



Appeal Decision

Site visit made on 5 May 2025

by **R Cahalane BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 July 2025

Appeal Ref: APP/D1780/W/24/3358051

37A Oxford Street, Southampton SO14 3DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Dawn Wastell (Genco Restaurant & Bar Ltd) against the decision of Southampton City Council.
 - The application Ref is 24/00553/FUL.
 - The application sought planning permission for change the use of the premises from a restaurant (Use Class E) to a drinking establishment/restaurant (Sui Generis) without complying with a condition attached to planning permission Ref 22/00979/FUL, dated 02 December 2022.
 - The condition in dispute is No 2 which states that: *"The use hereby approved shall not operate and no deliveries received outside the following hours: Monday to Sunday and recognised public holidays - 8AM until Midnight (08:00-00:00)".*
 - The reason given for the condition is: *"To protect the amenities of the occupiers of existing nearby residential properties."*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the premises from a restaurant (Use Class E) to a drinking establishment/restaurant (Sui Generis) at 37A Oxford Street, Southampton SO14 3DP in accordance with the application Ref 24/00553/FUL, without compliance with condition number 2 previously imposed on planning permission Ref 22/00979/FUL dated 02 December 2022, but subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plan referenced R1 dated 15 March 2020.
 - 2) The premises shall only be open to the public as a drinking establishment/restaurant (Sui Generis) between 8am to 1am Monday to Sunday, including Bank Holidays, subject to condition 3 below.
 - 3) The extended hours of opening to the public hereby permitted shall only be operated by Ms Dawn Wastell (Genco Restaurant & Bar Ltd) for a limited period of two years from the date of this decision, or the period during which the premises is operated by Ms Dawn Wastell (Genco Restaurant and Bar Ltd), whichever is the shorter. After two years from the date of this decision, the hours in which the premises is open to the public shall revert to between 8am to midnight Monday to Sunday, including Bank Holidays.
 - 4) The premises shall be operated only in accordance with the agreed flood risk management details dated 9th August 2022.

Applications for costs

2. An application for costs was made by Ms Dawn Wastell (Genco Restaurant & Bar Ltd) against Southampton City Council. This application is the subject of a separate decision.

Background and Main Issues

3. Planning permission was granted in December 2022 (“the original planning permission”) for a drinking establishment/restaurant and has been implemented. Permission is now sought to extend the night time customer opening hours from those originally imposed (as set out in the banner heading above) to 1am Monday to Sunday, for a temporary period of two years.
4. Paragraph 57 of the National Planning Policy Framework (The Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The main issues therefore are whether condition No 2 is reasonable and necessary and whether the proposed extended opening hours would safeguard the living conditions of neighbouring residents, with particular regard to noise and disturbance, anti-social behaviour and litter; and whether the proposal would lead to wider direct impacts on late night community safety within the city centre.

Reasons

Living conditions

5. The appeal site comprises a ground floor premises at the end of a row of buildings facing a part-pedestrianised section of Oxford Street, within Southampton city centre. It also has a corner frontage with Terminus Terrace (A33). The site is within a mixed-use area containing commercial and residential uses.
6. The development plan for Southampton includes the City Centre Action Plan (CCAP) (2015). The appeal site lies within one of the designated evening zones (Oxford Street) as defined in the CCAP. Its Policy AP8 sets out, amongst other things, that the Council will use its planning and licensing functions to promote a night time economy, with a range of activities that contribute to a vibrant city centre, whilst minimising potential disturbance to nearby residential areas.
7. Proposals for new development and extended opening hours in designated evening zones are subject to restricted opening times as set out in CCAP table 5. The supporting text to this table advises that this approach is taken to restrict the potential nuisance caused by night time uses. As the original planning permission was granted after the adoption of the CCAP, it is therefore subject to Policy AP8.
8. CCAP table 5 lists the latest night time opening time for Oxford Street as midnight. The CCAP supporting text advises at paragraph 4.73 that evening zones are identified as containing a concentration of existing pubs, bars and nightclubs generally either within or close to residential areas.
9. The proposed extended opening hours go beyond midnight. In this respect, the proposal is contrary to Policy AP8 of the CCAP. This does not however automatically mean that the proposal is contrary to the development plan as a whole, or that planning permission should be refused. The specific circumstances

of the appeal site must be taken in to consideration to determine the impacts on the living conditions of neighbouring residents.

10. In this regard, the other relevant development plan policies are Saved Policies SDP 1, SDP 16, and REI 7 of the City of Southampton Local Plan Review (LPR) (2015). Collectively, these policies require, amongst other things, development to avoid unacceptably adverse impacts on the health and amenity of the city and its citizens, including from noise and other forms of nuisance directly arising from the proposed use.
11. I observed flats and dwellings in the surrounding locality, including along Oxford Street towards the appeal site, and side roads such as Latimer Street and John Street. I found that Oxford Street becomes more commercial eastwards towards the appeal premises. Above the premises, there were two “offices to let” signs at the time of my visit, facing Oxford Street and to the rear at Queens Terrace. Based on the submitted evidence and what I saw on site, there is no evidence of residential use above this premises. There are also a number of eating and drinking establishments in close proximity along Oxford Street.
12. The area surrounding the appeal site is therefore broadly representative of an evening zone as described by the CCAP. However, having regard to the submitted evidence and my site visit observations, other established premises with opening hours beyond midnight are in the immediate vicinity. These include the London Hotel (which also operates as a public house) on the opposite side of Oxford Street, and a casino immediately to the east on the opposite side of the A33.
13. I afford weight in favour of the locational circumstances of the appeal site, in part surrounded by other established night time uses and the A33. In this context, I envisage that an additional night time operating period of one hour per day, between midnight and 1am, could be undertaken without a significant increase to the ambient noise levels of this area. This accounts for the possibility that this could form a peak time for noise and activity from the premises.
14. The Council’s Licensing department commented that the site is within one of four identified “stress areas” in the city. Although this relates to actions undertaken under separate licensing legislation, other interested parties have raised concerns regarding noise and disturbance impacts and anti-social behaviour. I accept that such impacts could occur in residential locations beyond the immediate environs of the proposal, potentially leading to negative health impacts. The evidence before me however does not demonstrate that such impacts directly arise from the current operation of the appeal premises.
15. The PPG¹ states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. In this respect, I give weight to the comments of the Council’s Environmental Health department, which explicitly raise no objections in principle to the proposed extension of opening times for a temporary period.
16. A temporary permission for two years would allow for the operation, management and impact of the extended opening hours to be further reviewed by the Local Planning Authority (LPA), and can be secured by means of planning condition. The appellant is also willing for such a permission to be personally tied, which I consider

¹ Paragraph: 014 Reference ID: 21a-014-20140306

necessary to further control potential impacts. Such a temporary and personal permission must not be construed as setting a precedent for other premises with similar restrictions. Each application must be considered on its own merits and site-specific circumstances.

17. There are public bins located in close proximity to the appeal site. Adverse litter issues may arise during night time hours. There is however no cogent evidence before me to suggest that the proposed later opening hours for this drinking establishment/restaurant would lead to a material increase in litter above the existing situation within the surrounding commercial area.
18. In conclusion, I am satisfied that the proposed extended opening hours in this specific location would unlikely lead to unacceptably adverse impacts on the living conditions of neighbouring residents. A temporary personal planning permission as proposed would provide a future safeguard for living conditions. The proposal therefore complies with Saved Policies SDP 1, SDP 16 and REI 7 of the LPR, the relevant requirements of which are already set out above. The conflict with Policy AP8 of the CCAP arising from the extended operating hours is addressed in the below Planning Balance section.

Wider direct impacts on late night community safety within the city centre

19. The LPA's Developer Contributions Supplementary Planning Document (DCSPD) (2013) sets out that extended opening hours for food and drink uses after 10pm within the city centre triggers the Community Safety Facilities obligation. This seeks the submission for LPA approval of a plan providing a package of community safety measures identified as necessary in connection with the proposal. Such measures could include signage, lighting, improvements of late night bus services and CCTV, amongst other things.
20. Any such contributions would have to be proportionate to the extent of increased opening hours proposed beyond what has already been given planning permission. This is in order to meet the three tests within Regulation 122 of the Community Infrastructure Regulations 2010, and the tests for planning obligations in Paragraph 57 of the Framework.
21. The proposed extended opening hours could potentially place some further demand on community facilities. However, there is no evidence before me to demonstrate that there is an existing need for or deficit of the abovementioned facilities in the specific locality of the appeal site. The LPA has also not put forward a specific schedule of works and costings directly relative to the nature and scale of the appeal proposal, as also required by the above tests.
22. It has therefore not been demonstrated that the grant of a temporary planning permission as proposed, without a Community Safety Facilities obligation, would lead to harmful conflict with Policy CS 13 of the Local Development Framework Core Strategy Development Plan Document (2015), Policies SDP 10 and CLT 15 of the LPR, and Policy AP8 of the CCAP (which replaces LPR Policy CLT 14). Harm in terms of wider direct impacts on late night community safety has therefore not been demonstrated.
23. The officer report also states that a Highway Condition Survey obligation is required. The DCSPD however advises that the threshold applied for this obligation is all major planning applications. The proposal does not comprise major

development and there is no evidence before me to demonstrate that a lower threshold should be applied to the particular circumstances of the proposal.

24. The appellant has offered to enter into a S106 agreement pursuant to the above matters, if and when a permanent permission is granted for the extended hours. These matters could then be reconsidered by the parties, if deemed necessary and based on the particular circumstances at that time. My current finding would therefore not prejudice that process.

Other Matters

25. The appeal building is a Grade II Listed Building², within the Oxford Street Conservation Area (CA). No alterations to the existing building are proposed. The special character of the Listed Building and its significance as a heritage asset would therefore be preserved.
26. Having regard to the CA Appraisal (October 2010) and my observations on site, the significance of the CA as a whole is derived from a large number of Listed Buildings, a broad array of building types and a mixed-use cosmopolitan area containing boutique bars, restaurants, offices and a strong residential character to the northern and western ends of the CA. One of the listed problems identified by the CA appraisal is anti-social behaviour, including drunken behaviour. Interested parties have also raised concerns regarding overcrowding, an over-subscription of drinking establishments, inconsiderate and illegal parking, and dangerous pedestrian and traffic interventions.
27. The proposed one hour increase in night time operating hours, within an existing drinking establishment/restaurant and near other establishments with late operating hours, would not materially harm the character of the CA. Its significance as a heritage asset would therefore be preserved. Given this context, there would also be no adverse highway safety impact beyond the existing baseline of the area. A previous application³ at this site was recently refused, but this sought opening hours up to 2am and is thus materially different. I have assessed the current proposal on its own merits.

Planning Balance

28. The proposed extended opening hours go beyond the time limits set out in Policy AP8 of the CCAP. The proposal would however contribute to a vibrant city centre night time economy as also supported by this policy. I have also found that the specific locational characteristics would likely avoid unacceptably adverse impacts on living conditions of nearby residential occupiers. Controlling permission for a temporary period of two years and subject to a personal condition would provide a future safeguard for living conditions. The extent of conflict with CCAP Policy AP8 is therefore limited.
29. For the above reasons, I have found that the proposal complies with Saved Policies SDP 1, SDP 16 and REI 7 of the LPR. In the absence of any other demonstrable and material policy conflict, the proposal therefore accords with the development plan when read as a whole.

² Royal Mail House – List Entry Number 1340003

³ LPA Ref: 23/01462/FUL

Conditions

30. As the original permission has already commenced, a condition listing the approved plans is not necessary. Reimposition of the approved plans condition (condition 1) is however necessary, in the interests of clarity. Conditions 2 and 3 are amended and new conditions respectively, and are necessary in the interests of the living conditions of neighbouring residents. Condition 4 is still necessary in the interests of flood risk management.

Conclusion

31. For the reasons given above, the appeal is allowed.

R Cahalane

INSPECTOR