CORBIL PLANNING

A: Bizspace, Courtwick Lane, Wick, Littlehampton, West Sussex, BN17 7TL

[redacted]

PLANNING STATEMENT

JANUARY 2023

SITE: THE ROCK BAR & RESTAURANT, 41-43 HIGH STREET, BOGNOR REGIS, WEST SUSSEX, PO21 1RX

DESCRIPTION: SECTION 73 APPLICATION TO VARY CONDITION 3 (OPENING HOURS) AND REMOVE CONDITION 4 (HOURS OF USE OF OUTSIDE SEATING AREA) OF PERMISSION REF: BR/73/16/PL DATED 08 AUGUST 2016

APPLICANT: SLADES BAR

LPA: ARUN DISTRICT COUNCIL

1.0 EXECUTIVE SUMMARY

1.1.1 It is the stated objective of Arun District Council through its spatial policies of RET SP1 and TOU SP1 to actively encourage and support development within Bognor Regis town centre and the Economic Growth Area that will promote the vitality of the centre and enhance the entertainment and leisure offer available to tourists and visitors.

1.1.2 This application seeks to vary the opening hours on condition 03 and to remove condition 04 which restricts the hours of use of the outside seating area. These conditions were imposed to the permission granted in 2016 (BR/73/16/PL) which changed the use of the premises from A3 (restaurant) to A4 (drinking establishment). Condition 03 was arbitrarily attached just because these were the hours sought by the applicant at the time, and no evidence was given as to why condition 04 was necessary.

1.1.3 This application seeks to resolve the current disparity between the restrictions on the opening hours of the 2016 permission and those on the current premises licence. It is of course, neither practical or common sense, to have two legislative functions restricting the use of a premises to two different sets of operating hours. In our submissions, there is far more substantive evidence for those hours in the premises licence being preferable and demonstrably necessary than the arbitrary hours stated under condition 3 of BR/73/16/PL.

1.1.4 It is for the above reasons that we hereby seek to extend the hours of use under condition 03 and remove condition 04 from permission ref BR/73/16/PL.

2.0 RELEVANT PLANNING POLICY

2.1 *National Legislation*

2.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

> *(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*

2.2 *National Planning Policy Framework*

2.2.1 The NPPF represents government planning policy and is therefore a strong material consideration within the planning process. The NPPF establishes the presumption in favour of sustainable development and requires that applications that are in accordance with an up-to-date development plan should be approved without delay.

2.2.2 The following paragraph of the NPPF is relevant to the proposed development in terms of encouraging economic activity within the town centre:

> *86. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.*

2.3 *Development Plan*

2.3.1 The development plan for Arun District Council is made up of the Local Plan 2011 to 2031 (adopted in July 2018). We have considered the proposed development of the site in respect of the following policies of the Local Plan:

SD SP1	*Sustainable Development*
EMP SP1	*Strategic Economic Growth*
EMP SP2	*Economic Growth Areas*
EMP DM1	*Employment Land: Development Management*
RET SP1	*Hierarchy of Town Centres*
RET DM1	*Retail Development*
TOU SP1	*Sustainable Tourism and the Visitor Economy*
TOU DM1	*Tourism Related Development*
QE SP1	*Quality of the Environment*
QE DM1	*Noise Pollution*

2.3.2 The following planning policy constraints are identified by ADC Policies Map:

Town Centre Boundary (Bognor Regis)
Economic Growth Area (Bognor Regis)
Retail Frontage (Secondary)

ARUN DISTRICT COUNCIL BR/41/23/PL

3.0 SITE DESCRIPTION & RELEVANT PLANNING HISTORY

3.1 *Site Description*

3.1.1 The application site is located within Bognor Regis Town Centre. It is within the Economic Growth Area and fronts onto the Secondary Shopping Frontage (High Street). The existing property features an active 'shop' frontage onto the High Street, and this sits alongside other class E uses either side of the property. An outside seating area is positioned in-front of the bifold doors and fronts onto the High Street.

3.1.2 The premises was formerly known as Tao up until 2020 when the business closed due to Covid-19. Since then, there has been a change in management and the premises re-opened and has operated as Rock Bar & Restaurant. The premises comprises of an outdoor seating area onto the High Street, a lounge and bar area, and a couple of private hire areas at the rear of the ground floor area. A first floor storage and office space is private from the customer areas albeit this application does sit alongside an application for a roof terrace and bar.

3.1.3 The existing bar and restaurant only has one means of access/egress for customers and that is onto the High Street. The front entrance to the property is directly opposite the NatWest Bank which has its upper floors within a commercial use. Similarly, those properties immediately adjacent to the site have retail ground floor areas with offices above. The nearest residential properties in High Street are located some 35m to the west of the site.

3.2 *Relevant Planning History*

3.2.1 The following planning history is relevant to this application:

BR/73/16/PL - Change of use of existing Class A3 restaurant & cafe to Class A4 drinking establishment.
Granted subject to conditions on 08 August 2016

3.2.2 The Local Planning Authority maybe aware that the site was formerly occupied by McDonalds Restaurant before they vacated the property in early 2016. It then became the Tao following the grant of planning permission in August 2016. The Tao stayed open until its forced closure as a result of Covid-19. Since then, the premises has opened under new management as the Rock Bar and Restaurant. It is under this management that the application is being made.

3.2.3 Condition 03 of the aforesaid permission allows the premises to open between the hours:

Monday to Wednesday:	10:00 to 23:00
Thursdays, Fridays & Sundays:	10:00 to 00:00
Saturdays:	10:00 to 01:00

3.2.4 Condition 04 of the aforesaid permission allows the outdoor space at the front of the property to be used for any purpose between the hours of 10:00 and 21:00, but for only smoking and/or seated meals between the hours of 21:00 to 22:00. The outdoor area is to be permanently closed after 22:00 in the evening until 10:00 in the morning. Those wishing to smoke are therefore required to do so off-site and in the street during the hours between the outdoor seating area closing and the premises as a whole closing.

4.0 THE PROPOSAL

4.1.1 This is a section 73 application to vary condition 03 and to remove condition 04 of permission ref: BR/73/16/PL dated 08 August 2016.

4.1.2 The existing restrictions are summarised in paragraphs 3.2.3 and 3.2.4 above. It is proposed to simply remove condition 4. Consent is hereby sought to vary condition 3 to the following:

3. The premises shall only be open between the hours of 09:00 and 00:00 on Sundays to Wednesdays, 09:00 and 01:00 on Thursdays, and 09:00 and 02:00 on Fridays & Saturdays.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun District Local Plan policies QE SP1 and QE DM1.

4.1.3 For ease of reference we have summarised the changes in the table below:

Day	Permitted Opening and Closing	Proposed Opening and Closing	Difference in Morning Hours (AM)	Difference in Evening Hours (PM)
Monday	09:00 - 23:00	09:00 - 00:00	+1	+1
Tuesday	09:00 - 23:00	09:00 - 00:00	+1	+1
Wednesday	09:00 - 23:00	09:00 - 00:00	+1	+1
Thursday	09:00 - 00:00	09:00 - 01:00	+1	+1
Friday	09:00 - 00:00	09:00 - 02:00	+1	+2
Saturday	09:00 - 01:00	09:00 - 02:00	+1	+1
Sunday	09:00 - 00:00	09:00 - 00:00	+1	0

4.1.4 The most significant change is Friday evenings when an additional two hours is being sought.

5.0 PLANNING APPRAISAL

5.1 *Planning Considerations*

5.1.1 Policy RET SP1 states:

Bognor Regis and Littlehampton will be the main focus for major retail, leisure, commercial, office, tourism, cultural, community and residential development. The Council will positively welcome developments and initiatives aimed at the sustainable economic growth and social wellbeing of the town centres. Such developments will diversify customer choice, aid economic resilience, improve quality both in design and the range of facilities and enhance competitiveness.

5.1.2 The above policy is clear that the LPA should take a positive and welcoming approach to development and initiatives which are aimed at encouraging economic growth and resilience in what it has defined as being the Bognor Regis *Economic Growth Area*. This includes proposals that aim to improve the range of facilities and customer choice within town centres. Furthermore, being positioned within the heart of a town centre which very much seeks to improve on its retail and service offer as a tourist destination, any improvement to a bar or restaurant for the use and enjoyment of visitors is encouraged under policy TOU SP1.

5.1.3 The following sub-sections of this statement explain how the proposed development is fully appropriate having regard to all other material considerations such as the character of the area and its environmental constraints, however in terms of the principle of the development, all of the relevant planning policies that seek to encourage economic growth within a town centre that is very much dependent on tourism indicate that the principle of development is to be whole heartedly supported.

5.2 *Coordination with Premises Licence*

5.2.1 The Rocks Bar and Restaurant has a Premises Licence (no. 14603) which allows for the following activities to take place on the site:

- Provision of late night refreshments (indoors and outdoors)
- Sale or supply of alcohol: for consumption on the premises
- Films: Indoors and outdoors
- Live music: Indoors and outdoors
- Recorded music: Indoors and outdoors
- Performances of dance

5.2.2 The hours of use permitted by the Premises Licence are as follows:

The Opening Hours of the Premise		
Day	**Start Time**	**End Time**
Monday	08:00	23:30
Tuesday	08:00	23:30
Wednesday	08:00	23:30
Thursday	08:00	01:30
Friday	08:00	01:30
Saturday	08:00	01:30
Sunday	08:00	00:00
On Sundays preceding Bank Holiday Mondays, on Christmas Eve and New Year's Eve the premises is permitted to remain open until 01:30 hours		

5.2.3 The Premises Licence differs from the hours of use under BR/73/16/PL and the proposed hours of use being sought under this application as follows:

The Opening Hours of the Premise			
Day	**BR/73/16/PL**	**Premises Licence**	**Proposed**
Monday	09:00 to 23:00	08:00 to 23:30	09:00 to 00:00
Tuesday	09:00 to 23:00	08:00 to 23:30	09:00 to 00:00
Wednesday	09:00 to 23:00	08:00 to 23:30	09:00 to 00:00
Thursday	09:00 to 00:00	08:00 to 01:30	09:00 to 01:00
Friday	09:00 to 00:00	08:00 to 01:30	09:00 to 02:00
Saturday	09:00 to 01:00	08:00 to 01:30	09:00 to 02:00
Sunday	09:00 to 00:00	08:00 to 00:00	09:00 to 00:00

5.2.4 One can see that this application seeks keep the opening hours for the premises at 09:00 which is later than allowed by the premises licence but consistent with the existing restrictive condition on the planning permission. The difference between the proposed hours of use and the hours of use on the existing premises licence is never more than 30 minutes. Overall, therefore, this application seeks shorter hours of opening than is currently allowed for under the existing premises licence.

5.2.5 Having in mind the close similarity between the opening hours on the premises licence and those being sought under this application, it is evident that this is more a process of reconciling the difference between the two forms of Council held control rather than seeking to operate for significantly longer hours than is already allowed for under the premises licence. However, the question maybe asked as to what the correct hours of use for the premises are, is it the premises licence, or is it the planning conditions on the 2016 permission? This question is addressed in the following sub-section.

5.3 *Premises Licence or Planning Conditions?*

Premises Licence

5.3.1 A premises licence is issued by the Council following full consideration, consultation with the responsible authorities (including the Police, Fire & Rescue, Primary Care Trust, Environmental Health and Local Planning Authority – to name a few), and following a period of advertisement to third parties. The licence is determined by the Council's licencing committee. The licence is subject to an annual renewal and at any event within a 12 month period a responsible authority (or registered third party who meets the terms of the complaint process) can instruct the Council to carry out a review of the Premises Licence.

5.3.2 As with the above, there is a thorough process involved for a premises licence to be issued, and this includes a review of the situation by many responsible authorities. This is relevant insofar as it gives credence to the hours of use and restrictions which are specified on the premises licence. It is also highly relevant that there is a statutory process of reviewing premises licences in the event that either a responsible authority or a registered third party makes a substantive complaint. The review gets undertaken within a 12 month period. This ensures that the premises licence gets reviewed on a regular basis if and when there is a reason to do so. On this basis, the applicant gives very substantial weight to the restrictions currently imposed by the existing premises licence.

Planning Conditions

5.3.3 The applicant requested the following hours of use on the application form for BR/73/16/PL:

Mondays to Fridays: 11:00 to 00:00

Saturdays:	10:00 to 01:00
Sundays & Bank Hols:	10:00 to 00:00

5.3.4 An email from the Environmental Health Dept. on 04 August 2016 did not raise any concerns with the hours of use but instead sought to attach conditions restricting delivery times and the use of the outside seating areas. No justification for these conditions was provided. In the absence of any objection or shorter hours being requested by the Environmental Health Dept, the planning officer simply obliged the applicant's request and attached the conditions requested in the planning application form. That was in 2016, before the change of use of the premises even took place, before the premises licence was issued, and is now 7 years ago.

5.3.5 Having regards to the circumstances under which the application site has become subject to the existing hours of use under BR/73/16/PL it is clear and evident that, unlike the process that was gone through in the issue of the premises licence, there was little consultation undertaken and no objective assessment was made in the planning application as to whether the conditioned hours were unnecessarily limiting. It is clear that through the subsequent and more detailed assessment as part of the premises licence that the hours of use on BR/73/16/PL are unnecessarily and unreasonably limiting, and that the hours of use decided on the premises licence should be preferred. We therefore give little material weight to the legitimacy of the hours of use listed under condition 3.

Conclusion

5.3.6 In conclusion, the evidence demonstrates that the premises licence is to be preferred and give more weight on account of its more contemporaneous nature of assessment, as well as because of the greater involvement of the responsible authorities in assessing the terms of issuing the premises licence. It is also clear that were the hours of use on the premises licence too long, and had this caused a negative environmental or social problems, then there would have been a review of the licence which would have led to tighter restrictions. The absence of tighter restrictions (more akin to the planning permission) being imposed is symptomatic of the fact that the premises can operate at these hours without having any adverse impacts. Consequently, condition 3 should be varied to reflect the proposed hours of use, which are more inline with those already agreed in the premises licence.

5.4 *Condition 4 (Outside Seating Areas)*

5.4.1 The outside seating area is within a recessed area on the front of the building. Only one side (the eastern side) of the front elevation is open with the western side having the ability to be enclosed by bi-fold doors along the back edge of the pavement. Effectively, the open eastern side of the building is only used for those wishing to smoke outside without leaving the premises. The effect of closing the outside area before the premises closes in accordance with the times listed under condition 3 is therefore non-sensical. The closure of the outside area will merely push those wishing to smoke or stand-outside for any reason to temporarily leave the premises and smoke in the street. There being no other external area on the site.

5.4.2 The condition emanated from a request made by the Environmental Health Dept on their consultation response under the 2016 permission. There is no such restriction on the premises licence and so there is a clear disparity in this respect, and neither was there any substantive case made by Environmental Health as to why this condition was required. It was certainly not considered that by closing the recessed outside area before the premises closes, all this would do is force those wishing to stand outside to leave the premises (e.g. to smoke). The condition serves no necessary purpose and should therefore be removed from the permission.