



Appeal Decision

Site visit made on 24 June 2025

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2025

Appeal Ref: APP/A0665/C/24/3348207

Frankies, 54-56 Watergate Street, Chester, Cheshire, CH1 2LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Durmus Bozdogan of Frankies against an enforcement notice issued by Cheshire West and Chester Borough Council.
- The notice was issued on 25 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use of the land from café use (A3 use) to a mixed use of café and bar with live music (sui generis) ("the unauthorised development").
- The requirements of the notice are to cease the use as a mixed use of café and bar with live music events.
- The period for compliance with the requirements is one calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement is quashed following a correction, and planning permission is granted in the terms set out below in the Formal Decision.

Matters concerning the Notice

1. The notice alleges a material change of use to a mixed use of café and bar with live music. The concept of a mixed use is two or more primary uses existing within the same planning unit or unit of occupation. Section 177(1) of the Act provides that planning permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'. It is important that the allegation is accurate because the deemed planning application arising under the ground (a) appeal is derived from its terms.
2. The parties' comments were sought on whether the 'live music' within the alleged use was a primary use or an incidental one. The appellant did not respond, but I have had regard to the comments made by the Council. Based on the evidence, I consider there to be two primary uses within the alleged mixed use of the planning unit, the café and the bar. The live music element is incidental to the functionality of the café and bar. The carrying out of the mixed café and bar use, without live music, clearly forms part of the matters alleged in the notice, and is not a different use with different planning impacts. Moreover, the appellant is not applying for live music events as part of the ground (a) appeal and deemed planning application. Therefore, correcting the allegation to remove reference to live music will not cause injustice to the parties. I have assessed the development on that basis.

Procedural Matters

3. I have determined the appeal having regard to the revised National Planning Policy Framework (the Framework) published in December 2024.

The ground (a) appeal and the deemed planning application

4. An appeal on ground (a) is that planning permission ought to be granted. The main issue in this case is the effect of the development on the living conditions of the neighbouring occupiers, having regard to noise and disturbance.
5. The appeal site relates to 54-56 Watergate Street, a four storey building which is currently occupied by the appellant's premises, a café and bar, at ground and first floor levels, together with residential accommodation to the upper levels which is accessed and occupied separately.
6. Watergate Street is located in Chester City Centre and is a busy thoroughfare of mainly four storey buildings characterised by the rows, a series of walkways at first floor level which are lined with shops and commercial premises, and situated above the street level premises. As well as retail premises, there are a wide variety of other uses, including restaurants, cafes and bars. There are flats on the upper levels of the buildings, including those situated above the appeal premises itself.
7. The allegation in the notice, as corrected, is a material change of use to a mixed use as a café and bar. The bar is situated at ground floor level along with customer seating areas. There is a smaller seating area, toilets and an office at first floor level which is proposed to be used as a kitchen. The yard at the rear of the property is partly enclosed by the buildings on either side and to the rear, and is used for parking. The bar and adjacent seating areas occupy a relatively small area and the appellant states that the capacity of the building is up to 60 persons with an additional seven seats outside.
8. The unauthorised use has led to concerns from neighbours and the Council about noise and disturbance, particularly in the evenings and weekends, from music from the premises and anti-social behaviour outside it. It is stated that the premises licence was revoked on one occasion, though details of this have not been provided.
9. I could see during my site visit that there is potential for noise and disturbance to the neighbours, including from comings and goings of customers and through transmission of noise and/or vibration through walls or ceilings to the flats above. However, the previous use of the property as a café, and before that as a shop, would also have generated a degree of noise and disturbance, albeit not late at night. Moreover, this is a bustling street with a variety of commercial premises nearby, including the attached premises at 58 Watergate Street which is a bar opening until late at night, and other bars and restaurants on the opposite side of the street. Noise and disturbance from night time activity would therefore be expected in this area, particularly from the comings and goings of customers.
10. I have carefully considered the comments of those living nearby and the Resident's Association, who have explained the problems arising from the unauthorised use. The representations also refer to the restrictions that were put in place as part of the planning permissions for three of the neighbouring bars and restaurants. Residents refer to issues with loud amplified music and live music events. However, as noted above, the latter is not proposed as part of this appeal which will mitigate its impact. Amplified music was being played within the bar area at the time of my site visit. Whilst the system may not have been at its loudest, the music was not perceptible to me outside the building on Watergate Street with the windows and front door closed, or on the first floor level of the building. The bar area is situated at ground level with

the intervening first floor level above acting as a buffer between the bar and the floors above which will reduce noise to the occupiers of the upper floors.

11. The appellant proposes opening hours up until midnight during the week with a later closing time of 02.00 at weekends. This would mean a notably later closing time than the premises has previously operated to, and would be later than many nearby restaurants and bars. The Council suggests a condition restricting opening hours to 11.00 to 22.00 on Sundays to Thursdays and 11.00 to midnight on Fridays and Saturdays. The Council's suggested morning opening times seem overly restrictive given the café use. However, although the Council's suggested closing times are earlier than some of the nearby bars, they are appropriate given the flats above the premises and strike an appropriate balance between protecting neighbouring occupiers from noise and disturbance at times when they would reasonably expect peace and quiet, whilst enabling the business to operate viably.
12. In order to mitigate noise from customers and music, further conditions can be imposed requiring submission of details of sound insulation and an acoustic lobby to contain noise, any new extraction/ventilation system, and controls on the disposal of glass bottles, keeping windows shut and no playing of live music. These measures would address many of the issues raised by residents.
13. Subject to these mitigation measures, which can be secured by conditions, and taking into account the nature of the existing use, the location of the site and the character of the surrounding area, I find that the development is not significantly harmful to the living conditions of neighbouring occupiers, having particular regard to noise and disturbance. Accordingly, there is no conflict with Policy SOC5 of the Cheshire West and Chester Council Local Plan, Part One, Strategic Policies (2015), Policies DM2 and DM30 of the Cheshire West and Chester Council Local Plan, Part Two, Land Allocations and Detailed Policies, and the Framework. Amongst other things, those policies seek to ensure that development safeguards the residential amenity, health and quality of life of neighbouring occupiers, including from noise.

Other Matters

14. The appeal building is Grade II listed and is located in Chester City Centre Conservation Area. As there are no internal or external alterations to the building proposed as part of the appeal development, the significance of the heritage assets would be preserved. The advertisements placed on the outside of the building are being dealt with separately by the Council outside of this appeal.
15. I note the concerns raised about the notification of neighbouring occupiers. However, the evidence indicates that the Council has notified neighbouring occupiers. Moreover, I have received representations from the Resident's Association who state that they represent the residents of the area and their concerns about the development have been set out in detail. I am therefore satisfied that the interests of neighbouring occupiers have not been prejudiced.

Conditions

16. I have imposed a condition specifying the approved plans to provide certainty. In order to safeguard the living conditions of nearby residents, it is necessary to attach conditions to agree details of mechanical extraction and ventilation, and to control hours of use, the disposal of glass containers, refuse collections, keeping windows closed and the playing of live music.

17. The Council suggests a condition requiring the submission of details of sound insulation measures within one month of the decision and subsequent implementation of the agreed measures within two months, and a further requirement for details of a suitable acoustic lobby prior to commencement of development. I agree that these matters need to be addressed in order to make the development acceptable. I have, however, amended the Council's wording to require the appellant to comply with a strict timetable for dealing with a scheme for sound insulation and an acoustic lobby because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
18. The Council suggests a condition that noise from any music played within the premises should not be audible beyond the site. However, this condition is vague, imprecise and would be difficult to enforce. I have not, therefore, imposed it. The other conditions should adequately mitigate the noise impacts of the development.

Conclusion

19. I have found that the development is not significantly harmful to the living conditions of neighbouring occupiers, having regard to noise and disturbance. The development complies with the development plan as a whole and there are no material considerations that indicate that it should be determined other than in accordance with the development plan.
20. As ground (a) succeeds, I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.
21. Given this conclusion, there is no need for me to consider the appeal on ground (g).

Formal Decision

22. It is directed that the enforcement notice is corrected by deleting the words 'live music' from paragraph 3 of the notice.
23. Subject to that correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely a material change of use of the land from café use (A3 use) to a mixed use of café and bar (sui generis) at Frankies, 54-56 Watergate Street, Chester, Cheshire, CH1 2LA as shown on the plan attached to the notice, and subject to the following conditions:
- (1) The development hereby permitted shall be carried out in accordance with the following approved plans: Dwg Nos. FCB/PP/01, FCB/PP/02 and FCB/PP/04.

- (2) The use hereby permitted shall cease within 1 month of the date of failure to meet any one of the requirements set out in i) to iv) below:

i. Within 1 month of the date of this decision, details of a scheme of sound insulation measures for the premises and a suitable acoustic lobby at the customer entrance from Watergate Street shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation. The details shall ensure that the following internal noise measures are met within any residential accommodation in 54-56 Watergate Street, Chester: maximum noise levels of 35dB(A)LAeq, 16hrs in living rooms and bedrooms during the day-time (07:00 – 23:00hrs) and 30dB(A)LAeq, 8hrs, and 45dB(A)LAm_{ax} in bedrooms during the night-time (23:00 – 07:00hrs).

ii. If within 9 months of the date of this decision, the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii. If an appeal is made in pursuance of ii) above, the appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- (3) Prior to the installation of any plant/mechanical extraction, ventilation, air handling or refrigeration equipment at the premises, a detailed scheme to control noise and odour shall be submitted to and approved in writing by the Local Planning Authority, and shall include the following details:

i. The scheme shall ensure that the rating level of noise emitted from any plant associated with the proposed development shall be 5dB(A) below the background noise level at any time as measured at the nearest noise sensitive receptor;

ii. All measures to mitigate odour including point of efflux and efflux velocity;

The scheme shall be completed in strict accordance with the approved details and shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.

- (4) The use hereby approved shall not be open to customers outside the hours of 10:00 and 22:00 Sunday to Thursday, and 10:00 and 00:00 on Fridays and Saturdays.

- (5) No collection of refuse or recycling materials shall take place outside the hours of 08:00 and 18:00 Monday to Friday, 08:00 and 17:00 on Saturdays and 10:00 and 17:00 on Sundays and Public/Bank Holidays.
- (6) The tipping/disposal/transfer of glass containers or bottles shall not take place outside the building except between the hours of 08:00 and 21:00 on any day.
- (7) All windows within the premises shall be kept closed whilst the business is operating except for in an emergency.
- (8) No live music shall be played within the Property at any time.

M Ollerenshaw

INSPECTOR