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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

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**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.*
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### 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