



Appeal Decision

Hearing Held on 26 July 2022

Site visit made on 26 July 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2022

Appeal Ref: APP/A0665/W/21/3287113

The Red House, Dee Banks, Great Boughton, Chester CH3 5UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Sterling Property Co Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 21/00102/FUL, dated 18 December 2020, was refused by notice dated 10 June 2021.
 - The development proposed is the demolition of the existing building and the erection of a new building to create 7 no. apartments plus associated underground parking.
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Decision

1. The appeal is allowed. Planning permission is granted for the demolition of the existing building and the erection of a new building to create 7 no. apartments plus associated underground parking at The Red House, Dee Banks, Great Boughton, Chester CH3 5UX in accordance with the terms of the application Ref 21/00102/FUL dated 18 December 2020 subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application was originally refused by the Council for four separate reasons. Since then, a follow up application (Council Ref 21/04648/FUL) for substantially the same proposal has been submitted to the Council. Work associated with that scheme has now enabled the parties to agree on matters relating to flood risk and ecology. It is therefore common ground that refusal reasons 3 & 4 have fallen away.
3. I have also been advised that a revised set of plans has been submitted to the Council who have consulted interested parties on those plans. Whilst the Procedural Guide to Planning appeals (2021) at Annexe M makes it clear that the appeal process should not be used to evolve a scheme, I have accepted those plans on the basis that interested parties would not be prejudiced as they have had the opportunity to comment on them.
4. The plans also indicate a broad reduction in the scheme through the height of the proposed buildings which it was clarified at the Hearing has been principally achieved through reductions and amendment to the roof designs. On the basis that I have accepted those plans, refusal reason 2 relating to the design of the scheme and its effect on the character and appearance of the Dee Banks Conservation Area (the Conservation Area) also falls away.

Main Issues

5. The first main issue is whether the Red House can be considered an existing community facility. The second is if the Red House is considered an existing community facility, the effect of its loss on the quality of life, health and well-being of residents and visitors.
6. The third is whether there would be an adverse effect on the integrity of the River Dee and Bala Lake Special Area of Conservation (SAC) and whether there would be an adverse effect on any of the notified interest features of the River Dee Site of Special Scientific Interest (SSSI).

Whether a community facility

7. The evidence indicates that the Red House was originally a public house, but which in recent years has been operating as an Italian Restaurant, Et Alia. Whilst that may be the case, it was discussed at the Hearing that it would be possible to visit the premises to take a drink only. The building sits within a very pleasant location, in the main due to its setting above the eastern banks of the River Dee with the attendant extensive views available to the river and land beyond to the west.
8. It was discussed at the Hearing that the local community have, and do, use the premises as a meeting place and that gatherings to mark life events have occurred at the premises in the past. It is clearly a location that fosters interaction between the community and at the time of my site visit, although only a snapshot in time on a late Tuesday afternoon, customers were gathered in groups around tables inside the building.
9. To conclude on this matter, the premises should be considered a community facility. In coming to this conclusion, I have taken account of Policy DM39 of the Cheshire West & Chester Council Local Plan Part Two: Land Allocations and Detailed Policies (2019) (CWCLP2).
10. The supporting text of the policy states that for its purposes community facilities and services could include education, libraries, social services, fire, police, health, public houses, local shops, places of worship and community centres. The use of the word 'could' suggests that this is not intended to be a fixed or closed list. Further, in light of the discussion at the Hearing, the manner in which some people appear to use Et Alia seems to bear some similarities with the way one may use a public house.
11. The glossary to the CWCLP2 also defines a community facility as facilities providing for the health, welfare, social educational, spiritual, leisure and cultural needs of the community.

Effect of loss of community facility

12. The ownership structure of the Red House has altered somewhat over the years. The present owner, Mr Stalker has operated the site since 2006. For many years his interest in the premises was on a freehold basis, with an annual rent paid to Punch Taverns. It was detailed at the Hearing that Mr Stalker bought the freehold of the site in 2019 to become the outright owner.

13. It was stated at the Hearing that the business has become unviable and that the business would be closed as its losses could no longer be sustained by the owner.
14. The financial information before me in this respect is far from complete, but I have been presented with a report by Savills¹. Trading and profit and loss accounts for the year ended 31 October 2016 & 2017 indicate the business suffered a substantial net loss. This relates to the previous Punch Taverns business structure. A letter within this report from Guy Walmsley Limited Chartered Accountants indicates the business made only a very small profit in the year to August 2019.
15. I have also been supplied with a more up to date hypothetical profit and loss account should the business operate at its optimal levels. This shows a fair maintainable operating profit of a very modest £20,000. The report suggests that given the seasonal nature of the business, a poor summer would impact this figure and a loss could be expected every other year the business operates moving forward.
16. The evidence indicates that Mr Stalker has invested heavily in the business to a level of £1.7 million initially and then a further £300,000 in 2015. This suggests that the owner has seriously committed to the business.
17. The large, glazed structure to the rear which opens up views across the river to the west is a unique feature which undoubtedly attracts custom. Nonetheless, such a structure will inevitably lead to higher energy costs than some other premises. I was advised at the Hearing that energy costs have risen substantially with the potential for further rises. This matter would further impact on profitability moving forward.
18. The evidence details schemes that were conceived in an attempt to increase business. It is indicated that a water taxi scheme from Chester City centre proved unviable. It was also detailed at the Hearing that a customer registration scheme was devised whereby £20 vouchers were delivered locally on the basis that the customer agreed to be included on the mailing list, but that only 10% of these were returned.
19. The evidence indicates that only four off street parking spaces are available for a business which can accommodate 120 internal and 200 external covers. The on-street parking situation is not ideal, with double yellow lines immediately outside the premises.
20. Further to the south where they cease, the width of the B5130 is not excessive and cars parked on the western side of the road would have to partially use the footpath so as not to impede the two-way flow of traffic. This is clearly not an ideal situation.
21. At the Hearing, Mr Stalker detailed that he had made attempts to remedy the parking situation by renting some parking space in the adjacent school car park while that was closed. However, he suggested that other motorists not visiting the premises often used the spaces, rendering them unavailable for customers and suggested the £7,500 per annum rent for the spaces further detracted from profits.

¹ Report to Planning Officer in respect of Sale Process WA Hunter MRICS Savills (UK) Limited 19 May 2022.

22. Whilst I appreciate that other potential owners of the site did not comment on the parking issues in their responses to the owner, it is hard not to conclude that such an acute lack of proper parking would deter a substantial number of visitors, especially those who are not immediately local to the site.
23. Concern was expressed by the Council and interested parties at the Hearing in relation to the marketing of the site. The evidence indicates that the site was marketed by Thomas Premier, a local estate agent between 2019 and 2021. This marketing included a listing on Rightmove. The evidence also indicates that Mr Stalker had privately approached other operators over a number of years with no real interest.
24. I have been provided with a copy of the listing. It is a rather open set of particulars designed to appeal to a wide range of potential buyers, but it clearly showcases the impressive interior of the restaurant and does identify the possibility for continued commercial use at the site.
25. I accept that marketing the premises through a national company specialising in hospitality premises could potentially have reached a wider range of prospective buyers. The appellant advised at the Hearing that he had previously approached Christies (who are such a company) on an informal basis when under the previous business model but the agent with whom he discussed the site suggested the prospects for a sale were not good. The appellant suggested that on hearing this advice he did not pursue further marketing with them.
26. Although concerns were expressed at the Hearing that the asking price, set by the agent, was high, it was confirmed at the hearing that no offers at a lower amount for consideration were received by the agent.
27. Various other existing community facilities where it is possible for members of the community to gather on both a formal and informal basis are detailed within the evidence. Community facilities where people could meet are available at Vicars Cross Community Centre, Huntington Village Hall, St Luke's Church and Caldý Valley Neighbourhood Church and Centre.
28. However, most relevant are the three local pubs, which serve food and which are located within a 20-minute walk or less from the Red House and which I was able to view after undertaking my site visit to The Red House. The Rake and Pikel is situated to the south, the Twirl of Hay to the east and the Mount Inn (which also offers river views to the rear) to the north.
29. Given that the Red House is located on the western fringes of a large residential area it is likely that the walk time to a hospitality venue would not be increased for many living within the locality as a result of these other premises within the local area.
30. The financial evidence suggests that the business cannot sustain itself at the site and the marketing over an extensive period of time has not resulted in any interest from another operator to continue the existing use of the site.
31. It is also of significance that there are many other community facilities within the local area which provide alternative provision as places of social gathering for the local community. There would therefore be no unacceptable impact on the quality of life, health and well-being of residents and visitors as a result of the loss of the facility.

32. The proposal would therefore accord with Policy DM39 of the CWCLP2. Amongst other things it states that development involving the loss of existing community facilities, cultural or local services will be supported where;
1. it is demonstrated that the facility is surplus to the needs of the local community;
 2. it is demonstrated that the facility is not capable of continued use for the existing purpose and cannot be used for other community uses in an economic and sensitive manner;
 3. the loss of the land/property forms part of a larger scheme for the development of community facilities serving the needs of the locality; or
 4. compensatory facilities of equivalent community benefit are provided within the catchment of the existing facility.
33. There was some debate at the Hearing as to whether the Policy at point 4 requires the provision of compensatory facilities by the developer. I don't see that to be the case, and the supporting text to the Policy offers some clarification at 14.47 stating that when considering proposals for amongst other things, demolition, the Council will also take into consideration existing alternative facilities in the surrounding area.
34. The proposal would not conflict with Policies SOC 5 and STRAT 11 of the Cheshire West & Chester Council Local Plan Part One: Strategic Policies (2015) which amongst other things do not permit development that would give rise to significant adverse impacts on health and quality of life and support measures to protect access to facilities that contribute to the quality of life of residents and visitors.

River Dee and Bala Lake SAC & River Dee SSSI

35. The site sits on the banks of the River Dee which is designated as part of the River Dee and Bala Lake SAC. The River Dee at this location is also a SSSI.
36. I am required to undertake a Habitats Regulations Assessment to identify all impacts from the proposed development which are likely to have significant effects on the qualifying features of the European Site. The River Dee and Bala Lake SAC amongst other things is designated on account of its widely varying habitat classes (including amongst other things mud flats, sand flats and lagoons to broad leaved deciduous woodland and improved grassland) which support a wide range of European Protected Species (including amongst other things Twaite, Bullhead, Otter, Freshwater Pearl Mussel and Atlantic Salmon).
37. Given that the site is immediately adjacent to the banks of the River Dee, I conclude that an impact pathway is present. Therefore, adopting the precautionary principle, and in the absence of any evidence to the contrary, I consider that as a result of the proposal, likely significant effects on protected habitats sites in combination with other plans and projects cannot be ruled out.
38. I am therefore required to carry out an Appropriate Assessment which must consider the conservation objectives for the affected European Sites and the effect the proposed development would have on the delivery of those objectives. In this regard I have afforded advice from the statutory nature conservation body (SNCB) within the evidence significant weight.

- 39. The main potential impacts would be those resulting from demolition and construction works at the site as well as from ongoing disturbance resulting from the use of the site.
- 40. However, various mitigation measures would be secured via condition. In line with advice from the SNCB, subject to the inclusion of the mitigation measures, the proposal would not have an adverse effect on the integrity of The River Dee and Bala Lake SAC.
- 41. For the same reasons an impact pathway would be present to the River Dee SSSI. However, for the same reasons as above, and having regard to the advice of the SNCB, the proposal would be unlikely to adversely affect the notified interest features of the River Dee SSI, taking account of the mitigation included within the proposal.

Other Matters

- 42. The site is within the Dee Banks Conservation Area. Following the submission of the amended plans, there is no disagreement between the parties that the proposal would preserve the character and appearance of the Conservation Area. I have no reason to disagree.
- 43. The evidence indicates that a lawful development certificate has been issued by the Council which would enable alternative uses at the premises. The appellant advised at the Hearing were the appeal not successful, their intention was to pursue the use of the building as offices.
- 44. However, having viewed the building, its internal set up is rather use specific and in reality, its use as offices may not be straightforward. Further, the problems which affect the existing site, including lack of parking, are also likely to be a hindrance to office use.
- 45. I was advised that Mr Stalker had other business interests that could move to occupy the site on an office basis. However, given the particular set up at the site and the other constraints I do not consider there to be a greater than theoretical possibility that the fall-back position could be fully and successfully implemented. I therefore afford the fallback position limited weight.
- 46. Construction would cause some disruption to those nearby including to the nearby school. However, this is an inevitable impact from any significant development proposal and could be mitigated by careful construction management and conditions are included to limit impacts as far as possible.
- 47. Despite the earlier application, the evidence details that the Council considered that the threshold to list the asset as one of community value (ACV) as defined in the Localism Act 2011 had not been met. They confirmed that the asset would be removed from the list. Regardless of this, the ACV matter has had little bearing on my decision.
- 48. I note third party concerns with regard to cycle store provision. This matter was discussed at the Hearing where it was agreed that it was likely that an appropriate cycle store facility could be accommodated on the site, to be agreed between the parties. This matter is conditioned.
- 49. I have not found conflict with other development plan policy that has been put before me.

Conditions

50. In addition to the standard three-year time limit for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans.
51. Conditions are also necessary relating to construction noise, vibration, dust, traffic, and lighting in the interests of the living conditions of the existing occupiers within the area. Restrictions on demolition/construction hours and deliveries are necessary for the same reason.
52. A building recording condition is required so that the previous building and history of the site can be understood into the future.
53. Materials details are required in the interests of the character and appearance of the area along with details of hard and soft landscaping. Drainage conditions are necessary to ensure proper drainage of the site and a levels condition is required to reduce the risk of flooding and a condition is required to minimise water usage in the interests of the sustainable use of resources.
54. Conditions relating to electric vehicle charging points and cycle storage are necessary to promote more sustainable forms of transport.
55. Conditions relating to invasive species eradication, bat and bird boxes, external lighting, pontoon access and other ecological mitigation measures are necessary in the interests of biodiversity at and around the site.

Conclusion

56. I have identified no conflict with the development plan and there are no material considerations to indicate that the appeal should be determined otherwise than in accordance with it. I therefore conclude that the appeal should be allowed.

T J Burnham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Culkin

Jonathan Storey

John Barrett

Leah-Ella/ Heggarty

Tony Hunter

Christopher Taylor

Elouise Park

FOR THE COUNCIL:

Lyndsay Shinner

Steven Holmes

Emma Jones

INTERESTED PARTIES:

Cllr Keith Board

R.W. Stalker

T. Hunter

S. Garrity

Sara Knowles

Michele Hulligan

K. Fitzgerald

Shirley Hurst

Lynda Coutta

OBSERVING:

Ben Greenwood

Emily Reed

Jo Redmond

Melanie Louw

DOCUMENTS SUBMITTED AT APPEAL:

Cheshire West & Chester Council Local Plan Part Two: Land Allocations and Detailed Policies – Glossary.

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: L(70)001 P2, L(60)001 P3, L(80)101 P1, L(82)001 P1, L(80)010 P4, L(92)001 P2, L(92)010 P1, L(60)001 P2, L(81)001 P9, L(81)301 P1, L(81)302 P1, L(81)010 P10, L(91)001 P6, L(91)002 P6, L(91)010 P9 & L(81)011 P1.

3. No development including demolition of the existing building shall commence until details of the following have been submitted to and approved in writing by the local planning authority;

- i. details of the use of any generators to be used within 50m of an existing residential property (including proposed location, the hours of use, the duration of use, the sound power level, a qualitative noise assessment, and if appropriate proposed noise mitigation measures);
- ii. details of any piling or subsurface vibration ground improvement techniques proposed (including details of the work, monitoring and environmental controls proposed);
- iii. details of the location of the site compound, delivery area and contractor car parking;
- iv. details of any external lighting.

The approved details shall be adhered to throughout the demolition and construction period.

4. No development including demolition of the existing building shall commence until details of any piling and other works likely to cause ground borne vibration have been submitted to, and approved in writing by, the local planning authority. The details shall include, but not be limited to, details of the work to be undertaken, equipment to be used, monitoring techniques, and environmental controls proposed. No development shall thereafter take place except in accordance with the approved details.

5. No development including demolition of the existing building shall commence until a noise control scheme has been submitted to, and approved in writing by, the local planning authority. The scheme shall include all items of equipment likely to cause noise during development and shall estimate noise levels at the nearest façades of neighbouring properties in line with relevant guidance. Means of adequate mitigation shall be included in the scheme. No development shall thereafter take place except in accordance with the approved scheme.

6. No development including demolition of the existing building shall commence until a dust control scheme has been submitted to and approved in writing by the local planning authority. No demolition or construction shall take place except in accordance with the approved scheme.

7. Prior to the commencement of development, detailed plans in respect of the works required within the adopted highway to form a suitable access and the

associated works with regard to the car lift shaft and basement parking facility, shall be submitted to and agreed in writing by the local planning authority. The works shall be carried out in accordance with the agreed details and completed prior to first occupation of the development and thereafter retained for the lifetime of the development.

8. Prior to the commencement of development full details of the phasing of the demolition and construction traffic for the development, including temporary highway vehicle and pedestrian routings, times and days of large vehicle movements to/from the site, suitable off-highway parking for all construction related vehicles, adequate material storage facilities, vehicle cleansing/ wheel washing facilities and the management of any deposits of debris on the highway, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed details.

9. The Invasive Species Eradication Method Statement as detailed in The Demolition and Construction Phase Measures, in the Rachel Hacking Ecology 'Ecological Statement for Habitats Regulations Assessment at the Red House, Dee Banks, Chester– Rev A', shall be adhered to in full prior to the commencement of development.

10. No demolition shall take place until a building recording and analysis report has been submitted to and agreed in writing by the local planning authority. The scope and contents of the report shall have been agreed in writing prior to the recording and analysis taking place.

11. No development above ground works (slab level) shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.

12. Vehicular turning areas shown on the approved plans L(91)002P6 Proposed Floor Plans and L(81)001 P9 Proposed Site Plan shall be fully implemented and available for use prior to the first occupation of any of the dwellings hereby permitted and retained in the approved manner thereafter.

13. Notwithstanding the details shown on the approved plans L(91)002 P6 Proposed Floor Plans and L(81)001 P9 Proposed Site Plan details of a scheme for the storage of bicycles at the site shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any of the dwellings hereby approved. The cycle storage shall be available prior to the first occupation of any of the dwellings hereby approved and shall be retained for its intended purpose for the lifetime of the development.

14. Prior to the first occupation of any of the dwellings hereby permitted, a scheme for the provision of bat roosting and bird boxes within the site, including location and specification, shall be submitted to, and approved in writing by the local planning authority. The bat and bird boxes shall be installed prior to first occupation and thereafter be retained in the approved manner for the lifetime of the development.

15. Prior to the first occupation of any of the dwellings hereby approved, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and the development shall only take place in accordance with the approved details. These details shall include:

- i. means of enclosure, including front boundary treatment;
- ii. hard surfacing materials;
- iii. Soft landscape works shall include planting plans consisting of at least two new native trees for each healthy, significant tree lost (four trees required) ; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.

The agreed details shall be fully implemented prior to the first occupation of any of the dwellings hereby approved.

16. Throughout the duration of the development, including demolition, the mitigation measures detailed in the Demolition and Construction Phase Measures of the Ecological Statement for Habitats Regulations Assessment at the Red House, Dee Banks – Rev. A, Chester - Rachel Hacking Ecology, dated 03rd May 2022 shall be fully implemented and adhered to.

17. No demolition/construction works shall take place outside 08.00 hours to 18.00 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays nor at any time on Sundays or Bank Holidays.

18. No deliveries shall be taken at or despatched from the site outside 08.00 hours to 18.00 hours Mondays to Fridays; 08.00 hours to 13.00 hours on Saturdays or at any time on Sundays or Bank Holidays.

19. Notwithstanding the details shown on the approved plans, no external lighting shall be installed during or post-construction except in accordance with an external lighting scheme to be submitted to and approved in writing by the local planning authority. The lighting scheme shall thereafter be implemented in full accordance with the agreed scheme and retained for the lifetime of the development.

20. The development shall be carried out in accordance with the submitted flood risk assessment (Flood Risk Assessment, Weetwood Final Report v1.2, November 2021) and the following mitigation measures it details:

- i. Finished floor levels shall be set no lower than 8.33 metres above Ordnance Datum (AOD)
 - ii. Access to the basement parking should be set no lower than 7.97 m AOD.
- These mitigation measures shall be fully implemented prior to occupation and shall be retained and maintained thereafter throughout the lifetime of the development.

21. No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.

22. Access and use of the pontoon shall be restricted to the residents of the 7no. apartments on the site only and their guests. There shall be no public access to the pontoon.

23. The Drainage Strategy as detailed in the Proposed Drainage Layout, Drawing No C100, Revision P1 shall be implemented in full and in line with additional information supplied via email comments 4902 Response to Natural England Concerns (Pollution Runoff) from Weetwood, dated 24 March 2022.

24. Each dwelling shall be provided with one dedicated Electric Vehicle Charging point, the details of which shall be submitted to and agreed in writing with the local planning authority prior to the first occupation of the development. Each charging point shall be available for the unit to which it relates prior to the occupation of that unit. The charging points shall thereafter be retained and maintained in working order for the lifetime of the development.

25. Each residential unit hereby approved shall be designed and constructed:

ii) to ensure that the potential consumption of wholesome water by persons occupying a new dwelling will not exceed 110 litres per person per day.

(Paragraph (2)(b) of The Requirement G2 of the Building Regulations applies).