



Appeal Decision

Site visit made on 8 April 2025

by **A Hickey MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/A0665/W/24/3357017

Boathouse at Dee Banks, Great Boughton, Chester, Cheshire, CH3 5UU

- 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 Cliff Carlton against the decision of Cheshire West and Chester Council.
 - The application Ref is 23/03724/FUL.
 - The development proposed is replacement of existing river chalet premises with new river chalet premises.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Revised drawings have been submitted as part of this appeal, which include amendments to the materials and the size of the building. The Procedural Guide for Planning Appeals¹ (appeal guidance) is clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially what was considered by the Council, and on which interested people's views were sought. As set out in the appeal guidance if an applicant (appellant in this case) thinks that amending their application will overcome the LPA's reasons for refusal, they should normally make a new planning application.
3. Having regard to established case law, to consider such modifications as proposed would be a substantive difference and procedurally could prejudice interested parties by depriving those who should have been consulted on the change the opportunity of such consultation. For this reason, I have determined the appeal using the plans that were considered by the Council and upon which the views of interested parties have been sought.
4. As part of the appeal the Council provided an incorrect version of Policy DM 46. The correct version was provided, and the appellant given the opportunity to comment. I have therefore taken the correct version into consideration.

Main Issues

5. The main issues are;
 - whether the proposal would preserve or enhance the character or appearance of the Dee Banks (Chester) Conservation Area (CA); and the effect of the development on;

¹ Planning appeals: procedural guide: September 2024

- biodiversity; and
- flood risk

Reasons

Character and appearance

6. The appeal site is located within the CA. As such, I have had regard to the duty to pay special attention to the desirability of preserving or enhancing its character or appearance.
7. The significance of the CA, particularly this part in which the appeal site is located, is derived from the variety of styles and historic elevated pattern of dwellinghouses along Dee Banks and their relationship overlooking the River Dee. Sited between the riverbank, road, and these properties are varying styles and sizes of boat houses and chalets at a lower level, many of which are single-storey or split-level.
8. The historic relationship and prominence of the elevated characterful dwellings and their relationship with the River Dee is best experienced from the river or on the opposite side from The Meadows.
9. The Meadows, a patchwork of grassland and wetlands, is connected by pedestrian trails. This part of the river is also used for riverboat cruises. The existing building, decking and greenery of the appeal site contribute positively to the setting of the CA. This is particularly notable as the appeal site forms part of the transitional relationship of the elevated dwellings and historic connection with the river. This is mainly due to the appeal building's form, height, modest scale, setback from the river and being set down from the top of the sloping boundary providing a subservient visual relationship. These elements ensure that the building does not compete visually with the properties on Dee Banks when viewed from The Meadows and the river, allowing an appreciation of their original form and setting, reflecting the historic development of the area.
10. The proposed chalet would be screened from the road by the existing fence, but visible from long and medium-range views on and across the river. The footprint of the chalet would not appear overlarge relative to the overall plot size. Indeed, it would have a smaller footprint and less developed area than the existing development. Nonetheless, the building is of a size given its two-storey façade design and set back into the site that it would still be a significant addition in this location.
11. Although there are nearby multi-floor boat houses/chalets, these have a substantial recess at first-floor level. As such, while these buildings may be at different distances from the river, they still follow the natural topography of the slope upward to Dee Banks. Unlike the examples cited by the appellant, the proposed building's overall design, height and positioning would be out of character with the established pattern of other boat houses/chalets on this stretch of the river.
12. While there are no dwellings directly behind the appeal site, others are in very close proximity. As such, the proposal, given its appearance and location, would alter the public's perception of the boathouses/chalets being subservient and thereby competing visually with the dwellings found at a higher level on Dee Banks.

13. The proposed building would have a similar roof pitch and orientation to the existing one. However, given its additional height, it would result in an incongruous roof design at odds with the style of the other two-storey buildings closest to the riverbank.
14. For the purposes of the National Planning Policy Framework (the Framework), the CA is a designated heritage asset. The proposal would lead to less than substantial harm to the significance of the CA. The Framework indicates that such harm is to be weighed against the public benefits of a proposal. However, great weight should be given to an asset's conservation.
15. Any benefit from the incorporation of wildflower planting would first offset the loss of the existing areas of planting and grass. Even if I were to accept the newer planting would provide some additional public benefits through environmental and visual improvements, given the scale of the scheme, these public benefits would be limited.
16. There is also a public benefit as regards renewable energy, and I have noted the appellant's calculations on energy generation that could be fed back into the network. Nonetheless, my conclusion in this particular case is that the incremental public benefits of solar energy and wildflower planting at the appeal site would not outweigh the harms to the CA identified above.
17. For the above reasons, the development does not preserve nor enhance the character or appearance of the CA. The proposal therefore conflicts with Policies ENV5 and ENV6 of the Cheshire West and Chester Local Plan (Part One) (LPP1) and Policy DM46 of the Cheshire West and Chester Local Plan (Part Two) (LPP2) which, taken together and amongst other matters, seek to safeguard or enhance heritage assets by requiring development to be sympathetic to heritage and its significance. The proposal would also conflict with the provisions of the Framework, in regard to conserving and enhancing the historic environment.

Biodiversity

18. The appeal site is located adjacent to the River Dee, where protected species may be present, including otters. Without any surveys or information, it is impossible to know whether protected species or habitats are affected by the proposal.
19. Circular 06/2005: Biodiversity and Geological Conservation states that it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by development, is established before planning permission is granted.
20. The appellant has stated that the matter could be dealt with by adding a condition to provide a survey, especially given the time taken to determine the application. However, as the Circular states, this should be carried out before any determination is made. It would therefore not be appropriate to apply a condition requiring ecological survey work to be carried out.
21. Therefore, without a survey to substantiate evidence to demonstrate protected species will not be adversely affected, the proposed development would harm local biodiversity and would be contrary to Policies ENV 4 of the LPP1 and DM 44 of the LPP2, which amongst other matters, expects development to protect sites from impact on priority habitats and protected/priority species and expects

development likely to have an impact on protected sites and species to be accompanied by an ecological assessment.

Flood Risk

22. The site is located within Flood Zones 2 and 3 due to its proximity to the River Dee. As such, a flood risk assessment is required in accordance with LPP2 Policy DM 40 and paragraph 176 and footnote 63 of the Framework require all development in Flood Zones 2 and 3 to provide a site-specific flood risk assessment (FRA).
23. No flood risk assessment or any substantive information was submitted as part of the planning application or this appeal. While the objection from the Environment Agency was withdrawn as no habitable accommodation was being provided, this does not overcome the need for an FRA to be provided.
24. Given the lack of an FRA the development conflicts with policies ENV 1 of the LPP1 and DM 40 of the LPP2 and the Framework which seek, amongst other things, to ensure development is not at risk of flooding or would increase flood risk elsewhere.

Other Matters

25. The appeal site falls within the zone of influence for the River Dee and Bala Lake Special Area of Conservation (SAC) and the River Dee Site of Special Scientific Interest (SSSI). As the competent decision making authority, if I had been minded to allow the appeal, it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as the appeal is being dismissed for other reasons, I have not taken the matter further.

Conclusion

26. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
27. Therefore, I conclude the appeal should be dismissed.

A Hickey

INSPECTOR