

PLANNING APPLICATION REPORT**REF NO:** EP/40/09/**LOCATION:** 27 Sea Road
East Preston**PROPOSAL:** Continuance of use without compliance with condition no.2 imposed under planning reference no. EP/123/08 relating to opening hours**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	As above.
SITE AREA	Approximately 151 square metres.
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	Front boundary is directly onto public footway, rear and side boundaries fences and boundary walls.
SITE CHARACTERISTICS	Mid terrace two storey building with single storey flat roof extension on rear, flat at first floor level with front balcony. The walls have red brickwork with a flat roof. Commercial premises at ground floor (currently vacant but formerly a fancy dress shop). Shopfront with grey tile surround, blue front door.
CHARACTER OF LOCALITY	Parade of shops with retail and commercial with flats above. Butchers shop and Beauty Salon to north and south, parking to front of site. Residential properties in the immediate vicinity comprise terraced and detached two storey.

RELEVANT SITE HISTORY

EP/63/98/	Installation of new aluminium part shop front.	Approve Cond 03-08-1998
EP/88/08/	Change of use from Fancy Dress shop (A1) to Indian Tandoori Restaurant (A3)	Refused 17-07-2008
EP/123/08/	Change of use from shop (A1) to Indian Tandoori Restaurant (A3) - re-submission following EP/88/08/	Approve Cond 05-11-2008

EP/98/61	Extension	Approve 04-10-1961
EP/80/68	Extension to form rest room and managers room	Approve 08-08-1968

REPRESENTATIONS

Representations received:

East Preston Parish Council

No objection.

2 Letters of Objection

Site notice removed from site and not displayed for 21 days.

Object to the new application EP/40/09 for all the previously recorded issues under EP/123/08 which are included in this letter for consideration. The new issue of revised opening times are in disregard to previously approved times. Any increase in opening times will lead to more noise, traffic congestion and air pollution for surrounding premises and residents late at night. If any alteration of times should be considered it should be a reduction in opening times as staff will be in before opening for preparation and remain after closing for clearing up. This effectively increases the activities well outside of the published times and will cause even more disruption during the night which is unsociable to nearby residents.

Comments on Representations received:

Comments noted.

The orange notice has been displayed in accordance with the Council's current publicity procedures and there is no requirement to replace a damaged or removed notice.

The application is to consider the hours of opening and all previous comments regarding the previous application for the change of use under EP/123/08 cannot be considered as part of this application. Comments regarding the extended times of opening are covered in the conclusions section of this report.

CONSULTATIONS

Environmental Health

Consultations responses received:

No objections from Environmental Health. The proposed hours match those recently granted under the Premises Licence.

Comments on Consultation responses:

None.

POLICY CONTEXT

Within Built Up Area Boundary
Class C Road

DEVELOPMENT PLAN POLICIES

West Sussex Structure Plan:	LOC1	Locational Strategy
	CH1	Character

Arun District Local Plan:	DEV1	High Quality Development
	DEV5	Parking Provision
	GEN2	Built-up Area Boundary
	GEN7	The Form of New Development
	GEN12	Parking in New Development
	GEN32	Noise Pollution
	DEV26	Criteria for Retail Development
	DEV30	Local and Village Centres

PLANNING POLICY GUIDANCE

PPS1	Delivering Sustainable Development
PPG13	Transport
PPS23	Planning and Pollution Control
PPG4	Industrial and Commercial Development
PPG24	Planning and Noise

POLICY COMMENTARY

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to visual and residential amenity.

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 is considered to comply with relevant Development Plan policies in that it would have no materially adverse effect on the visual amenities of the locality or the residential amenities of the adjoining properties, nor would it have an adverse impact upon the established character of the surrounding area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

The vacant shop which was formerly a fancy dress shop is sited within a parade of shops with residential accommodation above. An application for change of use to A3 restaurant has recently been approved under EP/123/08 on the 5th November, 2008.

Due to an oversight the hours of opening were incorrectly typed under Condition 2 on the decision

notice EP/123/08. This application seeks to rectify this situation and the hours of opening should have read Friday and Saturday 11.00-23.30 not 23.00 as specified.

It is not considered that the half hour on the Friday and Saturday would result in detrimental harm to the residential amenities of neighbouring properties which was the most crucial aspect in the consideration of the original application EP/123/08.

Environmental Health were aware of the opening hours under the previous application EP/123/08 and raised no objections to the hours. They have been consulted on this application and continue to raise no objection indeed the hours match those already granted under the Premises Licence.

It is therefore recommended that the application be approved, subject to the following conditions.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The premises shall not be open for trade or business except between the hours of:

Monday to Thursday	1100 - 2300
Friday and Saturday	1100 - 2330
Sunday and Bank Holidays	1700 - 2300

Reason: To safeguard the amenities of neighbouring properties in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

- 3 No deliveries shall be taken at the site outside of the hours of 0700 to 1000 nor at any time on Sundays, Bank or Public Holidays.

Reason: In the interests of the residential amenities of neighbouring properties in accordance with Policy DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

- 4 Before the use is first commenced, provision shall be made at the premises for the collection of customer waste in accordance with details to be submitted to and approved by the Local Planning Authority and such provision shall thereafter be maintained to the satisfaction of the Local Planning Authority whilst the use is taking place.

Reason: In the interests of the amenities of the locality in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

- 5 The change of use hereby permitted shall not begin until full details of a scheme for sound insulation between the use and the residential flat above has been submitted to

and approved by the Local Planning Authority. The insulation shall be installed before the premises are occupied and shall be maintained in an effective manner thereafter.

Reason: To safeguard the amenities of the occupiers of the flats above in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7, GEN32 of the Arun District Local Plan.

6 **INFORMATIVE:** Condition 5 relates primarily to the treatment of the party ceiling to ensure that noise affecting residents upstairs is not excessive. Sound insulation should at least meet the standards for airborne and impact sound insulation for material change of use specified in Table 0.1a of approved Document E of the Building Regulations. The scheme should include proposals for performance testing to show that the insulation standard is met.

7 **INFORMATIVE:** The rating level of the noise emitted from the ventilation system to be installed shall be maintained and operated in accordance with the manufacturer's specification.

8 **INFORMATIVE:** The applicant is advised of the following comments from Environmental Health:-

"The dimensions of the food rooms for food preparation and storage are minimal and may present operational and trading restraints, the business operator will have to consider external works and modifications to extend these areas if food safety concerns are identified".

9 **INFORMATIVE:**
Summary of Reasons for Grant Article 22(1) General Development Procedure Order 1995

SUMMARY

This planning permission is granted because it complies with the policies listed below in that the development would not cause any material adverse effect on visual or residential amenity on the surrounding area and its character and there are no material considerations to indicate otherwise.

RELEVANT POLICIES

STRUCTURE PLAN: LOC1, CH1, DEV1, DEV5

LOCAL PLAN: GEN2, GEN7, GEN12, GEN32, DEV26, DEV30

NATIONAL POLICIES: PPS1, PPG13, PPS23, PPG4, PPG24

This is only a summary of reasons for granting to comply with Article 22 and full reasons appear in the Officer report.