

PLANNING COMMITTEE

MINUTES OF THE MEETING of the Planning Committee held on Wednesday, 25 May 2016 at 1.00 pm in the The Executive Meeting Room - Third Floor, The Guildhall

These minutes should be read in conjunction with the agenda and associated papers for the meeting.

Present

Councillors Frank Jonas (Chair)
Scott Harris (Vice-Chair)
Jennie Brent
Ken Ellcome
Colin Galloway
Hugh Mason
Lee Hunt
Yahiya Chowdhury
Lynne Stagg (Standing Deputy)
Suzy Horton (Standing Deputy, part meeting)
Steve Hastings (Standing Deputy, part meeting)

Welcome

The chair welcomed members of the public and members to the meeting.

Guildhall, Fire Procedure

The new chair, Councillor Jonas, explained to all present at the meeting the fire procedures including where to assemble and how to evacuate the building in case of a fire.

47. Apologies (AI 1)

Apologies for absence had been received from Councillor Gerald Vernon-Jackson (who was represented by standing deputy Cllr Lynne Stagg) and Councillor Steve Pitt (who was represented by Councillor Suzy Horton for part of the meeting). Councillor Hastings appeared as a standing deputy for Cllr Scott Harris for one item (149-149a Albert Road).

48. Declaration of Members' Interests (AI 2)

Councillor Hugh Mason explained that for the item relating to 149-149a Albert Road whilst he had made a previous objection in 2014 and to this application, this was pre-deposition and not pre-determination, and he would listen to all the information and remain impartial before making his decision. Councillor Hunt also wished to state that he had previously objected but he had received legal advice and he was also going to listen and be open-minded before reaching a decision.

Councillor Scott Harris apologised for his late arrival and reported that he had received legal advice and as he owned a property close to 149-149a Albert Road he was deemed as having a pecuniary interest so he would not take part in discussion of this item.

Robert Parkin, the legal adviser to the committee, further explained the matter of pre-deposition versus pre-determination, as referred to within the Planning Code of Conduct paragraph 7.2. Thereby members of the committee could express views provided they were open-minded in reaching their decision which would be taken on the merits of the evidence presented.

49. Minutes of Previous Planning Committee Meeting - 27 April 2016 (AI 3)

RESOLVED that the minutes of the Planning Committee held on 27 April 2016 be agreed as a correct record and be signed by the Chair.

50. Updates on previous applications by the Assistant Director of Culture & City Development (AI 4)

There were no updates by the Assistant Director of Culture & City Development.

51. 15/02010/PAMOD - Request to modify legal agreement attached to planning permission 12/01382/FUL relating to land at 249 Fratton Road (AI 5)

The Assistant Director of Culture & City Development reported that this report had been withdrawn from consideration.

52. 16/00422/FUL - 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) (Report item 1) (AI 6)

Councillor Harris withdrew from the committee for this item in line with his earlier declaration of interest and was represented by standing deputy Cllr Hastings. Councillor Horton was not a member of the committee for consideration of this item to enable her to make a deputation, but took no part in the decision.

The following information was contained in the Supplementary Matters report which was brought to the attention of members:

20 further representations have been received raising similar objections to those reported and considered in the published report.

The online petition referred to in the report has been submitted with 763 signatures (and increase on the 141 reported at the time the report was written). The petition states that:

"There is a planning application, once again, to open a lap-dancing club at the old Conservative Club building on Albert Road. Albert Road is a shining gem in Portsmouth's crown, independent shops with something for the whole family. Opening a new sexual entertainment venue here is not wanted, not needed, and works against the vibrant community that has established itself here.

The council's existing licensing policy states that new applications for more lapdancing clubs in the city will be refused unless there is evidence to show how one would benefit the community. If this venue can't be licensed, it shouldn't get planning permission."

The following provides an update on the position regarding issues referred to in objections and relates to the duty of the Planning Committee under The Equalities Act 2010 and Crime and Disorder Act 1998.

The Equalities Act 2010

Public bodies must meet the Public Sector Equality Duty (PSED) when carrying out any functions, at all times. In some instances, the PSED is more apparently engaged than others. It is a procedural obligation - it does not constrain a decision-maker to an outcome. Rather, it requires those involved in the decision to have regard to various matters around what are described as protected characteristics. Protected characteristics include: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Public Sector Equality Duty requires the Planning Committee to have "due regard" to: the need to eliminate discrimination, harassment, victimisation; remove or minimise disadvantages suffered by persons who share a relevant protected characteristic; take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.

Importantly, a court will decide for itself if due regard has been had, but providing this is done it is for the decision maker to decide what weight to give to the equality implications of the decision (R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin). Section 149(6) makes it clear that compliance with the PSED in section 149(1) may involve treating some people more favourably than others - there is no outright duty to neutralise inequality.

Crime and Disorder Act 1998

Section 17 of the Crime and Disorder Act 1998, provides that due regard must be given to the effect of the exercise of the planning function on crime and disorder as set out below:

17.— Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment

In this case it should be noted that Hampshire Constabulary have chosen to make no comments relating crime prevention. It should also be noted case law makes it clear that in the absence of any evidence of disorder or crime, little weight should be afforded to a fear of crime or disorder.

Robert Parkin, as the committee's legal adviser, gave an extra explanation of the Equality Act with regard to the public sector equality duty in the process of decision making and the need to have due regard to the impact on the protected characteristic groups (as listed above).

The following deputations were made:-

- (i) Ms Mooney, as a local resident to object to the application, whose points included:
- Fear of an adverse effect for women's safety (especially shift workers returning home late) and wellbeing locally and an unreasonable attitude to women being promoted
 - General noise and nuisance caused by clients and the noise of cars and taxis
- (ii) Mrs Catlow spoke as a local resident and businesswoman to object, whose points included:
- This would devalue the architectural value of the property
 - This would have a negative impact on Albert Road businesses which promoted a boutique shopping experience and currently had high retail occupancy of independent traders and had received grants for regeneration.
 - The sexual entertainment establishment would destroy the cultural quality of the road near a theatre, the Wedgewood Rooms and near schools and churches
 - Many of the supporters signing the petition were from outside of the area and local residents would be the ones suffering and the petition against the proposal was from the community
- Mrs Catlow also read out a letter from Hon. Alderman Sally Thomas in objection to the application whose points included:
- This did not fit in with the leisure usages in the area next to the Wedgewood Rooms which were more family orientated
 - It also failed to fit in with the ambience of the road
- (iii) Mr McCulloch made a deputation to object, whose points included:
- The representations in support all had the same text
 - There should not be an increase in sexual entertainment venues and if the applicant's other premises closed someone else could use the planning permission thereby increasing the number of these venues in the city.
- (iv) Ms McCombie also spoke to object as a local resident and trader, whose points included:
- There were residents living over the shops so it was in a residential area too with many wholly residential roads going off Albert Road, and they already had problems parking when returning home at night
 - Late night closing should be in a controlled area as there would be a rise in anti-social behaviour with a licensed premises closing so much later than the adjacent premises.
 - 14 year olds were able to enter the Wedgewood Rooms next door, so this was an inappropriate site for a lap dancing club.
- (v) Mr L Weymes then spoke as the applicant's agent, in support, whose points included:

- He referred to the previously dismissed appeal decision and the reasons related to the retail element not any moral grounds
- The previous use was for a venue attracting public audiences
- Albert Road had a variety of mixed users and was a vibrant night-time destination
- The applicant would renovate the building and had experience in running 2 other similar venues, and this would need a separate entertainment licence from the Council as Licensing Authority
- The interior would be acoustically treated and so noise would not be a problem

(vi) Mr P Ojla, the applicant, spoke in support of his application, whose points included:

- His gentlemen's clubs did not lead to noisy or anti-social behaviour, and were discreet neighbours
- The police had not raised objections
- It would not affect children as the club would open after 9pm
- He believed it would make the area safer and would have CCTV

(vii) Councillor Suzy Horton spoke as a local ward councillor to object, in summary:

- Vitality of the Retail Area - there had been regeneration in the area and the negative tone of the business may cause other traders to leave
- The proximity of schools and family venues - there were two schools, a nursery and a community centre nearby as well as the young audiences going to the Wedgewood Rooms
- The inconvenience to residents in the area - there would be the inconvenience caused by the very late closing of 4am which was out of keeping with other businesses in the area, with the noise of cars and taxis leaving as well as parking problems.

(Councillor Horton then withdrew from the room)

Members' Questions

Members asked for a further breakdown of the categories of local and non-local objectors and supporters within the petitions - it was reported that those objecting were approximately 90% local residents and supporters were approximately 66% local with about 10% being some distance from the area. The waste collection arrangements were queried and if there was an impact on the Harold Road item on the agenda - the City Development Manager stressed that each application should be determined independently on its own merits. Members also queried the level of noise that may emanate from the premises and where patrons would park?

Members' Comments

The nature of the customers could not be anticipated but members were concerned at the impact on the successful independent retail street and the viability of the businesses in Albert Road and on the community due to the family venues nearby. Parking in the area was already problematic and however well managed there would be noise caused by the 4am closing time affecting the amenity of residents.

RESOLVED that permission be refused for the following reasons:

1) In the opinion of the Local Planning Authority, the proposal would represent an inappropriate use in this location, out of keeping with the established character of the Albert Road and Elm Grove District Centre. The proposal is therefore contrary to Policy PCS23 of the Portsmouth Plan.

2) In the opinion of the Local Planning Authority, the proposal would be likely to have an adverse effect on the vitality and viability of existing premises within the Albert Road and Elm Grove District Centre. The proposal is therefore contrary to the aims and objectives of Policy PCS8 and to PCS23 of the Portsmouth Plan.

53. 16/00309/FUL - Land Adjacent To 3 Harold Road Southsea PO4 0LR - Construction of new end of terrace dwelling (re-submission of 15/01009/FUL) (Report item 2) (AI 7)

This item had been deferred from the Planning Committee of 27 April pending further information; the rights of way and adopted highway issues were clarified by the City Development Manager.

Councillor Horton was not a member of the committee for this item.

Deputations were then made.

- (i) Mr P Smith, spoke to object to the application as a previous councillor whose points included:
- Concern that whilst the proposed building would not exceed the western boundary of the garage the garden may traverse the red line
 - This application was now for a 2 bedroom not 3 bedroom property but there was not room on this site and there should be greater care for residents with the size of rooms and their amenity (such as downstairs toilet with folding door)
 - There were differences to the plan which made this a new application rather than resubmission
 - Concern of flood risk
 - Comments by Environmental Health indicated that there would be noise problems caused by the proximity to the Wedgewood Rooms and there should be sound insulation provided
 - Concern regarding damp caused by blocking of airbricks at neighbouring property No.3 Harold Road.
 - Loss of light
- (ii) Mr Miah spoke to object as an occupant of an adjacent property, whose points included:
- Concern regarding use of the public right of way to his garden
 - Adequate sewage
 - The proposed property was still very small and out of keeping with the street scene

- There would be overlooking of his garden and loss of privacy (with reference to the Human Rights Act) and loss of light to his property and concern it would cause dampness to his property and noise would be generated as well as a car park space being lost
- The demolition of the garage may cause damage to his property and for construction there would need to be access to his garden

(iii) Councillor Suzy Horton spoke to object as a ward councillor whose points included:

- There were significant changes to the application but there was concern regarding the amenity of the residents at No.3 Harold Road (blocking of airbricks and loss of light)
- The neighbours had received a council grant to make improvements to their property which could now suffer by the proposed construction
- The alleyway may still be used for access for the Wedgewood Rooms for deliveries and waste collection and even for fire escape purposes, so its access was significant
- Sound-proofing was necessary suggesting that noise issues were anticipated.

(Councillor Horton then withdrew during the committee's discussion of this application.)

Robert Parkin, as the committee's legal adviser, explained that use of the side access which was not an adopted highway was a private matter, and was not relevant to the committee's consideration. The City Development Manager confirmed that the alleyway was used for access arrangements with the Wedgewood Room's fire door and their recycling bins, and access would need to be maintained if permission was granted for this application.

Members' Questions

Members asked about the potential for loss of light to the adjacent property - the City Development Manager reported that there would be some loss of light in the morning to the west facing garden but this should not be significant in the afternoon/evening. Questions were also raised regarding the effect on the windows on the boundary and the potential for air bricks to be blocked - it was reported that the ventilation was a Building Regulations matter. Access to cycle storage was also raised (bicycles could be taken internally through the property and was not reliant upon the strip of land adjacent to the site). The level of noise complaints already raised against the Wedgewood Rooms was queried.

Members' Comments

Members were concerned that the proposed residential property would be in a position that it would generate noise complaints by future occupiers against the incumbent adjacent business. They felt that the proposal was an overdevelopment of the space and unneighbourly, giving a sense of enclosure to the neighbouring property. The new development would not relate well to the streetscene and created cramped living conditions.

RESOLVED that the application be refused for the following reason:

In the opinion of the Local Planning Authority, the proposal would represent a cramped overdevelopment of the site resulting in an unneighbourly increased sense of enclosure and loss of light to the detriment of the residential amenities of the occupiers of neighbouring properties. The proposal is therefore contrary to Policy PCS23 of the Portsmouth Plan.

54. 16/00187/HOU - 149 Essex Road Southsea PO4 8DH - Construction of replacement rear boundary wall with incorporated brick outbuilding (Report item 3) (AI 8)

(Councillor Horton was a member of the committee, as a standing deputy, for this item.)

The following information was contained in the Supplementary Matters report which was brought to the attention of members:

" An objector reported that Wimborne Road has been spelt incorrectly throughout the report. The incorrect version contains the letter 'U'. The objector also reports that the storm damage occurred in December 2015 not January 2016."

Deputations were heard.

- (i) Mrs Maxwell, objecting as the neighbour to the rear, whose points included:
- This proposal would have a negative effect on both her property and the wider Conservation Area
 - It was an excessive size for a shed
 - There would be the loss of spatial separation between their properties and there would be a loss of outlook to her property and loss of enjoyment of her home (Human Rights Act)
 - The design was not complementary for the area (she circulated pictures)
 - She felt that there were factual inaccuracies in the officer's report
 - The shed would be closer to her home than the applicants so was un-neighbourly
 - There were possible compromises regarding the pitch and moving the shed from the boundary wall or digging deeper into the applicant's garden
- (ii) Mrs Worley, the applicant, spoke in support of her application, whose points included:
- This would enhance the character of the joint alleyway with high quality bricks (she also circulated pictures) and increase security to her property
 - The walls of the alleyway were already 2.2m and there was 1.8m width of alleyway between the 2 properties so the shed was not on the rear neighbour's boundary wall, and it would break up the view of the property for the neighbour.

Members' Questions

The distance between properties and boundary walls was queried and it was asked if a reorientation of the pitch of the shed would be beneficial (it was reported this would increase the bulk on the common boundary)?

Members' Comments

Members were mindful of the small element of the application that took it over Permitted Development Rights.

RESOLVED that conditional permission be granted, subject to the conditions outlined in the City Development Manager's report.

55. Proposed dates for Planning Committee meetings in 2016 (AI 9)

Members noted the following dates for a 4 weekly cycle for the Planning Committee in 2016:

- 22 June
- 20 July
- 17 August
- 14 September
- 12 October
- 9 November
- 7 December

Members asked if there could be consideration of investment in a more effective projector for committee meetings.

The meeting concluded at 3.30 pm.

Signed by the Chair of the meeting
Councillor Frank Jonas