

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

**REF NO:** FG/60/26/S73

**LOCATION:** 58 Ferring Street  
Ferring  
BN12 5JP

**PROPOSAL:** Variation of condition 5 imposed under FG/19/21/PL relating to hours of operation.

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| <b>SITE AND SURROUNDINGS</b> |
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| DESCRIPTION OF APPLICATION | This application seeks to vary condition 5 imposed under FG/19/21/PL, which sought to control hours of operation. |
| SITE CHARACTERISTICS       | Application relates to the first floor of a unit in Class E use as a restaurant.                                  |
| CHARACTER OF LOCALITY      | The site is within a shopping parade with other commercial uses at ground floor level and residential use above.  |

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| <b>RELEVANT SITE HISTORY</b> |
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| FG/124/24/PL | Roof extensions to enclose walkway and the replacement external staircase. This application is in CIL zone 4 (zero rated) as other development. | ApproveConditionally<br>11-11-24 |
| FG/48/26/DOC | Approval of details reserved by condition under FG/19/21/PL relating to condition 3 - Noise & Vibration.                                        | DOC Approved<br>24-06-26         |
| FG/14/26/DOC | Approval of details reserved by condition under FG/19/21/PL relating to condition 3- Plant details, Noise and Vibration Control.                | DOC Refused<br>16-04-26          |
| FG/19/21/PL  | Change of use of flat above restaurant to a bar. This site is in CIL Zone 4 (Zero Rated) as other development.                                  | ApproveConditionally<br>21-07-21 |
| FG/156/18/PL | Outdoor seating area on pavement consisting of 2 No. tables & 4 No. chairs to be stored when not in use.                                        | Refused<br>16-11-18              |

|              |                                                                                                                                                                            |                                  |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| FG/115/18/PL | Continuance of use without compliance with condition 3 imposed under FG/11/18/PL relating to Noise Managment Plan.                                                         | ApproveConditionally<br>08-11-18 |
| FG/11/18/PL  | Change of use of front room of restaurant from Class A3 (A3 Food & Drink) to Class A3/Class A4 (A3 Food & Drink & A4 Drinking Establishment) & altered hours of operation. | ApproveConditionally<br>27-04-18 |

Planning history noted.

## REPRESENTATIONS

Ferring Parish Council - Objection.

2 No. objections were received from nearby occupiers raising concerns that:

- Residents experience disturbance as a result of existing opening hours, which has been reported to the Council.
- Disturbance extends beyond existing opening hours, and this would be worsened.
- Existing sound insulation is ineffective.

## COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted. The noise impacts of the proposal are addressed in the conclusions.

## CONSULTATIONS

## CONSULTATION RESPONSES RECEIVED:

ENVIRONMENTAL HEALTH - No objection subject to conditions

- Requested condition requiring further details of a scheme to protect neighbouring occupiers from noise.
- If the condition is not attached, EH would likely object to the application.

## COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

## POLICY CONTEXT

Designation applicable to site:

Built Up Area Boundary

CIL Zone 4

## DEVELOPMENT PLAN POLICIES

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

QESP1 QE SP1 Quality of the Environment

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.

**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 the proposal would not result in significantly harmful impacts on neighbouring 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.

**CONCLUSIONS****PRINCIPLE**

FG/19/21/PL was granted on 21 July 2021 and gave consent for the change of use of the first floor flat above the existing commercial unit to a bar.

Condition 5 imposed under FG/19/21/PL states that:

"The use hereby permitted shall not be operated on Sundays or Public Holidays or at any time otherwise than between the hours of 14.00 - 22.00 on Monday - Friday and 17.00 - 22.00 on Saturday."

The current application seeks to amend the condition to state:

"The use hereby permitted shall not be operated at any time other than between the following hours:

- Monday to Saturday: 10:00 - 23:00

· Sundays and Public Holidays: 12:00 - 22:00"

## SUMMARY

The application seeks to significantly extend the operating hours of the first floor space Monday to Saturday, and to allow operation on Sundays and Public Holidays. The original condition was applied to safeguard the amenity of neighbouring properties, and the application has the potential to impact neighbouring occupiers by way of increased noise and disturbance.

Arun Local Plan (ALP) policy QE SP1 requires development not to have a significantly negative impact on residential amenity, and NPPF policy P3(2)(b) states that development should not give rise to, or contribute to, an unacceptable level of noise pollution. These impacts should be avoided where possible, or else mitigated to an acceptable degree.

Environmental Health had no objection subject to a condition requiring a scheme for the control of noise prior to the operation of the business during the extended operating hours. This has been agreed with the applicant and attached. This would provide adequate means of controlling the impacts on neighbouring occupiers in terms of noise and disturbance.

Subject to the condition, the application complies with ALP policy QE SP1 and the NPPF.

## OTHER MATTERS

As this is a Section 73 application any new permission sits alongside the original permission, which remains intact and unamended. Government guidance states that for the purpose of clarity, the conditions imposed on earlier permissions that continue to have effect should be reinstated.

### 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) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval 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

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.

### CIL DETAILS

This application is not CIL liable.

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| <b>RECOMMENDATION</b> |
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**APPROVE CONDITIONALLY**

1 The development shall be maintained in accordance with the following approved plans:

- Proposed First Floor Plan and Party Wall Detail dwg.no. 02-01 dated 02.02.2021

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with Arun Local Plan policies D DM1 and QE SP1.

2 The extended hours hereby approved shall not be implemented until a scheme for the control of noise arising from the use of the first-floor hospitality space during the extended hours has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include measures, where necessary, to control noise arising from the use of the hospitality space and associated customer and staff activity during the extended hours, including any associated access, egress and external activity. Any measures identified in the approved scheme shall be implemented prior to the first use of the extended hours to which they relate. The measures shall thereafter be operated in accordance with the approved scheme and maintained in good working order, unless otherwise agreed in writing by the Local Planning Authority. The scheme shall not require reassessment of the existing operation, plant or equipment in relation to the existing restaurant operating hours, except where consideration of such existing operation, plant or equipment is necessary to establish the additional noise impact arising from the extended hours.

Reason: To protect the amenity of local residents in accordance with Arun Local Plan policy QE DM1.

3 The use hereby permitted shall not be operated at any time other than between the hours of 10.00 - 23.00 on Monday - Friday, 12.00 - 22.00 on Saturday and 12:00 - 22.00 on Sundays and Public Holidays.

Reason: To safeguard the amenities of the neighbouring properties in accordance with Arun Local Plan policy QE SP1.

4 Aside from that which was approved under FG/48/26/DOC, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority.

Reason: To protect the amenity of local residents in accordance with Arun Local Plan policy QE SP1.

5 The proposals shown on the approved drawings for the insulation of noise for the first floor shall be permanently maintained unless otherwise approved under Condition 2 or through an application to remove the condition.

Reason: To safeguard the environment and the amenity of the adjoining properties in accordance with Arun Local Plan policy QE DM1.

6 **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 assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set

out within the NPPF.