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## Appeal Decisions

Site visit made on 19 November 2019

**by Jillian Rann BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 December 2019**

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### **Appeal A: APP/L3245/W/19/3234449**

#### **The Red Castle, A528 from Shrewsbury and Atcham district boundary to Higher Road, Ellesmere Road, Harmer Hill SY4 3EB**

- 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 Mr David Davies (Ashvale Contracting Ltd) against the decision of Shropshire Council.
  - The application Ref 18/05578/FUL, dated 29 November 2018, was refused by notice dated 17 April 2019.
  - The development proposed is described as: 'demolition of the existing building and outhouse and the erection of 2 No semi detached two storey dwellings with off street parking, gardens and services'.
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### **Appeal B: APP/L3245/W/19/3234464**

#### **The Red Castle, A528 from Shrewsbury and Atcham boundary to Higher Road, Ellesmere Road, Harmer Hill, Shrewsbury, Shropshire SY4 3EB**

- 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 Mr David Davies against the decision of Shropshire Council.
  - The application Ref 19/02262/FUL, dated 20 May 2019, was refused by notice dated 3 July 2019.
  - The development proposed is described as: 'erection of a one and a half storey dormer bungalow on grounds adjacent to the former Red Castle public house with off street parking'.
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## **Decision**

- 1. Appeal A and Appeal B are both dismissed.**

### **Application for costs**

- 2.** An application for costs was made by Mr David Davies against Shropshire Council. The application relates only to Appeal A, and is the subject of a separate Decision.

### **Preliminary Matter**

- 3.** The description in the heading above for Appeal A is taken from the application form. Whilst it refers to 2 semi-detached dwellings, it is evident from the drawings and submissions before me that the proposal relates to a development of 4 semi-detached houses, and was considered and determined by the Council on that basis. Accordingly, I have also considered the appeal on that basis, as a scheme for 4 semi-detached houses.

4. In relation to the references in the Council's reasons for refusal to the building being a 'heritage asset', the appellant has referred to various criteria in the Localism Act, and to the property not appearing on any list of buildings identified or designated under those criteria. Those criteria and lists referred to relate to Assets of Community Value (ACVs).
5. However, when referring to the building as a heritage asset in its submissions, the Council does so with reference to the definition in the National Planning Policy Framework (the Framework), and to paragraph 197 of the Framework, which relates to non-designated heritage assets (NDHAs). It is therefore evident from the submissions before me that, in referring to the existing building as a heritage asset, the Council considers it to be a NDHA, under the terms of the Framework, rather than an ACV under the terms of the Localism Act, and that it determined the applications on that basis. I have considered the appeal accordingly, having regard to relevant development plan and national policy and guidance relating to NDHAs, consistent with the Council's consideration.

## **Main Issues**

### *Appeal A*

6. The main issues are the effects of the proposed development on:
  - the character and appearance of the appeal site and its surroundings, including with regard to the existing building as a NDHA;
  - the safety and convenience of highway users and those accessing the appeal site;
  - biodiversity, particularly with regard to bats.

### *Appeal B*

7. The main issues are:
  - the effect of the proposed development on the character and appearance of the appeal site and its surroundings, including with regard to the significance and setting of the adjacent building as a NDHA;
  - whether sufficient parking would remain within the site, in the interests of the safety and convenience of highway users in the vicinity of the site;
  - the effect of the proposed development on the living conditions of the occupants of neighbouring properties with regard to outlook.

## **Reasons**

### *Appeal A*

#### Character and appearance

8. The appeal relates to the Red Castle, a public house building in the village of Harmer Hill, which is currently vacant, and which the Council considers to be a NDHA.
9. The Framework definition of heritage assets includes buildings identified as having a degree of significance meriting consideration in planning decisions

because of their heritage interest, and includes assets identified by the local planning authority, as well as designated heritage assets. The Red Castle is not included in the list of NDHAs in the Shropshire Historic Environment Record. However, whilst the Planning Practice Guidance (PPG) advises that it can be helpful if local planning authorities keep a local list of NDHAs, it also states that in some cases they may also identify NDHAs as part of the decision-making process on planning applications<sup>1</sup>.

10. The existing building dates back to at least the late 19<sup>th</sup> century, and is recorded as having been a 'beerhouse' in 1896 and 1901. Together with a handful of cottages and the former village store, which has now been converted to a house, the existing building is part of one of a few small clusters of buildings which formed the original village of Harmer Hill as it grew up during the 19<sup>th</sup> century. As such, the existing building and those neighbouring properties are distinctive in character and appearance from much of the more modern housing which has grown up around it over the course of the 20<sup>th</sup> and 21<sup>st</sup> centuries.
11. Therefore, and as a result of its longstanding use as a public house, the existing building has significance arising from its heritage interest, as part of the village's historic fabric and community life, which merits consideration in this appeal. Consequently, and having regard to the definition and guidance in the Framework and the PPG, I consider it appropriate to identify the building as a NDHA.
12. Policy MD13 of the Shropshire Council Site Allocations and Management of Development Plan (the SAMDev Plan) states, amongst other things, that proposals which are likely to have an adverse effect on the significance of a non-designated heritage asset will only be permitted if it can be clearly demonstrated that the public benefits of the proposal outweigh the adverse effect. The Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application and that, in weighing applications that affect NDHAs, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
13. The Red Castle is not currently in use as a public house, and both parties have made reference to its fortunes having suffered in recent years, and to the recent expansion of the village's other public house, The Bridgewater Arms, which is very close to the site and has an attached hotel. I have also been referred to there having been limited interest from recent marketing of the building. However, whilst it may not currently be in use as a public house, given its age and former longstanding use as such, the building nonetheless retains some historic interest as a part of the early growth of the village and its community, which contributes to its significance.
14. The original parts of the existing building are built in local sandstone with a slate roof, and elements of its detailing, including its chimneys and relatively tall, recessed windows, are reflective of its age and contribute to its appearance, architectural interest and distinctiveness as part of this small cluster of historic buildings in what is generally a relatively modern village.

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<sup>1</sup> Paragraph Reference ID: 18a-040-20190723

15. However, the building has been the subject of various alterations over the years. Those include extensions which have altered its roof form, the replacement of most of the windows with UPVC fixtures, and the coating of the whole building, including its original sandstone sections, in render. Furthermore, I observed that there appears to be little remaining of the building's original internal features. In combination, those changes have served to diminish the architectural character, fabric and interest of the building to some degree.
16. However, whilst its significance in those respects may have been somewhat diminished, the existing building's demolition would result in the total loss of that significance which remains, including the building's historic interest. The development would thus result in harm to the NDHA, which must be weighed in the balance when considering the proposed replacement buildings.
17. Notwithstanding the presence of more modern housing in the site's wider vicinity, the proposed houses would be viewed principally in the context of the historic cottages and converted former village store immediately adjacent to the site. Those neighbouring properties are relatively modest in their proportions and, in common with more modern dwellings in the wider vicinity, including those recently built on part of the public house's former car park, are set in from their side boundaries at first floor level. Those existing buildings in the vicinity thus maintain a sense of space and separation from adjacent sites and buildings, and from their road frontages.
18. The existing public house is taller than the adjacent terrace. However, its two storey section is located away from the boundary with that neighbouring building, with a much lower single storey section closest to that boundary, and its hipped roof slopes away from the adjacent terrace at present. It therefore maintains a sense of separation from those neighbouring terraced houses, and the effect of its greater scale and massing in relation to that adjacent building is limited to some degree.
19. In contrast, the proposed houses would be a full two storeys in height across almost the full width of the site. They would therefore extend closer to the adjacent terrace at two storey level than the existing building, and would have a tall, vertical side gable adjacent to those neighbouring houses, rather than the existing building's shallower hipped side roof, which is further away from them at present. There would also be very little separation between the two proposed buildings themselves. As a result, the proposed buildings would appear unduly cramped within the site, and would erode the sense of separation and space which exists between and around the existing buildings, and which characterises this part of the street scene at present.
20. Furthermore, whilst not dissimilar in appearance to other recently-built houses nearby, the proposed houses would not appear to incorporate any specific characteristics or detailing reflective of the original parts of the historic public house which they would replace, or those of the other historic buildings that they would be viewed immediately alongside. Therefore, I afford limited weight to the appearance of the proposed houses as a benefit that would outweigh the loss of the remaining architectural significance of the existing building, which retains some of its original characteristics despite having been much altered over the years.

21. Therefore, for the reasons given, the proposed development would appear as an unduly dominant, cramped and discordant feature which would not reflect the pattern of surrounding development or the character or appearance of its immediate surroundings. It would therefore not make a positive contribution to local character and distinctiveness, a matter which the Framework advises should be taken into account in determining applications for proposals affecting heritage assets.
22. The development would provide 4 dwellings, contributing to local housing supply. I have also had regard to the intention to incorporate sustainable construction measures as part of the development. However, notwithstanding references made to the houses being affordable, I have nothing before me by way of any undertaking or legal agreement which would secure them as affordable housing in the terms set out in the Framework, thus limiting the weight I afford to that proposal. In any event, the public benefits which would arise from the 4 dwellings proposed, and thus the weight I afford to those benefits, are very modest.
23. Harmer Hill has another public house and a village hall which, I am advised, is available for events and community activities. Therefore, having regard to the size of the village, and as the Council has not raised any objection in that respect, I conclude that the demolition of the public house would not have an adverse effect on the provision of community facilities within the village. However, the absence of harm in that respect is neutral, rather than a factor weighing in favour of the proposed development.
24. Drawing those threads together, notwithstanding the somewhat diminished significance of the existing building, for the reasons given it has not been demonstrated that the development would make a positive contribution to local character and distinctiveness. Therefore, having regard to Policy MD13 and paragraph 197 of the Framework, I conclude that neither the appearance of the proposed replacement scheme, nor those other very modest public benefits arising from the development, would outweigh the harm which would result from the loss of the NDHA, and of its remaining significance, in this instance.
25. I have had regard to information provided by the appellant with regard to the works and investment that would be required to convert the existing building. However, that information does not alter my conclusion that, for the reasons given, the particular redevelopment scheme proposed in this case would not result in overriding benefits to justify the demolition of the existing building.
26. I therefore conclude that the proposed development would have an adverse effect on the character and appearance of the appeal site and its surroundings, including with regard to the existing building as a NDHA. The proposal would therefore conflict with the terms of SAMDev Plan Policy MD13 as set out above, and with SAMDev Policy MD2, and Policies CS6 and CS17 of the Shropshire Core Strategy (the Core Strategy) which, amongst other things, require developments to be designed to a high quality, contribute to and respect locally distinctiveness or valued character, and protect the significance of heritage assets. The development would also conflict with the aims of the Framework as set out above.

### Safety and convenience of highway users

27. The proposed houses would have 8 parking spaces along the site frontage, the layout of which would require those using them to reverse onto or off the A528 at the front of the site. However, there are a similar number of spaces in a similar position to the front of the existing public house building, which could potentially be frequently used, and lead to vehicles reversing onto or off the road to the front of the site, if the existing building were to be brought back into use.
28. The section of the A528 which runs along the site frontage and beyond the adjacent cottages towards Lower Road, to the left (north) when leaving the site, is relatively straight and level, allowing views along the road for some distance from and towards the site in that direction.
29. Visibility to the right hand side (south) when leaving the site is more limited. However, I have not been presented with any substantive evidence to indicate that the existing spaces in a similar position at the front of the existing building, or those which I observed in front of some of the neighbouring cottages to the north, present a significant hazard to road safety at present, with reference to any accident record or similar information. Nor have I any substantive evidence before me by way of a speed survey to indicate that vehicle speeds past the site are regularly in excess of the 30mph speed limit, as has been suggested. In that context, on the basis of the evidence before me, I have no reason to conclude that the proposed parking arrangements would have adverse implications for highway safety compared with the existing situation.
30. The existing pedestrian footpath along the site frontage is relatively narrow. However, that footpath is of limited length, and does not continue beyond the site frontage for any notable distance in either direction. Therefore, and as there is an existing footpath on the opposite side of the A528 which runs alongside the full length of the road through the built-up part of Harmer Hill, the footpath along the site frontage is not likely to be so well-used as to justify a requirement for it to be widened as part of the proposed development. It would be sufficient in its current form to allow occupants and visitors to the proposed houses to do so safely.
31. Therefore, on the basis of the evidence before me, and having regard to the existing parking layout on the site frontage, I conclude that the proposed development would not have adverse implications for the safety and convenience of highway users or those accessing the appeal site. The proposal would therefore not conflict with Policy CS6 of the Core Strategy which, amongst other things, requires development to be safe and accessible to all.

### Biodiversity

32. The appellant has provided a Bat Survey – Preliminary Roost Assessment (the PRA), the methodology and conclusions of which have not been challenged by any party with reference to any substantive evidence. Therefore, I am content to rely on its results.
33. The PRA identifies a number of historical records of bat roosts within 2km of the site, and that tree lines and woodlands in the site area are likely to be used for foraging and commuting by local bat populations. The PRA identified several



areas of the existing building's roof which would provide access and suitable roosting features for bats, and also found bat droppings in two parts of its roofspace. On that basis, the PRA concludes that the building is a confirmed bat roost.

34. The proposed development would include the demolition of the existing building, and thus the removal of any roost(s) present. There is therefore a significant likelihood that bats, a protected species, would be adversely affected by the proposal.
35. Having concluded that the existing building is a bat roost, the PRA recommends the carrying out of bat emergence/re-entry surveys during the active bat season (May to September) to characterise the roost(s) present including with regard to species, roost type and access points, and thus inform any necessary or appropriate mitigation. However, no such surveys are before me, nor have any mitigation proposals been put forward as part of the scheme.
36. Circular 06/2005<sup>2</sup> states that it is essential to identify the presence of protected species and the extent to which they may be affected by a proposed development before planning permission is granted. I note the appellant's stated commitment to carrying out further surveys. However, in this case there is a reasonable likelihood of a protected species being present and affected by the development and, in the absence of those surveys, I am unable to assess the extent of any such effects, and whether they could be satisfactorily mitigated. There is therefore an unacceptable risk that the proposal could significantly harm bats. Circular 06/2005 states that ecological surveys should only be left to coverage under planning conditions in exceptional circumstances, which I do not find to exist here.
37. For the reasons given, I cannot be certain that the development could be carried out without significant harm to biodiversity, particularly with regard to bats. The proposal would therefore conflict with Policy CS17 of the Core Strategy and Policy MD12 of the SAMDev Plan which, amongst other things, seek to avoid harm to Shropshire's natural assets and require that development does not adversely affect those environmental assets or their ecological values and functions. The proposal would also conflict with the Framework, which states that, if significant harm to biodiversity cannot be avoided or adequately mitigated, planning permission should be refused.

## *Appeal B*

### Character and appearance

38. The proposed bungalow would be built on part of what is currently the public house's car park. It would be similar in appearance to two dormer bungalows which have been built to the rear (west) of the site, which also have quite tall, steep roofs, and to other houses of recent construction immediately to the south. It would be set back from the road and separated from the existing public house building by an access drive. The bungalow would therefore appear separate and distinct from the existing public house and the terrace of houses beyond, and would be viewed principally in the context, and against the backdrop, of those more recently-built houses immediately adjacent to and

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<sup>2</sup> Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System.

behind it. In that context, the proposed building would not be unduly dominant or discordant as a result of its height or its appearance.

39. Although associated with the existing public house building, the site is hard-surfaced and used as its car park. As such, the site makes very little contribution to the historic or architectural significance of that existing building as a NDHA, or to its setting. The proposed bungalow would be located quite close to the site boundaries. However, it would maintain a sufficient degree of separation from the existing public house building, the site frontage, and the front elevations of the new houses to the south, that it would not appear unduly cramped, particularly given its single storey appearance.
40. Therefore, in the context of surrounding houses which have recently been built immediately adjacent to the site, including those on another part of the pub's former car park to the south, the development of a further dwelling on this area would not have an adverse effect on the character or appearance of the appeal site or its surroundings, including with regard to the significance or setting of the adjacent building as a NDHA. The proposed development would therefore not conflict with the requirements of Policies CS6 and CS17 of the Core Strategy or Policies MD2 and MD13 of the SAMDev Plan as set out above. Nor would it conflict with the Framework which requires development to be sympathetic to local character, including the surrounding built environment.

#### Safety and convenience of highway users

41. As I have found the development proposed in Appeal A to be unacceptable, the existing public house building would remain. The development of a bungalow on the appeal site would result in the loss of part of the car park of that existing building.
42. The existing building is not currently in use, and I have had regard to evidence provided by the appellant with regard to the recent financial circumstances of the public house prior to its closure. However, for so long as the building remains, the possibility of it being brought back into use in some form could not be ruled out altogether. In such circumstances, I cannot be certain that the relatively limited number of spaces which would remain in front of the building would be sufficient to maintain an adequate level of parking provision for a building of its relatively large size.
43. The development of the appeal site as proposed could therefore lead to a shortfall in parking within the site in the event that the building's use was to recommence in some form. Consequently, in the absence of any substantive evidence to indicate that there would be capacity on nearby streets, including the main A528 route, to safely accommodate any overspill on-street parking which may arise as a result, I consider that the proposal could have significant implications for the safety and convenience of other road users in the vicinity of the site.
44. Consequently, in the current circumstances, and on the basis of the evidence before me, I cannot be certain that sufficient parking would remain within the site, in the interests of the safety and convenience of highway users in the vicinity of the site. The proposal would therefore conflict with Policy CS6 of the Core Strategy which, amongst other things, requires development to include appropriate car parking.



### Living conditions

45. The bungalow would be located quite close to the front elevation of one of the two recently-built houses on the adjacent site. However, the tallest part of its side gable would be in front of the entrance door to that neighbouring property, and its roof would slope downwards such that the section of wall immediately in front of the neighbour's front kitchen window would be much lower. The bungalow would therefore not appear unduly dominant, oppressive or overbearing when viewed from that neighbouring kitchen window, which would also maintain some wider outlook across the bungalow's front garden.
46. The main ground floor living areas of the neighbouring house are located to the rear, and their outlook over the property's rear garden would not be affected by the proposed development. Due to its single storey design, the bungalow would not have an adverse effect on the outlook from the upper floor windows of that neighbouring property, which would maintain a satisfactory wider outlook over its roof. I am therefore satisfied that the development would not have an adverse effect on the living conditions of that neighbouring property overall with regard to outlook.
47. The bungalow would be set back from, and not directly in front of, the neighbouring semi-detached house closest to the A528. Therefore, and as a result of the low eaves to its front elevation, the bungalow would not appear as an unduly dominant feature or adversely affect the outlook from that neighbouring property, which would also maintain a wider outlook across the bungalow's front garden.
48. Due to the position and orientation of other surrounding properties in relation to the proposed bungalow, it would not have adverse implications for the outlook from any other nearby dwellings.
49. Therefore, for the reasons given, I conclude that the proposed development would not have an adverse effect on the living conditions of the occupants of neighbouring properties with regard to outlook. The proposal would therefore not conflict with Policy CS6 of the Core Strategy which, amongst other things, requires development to safeguard residential amenity.

### **Planning Balance and Conclusion**

#### *Appeal A*

50. I have found that the development would not have adverse implications for the safety or convenience of highway users. However, I conclude that the development would have an adverse effect on the character and appearance of the site and its surroundings, including the NDHA, and that the modest benefits of the scheme would not outweigh the harm arising in that regard. Furthermore, I cannot be certain that the development could be carried out without harm to bats. I therefore conclude that the proposed development would conflict with the development plan taken as a whole, and would not amount to sustainable development in the terms of the Framework.
51. Therefore, for the reasons given, and having regard to all matters raised, the appeal is dismissed.

*Appeal B*

52. The development would provide a new dwelling which would contribute to local housing supply and would be designed to incorporate measures aimed at optimising thermal insulation. However, the benefits arising from the single dwelling proposed would be very modest, and I afford them limited weight.
53. I have found that the development would not have adverse implications for character and appearance, for the NDHA, or for the living conditions of neighbouring occupants. However, the absence of harm in those regards, and the very modest benefits arising from the proposed development, do not outweigh my concerns regarding the potentially significant highway safety implications which may arise in the event that insufficient parking provision remained within the wider site. I therefore conclude that the proposed development would conflict with the development plan taken as a whole, and would not amount to sustainable development in the terms of the Framework.
54. Therefore, for the reasons given, and having regard to all other matters raised, the appeal is dismissed.

*Jillian Rann*  
INSPECTOR