

Decision maker: Planning Committee

Subject: Planning appeal decision at 149a Albert Road, St Jude,
Southsea, PO4 0JW

Report by: Claire Upton-Brown
Assistant Director of Culture & City Development

Ward affected: Central Southsea

Key decision (over £250k): No

4. Purpose of report

To advise the Committee of the outcome of the appeal that was allowed.

5. Recommendations

That the report is noted.

6. Background

A full planning application was considered by the Planning Committee at its meeting on 25th May 2016 (16/00422/FUL). The proposal was for a 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) and was recommended by officers for conditional permission. This recommendation was overturned and the application was refused for the following two 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 affect 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.

In allowing the appeal, the Inspector made reference to Policy PCS8 of the Portsmouth Plan stating: "For Albert Road and Elm Grove it advocates that at least 50% of the primary frontage must remain in use as shops and highlights that anti-social behaviour from the evening uses towards the west of Albert Road is jeopardising the amenity of nearby residents. Policy PCS23 requires that all new development must be well designed and seeks active frontages in town centres."

The Inspector pointed out that from the evidence presented at the Appeal Hearing, it was clear that: "the proposed use would have a very limited physical impact on the District Centre as, given the previous leisure use of the site and the fact that the use would be located at first floor, it would not alter the current composition of the primary frontage. Furthermore, the site is located outside of the area where there are concerns regarding anti-social behaviour. "

Offering further clarification on PCS 8 of the Portsmouth Plan the Inspector concluded: " I agree with the Council that the proposal is a use that would be found in a town centre and as a result consider that the proposal would not conflict with any of the general or site specific criteria listed in policies PCS8 and PCS23 of the Core Strategy."

Having regard to the potential effect on the character, vitality and viability of the District Centre, the inspector identified the concerns of local residents stating: "It was considered, by local residents in particular, that locating a lap dancing venue in this location would discourage people from visiting the area and raised concerns about safety particularly for women and children. If people were deterred from visiting the centre or felt unsafe, it was advocated, that this could adversely affect local businesses and therefore the character and vitality and viability of the District Centre."

Addressing these concerns, the Inspector offered the following view: "I acknowledge that the presence of a lap dancing venue may deter some people from visiting this part of Albert Road. However, as already highlighted due to its first floor location the proposed lap dancing venue would have a very limited physical presence on the street. Being a late night venue the proposed use would not operate at the same time as the majority of the daytime businesses and retail uses and as I observed at both my site visits the area is thriving and characterised by an eclectic mix of both day and night time uses. For these reasons I consider that the proposal would not be out of character and while some people may be deterred from visiting, this number is unlikely to be sufficient to adversely affect the vitality and viability of the District Centre as a whole."

Fears about safety were raised and the Inspector offered the view that this was capable of being a material planning consideration so long as there was a reasonable evidential basis for this fear. To support their claim, interested parties submitted a copy of an appeal decision where, amongst other reasons, concerns about safety had led that Inspector to conclude that the proposal

would have a detrimental effect on the vitality and viability of the retail frontage. On this matter the Inspector offered the opinion that: "the circumstances for that appeal are materially different to the scheme before me as that area had a long standing reputation as a red light district; there were a number of other sex related uses already established within the area and the concerns about safety arose from the concentration of such uses and finally it was for a ground floor unit in a retail parade where due to high vacancy rates there were pre-existing issues regarding vitality and viability. None of those concerns apply in this case."

Reference was also made to research showing links between lap-dancing venues and an increase in sexual violence. On this matter, the inspector stated: "I also note that for this proposal the representative for the Police and Crime Commissioner advised that they had no comments. At the Hearing the appellant outlined their positive working relationship with the police and advocated that in their experience from operating similar venues elsewhere because of the presence of door staff the security of areas in which they operated had improved."

As stated under Section 72 of the Town and Country Planning Act 1990 and the Planning Practice Guidance (PPG) permission can be granted for a temporary period if it is appropriate to allow a trial run in order to assess the effect of a development in an area. On this matter the Inspector stated: "Given the concerns raised regarding security and the lack of conclusive evidence to either support or refute the claims made by the parties I consider that allowing the use for a temporary period would enable the Council to monitor the effect of the use and enable them at the end of that period to assess the effect of the proposal on the character and vitality and viability of the District Centre based on empirical evidence. On this basis I conclude that, subject to such a condition, the proposal would not adversely affect the health of the District Centre and would be in accordance with policies PCS8 and PC23 of the Core Strategy."

Local residents raised concerns relating to a rise in noise and disturbance as a result of this use and that this would affect their living conditions. In respect of this the Inspector concluded that "However, I note that the previous Inspector considered that a similar proposal would have limited negative impact on nearby residents and that the Council's Environmental Health advisors did not object to the current proposal. I have not read or heard any evidence submitted for this appeal that would lead me to an alternative view to the previous Inspector or the Council's specialist advisors."

Parking and highways concerns were identified due to the proposed opening hours and the reduction in on-street parking. The Inspector stated: "I note from the Statement of Common Ground that the Council consider that there are no highway issues which is further reinforced by the advice from the Council's Highways Advisors contained within the original Committee report. Whilst I agree that most visitors to the site would travel by car I have not read or heard any evidence that would lead me to form a different view to the Council on highway safety or parking issues. "

It was advocated that the proposal would be contrary to the Councils Sex Establishment Licensing Policy however the Inspector took the view that "at the start of the Hearing the Council confirmed that the introduction of a licensing regime for lap dancing venues had not been formally adopted by them and that the 'Sex Establishment Licensing Policy – responses to public consultation' (2012) document submitted with the appeal, which sought views on the adoption of such a licensing regime was not a planning policy document and therefore was not a material consideration when determining the appeal. I have therefore considered the appeal on this basis."

Concerns were raised relating to the appropriateness of advertising leaflets and how these would be distributed. On this matter the Inspector advocated that "the content of leaflets and how or when they are distributed is not a matter that is controlled by planning legislation."

Allegations were also raised about illegal activities associated with Lap Dancing Venues and that lap dancing is linked with other forms of sexual exploitation. The Inspector concluded: "To support this Interested Parties made reference to evidence given by a former worker of the appellant in relation to drug use at lap dancing venues. However, how a use operates is a matter for the relevant licensing authorities and the Police."

In relation to conditions, the Inspector stated that minor adjustments have been made to wording where appropriate and in the interests of proper planning, a condition has been applied that requires the development to be carried out in accordance with approved plans.

Other conditions are outlined below:

- In addition to the standard time limit for implementation for the reasons I have already outlined I consider that a condition granting the use for a temporary period is necessary. At the Hearing the appellant agreed that such a condition would not be unreasonable but considered, given the investment needed, that a period of five years would be appropriate. The Council suggested two. Having regard to the concerns of all the parties I consider that five years would be too long for a temporary permission. Whilst I acknowledge that some investment would be required to implement the use, having visited the premises, this would be the case for any use. However, I recognise that the scheme needs to be economically viable to warrant its implementation. As a result I consider that a three year (36 month) period would be sufficient to enable the effect of the use to be satisfactorily assessed but warrant the investment. As refurbishment work will need to be undertaken and other licences and permits obtained before the use could commence I have worded the condition so that the temporary period would run from the opening of the venue.

- An hours of use condition is considered necessary to ensure that the use would be operated in the terms it was applied for.
- At the Hearing concerns were raised that advertisements and signage at the premises would detract from the character and appearance of the District Centre. In the main these concerns related to the potential content and appearance and that it would increase the visibility of the use within Albert Road. Whilst I understand the concerns raised, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 does not control the content of signage or advertisements. However, given the concerns about the effect on the character of the District Centre limiting the amount and type of external signage/advertising would help reduce the physical presence of the use within the streetscene further. Whilst I agree with the appellant that no signage would be unreasonable I consider a condition giving the Council control over the amount and location of signage would be appropriate.

In respect of the conditions outlined above and for the details discussed, the Inspector concluded that the appeal should be allowed.

As there is a temporary permission in place there will be a need to monitor the impact of the use within the area over the period of the temporary permission. A monitoring regime will be established for the period of the temporary permission, traders within Albert Road will be contacted as will residents and asked to report any events of the use having an adverse effect of the character of the area. The information and monitoring evidence collected of the temporary period will provide evidence of the impact to enable a fully assessment should a subsequent application be submitted for a permanent permission, following the expiry of the temporary permission.

4. Reason for recommendations

For information to the Planning Committee.

5. Equality impact assessment (EIA)

None.

6. Head of legal services' comments

The report is for information only.

7. Head of finance's comments

The report is for information only.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Planning application 16/00422/FUL	Planning Services
Appeal decision APP/Z1775/W/16/3153456	Planning Services