



Appeal Decision

Hearing held on 29 November 2016

Site visits made on 28 and 29 November 2016

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 08 February 2017

Appeal Ref: APP/Z1775/W/16/3153456

149A Albert Road, St Jude, Southsea 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 Jaspal Singh Ojla (OJ's Discounts Ltd) against the decision of Portsmouth City Council.
 - The application Ref 16/00422/FUL, dated 11 March 2016, was refused by notice dated 26 May 2016.
 - The development proposed is change of use of first floor of Class D2 premises (former Conservative Club) to a Sui-Generis Lap Dancing venue.
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Decision

1. This appeal is allowed and planning permission is granted for the change of use of the first floor of Class D2 premises (former Conservative Club) to a Sui-Generis Lap Dancing venue at 149A Albert Road, St Jude, Southsea PO4 0JW in accordance with the terms of the application Ref 16/00422/FUL, dated 11 March 2016, subject to the conditions out in the attached schedule.

Procedural matters

2. The decision notice issued by the Council had used a different address to that detailed on the application form and used on the appeal documents. At the start of the Hearing the appellant confirmed that the site address was 149A Albert Road.
 3. Given the concerns expressed by a number of interested parties in addition to the accompanied site visit undertaken on the day of the Hearing I also visited the area on an unaccompanied basis the evening before in order to familiarise myself with the current night time character. The same evening I also visited Surrey Street where Wiggle is located. Finally following the accompanied site visit, as agreed at the Hearing, I visited Granada Road on an unaccompanied basis where Elegance, another lap dancing club owned by the appellant, is located.
 4. A signed statement of common ground was submitted prior to the start of Hearing which agreed that the Council and the appellant considered that there were no highway, flooding or residential amenity issues that needed to be discussed at the Hearing.
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Application for costs

5. At the Hearing an application for costs was made by Mr Jaspal Singh Ojla (OJ's Discounts Ltd) against Portsmouth City Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:

- the effect that the use would have on the character of the Albert Road and Elm Grove District Centre; and
- the effect of the proposal on the vitality and viability of the Albert Road and Elm Grove District Centre.

Reasons

7. The Albert Road and Elm Grove District Centre is characterised by a variety of specialist and independent shops, bars and restaurants. The District Centre appears to be well used both during the day and in the evening with an active evening economy resulting from both the bars and restaurants and the existence of a number of well-established entertainment venues such as the Kings Theatre and the Wedgewood Rooms.
8. The Portsmouth Plan: Portsmouth's Core Strategy (2012) (the Core Strategy) contains a number of policies aimed at protecting the vitality and viability of district centres. These include policy PCS8 which provides both general and centre specific criteria. 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.
9. From the evidence presented at the 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. 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.
10. However, from the evidence submitted and what I heard at the Hearing the concern about the effect on both the character and the vitality and viability of the District Centre would appear to stem from the type of use proposed. 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.

11. 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.
12. Whilst fear about safety is capable of being a material consideration¹ there must be some reasonable evidential basis for this fear. To support their position the Interested Parties submitted a copy of an appeal decision² 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. However, 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.
13. Reference was also made to research showing there to be links between lap dancing venues and an increase in sexual violence towards women³. However, 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.
14. Under Section 72 of the Town and Country Planning Act 1990 permission can be granted for a temporary period. The Planning Practice Guidance (the PPG)⁴ advocates that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of a development on an area. 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. The purpose of these policies is consistent with the National Planning Policy Framework (the Framework) which seeks, amongst other things, to support the vitality and viability of town centres.

¹ Smith v FSS (2005)

² PINS reference: APP/Z0116/A/10/2127967

³ The Lilith Report on Lapdancing and Striptease in the Borough of Camden (2003)

⁴ Planning Practice Guidance paragraph 014 reference ID: 21a-014-20140306

Other Matters

15. Local residents raised concerns that given the proposed opening hours the use would give rise to levels of noise and disturbance that would affect their living conditions. However, I note that the previous Inspector⁵ 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.
16. Given the proposed hours of use it was advocated that the majority of visitors would travel to the site by car which would affect the availability of on-street parking and raised highway safety concerns. 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.
17. It has been advocated that the proposal would be contrary to the Council's Sex Establishment Licensing Policy. However, 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.
18. The Public Sector Equality Duty (PSED) contained within the Equality Act 2010, sets out the need to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. A number of Interested Parties have advocated that a lap dancing venue which results in the sexual objectification of women and that increases concerns for the safety of women and children, would be contrary to the PSED. As protected characteristics include age and sex I agree that the PSED is relevant to this case.
19. However, the duty required under PSED is not a positive duty to eliminate discrimination, advance opportunity or foster good relations, rather it is a duty to ensure that any decision which may have a negative impact on equality is taken having given careful consideration to alternative less harmful ways of making the decision⁶. Where negative impacts are identified, potential ways to mitigate these should be considered. For the reasons I have already outlined I recognise that there is a fear about safety albeit that there is limited factual evidence to either support or refute this and concerns regarding the appropriateness of the use given the proximity of a number of uses that are regularly visited by children. Given the lack of conclusive evidence regarding safety and the sensitivities surrounding the proposed use I consider that a

⁵ PINS reference: APP/Z1775/W/15/3002302

⁶ R(Baker) v SSCLG [2008] EWCA Civ 141

precautionary approach would be appropriate. This could be achieved by taking measures to ensure that its visibility within the streetscene was minimised and allowing the use to operate on a temporary basis thereby enabling it to be monitored to assess the effect of the proposal. Having considered the case overall I consider this to be a proportionate response to the harm that may arise from the development. My conclusion on these matters also means that the requirements of Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights as incorporated by the Human Right Act 1998 would not be breached.

20. Concerns were raised regarding the appropriateness of the content of leaflets advertising the appellants other venues and that if the use was allowed that such leaflets would be distributed locally to advertise this venue. This was considered particularly sensitive given that in the leaflets women were dressed as schoolgirls and the proximity of a number of schools. However, the content of leaflets and how or when they are distributed is not a matter that is controlled by planning legislation.
21. There were a number of allegations that illegal activities were often carried out from lap dancing venues and that lap dancing is linked with other forms of sexual exploitation. 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.

Conditions

22. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council against paragraph 206, the advice contained within the PPG and the discussions at the Hearing. Where necessary I have adjusted their wording in the interests of clarity. For the avoidance of doubt and in the interests of proper planning I have included a condition that requires the development to be carried out in accordance with the approved plans.
23. 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.
24. An hours of use condition is considered necessary to ensure that the use would be operated in the terms it was applied for.

25. 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.

Conclusion

26. For the reasons given above and having considered all other matters raised, I conclude the appeal should be allowed.

Jo Dowling

INSPECTOR

APPERANCES

FOR THE APPELLANT

Les Weymes	Planning Agent
Jaspal Ojla	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Simon Barnett	Principal Planning Officer, Portsmouth City Council
Niall McAteer	Planning Officer, Portsmouth City Council

INTERESTED PARTIES

Jenni Catlow	Local resident
Charlie Dacke	Local resident
Cllr Suzy Horton	Ward councillor for Central Southsea Ward
Ann Jones	Local resident
Anna Koor	Local resident
Susan McCombie	Local resident
Patricia Mouney	Local resident
Andrew Pearce	Local business owner
Jane Walker	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

Document 1	Copy of appeal decision APP/Z0116/A/10/2127976
Document 2	Details of the TRaP project personal safety workshop plan
Document 3	Map of Albert Road and Elm Grove District centre

DOCUMENTS SUBMITTED AFTER THE HEARING

Document 1	Copy of letter sent to Portsmouth News and covering email from Maggie Ambler
Document 2	Letter dated 29 November 2016 from Portsmouth City Council responding to the appellant's application for costs.
Document 3	Letter dated 14 December 2016 from appellant in response to Council's letter of 29 November 2016

Schedule of conditions

1. The development hereby permitted shall begin no later than three years from the date of this decision. The use hereby permitted shall be for a limited period being the period of 36 months from the date of the use opening of which the local planning authority shall have been notified in writing. The use hereby permitted shall be discontinued on or before the end of this 36 month period in accordance with details that shall have been submitted to and approved in writing by the local planning authority.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 13.228.01. A and untitled plan that shows proposed floorplan and elevation.
3. Customers shall only be permitted on the premises between the following hours:

21:00-04:00 Monday-Sunday
4. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (or any regulations revoking or re-enacting those regulations with or without modification), no adverts or signs that would be covered by those Regulations shall be displayed on the building without the prior written approval of the local planning authority. Any adverts and signs shall be carried out in accordance with the approved details.