

**STATES OF JERSEY**

**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**

**APPEAL OF A DECISION UNDER ARTICLE 108**

**REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**

**by Mr Philip Staddon BSc, Dip, MBA, MRTPI**

**an Inspector appointed under Article 107**

**APPEAL BY: Pomme D'Or Hotel (1932) Limited**

**AGAINST: Approval of planning permission for 'revised plans: change of use from restaurant to public house, restaurant and entertainment venue.' Decision dated 19 March 2015**

**LOCATION: 14 – 16 Weighbridge Place, Weighbridge Street, St. Helier, JE2 3NF**

**REFERENCE: RP/2014/2198**

**APPEAL PROCEDURE: Hearing – held on 13 October 2015**

**SITE VISIT: 13 October 2015**

**DATE: 26 October 2015**

## **Introduction**

1. This report contains my assessment of the appeal made by Pomme D'Or Hotel (1932) Limited (the Appellant). The appeal is made against the decision of the Department of the Environment on 19 March 2015 to grant planning permission for a 'revised plans' application in respect of a development proposal on a site adjacent the Appellant's hotel business.
2. In March 2013, planning permission was granted for the comprehensive redevelopment of a site formerly occupied by the Southampton Hotel and 15-16 Weighbridge Place (Reference: P/2011/0840). The approved scheme entailed the demolition of most of the buildings on the site (the facade of the Southampton Hotel was to be retained) and the construction of a new building comprising a basement, ground floor restaurant, four storeys of offices and an upper storey housing plant and storage, along with external public realm improvement works.
3. The 'revised plans' application relates solely to the previously approved restaurant floorspace and it sought planning permission for a 'change of use' from the permitted use ('restaurant') to a use described in the decision notice as '*public house, restaurant and entertainment venue*'. The Department of the Environment granted planning permission for this revision / change of use on 19 March 2015. Two Planning conditions were imposed, one requiring precise details of the entrance doors and the other requiring details of security camera installations.
4. At the time of my inspection (October 2015) the building works on this major project were nearing completion, although no fitting out works of the restaurant space and the basement kitchen had commenced.

## **The appeal site and the surrounding area**

5. The appeal site is situated on the north-western side of Weighbridge Square just to the south of St. Helier town centre and adjacent to the public spaces of Liberation Square and Weighbridge Place. Further to the south are the town's quays and marinas. The locality is a vibrant and busy one, with a mixture of uses serving the tourist trade and the town's evening economy. It includes a number of hotels, bars, restaurants, shops, public spaces, the bus station and taxi ranks.
6. The building that previously occupied the appeal site comprised the Southampton Hotel (14 Weighbridge) which fronted Liberation Square and nos. 15 and 16 Weighbridge, which fronted towards the open space at Weighbridge Place. The building complex included two drinking establishments at ground floor level; the Southampton Hotel itself which operated as a traditional pub and 'Traders', which I am told was operated for a younger clientele and had a late licence. There was also a shop unit. The upper floors were used, in part, for staff accommodation and storage; the remaining space had been vacant in recent years.

## **The Appellant's hotel business and the grounds of appeal**

7. The Pomme D'Or hotel lies immediately adjacent to the appeal site. It is one of Jersey's oldest and best known hotels. The hotel's history can be traced back to 1837 and, over the intervening period, it has evolved, expanded and adapted to meet the changing visitor and tourist trade.
8. Today the Pomme D'Or houses 143 bedrooms and is registered to accommodate up to 285 guests. It has a four star industry rating and includes dining, bar and function room facilities. The Appellant advises that each year tens of thousands of guests stay at the hotel for leisure and business purposes.
9. The Appellant's main grounds of appeal concern the negative impact the change of use is considered to have on the operation of the hotel and the locality. In particular, the Appellant is concerned that the proposal will result in additional noise, nuisance, crime and disturbance impacts to hotel guests and that these will exacerbate existing problems, notably on Friday and Saturday evenings and night times. The grounds of appeal are more fully explored later in this report.

## **The Island Plan 2011 (Revised 2014) – policy considerations**

10. The Island Plan has primacy in decision making on planning applications. There is a general legal presumption that development in accordance with the plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'<sup>1</sup> for overriding its provisions.
11. The appeal site falls within the Plan's defined St. Helier 'Town Centre', although it is just outside the 'Core Retail Area' (the Pomme D'Or falls under both designations). Policy SP 3 adopts an overarching sequential approach to development, directing new shopping and office employment to the town centre.
12. More specifically, Policy ER 5 sets out the approach to evening economy development. It states that "*proposals for arts and cultural venues, restaurants, cafes, public houses and other non-retail uses will be permitted within the town centre of St. Helier, local shopping centres and Tourist Destination Areas, provided that the development accords with Policy GD 1 'General development considerations.'*" The pre-ambble to Policy ER 5 states that "*with regard to proposals for new night-clubs and other uses with the potential to cause noise or other disturbance, the Minister will pay particular attention to the impact on nearby homes and other residential accommodation, including tourist accommodation, and the character and amenity of the area.*"
13. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality.

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<sup>1</sup> Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

## Discussion and assessment

### *Defining the use*

14. The Hearing session debates exposed, and hopefully helped to resolve, a degree of confusion over the precise nature of the change of use. The previously permitted use of the floorspace as 'a restaurant' was unambiguous and would clearly fall under Use Class B(a)<sup>2</sup>. The appeal proposal description contained in the decision notice (*'public house, restaurant and entertainment venue'*) is less clear. It combines the previously consented B(a) class use (a restaurant), with a use specifically excluded from the Use Classes (a public house), along with a further 'use' which, to my mind, has little meaning or precision in Planning terms (an 'entertainment venue').
15. Based on the evidence, the Applicant's proposed business model appears to be essentially restaurant based. The rationale for the change of use application was a view, shared by the Department's officers, that the addition of drinking and entertainment activities migrated the use beyond the boundaries of the B(a) class and in to a 'mixed use' in a class of its own (known in Planning as a *sui generis* use).
16. The precise nature of the intended use is described in a letter submitted by the Applicant during the course of the application<sup>3</sup>. It details '*an upper mid market bar and restaurant' with '...a sizeable part of the premises ..being designed to accommodate restaurant diners'*. The letter also set out the intention to provide '*a varied mix of quality entertainment in the evenings from 9.00pm/9.30 pm...such as live jazz, acoustic sets and solo vocalists.'*
17. The submitted plans reflect this description. The large basement kitchen along with the largely seated ground floor layout (I was advised that most of the tables would be fixed) all appear to confirm a business model where the prime and dominant use is a dining restaurant experience, supplemented by other use / activity components. However, this is not clear from the description used in the Decision Notice. It could lead to concerns about enforceability should, as the Appellant fears is a possibility, the supplementary uses were to wax and the restaurant use were to wane. Notwithstanding other matters, I consider that this ambiguity can be addressed by a revised description and a Planning condition.

### *The principle of the use*

18. Having clarified the precise use, it is clear to me that it benefits from the positive presumption towards evening economy uses in the town centre as set out in Policy ER 5. Under that policy, such uses are acceptable 'in principle' in Planning terms. However, that positive presumption is caveated by, and contingent upon, an assessment of the more general Policy GD 1 considerations. In practice what this means is that if sufficiently adverse effects under GD1 were evidenced, the ER 5 presumption may be

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<sup>2</sup> Class B (a) of the Planning and Building (General development) Jersey order 2011

<sup>3</sup> Liberation Group letter to Minister for Planning & Environment – dated 19 February 2015

outweighed. These issues, along with some related matters, are explored below through a discussion of the grounds of appeal.

*Policies ER 5 and GD 1 considerations (Grounds 1 and 2 of the Appellant's case)*

19. The Appellant contends that insufficient regard has been paid to Policy ER 5 / GD 1 considerations, notably in respect of the impact on hotel guests and the character of the area. The Appellant explained that hotel guests, by their transient nature, do not have an effective voice on Planning applications. However, there is an established history of complaints from guests about noise, nuisance and disturbance, particularly on Friday and Saturday nights. The Appellant explained that there were 25 licenced premises in the area and, of these, 7 were late night bars or night clubs, along with hot food shops serving late night revellers. Despite investing in double glazing and air conditioning, the complaints continued from Pomme D'Or guests about shouting, disturbance and anti-social behaviour.
20. There are some complex issues to untangle here. First, it is clear to me that there are some, perhaps longstanding, tensions between the evening economy and the hotel trade in the vicinity. Second, such tensions are not uncommon in town centres, particularly vibrant ones where hotels and night-time uses co-exist. Third, the causes of those tensions and problems are complex and multi-faceted and extend beyond the number and proximity of establishments to include matters of licensing, premises management, taxis, policing, demographics and societal norms and values. Fourth, it is unlikely that town centres can ever fully 'solve' these problems, although they clearly can be managed.
21. To an extent at least, Planning is part of that wider management in terms of deciding where such uses are appropriate in land use terms. Accordingly, the assessment under Policy ER 5 and Policy GD 1 are extremely important. However, the appeal proposal must be judged on its individual merits and not on supposition. It is also important to recognise that the longstanding use of the site was as an intrinsic part of the town's nightlife (the Southampton Hotel and the Traders bar).
22. With the description of the new proposed use more precisely defined, I consider that it could be seen to offer some notable benefits over the longstanding previous uses on the site. There has been substantial investment in the building itself and in the public realm works. The proposed use does not seem, to my mind at least, to have a strong natural affinity with potential rowdiness and anti-social behaviour. Indeed, the proposed licensed capacity would be lower than the previous establishments; it would be extensively seated in its layout and principally based around a dining restaurant. In addition, acoustic insulation has been installed (adjacent to the Pomme D'Or) and the scheme will fund a further Police security camera.
23. Overall, I do not consider that, subject to the use being more clearly defined, there is evidence that the use would create undue adverse impacts on hotel guests or the local area.

### *Crime (Ground 3)*

24. The Appellant considers that insufficient regard has been given to crime pattern analysis, notably in terms of drunkenness and public order offences. I have studied this information and whilst it does serve to confirm existing issues and problems, the key test here is whether the appeal proposal will make matters materially worse.
25. In my view, there is no evidence to suggest that this will be the case for the reasons I have set out above. This is a view shared by the States of Jersey Police Crime Reduction Officer who has assessed the proposal in some detail and raised no objection. I must give appropriate weight to these views in reaching my assessment.

### *Licensing matters (Ground 4)*

26. The Hearing sessions explored the somewhat overlapping regimes of Planning and Licensing<sup>4</sup>. Whilst there are some blurred boundaries, my focus is on land use planning matters. Accordingly, I have not considered the issues relating to different types of premises licences, as they are not directly relevant to my assessment and findings.

### *Cumulative impact and precedent (Ground 5 and Ground 10)*

27. The Appellant is concerned that adding a further night time use to the existing local concentration would have 'an unreasonable impact on adjoining properties' and conflict with Policy GD 1. Whilst there is undoubtedly a concentration of night time uses in the area (with associated impacts), I do not accept that the addition of the appeal proposal will necessarily have an unreasonable impact.
28. Indeed, the proposal actually represents a transition from two drinks based establishments (Traders and the Southampton Hotel) to one (primarily) restaurant based mixed use. I do not consider that there is evidence to suggest an unreasonable impact, or that the development sets a precedent for further developments. Any future proposals for additional night time uses will need to be considered on their individual merits against the prevailing Planning policies.

### *Planning conditions (Grounds 6,7, 8 and 9)*

29. Notwithstanding the more fundamental objections, the Appellant contends that three additional Planning conditions should be imposed.
30. First, it is argued that a condition ought more precisely define and control the use. For reasons set out above, I agree.
31. Second, it is contended that a condition should be imposed to ensure that the noise insulation measures are maintained. I agree that a 'belt and braces' condition should be imposed as there is a possibility in the future that internal re-planning / alterations may disturb those measures.

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<sup>4</sup> Under the Licensing (Jersey) Law 1974

32. Third, it is suggested that an opening hours condition should be imposed. I do not agree with this suggestion, as I do think that trading hours of licensed premises are more appropriately controlled through the licensing regime.

### **Conclusions and recommendation**

33. The change of use proposal was not clearly defined in the Decision Notice. However, it is clear to me that the proposed change of use accords with Policy ER 5 of the Island Plan which makes a positive presumption in favour of night time uses in St Helier's defined town centre. Whilst I acknowledge that there are some evidenced difficulties arising from the operation of the existing evening economy, the appeal proposal must be judged on its individual merits.
34. In my view, there is no evidence to suggest that it would result in a material increase in noise, anti-social behaviour or crime patterns. Indeed, the proposal seems to offer the potential for some benefits to the evening and night time economies and appears to be supported by the Police.
35. However, I do consider that there is a need to more accurately describe and control the use in Planning terms. I also consider that a condition ensuring that the scheme of acoustic insulation is maintained at all times would serve a useful Planning purpose.
36. For the reasons stated above, the Minister is recommended to dismiss this appeal in so far as it relates to the principle of the use, but to allow it in part in terms of the matters I have set out below as a schedule of recommended changes to the Decision Notice.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**

Attached - Appendix A - Schedule of Recommended Changes to the Decision Notice – reference RP/2014/2198

## **Appendix A**

Schedule of Recommended Changes to the Decision Notice - reference RP/2014/2198

Modification Number	Modification
1	<p><u>Description</u></p> <p>Replace with the following text: <i>REVISED PLANS: Change of use of previously permitted Restaurant Use (Use Class B(a)) to a mixed use comprising a Restaurant with associated ancillary Public House and Entertainment Uses.</i></p>
2	<p>Add Condition 3</p> <p><u>Condition 3</u>: The use hereby permitted shall be the mixed use defined in the Applicant's letter dated 19 February 2015 and this permission shall not permit any material change from that use.</p> <p><u>Reason</u>: For the avoidance of doubt.</p>
3	<p>Add Condition 4</p> <p><u>Condition 4</u>: The approved scheme of acoustic insulation shall be fully implemented prior to the commencement of the use hereby permitted and shall be satisfactorily maintained thereafter.</p> <p><u>Reason</u>: to protect the amenities of neighbouring properties and occupiers in accordance with Policy GD 1 of The Revised Island Plan 2011.</p>