

**Southampton City Planning and Sustainability
 Planning and Rights of Way Panel meeting 19th July 2011
 Planning Application Report of the Planning and Development Manager**

Application address: 9 Bedford Place (Chickenland), Southampton			
Proposed development: Variation of Condition 6 of planning permission 981018/E to change operating hours from 08.00 -23.30 hours to 12.00 - 04.00 hours Monday - Sunday (resubmission of planning application reference 10/01423/FUL)			
Application number	11/00937/FUL	Application type	FUL
Case officer	Bryony Stala	Public speaking time	5 minutes
Last date for determination:	27.07.2011	Ward	Bevois
Reason for Panel Referral:	Referred by the Planning & Development Manager	Ward Councillors	Cllr Barnes-Andrews Cllr Burke Cllr Rayment

Applicant: Mr Ali Nouroozi	Agent: RM Legal Solicitors LLP
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Recommendation Summary	<ol style="list-style-type: none"> 1. Refuse 2. Delegate to the Planning & Development Manager to authorise the service of a Breach of Condition Notice
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Reason for refusal

REFUSAL REASON - Harmful Intensification

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 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. The proposal would thereby prove contrary to the provisions of saved policies SDP1, SDP 16, REI7 and CLT 14 of the adopted City of Southampton Local Plan Review (2006) and policy CS1 of the adopted Local Development Framework Core Strategy Development Plan Document (January 2010) as supported by the comments made to the application by Hampshire Constabulary.

Appendix attached			
1	Development Plan Policies	2	Planning History

Recommendation in Full:

- i. Refuse for the reason set out above
- ii. Serve a Breach of Condition Notice

1.0 Background

- 1.1 This application is one of five applications which have been submitted for the Bedford Place area all seeking to extend their current opening hours until 04:00. These applications are listed as follows:

11/0939/FUL – 3 Bedford Place (Caspain Kebab)
11/00938/FUL – 8 Bedford Place (JJS Fish and Chips)
11/00977/FUL – 15 Bedford Place
11/00936/FUL – 17 Bedford Place (Pizza Gogo)

- 1.2 These applications are resubmissions of identical schemes refused planning permission late last year. The applications have been submitted following enforcement investigations which revealed that the premises in question are currently operating outside of their permitted opening hours.

2. The site and its context

- 2.1 The application site is formed of a take-away unit with residential above. It is located on the eastern side of Bedford Place with servicing taken from Lower Banister Street.
- 2.2 The immediate area is predominantly commercial in nature and includes a diverse range of evening and night-time activities. The site falls within a defined Night Time Zone.

3. Proposal

- 3.1 The Planning Enforcement Team have monitored the premises operating outside their permitted hours between 8am to 11.30pm under planning permission 981018/E granted in 1988. The applicant is seeking to vary condition 6 to regularise this breach in operating hours for 1200 (midday) to 4am the following day.
- 3.2 In 1999 the owner of 9 Bedford Place sought to vary the opening hours of the premises to 3am. The application was refused and subsequently dismissed at appeal. In his decision the Inspector noted that hot food take-aways generate their own custom in the late evenings and supported the council's view that people returning homes from leisure establishments in other parts of the city could well be attracted into Bedford Place by late opening hot food outlets. He recognised the increase in potential for noise, disturbance and other anti-social activities in neighbouring residential area and notes the importance in protecting the peace and quiet of local residents and preventing further disruption to the night time environment. It was concluded that the proposal would cause harm to the residential amenity of nearby and surrounding residents and should be refused.
- 3.3 A previous application to change operating hours from 08.00 to 23.00 Monday - Thursdays and 8.00 to 23.30 Friday and Saturday to 11.00 - 04.00 hours Monday - Sunday was submitted in October 2010 and refused by the local planning authority on 14.12.2010. In order to address the previous reason for refusal, the applicant has submitted a statement of support which sets out the reasoning behind the need to open until 4am seven days a week. Peak periods of trade are between 2am and 4am. The applicant is concerned that should he not be allowed to open during these hours, his business will be unviable. An observation report submitted in conjunction

with the application notes the type and levels of activity between midnight and 4am on the 8th, 9th, 11th and 12th of March 2011.

3.4 A petition of support has also been submitted with the application.

4.0 Relevant Planning Policy

- 4.1 The policies of the South East Plan, Southampton's Core Strategy and Local Plan Review have been taken into account in the consideration of this application. The Core Strategy is in general conformity with the South East Plan, and it is not considered that the policies in the South East Plan either conflict with or add particular weight to the policies in the Core Strategy for this application. Consequently only the local statutory development plan policies (Core Strategy and Local Plan Review) have been cited in this report.
- 4.2 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.
- 4.3 Policies generally seek to safeguard the amenity of the city and its citizens by ensuring an appropriate mix of uses that do not adversely impact on quality of life such as noise or visual disturbance. With particular relevance to this application, policy REI 7 of the adopted local plan requires appropriate planning conditions to be imposed to prevent the generation of any undue noise or other forms of nuisance directly arising from a proposed use A3, A4 and A5 use where such uses are permitted in city, town or district centres. This policy must be read in conjunction with CLT 14 of the adopted local plan. The site is indicated as a night time zone by saved policy CLT14 where the principle of A3 to A5 uses is acceptable.

5.0 Relevant Planning History

- 5.1 A summary of the relevant planning history is set out in **Appendix 2** to this report. The application site was granted planning permission for a take away in 1998 with permitted opening hours of 08:00 to 23:30. In 2009 an application to vary this condition to open until 3am was refused and subsequently refused at appeal. Apart from the application last year seeking to vary these hours which was refused planning permission (reference 10/01423/FUL), there have been no other relevant applications relating to the application site.
- 5.2 In the locality of the application site, the Local Planning Authority has consistently resisted applications to extend opening hours beyond 00:00, particularly since the adoption of the Local Plan Review in 2006. Many of the decisions to refuse extended opening hours have also been tested at appeal without success. A list of the relevant decisions in the vicinity of the site is also included in **Appendix 2**.

6.0 Consultation Responses and Notification Representations

- 6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was also undertaken which included notifying adjoining and nearby landowners. At the time of writing the report 8 representations have been received from surrounding residents, the residents association and three local ward councillors.

6.2 Listed below is a summary of the issues raised by the objectors to the scheme:

- There are many problems of late night noise, littering and anti-social behaviour which is exacerbated by the opening hours of the takeaways.
- The Bedford Place and Polygon area is spoiled by take-away litter and discarded food from take-aways.
- Consent for the proposed opening hours would cause further harm to the amenities of the local area by reason of street noise, litter and anti-social behaviour such as urinating in the street.
- A few nights of monitoring the area proves nothing compared to the experience of Polygon residents affected by disturbance and littering during the night over many years.
- This area has enough crime and disorder issues 5 out of 7 nights a week. The council should be enforcing not encouraging owners to open later. An objection is made under section 17 of the crime and disorder act.

6.3 **SCC Licensing** – No objection. Chickenland holds a license which permits the provision of late night refreshment between 23.00 – 04.00 Monday to Sunday.

6.4 **SCC Food Safety** - Comments as per previous refused application. Opening until 4am is considered excessive. However, there have not been any complaints received with regards to noise and odour and as such no objection can be raised. It is however suggested that premises open no later than 2am Mon – Sat and midnight on Sundays.

6.5 **Hampshire Constabulary** – Object on the basis that the proposed extension of opening hours will exacerbate current issues of dispersal, anti-social behaviour and litter.

7.0 Planning Consideration Key Issues

7.1 The key issue for consideration in the determination of this planning application is the impact the proposed extension of hours would have on the residential amenity of nearby dwellings when considered in relation to existing late night uses and activity within the Bedford Place/London Road area. In particular, consideration must be given to the cumulative impact of all late night uses within the area being granted an extension to opening hours.

7.2 The adoption of policy CLT14 in the 2006 Local Plan Review and the publication of the council's unadopted night time economy briefing paper (which suggests the London Road (Bedford Place) area should only have opening hours extending to midnight) has strengthened the council's position when it comes to restricting late night activity within the Bedford place area.

7.3 Moreover, the Inspector's report into the Local Plan had regard to this issue with the creation of designated late night zones and hubs to distinguish between mid-late evening activity and late night activity such as nightclubs and to safeguard the amenities. The Bedford Place/London Rd area is designated as a late night zone and is supported by a policy briefing paper which advises a terminal hour of 12 midnight for new venues or VC's in this locality. The relevant policies of the local plan have been saved and as such remain a material planning consideration in the assessment of this application.

- 7.4 The Local Planning Authority is concerned that increasing the hours of operation of this take-away would exacerbate existing problems of activity on the streets during the early hours as people enjoying the late night uses within the Bedford Place area disperse into the surrounding residential streets. PPG24: Planning and Noise states that people have the right to expect quiet between the hours of 23:00 and 07:00. As such, it is considered that increasing the hours of this and other venues would have a harmful cumulative impact on existing residential amenities. The issue of cumulative impact is particularly pertinent given that five similar applications have been submitted simultaneously. Moreover, having regard to the planning history of the area and nature of uses in the locality, if permitted, the proposal could set an unwelcome precedent which would further exacerbate the issues of noise, anti-social behaviour and disturbance which is experienced in the locality.
- 7.5 Therefore, in order to prevent any further harm to nearby residential amenities, yet having regard to the night time economy, the LPA has taken a consistent approach in controlling hours of operation on new premises or applications for variation of condition; to date premises have been subject to a terminal hour of 11.30-12.00. This approach has been supported by the planning inspectorate with the dismissal of appeals seeking hours beyond 12 midnight (see 28 Carlton Place, 65-75 London Road, 16/17 Carlton Place and Carlton House, Carlton Place).
- 7.6 The concentration of A3, A4 and A5 uses in the Bedford Place / London Road area has grown over a considerable period of time. The growth of mid to late evening activity in this area has been problematic due to the noise and disturbance created by patrons leaving premises and dispersing through nearby residential areas. Many of these venues and take-aways are historic uses or operate with the benefit of old planning consents which did not contain any reference to operating hours.
- 7.7 The Police have expressed concern with regards to anti-social behaviour that occurs as a result of late night activity within the Bedford Place/London Road area through the week. Police records show that the peak times for assault and damages caused within this area were between 2300 and 0400. The police consider that allowing take-away premises to extend their opening hours will encourage people to stay in the area for longer and will put additional strain on the police resources and exacerbate current issues of dispersal, anti-social behaviour and litter.
- 7.8 The applicant's observation report submitted in conjunction with the application noted that the majority of patrons were from local pubs and clubs in the area, and that the busiest hours of use were between 2am and 4am when people were leaving nearby pubs and clubs. In addition, it was noted that some people were specifically coming into Bedford Place at that time of day to use the takeaway facilities. Whilst some patrons left in taxi's the majority dispersed through nearby streets. With regards to litter, the observation report found that whilst litter was an issue on the busiest nights, for the majority any litter discarded onto the streets nearby the takeaways was dealt with by a member of staff as and when possible.
- 7.9 The applicant argues that anti social behaviour which occurs in the area is a direct result of the pub and club uses not the takeaways. It is the intoxicated patrons who become disorderly, causing noise and litter nuisance.
- 7.10 It is appreciated that the instances of noise or disturbance cannot be attributed directly to the application site and the way the business is operated, and that the applicant (as part of the Business Crime Reduction Partnership (BCRP)) takes measures to improve the behaviour of customers and reduce crime and disorder in

and around the city centre. It is evident from the observation report submitted that takeaways being open in the early hours of the morning does attract people to the area and/or encourages them to stay within the area for a greater amount of time, prolonging the time of dispersal in and around the nearby residential areas.

- 7.11 What is likely to happen by permitting further late night opening hours, would be an intensification of the problems and disturbance from commercial uses and the likely and subsequent cumulative effect upon residents, particularly at a time of day when residents should be able to expect a period of quiet and rest.
- 7.12 A reasonable balance between the commercial activities in the area, the viability of the applicant's business and a proper living environment for residents must therefore be achieved. It is considered that this balance can and should be achieved by limiting late night use in Bedford Place until midnight in accordance with policy CLT 14 of the adopted local plan review.

8.0 Conclusion

- 8.1 A cumulative impact of the issues raised from an intensification of late night uses in this locality from an extension of opening hours occurs. The council has been consistent in its decision making for opening hours within this area and this approach has been supported in recent appeal decisions.
- 8.2.1 Information submitted with the application fails to address the previous reason for refusal. There are no material planning considerations which would alter the local planning authorities view on this matter.
- 8.3 The application is recommended for refusal.

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(e), 6(c), 6(l), 7(a),7(c), 7(x), 10(a)]

BG for 19.07.2011 PROW Panel.

9. POLICY CONTEXT

9.1 Core Strategy - (January 2010)

9.1.1 CS1 City Centre Approach

9.2 City of Southampton Local Plan Review – (March 2006)

9.2 .1 SDP1 Quality of Development

9.2.2 SDP 16 Noise

9.2.3 REI7 Food and Drink uses

9.2.4 CLT 14 City Centre and Night Time Zones and Hubs

9.3 Other Relevant Guidance

9.4.1 PPS1 Delivering Sustainable Development (February 2005)

9.4.2 PPG24 Planning and Noise (October 1994)

8 Bedford Place

1997. Ref: 971147/E – Change of use of ground floor from retail shop (class A1) to hot food takeaway (class A3). Approved with conditions.

10/01425/FUL - Variation of Condition 2 of planning permission 971147/E to change operating hours from 08.00 to 23.00 Monday - Thursdays and 8.00 to 23.30 Friday and Saturday to 11.00 - 04.00 hours Monday – Sunday – Refuse - 14.12.2010.

11/00938/FUL - Variation of Condition 2 of planning permission 971147/E to change operating hours from 08.00 to 23.00 Monday - Thursdays and 8.00 to 23.30 Friday and Saturday to 11.00 - 04.00 hours Monday – Pending Decision.

15 Bedford Place

10/01433/FUL - Variation of Condition 2 of planning permission 1552/M5 to allow opening times from 8.00am to 1.00am to 8.00am to 3.00am Mon - Thurs, 8.00am to 4.00am Saturdays and 8.00am to 12.00am Sundays – Ref. 16.12.2010.

11/00977/FUL - Variation of Condition 2 of planning permission 1552/M5 to allow opening times from 8.00am to 1.00am to 8.00am to 3.00am Mon - Thurs, 8.00am to 4.00am Saturdays and 8.00am to 12.00am Sundays. (resubmission 10/01433/FUL) - Pending Decision.

18 Bedford Place

10/01405/FUL - Variation Of Condition 4 Of Planning Ref 1559/M12 To Extend Opening Hours Monday - Saturday 12Pm - 4Am, And Sundays 12Pm - 3Am. Ref. 08.12.2010

3 Bedford Place

10/01424/MMA - Minor Material Amendment to planning permission 1463/P18 (The use of an existing shop at 3 Bedford Place, as a shop for the sale of cooked food (with opening hours of 9.00 a.m. to 11.30 p.m.)) to alter the operating hours from 09.00 - 23.30 hours to 11.00 - 04.00 hours Monday to Sunday – Object. 13.12.2010.

11/00939/FUL - Minor Material Amendment to planning permission 1463/P18 (The use of an existing shop at 3 Bedford Place, as a shop for the sale of cooked food (with opening hours of 9.00 a.m. to 11.30 p.m.)) to alter the operating hours from 09.00 - 23.30 hours to 11.00 - 04.00 hours Monday to Sunday (resubmission of planning application reference 10/01424/MMA) Pending Decision.

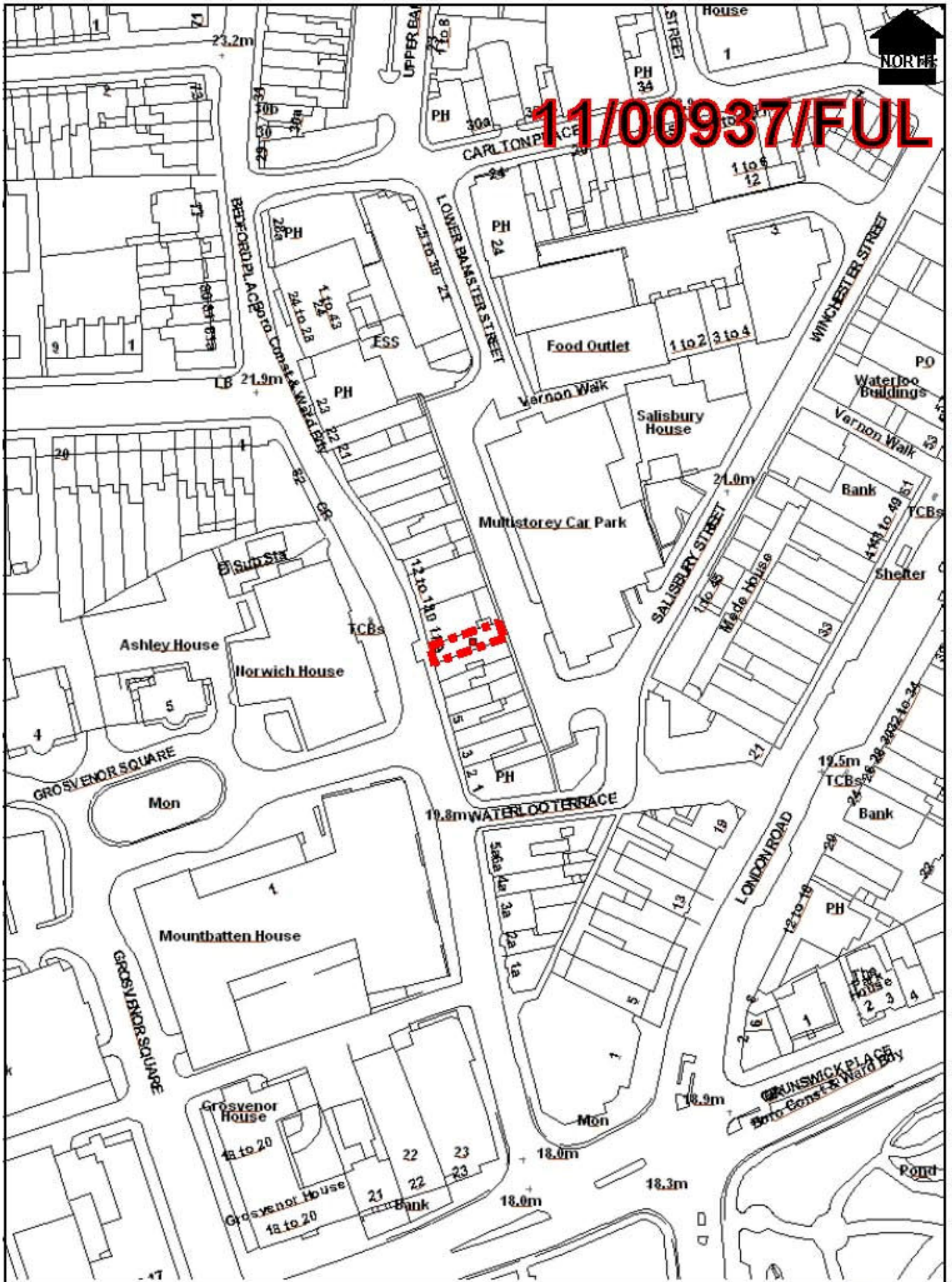
17 Bedford Place

10/01482/FUL - Variation of condition 8 of planning permission 940589/E to change operating hours from 8.00 - 23.00 Monday - Thursday and 8.00 - 23.30 Friday and Saturday to 8.00 - 04.00 Monday - Sunday –REF. 16.12.2010

11/00936/FUL - Variation of condition 8 of planning permission 940589/E to change operating hours from 8.00 - 23.00 Monday - Thursday and 8.00 - 23.30 Friday and Saturday to 8.00 - 03.00 Monday - Sunday (resubmission of planning application reference 10/01482/FUL - Pending Decision.

3 Winchester Street

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 - 21.12.2010



11/00937/FUL

Scale : 1:1250

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