



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**

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**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 appellants 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