

23/00695/FUL

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63-65 ALBERT ROAD SOUTHSEA PORTSMOUTH PO5 2RY

**CHANGE OF USE OF GROUND AND PART FIRST FLOOR TO MIXED USE RESTAURANT/TAKEAWAY/BAR/PRIVATE FUNCTION HIRE, WITH INSTALLATION OF KITCHEN EXTRACT SYSTEM; AND CHANGE OF USE OF PART FIRST FLOOR TO RESIDENTIAL ACCOMMODATION WITH SCREENED EXTERNAL ROOF TERRACE [NOTE AMENDMED DESCRIPTION]**

[23/00695/FUL | Change of use of ground and part first floor to mixed use restaurant/takeaway/bar/private function hire, with installation of kitchen extract system; and change of use of part first floor to residential accommodation with screened external roof terrace | 63-65 Albert Road Southsea Portsmouth PO5 2RY](#)

**Application Submitted By:**

Mr Steve Lawrence

ACHIEVE - Town Planning and Urban Design Ltd

**On behalf of:**

Mr Ting-On Tsui

**RDD:** 7th June 2023

**LDD:** 2nd August 2023

**SUMMARY OF MAIN ISSUES**

- 1.1 This application is being presented to Planning Committee due to the number of objections received (11).
- 1.2 The main considerations are:
  - The principle of the development;
  - Impact on amenity for Existing Residents;
  - Design considerations
  - Lack of 5 housing land supply
  - Agent of change principle

**SITE AND SURROUNDINGS**

- 2.1 The Site is located on the corner Albert Road and Chelsea Road. It falls within the Albert Road District Centre (Policy PCS8).
- 2.2 The building in question is sited on a corner plot and has historically been in commercial use as a printing/stationery shop (which is considered would fall under Class E if still in operation). It comprises an attractive two storey flat roofed building with stone style tiling at ground floor level and large shop front windows fronting Albert Road. The rest of the building is fenestrated with multi panelled windows with white frames at ground and first floor level.
- 2.3 The surrounding area is almost entirely commercial at ground level. There is a strong mix of business uses, with some Class E operations, but the overwhelming character of the area at ground floor level is of restaurants and drinking establishments. Many of the commercial units have residential flats above, and Chelsea Roads prevailing character is of a traditional terraced residential street.

## PROPOSAL

- 3.1 The development proposes very little operational development and the main consideration in this instance is the change of use of the premises to a mixed use comprising of a bar/restaurant/function room also with a takeaway function with a residential flat occupying a portion of the first floor. It is described by the agent that the applicant intends to live in the flat and invites that this should therefore be considered to be ancillary accommodation, but the layout, without its own external access and lack of operationally necessary connection means that there is no grounds to consider the flat an ancillary part of a larger planning unit and it is in effect and as a matter of judgement, notwithstanding the intent of the restaurant owner to live in the unit, not necessarily any different to a standalone dwelling in terms of the LPAs assessment. The application has been consequently described and determined on that basis. Minor external alterations are proposed to enable the change of use including an extraction flue which is mostly contained internally with the external aspect obscured from view by the proposed terrace screening, which is found to the rear of the property on the Chelsea Road boundary at first floor level.
- 3.2 The proposed terrace would involve minor brickwork to level the rear area and a 1.8m high balustrade consisting of vertical poles and privacy glass. It would be set back from the edge of the roof and is solely for the use of the residential flat rather than for patrons of the restaurant/bar.
- 3.3 The proposed layout of the ground floor features a bar, kitchen and a number of covers, with a similar smaller layout at first floor level. The description with regards to the commercial side of the application includes restaurant, takeaway and function uses within the description which would allow for more flexibility in the use than if the unit operated solely as a bar or a restaurant for example. The proposed opening hours stated by the applicant are 11:00am to 01:00pm on Fridays and Saturdays and 11:00am to 23:00pm on every other day.
- 3.4 The applicant has provided the following statement explaining how the takeaway function will operate:

*Further to our planning application for the Albert Road development, we write to confirm that in addition to the restaurant we are looking to offer both a home delivery food service as well as a take-away food service. It is our intention that should there be any walk-in take-away customers, there will be seating either at one of the tables or by any of the seating by the bar, while they wait for their order.*

- 3.5 This is in addition to delivery service which would be undertaken through the rear of the ground floor as shown on the plans.

## PLANNING CONSTRAINTS

- 4.1 As mentioned above, the site falls within the Albert Road District Centre. The implications of this and the weight it should be given are discussed later in this report. The site does not fall within a conservation area but is adjacent to the Campbell Road conservation area which terminates at 1 Chelsea Road and could affect *the setting* of the heritage asset.

## POLICY CONTEXT

- 5.1 The planning policy framework for Portsmouth is currently provided by:

The Portsmouth Plan (The Portsmouth Core Strategy) adopted in January 2012.

5.2 Having regard to the location of this site and the nature of the proposal, the relevant policies within the Portsmouth Plan would include:

- PCS8 - Albert Road District Centre
- PCS17 - Transport
- PCS23 - Design and Conservation

## RELEVANT PLANNING HISTORY

6.1 The site has very limited planning history, with none recent enough or comparable to the proposal to be considered relevant.

6.2 The site next door was granted permission to be used as a bar restaurant in 2016 under reference 16/00017/FUL. The opening hours are restricted to 11:30pm on weekdays and 03:00am on Fridays and Saturdays.

## CONSULTATIONS

Highways: No objection, no issues identified.

Regulatory Services: No objection subject to a conditions regarding:

- Opening Hours
- Noise insulation
- Extraction system
- Condenser units/refrigeration systems

Police: Initially objected over safety concerns with regards to the layout/facilities in the restaurant/bar and the entrance to the residential flat but following amendments support the application. The applicant has suggested through these discussions that a condition requiring details of security features would be agreeable.

## REPRESENTATIONS

7.1 Objections have been received from 11 persons which can be summarised as:

- How the accommodation is accessed through the restaurant (*Officer note: this is no longer the case following amended drawings*)
- How the terraces use will be restricted to only the resident of the flat and not patrons (*Officer note: see below regarding condition to this effect*)
- Highways comments regarding lack of transport statement (*Officer note: a traffic impact assessment is not considered necessary on such small scale development and Highways are satisfied that there would be no impact*)
- There are too many bars and restaurants on Albert Road and disturbance would be made worse by the addition of another
- Adding a roof terrace would make the disturbance worse (*Officer note: it would appear that the objector who mentions the terrace has misunderstood the location and proposed use of the roof terrace*)
- The market is saturated and the addition of another bar/restaurant is unfair on existing businesses
- Parking and traffic would be increased and would be unsustainable
- Overdevelopment of the area (*Officer note: the proposal is very minor and relates to a change of use of an existing building*)
- Increase in anti-social behaviour

- Takeaway function would give rise to unacceptable disturbance from takeaway drivers
- The use would block neighbours access due to illegal parking (*Officer note: The assessment of a planning application must be made with the expectation that occupiers and users of the proposed development would obey the law and if they did not, it would be for the appropriate authority to enforce. As such, this is not a material consideration*)
- Residents of the flats opposite on Albert Road are elderly/ill and this proposal would worsen issues with late night activity on Albert Road
- The road is already too loud and busy due to the operation of the many establishments and Kings Theatre
- The pavement outside of the premises is too narrow (*Officer note: The Local Highway Authority have reviewed the scheme and do not identify any issues with the location of the proposal*)
- The proposed development is far too large for the plot (*Officer note: the building is not increasing in size*)

## PLANNING CONSIDERATIONS / COMMENT

### Principle of the development

- 8.1 PCS8 seeks to encourage what was described as A1 uses in the 2012 Plan, with other uses such as A2 and D2 also considered acceptable. The change to the Use Classes Order in 2020 encompassed those uses under Class E (which includes restaurants), this policy is now heavily weakened in terms of the specific commercial uses discussed.
- 8.2 To this end, it should be noted that, hypothetically, a restaurant use with ancillary takeaway, bar and function room is unlikely to require permission and would be beyond the control of the LPA. This would be a realistic fallback position available to the applicant should this application be refused because many restaurants have a bar so that patrons can purchase a drink before or after eating. Many restaurants have a takeaway function also and are available for function hire. This should be given appropriate weight in the planning balance. However, as the proposal has been described by the applicant as a restaurant/bar/takeaway/function room, the LPA should consider it as such and should assess the acceptability of the proposed uses against relevant policy.
- 8.3 It is considered that a restaurant/bar/function use on Albert Road, which is an area heavily characterised by similar uses in very much in keeping with the character of the area and would be expected as a use in the locality. It is also not considered that the proposal would give rise to any measurable increase in late night noise and disturbance that is clearly already a feature of Albert Road when controlled by conditions in line with the surrounding premises. It is considered positive that a disused building on a busy and vibrant high street is proposed to be brought back into use. Furthermore, the agent of change principle, as set out in the NPPF, advises that some regard should be given, in assessing the impacts of change, to the prevailing and established character of the area, especially if it is of uses similar to the proposal.
- 8.4 The takeaway function should be assessed somewhat differently to the other described uses as it has more externality due to potential comings and goings of delivery drivers and customers. There would be a noise impact arising from this activity, but bearing in mind that there is already a proliferation of takeaways in the immediate area, it is considered that the potential harm can be controlled through planning condition as below.
- 8.5 The proposed flat would contribute to housing, which should be given significant weight in the tilted planning balance, which is applied as the Council is unable to demonstrate a 5 year land supply. At around 101msq GIA, it exceeds the NDSS requirement for a 2 bedroom flat of 70msq. It should be highlighted that two rooms which appear very similar to bedroom 2 are labelled as domestic storage. If these rooms were to be used as

bedrooms, the flat would still exceed the NDSS requirement for a 4 bedroom flat of 90sqm. These three rooms (bedroom 2 and the storage rooms) are not served by windows, but rather rooflights, which provide natural light but not outlook, which is a negative in the planning balance. The other rooms are served by windows which provide adequate light and outlook. The terrace provides some private outdoor amenity space which improves the standard of living and is in the proposals favour.

- 8.6 While no off street parking is provided, the locality is highly sustainable and can easily support car free living.

### **Design Considerations**

- 8.7 The National Planning Policy Framework (NPPF), Chapter 12, 'Achieving Well Designed Places', states that 'the creation of high quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve'. The NPPF is also supplemented by the National Design Guide (NDG).
- 8.8 Policy PCS23 (Design & Conservation) echoes the principles of good design set out within the NPPF requiring all new development to be well designed, seeking excellent architectural quality; public and private spaces that are clearly defined, as well as being safe, vibrant and attractive; relate to the geography and history of Portsmouth; is of an appropriate scale, density, layout, appearance and materials in relation to the particular context; create new views and juxtapositions that adds to the variety and texture of setting; and protection of amenity and provision of good standard of living environment for neighbouring and local occupiers as well as future residents/users of the development.
- 8.9 The surrounding area is predominantly commercial on the Albert Road frontage and there are very minor changes proposed which are considered in keeping with the character of the area and acceptable in principle. The proposed external alterations are mainly the installation of the privacy screening on the Chelsea Road frontage and the flue. The flue would only project above the roof by around 1m and is described as being aluminium. It is recommended that the external aspect of the flue is finished in black powder coating in order to minimise the impact on the Conservation Area, which can be secured through condition. The balustrading would be 1.8m in height from the decking in order to provide adequate screening. This would be very much subservient to the building and would be set back from the edge of the roof. This, coupled with the use of opaque glass presents a soft appearance and is not considered to cause harm to the conservation area. The garage sited on the opposite side of Chelsea Road (also on the border of the conservation area) is also finished in modern materials and as such, a more modern approach on the edge of the conservation area is already established. It is considered that the metal railings should also be powder coated in black to minimise their impact visually and to match the proposed flue and this should also be ensured through a condition.
- 8.10 The proposed new entrance to the flat is acceptable subject to security features as agreed with the designing out crime officer. This should be secured through a condition.

### **Impact on amenities of residential properties**

- 8.11 In addition to requiring good design, Policy PCS23 of the 2012 Portsmouth Plan also requires new development to protect the amenities of and to ensure a good standard of amenity for neighbouring and local residents.
- 8.12 The nature of the area is very much made up of drinking establishments and restaurants and as has been for decades. As such, development such as this is to be expected and it is considered to be in keeping with the nature of the area. It is appreciated that nearby

residents have concerns that the proposal may increase instances of noise nuisance and anti-social behaviour but it is not considered that this could be used as a reason for refusal given the well established character of the area.

- 8.13 Concerns have been raised that the proposed terrace will give rise to further noise disturbance, but this appears to be on the premise that it will be used by patrons of the restaurant/bar. It is clear from the plans that this is not the case and the use of the terrace by the residents of the residential flat and this will be ensured through a condition. It is not considered, based on the location of the area, that it would give rise to an unacceptable level of overlooking or loss of amenity given the 1.8m high screening.
- 8.14 The proposed use does of course have the potential to give rise to a degree of noise that could impact upon the amenities of residential properties opposite on Albert Road and to a lesser degree on Chelsea Road. The Regulatory Services Officer has reviewed the plans and particulars submitted with the application including the details of the use and the extraction systems and raised no objection subject to the conditions discussed below.
- 8.15 It is considered that subject to these conditions that there would be no harmful impact on thereby ensuring compliance with Policy PCS23 of the 2012 Portsmouth Plan.

### **Highways and Parking**

- 8.16 The Highways Officer has reviewed the scheme and raises no concerns. The minor nature of the development is not considered to give rise to Highways Safety concerns and, while the lack of parking results in a shortfall of 1 space as detailed in the parking SPD, the area is highly sustainable and is considered to be an ideal area for car free living.
- 8.17 The application shows cycle storage within the premises of the restaurant, which would provide cycle storage for employees at the site. No dedicated cycle storage is provided for the residential flat but, as annotated a significant amount of the floorspace at flat is available for domestic storage. While this would require carrying a bike up a flight of stairs it is not considered that the lack of defined residential cycle storage justifies withholding planning permission.

### **Human Rights and the Public Sector Equality Duty (PSED)**

- 8.18 The Council is required by the Human Rights Act 1998 to act in a way that is compatible with the European Convention on Human Rights. Virtually all planning applications engage the right to the enjoyment of property and the right to a fair hearing. Indeed, many applications engage the right to respect for private and family life where residential property is affected. Other convention rights may also be engaged. It is important to note that many convention rights are qualified rights, meaning that they are not absolute rights and must be balanced against competing interests as permitted by law. This report seeks such a balance.
- 8.19 Under section 149 of the Equality Act 2010, the Council must have due regard to the need to eliminate discrimination, harassment, or victimisation of persons by reason of their protected characteristics. Further the Council must advance equality of opportunity and foster good relation between those who share a relevant protected characteristic and those who do not. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Having had due regard to the public sector equality duty as it applies to those with protected characteristics in the context of this application, it is not considered that the officer's recommendation would breach the Council's obligations under the Equality



Act 2010.

### Other Issues

- 8.20 It is considered that all matters raised by objectors have been covered through the course of this report.

### CONCLUSION AND PLANNING BALANCE

- 9.1 While there may be some harm arising from the proposed restaurant/bar use, as explained above, the applicant could argue that the use does not require planning permission and as such, given this fallback position, this should be given very little weight. The revitalisation of a building that has fallen out of use on a busy high street is positive and the harm is limited, even less so when controlled through conditions. As such, the scheme is considered acceptable and should be granted permission in accordance with the below conditions. The following recommendations are made to the committee:

**RECOMMENDATION I** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to Grant Conditional Permission subject to:

(a) satisfactory completion of a Legal Agreement necessary to secure the mitigation of the impact of the proposed development on Solent Special Protection Areas (recreational disturbance and nitrates) by securing the payment of a financial contribution.

**RECOMMENDATION II** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to add/amend conditions where necessary.

**RECOMMENDATION III** - That delegated authority be granted to the Assistant Director of Planning & Economic Growth to refuse planning permission if a Legal Agreement has not been satisfactorily completed within three months of the date of this resolution.

### Implementation

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.  
**Reason:** To comply with Section 91 of the Town and Country Planning Act 1990.

### Approved Plans

- 2) Unless otherwise agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - 2162 02.01 REV F  
**Reason:** To ensure the development is implemented in accordance with the permission granted.

### External Materials

- 3) The bricks used in construction shall match those on the existing building, and the metalwork used on the external aspects of the flue and balustrading shall be powder coated in black unless otherwise agreed in writing with the LPA.  
**Reason:** In the interest of visual amenity in accordance with Policy PCS23 of the Portsmouth Plan.

### Odour

- 4) Prior to the commencement of the use, a kitchen extraction system shall be installed to suppress and disperse cooking odours. Details of the proposed equipment shall be submitted to the local authority for approval. Approved equipment shall then be installed

and maintained in accordance with the submitted schedule.

Reason: To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.

#### **Noise**

- 7) Prior to the installation of any fixed plant or equipment an assessment of noise from the operation of the plant shall be undertaken using the procedures within British Standard BS4142:2014 and a report submitted to the local authority for approval. Upon approval all specified measures to mitigate any identified observed adverse effect levels due to the operation of the plant shall be implemented.

Reason: To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.

#### **Sound Insulation**

- 8) Prior to the occupation of the residential flat, a scheme of sound insulation measures designed to reduce the transmission of airborne sound across the separating floor and walls between the commercial use and the first floor proposed residential dwelling shall be submitted to the planning authority. These measures shall ensure that the separating floor can achieve a minimum standard of Dntw+Ctr 55dB. Upon approval these measures shall be implemented and thereafter maintained.

Reason: To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.

#### **Neighbouring Amenity - Screening**

- 8) Prior to the occupation of the residential flat, the screening around the terrace shall be installed as per the approved plans, being 1.8m in height around the perimeter of the terrace. The glass screens shall be opaque to Pilkington Grade 4 level.

Reason; To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.

#### **Neighbouring Amenity - Use of Terrace**

- 9) The terrace hereby approved shall be strictly be for the use of the residents of the residential flat and shall not be used by employees or patrons of the commercial unit within the site.

Reason: To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.

#### **Opening Hours**

- 10) The restaurant/bar/takeaway/function uses hereby approved shall only be open and in operation between the hours of 11:00am and 01:00am on Fridays and Saturdays, and between 11:00am and 23:00 on all other days. The premises shall close to members of the public outside of those hours and no takeaway orders are to be prepared/sent out.

Reason: To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.

#### **Security Features**

- 11) Prior to the occupation of the residential flat, a scheme of security features including lighting and CCTV on the access to the flat within the shall be submitted to and agreed by the LPA in writing. The features shall then be installed and maintained.

Reason: To protect the residential amenity of neighbouring residents in accordance with Policy PCS23 of the Portsmouth Plan.