

Planning and Rights of Way Panel 29th January 2019
Planning Application Report of the Service Lead - Infrastructure, Planning and Development

Application address: 21 Lower Banister Street, Southampton			
Proposed development: Variation of condition 2 of planning permission ref 09/00336/FUL and condition 1 of planning permission ref 13/01840/FUL to allow opening hours of 08:30am to 03:00am 7 days a week			
Application number:	18/01987/FUL	Application type:	FUL
Case officer:	John Fanning	Public speaking time:	5 minutes
Last date for determination:	27.12.2018	Ward:	Bevois
Reason for Panel Referral:	More than 5 representation letters contrary to the officers recommendation	Ward Councillors:	Cllr Kataria Cllr Rayment Cllr Barnes-Andrews
Referred to Panel by:	N/A	Reason:	N/A
Applicant: Mr Kannangara		Agent: Sennitt Planning	
Recommendation Summary		Refuse	
Community Infrastructure Levy Liable		Not applicable	

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History
3	Previous Appeal Decisions		

Recommendation in Full - Refusal

1.Noise and disturbance

The proposed extension to opening hours would result in an extended late night use. It is considered that the intensification of use into the early hours of the morning would cause further detriment to the amenities of neighbouring properties by reason of noise, litter and disturbance caused as patrons leave the premises. The proposal would be contrary to the particular provisions of AP8 which outlines acceptable limits on opening hours within the city centre. Whilst the trade with existing hours on another premises is noted this approach is likely to create further harm to nearby residents of the application site and sets a difficult precedent for further trading that could lead to additional premises trading after midnight in an area with evidenced problems of late night disturbance. The proposal would thereby, having regard to similar appeal decisions in the locality for extended hours of use and the objection from the Police, 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).

1. The site and its context

- 1.1 The application site lies within the defined city centre, situated on Lower Banister Street between Bedford Place and London Road.
- 1.2 The area contains a number of late night music and drink venues with a mix of other uses in the wider surrounding area including a multi-storey car park.

2. Proposal

- 2.1 The site has a somewhat complicated planning history, with the premises currently operating as a single unit. Historically this was not always the case and there are two separate consents for the use of the ground floor and first floor as Class A4 uses.
- 2.2 Application 09/00336/FUL granted consent for the use of the ground floor as an A4 use and imposed the following condition:

APPROVAL CONDITION – A4 Hours of Use - [Performance Condition]

The ground floor A4 use hereby permitted shall not operate (meaning that customers shall not be present on the premises, no preparation, sale or delivery of food or drink for consumption on or off the premises) outside the following hours:

<i>Monday to Saturday</i>	<i>8.30 am to 12 Midnight</i>
<i>Sunday and recognised public holidays</i>	<i>8.30am to 12 Midnight</i>

Unless otherwise agreed in writing by the Local Planning Authority. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties

- 2.3 Application 13/01840/FUL granted consent for the use of the first floor as an A4 use and imposed the following condition:

APPROVAL CONDITION - Hours of Use - drink establishments [Performance Condition]

The drinking establishments hereby permitted shall not operate (meaning that customers shall not be present on the premises, no preparation, sale or delivery of food or drink for consumption on or off the premises) outside the following hours:

<i>Monday to Thursday</i>	<i>08.30am to 12.00 midnight</i>
<i>Friday and Saturday</i>	<i>08.30am to 12.00 midnight</i>
<i>Sunday and recognised public holidays</i>	<i>08.30am to 12.00 midnight</i>

Unless otherwise agreed in writing by the Local Planning Authority. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

- 2.4 The current application seeks to vary the consented hours for both floors to allow opening from 08.30AM to 03:00AM, 7 days a week. A trading hour's swap is proposed making this scheme a little different. It is intended to trade existing planning rights granted on a neighbouring site – namely 5a Bedford Place, which has operated under the name of The Rhino, and which has no conditions restricting hours of operation. In practice, The Rhino closed 4.00am six days a week. A legal agreement would bind the 2 premises so that 5a Bedford Place would trade with the midnight close that currently restricts the applicant.

2.5 Previous requests for extended hours have been refused and dismissed at appeal for this site. These appeal decisions are appended at Appendix 3.

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.

3.2 The National Planning Policy Framework (NPPF) was revised in July 2018. Paragraph 213 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.

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 with relevant appeal decisions also attached at Appendix 3.

4.2 The site was historically in use as a single retail unit before being subdivided to form separate food and drink elements. Presently the site is lawfully occupied as a single premises operating under separate consents for A4 uses on the ground floor and first floor. An application for the first floor to extend its opening hours to 2AM under application 14/00686/FUL was made in 2014. This application was refused and a subsequent appeal dismissed. Earlier applications in 2009 and 2010 under 09/01025/FUL and 10/01567/FUL for 2AM and 1AM opening were also refused and an appeal dismissed.

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 and erecting a site notice (16.11.2018). At the time of writing the report **8 representations in support** of the proposal have been received from surrounding residents. The following is a summary of the points raised:

5.2 • ***Precedent set by Buddha Lounge application***

Response

The Council has previously accepted a similar arrangement for an ‘hours swap’ on premises at 3 Winchester Street (Buddha Lounge) under application 15/02217/FUL. It is considered that there are substantial differences between the circumstances of the two cases which require a fresh assessment. This issue is discussed in more detail in section 6 below.

5.3 • ***Significant noise and disturbance associated with The Rhino when it was open***

• ***The Rhino had more anti-social issues while The Social has a more mature/well-managed clientele***

Response

It is noted that a planning consent runs with the land, not the current operator. While the Council encourages land owners to operate their premises responsibly and considerately of nearby residents, a future tenant may operate in a different way. The fact that the Rhino club presented issues does not in itself justify the extension of hours to a different operator.

- 5.4 • ***Existing closing time results in people leaving into dark, uneven footing. Additional lighting and staff would improve matters.***

Response

It is not clear that allowing later opening hours would improve this situation.

- 5.5 • ***Occupiers near The Social moved into the properties aware of the context of surrounding late night premises and would not suffer greater disturbance***

Response

The application would extend later opening hours in this area. It is noted that The Rhino is also a historic use of the premises and a similar argument can be made for that premises. Later hours have wider implications for nearby residents as customers leave the premises and walk home.

- 5.6 • ***Individuals leaving application site are less likely to pass takeaways and exacerbate associated impacts***

Response

It is not clear that the difference in location will have a substantial impact on the uptake of nearby food outlets.

- 5.7 • ***Reduce queues for nearby premises***

Response

The additional hours proposed will result in additional capacity later into the night, resulting in larger groups congregating later at night.

- 5.8 • ***Additional employment and leisure availability***

Response

The Council supports employment and leisure uses where the impacts do not have a harmful impact on the character or amenity of surrounding properties. In this case AP8 of the Councils CCAP outlines appropriate late night opening hours in this area and the proposed application would exceed those hours.

Consultation Responses

- 5.9 **Environmental Health – No objection**

Environmental Health do not have an objection in principle, however there are considerations to be made and works to attenuate sound may be required, the detail of which will only be known following a noise assessment. The issue of noise break out has been discussed at length with the management of the premises in the past following noise nuisance complaints (no substantiated) so the potential points for noise break out have already been identified. A noise report will be required, as notwithstanding that there are adjacent properties open until the early hours, each premises has to be considered independently for potential noise break out that may result in a statutory nuisance. The responsibility is on the operator and management to minimise problems, including use of any external areas. The building may require sound proofing, not only to the front elevation windows and external doors, but also as sound may break out through the roof. Noise break out from the front elevation can in part be achieved by keeping the external doors and windows closed and maintaining the double door lobby after 21.00 hours. A noise assessment must include levels at above the height of the building where residents living on the upper floors of particularly Roebuck House may be affected by noise which at ground level is not a problem/not audible. A good management plan will be required and this should be covered in licence conditions, but I think it is fair to say that detail of management of the premises relating to noise should be a condition of the planning application being granted. Although the building and use may have existed prior to the residential accommodation that does not remove the responsibility for the venue operator to take appropriate steps to protect against any noise that may adversely

affect neighbours, particularly domestic residents, due to the longer opening hours.

5.10 **Police – Objection**

The proposal is contrary to the provisions of the City Centre Action Plan. The Rhino has been closed since 2014 and has not had an alcohol licence since that date. It is considered that staggered opening times at present help prevent build ups of people in the public realm and the applicant is not considered to have clearly demonstrated that the change will not adversely impact the local area. Objection to application.

6.0 Planning Consideration Key Issues

6.1 The key issue in this case is the impact of late night operations on the amenity of the area. The site lies within one of the specified late night zones, laid out in the Council's City Centre Action Plan (CCAP). Policy AP8 in this document identifies late night uses are an important part of meeting the needs of those living within the city but that the impacts associated with such uses need to be carefully managed so as to avoid disruption and other negative impacts on local residents associated with congregations of such uses.

6.2 Specifically, in this area the CCAP identifies that premises should have a terminal hour of midnight, which is the existing closing time of the premises per their planning conditions. As such it is considered that a later opening time would be contrary to policy.

6.3 In order to address this issue the applicant has suggested they are willing to enter into a legal agreement where the opening hours on another nearby premises, The Rhino (which has currently been vacant for a number of years), will be limited to midnight (per the current restrictions on the application site), while the application site will have the opening hours proposed of 3AM.

6.4 The planning history of The Rhino (5A Bedford Place) is included in Appendix 2 but in summary application 1530/M23 granted consent for the use of the premises as a 'folk club' with no restriction on opening hours. The property has been extended a number of times since then. It is considered that the premises could lawfully operate as a music/drink venue without any restrictions on its hours. The premises has been vacant for a number of years and a number of applications have been submitted for the redevelopment of the site (16/01051/OUT, 16/01930/OUT) but were refused.

6.5 The Council has previously accepted a similar arrangement for an 'hours swap' on premises at 3 Winchester Street (Buddha Lounge) under application 15/02217/FUL. It is considered that there are substantial differences between the circumstances of the two cases. In that situation, the two premises were immediately adjacent and, at the time, linked internally. This meant that the impacts associated with the two uses were somewhat difficult to differentiate in terms of anything except hours of opening. As such it was considered that the agreement could secure a definitive improvement over the existing situation.

6.6 In this case the application site is a distinct separate premises from The Rhino. The properties are over 100m apart, on different frontages and separated by large multi-storey car park. The Rhino has also been closed for several years and does not currently have a licence to operate, though it is accepted that it could reopen without requiring planning permission.

6.7 While both properties are situated in the wider context of the Bedford Place/London Road area, it is not considered that there is a direct equivalency between the relative impacts associated with the two uses. As such it is not felt that a legal agreement would be an appropriate method of addressing the additional harm associated with the later opening hours. As such it is considered

that the proposal should be refused in line with the provisions of AP8. The Council maintains that midnight opening is in line with policy and any movement away from this position would harm the living conditions of neighbouring occupants (as confirmed by the appeal inspector at paragraph 17 of LPA ref: 14/00686/FUL.

7. Summary

7.1 The Police have raised concerns that the proposal would exacerbate existing issues associated with late night opening in the immediate area. A number of applications for later opening hours have been submitted on the site over the last 10 years which have been refused with subsequent appeals dismissed. The Council considers that the adoption of the CCAP in 2015 has only reinforced its stance on the harm resulting from later opening hours in this area.

7.2 The Council do not consider that the proposed legal agreement is sufficient to mitigate the immediate and wider impacts of the development and as such it is considered that the provisions of AP8 in the CCAP should be given significant weight and the application refused. The trading of hours in this manner would also set a precedent for further sites and could lead to more premises with extended hours to the detriment of residential amenity.

8. Conclusion

8.1 It is recommended that planning permission be refused.

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)(f), 4(f), 6(a)(b)

JF for 29/01/19 PROW Panel