

Planning and Rights of Way Panel 15th February 2022
Planning Application Report of the Head of Planning & Economic Development

Application address: 220 Burgess Road, Southampton			
Proposed development: Installation of covered seating area to front - Retrospective (Submitted in conjunction with 21/01535/ADV)			
Application number:	21/01534/FUL	Application type:	FUL
Case officer:	Mark Taylor	Public speaking time:	5 minutes
Last date for determination:	08.12.2021	Ward:	Swaythling
Reason for Panel Referral:	Five or more letters of support have been received, contrary to Officer's recommendation	Ward Councillors :	Cllr L Fielker Cllr M Munday Cllr S Vassiliou
Applicant: Uni Kebab		Agent: Studio Four Architects	

Recommendation Summary	Refuse
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Community Infrastructure Levy Liable	Not applicable
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Reason for Refusal

The introduction of a canopy structure to the front of the existing restaurant/takeaway, and wider building line, would result in an unacceptable development that would be out of keeping and visually harmful to the character and appearance of the area. An approval would also create a difficult precedent to resist for neighbouring sites to the potential detriment of the wider streetscene. The application is therefore contrary to Policy CS13 of the adopted Local Development Framework Core Strategy (as amended 2015), saved policies SDP1, SDP7 and REI 8 of the City of Southampton Local Plan Review (as amended 2015) and Policy CS13 of the Local Development Framework Core Strategy Development Plan Document (2015) and paragraph 187 of the National Planning Framework 2021 linked to good design.

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History

1. The site and its context

1.1 The site lies within a defined Local Centre within the Council's Development Plan and comprises of a dual restaurant and takeaway business, which was approved in 2019 under application 19/00250/FUL.

1.2 The premises lies at the end of a terrace, with a dental practice in the middle of the terrace and a hairdressing salon completing the terrace. A Sainsbury Local supermarket is located the other side of the application site.

2. Proposal

2.1 The application seeks planning permission for the retention of a covered seating area to the front of the premises. The seating area is constructed with a timber frame, raised decking and metal balustrades to the side and polycarbonate roof sheets. The sides would be enclosed with canvass material.

2.2 The covered seating area extends to the front by 4.5m, with a width of 7.3m and overall height of 2.6m. It is also proposed to add advertising logos on the front and sides of the canopy (subject to separate application 21/01535/ADV)

3. 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) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at **Appendix 1** and will be applied in the assessment of the proposals.

3.2 The National Planning Policy Framework (NPPF) was revised in 2021. Paragraph 219 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan 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 The NPPF is generally supportive of existing businesses and their growth. Paragraph 81 of the NPPF (2021) states that: ‘Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.’ Paragraph 187 also states that ‘Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities.

3.4 Under Schedule 2, Part 4, Class BB (moveable structures for historic visitor attractions and listed pubs, restaurants etc) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), some businesses are entitled to erect a temporary marquee/canopy structure without planning permission for up to 120 days in order to respond to covid restrictions. However, the applicant has applied for permanent permission and, in any event, this premises would not benefit from these permitted development rights for the following reasons:

- The business does not operate as a standalone restaurant use or drinking establishment
- the moveable structure would be within 2 metres of the curtilage of any adjacent land that is used for a residential uses.
- the moveable structure is used for the display of an advertisement

4. **Relevant Planning History**

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

5. **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, erecting a site notice 29.10.2021. At the time of writing the report **17 letters of objection** have been received and **16 letters of support**. The following is a summary of the points raised:

Summary of OBJECTION letters:

- 5.2
- Loss of light (specially the reception area on the ground floor).
 - Loss of patient's privacy (As whoever is sitting in this outside area could overlook the reception and movements off the patients in and out of the practice).
 - Loss of visibility and obscuring of entrances to neighbouring commercial units
 - Noise nuisance to neighbouring commercial and residential uses
 - Would lead to more litter and accumulation of uncollected street rubbish
 - Out of character and overdevelopment of the site as the whole of the site would be built on.
 - Does not promote healthy lifestyles and activities.
 - Development encroaches on to the pavement reducing manoeuvrability
 - Along with Bar S0/16 directly, anti-social behavior, car park intrusion, littering, urination in doorways, trespass, loitering and the discovery of drug paraphernalia will increase.

Officer Response

Impacts on neighbour amenity are discussed in the assessment sections below. This includes loss of light, loss of visibility and noise and disturbance to neighbouring uses. Issues relating to the use of the premises as a restaurant and takeaway use are not relevant as planning consent has already been granted for the use under 19/00250/FUL.

Summary of SUPPORT letters:

- 5.3
- Good design and adds appeal to both the restaurant and the surrounding area. We should support the regrowth of such business for

the economy and life of its city.

- It will be a halal and new style restaurant, and we need it in that area. The business owner is also a well-known person who supports students and the local community.
- The objections on the grounds of added noise and disturbances etc, seem unfair given that there are already many businesses with late openings hours on that stretch. The roof is transparent and would not result in loss of light to neighbouring businesses.

Officer Response

Comments regarding the design of the structure are noted. The type of restaurant and their reputation in the community is not a material Planning consideration. Impact on noise and disturbance are considered below.

Consultation Responses

5.4

Consultee	Comments
Environmental Health	Following a perusal of the submitted documentation the Environmental Health Service have no objections no make concerning this proposal but recommend that the opening hours are conditioned 7 days per week (including Bank Holidays) - 12:00 - 22:00 hrs
Highways Officer	Highways DM have no objection to the proposals for an outside covered seating area.
Urban Design Manager	Objection The roof canopy and associated structure creates a visual barrier to the pedestrian in an otherwise visually cohesive commercial street frontage and additionally involves the pedestrian having to deviate around the structure when walking along this otherwise wide pedestrian apron to the buildings. Creating a pinch point within this apron is at odds with the efficient functioning and established character of this commercial street frontage. At the end of this run of buildings there appears on google streetview a café called Bar SO16 which temporarily colonises the street frontage in a much more visually and physically appropriate manner to the functioning and appearance of a mixed commercial frontage.

CIL Officer	This one wouldn't trigger a CIL payment, for retail developments like this it needs to be over 100 sq m new floorspace for CIL to be charged.
Cllr Matthew Bunday	Support this application. I believe what Uni. Kebab are proposing will enhance the area and create a nice space for the community to come together.
Cllr Lorna Fielker	I support this application for a covered area at the front of the new Uni-Kebab restaurant. The design will enhance this local shopping area and help create a sense of vibrancy in the evenings.

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;
- Design and effect on character;
- Neighbour amenity; and
- Highway safety

6.2 Principle of Development

6.2.1 The principle for the use of the premise as a mixed use A3/A5 (restaurant/cafe/hot food takeaway) was established in the 2019 planning permission. This application purely relates to the front canopy addition, and whether or not it is appropriate in terms of its visual impact and impact on neighbour amenity. In general the policies of the Development Plan are supportive of the expansion of existing businesses and their growth. The National Planning Policy Framework is also supportive of economic growth provided proposals integrate sympathetically with its surroundings and neighbouring uses. In particular, Paragraph 187 of the NPPF also states that 'Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities.

6.3 Design and effect on character

6.3.1 Policy REI 8 of the Local Plan states that: Shop fronts which harm the character or appearance of an area through inappropriate design or use of unsympathetic security measures will not be permitted. Proposals should:

- (i) respect the proportions of the building and surrounding shop fronts and not dominate the street in terms of materials and scale of illumination;
- (ii) respect traditional features and aspects of local character;
- (iii) ensure the signs and advertisements, including projecting signs are only installed at fascia/ sub-fascia level;
- (iv) ensure that in the city, town and district centres, security measures are visually unobtrusive.

In addition Policy CS13 of the adopted Core Strategy states development should “respond positively and integrate with its local surroundings”. Policy SDP1 of the City Local Plan states that Planning Permission will only be granted for development which does not unacceptably affect the health, safety and amenity of the city and its citizens; and contributes, where appropriate, to a complementary mix of uses. Policy SDP7 seeks to prevent “development which would cause material harm to the character and/or appearance of an area”.

- 6.3.2 The sites lies along Burgess Road which comprises of a small row of shops, with residential accommodation above. Properties comprise of flat two storey frontages, which are set back from the pavement and highway. The area in front of these shops/businesses is free from any development, except for bicycle hoops and bollards. None of the properties have front additions and none have closed or cordoned off frontages. However the boundary of the forecourt frontages are distinguished with block paving, which is different from the paving slabs used for the highway pavement. The works the subject of this application have already been carried out, with a canopy roof structure covering a decking area measuring 4.5m deep x 7.3m wide and 2.6m high. The structure is enclosed with metal balustrades and timber vertical posts supporting a polycarbonate roof. The enclosure would also have canvass sides and it is proposed to add advertising on the front and side of the canopy.
- 6.3.3 This canopy structure is the first of any front addition within the immediate streetscene, which otherwise comprises of flat frontages that afford a generous set back between the front of the building and the pavement and highway. Whilst the lack of any other examples does not preclude any front addition from being considered acceptable in principle, it does establish a consistent building line and open frontage character to the immediate street scene. The application proposals are prominently visible when approaching the site from the east or west and the depth of 4.5m projects significantly beyond the front elevation of the building. The size and design of the structure results in a dominant feature of the existing building, which would be further compounded by its enclosed sides and proposed advertising. The dominance of the structure relates unsympathetically with the existing building and significantly detracts from its character and appearance within the street scene. Furthermore, the structure is at odds with its neighbouring properties and would significantly detract from, and be detrimental to, the visual amenities of the existing street scene. It is on this basis that the application proposals are considered to be unacceptable and would be contrary to saved policies REI8 and SDP7 of the Local Plan as they do not respect the proportions of the building and surrounding shop fronts and fail to respect traditional features and aspects of local character. Furthermore it is not considered that the development sympathetically integrates with existing businesses and the character of the area, as such the proposals also be contrary to paragraph 187 of the NPPF.

6.4 Neighbour amenity

- 6.4.1 The site comprises of an end of terraced property that operates within the ground floor of the building. A dental practice lies to the immediate east within the middle of the terrace and a hairdressing salon lies the other side. A Sainsbury Local supermarket is located to the west of the application site. Most of these ground floor units have residential accommodation above them, which would be sensitive receptors to this development. Concerns have been raised by third parties that the proposals result in loss of light and visibility of neighbouring businesses, as well as noise and disturbance and additional littering and anti-social behaviour.
- 6.4.2 In terms of loss of light and impact on the visibility and functioning of neighbouring businesses, the immediate premises affected by the physical development is the dental practice to the east and the Sainsbury Local to the west. Both have entrances located within the middle of their shopfronts, as such access to these premises will not be directly affected by the development. The Sainsburys Local covers the whole of its premises and is detached from the application site, therefore it is not considered to be adversely affected in terms of light and access requirements. The adjoining Dental Practice has frosted glass full length windows either side and a central access leading to a reception area. The adverse impacts on neighbouring development resulting from loss of light usually applies to the loss of a habitable residential room, as opposed to commercial development. In this instance, where the application site lies to the west of the Dental Practice, any loss of sunlight and daylight would be primarily restricted to evening light. Furthermore concerns relating to the loss of light to the reception area within the practice would be difficult to substantiate and quantify as a reason for refusing planning permission. On this basis, the proposals would not result in any significant loss of light to the neighbouring premises.
- 6.4.3 The second point of concern for neighbouring premises relates to the loss of visibility of the neighbouring business, primarily the fascia signs and frontage of the business. The canopy structure has a height of 2.6m, which is marginally below the height of the fascia on the existing building and neighbouring buildings. However the projection of the canopy to the front by 4.5m, coupled with the enclosed sides, would obscure views of the dental practice from the west, particularly from the level seen by motorists or pedestrians. That said, it is noted that most trips to a dental practice are specific journeys compared to trips to a restaurant or shop. Even with 'drop in' visits, it is assumed most visitors would have a vague idea on the location of the practice before visiting. Coupled with this assumption, the canopy does sit below the fascia signage of the neighbouring property and the practice retains an unfettered access and frontage. On this basis it is not considered that the canopy result in any significant loss of visibility of neighbouring premises within the street scene.
- 6.4.4 With the regards to the noise impacts from the enclosed seating area specifically, whilst the structure does have covered roof and canvass sides, it does have the potential to have open sides, particularly in the warmer months.

Therefore there is potential for noise to project out on to Burgess Road, especially to the flats above these row of commercial units. The original use of the premise was granted planning permission for opening hours of

- Monday to Saturday - 10:00hours to 23:00hours and
- Sunday and recognised public holidays - 10:00hours to 22:00hours,

which are considered to be appropriate hours for the size, scale and nature of the development and the mixed-use character of the immediate area. The Council's Environmental Health Officer raises no objection to the proposals but recommends that the opening hours are conditioned 7 days per week (including Bank Holidays) - 12:00 - 22:00 hrs. Whilst the no objection from the EHO is noted and agreed, additional restrictions beyond those originally approved are considered to be unnecessary and unjustified in this instance given the mix of uses within the area. If this application were to be recommended for approval it would be more appropriate to condition the use of the canopy area in line with the original hours. However, it would be prudent and reasonable to restrict any additional music sources (either live or amplified) in this area unless a noise assessment has been submitted and any associated mitigation. Therefore, subject to reiterating the original hours of use of the premises and a condition ensuring no music sources underneath the canopy structure, it is not considered the proposals result in adverse noise impacts to neighbouring residential and commercial uses. Furthermore anti-social behaviour and litter policies would be secured and enforced through the terms of the original licence and the canopy would not generate any additional measures of control in this instance.

6.4.5 It is acknowledged by officers that the canopy structure would result in some loss of light and visibility of the neighbouring Dental Practice. However, it is not considered that a reason for refusal on this basis could be justified in this instance. On this basis, notwithstanding the design objections set out above, the application is considered to be acceptable in terms of its impact on the amenity of neighbouring occupiers.

6.5 Impact on access and pedestrians – highway safety

6.5.1 Concerns have been raised by third parties that the proposed canopy reduces the width and useability of the existing pavement. As described above, the forecourt frontages of the commercial units are clearly delineated from the surface of the highway pavement. Whilst the set back of the premises from the pavement enables a greater free flowing space and manoeuvrability around the pavement, the forecourts do not form part of the highway boundary. The proposals extend to the depth of the forecourt outside the application site, but they do not encroach on the public footpath, which would retain a width of approximately 2.0m. Notwithstanding that the Highway Officer does not raise objections to the proposals in terms of highway safety, the Department for Transport Manual for Streets (2007) confirms that there is no minimum width for footways. It suggests that the minimum unobstructed width for pedestrians should generally be 2.0m. Inclusive Mobility (2002) advises that ideally the width of the footway should be 2.0m to facilitate two people in wheelchairs to pass each other comfortably. On this basis the proposals would not adversely impact on highway and pedestrian safety and

manoeuvrability.

7. Summary

- 7.1 The proposed canopy structure has partially been erected to the front of the site and comprises of vertical timber posts, metal balustrades and roof structure. The application proposals also include canvas material enclosing the sides, which have not been added (to date). The size, siting forward of the established building line, and the chosen design of the canopy structure results in a dominant and unsympathetic addition to the area, which would be out of keeping and visually harmful to the character and appearance of the area, and is therefore not considered to be an appropriate and acceptable addition to the area. On this basis the structure would be contrary to the Development Plan and guidance contained within the NPPF.

8. Conclusion

- 8.1 It is recommended that planning permission is refused for the reason set out above.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (e) (f) (g) 4.(f) (g) (vv) 6. (a) (b) 7. (a)

Case Officer **Rob Sims** PROW Panel 15/02/20222

Application 21/01534/FUL

APPENDIX 1

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS13 Fundamentals of Design

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

SDP1 Quality of Development

SDP7 Urban Design Context

SDP9 Scale, Massing & Appearance

SDP10 Safety & Security

SDP16 Noise

REI6 Local Centres

REI7 Food and Drink Uses (Classes A3, A4 and A5)

REI8 Shopfronts

Other Relevant Guidance

The National Planning Policy Framework (2021)

Application 21/01534/FUL
APPENDIX 2
Relevant Planning History

Case Ref	Proposal	Decision	Date
1401/20	Alterations and additions.	Conditionally Approved	13.10.1970
1474/M33	Erection of a single storey extension to shop and living accommodation.	Conditionally Approved	23.04.1974
1489/M3	INSTALLATION OF NEW SHOPFRONT	Conditionally Approved	25.03.1975
891164/W	INSTALLATION OF NEW SHOP WINDOW	Conditionally Approved	06.10.1989
891393/WA	ILLUMINATED FASCIA SIGN 'WASHING MACHINE SPARES' AND ILLUMINATED PROJECTING SIGN 'PREMIER ELECTRICS'	Conditionally Approved	02.08.1989
970714/W	ERECTION OF A SINGLE STOREY REAR EXTENSION AND COVERED WAY	Conditionally Approved	07.08.1997
06/01433/FUL	Erection of garage to rear of property.	Conditionally Approved	30.11.2006
19/00250/FUL	Change of use of existing shop (A1 retail) to a mixed use A3/A5 (restaurant/cafe/hot food takeaway) and single storey rear extension	Conditionally Approved	27.03.2019
19/01819/DIS	Application for approval of details reserved by condition 6 (Ventilation and extraction) of planning permission ref: 19/00250/FUL for change of use to restaurant/cafe/hot food takeaway (Class A3/A5).	No Objection	15.11.2019
20/01558/FUL	2 bedroom first floor flat over existing single storey rear building.	Application Refused	05.01.2021
21/01535/ADV	Installation of 3x non-illuminated canopy signs (Submitted in conjunction with 21/01534/FUL)		