

**Planning, Transport & Sustainability Division**  
**Planning and Rights of Way Panel (EAST) - 27 October 2015**  
**Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> 10 – 11 Bedford Place, Southampton, SO15 2DB			
<b>Proposed development:</b> Change of use from restaurant/cafe (class A3) to mixed use restaurant/cafe, drinking establishment, hot food takeaway, non-residential institutions, assembly and leisure (class A3/A4/A5/D1/D2) with new folding doors and retractable awning at first floor level.			
<b>Application number</b>	15/01470/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Laura Grimason	<b>Public speaking time</b>	5 Minutes
<b>Last date for determination:</b>	30/10/2015 (Extended)	<b>Ward</b>	Bevois
<b>Reason for Panel Referral:</b>	Five or more letters of objection have been received	<b>Ward Councillors</b>	Cllr Burke Cllr Rayment Cllr Barnes-Andrews

<b>Applicant:</b> Diegos Restaurant	<b>Agent:</b> Achieve Town Planning and Urban Design Ltd.
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<b>Recommendation Summary</b>	<b>Conditionally approve</b>
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<b>Community Infrastructure Levy Liable</b>	<b>Not applicable</b>
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**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 as set out in the report to panel on the 27 October 2015 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 the development plan as required by 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, SDP9, SDP15 and REI7 of the City of Southampton Local Plan Review (as amended 2015); CS1 and CS13 of the Local Development Framework Core Strategy Development Plan Document (as amended 2015); AP5 and AP8 of the City Centre Action Plan (March 2015).

<b>Appendix attached</b>	
1	Development Plan Policies
2	Site Plan

## Recommendation in Full

### Conditionally approve

#### 1.0 The site and its context

- 1.1 The application site comprises a two storey, terraced property on the western side of Bedford Place. The rear of the property fronts Upper Bannister Street. This property currently operates as Diego's, an A3 restaurant use providing Latin influenced cuisine.
- 1.2 The site is located within both a designated late night zone and an area of secondary retail frontage. The surrounding area is characterised by a range of commercial uses including food and drink, office and retail uses.

#### 2.0 Proposal

- 2.1 Permission is sought for a change of use from restaurant/cafe (class A3) to a flexible use providing mixed use restaurant/café (A3), drinking establishment (A4), hot food takeaway (A5), non-residential institutions (D1), assembly and leisure (D2) with new folding doors and retractable awning at first floor level.
- 2.2 More specifically, the proposed use would comprise:
- Class A3 (restaurant) – This would continue to be the principal use of the property.
  - Class D1 (non-residential institutions)- This would enable the applicant to hold dance classes within the function room at first floor level (as indicated on the submitted plans).
  - Class D2 (assembly and leisure) - The applicant intends to provide live music / dance performances for visitors both in the main restaurant area ground level and in the function room at first floor level when required.
  - Class A4 (bar) – The existing bar is ancillary to the main use of the property as a restaurant. This will continue to be the case however the applicant has indicated that there may be times when people attending dance classes / performances may wish to drink during / afterwards without purchasing food.
  - Class A5 (hot food takeaway) - At present, there is an ancillary takeaway element to the property where people can buy food to consume off site. This is to remain and the applicant wishes to include this in the description of development to formally recognise this element of the business.

The application seeks to provide greater flexibility for the building. The main use of the property would remain as a restaurant. Customers are able to take away food at the current time and there is an existing bar at the property. Both of these elements are ancillary to the main restaurant use at the current time and they would continue to be ancillary as a result of this proposal. The proposed D1 (non-residential institutions) and D2 (assembly and leisure) uses would also be secondary to the main use of the property as a restaurant.

- 2.3 The application also proposes to install a retractable awning over part of the existing smoking terrace. This will enable the terrace to be used during periods

of inclement weather. The submitted plans also indicate the installation of full length, glazed, concertina doors to the rear elevation to provide access to this smoking terrace.

### **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 at **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.

### **4.0 Relevant Planning History**

4.1 The property has historically been used as a restaurant with ancillary uses (including bar and takeaway).

4.2 In 2015, conditional approval (ref.15/01075/FUL) was granted for the replacement of first floor single glazed metal windows with uPVC double glazed windows.

4.3 In 2015, conditional approval (ref.15/00500/FUL) was granted for alterations to the shop front (retrospective).

4.4 In 2008, conditional approval (ref.08/00085/FUL) was granted for a new shopfront.

4.5 In 2003, conditional approval (ref.03/00905/FUL) was granted for the creation of roof top terrace and additional restaurant seating area at first floor level at the rear of the building. This permission does not appear to have been implemented.

### **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 (24/07/2015). At the time of writing the report **8** representations have been received from surrounding residents. The following is a summary of the points raised:

5.1.1 There is an excess of late night uses in the Bedford Place and London Road area.

*Response: The application site is located within both a late night zone and an area of secondary frontage where the proposed uses are considered to be acceptable. The A3 use is existing and will continue to operate as a result of this application. The proposed mixed use would establish a series of uses which would be appropriate for both a late night zone and an area of secondary retail*

*frontage. A4 (bar) and A5 (hot food takeaway) uses already operate at this property in an ancillary manner and are not likely to be significantly intensified as a result of this proposal. The proposed D1 (non-residential institutions) and D2 (assembly and leisure) uses would remain secondary to the main use of the property as a restaurant. There are no policy restrictions to the number of late night uses within this part of the city.*

- 5.1.2 The application could result in 24 hour operation for the property.

*Response: The hours of operation for the restaurant use have never been controlled and it would be unreasonable to impose restrictions on hours of operation for this use at this stage. Hours of operation for the new A4 (bar), A5 (hot food takeaway), D1 (non-residential institutions) and D2 (assembly and leisure) uses will however be controlled by planning condition to ensure no loss of amenity occurs. A midnight close is also recommended as supported by the current development plan.*

- 5.1.3 The proposal would result in increased noise, disturbance and antisocial behaviour for local residents who already suffer due to the existing late night uses.

*Response: It is not considered that the proposed uses would give rise to additional noise, disturbance or antisocial behaviour in this location. As discussed previously, the existing restaurant use already has ancillary bar and takeaway elements and planning conditions will be used to ensure that these remain ancillary to the main use at all times. This will prevent these uses becoming the sole use of the property in the future. The additional D1 (non-residential institutions) and D2 (assembly and leisure) uses will be secondary to the main A3 (restaurant) use and will take place at first and ground floor level when required. The Local Planning Authority is satisfied that the impact of these can successfully be mitigated by way of planning condition.*

- 5.1.4 As a result of the proposal, the application site would operate more as a public house which would be detrimental to residential amenity. Hours of operation for an A4 (bar) use in this location should be controlled.

*Response: This scheme does not seek permission for a new A4 (bar) use in this location. There is an existing ancillary bar at the property. This will continue to be ancillary as a result of this proposal and this will be controlled by planning condition. Hours of operation for the bar element will also be controlled by condition.*

- 5.1.5 Opening doors onto the pavement along Bedford Place will make walking down this street difficult.

*Response: This scheme does not seek to alter the front elevation. It is not therefore, considered likely to have an impact on pedestrian movements along Bedford Place.*

- 5.1.6 The operation of the site solely as a takeaway would be detrimental to the character and amenity of the local area.

*Response: This scheme does not seek permission for a new A5 (hot food*

*takeaway) use in this location. There is an existing A5 (hot food takeaway) use which is ancillary to the main use of the property as a restaurant. This will continue to be ancillary as a result of this proposal and this will be controlled by planning condition. Hours of operation for the takeaway element will also be controlled by condition.*

## 5.2 Consultation Responses

### 5.2.1 SCC Environmental Health (Pollution & Safety)

Environmental Health have no objection in principle to this application but recommend that conditions are applied to minimise risk of nuisance and hence;

- The hours of use for the external terrace do not exceed the hours of nearby premises.
- The folding doors leading to the terrace should be closed at all times except for access and egress.
- The double door lobby to the front must be retained.
- The condition that windows remain closed after 21.00 hours.
- No music to be provided on the external terrace.
- The terrace must not be enclosed if it is to be used for smoking as it would not comply with the Health Act which requires 50% open sides if a roof exists to the area.

The control of use of the terrace and the doors and windows restrictions are to minimise noise break out and potential disturbance and nuisance to neighbours and residents.

*Response: Health and safety legislation is considered sufficient to address the issue relating to the enclosure of the smoking terrace and so a planning condition is not considered relevant for this issue. The hours of use for the external terrace will match the hours of use for the operation of the property.*

### 5.2.2 Hampshire Constabulary – No objection.

NPPF Para 58 includes the following statement; *Planning policies and decisions should aim to ensure that developments: "create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion"*

Consideration should be given to limiting the number or percentage of premises in A4 use, particularly where they would be replacing other uses which would otherwise add to the diversity of the area and thus encourage a greater mix of visitors.

A successful, vibrant and sustainable night time economy should be based on a diversity of attractions which encourages a greater mix of visitors. Simply having a large concentration of bars and nightclubs is not the answer and could potentially result in creating a violent drinking culture and unsafe area where many people feel reluctant to go. It cannot be left solely to the Local Authority and Police licensing teams to manage these issues via the licensing process.

The Police wish to encourage a mix of use in the night time economy area, our

only concern is the potential for A4 (bar) use to become dominant.

The applicant states that the A4 (bar) use is to allow patrons attending the dance classes or special event to have a drink without the need to have a substantial meal. This is considered acceptable in this case providing the A4 (bar) area is limited, therefore, if you are minded to approve this application then the Police would request that this be formalised, by way of condition if necessary.

This is no criticism of this particular applicant, their management processes or their brand, it is simply because once A4 (bar) use has been established it would be difficult to refuse future applicants who may not wish to operate in the same manner.

## **6.0 Planning Consideration Key Issues**

6.1 The determining issues for this scheme relate to:

- The acceptability of the principle of development.
- The impact of the proposed scheme on the residential amenities of any nearby residential occupiers.
- The acceptability of the design of any external alterations.

## **6.2 Principle of Development**

6.2.1 All of the proposed uses can, according to the NPPF, be classed as 'main town centre uses'. They are therefore, uses which by their very nature, are considered to be acceptable in city centre locations.

6.2.2 This application site is located within a designated area of secondary retail frontage within Southampton City Centre.

6.2.3 With regards to areas of secondary retail frontage, policy AP5 of the City Centre Action Plan states that:

*'Proposals for new development or a change of use at ground floor level for A1, A2, A3, A4 or A5 uses or those offering a direct service to the public will be supported provided:*

*(v) An active frontage appropriate to a shopping area is included; and  
(vi) It would not be detrimental to those living or working nearby, for example by causing undue noise, odour and disturbance'.*

The restaurant use is an existing use and is considered to be compliant with this policy. It is noted that the existing restaurant has ancillary bar and takeaway uses at the current time which have evolved over time as the use classes system has changed. In light of policy AP5, the principle of the additional bar and takeaway uses would be considered acceptable in this location. These uses would only constitute a small element of the scheme and are not considered to be harmful when in conjunction with the main restaurant use. It is acknowledged that it is desirable for these uses to remain ancillary and for this reason, a suitably worded planning condition will be imposed to ensure that these uses do not at any time, become the principal use of the site.

6.2.4 Policy AP5 of the City Centre Action Plan continues to state that:

*‘Proposals for the use of upper floors in Primary and Secondary Retail Frontages for retail, residential, leisure, office or other complementary uses which help to maintain or enhance the character and vitality of the centre will be supported. Where upper floors are currently in retail use, developers should seek to retain uses where viable and appropriate’.*

6.2.5 With regards to the D1 (non-residential institutions) and D2 (assembly and leisure) uses, the submitted plans indicate that it is only the function room located at first floor level which would accommodate these. At first floor level, these leisure uses would be complementary to the secondary retail frontage by diversifying the range of city centre uses in the area. Subsequently they maintain the vitality and viability of the secondary retail frontage. Again, in the interest of the vitality and viability of the secondary retail frontage, a suitably worded planning condition will be imposed to ensure that these do not become the principal use of the site and that they are restricted to the first floor only.

6.2.6 The application site is located within a designated late night zone under policy AP8 of the City Centre Action Plan. Paragraph 4.71 of the City Centre Action Plan states that:

*‘Proposals for new development and extended opening hours will be subject to restricted opening times as set out in table 5. In evening zones and late night hubs, extended opening hours for food and drink uses (Use Classes A3, A4 and A5) will be supported subject to meeting other policies, particularly those to protect residential amenity and retail areas’*

6.2.7 Table 5 of paragraph 4.74 of the City Centre Action Plan indicates that a terminal hour of midnight will apply for new late night uses within the Bedford Place and London Road area.

6.2.8 The existing restaurant has operated for a substantial period of time with no restrictions to its hours of operation. The building also has a current license for 00:30 (Monday to Saturday). As such, it is considered unreasonable to introduce restrictions to limit the hours of operation for the restaurant use at this time. It is however, deemed necessary to limit the hours of operation of the proposed A4 (bar), A5 (takeaway), D1 (non-residential institutions) and D2 (assembly and leisure) uses to ensure that they can only operate up until a terminal midnight hour. This would successfully mitigate the impact of these uses and complies with policy.

### **6.3 Residential Amenity**

6.3.1 There are no residential dwellings located immediately adjacent to the application site, however care needs to be taken to ensure there is no impact to residential dwellings in the wider area. The range of uses which have been proposed are not considered to be detrimental to the residential amenities of any adjoining occupiers. The City Council’s Environmental Health team have assessed the proposal and recommended a number of conditions to minimise the risk of nuisance to the wider area. These relate to:

- Hours of operation for the smoking terrace to be restricted.
- Folding doors to the terrace to remain closed at all times except when

required to be opened for access and egress.

- Double door lobby to the front of the property to be retained.
- Windows to remain closed after 21:00 hours.
- Smoking terrace not to be enclosed – open sides to be retained.

Conditions have been added to cover these points. Provided that these conditions are satisfied, this scheme is not considered to give rise to additional noise or disturbance.

## **6.4 Design**

6.4.1 The first external alteration relates to the installation of an awning over part of the roof terrace. The roof terrace is not highly visible from the rear of the property. As such, it is not considered to have a significant impact on the wider streetscene and would be acceptable in design terms.

6.4.2 The second external design alteration relates to the installation of folding doors to provide access to the roof terrace. These would replace an existing set of folding doors in this location. The proposed replacement doors are considered to be of an acceptable appearance for this location and would not differ greatly from the existing doors. Again, their location within the rear elevation, obscured by the roof terrace would ensure that they would not be overly visible from the wider streetscene. As such, these are considered to be acceptable in design terms and compliant with Core Strategy policy CS13.

## **7.0 Summary**

7.1 Having regard to the issues discussed in this report, this proposal is considered to be acceptable in principle and is not considered likely to be harmful to residential amenity. This proposal seeks flexibility around the principle restaurant use and largely seeks to ratify the existing ancillary uses that have taken place at the premises. Furthermore, all external alterations are considered to be acceptable in design terms.

## **8.0 Conclusion**

8.1 The application is recommended 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), 2(e), 6(a), 6(b).

### **LAUGRI for 27/10/15 PROW Panel**

## **PLANNING CONDITIONS**

### **1. 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).

## **2. 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.

## **3. APPROVAL CONDITION: Restriction of A4, A5, D1 and D2 uses**

The principal use of the property shall remain within class A3 (restaurants and cafes) at all times. The A4 (drinking establishment), A5 (hot food takeaway), D1 (non-residential institutions) and D2 (assembly and leisure) uses hereby permitted shall remain secondary to the A3 (restaurants and cafes) use at all times unless otherwise agreed in writing by the Local Planning Authority. Furthermore, the unit shall not be subdivided to form a separate planning unit without first obtaining planning permission from the Local Planning Authority.

Reason:

In the interests of amenity and to protect the character of the Secondary Retail Frontage.

## **4. APPROVAL CONDITION - Hours of Operation for A4, A5, D1 and D2 uses - [Performance Condition]**

Unless otherwise agreed in writing by the Local Planning Authority, the A4 (drinking establishments), A5 (hot food takeaway), D1 (non-residential institutions) and D2 (assembly and leisure) uses hereby permitted shall not operate outside the following hours:

Monday to Sunday: 08:00 to 00:00

Reason:

In the interests of residential amenity.

## **5. APPROVAL CONDITION - Hours of use for smoking terrace [Performance Condition]**

The smoking terrace shall not be open for use by patrons between the hours of 00:00 and 08:00 seven days a week and no music shall be played on the terrace at any time unless otherwise agreed in writing by the Local Planning Authority.

Reason:

In the interests of residential amenity.

## **6. APPROVAL CONDITION: Noise break out measures.**

Unless otherwise agreed in writing by the Local Planning Authority, the following measures shall be implemented at all times:

- (a) All windows shall remain closed after 21:00 hours.
- (b) The double door lobby at ground floor level shall be retained at all times.
- (c) The folding doors hereby permitted shall remain closed at all times except for access and egress purposes.

Reason:

To prevent the break out of noise associated with the uses hereby permitted.