



Appeal Decision

Site visit made on 19 February 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2024

Appeal Ref: APP/W4325/W/23/3329810

The Black Horse Hotel, School Hill, Heswall, Wirral, Merseyside CH60 0DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Wayne Moore on behalf of The Black Horse Hotel against the decision of Wirral Metropolitan Borough Council.
- The application Ref APP/22/01737, dated 30 September 2022, was refused by notice dated 07 June 2023.
- The development proposed is erection of a raised decking area, including safety fencing.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the above banner heading is taken from the decision notice as I consider this to be a more accurate and concise description than that provided on the planning application form. I have therefore determined the appeal on that basis.
3. I have removed the words “retrospective” from the description of development in the above banner heading as this does not constitute an act of development. I observed on my site visit that the appeal proposal has already been implemented, I shall thus consider it on a retrospective basis.
4. Whilst not referred to in the reasons for refusal, the Council’s submission makes reference to Policies WD 2, WD 2.2, WD 7.1 and WD 10 of the emerging draft Wirral Local Plan. The draft Wirral Local Plan has been through Public Examination, however the Inspector’s findings on the plan have yet to be published. I therefore attribute limited weight to the emerging local plan, and these policies, in the determination of this appeal.
5. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The amendments to the Framework do not affect the matters that are in dispute in the determination of this appeal. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

6. The main issues are the effect of the proposal on:
 - the character and appearance of the Heswall Lower Village Conservation Area (CA); and

- the living conditions of nearby residents with particular reference to privacy, noise and disturbance.

Reasons

Character and appearance

7. As the appeal site is situated within the CA, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
8. The appeal relates to the yard/garden area located to the rear of the public house known as the Black Horse Hotel. The boundaries of the CA encompass the original small fishing village of Heswall, which pre-dates the suburban expansion of the village after the arrival of the railway in the late nineteenth century, as well as some of the earliest and best quality later suburban development.
9. The significance of the CA is derived in part by the varying topography which reflects the Lower Village's positioning on the west facing slopes of the Wirral Peninsula, with the appeal site located at the lower end of the steep sloping streets to the north.
10. The village contains a range of building uses, with the appeal site located relatively close to a cluster of shops, a church and its associated community centre within the heart of the original settlement on Village Road. However, in the main the CA, and the area immediately surrounding the appeal site, is characterised by residential properties set within an attractive variety of streets, with each street having its own distinct character. The character of each of these streets is strongly influenced by the period within which the street was developed, and the aforementioned varying topography of the area.
11. The area in which the appeal site is located is characteristic of the wider CA. To the south is the historic heart of the village which is defined by older buildings fronting onto the highway of Village Road. To the north, and due to the mix of building styles, designs, ages and topography, the urban grain is somewhat ad-hoc, representing the various phases of development.
12. The appeal site itself makes a positive contribution to the CA, with the appeal building designated as a category 'A' building in the appendices section of the Heswall Lower Village Conservation Area Appraisal and Management Plan (CAAMP). This categorisation states that the building is critical to the character of the area.
13. The public house is four-storeys in height and occupies a prominent position within the CA, at the junction where Village Road, School Hill and Thurstaston Road all meet. Part 1 of the CAAMP makes reference to the underlying sandstone bedrock being visible at the lower parts of steep streets, and this is evident at the appeal site which has a sandstone boundary wall to the rear of the public house, fronting onto Thurstaston Road and this wall also makes a positive contribution to the CA as a result of its materials, height and alignment adjacent to the highway. Furthermore, Part 1 of the CAAMP identifies local sandstone boundary walls as a typical traditional feature of the CA and Part 2 of the CAAMP states that the loss or alteration of these features would adversely affect the character of the CA.

14. The appeal scheme has retained this sandstone boundary wall to the rear of the public house. However, the erection of a solid timber fence atop of this boundary wall, to enclose the decking that serves the outdoor drinking area, results in a modern man-made feature of some significant height that dominates views of, and detracts from the visual quality of, this wall at this prominent location within the CA.
15. Furthermore, standing atop of an existing high boundary wall, the timber fencing is clearly visible from public vantage points close to the appeal site along Thurstaston Road, as well as from longer distances on Village Road at the heart of the original settlement. From these locations the fencing appears as an striking and incongruous feature on the street scene and harms the visual qualities of the appeal site and this part of the CA.
16. I note the appellant comments that the colour of the fence harmonises with the existing sandstone wall. Notwithstanding this, I find that the colour of the fence jars against the sloping backdrop of surrounding greenery and vegetation, as well as the rendered finish of the public house, increasing its visual prominence. The appellant has also asserted that the design allows plants to grow up the fence to provide a natural look over time. I did not observe any such planting on my site visit and no specific details have been provided in respect of this matter. Even were this the case, and having regard to the scope of suitably worded planning conditions, based upon the evidence before me, I am not satisfied that supplementary landscaping could adequately mitigate the harmful effects.
17. I acknowledge that the neighbouring property at the Hermitage has an existing timber fence above its boundary wall which is also visible from Thurstaston Road. I have not been provided with the planning history details of this fence, nonetheless, I observed on site that this fence is set on land behind this boundary wall and its total height is less than the fence subject to this appeal. As such, I do not consider this neighbouring fence to be as visually dominant as the appeal scheme and is therefore not directly comparable.
18. The appellant contends that fencing positioned above walls is a feature of the CA and on my site visit I observed that some residential properties have fencing above existing boundary walls. Again, I have limited information before me in respect of the planning history of these boundary treatments. Nevertheless, I found that none of these nearby boundary treatments that I observed were of a resulting juxtaposition, or in as prominent a location as the appeal site's location at the junction where the highways of Village Road, School Hill and Thurstaston Road all meet.
19. In view of the above, the timber fencing will have a negative impact on the character and appearance of the appeal site and the street scene, and would harm the significance of the CA. The proposal would therefore not preserve the character or appearance of the CA. The degree of harm is less than substantial, nonetheless paragraph 205 of the Framework makes it clear that when considering the impact of a development on the significance of a designated heritage asset great weight should be given to the asset's conservation. Therefore, in accordance with paragraph 208 of the Framework this harm must be weighed against the public benefits.
20. The appellant comments that the Black Horse Hotel is a key building in the CA, as a result of its age, appearance and the fact it is a public house that has been

at the heart of the village for 140 years. The appellant contends that the appeal scheme will provide increased summer trade for the business, and therefore help to sustain the use of the building as a public house, in a time when hundreds of pubs are closing each year, which is a demonstrable public benefit.

21. I acknowledge that the provision of an outdoor drinking area to the rear of the public house is likely to increase summer trading at the premises beyond that provided by the existing outdoor area to the front of the public house. This in turn will improve the viability of the business and help to preserve the premises use as a public house, which is of benefit to the public. It is also suggested the existing outdoor seating area is not desirable for safety reasons.
22. I have also noted the patron support in the petition. However, I have been provided with limited evidence that the existing business, or use of the building as a public house, is at any immediate risk, or any substantive evidence of the financial benefits that the outdoor drinking area would provide to the business. Furthermore, I have been provided with limited evidence that the appeal scheme is the only way that an outdoor drinking area could be provided at the appeal site.
23. In view of the above, and based upon the submitted evidence, the public benefits arising from the appeal proposal would not outweigh the great weight to be given to the preservation of the heritage asset, and thus the proposal would conflict with paragraph 206 of the Framework as the harm to a designated heritage asset would not have a clear and convincing justification.
24. Accordingly, I conclude that the proposal would have a harmful impact upon the site and would not preserve or enhance the character and appearance of the CA. The proposal therefore conflicts with Policies CH2 and CH14 of the Wirral Unitary Development Plan (2000) (UDP). These policies together seek to ensure, amongst other things, that proposals preserve the distinctive characteristics of the area, and preserve the character and setting of buildings and other elements which make a positive contribution to the appearance and special character of the area. The proposal is also contrary to the Framework where it seeks to conserve and enhance the historic environment.

Living conditions

25. To the north / rear the appeal site shares a boundary with a block of residential apartments known as the Hermitage, with this apartment block being situated on slightly higher land due to the natural rising topography of the area. The shared boundary is defined by an attractive stone wall, with vegetation situated on the apartment block side of this wall.
26. The upper decking level of the outdoor drinking area adjoins up to this boundary wall and picnic style benches, and a planter containing two small trees, have been located adjacent to this boundary wall. As such patrons using this upper area would be able to sit or stand directly adjacent to the boundary shared with this neighbouring apartment block.
27. Whilst relatively modest in size the outdoor drinking area, presently containing 5no. picnic style tables on the upper level, could be used by significant numbers of people. I have not been provided with any substantive noise evidence but I

- observed on site that the background noise levels in this area were low, albeit recognising that this is a single snapshot in time.
28. Nevertheless, and given the nature of the use as an outdoor drinking area for a public house, it is not unreasonable to assume that at times people using this area would be projecting their voices or be many in number, or possibly on occasions be in high spirits. In this context, instances of raised voices caused by patrons on this raised decking area would be very noticeable within the neighbouring site, either within the outdoor amenity area closest to the appeal site, or the apartment block itself.
29. Consequently, as a result of becoming a more attractive area for use by patrons, the scheme will result in greater levels of use, and associated noise and disturbance for the occupiers of the neighbouring residential use. This would be particularly harmful during the summer months when the weather is generally warmer and residential properties would be more likely to have their windows open, or residents would want to sit out and utilise the outdoor amenity area close to the shared boundary.
30. I note that the boundary is currently partially screened by a stone wall and planter containing two small trees, as well as vegetation on the apartment block side. Even so, this wall is not of sufficient height to screen all noise from the appeal site, especially with the apartment block being on slightly higher land, and there is no guarantee that the existing vegetation will be retained in perpetuity. Furthermore, I observed on site that this vegetation includes significant gaps, and therefore would be unlikely to prevent noise from travelling towards this neighbouring residential site.
31. The appellant has commented that they have never witnessed the residents of this apartment block utilising the outdoor amenity space. This is not substantive evidence that this outdoor area is not used, or will not be used in the future. In any case, my concerns also include noise and disturbance experienced within the apartment block itself, due to its proximity to the outdoor seating area.
32. The appellant has suggested a condition requiring the use of this outdoor area to cease at 20:30 at night could be imposed. Nonetheless, this would still potentially subject these residents to unacceptable levels of noise and disturbance for a significant proportion of the day, especially at weekends. As such this suggested condition would not overcome my concerns in respect of the impact of the appeal scheme on the living conditions of neighbouring occupiers through noise and disturbance.
33. The appellant has also stated that no live or amplified music will be played outside. Whilst this is acknowledged it does not overcome my concerns in respect of the noise and disturbance generated from patrons using this upper decking area, so close to the boundary with the neighbouring apartment block.
34. The appellant states that the facilities already have a licence for serving food and drink, and a licence will not be granted if there is a prospect of detrimental impact on neighbours. Whilst these comments are noted, licensing is the subject of a separate legislative regime and process to the planning system, and it has not been demonstrated the safeguards would ensure satisfactory living conditions for neighbouring occupiers.

35. With regard to loss of privacy through overlooking, users of the upper level of the outdoor drinking area would have views towards windows in the adjacent apartment block and the outdoor amenity area to the south of the apartment block. The existing stone wall is not of sufficient height to prevent these views, especially when stood on the upper level. Furthermore, whilst there is some vegetational screening along this boundary, as mentioned earlier there is no guarantee that this will be retained and there are significant gaps which would allow for views towards this neighbouring site.
36. Given the proximity of these windows to the upper level of the outdoor drinking area, residents within these rooms, and when using the outdoor amenity area, will likely experience a perception of being overlooked from the patrons on the upper level of the outdoor drinking area, to the detriment of their living conditions.
37. I conclude therefore that the appeal proposal will result in significant harm to the living conditions of nearby residents due to loss of privacy through overlooking, noise and disturbance. Consequently, the proposal would be contrary to Policy HS15 of the UDP which seeks to ensure, amongst other things, that proposals will not cause nuisance to neighbouring uses, particularly in respect of noise and disturbance. Furthermore, the proposal is also considered to be contrary to paragraph 135(f) of the Framework which seeks to ensure developments provide a high standard of amenity for existing users.

Other Matters

38. I acknowledge that the fence is required for safety reasons. However, given that I have ultimately found that the decking area, which serves as an outdoor drinking area, is in itself unacceptable due to its impact upon the living conditions of neighbouring residents, the safety implications of the fencing is not a matter that weighs in favour of the appeal scheme.
39. The appellant has commented that because the outdoor area is overshadowed by the existing public house, it will only be useable for a limited amount of time. Nevertheless, the use of this area for a limited period does not overcome my concerns in respect of the impact on neighbouring occupiers when it is used, or the visual impact that the fencing has upon the character and appearance of the site and the CA.

Conclusion

40. The appeal scheme would be harmful to the character and appearance of the CA, and would have harmful impacts upon the living conditions of neighbouring occupiers. The proposal is therefore contrary to the development plan read as a whole and the Framework. There are no material considerations that outweigh this finding. Therefore, the appeal should be dismissed.

R Major

INSPECTOR