The Planning Inspectorate

Appeal Decision

Site visit made on 9 September 2022

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2023

Appeal Ref: APP/Z0116/W/22/3296352
Bell Hill, Stapleton, Bristol, BS16 1BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Red Rock Developments Ltd against Bristol City Council.
- The application Ref 21/00968/F, is dated 25 February 2021.
- The development proposed is Change of use from public house (Sui Generis) to mixed use Class F2 (Local Community Uses), Class C3 (retention and extension of existing dwelling) and Class C4 (regularisation of existing shared accommodation).

Decision

1. The appeal is dismissed.

Application for costs

2. An application for the award of costs has been made by the appellant, which is subject to a separate decision.

Preliminary Matters

3. The appeal relates to the failure of the Council to give notice of its decision on an application for planning permission.

4. Both main parties declined the opportunity for the appeal to be determined by way of a hearing. During the appeal process, the Council also identified that it no longer wished to contest the appeal following the receipt of independent viability evidence. Despite this, the jurisdiction to determine the application no longer lies with the Council.

5. Late evidence has been submitted from the Colston Estate Community Association (CECA). I understand that it was only after the deadline for a response that the CECA became aware that the Council was not seeking to contest the appeal, hence the submission of further information. Additionally, the comments highlighted that the Council had recently published a Public House Practice Note in October 2022 (Practice Note). The Practice Note supplements the application of the Council's planning policies in relation to public houses. Although this amounted to late evidence, both main parties have been given the opportunity to comment on CECA's submission with the appellant providing a response. Therefore, no injustice would arise were I to consider the late evidence as part of my determination of the appeal.

Main Issue

6. The main issue is whether the facilities offered by the Merchant Arms Public House should be retained to serve the needs of the local community, having regard to local and national planning policies.

Reasons

Background and Policy Context

7. The appeal site comprises the former Merchant Arms Public House, located on the corner of Averay Road and the B4058. I understand the property also contained ancillary residential accommodation at first floor level alongside a separate ground floor flat, which have remained in use despite the closure of the pub in 2016.

8. Prior to its closure, The Merchant Arms was operated by the national pub retailer and brewer Greene King, as part of its chain of 'Hungry Horse' pubs. I understand that the pub ceased trading in December 2016, shortly before its purchase by the appellant, and has not re-opened since.

9. The pub was listed as an Asset of Community Value (ACV) in 2018 having been nominated by the CECA. The ACV listing acknowledged that the Merchant Arm's current use or use in the recent past "*furthers the social wellbeing and interests of the local community*". Since its listing as an ACV the appellant has sought to market the property for sale, which I will return to in further detail below.

10. Policy DM6 of the Bristol Local Plan – Site Allocations and Development Management Policies (adopted 2014) (the Local Plan) relates specifically to development involving public houses. The policy is 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 a diverse range of public house provision exists within the locality. Although the appellant has submitted evidence to demonstrate compliance with both aspects, the policy only requires the proposal to comply with one of these two criteria.

11. Additionally, Policy BSC12 of the Bristol Development Framework Core Strategy (adopted 2011) (Core Strategy) seeks amongst other matters to retain existing community facilities, unless it can be demonstrated that there is no longer a need to retain the use or where alternative provision is made. The supporting text to the policy identifies that community facilities can include uses whose primary function is commercial but perform a social role, including public houses. The designation of the property as an ACV further reinforces the notion that the existing use of the appeal site is a community facility.

Evidence on Viability

12. The supporting text to Policy DM6 sets out that viability assessments must include analysis of trade potential, the existing business and evidence of adequate marketing. It also advises that regard will be had to the CAMRA Public House Viability Test.

13. The appellant has provided a viability report prepared by Fleurets (a leading agent in the leisure and hospitality sector), alongside a separate marketing

statement that was prepared by James A Baker Chartered Surveyors (the sales agent).

14. The appellant's viability evidence provides no detailed information as to the pub's financial performance prior to its closure. It is unclear whether the property was being sold as a going concern when on the market in 2016. The decision of Greene King to sell the Merchant Arms is likely indicative that the pub was not operating at a profit level that matched its commercial requirements or future expectations. I also note that several other commercial operators have shown a lack of interest in the site as part of the appellant's targeted marketing campaign (further discussed below).

15. From the evidence before me, and my observations on site, I do not doubt that the appeal site has constraints that would make it an unattractive proposition for national/regional commercial operators. Such constraints include its setting, lack of prominence and ease of access as a destination venue. There are of course also wider sector challenges for the public house/hospitality industry in general. However, there also appear to be several attributes associated with the property including a sizeable local population, limited nearby competition, on-site garden/external trade space, parking facilities, commercial kitchen, ancillary accommodation, and sufficient space to allow flexibility in its operations (e.g. function space could be used for a range of activities/hire).

16. The appellant's viability report does not include an assessment of trade potential. The appellant identifies that undertaking such an assessment would be a purely subjective exercise and reiterates a lack of interest for continued use of the property as a public house. However, as I will discuss further below, I have concerns about the marketing that has taken place that may have affected potential interest from suitable public house operators.

17. The appellant has also completed the CAMRA Public House Viability Toolkit Assessment (CAMRA Assessment), that offers insights into a range of broad issues and constraints that can affect the public house's viability. Notwithstanding the wider concerns of third parties, the appellant's CAMRA Assessment still does not provide a thorough illustration of the public house's previous financial performance or potential future trade.

18. I acknowledge that meaningful investment may be required before the pub could be re-opened and that this is likely to entail significant risk from any relevant party. However, there is a lack of robust information before me as to the likely level of investment required, the potential operational and financing costs, and whether the site's continued use as a pub could generate a fair maintainable operating profit that would provide an owner with a suitable level of return on investment.

19. The appellant's views on the public house use have been contested by the CECA, which has provided an extensive range of evidence to suggest that the Merchant Arms remains viable. This includes a Business Buyer & Market Appraisal Valuation Report (BB&MAVR) that the appellant has commissioned. I have only been furnished with an overview/extracts of the BB&MAVR. However, the report has been prepared by a Mr Michael Hughes, a suitably qualified expert, with what appears to be an extensive background in licensed trade and commercial property.

20. Mr Hughes has undertaken an examination of previous business rate valuation records to provide estimates of the public house's former financial performance. The records are said to demonstrate that the Merchant Arms was likely to be trading well prior to its closure, even if not at a level that would be deemed so by a corporate body. Furthermore, estimates of the fair maintainable trade, gross and operating profits have also been provided. It is indicated that the pub could achieve an operating profit in the region of £70,000 pa, albeit I note that this does not include depreciation or potentially relevant loan re-payments. It is therefore suggested that the pub could remain viable under alternative business/ownership models, namely if it were to be independent or community run. The appellant has not directly contested these figures or findings but has instead emphasised the general lack of interest from potential suitable operators.

21. I have also been provided with several examples of public houses within the vicinity of Bristol that were previously corporate owned and understood to be deemed unviable. However, they are now seemingly trading successfully under independent ownership for a variety of reasons. I do not have the full details of each of the case studies presented, and I appreciate that each of the examples will have a somewhat different context to the appeal site. Nevertheless, the case studies still provide an illustration of how public houses may remain viable under alternative management/ownership arrangements. I am also mindful of the cited findings of the Plunket Foundation, which highlights there are some 150 community-owned pubs in the UK and none have yet failed.

22. Overall, I recognise that the Merchant Arms may not have been viewed as a profitable/sufficiently profitable enterprise by Greene King, or other national/regional corporate operators in the hospitality market. However, from the evidence I have been presented, I am not convinced that other ownership or operational types could not be successful.

Marketing

23. Given the absence of previous accounts information and any detailed assessment of trade potential, the appellant's case is heavily reliant on the marketing of the property and the lack of interest that it has received from potential public house operators.

24. I understand that Greene King originally marketed the pub for sale at £595,000 from July 2016, before it was eventually purchased by the appellant in December 2016 for a price in the region of £475,000.

25. The appellant's sales agent also acted on the 2016 sale of the property (on behalf of Greene King) and indicates at that time no offers were received for its continued use as a public house. This is disputed by the CECA and it has referred me to evidence in its submission for the site to be listed as an ACV[1]. The evidence referred to suggests that a Bristol resident/property developer expressed interest in purchasing the public house with a view to continuing its use. Whilst I have been provided with a copy of CECA's AVC submission and the final listing report, I have not received a copy of the background evidence submitted to the hearing. Despite this, the matter has not been directly

[1] Evidence referred to includes third party statements and transcripts provided as part of the submission to the 2019 ACV Review of Decision to List Merchant Arms Public House under the Localism Act.

rebutted by the appellant and I have no specific reason to distrust the validity of CECA's claim.

26. The appeal property is clearly an unattractive proposition to national/regional organisations in the public house or hospitality sectors. This is demonstrated through Greene King's original disposal of the site and the subsequent feedback received from a targeted marketing campaign with a range of established operators (between February – June 2019). Again, however, this does not preclude the public house use from being viable.

27. Following the lack of interest from the appellant's targeted marketing campaign, I understand the property was placed on the open market from February 2020. To the best of my knowledge, it continues to be so. The sale of the property appears to have been widely advertised. This includes erection of a sales board, being featured on a range of property industry websites and targeted mailshots to regional/local licensed leisure operators, developers, investors, and local agents.

28. The open marketing phase resulted in a significant number of enquires and several offers. Only one of these offers, from the CECA, was made with the intention of retaining the use of the property as a public house[2]. The CECA has claimed that obstacles were placed into the sale's process that prevented it from refining its offer and securing funds. Nonetheless, I have significant doubts as to whether the CECA is capable of being a realistic purchaser. This is due to the stated conditions of its offer and that it would require a substantial amount of capital to be raised from crowd funding, with evidence of only limited amounts having previously been secured.

29. Despite this, I still have fundamental concerns about the marketing exercise that has taken place. I appreciate marketing on an offer's invited basis should in theory enable any party with an interest to make an offer. However, I am somewhat doubtful that this will always materialise, given that it may lead to uncertainty as to the expected sales price.

30. The CECA has also provided me with an email trail between the agent and an unnamed third party[3] purporting to be a prospective purchaser with a local background of running public houses. The email trail is largely redacted of personal information and I cannot be certain whether this related to a genuine interest in the property. However, in any case, the email trail illustrates that the sales agent was seeking proof of funds for £975,000 to enable viewings of the property. I find that such a condition would be a significant barrier to interest, as it would likely put off some potential buyers since it is an indicator of the approximate level that the seller hopes to achieve. I therefore have concerns that other prospective enquiries may have not progressed.

31. It is unclear where the value of £975,000 cited in the email from the agent has arisen from, but I am informed that the appellant received offers for the property ranging between £450,000 to £900,000. This included several that were considerably higher amounts than the property was purchased for in late 2016. Each of the offers were rejected for a variety of reasons, but notably I am told that all the amounts offered fell below the vendor's expectations for

[2] The CECA offer sought to retain the public house use, whilst also supplementing it with other uses including café, community meeting/function space (subject to planning permission).
[3] Personal details within the emails have been redacted.

the site. This also adds to the likely validity of the CECA's claim regarding the need of proof of funding for £975,000 to enable viewings of the property.

32. Clearly market values will have changed since late 2016, whilst I also note the appellant has made some investment into the fabric of the building in this time. Despite this, I have been provided with no robust explanation as to why the property is now deemed by the appellant to have a value in excess of £900,000. Especially, since the appellant's viability evidence explains that on the basis that a property is being sold without the benefit of planning permission, the value differential between a public house sale for continued licence use and for alternative use sale is small.

33. The CECA's own independent valuation of the site, based on its current use, suggests that its market value lies between £560,000 and £725,000. I understand that this has been based on comparable market transactions, the previous 2016 asking/sale prices, and subject to various assumptions of trading potential. Whilst I note the appellant's criticism of this valuation it has not put forward what a reasonable market valuation may be. Consequently, based on all the evidence before me, it seems that the appellant is adding an element of 'hope value' above its true value based on the lawful use.

34. From the available evidence, I therefore find that the marketing conditions (e.g. proof of funds seemingly required in excess of the likely value of the current property) may have impeded interest from parties, including those that may have sought to continue the public house use.

35. The initial marketing of the property also took place during the COVID-19 pandemic, which third parties argues undermines the exercise. However, I understand that the property has continued to be on the market for a considerable period after the height of the pandemic, although possibly not advertised as vigorously. As such, this is a matter that I am less concerned by.

36. Nevertheless, I am ultimately unconvinced that marketing of the property has been undertaken in a manner that has sought to achieve a sale value commensurate with the existing use of the property. This has potentially disincentivised alternative public house operators from making offers.

37. Due to the concerns in respect of the marketing that has taken place, and the lack of evidence regarding the previous financial performance of the public house and future trade potential, I am not satisfied that the appeal property has been demonstrated to be unviable as a public house.

Alternative Provision

38. There are two components to the alternative provision test under Policy DM6. Firstly, what is deemed to be within the locality and then what constitutes a diverse range of public house provision.

39. The supporting text to Policy DM6 highlights that in considering alternative provision within the locality, a diverse range of public house provision should include a good choice of pub environments that can collectively continue to meet the needs and expectations of the whole community. Whilst not exhaustive, it lists possible social activities such as quiz nights and live music, as well as potential community activities such as, sports or social clubs, children's play areas and evening classes.

40. In terms of locality, the policy supporting text highlights that this should include all other surrounding public houses within a reasonable walking distance. However, such a distance is not defined.

41. The appellant contends that 1,200m (equivalent to approximately a 15-minute walk) amounts to a reasonable walking distance. This is based on guidance published by the Chartered Institute of Highways and Transport[4] (CIHT Guidance), which the Council has previously used in the determination of another application (ref: 21/02835/F). I also understand that this guidance was recommended to the appellant as part of pre-application advice. There are four other public houses within a 1,200m radius of the site, albeit only three of which are within 1,200m/15 minutes, when taking account of routes that can be physically walked. Each of the identified alternative public houses is near the upper limit of the 1,200m threshold.

42. Third parties argue that a reasonable walking distance should instead be 800m, which has also been cited by the Council and an Inspector in the determination of a previous appeal[5]. I have been provided with a copy of the relevant appeal decision and note that the 800m referred to is taken from guidance established in Manual for Streets (MfS) in respect of walkable neighbourhoods. In my experience this distance/guidance is very commonly used for the purpose of considering accessibility to services on foot. Furthermore, although not adopted policy, the Council's recently published Practice Note also advises that an 800m threshold (roughly equivalent to a 10-minute walk) should be used in connection with Policy DM6.

43. Based on the evidence before me, and despite the pre-application advice that the appellant received, I find that 800m is the more appropriate measure of a reasonable walking distance for the application of Policy DM6. No other public houses have been identified within 800m. Accordingly, there is not an existing range of public houses within the locality of the appeal site.

44. Even if I were to accept the appellant's contention that 1,200m is a reasonable walking distance, I have concerns that residents near the appeal site may be discourage from using the relevant routes due to their environmental context. For example, due to factors including topography/gradients, lack of streetlighting and perceptions of safety. I have also been provided with only very limited details of the CIHT guidance, and it is not clear to me as to whether it seeks to take account of these type of matters. Notably, however, the Council's Practice Note indicates that regard should be had to such factors and that alternative public house provision beyond barriers such as these may not be considered within a reasonable walking distance. Consequently, I am still not satisfied that there is an alternative range of public houses within the locality of the site should the 1,200m threshold be used.

45. The appellant has also given details of the various offerings that the public houses within 1,200m provide to indicate their diverse provision. This includes their offering in respect of food and drink, beer gardens, sports tv, function rooms etc. Again, the diversity of their offer has been contested by third parties. However, given my finding that these pubs are not within the locality of the site (i.e. reasonable walking distance), it has not been necessary for me to consider this in further detail.

[4] 'Providing for Journeys on Foot' (Date not specified).
[5] Appeal Ref: APP/Z0116/W/20/3257409

46. Whilst not determinative, I have also noted the findings of the AVC listing report, whereby it was deemed that there was a lack of alternative provision within a reasonable and safe walking distance of the site.

47. Accordingly, the proposal is contrary to Policy DM6 of the Local Plan as it has not been satisfactorily demonstrated that the continued use of the property as a public house is unviable, whilst it has also not been demonstrated that a diverse range of public house provision exists within the locality.

48. Although there is a lack of alternative public houses nearby, in respect of Core Strategy Policy BSC12, the proposal would include the provision of community floorspace (Use Class F2). The appellant indicates that this would be in the form of a function room that can be used as a community meeting point, or for a range of activities/classes. Supporting text to Policy BCS12 identifies that community facilities can be wide ranging and include commercial functions provided it performs a social or community role. The policy also refers to community 'facilities' and 'uses' interchangeably.

49. I am inclined to agree with third parties that an entirely private hire venue is unlikely to be as inclusive or perform a comparable community function as a pub. Nonetheless, alternative provision of a community use is being made and Policy BCS12 does not set out a requirement for this to be on a like for like basis. Based on the evidence before me I am satisfied, in this instance, that the proposal accords with Policy BSC12.

50. Similarly, I am satisfied that through the provision of the proposed alternative community use floorspace, the proposal accords with Policy DM5 of the Local Plan. This policy seeks to protect community facilities, including through consideration of demand for other community facilities where the existing use has ceased. Nonetheless, the proposal remains contrary to Local Plan Policy DM6 which relates specifically to public house uses.

Other Matters

51. The appeal site lies within the Stapleton and Frome Conservation Area (CA). The CA covers an extensive area and therefore its character highly varies. Indeed, much of the CA, including the village of Stapleton, has a predominantly rural origin, which can be observed in the use of building materials, detailing, and layout of buildings and streets. The area also contains a range of listed buildings, historic parks and gardens. However, the appeal site and immediate surroundings are of an inter-war era and do not appear to be reflective of the rural architectural character of the wider CA. In fact, the interwar residential estate that neighbours the Merchant Arms is excluded from the CA.

52. The appeal building has been locally listed due to its aesthetic value, which has been noted to have strong and clear architectural significance and a connection to noteworthy local architects. It can therefore be deemed a non-designated heritage asset. Despite this, as there would not be any significant physical alterations to the building, I consider that the proposal would not harm the character or appearance of the building or the CA. Accordingly, the character and significance of the heritage assets would be preserved.

53. I am aware that the Council has received an independent viability assessment prepared by Avison Young. I understand that this assessment concluded that the public house was unviable, hence the reason the Council has not sought to

contest the appeal. Whilst Avison Young may be a reputable commercial agent with a good local knowledge of the Bristol property market, I have not been provided with a copy of the report to examine its findings. Therefore, although I am mindful of the assessment's overall conclusion, I have given this only limited weight in the determination of this appeal.

54. I understand the appellant's concerns regarding the Council's procedural transparency, given it provided a copy of the Avison Young report to third parties, whilst the appellant had not been provided with a copy or even made aware that it had been commissioned. However, this is a matter for the Council to address, while the appeal has been determined on its own merits.

55. There has been a variety of support expressed for the proposed development, including for the property to re-open with a community use, the provision of housing and concerns surrounding the existing pub use. However, the support received does not justify the conflict with the adopted planning policy. Whilst I also note that a significant number of local residents have voiced opposition to the proposal, in particular, due to the loss of the public house use.

Planning Balance

56. I understand that the Council cannot demonstrate a five-year supply of housing sites. Paragraph 11(d)ii of the National Planning Policy Framework (the Framework) therefore applies. This requires an assessment of the proposal against the policies of the Framework taken as a whole.

57. Despite my findings of general compliance with Core Strategy Policy BCS12 and Policy DM5 of the Local Plan, I have found that the proposed development would conflict with Local Plan Policy DM6. The policy is largely consistent with the provisions of the Framework in that it seeks to plan positively for the provision of public houses. Even taking account of the Council's failure to deliver sufficient housing, the conflict between the proposal and the development plan should be given significant weight in this instance.

58. Against this, the benefits of the scheme must be balanced. The proposal would regularise a 6-bed HMO and a self-contained flat, thereby adding to the local housing stock in an area with significant housing pressures. This would also be achieved using brownfield land in a sustainable location. However, whilst paragraph 60 of the Framework refers to significantly boosting the supply of housing, the provision made by the appeal scheme would make little meaningful difference.

59. The proposal would also provide social benefits through providing a large function space that can be used for a variety of community activities, thereby promoting interaction. However, I attribute only modest weight to this benefit. This is because a public house could perform a similar role and would likely be more inclusive than a venue largely intended for private hire. It has also not been satisfactorily demonstrated that the public house use is unviable.

60. Further environmental benefits have been identified in respect of reducing the site's carbon emissions through works associated with the proposed development. Again, however, given the scale and nature of the scheme, these benefits would be limited.

61. The proposal would also comply with a range of other planning policy requirements. For example, in relation to residential amenity, design and

heritage, and transport matters. However, this is to be expected of new development proposals. Consequently, these are neutral matters in the planning balance.

62. Overall, when assessed against the policies in the Framework taken as a whole, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development does not apply.

Conclusion

63. I realise that my decision will come as a disappointment to the appellant. I have no desire to prolong the current use if indeed there is no reasonable prospect that its use as a public house remains viable. However, I am not satisfied that the evidence shows this is yet the case.

64. In conclusion, the appeal scheme conflicts with the development plan as a whole and there are no other considerations, including the Framework's provisions, which outweigh this finding. Therefore, for the reasons given above and considering all other matters raised, the appeal is dismissed.

Lewis Condé

INSPECTOR