



Appeal Decision

Site visit made on 1 December 2008

by **Gareth Symons BSc(Hons) DipTP**
MRTPI

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

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Decision date:
15 December 2008

Appeal Ref: APP/D1780/A/08/2078978

24 Carlton Place, Southampton, Hampshire, SO15 2DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Carltons Restaurant and Bar Limited against the decision of Southampton Council.
- The application Ref: 08/00371/VC/25943, dated 12 March 2008, was refused by notice dated 23 May 2008.
- The application sought planning permission for variation of condition to change opening hours 08.00am to 00.30am Monday – Thursday; 08.00am to 00.30am Friday – Saturday and 10.00am to 00.30am Sundays and Public Holidays without complying with a condition attached to planning permission Ref: 07/00879/VC/25943, dated 31 August 2007.
- The condition in dispute is No 02 which states that: Notwithstanding the hours applied for the premises shall only be open to the public within the hours of 08.00am to Midnight Monday to Saturdays and 10.00am to Midnight Sundays and Public Holidays.
- The reason given for the condition is: To safeguard the amenities of neighbouring properties and the area generally in accordance with policies CLT14 and RE17 of the City of Southampton Local Plan March 2006.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions as set out below in the Formal Decision.

Main Issue

1. The main issue is the effect of the proposal on the living conditions of residential occupiers in the area, with particular reference to noise and disturbance.

Reasons

2. The Council states that it has been consistent in terms of the hours of operation of entertainment premises in the area. However I do not have any details to support this claim. A study of opening hours carried out in relation to an earlier appeal regarding the same venue, that was later withdrawn, has been referred to but I do not have that either. I do note the consultation response from the Council's planning policy team but that gives little more information about restrictions on late night opening times. In terms of evidence from the Council about noise and disturbance that might arise if the appeal premises did open later, there is nothing from an environmental health perspective and I do not have any objections from the police.

3. In contrast the appellant has submitted details showing that various clubs and bars in the immediate vicinity already operate later than midnight, with several open until 0200. Many of these late night hours have been approved under licensing powers. This includes the appeal venue. It has been stated that when that licence variation was considered the police observations related to a drinking up period and environmental health concerns were addressed by a noise report. None of this evidence has been disputed by the Council.
4. I recognise the distinction between hours of opening that may have been approved under the planning acts as opposed to those granted under licensing regimes. Therefore, in this regard, if premises had been operating in breach of planning conditions and this had been causing amenity problems, I might have expected to see some evidence from the Council relating to enforcement action. Apart from a nearby hot food outlet referred to by the appellant, I have nothing of this nature before me.
5. I am mindful of the conflicts that such uses can cause when they are alongside dwellings. As such I have read all the objections submitted at the application and appeal stages. However it seems to me that the majority of concerns such as anti-social behaviour, drinking excessive alcohol, litter, noise and disturbance relate collectively to the uses overall and very few can be attributed solely to the appeal premises. Those that might, such as signs on pavements, noise through adjoining walls and the blocking of accesses, could be dealt with under different legislation or, in my view, would not be materially worse if the planning approved hours were extended.
6. The appellant has also referred to various initiatives that have been introduced in response to amenity problems caused by late night activities in the nearby Polygon area. These include public realm improvements, on street parking controls, bans on drinking in public places, CCTV and late night bus services. I recognise that local residents still have concerns relating to these areas. However to my mind, they do at least represent a broad package of measures aimed at countering the unfortunate adverse side effects of revelry.
7. Several objectors have referred to local plan policies CLT14 and CLT15. Although they do not appear in the Council's decision notice on this application, they do aim to promote and manage the night time economy. However, they do not specify opening hours for such activities. I have therefore had regard to the Council's Night Time Economy guidelines, but these are not hard and fast rules. The guidelines also recommend consultation with the City Centre Manager when longer operating hours are proposed. I do not have any such response in this case. I take the view therefore that this appeal should be considered on its merits based on what has been put before me.
8. In this context and given what I have found above, the proposed extended opening time of this premise would be reasonable. The increased activity this might cause would not be any more noisy or disturbing bearing in mind the concentration of clubs, bars, restaurants and takeaways that have already given this part of the city an established late night entertainment culture. I give limited weight to claims that this decision would set a precedent. What is being approved would only bring the appeal premise in line with the existing hours operated by other venues. I also have no evidence, such as refusals of planning permissions or failed appeals to demonstrate pressure for other

establishments to open longer. In any event each application or appeal should be considered on its individual merits.

9. Therefore the proposal would not conflict with the amenity aims of policies SDP1, SDP16, CLT14 and CLT15 from the local plan. The Council has not stated that there is any conflict with local plan policy RE17. I agree.

Conclusion

10. For the reasons given and taking everything else into account, I conclude that the appeal should succeed. The Council has not suggested any other conditions that might need imposing in the event of the appeal being successful. I shall therefore only vary the condition relating to opening hours on the basis of what was applied for.

Formal Decision

11. I allow the appeal and grant planning permission at 24 Carlton Place, Southampton, Hampshire, SO15 2DY for variation of condition to change opening hours 08.00am to 00.30am Monday – Thursday; 08.00am to 00.30am Friday – Saturday and 10.00am to 00.30am Sundays and Public Holidays without complying with condition no 02 attached to planning permission Ref: 07/00879/VC/25943, dated 31 August 2007, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and the following condition:
 - 2) The premises shall only be open to the public within the hours of 0800 to 0200 Monday to Saturday and 1000 to 0200 Sundays and Public Holidays.

Gareth Symons

INSPECTOR