

Planning, Transport & Sustainability Division
Planning and Rights of Way Panel (West) 24 February 2015
Planning Application Report of the Planning and Development Manager

Application address: 28A Bedford Place, Southampton SO15 2DB			
Proposed development: Application for variation of Conditions 9 (roof terrace hours) and 10 (no sound amplifying equipment) of planning permission 03/00219/FUL to extend hours of use of roof terrace until 23.00 seven days a week and to allow music on roof terrace until 22.00 seven days a week.			
Application number	15/00047/FUL	Application type	FUL
Case officer	Anna Lee	Public speaking time	5 minutes
Last date for determination:	10.03.2015	Ward	Bevois
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors	Cllr Burke Cllr Rayment Cllr Barnes-Andrews

Applicant: The New Inventive Bar Company	Agent: Firstplan - Fao Mr Mark Shearman
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Recommendation Summary	Conditionally approve
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Community Infrastructure Levy Liable	No
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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 including the impact of noise and disturbance on the surrounding area 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 Local Authority is also satisfied that the character of the area would be preserved. 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 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 186-187 of the National Planning Policy Framework (2012). Accordingly the proposal complies with saved policies SDP1, SDP16, CLT14 and REI7 of the Local Plan (2006), Policy AP8 of the City Centre Action Plan (Draft January 2015 Emerging), Carlton Crescent Conservation Area Conservation Area Appraisal and Management Plan (2013) and the National Planning Policy Framework (2012).

Appendix attached			
1	Development Plan Policies	2	Relevant planning history
3	15/00047/FUL Management Plan		

Recommendation in Full

Conditionally Approve

1.0 The site and its context

- 1.1 The application site contains a part two and part three storey building located on the corner of Bedford Place and Carlton Place. The building is currently used as a bar (Use Class A4) with an associated roof terrace. The site is located within the Carlton Crescent Conservation Area. The site is identified as part of a designated Late Night Zone in the Local Plan, and within the emerging City Centre Action Plan where opening hours of up to Midnight are, in principle, acceptable providing that no harm on residential amenity will occur.
- 1.2 The area around Bedford Place, Carlton Crescent and London Road does have a number of late night uses. However, the commercial elements are interspersed with residential accommodation and to the west of Bedford Place the area is characterised by predominantly residential areas.

2.0 Proposal

- 2.1 The proposal seeks to vary conditions set out within planning permission 03/00219/FUL where the hours of use of the roof terrace were restricted to 22.00 (10.00pm) under condition 9. The use of sound amplifying equipment on the roof terrace was also prohibited at any time (as set out in condition 10).
- 2.2 The proposed hours of use sought for the roof terrace as part of this application are till 23.00 (11.00pm) (i.e. an increase of 1 hour). Permission is also sought to remove condition 10 and allow background music only until 22.00 (10.00pm).
- 2.3 The proposal partly seeks to regularise the situation on site as currently the roof terrace is being used until midnight and has been for a number of years. There have been no complaints received during this time to the additional hours. During pre-application discussions the applicant sought officer's opinion on a terminal hour of midnight. Officers felt midnight for an external roof terrace in this location was not reasonable. Although, currently (unlawfully) open until midnight officers advised the applicants to seek a terminal hour of 23.00 (11.00pm). A refusal of a similar request in 2005 for a midnight close was refused (LPA ref: 05/01266/VC refers) and is a material consideration in this case.

3.0 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy 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.

4.0 Relevant Planning History

4.1 03/00219/FUL Conditionally Approved 10.09.2003

Erection of a three storey rear extension, elevational alterations to include the enclosure of the existing sun terrace.

05/01266/VC Refused 12.10.2005

Relief from Condition 9 of planning permission 03/00219/FUL dated 10.09.03 (hours of use).

Refusal Reason:

The proposed extension of opening hours of the roof terrace (until midnight) would give rise to late night and early morning noise and disturbance by reason of the movement of patrons through adjoining residential neighbourhoods to the detriment of the residential amenities of those people living in the surrounding area. The proposed variation of condition is thereby considered to be contrary to the provisions of the City of Southampton Local Plan Policy GP1 (v) and S10 (b) and contrary to the City of Southampton Local Plan Review proposed modifications to the Revised Deposit Version (June 2005) Policy CLT 14 (ii) (E).

07/00839/FUL Conditionally Approved 10.08.2007

Addition of a roof extension and canopy to existing roof top bar.

08/01331/ADV Conditionally Approved. 05.11.2008

Relocation and continued display of 1 x internally illuminated projecting sign at first floor level on Bedford Place frontage.

09/00618/FUL Withdrawn 13.08.2009

Implementation of planning permission 03/00219/FUL not in accordance with condition 9 (roof terrace hours of use). Variation sought to extend the hours of use of the roof terrace from 22:00 hours (10pm) to 23:30 Hours (11.30 pm daily).

- 4.2 A number of planning appeals have been dismissed within the vicinity of this application site for hours later than Midnight. **Appendix 2** summarises the latest relevant decisions.

5.0 Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (30.01.2015) and erecting a site notice (30.01.2015). At the time of writing the report **6** representations have been received from surrounding residents. The following is a summary of the points raised:

5.2 Noise and disturbance

Response

The site is located adjacent to existing residential development where care should be taken to ensure that harm to residential amenity does not occur from an intensified use of this roof terrace. The closest adjacent window serves an existing open plan living room/dining kitchen. Every application does have an

impact on the neighbouring properties to some degree but no objection has been raised from Environmental Health Officers on these amenity grounds and this nearest neighbour has been notified of the application and no objection has been received. The management company for this residential development have objected on noise and disturbance grounds. In response the application site has an established (historic) A3 use with unrestricted hours (in planning terms) in a city centre location. The site is licensed until 3:30am (everyday) within an identified late night zone where venues are open to similar hours. The hours proposed for the roof terrace would still be restricted so that music stops at 10pm and the terrace is cleared by 11pm.

5.3 **Shortage of parking**

Response

The site is within the city centre and the extension of hours of the roof terrace is unlikely to impact on parking in the area as the roof terrace has been open till midnight for some time. Officers are not aware of any complaints being received on these grounds and it is likely that patrons would be visiting the premises for its late night drinking regardless as to whether or not the roof terrace was open. Furthermore, it is likely that the majority of patrons would arrive on foot without the need for additional car parking

Consultation Responses

- 5.4 **SCC Environmental Health (Pollution & Safety)** No objection subject to restrictions on the actual noise levels of sound amplifying equipment. No objection is raised about the terminal hour of 23:00 for use of the roof terrace, but officers remain concerned about the use of sound amplifying equipment on the roof terrace as any sound cannot be attenuated and must therefore be controlled at source. Agreement has previously been made to secure a sound level that would be unlikely to cause a statutory noise nuisance. No dB level was given, as is normal practice, as it is the tone and style of the music, along with the number and orientation of the speakers that are more likely to be the cause of complaints. Previously, it was agreed that a password lock was added to the sound system and that there were only one or two people who had the password, so to minimise any unwarranted changing of sound levels. In addition the system also had a limiter that would cut off the sound if it exceeded the agreed level. No formal setting or level was written down as this could alter if the sound system was changed. It was made clear that the levels were suitable at the time they were assessed, but they may need to be altered if there were substantiated noise nuisance complaints.
- 5.5 In summary, a condition either retaining the same level set previously or for Environmental Health to revisit to reassess the levels and reset are the options available.
- 5.6 **SCC Historic Environment** – No objection raised.
- 5.7 **City of Southampton Society** - The Revolution Bar is situated in a 'late night zone'. There are flats immediately adjacent (over the branch of Sainsbury's) and residential side streets close by. Presumably local residents will be aware of the effect of the extended hours because they have already been in operation for some time. This is such a local issue that we find it difficult to make a decision given the current state of affairs, therefore CoSS abstain.

6.0 Planning Consideration Key Issues

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

- Principle of development
- Noise and Disturbance
- Residential amenity

6.2 Principle of Development

The Local Planning Authority has taken a consistent approach in restricting the hours of use of new late night venues and applications for variation on hours of existing venues within this area. Some relevant examples are listed in **Appendix 2** of this report.

6.2.1 The terminal hour of 11pm for the roof terrace is in line with saved policy CLT14 of the Local Plan and AP8 of the emerging City Centre Action Plan. Although it is a night time area there are residential properties within the vicinity and therefore the impact on residential amenity is key to the determination of this case. The existing premises provide late night drinking and music over two floors with a license until 3:30am. The roof terrace provides an additional floor and has recently been operated later than the 10pm consented. No recent complaints have been received and Environmental Health are content to allow the additional hours with amplified music provided a noise level is agreed with the venue.

6.3 Noise and Disturbance

Saved Local Plan Policy SDP16 explains that noise generating development will not be permitted if it would cause an unacceptable level of noise impact. Complaints have been received by the Environmental Health (EH) team relating to noise and general disturbance, but not recently in respect of this roof terrace.

6.3.1 The roof terrace has been recently used until midnight for a number of years – particularly in warmer weather - and this proposal seeks to restrict the use to 11pm only. A management plan has been submitted as part of this application and is attached to this report at **Appendix 3**. It sets out how the roof terrace is going to be managed in the future. A suggested condition seeks to secure the use of the roof terrace in line with this document.

6.3.2 EH have requested that a noise level is set to prevent a detrimental impact on adjoining neighbouring properties. Although, a level has been agreed previously it was never agreed formally. The applicants are happy to work with the EH team to set this level and a condition is suggested in order for this to be undertaken.

6.3.3 With the imposition of the conditions the proposal is considered to address concerns raised by neighbouring properties.

6.4 Residential amenity

The site is located on a corner of two main roads which both lie within the defined late night area. Whilst there are residential properties within the area there are also commercial properties with existing late night licenses. The proposal will have an impact on neighbouring properties, but as the roof terrace has been used to midnight for the last few years (and no recent complaints regarding these extended hours have been received) the proposal is unlikely to be detrimental.

The introduction of background music on the roof terrace is a new issue, but with the proposed condition restricting the hours and acoustic level of music played it is considered that the resulting noise level should be acceptable and not harmful. Furthermore, the premises can open until 3:30am regardless of the success of this application and the amenity issues associated with the terrace are less significant than the existing established use.

7.0 Summary

7.1 Overall the scheme is acceptable and the use of the roof terrace till 23.00 and the introduction of sound amplifying equipment to 22.00 will not result in an adverse impact on the amenities enjoyed by surrounding residents, the nearby commercial activity or to the character and appearance of the area.

8.0 Conclusion

8.1 The proposals are consistent with adopted local planning policies and therefore the application is recommended for approval subject to appropriate conditions.

Local Government (Access to Information) Act 1985 **Documents used in the preparation of this report Background Papers**

1(a), 1(b), 1(c), 1(d), 2(b), 2(d),4(f), 4(qq), 6(c), 7(a), 9(a), 9(b).

ARL for 24/02/2015 PROW Panel

PLANNING CONDITIONS

01. 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.

02. APPROVAL CONDITION - Hours of use of roof terrace [Performance Condition]

Unless the Local Planning Authority agree otherwise in writing the roof terrace area to which this consent relates, shall not be open for use by patrons between the hours of 2300 (11.00pm) to 0800 (08:00am) seven days a week. When in use, the roof terrace shall be operated in accordance with the submitted Management Plan dated November 2014.

Reason:

To protect the amenities of the surrounding area.

03. APPROVAL CONDITION - Noise level restriction [Performance Condition]

Within three months of the date of the decision details of a fixed maximum noise level for the playing of background music to be measured on the roof terrace, shall be agreed in writing by the Local Planning Authority. The agreed level shall be used and maintained in perpetuity unless agreed in writing by the Local Planning Authority.

Reason:

To protect the amenities of the surrounding area.

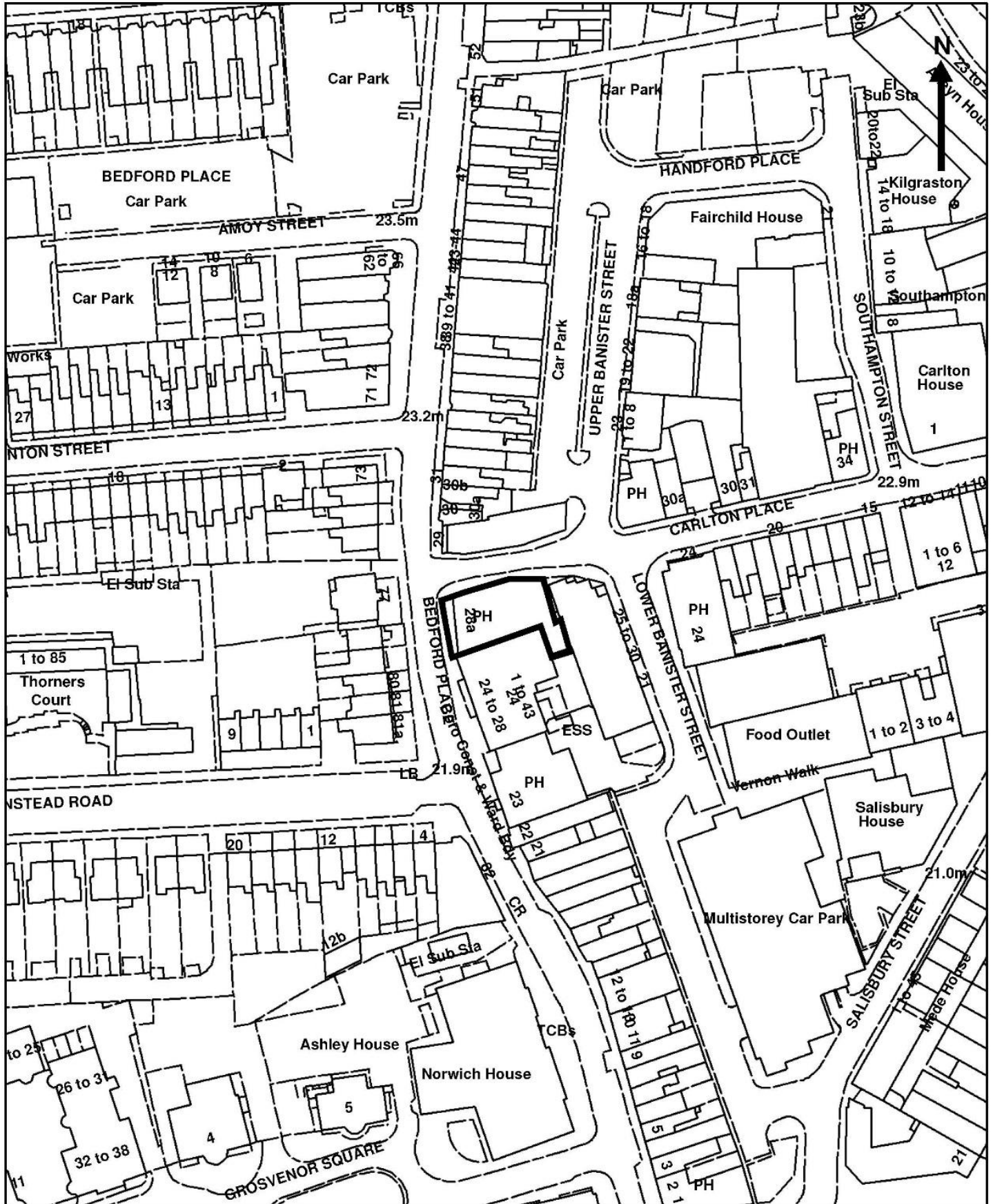
04. APPROVAL CONDITION - Restriction on hours of music [Performance Condition]

No music or other sound amplifying equipment shall be permitted on the roof terrace other than background music. Background music shall only be allowed between 8.00am and 22.00 (10pm) unless otherwise agreed in writing by the Local Planning Authority. At no time shall the area be used for live performances without the prior written consent of the Local Planning Authority.

Reason:

To protect the amenities of the surrounding area.

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