

**Planning and Rights of Way Panel 16<sup>th</sup> July 2019**  
**Planning Application Report of the Service Lead - Infrastructure, Planning & Development**

<b>Application address:</b> 25 Oxford Street, Southampton			
<b>Proposed development:</b> Proposed change of use from restaurant/cafe (Class A3) to mixed use restaurant/cafe/bar (Class A3/A4)			
<b>Application number:</b>	19/00711/FUL	<b>Application type:</b>	FUL
<b>Case officer:</b>	John Fanning	<b>Public speaking time:</b>	5 minutes
<b>Last date for determination:</b>	27.06.2019	<b>Ward:</b>	Bargate
<b>Reason for Panel Referral:</b>	Request by Ward Member	<b>Ward Councillors:</b>	Cllr Bogle Cllr Noon Cllr Paffey
<b>Referred to Panel by:</b>	Cllr Bogle	<b>Reason:</b>	Positive use which maintains vitality of Oxford Street
<b>Applicant:</b> Dr Serkan Ceylan		<b>Agent:</b> N/A	

<b>Recommendation Summary</b>	<b>Refuse</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Not applicable</b>
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<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History

**Recommendation in Full**

Reason for Refusal - Noise and disturbance

Whilst the principle of the change of use is supported, the proposed extension to opening hours would result in an extended late night use. It is considered that the intensification of use into the early hours of the morning would cause further detriment to the amenities of neighbouring properties by reason of noise, litter and disturbance caused as patrons leave the premises. The proposal would be contrary to the particular provisions of AP8 which outlines acceptable limits on opening hours within the city centre and would set a difficult precedent for further trading that could lead to additional premises trading after midnight in an area with evidenced problems of late night disturbance. The proposal would thereby 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).

Reason for Refusal - Lack of Section 106 or unilateral undertaking to secure planning obligations.

In the absence of a completed Section 106 legal agreement to support the development the application fails to mitigate against its wider direct impacts in the following areas:

- i. Late Night Community Safety Contribution to address the wider implications of late night uses within the city centre in accordance with 6.5 of the Developer Contributions Supplementary Planning Document (2013).
- ii. CCTV contribution to address the wider implications of late night uses within the city centre in accordance with 6.5 of the Developer Contributions Supplementary Planning Document (2013).

## **1. The site and its context**

- 1.1 The application relates to an existing Class A3 restaurant use situated in the commercial Oxford Street frontage (on the corner with the more residential Latimer Street). The site lies within the defined city centre and within one of the designated late night zones.
- 1.2 The application site is situated prominently within the Oxford Street conservation area. The building itself is locally listed, with other nationally listed buildings in the immediate context.

## **2. Proposal**

- 2.1 The application proposes no physical alterations to the existing building but rather seeks permission for the conversion to a mixed Class A3/A4 use (with the ground floor serving as a bar and the upper floor retained as a restaurant).
- 2.2 The application also proposes an extension of the existing opening hours of the property. At present the existing Class A3 use has the following opening hours:

Monday-Saturday	9AM-11PM
Sunday	10AM-10.30PM

- 2.3 The application proposes the following opening times:

### Class A3 (1<sup>st</sup> floor)

Monday-Sunday 4PM-11.30PM

### Class A4 (ground floor)

Monday-Sunday 4PM-2AM

## **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) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at

**Appendix 1.** Specifically, the site lies within one of the defined late night zones highlighted in AP8 of the Councils City Centre Action Plan. AP8 outlines terminal hours for late night uses in these areas depending on which part of the city they fall in. With reference to the application site this is set at midnight.

3.2 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan 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 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

4.2 The site has been in use as a restaurant falling within Class A3 for a number of years. Permission was originally granted for the use of the ground and first floors as a restaurant with residential above in 1994 under application 940304/E. This was granted subject to a number of conditions including restricting the opening hours as outlined in section 2.2.

4.3 A subsequent application to extend the opening hours to 12.30AM Mon-Sat and midnight on Sunday was refused in 1998 under application reference 980695/EX on the basis of the exacerbating of noise impacts on the residents of Latimer Street. A further application granted permission in 2004 for the conversion of the entire building to serve as a single Class A3 use. There have additionally been a number of other applications for minor physical alterations to the building and the installation of advertisements on the premises.

#### **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 on **17.05.2019** and erecting a site notice on **17.05.2019**. At the time of writing the report **no** representations have been received from surrounding residents. One Ward Councillor did write in to support the scheme and the below is a summary of their comments:

##### **5.2 Cllr Bogle**

- If managed well could be a positive development which supports vitality of Oxford Street.

##### **5.3 Consultation Responses**

5.4 **Police** – No comment. A verbal update will be given at the meeting.

5.5 **Licensing** – No comment. A verbal update will be given at the meeting.

5.6 **Historic Environment** – This is a locally listed building in the Oxford Street conservation area. The change of use although technically different in planning terms of the existing permitted use, should not make any fundamental changes to the structure of the building and I would therefore not object in principle. However, should the additional use require any physical alterations affecting the external appearance of the building it may trigger the requirement for planning permission.

## 6.0 **Planning Consideration Key Issues**

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

- Change of use
- Hours of operation

6.2 The application proposes no physical alterations to the existing building under this application but seeks permission for the change of use of the ground floor of the premises to serve as a bar (Class A4) while retaining a restaurant function upstairs (Class A3) in addition to an extension of the existing opening hours.

### 6.3 Change of use

6.3.1 The site lies within the defined city centre and forms part of the commercial Oxford Street frontage. Oxford Street offers a number of food and drink uses and is one of the city centres identified late night zones. At present the site is vacant but was previously in use as a restaurant forming part of this offering.

6.3.2 The site does sit on the corner with Latimer Street which is residential in nature, however notwithstanding this it is considered that taking into account the context of the surrounding area, the existing use of the site and the late night policy designation the principle of the A4 use can be considered acceptable with reference to the surrounding area and the overall character of the conservation area. As such the key issue becomes whether or not the specific impacts of the proposed use are acceptable.

### 6.4 Hours of operation

6.4.1 The application proposes an extension of the existing opening hours. At present the premises is restricted by planning condition to:

Monday-Saturday	9AM-11PM
Sunday	10AM-10.30PM

6.4.2 The application proposes extending the opening hours to:

#### Class A3

Monday-Sunday	4PM-11.30PM
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#### Class A4

Monday-Sunday	4PM-2AM
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- 6.4.3 As noted, the site lies within the identified city centre and falls under the remit of the Councils City Centre Action Plan (CCAP). Under Policy AP8 of the CCAP Oxford Street was identified as a late night zone. The policy reviewed the various parts of the city centre and sought to identify terminal hours of operation for late night uses in different parts of the city centre to mitigate and manage the impacts of the late night uses on nearby occupiers. This remains the Councils adopted position.
- 6.4.4 In accordance with AP8 of the CCAP, the Oxford Street late night zone, which is situated in close proximity to nearby residential occupiers, was identified as being appropriate to have a terminal opening time of midnight. As the application proposes extending the existing opening hours of the premises beyond this limit it is considered that the proposal would be contrary to policy and as such it is considered sufficient to justify refusing the application despite the support for the intended use.
- 6.4.5 It is considered that allowing a later opening hour would, in addition to the specific local impacts in immediately proximity to the application site, result in additional comings and goings later into the evening which would result in disruption for properties and local residents in the wider surrounding area as patrons dispersed. Policy AP8 in the CCAP was put in place to control and manage this impact. While each case must be considered on its individual merits it is noted that granting applications contrary to this policy without clear justification would weaken the position of the Local Planning Authority in terms of relying on the policy both in the local area and in other parts of the city centre where the Council has sought to control and manage the impacts associated with congregated evening and late night uses.

## **7. Summary**

- 7.1 While no objection is raised to the principle of the mixed A3/A4 use proposed, it is considered that the proposed hours of operation are contrary to the provisions of AP8 in the Councils City Centre Action Plan and therefore it is considered that the application should be refused.

## **8. Conclusion**

- 8.1 It is recommended that planning permission be refused for the reasons outlined above.

**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)(f), 4(g)(mm), 6(a)(b)**

**JF for 16/07/19 PROW Panel**

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS1	City Centre Approach
CS3	Promoting Successful Places
CS13	Fundamentals of Design
CS14	Historic Environment
CS25	The Delivery of Infrastructure and Developer Contributions

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

SDP1	Quality of Development
SDP4	Development Access
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP16	Noise
HE1	New Development in Conservation Areas
HE2	Demolition in Conservation Areas
HE4	Local List
REI7	Food and Drink Uses (Classes A3, A4 and A5)
REI8	Shopfronts

City Centre Action Plan - March 2015

AP 8	The Night time economy
AP 16	Design

Supplementary Planning Guidance

Planning Obligations (Adopted - September 2013)

Other Relevant Guidance

The National Planning Policy Framework (2019)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

**Relevant Planning History**

10/01282/ADV, Replacement signage 3 x internally illuminated fascia signs, 1 x externally illuminated projecting sign and 2 x internally illuminated menu boxes  
Conditionally Approved, 09.11.2010

04/00829/FUL, Retention of extract duct to rear elevation and the installation of an air fan and duct.  
Conditionally Approved, 22.07.2004

04/00070/ADV, Installation of fascia and projecting sign externally illuminated with spot lights and the installation of an externally illuminated menu box.  
Conditionally Approved, 05.05.2004

03/01808/FUL, Change of use of second floor from residential to restaurant (A3 use class).  
Conditionally Approved, 06.04.2004

980695/EX, VARIATION OF CONDITION 6 OF PLANNING PERMISSION  
940304/4849/E TO EXTEND OPENING  
TIMES TO 12.30 AM MONDAY TO SATURDAY AND 12 PM SUNDAYS  
Refused, 27.11.1998

**Reason for Refusal**

*The extension of opening hours proposed is likely to exacerbate the existing noise nuisance suffered by residents in Latimer Street. The extension is likely to result in some form of late night entertainment use of the building which is considered would adversely affect the residential amenities of the occupiers of the nearby dwelling houses by virtue of late night noise and disturbance. The proposal is therefore considered to be contrary to the provisions of Policies S10(b), (c) and GP1 (v) and (vi) of the City of Southampton Local Plan 1996.*

940305/EL, DEMOLITION OF FRONT CORNER AND REAR WALL  
Conditionally Approved, 17.05.1994

**940304/E, CHANGE OF USE OF GROUND AND FIRST FLOOR TO A3 (FOOD AND DRINK) AND SECOND FLOOR TO RESIDENTIAL WITH ELEVATIONAL ALTERATIONS**  
Conditionally Approved, 12.05.1994

**Condition 6**

***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 9.00 am to 11.00 pm Mondays to Saturdays and 10.00am to 10.30pm on Sundays.***

***Reason: To protect the amenities of the area.***