

Appeal Decision

Site visit made on 16 July 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/D0121/W/23/3330654

Bristol Hotel, Chapel Hill, Clevedon, North Somerset BS21 7NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Punch Partnerships (PML) Limited against the decision of North Somerset Council.
 - The application Ref is 22/P/2562/FUL.
 - The development proposed is the erection of three terraced dwellings (Use Class C3) on land to the rear of the existing pub (Sui Generis), including the provision of parking and hard and soft landscaping and the reconfiguration of the public house car park and garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the address above which I have taken from the application form, the appeal property is largely referred to as the 'Bristol Inn' within the evidence, consistent with the signage for the public house. As such, I have used 'Bristol Inn' throughout the decision.
3. The appellant has submitted amended plans with the appeal, which omit the relocation of the smoking shelter from the eastern end of the pub. I consider this to be a minor change to the scheme which does not fundamentally alter the proposals. The appellant has also provided an updated version of the Proposed Site Section, an updated noise assessment, and a shadow study. These plans and reports provide an updated context and additional technical information to the proposals and do not represent a change to the scheme before me. As such I am satisfied that no parties would be prejudiced by my acceptance of these details, and I have taken them into account in my determination of the appeal.

Main Issues

4. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the Clevedon Triangle Conservation Area (CA), including the effects of the proposal on the significance of the Bristol Inn as a non-designated heritage asset (NDHA);

- the effect of the proposed development on the living conditions of neighbouring occupiers at 10 and 20 Lime Kiln Lane, with regard to outlook, daylight, and sunlight;
- whether the proposed development would provide adequate living conditions for future occupiers with regard to noise; and
- the effect of the proposed development on highway safety.

Reasons

Character and appearance

5. The appeal site lies within what is currently part of the grounds of the Bristol Inn public house. This building addresses Chapel Hill to the west behind a large car park, and the gardens extend towards residential properties on Lime Kiln Lane to the east. As the appeal site is located within the CA, in accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
6. I have had regard to the appellant's Heritage Statement, and alongside my own observations consider the significance of the CA as a whole to derive from the historical development of the town as a seaside resort, and from the consistent architectural style, detailing, and use of materials, together with several feature buildings. In the context of the appeal site, the Bristol Inn contributes to the significance and understanding of the CA as a long-standing focal point and feature building with distinctive architecture. To the east, Lime Kiln Lane forms a small residential side-street reflecting the early development of the town. Its attractive grouping of vernacular cottages with an intimate character also makes a positive contribution to the significance of the CA.
7. The appeal site forms part of the beer garden to the side of the Bristol Inn, comprising an elevated grassed area of seating and play equipment. It makes a modest positive contribution to the significance of the CA through its contribution towards the understanding of the role, function, and context of the Bristol Inn, facilitating views towards the rooflines of cottages on Lime Kiln Lane as well as the original elements of the main Bristol Inn building. While modern housing is visible to the north-west, it lies outside the CA and is separated from the pub and its grounds by significant walls and level changes. Its presence therefore does not substantially detract from the contribution the appeal site makes to the significance of the CA.
8. The proposed development comprises the introduction of a terrace of three dwellings into the side gardens of the Bristol Inn. While the footprint of the dwellings would be subordinate to the pub, there is no section showing their overall scale in relation to the main building. The primary elevations of the public house display Georgian proportions and detailing, including shallow hipped roofs. The rear wing and various built additions to the rear are also predominantly single storey, resulting in an overall building that has a noticeably low-set profile. To the east, the cottages on Lime Kiln Lane are also of a markedly modest scale.
9. The proposed dwellings would not reflect the scale, form, character, or profile of this historic built context. A modern roof pitch and span, combined

with two storey development meeting modern building regulations is likely to be substantially taller and with a greater bulk and massing than the feature building of the Bristol Inn, eroding its presence as a focal point within the CA. This would be exacerbated by the appeal site's location on rising ground adjacent to the single-storey elements of the public house.

10. With reference to the submitted sections, the uncharacteristic scale of the proposal would also be starkly apparent from within Lime Kiln Lane, where its eastern elevation would dwarf the existing cottages, substantially detracting from the intimate traditional character within the residential lane. Even though several of the material choices and design details of the proposals reflect locally distinctive characteristics, they would not alter the perception of the dwellings as a large and uncharacteristic development in this context. As such, the form and scale of the proposed development in this location would fail to preserve the character and appearance of the CA.
11. The proposed timber fencing and bin stores of the front and rear gardens of the proposal are typical of modern housing development, and would not reflect the historic context of the site. While the proposal would secure the removal of a short length of existing modern fencing that is visible from Chapel Hill, it would be replaced by an area of car parking enclosed with a shorter length of fencing. The replacement of one unsympathetic modern feature with another would result in an overall neutral effect on the character and appearance of the CA. If a stone wall could be conditioned to meet the same acoustic requirements as the fencing while preserving local character, this may represent a minor beneficial effect. However, in the context of the wider changes to the site I find overall harm to the character and appearance of the CA.
12. There is little regularity in plot pattern and building orientation in the context of the appeal site, reflecting the changing topography and the development of the town over time. In addition, given the presence of surrounding development and vegetation, public views of the proposed development would likely be limited to the upper end of Lime Kiln Lane, and views of ancillary features to the side of the Bristol Inn.
13. However, CAs are experienced throughout the area, including private spaces. As such, alongside the public views, occupiers of nearby private dwellings and garden spaces, and the users of exterior seating areas of the Bristol Inn would each perceive a harmful change to the character and appearance of the CA. The change to the experience of the CA would therefore be sufficient to harm its significance.
14. The parties agree that the Bristol Inn is a NDHA. In accordance with paragraph 209 of the National Planning Policy Framework (the Framework) the effect on the significance of a NDHA should be taken into account. With a clear functional link to the pub and part of its historic curtilage, the appeal site makes a modest positive contribution to the significance of the NDHA and forms part of its setting. The introduction of uncharacteristically large modern housing and associated structures into the beer garden of the pub would significantly and permanently erode the functional link between the main building and this area of its curtilage, affecting its significance. While any change to the perception of the Bristol Inn in its road frontage would be relatively minor, experienced from the remaining curtilage of the pub, the proposal would result in localised harm to the significance of the asset.

15. Although some modern extensions are present to the rear of the public house, these are ancillary features that retain a functional link to the main building. They do not noticeably detract from the setting of the NDHA or the historic context of the appeal site. In addition, although there is evidence of previous outbuildings being present to the rear and side of the pub, these would have retained a functional link with the main building, and do not appear to have been of a scale or character comparable with the three dwellings now proposed. Accordingly, their past presence has little bearing on my consideration of this appeal.
16. The Council has raised concerns regarding a row of trees which form the southern boundary to the appeal site. As relatively tall trees, there would likely be some pressure to reduce the size of the crowns to minimise shading of the new gardens. However, the trees appear to be located predominantly outside of the site boundary, and would in any event be protected from uncontrolled works by virtue of their location within the CA. Although the trees offer some visual screening of the site, buildings on Old Street would also restrict visibility towards the new dwellings from this direction. As such, despite the potential future pressure on these trees, this would not in itself harm the character or appearance of the CA or the significance of the NDHA.
17. Overall however, for my reasons above, I conclude that the proposed development would fail to preserve or enhance the character or appearance of the CA as a designated heritage asset, and would harm the significance of the Bristol Inn as a NDHA as a result of development within its setting. There would, therefore, be conflict with Policies DM3, DM7, DM32, and DM37 of the Sites and Policies Plan Part 1 (2016) (the SPP) insofar as they seek to ensure that new development is sensitive to local character, enhances local distinctiveness, and will not harm the character or appearance of conservation areas, having regard to matters including form, scale, height and massing, and taking into account the significance of NDHAs.
18. The Council has also referred to Section 2 of its Residential Design Guide¹ in its reason for refusal. However, this part of the design guide refers to house extensions and alterations, of which the appeal is neither. As such this guidance is not relevant to my consideration of this appeal.
19. The harm which would be caused to the significance of the CA would be less than substantial, but nevertheless it attracts considerable importance and weight in the planning balance. Under these circumstances paragraph 208 of the Framework indicates that this harm should be weighed against the public benefits of the proposal. In addition, a balanced judgement is required in relation to a NDHA, having regard to the scale of the harm and the significance of the asset. I shall therefore consider these matters further in the overall heritage and planning balance.

Living conditions – neighbouring occupiers

20. Existing dwellings at 10 and 20 Lime Kiln Lane lie to the east of the appeal site. The side gable elevation of proposed Unit 1 would lie in the space between Nos 10 and 20, approximately 2m from the shared boundary. I observed on site that the ground levels between the appeal site and No 20 are broadly level. However, due to the sloping topography, the appeal site

¹ Supplementary Planning Document Residential Design Guide – section 2: Appearance and character of house extensions and alterations (2014)

ground level is notably higher than that of No 10 and the public realm of Lime Kiln Lane.

21. The space between Nos 10 and 20 is formed by part of the garden at No 20. This is a terraced area of garden, and includes a large external seating area for the property, along with the approach to the front door. The terracing contains a number of small trees, and is enclosed by vegetation and built form to the north, east, and south. Above the shared boundary wall there is an open aspect to the west, which forms the primary outlook from the garden and seating area.
22. The proposed development would introduce a significant gable elevation in this western outlook, in close proximity to the garden boundary. The new building would be considerably taller than the existing dwellings to either side, and would dominate the western aspect of the garden, enclosing the majority of its length. The presence of substantial new built massing in this location would be overbearing both within the garden area and on the approach to the dwelling. This would materially harm the living conditions of the neighbouring occupiers at No 20.
23. With regard to daylight and sunlight, the submitted shadow studies indicate that very little direct shading to the building elevations of Nos 10 and 20 would occur due to the offset in position of the new dwellings. The garden space for No 20 would be partially shaded in the afternoons in March and September, with a greater level of shading by 6pm. By mid-summer, the area of shading would be reduced, but would still cover the western portion of the garden space at 3pm, and a relatively high proportion of the garden space by 6pm. Although the garden may experience some existing shading caused by the shared boundary wall, the significant increase in height associated with the new development would noticeably worsen this effect.
24. I observed on site that this garden space at No 20 is used for external seating and recreation, and due to its open western aspect, is likely to be used when the area receives direct sunlight in the afternoons and evenings. As such, the reduction in sunlight predicted by the studies would unacceptably harm the living conditions of occupiers at No 20. Moreover, due to the existing enclosure of the external space by vegetation and built form to all other aspects, the proposal would likely also adversely affect levels of daylight experienced in the space, changing how bright and light the space feels for occupiers.
25. The external areas associated with No 10 appear to be functional spaces providing rear access. While at a notably lower ground level than the appeal site, No 10 is also enclosed to the west by significant vegetation on its western boundary, which curtails the outlook from the property and external spaces towards the appeal site. As such, while the presence of the new built form may be apparent, it would not unacceptably dominate the spaces surrounding the property, or significantly alter the levels of daylight and sunlight it receives.
26. My attention has been drawn to Section 1 of the Council's Residential Design Guide² (RDG). This sets out a series of tests to identify situations in which overbearing impact and loss of light may be caused by new development. The proposal would lie approximately 4m from the closest point of No 20,

² Supplementary Planning Document Residential Design Guide – section 1: Protecting living conditions of neighbours (2013)

and approximately 9m from No 10. While these distances fall well-below the RDG's guidance minimum separation of 12m, the new development would be offset from the main elevations of neighbouring properties with no built form present directly opposite the existing elevations. While oblique views of the development would be available from windows of both No 10 and No 20, the primary aspect from these windows would be largely unchanged. As such, the proposal would not unacceptably affect the outlook from the windows of either property.

27. Accordingly, while I have found no unacceptable harm in respect of the windows of the neighbouring properties or to the external spaces of No 10, for the reasons given above I conclude that the proposed development would unacceptably harm the living conditions of neighbouring occupiers at No 20, with regard to outlook, daylight, and sunlight. This would conflict with Policies DM32 and DM37 of the SPP where they require that development does not prejudice the living conditions of adjoining occupiers through overshadowing or overbearing impacts. There would also be broad conflict with the RDG where it sets out that developments should not cause significant harm to the living conditions of neighbouring residents when using their gardens.

Living conditions – future occupiers

28. Alongside its operation as a pub, the Bristol Inn hosts regular music events, including late-night operation between 2300 and 0000 hours Monday – Thursday, and 2300 and 0100 hours on Friday to Saturday. Two noise reports have been provided with the appeal, both comprising an Acoustic Testing Report (ATR) and a Noise Management Plan (NMP). They are based on a series of acoustic measurements, carried out in January and September 2023. The appellant states that the noise mitigation measures proposed in the earlier assessment have now been put in place.
29. The evidence indicates that numerous noise, disturbance, and nuisance complaints in association with the Bristol Inn have been received from local residents since 2005, although there is no information regarding how many have been received since the mitigation measures have been put in place. Nevertheless, the differences between the January and September ATRs indicate that the mitigation measures are having some effect on the local noise impacts of the pub.
30. The appellant asserts that the noise mitigation measures are designed to ensure that music from events (which occur within the building) is inaudible within the new dwellings at all times. The ATRs do not explicitly demonstrate this, but do show that with mitigations, noise from music events is unlikely to breach acceptable thresholds within the new dwellings and their gardens. However, the proximity of the dwellings to the remaining external seating areas and the car park of the pub would make future occupiers vulnerable to noise sources other than internal music.
31. While the noise recordings were undertaken during predominately dry conditions, both periods of assessment were during periods that would not have seen the external spaces of the pub in peak use. A maximum temperature of 14 degrees Celsius would not give a comparable level of use to warm, summer afternoons and evenings. Although the ATRs indicate that bespoke calculations have been used to incorporate possible summer usage, these are based on 30 customers using the garden area. I observed that the

southern garden area and terrace could readily accommodate more than 30 people. The ATRs also acknowledge that events such as shouting and raised voices may increase the noise levels from those calculated, and in my view such events would be relatively commonplace in association with a pub. As such, I consider that the calculated external noise levels of the ATRs are likely to be an underestimation of peak summer noise levels.

32. In addition, while the pub garden area and side terrace would not be in use after 2230 hours, the gardens of the new dwellings are likely to be most sensitive to noise during their use prior to this time. Even taking account of the noise reduction provided by the proposed acoustic fence, I find it very likely that the noise levels in the private gardens of the new dwellings would reach levels that would give rise to a poor living environment for occupants of the proposal. This would be particularly true for the garden of Unit 3, which would be located approximately 5m from the side terrace of the pub, and approximately 20m from its southern garden. While I recognise that a similar relationship exists between the existing beer garden and houses in Lime Kiln Lane, the evidence of previous noise and disturbance complaints from neighbours, including more recent comments from interested parties, indicates that the existing relationship is not a successful one.
33. The ATRs identify some one-off events of a high noise level late at night, indicating that these took place outside the public house building. There are limited details of the scale or timing of any events taking place during the assessment period, making the interpretation of these noise sources difficult. However, in seeking to quantify the level of noise attributed to the car park, the ATRs use calculations and an assumption of 25 car movements within a 15 minute period. I do not have details of the audience limits or capacity of the pub as a music venue. However, I consider it likely that a high number of customers would depart from the venue within a relatively short timeframe, including from events that continue after 2300 hours. This would include noise from those travelling by car, but also from those travelling on foot or waiting for other transport such as taxis.
34. The mitigation measures for noise from the car park rely on requests made of customers, either verbal or through signage. Such measures would likely have some effect, but unpredictable events such as shouting would be difficult to control, and would be significantly disruptive to occupiers. There can be no guarantee that such events would not occur.
35. While the acoustic fencing proposed between the dwellings and the pub would provide some sound reduction from the car park, the first-floor bedroom windows to the front and rear of the properties would be positioned well above the level of any fencing, reducing its effectiveness at controlling noise. Moreover, while mechanical ventilation is proposed to the new dwellings to provide occupiers with an alternative to opening windows, it would not be possible to control the use of such systems. Given the unpredictability of many of the noise sources, residents opening their windows earlier in the evening may be exposed to unacceptable noise levels in bedrooms at night. I therefore do not consider the provision of mechanical ventilation to represent effective mitigation to the potential for noise disturbance.
36. I acknowledge the detailed assessment and findings of the ATRs and NMPs, including the measures that have already been put in place to reduce the noise escaping from the pub during music events. However, to my mind, the

proximity of the proposed dwellings to the pub as both a late-night venue and a public house with generous external seating arrangements would be likely to give rise to a poor living environment for occupants of the proposal, especially within their gardens and in the upper floor bedrooms.

37. The proposed development would therefore not provide adequate living conditions for future occupiers with regard to noise. This would conflict with Policy CS3 of the North Somerset Council Core Strategy (2017) (the Core Strategy) and Policy DM37 of the SPP insofar as they require that any harm to amenity will need to be mitigated to an acceptable level, and that the living conditions of occupiers would not be prejudiced.
38. The Council has also found conflict with Policy CS12 of the Core Strategy and Policy DM32 of the SPP in relation to this main issue. However, Policy CS12 contains no tests or objectives relating to living conditions or environmental amenity, and while Policy DM32 refers to living conditions of future occupiers, it specifically refers to matters of privacy, overlooking, overshadowing and overbearing impacts, and does not refer to noise or other disturbance. As such, I find no direct conflict with these policies.
39. I have had regard to paragraphs 193 and 194 of the Framework, which set out that where the operation of an existing business could have a significant adverse effect on new development, suitable mitigation should be provided before the development has been completed, and that planning decisions should assume that control regimes will operate effectively. While the NMP has sought to achieve suitable mitigation, for my reasons above, I am not satisfied that this would provide effective mitigation for all noise sources from the public house, even if control regimes are operating effectively. Moreover, I am not persuaded that the remainder of paragraph 193 would be satisfied. Namely that the proposed dwellings could be integrated effectively with the existing business, or that the pub may not have unreasonable restrictions placed on it in the future to provide acceptable living conditions for neighbouring occupiers.

Highway safety

40. The frontage of the pub comprises parking spaces to either side of the access road which would serve the new dwellings. The evidence indicates that at present, large delivery vehicles may restrict this access to the new dwellings during some periods. However, I am satisfied that there is sufficient space available to facilitate parking of delivery vehicles while maintaining access to the new dwellings for residents, along with emergency or waste collection vehicles. Suitable controls over delivery vehicle parking could be secured by condition if the appeal were to be allowed.
41. The appellant has identified a marked route from the dwellings to the highway, which would allow passage of pedestrians without conflict with parked cars or vehicles manoeuvring in the car park. The majority of the route already serves as pedestrian access around the edge of the car park to access the front of the pub. The remaining route would pass to the front of the pub, marked with white lining, in front of an area used for seating. While there may be some interaction between pedestrians and patrons of the pub, an existing fence would separate the two uses, and there would be no sections of the path where vehicles would need to cross or overrun the marked route. As such I see no reason why the use of this route would lead to increased or unsafe interactions between pedestrians and vehicles.

42. Accordingly, I conclude that the proposal would not adversely affect highway safety. It would therefore accord with Policies DM24 and DM37 of the SPP insofar as they support development which meets parking standards, and which does not prejudice highway safety or inhibit necessary access for emergency, service or waste collection vehicles.

Heritage and Planning Balance

43. The Framework states that great weight should be given to the conservation of a designated heritage asset, irrespective of whether the harm to its significance is less than substantial. As outlined above, the Framework requires the less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal.
44. The proposal would undoubtedly offer social and economic benefits that are also public benefits. Benefits would arise from the delivery of housing, increasing the choice of homes and contributing to the supply of housing in an area where the Council cannot demonstrate its necessary housing supply. The scheme would also contribute to the Government's objective to significantly boost the supply of homes, and align with the aims of the Framework to re-use previously developed land, recognising the important contribution that small windfall sites can make to meeting the housing requirement of an area. Located within the settlement boundary for Clevedon, there would be further benefits as future occupiers would support local services and facilities, alongside economic benefits relating to the construction phase.
45. The appellant identifies that the capital raised from the sale of the development plot will be reinvested in the pub as a business. However, no details or specific proposals for this have been identified, and any public benefits in this regard therefore carry limited weight. That no harm has been identified in respect of matters including highway safety and parking, cycle storage, flooding, energy efficiency, biodiversity and the setting of listed buildings are neutral considerations.
46. The social and economic benefits, which are also public benefits, associated with three dwellings would be modest. Even taking account of the current housing land supply position, the cumulative weight of benefits would be moderate and not sufficient to outweigh the great weight that the conservation of a designated heritage asset carries. The proposal therefore fails to accord with the historic environment protection policies of the Framework in respect of the designated heritage asset.
47. In taking a balanced judgement on the effect on the NDHA, I attach moderate weight to the localised harm to the significance of the asset. Alongside the harm to heritage assets, I have found that the proposed development would conflict with Policy CS3 of the Core Strategy and Policies DM32 and DM37 of the SPP in relation to its effect on the living conditions of existing and future occupiers. While the development plan predates the current Framework, it is clear existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication; due weight should be given to policies according to their consistency with the Framework. These policies are generally consistent with the Framework where it aims to secure a high standard of amenity for existing and future users. As such, I afford significant weight to the conflict of the proposal with these policies.

48. The parties agree that the Council cannot currently demonstrate the necessary supply of deliverable housing sites. In these circumstances, paragraph 11(d) of the Framework is engaged. However, I have already found that harm to the significance of the designated heritage asset would not be outweighed by public benefits, which provides a clear reason for refusing the development proposed under the provisions of paragraph 11(d)(i) of the Framework. The balance in favour of granting planning permission given by paragraph 11(d) of the Framework, therefore, does not apply. Consequently, the proposal does not benefit from the Framework's presumption in favour of sustainable development.

Conclusion

49. The proposal conflicts with the development plan and material considerations, including the Framework, do not indicate the appeal should be decided other than in accordance with it. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

K Jones

INSPECTOR