

Planning and Rights of Way Panel 29th May 2018
Planning Application Report of the Service Lead - Infrastructure, Planning and Development

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| Application address: 24 Carlton Place, '90 degrees', Southampton | | | |
| Proposed development: Application for variation of condition 2 (Opening Hours) of planning permission 08/00371/VC to extend opening hours from 2:00 am - 3:00 am Monday - Sunday. | | | |
| Application number | 18/00551/FUL | Application type | FUL |
| Case officer | Mat Pidgeon | Public speaking time | 5 minutes |
| Last date for determination: | 24.05.2018 | Ward | Bevois |
| Reason for Panel Referral: | More than five letters of support have been received | Ward Councillors | Cllr Toqeer Kataria Cllr Jacqui Rayment Cllr Stephen Barnes-Andrews |

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| Applicant: Mr N Raftopoulos | Agent: Luken Beck Ltd |
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| Recommendation | Refuse. |
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01.Reason for Refusal: Noise and disturbance

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 by an additional hour would cause further detriment to the residential amenities of neighbours by reason of noise, litter and disturbance caused as patrons leave the premises.

Furthermore, approval would set a difficult precedent to defend against and could lead to further impacts. The proposal would thereby, having regard to similar appeal decisions in the locality for extended hours of use, prove contrary to and conflict with 'saved' policies SDP1, SDP16 and REI7 of the City of Southampton Local Plan Review (amended 2015) and Policy AP8 of the City Centre Area Action Plan (adopted 2015).

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| Appendices attached | |
| 1 | Development Plan Policies |
| 2 | 08/00371/VC appeal decision, 24 Carlton Place, '90 degrees' |
| 3 | 04/00230/FUL appeal decision, 15/16 Carlton Place |
| 4 | 09/00291/FUL appeal decision, 28 Carlton Place and 29 Bedford Place |
| 5 | 11/00537/FUL appeal decision, 67 – 75 London Road (former Varsity) |
| 6 | 13/00440/FUL appeal decision, 22 Bedford Place, |
| 7 | 14/00392/FUL appeal decision, 3 Winchester Street, Budhha Lounge |
| 8 | 14/00686/FUL appeal decision, 24 Lower Banister Street, The Social |

1 The site and its context

- 1.1 The site is located within the City Centre (Bevois Ward) in the Bedford Place area and it is also within the Carlton Crescent Conservation Area. The area is designated as an evening zone under the Night Time Economy policy within the City Centre Action Plan (AP8).
- 1.2 The site is located at the junction of Carlton Place and Lower Banister Street, the building is set over three floors of accommodation and is within an area of the city which benefits from a wide range of uses including pubs, clubs, and bars together with a mix of commercial, retail and residential units, including flatted development on the nearby Mede House site.
- 1.3 The building currently has permission to be occupied as a restaurant/drinking establishment (mixed A3/A4 use) called '90 Degrees'. The use occupies the ground and first floor. It is noted that 90 Degrees is currently being operated with a focus towards drinking establishment (A4) rather than restaurant use (A3).
- 1.4 90 degrees is permitted to operate until 2am 7 days a week. Permission was granted for those hours in December 2008 under the appeal relating to application 08/00371/VC (**Appendix 2**).
- 1.5 There are a range of opening hours in the local area; many that extend past midnight benefit from historic planning permissions without conditions restricting opening hours.

2 Proposal

- 2.1 Through the variation of condition 2 of permission 08/00371/VC this application seeks permission to extend the hours of the established use so that it can open an extra hour (until 3am) seven days per week.

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). 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 27th 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) of the City Centre Action Plan identifies the Bedford Place area as an evening zone subject to the restricting the opening hours until midnight for new development. The policy acknowledges that the city centre is an appropriate location for late night uses. Policy AP8 replaces policy CLT13 of the Local Plan which was supported by the Night Time Economy Briefing Paper. Any agreed licensing is separate from planning control.

4 Relevant Planning History

- 4.1 On 22nd September 1992 planning consent (920921/25943/E) was granted for a change of use on the ground floor from retail to restaurant, with the remainder of the building remaining in office use. The opening hours to the public were restricted by condition to 10pm on Sundays, 11pm Monday – Friday and 11:30pm on Saturdays.
- 4.2 The opening hours were subsequently extended in June 1995 and then again in February 2005 (planning consent 04/01561/VC) resulting in a closing time of 23.20 Mondays to Thursdays, 23.30 Fridays and Saturdays; and 10.00 - 22.50 on Sundays and Public Holidays.
- 4.3 On the 27th June 2007 planning consent (06/01809/FUL) was granted for the change of use of first floor from B1 (offices) to A3/A4 (Restaurant/Drinking Establishment) so that the ground floor premises could be enlarged.
- 4.4 In August 2007 permission was granted (07/00879/VC) allowing a further extension of the opening hours to Midnight 7 days a week.
- 4.5 A further application (08/00371/VC) to extend the opening hours until 2am was refused in May 2008, with the main issue being the effect of the proposal on the amenity of occupants neighbouring properties, with particular reference to noise and disturbance. This decision was appealed and the appeal allowed in December 2008 (**Appendix 2**). It is noted that the Council did not evidence to support the application but was approved. As such, whilst regrettable, this decision is not deemed to have set a precedent as the Inspector was not fully informed about the concerns of the Council; in particular the cumulative impact of increased hours and many subsequent appeal decisions have supported the Council's case as evidenced by the appendices attached to this report.
- 4.6 Other drinking establishments nearby also have planning histories that are relevant to the assessment of this application:
- 4.7 In 2005 an appeal was dismissed (04/00230/FUL) at 16/17 Carlton Place which sought 12:30am closing time (**Appendix 3**).
- 4.8 In March 2010 an appeal against the refusal of planning permission for an extension to the hours of operation to allow 2am closing seven days per week was dismissed at 28 Carlton Place - 29 Bedford Place (09/00291/FUL). It is noted that the applicant also offered an alternative of 1am, if considered appropriate, only on Saturday and Sunday mornings. The extension of operational hours, for both 1am and 2am, were both dismissed (**Appendix 4**).
- 4.9 In October 2011 an appeal was allowed in part and planning permission (11/00537/FUL) granted for the extension of hours at 67 – 75 London Road. The extended hours were however the opening hours rather than the closing hours which were not allowed. Therefore the closing hour remained unchanged: midnight seven days per week for (**Appendix 5**)
- 4.10 In April 2014 an appeal at 22 Bedford Place was allowed although the inspector did not allow the hours sought of 1100 to 0400hrs all days, instead the inspector

varied the hours to allow the premises to open until 11pm Monday to Thursday and 11:30pm Friday and Saturday (**Appendix 6**)

- 4.11 In January 2015 an appeal was dismissed at 3 Winchester Street (Budhha Lounge) the application was to extend the opening hours until 1am seven days per week. (**Appendix 7**)
- 4.12 In December 2014 an appeal was dismissed which sought permission to allow opening of 'The Social' (Triad House, 24 Lower Banister Street) to be extended to allow a closing time of 2am seven days per week (14/00686/FUL). The appeal decision is included as (**Appendix 8**).
- 4.13 In May 2016 permission was granted for the extension to the operational hours at the 'Budha Lounge'. The proposal included swapping the operational hours with the 'Budha Club'. The two premises are next to one another and the assessment concluded that 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.
- 4.14 The above appeal decisions support the Council's position in resisting planning applications seeking to extend operational hours of drinking establishments in the Bedford Place/London Road Evening Zone as defined by policy AP8 of the City Centre Action Plan, which continues the approach set out in the Local Plan Review (policy CLT14/Night Time Briefing Paper). The above appeal decisions all support the Council's concerns and are a relevant material consideration in this case; by allowing later opening hours, in combination with other premises which benefit from historic planning permissions without hours restrictions, or having established lawful uses over the passage of time, the existing harmful impact on the living conditions of residents who live nearby would be exacerbated. The decisions support the conclusion that significant harm is caused as a result of customers leaving the premises and associated noise, disturbance and antisocial behaviour occurring at antisocial hours of the day when residents are expected to be sleeping; and littering.

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 (13.04.2018) and publishing an advertisement (13.04.2018). At the time of writing the report **15** representations have been received from surrounding residents and a local ward Councillor (Cllr Burke). The following is a summary of the points raised:
- 5.2 **Letters of support:** 7 including Cllr Burke
- **The business is well managed.**
 - **Additional hour would not bring new people to the area.**
 - **The building has good sound insulation.**
 - **Customers will move to another later opening bar/club thus opening for another hour will make no difference.**

Response The proposal would result in an intensification of late night uses and is contrary to development plan policies. As a result the development would intensify the number of people on the streets at unsociable hours leading to noise disturbance to local residents. Whilst only another hour the Council's current position is midnight and this gradual shift in hours creates a precedent for others and intensifies the problem currently experienced.

5.3 **Letters of objection: 8 (including 2 from the same person)**

- **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 agree to these concerns raised, which are supported by the Local Plan.
- It is clear from public responses to this application along with those provided in response to similar applications (see planning history section) that the mix of uses close to residential areas does lead to sensitivities and problems from unsocial behaviour in the early hours of the morning.

5.4 **SCC Environmental Health (Pollution & Safety) – Objection**

EH would not support this application for a variation to extend the terminal trading hour as although noise from inside the premises appears currently to be well controlled, patrons spilling onto street at terminal hour and smokers are likely to cause noise that will disturb neighbours particularly those living immediately opposite and overlooking the site.

5.5 In addition the potential noise from vehicles, including taxis, collecting patrons present a further source of excessive noise to residents.

5.6 **Hampshire Constabulary – Objection.**

Noise and anti-social behaviour. Licencing hours were extended to prevent multiple venues from closing at the same time causing more noise and anti-social behaviour than when venues have staggered closing times. By allowing more premises in Bedford Place/London Road to close at the same time this problem would be exacerbated. Police Licencing would object to the extension of the licencing hours past the permitted 2am.

6 Planning Consideration Key Issues

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

- principle of development; and
- impact on character and amenities of the local area.

Principle of development.

6.2 The proposal seeks to extend the closing time for the premises by one hour resulting in a closing time of 3am rather than 2am. The proposed hours exceed

the hours permitted by CCAP policy AP8 which sets 12 midnight as the latest time that food and drink uses can stay open until within the evening zones. The principle of further extending the hours in this location is not supported.

Impact on character and amenities of the local area.

- 6.3 Paragraph 4.76 of the CCAP confirms that within the Bedford Place/London Road area licences for new premises or substantial variations to existing licences such as longer opening hours are unlikely to be permitted unless the applicant can demonstrate that the changes will not have an adverse impact on the area. Having taken account of the supporting information officers are not convinced that the applicant has demonstrated that the additional hour for trading will achieve this.
- 6.4 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 are historic uses or operate with the benefit of old planning consents which did not contain any reference to operating hours.
- 6.5 The Local Planning Authority, Hampshire Constabulary and the Council's Environmental Health Officer are concerned that by increasing the hours of operation of this venue existing problems of activity on the streets during the early hours would be exacerbated.
- 6.6 Therefore in order to prevent any further harm, 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. This approach has been supported by the Planning Inspectorate with the dismissal of appeals seeking hours beyond 12 midnight; the six appeal decisions listed above in section 4 all raise cumulative impact as a reason for preventing more premises from opening later.
- 6.7 Moreover the Inspector's report into the current 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 residential amenities. This approach has been brought forward by the City Centre Action Plan where Policy AP8 still makes a clear distinction between late night hubs and evening zones, with late night hubs such as Leisure World allowing premises to be open until 3am.
- 6.8 As stated, Policy AP8 it clearly states 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 it's 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. It is however noteworthy that the latest closing hour set by licencing for 90 degrees is 2am.

- 6.9 The proposal is therefore clearly contrary to current Policy AP8. It is also in conflict with LPR Policies SDP1 and SDP16 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.
- 6.10 The LPA also notes that an appeal decision for the application site (08/00371/VC, **appendix 2**) allowed a variation of hours until 2am. This is not considered to represent a precedent because the Inspector was not fully informed about the Council's concerns (because the LPA did not provide a statement of case) and had little or no regard to the cumulative impact of increased hours. A subsequent appeal decision at 28 Carlton Place - 29 Bedford Place (**appendix 4**) has supported the Council's consistent approach thereafter.
- 6.11 The granting of this application would make it difficult for the LPA to resist future applications on other premises and it is likely that the cumulative impact of a number of venues increasing their hours would lead to more harmful disturbance. Planning history for the area would indicate that many venues within the area would be keen to increase their hours of operation, if possible.
- 6.12 Officers accept that there needs to be a balance struck between economic benefits and residential amenity, however by allowing later opening hours of the premises the cumulative amount of late night activity in the area would increase and therefore the potential for noise and disturbance to occupiers of nearby residential properties would also intensify. Appeal inspectors have agreed with the Council with this regard on numerous occasions and have had regard to a large body of evidence held by the Council demonstrating the degree of the problem in this area.
- 6.13 The Council's Environmental Health Team and the Police Licensing Team also oppose the proposal for the reasons set out above.

7 **Summary**

- 7.1 Although the City Strategy aspires to a vibrant, mixed use, 24-hour city centre, an appropriate balance needs to be struck between economic benefits and residential amenities. Policy AP8 intends to limit the hours of premises trading within the Bedford Place area to no later than midnight in order to achieve this. Other historic uses nearby do not benefit from planning control and as such have unrestricted operational hours. These do not however justify the extension of the operational hours of other premises nearby given that there is likely to be an overall harmful cumulative impact. It is the opinion of officers that extending the opening hours of the appeal premises would contribute to the erosion of the existing balance in the locality as supported by the appeal decisions listed in section 4 above. Furthermore Hampshire Constabulary and the Council's Environmental Health Officer object. The application should, therefore, be refused giving the applicant their right to appeal.

8 Conclusion

- 8.1 The application is contrary to policy AP8 as the applicant has failed to demonstrate that changes will not have an adverse impact on the local area. The proposal would lead to a cumulative increase in noise and disturbance and cumulative effect and is recommended for refusal on that basis.

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) (e) 6 (a) (b), 7 (a), 9 (a) and (b)

MP for 29/05/18 PROW Panel