

# PLANNING COMMITTEE

## 25 MAY 2016

1 PM EXECUTIVE MEETING ROOM,  
3<sup>RD</sup> FLOOR, GUILDHALL

### REPORT BY THE CITY DEVELOPMENT MANAGER ON PLANNING APPLICATIONS

#### ADVERTISING AND THE CONSIDERATION OF PLANNING APPLICATIONS

All applications have been included in the Weekly List of Applications, which is sent to City Councillors, Local Libraries, Citizen Advice Bureaux, Residents Associations, etc., and is available on request. All applications are subject to the City Councils neighbour notification and Deputation Schemes.

Applications, which need to be advertised under various statutory provisions, have also been advertised in the Public Notices Section of The News and site notices have been displayed. Each application has been considered against the provision of the Development Plan and due regard has been paid to their implications of crime and disorder. The individual report/schedule item highlights those matters that are considered relevant to the determination of the application

#### REPORTING OF CONSULTATIONS

The observations of Consultees (including Amenity Bodies) will be included in the City Development Manager's report if they have been received when the report is prepared. However, unless there are special circumstances their comments will only be reported VERBALLY if objections are raised to the proposals under consideration

#### APPLICATION DATES

The two dates shown at the top of each report schedule item are the applications registration date- 'RD' and the last date for determination (8 week date - 'LDD')

#### HUMAN RIGHTS ACT

The Human Rights Act 1998 requires that the Local Planning Authority to act consistently within the European Convention on Human Rights. Of particular relevant to the planning decisions are *Article 1 of the First Protocol- The right of the Enjoyment of Property, and Article 8- The Right for Respect for Home, Privacy and Family Life*. Whilst these rights are not unlimited, any interference with them must be sanctioned by law and go no further than necessary. In taking planning decisions, private interests must be weighed against the wider public interest and against any competing private interests Planning Officers have taken these considerations into account when making their recommendations and Members must equally have regard to Human Rights issues in determining planning applications and deciding whether to take enforcement action.

Web: <http://www.portsmouth.gov.uk>



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**FIRST FLOOR 149-149A ALBERT ROAD SOUTHSEA PO4 0JW****CHANGE OF USE OF FIRST FLOOR FROM CLASS D2 PREMISES (FORMER CONSERVATIVE CLUB) TO A LAP DANCING VENUE (SUI-GENERIS) (AMENDED SCHEME TO 14/00854/FUL)****Application Submitted By:**

Les Weymes Planning Consultancy Ltd  
FAO Mr Les Weymes

**On behalf of:**

OJ's Discounts Ltd  
FAO Jaspal Singh Ojla

**RDD:** 11th March 2016

**LDD:** 12th May 2016

**SUMMARY OF MAIN ISSUES**

The main issues are whether the proposed use of the first floor as a lap dancing club would affect the established character of this part of Albert Road and whether the living conditions of local residents would be affected with particular regard to noise and disturbance.

**The site and surroundings**

This application relates to a two-storey building situated on the north side of Albert Road, between its junctions with Lawrence Road to the west and Harold Road to the east, and was formerly occupied by the Southsea Conservative Club. The premises have a rear pedestrian access from Harold Road. Immediately to the west of the site lie the Wedgewood Rooms, a Class D2 leisure and assembly use, and to the east a retail shop with four flats/maisonettes above and to the rear. To the north of the site beyond a rear yard lie the rear gardens to houses fronting Harold Road.

Albert Road, between Victoria Road South and St Ronans Avenue, is characterised by a variety of specialist, independent shops and a variety of bars and restaurants. As a result, it is a popular destination for residents and visitors to the city during the day and into the evening. To the north and south of Albert Road side roads are fronted by terraced houses, and demand on those side roads for parking is significant from both residents and visitors. The tidal flood plain which covers part of central Southsea extends northwards to include this part of Albert Road.

**The proposal**

This application seeks planning permission for the use of the first floor of the site as a lap dancing club, accessed from the western end of the frontage via a lobby serving the staircase leading up to the first floor.

**Planning history**

The premises comprising Nos. 149 and 149a have historically, since before 1975, been used by the Southsea Conservative Club. The applicant's planning consultant describes the previous use of the premises as falling within Use Class D2, based on its historic use and operation as a social club with bar, function halls and meeting rooms. The proposed development would

however be regarded as a sui generis use, being a use which is not provided for or included in the Use Classes Order.

A previous application (14/00854/FUL) sought permission to use the ground floor of the premises as a bar, within Class A4 of the Use Classes Order, with access from the eastern end of the road frontage, and the use of the first floor as a lap dancing club. This application was refused in September 2014 for the following reasons:

1) Having regard to the current proportion of the retail frontage in Class A3, A4 and A5 uses within Albert Road it is considered that the proposed drinking establishment (Class A4) would result in an inappropriate and over-intensive increase in the concentration of 'food and drink' uses detrimental to the balance of uses in Albert Road and be cumulatively harmful to the amenities of nearby residents. The proposal would therefore be contrary to the aims and objectives of the Food and Drink Uses on Albert Road SPD and policy PCS8 of The Portsmouth Plan

2) Having regard to the proximity of uses in this locality which operate until the early hours of the morning it is considered that the proposed use of the first floor, in conjunction with the proposed use of the ground floor of the premises, would result in an undesirable concentration of such uses giving rise to increased activity at unsocial hours to the detriment of the living conditions of the adjoining and nearby residents. The proposals would, therefore, be contrary to policy PCS23 of the Portsmouth Plan.

The applicant appealed Council's decision in May 2015. The Planning Inspector dismissed the appeal upholding the first reason for refusal concluding that the use of the ground floor as a drinking establishment (within Class A4) would have a negative effect on the balance of uses within the Albert Road and Elm Grove District Centre and as such be in conflict with Policy PCS8 of the Portsmouth Plan.

In considering the second reason for refusal the Inspector concluded that "the proposed development would not significantly harm the living conditions of nearby residents" and that "as a result there would be no conflict with CS Policy PCS23 which sets out, amongst other things, that the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers will be sought in new development". The Inspector did not uphold the second reason for refusal.

Following this decision the applicant made a planning application to change the ground floor use to a retail use, aligning with the conclusions of the Inspector. Planning permission was granted in February 2016 (under reference 15/01981/FUL) for a change of use from Class D2 (assembly & leisure use) to Class A1 (retail use) on ground floor with external alterations to include installation of new shop front with recessed entrance door.

A copy of the appeal decision together with another for similar premises in Surrey Street are attached as appendices to the agenda.

## **POLICY CONTEXT**

The relevant policies within the Portsmouth Plan would include:  
PCS8 (District centres), PCS12 (Flood Risk), PCS23 (Design and Conservation),

## **CONSULTATIONS**

### **Crime Prevention Design Advisor**

No comments to make with reference to crime prevention at this time

## **Environmental Health**

The Design and Access Statement suggests a closing time of 04:00hrs for the proposed change of use. The applicant's agent has identified within this document that the interior of the building will be acoustically treated to ensure that there will be no noise breakout. This along with separation being provided by a changing area, private dance rooms and a bar, it is unlikely that a loss of amenity will be caused to the attached first floor residential property at 151. Noise in the street from clientele leaving 149 Albert Road is also unlikely to be experienced due to customers being discreet and leaving alone or in small numbers.

As the applicant has similar venues which are licensed until 04:00hrs, I have searched the complaint records for both Elegance in Granada Road and Wiggle in Surrey Street and can confirm that no noise complaints have been received by Environmental Health for the provision of regulated entertainment or from customers leaving.

In Summary, we have no objections to this application being granted.

## **Highways Engineer**

The change of use is unlikely to impact on the highway network, as Albert Road has a variety of leisure and entertainment venues and high pedestrian footfall. However, the increase in staff may experience difficulty parking. Albert Road to the front of the property is fully restricted with double yellow lines, leading up to its 4-arm signalised junction of Lawrence Road / Waverley Road. Parking in the nearest side road (Harold Road) is restricted to Permit Holders Only between 5pm-7pm, and opposite in Beatrice Road a 24-hour Residents' Parking Scheme is in operation.

RECOMMENDATION: Raise no objection.

## **Licensing**

The licensing code for Sexual Entertainment Venues ("SEVS") was an adoptive provision contained within the Policing & Crime Act 2009 and introduced a new category of sex establishment. Previously only sex shops and sex cinemas were generally licensed under the 1982 Miscellaneous Provisions act. The council adopted the licensing code for SEVS and now requires premises providing live performances of relevant entertainment, which although not strictly defined but could include lap/pole/table dancing, strip shows, peep shows and live sex shows, or the display of nudity to an audience that is designed to sexually stimulate any person to be licensed accordingly.

Premises providing SEV entertainment are almost certainly likely to be licensed for the sale and/or supply of alcohol under the Licensing Act 2003. These are, however, two separate regimes with the Licensing Act focusing on the promotion of the statutory licensing objectives and the licensing of SEV's taking into consideration such matters as character of the area, numeric need, locality etc.

The council has adopted a policy that recognises a presumption to renew, transfer or vary existing SEV premises but indicates that it is unlikely to support any new application in the city although they must consider each application on merit.

So far as 149 Albert Road is concerned, the former Club Premises Certificate for Southsea Conservative Club was surrendered in April 2014. The certificate entitled club alcohol sales until midnight (Monday - Thursday) and until 0100 on Friday and Saturdays. Live and recorded music were also permitted as recognised club activities.

Finally, SEV licences are not transferrable from one premises to another.

## **REPRESENTATIONS**

At the time of writing 63 representations, including ones from Councillor Hugh Mason, Flick Drummond MP and on behalf of the UNISON South East Regional Womens Committee, have been received objecting to the application. The grounds of objection are summarised as follows;

a) the lap dancing club would be located adjacent to the Wedgewood Rooms which attracts large numbers of young people, many of which may be minors, and is therefore wholly inappropriate. However discreet it will be widely known to be a sexual entertainment venue;

- b) the proposal would exacerbate the already overcrowded parking in the vicinity of Albert Road causing annoyance to local residents;
- c) proximity to religious buildings, schools and community centre;
- d) an SEV licence cannot be transferred under current licensing policy;
- e) women will not walk near the club at night for fear of their safety;
- f) the applicant's existing Granada Road site looks 'seedy';
- g) the lap dancing club would contradict the council's regeneration attempts for "the Great Waterfront City";
- h) the granting of an SEV licence would evidence that the council does not adhere to the Gender Equality Duty which came into force in 2007;
- i) no need for a lap dancing club;
- j) as Albert Road represents the cultural and artistic side of Portsmouth a lap dancing club would be out-of-character;
- k) late night noise and disturbance from activities within the premises and from people leaving;
- l) increase in anti-social behaviour and fear of crime;
- m) the promotion of young women as sexual objects is immoral and could give rise to an increased risk of sexual motivated violence;
- n) it would be contrary to Licensing policy.

It must be noted that a number of representations refer to licensing and the Council's duty as Licensing Authority in regulating Sexual Entertainment Venues and its adopted Sex Establishment Licensing Policy (October 2012).

A petition containing 580 signatures has been submitted by the Albert Road Traders Association in opposition to the proposal. The covering letter also makes reference to an online petition also opposed to the proposal which has (at the time of writing) 622 signatures.

468 representations in support have been received stating: "We need more business in Britain and as long as it's legal it should be allowed to flourish. "Business is great" is the tag line for Britain so let's make it happen. Lap-dancing clubs tend to have the least amount of crime associated with them, due to the average age of customers visiting. It's a venue where mostly mature individuals have a chance to enjoy a good night out."

Four further individual letters of support have been received highlighting the need for facilities to entertain business visitors to the City and the creation of jobs.

## **COMMENT**

The main determining issues in this case are whether the proposed use of the first floor as a lap dancing club would affect the established character of this part of Albert Road and whether the living conditions of local residents would be affected with particular regard to noise and disturbance. Other issues include flood risk and parking.

This application relates solely to the use of the first floor and its separate access through a small entrance lobby fronting Albert Road. The use of the ground floor, which was a reason for the refusal of the previous application, is not relevant to the determination of this application.

The site is located within the Albert Road and Elm Grove District Centre where Policy PCS8 applies. The proposed use of the first floor as a lap dancing venue is considered to represent an appropriate town centre use and as such would accord with policy PCS8. The proposal would not conflict with any of the general or centre specific criteria within policy PCS8.

This section of Albert Road is fronted by uses that offer alcohol and entertainment through the evening and into the early hours of the morning. Although the previous use of the premises as a private members club had a licence to operate until 01:00 hours on Friday and Saturday nights and midnight on Sunday to Thursday nights, the proposed use would be different. The proposed use of the first floor would be open to the public, with similar external impacts to that of

a bar or nightclub, where patrons would arrive and depart individually or in groups, and would operate between 21:00 hours and 04:00 hours the following morning on a daily basis.

In considering the appeal for this site the Inspector recognised that "the site is located in an area where late night activities already take place and thus where a certain amount of noise can reasonably be expected". The Inspector noted the site's position adjacent to the Wedgewood Rooms, its large capacity and its opening hours which extend into the early hours of the morning and that the level of activity at unsocial hours in the vicinity of the site is likely to be high. The Inspector accepted that the proposal would increase the level of activity at unsocial hours within the vicinity of the site but that as a result of the existing level of activity considered any increase resulting from the proposed development would have a limited negative impact on nearby residents. The Inspector concluded that "for these reasons the proposed development would not significantly harm the living conditions of nearby residents" and that "as a result there would be no conflict with Policy PCS23 which sets out, amongst other things, that the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers will be sought in new development".

Having regard to the Inspectors comments and considering the proposal afresh it is considered that due to the lack of any significant change in policy or circumstances the proposal would not give rise to harm to the character or amenity of the area. The nature of the proposed use is such that is considered reasonable and necessary to impose a planning condition restricting the hours of use to between the proposed 9pm and 4am.

The Planning Inspector's report on a lap dancing club at 1 Surrey Street made note that issues raised by third parties in relation to gender equality, child safeguarding or morals are not material to the consideration of this type of proposal, as it is considered on its individual planning merits. The precise nature of the entertainment to be provided and its regulation would be a matter to be dealt with by the Council exercising its duty as Licensing Authority. The applicant has acknowledged that the approval of the Council as Licensing Authority would also be required.

Having regard for the submissions that have been received on this application and the separate regulation of this activity through licensing, there are no further planning matters which need to be addressed.

Although located within the indicative tidal floodplain this site is close to its northern limit and, furthermore, with the intended flood prevention measures to the coast residual risk of flooding would be minimal. The proposals would not, therefore, give rise to an objection under policy PCS12.

Having regard to the previous use of the premises, it is considered that the level of traffic generation associated with the proposed use is unlikely to be significantly greater or different in nature. In these circumstances an objection on highway grounds would not be considered sustainable.

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers:

\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*



3) The use hereby permitted shall only be open to and occupied by customers between the hours of 21:00 and 04:00 the following morning.

**The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To control the operation of the use permitted in the interests of the amenities of local residents and other users of the District Centre to accord with Policy PCS8 and PCS23 of the Portsmouth Plan.

**PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

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# APPENDIX A



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## Appeal Decision

Site visit made on 13 May 2015

**by Edward Gerry BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 08 June 2015**

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**Appeal Ref: APP/Z1775/W/15/3002302**

**149–149a Albert Road, Southsea, Hampshire PO4 0JW**

- 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 Paul Ojla (OJ's Discounts Ltd) against the decision of Portsmouth City Council.
  - The application Ref 14/00854/FUL, dated 10 July 2014, was refused by notice dated 4 September 2014.
  - The development proposed is described as 'change of use from Class D2 (assembly and leisure use) to Class A4 (drinking establishment) on ground floor with sui-generis lap dancing venue on first floor'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. There is a minor discrepancy between the site address detailed on the application form and that set out on the appeal form. The site address outlined on the appeal form more accurately reflects the location of the appeal site and thus I have used it in the banner heading above.
3. The application seeks planning permission for a change of use from Class D2 to Class A4 on the ground floor with a sui-generis use on the first floor. The Council considers that the proposal relates solely to a sui-generis use and suggest that the ground floor would not be in a separate Class A4 use. However, whether or not the ground floor would be in a Class A4 use is not a matter for me to determine in respect of this appeal. I have made my decision on the basis of the proposed development set out on the application form.

### Main Issues

4. The main issues are the effect of the proposal on the balance of uses within the Albert Road and Elm Grove district centre and the effect on the living conditions of nearby residents, with particular reference to noise and disturbance.

## Reasons

### *Balance of uses*

5. The appeal site is located within the Albert Road primary shopping area which forms part of a district centre (Albert Road and Elm Grove). The part of Albert Road on which the site is situated is largely characterised by a variety of specialist and independent shops, bars and restaurants. Policy PCS8 of The Portsmouth Plan: Portsmouth's Core Strategy (CS) details, amongst other things, that proposals for drinking establishments (A4) will be supported, subject to specific proposals relating to each district centre, provided that the development would not result in an over-concentration of non-shopping uses in the centre as a whole or in the vicinity of the proposed development.

6. With particular regard to the Albert Road and Elm Grove district centre Policy PCS8 sets out the need to balance the centre's role of day to day shopping, specialist shopping and the night time economy. It outlines that at least 50% of each section of primary frontage must remain in use as shops (A1) whilst no more than 23% of the total frontage of the centre will be in use as restaurants (A3), drinking establishments (A4) and hot food take-aways (A5) at any time.

7. In addition to Policy PCS8 detailed above both the Council and the appellant make reference to the Food and Drink Uses on Albert Road Supplementary Planning Document (SPD). I have given consideration to the SPD's content but in my view the thrust of the document is not especially different from Policy PCS8, particularly the part of the policy which considers the Albert Road & Elm Grove district centre, within the development plan. Therefore, the SPD does not feature in my deliberations below.

8. Given the proposal relates to the change of use of a D2 use to an A4 use at ground floor level it would not affect the percentage of A1 uses within the section of primary frontage that the site forms part of. Consequently, it would not conflict with Policy PCS8 in this regard. However, based on the most up-to-date evidence in front of me the proposed development would increase the proportion of A3 to A5 uses, within the Albert Road and Elm Grove district centre from 23.13% to 23.58%.

9. Therefore, the proposal would be contrary to the section of Policy PCS8 which seeks to ensure that no more than 23% of the total frontage of the centre is in an A3 to A5 use. Whilst I accept it would only result in a marginal increase above the 23% threshold set out in the policy, in my view, the cumulative effect of such proposals would have a negative effect on the balance of uses within the district centre which is what the policy attempts to avoid.

10. I note the appellant questions whether the 23% threshold has been exceeded on the basis that he has concerns regarding the validity and accuracy of the survey sheets which informed the Council's decision. However, the Council details that the reference to Policy CD5 (a policy in the Portsmouth City Local Plan (2006) which has been superseded) on the survey sheets relates to the fact that the survey sheets basic construction was devised to monitor policies in this previous Local Plan. Furthermore, the Council, as part of its statement, has provided extracts from the Council's monitoring of Policy PCS8 which includes survey sheets which identify a survey date. On this basis, and in the absence of any contradictory survey evidence, I am satisfied regarding the validity and accuracy of the survey sheets.

11. Further to the above, I note the suggestion that the site is located on a section of the Albert Road where there are only three existing drinking establishments. In addition, I observe the opinion that on this basis the proposal would not unbalance the mix of uses on this part of the Albert Road especially given the view that the former use of the site does not differ substantially from what is proposed. I also note the comments regarding the restrictive nature of the 23% threshold set out in Policy PCS8, additionally the suggestion that the policy has resulted in some long term vacancies and that it prevents flexibility in the introduction of a variety of uses which could ensure a sustainable and viable district. I also observe the view that the planning system should deliver mixed shopping frontages inclusive of cafes, restaurants, public houses and hot food takeaways which are attractive to customers and local residents with vitality and viability as a main environmental consideration.

12. However, whilst I can understand these points, Policy PCS8 clearly aims to try and achieve an appropriate balance between competing uses within the Albert Road and Elm Grove district centre. Furthermore, on the basis of my site visit, it is evident that the district centre is a vibrant area which does not currently suffer from a high level of vacant units. Accordingly, I see no reason to apply flexibility in respect of the appliance of Policy PCS8 in relation to the proposed development.

13. In considering the proposal I have taken account of the physical form of the appeal building and the ground floor frontage associated with it. I acknowledge that vacant buildings do little to enhance the character of any shopping centre and observe the view that the Class A4 use could contribute to the vitality and viability of the part of Albert Road to which the appeal site relates. Nevertheless, in my view, any benefits the proposal would bring in this regard do not outweigh the harm that would result in terms of the balance of uses on Albert Road.

14. For these reasons the proposed development would have a negative effect on the balance of uses within the Albert Road and Elm Grove district centre. As a result there would be a conflict with CS Policy PCS8.

#### *Living conditions*

15. The appeal site is located in a fairly central position on the Albert Road. It is proposed that the hours of operation relating to the proposed ground floor use would be from 11:00 to 01:00 daily and 21:00 to 04:00 daily in respect of the first floor use. Situated directly adjacent to the site is the Wedgewood Rooms which is a live entertainment venue that can accommodate a large number of people. It is licensed to operate until 03:00 each day from Monday to Saturday and until 00:30 on Sundays. Within close proximity of the site, both on the upper floors of buildings on Albert Road and on adjoining streets, are residential dwellings.

16. I note the view that the proposed Class A4 use on the ground floor would result in a concentration of food and drink uses which would be cumulatively harmful to the amenities of nearby residents. I also observe the opinion, having regard to the proximity of the Wedgewood Rooms, its hours of operation and the fact that the proposed use at first floor level would extend further into the early hours of the morning than the adjoining Wedgewood Rooms, that the proposal would result in an undesirable concentration of such uses giving rise to increased activity at unsocial hours to the detriment of the living conditions of nearby residents.

17. Notwithstanding this, the site is located in an area where late night activities already take place and thus where a certain amount of noise can reasonably be expected. I consider the site's position adjacent to the Wedgewood Rooms to be of particular relevance. Given its large capacity and its opening hours, which extend into the early hours of the morning, the level of activity at unsocial hours in the vicinity of the site is likely to be high. Thus, whilst I accept that the proposal would increase the level of activity at unsocial hours within the vicinity of the site, as a result of the existing level of activity any increase resulting from the proposed development would have a limited negative impact on nearby residents.

18. For these reasons the proposed development would not significantly harm the living conditions of nearby residents. As a result there would be no conflict with CS Policy PCS23 which sets out, amongst other things, that the protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers will be sought in new development.

### **Other Matters**

19. In reaching my decision I have considered the appeal decisions referred to by the appellant and the Council.

20. The appellant has provided a copy of a section 106 planning obligation in relation to the proposed development. The planning obligation provides for the closure of an existing lap dancing venue in the area. Irrespective of whether the planning obligation meets the tests set out in paragraph 204 of the National Planning Policy Framework (the Framework) any positive benefits which would result from the existing venue closing down would not outweigh the harm that the proposal would cause to the balance of uses within the Albert Road and Elm Grove district centre. Therefore, the planning obligation does not provide backing for the proposed development.

21. I observe the support for the proposal and I have taken this into account in making my decision. I also note the appellant's view that the proposal does not conflict with the content of the Framework. Nevertheless, given the harm that I have identified above such factors do not form a basis for allowing this appeal.

22. Finally, I note the large number of representations and the petitions objecting to the proposal. These representations highlight a wide range of concerns including in respect of licensing matters, gender equality, child safeguarding and moral issues. However, these are not matters that I am able to consider as part of this appeal and thus I have dealt with the proposal solely in relation to its planning merits. Accordingly, I find nothing further to add to my reasons for dismissing this appeal.

### **Conclusion**

23. Notwithstanding my conclusions on living conditions, they do not outweigh the harm that I have identified in respect of the effect the proposal on the balance of uses within the Albert Road and Elm Grove district centre. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be dismissed.

*Edward Gerry*

INSPECTOR

# APPENDIX B



The Planning  
Inspectorate

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## Appeal Decision

Site visit made on 26 September 2012

by Ian McHugh Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 October 2012

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Appeal Ref: APP/Z1775/A/12/2175006

1-7 Surrey Street, Portsmouth, Hampshire, PO1 1JT

- 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 Paul Ojla, OJ's Discounts, against the decision of Portsmouth City Council.
  - The application Ref 11/00945/FUL, dated 17 September 2011, was refused by notice dated 10 November 2011.
  - The development proposed (as described on the planning application form) is change of use of upper floors of the Surrey Arms (Class A4) to Class D2, Leisure Entertainment Club.
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use of first floor and part of second floor from public house to lapdancing venue (retrospective) at 1 Surrey Street, Portsmouth, Hampshire PO1 1JT in accordance with the terms of the application, Ref 11/00945/FUL, dated 17 September 2011, subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan; proposed plan LP/1, dated December 08.
  - 2) The premises shall be closed to, and vacated by the public between 04.00 hours and 10.00 hours daily.

### Procedural Matters

2. Following submission of the planning application, the description of the development has been modified by the Council to reflect the fact that the use falls outside any of the Use Classes, as set out in the schedule to the Town and Country Planning (Use Classes Order) 1987 (as amended). I have used this amended description in my decision.
3. The evidence that I have before me indicates that the premises are already in use as a lapdancing venue. I have therefore dealt with the development as a proposal under Section 73A of the Town and Country Planning Act 1990

i.e. for retrospective planning permission for development already carried out.

4. Following the refusal of planning permission by the Council, Portsmouth's Core Strategy (CS): The Portsmouth Plan has been adopted. In reaching my decision, I have had regard to the relevant policies of the CS which have been drawn to my attention in the Council's written statement.
5. The Council has confirmed that following the adoption of the Community Infrastructure Levy Charging Schedule, contributions towards city centre improvements are no longer sought. Consequently, the second reason for refusal is not being pursued and I am no longer required to consider this matter.

#### Main Issue

6. The main issue is the effect of the proposal on the living conditions of residents living near to the site, with particular regard to noise and disturbance.

#### Reasons

7. The appeal site comprises the first floor and part of the second floor of the Surrey Arms Public House, which is located in the heart of the city centre. The lapdancing venue is served by a separate entrance on Surrey Street. The surrounding area predominantly comprises a mix of business, retail and leisure uses, although residential flats (Avalon House) lie opposite the site on the southern side of Surrey Street. Representations state that some of the flats are occupied by families with children.
8. Policy PCS4 of the CS aims to locate new commercial leisure facilities in the city centre, in areas most accessible to public transport. The Council considers that a lapdancing club is an appropriate city centre use and the proposal accords with PCS4. In this regard, I have no reason to disagree with the Council's conclusion, given the good levels of accessibility and the mix of uses in the area.
9. The Council however, considers that the proposal would give rise to unacceptable levels of noise and disturbance which would be detrimental to the residential amenities of the occupiers of Avalon House. I also note that objections were submitted to the Council from local groups and residents, expressing concerns over anti-social activity and public safety. It is also stated by objectors that such problems have increased since the use commenced.
10. However, the site is located in a part of the city centre where late night activities already take place and where a certain amount of noise can therefore reasonably be expected. I also note that the City Council has granted a Premises Licence, under the provisions of the Licensing Act 2003. This allows different parts of the building to be used for a mixture of music and dancing and for the consumption of alcohol on seven days a week up until 04.00 hours. Consequently, I am not persuaded that that the lapdancing use should have any significantly greater impact, in terms of noise and disturbance than the existing activities in the surrounding area, or when compared to the uses that could take place under the terms of the Premises Licence. In addition, any significant concerns about anti-social behaviour can be appropriately dealt with by the relevant enforcement authorities. In this regard, the Crime Prevention Design Advisor (Hampshire Constabulary) had no objection to the planning application and stated that any issues "will be tackled through placing conditions on the premise licence application".
11. I therefore conclude that the use as a lapdancing venue is acceptable in this location and that the use should not cause unacceptable harm to the living conditions of the occupiers of nearby residential properties. Consequently, the use does not conflict with Policy PCS23 of the CS which, whilst placing an emphasis on

design, seeks to ensure that new development protects amenity and provides a good standard of living environment for neighbouring and local occupiers.

#### Other Matters

12. I note that representations were made with regard to gender equality, child safeguarding and moral issues. However, these are not matters that I am able to consider, and I have dealt with the proposal on its planning merits.
13. My attention has also been drawn to the contents and proposals contained within the City Council's Draft Sex Establishment Licensing Policy, January 2012. This document however, relates to the Council's duty as a licensing authority and is exclusive to my considerations under the Planning Act.
14. It has been stated that the signage at the premises is unsuitable. The signage however, is not part of this appeal and I am therefore unable to consider the matter further.

#### Conditions

15. The Council has suggested conditions in the event of the appeal being allowed. I have considered these in the light of Circular 11/95.
16. For the avoidance of doubt and in the interests of proper planning, a condition is imposed requiring the development to be carried out in accordance with the approved plans.
17. Although a restriction on opening hours would normally be a matter for the Licencing Authority, I have imposed a condition in accordance with the Council's recommendation to protect the amenity of nearby residents.

#### Conclusion

18. For the reasons given above, it is concluded that the appeal should be allowed.

*Ian McHugh*

INSPECTOR



**LAND ADJACENT TO 3 HAROLD ROAD SOUTHSEA PO4 0LR****CONSTRUCTION OF NEW END OF TERRACE DWELLING (RE-SUBMISSION OF 15/01009/FUL)****Application Submitted By:**

Ray Brown (B&PC)  
FAO Mr Ray Brown

**On behalf of:**

Mr Steve Williams

**RDD:** 25th February 2016

**LDD:** 22nd April 2016

**SUMMARY OF MAIN ISSUES**

The main issues to be considered in the determination of this application are: a) whether the principle of conversion of the building would be acceptable; b) whether the proposed standard of accommodation would provide an acceptable living environment for future occupiers and whether it overcomes the previous reason for refusal; c) whether the design of the building is acceptable and whether it overcomes the previous reason for refusal and meets the requirements for sustainable design and construction; d) whether the proposal would adequately address the transport needs of future occupiers; e) whether the proposal would provide an acceptable means of waste/recycling collection; and, f) whether there would be an impact on residential amenity. Other considerations relate to suitable mitigation in respect of habitats mitigation.

**The Site**

This application relates to a modest plot of land situated to the rear of Nos.149a and 151 Albert Road and adjacent to the flank wall of No.3 Harold Road. The overall width of the plot of land for the proposed development is 4.35metres. The Wedgewood Rooms and former Conservative Social Club are situated close-by to the south-west. For a considerable period of time the site has comprised a garage and hardstanding with an access way to the adjoining commercial/residential premises. The site is within an indicative area of flooding (zone two).

**The Proposal**

The applicant seeks full permission for the construction of new end of terrace dwelling (re-submission of 15/01009/FUL).

This item was deferred from the 27th April planning committee to enable further information to come back clarifying:

- o The status of the 1 metre strip of land to the rear of properties fronting Albert Road, is it a public right of way?; and
- o What is the ownership of the land the subject of the planning application and has the correct certificates been submitted with the planning application.

In addition to addressing the two above reasons for deferral the applicant has submitted amended floor plans demonstrating that the internal floor configuration can achieve the minimum space standards. These amended floor plans are considered as part of the assessment of the application.

## Planning History

The relevant planning history for this site relates to:

a) Construction of a new end of terrace dwelling which was refused on the following three grounds (appearance, standard of living environment and recreational disturbance respectively) (15/01009/FUL):

1. The proposed dwelling would, by virtue of its appearance with an excessive box dormer to the front roof slope and an unsympathetic pattern of fenestration out-of-keeping with adjoining terraced houses, amount to a visually discordant feature in the street scene detrimental to the visual amenity of the area. The proposal would therefore fail to accord with the objectives of the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan.

2. With a floor area of circa 86.5sqm the proposed accommodation would fall below the internal space standards set out in the Supplementary Planning Document: Housing Standards, and together with the provision of a comparatively modest private amenity area, it is considered that the proposed dwelling would fail to provide an adequate standard of living environment for future occupiers. The proposal would therefore be contrary to policy PCS19 of the Portsmouth Plan.

3. Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).

Further relevant planning history relates to:

b) Conversion of part rear ground floor and upper floors to form 4 flats including front/side and rear dormer windows, external alterations to include new doorway, replacement windows and associated refuse/ cycle storage which was granted conditional permission in August 2011 (Amended Scheme 07/00602/FUL). This scheme included the provision of a bin store and cycle stores for the occupiers of the four flats on land that forms part of the application site. This permission is not considered to have been implemented.

c) Conversion of part rear ground floor and upper floors to form 4 flats including front/side and rear dormer windows, external alterations to include new doorway, replacement windows and associated refuse/ cycle storage ( Amended Scheme 07/00602/FUL) and this scheme is considered to have been implemented (10/01185/FUL). This scheme included the provision of a bin store and cycle stores for the occupiers of the four flats on land that forms part of the application site. Conditions 4 and 5 of the 2010 permission require the provision of those facilities and their subsequent retention.

## POLICY CONTEXT

The relevant policies within the Portsmouth Plan would include:

PCS10 (Housing Delivery), PCS12 (Flood Risk), PCS13 (A Greener Portsmouth), PCS15 (Sustainable design and construction), PCS16 (Infrastructure and community benefit), PCS17 (Transport), PCS19 (Housing mix, size and affordable homes), PCS23 (Design and Conservation),

In addition to the National Planning Policy Framework the relevant policies within the Portsmouth Plan would include: PCS10 (Housing Delivery), PCS12 (Flood Risk), PCS13 (A Greener Portsmouth), PCS15 (Sustainable design and construction), PCS16 (Infrastructure and

community benefit), PCS17 (Transport), PCS19 (Housing mix, size and affordable homes), and PCS23 (Design and Conservation).

Furthermore the Supplementary Planning Documents in relation to Housing Standards, Parking Standards and Transport Assessments, and the Solent Special Protection Areas would also be material considerations.

## **CONSULTATIONS**

### **Highways Contractor (Colas)**

The dropped kerb should be taken out and replaced with full kerbs and Portsmouth City Council Paving put back if a house is to be built on this area of land. The planning documents do not show any details of the building.

### **Contaminated Land Team**

Given the sensitive nature of the proposed development, the following conditions are required (the survey is requested as a precaution and so a minimal scope and/or combined report with the geotechnical testing would be acceptable to this office):

(i) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority before development commences or within such extended period as may be agreed with the Local Planning Authority:

a) A desk study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 (CLR2:1994 Guidance on preliminary site inspection of contaminated land) and CLR 3:1994 Documentary research on industrial sites) and BS10175:2011+A1:2013 - Investigation of potentially contaminated sites - Code of Practice. The report should contain a conceptual model;

and unless otherwise agreed in writing by the LPA,

b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk study in accordance with BS10175:2011+A1:2013; the report should refine the conceptual model of the site and state whether the site is suitable for proposed end-use or will be made so by remediation;

and, unless otherwise agreed in writing by the LPA,

c) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person<sup>1</sup> to oversee the implementation of the works.

(ii) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition (i)c that any remediation scheme required and approved under the provisions of conditions (i)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise (but not be limited to):

a) as built drawings of the implemented scheme

b) photographs of the remediation works in progress

c) certificates demonstrating that imported and/or material left in situ is free of contamination. Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions (i)c.

Reason (common to all): To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

### **Environmental Health**

The proposed development is in close proximity to licenced premises. As there is already residential accommodation in the area I have searched our complaints data base and can confirm that no complaints have been received for Southsea Conservative Club, however noise complaints for the Wedgewood Rooms regarding loud music were received in 2013 from residents that live on the front façade of the building. Subsequently to this a noise abatement notice was served upon the company responsible for the operation of the business.

The Wedgewood Rooms have a premise licence which includes the provision of all types of entertainment Monday to Saturday 12:00 to 03:00hrs and the introduction of sensitive premises at the rear of 147B Albert Road as proposed would likely to cause the occupants of the new terraced dwelling disturbance late at night and into the early hours of the morning. I am therefore unable to support this application and I recommend that it be refused on the grounds of the likelihood of loss amenity caused by the nearby commercial uses to the proposed development.

### **Environment Agency**

No comments have been received.

### **Coastal And Drainage**

The Drainage Team will not provide any comments in relation to this application.

### **Coastal Partnership**

No comments have been received.

### **Highways Engineer**

The proposed development will generate minimal impact on the public highway and it is considered to be acceptable.

The side access appears to be a shared access with neighbouring properties. However, the red line on the location and block plan extends over this area which a right of way or right of access over this land is assumed. However, as the access way is shared, the bins should be enclosed and secure for the benefit of the residents and the security of the bins.

### **RECOMMENDATION:**

The application is to be recommended for Approval subject to the following conditions:

- o A waste management plan to be submitted and agreed upon in writing by the local planning authority. Details to include an enclosed and fully secure bin store and arrangements whereby residents will move the bins to a suitable bin collection point (to be agreed with the Waste Team) on collection days only and then to be moved back to the bin store.
- o Material Storage. Prior to commencement of works, on site provision for the storage of plant equipment, materials and waste will be provided.

### **REPRESENTATIONS**

Two conditional deputation requests have been received from Ward Councillors Smith and Horton requesting that this application be taken to planning committee if the officers' recommendation is for permission.

Two letters of representation and deputations requests have been received objecting on the grounds of:

- a) The development does not comply with local or national planning policy;
- b) The design of the proposed development is out of keeping with the appearance of the terrace;

- c) There has been no payment of habits mitigation which does not overcome a previous reason for refusal;
- d) Increase in noise, fumes, disturbance and litter; and,
- e) Increased parking and congestion problems;

Other matters raised relate to digging works and subsidence and public rights of way. These are not considered to be material considerations in the determination of this application and would not form a sustainable reason for refusal.

## **COMMENT**

Whilst there are clear implications in relation to the provision of adequate refuse and cycle storage facilities for the occupiers of No.151 Albert Road as required by the 2010 permission, the main issues to be considered in the determination of this application are: a) whether the principle of conversion of the building would be acceptable; b) whether the proposed standard of accommodation would provide an acceptable living environment for future occupiers and whether it overcomes the previous reason for refusal; c) whether the design of the building is acceptable and whether it overcomes the previous reason for refusal and meets the requirements for sustainable design and construction; d) whether the proposal would adequately address the transport needs of future occupiers; e) whether the proposal would provide an acceptable means of waste/recycling collection; and, f) whether there would be an impact on residential amenity. Other considerations relate to suitable mitigation in respect of habitats mitigation.

### Procedural issues

The 1 metre strip of land to the rear of properties 149a/151 Albert Road appears as a separate title on Land Registry. There is no identified ownership for this land on the records held by Land Registry or Council's Highways mapping. The proposed development does not encumber this strip of land and it will be able to continue to be used for access purposes.

No.3 Harold Road has over time had the benefit of pedestrian access to private open space located to the rear of the property, from the same pedestrian 1 metre strip used to access the rear of the Albert Road properties.

The use of this strip of land for access is not by way of a formal benefit on the title of 3 Harold Road, however the proposal before the Council does not seek to prevent or limit the continued use of the 1 metre strip of land. Should No.3 Harold Road wish to formalise this access it would be a private matter and not a planning consideration with this proposal.

The land the subject of the planning application is in private ownership and the certificate 'A' which accompanied the planning application is the correct form of ownership certificate, confirming this application is valid and able to be considered.

### Principle of conversion

The previous gross floor space reason for refusal relates to:  
'With a floor area of circa 86.5sqm the proposed accommodation would fall below the internal space standards set out in the Supplementary Planning Document: Housing Standards, and together with the provision of a comparatively modest private amenity area, it is considered that the proposed dwelling would fail to provide an adequate standard of living environment for future occupiers. The proposal would therefore be contrary to policy PCS19 of the Portsmouth Plan.'

All new dwellings should be of a reasonable size appropriate to the number of people the dwelling is designed to accommodate. Larger dwellings generally result in more personal and private space which can contribute towards improved health and wellbeing. However in line with national trends, the size of an average new build dwelling has been falling in Portsmouth over

recent years. To reverse this trend, the Department for Communities and Local Government introduced in March 2015 the 'Technical housing standards - nationally described space standard'. These standards will ensure that the gross internal floor area of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home, notably bedrooms, storage and floor to ceiling height.

The minimum floor space for a two bedroom, two-storey dwelling should be 70m<sup>2</sup> with 2.0m<sup>2</sup> built in storage. The city needs to make the best possible use of its existing stock and find the right balance between housing needs, ensuring adequate standards of accommodation, protecting residential amenity and maintaining the supply of family housing. The floor area of the ground and first floor for the property would be 84.88m<sup>2</sup> with 2.77m<sup>2</sup> built in storage. In the context of the nationally described space standard (minimum gross internal floor areas and storage) the proposal is considered to be acceptable in principle and overcomes the previous reason for refusal.

#### Standard of accommodation

In this case the proposed dwelling meets the gross internal floor area requirements and bedroom one exceeds the minimum standards required for a double/twin room at 11.74m<sup>2</sup> (11.5m<sup>2</sup> required). This bedroom would be located at first floor level at the front of the property and would have access to light and outlook from a large casement style window on the front elevation. This room would also benefit from an en-suite.

The properties second bedroom would be located towards the rear of the property and would have a floor area of 9.34m<sup>2</sup>, exceeding the required 7.5m<sup>2</sup>. As such, it is considered that both bedrooms would provide an acceptable standard of accommodation. This bedroom would have a casement style window to allow adequate access to light and outlook for future occupiers.

The floor plans indicate that all the rooms including the bedrooms (except two bathrooms) would be served by at least one window which is considered to provide an acceptable means of outlook and access to light for the future living conditions of occupiers. With the submission of the revised plans meeting the standards required, it is considered that in the context of policy PCS23 of the Portsmouth Plan, the proposed development would provide an acceptable standard of accommodation.

Furthermore, the concerns of the Environmental Health Officer are noted. The site is located within close proximity to commercial uses that generate noise levels into the early hours and could therefore have an undesirable impact on future occupiers. Nonetheless, this was not an issue that was raised as part of the proposal that received permission in 2007. Given the lack of complaint since 2013, it would not be appropriate to withhold permission on grounds of potential noise intrusion.

#### Design

The previous design reason for refusal stated:

'The proposed dwelling would, by virtue of its appearance with an excessive box dormer to the front roof slope and an unsympathetic pattern of fenestration out-of-keeping with adjoining terraced houses, amount to a visually discordant feature in the street scene detrimental to the visual amenity of the area. The proposal would therefore fail to accord with the objectives of the National Planning Policy Framework and policy PCS23 of the Portsmouth Plan.'

The west side of Harold Road is characterised by traditional two-storey brick-faced terraced houses with arched rubbed brick lintols, the exception being those that have had an applied render finish as at No.3 Harold Road. These houses have two-storey rear projections creating light wells. The applicant's proposal would entail a render finish with the number of windows and their method of opening being similar to other properties on Harold Road which is considered to have an acceptable relationship to the established pattern and fenestration in the street scene.

Part of No.3s objection in relation to the design relates to the position of the front doorway. Whilst the pattern of doorways along Harold Road is a two by two, i.e. number 3's door is adjacent to number 5's door; it is considered that in this instance, the proposed positioning of the door is appropriate and would maintain the established pattern in the wider streetscene. As such, it is considered that the design of the front elevation fronting Harold Road is acceptable in the context of policy PCS23 of the Portsmouth Plan.

This revised scheme also omits the dormer extension of the front elevation and when considered in conjunction with the revised and appropriate fenestration, it is considered to overcome the previous design reason for refusal.

#### Sustainable design and construction

Sustainable development is about positive growth, making economic, environmental and social progress now and into the future. As a result, high standards of sustainable design and construction are at the heart of sustainable development. The SPD on sustainable design and construction sets out the Council's approach to achieving this objective in accordance with policy PCS15 of the Portsmouth Plan.

Although the applicant would have been expected to submit a pre-assessment estimator, this shortcoming could be resolved by the imposition of a suitably worded condition. Similarly, confirmation that the development has been completed in accordance with the Code for Sustainable Homes could also be secured through a suitably worded condition. Under policy PCS15 the development would normally be expected to achieve Code 5. However, given the recent Ministerial Statement, to which due weight should be given, the requirement of those conditions would have been reduced to Code level 4.

#### Highways

The application makes no provision for the parking of cars, and none can be provided. The site is located in area where on-street parking congestion in this area is significant due to the proximity of Albert Road shops and demand for parking associated with the predominantly terraced housing to the north. The site is also within a short walk (400 metres) of high frequency bus routes. Whilst no evidence has been submitted to justify a car free development, as required under the provisions of the Residential Car Parking Standards SPD, mindful of the Highway Engineer's comments it is not considered that an objection on car parking grounds could be sustained.

The application makes reference to the provision of a covered cycle space. The size and layout of the private amenity area is such that a secure cycle store for two cycles could be provided although would reduce the useable area of the already modest courtyard garden. It is considered that the provision of a cycle store could be secured by way of an appropriately worded condition.

The Council's highways contractor (Colas) has requested that if the development is granted that a full kerb be re-instated. However, it is not considered a reasonable condition to require the applicant to enter into a section 278 agreement with the Council to re-instate this.

#### Waste

Any refuse/recycling generated from this residential properties could be accommodated within the curtilage of the property at the rear and placed at the front of the property on collection days. The applicant makes reference to one general waste and recycling bin stored in a dedicated storage area to the side of the property. The level of occupancy of a three person house is unlikely to generate significant waste and as this area can be controlled by a suitably worded planning condition, it is considered that a refusal on waste ground would not be sustainable.

## Impact on residential amenity

In considering the potential for impacts on residential amenity, the relationship between the proposed dwelling and no.3 Harold Road has been assessed.

The proposed dwelling house is sited on the plot so as to respect the existing building line to Harold Road; however the property will project deeper into the plot than No.3 Harold Road, to which the development is attached. Due to the orientation of the proposed dwelling the development is not considered to result in a significant impact with regard to loss of outlook, light, or result in overshadowing or loss of privacy.

Due to the location of the private open space for No.3 Harold Road being offset and to the rear of the proposed plot it is acknowledged that there will be further enclosure, however this is not considered to be out of character with the dense form of urban fabric in this locality.

It is acknowledged that there may be some loss of light into the side and rear windows of No.3 for some part of the morning. However, having regard to the west facing orientation of the rear garden which would benefit from light for most of the afternoon/evening, it is not considered that this would be a significant loss or detrimental to the living conditions of the occupiers of No.3 to warrant withholding permission. As the property would have a limited in size rear amenity area and to prevent this being infilled with outbuildings/future extensions, it is considered necessary to remove the permitted development rights for householders for the future occupiers of this property.

The floor plans indicate a bathroom on ground floor level would be adjacent to the boundary wall with No.3 and given that residential accommodation can generate some noise through day to day activities, it is considered necessary to impose a condition requiring horizontal noise insulation measures be provided and submitted for approval prior to commencement of the development.

## SPA Mitigation

The previous habitats reason for refusal stated:

'Without appropriate mitigation the development would be likely to have a significant effect on the Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas and so is contrary to Policy PCS13 of the Portsmouth Plan and the Conservation of Habitats and Species Regulations (as amended).'

The Conservation of Habitats and Species Regulations 2010 [as amended] and the Wildlife and Countryside Act 1981 place duties on the Council to ensure that the proposed development would not have a significant effect on the interest features for which Portsmouth Harbour is designated as a Special Protection Area, or otherwise affect protected habitats or species. The Portsmouth Plan's Greener Portsmouth policy (PCS13) sets out how the Council will ensure that the European designated nature conservation sites along the Solent coast will continue to be protected.

The Solent Special Protection Areas Supplementary Planning Document (SPD) was adopted in April 2014. It has been identified that any development in the city which is residential in nature will result in a significant effect on the Special Protection Areas (SPAs) along the Solent coast. The SPD sets out how development schemes can provide a mitigation package to remove this effect and enable the development to go forward in compliance with the Habitats Regulations.

This proposal would lead to a net increase in population, which would be likely to lead to a significant effect as described in section 61 of the Habitats Regulations on the Portsmouth Harbour and the Chichester and Langstone Special Protection Areas (SPAs) (as set out in sections 2.8-2.9 of the Solent Special Protection Areas Supplementary Planning Document). The development is not necessary for the management of the SPA.



Based on the methodology in the SPD, an appropriate scale of mitigation would be calculated as £176 (1 x £176). It is considered that, subject to the inclusion of an appropriate level of mitigation within a unilateral undertaking or payment through an agreement under S111 of the Local Government Act, there would not be a significant effect on the SPAs. As of 1st April 2016 and in line with the Retail Price Index, the cost of mitigation for each new dwelling rose from £174 to £176. The level of mitigation of £176 for the new dwelling would be appropriate. The requirement for a payment to secure mitigation would be both directly related to the development and be fairly and reasonably related in scale to the development.

## Conclusion

The officer's recommendation is one of conditional permission.

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Revised Block Plan, Proposed Elevations (RB/SW/226/15 (1 of 2)) and Revised Floor Plans (RB/SN/226/15 (2 of 2) Rev B)
- 3) No development shall take place on site until a scheme for protecting the proposed dwelling from external noise from Harold Road and Albert Road for both vehicular and pedestrian traffic; has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme shall be completed before the permitted dwelling is occupied. The scheme shall thereafter be retained in the approved condition.
- 4) Development shall not commence until there has been submitted to and approved in writing by the Local Planning Authority (or within such extended period as may be agreed with the Local Planning Authority):
  - a) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority before development commences or within such extended period as may be agreed with the Local Planning Authority:
  - a) A desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2011+A1:2013; and unless otherwise agreed in writing by the LPA,
  - b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2011+A1:2013 - Investigation of potentially contaminated sites - Code of Practice; and, unless otherwise agreed in writing by the LPA,
  - c) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works.
- 5) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the Local Planning Authority verification by the competent person approved under the provisions of condition (3)c that any remediation scheme required and approved under the provisions of conditions (3)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in

advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise (but not be limited to):

- a) as built drawings of the implemented scheme
- b) photographs of the remediation works in progress
- c) certificates demonstrating that imported and/or material left in situ is free of contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions (3)c.

6) Development shall not commence until written documentary evidence has been submitted to, and approved in writing by, the Local Planning Authority proving that the development will:

- a) achieve a minimum of a 19% improvement in the dwelling emission rate over the target emission rate, as defined in The Building Regulations for England Approved Document L1A: Conservation of Fuel and Power in New Dwellings (2013 Edition). Such evidence shall be in the form of a Design Stage Standard Assessment Procedure (SAP) Assessment, produced by an accredited energy assessor; and
- b) achieve a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a design stage water efficiency calculator.

7) The development hereby permitted shall be completed in full accordance with the 'appearance' within the submitted Design and Access Statement unless otherwise agreed in writing with the Local Planning Authority.

8) Prior to first occupation of any dwelling hereby permitted, secure and waterproof bicycle storage facilities shall be provided in accordance with the submitted and approved: Floor Plan (RB/SN/226/15 (2 of 2)) and Proposed Elevations (RB/SW/226/15 (1 of 2)). The facilities shall thereafter be retained for the storage of bicycles at all times.

9) Notwithstanding the submitted details, prior to first occupation of the dwelling hereby permitted, facilities for the storage of refuse and recyclable materials shall be provided in accordance with a detailed scheme to be submitted to and approved in writing by the Local Planning Authority. The storage facilities shall thereafter be retained for the storage of refuse at all times.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order amending, revoking and or re-enacting that Order with or without modification) no building, structure, addition or other alteration permitted by Class A, or Class E of Part 1 of Schedule 2 shall be constructed/carried out without the prior written permission of the Local Planning Authority obtained through the submission of a formal planning application.

**The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) To ensure that acceptable noise levels within the dwellings and the curtilages of the dwellings are not exceeded in the interests of residential amenity in accordance with policy PCS23 of the Portsmouth Plan.
- 4) In order to ensure that the site is free from prescribed contaminants in accordance with saved policy DC21 of the Portsmouth City Local Plan 2001-2011.

- 5) In order to ensure that the site is free from prescribed contaminants in accordance with saved policy DC21 of the Portsmouth City Local Plan 2001-2011.
- 6) To ensure that the development as built will minimise its need for resources and be able to fully comply with policy PCS15 of the Portsmouth Plan.
- 7) In the interests of the visual amenities of the area in accordance with policy PCS23 of the Portsmouth Plan.
- 8) To ensure adequate provision for and to promote and encourage cycling as an alternative to use of the private motor car in accordance with policies PCS14, PCS17 and PCS23 of the Portsmouth Plan.
- 9) To ensure that adequate provision is made for the storage of refuse and recyclable materials in accordance with policy PCS23 of the Portsmouth Plan.
- 10) In the interests of visual and residential amenity having regard to the specific design of the building, site layout and constrained relationship in accordance with policy PCS23 of the Portsmouth Plan.

#### PRO-ACTIVITY STATEMENT

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

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**149 ESSEX ROAD SOUTHSEA PO4 8DH****CONSTRUCTION OF REPLACEMENT REAR BOUNDARY WALL WITH INCORPORATED BRICK OUTBUILDING****Application Submitted By:**

Mr Tom Worley

**On behalf of:**

Mr Tom Worley

**RDD:** 8th February 2016**LDD:** 12th April 2016**SUMMARY OF MAIN ISSUES**

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The determining issues are whether the design of the outbuilding and boundary wall is appropriate to the recipient property and the surrounding area, whether the development would preserve or enhance the character and appearance of the Essex Road conservation area and whether there would be a significant impact on residential amenity.

**The Site**

This application relates to a two-storey mid terraced dwellinghouse located on the southern side of Essex Road. The property is within the Essex Road Conservation Area (No.28) and there is an Article 4(2) Direction which restricts various alterations to the front elevation of these distinct properties which can be described as: properties within this road are early Edwardian red-brick houses with classical-style balustrades and pediments. On the rear elevation, most properties benefit from a single storey extension. The road is lined by an avenue of hornbeam trees.

**The Proposal**

The applicant seeks permission for the construction of replacement rear boundary wall with incorporated brick outbuilding.

**Relevant Planning History**

The relevant planning history for this site relates to the installation of rooflights to front roofslope which was granted conditional permission (14/01095/HOU).

**POLICY CONTEXT**

In addition to the National Planning Policy Framework, the relevant policies within the Portsmouth Plan would include PCS23 (Design and Conservation).

## **CONSULTATIONS**

**None.**

## **REPRESENTATIONS**

One letter of representation has been received objecting on the grounds of: a) The design and appearance is unsympathetic to the conservation area; b) The loss of outlook due to the height of the outbuilding; and, c) Increased sense of enclosure from the outbuilding.

Councillor Vernon-Jackson has requested this item be determined by the planning committee.

## **COMMENT**

The determining issues are whether the design of the outbuilding and boundary wall is appropriate to the recipient property and the surrounding area, whether the development would preserve or enhance the character and appearance of the Essex Road conservation area and whether there would be a significant impact on residential amenity.

### **Conservation and Design**

With its dominant late Victorian/ Edwardian architectural style and more ornate take on the typical period terrace house, Essex Road makes a positive contribution to the visual amenity of the Milton area of the city. The entire road is extremely uniform in character -all plot widths are identical, as are the height of rooflines, the proportions of all front elevations, and the size of front gardens. Although built over an extended time period, all of the houses share similar structural features including: Ornate single or two storey window bays constructed of structural terracotta on a brick plinth and incorporating a number of unusual architectural elements such as vermiculated keystones, rusticated columns with capitals on a botanical theme, and heavy balustrades also in terracotta, timber sliding sash windows and doors. Boundary walls, gates and pillars form an important part of the character and appearance of the area. Loss of these features can be to the detrimental to the character of the streetscene

When determining application in conservation area, the local planning authority must have regard to section 72 of the Listed Buildings and Conservation Areas Act 1990 (as amended) which states: special attention shall be paid to the desirability of preserving or enhancing the character and appearance of the conservation area.

The existing boundary wall at the rear of the property suffered storm damage in January 2016 and several walls in the vicinity collapsed due to falling trees. Behind the property and running adjacent to Wimbourne Road is a small alleyway which many of the properties have access. It is clear following a site visit that high boundary walls to the rear of these traditional properties is an element which contributes to the character and appearance of the conservation area. Many of these existing walls are constructed from red brick and exceed 2 metres in height. The conservation area guideline state: 'The city council will encourage the retention of existing original boundary walls, gatepillars and railings, and i) discourage the removal, demolition or unsympathetic alteration thereof; and, iii) The city council will encourage the reinstatement of walls, gatepillars and railings to match the original style of that property. The proposed replacement wall would be 2.2 metres in height with 2.4 metre high gate pillars and constructed in red brick similar to that on the existing property. Given that the height of the rear boundary walls form an important part of the conservation area; albeit no actively seen by the public, it is considered that through the use of similar materials and its height would be an appropriate design solution that would preserve the character and appearance of the Essex Road conservation area.

The existing timber shed would be removed and replaced with a 3 metre in height outbuilding which would be constructed in red brick to match those on the existing property and other boundary walls, with Marley Double Roman tiles to match those on the existing property and other roof slopes in the immediate area. The outbuilding would form part of the boundary wall and the red brick would be the same as those used in the construction of the boundary wall. Whilst the conservation area guidelines would encourage the use of natural slate for the roof slope, the proposed roof tiles are considered to be sympathetic to those found in the conservation area and would be quality tiles that would have a neutral impact, that is to say would preserve the character and appearance of the conservation area.

#### Impact on Residential Amenity

When the outbuilding and boundary wall would be viewed from No.149, there is approximately a 13.7 metre spatial separation between the property and end of garden. This distance, and the relatively open urban fabric to the east and west provide an 'open feel' to the rear gardens and as such it is considered that there would be no significant impact on residential amenity for the occupiers of properties on Essex Road.

When viewed from 38 Wimbourne Road, the spatial separation between the rear elevation of the property (which benefits from a large single storey extension) is some 10.1 metres. This property has a high boundary wall to some 2.1 metres in height like those on Essex Road and others on Wimbourne Road. These properties have significantly smaller rear gardens and it is therefore considered that the construction of an outbuilding which forms part of the boundary wall would have some impact with regard to outlook from No.38, notably due to the smaller spatial separation. The outbuilding, forming part of the boundary wall would project some 0.7 metres higher than No.38s wall. As part of an objection, reference was made to an increased sense of enclosure and the overbearing impact of the development. Whilst the objector can be sympathised with and having regard to a larger scheme consented to in 2011 at No.157 and its appearance from No.38, it is considered that due to the limited projection of the pitched roof outbuilding above the boundary wall and its appropriate use of materials, there is unlikely to be any significant increase in the sense of enclosure or result in a significant loss of outlook. The outlook from the rear garden of No.38s single storey rear extension would be different and altered; but, this is not considered to form a substantial or sustainable reason for refusal.

It is therefore considered that on balance, the construction of the boundary wall and outbuilding would be in accordance with the aims and objectives of the NPPF and to policy PCS23 of the Portsmouth Plan.

## **RECOMMENDATION                      Conditional Permission**

### **Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers: Location Plan, Proposed Floor Plan and Proposed Elevations.
- 3) The materials to be used in the construction of the external surfaces of the outbuilding and south boundary wall hereby permitted shall include red brick to match those on the existing property in type, colour and texture and Marley Double Roman roof tiles (or such other alternative that shall be agreed in writing with the Local Planning Authority).

**The reasons for the conditions are:**

- 1) To comply with Section 91 of the Town and Country Planning Act 1990.
- 2) To ensure the development is implemented in accordance with the permission granted.
- 3) In the interests of visual amenity to preserve the character and appearance of the 'Essex Road' conservation area in accordance with policy PCS23 of the Portsmouth Plan.

**PRO-ACTIVITY STATEMENT**

Notwithstanding that the City Council seeks to work positively and pro-actively with the applicant through the application process in accordance with the National Planning Policy Framework, in this instance the proposal was considered acceptable and did not therefore require any further engagement with the applicant.

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