82-84 Montague Street, Worthing, West Sussex, BN11 3HF

Planning Appeal – Final Comments

Prepared by Brown&Co JHWalter on behalf of Slots Trading Ltd

Appeal against the refusal of "Application to vary condition 3 of previously approved AWDM/0371/25 to extend the opening hours to between 07.00 and 23.59 Sunday to Thursday and between 07.00 and 02.00 on Friday and Saturday (Ref: AWDM/1153/25)

15/06/2026

1.0 Introduction

1.1 This statement has been prepared in response to the Council's '*Rebuttal of Appellants grounds of appeal'.*

1.2 The information of the 'Field Test Noise Report' has been included to help facilitate the most appropriate conclusion to this appeal and is considered relevant. With further time incurred operating without issue, the more weight the results will have. If a Field Test Report was conducted prior to opening, it would hold a lower value of weight. This information was not requested during the determination and therefore the applicant saw this as the first opportunity to present the information to help assist the Inspector with the decision-making process. Furthermore, the Environmental Health Officer (EHO) was content with the opening hours proposed, as the hours were advised originally by them themselves and therefore it was not considered that the report at that stage was necessary given the considerations of the EHO.

1.3 During the Committee, there was no substantiative evidence as to why the hours were limited beyond the recommendation of the EHO and the Case Officer. One of the Councillors stated, '*I wish there were planning grounds to go against this, but I don't think there are...so I'm unfortunately thinking we are going to have to vote for this'.*

1.4 The comments from the Committee were predicated on the fact that the members were not in favour of the use, therefore wanted to control opening times in order to restrict the development, however what was disappointing was that this was made in full knowledge of other uses being open at later times when considering the night-time setting. There have been no substantive evidence for how longer openings would lead to adverse amenity impact beyond speculation and opinion.

2.0 Final Comments

2.1 During the original application for the change of use (AWSM/0371/25) the opening hours were extensively discussed and we, with the Case Officer and EHO, came to a mutual conclusion on what was acceptable.

2.2 The EHO had original concerns over the 24-hour opening. However, after much discussion, the verdict of the EHO was that the 2am closing time was a 'fair compromise'. This was considered acceptable by the applicant, and the Case Officer was in agreeance. We then moved forward to Committee content in the negotiations of which we had undertaken.

2.3 We are not aware of any issues or complaints that have derived from the use whilst it has been in operation and Slots Trading Ltd themselves have not seen or heard any issue regarding amenity report to them. Slots Trading Ltd already have a 24-hour licence for the use at 82-84 Montague Street, which was granted by Worthing Council last year.

2.4 The use has been well integrated into the street scene and has been successful in filling the void vacancy on Montague Street

2.5 It was considered disappointing in the decision to limit opening hours at the original Committee without factual data to justify the limitation. Much of the committee referred to 'falling back to the licensing', however the unit already holds a 24-hour licence for the use, as granted by Worthing Council. The Field Test Report does provide this evidence of noise produced by the use and hence its importance in this appeal stage to delineate the amenity concerns that have been asserted by the Council now, despite previously being in agreeance with the proposed opening hours. Within the view of the EHO, the Officer stated "*Montague Street is a pedestrian precinct, there is no traffic and we have seen over the years more and more residential living accommodation is being located above the stops in this area to meet the housing needs of residents. The acoustic reports that have been submitted with the planning applications for these conversions have demonstrated that the background noise levels in this locality fall below 30dB in the early hours of the morning. Therefore, we can see it is a quiet area once the local businesses have closed and their customers have gone home".* The Field Test Report concluded that the use has a 'potential sound leakage to surrounding areas' of 28.2dB (maximum) which is *under* the level referred to in the EHO comments. If the existing 30dB level is considered a 'quiet area', then this proposal has no adverse impact and is completely in line with the level being at a level of 28.2dB maximum being below the existing level.

2.6 We consider the comments of the Council, when quoting the EHO, to be misleading. The comments within the LPA Statement are the following:

"He indicated within his consultation response that 'there is no way of knowing what levels of new customers the premises will attract, nor do we have any way of controlling customer behaviour'."

The actual verbatim comment (and wider context) was the following:

"*I should be noted that our brains continually assess sounds whilst we are asleep and if a sound is deemed a threat then it will cause awakening. Most people will sleep through anonymous sounds such as distant traffic, but conversation, even at a relatively low noise levels will cause awakening as we perceive this as a threat. Unfortunately, there is no practical way of quantifying this through noise measurement, mainly because customers numbers, their location and how they behave will be variable. Therefore the most practicable way pf preventing any adverse impact from the proposed development is to control the opening hours".*

Therefore, considering the LPA comments within their statement, the following is considered important: -

- The EHO was discussing sound as a general consideration and came to be conclusion that limitation of opening hours was the most practicable way of preventing adverse impact. He then suggested the opening hours that the appellant is appealing now. The opening hour restriction was the concluding solution to the issue, as opposed to the inference of the Council in their statement which makes it seem as if the EHO still has issue with the control of customer behaviour
- To reiterate, the use has not seen any problems from an amenity standpoint or had any other issue.
- The paraphrase of the LPA in their statement insinuates that the EHO has indicated there is no way of controlling customer behaviour without the wider context of why noise consideration is important and how it can be controlled. It also fails to note that the noise levels that the EHO have suggested are in line with the Field Test Report produced by the client despite then referencing the 30dB existing noise

level. The Field Test Report is quite clear that the leakage level is below this existing noise level. Therefore, the noise produced cannot be considered as adverse, nevertheless being considered as significant or unacceptable in any way.

- Later than midnight opening times are apparent on Montague Street with convenience store 'Londis' opening from 7am – 12am Sunday – Wednesday and 7am – 1am Thursday – Saturday. This demonstrates that public activity does/can occur during these times without issue or concern and the unit, as proven by the Field Test Report, would be under the noise level as considered 'quiet'. The Londis licence began in May 2013 and its last issue date was 13th May 2026, enabling the above opening hours.

2.7 In reference to the Planning Policy, the Council highlight Policy DM5 which states that that new development should not have an unacceptable impact on the occupiers of adjacent properties, including an unacceptable increase in noise giving rise in significant adverse impact. As with any policy wording, the intention of the lexicon used is imperative in understanding its intention in how the policy is considered. The words within DM5 such as ***unacceptable*** and ***significant*** create a high bar in terms of impact required to be assessed. Not only is it considered that the extension of the opening hours would not create an unacceptable or significant impact, but it is not considered that the extension of opening hours have any material adverse impact upon the neighbouring residents. The Field Test Report clearly demonstrates a maximum potential leakage sound level below the 30 dB quoted by the EHO as a 'quiet area' level and it is far below the local authority guidelines and environmental health regulations which states that the guidelines for noise from neighbours is a level of 45dB or 15dB above the ambient background level. This is an advisory limit between the hours of 7pm and 7am, with a level of 55dB or 20dB above ambient background level the advisory limit between the hours of 7am and 7pm. The Council have used the '30dB' reference in their statement, however this is considered confused, with the appellants' evidence demonstrating that the application can adhere to this. It is therefore suggested that there is no doubt that the application accords with policy here.

2.8 In consideration Policy DM5 and its intentionality of how the policy is to be implemented; it is not considered that the proposal would lead to unacceptable or significant adverse impact.

2.9 Likewise, when considering Policy DM22, there is nothing to suggest that the extension of the opening hours would lead to unacceptable levels of light or noise pollution. The comment that '*additional hours would inevitably cause disturbance from customers, lighting, and late-night activity*' is unfounded without evidence, especially considering the use has not led to any issue in regard to any amenity matter since its operation has begun. These comments are considered disappointing.

2.10 The reference to Policy DM13 which mentions over-concentration is also contested when the use by its nature is a daytime and night-time use. This was quite clear on the permission of the change of use and was accepted by the LPA. Therefore, this is not considered relevant to the case.

<u>Summary of Case</u>

- The opening hours which are being appealed for had originally been suggested by the EHO and accepted by the LPA. The EHO has maintained this opinion throughout the subsequent s.73 application and this appeal, which makes it quite clear that from an EH perspective that this proposal is acceptable. Not only acceptable, but the proposed opening times are the suggestion of the Council.
- The sound leakage level from the arcade is 28.8dB (maximum) which is less than a household level and the local authority guidelines and environmental health regulations. It is also lower that the level suggested by the EHO (30dB) as the level of the 'quiet area' of Montague Street. It is considered there is no doubt that this proposal would not accord policy surrounding amenity.
- Policy DM5 and DM22, there is a high bar of tolerance of impact, particularly suggesting applications be refused where they are unacceptable or significant in terms of harm. The application simply does not meet that threshold and in fact is in line, if not lower, than the existing noise level of the surrounding neighbours. It

is therefore considered that the application cannot be contrary to the policies proposed.

- Late night opening (beyond midnight) is already apparent on Montague Street, so this unit wouldn't be the first operator to do so. Whilst there are no precedents within planning, it wouldn't be create a new premise for post-midnight hours, but instead would be sensitively extending the opening hours to enable a increase it viability.
- Slots Trading Ltd already hold the relevant 24-hour licence for the use.

We respectfully ask the Inspector to consider these points, and we consider that the proposal is compliant with the Development Plan as a whole and the NPPF. The opening hours were the original recommendation of the Council and the Environmental Health Officer who is a specialist in such matters.