

PLANNING APPLICATION REPORT

REF NO: FG/155/22/PL

LOCATION: 7 Sea Lane  
Ferring  
BN12 5JP

PROPOSAL: Variation of condition 4 following FG/12/16/PL to vary hours of operation to Monday-Sunday 12:00-22:30, Christmas Eve 102:00-23:00, New Year's Eve 12:00-00:30; late night refreshment on Christmas Eve 23:00-00:30, New Year's Eve 23:00-01:00; performance of live music on New Year's Eve 23:00-00:30 and performance of recorded music on New Year's Eve 23:00-00:30.

<b>SITE AND SURROUNDINGS</b>
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DESCRIPTION OF APPLICATION	<p>This application seeks to permanently vary condition 4 of FG/12/16/PL as it relates to the retail opening hours.</p> <p>Application FG/12/16/PL was in connection with - 'Rationalisation of existing buildings to provide amended B1 (office &amp; light industrial uses), B8 (Storage &amp; Distribution) A1 retail &amp; Cafe. Insertion of mezzanine level of office accommodation within rear building for Kingsley Roofing, together with revised opening hours and installation of parking barrier.'</p> <p>Condition 4 of that permission states -</p> <p>The retail uses as specified in the planning application shall be open to the public between the hours of 08.00 - 18.00 Monday to Saturday and 09.00 - 16.00 Sundays and Bank Holidays.</p> <p>Reason: In the interests of amenity in accordance with GEN7 of the Arun District Local Plan.</p> <p>The Applicant now wishes to permanently extend the opening hours into the evening so that they may lawfully operate on special holiday occasions. The opening hours being applied for are (including the previously approved hours) -</p> <p>Monday-Saturday 08:00-22:30; Sunday 09:00-22:30;</p> <p>Christmas Eve 09:00-00:00; New Year's Eve 09:00-01:00.</p> <p>With the performance of live music on New Year's Eve 23:00-00:30 and performance of recorded music on New Year's Eve</p>
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23:00-00:30.

**SITE CHARACTERISTICS**

The site sits in a small parade of shops with flats at first-floor level.

**CHARACTER OF LOCALITY**

Residential/ retail mix.

**RELEVANT SITE HISTORY**

FG/12/16/PL	Rationalisation of existing buildings to provide amended B1 (office & light industrial uses), B8 (Storage & Distribution) A1 retail & Cafe. Insertion of mezzanine level of office accommodation within rear building for Kingsley Roofing, together with revised opening hours and installation of parking barrier.	ApproveConditionally 10-08-16
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**REPRESENTATIONS**

Ferring Parish Council - Objection.

This proposal would be damaging to the existing businesses which operate without undue disturbance to residents. The changes requested represent a considerable step change not only in hours but in the impact of the noise and activity likely to be generated by the recorded and live music intended under this application, for which no acoustic assessment has been provided. Whilst Ferring Parish Council wish to support suitable business operations within the parish, we must object to this application which is neither commensurate with the location or the other licenced premises nearby and unsuited to such a village centre setting.

Ferring Conservation Group - Objection.

- Impact to nearby residents from music, noise, lighting and smells.
- Impact to limited on street parking.
- No details in conjunction with extraction and facilities have been provided for restaurant use.
- External tables not permitted under original application.
- Suggest that an application for change of use is submitted.

Further comments from Ferring Conservation Group (10/11/22) -

- Will food or drinks be served in the evening.
- Different sort of customer leading to increased traffic and noise.

10 letters in support of the application.

- Good for vitality of village centre.
- Good for interest groups to meet and socialise.
- Since closure of local pub, a new venue to meet and socialise will be of great benefit to the local community.
- Most local will walk as they did to the pub.
- Too much house building has had a negative effect on local facilities, this will improve the offerings to the local community.
- Positive addition.

**COMMENTS ON REPRESENTATIONS RECEIVED:**

Noted and any planning related issues raised will be dealt with in Conclusions section.

**CONSULTATIONS**

**CONSULTATION RESPONSES RECEIVED:**

Environmental Health (EH):

When commenting on FG/12/16/PL EH objected to the retail use operating beyond 18:00 Mondays to Saturdays and beyond 16.00 on Sundays and Bank Holidays. This was supported by the fact that this use is in close proximity to residential units.

If approval is recommended EH request a condition is included to require an acoustic assessment to be undertaken, prior to use commencing, determining any impact arising from the development and what mitigation measures could be implemented should those levels be determined unacceptable. External and internal levels are required.

Without the requested acoustic assessment Environmental Health would recommend refusal on grounds of unacceptable noise.

**COMMENTS ON CONSULTATION RESPONSES:**

Comments noted. The condition proposed by EH is seen to be necessary to prevent the proposal causing unacceptable noise and disturbance.

**POLICY CONTEXT**

Designation applicable to site:  
Built Up Area Boundary

**DEVELOPMENT PLAN POLICIES**

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

DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
TSP1	T SP1 Transport and Development

[Ferring Neighbourhood Plan 2014 Policy 1A](#) A Spatial Plan for the Parish

**PLANNING POLICY GUIDANCE:**

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

**SUPPLEMENTARY POLICY GUIDANCE:**

SPD13	Arun District Design Guide (SPD) January 2021
SPD11	Arun Parking Standards 2020

**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.

The relevant policy in Ferring Neighbourhood Plan has been considered.

#### **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 not result in unacceptable harm to residential or visual amenity. There are no external changes proposed that would affect visual amenity and the potential to unacceptably harm neighbouring residential amenities by way of noise and disturbance can be overcome by a suitably worded condition.

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**

It is considered that there are no other material considerations to be weighed in the balance with the Development Plan.

#### **CONCLUSIONS**

##### **BACKGROUND**

The site enjoys permission for a Class A1 Retail and Cafe as part of approval FG/12/16/PL in 2016. From the 1st of September 2020, this use class became the new use class E. Use Class E (commercial, business and services) combined, of most significance, the pre-existing use classes A1 and A3. The combination of these use classes (A1 food sales primarily for food consumption off the premises, licensed or unlicensed and A3 Cafe/Restaurant, consultation on premises) under the single use class of E has resulted in the cafe being able to operate as either licensed or unlicensed for hot/cold food sales on or off the premises.

The Agent has confirmed that the intention is to run the cafe as it currently exists, serving light snacks and lunches. This does not result in a change of use of the premises, even should the cafe be granted an alcohol license. The extended hours of operation will encourage evening trade to be established, thus maintaining the vitality of the business.

The primary area of concern would be the noise generated from the proposed increase in hours of operation, and to what extent this will impact on the residential amenity enjoyed by neighbouring

residential occupiers.

#### **PRINCIPLE**

This application seeks only to vary the hours of operation, no other amendments are sought to the original planning application FG/12/16/PL. As such the key policies for consideration are D DM1, QE SP1 and QE DM1 and the Arun Local Plan (ALP). Ferring has a made neighbourhood plan (FNP). Policies 1A is of relevance.

#### **VISUAL AMENITY**

Policy D DM1 sets out 13 design aspects of which applications should be assessed against. These include: Character, Appearance, Impact, Innovation, Adaptability, Crime Prevention, Trees, Public realm, Layout, Public Art, Density and Scale.

No alterations are proposed within the application to the external physical aspects of the site. Tables, along with Local Authority picnic benches, are already provided to the front of the site. The visual character of the site will not alter, as the cafe will be retained in the commercial unit, which is set amongst other commercial units.

No negative impact to the visual amenity of the site will occur as a result of altering the hours of operation, as such the proposal accords with Policy D DM1 of the ALP.

#### **RESIDENTIAL AMENITY**

Policy QE SP1 of the ALP requires all development to contribute positively to the quality of the environment and ensures that development does not negatively impact on residential amenity.

Policy QE DM1 requires new noise generating development to seek determination if a noise assessment would be required.

This application seeks to extend the hours of operation and includes the ability for the premise to perform live and recorded music on New Year's Eve. As such the proposed change in hours will generate a level of noise that will impact on the local residents.

Two other establishments with later opening hours can be found in the vicinity of the application site. 58-60 Ferring Street, a restaurant open until 23:00 Monday-Saturday and until 22:00 Sundays and Bank Holidays and the retail unit operated by the Co-Op, which is open until 22:00 every evening. There are also other later opening establishments within the same parade but further to the north, these generally have historically unrestricted hours of opening.

Environmental Health have provided no objection to the proposal only if a condition is imposed to ensure that, before development commences, an acoustic report is provided demonstrating that the level of noise arising from the development does not breach certain prescribed levels so as to make the resultant noise environment acceptable. This is seen as a reasonable requirement to afford protection against excessive noise levels to the residents who may be directly impacted by the development.

It is recommended that the permission be granted for a 12 month period only so as monitor any nuisance caused.

It is noted that from the comments provided by Ferring residents that they see the proposed development a positive addition to the local community.

No harm is identified subject to Environmental Health's required condition, and the proposal will ensure the vitality and longevity of an asset which has value to the community.

Subject to the condition recommended by Environmental Health and its satisfactory discharge before the extended hours are implemented, the proposal will not negatively impact neighbouring residents and the resulting premise will contribute positive to the local community by providing an asset of community value and therefore accords with policies QE SP1 and QE DM1 of the ALP.

As the proposal is located to a premise located within the Built-Up Area Boundary, it accords with Policy 1A of the Ferring Neighbourhood Plan.

#### **PARKING**

Comments have been received relating to the increase in traffic as a result of the extended opening hours. The coffee shop already runs successfully during the day and there is sufficient parking provided (5 spaces) to the front of the existing premise for the exclusive use of the cafe patrons, these meets the requirements of the Arun District Council Parking Standards. No significant increase in traffic movements/parking requirement is expected from an extension of hours. There is good provision of evening (after 6pm) unrestricted on-street parking surrounding the site. As such the proposal accords with Policy T SP1 of the ALP.

#### **SUMMARY**

The proposed development accords with the relevant development policies and as such is recommended for approval subject to the following conditions and informatives.

Further to an amended description, correcting the application number given in the description, this application is still currently undergoing consultation. However, as the reason for re-consultation does not fundamentally impact the description of the development, no additional comments are expected. The final consultation period ends on the 8th of December 2022. Committee is therefore recommended to give the Chairman and Group Head of Planning delegated authority to issue a decision once the consultation period ends.

#### **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**

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**

**APPROVE CONDITIONALLY**

1 The retail uses as specified in the planning application (in connection with 7 Sea Lane) shall be open to the public between the hours of -

Monday-Saturday 08:00-22:30;  
Sunday 09:00-22:30;

Christmas Eve 09:00-00:00;  
New Year's Eve 09:00-01:00.

Reason: In the interests of amenity in accordance with QE DM1 of the Arun Local Plan.

2 The extended hours shall not take effect until an acoustic assessment has been undertaken to determine the impact of noise arising from the development site and the results of the assessment and details of any mitigation measures submitted and approved in writing by the Local Planning Authority.

Noise from commercial premises should be controlled, such that the noise rating level (L<sub>Ar</sub>,Tr) emitted from the development does not exceed the background noise level (L<sub>A90,T</sub>), by more than 3dB. All measurements shall be defined and derived in accordance with BS 4142:2014. The assessment shall also ensure that internal ambient noise levels detailed in section 7.7.2 of BS8233:2014 can be achieved and that noise levels detailed in WHO 'Guidelines for Community Noise, 1999' are also achieved.

The approved measures shall be implemented before the development is brought into use and thereafter be maintained in accordance with the approved details.

Reason: To protect the amenity of local residents in accordance with Policy QE DM1 of the Arun Local Plan 2011 - 2031

3 The extended operating hours hereby permitted shall be discontinued permanently and the operation times reverted to their former extent as per condition 4 of FG/12/16/PL, on or before the expiration of the period ending one year from the date of this decision.

Reasons: To enable the Local Planning Authority to review the special circumstances under which this permission is granted.

4 **INFORMATIVE:** This permission relates to the variation of condition 4 of planning permission FG/12/16/PL only. Condition 4 of FG/12/16/PL is temporarily replaced by condition 1, subject to the approval of condition 2, hereby attached to this permission.

The applicant is reminded that the other planning conditions attached to the original planning permission number FG/12/16/PL remain in force and must be complied with.

**BACKGROUND PAPERS**

[The documents relating to this application can be viewed on the Arun District Council website by going](#)

to <https://www.arun.gov.uk/weekly-lists> and entering the application reference or directly by clicking on [this link](#).



**FG/155/22/PL - Indicative Location Plan (Do not Scale or Copy)**  
**(All plans face north unless otherwise indicated with a north point)**



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