



Appeal Decision

Site visit made on 17 June 2025

by **D Cleary MTCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 July 2025

Appeal Ref: APP/A0665/W/25/3362728

The Architect, 54 Nicholas Street, Chester CH1 2NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Brunning & Price against the decision of Cheshire West & Chester Council.
 - The application Ref 24/01961/S73 was approved on 25 February 2025 and planning permission was granted subject to conditions.
 - The development permitted is the change of use to drinking establishment (Class A4). Partial demolition of building to be replaced by single storey side/rear extension. Alterations and landscaping works, including erection of external shelter and metal fencing - Variation of conditions 9 (opening hours) and 10 (extent of outdoor area) of planning permission 11/05385/FUL.
 - The condition in dispute is No.9 which states that: *The customer outdoor drinking and/or dining area demarcated with a red line on Drawing L12 Rev B originally approved under application reference 12/02529/DIS shall only be open to customers between 0900 to 2100 on any day. No other outdoor area within the development site shall be used by customers for drinking and/or dining.*
 - The reason given for the condition is: *To ensure that the residential amenities that occupiers can reasonably expect to enjoy are adequately protected in accordance with Policy SOC 5 of the LP1 and Policies DM 2 and DM 30 of the LP2.*
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Decision

1. The appeal is allowed and the planning permission Ref 24/01961/S73 for the change of use to drinking establishment (Class A4), partial demolition of building to be replaced by single storey side/rear extension, alterations and landscaping works, including erection of external shelter and metal fencing - Variation of conditions 9 (opening hours) and 10 (extent of outdoor area) of planning permission 11/05385/FUL at The Architect, 54 Nicholas Street, Chester CH1 2NX granted on 25 February 2025 by Cheshire West & Chester Council, is varied by deleting condition 9 and substituting it for the following condition:
 - 9) For a period of one year only from the date of this permission, the customer outdoor drinking and/or dining area, demarcated with a red line on Drawing L12 Rev B (originally approved under application reference 12/02529/DIS), shall only be open to customers between 0900 to 2230 on any day. During this one year period, the site shall operate in accordance with the noise control measures as set out in paragraphs 4.9 - 4.11 of the Noise Assessment, prepared by Hepworth Acoustics (Ref: P24-024-R01), dated July 2024.

After the expiry of the one year period permitted above, the customer outdoor drinking and/or dining area, demarcated with a red line on Drawing L12 Rev B (originally approved under application reference 12/02529/DIS), shall only be open to customers between 0900 to 2100 on any day.

No other outdoor area within the development site shall be used by customers for drinking and/or dining.

Background and Main Issue

2. Condition 9 attached to the planning permission granted restricts the use of the designated outdoor drinking and dining area for use by customers between the hours of 09:00am and 21:00pm only. The reason for this condition is to safeguard the living conditions of the occupiers of nearby residential properties. The Council have confirmed that the likely effects are from noise and disturbance.
3. At the time the application was submitted, the appellants sought consent to allow for the use of the external area by patrons up to 22:30pm. This was in addition to other alterations to the hours of use, both internally and externally, and those other changes were agreed by the Council. The appellant would like to vary the condition to the operating hours initially sought i.e. up to 22:30pm. However, in their statement, they have suggested that they would accept a limitation to 22:00pm and/or the consideration of a temporary trial period.
4. Therefore, the main issue is the effect of varying condition 9 on the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance.

Reasons

5. The appeal site relates to a pub/restaurant, known as The Architect, which is located on the edge of Chester city centre. The building is a large detached property set within a spacious plot which includes landscaped areas, outdoor seating, and parking. The site lies between Nicholas Street, which forms part of the inner ring road, and Nuns Road, which runs adjacent to Chester Racecourse. The surrounding area comprises a wide mix of uses including commercial, government and residential uses, amongst others. On my site visit, I observed that the area had a reasonably high level of activity. This mix of uses and the level of activity associated with these is indicative of its edge of city centre location.
6. The site shares a boundary with residential properties on Black Friars. This includes a row of terraced properties, the back gardens/yards of which back onto the appeal site. These properties also have openings which face towards the appeal site. At one end of Black Friars is Black Friars Court which is a block of apartments which bookends the street. These apartments have a number of openings and balconies which face towards the appeal site.
7. While the building is set in large grounds, there are existing restrictions to where outdoor drinking and dining can occur¹. This is controlled by a condition 9 on the planning permission. This designated area excludes the parcel of land which is positioned immediately adjacent to the façade of Black Friars Court which faces the site. The extent of the designated area appears to have been conceived with these neighbours in mind.
8. The edge of city centre location means that there is an underlying high level of activity, particularly when compared to a predominantly residential area. In such edge of city locations, it is necessary to strike an appropriate balance between

¹ Drawing L12 Rev B

often competing uses. A close relationship between pubs/restaurants and residential properties is not an uncommon one, particularly in such locations, and with reasonable restrictions in place there is no reason why the uses cannot coexist harmoniously as neighbours.

9. In this instance, there is an existing time restriction for patrons using the external drinking/dining areas to 9:00pm. After this time, patrons are required to cease use of these areas. This time restriction does not align with permitted hours for internal use, which is allowed to operate up to 11:00pm on Monday to Saturdays and 10:30pm on Sundays and Public Holidays². It has not been advanced that these conflicting hours lead to any operational difficulties for the business. Nonetheless, it is apparent that there would remain a level of activity associated with the comings and goings of customers through the external areas beyond the 9:00pm restriction.
10. At face value, the suggested end hour of 10:30pm for the use of the external area, does not appear to be wholly unreasonable for a use of this nature. This is particularly given its context in an edge of city centre location where the range of uses and vehicular/pedestrian movements leads to an underlying high level of activity. I am also mindful of the restrictions in place on where customers are allowed externally which includes a landscaped buffer from Black Friars Court. Furthermore, I note that there are significant restrictions on the use of sound amplified equipment at the site³, while the submitted Noise Assessment⁴ (the NA) suggests various physical and operational noise measures, along with a dispersal policy which could be applied. Finally, I am also conscious of other relevant licensing legislation, which the site would have to operate in accordance with and which may include other powers available to Council to control activities at the site.
11. With these restrictions and measures in place, it is possible that the external drinking and dining area could operate up to 10:30pm, in this edge of city centre location, without resulting in significant adverse effects on the living conditions of the occupiers of nearby residential properties.
12. On the other hand, I understand that the existing 9:00pm restriction has been in operation for some time. I note that there may have been some complaints raised by residents which have been directed to the management company of the site, although I have no evidence of what these concerns related to. I have not been provided with any evidence of complaints relating to noise that have been directed to the Council. With this current restriction in place, there is nothing before me to suggest that the premises has been operating in a manner which is causing regular disturbance to its neighbours. Therefore, I am mindful of this seemingly harmonious relationship.
13. The submitted NA suggests that the increase in noise during the extended trading hours would only lead to an increase in noise of up to 3dB. However, noise from such uses can be variable and, at times, unpredictable leading to a disturbance to residents more generally. Therefore, I do share some of the Council's concerns in this regard.
14. Given the nature of the use and the close proximity of its residential neighbours, I consider that it would be reasonable to take a cautious approach to changing the

² Condition 8 attached to 24/01961/S73

³ Condition 5 attached to 24/01961/S73

⁴ Prepared by Hepworth Acoustics – dated July 2024

hours of use for the external drinking/dining area. The appellant have suggested a temporary trial period for the extended hours, and I consider this to be a reasonable suggestion. This approach would be in accordance with Planning Practice Guidance⁵. This advises that conditions for a temporary use can be used where a “trial run” may be needed in order to assess the effect of the development on the area. I consider that the issues presented in this appeal to be precisely the scenario where such a trial period ought to be considered. This would enable the Council to monitor the effects of the extended hours on the living conditions of its neighbouring occupiers before considering any permanent change.

15. A trial period for one year would be reasonable for this use. This would ensure that any seasonal variances in activity are covered.
16. Accordingly, I conclude that the variation of condition 9, for a temporary one year period only, would not lead to a significant adverse effect on the living conditions of the occupiers of nearby residential properties by reason of noise and disturbance. Therefore, the development accords with Policy SOC5 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies, and Policies DM2 and DM30 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies. Together, amongst other things, these require that development does not have a significant adverse effect on quality of life and living conditions.

Other Matters

17. The Architect PH is a Grade II listed building. The site also lies within the Chester City Centre Conservation Area (the CCCA). Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) requires me to have special regard to the desirability of preserving listed buildings, or their setting, or any feature of special architectural or historic interest which they possess. S.72(1) of the LBCA Act requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
18. I consider that the significance of the listed building is derived from its historic origins as an early 19th century villa, and the architectural quality and features that it possesses. With regard to the CCCA, insofar as is relevant to this case, I consider that its significance derives from its historic origins and development, the pattern and plan form of development, and the variety and architectural quality of buildings within the area.
19. The specific area to which this appeal relates can be considered to fall within the immediate setting of the listed building. The Council have not raised any specific concern with regard to the effect of the appeal proposals on the setting of the listed building or the character or appearance of the CCCA. The use of these areas is established, and the scheme proposes no further operational development. Therefore, I am of the opinion that the setting of the listed building, and the character and appearance of the CCCA, would be preserved.

Conditions and Conclusions

20. By allowing the appeal I am varying the original permission by removing condition 9 and I have imposed a revised condition as detailed in my formal decision. The reimposed condition is for a temporary trial period for one year only. This will

⁵ Paragraph: 014 Reference ID: 21a-014-20140306

enable the full effects of the varied hours to be monitored and assessed over the course of a year. The reimposed condition also requires the site to adhere to the noise control measures set out in the NA, which is necessary in the interest of the living conditions of nearby residents. Following on from this one year period, the condition requires the external seating area to revert to the previously imposed hours of use. The original planning permission and this decision should therefore be read together.

21. For the reasons given above the appeal should be allowed.

D Cleary

INSPECTOR