Development Control – Delegated Officer Report

Application Number: AWDM/0596/23 **Recommendation: Approve**

Site: **8-9 Montague Place, Worthing**

Proposal: **Change of Use from Bank (Use class A2) to restaurant (Use class A3). Application to Vary Condition Number: 10 of previously approved AWDM/1630/19: No customer trade or business shall take place on the premises except between the hours of 07:00am and 20.00pm on any day. Amendment: to be able to be open between 07.00am to 11.00pm Sunday to Wednesday and between 07.00am to 12.00am Thursday to Saturday.**

Site Visit: 27.06.2023

Neighbours checked: Y

Additional neighbour notifications: Amended description to correct proposed hours notified 22.6.2023 Site notice posted 16.05.2023

Site, Surroundings and Proposal

The application site relates to a four storey building located on the west side of Montague Place within the town centre. The ground and first floors have previously been in use as a restaurant following permission in 2020 but are currently vacant. The upper floors comprise of two residential flats. Adjoining to the south is a café at No. 10 which has outdoor seating on the adjacent footway and there are flats to the upper floors. No. 10 is a Grade II listed building and there are also other listed buildings within the terrace continuing to the south at No's 11 to 14. No. 7 attached to the north side is occupied by 'Subway' which has a two storey shopfront and café seating to the adjacent footway. The site is within the South Street Conservation Area.

The original planning permission under AWDM/1630/19 for the restaurant at No. 8-9 limited opening hours by condition 10 which states:

10. No customer trade or business shall take place on the premises except between the hours of 07:00am and 20.00pm on any day.

The premises shall be emptied of customers 30 minutes outside of these hours.

All staff activity associated with the use shall cease at the premises within one hour of the closing time.

***Reason**: To safeguard the amenities of the occupiers of neighbouring properties having regard to saved policies RES7 and H18 of the Worthing Local Plan.*

The current application seeks a variation to condition 10 to allow the restaurant to open between 07.00am to 11.00pm on Sunday to Wednesday and between 07.00am to 12.00am on Thursday to Saturday.

The following extracts are from the applicants supporting statement:

'Introduction
Following the closure of the former bank, a planning approval was obtained, ref AWDM/1630/19 to change the use of the building to a restaurant under (the then current) use class A3. The Boston Tea Party have taken on the lease for the building, but find that the economic sustainability of the site restricted by the opening hours, which prevent the use of the site into the evening, while much of the nearby competition is not so restricted.

Proposal:
To improve the economic viability of the site, an extension of the opening hours into the evening is proposed. To provide the maximum flexibility opening until midnight is proposed for the latter part of the week, and 11:00 in the evening Sunday to Wednesday.'

Relevant Planning History:

AWDM/1630/19 - Change of Use from Bank (Use class A2) to restaurant (Use class A3).
STATUS: APP 18th June 2020.

AWDM/1920/19 - Change of use of pavement to outside seating are for 20 covers.
STATUS: APP 18th June 2020.

AWDM/1587/20 - Advertisement consent for proposed 2 no. internally illuminated projecting signs, 1no. internally illuminated fascia sign, 1 no. internally illuminated menu box and 1 no. awning with company branding.
STATUS: APP 8th December 2020.

AWDM/0014/21 - Change of use of pavement to outside seating area for 36 covers (10 tables). (Amendment to previously approved AWDM/1920/19).
STATUS: APP 1st March 2021.

Consultations:

The **Highway Authority** has raised no objection based on the initial consultation but have been consulted again with the corrected description with the proposed hours. No objection has been raised and comments are as follows:

WSCC in its role as Local Highway Authority (LHA) previously provided comment on this application, dated 22/05/2023, raising no highway safety

concerns. The application description has been amended to further extend the proposed opening times, with the proposed times being 07:00 – 23:00 Sunday to Wednesday and 07:00 – 00:00 Thursday to Saturday.

As per the LHAs previous comments, whilst the extended opening hours will likely see an intensification of movements during these new times, this will be outside of network peaks and the increase in movements is not anticipated to have a significant impact on the local highway network in this location.

In summary, the LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 111), and that there are no transport grounds to resist the proposal.

The **Sussex Police** Designing out Crime Officer has commented on the corrected proposed hours as follows:

The National Planning Policy Framework demonstrates the government's aim to achieve healthy, inclusive, and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of attractive, well-designed, clear, and legible pedestrian and cycle routes, and high-quality public space, which encourage the active and continual use of public areas.

The level of crime and anti-social behaviour in Worthing district is above average when compared with the rest of Sussex, so additional measures to mitigate against any identified local crime trends and site-specific requirements should always be considered.

I have had the opportunity to examine the detail within the application and in an attempt to reduce the opportunity for crime and the fear of crime I offer the following comments.

I refer the applicant to previous correspondence from this office pertaining to this site – Your Ref: AWDM/0596/23 dated the 10th of May 2023 and Our Ref: LM/WOR/23/09A dated the 10th of May 2023.

The application was seeking to vary condition number 10 with regards to planning application AWDM/1630/19 to extend opening hours until 23:00 Sunday to Wednesday.

I note that this this latest application is seeking an amended description to be able to be open between 07.00am to 11.00pm Sunday to Wednesday and between 7:00 am to 12.00am Thursday to Saturday.

As the applicant will be aware I made the following comments with regards to the previous application:

From a crime prevention perspective my main concern with the proposed variation is with regards to the amenity of the surrounding residential community in that they may be unduly disturbed by noise when customers leave particularly in the late evening as the applicant is seeking an extension of opening hours until 11pm Sunday to Wednesday.

If permission is granted for this amendment - I would ask moving forward that a degree of sensitivity is shown to ensure that the local community are not disturbed when customers leave the premises during the hours of darkness.

This latest application is seeking permission to further extend opening hours. My comments and concerns remain extant and would respectfully ask that these are considered when deciding any outcomes as the amenity of the local community could be unduly disturbed even further by the proposed additional opening hours.

Thank you for giving me an opportunity to comment.

The Crime & Disorder Act 1998 heightens the importance of taking crime prevention into account when planning decisions are made. Section 17 of the Act places a clear duty on both police and local authorities to exercise their various functions with due regard to the likely effect on the prevention of crime and disorder. You are asked to accord due weight to the advice offered in this letter which would demonstrate your authority's commitment to work in partnership and comply with the spirit of The Crime & Disorder Act.

The **Worthing Society** has made the following comments:

Thank you for requesting our comments regarding the above mentioned application for an amendment to opening hours. This matter is generally outside our remit. As a Conservation Society we do not offer comments in respect of licensing or opening hours. However, this business is located within the South Street Conservation Area and I would draw your attention to the comments and concerns from the Consultation Response submitted by Sussex Police.

Following re-consultation has added *'However we do refer you to the recent comments made by residents regarding this amendment'*

The Council's **Environmental Health** Officer initially confirmed no comment but wasn't aware at that time that the required sound insulation scheme for the approved restaurant had not been approved (condition 4 of AWDM/1630/19). An acoustic report has since been submitted and the Environmental Health Officer has commented that although the scheme has failed to meet the sound insulation requirements by 1dB he is satisfied in this instance. He states that:

Conversation is typically mid frequency and the noise assessment shows that the current insulation exceeds 50dB at these mid frequencies, therefore customer voices will still be well controlled even with this slight failure. There is also a condition on the premises prohibiting the playing of music so the later

hours should not be an issue. I can confirm that there are no EH objections to this application.

Condition 13 of AWDM/1630/19 states that

13. Only unobtrusive recorded background music shall be provided in the premises within the approved hours of operation. For this purpose the music noise level shall not exceed 75dB (LAeq15min) measured anywhere on the premises.

***Reason**: To safeguard the amenities of the occupiers of neighbouring properties having regard to saved policies RES7 and H18 of the Worthing Local Plan.*

The Environmental Health Officer has clarified further in relation to the playing of music stating that*: Unobtrusive background music is ok. 75dB minus 49dB(A) for the existing sound insulation is 26dB so the music level in the upstairs rooms will still meet the BS8233 good standard which is 35dB(A) during the day and 30dB(A) at night. The background music condition provides adequate protection moving forward.*

The Council's **Private Sector Housing** Team has confirmed no comments.

Representations:

Three representations have been received from the occupiers of flat 1 and 2 located above the existing restaurant, objecting to the application and raising concerns of noise and disturbance. Specific concerns relate to noise and disturbance continuing to 1am, noise internally from café customers and chairs moving, people congregating outside the building late at night, and additional noise from takeaway vehicles.

Relevant Planning Policies

Worthing Local Plan 2020-2036: DM5, DM12, DM13, DM15
National Planning Policy Framework (HCLG 2021)
National Planning Practice Guidance (CLG)
WSCC Guidance on Parking for New Development (2020)

Planning Assessment

Principle

The National Planning Policy Framework sets out the overarching objectives in achieving sustainable development including the economic objective – *to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure.* This is interdependent with the other

overarching social and environmental objectives and need to be pursued in mutually supportive ways (NPPF paragraph 8).

In ensuring the vitality of town centres the NPPF states that*: Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. (Paragraph 86.)*

The site is located within the Primary Shopping Area where retail uses are concentrated and separated into Primary Shopping and Secondary Shopping Frontage under Policy DM13 of the Worthing Local Plan. The site is identified as being Secondary Shopping Frontage. In relation to Worthing Town Centre Policy DM13 states:

Worthing Town Centre
Spatial Policy SS3 (Town Centre) sets out the overarching principles for the Town Centre and associated seafront and it is the starting point against which all proposed development in these areas will be assessed. The more detailed approach to frontages is set out below:

c) Primary Shopping Area (PSA) - a wider range of main town centre uses will be encouraged to bring people into the town and generate footfall throughout the day. In considering the most appropriate locations for proposed uses, the Council will use the identified Town Centre Character Areas as a tool to help assess whether a specific proposal would give rise to harm to the individual character or vision for each character area. The following sets out the approach to ground floor frontages within the 'Primary Shopping Area':

i) Primary Shopping Frontage (PSF) - will be the focus for retail uses within the centre The Council will seek to retain 65% of units in retail use to ensure that the centre retains its role as a sub-regional shopping centre and meets the shopping needs of the towns population. Uses such as Drinking Establishments and takeaways together with other uses that would detract from the overall shopping function of the frontage will be resisted

ii) Secondary Shopping Frontage (SSF) - a wider range of uses will be supported provided they are active uses with active shop fronts will enhance the vitality and viability and complement existing uses. However, uses such as takeaways and uses with closed and inactive street frontages will be resisted; and

iii) Town Centre Seafront Area - proposals that help to maintain and enhance an active and vibrant seafront will be supported. Eating, drinking and shopping together with appropriate cultural and leisure uses will be retained and encouraged. However, uses such as takeaways and uses with closed and inactive street frontages will be resisted. particularly where they cause or contribute to an over-concentration of such uses.

d) Proposals that help develop and enhance the evening and night-time economy will be supported in the town centre where the operation of such

activities can be controlled to address residential amenity implications and can demonstrate that such uses will add to the vitality and viability of the centre.

The site within the South Street/Montague Street/Grafton Site Town Centre Character Area which has the following role and function identified in the local plan:

• *South Street / Montague Street / Grafton Site: Aspirational high end retailing, food and beverage, and commercial leisure quarter anchored by a leisure / entertainment 'destination'. Strong links between 'Commercial Heart' and Seafront, and located within the Primary Shopping Area.*

The principle of evening and night time uses in the town centre is generally supported subject to careful consideration of the impact on the character and function of the centre, on its vitality and viability, and with adequate controls to protect residential amenity. In this case this is an existing restaurant use which has been established under the previous permission in 2020 with opening hours until 20:00pm daily, but is nevertheless located within a Secondary Frontage Area within the town centre and where there are strong links between the commercial heart and seafront areas, and where public realm enhancements are being designed to bring improvements to the surrounding public space (following a public consultation in June 2023). The extended hours for the restaurant can therefore be supported in principle and would add to the vitality and viability of the town centre where it would contribute towards supporting a vibrant evening economy, subject to consideration of the effects of the proposal on the character and appearance of the area, the effects on the living conditions for existing and future occupiers, and highway and parking considerations.

Visual amenity and the effect on the character and appearance of the area
No external alterations are proposed. There would be no significant harm to the visual amenities of the site or surrounding conservation area.

Residential Amenity
There would be no changes to the overall restaurant area and it would follow that the level of activity associated with the site is unlikely to alter significantly but would continue over an extended period into the evening.

The hours of operation are proposed to be varied to be between 07:00 to 11:00pm Sunday to Wednesday and 07:00 to 12.00am Thursday to Saturday. The existing condition requires all customers to leave within 30 minutes and all staff activity to cease within 1 hour.

The comments raised in the representations are noted and in respect of noise transfer within the building the applicant has now provided an acoustic report which sets out the sound insulation measures and testing that has been carried out in respect of condition 4 of AWDM/1630/419. It is understood that an additional ceiling was constructed at first floor level with an acoustic quilt installed in the void.

The Environmental Health Officer has found the acoustic report and findings to be satisfactory and there are also existing controls in place to limit noise levels from background music (condition 13), noise and vibration from extract/ventilation equipment (condition 6) and delivery times (condition 11).

The Environmental Health Officer raises no objections and is satisfied that there are sufficient controls already in place under the existing planning permission for the restaurant.

The Designing out Crime Officer has concerns that the surrounding residents may be unduly disturbed by noise when customers leave the premises particularly in the late evening and this is echoed in the representations. However it is considered that the proposals would not result in an over concentration of night time uses, and any instances of anti-social behaviour such as rowdy or inconsiderate behaviour would be a police matter.

Outdoor seating has been approved separately for the restaurant with hours of use for the outdoor area limited to between 7am and 8pm and so the use of this area would not be extended under the current application (AWDM/0014/21 refers).

Balancing the needs and impact on local residents against the economic benefits of promoting an enhanced evening and night time economy, which is reflected in a number of the Council's strategies, and in the absence of any objection from the Council's Environmental Health Officer and where controls are already in place which are considered sufficient to adequately protect residential amenity, the proposal is considered acceptable in this town centre location.

Transport and Highway Impacts

The site is considered to be in a sustainable location sited within the town centre with good access to public transport and local facilities. There is no car parking or cycle parking associated with the restaurant use at present and this would remain the case for the extended hours proposed. The Highway Authority considers that the proposals would not have a significant impact on the local highway network in this location and raises no objections.

Recommendation

Approve the variation of condition 10 of planning permission AWDM/1630/19 to read:

10. No customer trade or business shall take place on the premises except between the hours of 07:00am and 11.00pm on Sunday to Wednesday and 07:00am and 12.00am on Thursday to Saturday.

The premises shall be emptied of customers 30 minutes outside of these hours.

All staff activity associated with the use shall cease at the premises within one hour of the closing time.

Reason: *To safeguard the amenities of the occupiers of neighbouring properties having regard to policy DM5 of the Worthing Local Plan.*

and subject to the following conditions

1. Permission relates to approved plans
3. Construction hours
4. Use to be carried out in accordance with approved Sound insulation/Acoustic Report
5. Kitchen extract/ventilation equipment to be installed and maintained in accordance with manufacturer's instructions
6. The extract/ventilation plant and equipment shall be installed and maintained in accordance with the Plant Noise Assessment reference 10186.RP01.PNA.0 dated 29 April 2020 including the recommended attenuator specification and mountings to control noise and vibration.
7. Development to be carried out in accordance with recommendations of FRA
8. Bin storage to be provided/retained
9. Ducting colour/finish to match painted render finish of existing building
10. The hours of operation shall be restricted to 07:00am to 11:00pm Sunday to Wednesday and 07:00am to12.00am on Thursday to Saturday.
11. Deliveries/servicing shall not take place except between 07.30 and 20:00 on any day.
12. Plant and equipment hours limited to hours of operation.
13. Music noise levels limited

Informatives:

- The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
- SW – application for connection to public sewer
- SW – Sewer investigation
- SW – Waste water grease traps

Is recommendation contrary to letter(s) of representation? Y

Case Officer: Rebekah Hincke Date: 07.09.2023

Authorised by: Jo Morin Date: 11 September 2023