

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	ENFORCEMENT UPDATE REPORT IN RESPECT OF 3 BEDFORD PLACE, SOUTHAMPTON
DATE OF DECISION:	14 FEBRUARY 2012
REPORT OF:	PLANNING AND DEVELOPMENT MANAGER
STATEMENT OF CONFIDENTIALITY	
Not applicable	

BRIEF SUMMARY

Authorisation was given by Panel at its 19 July 2011 meeting to serve an Enforcement Notice at 3 Bedford Place (see **Appendix 1**).

Legal advice has since been given setting out that such action cannot be taken because the control of hours of trading has been executed through the description of development, which is ultra vires.

Such controls must be achieved by way of planning conditions. As such, the Council is unable to serve an Enforcement Notice in respect of this property.

The Panel's agreement is sought to rescind minute 25 to the 19.7.2011 minutes (see **Appendix 1**) and to take no further planning enforcement action in respect of these premises trading beyond the hours set out in the decision notice 7851/1463/P18 dated 4 September 1973 reproduced in **Appendix 1**.

RECOMMENDATIONS:

- (i) Agree that it is not possible to serve a planning enforcement notice and that case 11/00303/ENUDEV be formally closed.
- (ii) Agree that no further planning enforcement action be taken in respect of the premises trading outside the hours specified in the description of development set out in decision notice 7851/1463/P18 dated 4 September 1973.

REASONS FOR REPORT RECOMMENDATIONS

1. DCLG Circular 11/95 sets out that the only way to control the hours of operation of a business is by the imposition of a planning condition at the time of granting planning permission.
That has not happened in this case and it is therefore not possible to serve a planning enforcement notice to require the extended hours of trading to cease.

DETAIL

2. This report updates the 19 July 2011 report to the Planning and Rights of Way Panel. At the former meeting it was resolved to refuse retrospective planning permission for extended trading hours serve an Enforcement Notice requiring adherence to the trading hours set out in decision notice reference 7851/1463/P18 dated 4 September 1973. (see **Appendix 1**).
3. Subsequent discussions between the Development Management Team and the Planning Solicitor brought to light that the local planning authority had originally sought to control the hours of operation of the use through the wording used in the description of development.
4. The Government advises on the use of planning conditions though its

Circular 11/95. This sets out that the appropriate way to control such matters is by the imposition of a planning condition, which meets all relevant tests, including enforceability.

5. Caselaw has recently established that it is not possible to control matters through the description of development alone, particularly in the case of granting temporary planning permission for example, where the local planning authority must set out in a planning condition a date when the use of land is to cease on or before or in the case of physical development, the date when a building is to be removed before or by.

Conclusion

6. It is not possible to serve a planning enforcement notice to seek to control the extended trading hours beyond those set out in decision notice reference 7851/1463/P18 dated 4 September 1973.
7. No further planning enforcement action should be taken in respect of the extended trading hours at 3 Bedford Place and case 11/00303/ENUDEV should be formally closed, with original complaint advised of the council's decision.
8. Minute 25 of the 19 July 2011 meeting of the Planning and Rights of Way Panel should be rescinded.

RESOURCE IMPLICATIONS

Capital/Revenue

9. None.

Property/Other

10. None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

11. None.

Other Legal Implications:

12. None.

POLICY FRAMEWORK IMPLICATIONS

13. None.

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Relevant Planning and Rights of Way Panel minute, Decision notice and application details for 7851/1463/P18
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Documents In Members' Rooms

1.	None.
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
None	

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	Bevois
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