

Planning and Rights of Way Panel

Tuesday, 29th May, 2018
at 6.00 pm

PLEASE NOTE TIME OF MEETING

Conference Rooms 3 & 4 - Civic
Centre

This meeting is open to the public

Members

Councillor Savage (Chair)
Councillor Claisse
Councillor Coombs
Councillor L Harris
Councillor Mitchell
Councillor Murphy
Councillor Wilkinson

Contacts

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PUBLIC INFORMATION

ROLE OF THE PLANNING AND RIGHTS OF WAY PANEL

The Panel deals with various planning and rights of way functions. It determines planning applications and is consulted on proposals for the draft development plan.

PUBLIC REPRESENTATIONS

Procedure / Public Representations

At the discretion of the Chair, members of the public may address the meeting on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda.

The Southampton City Council Strategy (2016-2020) is a key document and sets out the four key outcomes that make up our vision.

- Southampton has strong and sustainable economic growth
- Children and young people get a good start in life
- People in Southampton live safe, healthy, independent lives
- Southampton is an attractive modern City, where people are proud to live and work

SMOKING POLICY – The Council operates a no-smoking policy in all civic buildings

MOBILE TELEPHONES:- Please switch your mobile telephones to silent whilst in the meeting

USE OF SOCIAL MEDIA:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

FIRE PROCEDURE – In the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

ACCESS – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2017/18

2018	
29 May	11 September
19 June	2 October
10 July	23 October
31 July	13 November
21 August	11 December

2019	
8 January	12 March
29 January	2 April
26 February	23 April

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Planning and Rights of Way Panel are contained in Part 3 (Schedule 2) of the Council's Constitution

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:
Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
 - a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
 - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

OTHER INTERESTS

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

PRINCIPLES OF DECISION MAKING

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

1 ELECTION OF VICE-CHAIR

To elect the Vice Chair for the Municipal Year 2018/19.

2 APOLOGIES AND CHANGES IN PANEL MEMBERSHIP (IF ANY)

To note any changes in membership of the Panel made in accordance with Council Procedure Rule 4.3.

3 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

4 STATEMENT FROM THE CHAIR

5 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

(Pages 1 - 6)

To approve and sign as a correct record the Minutes of the meetings held on 24 April 2018 and to deal with any matters arising.

CONSIDERATION OF PLANNING APPLICATIONS

6 PLANNING APPLICATION - 18/00115/FUL - 88 WILTON AVENUE (Pages 11 - 20)

Report of the Service Lead, Planning, Infrastructure and Development recommending that conditional approval be granted in respect of an application for a proposed development at the above address.

7 PLANNING APPLICATION - 18/00035/FUL - 14 THE BROADWAY PORTSWOOD ROAD (Pages 21 - 34)

Report of the Service Lead, Planning, Infrastructure and Development recommending that conditional approval be granted in respect of an application for a proposed development at the above address.

8 PLANNING APPLICATION - 18/00551/FUL - 24 CARLTON PLACE (Pages 35 - 84)

Report of the Service Lead, Planning, Infrastructure and Development recommending that the Panel refuse planning permission in respect of an application for a proposed development at the above address.

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PLANNING AND RIGHTS OF WAY PANEL
MINUTES OF THE MEETING HELD ON 24 APRIL 2018

Present: Councillors Denness (except Minute number 70) (Chair), Savage (Vice-Chair), Barnes-Andrews (except Minute number 70), Claisse, Hecks, Murphy and Wilkinson

67. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED: that the minutes for the Panel meeting on 13 March 2018 be approved and signed as a correct record.

68. **PLANNING APPLICATION - 18/00347/FUL - 128 -130 WEST END ROAD**

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Change of use from a drinking establishment (Class A4) to flexible use within A1, A2, A3 or A4 (Retail, financial, professional services, restaurants, cafe and drinking establishments).

Michelle Baker, Alan Lloyd (local residents/ objecting), and Councillor Letts (Bitterne Ward Councillor objecting) were present and with the consent of the Chair, addressed the meeting.

The presenting officer reported some minor changes to conditions as set out below. In addition it was noted that the price that of £51,000 set out the report as the sale price should have been £510,000. Concern was raised that there were no clear plans for the site and that amending the designated use would open up the opportunity for the potential for a fast food restaurant. The Panel requested that additional amendments be made to conditions, set out below, be added to limit the opportunity for the potential for a takeaway restaurant element on site. Due to the level of public interest in the site Members requested that officers contact the Planning Inspectorate to request the Informal Hearing procedure for the appeal which has been lodged against the decision to refuse residential redevelopment on this site (Ref 17/00750/FUL).

The Panel then considered the recommendation to grant conditional planning permission. Upon being put to the vote the recommendation was carried.

RECORDED VOTE to grant planning permission

FOR: Councillors Denness, Barnes-Andrews, Claisse and Savage

ABSTAINED: Councillors Hecks, Murphy, and Wilkinson

RESOLVED that

- (i) the Panel approved the change of use from a drinking establishment (Class A4) to flexible use within A1, A2, A3 or A4 (Retail, financial, professional services, restaurants, cafe and drinking establishments), subject to the

conditions set out in the report and the additional and amended conditions set out below.

- (ii) That officers be requested to contact the Planning Inspectorate to request the Informal Hearing procedure for the appeal which has been lodged against the decision to refuse residential redevelopment on this site (Ref 17/00750/FUL).

Amended Conditions

04. APPROVAL CONDITION - Floorspace flexibility

The units can flip between the agreed uses and this "dual A1 (retail) and/or A2 (financial and professional) and/or A3 (restaurant) and/or A4 (drinking establishment) " hereby permitted for the development shall, under Class V Part 3 Schedule 2 of the Town and County Planning (General Permitted Development) Order 2015 (as amended), be for a limited period of 10 years only from the date of this Decision Notice. The units shall remain as the prevailing use at that time as hereby agreed in writing by the Local Planning Authority. If the building is occupied for A3 use and notwithstanding the provisions of Class C Part 3 Schedule 2 of the Town and County Planning (General Permitted Development) Order 2015 (as amended), no ancillary hot food takeaway shall be prepared or sold from the premises.

Reason:

In order to provide greater flexibility to the development and to clarify the lawful use hereby permitted and the specific criteria relating to this use. Insufficient evidence has been provided in order to demonstrate that ancillary hot food take-away will not lead to adverse noise, disturbance, anti-social behaviour and litter impacts having regard to the proximity to nearby residential properties.

05. APPROVAL CONDITION - Servicing Management

If the building is to be occupied for A1 retail use, the use shall not commence until a servicing management plan is submitted to the Local Planning Authority and agreed in writing. The servicing management plan shall include details of the maximum length of vehicle to service the site and shall demonstrate that servicing vehicles can enter and leave the site in a forward gear. The development shall be implemented and retained in accordance with the agreed servicing management plan.

Reason: In the interests of highway and pedestrian safety.

69. **PLANNING APPLICATION - 17/02378/FUL - MILLBROOK TRADING ESTATE**

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Environmental and highway improvements including additional parking to existing verges, new parking layout to existing car park and new landscape (renewal of expired planning consent ref: 13/01962/FUL)

Lisa Jackson (agent) and Councillors McEwing and Pope (ward councillors objecting) were present and with the consent of the Chair, addressed the meeting.

The presenting officer noted that Councillor Pope had submitted a number of objections to the application. However it was noted that objections to the application had been withdrawn by the Southampton Cycling Campaign and CTC (Cycling UK). The presenting officer reported some amendments to the report noting that the existing number of spaces was 56 and not 65 as the report stated and that therefore the total of spaces would be 86. In addition the officer noted the need for an amendment for the landscaping condition and that 3 further conditions to be added, as set out below.

The Panel then considered the recommendation to grant conditional planning permission. Upon being put to the vote the recommendation was carried.

RECORDED VOTE to grant planning permission

FOR: Councillors/s Denness, Claisse, Hecks, Savage and
Wilkinson

ABSTAINED: Councillors Barnes-Andrews and Murphy

RESOLVED that Planning permission be approved subject to the conditions within the report and any additional or amended conditions set out below.

ADDITIONAL CONDITIONS

APPROVAL CONDITION - Amended Plan (Pre-Commencement Condition)

Notwithstanding the layout shown on drawing 428-06E, prior to commencement of development, at the request of the City Council, a revised plan showing the parking layout and that there will be sufficient space to achieve a cycle freeway of 3m width on the north side of Second Avenue shall be submitted to and approved in writing by the Local Planning Authority and the development hereby approved shall be completed and retained in accordance with the revised plan.

Reason: In the interests of sustainable travel, in particular cycle infrastructure improvements.

APPROVAL CONDITION - Car Parking Layout (Performance Condition)

The approved parking layout shall be marked out in full prior to its first use in accordance with the agreed/amended scheme, or in accordance with an alternative timescale that shall have been agreed with the Local Planning Authority prior to the commencement of development. The agreed parking scheme shall be retained as agreed.

Reason: In the interests of highways safety and visual amenity.

APPROVAL CONDITION - Bollards (Pre-Commencement Condition)

Prior to the commencement of the development details of bollards (design and position within the site) separating the site from Second Avenue shall be submitted to and approved in writing by the Local planning Authority. Once approved the development shall be carried out in accordance with agreed details.

Reason: In the interests of Highways Safety.

AMENDED CONDITION

APPROVAL CONDITION - Landscaping, detailed plan (Pre-Commencement)

Notwithstanding the submitted details, before the commencement of any site works a detailed landscaping scheme and implementation timetable shall be submitted to and approved by the Local Planning Authority in writing, which includes:

- (i) proposed finished ground levels or contours; hard surfacing materials;
- (ii) planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/planting densities where appropriate;
- (iii) Any trees to be lost shall be replaced on a favourable basis (a two-for one basis unless circumstances dictate otherwise and agreed in advance) and can be off site on Council owned land if required; and
- (iv) a landscape management scheme.

The approved hard and soft landscaping scheme for the whole site shall be carried out prior to use of the site in association with the hereby approved permission and during the first planting season following the full completion of building works, whichever is sooner. The approved scheme implemented shall be maintained for a minimum period of 5 years following its complete provision.

Any trees, shrubs, seeded or turfed areas which die, fail to establish, are removed or become damaged or diseased, within a period of 5 years from the date of planting shall be replaced by the Developer in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation. The Developer shall be responsible for any replacements for a period of 5 years from the date of planting.

Reason: To improve the appearance of the site and enhance the character of the development in the interests of visual amenity, to ensure that the development makes a positive contribution to the local environment and, in accordance with the duty required of the Local Planning Authority by Section 197 of the Town and Country Planning Act 1990

COUNCILLOR SAVAGE IN THE CHAIR

70. PLANNING APPLICATION - 17/01669/FUL - 4 PRIMROSE ROAD

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Erection of part single storey, part two-storey rear extension (retrospective)

Dr Bragg (local resident objecting), Mr Sihota (applicant), were present and with the consent of the Chair, addressed the meeting.

The presenting officer noted that Councillor Barnes-Andrews and Denness had both given their apologies for the site visit on 7th March 2018.

The Panel then considered the recommendation to grant conditional planning permission. Upon being put to the vote the recommendation was lost.

A further motion to refuse to grant conditional planning permission authority, for the reasons set out below, was then proposed by Councillor Hecks and seconded by Councillor Savage.

RESOLVED

- (i) to refuse planning permission for the reasons set out below.
- (ii) that the Panel instructed officers to refer the item to the Council Planning Enforcement Team

Reasons for Refusal

Design & Impact on Neighbouring Amenity

The extension built on site differs from that approved under LPA ref: 16/00346/FUL and demonstrates poor design; in terms of the use of non-matching materials, and reduces the residential amenity of the neighbours at 2 Primrose Road in terms of a poor visual impact, with a single storey extension – with an eaves line that is 750mm taller than approved - that presents an overbearing impact to this neighbour when viewed from the property and its garden. The development is, therefore, considered to detrimentally affect this neighbour's outlook and residential amenity. As such, the unauthorised development has been assessed as contrary to Policy SDP1(i) of the adopted City of Southampton Local Plan Review (amended 2015) and Policy SDP13 of the adopted Local Development Framework Core Strategy (amended 2015) as supported by the relevant sections of the Council's approved Residential Design Guide Supplementary Planning Document (2006), which seek to secure good design whilst protecting existing residential amenity.

NB Councillors Barnes-Andrews and Denness withdrew from the meeting as they had not attended the site visit.

In the event that a householder appeal is lodged in respect of this application it is understood that no further evidence can be provided by the Local Planning Authority. The Planning Panel were unable to support the scheme, or the officer's recommendation to support with conditions requiring additional work, for the reason given above. On this basis the Planning Inspector is respectfully requested to review the Council's reason for refusal in light of the following paragraphs of the Council's Residential Design Guide – adopted as a Supplementary Planning Document in 2006 following a full round of public consultation – 2.1.4, 2.2.1, 2.2.18, 2.2.19, 2.5.1 and 2.5.5.

COUNCILLOR DENNESS IN THE CHAIR

71. PLANNING APPLICATION - 12/00596/FUL - BROWNHILL WAY/BROWNHILL RD

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending that authority be delegated to enter into a Deed of Variation in respect of an application for a proposed development at the above address.

The erection of 14 two-storey houses (12 x three bedroom and 2 x two bedroom) with associated parking, vehicular access from Lower Brownhill Road and space for a children's play area.

Mark Hewitt (Agent) and Councillors McEwing and Pope (Ward Councillor, objecting) were present and with the consent of the Chair addressed the meeting.

The presenting officer reported that an objection had been received by Councillor Pope.

The Panel then considered the officer recommendation to delegate to the Service Lead – Infrastructure, Planning and Development to agree a deed of variation to the Section 106 Agreement dated 30 August 2013 to reduce the affordable housing provision, on viability grounds, to the provision of one (1) on-site unit, and a financial contribution amounting to £25,000. Upon being put to the vote the recommendation was lost.

A further motion to delegate approval to the Service Lead: Infrastructure, Planning and Development to negotiate a Deed of Variation with the developer for two (2) affordable housing units was then proposed by Councillor Savage and seconded by Councillor Barnes-Andrews.

RECORDED VOTE to delegate authority to the Service Lead: Infrastructure, Planning and Development to negotiate and enter into a deed of variation.

FOR: Councillors Savage, Barnes-Andrews, Claisse
Murphy and Wilkinson

ABSTAIN: Councillors Denness and Hecks

RESOLVED that the Panel delegated to Service Lead: Infrastructure, Planning and Development authority to negotiate a Deed of Variation with the developer for two (2) affordable housing units and vary the Section 106 accordingly.

Agenda Annex

INDEX OF PLANNING APPLICATIONS FOR DECISION

DATE: 29th May 2018 - 6pm Conference Rooms 3 and 4, 1st Floor, Civic Centre

Main Agenda Item Number	Officer	Recommendation	PSA	Application Number / Site Address
6	MG/AG	CAP	5	18/00115/FUL 88 Wilton Avenue
7	AT/MP	CAP	5	18/00035/FUL 14 The Broadway
8	MP	REF	5	18/00551/FUL 24 Carlton Place

PSA – Public Speaking Allowance (mins); CAP - Approve with Conditions: DEL - Delegate to Officers: PER - Approve without Conditions: REF – Refusal: TCON – Temporary Consent: NOBJ – No objection

Case Officers:

AG – Andy Gregory

MG – Matt Griffiths

AT – Amber Trueman

MP – Mat Pidgeon

Southampton City Council - Planning and Rights of Way Panel

Report of Planning & Development Manager

Local Government (Access to Information) Act 1985

Index of Documents referred to in the preparation of reports on Planning

Applications:

Background Papers

1. Documents specifically related to the application
 - (a) Application forms, plans, supporting documents, reports and covering letters
 - (b) Relevant planning history
 - (c) Response to consultation requests
 - (d) Representations made by interested parties

2. Statutory Plans
 - (a) Hampshire, Portsmouth, Southampton and New Forest National Park Minerals and Waste Plan (Adopted 2013)
 - (b) Amended City of Southampton Local Plan Review (Adopted March 2015)
 - (c) Local Transport Plan 2006 – 2011 (June 2006)
 - (d) Amended City of Southampton Local Development Framework – Core Strategy (inc. Partial Review) (adopted March 2015)
 - (e) Adopted City Centre Action Plan (2015)
 - (f) Community Infrastructure Levy Charging Schedule (2013)
 - (g) Bassett Neighbourhood Plan (Adopted 2016)

3. Statutory Plans in Preparation

4. Policies and Briefs published and adopted by Southampton City Council
 - (a) Old Town Development Strategy (2004)
 - (b) Public Art Strategy
 - (c) North South Spine Strategy (2004)
 - (d) Southampton City Centre Development Design Guide (2004)
 - (e) Streetscape Manual (2005)
 - (f) Residential Design Guide (2006)
 - (g) Developer Contributions SPD (September 2013)
 - (h) Greening the City - (Shoreburs; Lordsdale; Weston; Rollesbrook Valley; Bassett Wood and Lordswood Greenways) - 1985-1995.
 - (i) Women in the Planned Environment (1994)
 - (j) Advertisement Control Brief and Strategy (1991)
 - (k) Biodiversity Action Plan (2009)
 - (l) Economic Development Strategy (1996)
 - (m) Test Lane (1984)
 - (n) Itchen Valley Strategy (1993)

- (o) Portswood Residents' Gardens Conservation Area Character Appraisal (1999)
- (p) Land between Aldermoor Road and Worston Road Development Brief Character Appraisal(1997)
- (q) The Bevois Corridor Urban Design Framework (1998)
- (r) Southampton City Centre Urban Design Strategy (2000)
- (s) St Mary's Place Development Brief (2001)
- (t) Ascupart Street Development Brief (2001)
- (u) Woolston Riverside Development Brief (2004)
- (v) West Quay Phase 3 Development Brief (2001)
- (w) Northern Above Bar Development Brief (2002)
- (x) Design Guidance for the Uplands Estate (Highfield) Conservation Area (1993)
- (y) Design Guidance for the Ethelburt Avenue (Bassett Green Estate) Conservation Area (1993)
- (z) Canute Road Conservation Area Character Appraisal (1996)
- (aa) The Avenue Conservation Area Character Appraisal (1997)
- (bb) St James Road Conservation Area Character Appraisal (1996)
- (cc) Banister Park Character Appraisal (1991)*
- (dd) Bassett Avenue Character Appraisal (1982)*
- (ee) Howard Road Character Appraisal (1991) *
- (ff) Lower Freemantle Character Appraisal (1981) *
- (gg) Mid Freemantle Character Appraisal (1982)*
- (hh) Westridge Road Character Appraisal (1989) *
- (ii) Westwood Park Character Appraisal (1981) *
- (jj) Cranbury Place Character Appraisal (1988) *
- (kk) Carlton Crescent Character Appraisal (1988) *
- (ll) Old Town Conservation Area Character Appraisal (1974) *
- (mm) Oxford Street Conservation Area Character Appraisal (1982) *
- (nn) Bassett Green Village Character Appraisal (1987)
- (oo) Old Woolston and St Annes Road Character Appraisal (1988)
- (pp) Northam Road Area Improvement Strategy (1987)*
- (qq) Houses in Multiple Occupation (2012)
- (rr) Vyse Lane/ 58 French Street (1990)*
- (ss) Tauntons College Highfield Road Development Guidelines (1993)*
- (tt) Old Woolston Development Control Brief (1974)*
- (uu) City Centre Characterisation Appraisal (2009)
- (vv) Parking standards (2011)

* NB – Policies in these documents superseded by the Residential Design Guide (September 2006, page 10), albeit character appraisal sections still to be had regard to.

5. Documents relating to Highways and Traffic

- (a) Hampshire C.C. - Movement and Access in Residential Areas
- (b) Hampshire C.C. - Safety Audit Handbook
- (c) Southampton C.C. - Cycling Plan (June 2000)
- (d) Southampton C.C. - Access for All (March 1995)

- (e) Institute of Highways and Transportation - Transport in the Urban Environment
- (f) I.H.T. - Traffic Impact Assessment Guidelines
- (g) Freight Transport Association - Design for deliveries
- (h) DETR Traffic Advisory Leaflets (various)

6. Government Policy Planning Advice

- (a) National Planning Policy Framework (27.3.2012)
- (b) National Planning Policy Guidance Suite

7. Other Published Documents

- (a) Planning for Daylight and Sunlight - DOE
- (b) Coast and Countryside Conservation Policy - HCC
- (c) The influence of trees on house foundations in clay soils - BREDK
- (d) Survey and Analysis - Landscape and Development HCC
- (e) Root Damage to Trees - siting of dwellings and special precautions – Practice Note 3 NHDC
- (f) Shopping Policies in South Hampshire - HCC
- (g) Buildings at Risk Register SCC (1998)
- (h) Southampton City Safety Audit (1998)
- (i) Urban Capacity Study 2005 – 2011 (March 2006)
- (j) Strategic Housing Land Availability Assessment (March 2013)

Agenda Item 6

Planning and Rights of Way Panel 29th May 2018 Planning Application Report of the Service Lead – Infrastructure, Planning & Development

Application address: 88 Wilton Avenue, Southampton			
Proposed development: Conversion of existing 2 flats (1 x 3-bedroom HMO, 1 x 2-bedroom) into a 4-bed house for use as either a house in multiple occupation (HMO, class C4) or a dwelling house (class C3)			
Application number	18/00115/FUL	Application type	FUL
Case officer	Matthew Griffiths	Public speaking time	5 minutes
Last date for determination:	27/03/2018 (Extension of Time)	Ward	Bargate
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors	Cllr Bogle Cllr Noon Cllr Paffey
Referred to Panel by:	n/a	Reason:	n/a

Applicant: Dr E Fogg	Agent: Kingston Studio
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Recommendation Summary	Conditionally Approve
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Community Infrastructure Levy Liable	Not Applicable
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with the development plan as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012). Policies - SDP1, SDP7, SDP9 and H4 of the City of Southampton Local Plan Review (as amended 2015) and CS13 and CS16 of the Local Development Framework Core Strategy Development Plan Document (as amended 2015) as supported by the current HMO SPD.

Appendix attached			
1	Development Plan Policies		

Recommendation in Full

Conditionally approve

1.0 The site and its context

- 1.1 The application site is a two-storey semi-detached dwelling currently in use as two flats. The ground floor comprises a 3-bedroom flat established as a licenced HMO that is accessed from the side elevation of the property, and the first floor is a 2-bedroom flat. The front of the property features a small area enclosed with a low wall, and a side access leading to the rear the property comprising a small garden that is largely paved.
- 1.2 The property is located on Wilton Avenue within a residential area characterised by semi-detached or terraced housing. There is a high concentration of HMOs in the locality, which is west of the Bedford Place/London Road commercial area. Wilton Avenue and the surrounding streets are covered by a parking permit residents scheme (8am-6pm Monday to Friday) and, in some stretches of road, 2 hours maximum parking.

2.0 Proposal

- 2.1 Planning permission is sought for the use of the property as either Class C3 family dwelling house or as a Class C4 House of Multiple Occupation (HMO) for up to 4 people. As per the HMO Supplementary Planning Document (HMO SPD) a condition can be applied to allow changing between these two uses for a period of 10 years without the need for planning permission, with the use at the end of the 10 year period resulting in the set lawful use from that point. This 'flexible' type of permission enables the owner to rent to families and groups without the need for further permission.
- 2.2 Although no external changes are proposed internal alterations to convert the two flats back into a single dwelling would be required, including the removal of a first floor kitchen and bathroom and conversion of two ground floor bedrooms into a communal lounge.

3.0 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.
- 3.3 Core Strategy CS16 and Saved Local Plan policy H4 are relevant to the determination of planning applications relating to HMOs. Policy CS16 of the Core Strategy states that the contribution that the HMO makes to meeting housing need should be balanced against the impact on character and amenity of the area. Saved policy H4 of the Local Plan requires new HMOs to respect the amenities of neighbouring properties and the character of the area and to provide adequate private and useable amenity space.

3.4 The Houses in Multiple Occupation SPD (HMO SPD) was adopted in March 2012, which provides supplementary planning guidance for policy H4 and policy CS16 in terms of assessing the impact of HMOs on the character and amenity and mix and balance of households of the local area. The SPD sets a maximum threshold of 10% for the total number of HMOs within the defined area measured from the application site within a 40m radius or the 10 nearest residential properties (section 6.5 of the HMO SPD refers). There is no loss of family housing proposed given the current and proposed arrangements.

4.0 Relevant Planning History

4.1 An existing Lawful Development Certificate was granted in 2004 under permission 04/01580/LDCE for the use of the property as two flats.

5.0 Consultation Responses and Notification Representations

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and placing a site notice on 09/02/2018. A further re-consultation period was undertaken for Councillors and all nearby properties after the description of development was amended to clarify the HMO status of an existing flat. At the time of writing the report **7 representations** have been received from surrounding residents. The following is a summary of the points raised:

5.2 **Whilst a number of representations were supportive of the potential change to a family dwelling, there are already a large number of HMOs in the area and to allow more would result in a further unbalancing of the community.**

Response: It is acknowledged that there are a significant number of HMOs within this area of the city, and that the 10% threshold assessment detailed within the HMO SPD has already been exceeded in the 40m radius from the site. It is important to note, however, that one of the flats within the site is currently a HMO and thus there would be no net gain of HMOs as a result of this application. The HMO SPD also states that in cases where there is already an established HMO on the site the threshold limit is not a material consideration.

5.3 **Is this already an HMO , and was the house in that use as C4 before Article 4 came in March 23rd 2012**

Response: The property has been in use as two flats since at least 1984 as confirmed as part of the granting of the existing lawful development certificate in 2004. The Council's HMO licensing records have the ground floor 3-bedroom flat recorded as shared student accommodation (HMO) since at least 2009 (ie. before the Article 4 was enacted in the City). The Council's current HMO licensing regime has both existing flats recorded as HMOs.

5.4 **This intensification of activity is considered to harm the character of the area and undermine the Council's approach of promoting mixed and balanced communities to the detriment of the amenities of local residents.**

Response: The existing flats are licensed HMOs. The conversion of the existing flats (1 x 3-bed and 1 x 2-bed) into a 4-bed property would represent a net reduction in bedrooms and therefore the proposed conversion would not represent an intensification of activity.

Consultation Responses

5.5 **SCC Archaeology** – Although this site is in a Local Area of Archaeological Potential, as defined in the Southampton Local Plan and Core Strategy - LAAP 7

(Bannister's Park), the proposals are unlikely to affect below-ground archaeological remains. Therefore, no archaeological conditions are required.

5.6 **SCC Environmental Health – no comment**

6.0 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- (a) whether the proposed change of use from two flats to either a C3 family dwelling or a C4 HMO is acceptable in principle;
- (b) whether the proposed development would have a harmful impact on parking in the local area;
- (c) whether the proposal would have a harmful impact upon the character of the property or local area; and
- (d) whether the proposal would have a harmful impact upon the residential amenities of surrounding neighbours or the occupants of the host dwelling.

6.2 Principle of Development

6.2.1 The existing lawful flats are licensed HMOs and the ground floor 3-bed flat has been in use as an HMO since at least 2009. The proposal does not, therefore, result in the net loss of a family home and the proposal would be in accordance with policy CS16 of the Core Strategy. The proposed development is also in accordance with saved policies H1 and H2 of the Local Plan which support the conversion of existing dwellings for further housing and require the efficient use of previously developed land. As confirmed by Core Strategy Policy CS16, the proposed HMO use meets a recognised housing need for single households or for those with lower incomes and is therefore, acceptable in principle.

6.2.2 Although the HMO SPD details that a threshold assessment would ordinarily be undertaken to establish the number of HMO's within a 40m radius of the site, in this instance a HMO is already established at the site as one of the existing flats. Although section 4.8.1 of the SPD talks specifically of extensions to HMOs, the assessment within the that the threshold limit will not be a material consideration in cases where established HMO's exist on site is relevant to this proposal, as there would be no increase to the concentration of HMOs in the local area.

6.3 Impact in terms of Character, Amenity and Parking

6.3.1 There are no structural changes proposed to the building and no changes to the external appearance of the property, so any impact on character and amenity would be as a result of changes in the intensity of use of the property. However in this case the proposal is for a Class C3 family home or Class C4 HMO of 4 bedrooms, which would be a reduction from the 5-bedrooms across two flats that currently exist. Furthermore the conversion of the property from two flats back to its original use as a single dwelling is welcomed, whilst there are a number of properties in the area having been converted to flats, the prevailing character is that of semi-detached or terraced single dwellings. As such there are no concerns with the proposal with respect to character or a potential intensification of the use of the site.

6.3.3 In terms of parking, although there is no off street parking provision the surrounding streets including Wilton Avenue are restricted to either Permit Parking only, or 2 hours maximum without a permit. As paragraph 5.2 of the HMO SPD states, where a property is within a residents permit zone, occupants are entitled to apply for permits however the number of permits available will be restricted in accordance with the local parking policy, which would control the number of cars associated with the dwelling. Furthermore the site is close to local amenities within Bedford Place and London Road, and the city centre is also nearby to the south. As such, and given there will be a reduction in the number of bedrooms within the property from 5 to 4 as a result of the changes, it is considered that there would not be a harmful impact from the development to the levels of parking available in the area.

6.4 Quality of the Residential Environment

6.4.1 Saved policy H4 of the City of Southampton Local Plan Review 2010 states that: 'Planning permission will only be granted for conversions to houses in multiple occupation where: (i) it would not be detrimental to the amenities of the residents of adjacent or nearby properties; and (iii) adequate amenity space is provided which (a) provides safe and convenient access from all units; (b) is not overshadowed or overlooked especially from public areas; and (c) enables sitting out, waste storage and clothes drying'.

6.4.2 The proposal would retain ample communal living space on the ground floor with separate lounge and kitchen areas provided with improved outlook. A condition is recommended to secure retention of the communal living space. All habitable rooms would have suitable outlook from windows. Occupants of the property have access to a private garden that, whilst small, is typical of the properties in the area. Although internal alterations would be made all bedrooms would be of suitable size, therefore, the amenity of the occupants of the host dwelling shall not be harmed. In addition, a condition is recommended to secure the provision of refuse and cycle storage facilities as detailed within the submitted plans.

7.0 Summary

7.1 The proposal for the conversion of the property to either a C3 family dwelling or to a C4 HMO is considered to be acceptable in principle, as the threshold criteria does not apply given the existing HMO flat and unacceptable harm shall not be caused to neighbouring amenity or highway safety. In addition, the alterations are considered to improve the character of the property by bringing the property back to a single dwelling use and the amenity of the occupants of the host dwelling would not be harmed.

8.0 Conclusion

Subject to the imposition of the suggested conditions attached to this report, the proposal would be acceptable. The application is therefore recommended for approval.

Local Government (Access to Information) Act 1985
Documents used in the preparation of this report Background Papers

1(a), 1(b), 1(c), 1(d), 2(b), 2(d), 4(f), 4(qq), 4(vv)

MG for 29/05/18 PROW Panel

PLANNING CONDITIONS

01. Full Permission Timing Condition (Performance Condition)

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

02. C3/C4 dual use (Performance Condition)

The dual C3 (dwellinghouse) and/or C4 (House in multiple occupation) use hereby permitted shall be for a limited period of 10 years only from the date of this Decision Notice (under Class V, Part 3, Schedule 2 of the Town and County Planning (General Permitted Development) Order 2015). The use that is in operation on the tenth anniversary of this Decision Notice shall thereafter remain as the permitted use of the property.

Reason:

In order to provide greater flexibility to the development and to clarify the lawful use hereby permitted and the specific criteria relating to this use.

03. Retention of communal spaces and number of occupiers (Performance Condition)

The rooms labelled kitchen and lounge on the proposed ground floor plan shall be made available for use by all of the occupants prior to first occupation of the converted dwelling hereby approved, and thereafter shall be retained and available for communal purposes when in use as a HMO. The number of occupiers within the property, when in HMO use, shall not exceed 4 persons unless otherwise agreed upon in writing by the Local Planning Authority.

REASON

To ensure that suitable communal facilities are provided for the residents, and in the interests of protecting the amenities of local residents.

04. Refuse & Recycling (Performance Condition)

Before the development hereby approved first comes into occupation, the storage for refuse and recycling shall be provided in accordance with the plans hereby approved and thereafter retained as approved.

Reason: In the interest of visual and residential amenity.

05. Cycle parking (Performance Condition)

Before the development hereby approved first comes into occupation, the storage for bicycles shall be provided and made available for use in accordance with the plans hereby approved. The storage shall thereafter be retained as approved.

Reason: To encourage cycling as an alternative form of transport.

06. Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

Note to Applicant

A HMO License will be required to operate the property as a Class C4 HMO. The applicant is advised to contact the HMO licensing team for more information or to see the following link;

<http://www.southampton.gov.uk/housing-council-tax/landlords-home-owners/landlords/houses-in-multiple-occupation/licensing-houses-in-multiple-occupation/default.aspx>

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS13	Fundamentals of Design
CS16	Housing Mix and Type
CS19	Car & Cycle Parking

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP5	Parking
SDP7	Urban Design Context
SDP9	Scale, Massing & Appearance
H4	Houses in Multiple Occupation

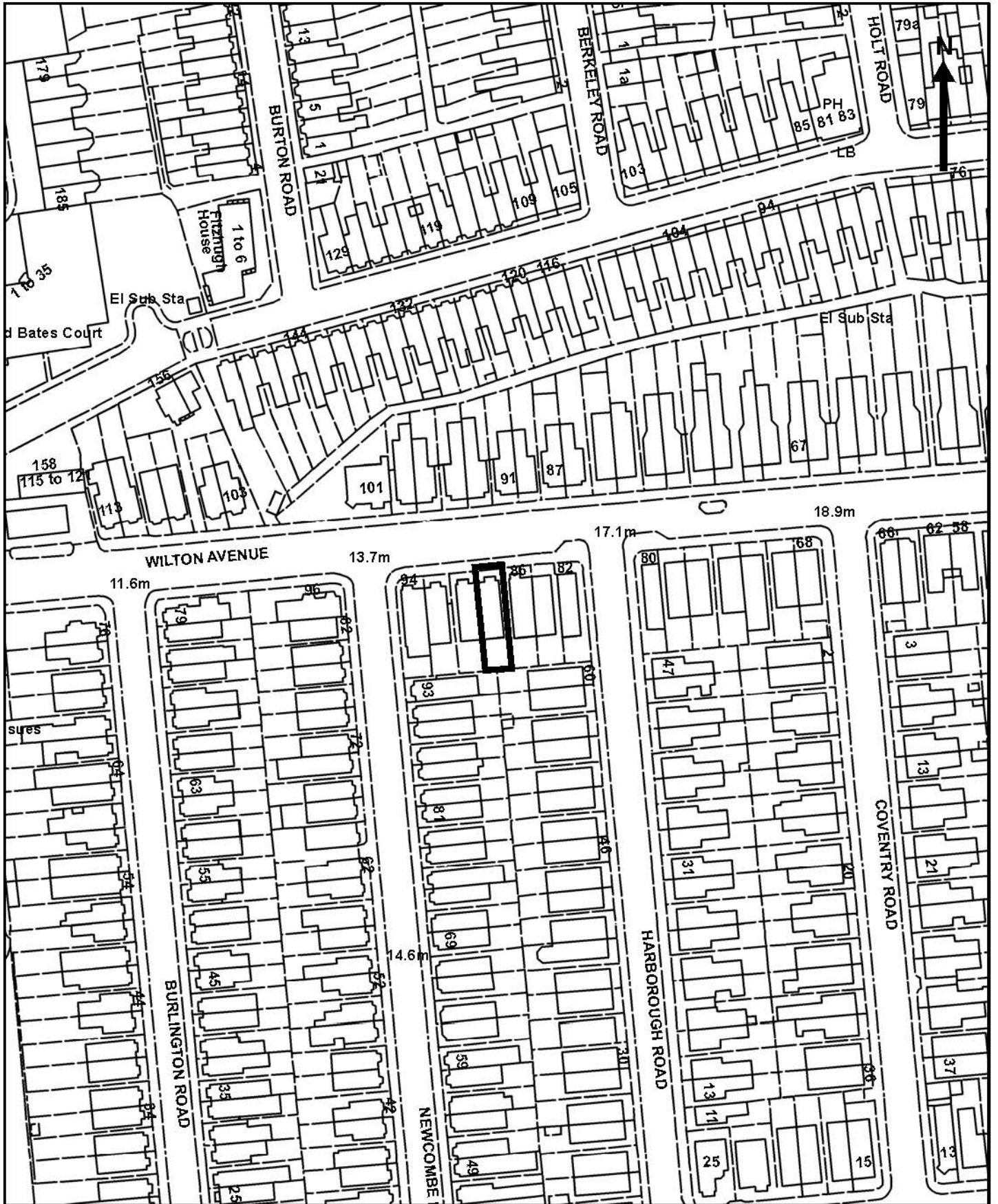
Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)
Parking Standards SPD (September 2011)
Houses in Multiple Occupation (amended 2016)

Other Relevant Guidance

The National Planning Policy Framework (2012)

18/00115/FUL



Scale: 1:1,250

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Agenda Item 7

**Planning, Transport & Sustainability Division
Planning and Rights of Way Panel 29th May 2018
Planning Application Report of the Planning and Development Service Lead**

Application address: 14 The Broadway, Portswood Road, Southampton, SO17 2WE			
Proposed development: Proposed change of use from coffee shop (A1 use) to drinking establishment (micro pub)(Class A4) - submitted in conjunction with 18/00036/ADV			
Application number	18/00035/FUL	Application type	FUL
Case officer	Amber Trueman	Public speaking time	5 minutes
Last date for determination:	5 th June 2018	Ward	Portswood
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors	Cllr Savage Cllr O'Neill Cllr Claisse
Referred to Panel by:	N/A	Reason:	N/A

Applicant: Mr N Davis	Agent: Paul Ashton Ltd
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Recommendation Summary	Conditionally approve
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Community Infrastructure Levy Liable	No
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP7, SDP9, SDP10, SDP16, CLT15, REI4, REI5, REI7 and REI8 of the City of Southampton Local Plan Review (Amended 2015), CS3, CS19 and CS24 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015) and the relevant sections of the Parking Standards Supplementary Planning Document (2011).

Appendix attached	
1	Development Plan Policies

Recommendation in Full

Conditionally approve

1 The site and its context

- 1.1 The site is located on the corner of Portswood Road and Westridge Road in the heart of Portswood District Centre. The site comprises a 2 storey building which fronts Portswood Road. The ground floor was formerly occupied (until late 2017) as a coffee shop but it is unclear whether the use of the upper floor space was linked with this business. The entire property is currently vacant.
- 1.2 The main access to the property is situated on the corner of the building adjacent to the junction with Westridge Road. The property also benefits from rights of access over a small strip of land to the rear of the site which enables use of the rear servicing track that runs parallel to the rear of the site and is accessed from Westridge Road.
- 1.3 The area surrounding the site comprises a mix commercial and residential uses. More specifically, Portswood Road features a mix of two and three storey properties with a selection of different uses at ground floor level including shops, betting shops, cafes, restaurants, hairdressers, banks, takeaways, bars and pubs. It should also be noted that a lot of these properties have residential uses on the floors above. Westridge Road however, is a residential street predominantly made up of two storey dwelling houses.

2 Proposal

- 2.1 The proposal seeks to change the use of the ground floor of the property from a coffee shop (Use Class A1) to a drinking establishment (micro pub) (Use Class A4).
- 2.2 The application was submitted in conjunction with application ref. 18/00036/ADV for the 'installation of 1 x externally illuminated hanging sign, 5 non illuminated awnings and 7 non illuminated window vinyls', which was granted conditional approval on 27/04/2018.

3 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

4 Relevant Planning History

4.1 Objection was raised to an application for prior approval for a change of use of the first floor of the building from office use (Class B1) to 3 x one bed flats (Class C3) (Ref. 17/02589/PA56) on 14/02/2018 for the following reason:

01. Lack of evidence to demonstrate class B1a use

The evidence submitted does not adequately demonstrate that the prior use or authorised use of the building was B1(a) office and therefore the proposed conversion of the building does fall under permitted development in accordance with the requirements of Class O of the GPDO (2015 amended).

4.2 It is also noted that at the time of this application the first floor remains vacant and there have been no subsequent application submitted to change the use of the first floor.

4.3 The current application was submitted in conjunction with application reference 18/00036/ADV which was determined on 27/04/2018. The application comprised the installation of 1 x externally illuminated hanging sign, 5 non illuminated awnings and 7 non illuminated window vinyls and was granted approval subject to conditions.

5 Consultation Responses and Notification Representations

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (enter date) and erecting a site notice (enter date). At the time of writing the report **15** representations have been received from surrounding residents, **1** in support, **13** in objection to the proposal and **1** which is not applicable to the current application as it refers solely to application reference 17/02589/PA56, for the conversion of the first floor into three one-bed flats, which was determined on 14/02/2018. The following is a summary of the points raised by objectors and responses from the Case Officer:

5.2 **The proposal, including the division of the first floor into three flats, is an over-development.**

Officer Response: The application refers to the ground floor of the property only. The division of the first floor is a separate application by a different applicant and has already been determined as stated above (refer to section 4). With regard to overdevelopment, this is a change of use to the property to bring it back into use, the proposal includes no extensions, major building works or subdivision of the unit or site and the original property will be retained. The proposal is not considered to represent an overdevelopment.

5.3 **The proposal would result in oversaturation of licensed premises in the area.**

Officer Response: The property is located within Portswood District Centre. Licensed premises are characteristic of these types of areas which provide a variety of services to the public. Licenced premises are permitted within District Centres (policy CLT15 specifically permits A4 uses within Portswood District Centre). The proposed micro-will help to maintain the vitality and viability of the District centre by bringing this vacant unit back into use. Policy CS3 encourages active commercial use of buildings in Portswood District Centre.

5.4 The hours of operation are excessive.

Officer Response: The hours of operation (11:00 to 23:59 7 days per week) as stated on the application form are incorrect. The applicant has recently confirmed that the hours proposed for opening the micro pub are 11:00 to 23:00 7 days per week, these amended hours are considered to be appropriate for a drinking establishment located within a District Centre. The operational hours of surrounding late opening premises have been assessed and the proposed establishment is judged to be in keeping with opening hours in the local area. Cumulative impact has also been considered.

5.5 The proposal would result in more antisocial behaviour and noise and disturbance in what is a predominately residential area.

Officer Response: The proposal features no outdoor courtyard or outdoor seating therefore the only people likely to be occupying the street surrounding the premises are those smoking. All other activity will be confined to the indoor area and given the existing background noise experienced in the District Centre, the noise generated as a result of the proposal is not thought to be significant or detrimental to neighbouring residents. It should also be noted that the area is characterised by a mix of commercial and residential uses of which the proposed Class A4 use is in keeping with.

5.6 The proposal has the potential to cause increased litter in the area.

Officer Response: Appropriate bins and bin storage will be provided at the venue and an appropriate servicing plan will be enforced by condition in order to eliminate the risk of litter at the site.

5.7 There is no parking provision at the site and the proposal will result in further parking pressure in the area.

Officer Response: The site is located within the highly accessible area of Portswood District Centre therefore on-site parking is not deemed necessary to access the site. Given that the property will be a drinking establishment it is unlikely that many will opt to drive to the venue therefore the addition to parking pressures in the area is thought to be negligible. However, there is restricted parking available along Portswood Road for those wishing to utilise it and a disabled bay directly adjacent to the site.

5.8 The signage is out of character.

Officer Response: The current application is not considering the advertisements on the premises. These have already been considered under application reference 18/00036/ADV which was conditionally approved on 27/04/2018.

5.9 The awnings will impede pedestrians.

Officer Response: The proposed awnings will be set at a height of 2.4m which is deemed acceptable in highway safety terms and will not cause any harm or obstruction to pedestrians.

5.10 Delivery vehicles will cause highway safety issues

Officer Response: As stated in the highways comments below, the previous use would have required servicing and deliveries. As such, it is judged that deliveries can take place without causing any harmful to highway safety however, further details will be required to better understand the servicing requirements of the premises and to agree appropriate timings for deliveries given the restricted loading and disabled bays surrounding the site. These details can be adequately

controlled via a pre-commencement condition.

Consultation Responses

5.11 SCC Highways

There are parking and loading restrictions on Westridge Road and also disabled bays on Portswood Road. Beyond that are further parking restrictions, the nearest unrestricted parking is Tennyson Road. Parking bays along Portswood Road would be available outside of time restrictions.

5.12 In terms of trip generation, overspill in the immediate area where highway safety is concerned would be unlikely due to the parking restrictions. Furthermore, a micropub this size may not generate a significant increase in vehicular trips – the evening opening hours would be the main increase but traffic levels would generally be lower at this time.

5.13 In terms of servicing, further details are required to identify the units requirements however it is anticipated that by restricting servicing hours to times of the day which are outside of peak traffic hours the servicing arrangements will be satisfactory in terms of highways safety and congestion.

5.14 As long as there is 2.4m ground clearance, the proposed awnings are acceptable. Add informative: over sailing licence will need to be obtained (separate process to planning).

5.15 The application is to be recommended for Approval subject to the following condition:

- Servicing management plan.

5.16 SCC Environmental Health (Pollution & Safety)

No objection.

6 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- Principle of development;
- Impact on local character;
- Impact on neighbouring and local amenity (noise, disturbance and visual impact); and
- Highways, parking and servicing.

Principle of Development

6.2 The site located within the heart of Portswood District Centre and is defined as a 'secondary retail frontage' meaning that under policy REI4 development at ground floor will only be permitted if it is within A1 (retail), A2 professional services, A3 food and drink use, A4 drinking establishments, A5 hot food and takeaway and uses that offer a direct service to the public. Businesses must also ensure that an active shopfront is provided.

6.3 The change of use of this premises, to provide an 'A4' use drinking establishment, is considered to offer a direct service to the public which is appropriate within the District Centre location as detailed in Local Plan Policy REI5.

6.4 It is hoped that the proposal will bring the currently vacant commercial unit back into use so that the facilities with the District Centre continue to serve the day to

day needs of the local population This approach is required by policy CS3 within the 'promoting successful places' section of the Local Development Framework Core Strategy which states:

"The Council will support the role of the town and district centres in providing shops and local services in safe, accessible locations. New development should make a positive contribution to the centre's viability and vitality, promote and enhance its attractiveness."

- 6.6 The council also seeks to encourage and support small local businesses wherever possible and it is clear from the National Planning Policy Framework that planning decisions should give weight to the economic benefit of development. As aforementioned, the unit is currently disused therefore the proposed change of use would both help to remedy this and offer a new use that has the potential to be more frequently used by the public and help to boost local economy. As such, the proposal is judged to comply with the NPPF in this regard.
- 6.7 Policy RE17 identifies that proposals involving food and drink uses (including A4 uses) are permitted in city, town, district and local centres providing that appropriate measures can be taken to adequately control noise and disturbance, cooking fumes and litter. In light of the fact that the establishment is located in a district centre, the proposed use is not considered to generate a significant increase in noise and nuisance, noticeable above background noise levels. Moreover, there will be no on-site cooking or frying and appropriate bin storage has been incorporated into the plans. As such, and with reference to the relevant consultation responses above, it is judged that the proposed establishment is acceptable in principle and can be supported subject to conditions to control the opening hours, noise and servicing.
- 6.8 The proposed site is a good location for such a facility as it is well served by public transport and is in a short walking distance of many residential properties, thus the scheme would be supported by sustainable modes of transport.

Impact on local character

- 6.9 The application proposed no changes to the built frontage in terms of its physical structure other than the installation of 5 awning, the advertisements on those awning have already approved under application ref. 18/00036/ADV. The installation of the awnings is deemed appropriate as they will not harm the character of the area. Other commercial properties within the area also have awnings. The proposed awning will also not detract from the character of the host property. It is also considered that the awnings will provide a visually interesting feature for the largely visible frontage which runs from Portswood Road round to Westridge Road. As such, an appropriate and active shopfront will be maintained in line with Policies RE14 and RE18, and the changes proposed to the shopfront will have a negligible impact to the character of the area. The proposal is therefore deemed compliant with Policies SDP1 (Quality of development), SDP7 (Context) and SDP9 (Scale, massing and appearance).
- 6.10 Furthermore, by granting permission the activity associated with the premises will also contribute to local character and strengthen the vitality of the District Centre area.

Impact on neighbouring and local amenity

- 6.11 It is accepted that there is the potential for the development to have an impact upon occupiers of neighbouring properties with regard to noise. The Council acknowledge that customers may stand outside in order to smoke, however there is no formalised outdoor seating therefore the number of people gathering at the

front of the property is thought to be minimal. All other activity will be confined to inside the establishment and the food to be served will be snack foods only heated via a domestic scale oven. As such no excessive fumes will be created and no commercial extraction is required.

- 6.12 Owing to the sites location, background noise is higher than in wholly residential areas where there are no commercial uses. Due to the small scale nature of the use, it is unlikely that the micro pub will accommodate large numbers of customers on a regular basis each night of the week and it is also worthwhile noting that the Environmental Health Team have raised no objection to the development on noise grounds. In light of the above, it is considered that the noise generated as a result of the proposal would not seriously affect residential amenity. Furthermore conditions are recommended to restrict amplified noise so that it is not audible at the closest residential property. In addition Environmental Health Legislation can be used to control noise nuisance.
- 6.13 The previous coffee shop use would also have generated some moderate noise also there appears to be no relevant planning history restricting the hours of operation associated with the coffee shop. The surrounding units are primarily occupied by retail (A1 use) opening in the day therefore the evening use is unlikely to have a notable impact upon these premises. Furthermore, the first floor unit of the host property is currently unoccupied however, the same considerations have been applied and it is judged that the noise impact is likely to be similar to that of the previous use with the noise during evening hours unlikely to have a significantly harmful impact upon the first floor unit. It is judged that the proposal will have an acceptable impact upon neighbouring uses.
- 6.14 It is acknowledged that customers may create some noise and disturbance when they travel to and from the premises and that this is a concern raised by local residents. The use however is acceptable in this location given the District Centre location and it is the proposed hours of operation that will mostly determine the impact on surrounding residents, along with the behaviour of the customers when leaving the premises and walking home.
- 6.15 Cumulative impact with other uses nearby and their closing hours are also important to consider. The preferred method of reducing this impact is to stagger closing times across areas of stress. The proposed hours listed on the application form are 11:00 – 23:59 however this is an error and the applicant has confirmed with officers that the proposed hours should have stated 11:00 to 23:00 which would match the permitted licencing hours (granted May 2018).
- 6.16 It is also noteworthy that there are also other evening uses close by which generate activity, some of those uses stay open later than the proposed opening hours of the micro pub owing to historic planning permissions or through the benefit of lawful existing use, or indeed through imposed planning conditions; appendix 2 refers.
- 6.17 The assessment has also taken account of the controls that are available to the Council through the management of licensing agreements as managed by the environmental health and the police licensing teams.
- 6.18 The hours proposed are deemed to be fairly modest in terms of closing hours when taking account of closing times of other local evening use establishments within and close to Portswood District Centre. Accordingly Officers are minded to support the proposed hours of operation.

Highways, parking and servicing

- 6.19 The site is easily reachable by public transport and given the location and intended use of the building as a drinking establishment it is reasonable to expect most customers to arrive on foot, by public transport or by taxi. Restricted parking is available on Portswood Road including directly in front of the site. Whilst it is acknowledged that the business may lead to a small amount of parking pressure within areas close to the development the impact is not judged to be significantly harmful or sufficient to justify refusal.
- 6.20 Highways Development Management have also confirmed that there are no associated highways safety concerns with the scheme. The location is highly accessible by public transport and it is envisaged that acceptable delivery and servicing arrangements can be achieved thus with appropriate conditions to secure a servicing management agreement the proposal is considered to be acceptable in terms of highways impact.

7 Summary

- 7.1 Overall the scheme is judged to bring life back into a currently inactive shopfront within Portswood District Centre and provide a desirable service to members of the public. The change of use is thought to be appropriate for the area and presents no significantly harmful impact to neighbouring residents or commercial occupiers. Access to the restaurant is deemed acceptable considering the accessible location, public transport links and that it is in easy walking distance for many. Furthermore, servicing and delivery arrangements can be achieved. In light of the above the proposal is deemed acceptable and is recommended for approved subject to appropriate conditions including hours of operation.

8 Conclusion

- 8.1 A careful assessment of the material planning considerations and public representations, discussed above, has been made. Despite the level of local objection, the proposal is not judged to present significant harm to the character of the host property, the character of the local area, residential amenity or highway safety. As such, it is recommended that the scheme is approved subject to appropriate conditions to control the development, where needed, in the interest of local amenity.

Local Government (Access to Information) Act 1985
Documents used in the preparation of this report Background Papers

1(a), 1(b),1(c), 1(d), 2(b), 2(d), 4(vv), 6(a), 7(a)

AT for 29/05/18 PROW Panel

PLANNING CONDITIONS

1. APPROVAL CONDITION - Full Permission Timing Condition - Change of use
The use hereby permitted shall begin not later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990(as amended).
2. APPROVAL CONDITION - Approved Plans
The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.
3. APPROVAL CONDITION - Control of Amplified Equipment [Performance Condition]
At no time shall sound amplifying equipment or acoustic instruments be used or installed which would generate noise audible from the boundary of the nearest residential property to the building to which the consent hereby granted relates unless otherwise agreed in writing with local Planning Authority.

Reason: To protect the amenities of the occupiers of nearby residential properties.
4. APPROVAL CONDITION - Hours of Operation [Performance Condition]
The A4 'drinking establishment' to which this permission relates shall only operate in accordance with the following hours:

Customers will only be permitted on the premises between the hours of 11:00 – 23:00 on any day.

Reason: To protect the amenities of the occupiers of nearby residential properties.
5. APPROVAL CONDITION - CCTV system [Pre-Occupation condition]
Before the first occupation of the development details of a scheme for a CCTV system to cover the inside and outside areas of the establishment shall be submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be fully installed and operational prior to the approved use of the development first commencing. It shall be maintained in working order and operated at all times when the premises is open. Recorded images shall be held for a 1 month period after being made on a daily basis for use by the Police as required.

Reason: In the interests of crime reduction and customer/staff safety.
6. APPROVAL CONDITION, Servicing [Pre-Occupation Condition]
Prior to the commencement of the development hereby approved a servicing management plan shall be submitted to and approved in writing by the Local Planning Authority. Once approved the development shall be carried out in full accordance with the approved servicing management plan.

Reason: To protect the amenities and privacy of occupiers of the adjoining properties, to protect the highway surface and in the interests of highways safety.

7. APPROVAL CONDITION, Glass Storage [Performance Condition]
Except for on bin collection day no storage of glass (for recycling purposes) shall take place outside of the building. Glass collection shall also not take place between the hours of 20:00 and 9:00.

Reason: To protect the amenities of occupiers of the adjoining property.

8. APPROVAL CONDITION - Ancillary Snack Foods [Performance Condition]
The development hereby approved shall only serve snack foods as an ancillary service to the drinking establishment. The food may be heated via a domestic scale oven only and all food must be for consumption on the premises. The food must not be prepared, cooked or fried on site and the kitchen must not be installed with any equipment requiring ventilation unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of neighbours and the wider environment.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS3	Promoting Successful Places
CS4	Housing Delivery
CS19	Car & Cycle Parking
CS24	Access to Jobs

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP7	Urban Design Context
SDP9	Scale, Massing & Appearance
SDP10	Safety & Security
SDP16	Noise
CLT15	Night Time Uses in Town, District and Local Centres

REI4	Secondary Retail Frontages
REI5	District Centres
REI7	Food and Drink Uses (Classes A3, A4 and A5)
REI8	Shopfronts

Supplementary Planning Guidance

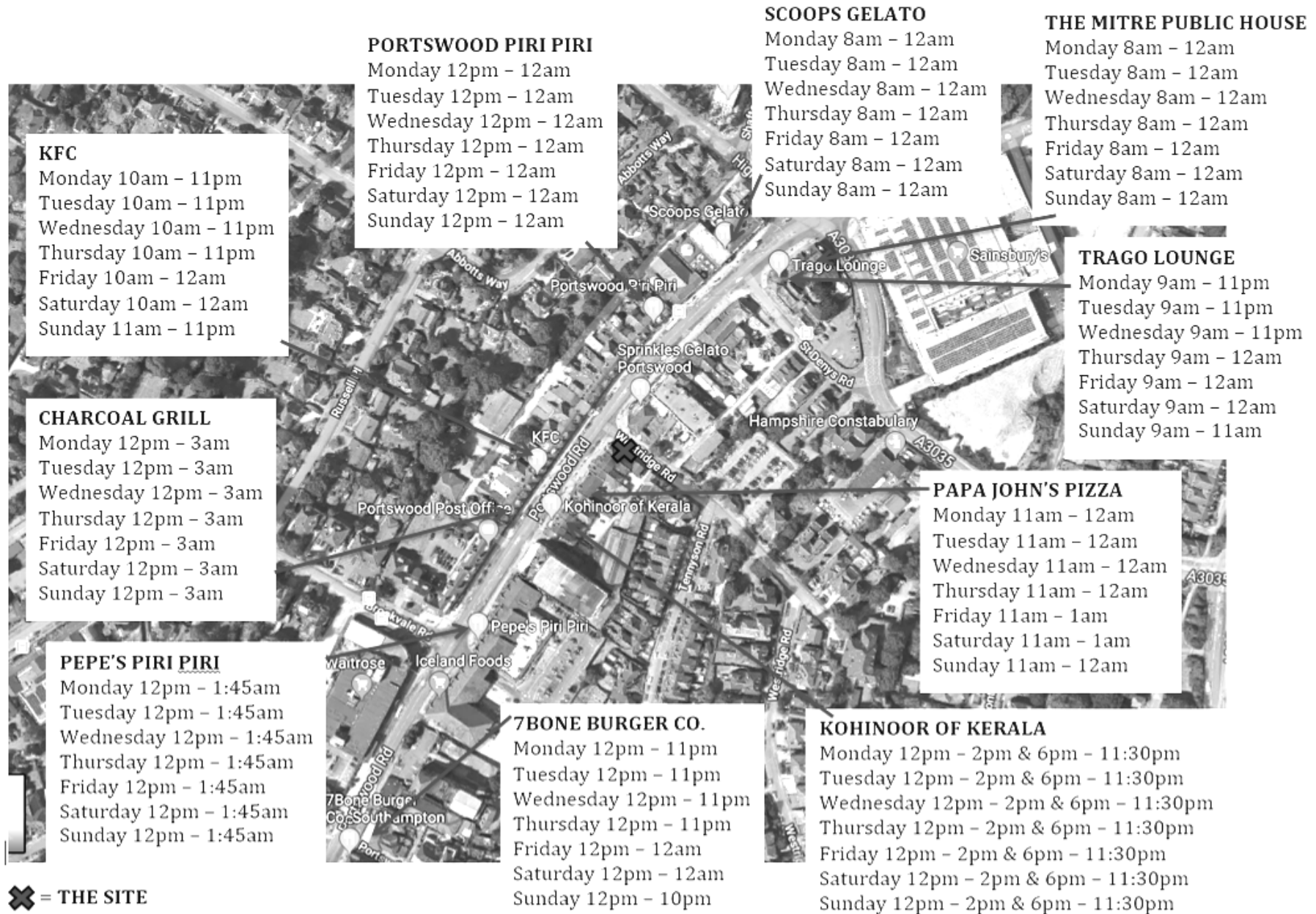
Parking Standards SPD (September 2011)

Other Relevant Guidance

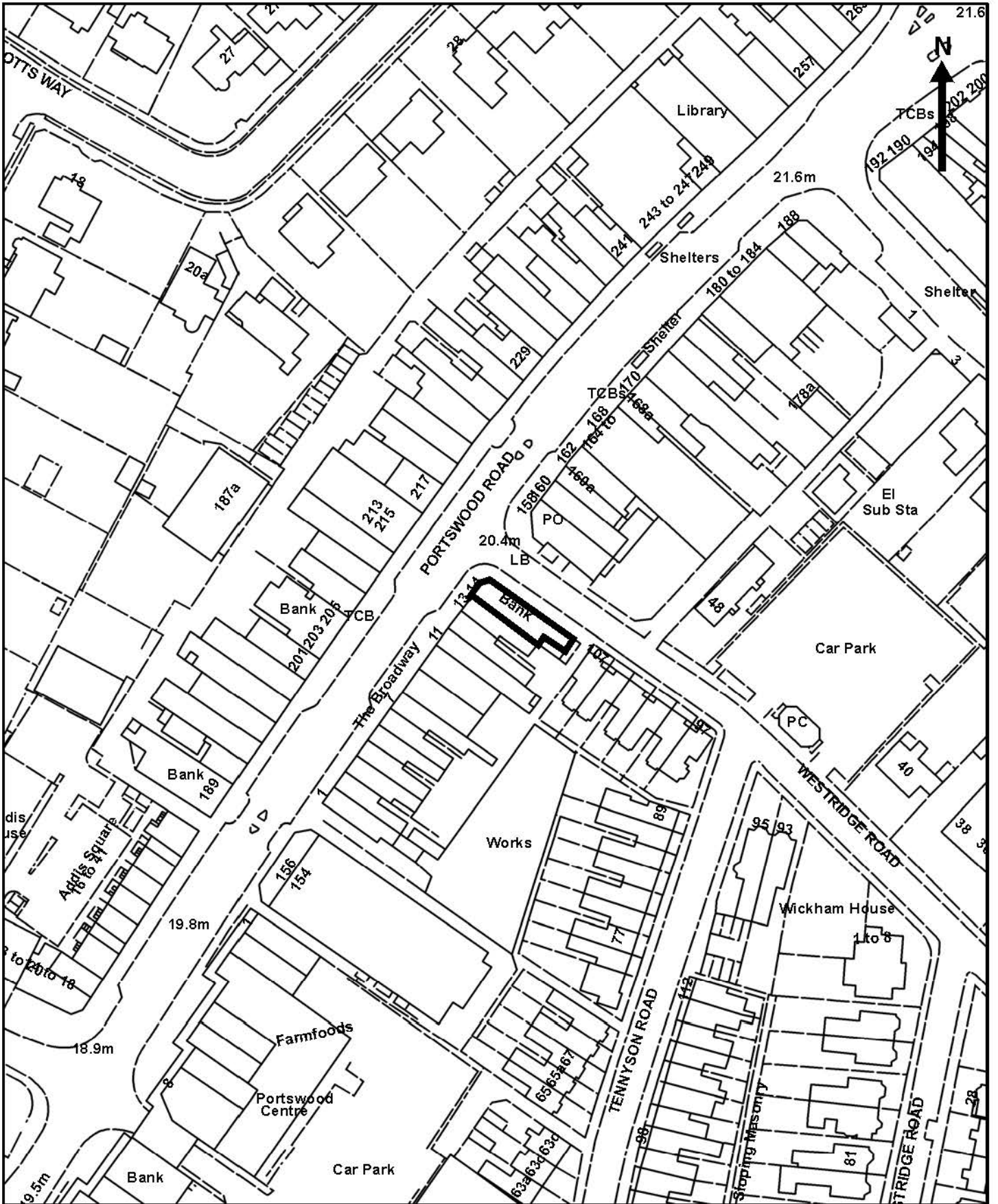
The National Planning Policy Framework (2012)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

Map to show location and opening hours of nearby late night uses



18/00035/FUL



Scale: 1:1,250

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Planning and Rights of Way Panel 29th May 2018
Planning Application Report of the Service Lead - Infrastructure, Planning and Development

Application address: 24 Carlton Place, '90 degrees', Southampton			
Proposed development: Application for variation of condition 2 (Opening Hours) of planning permission 08/00371/VC to extend opening hours from 2:00 am - 3:00 am Monday - Sunday.			
Application number	18/00551/FUL	Application type	FUL
Case officer	Mat Pidgeon	Public speaking time	5 minutes
Last date for determination:	24.05.2018	Ward	Bevois
Reason for Panel Referral:	More than five letters of support have been received	Ward Councillors	Cllr Toqeer Kataria Cllr Jacqui Rayment Cllr Stephen Barnes-Andrews

Applicant: Mr N Raftopoulos	Agent: Luken Beck Ltd
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Recommendation	Refuse.
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01.Reason for Refusal: Noise and disturbance

The proposed extension to opening hours would result in an extended late night use, which is situated in a location where there are nearby residential properties. As such, it is considered that the intensification of use into the early hours of the morning by an additional hour would cause further detriment to the residential amenities of neighbours by reason of noise, litter and disturbance caused as patrons leave the premises.

Furthermore, approval would set a difficult precedent to defend against and could lead to further impacts. The proposal would thereby, having regard to similar appeal decisions in the locality for extended hours of use, prove contrary to and conflict with 'saved' policies SDP1, SDP16 and REI7 of the City of Southampton Local Plan Review (amended 2015) and Policy AP8 of the City Centre Area Action Plan (adopted 2015).

Appendices attached	
1	Development Plan Policies
2	08/00371/VC appeal decision, 24 Carlton Place, '90 degrees'
3	04/00230/FUL appeal decision, 15/16 Carlton Place
4	09/00291/FUL appeal decision, 28 Carlton Place and 29 Bedford Place
5	11/00537/FUL appeal decision, 67 – 75 London Road (former Varsity)
6	13/00440/FUL appeal decision, 22 Bedford Place,
7	14/00392/FUL appeal decision, 3 Winchester Street, Budhha Lounge
8	14/00686/FUL appeal decision, 24 Lower Banister Street, The Social

1 The site and its context

- 1.1 The site is located within the City Centre (Bevois Ward) in the Bedford Place area and it is also within the Carlton Crescent Conservation Area. The area is designated as an evening zone under the Night Time Economy policy within the City Centre Action Plan (AP8).
- 1.2 The site is located at the junction of Carlton Place and Lower Banister Street, the building is set over three floors of accommodation and is within an area of the city which benefits from a wide range of uses including pubs, clubs, and bars together with a mix of commercial, retail and residential units, including flatted development on the nearby Mede House site.
- 1.3 The building currently has permission to be occupied as a restaurant/drinking establishment (mixed A3/A4 use) called '90 Degrees'. The use occupies the ground and first floor. It is noted that 90 Degrees is currently being operated with a focus towards drinking establishment (A4) rather than restaurant use (A3).
- 1.4 90 degrees is permitted to operate until 2am 7 days a week. Permission was granted for those hours in December 2008 under the appeal relating to application 08/00371/VC (**Appendix 2**).
- 1.5 There are a range of opening hours in the local are; many that extend past midnight benefit from historic planning permissions without conditions restricting opening hours.

2 Proposal

- 2.1 Through the variation of condition 2 of permission 08/00371/VC this application seeks permission to extend the hours of the established use so that it can open an extra hour (until 3am) seven days per week.

3 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.
- 3.3 Policy AP8 (Night time economy) of the City Centre Action Plan identifies the Bedford Place area as an evening zone subject to the restricting the opening hours until midnight for new development. The policy acknowledges that the city centre is an appropriate location for late night uses. Policy AP8 replaces policy CLT13 of the Local Plan which was supported by the Night Time Economy Briefing Paper. Any agreed licensing is separate from planning control.

4 Relevant Planning History

- 4.1 On 22nd September 1992 planning consent (920921/25943/E) was granted for a change of use on the ground floor from retail to restaurant, with the remainder of the building remaining in office use. The opening hours to the public were restricted by condition to 10pm on Sundays, 11pm Monday – Friday and 11:30pm on Saturdays.
- 4.2 The opening hours were subsequently extended in June 1995 and then again in February 2005 (planning consent 04/01561/VC) resulting in a closing time of 23.20 Mondays to Thursdays, 23.30 Fridays and Saturdays; and 10.00 - 22.50 on Sundays and Public Holidays.
- 4.3 On the 27th June 2007 planning consent (06/01809/FUL) was granted for the change of use of first floor from B1 (offices) to A3/A4 (Restaurant/Drinking Establishment) so that the ground floor premises could be enlarged.
- 4.4 In August 2007 permission was granted (07/00879/VC) allowing a further extension of the opening hours to Midnight 7 days a week.
- 4.5 A further application (08/00371/VC) to extend the opening hours until 2am was refused in May 2008, with the main issue being the effect of the proposal on the amenity of occupants neighbouring properties, with particular reference to noise and disturbance. This decision was appealed and the appeal allowed in December 2008 (**Appendix 2**). It is noted that the Council did not evidence to support the application but was approved. As such, whilst regrettable, this decision is not deemed to have set a precedent as the Inspector was not fully informed about the concerns of the Council; in particular the cumulative impact of increased hours and many subsequent appeal decisions have supported the Council's case as evidenced by the appendices attached to this report.
- 4.6 Other drinking establishments nearby also have planning histories that are relevant to the assessment of this application:
- 4.7 In 2005 an appeal was dismissed (04/00230/FUL) at 16/17 Carlton Place which sought 12:30am closing time (**Appendix 3**).
- 4.8 In March 2010 an appeal against the refusal of planning permission for an extension to the hours of operation to allow 2am closing seven days per week was dismissed at 28 Carlton Place - 29 Bedford Place (09/00291/FUL). It is noted that the applicant also offered an alternative of 1am, if considered appropriate, only on Saturday and Sunday mornings. The extension of operational hours, for both 1am and 2am, were both dismissed (**Appendix 4**).
- 4.9 In October 2011 an appeal was allowed in part and planning permission (11/00537/FUL) granted for the extension of hours at 67 – 75 London Road. The extended hours were however the opening hours rather than the closing hours which were not allowed. Therefore the closing hour remained unchanged: midnight seven days per week for (**Appendix 5**)
- 4.10 In April 2014 an appeal at 22 Bedford Place was allowed although the inspector did not allow the hours sought of 1100 to 0400hrs all days, instead the inspector

varied the hours to allow the premises to open until 11pm Monday to Thursday and 11:30pm Friday and Saturday (**Appendix 6**)

- 4.11 In January 2015 an appeal was dismissed at 3 Winchester Street (Budhha Lounge) the application was to extend the opening hours until 1am seven days per week. (**Appendix 7**)
- 4.12 In December 2014 an appeal was dismissed which sought permission to allow opening of 'The Social' (Triad House, 24 Lower Banister Street) to be extended to allow a closing time of 2am seven days per week (14/00686/FUL). The appeal decision is included as (**Appendix 8**).
- 4.13 In May 2016 permission was granted for the extension to the operational hours at the 'Budha Lounge'. The proposal included swapping the operational hours with the 'Budha Club'. The two premises are next to one another and the assessment concluded that trading of hours between the two premises would not arise in material harm to the character and amenities of the local area subject to the capacity of the premises being controlled to prevent an intensification of the late night use.
- 4.14 The above appeal decisions support the Council's position in resisting planning applications seeking to extend operational hours of drinking establishments in the Bedford Place/London Road Evening Zone as defined by policy AP8 of the City Centre Action Plan, which continues the approach set out in the Local Plan Review (policy CLT14/Night Time Briefing Paper). The above appeal decisions all support the Council's concerns and are a relevant material consideration in this case; by allowing later opening hours, in combination with other premises which benefit from historic planning permissions without hours restrictions, or having established lawful uses over the passage of time, the existing harmful impact on the living conditions of residents who live nearby would be exacerbated. The decisions support the conclusion that significant harm is caused as a result of customers leaving the premises and associated noise, disturbance and antisocial behaviour occurring at antisocial hours of the day when residents are expected to be sleeping; and littering.

5 Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, erecting a site notice (13.04.2018) and publishing an advertisement (13.04.2018). At the time of writing the report **15** representations have been received from surrounding residents and a local ward Councillor (Cllr Burke). The following is a summary of the points raised:
- 5.2 **Letters of support:** 7 including Cllr Burke
- **The business is well managed.**
 - **Additional hour would not bring new people to the area.**
 - **The building has good sound insulation.**
 - **Customers will move to another later opening bar/club thus opening for another hour will make no difference.**

Response The proposal would result in an intensification of late night uses and is contrary to development plan policies. As a result the development would intensify the number of people on the streets at unsociable hours leading to noise disturbance to local residents. Whilst only another hour the Council's current position is midnight and this gradual shift in hours creates a precedent for others and intensifies the problem currently experienced.

5.3 **Letters of objection: 8 (including 2 from the same person)**

- **Late night disturbance to adjacent residential properties including families and nearby local residents in addition to the cumulative disturbance from other late night uses in the vicinity. Increase to the number of patrons walking through surrounding streets after midnight adding to the incidences of anti-social behaviour and alcohol related crime.**

Response

- Officers agree to these concerns raised, which are supported by the Local Plan.
- It is clear from public responses to this application along with those provided in response to similar applications (see planning history section) that the mix of uses close to residential areas does lead to sensitivities and problems from unsocial behaviour in the early hours of the morning.

5.4 **SCC Environmental Health (Pollution & Safety) – Objection**

EH would not support this application for a variation to extend the terminal trading hour as although noise from inside the premises appears currently to be well controlled, patrons spilling onto street at terminal hour and smokers are likely to cause noise that will disturb neighbours particularly those living immediately opposite and overlooking the site.

5.5 In addition the potential noise from vehicles, including taxis, collecting patrons present a further source of excessive noise to residents.

5.6 **Hampshire Constabulary – Objection.**

Noise and anti-social behaviour. Licencing hours were extended to prevent multiple venues from closing at the same time causing more noise and anti-social behaviour than when venues have staggered closing times. By allowing more premises in Bedford Place/London Road to close at the same time this problem would be exacerbated. Police Licencing would object to the extension of the licencing hours past the permitted 2am.

6 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- principle of development; and
- impact on character and amenities of the local area.

Principle of development.

6.2 The proposal seeks to extend the closing time for the premises by one hour resulting in a closing time of 3am rather than 2am. The proposed hours exceed

the hours permitted by CCAP policy AP8 which sets 12 midnight as the latest time that food and drink uses can stay open until within the evening zones. The principle of further extending the hours in this location is not supported.

Impact on character and amenities of the local area.

- 6.3 Paragraph 4.76 of the CCAP confirms that within the Bedford Place/London Road area licences for new premises or substantial variations to existing licences such as longer opening hours are unlikely to be permitted unless the applicant can demonstrate that the changes will not have an adverse impact on the area. Having taken account of the supporting information officers are not convinced that the applicant has demonstrated that the additional hour for trading will achieve this.
- 6.4 The concentration of A3, A4 and A5 uses in the Bedford Place/London Road area has grown over a considerable period of time. The growth of mid to late evening activity in this area has been problematic due to the noise and disturbance created by patrons leaving premises and dispersing through nearby residential areas. Many of these venues are historic uses or operate with the benefit of old planning consents which did not contain any reference to operating hours.
- 6.5 The Local Planning Authority, Hampshire Constabulary and the Council's Environmental Health Officer are concerned that by increasing the hours of operation of this venue existing problems of activity on the streets during the early hours would be exacerbated.
- 6.6 Therefore in order to prevent any further harm, yet having regard to the night time economy, the LPA has taken a consistent approach in controlling hours of operation on new premises or applications for variation of condition. This approach has been supported by the Planning Inspectorate with the dismissal of appeals seeking hours beyond 12 midnight; the six appeal decisions listed above in section 4 all raise cumulative impact as a reason for preventing more premises from opening later.
- 6.7 Moreover the Inspector's report into the current Local Plan had regard to this issue with the creation of designated late night zones and hubs to distinguish between mid-late evening activity and late night activity such as nightclubs and to safeguard residential amenities. This approach has been brought forward by the City Centre Action Plan where Policy AP8 still makes a clear distinction between late night hubs and evening zones, with late night hubs such as Leisure World allowing premises to be open until 3am.
- 6.8 As stated, Policy AP8 it clearly states that Class A3, A4 and A5 night time uses will be restricted to midnight in this area in order to balance the economic needs of such businesses against the social and environmental requirements of nearby residents to enjoy reasonable peace and quiet at night. The text to this policy also identifies this area as a Cumulative Impact Policy Area for Licensing Applications because it is an area already suffering due to the concentration of licensed premises and that the Council will co-ordinate it's planning and licensing functions as far as possible. This does not of course mean that planning restrictions must

be eased to correspond with current licensing hours because planning and licensing considerations vary. It is however noteworthy that the latest closing hour set by licencing for 90 degrees is 2am.

- 6.9 The proposal is therefore clearly contrary to current Policy AP8. It is also in conflict with LPR Policies SDP1 and SDP16 which together specify that development will only be granted if the amenity of the city's citizens will not be unacceptably affected including in terms of noise impact.
- 6.10 The LPA also notes that an appeal decision for the application site (08/00371/VC, **appendix 2**) allowed a variation of hours until 2am. This is not considered to represent a precedent because the Inspector was not fully informed about the Council's concerns (because the LPA did not provide a statement of case) and had little or no regard to the cumulative impact of increased hours. A subsequent appeal decision at 28 Carlton Place - 29 Bedford Place (**appendix 4**) has supported the Council's consistent approach thereafter.
- 6.11 The granting of this application would make it difficult for the LPA to resist future applications on other premises and it is likely that the cumulative impact of a number of venues increasing their hours would lead to more harmful disturbance. Planning history for the area would indicate that many venues within the area would be keen to increase their hours of operation, if possible.
- 6.12 Officers accept that there needs to be a balance struck between economic benefits and residential amenity, however by allowing later opening hours of the premises the cumulative amount of late night activity in the area would increase and therefore the potential for noise and disturbance to occupiers of nearby residential properties would also intensify. Appeal inspectors have agreed with the Council with this regard on numerous occasions and have had regard to a large body of evidence held by the Council demonstrating the degree of the problem in this area.
- 6.13 The Council's Environmental Health Team and the Police Licensing Team also oppose the proposal for the reasons set out above.

7 **Summary**

- 7.1 Although the City Strategy aspires to a vibrant, mixed use, 24-hour city centre, an appropriate balance needs to be struck between economic benefits and residential amenities. Policy AP8 intends to limit the hours of premises trading within the Bedford Place area to no later than midnight in order to achieve this. Other historic uses nearby do not benefit from planning control and as such have unrestricted operational hours. These do not however justify the extension of the operational hours of other premises nearby given that there is likely to be an overall harmful cumulative impact. It is the opinion of officers that extending the opening hours of the appeal premises would contribute to the erosion of the existing balance in the locality as supported by the appeal decisions listed in section 4 above. Furthermore Hampshire Constabulary and the Council's Environmental Health Officer object. The application should, therefore, be refused giving the applicant their right to appeal.

8 Conclusion

- 8.1 The application is contrary to policy AP8 as the applicant has failed to demonstrate that changes will not have an adverse impact on the local area. The proposal would lead to a cumulative increase in noise and disturbance and cumulative effect and is recommended for refusal on that basis.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1 (a), (b), (c), (d), 2 (b), (d) (e) 6 (a) (b), 7 (a), 9 (a) and (b)

MP for 29/05/18 PROW Panel

Application 18/00551/FUL

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS1 City Centre Approach

City of Southampton Local Plan Review – (as amended 2015)

SDP1 Quality of Development
SDP7 Urban Design Context
SDP9 Scale, Massing & Appearance

City Centre Action Plan - March 2015

AP 8 The Night time economy

Supplementary Planning Guidance

Planning Obligations (Adopted - September 2013)

Other Relevant Guidance

The National Planning Policy Framework (2012)

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Appeal Decision

Site visit made on 1 December 2008

by **Gareth Symons BSc(Hons) DipTP**
MRTPI

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

Appendix 2

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
15 December 2008

Appeal Ref: APP/D1780/A/08/2078978

24 Carlton Place, Southampton, Hampshire, SO15 2DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Carltons Restaurant and Bar Limited against the decision of Southampton Council.
- The application Ref: 08/00371/VC/25943, dated 12 March 2008, was refused by notice dated 23 May 2008.
- The application sought planning permission for variation of condition to change opening hours 08.00am to 00.30am Monday – Thursday; 08.00am to 00.30am Friday – Saturday and 10.00am to 00.30am Sundays and Public Holidays without complying with a condition attached to planning permission Ref: 07/00879/VC/25943, dated 31 August 2007.
- The condition in dispute is No 02 which states that: Notwithstanding the hours applied for the premises shall only be open to the public within the hours of 08.00am to Midnight Monday to Saturdays and 10.00am to Midnight Sundays and Public Holidays.
- The reason given for the condition is: To safeguard the amenities of neighbouring properties and the area generally in accordance with policies CLT14 and RE17 of the City of Southampton Local Plan March 2006.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions as set out below in the Formal Decision.

Main Issue

1. The main issue is the effect of the proposal on the living conditions of residential occupiers in the area, with particular reference to noise and disturbance.

Reasons

2. The Council states that it has been consistent in terms of the hours of operation of entertainment premises in the area. However I do not have any details to support this claim. A study of opening hours carried out in relation to an earlier appeal regarding the same venue, that was later withdrawn, has been referred to but I do not have that either. I do note the consultation response from the Council's planning policy team but that gives little more information about restrictions on late night opening times. In terms of evidence from the Council about noise and disturbance that might arise if the appeal premises did open later, there is nothing from an environmental health perspective and I do not have any objections from the police.

3. In contrast the appellant has submitted details showing that various clubs and bars in the immediate vicinity already operate later than midnight, with several open until 0200. Many of these late night hours have been approved under licensing powers. This includes the appeal venue. It has been stated that when that licence variation was considered the police observations related to a drinking up period and environmental health concerns were addressed by a noise report. None of this evidence has been disputed by the Council.
4. I recognise the distinction between hours of opening that may have been approved under the planning acts as opposed to those granted under licensing regimes. Therefore, in this regard, if premises had been operating in breach of planning conditions and this had been causing amenity problems, I might have expected to see some evidence from the Council relating to enforcement action. Apart from a nearby hot food outlet referred to by the appellant, I have nothing of this nature before me.
5. I am mindful of the conflicts that such uses can cause when they are alongside dwellings. As such I have read all the objections submitted at the application and appeal stages. However it seems to me that the majority of concerns such as anti-social behaviour, drinking excessive alcohol, litter, noise and disturbance relate collectively to the uses overall and very few can be attributed solely to the appeal premises. Those that might, such as signs on pavements, noise through adjoining walls and the blocking of accesses, could be dealt with under different legislation or, in my view, would not be materially worse if the planning approved hours were extended.
6. The appellant has also referred to various initiatives that have been introduced in response to amenity problems caused by late night activities in the nearby Polygon area. These include public realm improvements, on street parking controls, bans on drinking in public places, CCTV and late night bus services. I recognise that local residents still have concerns relating to these areas. However to my mind, they do at least represent a broad package of measures aimed at countering the unfortunate adverse side effects of revelry.
7. Several objectors have referred to local plan policies CLT14 and CLT15. Although they do not appear in the Council's decision notice on this application, they do aim to promote and manage the night time economy. However, they do not specify opening hours for such activities. I have therefore had regard to the Council's Night Time Economy guidelines, but these are not hard and fast rules. The guidelines also recommend consultation with the City Centre Manager when longer operating hours are proposed. I do not have any such response in this case. I take the view therefore that this appeal should be considered on its merits based on what has been put before me.
8. In this context and given what I have found above, the proposed extended opening time of this premise would be reasonable. The increased activity this might cause would not be any more noisy or disturbing bearing in mind the concentration of clubs, bars, restaurants and takeaways that have already given this part of the city an established late night entertainment culture. I give limited weight to claims that this decision would set a precedent. What is being approved would only bring the appeal premise in line with the existing hours operated by other venues. I also have no evidence, such as refusals of planning permissions or failed appeals to demonstrate pressure for other

establishments to open longer. In any event each application or appeal should be considered on its individual merits.

9. Therefore the proposal would not conflict with the amenity aims of policies SDP1, SDP16, CLT14 and CLT15 from the local plan. The Council has not stated that there is any conflict with local plan policy RE17. I agree.

Conclusion

10. For the reasons given and taking everything else into account, I conclude that the appeal should succeed. The Council has not suggested any other conditions that might need imposing in the event of the appeal being successful. I shall therefore only vary the condition relating to opening hours on the basis of what was applied for.

Formal Decision

11. I allow the appeal and grant planning permission at 24 Carlton Place, Southampton, Hampshire, SO15 2DY for variation of condition to change opening hours 08.00am to 00.30am Monday – Thursday; 08.00am to 00.30am Friday – Saturday and 10.00am to 00.30am Sundays and Public Holidays without complying with condition no 02 attached to planning permission Ref: 07/00879/VC/25943, dated 31 August 2007, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and the following condition:
 - 2) The premises shall only be open to the public within the hours of 0800 to 0200 Monday to Saturday and 1000 to 0200 Sundays and Public Holidays.

Gareth Symons

INSPECTOR

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Appeal Decision

PLANNING &

- 2 FEB 2005

Site visit made on 10 January 2005

The Planning Inspectorate
409 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

by Sue Turner RIBA, MRTPI, IHBC

SUSTAINABILITY

an Inspector appointed by the First Secretary of State

Date 31 JAN 2005

7144

Appeal Ref: APP/D1780/A/04/1155312

16/17 Carlton Place, Southampton, SO15 2DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Piers Kannangara against the decision of Southampton City Council.
- The application Ref:04/00230/FUL, dated 11 February 2004, was allowed on 8 April 2004 subject to conditions.
- The development permitted is demolition of existing rear extensions, alterations, new rear extension, No 17 first floor and second floor change of use from retail / office to A3 ancillary.
- The condition in dispute is No 10 which states that: Unless the Local Planning Authority agree in writing, the premises to which this permission relates shall not be open for business outside the following hours: 10.00am – 11.30pm unless otherwise agreed by the Local Planning Authority.
- The reason given for the condition is: To protect the amenities of the occupiers of adjoining residential properties.

Summary of Decision: The appeal is dismissed

Main Issue

1. I consider that the main issue in this case is the effect on the living conditions of occupants of adjacent residential properties, with particular reference to noise and disturbance, of varying condition 10 to allow opening of the premises between the hours of 1000 hours and 2400 hours with a further 30 minutes "drinking up" time.

Planning Policy

2. The development plan for the area includes the City of Southampton Local Plan 1995. Of the policies that have been drawn to my attention I consider that Policies ENV17 and S10 are particularly relevant to this appeal. Policy ENV17 (ii) seeks in part to ensure that development proposals do not have adverse effects on existing or future nearby development. Policy S10 (b) states that proposals for premises within the A3 use class will only be permitted if, amongst other things, appropriate conditions are imposed to prevent the generation of any undue noise or other forms of nuisance directly arising from the proposed use, in the interests of residential amenity.
3. My attention has also been drawn to the 2003 Revised Deposit Version of the Local Plan. As this plan has been the subject of a Local Plan Inquiry and has reached an advanced stage in the development plan process I will attach considerable weight to its objectives. In particular Policy SDP1(i) seeks to ensure that development does not unacceptably affect the amenity of the city and its citizens, whilst Policy RE18(i) seeks to ensure that appropriate planning conditions are imposed where necessary to prevent generation of any undue noise or other forms of nuisance directly arising from proposed A3 uses. Policy RE15 restricts residential development within the secondary retail frontages to the upper floors only.

4. Policy CLT14 of the emerging local plan seeks to control the location of A3 uses relating to the night time economy within the city centre. Paragraph 5.51 distinguishes between activities which are part of the early to mid evening economy and late at night activity. The appeal site lies within an area described in paragraph 5.52 as having a more diverse range of activities designed to appeal to a wider audience, making it a more appropriate location for early to mid evening activity.
5. Circular 11/95 deals with the use of conditions in planning permissions. It emphasises that conditions should only be imposed where they are necessary, reasonable and where they can be enforced.

Reasons

6. Carlton Place lies close to the city centre in an area which has a mix of uses, with shops, restaurants and public houses. The variety of uses and the predominantly small scale of buildings create a lively urban character. I observed that several properties along Carlton Place and in the surrounding area have residential accommodation on the upper floors, above the commercial uses. In particular No 18 Carlton Place, which is next door to the appeal property, has residential accommodation at first floor level.
7. The appeal property is a three storey building on the south side of Carlton Place. Planning permission has been granted for changes to the building to facilitate use of the whole of the ground floor area as licensed premises and allow the use of the upper floors of No 17 as ancillary A3 space. From the evidence submitted it is clear that the concentration of A3 uses in the surrounding area already generates a significant level of night time activity. However paragraph 5.47 of the emerging local plan identifies the need to manage the night time economy to ensure that night time disturbance is kept to a minimum whilst at the same time supporting the economic benefits of the night time economy.
8. The appellant has drawn my attention to several premises in the immediate vicinity which are open until after midnight. However the Council contends that many of the A3 uses in the surrounding area are historic uses or operate under old planning permissions without any conditioned opening hours. In order to retain the area around the site for early to mid evening activity the Council contends that it has recently sought to restrict new permissions for the use of premises as public houses to a closing time of 2330 hours.
9. Other conditions have been attached to the extant planning permission to control the level of amplified noise and other noise emanating from the premises. Thus it seems to me that the disputed condition would serve primarily to control noise and disturbance caused by customers leaving the premises. Altering the operating hours to those proposed by the appellant would allow customers to leave the premises as late as 0030 hours. Whilst I recognise that there are other premises in the area which close at this time and later, I consider that extending the operating hours of the appeal property as proposed would contribute to a shift towards additional late night activity in the locality and would lead to an increase in late night noise and disturbance in and around Carlton Place. In my view this would have a cumulative harmful effect on the living conditions of local residents and in particular on the occupants of the residential accommodation above No 18 Carlton Place.
10. I acknowledge that the existing A3 use of the site, which has unrestricted operating hours, could be continued. Furthermore I note that the area is designated for night time uses and that there is only limited residential use in the immediate surrounding area, with no

evidence of any noise complaints relating to the use of the appeal premises. However the changes allowed under the extant planning permission would improve and enlarge the ground floor accommodation and enable the appeal property to be put to more intensive A3 use than at present. I consider that it would consequently generate more activity than the previous restaurant use and that allowing it to remain open until 0030 hours would fail to strike a reasonable balance between encouraging economic activity and maintaining the living conditions of local residents.

11. In determining this appeal I have had regard to the appellant's argument that some premises in the locality have only recently been granted permission to remain open significantly later than 2330 hours. I have also considered other examples that have been drawn to my attention, including some cases where there have been more vociferous local objections and where premises have been closer than the appeal site to more intensive residential use. However in the absence of detailed information regarding the exact circumstances at the other sites referred to I can attach little weight to them. I have therefore determined this appeal on the basis of its individual merits having in mind the circumstances at the appeal property and in the light of the relevant adopted and emerging local plan policies.
12. In conclusion, I consider that the removal of the disputed condition would have a harmful impact on the living conditions of the occupants of residential accommodation in the area surrounding the appeal site. On this basis I conclude that Condition 10 is both reasonable and necessary in order to meet the objectives of Local Plan Policies ENV17 and S10 and those of Policies SDP1 and RE18 and of the emerging Local Plan.

Other Matters

13. I have taken account of the appellant's suggestion that the extended operating hours could be limited to Thursday, Friday and Saturday nights only. However I consider that the harmful effect of later opening hours on the living conditions of nearby residents would be just as unacceptable on these nights as during the rest of the week. I am not, therefore, persuaded that the condition should be varied even for just part of the week.

Conclusions

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

15. I dismiss the appeal.

Sturmer

INSPECTOR

PLANNING &

- 2 FEB 2005

SUSTAINABILITY



Appeal Dismissed
31/4/05

DETERMINATION OF APPLICATION
TOWN AND COUNTRY PLANNING ACT 1990

Town and Country Planning (General Development Procedure) Order 1995

Piers Kannangara
c/o Bob Dalton
Merchant Design International
Saxon House
Saxon Wharf
Southampton
SO14 5QE

Appeal against Condition
16/7/04

In pursuance of its powers under the above Act and Regulations, Southampton City Council, as the District Planning Authority, hereby gives notice that the application described below has been granted:

CONDITIONALLY APPROVED

Proposal: Demolition of the existing rear extensions and erection of a single storey rear extension to provide bar area involving installation new external staircase and condensers in connection with use of whole ground floor premises as a bar (Class A3). First and second floors of no. 17 Carlton Place to be used as ancillary A3 space.

Site Address: 16/17 Carlton Place Southampton SO15 2DY

Application No: 04/00230/FUL

In accordance with the plans and application submitted with the above FULL Application, subject to the following condition(s):

01.
The development hereby permitted shall begin not later than five years from the date on which this planning permission was granted.

REASON

To comply with S.91 of the Town and Country Planning Act 1990.

02.

The development hereby approved shall be implemented solely in accordance with drawings received by the Local Planning Authority.

REASON

To define the consent and for the avoidance of doubt.

03.

The existing building and/or structure shall be demolished and all resultant materials removed from the site before the development hereby approved is commenced unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To secure a satisfactory comprehensive form of development and to safeguard the visual amenity of the locality.

04.

Details of satisfactory facilities to be provided for the storage and removal of refuse from the premises shall be submitted to the Local Planning Authority before the building is first occupied. The facilities shall include accommodation for the separation of waste to enable recycling.

REASON:

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

05.

No sound amplifying equipment which is audible outside the premises shall be installed in the premises without the prior written consent of the Local Planning Authority.

REASON:

In the interests of the amenities of nearby properties.

06.

All works relating to the construction of the development hereby granted, including the works to regrade the levels of the site, demolition and ground preparation prior to building operations shall only take place between the hours of 8am and 6pm on Monday to Friday and 9am to 1pm on Saturdays and at no time on Sundays or Bank Holidays. Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To protect the amenities of adjoining properties during the construction period.

07.

Before development commences a detailed scheme for the soundproofing of the building shall be submitted to and approved by the Local Planning Authority. Such agreed scheme of soundproofing shall be fully implemented to the satisfaction of the Local Planning Authority before the extension hereby approved is occupied.

REASON:

To protect the amenities of the surrounding area.

08.

The roof area of the extension hereby approved shall not be used as a balcony, sitting out area, roof garden or similar activity without the grant of a further specific planning permission by the Local Planning Authority.

REASON:

To prevent overlooking and loss of privacy to adjoining properties.

09.

Any existing access to the site shall be stopped up and abandoned and footway and verge crossings shall be reinstated immediately after completion of the new access.

REASON:

In the interests of highway safety.

10.

Unless the Local Planning Authority agree in writing, the premises to which this permission relates shall not be open for business outside the following hours :-
10.00am - 11.30pm unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To protect the amenities of the occupiers of adjoining residential properties.

11.

The premises shall only be used for food and drink purposes as specified in the Description of Development above and for no other purpose whatsoever, including a night club or dance hall or for any other purpose falling within Class D2 of the Schedule to the Town and Country Planning (Use Classes) Amendment Order 1991, (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order).

REASON:

To enable the Local Planning Authority to retain control over the development in the interests of the amenities of the area.

12.

The development to which this consent relates shall not be brought into use in full or in part until secure, covered space/changing facility has been laid out within the site for 3 bicycles to be stored for the benefit of the residents/staff in accordance with the plans to be submitted to and approved in writing by the Local Planning Authority. The cycle storage/changing facility hereby approved shall thereafter be retained on site for that purpose.

REASON:

To encourage cycling as a sustainable form of transport.

13.

No doors or gates shall open onto the public highway.

REASON:

In the interests of vehicular and pedestrian safety.

14.

The materials and colours to be used for the fenestration on the front elevation and external surfaces of the extension hereby approved shall be as specified in the approved drawing no:06 and planning application form unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To ensure a satisfactory appearance for the development.

15.

Notwithstanding the approved plans the precise design and materials to be used for the windows on the front elevation of the building shall be submitted and approved the

Local Planning Authority before the development commences. The development shall then be implemented in accordance with the approved details.

To ensure that the character of the Conservation Area is enhanced.

16.

The existing Flue on the rear elevation of the building shall be painted to match the colour of the building before the extension is first brought into use.

To enhance the character of the Conservation Area.

17.

The development hereby approved shall be implemented solely in accordance with drawing no.06 received by the Local Planning Authority.

REASON

To define the consent and for the avoidance of doubt.

REASON FOR APPROVAL: The proposal is in accordance with Policies SDP1, SDP7, SDP9, HE1, RE15 and RE18 of the City of Southampton Local Plan Review Revised Deposit Draft (Feb 2003).



Alan Sayle
Development Control Manager

8 April 2004



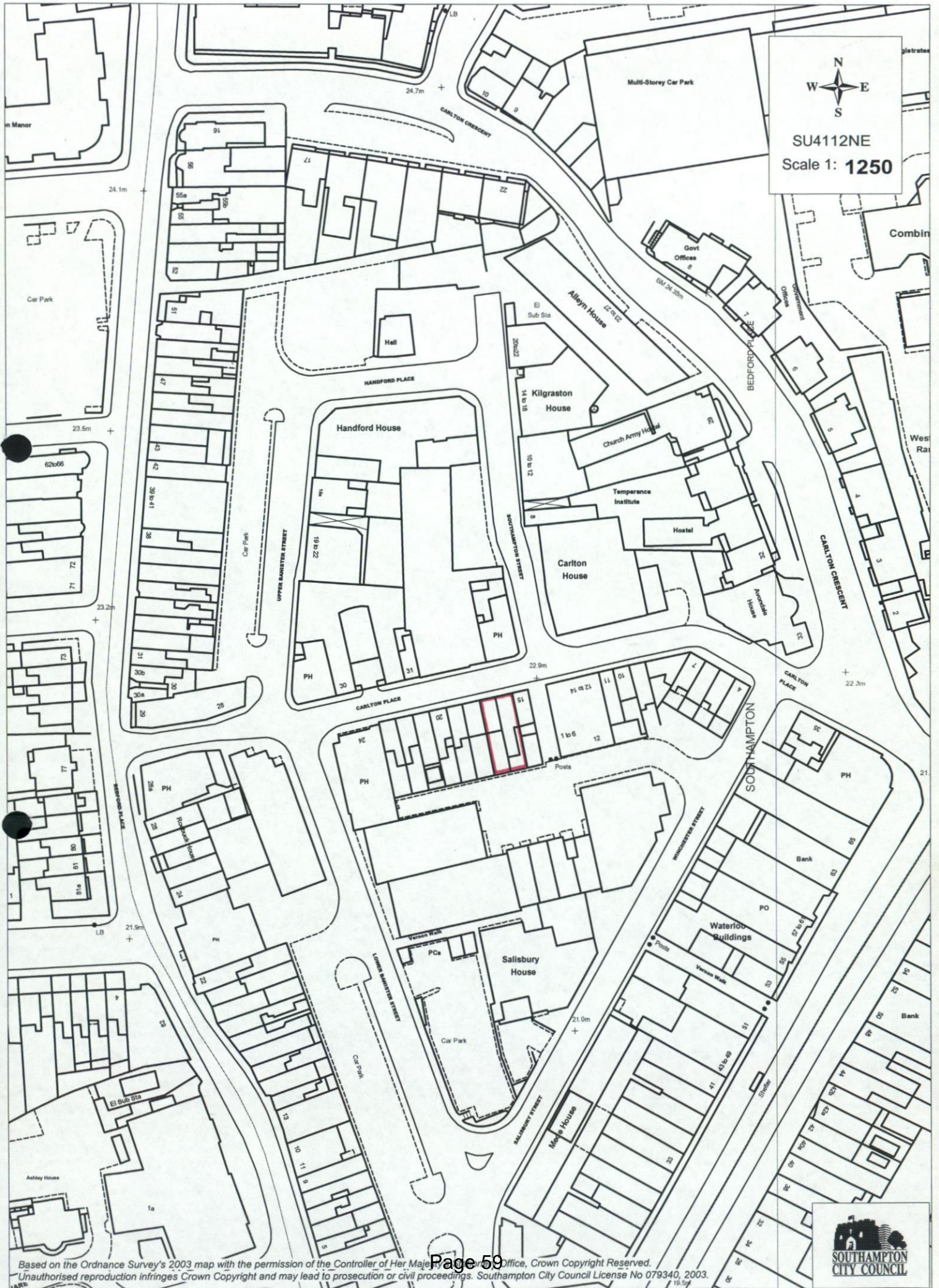
If you have any further enquiries please contact:
David Randall

NOTES

1. This permission relates to Planning Control only. Approval under the Building Regulations may also be required and should you be in any doubt about this, please contact Building Control Services, Tel. 023 8083 2558. Any other necessary consent must be obtained from the appropriate authority. Special attention is drawn to the fact that this permission does not relate to the display of advertisements and separate consent is required under the Town and Country Planning (Control of Advertisements) Regulations. Development affecting buildings of special Architectural or Historical interest is also subject of separate Listed Building Consent. Any queries should be made to Development Control Service as indicated below.
2. This permission has been granted on the basis of all the information submitted by the applicant shown on the plans accompanying the application. Any material misstatement or wrong information may invalidate the permission.
3. If the applicant is aggrieved by the decision of the District Planning Authority to approve the proposed development, subject to conditions, they may appeal to the Secretary of State for the Environment, Transport and the Regions in accordance with Section 78 of the Town and Country Planning Act 1990, within three months of the date of decision. (Appeals must be submitted on a form available from the Planning Inspectorate, 3/07 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS2 9DJ). The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Planning Authority, or could not have been granted other than subject to the conditions imposed by it having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under that Order.
4. If permission to develop land is granted subject to conditions, whether by the District Authority or by the Secretary of State, and the owner of the land claims that the land has become incapable of reasonable beneficial use by the carrying out of any development which has been or would be permitted, they may serve on the Council a purchase notice requiring the Council to purchase their interest in the land in accordance with the provisions of Part IV of the Town and Country Planning Act 1990.
5. In certain circumstances, a claim may be made against the District Planning Authority for compensation, where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
6. Attention is drawn to the provisions of Section 12 of the Hampshire Act 1983 relating to access for the Fire Brigade, and you are advised to contact Building Control Services as set out in Note 1.
7. For those developments which are covered by Sections 4,8 and 8A of the Chronically Sick and Disabled Persons Act 1970, the attention of developers is drawn to the relevant provisions of the Act and to the British Standards Institution Code of Practice for Access for the Disabled to Buildings (BS 5810:1979) or the Department of Education and Science Design Note 18 "Access for the Physically Disabled to Educational Buildings". (Section 4 of the 1970 Act covers buildings or premises to which the public are to be admitted; Section 8 relates to Educational Buildings and Section 8A covers shops, offices, railway premises and factories).

Please address any correspondence in connection with this form quoting the application number to:

Development Control Service, Southampton City Council, Civic Centre SOUTHAMPTON, SO14 7LS





Appeal Decision

Site visit made on 18 February 2010

by **G M Hollington MA, BPhil, MRTPI**

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

Appendix 4

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
9 March 2010**

Appeal Ref: APP/D1780/A/09/2116478

28 Carlton Place & 29 Bedford Place, Southampton, Hampshire, SO15 2DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Steven Hughes against the decision of Southampton City Council.
- The application Ref. 09/00291/FUL, dated 12 March 2009, was refused by notice dated 11 May 2009.
- The application sought planning permission for change of use from retail (class A1) to food and drink (class A3) (café and sandwich bar) and elevational alterations (new shopfront) without complying with a condition attached to planning permission Ref. 07/01737/VC, dated 10 June 2008.
- The condition in dispute is No. 02 which states that:
"Except on New Year's Eve and New Year's Day, the use shall not be open to customers outside the following times:
0800 to 0000 hours Monday to Saturday inclusive; and
1000 to 2300 hours on Sundays.
On New Year's Eve and New Year's Day, the use shall not be open to customers outside the times of 0800 hours on New Year's Eve if that day falls on a Monday to Saturday, or 1000 hours if it falls on a Sunday, and 0030 hours on New Year's Day."
- The reason given for the condition is:
"The premises are located within a secondary shopping area which is in close proximity to residential premises and the local planning authority wish to control the hours of use in the interests of the amenities of those living in the area, whilst taking into account the pattern of activity in the New Year period".

Decision

1. I dismiss the appeal.

Main Issue

2. I consider the main issue in this appeal to be the effect of the proposed development on the living conditions of local residents, with particular reference to noise and disturbance.

Procedural Matter

3. The planning application as initially submitted sought opening until 0200 daily. The appellant's appeal statement refers to this but also offers the alternative, if considered appropriate, of extended opening only on Saturday and Sunday mornings, until 0100 hours.

4. Consideration of the application by the local planning authority (LPA) was on the basis of opening until 0200 hours except on Monday mornings (0030 hours); these are the hours are referred to in the decision notice and on the appeal form. I have therefore considered the appeal on the same basis but bearing in mind the possibility of shorter hours if appropriate.

Reasons

5. The appeal premises are an eating and drinking establishment described by the LPA as having an A3/A4 use. They are located within but on the edge of an area containing a mix of commercial uses, with many in classes A3, A4, A5 and D2 of the Use Classes Order. Also within this area is some residential accommodation on upper floors of buildings and, close to the appeal site, blocks of flats at Bedford Gate and Roebuck House. Beyond premises along the opposite side of Bedford Place, there is a predominantly residential area.
6. The mixed use area is defined in the City of Southampton Local Plan Review as a night time zone (NTZ), where proposals for A3, A4 and A5 uses will be permitted by policy CLT 14 subject to compliance with policy REI 7 which, among other criteria, seeks to prevent the generation of any undue noise or other forms of nuisance directly arising from the proposed use.
7. The LPA has prepared a *Night Time Economy* briefing paper to provide guidance (rather than hard and fast rules) for operating hours relating to policy CLT 14 (and CLT 15). The recommended closing time for London Road (Bedford Place) is 12 midnight each day. The guidelines were not subject to public consultation, so this limits the weight I can give them, but I note that other LPA and appeal decisions have accorded with this approach. One exception, an appeal decision allowing opening until 0200 hours at 24 Carlton Place, is acknowledged by both main parties as having been made without the benefit of a statement of case from the LPA.
8. Problems such as late night noise in what was then called the "North of the Parks" area and tensions between long term local residents and a large transitory student population in the Polygon area (west of Bedford Place) were referred to in the Inspector's report of the public local inquiry into the Local Plan Review. Allowing later opening of the appeal premises could add to the amount of late night activity in the area and would increase the potential for noise and disturbance to occupiers of nearby residential properties.
9. In the context of many other commercial, late night uses in the vicinity, the difference arising from just the appeal premises might seem insignificant, but it would add to the existing problems identified in the area. It would also have a more damaging cumulative effect by making it difficult to resist similar extensions of permitted hours at times when many people are normally trying to sleep (Planning Policy Guidance note 24: *Planning and Noise* defines this as 2300 – 0700 hours).
10. There is residential accommodation both within and adjacent to the NTZ and I noticed that, although Roebuck House is said by the appellant to be protected from noise and odour nuisance by a sophisticated forced air ventilation system to every flat, even on a winter's day several of the flats' windows were open.

11. The area has been the subject of Council initiatives to reduce late night nuisance but Hampshire Constabulary objects to the appeal proposal because of anti-social behaviour in the area directly related to licensed premises. The appeal property has a Premises Licence until 0200 hours issued by the Council's Licensing Committee after consultation with the police, but the reason given for the planning condition is in the interests of the amenities of those living in the area and this appears not to fall explicitly within the four key licensing objectives.
12. The constabulary regards the premises as a well-run establishment and the appellant states The Wine Bar does not set out to attract the younger element seen in many other local public houses and bars. However, the premises have now become the Yuzu Lounge Bar and I noticed it advertises reduced price drinks on Tuesday evenings. Ownership and operation of the business may change, whereas any permitted extension of opening hours would run with the premises. Furthermore, the appellant would be able to do little about noise and disturbance from customers once they have left the premises.
13. Circumstances vary from place to place and so the different approaches to opening hours in the Cultural Quarter NTZ and the Night Time Hubs are not necessarily suitable here. Although the City Strategy aspires to a vibrant, mixed use, 24-hour city centre, an appropriate balance needs to be struck between economic benefits and residential amenities. In my view, extending the opening hours of the appeal premises would contribute to erosion of the existing balance in the locality.
14. I have considered whether a lesser extension of opening hours (including limitation to Saturday and Sunday mornings) would be feasible, but I consider the harmful effect of extended hours on local residents' living conditions would be just as unacceptable on those nights as on others.
15. I therefore conclude that varying the disputed condition would result in unacceptable harm to the living conditions of local residents, with particular reference to noise and disturbance. The condition remains reasonable and necessary in order to meet the aims of Local Plan policies CLT 14, REI 7, SDP 1 and SDP 16.

G M Hollington

INSPECTOR

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Appeal Decision

Site visit made on 10 October 2011

by E C Grace DipTP FRTPI FBEng PPIAAS

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

Decision date: 18 October 2011

Appeal Ref: APP/D1780/A/11/2154719

Varsity, 67 - 75 London Road, Southampton SO15 2AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Barracuda Pubs and Bars Ltd against the decision of Southampton City Council.
 - The application Ref 11/00537/FUL, dated 31/3/11, was refused by notice dated 26/5/11
 - The application sought planning permission for extension of opening hours by variation of condition 10 attached to planning permission Ref 07/02056/VC, dated 17/3/08 which in turn was an approval for a variation of Condition 10 of planning permission for the conversion of basement, ground, first and second floors to food and drink Use (Class A3) Ref 99/00625/FUL dated 17/4/00.
 - The condition in dispute is No 10 which states: Unless the Local Planning Authority agree otherwise in writing the premises to which this permission relates shall not be open for business outside the hours of 10.00am – 00.00pm (Mon – Sun).
 - The reason given for the condition is: To protect the amenities of the occupiers of nearby residential properties.
-

Decision

1. The appeal is allowed in part and planning permission is granted for continued use of the premises at Varsity, 67 - 75 London Road, Southampton for Class A3 Use in accordance with the application Ref 11/00537/FUL, dated 31/3/11, without compliance with condition number 10 previously imposed on planning permission Ref 07/02056/VC, dated 17/3/08 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition 10:

The use hereby permitted shall not be open to customers outside the following times:

09.00hrs – midnight (Mon – Sun)

Main Issue

2. The main issue is whether extending the opening hours would result in harm to the living conditions of residents in nearby dwellings.

Procedural Matter

3. It is evident that the permission granted on 17 March 2008 (Ref 07/02056/VC) is now regarded as the substantive planning permission governing the use of the premises as a public house and supersedes the original permission.

Reasons

4. The appellant seeks an extension to the currently permitted operating hours to open 1 hour earlier each day and 1 hour later on Friday and Saturday nights to correspond with the opening times in their premises licence. They point out that even if planning permission is granted for the extension sought, the Council will retain full control over the opening times under the Licensing Act 2003, which enables a licence to be revoked, suspended or amended at any time. It is thus argued that licensing is a far more flexible and responsive regulatory tool than the planning system provides.
5. They wish to compete with the many other premises in the vicinity by opening at 09.00hrs for the service of coffee and breakfasts and they maintain that the original approval for change of use allowed opening from 08.00hrs on Mondays to Saturdays. The Council has not objected to this aspect of the proposal and I too can see no reason for withholding permission for earlier opening.
6. The appeal property is located within the London Road/ Bedford Place "North of Parks Area" which has a mix of commercial uses interspersed with residential uses, either above the commercial premises or in purpose built blocks of flats. A significant number of businesses here contribute to the night time economy of the city and this is reflected by its inclusion within the designation of a *Late Night Zone* to which saved Local Plan Policy CLT14 applies. This states that A3, A4 and A5 Uses will be permitted subject to compliance with Policy REI 7 which specifies four criteria to be met. From the representations, I am content that appropriate measures are in place to mitigate the emission of sound and smells from the premises and avoidance of litter. Thus, the only relevant criterion is that appropriate planning conditions are imposed to prevent the generation of any undue noise or other forms of nuisance directly arising from the proposal.
7. The Council indicate that the growth in uses associated with the night time economy has evolved over time, whereby there are historic uses that have no opening time limitations imposed upon them. The escalation in the amount of premises combined with increased numbers of patrons leaving them and dispersing past the nearby residential properties has led to a diminution of residential amenities, arising from boisterous and anti-social behaviour and even some incidents of criminal activity. The Planning Authority maintain they have adopted a consistent approach in limiting the terminal opening time to midnight in new applications and proposals for variations to opening times in this locality. This is set out in a policy briefing paper which indicates that for London Road/ Bedford Place midnight is the time deemed as being the latest acceptable opening hour, whereas at Guildhall Square 01.00hrs is judged to be acceptable, while in the identified late night hub, centred on Leisure World/ Bargate and Below Bar, 03.00hrs is the prescribed time.
8. The Council readily concede there has been a lack of co-ordination between their Licensing and Planning arms in the past. However, they indicate that more recently the Licensing team have recognised there are areas of the city which have been harmed by the accumulation of late night uses as appears to be the case here, judging from the comments received from nearby residents. Accordingly, the Council's Licensing Department has adopted a Cumulative Impact Policy (CIP), where additional licensed premises or significant variation of operating hours are unlikely to be permitted unless the applicant can demonstrate to the Council as Licensing Authority that the intended changes will not have an adverse impact on the area.

9. The appellant has undertaken a survey of noise and activity levels outside the premises between 23.00hrs and 01.30hrs on the night of January 29 this year to represent a typical busy weekend night. It demonstrates the area was busy with traffic (including taxis and buses) and groups of people walking between the various licensed premises. The findings are in line with similar surveys conducted in 2004 and 2007 in connection with previous proposals for variations to the opening hours. It demonstrates that the ambient noise levels are attributable to traffic noise and pedestrian activity. They demonstrate there is a relatively consistent high level of noise throughout that period beyond the current closing time and up to 01.30, due to the later opening times of other premises in the locality. It is therefore asserted that the later opening time sought would not add to the character of the existing noise environment.
10. I entirely accept the premises are part of a national group and are well run, with acceptable noise levels being generated from within the building, but the problems encountered by occupants of nearby dwellings are associated with the activities and noise from pedestrians and vehicles in the neighbouring roads, over which the appellant and other licensed operators have little control. Though there is a perceived overlap between the objectives of licensing and planning controls, and it is argued that the premises license provides suitable controls, it is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises. However, it is apparent that the planning policies have a land use function and in this instance have distinguished between areas of greater and lesser sensitivities to the concentration of licensed premises, mainly due to the presence of dwellings.
11. I consider the policy is deserving of support and it is apparent there is a move by the Council to align their Planning and Licensing Departments in this regard. Therefore, notwithstanding the existence of other premises in the locality that remain open beyond midnight, I anticipate that over time, the consistency of the Planning Department will be matched by the Licensing Department with the aim of safeguarding the residential amenities in the surrounding area. I thus consider the appellant's suggestion of granting permission for a temporary period to enable the impact to be assessed would be prejudicial the Council's aspirations to safeguard residential amenities. Accordingly, I conclude that the extension of the opening hours beyond midnight would be contrary to the application of Policy CLT14 and result in harm to the living conditions of residents in nearby dwellings.
12. Nevertheless, for the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission without the disputed condition 10, but substituting a new condition which extends the morning opening hours and retaining the relevant non-disputed conditions from the previous permission.

Edward Grace

Inspector

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Appeal Decision

Site visit made on 21 March 2014

by A Harwood CMS MSC MRTPI

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

Decision date: 23 April 2014

Appeal Ref:APP/D1780/A/13/2210207

22 Bedford Place, Southampton, Hampshire, SO15 2DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Dabeel Waheed against the decision of Southampton City Council.
 - The application Ref 13/00440/FUL/1957, dated 29 January 2013, was refused by notice dated 11 June 2013.
 - The application sought planning permission for the change of use to restaurant on ground floor and 2 studio flats on first and second floors with the erection of a single storey rear extension and external staircase complying with a condition attached to planning permission Ref 960034/1957/E, dated 28 March 1996.
 - The condition in dispute is No 6 which states that: Unless the Local Planning Authority agrees otherwise in writing the premises to which this permission relates shall not be open for business outside the hours specified below and at no time on Sundays or recognised Public Holidays:
 - 0800 to 2300 hours Monday to Thursday;
 - 0800 to 2330 hours Friday & Saturday.
 - The reason given for the condition is: To protect the amenities of the occupiers of the flats an adjoining residential properties.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use to restaurant on ground floor and 2 studio flats on first and second floors with the erection of a single storey rear extension and external staircase complying with a condition attached to planning permission Ref 960034/1957/E, dated 28 March 1996 without compliance with condition number 6 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:
 - i) The food and drink use hereby permitted shall not be open to customers outside the following times: 0800 hours to 2330 hours on any day.

Procedural Matters

2. The appellant has requested opening times on all days of 1100 hours to 0400 hours although has referred to the ability to consider different opening hours or a trial period. The planning permission to which the condition in dispute is
-

attached was approved before changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) brought about new use classes. Although approved as a restaurant, it is clear from the submitted representations that the appeal premises are trading as a take-away which is now within use class A5.

3. Planning practice guidance came into force, and various previous national planning guidance documents were cancelled, on 6 March 2014. Given the nature of this proposal, these changes to the guidance framework have not affected my decision.

Main Issue

4. The main issue is the effect of the proposed extended opening times on the living conditions of neighbouring residential properties with particular reference to noise and activity.

Reasons

5. The appeal site is positioned within a mixed use part of the City. The immediate area includes a range of shops, pubs, restaurants and clubs as well as residential premises. The site is within a 'late night zone' (NTZ) to which policy CLT14 of the City of Southampton Local Plan Review adopted March 2006 (LP) relates. Within such zones, CLT14 does not allow for further night clubs and similar uses but does allow for take-away uses (amongst others) subject to compliance with LP policy REI7. REI7 seeks to prevent adverse impacts upon amenities of residential premises but does not give any specific indication of what hours should be accepted. The briefing paper entitled Night Time Economy which the Council refers to recommends operating hours. It does not appear to have been through a formal public consultation process which limits the weight I can give it. It suggests a closing time of 0000 hours.
6. The flats above this site as well as some neighbouring properties may be connected with the ground floor commercial uses. However I am not aware of any restrictions limiting occupancy of the flats to owners or workers of those premises. It is important to ensure a satisfactory degree of living conditions for those residents although there must be an expectation that this area will be subject to a degree of activity. The area immediately to the west of the site is known as the Polygon and includes a higher proportion of residential premises. Bedford Place is within walking distance of the Southampton Solent University and from information provided by members of the public, the area appears to attract students late at night. Other take-away premises are open into the early hours of the morning. Some have developed like this over time without planning permission.
7. The appellant considers that extending the hours would lead to customer visits being spread out more evenly. I can see that there could be an existing peak around the current closing time when potential customers may be leaving nearby pubs and clubs that could be evened out with an extension of trading hours. The Council has provided no measured or observed evidence of problems from existing similar premises that trade into the early hours. It is clear from public responses to the application and this appeal however that the mix of uses close to residential areas does lead to sensitivities and problems from unsocial behaviour in the early hours of the morning. Customers using a take-away early in the evening are likely to include residents and people in the

early stages of a night out. The additional customers after current opening times are more likely to be those looking for food after a night out who may have consumed alcohol and generally being in high spirits. Without the ability to buy food after leaving clubs and bars, those people are more likely to make a quicker return home, not lingering close to residential properties.

8. Additional customers at these premises are unlikely to have a significant impact upon overall numbers of people within the NTZ. Given the position of the site close to the Polygon area and other flats, even altering the hours at these individual premises could have a significant impact upon those nearest neighbours. The small capacity of the appeal premises could in my experience lead to waiting customers queuing outside making that problem even worse.
9. Other than a decision relating to 24 Carlton Place which is also within the NTZ, there have been many other decisions where extended hours into the early morning hours have been refused on appeal. Despite the lack of observed evidence provided by the Council in this case, these decisions, the representations from local residents which includes reference to press reports brings with it a large body of evidence demonstrating the degree of the general problem in this area. Allowing extended hours would contribute further to that, exacerbating the existing problems.
10. The appellant has also referred to Temporary Event Notices that have been approved by the Council for this and other premises allowing them to open early on occasions into the morning under the provisions of the Licensing Act 2003. I am not aware of the full circumstances or considerations that led to those decisions. Whilst these matters may be material considerations, the appellant is suggesting that the licensing regime would alone provide effective control. However, these other controls do not appear from the evidence to be suitably preventing harmful effects on living conditions in this area at the moment. I am not convinced that increasing the opening times at these premises should be allowed due to the overlap of controls through the licensing or the environmental protection regimes. However the evidence is not refined and I am not convinced that there is any particular justification for preventing any opening of the premises on Sundays and bank holidays. The Council in its suggested condition has not distinguished between any days of the week or bank holidays. Neither is there any indication from the evidence that distinguishing between 2300 hours and 2330 hours makes any difference to the noise and disturbance in the local area.
11. In relation to the main issue, the proposed extension of opening hours as applied for would have an unacceptable impact upon living conditions of neighbouring residential properties due to increased noise and activity. This would not comply with LP policies CLT14 and REI7. These policies are consistent with the National Planning Policy Framework (NPPF) which aims to achieve safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. However, I consider that the extension of opening until 1130 hours on all days including Sundays and bank holidays would not have an unacceptable impact and have attached a condition to that effect. This would comply with the above LP policies and the NPPF.

Other Matters

12.I recognise that the appellant has invested in this property but the hours restrictions have been in place since the use was originally approved. The NPPF encourages the promotion of viability and vitality in towns but as is often the case in planning decisions, there needs to be a balance struck. In this case, the needs of the business do not outweigh my conclusions. I do not consider that, given the evidence available, a trial period to test even longer opening hours than I am allowing is necessary.

Overall Conclusion

13.For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Harwood

INSPECTOR

Appeal Decision

Site visit made on 5 January 2015

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 12 January 2015

Appeal Ref: APP/D1780/A/14/2228297

Ground Floor, 3 Winchester Street, Southampton SO15 2EL

- 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 Sirajul Islam against the decision of Southampton City Council.
 - The application Ref 14/00392/FUL, dated 17 March 2014, was refused by notice dated 2 May 2014.
 - The development proposed is the use of the ground floor for a mixed use restaurant (Class A3) and drinking establishment (Class A4), with extended hours of opening hours on Mondays to Saturdays of 0800-0100 and Sundays and Public Holidays of 1000-0100.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The premises have been addressed by a variety of names by the applicant/appellant and the Council but it is clear that the appeal relates to the ground floor premises at the above address, which is known as the Budhha Lounge.
3. The application form states that the application was to extend the hours until 1am only on Fridays and Saturdays but the desired hours were clearly changed to those set out in the last bulleted point above, and I am considering the appeal on this basis.

Main Issue

4. The main issue is the effect that the proposal would have on the living conditions of local residents.

Reasons

5. The appeal property is the ground floor of a two storey building on the corner of Winchester Street and Vernon Walk, a pedestrian thoroughfare that partly runs under neighbouring higher buildings. It is occupied by the Budhha Lounge, a Class A4 drinking establishment, which is laid out as a central open area around a bar with low level sofas and seats around the edge of the premises. The proposal is to replace these sofas and seats with tables providing 60 restaurant covers, but also to retain the Class A4 use as well. If I were to allow the appeal, the appeal premises could therefore be used as a Class A3 or A4 use, or indeed a combination of the two together.

6. The area is a busy mixed use inner city location with a wide range of bars, restaurants, night clubs and takeaways as well as blocks of residential flats and offices and the Bedford Place public multi-storey car park.
7. The main entrance to the Budhha Lounge is off Vernon Walk but it can also be accessed from the entrance on Winchester Street, which is the main entrance to the Tiger Lilly Restaurant on the first floor, also run by the appellant. At first floor level there is an external roof terrace, accessed from both the Bar and the Restaurant. The appellant has recently acquired the adjacent building at 3-4 Vernon Walk, known as the Budhha Club, which has an internal door linking it to the appeal premises.
8. The Budhha Lounge is controlled by a planning condition that requires customers to be off the premises after midnight although another condition allows the first floor restaurant to remain open until 1am on Fridays and Saturdays¹, which the Council state was historic. The adjacent Budhha Club, also a Class A4 use, has no planning restrictions controlling its hours of operation.
9. I understand the appellant's desire to harmonise the hours of operation for both floors of his establishment and to allow sufficient flexibility to accommodate customers wishing to eat on the ground as well as the first floor. But the new layout of the ground floor, with tables instead of sofas, would not necessarily mean that more customers would want to eat or that it would attract a different clientele. The nature of the seating would not in itself change customers' requirements or desires. It may mean that the appeal premises would operate more like a pub rather than a bar and the appellant's suggestion that customers leaving the mixed use premises would be likely to be less intoxicated than at present is rather speculative.
10. I am also concerned at the objection from the Police, who consider that the continuation of DJ nights suggests that the appeal premises will continue to be used mainly for drinking, and obviously until later. They also consider that having a mixed bar and restaurant use in the manner proposed could contribute to crime and disorder, rather than lessen it as the appellant suggests.
11. His argument that harmonising the closing hours of the ground and first floor uses will prevent large groups of people spilling out onto the street is unclear and unconvincing, because if both the bar and restaurant closed at 1am there would be likely to be more people exiting the premises at this time whereas presently some exit at midnight and others at 1am on Fridays and Saturdays. His argument that the ground floor use could change to Class A3 without planning permission is irrelevant because the issue at contention is the effect of the extending the hours for the sale of alcoholic drinks. Also, the proposal would leave the authorised opening hours of the restaurant on the first floor unchanged from Sunday through to Thursday at midnight so there would remain a difference in the two uses' hours of operation.
12. His acquisition of the next door Budhha Club allows patrons to pass internally from the Budhha Lounge into those premises but this does not justify an extension of opening hours of the larger appeal premises until 1am every day

¹ Conditions 2 & 3 of planning permission ref 09/00636/FUL respectively, referred to in Breach of Condition Notice dated 10 February 2014

because many customers would still be likely to leave the Budhha Lounge at 1am given its larger area compared to the Budhha Club. Even if this wasn't the case and the majority of customers from the appeal premises managed to cram into the smaller Budhha Club premises next door, then more possibly intoxicated people would exit and disperse through surrounding residential neighbourhoods even later at night, which would exacerbate any resulting noise and disturbance to nearby residential neighbours.

13. The appellant understandably wants his premises to remain competitive with other existing drinking establishments in the area, some of whom are allowed to open until 1am or later as set out in his submissions. But the Council's adopted and emerging policies rightly and in accordance with the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) attempt to balance the needs of such businesses with the reasonable needs of local residents to obtain a good night's sleep free of the noise, disturbance and anti-social behaviour at times associated with such late night eating and drinking establishments.
14. The appellant's contention that the proposal will improve the amenity of local residents is substantively and convincingly countered by the Council and the Police and for the reasons set out above. The Council also points out that whilst there are nearby premises legitimately open after midnight these relate to historic permissions which predate current planning policy on such uses.
15. In conclusion, the proposal would be likely to result in more people coming and going to the appeal premises later at night than currently, at a time when most people including those in nearby residential flats would be asleep or trying to get to sleep. In particular it would be likely to give rise to more people likely to have been consuming alcoholic drinks for a longer period to exit into the street from the premises and disperse into surrounding residential areas, with all the implications for noise, disturbance and anti-social behaviour that this could and more than likely would entail.
16. In both its current and emerging development plan policies the Council makes a clear distinction between 'late night hubs' (LNH) and 'evening zones' (EZ), or 'night time zones'(NTZ) as referred to in 'saved' Policy CLT 14 of the City of Southampton Local Plan Review adopted in 2006 (LPR). The appeal premises are located in the Bedford Place/London Road NTZ, or EZ as it is referred to in Policy AP 8 of the emerging Southampton City Centre Action Plan (CCAP).
17. Under adopted LPR Policy CLT 14 Class A3, A4 and A5 uses will be permitted subject to compliance with Policy REI 7, which itself states such uses will be permitted provided that appropriate planning conditions are imposed where necessary to prevent the generation of undue noise or other forms of nuisance directly arising from the proposed use. This approach was specifically endorsed by the examining Inspector into the LPR.
18. The appellant states that the site has not been the subject of any individual noise complaint. The Council does not contest that statement. However, that does not mean that people exiting the premises and dispersing into the neighbouring streets have never made any noise and disturbance affecting neighbours' residential amenity and it would be fanciful to suppose they never would, especially given the longer proposed opening hours. Whilst the current premises may be well run by the appellant any such extended opening hours would run with the land and it is necessary for me to consider the likely long

- term effects of such an extension of opening hours, cumulatively with other such premises, on the living conditions of residential neighbours.
19. The approach to Class A3, A4 and A5 uses has been continued into Policy CS1 of the adopted Core Strategy, which identifies the Council's approach to the City Centre, as well as signalling its intention to take forward its spatial strategy via a CCAP. The CCAP has recently been examined and found 'sound' subject to various recommended modifications. CCAP Policy AP 8 is not recommended for modification and it therefore carries significant weight, in accordance with NPPF paragraph 216.
 20. Policy AP 8 continues the approach of the LPR in that the Bedford Place/London Road area remains an EZ. Furthermore, it clearly states² that Class A3, A4 and A5 night time uses will be restricted to midnight in this area in order to balance the economic needs of such businesses against the social and environmental requirements of nearby residents to enjoy reasonable peace and quiet at night. The text to this policy also identifies this area as a Cumulative Impact Policy Area for Licensing Applications because it is an area already suffering due to the concentration of licensed premises and that the Council will co-ordinate its planning and licensing functions as far as possible. This does not of course mean that planning restrictions must be eased to correspond with current licensing hours because planning and licensing considerations vary.
 21. The proposal is therefore clearly contrary to current LPR Policies CLT 14 and REI 7. It is also in conflict with LPR Policies SDP 1 and SDP 16, which together specify that development will only be granted if the amenity of the city's citizens will not be unacceptably affected including in terms of noise impact. It is also contrary to emerging CCAP Policy AP 8, which states that opening times in this area will be restricted to no later than midnight in order to protect residential amenity.
 22. The appellant cites two appeal decisions in favour of the proposal³ as well as referring to the appeal submissions relating to a very recent appeal⁴. But this latter case was dismissed on 31 December 2014 including for reasons that the proposal in that case would be contrary to the same above Policies. This very recent appeal decision is highly significant because that proposal also sought an extension of hours beyond midnight at a premises situated only about 50m away from the current appeal premises.
 23. That case involved the first floor of the premises known as Triad House/Attik/Roxx at the western end of Vernon Walk on the corner of Lower Banister Street. The Inspector concluded that, given extant and emerging development plan policy and the mixed character of the area including residential flats, the extension of hours beyond midnight would be likely to harm the living conditions of such local residents. Given the proximity of those premises with the appeal premises in this case I can see no reason to come to a different decision.
 24. In his decision the Inspector gave little weight to the two above appeal decisions also cited by the appellant in that case because in case 2078978 the Inspector was unaware of the policy background and the decision in case

² CCAP Proposed Submission document, September 2013 – paragraph 4.71, Table 3

³ APP/D1780/A/08/2078978 & APP/D1780/A/00/1046651

⁴ APP/D1780/A/14/2226053

1046651 considerably predates the LPR. I agree with the Inspector's reasoning in case 2226053 that these decisions therefore carry little weight. In contrast the Council have provided a list of several more recent appeals where Inspectors have supported its policy stance and refused the extension of such hours. Consequently the Council has not been inconsistent or unreasonable in its application of policy in this case.

25. In light of the above, and having considered all other matters, the appeal is dismissed.

Nick Fagan

INSPECTOR

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Appeal Decision

Site visit made on 8 December 2014

by Michael Boniface MSc MRTPI

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

Decision date: 31 December 2014

Appeal Ref: APP/D1780/A/14/2226053

Triad House, 24 Lower Banister Street, Southampton, SO15 2EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Neil Homer (Roxx) against the decision of Southampton City Council.
 - The application Ref 14/00686/FUL, dated 22 April 2014, was refused by notice dated 30 July 2014.
 - The application sought planning permission for the change of use of the first floor from A3 (restaurant) to A4 (drinking establishment) (retrospective) without complying with a condition attached to planning permission Ref 13/01840/FUL, dated 7 March 2014.
 - The condition in dispute is No 1 which states that: *The drinking establishments hereby permitted shall not operate (meaning that customers shall not be present on the premises, no preparation, sale or delivery of food or drink for consumption on or off the premises) outside the following hours: Monday to Thursday 08.30am to 12.00 midnight, Friday and Saturday 08.30am to 12.00 midnight, Sunday and recognised public holidays 08.30am to 12.00 midnight. Unless otherwise agreed in writing by the Local Planning Authority. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.*
 - The reason given for the condition is: *To protect the amenities of the occupiers of existing nearby residential properties.*
-

Decision

1. The appeal is dismissed.

Background

2. The appellant considers that the hours restrictions contained in condition 1 of the planning permission granted by the Council are overly onerous on the business, are not appropriate for modern drinking habits and offer competitors with later opening hours an unfair advantage. As such, the application seeks to vary the permissible hours to allow opening from 08.30 to 02.00am on all days of the week.

Main Issue

3. The main issue is the effect that the proposed variation of opening hours would have on the living conditions of local residents.

Reasons

4. The appeal property is the first floor within a building comprising a further drinking establishment at ground floor level. A mix of uses surround the site including a wide range of pubs, night clubs, restaurants and other night time uses. A modern development of residential flats is located on the opposite side of the road and other residential streets, including a large residential area known as the Polygon, are located nearby.
5. The Council has identified issues of noise, disturbance, anti-social behaviour and littering which are said to be associated with people leaving late night premises and making their way through residential streets. This is a matter that was considered in some detail during the Examination into the City of Southampton Local Plan Review (LPR) (2006). The Inspector noted attempts to support and maintain the night-time economy whilst protecting the living conditions of neighbouring residents. In doing so, she drew a distinction between 'Late Night Zones' where existing concentrations of night time uses stand close to residential uses, and 'Late Night Hubs', evening economy areas more remote from residential areas where future late night uses with extended opening hours should be focused.
6. Policies CLT 14 and REI 7 of the LPR enshrine this approach within the development plan and the site, falling within the Bedford Place/London Road area, is identified on the Proposals Map as a Late Night Zone. Whilst A4 uses are not precluded from these areas, they will only be permitted where potential adverse impacts can be mitigated, including through the imposition of planning conditions. In particular, these policies seek to protect the living conditions of nearby residents.
7. In order to implement these policies consistently, the Council has produced a Planning Policy Note, *Night Time Economy, Guidelines for opening hours relating to Policies CLT 14 and CLT 15*. I can attach this document only limited weight as it has not undergone public consultation. However, it suggests a terminal hour of 12am for premises within the London Road (Bedford Place) zone. This appears to have been implemented consistently by the Council, and indeed at appeal, having had regard to the examples submitted, most recently at 22 Bedford Place (APP/D1780/A/13/2210207).
8. The appellant refers to an appeal example where opening hours were allowed until 02.00 in relation to 24 Carlton Place (APP/D1780/A/08/2078978). Whilst acknowledged by the Council, it makes clear that the Inspector in that case was unaware of the policy background described above as no appeal statement was provided. I have also had regard to a decision at 42B London Road (APP/D1780/A/00/1046651) but this considerably predates the LPR. Having regard to the more recent examples provided by the Council and the evidence outlined above, I attach these examples little weight.
9. I note that the LPR is aged but Policies CLT 14 and REI 7 remain saved with the firm intention of maintaining residential living conditions. This is an objective that I consider to be consistent with the National Planning Policy Framework (the Framework), one of its core planning principles being to ensure a good standard of amenity for all existing and future occupants of land and buildings. As such, I attach them significant weight.

10. Furthermore, the Council's emerging policy AP8, contained within the City Centre Action Plan Proposed Submission (CCAP) (September 2013) seeks to maintain this policy approach, identifying that the issues raised above are ongoing. This is further highlighted in the responses I have received from local people which outline ongoing objections and concerns with regards to the issues identified above. This document has undergone independent examination but the results are yet to be published and I do not know the extent of any outstanding objections to the document. With this in mind, and the fact that the document is yet to be adopted, I can only attach it limited weight, but it nonetheless supports the Council's current policy position.
11. There are a number of other premises in the vicinity of the site that operate later opening hours than the appeal premises. However, the Council suggest that these are outside the scope of planning control, resulting from historic planning permissions without hours restrictions or having established lawful uses over the passage of time. I have seen no compelling evidence, notwithstanding the examples discussed above, that demonstrates any deviation by the Council from the policy approach set out within the development plan. The presence of late night uses is accepted but they are also highlighted as key contributors to the issues of noise, disturbance, anti-social behaviour and littering that have led to the policy approach described. To permit later opening hours of existing premises within the Late Night Zone would conflict with this policy approach and exacerbate these issues.
12. I have had regard to the appellant's track record of successfully operating other local venues, the type of venue aspired to, focusing on entertainment and culture rather than a cheap drinks establishment, as well as the economic benefits that result from local businesses. However, the planning application relates to an open A4 use and there is no guarantee that any subsequent occupier would maintain the same values. In any case, these matters do not outweigh the harm that I have identified with regard to the main issue.
13. I note the existing sound mitigation measures including entry system, sound proofing and dispersion policy, as well as measures employed in nearby residential developments. However, the issues identified relate to noise and disturbance from patrons that have left the site rather than noise emanating from the building and its immediate environs. Whilst these measures, combined with the proposed security staff and litter pickers would no doubt assist in managing patrons at the site, the appellant can have little control over behaviour further afield. Although financial contributions towards local management schemes are offered, these appear to be having only limited effect given the level of objection identified by local people and the ongoing policy impetus to restrict opening hours in the Late Night Zones.
14. The appellant highlights that no objections have been received from immediate neighbours, the Police or the Council's Environmental Health team but this does not alter the harm that I have identified. It is also apparent from the evidence before me that the Police have visited the appeal premises on a number of occasions and reported later opening hours to the Council, suggesting some level of concern.
15. Whilst the concerns raised by the Council and local residents cannot be directly attributed to customers visiting the appeal site the examination into the LPR accepted that issues were associated with late night uses in a general sense. It

is clear that allowing later opening hours would intensify the number of people on the streets at unsociable hours. It is, therefore, sensible to consider the cumulative impact of concentrated night time uses and the impacts of further intensification.

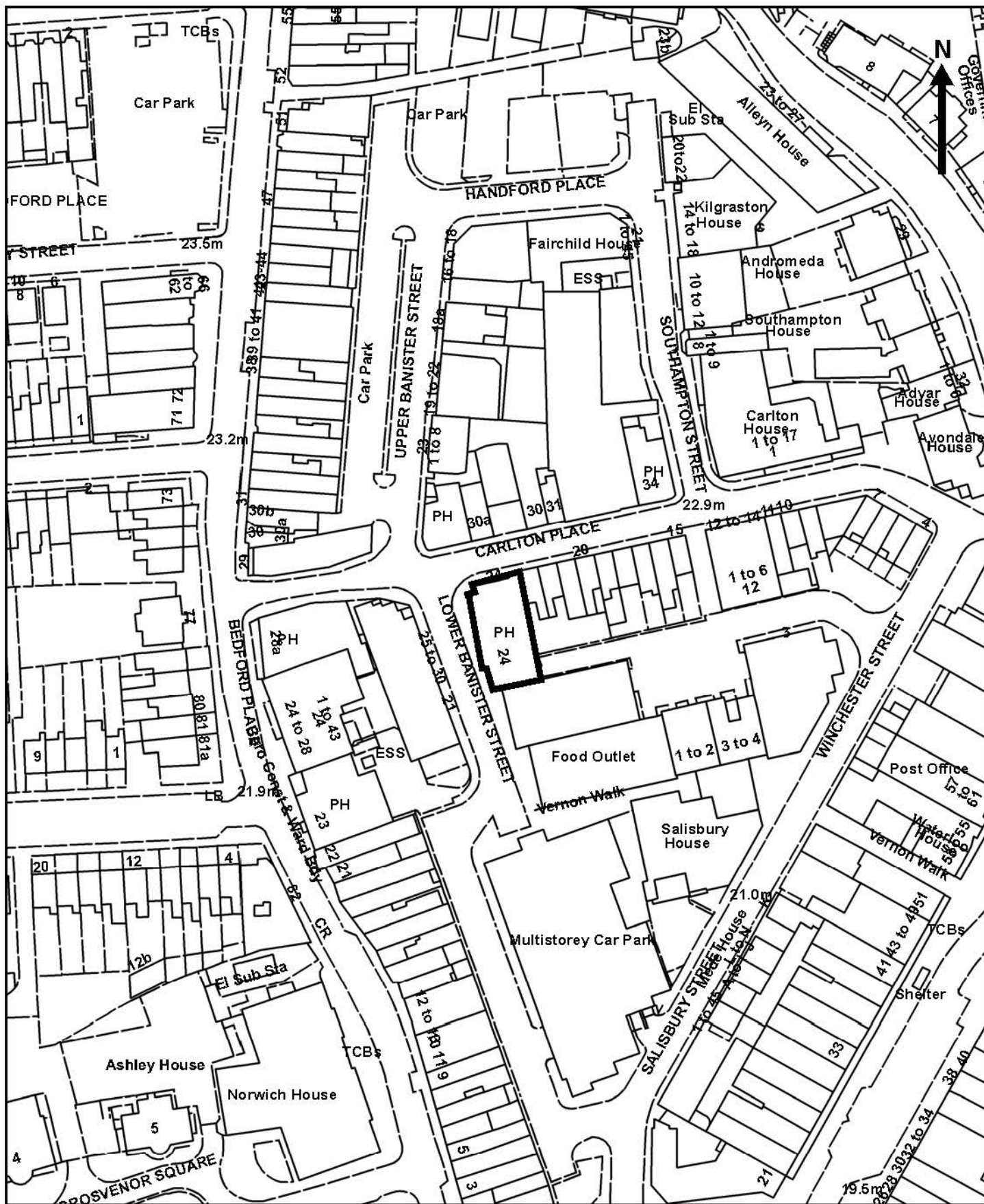
16. I acknowledge that the Framework has been introduced since a number of previous appeal decisions were made and subsequent to the LPR being adopted. I have had regard to the presumption in favour of sustainable development advocated but I have already identified conflict with social objectives to protect the living conditions of local people and the development cannot, therefore, be said to comprise 'sustainable development', notwithstanding that there would be some economic benefits.
17. The proposed opening hours would harm the living conditions of neighbouring occupants. As such, the development would conflict with Policies SDP 1, SDP 16, REI 7 and CLT 14 of the LPR, which seek to direct night time uses to appropriate locations, require development to contribute, where appropriate, to a complimentary mix of uses whilst avoiding harm to the health, safety and amenity of residents, with particular regard to noise, disturbance and litter; as well as Policy AP8 of the emerging CCAP, which has similar objectives.
18. In light of the above, and having considered all other matters, the appeal is dismissed.

Michael Boniface

INSPECTOR

Agenda Item 8 18/00551/FUL

Appendix 9



Scale: 1:1,250

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