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

Application address:

15 Bedford Place (Teds Fish and Chips), SO15 2DB

Proposed development:

Variation Of Condition 2 Of Planning Permission 1552/M5 to change opening hours from 8.00 To 1.00 hours to 0800 To 0300 Mon - Thurs, 0800 to 0400 Saturdays and 0800 to 12.00 Midnight Sundays. (Resubmission of planning application reference 10/01433/Ful)

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Application number	11/00977/FUL	Application type	FUL
Case officer	Mathew Pidgeon	Public speaking time	5 minutes
Last date for determination:	27.07.2011	Ward	Bevois
Reason for Panel Referral:	Referred to panel by the Planning and Development Manager	Ward Councillors	Cllr Burke Cllr Rayment Cllr Barnes-Andrews

Applicant: Mr Jamshid BakhtiarAgent: Rm Legal Solicitors Llp

Recommendation	1. Refuse
Summary	2. Delegate to the Planning & Development Manager to
	authorise the service of a Breach of Condition Notice

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).

Appendix attached		
1	Development Plan Policies	
2	Relevant Planning History (Surroundings):	

Recommendation in Full

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 up to 04:00. The other applications are listed as follows:

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11/00939/Ful – 3 Bedford Place (Caspian Kebab)
11/00938/Ful – 8 Bedford Place (JJS Fish and Chips)
11/00937/FUL – 9 Bedford Place (Chicken Land)`
11/00936/FUL – 17 Bedford Place (Pizza Gogo)
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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.

2.0 The site and its context

- 2.1 The application site lies within a mixed use commercial and residential area on the edge of the city centre. The site is a two-storey, mid-terrace property.
- 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.

3.0 Proposal

- 3.1 The Planning Enforcement Team have monitored the premises operating outside their permitted hours allowed under planning permission 1552/M5 which was granted in 1979. The applicant is seeking to vary condition 2 to regularise this breach in operating hours for 8.00am to 3.00am Mon Thurs, 8.00am to 4.00am Saturdays and 8.00am to 12.00am Sundays.
- 3.2 A previous application to change operating hours to 8.00am to 3.00am Mon Thurs, 8.00am to 4.00am Saturdays and 8.00am to 12.00am Sundays was submitted in October 2010 and refused by the local planning authority on 16th December 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 beyond 1am. 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, 11th, 12th and 13th of March 2011.
- 3.3 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.

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 1979 with permitted opening hours of 08:00 to 01:00. Since the original consent there have been two applications which have sought to extend the opening hours, both of which were refused.
- 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 and erecting a site notice (23.06.2011). At the time of writing the report <u>3</u> representations had been received from surrounding residents.
- 6.2 It is noted that similar applications before Panel located on Bedford Place have received objections from nearby residents. It should also be noted that the LPA received 8 objections prior to the determination of the previously refused application (10/01433/Ful). A summary of the comments received are included below:
 - The proposal would have a harmful impact on the surrounding area in terms of noise, disturbance and littering.
 - The dispersal of people from such late night uses through and to the surrounding residential areas results in anti-social behaviour. The proposal would therefore exacerbate matters for surrounding residents.

- 6.3 **SCC Licensing –** No objection. There is premises licence for this property which permits opening until 04:00.
- 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 **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
- 6.6 **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 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, antisocial 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 11.30-12 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 and predate the current planning policy framework.
- 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. Hampshire Constabulary has recently undertaken an analysis of the area which demonstrates that crime and anti-social behaviour is linked to the operating times of premises within the Bedford Place area. 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 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 taxis 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 little 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 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 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.

<u>Local Government (Access to Information) Act 1985</u> 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)

MP for 19.07.2011 PROW Panel.

POLICY CONTEXT

<u>City of Southampton Local Plan Review – (March 2006)</u>

SDP1	Quality of Development
SDP7	Urban Design Context
SDP16	Noise
CLT14	City Centre Night Time Zones and Hubs
CLT15	Night Time Uses in Town, District and Local Centres
REI4	Secondary Retail Frontages
REI7	Food and Drink Uses (Classes A3, A4 and A5)

Supplementary Planning Guidance

Planning Obligations (Adopted - August 2005 and amended November 2006)

Other Relevant Guidance

PPS1 Delivering Sustainable Development (February 2005)

PPG24 Planning and Noise (October 1994)

Application 11/00977/FUL

APPENDIX 2

Relevant Planning History (Surroundings):

15 Bedford Place

1552/M5 - USE OF OFFICE PREMISES FOR TAKE-AWAY HOT FOOD - CAP - 13.03.1979. Condition 2 - No sales between 1am and 8am any day of the week.

09/01340/FUL - Variation of condition 2 of planning consent 5497/1552/M5 to allow sales to take place from the premises between the hours of 08.00 to 03.00 Mon - Thurs, 08.00 to 04.00 Fri and Sat, and 0900 to 02.00 Sundays - REF 09.03.2010

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

8 Bedford Place

10/01425/FUL

Refused 14.12.2010

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.

9 Bedford Place

10/01423/FUL

Refused 14.12.2010

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.

17 Bedford Place

10/01482/FUL

Refused 16.12.2010

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.

18 Bedford Place

10/01405/FUL

Refused 08.12.2010

Variation of condition 4 of planning permission ref 1559/M12 to extend opening hours of the hot food take-away to Monday - Saturday 12pm - 4am, and Sundays 12pm - 3am.

29 Bedford Place

10/01731/FUL

Refused 28.01.2011

Implementation of planning permission reference 07/01737/VC not in accordance with condition 2 to allow bar/restaurant to open 08:00-01:00 hours Monday-Sunday morning and 10:00-01:00 Sunday to Monday morning

1 Carlton Place

08/01775/FUL

Refused 16.02.09 and Appeal Dismissed

Variation of condition 2 of Planning Consent 07/01319/FUL to allow extended opening hours for the ground floor bar on Friday and Saturday from 8am - 2 am (the following day).

28 Carlton Place and 29 Bedford Place

09/00291/FUL

Refused 11.05.09 and Appeal Dismissed

Implementation of planning permission reference 07/01737/VC not in accordance with Condition 2 to allow bar and restaurant to open 08:00 - 02:00 hours Monday-Sunday mornings and 10:00 - 00:30 hours Sundays to Monday mornings - description amended following validation

01/00626/VC

Refused 15.10.01

Relief from conditions 3,8 and 9 of permission 971002/7212/E, conditions 1 and 2 of permission 980459/7212/EX, condition 1 of permission T/APP/D1780/A/981011844/P7 to allow restaurant use in part of the ground floor

07/01737/VC

CAP 10.06.08

Variation of condition 02 of planning permission 01/00626 to allow extension of closing time from 11.30pm till midnight

09/00291/FUL

Refused 11.05.09 and Appeal Dismissed

Implementation of planning permission reference 07/01737/VC not in accordance with Condition 2 to allow bar and restaurant to open 08:00 - 02:00 hours Monday-Sunday mornings and 10:00 - 00:30 hours Sundays to Monday mornings - description amended following validation

33 Carlton Crescent (Avondale House)

05/01161/VC

Refused 07.10.05

Variation of condition 2 of previous planning permission Ref. 6163/970655/EX to change hours of operation to 08.00 - 12 midnight Mondays to Sundays

Triad House Lower Banister Street

09/01025/FUL

Refused 19.11.09

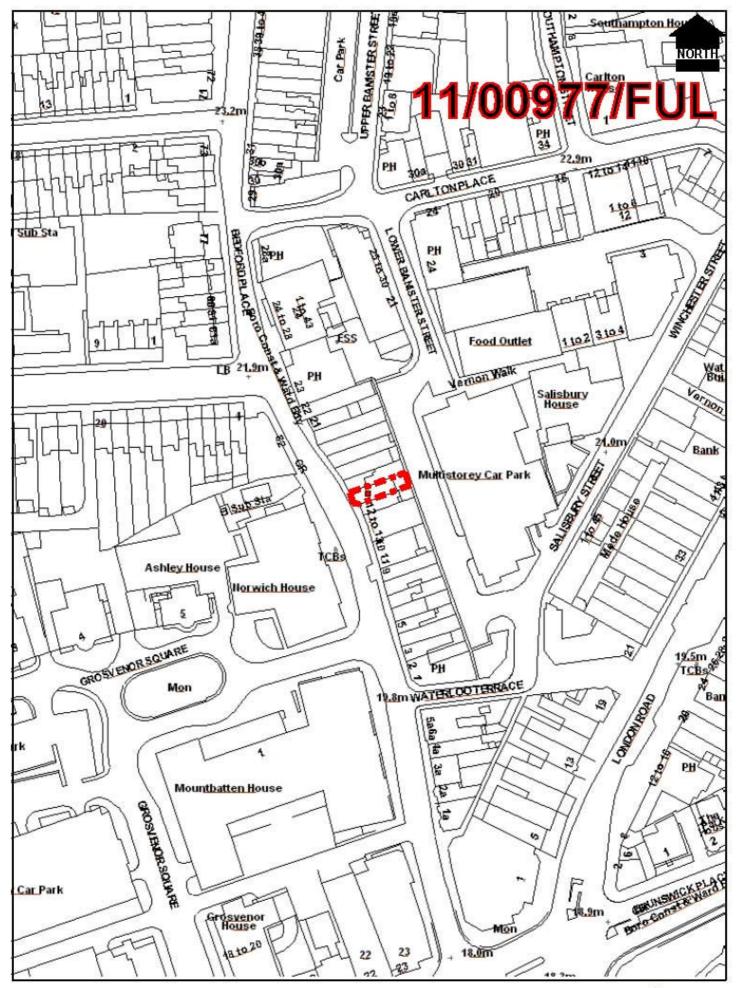
Variation of conditions 2 and 3 of permission 09/00336/FUL to extend the approved opening hours for both A3 and A4 use from 08.30 (8.30 am) until midnight (Monday - Sunday) to 08.30 (8.30 am) until 02.00 (2am) (Monday - Sunday)

65-75 London Road

04/00264/VC

Refused 07.04.04 and Appeal Dismissed

Extension to hours of opening of public house beyond 11.30pm Monday to Saturdays and 11pm on Sundays (variation of condition 10 of permission 99/00625/FUL)



Scale: 1:1250 **Date:** 06 July 2011

