Recommendation Report for Planning Permission

REF NO: BR/41/23/PL

LOCATION: Rocks Bar & Restaurant
41-43 High Street
Bognor Regis
PO21 1RX

PROPOSAL: Variation of conditions 3 and 4 following the grant of BR/73/16/PL relating to opening hours and hours of use of outside seating area.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	BR/73/16/PL approved the change of use of existing Class A3 restaurant & cafe to Class A4 drinking establishment. (Class A was revoked from 1 September 2020. Class A 1/2/3 were effectively replaced with Use Class E(a,b,c). A4/5 uses were not covered by Use Class E and became defined as 'Sui Generis'). This proposal seeks to vary condition 3 (specifying the opening hours) to allow longer opening hours into the evenings, beyond those granted by BR/73/16/PL and removal of condition 4 (restricting the opening hours of outside seating area).
BOUNDARY TREATMENT	None.
SITE CHARACTERISTICS	One and a half storey mid terraced commercial property. Rendered to the rear elevation. Corrugated cladding with 3 mirror windows on the top and contemporary shop front beneath with sign on timber cladding. The building has a predominantly flat roof, but the central part is pitched. There is no allocated private parking.
CHARACTER OF LOCALITY	Predominantly commercial area with some residential flats above commercial properties or on streets behind. On a main road within the primary shopping area of Bognor Regis town centre. Adjacent properties consist of a HSBC Bank with offices above on the western side and a Bargain store with a flat above to the eastern side. There is a large, flatted building (Mountbatten Court) on the other side of Belmont Street to the rear).

Conditions 3 and 4 imposed to the planning application BR/73/16/PL restrict opening hours for internal spaces (3) and the outside seating area (4).

REPRESENTATIONS

Bognor Regis Town Council: No objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ENVIRONMENTL HEALTH: Object proposed extended opening hours approved by condition 3 and removal of condition 4 (BR/73/16/PL) due to the history of noise complaints.

WSCC HIGHWAYS: Proposal would not have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network,

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designation applicable to site:

Within Built Up Area Boundary;
Class B Road; and
No Public Sewer.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
RETDM1	RET DM1 Retail development
SDSP2	SD SP2 Built-up Area Boundary

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

There are no relevant policies in the Bognor Regis Neighbourhood Development Plan to the determination of this application.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

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

"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."

The proposal does not comply with relevant Development Plan policies in that the increasing the opening hours would adversely affect the residential amenities of adjoining properties. The noise would be at times when a noise free environment would be experienced and when it would unduly disturb the sleep of the occupiers of neighbouring properties.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that:

(2) in dealing with an application for planning permission the authority shall have regard to -
(a) the provisions of the development plan, so far as material to the application,
(aza) a post examination draft neighbourhood development plan, so far as material to the application,
(b) any local finance considerations, so far as material to the application, and
(c) any other material considerations.

OTHER MATERIAL CONSIDERATIONS

Other material considerations relating to this application include:

National Planning Policy Framework 2021; and
Potential benefits to the local economy arising from supporting an existing business and the night-time economy in Bognor Regis.

CONCLUSIONS

PRINCIPLE:

The principle of development was approved by BR/73/16/PL - this application seeks amendments to extend the opening hours of drinking establishment (sui generis) through a variation of condition 3, and the removal of condition 4, which currently restricts the hours the outside seating area is permitted to be used.

RESIDENTIAL AMENITY

Arun Local Plan policy D DM1 indicates permission will only be granted for schemes displaying high quality design and layout and which takes into account impact on adjoining occupiers, land, use or property by avoiding significant loss of sunlight, privacy and outlook and unacceptable noise and disturbance. The Council requires in policy QE SP1 that all development contributes positively to the quality of the environment and ensure that development does not have a significantly negative impact upon residential amenity.

Condition 3, subject to this application, allows the retail uses as specified in the planning application (BR/73/16/PL) to be open to the public between the hours of 10.00 - 23.00 Monday to Wednesday, 10:00 - midnight on Thursday, Friday & Sunday and 10.00 - 01:00 on Saturdays.

Condition 4 allows the outside seating area to be open between 10.00 and 22.00 hours, but between

21.00 and 22.00 the outside seating area shall only be used for those who are seated for a meal or who are smoking. There shall be no drinks in the outside seating area after 22:00.

This application seeks hours of operation of 09:00 - 00:00 Monday, Tuesday, Wednesday and Sunday, 09:00 - 01:00 Thursday and 09:00 - 02:00 Friday & Saturday. The applicant in their Planning Statement has pointed out the difference between opening hours restricted by condition 4 (BR/73/16/PL) and those permitted under the premises licence (table 5.2.3), which are: Monday, Tuesday and Wednesday 08:00 - 11:30; Thursday, Friday and Saturday 08:00 - 01:30; Sunday 08:00 - midnight. This is noted, but the planning regulations and those governing licencing are entirely separate and assessed under different criteria, so this is not an unusual situation.

The EH Officer has noted that there is a discrepancy between the opening hours stated on BR/73/16/PL and those stated by the applicant. According to their statement the opening hours allowed by BR/73/16/PL are from 9am daily (table in 5.2.3 of planning statement), whilst the BR/73/16/PL details opening hours from 10am daily. Notwithstanding this, EH do not have any objection to the opening hours to be 9am daily.

There has been a history of noise complaints from this premises, the last noise complaints having been received May 2022 detailing loud music late at night, including sound transfer entering the domestic premises, noise from customers leaving the premises, shouting, and the occasional fight. There has also been a history of licensing complaints against the premises. EH does not agree with the suggested changes to Condition 3 given the history of noise complaints and consider that extending the hours as proposed would create further noise and disturbance.

Regarding condition 4, given the above-mentioned history of noise complaints, Environmental Health is not satisfied with the proposed removal of this condition.

The site is within the primary shopping area of Bognor Regis. This is a town centre location and, as such, potential uses such as this bar can be found in this location, there is a residential flat above an adjacent premises and there are residential properties to the south of the premises (Mountbatten Court) which is comprised of flats. There are also some domestic premises located above commercial premises in the High Street. To protect the amenity of nearby residential occupiers, conditions 3 and 4 were imposed to BR/73/16/PL.

Given the position and scale of the drinking establishment and the history of licensing complaints against the premises, the hours of operation proposed would have unacceptable detrimental impacts upon residential amenities of the locality. The noise would be audible at times when background levels are at their lowest and would affect the acoustic character of the area and the potential noise would be at times when a noise free environment would be experienced, could reasonably be expected, and when it could unduly disturb the sleep of the occupiers of neighbouring properties. Therefore, conditions to limit the opening hours of the premises are reasonable and necessary (conditions 3 and 4) in the interest of preventing a harmful effect on the living conditions of occupiers of neighbouring properties.

The request currently being made to open until 2:00 am on a Friday and Saturday and until midnight Monday, Tuesday, Wednesday & Sunday and until 1:00 am on Thursdays would have an unacceptable impact on the residential amenities of adjoining properties. Noise from traffic and customers would be likely to be generated into the night during the increased opening times when residents above and opposite the premises can reasonably expect peace and quiet. Residents would have no respite from late night opening.

The proposal would thereby fail to accord with policies D DM1, QE SP1 of the Arun Local Plan and relevant paragraphs of the NPPF. The applicant states that the extended hours proposed would allow

them to maximise their business opportunities in the current climate and would align more closely with their premises licence. Whilst the potential economic benefits arising from the proposals have been weighed into the planning balance as a material consideration, this does not outweigh the harm that would result to residential amenity and does not provide adequate justification to allow the increased opening times and removal of time restrictions over the use of the outside seating area. There is no planning reason why planning conditions must be consistent with opening hours allowable under a premises licence.

The application is therefore recommended for refusal for the following reasons.

HUMAN RIGHTS ACT

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (Right to respect private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

REFUSE

1 The Local Planning Authority is not satisfied that amending the permission by increasing the hours of operation allowable under condition 3, and removing condition 4 restricting opening hours of the outside seating area, could be undertaken without adversely affecting the residential amenities of adjoining and nearby noise-sensitive properties by reason of the general level and nature of activity and the noise and disturbance generated outside of normal retail hours. The proposal thereby conflicts with policies D DM1 and QE SP1 of the Arun District Local Plan.

2 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local

Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.