

Planning and Rights of Way Panel 9th July 2024
Planning Application Report of the Head of Transport and Planning

Application address: 37 London Road, Southampton			
Proposed development: Continued implementation of planning permission 13/01284/FUL not in accordance with condition 3. Variation to condition 3 (hours of use) to vary the opening hours to 11:00 to midnight (11:00 to 00:00 hours) Monday to Sunday - <i>Description amended to reduce extended hours from 03:00 am close to 00:00 midnight close</i>			
Application number:	22/00122/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	23.03.2022	Ward:	Bevois
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Rayment Cllr Kataria Cllr Denness
Referred to Panel by:	n/a	Reason:	n/a
Applicant: MR A SRIVASTAVA		Agent: Mr T AY	

Recommendation Summary	Delegate to the Head of Transport and Planning to grant planning permission subject to criteria listed in report
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Community Infrastructure Levy Liable	No
Biodiversity Net Gain Applicable	No

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 39-42 and 46 of the National Planning Policy Framework (revised 2023). Policies – CS1, CS3, CS6, CS7, CS13, CS18, CS19, CS25 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP4, SDP5, SDP7, SDP10, SDP11, SDP16, REI7 of the City of Southampton Local Plan Review (Amended 2015). Policies AP5, AP9 of the City Centre Action Plan March 2015.

Appendix attached

1	Development Plan Policies	2	Relevant Planning History
3	Planning permission 13/01284/FUL		

Recommendation in Full

1. Delegate to the Head of Transport and Planning to grant planning permission subject to the planning conditions recommended at the end of this report and the completion of a S.106 Legal Agreement to secure the provision of a financial contribution towards late night Community Safety Initiatives within the City Centre, having regard to the late night uses within the application proposal and in accordance with policy AP8 of the City Centre Action Plan as supported by the Planning Obligations SPD.
2. In the event that the legal agreement is not completed within a reasonable period following the Panel meeting, the Head of Transport and Planning be authorised to refuse permission on the ground of failure to secure the provisions of the Section 106 Legal Agreement.

1. The site and its context

- 1.1 This application site is located in London Road and comprises a mixed use restaurant and takeaway on the ground floor with servicing for bins to the rear accessible from Salsbury Street.
- 1.2 The surrounding area is characterised by a mix of ground floor commercial uses, with residential properties and offices above. Immediately to the west of the site in Winchester Street is the residential block of flats known as Mede House, and there are residential flats on the first and second floors above the premises.
- 1.3 The area falls within the Bedford Place evening zone (as defined by saved policy AP8 (nighttime economy) of the City Centre Action Plan) with a number of commercial and late-night uses including public houses, restaurants, night clubs and other live music entertainment venues associated with the nighttime economy. These are situated nearby streets in London Road, Vernon Walk, Carlton Place, Lower Banister Street and Bedford Place. There are a number of residential neighbourhoods located on the edge of the evening zone mainly to the west of Bedford Place and east of London Road heading out of the city centre.
- 1.4 The premises is authorised to operate the food and drink use under planning permission ref no. 13/01284/FUL from 11:00 to 23:00 hours Monday to Sunday (**see Appendix 3** for plans and decision notice).
- 1.5 The business advertises online that it currently deliveries to customers until 02:00 hours after the premises closes to customers at 23:00. Although customers are not allowed on the premises during these hours, the nature of the delivery use outside the authorised hours would require planning permission itself and, as such, the Planning Enforcement team has advised the applicant to cease this planning breach. If the panel are minded to

approve the application, the Planning Enforcement team will seek to take appropriate enforcement action if the delivery business continues to operate outside the approved hours. This element of the operation is not for consideration by this Panel.

2. Proposal

- 2.1 Since the application was submitted the applicant has agreed to reduce the extended hours of use from 03:00 (as originally submitted) to a midnight close instead. As such, closing time of the premises will be extended by 1 hour (Monday to Sundays). The applicant agreed that the proposal does not include any delivery use once closed beyond midnight and this can be dealt with separately.

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 2023. Paragraph 225 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.
- 3.3 Saved policy REI7 (Food and Drink) of the Local Plan Review supports A3/A4 uses within the city centre subject to appropriate controls to mitigate noise disturbance and other associated nuisances to the amenities of neighbouring residential properties. The policy acknowledges that these uses have their place and can add to the vitality of shopping centres. However, the potential for noise from within the premises, and from customers entering and leaving the premises (particularly late at night) amongst other issues will require careful consideration and these impacts are further assessed in the ‘Planning Considerations’ of the report.
- 3.4 The Council will use its planning and licensing functions to promote a night time economy with a range of activities that contribute to a vibrant city centre whilst minimising potential disturbance to nearby residential areas. Policy AP8 sets out guidance to manage the impact of the night time economy to minimise its potential disturbance to nearby residential areas. The approach in the Plan is to promote clusters of facilities in identified areas where extended opening hours are supported. Outside of these hubs, tighter restrictions will be placed on what opening hours are acceptable. New uses with extended opening hours (beyond 23.00 hours) will therefore be directed to designated evening zones and late-night hubs as shown on the Policies

Map. In this case, the Bedford Place evening zone (which covers this site) permits night time uses to operate until midnight (see Map 6 and table 5 of the policy).

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.

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 on 11.02.2022. At the time of writing the report **19 letters of objection** have been received from surrounding residents. The following is a summary of the points raised:

5.2 ***Contrary to licensing requirements in the Cumulative Impact Area (CIA). The business does not have a license.***

Response

The issuing of a premises license would be decided separately to the planning process. Although there is some overlap, the planning and licensing systems have different assessment criteria and are different regimes. Planning can consider wider range of factors including residential amenity impacts. The Environmental Health/SCC licensing team is aware that the premises does not have a late night refreshment licence and have separate powers to take further steps to remedy outside the planning process. The decision notice would include an advisory note to make this clear to the applicant.

5.3 ***The late night hours will cause noise disturbance to the detriment of the amenity of nearby residents. Contrary to the midnight closing hours required by policy AP8 for this area. Needs to be consistent with other decisions made by the Council for applications to extend hours of premises in the area.***

Response

The applicant has agreed to reduce the hours to a midnight closure to comply with the policy AP8. As such, the noise and disturbance associated with the proposed use, and dispersal of patrons, will not adversely affect adjoining and nearby residents. The Environmental Health team have no objection to the revised hours. So whereas the scheme as submitted was contrary to adopted Policy the current hours align and should be supported.

Consultation Responses

5.4

Consultee	Comments
Environmental Health	<p><u>Initial Objection - Superseded</u> <i>Environmental Health consider that opening until 03.00 hours is excessive due to the close proximity of residential properties above and to the rear of this property. Robust noise management plan required based on a noise assessment to include activities inside the premises, the extraction system and customers. Emptying of bins, particularly glass, to be restricted to 09.00 to 21.00.</i></p> <p><u>No objection received following reduction in hours</u> I have checked the history for 37 London Road and can find no complaints relating to this premises. I am happy to support this application for an additional hour. I believe the emptying of bins condition would be sensible unless the applicant feels this is unfair. Can we provide an advice note to the applicant that states they will now need a late night refreshment licence. We can deal with potential management matters under condition on the licence, however I envisage this will only be able to deal with ensuring dispersal and ensuring delivery drivers do not create a nuisance.</p>
Licensing	<p><u>No objection raised</u> There is no premises licence in place at this address. If the applicant wishes to conduct licensable activities at this property an application for a premises licence will need to be made.</p>
Crime Prevention Design Advisor	<p><u>Objection</u> This premises falls within a Cumulative Impact Area, policing within this area is challenging. We are concerned that the extension of hours will have the following effects:</p> <ul style="list-style-type: none"> • Cause people leaving other nearby venues to come to this location • Delay dispersal from the area • Place an additional burden on resources at a later dispersal time • Those visiting this venue may cause issues for local residents <p><u>Officer Response</u> Due the reduction in closing hours to comply with policy AP8, the concerns regarding the policing resources</p>

	burden and dispersal delays raised by the objection no longer holds significant material weight in deciding the application. This will be further mitigated by the requirement to secure a financial contribution towards community safety measures.
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6.0 Planning Consideration Key Issues

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

- The principle of development;
- Effect on character and amenity;
- Parking highways and transport and;
- Mitigation of direct local impacts.

6.2 Principle of Development

6.2.1 The principle of encouraging the expansion of the night time economy is supported in the city centre subject to the acceptability of other material considerations (as discussed below). In this instance, proposed closing hours of the premises will comply with the designated Bedford Place evening zone (see Map 6 under policy AP 8) no later than midnight (see table 5 of the policy). The principle of development is fully supported.

6.3 Effect character and amenity

6.3.1 Having reduced the extended hours of the business from 03:00 to midnight, the proposal now complies with the latest closing hours allowed under policy AP8. Whilst the occupants of the flats above and to the rear, and nearby residents will notice additional comings and goings to the premises by customers and staff during the extended hour, the resulting noise and disturbance from the food and drink use would not cause a significantly adverse impact given the existing level of background noise and activity associated with the activities of the nighttime local economy in the London Road and Bedford Place area.

6.3.2 Following the comments of the Environmental Health team, it is recommended to minimise late night disturbance by restricting the emptying of bins and glass to 09:00 to 21:00 hours. Conditions 2 and 4 under the original planning permission will be reimposed to require the retention of the approved cooking extraction system installed and provision of adequate bin storage. Environmental Health have confirmed no complaints have been received relating to the use of the premises. Furthermore, the applicant will be expected to apply for a late night refreshment license which deals with aspects of the business such as ensuring dispersal and delivery drivers do not create a nuisance.

6.4 Parking highways and transport

6.4.1 The number of trips associated with the proposed use is unlikely to significantly change compared to the existing, whilst the high accessibility of

the city centre location would ensure that the traffic associated with the proposed use would not significantly affect the local road network. Provision of refuse storage will be reimposed by condition from the original planning permission.

6.5 Mitigation of direct local impacts

6.5.1 The applicant will be liable to complete a S106 agreement to secure a £5,000 contribution towards Late Night Community Safety Facilities as the late night hours proposed will increase the burden on managing security and safety within the Bedford Place/London Road area due to the additional patrons being in the area during the extended hour Monday to Sundays.

7. Summary

7.1 In summary, extending opening times of the food and drink use by 1 hour (till midnight) complies with the Council's nighttime economy policy to manage the safety and amenity of the local area, whilst this would have the economic benefit of supporting growth of the night time economy. In relation to the impact from noise and disturbance and the wider impacts of customer dispersal during and after the proposed closing time, the scale and nature of the food and drink use would not adversely affect the amenity of adjoining and nearby residents.

8. Conclusion

8.1 It is recommended that planning permission be granted subject to a Section 106 agreement and conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (e) 4. (g) (vv) 6. (a) (b)

SB for 09/07/24 PROW Panel

PLANNING CONDITIONS to include

1. Full Permission Timing (Performance)

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).

2. Extract ventilation (Performance)

Unless otherwise agreed in writing by the Local Planning Authority, for the lifetime of the approved use the cooking extraction equipment shall be maintained and retained as approved under planning permission ref no. 13/01284/FUL. The equipment shall be operated in accordance with the manufacturers' instructions to effectively control odours from any cooking process and noise and/or vibration generated by the extractor fan.

Reason: To protect the amenities of adjoining residential properties.

3. Hours of Use (Performance) – Amended by this Permission

Unless otherwise agreed in writing by the Local Planning Authority, the food and drink 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 Sunday 11.00 hours to 00.00 hours (11.00am to 12.00am)

A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.

No emptying of refuse or glass bins associated with the approved use shall take place outside the hours of 09:00 to 21:00 hours.

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

4. Refuse storage

The provision of adequate storage to dispose of all refuse, crates, pallets and packing materials to the rear of the site will continue for the lifetime of the use hereby approved.

Reason: To prevent littering in the surrounding area.

5. 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

Please note that the premises require a License, in addition to this Planning Permission, for this use. Furthermore, planning permission is needed for any delivery service that operates outside of the approved hours of use. This matter has been passed to the Council's Planning Enforcement team to investigate further.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS1	City Centre Approach
CS3	Promoting Successful Places
CS6	Economic Growth
CS7	Safeguarding Employment Sites
CS13	Fundamentals of Design
CS18	Transport: Reduce-Manage-Invest
CS19	Car & Cycle Parking
CS25	The Delivery of Infrastructure and Developer Contributions

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

SDP1	Quality of Development
SDP4	Development Access
SDP5	Parking
SDP7	Urban Design Context
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP16	Noise
REI7	Food and Drink Uses (Classes A3, A4 and A5)

City Centre Action Plan - March 2015

AP 5	Supporting existing retail areas
AP 8	The Night time economy

Supplementary Planning Guidance

Planning Obligations (Adopted - September 2013)
Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2023)

Relevant Planning History

Case Ref	Proposal	Decision	Date
02/00667/VC	Variation of condition 02 of planning permission 961373/3820/E to extend opening hours to 1:00 Monday to Thursday, 2:00 Friday & Saturday and 12:30 on Sunday	Refused	09.09.2002
13/01284/FUL	Change of use of ground floor from mixed A1/A3 to mixed restaurant/hot food takeaway (classes A3/A5)	Conditionally Approved	23.09.2013
13/01726/FUL	Installation of a new shopfront (submitted in conjunction with 13/01727/ADV)	Conditionally Approved	06.12.2013
14/01212/FUL	Application for variation of condition 3 of planning permission ref 13/01284/FUL to vary the opening hours from 11:00 - 23:00 to 07:00 - 23:00 Monday - Sunday (amended description)	Conditionally Approved	04.09.2014



13/01284/FUL/3820

DETERMINATION OF APPLICATION

TOWN AND COUNTRY PLANNING ACT 1990

**Town and Country Planning
(Development Management Procedure) (England) Order 2010**

Mr David Silence
Simpson Hilder Associates
67A High Street
Lyndhurst
SO43 7BE

In pursuance of its powers under the above Act and Regulations, Southampton City Council, as the Local Planning Authority, hereby gives notice that the application described below has been determined. The decision is:

FULL APPLICATION - CONDITIONAL APPROVAL

Proposal: Change of use of ground floor from mixed A1/A3 to mixed restaurant/hot food takeaway (classes A3/A5)

Site Address: 37 London Road Southampton SO15 2AD

Application No: 13/01284/FUL

Subject to the following conditions.

01. 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).

02. APPROVAL CONDITION - Extract ventilation - control of noise, fumes and odour

The use hereby approved shall not be first commenced until the agreed scheme for the control of noise, vibration, fumes and odours from extractor fans and other equipment have been installed in full working order. The equipment shall be maintained in accordance with the manufacturers' instructions to effectively control odours from any cooking process and noise and/or vibration generated by the extractor fan. The approved scheme of works shall be retained at all times thereafter in good working order.

Reason:

To protect the amenities of adjoining residential properties.

03. APPROVAL CONDITION - Hours of Use - food/drink establishments

The food and drink uses / 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 Sunday 11.00 hours to 23.00 hours (11.00am to 11.00pm)

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.

04.APPROVAL CONDITION - Refuse - on site storage [Performance Condition]

Provision shall be made within the site for the adequate storage prior to disposal of all refuse, crates, pallets and packing materials.

Reason:

To prevent littering in the surrounding area.

05.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.



Chris Lyons
Planning & Development Manager

23 September 2013

If you have any further enquiries please contact:

David Nip

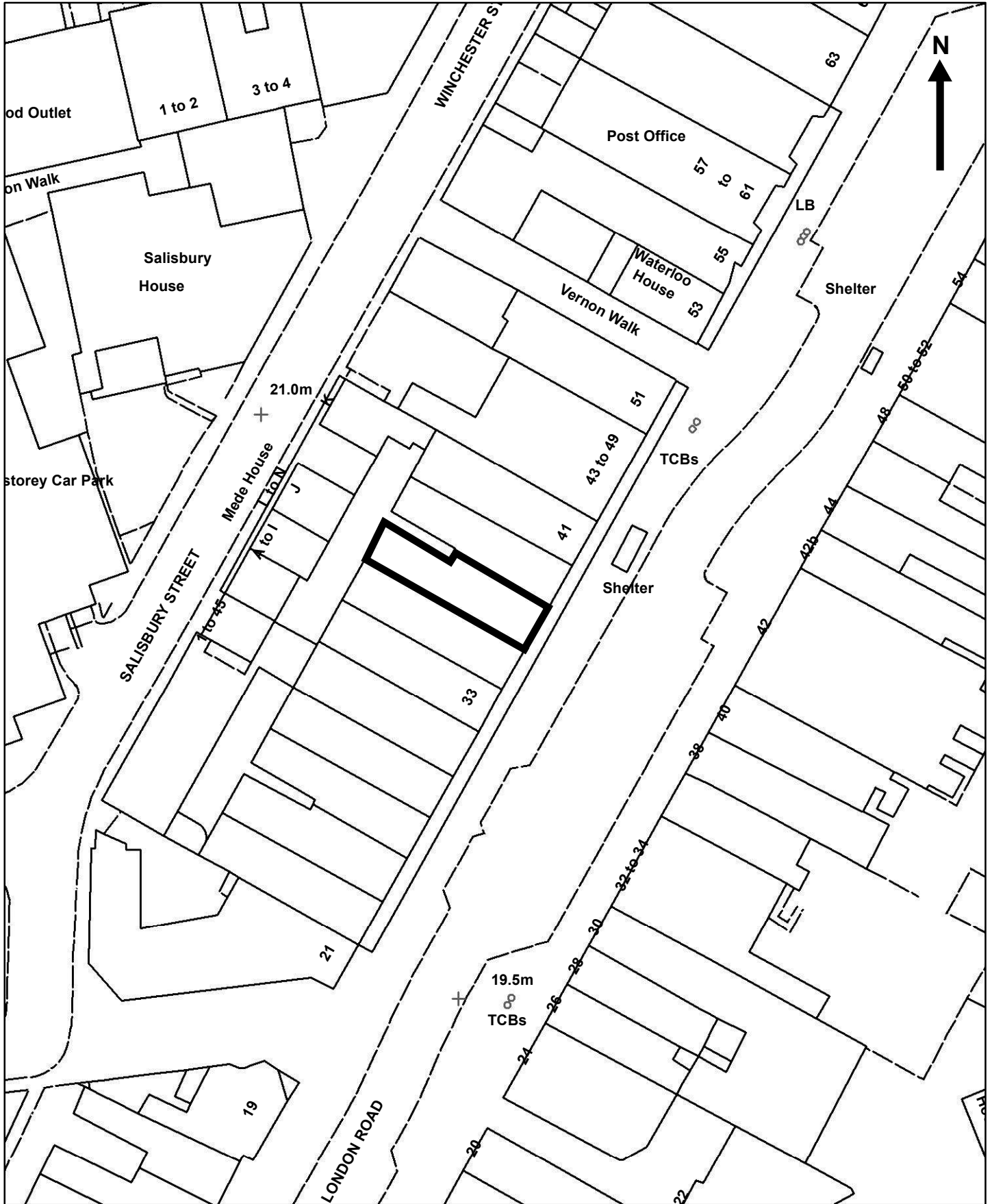
IMPORTANT NOTE TO APPLICANT

This decision has been made in accordance with the submitted application details and supporting documents and the development should be implemented in respect of the following plans and drawings.

Drawing No:	Version:	Description:	Date Received:	Status:
6879 - D&A		Design and Access Statement	29.07.2013	Approved
6879-001		Existing Plans	29.07.2013	Approved
6879-002	B	Proposed Plans	29.07.2013	Approved
6879-003		Block Plan	29.07.2013	Approved
AIRFILTER 1		Technical Spec	14.08.2013	Approved
AIRFILTER 2		Technical Spec	14.08.2013	Approved
FAN		Technical Spec	20.08.2013	Approved
KITCHEN VENT SUPPORT		Planning Statement	20.08.2013	Approved
EQUIPMENT SCHEDULE		Floor Plan	20.08.2013	Approved
PROPOSED KITCHEN VENT	A	Technical Spec	29.07.2013	Approved



FLOOR PLAN SCALE 1:50



Scale: 1:625

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