

**Recommendation Report for Application under Section 73 for the Removal or Variation of Conditions
Under a Previously Approved Permission**

REF NO: BR/84/26/S73

LOCATION: 48 Aldwick Rd
Bognor Regis
PO21 2PN

PROPOSAL: Variation of condition 3 following the grant of BR/42/21/PL for amended hours of operation.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above.
SITE CHARACTERISTICS	The site forms a terraced property within Aldwick Shopping Parade, with a commercial unit to the ground floor with residential units above.
CHARACTER OF LOCALITY	The area is mixed in nature with both commercial and residential uses within the vicinity.

RELEVANT SITE HISTORY

BR/42/21/PL	Change of use from betting shop (Class Ea) to a hot food takeaway (Sui Generis) including installation of extraction. This site is in CIL Zone 4 (Zero Rated) as other development.	ApproveConditionally 30-04-21
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BR/42/21/PL - This application granted planning permission for the change of use of the ground-floor betting shop to a hot-food takeaway. It was restricted to the hours of 11am - 11pm Monday to Sunday, including Bank holidays. The current application seeks to extend these operating hours.

REPRESENTATIONS

Bognor Regis Town Council - Objection:

- Residential properties located directly above and opposite the site.
- Concerned that the extended hours would result in increased noise and disturbance during late evening and early morning periods when background noise levels are significantly lower.
- Note the objection from Environmental Health (EH), which raises serious concerns regarding the impact of the proposed hours on neighbouring residential amenity.
- EH confirms noise would stand out in these hours and that noise complaints have previously been received related to this premises.
- Consider that the proposal would result in an unacceptable impact on the living conditions of nearby residents.
- The proposal is contrary to Policy D SP1 of the Arun Local Plan and Paragraph 135 of the NPPF.

No representations from nearby occupiers.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

Environmental Health - Objection:

- Residential premises are above and opposite the site.
- The extended hours would result in additional noise generated during periods with lower background noise levels.
- Noise complaints have already been received in relation to this premises.
- No evidence has been submitted to suggest noise impacts would be acceptable.
- The only justification given is that the business is struggling and needs to open longer.
- Recommended refusal at this time.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Built-up Area Boundary.

Risk of Surface Water Flooding in the future when accounting for Climate Change (2061-2125).

Potential Risk of Groundwater Flooding ($\geq 25\%$ $< 50\%$).

Future Flood Zones when accounting for Climate Change (2070-2125).

Locally Listed Buildings or Structures of Character.

Pagham Harbour Zone B.

Article 4 Direction.

2km Buffer for Site of Special Scientific Interest (Bognor Reef).

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

DSP1	D SP1 Design
DDM1	D DM1 Aspects of form and design quality
QESP1	QE SP1 Quality of the Environment
QEDM1	QE DM1 Noise Pollution
EMPDM1	EMP DM1 Employment Land: Development Management

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 from the Bognor Regis Neighbourhood Development Plan.

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 complies with relevant Development Plan policies in that it would likely protect and enhance the existing employment site, however, it conflicts with relevant Development Plan policies in that it would unacceptably prejudice the character of the area and the residential amenity of nearby occupiers.

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

There are no other material considerations to be weighed in the balance with the Development Plan.

BIODIVERSITY NET GAIN

This application is not liable for Biodiversity Net Gain (BNG) as a Section 73 application which applies to a permission which was not liable for BNG, and under the de-minimis exemption.

CONCLUSIONS

SECTION 73

As this is a Section 73 application, any new permission would sit alongside the original permission. In this case, this S73 would have sat alongside BR/42/21/PL. The NPPG states that for the purpose of clarity, conditions imposed on the original/earlier permissions that continue to have an effect should be re-imposed (Paragraph: 040 Reference ID: 21a-040-20190723). In accordance with government advice, had this application been approved, conditions from BR/24/21/PL would have been re-imposed on this permission where necessary. That relating to hours of operation would have been amended.

CHARACTER

The unit lies amongst a row of ground-floor retail/commercial units within Aldwick Road, with another row opposite. Above these retail/commercial units are many residential properties.

The host unit has two residential flats above. There are 1-3 flats at first floor or above within every unit

along the terrace in which the host unit lies, including two above each of the immediately attached neighbouring units. Furthermore, there are residential dwellings within the upper floors of many of the buildings/terraces on the opposite side of Aldwick Road.

While the area has a strong retail character at ground-floor level, the site is not a designated retail area in policy terms. Additionally, the majority of retail/commercial units within the area do not open beyond typical working hours (17:00). There are some that close later in the evening, and it is known that Tesco Express closes at 23:00. However, there are no other businesses within the area known to close later than 23:00, and certainly not until 3:00.

The operating hours proposed are out of character with the area and would result in activity and disturbance where the street would otherwise remain absent of commercial activity. The proposal would, therefore, not preserve the character of the area in conflict with ALP policies D SP1 and D DM1.

NOISE AND RESIDENTIAL AMENITY

The proposal seeks to vary and extend the approved operating hours of the site by going from 11:00-23:00 Monday to Sunday, including Bank Holidays, as approved, to 13:00-01:00 Sundays to Thursdays, and 13:00-03:00 on Fridays and Saturdays.

The proposal would result in the operation of the site a further two hours through the night and into the early morning from Sundays to Thursdays, and a further four hours through the night and into the early morning on Fridays and Saturdays.

EH object, noting that noise complaints have been received with respect to the operations of this site and that the site lies underneath and adjacent to many residential properties. They advise that there are no known late night uses within the area, meaning the extended operations would generate noise that stands out against the quieter background noise levels expected as the night goes on.

It is clear the existing operations of the site raise noise concerns with neighbouring residences. Extending the hours of operation later into the night would be out of character for the area and likely to incur additional disturbance that would have an unacceptably adverse impact on neighbouring residential amenity. No evidence has been provided that would suggest otherwise and the proposal is in conflict with ALP policies D DM1, QE DM1, and QE SP1.

EMPLOYMENT

The application form indicates that the existing business is struggling financially and that extended operating hours are required to help ensure the business can continue to operate. No evidence of the current financial difficulties, nor that extending the hours of operation later into the night would reap a significant monetary gain that would support the existing business has been provided.

The majority of uses within the area close after standard operating hours. There are no known businesses that operate beyond 23:00, and no evidence to suggest that there is a significant demand during these extended hours that would provide certainty that the hours of operation are essential to the survival of the business.

That said, taking the applicant's claims at face value, the economic benefit of approving this proposal would be afforded moderate weight. However, given the uncertainty as to how critical these extended hours would be to the survival of the business or how dire the financial situation of the business, the economic benefit of this proposal is afforded limited weight.

In any event, had evidence of late-night demand and the financial struggles been submitted, it remains likely that the harms relating to character and residential amenity would still have outweighed the

benefits.

On the basis the application claims that the extended hours are necessary to the survival of the business, the proposal is broadly supported by ALP policy EMP DM1 in that it states the Council will seek to protect and enhance existing employment sites and premises.

SUMMARY

The proposal would result in unacceptable adverse impacts on the character of the area and on the residential amenity of nearby residential premises and as such, it is recommended for refusal.

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 operating hours proposed are out of character with the area and would result in activity, noise, and disturbance when the street would otherwise remain absent of commercial activity. The proposal would prejudice, and not preserve, the character of the area in conflict with Arun Local Plan policy D SP1.
- 2 The extended hours of operation proposed would result in additional noise and disturbance during quieter hours that would have an unacceptably adverse impact on neighbouring residential amenity, and no evidence has been provided that would suggest otherwise, which is in conflict with Arun Local Plan policies QE DM1 and QE SP1.
- 3 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). 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.