

**Planning, Transport & Sustainability Division**  
**Planning and Rights of Way (EAST) Panel - 19 January 2016**  
**Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> Unit 3 Winchester Street and 3-4 Vernon Walk, SO15 2EL			
<b>Proposed development:</b> Variation of Condition 2 of planning consent ref. 09/00636/FUL to allow operational hours of 8.00am - 2.00am Monday to Thursday, 8.00am - 3.00am Friday, Saturday and Bank Holidays and 10.00am - 2.00am on Sundays (Ground Floor, Unit 3 Winchester Street) and to reduce operational hours to 8.00am -12.00am Monday to Saturday and 10.00am - 12.00am on Sundays and Bank Holidays (3-4 Vernon Walk).			
<b>Application number</b>	15/02217/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>	06.01.16	<b>Ward</b>	Bevois
<b>Reason for Panel Referral:</b>	Five letters of objection have been received	<b>Ward Councillors</b>	Cllr Burke Cllr Rayment Cllr Barnes-Andrews

<b>Applicant:</b> Mr Islam	<b>Agent:</b> SDA Planning Ltd
----------------------------	--------------------------------

<b>Recommendation Summary</b>	<b>Delegate to Planning and Development Manager to grant planning permission subject to criteria listed in report</b>
-------------------------------	---

**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, SDP7, SDP9 of the City of Southampton Local Plan Review (March 2015) and AP8 of the City Centre Action Plan (March 2015).

<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History
3	14/00392/FUL appeal decision		

**Recommendation in Full**

Delegate to the Planning and Development Manager to grant planning permission subject to:

1. The submission of a satisfactory Capacity Management Plan, setting out how the capacity of the premises will be monitored and recorded to accord with the agreed levels.

2. The completion of a S.106 Legal Agreement to secure reduction in opening hours on 3-4 Vernons Walk site and the implementation of a Capacity Management Plan.

3. That the Planning and Development Manager be given delegated powers to add, vary and /or delete relevant parts of the Section 106 agreement and/or conditions as necessary.

4. In the event that a satisfactory Management Plan is not provided or that the legal agreement is not completed within two months of the Planning and Rights of Way Panel meeting, the Planning and Development Manager be authorised to refuse permission on the ground of failure to demonstrate that the proposal would not result in a harmful intensification of late night noise and disturbance and failure to secure the provisions of the Section 106 Legal Agreement.

## **1.0 The site and its context**

1.1 The site is located within the City Centre (Bevois Ward) in the Bedford Place area. The area is designated as an evening zone under the Night Time Economy policy within the City Centre Action Plan.

1.2 The immediate area is predominantly commercial in nature, generally consisting of rear elevations and service areas to buildings fronting London Road and Carlton Place, to the south is Salisbury House consisting of a number of bars. Residential development is located in close proximity, including flatted development on the nearby Mede House site.

1.3 The site consists of a part single-storey/ part two storey, end-terrace building which fronts Winchester Street, located in close proximity to the junction with Carlton Place. The building is currently occupied by a restaurant use (Class A3) and a drinking establishment (Use Class A4) approved under application 08/01219/FUL which contains the Buddha Lounge. The Buddha Lounge is permitted to operate until midnight.

1.4 The application site also incorporates the premises 3-4 Vernon Walk, containing a nightclub, the Buddha Club, which is also owned by the applicant. The nightclub is an established use, unfettered by planning conditions. The trading hours of the Buddha Club licensed by the Council are:

Monday: 09:00 - 02:00

Tuesday: 09:00 - 02:00

Wednesday: 09:00 - 02:00

Thursday: 09:00 - 02:00

Friday: 09:00 - 03:00

Saturday: 09:00 - 03:00

Sunday: 09:00 - 01:00

## **2.0 Proposal**

2.1 Through the variation of condition 2 under permission 09/00636/FUL, this application seeks permission to extend the hours of the Buddha Lounge restaurant and drinking establishment (as below) through swapping the current trading hours with the adjoining premises Buddha Club, whilst enforcing formal midnight closing hours for the Buddha Club.

- 2.2 The hours for the Buddha Lounge restaurant and drinking established are therefore proposed to be:  
Monday to Thursday: 8.00am - 2.00am  
Friday, Saturday and Bank Holidays: 8.00am - 3.00am  
Sundays: 10.00am - 2.00am

Whilst the hours for the Buddha Club are proposed to be restricted to:  
Monday to Saturday: 8.00am -12.00am  
Sundays and Bank Holidays: 10.00am - 12.00am

- 2.3 The intention to swap the hours between the premises is sought by the applicant to focus the activities from the Buddha Club to the Buddha Lounge, where the latter is a more viable business venture for the applicant, and in turn reduce the management issues of patrons when leaving the Buddha Lounge at midnight to use the Buddha Club.

### **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.
- 3.3 Policy AP8 (Night time economy) identifies the Bedford Place area as an evening zone subject to the restricting the opening hours till midnight. The policy acknowledges that the city centre is an appropriate location for late night uses.

### **4.0 Relevant Planning History**

- 4.1 Unit 3-4 Vernon Walk (Buddha Club) currently operates beyond the policy set hours, being licensed to closed at 2am on Monday to Thursdays, 3am on Friday and Saturday, and 1am on Sunday. The operation hours of the premises cannot be controlled, given that there is no planning condition attached to the use.
- 4.2 Unit 3 Winchester Street (Buddha Lounge) is a late night entertainment premises which is authorised to trade till midnight. The applicant was refused permission in 2010 (ref no. 10/01489/FUL) and 2014 (ref no. 14/00392/FUL) to extend the trading hours beyond midnight (**see Appendix 2**). The latter application was then dismissed at appeal (**see Appendix 3**).

### **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 (24.11.2015). At the time of writing the report **5** representations have been received from surrounding residents. The

following is a summary of the points raised:

- 5.1.1 **Late night disturbance to adjacent residential properties including families and nearby local residents in addition to the cumulative disturbance from other late night uses in the vicinity. Increase to the number of patrons walking through surrounding streets after midnight adding to the incidences of anti-social behaviour and alcohol related crime.**

Response

Officers are satisfied that the applicant has demonstrated that the trading of hours between the premises would not be materially different in terms of the capacity of both premises, subject to the capacity of the Buddha Lounge being limited. As such, by limiting the trading hours of the Buddha Club till midnight it is considered that there would be no adverse impact on the amenities on local residents. Conditions will be used to mitigate noise breakout during the late hours including an opening restriction on the bi-fold doors, and the removal of the internal door between the premises.

- 5.1.2 **Contrary to policy AP8.**

Response

Each application should be assessed on its own individual merits. It is considered that the trading of the opening hours between the Buddha Lounge and Buddha Club would not be contrary to this policy given that this would not result in an intensification in late night uses if the Capacity Management Plan is secured, since the planning department gains control over the hours of operation of the Buddha Club, which would reduce their trading hours accordingly.

5.2 **Consultation Responses**

- 5.2.1 **SCC Environmental Health (Pollution & Safety) - No objection.**

- 5.2.2 **Hampshire Constabulary – No objection.**

- 5.2.3 **Police Licensing – No objection.** The limit of patrons as set out by the applicant can be specified in the premises license.

6.0 **Planning Consideration Key Issues**

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

- The principle of development and;
- Impact on Character and Amenities of the Local Area.

6.2 Principle of Development

- 6.2.1 Policy AP8 intends to limit the hours of premises trading within the Bedford Place area to no later than midnight in the interests of protecting the amenities of the neighbouring occupiers from late night noise and disturbance as patrons leave the Bedford Place area and walk through the surrounding residential streets once the premises are closed.

- 6.2.2 Since 2006, when the Local Plan Review was originally adopted, the planning

department has taken a consistent approach to new applications to increase hours of operation in the Bedford Place area and typically restricts hours of operation to close no later than midnight. This approach has also been consistently supported by appeal inspectors. In a similar way, previous applications have been refused to extend the trading hours of the application site beyond midnight and an appeal of the refusal has been dismissed (**Appendix 3**). This planning approach has partly influenced the current proposal for an hours of operation swap between the two premises. Notwithstanding the planning history of the site and the area, this application is materially different in circumstances to that previously considered and, therefore, should be assessed on its own merits.

6.2.3 It is considered that the trading of the opening hours between the Buddha Lounge and Buddha Club would not be contrary to Policy AP8 given that this would not result in an intensification of late night activity in the area. This is particularly since the planning control over the hours of operation for the Buddha Club would be introduced, which is currently unfettered by planning conditions. Therefore, the principle of the development is acceptable. This is subject, however, to the amenities of the nearby residents not being materially harmed.

### 6.3 Impact on Character and Amenity

6.3.1 The reports from local residents of anti-social behaviour caused by patrons within and leaving the Bedford Place area are noted and subject to the recommendation to reduce the hours of operation of the Buddha Club by section 106 agreement, are considered to be addressed. As noted above, there is currently a management issue regarding the movement of patrons from the Buddha Lounge to the Buddha Club once it closes. As Buddha Lounge is the more intensively used premises, once it closes, patrons that leave then queue for the Buddha Club within Vernon Walk, resulting in noise and disturbance to surrounding residents. Given that Buddha Club is less intensively used, it is considered that proposal will reduce the effect of the movement of patrons between the two venues following its closure at midnight. The Police and Environmental Health have not raised a concern with the proposed approach in terms of there being any further harm arising to the amenities of nearby residents.

6.3.2 The applicant intends to operate the Buddha Lounge beyond the current licensing hours on the Sunday till 2am, however, to be consistent with the licensing hours, a 1am closing time should be imposed.

6.3.3 The Buddha Lounge has a maximum capacity of 680 people and the Buddha Club has 380. Recognising the greater capacity at the Buddha Lounge, the applicant has offered to limit the number of patrons to 400. As a result, there would not be a significant increase in activities from the 20 additional persons and would therefore not adversely affect the amenities of the neighbouring occupiers. That said, it needs to be demonstrated, before planning permission is granted, that a condition limiting the number of patrons could be easily monitored and recorded, in the event of any potential Enforcement complaints in the future. As such, the recommendation to approve is subject to the receipt of a satisfactory Management Plan which demonstrates how the capacity will be monitored and recorded, to ensure that a planning condition restricting capacity is enforceable. The implementation of the Management Plan will then be secured by section 106 agreement to ensure that it is adhered to in perpetuity.

- 6.3.4 To protect the immediate occupiers from late night disturbance, the existing bi-fold windows on the ground floor shall remain closed shut between 10.00pm and closing time to minimise noise outbreak.
- 6.3.5 A Gampian style condition can be used to ensure that the internal door between the Buddha Lounge and Club is removed prior to the proposed hours of operation taking effect. This would ensure that patrons could not move internally between the two premises, ensuring that the operating hours of the two premises remains distinctive.
- 6.3.6 The applicant will be required to enter into a S106 legal agreement to secure reduction in opening hours on 3-4 Vernon Walk site (Buddha Club). It is recommended that the agreement be secured by officers following a resolution by the Panel to grant permission.

## **7.0 Summary**

- 7.1 As such, it is considered that the trading of hours between the two premises would not arise in material harm to the character and amenities of the local area subject to the capacity of the premises being controlled to prevent an intensification of the late night use. Further controls can be imposed on the operation of Buddha Lounge to minimise late night noise and disturbance from premises, whilst the Local Planning Authority will gain planning control over the trading hours of the Buddha Club. The proposal can therefore be supported for approval.

## **8.0 Conclusion**

- 8.1 In conclusion, the proposal is judged to have an acceptable impact in accordance with the relevant policies and guidance and therefore is recommended for approval subject to the conditions sets out below and the completion of the section 106 legal agreement.

### **Local Government (Access to Information) Act 1985**

#### **Documents used in the preparation of this report Background Papers**

1 (a), (b), (c), (d), 2 (b), (d) 6 (c), 7 (a), 9 (a) and (b)

### **SB for 19/01/16 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 ground floor A4 use of 'Unit 3 Winchester Street' hereby approved shall not operate outside the following hours:

Monday to Thursday - 09.00 to 02.00 hours;

Friday and Saturday - 09.00 to 03.00 hours;  
Sunday and recognised public holidays - 09.00 to 01.00 hours;

Other than as outlined in the other conditions set out in this decision notice, all other uses and activities shall continue in accordance with the requirements of the conditions outlined under application 09/00636/FUL.

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

### **03. Separate planning units & Removal of Internal Door**

The hours of use hereby approved shall not commence until the existing internal doorway between the Unit 3 Winchester Street and Unit 3-4 Vernon Walk is removed and is reinstated with a solid wall integral to the building fabric. The units known as unit 3-4 Vernon Walk and unit 3 Winchester Street shall operate as two separate planning units at all times. There shall be no internal access between the separate premises at any time.

REASON: In the interests of protecting the amenities of the local residents. This would ensure no concealment of patrons going between the adjoining premises at 3-4 Vernon Walk ceases trading at midnight.

### **04. Capacity**

The capacity of the Buddha Lounge at Unit 3 Winchester Street, shall not exceed 400 patrons at any one time.

REASON: In the interests of protecting the amenities of neighbouring occupiers by limiting the maximum capacity of the premises.

### **05. Bi-fold doors restriction**

The existing bi-fold windows on the ground floor of unit 3 Winchester Street shall remain closed shut between 10.00pm and closing time.

Reason: In the interests of protecting the amenities of neighbouring occupiers from undue late night noise disturbance.

### **06. 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.

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS1            City Centre Approach

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

SDP1            Quality of Development  
SDP7            Urban Design Context  
SDP9            Scale, Massing & Appearance  
City Centre Action Plan - March 2015

AP 8            The Night time economy

Supplementary Planning Guidance  
Planning Obligations (Adopted - September 2013)

Other Relevant Guidance  
The National Planning Policy Framework (2012)



**Relevant Planning History**

14/00392/FUL - Change of use of the ground floor to a Restaurant/Drinking Establishment (Class A3/A4) with an extension of opening hours on Monday-Saturday from 08:00-00:00 to 08:00-01:00, and Sundays and Public Holidays from 10:00-00:00 to 10:00-01:00 [description amended following validation] - REF. Dismissed at appeal (ref no. APP/D1780/A/14/2228297)

**Reason - The nature of the proposed mixed-use is considered to be reliant upon extending the hours of the existing bar use, whereby a material change of use to A4 use is likely to occur given the exclusive nature and intensity of the late night entertainment activities and alcohol consumption proposed. As such, the nature and intensity of comings and goings associated with the proposed use in a location nearby residential properties extended further into the early hours of the morning would therefore materially harm the residential amenities of neighbours by reason of noise and disturbance as patrons leave the premises and disperse into the surrounding residential areas. Furthermore, the proposal in conjunction with other similar application proposals that would likely follow would set a precedent for late opening of other premises within the vicinity of the site would create a cumulative harmful impact on the residential amenity.**

10/01489/FUL - Variation of Condition 2 of planning permission 09/00636/FUL to allow opening of the ground floor A4 use between 8.00 - 1.00 on Fridays and Saturdays - REF

**Reason - The proposed extension to opening hours would result in an extended late night use, which is situated in a location where there are nearby residential properties. As such, it is considered that the intensification of use into the early hours of the morning would cause further detriment to the residential amenities of neighbours by reason of noise and disturbance as patrons leave the premises and disperse into the surrounding residential areas. Furthermore, the proposal in conjunction with other similar application proposals that would likely follow would set a precedent for late opening of other premises within the vicinity of the site would create a cumulative harmful impact on the residential amenity.**

09/00636/FUL - Internal alterations and creation of external roof terrace with fixed covered seating and bar area at first floor level and outdoor seating area fronting Winchester Street at ground floor level to serve existing restaurant/bar uses approved under application ref 08/01219/FUL. CAP - 12.08.2009.

08/01219/FUL - Change of use from A3 (Restaurant/Bar), to A4 (Bar) at ground floor, and A3 (Restaurant/Bar) at first floor level with external alterations (Alterations to previous permission 08/00346/FUL) - CAP - 24.10.2008.

08/00346/FUL - Change of use of first floor, including formation of enclosed external roof terrace, to A3 (restaurant) use and installation of new shop front - CAP - 10.03.2008

07/00843/VC - Variation of Condition 1 of previous planning consent ref: 950832/22740/E to vary opening hours to permit the premises to be open from 10:00am to 01.30am Mondays to Thursdays, 10:00am to 02.30am Fridays and Saturdays and 12:00pm to 01.30am on Sundays - REF - 27.07.2007

Reason - The proposed extension to opening hours would result in an extended late night use, which is situated in a location where there are nearby residential properties. As such, it is considered that the intensification of use into the early hours of the morning would cause further detriment to the residential amenities of neighbours by reason of noise, litter and disturbance caused as patrons leave the premises.

05/00069/FUL - External alterations to the south and the south-east elevations - CAP - 15.03.2005

3-4 Vernon Walk

1555/M9 - USE OF THE PREMISES AS A RESTAURANT AND INSTALLATION OF A NEW SHOPFRONT - CAP 1979

---

## Appeal Decision

Site visit made on 5 January 2015

by **Nick Fagan BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2015

---

**Appeal Ref: APP/D1780/A/14/2228297**

**Ground Floor, 3 Winchester Street, Southampton SO15 2EL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Sirajul Islam against the decision of Southampton City Council.
  - The application Ref 14/00392/FUL, dated 17 March 2014, was refused by notice dated 2 May 2014.
  - The development proposed is the use of the ground floor for a mixed use restaurant (Class A3) and drinking establishment (Class A4), with extended hours of opening hours on Mondays to Saturdays of 0800-0100 and Sundays and Public Holidays of 1000-0100.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The premises have been addressed by a variety of names by the applicant/appellant and the Council but it is clear that the appeal relates to the ground floor premises at the above address, which is known as the Budhha Lounge.
3. The application form states that the application was to extend the hours until 1am only on Fridays and Saturdays but the desired hours were clearly changed to those set out in the last bulleted point above, and I am considering the appeal on this basis.

### Main Issue

4. The main issue is the effect that the proposal would have on the living conditions of local residents.

### Reasons

5. The appeal property is the ground floor of a two storey building on the corner of Winchester Street and Vernon Walk, a pedestrian thoroughfare that partly runs under neighbouring higher buildings. It is occupied by the Budhha Lounge, a Class A4 drinking establishment, which is laid out as a central open area around a bar with low level sofas and seats around the edge of the premises. The proposal is to replace these sofas and seats with tables providing 60 restaurant covers, but also to retain the Class A4 use as well. If I were to allow the appeal, the appeal premises could therefore be used as a Class A3 or A4 use, or indeed a combination of the two together.

6. The area is a busy mixed use inner city location with a wide range of bars, restaurants, night clubs and takeaways as well as blocks of residential flats and offices and the Bedford Place public multi-storey car park.
7. The main entrance to the Budhha Lounge is off Vernon Walk but it can also be accessed from the entrance on Winchester Street, which is the main entrance to the Tiger Lilly Restaurant on the first floor, also run by the appellant. At first floor level there is an external roof terrace, accessed from both the Bar and the Restaurant. The appellant has recently acquired the adjacent building at 3-4 Vernon Walk, known as the Budhha Club, which has an internal door linking it to the appeal premises.
8. The Budhha Lounge is controlled by a planning condition that requires customers to be off the premises after midnight although another condition allows the first floor restaurant to remain open until 1am on Fridays and Saturdays<sup>1</sup>, which the Council state was historic. The adjacent Budhha Club, also a Class A4 use, has no planning restrictions controlling its hours of operation.
9. I understand the appellant's desire to harmonise the hours of operation for both floors of his establishment and to allow sufficient flexibility to accommodate customers wishing to eat on the ground as well as the first floor. But the new layout of the ground floor, with tables instead of sofas, would not necessarily mean that more customers would want to eat or that it would attract a different clientele. The nature of the seating would not in itself change customers' requirements or desires. It may mean that the appeal premises would operate more like a pub rather than a bar and the appellant's suggestion that customers leaving the mixed use premises would be likely to be less intoxicated than at present is rather speculative.
10. I am also concerned at the objection from the Police, who consider that the continuation of DJ nights suggests that the appeal premises will continue to be used mainly for drinking, and obviously until later. They also consider that having a mixed bar and restaurant use in the manner proposed could contribute to crime and disorder, rather than lessen it as the appellant suggests.
11. His argument that harmonising the closing hours of the ground and first floor uses will prevent large groups of people spilling out onto the street is unclear and unconvincing, because if both the bar and restaurant closed at 1am there would be likely to be more people exiting the premises at this time whereas presently some exit at midnight and others at 1am on Fridays and Saturdays. His argument that the ground floor use could change to Class A3 without planning permission is irrelevant because the issue at contention is the effect of the extending the hours for the sale of alcoholic drinks. Also, the proposal would leave the authorised opening hours of the restaurant on the first floor unchanged from Sunday through to Thursday at midnight so there would remain a difference in the two uses' hours of operation.
12. His acquisition of the next door Budhha Club allows patrons to pass internally from the Budhha Lounge into those premises but this does not justify an extension of opening hours of the larger appeal premises until 1am every day

---

<sup>1</sup> Conditions 2 & 3 of planning permission ref 09/00636/FUL respectively, referred to in Breach of Condition Notice dated 10 February 2014



because many customers would still be likely to leave the Buddha Lounge at 1am given its larger area compared to the Buddha Club. Even if this wasn't the case and the majority of customers from the appeal premises managed to cram into the smaller Buddha Club premises next door, then more possibly intoxicated people would exit and disperse through surrounding residential neighbourhoods even later at night, which would exacerbate any resulting noise and disturbance to nearby residential neighbours.

13. The appellant understandably wants his premises to remain competitive with other existing drinking establishments in the area, some of whom are allowed to open until 1am or later as set out in his submissions. But the Council's adopted and emerging policies rightly and in accordance with the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF) attempt to balance the needs of such businesses with the reasonable needs of local residents to obtain a good night's sleep free of the noise, disturbance and anti-social behaviour at times associated with such late night eating and drinking establishments.
14. The appellant's contention that the proposal will improve the amenity of local residents is substantively and convincingly countered by the Council and the Police and for the reasons set out above. The Council also points out that whilst there are nearby premises legitimately open after midnight these relate to historic permissions which predate current planning policy on such uses.
15. In conclusion, the proposal would be likely to result in more people coming and going to the appeal premises later at night than currently, at a time when most people including those in nearby residential flats would be asleep or trying to get to sleep. In particular it would be likely to give rise to more people likely to have been consuming alcoholic drinks for a longer period to exit into the street from the premises and disperse into surrounding residential areas, with all the implications for noise, disturbance and anti-social behaviour that this could and more than likely would entail.
16. In both its current and emerging development plan policies the Council makes a clear distinction between 'late night hubs' (LNH) and 'evening zones' (EZ), or 'night time zones'(NTZ) as referred to in 'saved' Policy CLT 14 of the City of Southampton Local Plan Review adopted in 2006 (LPR). The appeal premises are located in the Bedford Place/London Road NTZ, or EZ as it is referred to in Policy AP 8 of the emerging Southampton City Centre Action Plan (CCAP).
17. Under adopted LPR Policy CLT 14 Class A3, A4 and A5 uses will be permitted subject to compliance with Policy REI 7, which itself states such uses will be permitted provided that appropriate planning conditions are imposed where necessary to prevent the generation of undue noise or other forms of nuisance directly arising from the proposed use. This approach was specifically endorsed by the examining Inspector into the LPR.
18. The appellant states that the site has not been the subject of any individual noise complaint. The Council does not contest that statement. However, that does not mean that people exiting the premises and dispersing into the neighbouring streets have never made any noise and disturbance affecting neighbours' residential amenity and it would be fanciful to suppose they never would, especially given the longer proposed opening hours. Whilst the current premises may be well run by the appellant any such extended opening hours would run with the land and it is necessary for me to consider the likely long

term effects of such an extension of opening hours, cumulatively with other such premises, on the living conditions of residential neighbours.

19. The approach to Class A3, A4 and A5 uses has been continued into Policy CS1 of the adopted Core Strategy, which identifies the Council's approach to the City Centre, as well as signalling its intention to take forward its spatial strategy via a CCAP. The CCAP has recently been examined and found 'sound' subject to various recommended modifications. CCAP Policy AP 8 is not recommended for modification and it therefore carries significant weight, in accordance with NPPF paragraph 216.
20. Policy AP 8 continues the approach of the LPR in that the Bedford Place/London Road area remains an EZ. Furthermore, it clearly states<sup>2</sup> that Class A3, A4 and A5 night time uses will be restricted to midnight in this area in order to balance the economic needs of such businesses against the social and environmental requirements of nearby residents to enjoy reasonable peace and quiet at night. The text to this policy also identifies this area as a Cumulative Impact Policy Area for Licensing Applications because it is an area already suffering due to the concentration of licensed premises and that the Council will co-ordinate its planning and licensing functions as far as possible. This does not of course mean that planning restrictions must be eased to correspond with current licensing hours because planning and licensing considerations vary.
21. The proposal is therefore clearly contrary to current LPR Policies CLT 14 and REI 7. It is also in conflict with LPR Policies SDP 1 and SDP 16, which together specify that development will only be granted if the amenity of the city's citizens will not be unacceptably affected including in terms of noise impact. It is also contrary to emerging CCAP Policy AP 8, which states that opening times in this area will be restricted to no later than midnight in order to protect residential amenity.
22. The appellant cites two appeal decisions in favour of the proposal<sup>3</sup> as well as referring to the appeal submissions relating to a very recent appeal<sup>4</sup>. But this latter case was dismissed on 31 December 2014 including for reasons that the proposal in that case would be contrary to the same above Policies. This very recent appeal decision is highly significant because that proposal also sought an extension of hours beyond midnight at a premises situated only about 50m away from the current appeal premises.
23. That case involved the first floor of the premises known as Triad House/Attik/Roxx at the western end of Vernon Walk on the corner of Lower Banister Street. The Inspector concluded that, given extant and emerging development plan policy and the mixed character of the area including residential flats, the extension of hours beyond midnight would be likely to harm the living conditions of such local residents. Given the proximity of those premises with the appeal premises in this case I can see no reason to come to a different decision.
24. In his decision the Inspector gave little weight to the two above appeal decisions also cited by the appellant in that case because in case 2078978 the Inspector was unaware of the policy background and the decision in case

---

<sup>2</sup> CCAP Proposed Submission document, September 2013 – paragraph 4.71, Table 3

<sup>3</sup> APP/D1780/A/08/2078978 & APP/D1780/A/00/1046651

<sup>4</sup> APP/D1780/A/14/2226053

1046651 considerably predates the LPR. I agree with the Inspector's reasoning in case 2226053 that these decisions therefore carry little weight. In contrast the Council have provided a list of several more recent appeals where Inspectors have supported its policy stance and refused the extension of such hours. Consequently the Council has not been inconsistent or unreasonable in its application of policy in this case.

25. In light of the above, and having considered all other matters, the appeal is dismissed.

*Nick Fagan*

INSPECTOR