

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

Application address: 21 Lower Banister Street, Southampton			
Proposed development: Application for variation of condition 2 of planning permission ref: 09/00336/FUL and condition 1 of planning permission ref: 13/01840/FUL to allow opening hours from 08:30am - 12 midnight to 08:30am - 01:00am 7 days a week.			
Application number:	19/00392/FUL	Application type:	FUL
Case officer:	John Fanning	Public speaking time:	5 minutes
Last date for determination:	06.03.2019	Ward:	Bevois
Reason for Panel Referral:	Five or more letters of support have been received	Ward Councillors:	Cllr Kataria Cllr Rayment Cllr Barnes-Andrews
Applicant: Mr Kannangara		Agent: Sennitt Planning	

Recommendation Summary	Refuse
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Community Infrastructure Levy Liable	Not applicable
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Appendix attached			
1	Development Plan Policies	2	Relevant Planning History
3	Appeal Decision 14/00686/FUL (2AM)	4	Appeal Decision 10/01567/FUL (1AM)
5	Survey surrounding opening hours	6	Minutes from 18/01987/FUL

Recommendation in Full

Reason for Refusal - Noise and disturbance

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. Whilst the trade with existing hours on another premises is noted this approach is likely to create further harm to nearby residents of the application site and sets 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, having regard to similar appeal decisions in the locality for extended hours of use and the objection from the Police, 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).

1. The site and its context

- 1.1 The application site lies within the defined city centre, situated on Lower Banister Street between Bedford Place and London Road.
- 1.2 The area contains a number of late night music and drink venues with a mix of other uses in the wider surrounding area including a multi-storey car park.

2. Proposal

- 2.1 The site has a somewhat complicated planning history, with the premises currently operating as a single unit. Historically this was not always the case and there are two separate consents for the use of the ground floor and first floor as Class A4 uses.
- 2.2 Application 09/00336/FUL granted consent for the use of the ground floor as an A4 use and imposed the following condition:

APPROVAL CONDITION – A4 Hours of Use - [Performance Condition]

The ground floor A4 use 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:

<i>Monday to Saturday</i>	<i>8.30 am to 12 Midnight</i>
<i>Sunday and recognised public holidays</i>	<i>8.30am to 12 Midnight</i>

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.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties

- 2.3 Application 13/01840/FUL granted consent for the use of the first floor as an A4 use and imposed the following condition:

APPROVAL CONDITION - Hours of Use - drink establishments [Performance Condition]

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:

<i>Monday to Thursday</i>	<i>08.30am to 12.00 midnight</i>
<i>Friday and Saturday</i>	<i>08.30am to 12.00 midnight</i>
<i>Sunday and recognised public holidays</i>	<i>08.30am to 12.00 midnight</i>

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.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

- 2.4 A recent application was made for 3AM opening and was refused by Panel. The current application seeks to vary the consented hours for both floors to allow opening from 08.30AM to 01.00AM, 7 days a week. A trading hours swap is proposed whereby it is intended that a legal agreement will secure restriction of the opening hours of a nearby site, 5A Bedford Place (which has previously

operated under the name of The Rhino), which has no conditions restricting hours of operation. A legal agreement would bind the 2 premises to that 5A Bedford Place would trade with the midnight close that currently restricts the applicant.

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**.
- 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 was historically in use as a single retail unit before being subdivided to form separate food and drink elements. Presently the site is lawfully occupied as a single premises operating under separate consents for A4 uses on the ground floor and first floor. An application for the first floor to extend its opening hours to 2AM under application 14/00686/FUL was made in 2014. This application was refused and a subsequent appeal dismissed. Earlier applications in 2009 and 2010 under 09/01025/FUL and 10/01567/FUL for 2AM and 1AM opening were also refused and an appeal dismissed. A copy of the appeal decision for the 2014 application for 2AM is attached as **Appendix 3**. A copy of the appeal decision for the 2010 application for 1AM is attached as **Appendix 4**.
- 4.3 In the appeal of application 10/01567/FUL the Inspector made the following comments:

“The appellant company says that it has an excellent record of managing late night establishments in the area. However, the weight to be attached to this is limited by the fact that, as the planning permission runs with the land, the current appellant may not continue to run the premises.”

“...the evidence before me strongly points to the harmful effect of late night activity in the area on the living conditions of local residents. Allowing later opening hours would increase the potential for noise and disturbance to those living nearby and at a time when many will be seeking to sleep. It would also have a more damaging cumulative effect by making it difficult for the Council to maintain its current approach of limiting opening hours.”

- 4.4 In the appeal of application 14/00686/FUL the Inspector made the following comments:

“The presence of late night uses is acceptable but they are also highlighted as key contributors to the issues of noise, disturbance, anti-social behaviour and littering which 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.”

“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 I have identified with regard to the main issue.”

- 4.5 A previous application was recently submitted and refused by the Planning & Rights of Way Panel under application 18/01987/FUL for a variation of these conditions to allow opening until 3AM. This application was refused by the Panel on 31.01.2019. A copy of the Panel minutes is attached as **Appendix 6**. An appeal has been submitted against the refusal of this application but has not yet been determined.

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 and erecting a site notice (**26.03.2019**). At the time of writing the report **30** representations in support of the scheme have been received from surrounding residents (from 22 separate addresses). The following is a summary of the points raised:

- 5.2
 - ***Precedent set by Buddha Lounge application***

Response

The Council has previously accepted a similar arrangement for an ‘hours swap’ on premises at 3 Winchester Street (Buddha Lounge) under application 15/02217/FUL. It is considered that there are substantial differences between the circumstances of the two cases which require a fresh assessment. This issue is discussed in more detail in section 6 below.

- 5.3
 - ***Significant noise and disturbance associated with The Rhino when it was open***
 - ***The Rhino had more anti-social issues while The Social is more well managed and serves a different clientele with less associated noise/anti-social behaviour***

Response

It is noted that a planning consent runs with the land, not the current operator. While the Council encourages land owners to operate their premises responsibly and considerately of nearby residents, a future tenant may operate in a different way.

- 5.4
 - ***Existing closing time results in people leaving into dark, uneven footing. Additional lighting and staff would improve matters.***

Response

It is not clear that allowing later opening hours would improve this situation.

- 5.5 • ***Occupiers near The Social moved into the properties aware of the context of surrounding late night premises and would not suffer greater disturbance***

Response

The application would extend later opening hours in this area. It is noted that The Rhino is also a historic use of the premises and a similar argument can be made for that premises.

- 5.6 • ***Individuals leaving application site are less likely to pass takeaways and exacerbate associated impacts***

Response

It is not clear that the difference in location will have a substantial impact on the uptake of nearby food outlets.

- 5.7 • ***Reduce queues for nearby premises***

Response

The additional hours proposed will result in additional capacity later into the night, resulting in larger groups congregating later at night.

- 5.8 • ***Additional foot traffic and viability for bars in the area***

Response

The Council has identified the area as a late night zone and supports the principle of late night uses in the area where they are not considered to have a harmful impact on the character or amenities of surrounding properties. In this case AP8 of the Councils CCAP outlines appropriate late night opening hours in this area and the proposed application would exceed those hours.

- 5.9 • ***The proposal would be in keeping with the hours of other nearby premises***

Response

As part of implementing the City Centre Action Plan the Council reviewed areas of the city centre and made an assessment on appropriate opening hours in an effort to try and address areas where late night opening issues were problematic. Some properties in the area may benefit from historic uses not covered by conditions or consents granted prior to the implementation of the CCAP. The idea of implementing the policies is that over time as a result of the application of the policy that these impacts will reduce. It is not considered that the presence of an existing impact justifies deviation from a policy designed to prevent the further intensification of that problem. For context, a summary of opening times of nearby premises are included in ***Appendix 5***.

5.10 **Consultation Responses**

- 5.11 **Environmental Health** – Environmental Health do not have an objection in principle, however there are considerations to be made and works to attenuate sound may be required, the detail of which will only be known following a noise assessment. The issue of noise break out has been discussed at length with the management of the premises in the past following noise nuisance complaints (no substantiated) so the potential points for noise break out have already been identified. A noise report will be required, as notwithstanding that there are adjacent properties open until the early hours, each premises has to be considered independently for potential noise break out that may result in a statutory nuisance. The responsibility is on the operator and management to minimise problems,

including use of any external areas. The building may require sound proofing, not only to the front elevation windows and external doors, but also as sound may break out through the roof. Noise break out from the front elevation can in part be achieved by keeping the external doors and windows closed and maintaining the double door lobby after 21.00 hours. A noise assessment must include levels at above the height of the building where residents living on the upper floors of particularly Roebuck House may be affected by noise which at ground level is not a problem/not audible. A good management plan will be required and this should be covered in licence conditions, but I think it is fair to say that detail of management of the premises relating to noise should be a condition of the planning application being granted. Although the building and use may have existed prior to the residential accommodation that does not remove the responsibility for the venue operator to take appropriate steps to protect against any noise that may adversely affect neighbours, particularly domestic residents, due to the longer opening hours.

5.12 **Police** – The proposal is contrary to the provisions of the City Centre Action Plan. The Rhino has been closed since 2014 and does not have a current alcohol licence. Records show that incidents reported to the police in this area peak between midnight and 2AM. It is considered that staggered opening times at present help prevent build ups of people in the public realm and the applicant is not considered to have clearly demonstrated that the change will not adversely impact the local area. Objection to application.

5.13 Reviewing the incident information held by Hampshire Constabulary on their Records Management System (RMS) for the period 20th June 2018 to 19th June 2019, for this area, gives some idea of the numbers of incidents being reported to the police:

Hour	8pm	9pm	10pm	11pm	12pm	1am	2am	3am	4am
Number of incidents	5	7	16	11	41	51	32	19	7

5.14 **Contamination** – The proposed use is sensitive to the effects of land contamination.

Response

As the proposed application involves no physical ground works and primarily relates to a variation of opening hours it is not considered appropriate to impose further conditions in relation to land contamination.

6.0 Planning Consideration Key Issues

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

- Impact on surrounding character and amenity

6.2 The proposal represents a resubmission of a scheme previously refused by the Panel, seeking an extension of opening hours to 1AM compared to the 3AM of the previously refused application. The application for 3AM opening is currently in the process of being appealed by the applicant. There are other recent applications on the site which were dismissed at appeal for 2AM opening (14/01567/FUL) and 1AM opening (10/01567/FUL). These decisions were made prior to the Councils

adoption of the City Centre Action Plan but given the relevant circumstances of the decisions the Council considers that the key issues remain relevant and the assessments made can be given weight in the Panels decision.

- 6.3 The site lies within one of the specified late night zones, laid out in the Councils City Centre Action Plan (CCAP). Policy AP8 in this document identifies late night uses are an important part of meeting the needs of those living within the city but that the impacts associated with such uses need to be carefully managed so as to avoid disruption and other negative impacts on local residents associated with congregations of such uses.
- 6.4 Specifically, in this area the CCAP identifies that premises should have a terminal hour of midnight, which is the existing closing time of the premises per their planning conditions. As such it is considered that a later opening time would be contrary to policy and strengthens the Councils position in policy terms when compared to the previously dismissed appeals on the site for 2AM and 1AM opening.
- 6.5 In order to address this issue the applicant has suggested they are willing to enter into a legal agreement where the opening hours on another nearby premises, The Rhino (which has currently been vacant for a number of years), will be limited to midnight (per the current restrictions on the application site), while the application site will have the opening hours proposed of 1AM.
- 6.6 The planning history of The Rhino (5A Bedford Place) is included in **Appendix 2** but in summary application 1530/M23 granted consent for the use of the premises as a 'folk club' with no restriction on opening hours. The property has been extended a number of times since then. It is considered that the premises could lawfully operate as a music/drink venue without any restrictions on its hours. The premises has been vacant for a number of years and a number of applications have been submitted for the redevelopment of the site (16/01051/OUT, 16/01930/OUT) but were refused.
- 6.7 The Panel has previously rejected the same request on this site under application 18/01987/FUL but accepted a similar arrangement for an 'hours swap' on premises at 3 Winchester Street (Buddha Lounge) under application 15/02217/FUL. It is considered that there are substantial differences between the circumstances of the two cases. In that situation, the two premises were immediately adjacent and, at the time, linked internally. This meant that the impacts associated with the two uses were somewhat difficult to differentiate in terms of anything except hours of opening. As such it was considered that the agreement could secure a definitive improvement over the existing situation.
- 6.8 In this case the application site is a distinct separate premises from The Rhino. The properties are over 100m apart, on different frontages and separated by large multi-storey car park. The Rhino has also been closed for several years and does not currently have a licence to operate, though it is accepted that it could reopen without requiring planning permission.
- 6.9 While both properties are situated in the wider context of the Bedford Place/London Road area, it is not considered that there is a direct equivalency between the relative impacts associated with the two uses. As such it is not felt that a legal agreement would be an appropriate method of addressing the additional harm

associated with the later opening hours. As such it is considered that the proposal should be refused in line with the provisions of AP8.

- 6.10 The Planning & Rights of Way Panel have previously been asked to consider a very similar proposal on the site for 3AM opening and found that the proposed legal agreement was not sufficient to mitigate the impacts of the extended opening hours. The current application has been resubmitted with no other alterations except a change in the proposed opening hours from 3AM to 1AM. While it is considered that 1AM is an improvement when compared to the previously refused scheme, the proposal is still contrary to policy and it is considered that the substantial reasons for the refusal of the previous scheme remain as they were under the previous application. On this basis it is considered that the same issues remain regarding the principle of the development and the application is recommended for refusal on the same basis.

7. Summary

- 7.1 The Police have raised concerns that the proposal would exacerbate existing issues associated with late night opening in the immediate area. A number of applications for later opening hours have been submitted on the site over the last 10 years which have been refused with subsequent appeals dismissed. The Council considers that the adoption of the CCAP in 2015 has only reinforced its stance on the harm resulting from later opening hours in this area.
- 7.2 The Council do not consider that the proposed legal agreement is sufficient to mitigate the immediate and wider impacts of the development and as such it is considered that the provisions of AP8 in the CCAP should be given significant weight and the application refused.

8. Conclusion

- 8.1 It is recommended that planning permission be refused.

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(f), 6(a)(b)

JF for 16/07/19 PROW Panel

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS1 City Centre Approach
CS13 Fundamentals of Design

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

SDP1 Quality of Development
SDP16 Noise
REI7 Food and Drink Uses (Classes A3, A4 and A5)

City Centre Action Plan - March 2015

AP 8 The Night time economy

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Other Relevant Guidance

The National Planning Policy Framework (2019)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

Relevant Planning History

21 Lower Banister Street

**18/01987/FUL, Variation of condition 2 of planning permission ref 09/00336/FUL and condition 1 of planning permission ref 13/01840/FUL to allow opening hours of 08:30am to 03:00am 7 days a week
Refused, 31.01.2019
Appeal Pending**

Reason for Refusal - Noise and disturbance

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. Whilst the trade with existing hours on another premises is noted this approach is likely to create further harm to nearby residents of the application site and sets 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, having regard to similar appeal decisions in the locality for extended hours of use and the objection from the Police, 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).

15/02302/FUL, Variation of condition 6 of planning permission 05/00174/FUL to allow extended opening hours to 2am Thursday, Friday and Saturday
Withdrawn, 27.09.2017

14/00686/FUL, Variation of condition 1 of planning permission 13/01840/FUL to extend the approved opening hours for the first floor bar (A4 use) from 08:30am - 12 midnight (Monday - Sunday) to 08:30am - 02:00am (Monday - Sunday and recognised public holidays)
Refused, 30.07.2014
Appeal Dismissed, 31.12.2014

REFUSAL REASON: 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 would cause further detriment to the residential amenities of neighbours by reason of noise, litter and disturbance caused as patrons leave the premises. The proposal would thereby, having regard to similar appeal decisions in the locality for extended hours of use, prove contrary to the provisions of 'Saved' policies SDP1, SDP16, REI7 and CLT14 of the adopted City of Southampton Local Plan Review (2006) and Policy AP8 of the emerging City Centre Area Action Plan (2013).

**13/01840/FUL, Change of use of the first floor from A3 (restaurants) to A4 (drinking establishment) (retrospective)
Conditionally Approved, 07.03.2014**

Condition 1

APPROVAL CONDITION - Hours of Use - drink establishments [Performance Condition]

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.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

10/01567/FUL, Application for variation of conditions 2 and 3 of planning permission 09/00336/FUL to extend the approved opening hours for both A3 and A4 uses from 08:30am-midnight Monday-Sunday to 08:30am-01:00am Monday-Sunday.

Refused, 10.01.2011

Appeal Dismissed, 12.09.2011

REFUSAL REASON: 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 would cause further detriment to the residential amenities of neighbours by reason of noise, litter and disturbance caused as patrons leave the premises. The proposal would thereby prove contrary to the provisions of Policies SDP1, SDP 16, REI7 and CLT 14 of the adopted City of Southampton Local Plan Review (2006).

09/01025/FUL, Variation of conditions 2 and 3 of permission 09/00336/FUL to extend the approved opening hours for both A3 and A4 use from 08.30 (8.30 am) until midnight (Monday - Sunday) to 08.30 (8.30 am) until 02.00 (2am) (Monday - Sunday).

Refused, 19.11.2009

REFUSAL REASON: 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 would cause further detriment to the residential amenities of neighbours by reason of noise, litter and disturbance caused as patrons leave the premises. The proposal would thereby prove contrary to the provisions of Policies SDP1, SDP 16, REI7 and CLT 14 of the adopted City of Southampton Local Plan Review (2006).

09/00336/FUL, Alterations to ground floor front/side elevations and change of use from Class A3 to mixed use Class A3/A4

Conditionally Approved, 04.06.2009

Condition 2

APPROVAL CONDITION – A4 Hours of Use - [Performance Condition]

The ground floor A4 use 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 Saturday 8.30 am to 12 Midnight
Sunday and recognised public holidays 8.30am to 12 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.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties

Condition 3

APPROVAL CONDITION – A3 Hours of Use - [Performance Condition]

The first floor A3 use 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 Saturday 8.30 am to 12 Midnight
Sunday and recognised public holidays 8.30am to 12 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.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties

06/01682/FUL, Retrospective application for external alterations to front elevation, erection of decking to front, insertion of windows and formation of fire escape.
Conditionally Approved, 22.12.2006

06/01559/VC, Variation of Condition 06 of Planning Permission (ref 05/00174/FUL) to allow opening hours of 8.30am to 12 midnight 7 days a week.
Conditionally Approved, 15.12.2006

05/00174/FUL, Subdivision of the premises and change of use of part of premises from A1 (Retail) to A3 (Restuarants and cafes) and change of use of another part of the premises from A1 (Retail) to A4 (Drinking establishment) to form an extension to The Orange Rooms and alterations to the fenestration of the building on the south and west elevations (resubmission).
Conditionally Approved, 08.03.2006

5A/6A Bedford Place

16/01930/OUT, Redevelopment of the site. Demolition of the existing building and erection of a 5-storey building to provide commercial use on the ground floor and 10 flats above (7 x 2-bed and 3 x 1-bed) with associated refuse facilities (Outline application seeking approval for Access, Layout and Scale)
Refused, 07.02.2017

16/01051/OUT, Redevelopment of the site. Demolition of the existing building and erection of a 6-storey building to provide commercial use on the ground floor and 15 flats above (5 x one bedroom, 8 x two bedroom and 2 x three bedroom. (Outline application seeking approval for access, layout, scale and appearance).
Refused, 11.08.2016

10/00127/FUL, Change of use from A1 (retail) to mixed use comprising a combination of uses within Use Class A1 (retail), A2 (financial services), A3 (drinking establishment), A4 (restaurant) and/or A5 (take-away)
Conditionally Approved, 08.04.2010

09/00861/FUL, Installation of a new shop front
Conditionally Approved, 25.09.2009

09/00617/FUL, Change of use from retail (class A1) to mixed use restaurant/cafe and takeaway (A3 and A5)
Conditionally Approved, 10.08.2009

09/00193/FUL, Change of use of ground floor from retail (use class A1) to hot food takeaway (use class A5)
Conditionally Approved, 01.05.2009

04/01586/FUL, Installation of automatic sliding door to existing shopfront.
Conditionally Approved, 06.12.2004

971262/E, INSTALLATION OF A NEW SHOPFRONT
Conditionally Approved, 26.01.1998

1631/M18, INSTALLATION OF 6 NEW WINDOWS FRONTING WATERLOO TERRACE
Conditionally Approved, 07.06.1983

1626/M17, USE OF GROUND FLOOR AS RESTAURANT
Conditionally Approved, 01.02.1983

1571/M27, ERECTION OF A FIRST FLOOR REAR EXTENSION FOR USE AS CASINO
Conditionally Approved, 24.06.1980

1554/M29, ALTERATIONS TO FLANK WALL FRONTING WATERLOO
Conditionally Approved, 03.04.1979

1548/M29, USE OF PREMISES AS RESTAURANT
Conditionally Approved, 09.01.1979

1532/M25, ALTERATIONS TO THE EXTERNAL ELEVATIONS IN CONNECTION WITH THE USE OF REAR OF PREMISES AS FOLK CLUB.

Conditionally Approved, 29.11.1977

1530/M23, USE AS FOLK CLUB
Conditionally Approved, 20.10.1977



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.*
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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



Appeal Decision

Site visit made on 15 August 2011

by **R J Marshall LLB Dip TP MRTPI**

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

Decision date: 12 September 2011

Appeal Ref: APP/D1780/A/11/2154256

Triad House, 24 Lower Banister Street, Southampton, Hampshire, 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 Aura Bar and Lounge Ltd. against the decision of Southampton City Council.
 - The application Ref 10/01567/FUL, dated 12 November 2010, was refused by notice dated 10 January 2011.
 - The application sought planning permission for "Alterations to ground floor front/side elevations and change of use from Class A3 to mixed use Class A3/A4 without complying with conditions attached to planning permission Ref 09/00336/FUL/23748, dated 4 June 2009.
 - The conditions in dispute are Nos. 2 and 3 which state that:
 - (2) *The ground floor A4 use 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 Saturday 8.30am to 12 Midnight
Sunday and recognised public holidays 8.30am to 12 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.*
 - (3) *The first floor A3 use 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 Saturday 8.30am to 12 Midnight
Sunday and recognised public holidays 8.30am to 12 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 both the conditions is: *To protect the amenities of the occupiers of existing nearby residential properties.*
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the permitted use of the appeal premises on the living conditions of local residents in the absence of the disputed condition with special reference to noise and disturbance.

<http://www.planning-inspectorate.gov.uk>

Reasons

3. The permitted use of the appeal premises is as a restaurant and bar. The appellant had sought, in the application for development without complying with condition Nos. 2 and 3, to enable the premises to open until 01.00 hours every day of the week.
4. The appeal site lies in an area containing a mix of commercial uses. There is within this area quite a substantial concentration of A3 (restaurant/café) and A4 (drinking establishment) uses. Within this area, and in the vicinity of the appeal site, there appears to be residential accommodation on the upper floors of buildings and in some purpose built flats. Only slightly further afield to the west is an extensive area of residential streets.
5. The area in which the appeal site lies is defined in the City of Southampton Local Plan Review (LPR) (2006) as a Night Time Zone (NTZ). In this area A3, A4 and A5 uses are permitted under Policy CLT 14 subject to compliance with Policy REI 7. Amongst other things, this Policy seeks to prevent the generation of any undue noise or other forms of nuisance arising from the proposed use.
6. The Council has prepared a *Night Time Economy* briefing paper to give guidance for operating hours relating to Policy CLT 14. The recommended closing time for premises in this area is 12am each day. The weight to be attached to this document is limited by the fact that it has not been subject to public consultation. However, the Council's recent planning decisions have been in accordance with this approach. As too have been appeal decisions, other than in one case where the decision was made without the benefit of a statement of case from the Council.
7. In support of the proposal the appellant says that the appeal site is in a lively area full of vitality by day and night. However, the Inspector's report into the LPR referred to the problems of late-night noise in the area in which the appeal site is located and to tension between long-term local residents and a large transitory student population. The appellant says that matters have improved since then. Reference is made to a city wide ban on drinking in public places, to the provision of CCTV in the area, the availability of a late night multi-storey car park along with resident parking zones and to the new licensing regime improving the regulation of premises. It is also said that if there was the harm alleged then it would be expected that there would be evidence of the Council enforcing or reviewing license restrictions.
8. However, the police object to the proposal before me. They say that over the last 18 months there has been a need to increase police patrols and resources in this area at night because of problems directly related to licensed premises in the area. Residents meetings have shown antisocial behaviour in the area to be a major cause of concern. These concerns have been reiterated in public observations on the planning application and this appeal.
9. The appellant company says that it has an excellent record of managing late-night establishments in the area. However, the weight to be attached to this is limited by the fact that, as the planning permission runs with the land, the current appellant may not continue to run the premises.
10. I appreciate that there is a substantial variation in the opening hours of premises in the area and note the appellant's references to many premises opening later than the appeal premises. However, the Council says that this is

a result of venues operating under old planning permissions that contain no reference to opening hours.

11. It is understandable why, from a commercial viewpoint and to compete with other late night venues, the appellant would prefer to operate later. Regard also needs to be had to the Government encouragement of economic growth. However, the evidence before me strongly points to the harmful effect of late night activity in the area on the living conditions of local residents. Allowing later opening hours would increase the potential for noise and disturbance to those living nearby and at a time when many will be seeking to sleep. It would also have a more damaging cumulative effect by making it difficult for the Council to maintain its current approach of limiting opening hours.
12. The current condition appears to strike the correct balance between allowing commercial uses such as this in the area whilst at the same time protecting the amenities of local residents. I am of this view notwithstanding the appellant's reference to the fact that students frequenting other areas in the city where later hours of opening are accepted may well return home through the residential streets in the vicinity of the appeal site.
13. I conclude that in the absence of the disputed condition the permitted use of the appeal premises would detract from the living conditions of local residents with special reference to noise and disturbance. As such it would be contrary to LPR Policies SDP 1, SDP 16, CLT 14 and RE 17 in so far that they seek to prevent such harm.
14. In arriving at this conclusion regard has been had to the appellant's reference to the effects of "pre-loading", that is the recent trend of people drinking extensively in private residences before going out to bars and clubs, and to the current tough economic climate reducing the number of customers. The appellant says that these factors are likely to lead to customers of the premises merely vacating it at the current closing time to go to an adjoining venue that opens later. However, the circumstances referred to may not be long term trends and the alleged consequence of them is a largely speculative view.
15. Regard has also been had to the Draft National Planning Policy Framework. However, as this document is still in draft form and subject to change little weight has been accorded to its Policies.

Conclusion

16. It is for the reasons given above that it has been concluded that the appeal should be dismissed.

RJ Marshall

INSPECTOR

1. 21 Lower Banister Street (The Social)
2. 17 Lower Banister Street (Pop World)
No planning restrictions (940538/E)
3. 1-2 Vernon Walk (Orange Rooms)
Roof terrace 8AM-10PM (08/00922/FUL)
No planning restrictions (M26/1671)
4. 3 Winchester Street/3-4 Vernon Walk (Buddha Lounge)

3 Winchester Street –
Monday to Thursday 08:00-02:00
Friday and Saturday 08:00-03:00
Sunday and Public Holidays 08:00-01:00

3-4 Vernon Walk –
Monday to Saturday 08:00-00:00
Sunday and Bank Holidays 12:00-00:00
(15/02217/FUL)
5. 24 Carlton Place (Fever and Vibe)

Monday to Saturday 08:00-02:00
Sunday and Public Holidays 10:00-02:00
(08/00371/VC – allowed at appeal)
6. 23 Bedford Place (The Bedford)

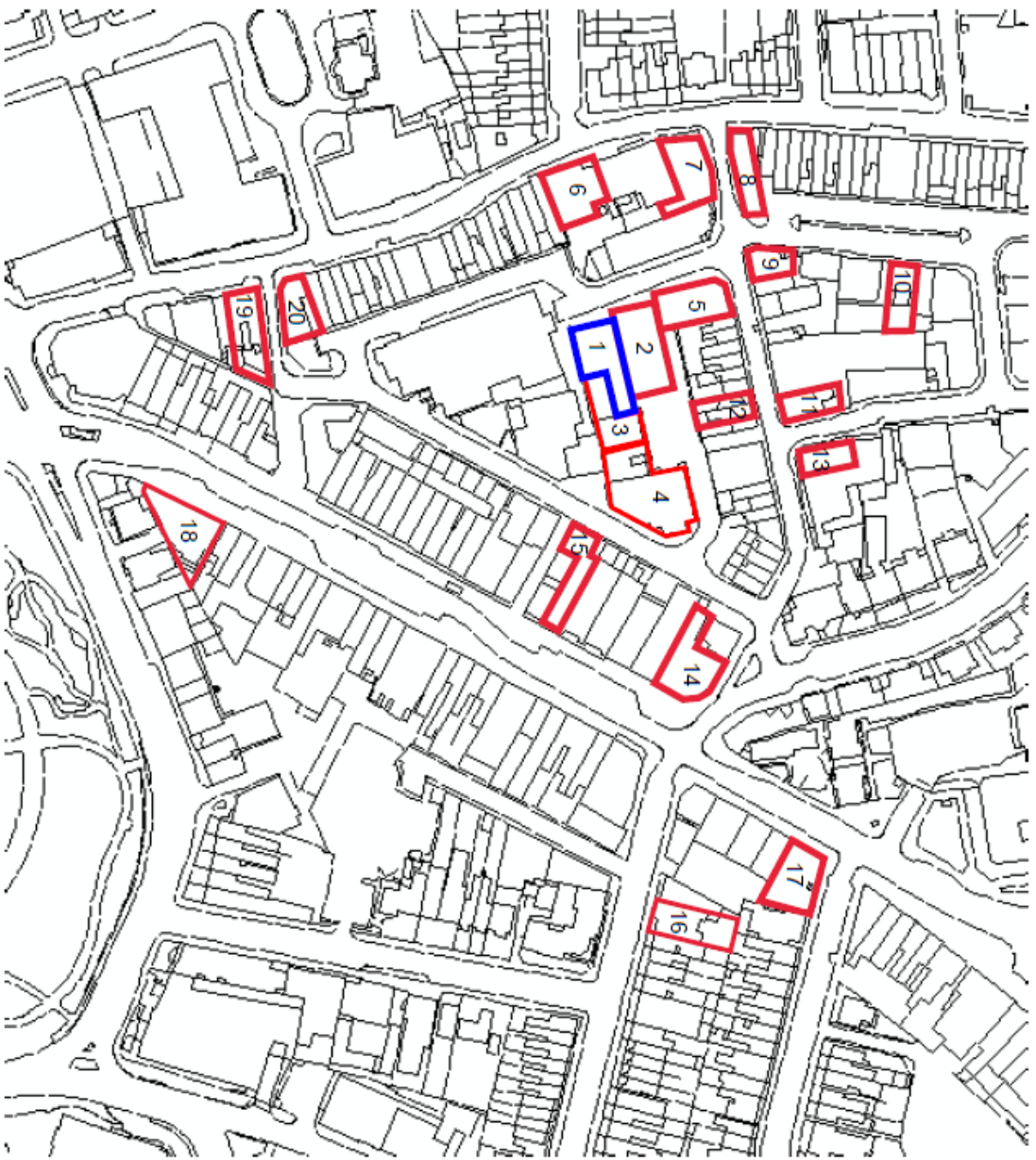
No planning restrictions (historic consent)
7. 28A Bedford Place (Revolution)

Roof terrace 08:00-23:00 (15/00047/FUL)
No planning restrictions
8. 28 Carlton Road/29 Bedford Place (XOXO)

Monday to Saturday 08:00-00:00
Sunday 10:00-23:00
(07/01737/VC)
9. 29 Carlton Place (4Q Bar and Lounge)

No planning restrictions (historic use)

10. 18A Upper Banister Street (Brewdog)
Monday to Sunday 11:00-00:00
(15/01624/FUL)
11. 34 Carlton Place (Cricketers Arms)
No planning restrictions (historic use)
12. 16-17 Carlton Place (Smugglers)
Monday to Sunday 10:00-23:30
(04/00230/FUL – appeal dismissed seeking 10:00-00:00)
13. Carlton House, Carlton Place (Seymours)
No planning restrictions (M29/1661)
14. 67-75 London Road (Brewhouse)
Monday to Sunday 09:00-00:00
(11/00537/FUL)
15. 55 London Road (Rebel)
No planning restrictions (1422/P10)
16. 6 Bellevue Road (The Alexandra)
No planning restrictions
17. 74-76 London Road (Sadler's)
No planning restrictions (1582/M22)
18. 12-16 London Road (Giddy Bridge)
Monday to Sunday 07:00-00:00
(07/00190/VC)
19. 5A/6A Bedford Place (The Rhino)
No planning restrictions (1530/M23)
20. 1-2 Bedford Place (The Lion)
No planning restrictions (historic use)



- 1 - 21 Lower Banister Street (The Social)
- 2 - 17 Lower Banister Street (Pop World)
- 3 - 1-2 Vernon Walk (Orange Rooms)
- 4 - 3 Winchester Street/3-4 Vernon Walk (Buddha Lounge)
- 5 - 24 Carlton Place (Fever and Vibe)
- 6 - 23 Bedford Place (The Bedford)
- 7 - 28A Bedford Place (Revolution)
- 8 - 28 Carlton Place/29 Bedford Place (XOXO)
- 9 - 29 Carlton Place (4Q Bar and Lounge)
- 10 - 18A Upper Banister Street (Brewdog)
- 11 - 34 Carlton Place (Cricketers Arms)
- 12 - 16-17 Carlton Place (Smugglers)
- 13 - Carlton House, Carlton Place (Seymours)
- 14 - 67-75 London Road (Brewhouse)
- 15 - 55 London Road (Junk)
- 16 - 6 Bellevue Road (The Alexandra)
- 17 - 74-76 London Road (Sadler's)
- 18 - 12-16 London Road (Giddy Bridge)
- 19 - 5A/6A Bedford Place (The Rhino)
- 20 - 1-2 Bedford Place (The Lion)

PLANNING APPLICATION – 18/01987/FUL – 21 LOWER BANISTER STREET

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

Variation of Condition 2 of planning permission ref 09/00336/FUL and Condition 1 of planning permission ref 13/01840/FUL to allow opening hours of 08:30am to 03:00am 7 days a week.

Mark Sennit (agent), Lorraine Barter, and David Rogers (supporters) were present and with the consent of the Chair, addressed the meeting.

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

RECORDED VOTE to refuse planning permission

FOR: Councillors Savage, Coombs, Claisse, Mitchell, and Wilkinson

AGAINST: Councillors L Harris and Murphy

RESOLVED that the Panel refused to grant conditional planning permission for the reasons set out within the report.