

Planning and Rights of Way Panel 27th August 2024
Planning Application Report of the Head of Transport and Planning

Application address: 197 Portswood Road Southampton SO17 2NF			
Proposed development: Erection of a single-storey rear extension to facilitate the use of the site for sale of hot food and drink and takeaway			
Application number:	24/00790/FUL	Application type:	FUL
Case officer:	Stuart Brooks	Public speaking time:	5 minutes
Last date for determination:	29.08.2024	Ward:	Portswood
Reason for Panel Referral:	Request by Ward Member	Ward Councillors:	Cllr Barbour Cllr Finn Cllr Savage
Referred to Panel by:	Cllr Finn & Savage	Reason:	Impacts on amenity and access
Applicant: HKSA Trading Ltd		Agent: B Heer	

Recommendation Summary	Conditionally approve
-------------------------------	------------------------------

Community Infrastructure Levy Liable	No
Biodiversity Net Gain Applicable	Not applicable

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 –CS3, CS6, CS7, CS13, CS18, CS19 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP4, SDP5, SDP7, SDP9, SDP10, SDP11, SDP16, CLT15, REI4, REI5, REI7 of the City of Southampton Local Plan Review (Amended 2015).

Appendix attached			
1	Development Plan Policies	2	Prior approval 24/00572/PA56
3	Appeal decision Varsity		

Recommendation in Full Conditionally approve

1. The site and its context

- 1.1 The site is located within the Portswood district centre which comprises a mix of commercial and retail uses including a number of food and drink businesses which operate in the late evening. There are residential uses located on upper floors along the Portswood centre. In wider area, there are residential neighbourhoods to the west, including residential properties in Russell Place, forming the Portswood Residents Gardens Conservation Area.
- 1.2 The site contains a 2 storey building with converted roofspace and comprises class E retail use on the ground floor with ancillary storage on the upper floors. The rear lane services the site and runs to the rear of the Portswood centre to Highfield Lane. The service lane is shared by other premises fronting Portswood Road. This lane is not adopted as a public highway and is privately maintained. The lane is mostly unmade and unlit with a small section of hardtop surface leading from the Portswood Road access to the south of the site.
- 1.3 The lane provides access to the car park of the Mencap centre (187a Portswood Road) adjacent to the rear of the site. Mencap centre provides a day service programme for people with learning disabilities.

2. Proposal

- 2.1 It is proposed to convert the retail unit into a mixed use restaurant and takeaway use serving hot food. Since the initial submission of the application, the applicant has agreed to reduce the closing hours from 03:00 to midnight, opening from 12:00pm (Monday to Sundays/Public Holidays). The proposal also would add a single storey rear extension with outside storage area, and extraction flue on the roof top of the extension.
- 2.2 The proposed rear extension would form a new residential linked to a pending prior approval application to convert the upper floors into 2 x 1 bed flats (ref no. 24/00572/PA56) under Schedule 2 Part 3 Class G of the General Permitted Development Order (**see Appendix 2**).
- 2.3 Although the proposed extension is necessary to create suitable bin storage for the proposed flats, the prior approval must be considered separately to this application.

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). 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.

4. Relevant Planning History

- 4.1 As explained above, there is a pending prior approval application to convert the upper floors into 2 x 1 bed flats (ref no. 24/00572/PA56). The plans can be viewed in **Appendix 2**.

- 4.2 Nearby consented evening opening hours include the following:

Rio Piri Piri, 243 Portswood Road Ref: 21/01285/FUL
07:30am to 11:30pm every day

Portswood Piri Piri, 237 Portswood Road Ref: 13/00738/FUL
Monday to Saturday until 11:30pm
Sundays until 11:00pm

Xiongqi hot pot restaurant, 186-188 Portswood Road Ref: 14/00739/FUL
Monday to Saturday until 11:00pm
Sundays until 9:30pm

Burga, 170 Portswood Road Ref: 17/01414/FUL
Monday to Saturday until midnight
Sundays until 11:00pm

Sravs Kitchen restaurant, 162 Portswood Road Ref: 20/01690/FUL
Monday to Sunday until 11:00pm

Fu House restaurant, 160A Portswood Road Ref: 17/01014/FUL
Monday to Friday until 11:00pm
Sundays until 10:00pm

Land to rear of The Broadway, Portswood Road Ref: 19/01261/FUL
Monday to Sunday until 10:00pm
Food court including takeaway

TNB restaurant, 5 The Broadway, Portswood Road Ref: 18/02035/FUL
Tuesday to Sunday until 10:00pm

Pho Vietnam, 3 The Broadway, Portswood Road Ref: 14/01044/FUL
Monday to Sunday until 11:00pm

Smokeys, 114 - 116 Portswood Road Ref: 14/00284/FUL
Monday to Sunday until midnight

- 4.3 In 2008, the bar premises 'The Broadway' at 5-6 Portswood Centre (nee Varsity) was allowed by appeal to extend their closing hours until midnight (*see Appendix 3*).

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 19.07.2024. At the time of writing the report 6 objections have been received from surrounding residents, albeit 4 objectors live outside the ward. The others are representatives of the Mencap centre. The comments raised by the ward councillors are set out below. The following is a summary of the points raised:

- 5.2 ***The surfacing of the service lane is poorly maintained. The proposed development of a food outlet would increase the traffic using the lane, decrease the safe and convenient access for service users of the Mencap centre by delivery and servicing vehicles obstructing the lane and car park entrance, and worsen the condition of the lane surface. All too frequently, cars, delivery vans etc use the car park for turning or parking when the lane becomes blocked by other vehicles, so the car park gates are frequently locked to ensure safety. This causes delays for visitors. Delays caused by increased traffic could impact carers and taxis attempting to navigate the area efficiently, potentially deterring individuals from utilising Mencap services.***

Response

Any dispute over damage caused to the lane by the applicant during construction would be a civil matter, however, a Construction Management Plan will be secured via planning condition 6 to minimise obstruction to other users and damage to the service lane. The applicant is not solely responsible for the up keep of the private lane. It would therefore be unreasonable and disproportionate to require the lane to be resurfaced or repaired by the applicant. Traffic movements associated with the proposed food and drink use will not significantly increase along the service lane from staff and servicing vehicle trips, however, no enforceable controls can

be applied to how and when the private lane is used for servicing, deliveries, and unloading of goods by the applicant.

- 5.3 ***It is unclear from the application if the extension is to be used by the public, but if so, it is not very accessible due to the poor condition of the lane. If a senior citizen, or a person with a disability wished to access the extension they would find it very difficult to walk safely down the lane. There is no footpath, so a continual watch must be made for any delivery vehicles, cars, delivery bikes or e-scooters. The drivers of these vehicles are unlikely to be aware of the problems they can cause. There is no available parking for anyone unless by causing an obstruction. Food takeaways can cause a large amount of litter. The lane is already used for fly tipping. An increase in waste, particularly food waste could become a health hazard to anyone using the lane.***

Response

The premises at 197 Portswood Road will be accessed by customers from the front shop entrance and not the service lane. Refuse bins for the proposed use will be stored at the rear of the premises and collected from the service lane as per the existing business. There is no parking for staff and servicing vehicles on the site. A customer litter bin within the premises will be secured by condition 7. Fly-tipping is a criminal offence with significant penalties available to the courts when the perpetrators are identified, however, it is the responsibility of the landowner to remove rubbish on private land. That said, it should be assumed that the applicant will act in a reasonable manner when using the site and managing their waste.

- 5.4 ***Late night disturbance and nuisance from increased noise, anti-social behaviour, and cooking odours affecting local residents and littering. Led by high student population in local area, there is a large number of food outlets both for takeaway food and for consuming on site, in Portswood so another one seems to be unnecessary. Negative impact on vitality of Portswood centre with over proliferation of food and drink uses and decline/diversity of retail businesses, and unhealthy food options.***

Response

Policy RE14 of the Local Plan Review places no restriction for secondary retail frontage on the grounds of balance between shopping and other uses, whilst policy CLT15 accepts the principle of late night uses in Portswood district centre. However, the concentration of uses may impact on amenity justifying refusal of planning permission; in relation to food and drink uses, where policy RE17 applies. The Environmental Health team have raised no objection with regards to the impact of noise disturbance and cooking odours arising from the proposed use. The adverse health impact of the food menu options cannot be afforded significant weight in

this case. This is further assessed in section 6 of the report.

Consultation Responses

5.5

Consultee	Comments
Cllr Marie Finn	<p><u>Objection received 19.07.2024</u></p> <p>I am happy to see that they have changed their opening hours to end at midnight. I have no concern about there being an extension and a take away in itself.</p> <p>My objection comes from uncertainty about the effect of increased traffic and construction vehicles will have on the safety and convenience of access for the service users of the Mencap centre, especially pedestrians and in the winter when the surface conditions are worsened by rain and mud.</p> <p>If a solution can be found to this alleyway issue, I would withdraw the objection but as it stands, I request that it goes to planning committee for discussion and consideration.</p>
Cllr John Savage	<p>Objection. I would like to bring this application to panel.</p> <p>Reasons:</p> <ul style="list-style-type: none">• The threat to worsening the condition of the road for other users.• Noise and disturbance• ASB at night in an area with lack of surveillance
Cllr Barbour	<p>It is a sad day that the hardware store which has enhanced our high street is being replaced by a food takeaway. Sadly not enough people supported this business and instead used Amazon and other online businesses and shops outside this area to get their hardware needs. The shop was looked at by D & G hardware who decided against buying it, this must have been in part due to the amount of trade the shop was doing. So we get another takeaway store proposed. I am sure the owners will negotiate with the local day centre to ensure the work does not impinge on the free movement of taxis delivering customers to Mencap. This can be stressed in the planning approval if this is given the green light. I note the takeaway will now close at midnight which is a sensible decision so locals who live above the shops are able to get some rest and quiet.</p>

Environmental Health	No objection due to the reduced hours now specified as midnight and design and specification for the kitchen ventilation system
Highways	No objection

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
- Design and effect on character
- Residential amenity
- Access and parking

6.2 Principle of Development

6.2.1 The application site is located within the Portswood district centre (policy REI5) and is designated as secondary retail frontage (policy REI4). Policy REI4 and REI5 of the Local Plan Review permits the use of the premises for Class A1 to A5 or other uses which offer a direct service to the public. Furthermore, the supporting text (paragraph 8.14 refers) of policy REI4 states that *'beyond the primary retail frontage there is no restriction on the grounds of balance between shopping and other uses. However, the concentration of uses may impact on amenity justifying refusal of planning permission; in relation to A3, A4 and A5 uses, Policy REI 7 applies'*. The supporting text (paragraph 8.22 refers) of policy REI5 states that *'although the city council takes the view that the primary role of the district centre is to offer a range of retailing facilities, their role extends beyond the purely shopping function. Diversity of use is required in order to sustain and enhance the district centres'*.

6.2.2 Policy CLT15 of the Local Plan permits proposals for restaurants and takeaways uses in town, district and local centres subject to compliance with policy REI7. Policy REI7 requires consideration of the amenity impacts of the proposed use from noise disturbance, odour and litter associated with the cooking processes, hours of use, and comings and goings. The assessment of these impacts is set out in the report below.

6.2.3 In September 2020, the Use Classes Order reclassified the use of hot food takeaways and restaurants into a Sui Generis and class E use respectively. Prior to this change, a hot food takeaway was classed as 'A5' use. There are no external shopfront changes proposed affecting the activeness of the Portswood Road frontage.

6.2.4 As such, the proposed change of use will not be contrary to the range of uses allowed under policies REI4 & REI5. Therefore, the principle of development would be acceptable.

6.3 Design and effect on character

6.3.1 The scale and design of the proposed single storey extension/servicing compound and rooftop extraction equipment will be a modest addition to the building (replacing an existing single storey rear element). This will be in keeping with the character and appearance of the back of buildings visible along the service lane. The compound will screen refuse bins. As such, the proposal will not adversely affect the visual amenity of the local area.

6.4 Residential amenity

6.4.1 The Portswood centre is made up of mix of commercial uses with food and drink businesses trading late at night. Portswood Road is a busy traffic route. This makes the centre a fairly noisy environment. There are residential neighbourhoods surrounding the centre and flats above shops.

6.4.2 With the reduction in the closing hours to midnight and the mitigation of cooking odours provided by the extraction equipment, the Environmental Health team have raised no objection to the impact from noise and odour issues. The midnight closing hours are on the upper limit of the range of hours permitted for food and drink premises within the Portswood centre. That said, the Varsity appeal decision allowed in 2008 (**see Appendix 3**) to extend closing hours till midnight for a drinking establishment, concluded that nearby residential properties would not be adversely affected by noise and disturbance from those leaving the premises late at night, in particular customers dispersing over a wide area would dilute the impact, and unacceptable levels of traffic related noise and disturbance would not be caused (paragraph 19 refers).

6.4.3 The above appeal decision established that a midnight closing time in this location would not be inappropriate or harmful to residential amenity. In addition, the examples listed in paragraph 4.2 of this report highlight that planning permission has been granted up to midnight for other food and drink premises in Portswood. On this basis the proposals to increase the opening time of the property to midnight would not result in significant additional noise and disturbance to neighbouring residents.

6.4.4 Depending on the outcome of this application, the noise disturbance impact on the prior approval flat conversion will be considered separately by officers under the pending application (ref no. 24/00572/PA56) within the scope of matters limited under permitted development (Schedule 2 Part 3 Class G).

6.4.5 As such, the scale and nature of the proposed use, including the impacts

of customers dispersing into surrounding neighbourhoods late at night, will not adversely affect residential amenity, whilst noise disturbance and nuisance from cooking odours can be adequately mitigated through conditions.

6.5 Access and parking

- 6.5.1 Customers will access the site from the shop entrance and not the service lane. Refuse bins for the proposed use will be stored at the rear in an enclosed compound and collected from the service lane as per the existing business. There is no on site parking for staff and servicing vehicles. No enforceable controls can be applied to how and when the private lane is used for servicing, deliveries, and unloading of goods by the applicant.
- 6.5.2 A service lane is poorly maintained and unlit route, which is mostly unmade with hardtop along the section from Portswood Road to the rear of the site. The service lane is privately maintained and historically serves rear access for premises along Portswood Road and waste collection, including the Mencap centre and a gated car park on the north-west side of the lane. The attendees have physical disabilities in addition to learning disabilities.
- 6.5.3 Traffic movements associated with the proposed use will not significantly increase along the service lane or Portswood Road from staff and servicing vehicles. Additional parking demand and trips to the site will be minimised by the highly accessible location for public transport and, therefore, will not adversely affect the local road network or pressure on street parking in the local area. The impact on safety and security of future occupiers accessing the proposed flats via the service lane is limited only to the '*arrangements required for the storage and management of domestic waste*' under the prior approval application.
- 6.5.4 Concerns have been raised about the negative impact of pedestrian safety on other users and further deterioration of the service lane from increased traffic and construction activities. This includes a negative impact on safe access of service users attending the Mencap centre which access their car park from the service lane just behind the site, and pedestrians navigating the unlit, unmade and uneven surfaced sections of the lane, especially during inclement weather.
- 6.5.5 The small scale build and demolition works will cause limited disruption to the users of the service lane in terms of the modest time to complete the build and number of contractors working on the project. Any dispute over damage caused to the lane by the applicant during construction would be a civil matter, however, to minimise obstruction and damage to the service

lane a Construction Management Plan will be secured via planning condition 6. This will seek to manage contractor parking, designated unloading area and route for site delivery vehicles, size of delivery vehicles, and storage of building materials and equipment/welfare facilities.

- 6.5.6 The applicant is not solely responsible for the up keep of the private lane and, therefore, it would be unreasonable and disproportionate to require the applicant to resurface or repair the route in connection with the application. As such, a planning condition will seek to manage potential damage to the service lane and safety of other users during construction, whilst the proposed use is not considered to adversely affect road safety for all users.

7. Summary

- 7.1 In summary, the proposal will not have a negative social and environmental effect on the local area, whilst reusing the premises as a food and drink use will have local economic benefits and sustain the vitality and viability of the Portswood centre. The local concerns raised about impacts on the service lane have been taken into account and addressed in the report.

8. Conclusion

- 8.1 It is recommended that planning permission be granted subject to the 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) 4. (vv) 6. (a) (b)

SB for 27.08.24 PROW Panel

PLANNING CONDITIONS

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)

Prior to the commencement of use, the cooking extraction equipment shall be installed and made operational as approved and, thereafter, maintained and retained as approved for the lifetime of the development. 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)

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 Sundays/Public Holidays 12.00 hours to 00.00 hours

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.

4. Materials in accordance with submission (Performance)

The materials and finishes to be used for the external walls, windows (including recesses), drainage goods and roof in the construction of the building hereby permitted shall be in accordance with the submitted plans and information hereby approved.

Reason: To enable the Local Planning Authority to control the development in detail in the interest of the visual amenities of the locality and to endeavour to achieve a building of high visual quality and satisfactory visual relationship of the new development to the existing.

5. Refuse & Recycling (Performance)

Before the development hereby approved first comes into use, the storage for refuse and recycling, including the compound enclosure, shall be provided in accordance with the plans hereby approved and thereafter retained as approved.

Reason: In the interest of visual amenity.

6. Construction Management Plan (Pre-Commencement)

Before any development works are commenced, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority which shall include details of:

- (a) parking of vehicles of site personnel, operatives and visitors;
- (b) loading and unloading of plant and materials, route for site deliveries along the service lane, and maximum size of delivery vehicles;
- (c) storage of plant and materials, including cement mixing and washings, used in constructing the development;
- (d) measures to be used for the suppression of dust and dirt throughout the course of construction;
- (e) details of construction vehicles wheel cleaning; and,

The approved Construction Management Plan shall be adhered to throughout the

development process unless agreed otherwise in writing by the local planning authority.

Reason: In the interest of health and safety, protecting the amenity of local land uses and to minimise obstruction and damage to the service lane, and the character of the area and highway safety.

7. Litter Bin (Performance)

Litter bin facilities shall be provided and made accessible for customers within the serving area of the premises prior to the first commencement of use and shall thereafter be retained for the lifetime of the use.

Reason: In the interests of visual amenity.

8. 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.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS3	Promoting Successful Places
CS6	Economic Growth
CS7	Safeguarding Employment Sites
CS13	Fundamentals of Design
CS18	Transport: Reduce-Manage-Invest
CS19	Car & Cycle Parking

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

SDP1	Quality of Development
SDP4	Development Access
SDP5	Parking
SDP7	Urban Design Context
SDP9	Scale, Massing & Appearance
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP16	Noise
CLT15	Night-time Uses in Town, District and Local Centres
REI4	Secondary Retail Frontages
REI5	District Centres
REI7	Food and Drink Uses (Classes A3, A4 and A5)

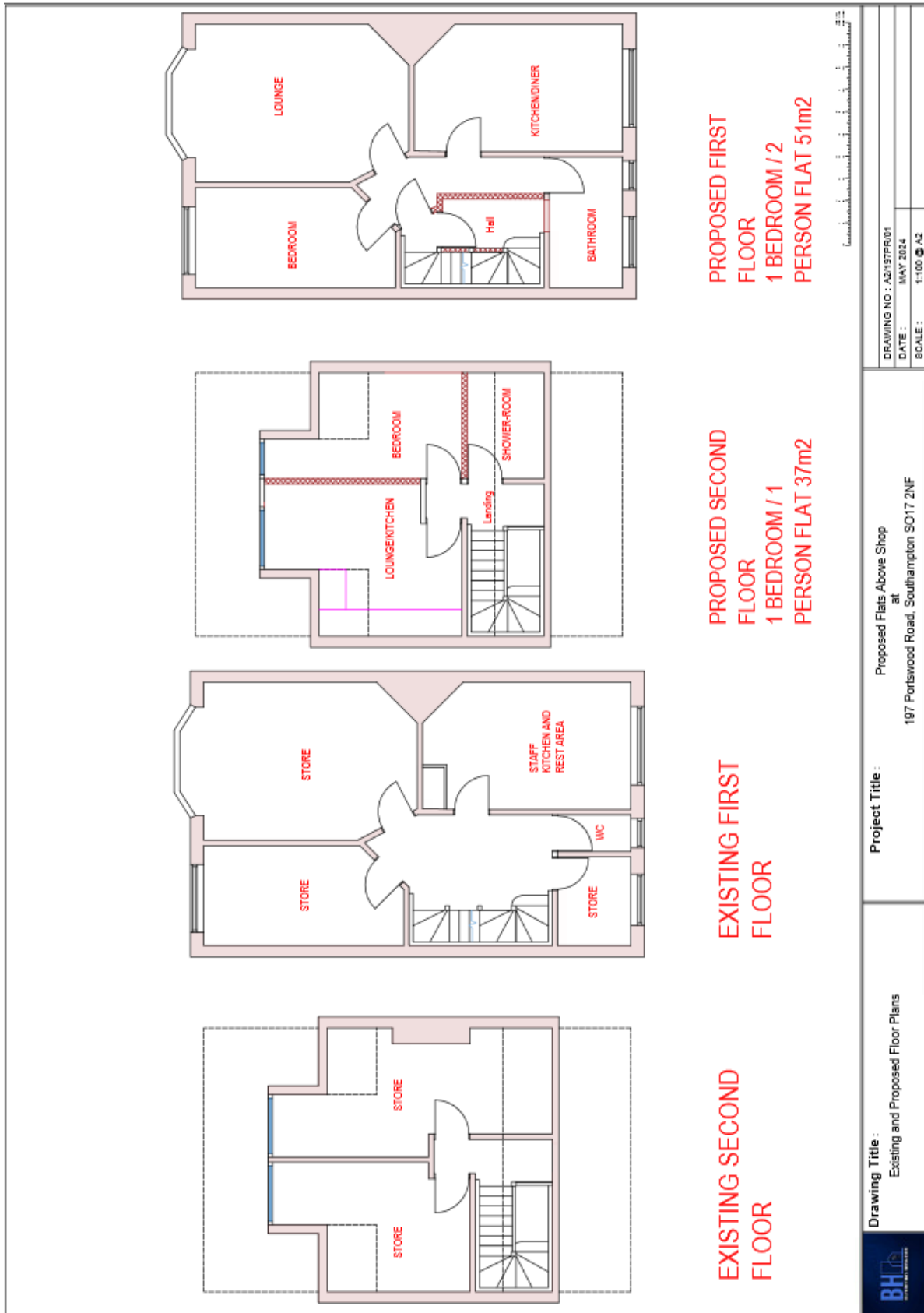
Supplementary Planning Guidance

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2023)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)





Appeal Decision

Hearing held on 21 October 2008

Site visit made on 21 October 2008

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

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pns.gsi.gov.uk

Decision date:
18 November 2008

Appeal Ref: APP/D1780/A/08/2073082

The Terminal, 5-6 Portswood Centre, Portswood Road, Southampton

- 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 Barracuda Group Ltd. against the decision of Southampton City Council.
- The application Ref 07/02055/VC/29854, dated 20 December 2007, was refused by notice dated 4 March 2008.
- The application was described as "Variation of condition 3 attached to permission no. 04/00210/FUL".
- Condition No. 03 states that:
"The use shall be restricted to the following hours:-
Monday to Saturday – 09.00am to 11.30pm
Sundays – 09.00am to 11.00pm
Outside of these hours the premises shall be closed to the public".
- The reason given for the condition is: "To safeguard the amenities of neighbouring properties and the area generally".

Decision

1. I allow the appeal and grant planning permission for an A4 drinking establishment including ancillary staff accommodation at first floor at the Varsity, 5-6 Portswood Centre, Portswood Road, Southampton in accordance with the application Ref 07/02055/VC/29854 dated 20 December 2007, without compliance with condition number 03 previously imposed on planning permission Ref 04/00210/FUL/26815 dated 14 June 2004 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new condition: *No customers shall be on the premises of the use hereby permitted outside the following times: Sundays to Saturdays 09.00 hrs to 00.00 hrs.*

Procedural matters

2. At the time the application the subject of this appeal was made the appeal premises was a public house known as The Terminal. It is now known as the Varsity.
3. The application before me should more accurately have been described as being for permission to develop land without complying with condition 03 subject to which planning permission 04/00210/FUL/2815 was granted. That permission was for "Change of use from retail (A1) to food and drink (A3)

including ancillary staff accommodation at first floor". Moreover, since the date of that decision changes to the Use Classes Order created a separate A4 drinking establishment use. A public house falls within that Use Class. The parties confirmed that if the appeal was allowed the new permission should refer to the appeal premises being an A4 use. I concur with that approach. My decision reflects this and the other matters to which I have referred above.

4. The appellant confirmed that on Mondays-Saturdays inclusive the appeal premises is operated on the basis of last orders being at 23.00 hrs with customers being required to vacate the premises by 23.30 hrs. Both parties read the disputed condition as requiring this.
 5. On the application forms the proposal before me was described simply in the terms set out in the bullet points of this decision. A letter accompanying the application said that it was proposed that the opening hours be extended as follows: Sundays to Saturdays 09.00 hrs to 00.00 hrs.
 6. In the discussion on conditions, towards the close of the hearing, the appellant said that a condition imposed on any new permission should be worded so as to enable drinks to be served up until 00.00 hrs and requiring customers to vacate the premises by 00.30 hrs. Strong objections to this were raised by the Council and local residents who said that this went beyond what they thought the appellant had been seeking. They had read the proposal as requiring the premises to be vacated by 00.00 hrs.
 7. The wording of the application and covering letter refers only to a change of hours. In the absence of any evidence to the contrary it was reasonable for the Council to have taken it that the suggested additional hours were sought on the basis of the same restriction that currently applies, that is that any drinking up time is included within the specified hours.
 8. Added weight is given to this being the appellant's intention when submitting the application by the fact that the Officers' report, recommending permission, carried a condition identically worded to the existing condition 03, but with the following hours referred to: Mondays to Sundays 09.00 to 00.00. At no time prior to the hearing did the appellant object to this or suggest that a differently worded condition should be imposed so as to allow drinking up time beyond 00.00 hrs.
 9. In additional support of this view is the acoustic report prepared for the appellant. This said that "The current trading hours of The Terminal are up to 23.30 hrs Mondays to Saturdays and 23.00 hrs on Sundays. We understand that the proposed extension of trading hours would be to midnight Monday to Sunday. All of the times given above include a 30 minute drinking up period subsequent to last orders".
 10. Having regard to the above I shall determine this appeal on the basis that the appellant was seeking to revise the opening hours of the premises so that customers would be required to vacate them by 00.00 hours. Any other approach would be contrary to a reasonable interpretation of the application and detrimental to those with an interest in the appeal.
-

Main issue

11. The main issue in this appeal is the effect of the proposed development on those nearby, and in surrounding residential areas, through noise and disturbance.
12. As the site lies fairly close to the Portswood Residents' Gardens Conservation Area I shall also have regard to whether the proposal would preserve or enhance the character of this area.

Reasons

Effect on residents living conditions

13. The appeal site lies towards one end of the Portswood district centre. This is a fairly large shopping area that also contains a substantial bingo hall, restaurants, takeaways and public houses. The centre lies to either side of Portswood Road, a main road leading into Southampton city centre. The Varsity has quite a large floor area and can accommodate a large number of customers.
 14. The City of Southampton Local Plan Review (2006) encourages strengthening district centres and sustaining and enhancing them by allowing a diversity of uses (Policy REI 5). Within such centres A4 uses will be permitted (CLT 15). Explanatory text to this Policy says that where there would be an adverse impact on amenity, hours of opening will be conditioned. However, it also says that beyond the city centre, district centres are the venues most capable of accommodating night related activities. That being so I do not read this Policy as being as restrictive in principle on opening hours as local residents suggest. Other Local Plan Policies more generally seek to protect neighbours' living conditions.
 15. Given the characteristics of the district centre referred to above it is a fairly noisy environment. Noise and disturbance will in the main be concentrated within the centre. However, it is likely that some degree of noise and disturbance will radiate out into surrounding residential areas especially along the more major roads leading to and from the centre.
 16. There are residential flats above commercial properties in the district centre and houses adjoin a car park at the rear of the premises. However, residents in such areas are likely to expect a degree of noise and disturbance even into the late evenings. In this context, I see no harm in the slightly longer hours of opening sought by the appellant. I am of this view even if the opening hours of other public houses in the centre are as suggested by the Council.
 17. I now turn to the effect of proposal on residents in the wider area, including some in retirement accommodation, beyond the district centre. Residents, especially those in the Conservation Area to the north of the centre, have expressed concerns about the proposed extended opening hours. Their concern is primarily on the noise and disturbance that they say would occur at a later hour from those leaving the Varsity on foot.
 18. Local residents say that harm through noise and disturbance arises at present from those leaving the district centre in the evenings. However, this is largely anecdotal and there is no substantial evidence to link such noise and
-

disturbance to those leaving the appeal premises. That said, I also place limited weight to the figures on pedestrian movements in the appellant's noise survey, given the restricted survey period.

19. Nevertheless, given the large number of residential streets in the area I consider that those leaving the appeal premises are likely to disperse over a wide area. This should substantially reduce the impact that they would have over the area as a whole through noise and disturbance. Nor is there any substantial evidence to support concerns that the use of the Varsity causes unacceptable levels of traffic related noise and disturbance that would be exacerbated by the extended hours.
20. A major concern of residents is that, unlike The Terminal, the Varsity is a student pub. I am in no doubt, given its name and the publicity material on it, that the pub appeals to the student market. However, students are likely to disperse from the appeal premises into the surrounding roads as widely as others would. For, although the main university campus is in a specific area some distance to the north-west of the district centre, students appear to be accommodated more broadly in the wider area. Nor is there any substantial evidence, that even without a permanent police presence in the area, students would create more noise and disturbance than others of a similar age.
21. In my view, allowing the appeal premises to open half an hour later than it currently does on Mondays to Saturdays, and an hour later on Sunday, would cause only a limited degree of additional noise and disturbance in surrounding residential streets. This would not be sufficient to cause unacceptable harm to living conditions. I see this as being quite different from the recently dismissed appeal where opening hours through to 01.30 hours were sought. Opening to that hour would have had a far more substantial impact on living conditions. The current proposal provides an acceptable balance between the need for satisfactory living conditions whilst ensuring an active and vibrant district centre.
22. The Council says that it has taken a consistent approach in refusing permission for extended opening hours on other premises in the vicinity. However, only one of the cases referred to is in Portswood Road and that involved extended opening hours much later than in the case before me. Moreover, turning to local concerns on precedent, planning permission in this case would not make it more difficult for the Council to resist harmful extensions to opening hours.
23. I conclude that the proposed development would cause no unacceptable harm to the living conditions of those nearby, and in surrounding residential areas, through noise and disturbance. It would conform therefore to the Local Plan Policies to which I have referred.

Effect on Conservation Area.

24. The Portswood Residents' Gardens Conservation Area comprises attractive low density housing enclosing 2 landscaped open spaces. A certain degree of tranquillity is part of the character of this area. However, for the reasons given above, the minor extension of opening hours proposed would not impact on this to an extent that would make the proposal contrary to the statutory requirement on the preservation or enhancement of the character of such areas. There is no substantial evidence to support a view that the proposed
-

extended opening hours would result in any material increase in litter or graffiti in the Conservation Area.

Conditions

25. As I am minded to allow the appeal I have considered what conditions should be imposed in addition to those still subsisting and capable of taking effect.
26. To protect the living conditions of those nearby, and ensure that the permission accords with what was applied for, I shall require the premises to be vacated by customers by 00.00 hours. In so doing I note the appellant's reference to the fact that this would differ from the premises licence. However, this is justified given the differences between the planning and licensing regimes and to ensure that the new planning permission accords with what was sought.

Conclusion

27. For the reasons given above I conclude the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting one other and retaining the relevant non-disputed conditions from the previous permission.

RJ Marshall

INSPECTOR
