



Decision by Mike Shiel, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-180-2062
- Site address: Land to the east of Brownhill Place and north of Brownhill Street, Dundee DD2 4JR
- Appeal by Blackwood Homes & Care against the decision by Dundee City Council
- Application for planning permission no.20/00250/FULL, dated 23 April 2020, refused by notice dated 17 December 2020.
- The development proposed: The erection of 12 flats including associated access, parking and landscaping.
- Application drawings: as listed in the schedule at the end of this notice
- Date of site visit by Reporter: 24 March 2021

Date of appeal decision: 21 May 2021

Decision

I allow the appeal and grant planning permission subject to the 13 conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are:
 - a. whether the principle, scale and design of the proposed development are acceptable; and
 - b. whether there is adequate parking provision, and the impact of any shortfall on the surrounding area.
2. The appeal site comprises an irregularly-shaped area of land amounting to 0.24 hectares on the corner of Brownhill Place and Brownhill Street. It was formerly occupied by a block of flats which were demolished in the 1990s, and the site is now covered in rough grass which receives some maintenance. The site, which slopes down from north to south is bounded on the roadsides by a metal fence, and there is no indication that it is intended for use as formal open space.
3. The proposed development is a three-storey building containing 12 two-bedroom flats, designed to be suitable for wheelchair users. 12 on-site parking spaces would be provided on Brownhill Street, on the southern side of the site.

4. The development is one of seven proposals on infill sites in the Charleston area submitted by the current appellant. These have been the subject of five separate planning applications, of which four have now received planning permission. It is argued for the appellant that the loss of the proposed flats on the appeal site could affect the viability of the overall proposal, thus reducing the number of social rented homes that the appellant could provide to less than the 54 that have already received permission.

The development plan

5. The development plan for this area comprises TAYplan Strategic Development Plan 2016-2036, and the Dundee Local Development Plan 2019 (DLDP). The site is located within an area of established residential character within Dundee, and was formerly occupied by residential development. Its redevelopment for a similar purpose therefore accords with the location priorities of policy 1 of TAYplan. Although the site is not specifically allocated for development in the DLDP, it would represent a windfall site contributing towards the overall housing land supply, and thus be compliant with TAYplan policy 4.

6. With regards to the DLDP, the council accepts that the development would comply with most of the relevant policies. However, in light of the representations received from local residents, I have assessed the proposal against those policies.

7. Policy 1 (High Quality Design and Placemaking) requires development to contribute positively to the quality of the surrounding built environment; respect the character and amenity of the place and to meet the six qualities of successful place set out in Scottish Planning Policy. The appeal site is situated in the Charleston area of the city, an extensive area of 1950/1960s council and former council houses. Although most are of two storeys, there are occasional three-storey blocks of flats, including one on the south side of Brownhill Street, diagonally opposite the site. In this context, I do not consider that the proposal for a three-storey building on the site is inherently inappropriate. Although higher than the immediately adjoining houses in Brownhill Street, the new building would not be visually over-dominant. I consider that its design and proposed materials would create a pleasant building which, although different from surrounding buildings, would positively contribute to the character of the area. I conclude that the proposed development would therefore comply with policy 1.

8. Policy 9 (Housing Land Release) gives priority to the development of allocated brownfield and greenfield sites. In addition housing land release on unallocated brownfield sites may be acceptable where it can be demonstrated that it will improve the tenure mix of an area where existing choice is limited. The proposed development is intended to provide wheelchair-accessible social housing. In the appellant's submissions, it is noted that 20% of wheelchair users in Scotland are currently housed in unsuitable accommodation. In Dundee itself, there is a waiting list of 99 families for wheelchair housing, 75% of whom require one- or two-bedroom accommodation. The current proposal has been specifically designed with this need in mind. Its location on a previously developed site in an established residential area would therefore contribute to an identified local housing need, and would be consistent with policy 9.

9. The council's reasons for the refusal of permission for this development cite DLDP policy 10 (Design of New Housing), because it does not meet the minimum parking

requirements set out in Appendix 4 of the plan. That appendix sets out a number of standards for development in suburban areas. I deal with the parking issue in more detail below. Policy 10 requires the design and layout of new housing developments to be of a high quality and contribute to creating places that respect and enhance the distinct character and identity of different parts of the city. This is essentially the same as the aim of policy 1, and I have already concluded that the current proposal would comply with that policy.

10. In relation to the requirements of Appendix 4 in terms of house types, it is stated that flats may be acceptable through the conversion of buildings of merit where conversion to houses cannot be achieved, or where identified in a site planning brief. In its appeal submission, the council has suggested that the appellant has given no explanation for why flatted accommodation is necessary on this site, and why it would not be suitable for detached or semi-detached houses to meet the requirements of tenants with particular needs; although this issue is not explicitly referred to in the reasons for refusal. There is no apparent explanation in the plan for this approach to new-build flats. I note that in the Masterplan Design and Access Statement for the whole of the proposed new development it is proposed to build flats on four of the other sites. If planning permission has been granted on that basis, the council would appear to be somewhat inconsistent in its implementation of this requirement. In any event, the appellant has identified a particular need for two-bedroom accommodation, and it makes considerable sense to utilise the available land as efficiently as possible. The Report of Handling for the application acknowledged that the proposal was not fully compliant with Appendix 4, but nevertheless recommended that planning permission should be granted. I agree with that assessment and conclude that there is no overriding reason why flats should not be permitted on the appeal site.

11. With regards to the other requirements in Appendix 4, indoor storage is proposed for bicycles and mobility scooters. At present two bicycle spaces are provided for every three flats, on the basis that some of the occupants will be unable to use bicycles and will need mobility scooters. Although some representations have complained that there is inadequate bicycle storage, I agree with the recommendation in the Report of Handling that further details can be dealt with through a planning condition. The development would provide a substantial area of communal garden space to the rear of the building, plus an area to be planted as a wildflower meadow to the north-east. Because of the slope of the site, some excavation would be needed to create level areas suitable for wheelchair users. Full details of the proposed landscaping of the site can again be the subject of a planning condition.

12. Appendix 4 requires the provision of a minimum of 18 metres between the facing windows of habitable rooms. This would generally be more than achieved with the proposed development, and I am satisfied that it would have no significant impact on the privacy of existing residents. Although three storeys in height, the slope of the ground, the distances involved, and the existing boundary treatments would minimise any overlooking of the rear gardens of the houses to the north of the site. Whilst not specifically mentioned in Appendix 4, some of the representations are concerned about loss of sunlight/daylight and overshadowing. A sun path analysis submitted for the appellant demonstrates that, at the summer solstice, there would be little overshadowing of gardens of properties to the north and east of the site. In winter, there would be some additional overshadowing of

properties to the north, but I agree with the assessment in the Report of Handling that this would not be to an extent that would have a significant detrimental impact on their amenity.

13. Returning to the question of parking provision, the proposed development would provide 12 on-site parking spaces (i.e.100%), whereas Appendix 4 requires 150% provision for flats. It is argued for the appellant that the overall development in Charleston would have 142 % parking provision, but I agree with the council's appeal submission that visitors to this site would be unlikely to use parking spaces elsewhere, as they would be unlikely to be aware of their availability, rather than parking on the street as close to the site as possible. The parking problem, and related matters of congestion and road safety, are clearly a major concern to local residents who have submitted objections to this development.

14. In driving around the area, I could see that there is an issue with the extent of on-street parking. The age and layout of the residential development in Charleston are such that there are relatively limited opportunities for providing parking spaces within the curtilages of individual properties. On-street parking tends to reduce the width of road carriageways to essentially a single lane only, as is the case with the short length of Brownhill Street adjacent to the appeal site. The presence of terraced houses and flat blocks on this street increases the demand for on-street parking.

15. The current proposal would, however, provide sufficient on-site parking to meet the direct needs of the occupants of the 12 flats, including three disabled spaces. Whilst wheelchair users might be highly dependent on the private car for their transport needs, it is possible that not all potential tenants will actually own their own vehicle. The proposed parking spaces would be at right-angles to the carriageway of Brownhill Street, requiring users to reverse into or out of them. Swept-path diagrams have been submitted showing how this can be achieved without impinging on the on-street parking along the south side of the street. I realise that these turning movements might cause some short delay to other road users, but I consider that any inconvenience caused would be minor, given the short length of road involved.

16. In the Report of Handling it is stated that the City Council Roads Engineers have reviewed the supporting information for the application and support the approach to parking provision at this site. I can understand the concerns of local residents over the parking situation in this area which, as I have suggested above, is in large part the result in the increased ownership of private cars since the estate was originally designed and built. It is a wider issue than caused by this development alone, which would provide off-street parking facilities for each of the proposed flats. I am not persuaded that the shortfall of parking spaces based on the Appendix 4 requirement, which relates to provision for visitors, would significantly exacerbate the existing situation in the area. Cars parked on the appeal site would be clear of the road carriageway and would not obstruct that carriageway for the passage of delivery, service or emergency vehicles.

17. As stated in the Report of Handling, this proposal does not fully comply with DLDP policy 10, in that the requirements of Appendix 4 in relation to the construction of flats and the provision of parking are not met. Policy 10 also states that all new housing developments will need to ensure that the design and layout respects and enhances the character of adjoining properties and the surrounding area and does not have a detrimental impact on residential amenity and parking. I have already concluded that the design and

layout of the development itself would not have any significant adverse impact on the amenity of adjoining residents. Whilst an increased demand for on-street parking caused by visitors to the development may result in some inconvenience to existing residents, I am not convinced that this would result in a serious loss of residential amenity.

18. With regards to other relevant development plan policies, the development would largely comply with the criteria of policy 14, relating to residential accommodation for particular needs, in terms of providing a high quality residential environment with appropriate amenity space. As previously indicated, I consider that the scale, massing and materials of the development are appropriate and the development would not adversely impact on the amenity of neighbours by virtue of its layout, overshadowing or overlooking. The site is easily accessible to Buttar's Road, where there are bus stops and some local facilities, and the development would not lead to an excessive concentration of non-mainstream residential uses in the area. Criteria five of this policy requires the provision of appropriate car parking relative to the need of occupants, visitors and support staff. In its appeal submission the council has stated that, because of the lack of parking provision, the development would therefore not comply with policy 14; although this policy is not cited in the reasons for refusal. I have considered the parking issue in some detail in connection with policy 10.

19. The council accepts, and I agree, that the development would not conflict with policies 30 (Green Infrastructure Maintenance), 35 (Trees and Urban Woodland), 37 (Sustainable Drainage Systems), 39 (Environmental Protection), 41 (Land Contamination), 44 (Waste Management Requirements for Development), and 48 (Low and Zero Carbon Technology in New Development). Where appropriate, planning conditions can be imposed to ensure full compliance with these conditions.

20. The reasons for the refusal of permission cite policy 54 (Safe and Sustainable Transport). The council argues that, whilst the development would comply with six of the seven criteria in that policy, it would not meet the fourth, as it considers that the additional traffic generated by the development would cause congestion and road safety problems on the short cul-de-sac of Brownhill Street which would provide access to the development. There is no technical evidence to support this contention, although I appreciate that it reflects the concerns of local residents. However, the council's roads engineers have raised no objections to the proposal. I am not convinced that the amount of traffic generated by this modest development would be so large as to significantly exacerbate traffic conditions on this short section of road; although I have recognised that the increased number of turning movements associated with the parking spaces would be likely to cause some delay and inconvenience to other residents. Given the nature of this road and the constraints already caused by existing on-street parking, traffic speeds are likely to be low. All told, I do not consider that the traffic impact of the development would be such as to conflict with policy 54.

Conclusions in respect of the development plan

21. It is frequently the case that developments comply with some policies in the local development plan, but not with others. It is not necessary for a development to comply with every policy in the development plan to, nevertheless, be in accordance with that plan when taken as a whole. It is a matter of planning judgement as to where the balance lies. In this case I acknowledge that the proposed development does not fully comply with the

requirements of DLDP policy 10 and Appendix 4 in relation to the construction of new-build flats and the level of on-site parking provision. Despite these areas of non-compliance, I am satisfied that, when judged overall, this proposal is in accordance with the development plan.

22. It therefore remains to consider whether there are any other material considerations which have a bearing on the outcome of this appeal.

Other material considerations

23. In terms of national planning policies, the recently published Scottish Planning Policy (SPP) 2020 states in paragraph 32 that proposals that accord with development plans should be considered acceptable in principle and consideration should focus on the detailed matters arising. The following paragraph indicates that the presumption in favour of sustainable development is a material consideration in favour of a proposal; and that whether a proposal is sustainable development should be assessed according to the principles set out in paragraph 29. Insofar as they are relevant to the current proposal, I conclude that it would meet those principles and would, therefore, be sustainable development. As such, I find that SPP is generally supportive of the development.

24. The appellant has provided supporting information that the site, although not specifically allocated in the DLDP, has been included within the Dundee Strategic Housing Investment Plan for affordable housing development. Working with the council's housing team and the Dundee Health and Social Care Partnership, a significant number of families have been identified with a medical need who would benefit from the type of properties being provided at this site. The proposal would improve the tenure mix in the area, and reduce waiting times for wheelchair-accessible accommodation. The 12 flats would help to provide homes for people with some of the most complex needs who are currently housed in unsuitable accommodation such as care homes and respite facilities. All these considerations, in my opinion, weigh in favour of the development, despite the non-compliance with some aspects of the development plan.

25. A further material consideration is the representations received. 24 representations were made to the original application, of which one was generally in favour, and the remaining 23 objected to the development. One further representation has been received in relation to this appeal on behalf of the original objectors.

26. The main concerns expressed by the objectors are as follows:

- increased traffic congestion and on-street parking problems as a result of the development, and the consequent impact on road safety;
- inappropriate height and design of the new building, which would be out of keeping with existing properties in the area;
- adverse impact on the amenity of adjoining properties from overshadowing, loss of daylight and overlooking;
- increased traffic and domestic noise;
- adverse effect on access for service and emergency vehicles to Brownhill Street;
- inadequate provision for bicycle storage; and
- the loss of open space.

27. I have dealt with most of these issues in the preceding part of this notice. The matter of the loss of open space has been raised by the Charleston Residents & Tenants Association in relation to all the proposed developments in the area. Whilst I have little doubt that the present appeal site is used on occasions by local children as informal open space, it is not part of the formal greenspace network of the area, and was formerly occupied by buildings. All told, I conclude that, whilst I understand the reasons for the objectors' concerns, the development would not have a significant adverse impact on the character or amenity of the area such as to warrant the refusal of planning permission.

28. The council has recommended that 13 conditions should be imposed if planning permission is to be granted. I have adopted those conditions with some minor modifications.

Overall conclusion

29. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

M D Shiel

Reporter

Conditions

1. Prior to the commencement of development, full details and samples of the external finishing materials shall be submitted to and approved in writing by the council. Thereafter the development shall be carried out in accordance with the approved details.

Reason: in the interests of visual amenity and to ensure the use of high quality materials.

2. Before any unit is occupied the remediation scheme submitted with the application shall be fully implemented and a verification report with relevant documentation demonstrating that the objectives of the remediation scheme have been achieved shall be submitted to and approved by the council.

Reason: in order to ensure that any potential contamination of the site is dealt with appropriately in the interests of public and environmental safety.

3. Prior to the commencement of development, full details of the soft and hard landscaping scheme and works shall be submitted to and approved in writing by the council. Thereafter, all works approved by virtue of this condition shall be carried out prior to the first occupation of the development hereby approved. Details of the scheme shall include:

- a. existing trees, shrubs and hedges to be removed;
- b. existing trees and landscape features to be retained;
- c. the location of new trees, shrubs, hedges, grassed areas and water features; and
- d. a schedule of planting to comprise species, plant sizes and proposed numbers and density.

Reason: to ensure the implementation and management of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape, in the interests of the visual amenity of the area.

4. Prior to the commencement of development, a maintenance schedule for the greenspace and new planting as well as the protection of existing and proposed trees shall be submitted to and approved in writing by the council. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted in terms of condition 3.

Reason: in the interests of the maintenance and visual amenity of the area.

5. Prior to the commencement of any works on site, a detailed surface water drainage/Sustainable Drainage System (SuDS) design including drawings, calculations, full modelling, simulation results, design risk assessment, signed Dundee City Council Design Compliance and Independent Check Certification, evidence of compliance with the Simple Index Approach as described in section 26.7.1 of the CIRIA SuDS Manual (C753), and where appropriate Scottish Environment Protection Agency comments shall be submitted to and approved in writing by the council. Thereafter, all works approved by virtue of this condition shall be carried out prior to the first occupation of the development hereby approved.

Reason: in the interests of flood protection.

6. Prior to the commencement of any works on site, details of measures proposed to manage surface water run-off from the site during construction shall be submitted to and approved in writing by the council. Thereafter, all works approved by virtue of this condition shall be carried out prior to construction works commencing on any part of the development hereby approved.

Reason: in the interests of flood protection.

7. Prior to the commencement of any works on site, maintenance responsibilities along with a maintenance schedule for the surface water drainage system/SuDS features shall be submitted to and approved in writing by the council. Thereafter, all works approved by virtue of this condition shall be carried out in perpetuity.

Reason: in the interests of flood prevention and visual amenity.

8. Prior to the commencement of any works on site, evidence of Scottish Water approval for the proposed drainage system for the development hereby approved shall be submitted to and approved in writing by the council.

Reason: to ensure the provision of adequate drainage facilities for the development.

9. Prior to any works on site, details of the proposed footway works shall be agreed and must be formed and constructed to Dundee City Council standards and specifications.

Reason: in the interests of vehicle and pedestrian safety.

10. Prior to any works on site, details of any proposed street lighting alterations shall be agreed and must be to Dundee City Council standards and specifications.

Reason: in the interests of vehicle and pedestrian safety.

11. Prior to the commencement of development, details of the proposed electric vehicle charging provision shall be submitted to and approved in writing by the council. The agreed provision shall be installed prior to occupation of the development.

Reason: in the interest of promoting the use of sustainable travel measures.

12. Prior to the occupation of any unit, full details of the proposed secure cycle storage shall be submitted to and approved in writing by the council. Thereafter the development shall be carried out in accordance with the approved details.

Reason: In the interests of sustainable travel measures.

13. Prior to the occupation of any unit, the low and zero carbon technologies as detailed in the supporting energy statement submitted with the application shall be fully installed.

Reason: in order that the new development will meet the required carbon emissions reduction standards in the interests of the environment.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Application drawings

Drawing No. 0(00)001	Overall Site Location Plan
Drawing No. 0(00)033	Site 7 Location Plan
Drawing No. 0(00)053	Site 7 Existing Road Layout
Drawing No. 7-00-002 rev P04	Site 7 Proposed Site Plan
Drawing No. -0(00)012 rev P02	3 storey Flats Proposed Floor Plans 1 of 2
Drawing No. -0(00)021	3 storey Flats Proposed Floor Plans 2 of 2
Drawing No. -0(00)13 rev P02	3 storey Flats Proposed Elevations 1 of 2
Drawing No. -0(00)022	3 storey Flats Proposed Elevations 2 of 2
Drawing No. -0(00)023	3 storey Flats Proposed Sections
Drawing No. -7(00)004	Site 7 Proposed Elevation & Section
Drawing No. 7-00-001	Site 7 Existing/Topographical Site Plan
Drawing No. 126695/SK7106	Site 7 Vehicle Parking Movements
Drawing No. 132612/2013	Site 7 Drainage Layout