



# Appeal Decision

Site visit made on 12 April 2022

by **M. P. Howell BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: Thursday 19 May 2022**

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**Appeal Ref: APP/Z0116/W/21/3289000**

**14, The Windmill and 3 Eldon Terrace, Windmill Hill, Bedminster, Bristol BS3 4LU**

- 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 Bar Wars Ltd against the decision of Bristol City Council.
  - The application Ref 20/02864/F, dated 2 July 2020, was refused by notice dated 2 December 2021.
  - The development proposed is for first-floor and raised single storey rear extensions. Change of use of The Windmill Public House from Use Class A4 and conversion into 5 flats (Use Class C3). Reinstatement of the basement beneath 3 Eldon Terrace to residential use. Minor external alterations and sub-division of the rear garden area.
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## Decision

1. The appeal is allowed, and planning permission is granted for first floor and raised single storey rear extensions. Change of use of The Windmill Public House and conversion into 5 flats (Use Class C3). Reinstatement of the basement beneath 3 Eldon Terrace to residential use. Minor external alterations and sub-division of the rear garden area at 14, The Windmill & 3 Eldon Terrace, Bristol BS3 4LU in accordance with the terms of the application, Ref 20/02864/F, dated 2 July 2020, subject to the conditions in the attached Schedule of Conditions.

## Applications for costs

2. An application for costs was made by Bar Wars Ltd against Bristol City Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The submissions with the appeal indicate that 3 Eldon Terrace has now been sold and the basement is being converted back into residential use. Notwithstanding this, I have dealt with the appeal on the basis of what is shown on the submitted drawings and the description of the development. This includes the reinstatement of the basement 3 Eldon Terrace to residential use.

## Background and Main Issue

4. Planning permission for the change of use of the public house to residential flats was granted by Bristol Planning Committee on the 11 November 2020. However, the decision was quashed following a legal challenge, which claimed that the Council had failed to consider the Public Sector Equality Duty as it is required to do under the Equality Act 2010. There was also a challenge that the Council had failed to properly consider the pub as an Asset of Community Value

(ACV) and that Policies DM5 and DM6 of the Bristol Local Plan – Site Allocations and Development Management Policies 2014 (LP) had not been correctly applied to the proposal.

5. Following the quashing of the planning permission, the application was reported to the Planning Committee again on November 24, 2021. In the interim period the Council had sought to address the issues associated with the legal challenge set out above. This included the owner notifying the Council of their intention to sell the ACV. The interim moratorium period was commenced and expired, with an intention to bid being received by an interested community group. This meant that a full 6-month moratorium period was undertaken prior to the application being determined at the Planning Committee in November 2021.
6. The main issue is whether the facilities offered by The Windmill public house should be retained to serve the needs of the local community.

## **Reasons**

### *Whether the public house facilities should be retained*

7. The appeal site is a public house, known as the Windmill, situated on the corner of Windmill Hill and Eldon Terrace. The public house included a small beer garden/outside area and served food. The ground floor was in use as a public house, until its closure, and the first floor accommodates a single residential apartment. The basement of the adjoining property (3 Eldon Terrace) was used as a cellar serving the pub. The application proposes to convert the building to 5 flats, including a first floor and single storey extensions.
8. Policy DM6 of the (LP) deals specifically with the subject of public houses. It makes clear that the loss of established public houses will not be permitted unless it is demonstrated that the pub is no longer economically viable, or that a diverse range of public house provision exists within the locality. Although the appellant has submitted evidence to demonstrate compliance with both, the policy only requires the proposal to comply with one of the two criteria.
9. In view of the policy requirements, it is appropriate to initially consider the alternative provision within the locality. The supporting text<sup>1</sup> of Policy DM6 of the LP states that a diverse range should include a good choice of pub environments that can collectively continue to meet the needs and expectations of the whole community. Although not exhaustive, it lists possible social activities as quiz nights, skittles, and live music. Also, community activities could include sports or social clubs, children’s play areas and evening classes.
10. In respect of locality, the supporting text indicates that this should include all other surrounding public houses within a reasonable walking distance. However, it does not specifically set out what a reasonable walking distance would be in this instance. Manual for Streets indicates in section 4.4 that walkable neighbourhoods are typically characterised as having a range of facilities within a 10-minute walk. Manual for Streets 2 in section 5 also states that where it is appropriate to provide traffic-free routes for pedestrians, they should be short, well-overlooked and relatively wide. Consequently, I have considered the provision of pubs within the locality and access to them on this basis.

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<sup>1</sup> Paragraphs 2.6.2, 2.6.3 and 2.6.4

11. The appellant has provided a map, which identifies the appeal site and the range of pubs included within an 800m radius. The map indicates that 14 alternative public houses exist to serve the community. The Council have set out that the public houses highlighted have perceived social barriers associated with them for some vulnerable members of the community. Furthermore, to access most of the public houses on East Street and in Bedminster, the Council would class the walking routes as unsafe, particularly with respect to community members, such as women and LGBTQ+ groups. In this respect, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010 when making my assessment.
12. With respect to the public houses identified, I have had regard to the concerns over the potential safety issues associated with the routes and distances to the surrounding public houses. For that reason, I have discounted 'Bristol Distilling' and 'The Star and Dove' from the alternative provision around the Victoria Park area. With respect to the public houses set out in Bedminster, I have discounted The Barley Mow, The Apple Tree and Fiddlers. From what I saw, to access these sites within 800m, residents would have to follow routes with potential public safety issues, such as enclosed or long traffic free routes, with poor lighting or inadequate natural surveillance.
13. To access 'The Victoria Park' public house, via Somerset Terrace, residents would be required to access it via an area of public open space, an alleyway, or a small section of Victoria Park. However, it has been included as the routes via the park and public open space were short (less than 100m), open, well-overlooked and included lighting. I have also included The Windmill Community Association and Social Club even though it requires membership. From what I saw, there were no specific exclusions or requirements to becoming a member, other than a fee.
14. The Rising Sun and the Windmill Community Association and Social Club are situated around 200m from the appeal site. The Victoria Park and Brunel are further, but within the 800m, depending on what route is taken. There are also several public houses in Bedminster, located on East Street and close to the cross roads with North Street. The public houses identified in this area are at the limit of the 800m walking distance, but from what I saw, all can be accessed via Hereford Street and then Church Lane. There is a pedestrian pathway through Church Lane, but this was a very short distance, and the lane included lighting and is well overlooked. Alternatively, there would be a slightly longer route via Little Paradise or St. Johns Road.
15. I acknowledge that the loss of the public house would be difficult to those residents who regularly used the facility, enjoy its proximity and the services it offered. Furthermore, that some residents consider that the alternatives and the routes are not appropriate. However, based on the evidence before me, and from what I saw, there are two existing alternative provisions within a short walk (within 200m), together with a further 8 public houses accessible along safe routes within a reasonable walking distance. Several of them provided quiz nights, sports, live music events, food and are family friendly. The social club also offers halls for hire, fitness classes, book clubs and help groups.
16. Accordingly, the number of public houses within an 800m walk, along with the community and social activities they provide, amounts to a diverse range of public houses within the locality. As such, the facilities offered by The Windmill

do not need to be retained to serve the needs of the local community, as a diverse range of public house provision exists in the locality, in compliance with Policy DM6 of the LP.

17. With respect to viability, the appellant submitted financial information along with a marketing exercise to demonstrate that the site was no longer economically viable. As the Council determined that inadequate alternative provision existed within the locality, it was necessary for them to determine the viability of the public house. The Council and the submitted representations have set out a case indicating why the public house would still be a viable business, which included the fact that a high number of flatted properties are being constructed in close proximity to the site. However, as sufficient provision has been shown to be situated in the locality, in compliance with criterion (ii), it is unnecessary to determine the scheme based on its viability, required by criterion (i) of Policy DM6 of the LP.

### **Other Matters**

18. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act. In respect of the above, allowing the appeal could interfere with the rights of those who feel they would no longer have safe access to a diverse range of public houses in the locality. However, having regard to the legitimate and well-established planning policy aims to provide new homes through the conversion of public houses, allowing the appeal in this case would be proportionate and necessary. It would not unacceptably violate their rights under the Human Rights Act or the Equality Act.
19. There is some contention over whether the reasonable walking distance should be shorter, based on the advice set out in 'Guidelines for Provision for Journeys on Foot'<sup>2</sup>. However, in my view, table 3.2 of this document sets out that 800m would be an acceptable walking distance to locations categorised as 'elsewhere', with shorter distances being appropriate to town centres. In this instance, I have taken the view that a public house should be considered as an 'elsewhere' location.
20. The Council does not object to the principle of the housing development in this location, the visual impacts of the external alterations, parking provision and highway safety or neighbouring impacts. Whilst I have had full regard to local representations, I do not disagree with the Council's conclusions on these matters. The flats have an acceptable size and outlook for occupants and would be within an accessible location. There would be no unacceptable effects on the character and appearance of the building or area. Furthermore, issues associated with traffic generation, highway safety and the living conditions of nearby residents would be acceptable, subject to appropriate planning conditions, along the lines of those suggested by the parties, were planning permission to be granted.

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<sup>2</sup> Institute of Highways and Transportation document- Guidelines for Provision for Journeys on Foot' Table 3.2

21. A representation included a Planning Inspector's findings for a similar development at an alternative location<sup>3</sup>. The representation indicates that because the nearest alternative pub lay in a different area - outside the locality where one might meet one's own neighbours, then the Inspector deemed it unsuitable as alternative provision. Although I do not have the full details that would have been available to the decision maker, there are differences between this case and the one subject of this appeal. For instance, there are a greater number of alternatives within this area and within a more reasonable walking distance. The differences would result in a different impact upon the local community. Notwithstanding this, I have considered this scheme on its own merits.

### **Conditions**

22. The Council has submitted suggested conditions, were I minded to allow the appeal. I have considered these in the light of advice in the National Planning Practice Guidance (the PPG) and, in the interests of clarity and precision, amended some of the wording.
23. In addition to the statutory time limit, it is necessary in the interests of clarity, to define the approved plans for the scheme. A pre commencement condition relating to a construction method statement would be necessary to protect the adjacent living conditions of neighbours during the construction phase.
24. Conditions ensuring the implementation of bin storage, cycle provision, pedestrian and cycle access are also necessary to ensure access and the provision of bin and cycle provision to serve any future occupiers. A condition requiring the scheme to be carried out in accordance with the energy strategy and sustainability statement is necessary to achieve the aim of reducing emissions from the scheme. A condition ensuring a timber slatted screening is installed, prior to occupation of the flat it serves is needed to safeguard neighbours living conditions.

### **Conclusion**

25. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed.

*M. P. Howell*

INSPECTOR

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<sup>3</sup> APP/Z0116/W/20/3257409

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall begin before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans- Site location plan, T(20)E00\_REV(B) and T(20)P00\_REV(E)
3. No development shall take place, including any demolition works, until a construction method statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
  - o 24 hour emergency contact number;
  - o Hours of operation;
  - o Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
  - o Routes for construction traffic;
  - o Locations for loading/unloading and storage of plant, waste and construction materials;
  - o Measures to protect vulnerable road users (cyclists and pedestrians)
  - o Any necessary temporary traffic management measures;
  - o Arrangements for turning vehicles;
  - o Arrangements to receive abnormal loads or unusually large vehicles;
  - o Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
4. No flat shall be occupied until the refuse store and facilities is completed in accordance with the approved drawing T(20)P00\_REV(E). All refuse and recyclable materials associated with the development shall either be stored within this dedicated store/area or internally within the building thereafter. No refuse or recycling material shall be stored or placed for collection on the adopted highway (including the footway), except on the day of collection.
5. No flat shall be occupied until the means of access for pedestrians and/or cyclists is carried out in accordance with the approved plans, and shall thereafter be retained for access purposes only.
6. No flat shall be occupied until the cycle parking provision has been carried out in accordance with the approved drawing T(20)P00\_REV(E) and the turmec bike data shelter sheet. The cycle parking provision shall, thereafter, be kept free of obstruction and available for the parking of cycles only.
7. The development hereby approved shall be carried out in accordance with the Energy & Sustainability Statement, dated December 2019, and prepared by JS Lewis LTD.
8. The vertical timber slatted screen on the first floor south west elevation, as shown on the Proposed Sections & Elevations T(20)E00 Rev B, shall be erected prior to the occupation of Flat 6, and retained in perpetuity.