

Planning, Transport & Sustainability Division
Planning and Rights of Way Panel 14th July 2015
Planning Application Report of the Planning and Development Manager

Application address: 253-253A Portswood Road			
Proposed development: Variation of condition 4 of planning permission reference 13/01745/FUL to allow the restaurant/cafe premises to open between 07:00 hours and midnight on any day.			
Application number	14/01981/FUL	Application type	FUL
Case officer	Stuart Brooks	Public speaking time	5 minutes
Last date for determination:	21.01.2015	Ward	Portswood
Reason for Panel Referral:	More than five letters of objection have been received	Ward Councillors	Cllr Paul O'Neil Cllr Matthew Claisse Cllr Linda Norris

Applicant: Mr Saleem Ahmed	Agent: Mr Les Weymes
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Recommendation Summary	Conditionally approve
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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. The proposed extension of hours is not considered to materially harm the highway safety, and character and amenity of the local area, whilst preserving the character of the adjacent conservation area and the amenities of occupiers of nearby residential properties. 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 186-187 of the National Planning Policy Framework (2012). Policies - SDP1, SDP16, HE1, REI5, REI7 of the City of Southampton Local Plan Review (March 2006) and CS13, CS14, CS18, CS19 of the Local Development Framework Core Strategy Development Plan Document (January 2010) as supported by the Portswood Residents Gardens Conservation Area Appraisal and Management Plan.

Appendix attached			
1	Development Plan Policies	2	Planning History
3	Appeal decision 2013	4	Permitted Hours of Operations
5	Appeal decision 2007		

Recommendation in Full

Conditionally approve

1.0 Introduction

- 1.1 This application has been submitted concurrently with planning application 14/01941/FUL which seeks planning permission to retain a rear extension and associated air handling units.

2.0 The site and its context

- 2.1 The site is located within the Portswood District Shopping Centre which is predominantly characterised by a range of commercial uses, including food and drink premises. The site is bounded by a service track to the rear which runs alongside the rear gardens of the residential properties in Abbots Way. The boundary of the Portswood Residents Gardens Conservation Area follows the rear edge of the gardens of these properties.
- 2.2 The application site itself contains a two-storey building split into two commercial premises at ground floor, comprising a Use Class A3 ice cream parlour (subject of this application) and a Use Class A2 professional use. Permission has been previously granted to convert the first floor into two small HMO (class C4) units (4 bedrooms).

3.0 Proposal

- 3.1 It is proposed to extend the current hours of the Ice Cream Parlour 'Scoops' from 07:00 to 21:00 hours Monday to Sunday to 07:00 and midnight on any day of the week.
- 3.2 A separate application (ref no. 14/01941/FUL) for the retention of the single storey rear extension is currently being considered. This includes the retention of the air conditioning units to the rear of the premises.

4.0 Relevant Planning Policy

- 4.1 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**.
- 4.2 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.
- 4.3 Saved policy REI5 (District Centres) requires development to be in scale with the District Centre and should maintain, and where possible enhance its vitality and viability. Policy REI7 (Food and Drink Uses) permits A3 uses providing that

suitable conditions are used to control the impact on amenity to local residents from disturbance and nuisance caused by cooking odours and noise. Saved policy CLT15 of the Local Plan accepts the principle of night-time uses within District Centre Locations.

- 4.4 Saved policy SDP1(i) seeks to protect the amenity of local residents, whilst policy SDP16 will not permit noise generating development if it would cause an unacceptable level of noise impact to nearby sensitive noise uses.
- 4.5 Saved policy HE1 (New Development in Conservation Areas) states that where development is adjacent to a conservation area, it will only be permitted where the character or appearance of the area is preserved or enhanced. The Portswood Residents' Gardens Conservation Area Appraisal and Management Plan (PRGCA) sets out a strategy for preserving and enhancing the conservation area.

5.0 Relevant Planning History

- 5.1 The relevant planning history is set out in **Appendix 2**. In summary, an application was refused in 2013 (ref no. 13/00228/FUL) for the conversion of the building into small HMO (class C4) accommodation on the upper floors and subdivision of the ground floor A1 retail unit into 2 separate units for A3 and A2 use.
- 5.2 In a subsequent application (13/01206/FUL - February 2014), an entrance door was provided for the upper floor HMOs off Portswood High Street. This application was refused by the Planning Committee and then allowed at appeal (ref no. APP/D1780/A/13/2208545). The decision notice and plans are appended to **Appendix 3**. The Members refused the application with specific concerns to the quality of the residential environment in terms of layout and access. A Planning Inspector subsequently concluded at appeal that the quality of the residential environment and servicing of the HMO accommodation was adequate.
- 5.3 During determination of the appeal, separate applications were approved by Officer's to convert the ground floor into the A3 and A2 uses which was previously refused as part of the mixed use scheme.
- 5.4 When the conversion works started to take place, the applicant decided to build a secure and covered bin and cycle store covering the small courtyard area next to the rear track. The retention of this structure is current being determined under application 14/01941/FUL.

6.0 Consultation Responses and Notification Representations

- 6.1 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 (19.12.2014). At the time of writing the report **8** representations have been received from surrounding residents. The following is a summary of the material considerations raised:

6.1.1 Comment

Adverse impact on amenity of nearby residential properties from noise disturbance caused by patrons returning home as they walk through nearby residential streets.

Response

Midnight closing hour is considered to be appropriate within this District Centre location. The Council's adopted policies recognise that night-time uses are appropriate in District Centre locations and the Council has adopted a consistent approach to allow up to midnight closing in District Centre locations. As such, there are a number of late night premises in the local area, including food and drink uses, which operate until midnight. These include premises which the Council have approved and also those which have been approved by the Secretary of State at appeal. The customers leaving the premises will be widely dispersed over the large residential area. Therefore, it is considered that allowing the premises to operate until midnight will not present any further material harm to the amenity of local residents.

6.1.2 Comment

There is already an over provision of fast food outlets, snack bars and restaurants in the district centre. Late night noise disturbance and light and litter nuisance, in particular to residential properties in Abbots Way from refuse being put out in the rear service area, refrigeration units adjacent, and external lighting. As well as likely to attract customers from outside the area for late night eating and drinking, compounding further problems.

Response

The food and drink use already has permission. The Council's adopted Development Plan policies recognise that food and drink uses can play an important role in maintaining the vitality and viability of retail centres. Similarly, night-time uses are an integral part of city life but in recognition of the impacts that such uses can have on residential amenity, the Council seeks to guide them to City, Town and District Centre locations. Furthermore, it is considered that the nature of the use, as a café, is less disruptive to residential amenity, than other late night uses within the vicinity of the site. The extension of hours, is therefore, considered to be in line with Council policy and recent appeal and Council decisions made in the district centre. There is a reasonable separation distance from the properties in Abbots Way to ensure there is no undue disturbance to the local residents. The Environmental Health team have raised no objection to the acoustic report submitted to control the noise emitted from the plant equipment associated with the use.

6.1.3 Comment

The proposal would harm the character of the Portswood Residents Gardens Conservation Area.

Response

There is a distinctive physical and visual separation between the buildings forming part of Portswood District Centre and the Conservation Area. As such, it is considered that the character of the conservation area would not be materially harmed by the proposal.

6.1.4 Comment

The information supplied with the application about late night uses is misleading as the majority of the premises close at 23.00 hours or earlier.

Response

Notwithstanding the list of premises submitted, officers have made their own assessment within the context of the local area and are satisfied that the proposal is consistent with other relevant decisions within the area (**Appendix 4 and 5** refer).

6.1.5 Comment

The hours imposed by the Planning Inspector should be enforced.

Response

The Inspector conditioned the hours applied for by the applicant in application 13/01206/FUL at that time. The applicant is entitled to submit an application for the Council to reconsider their operating hours.

6.2 Consultation Responses

6.2.1 **SCC Highways** – No objection.

6.2.2 **SCC Environmental Health** – No objection. The hours of operation should generally be similar to other premises within the area.

7.0 Planning Consideration Key Issues

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

- (i) Principle of Development;
- (ii) Impact on residential amenity;
- (iii) Impact on the character of the area and;
- (iv) Impact on highway safety

7.2 (i) Principle of Development

7.2.1 The principle of the A3 use has already been accepted under the previous permissions. Saved policy CLT15 of the Local Plan supports night-time uses in Portwood District Centre, although it is noted that there is no specified terminal hour set out in the relevant planning policies. A judgement has been based on the nature of the local area in terms of appeal decisions and other applications as well as advice from SCC Environmental Health. As such, an assessment has been made against the material considerations as set out below.

7.3 (ii) Impact on residential amenity

7.3.1 The commercial uses within Portwood High Street have historically co-existed with the residential communities nearby. The rear of the site backs onto the rear gardens of the residential properties within Abbots Way separated by a service track. The appeal decision raised no significant concern with regards to this relationship.

7.3.2 The hours of business conditioned by the Inspector were in line with the hours requested by the applicant, at that time, under application 13/01206/FUL. The condition can be reconsidered by the Council in terms of its necessity and

reasonableness.

- 7.3.3 It is considered the closing hours of midnight would be consistent with recent decisions made for other premises in the District Centre (**Appendix 4** refers) as well as the appeal decision relating the 5-6 The Portswood Centre in 2008 (ref no. 07/02055/VC), which allowed midnight closing every day of the week. The appeal decision is attached to **Appendix 5**.
- 7.3.4 The Inspector concluded that 'residents living above the properties within the Portswood District centre are likely to expect a degree of noise and disturbance even into the late evenings'. In this context, it was considered that there is no harm in the opening hours that were proposed (an additional hour for this premises). It was also concluded, in paragraph 19, that the impact of noise and disturbance would be substantially reduced as whole, given the large number of residential streets which would disperse those leaving the premises over a wider area.
- 7.3.5 In addition to this, in 2012, permission (ref no. 12/00618/FUL) was granted for the ice cream parlour 'Sprinkles' in Portswood Road to operate until midnight every day of the week, including public holidays.
- 7.3.6 In relation to using the plant equipment to the rear during the extended hours, the Environmental Health team have raised no objection to the noise impact on local residents following the submission of the noise report. The separation between the track way, as well as the overall distance to the rear of the properties in Abbotts Way, would also ensure that the amenity of neighbouring occupiers would not be materially harmed by the external lighting and noise from the servicing (i.e. taking out refuse) during the extended hours. Since the Environmental Health Team have confirmed that further noise mitigation measures are required, in relation to the mechanical equipment, it is considered reasonable to require these mitigation measures to be implemented before the extended hours of operation come into effect.
- 7.3.7 Overall, a café use is not considered to be overly disruptive to residential amenity when compared with other late night uses within the locality and it is noted that there have been no complaints received about the premises since it has been in operation. Midnight closing would accord with other similar uses within the District Centre and moreover, is considered to be an appropriate termination time within commercial centres of this nature. As such, it is considered that the extension of hours until midnight would not adversely affect the amenity of local residents.

7.4 (iii) Impact on the character of the local area

- 7.4.1 As reasoned in the section above, allowing the premises to operate until midnight would not be uncharacteristic of other uses within the District Centre. The Council's policies recognise that food and drink uses can support the vitality and viability of the District Centre and, along with the City Centre, District Centres represent the most sustainable locations for late night uses in the city. Furthermore, the comings and goings to and from the premises would be widely dispersed over the large surrounding residential area so not to have a noticeable impact on the character of the local area.

7.4.2 There is a distinctive physical and visual separation between the buildings forming part of Portswood District Centre and the Portswood Residents Gardens Conservation Area. As such, the character of the conservation area would not be adversely affected.

7.5 (iv) Impact on highway safety

7.5.1 The Highway Officer has raised no concerns that the proposal would adversely affect highway safety.

8.0 Summary

8.1 In summary, the proposed extension of hours is not considered to materially harm the character and amenity of the local area, whilst preserving the character of the adjacent conservation area. Furthermore highway safety is not adversely affected.

9.0 Conclusion

9.1 As such, the proposal is judged to have an acceptable impact and, therefore, can be supported for conditional approval.

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(vv), 7(a), 9(a), 9(b)

SB for 14/07/15 PROW Panel

PLANNING CONDITIONS

01. APPROVAL CONDITION - Full Permission Timing Condition - Physical works

The development works 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 - Hours of business

The ground floor A3 unit hereby approved shall not be open for customers outside the following hours: 0700-0000 (midnight) Monday to Sunday and recognised public holidays.

Reason:

In the interests of protecting residential amenity

03. APPROVAL CONDITION - Carbon emissions

The scheme of carbon emissions reduction approved under application 14/01193/DIS shall be retained as operational.

Reason:

To reduce the impact of the development on climate change and finite energy resources and to comply with adopted policy CS20 of the Local Development Framework Core Strategy Development Plan Document Adopted Version (January 2010).

04. APPROVAL CONDITION - Change in cooking processes

In the event that the cooking processes change for the A3 use hereby approved and extraction equipment is needed then a written scheme for the control of noise, fumes and odours from extractor fans and other equipment is submitted to and approved in writing by the Local Planning Authority. Details should be agreed prior to the installation of new extraction equipment and thereafter installed in accordance with the approved details and findings.

Reason:

To safeguard the amenities of nearby occupiers

05. APPROVAL CONDITION - Noise mitigation

Before the hours of operation hereby approved first come into effect, details of the measures outlined on page 17 of the approved 'External Plant Noise Assessment' report (ref.SA-3779 and dated 21st May 2015) shall be implemented in accordance with details to be submitted to and approved by the Local Planning Authority in writing. More specifically, these measures shall comprise:

(1) The relocation of the 3 existing air conditioning units to the roof of the extension. These should be contained within an acoustic enclosure comprising:

- a) 100mm thick acoustic panels manufactured from galvanised mild steel with a mineral wool infill of 100mm thick 45kg/m³.
- b) An inner face comprising perforated mild steel with a maximum open area of 30%.
- c) The enclosure should be sealed to the roof to ensure an absorptive inner face is in place.

(2) Upgrading the existing louvres with acoustic ventilation louvres to achieve the minimum static insertion loss levels as outlined on page 17 of the report.

The scheme shall be implemented as approved and retained thereafter unless otherwise agreed in writing with the Local Planning Authority.

Reason:

To protect the residential amenities of neighbouring occupiers.

06. APPROVAL CONDITION - Storage

Access to the refuse and cycle storage areas shall be permanently retained for both the commercial and residential uses.

Reason:

In the interests of visual and residential amenity and encouraging the use of sustainable transport modes.

07. 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. For the avoidance of doubt the works shown on the plans in connection with application 14/01941/FUL do not form part of this approval.

Reason:

For the avoidance of doubt and in the interests of proper planning.