

Simon Davis

From: Simon Davis
Sent: 23 December 2013 16:26
To: Linda Standley
Subject: FW: Planning Consultation on: AW/336/13/
Attachments: Java ViewTIFF Print.pdf

Hi Linda,

In your consultation response, I note that you ask for the following:

- We'd like to see occupancy figures please.
- We'd also like to see some kind of viability assessment, which could include the figures requested above as well as any efforts that have been made to attract any other providers to take on the accommodation as a hotel.
- We note that no figures have been provided as to how many jobs are being created or lost and we would like to have this information.

I attach the planning statement which includes a viability statement as an appendix (Appendix 3) as well as a confidential statement by the applicant (Appendix 2). Perhaps these items contain some/all of the information you request?

Kind Regards

Simon J Davis MRTPI, Senior Planning Officer, Development Control
Arun District Council (First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF)
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Simon Davis

From: Jo Tasker [REDACTED]
Sent: 11 February 2014 13:08
To: Simon Davis; Daniel Vick
Cc: Mike Langworth
Subject: FW: Russell Hotel - CMS 2801

Dear Simon

I am writing further to your message below and our recent conversation.

I can confirm that, as you noted, the information below relates to the hotel group. I am advised as follows:

The trading position overall has worsened since the 2012 figures were published. While income has gone up costs have risen even faster resulting in a deficit that is £132k worse than the prior year.

Occupancy has fallen overall by 5%.

At an operating level before overheads overall it appears the Action for Blind People's Hotel group lost £457k in 2012/13 illustrating the challenging nature of the market place.

I trust that this clarifies matters

Regards

Jo Tasker
BSc (Hons) BTP MRTPI
Associate Planner
ROBINSON ESCOTT PLANNING

Downe House, 303 High Street, Orpington, Kent BR6 0NN Tel: 01689 836334 / Fax: 01689 878091

From: Simon Davis [mailto:Simon.Davis@arun.gov.uk]
Sent: 06 February 2014 13:14
To: Jo Tasker
Subject: RE: Russell Hotel - CMS 2801

Hi Jo,

Further to our conversation earlier, I wanted to see if the Action for Blind People's website contained any financial information along the lines of what we discussed. I see that there is a 2012/13 Financial review (<https://www.actionforblindpeople.org.uk/about-us/downloads/show/145>) on their site which firstly states that:

"Owing to the prevailing economic environment, our hotels did not fully achieve their financial targets this year, but have achieved an important increase over last year" (bottom of page 14) and then on page 15, "The net cost of the hotels was £1.480m (2012: 1.348m). Although, not fully achieved, as noted above, our financial aim by 2013 was breakeven at operating level before charging depreciation, central overheads and certain other specific expenses".

I cannot see in the report exactly where the figures are that say what the hotels achieved towards their net costs. I did wonder whether the £1.48m figure quoted above was that which you mentioned in our telephone conversation? If so, the report would seem to suggest that whilst the hotels did not fully pay for themselves, they did come close to doing so.

Dan Vick and I are just wondering why there is this confidentiality issue when surely a charity's financial situation should be in the public domain anyway – and the fact that financial reports are available on their website seems to confirm this (although I note that the hotel's balance sheet is not available).

Kind Regards

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From: Jo Tasker [redacted]
Sent: 31 January 2014 09:48
To: Simon Davis
Subject: RE: Russell Hotel - CMS 2801

Thank you Simon

We will look at this and respond.

Regards

Jo Tasker
BSc (Hons) BTP MRTPI
Associate Planner
ROBINSON ESCOTT PLANNING

Downe House, 303 High Street, Orpington, Kent BR6 0NN Tel: 01689 836334 / Fax: 01689 878091

From: Simon Davis [<mailto:Simon.Davis@arun.gov.uk>]
Sent: 31 January 2014 09:44
To: Jo Tasker
Subject: FW: Russell Hotel - CMS 2801
Importance: High

Dear Jo,

Please see the advice below which I have received regarding the confidential details. Perhaps you can digest the information and then let me know your thoughts.

Kind Regards

Simon J Davis MRTPI, Senior Planning Officer, Development Control
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From: Heidi-Anne O'Neill
Sent: 30 January 2014 17:56

Simon Davis
Subject: Russell Hotel - CMS 2801
Importance: High

Dear Simon

Thank you for your patience.

I appreciate the concerns of the applicant, and Action for Blind People, regarding the potential public disclosure of confidential information to support a planning application on the site of the Russell Hotel. The consideration of confidentiality is, in my opinion, relevant not only because of the Council's requirement to make information relating to planning applications public but also because the Council will have a duty to supply documents as part of an information request.

The issue of confidentiality in planning applications has, no doubt, been considered by Delwyn but I take this opportunity to add my observations for the sake of completeness. You will no doubt be aware of the need to balance the Council's duty to the applicant (and Action for the Blind) to keep information confidential and the Council's duty to make sufficient information available to consultees to enable them to provide intelligent responses to the application. You may therefore have to be prepared to release the "gist" of the information, which you have redacted from public view, if requested to do so. Such was the advice by the Court in R (English) v East Staffordshire Borough Council & Anor [2010] EWHC 2744 (Admin) where financial information was withheld from objectors and the planning committee deciding on the application. In that case however, the financial information was subject to an independent review and this fact alone may have swayed the court. I suspect Delwyn may be able to elaborate further on this, if necessary, as the information you are obliged to provide to the public as part of the planning application is, I believe, a separate issue for consideration.

So far as information requests are concerned, a request can be made at any time by anyone to view the redacted information, or indeed any information held back from public disclosure, in a planning application. Such a request, for planning, would be considered under the Environmental Information Regulations 2004. These Regulations place an obligation on the part of the Council to release information unless there is a "good reason" not to. These "good reasons" come in the form of a limited number of exceptions. One such exception allows the Council to refuse to release information where disclosure would adversely affect the "confidentiality of commercial or industrial information where such confidentiality is protected by law". The triggers that need to be considered are therefore: -

- (1) that the information is of a commercial nature [the redacted information appears to be so],
- (2) that the information is subject to a duty of confidence which is provided by law [the Information Commissioners Office accept that information (such as viability reports) can be supplied as part of a planning application and be kept confidential for the purposes of the Environmental Information Regulations 2004 – Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012 24 May 2012)],
- (3) that the confidentiality is required to protect a legitimate economic interest [this appears to be the case with Action for Blind People], and
- (4) that disclosure of the information would adversely affect the legitimate interest in (3) which the confidentiality was supposed to protect [it may be helpful to obtain details of any adverse effects as this would assist if we need to consider the disclosure of the redacted information in the future. It would also be helpful to find out whether there is a timescale in which disclosure would cause such adverse effects as the importance, and sensitivity, of information can diminish over time).

Assuming the triggers are met and the exception can be applied then the Council is also statutorily obliged to consider the public interest test before releasing or withholding documents from disclosure. This simply means that we have to consider whether the public interest in favour of disclosure outweighs the public interest in withholding the information. The Environmental Information Regulations 2004 specifically require the Council to apply a presumption in favour of disclosure so there are occasions when we have to release information even though it is

confidential and disclosure would harm someone's legitimate economic interest. In practice this means that, despite assertions about confidentiality and the adverse effects of disclosure, we may still be required to release the redacted information submitted as part of this application. This is because the public interest considerations can change depending on political climates and sensitivities. It is for this reason that I have said, in earlier correspondence, that it is not possible to offer a blanket guarantee to confidentiality if an information request were to be received seeking the release of this information.

That said, you can prepare the groundwork and ask for details of the harm any disclosure would have and the timescales (referred to in (4) above) if relevant so that we would be better informed in applying the exception should we receive an information request in the future. You can then keep these details on file or give them to me to record if it is easier.

I hope this information is helpful but please do not hesitate to contact me if you need further information.

Kind regards

Heidi-Anne

Heidi-Anne O'Neill LLB(Hons) LLM PC.dp PC.foi | Junior Solicitor, Legal Services, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

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