

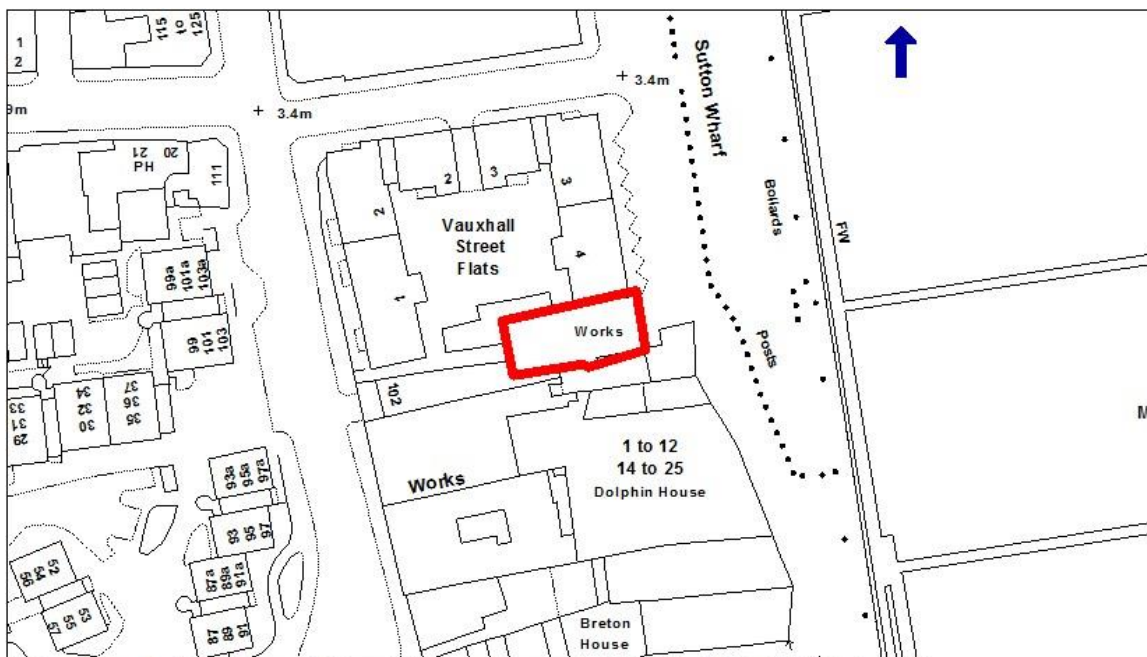
PLANNING APPLICATION REPORT



Application Number	15/01367/FUL	Item	03
Date Valid	27/07/2015	Ward	St Peter & The Waterfront

Site Address	MEZE GRILL, SUTTON WHARF, SUTTON HARBOUR PLYMOUTH		
Proposal	Retrospective construction of decking and balustrading		
Applicant	Mr Paris Oxiniou		
Application Type	Full Application		
Target Date	21/09/2015	Committee Date	Planning Committee: 27 August 2015
Decision Category	Member Referral		
Case Officer	Kate Price		
Recommendation	Refuse		

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This application is being brought to the Planning Committee because it has been called in by Councillor Chris Penberthy.

1. Description of site

Meze Grill is a restaurant occupying the ground floor of a grade II listed building which was formerly the Marine Bazaar and a ship chandler's. It had been one of the many warehouses lining the streets and quayside of the Barbican and dates from the 19th century. The property is on Sutton Wharf, the east side of Sutton Harbour, and next to the former Fox and Haggart Engineering works (currently unoccupied) and also next to three storey flats. It is in the Barbican Conservation Area. Part of the Fox and Haggart ownership projects into part of the front elevation of the property and has a granite sett apron immediately in front of it demarcated by cast iron bollards and chains. The new decking occupies the space at the front of property approximately 2.00m from the principal entrance and its south side up against the Fox and Haggart boundary, and slightly set back from the north – east corner of the Fox and Haggart enclosure. The site is also designated public highway and the Council has served a Highway Enforcement Notice due to obstruction under S143 of The Highways Act 1980 for the decking to be removed by 20th August 2015.

2. Proposal description

Retrospective application for the construction of new decking and balustrading

3. Pre-application enquiry

None

4. Relevant planning history

None for this particular application

5. Consultation responses

Local Highway Authority - recommend refusal

Public Protection Service – no objections

Queens Harbour Master - reply awaited

Waterfront Partnership – reply awaited

Environment Agency - reply awaited

6. Representations

NB The consultation period expires 25th August and, at the date of writing this report, eight letters of representation have been received – 6 objections and 2 letters of support.

The main reasons for objection are summarised as follows:

- The application seeks to regularise an illegal act
- The validation process is flawed
- The information contained in the application is inaccurate

- Illegal acts should not be rewarded
- The decking occupies a space currently used for vehicle turning
- The decking has been illegally placed on the highway and reduces available road width
- There are implications for vehicular and pedestrian access and not none as the applicant has stated
- Pedestrians need to walk around the decking
- The flood risk questions have not been answered correctly as it is a flood risk area
- Queried the ownership of the highway
- Commented that Listed building Consent has been applied for and is not necessary as the decking is not on the application site
- Disagree with the applicant's statement that the decking installation does no harm - noise and anti-social behaviour occurs at night on the Barbican and the extension of the restaurant will exacerbate the situation
- Increase of noise and odours to the adjacent flats
- Largely a residential area and proposal will have significant impact
- Applicant has extended the area of decking by installing planters and menu boards in addition
- Parking issues have been worse since the platform has been constructed
- The original license for four tables was for until 8.00pm but was repeatedly ignored

The reasons for support are as follows:

- The decking and sitting out area is a massive improvement to enjoy the view
- The decking helps because improvement on the cobbles
- This enhances the area and is what is needed on this side of the Barbican

7. Relevant Policy Framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises of the Local Development Framework Core Strategy (Adopted April 2007). *In the case of this application, it also comprises the Sutton Harbour Area Action Plan.*

The development plan is currently being reviewed as part of the Plymouth Plan. The Plymouth Plan-Part One: Consultation Draft (January 2015) has been subject to a consultation process and representations received are currently being reviewed. As such it is a material consideration for the purposes of planning decisions.

The policies contained in National Planning Policy Framework (the Framework) and guidance in National Planning Practice Guidance (NPPG) are also material considerations which should be taken into account in the determination of planning applications. Due weight should be given to relevant

policies in existing and emerging plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The Framework provides that the weight to be given to an emerging draft plan is also to be determined according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given). The Plymouth Plan is at an early stage of preparation.
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given).

At the heart of the Framework is a presumption in favour of sustainable development. In the context of planning applications, this means approving development proposals that accord with the development plan without delay but where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits; or
- Specific policies in the Framework indicate development should be restricted.

Additionally, the following planning documents are also material considerations in the determination of the application:

- *Sustainable Design Supplementary Planning Document*
- *Development Guidelines Supplementary Planning Document*
- *Barbican Conservation Area Appraisal and Management Plan*

8. Analysis

1. This application has been considered in the context of the development plan, the draft Plymouth Plan, the Framework and other material policy documents as set out in Section 7 with particular regard to CS02 Design, CS03 Historic Environment, CS28 Local Transport Considerations, CS34 Planning Considerations and Objective 3 (Safe, High Quality Environment) of the Sutton Harbour Area Action Plan.
2. As this application has been brought to the 27th August 2015 Planning Committee any further letters of representation received after the report has been published and before the expiry date for consultations (25th August 2015) will be reported in an addendum report. Officers consider there is an urgency to bring this application to Planning Committee on the 27th August since the Council has served a Highways Enforcement Notice under S143 of the Highways Act 1980 due to the obstruction caused to the highway by this development and the applicant is being asked to remove the development by 20th August 2015. Although this action is not a planning consideration and Members should not let it influence their determination of this application, an early Planning decision would be helpful in the consideration of further action that the Council might take.
3. With regard to policy CS 28 Local Transport Considerations officers consider that the development is not acceptable in principle and the primary reason is the Local Highway Authority objection. The Local Highway Authority has objected to the use of the space for decking. They have advised the following: *“The Council’s records indicate the public highway extends for the full width of and up to the front face of the application building. The section of the*

street beyond the turning head where the decking is situated, going toward Vauxhall Quay (south), narrows in width and is 'One Way' and has restricted vehicle access (with signs indicating 'Except for Access'), and is not intended to carry through traffic. Consequently the wider carriageway area outside the restaurant is required to function as a vehicle turning head within the highway, and is therefore essential to enable vehicles to comply with the Road Traffic Orders, notwithstanding that there might be some through traffic there. From the Transport and highway perspective the decking within the highway turning head is considered unlawful and in contravention of the Highways Act 1980. Transport is mindful that the Council as Highway Authority has a duty under Section 130 (1 & 2) of the Act, 'to assert and protect the rights of the public to use and enjoyment of any highway' 'in their area', and (3) 'to prevent, as far as possible, the stopping up or obstruction of any highway, 'if, in their opinion, the stopping up or obstruction of the highway would be prejudicial to the interest of their area'. Further, Section 137 of the Highways Act 1980 seeks to prevent obstruction of highways and streets, and states 'If a person, without lawful authority or excuse, in any way willfully obstructs the free passage along a highway he is guilty of an offence'.

This decking occupies a similar space on which the applicant previously sited 5 tables and associated sets of chairs for which a license has already been obtained from the Council and which runs from 1st April 2015 to 31st March 2016. However the table and chairs are more temporary in nature than this decking which is the subject of this application and are taken in each night. When the tables and chairs are in place the pedestrians do still need to walk around although generally would take a diagonal route and vehicles still have some difficulty in being able to turn.

4. The hours of use are cited in the application form as Monday to Friday 12.00 - 15.00 and 17.00-22.00 and the agent has confirmed subsequently in writing that these are for every day including Saturdays, Sundays and Bank Holidays. Therefore the application is being considered on the basis that the decking will be used by the restaurant during these hours every day of the week.
5. The proposals have been carefully considered with regard to CS02 Design and CS03 the Historic Environment, and with special regard to the setting of the Listed Building itself, and others around it, and the Barbican Conservation Area and its effect on these. Officers consider this is acceptable in that the timber decking and simple rope balustrading is not intrusive and is of a small scale. The installation as proposed has been described as temporary from the beginning of April to end of September (confirmed by agent by email) but it is being assessed on the basis that, if approved, it would be likely to be an all year round installation. The decking sits on the historic granite setts/cobbles of Sutton Wharf which are an immensely important part of the character of the Barbican and which have been specifically highlighted in the adopted Barbican Conservation Area and Management Plan. It is considered that the proposal is not substantial harm, the installation is entirely reversible and therefore it could be acceptable with regard to Historic Environment.
6. With regard to CS34 Planning Considerations, and in particular residential amenity, there is a three storey residential block immediately to the north of the site and Dolphin Court to the south one block away from the intervening Fox and Haggart building. There is potential for nuisance from noise and odours from the use. However Public Protection Service has been consulted and they have not raised any objections.
7. The Core Strategy Document and The Sutton Harbour Area Action Plan have stated as one of their aims to improve the continuity around the waterfront and harbourside and officers consider this addition is compatible with that aim. In particular Objective 3 of the Sutton

Harbour Area Action Plan envisages a visually accessible waterfront enlivened with entertainment, leisure and cultural uses.

8. The proposal makes sufficient provision for sustainability in terms of both the NPPF and the Council's own policies in that it is demountable, and reusable, and constructed in recyclable materials.
9. The proposal does not specifically make provision for climate change in terms of both the NPPF and the Council's own policies. Although the installation is within the flood risk area it is not contained within a space where water could accumulate or endanger people and this position is no different than many areas of outside seating within the Barbican. There is also no domestic occupation.

Queen's Harbourmaster, The Waterfront Partnership and Environment Agency have been consulted and a reply from them is awaited. Any responses will be provided in the form of an addendum report to Planning Committee.

9. Human Rights

Human Rights Act – The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

10. Local Finance Considerations

None applicable to this application

11. Planning Obligations

None

12. Equalities and Diversities

There are two steps up to the decking from the front of the restaurant and therefore is not accessible to those in a wheelchair.

13. Conclusions

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal does not accord with policy and national guidance and specifically CS 28 Local Transport Considerations.

14. Recommendation

In respect of the application dated **27/07/2015** and the submitted drawings Drawing I20/GA/01 Rev A including plan, photographs, specification and location plan, it is recommended to: **Refuse**

15. Reasons

LOSS OF PUBLIC HIGHWAY TURNING AREA

(1) Loss of public highway turning area:

The proposal will result in the loss of the existing public highway turning area, the loss of which is likely to give rise to associated issues of highway and public safety and encourage contravention of the traffic flow order that is in operation in the street, and be detrimental to the street amenity and use: -

- a) Damage to amenity;
- b) Prejudice to public safety and convenience;
- c) Interference with the free flow of traffic on the highway;

which is contrary to Policy CS28.2(2) and Policy CS34 of the adopted City of Plymouth Local Development Framework Core Strategy adopted April 2007

INFORMATIVE

(1) Notwithstanding any planning consent the structure would remain unlawful and the applicant's attention is drawn to the fact that the unlawful structure is subject to enforcement action for removal by the Council as Highway Authority. Should the applicant fail to remove it within the specified time then the Highway Authority will take action for removal and costs borne by the applicant.

REFUSAL (NO NEGOTIATION)

(2) In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission. This includes the offer of pre-application discussions to resolve issues of concern to the Council prior to formal submission of a planning application. However in this case the proposal is not sustainable development for the reasons set out and the Council was unable to identify a way of securing a development that improves the economic, social and environmental conditions of the area.

CS28 - Local Transport Consideration

CS34 - Planning Application Consideration

CS03 - Historic Environment

CS02 – Design

Objective 3 (Safe, High Quality Environment) of the Sutton Harbour Area Action Plan

NPPF - National Planning Policy Framework March 2012