

**Planning, Transport & Sustainability Division**  
**Planning and Rights of Way Panel (WEST) - 9 February 2016**  
**Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> 237 Portswood Road, SO17 2NG			
<b>Proposed development:</b> Variation of Condition 2 of planning permission ref. 13/00738/FUL (hot food takeaway) for increased hours of operation to 07:30 - midnight Monday to Sundays and Public Holidays (description amended - reduction of opening times to midnight)			
<b>Application number</b>	15/02216/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Stuart Brooks	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	15.02.16	<b>Ward</b>	Portswood
<b>Reason for Panel Referral:</b>	Request by Ward Member and five or more letters of objection have been received	<b>Ward Councillors</b>	Cllr O'Neill Cllr Claisse Cllr Norris
<b>Referred by:</b>	Cllr Claisse	<b>Reason:</b>	Impact on: Character Conservation Area Residential Amenity Noise disturbance

<b>Applicant:</b> Roosters Piri Piri - Fao Mr Sobhat Hussain	<b>Agent:</b> Les Weymes Planning Consultancy
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<b>Recommendation Summary</b>	<b>Conditionally approve</b>
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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 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.

<b>Appendix attached</b>			
1	Relevant Planning Policies	2	Decision notice for 13/00738/FUL
3	Premises trading until midnight	4	Appeal decision 2007
5	Enforcement Issues		

## Recommendation in Full

### Conditionally approve

#### 1.0 The site and its context

- 1.1 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 map attached to **Appendix 3** shows food and drink premises within the vicinity which currently operate until midnight.
- 1.2 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.
- 1.3 The site itself contains a two-storey building with an A3/A5 restaurant and take away use on the ground floor and residential on the upper floor (accessible from the rear service lane). The ground floor unit is serviced from the rear lane, with an extraction flue fitted to the rear.

#### 2.0 Proposal

- 2.1 The proposal is solely to extend the opening hours of the ground premises from 23:00 to midnight daily (including public holidays). This is an amendment to the originally proposed opening hours of 01:00 hours under this application.
- 2.2 A breach of condition matter (as explained in **Appendix 5**) is being separately resolved through a discharge of conditions application.

#### 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 (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out in **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) came into force on 27<sup>th</sup> 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.
- 3.3 Saved policy RE15 (District Centres) requires development to be in scale with the District Centre and should maintain, and where possible enhance its vitality and viability. Policy RE17 (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.
- 3.4 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.

- 3.5 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 Portwood Residents' Gardens Conservation Area Appraisal and Management Plan (PRGCA) sets out a strategy for preserving and enhancing the conservation area.

#### **4.0 Relevant Planning History**

- 4.1 Permission was granted under application 13/00738/FUL for the current A3/A5 use. A separate application is being considered to regularise the breach of conditions under permission 13/00738/FUL (*see Appendix 5*).

#### **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, and erecting a site notice (20.11.2015). At the time of writing the report 9 representations have been received from surrounding residents (including a local Ward Cllr). The following is a summary of the points raised:

##### **5.1.1 Adverse impact on amenity of nearby residential properties from noise disturbance caused by patrons congregating outside the premises and returning home as they walk through nearby residential streets**

###### Response

Following advice from Officer's that 01:00 hours would not be supported, the applicant has agreed to reduce the opening hours from 01:00 hours to midnight since the submission of the application.

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.

##### **5.1.2 The operator has no regard for the local community and has ignored noise abatement notices. The premises has also created noise, litter, and pollution in the form of noise and smell**

###### Response

Environmental Health have confirmed that the noise abatement notices have now been complied with and there have been no complaints received since their enforcement case was closed at the end of October 2015.

- 5.1.3 **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 Abbotts 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 restaurant/takeaway, 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 Abbotts Way to ensure there is no undue disturbance to the local residents. The Environmental Health team are satisfied that the noise and odour controls for the plant equipment associated with the use does not adversely affect the amenities of the local residents.

- 5.1.4 **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.

**Consultation Responses**

- 5.2 **SCC Environmental Health – No objection**

Comments

As the premises has been operating these hours without any problems since the extraction system was improved then EH have no objections.

**6.0 Planning Consideration Key Issues**

- 6.1 The key issues for consideration in the determination of this planning application are:  
-Principle of Development;  
-Impact on Character and Amenity

6.2 Principle of Development

- 6.2.1 The principle of the A3/A5 use has already been accepted under the previous permission. Saved policy CLT15 of the Local Plan supports night-time uses in Portswood 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 key considerations as set out below.

### 6.3 Impact on Character and Amenity

- 6.3.1 The commercial uses within Portswood 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.
- 6.3.2 It is considered the closing hours of midnight would be consistent with recent decisions made for other premises in the District Centre (**Appendix 3** 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 4**.
- 6.3.3 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. 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.
- 6.3.4 Overall, a restaurant/takeaway 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 no further complaints have been received about the premises since the Environmental Health team closed their enforcement case last October. 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.
- 6.3.5 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.

### 7.0 Summary

- 7.1 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.

### 8.0 Conclusion

- 8.1 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(o), 9(a), 9(b)

**SB for 09/02/16 PROW Panel**

**PLANNING CONDITIONS**

**01. Full Permission Timing Condition**

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).

**02. Hours of Use**

The use hereby approved shall not operate outside the following hours:  
Monday to Sunday and recognised public holidays – 07:30 hours to midnight

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

**03. Original Planning Permission**

The use hereby approved shall operate in accordance with the conditions as set out in the original planning permission 13/00738/FUL other than condition 2 which relates to hours of use.

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

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS13            Fundamentals of Design  
CS14            Historic Environment

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

SDP1            Quality of Development  
SDP7            Urban Design Context  
SDP16           Noise  
SDP17           Lighting  
HE1             New Development in Conservation Areas  
REI4            Secondary Retail Frontages  
REI5            District Centres  
REI7            Food and Drink Uses (Classes A3, A4 and A5)  
CLT15           Night time Uses

Supplementary Planning Guidance

Portswood Residents Gardens Conservation Area Appraisal and Management Plan

Other Relevant Guidance

The National Planning Policy Framework (2012)



**DETERMINATION OF APPLICATION**

**TOWN AND COUNTRY PLANNING ACT 1990**

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

Les Weymes Planning Consultancy  
Mr Les Weymes  
18 Limberline Spur  
Hilsea  
Portsmouth  
Hampshire  
PO3 5HJ

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 from restaurant/cafe (class A3) to mixed use restaurant/cafe and hot food takeaway (classes A3/A5) (retrospective)

**Site Address:** Roosters Piri Piri 237 Portswood Road Southampton SO17 2NG

**Application No:** 13/00738/FUL

Subject to the following conditions.

**01.APPROVAL CONDITION - Extract Ventilation - control of noise, fumes and odour [Pre-Commencement Condition]**

No cooking of any type shall take place on the premises subject to this approval until a fully detailed specification (including plans and a written statement) for the control of noise, fumes and odours from extractor fans and other equipment have been submitted to and approved in writing by the Local Planning Authority. The scheme must include details of the external appearance of the flue, the method, design and position of all fixings (of the flue) to the external wall. The extract equipment shall be implemented in accordance with the approved details and findings and thereafter maintained and operated in full working order.

**Reason:**

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

**02.APPROVAL CONDITION - Hours of Use - food/drink establishments [Performance Condition]**

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 Saturday	07.30 hours to 23.30 hours
Sunday and recognised public holidays	07.30 hours to 23.00 hours



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.

03.APPROVAL CONDITION - Litter bin [Performance Condition]

A litter bin shall be provided on the site within the customer area of the floor space and made available for use of patrons of the hot food takeaway hereby approved during trading hours.

Reason:

To prevent littering in the surrounding area.

04.APPROVAL CONDITION - soundproofing - [Pre-commencement condition]

In addition to any Building Regulations approval that may be required the developer shall submit a scheme of works to soundproof dwellings abutting the premises from the impact of noise from within the premises for approval in writing by the Local Planning Authority prior to the commencement of any conversion works. Once approved, those works shall be fully implemented before the A3 use hereby approved first commences. Such works shall be retained at all times thereafter whilst the building is operational for the approved use..

Reason

To protect the amenities of occupiers of dwellings abutting the premises.

05.APPROVAL CONDITION - Storage / Removal of Refuse Material [Pre-Occupation Condition]

Before the use first commences a minimum of two wheeled bins - one for general waste, the other for recycling waste - shall be provided for the storage and removal of refuse from the premises. These shall be stored in the enclosed yard to the rear of the site. That refuse and recycling storage shall be retained at all times whilst the ground floor of the building is in use for Class A3 commercial purposes.

Reason:

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

06.APPROVAL CONDITION, Cycle storage facilities [Pre-Commencement Condition]

At least one cycle storage facility, to conform to the Local Planning Authorities standards, shall be provided within the site before the development hereby permitted commences and storage shall be permanently maintained for that purpose.

Reason

To prevent obstruction to traffic in neighbouring roads and to encourage cycling as an alternative form of transport

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.

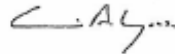
Reason:

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

**Reason for granting Planning 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 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP7, SDP9, SDP16, REI3, REI5, REI7 and of the City of Southampton Local Plan Review (March 2006) and CS13 of the Local Development Framework Core Strategy Development Plan Document (January 2010).



 **Chris Lyons**  
**Planning & Development Manager**

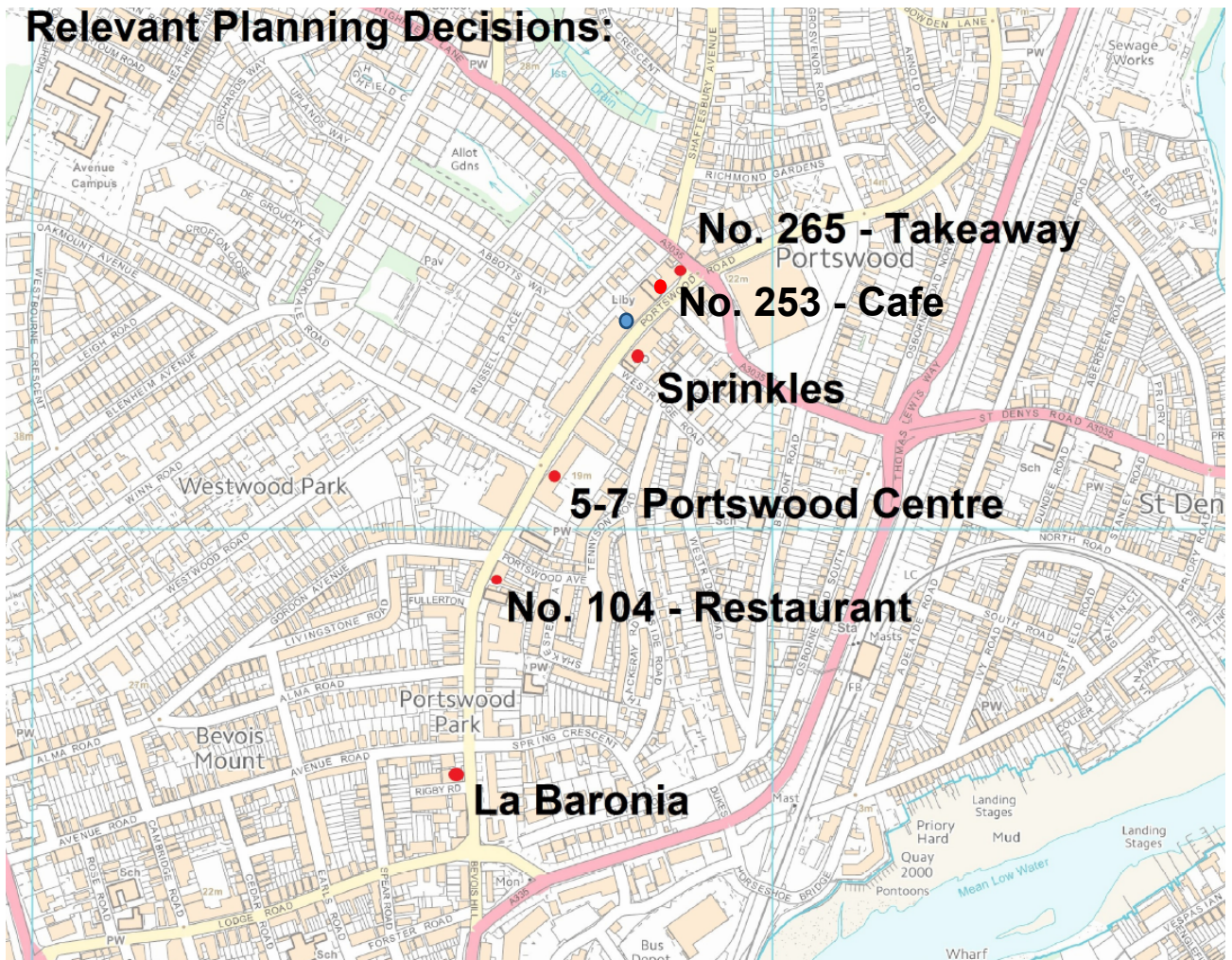
27 June 2013

If you have any further enquiries please contact:  
**Luan Dray**

**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.

<b>Drawing No:</b>	<b>Version:</b>	<b>Description:</b>	<b>Date Received:</b>	<b>Status:</b>
		Site Plan	15.05.2013	Approved
PL/01		Location Plan	15.05.2013	Approved
		Floor Plan	05.06.2013	Approved







## 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

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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 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

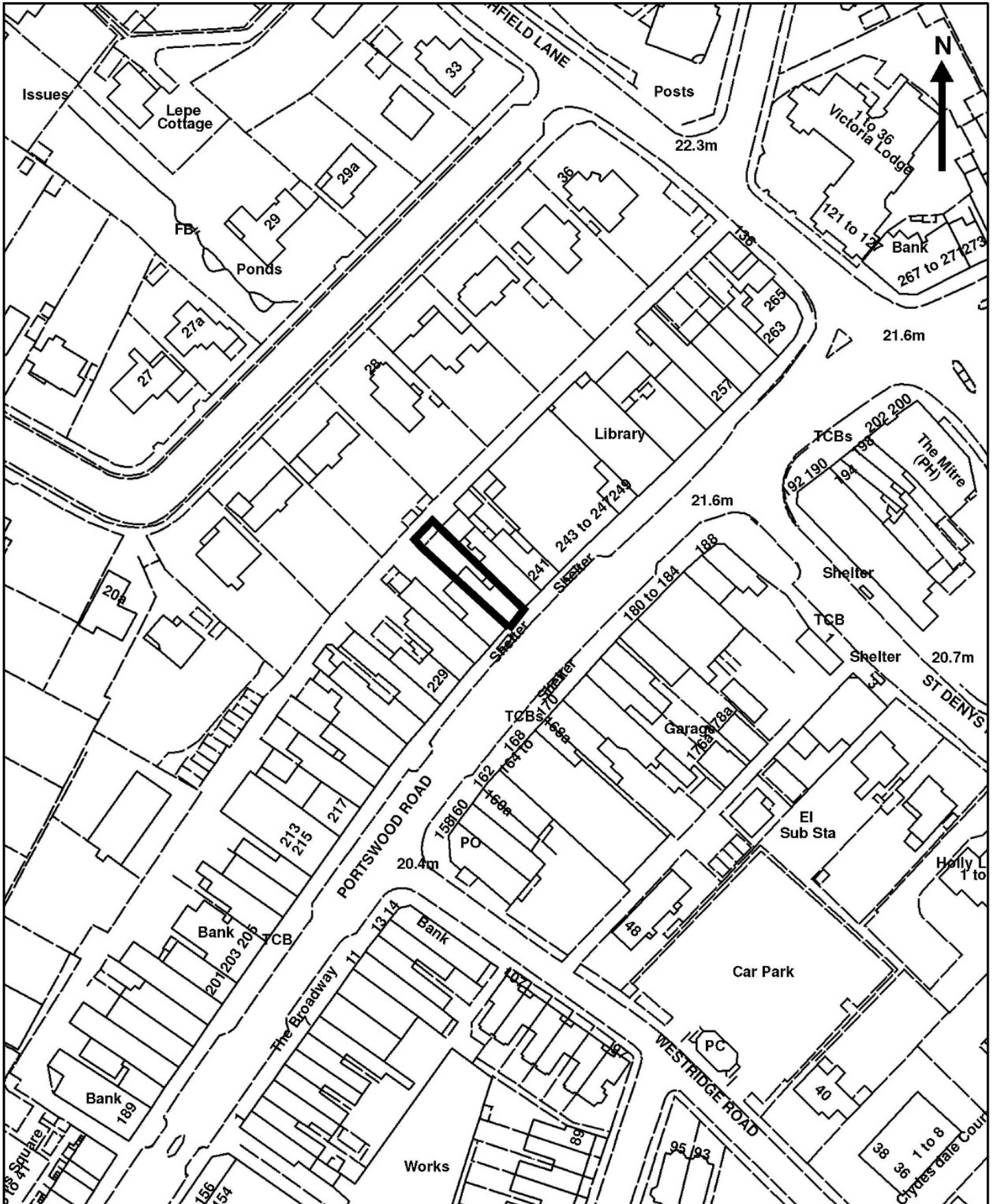


Enforcement Issues

Following an enforcement investigation, it was found that there was a breach of conditions 1 (extract system) and 4 (soundproofing) of the original permission which approved the use of the ground floor unit to its current A3/A5 restaurant and hot-food takeaway use (ref no. 13/00738/FUL - copy of the decision notice is attached to **Appendix 2**). The breach of condition is being resolved separately to this planning application through a discharge of conditions application (ref no. 16/00073/DIS).

It should be noted that the improvement works to the extraction equipment and soundproofing have already taken place. The Environmental Health team are satisfied that these works would safeguard the amenities of the neighbouring occupiers with regards to noise disturbance. It should also be noted that the members of public are statutorily notified about the discharge of conditions application and, therefore, would be determined under powers delegated to the Planning team.

# 15/02216/FUL



Scale: 1:1,250

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