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

Planning Appeal Statement – Statement of Case

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)

17/11/2025

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Appendices

Appendix A – Decision Notice

1.0 Background of Application

1.1 This Appeal Statement has been prepared by Brown & Co JHWalter, on behalf of Slots Trading Ltd ["the Appellant"] to support an appeal following the decision of Worthing Borough Council ["the LPA"] to refuse the planning application reference AWDM/1153/25 for "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)" at 82 – 84 Montague Street, Worthing, West Sussex, BN11 3HF

1.2 The application was refused on the 5th November 2025. A copy of the Decision Notice is submitted as part of the documentation of the Appeal, and is evidenced in Appendix A.

1.3 The appellant contests the reasons for the refusal, as will be explained within this statement.

1.4 The application was refused on the following: -

"The extended hours proposed are considered to result in noise and disturbance which would adversely affect the residential amenity of nearby residents contrary to policies DM5 and DM22 of the Worthing Local Plan (2023)"

2.0 Proposal

2.1 The proposal is for “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)” at 82 – 84 Montague Street, Worthing, West Sussex, BN11 3HF

3.0 Context Assessment

The Site

3.1 The site is 82-84 Montague Street, Worthing and has permission for ‘Change of use from retail (Class E) to an Arcade incorporating Bingo (Sui Generis) (AWDM/0371/25).

Surrounding Area

3.2 The surrounding area on the High Street is commercial in character comprising retail units, professional services, food outlets, offices, banks and other sui generis units.

4.0 Points of Clarification

4.1 The opening hours were a consideration through the determination of the original application of AWDM/0371/25. At first, the applicant proposed 24 hour use. However, after extensive discussions, which were made in good faith, the Case Officer and the Environmental Health Officer recommended the following opening hours:-

"No customer trade or business shall take place on the premises except between the hours of 07:00am and 11.00pm on Sunday to Thursday and 07:00am and 2.00am on Friday and Saturday and the premises shall be closed for business outside these hours".

4.2 This was agreed with the Case Officer following the comments of the Environmental Health Officer. The correspondence between the EHO and the Case Officer are depicted overleaf with the agent copied in.

4.3 It was then at Planning Committee, when the application for the change of use was granted, when condition 3 (below) was imposed.

> 03. No customer trade or business shall take place on the premises except between 09:00hrs and 23.00hrs on Sunday to Thursday and between 09:00hrs and 23.59hrs on Friday and Saturday and the premises shall be closed for business outside these hours.

4.4 The applicant has provided a Field Test Noise Report to help support this appeal. This was never requested as part of the determination process as it was considered that the EHO was content with the opening hours – therefore this is the first opportunity to do so.

4.5 The EHO did not change their position as part of this application, remaining in the same position to suggest the opening hours proposed as acceptable.

From: **Michael Lavender** <michael.lavender@adur-worthing.gov.uk>
Date: Thu, 22 May 2025 at 10:39
Subject: Re: 250512 - AWDM/0371/25 - 82-84 Montague Street, Worthing - Retail to Bingo
To: Jacqueline Fox <jacqueline.fox@adur-worthing.gov.uk>
Cc: Alistair Anderson

Dear Jacqueline,

I have now had the opportunity to look at this application again in more detail and consider the applicant's request for 24 hour operations.

My main concern is customer noise as customers make their way to and from the premises. 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 shops in this area to meet the housing needs of our 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. Therefore to protect the current amenity of occupants of these flats, I would not want to see customers being attracted to the area beyond the current night time economy's closing time in this area. This is because we have no way of knowing what level of new custom the premises will attract nor do we have any way of controlling customer behaviour when they are off the premises, even normal conversation as people walk along the precinct will be audible in bedrooms if windows are open. It 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 customer numbers, their location and how they behave will be variable. Therefore the most practicable way of preventing any adverse impact from the proposed development is to control the operating hours.

I see that the applicant is trying to demonstrate that noise is not an issue at his other premises and I have been contacted by PC James Williams, a Kent County Police Licensing Officer. I have not spoken to PC Williams because Licensing considers public nuisance and for public nuisance to exist the disruption has to be quite severe. Someone walking down the precinct having a conversation in the early hours of the morning would not constitute a public nuisance. Whereas the standards in planning are to protect amenity and if somebody has a home in the town centre and is accustomed to having commercial premises around them closed by a certain time, then any disruption beyond these hours is going to impact their amenity.

Permitting 24 hour openings 7 days a week in this part of town will set a precedent and will completely change the character of this mixed commercial residential area. I am of the view that we need to balance the needs for business with residential amenity and having considered the hours of nearby licensed premises, I would suggest a 2am closing time would be a fair compromise at weekends e.g. Friday night Saturday morning and Saturday night Sunday morning, with a 11pm finish all other nights.

Kind Regards.

Michael Lavender

5.0 Statement of Case

Introduction

5.1 This appeal relates to "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)" at 82 – 84 Montague Street, Worthing, West Sussex, BN11 3HF

Submission

5.2 The application was submitted to Worthing Borough Council on 10th September 2025 and was validated on the same day. Brown&Co JHWalter were instructed to submit the original application and this subsequent appeal, as well as the prior change of use application (AWDM/0371/25) which was granted.

Summary of Case

5.3 The opening hours had been extensively discussed within the original application AWDM/0371/25 and agreement was made with the Case Officer and the Environmental Health Officer following the EHO comments throughout the determination.

5.4 The EHO had concerns over the opening times that were originally proposed (24 hour). However, did suggest the alternative of a 2am closing time at the weekend (Friday night and Saturday Night) and a 11pm finish all other nights. This was considered acceptable by the applicant and we worked with the Case Officer through to a positive determination at committee.

5.5 However, at Planning Committee the restricted opening hours were then implemented based on amenity grounds. This was after the Officer had reported that the EHO considered the proposed and agreed opening hours to be acceptable.

5.6 Within the Committee Report which was produced prior to the Planning Committee, the Officer wrote the following:-

> Officers recognise that there is little existing commercial / entertainment activity in this vicinity after midnight and that whilst a 2am weekend approval may avoid the risk of activity and disturbance in the quietest times of night, it is at the margin of the nighttime economy hours. A planning condition controlling these hours is included at the end of this report based on the Environmental Health suggestion but it is open to the Committee to decide upon this timing.

5.7 It is therefore absolutely clear that the EHO and the Case Officer were content with the original hours proposed.

5.8 Considering the Policies that were attached for the reason for refusal. The only section within DM5 which is considered applicable is (a) (viii) which states that all new development (including extensions, residential annexes, alterations, ancillary development, change of use and intensification) should not have an unacceptable impact on the occupiers of adjacent properties, particularly of residential dwellings, including unacceptable loss of privacy, daylight/sunlight, outlook, an unacceptable increase in noise giving rise in significant adverse impacts, or vehicular movements resulting in severe cumulative impacts on the road network, or loss of important open space of public value (unless it satisfies any of the exceptions set out under Policy DM7 – Open Space, Recreation and Leisure)

5.9 The policy refers to an unacceptable level of noise which would give rise to significant adverse impact. There is nothing to suggest from the original decision that the use would have an unacceptable level of noise or give rise to significant adverse impact. The EHO was content with the opening hours of 7am – 2am on weekend nights and this was the Council's suggestion. It is therefore considered that the proposal is compliant in regard to this part of the policy. The Field Test Acoustic Report clarifies that the level of noise and leakage level is well below the Council's regulations and guidelines.

5.10 The other policy referred to is DM22 (Pollution). The parts applicable are (a) and (d) which state: -

(A) Development should not contribute to, be put at risk from, or be adversely affected by unacceptable levels of soil, air, water, artificial light or noise pollution or land

instability. Where possible development should help to improve local environmental conditions.

(d) Where appropriate, air quality and/or noise assessments and lighting assessments will be required to support planning applications. These should be undertaken in accordance with the most up to date guidance and have regard to any relevant action plans. Any new development in the Worthing Air Quality Management Area must be consistent with the Air Quality Action Plan. Where any identified harm to any of these factors cannot be adequately mitigated, planning permission will be refused.

5.11 As stated, the proposed opening hours subject to this appeal were the recommendation of the EHO and agreed to by the Case Officer. Therefore, it is not reasonable for noise to be considered as unacceptable when Worthing Borough Council's Officers have considered and recommended these opening hours.

5.12 Given the agreeance to the opening hours following the consideration of the EHO, an acoustic report / noise assessment has never been requested or considered relevant at that time. Subsequently, as presented within this appeal as the first opportunity to do so, the applicant has prepared a '*Field Test of Acoustic Performance of Proposed Arcade*'. Please find this enclosed. As can be seen on the 'Informatives' of the Decision Notice, it states 'Refused no discussion'.

5.13 The report concluded the following:-

- Internal noise levels from previous test reports of the use reported a level of 66.6dB which is comparable to TV (normal volume)
- The sound leakage from the arcade would be 28.2dB (maximum) which is less than a household level (lounge/silent)
- The local authority guidelines and environmental health regulations state that the guidelines for noise from neighbours states that a level of 45dB or 15dB above ambient background level is an advisory limit between the hours of 7pm and 7am, with a level of 55dB or 20dB above ambient background level is an advisory limit between the hours of 7am and 7pm. Therefore, as seen by the data there is no breach of local authority or environmental health regulations.

- An additional ‘sweep test’ was made of the arcade to ascertain if there were any ‘acoustically weak’ areas. No sources were identified.

6.0 Summary

6.1 In summary of this Statement of Case, it is considered that the proposed hours are not only policy compliant but are the suggestion of the EHO officer. The following is considered important:-

- The applicant / unit already holds the relevant license which allows the opening hours proposed
- The opening hours proposed are the suggestion of the EHO which were originally negotiated in good faith. Worthing Borough Council supported the opening hours prior to the Planning Committee and the Case Officer and the applicant worked extensively in negotiation to reach this conclusion.
- The Field Test Report concludes that the use would have a low level of amenity and both the internal noise and the external leakage noise would be below the regulations and guidelines of Worthing Borough. The level would either be similar to TV level / House level or below.
- It is considered that the appeal should be allowed and the opening hours revert back to the original EHO recommendation.

Appendix A – Decision Notice (Redacted)

WORTHING BOROUGH COUNCIL

Mr Alistair Anderson
Brown&Co JHWalter
5 Oakwood Road
Lincoln
LN6 3LH

PLANNING REFUSAL

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2015

APPLICATION NUMBER: AWDM/1153/25

Details of Development
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

ORIGINAL DESCRIPTION: CHANGE OF USE FROM RETAIL (CLASS E) TO AN ARCADE INCORPORATING BINGO (SUI GENERIS)

Location of Development
82 - 84 MONTAGUE STREET WORTHING WEST SUSSEX BN11 3HF

In pursuance of their powers under the above-mentioned Act and Order the Council hereby notify you that they REFUSE to permit the above development, in accordance with the application and relevant correspondence registered on 10th September 2025.

The reasons for the Council's decision to refuse to permit the development are stated on the schedule overleaf.

G Peck

Gary Peck
Planning Services Manager
05/11/2025

Worthing Borough Council, Development Management, Economy Directorate,
Portland House, 44 Richmond Road, Worthing, West Sussex, BN11 1HS
Tel: 01903 221065 Email: planning@adur-worthing.gov.uk
Web: www.adur-worthing.gov.uk

SCHEDULE

Reasons for Refusal

01. The extended hours proposed are considered to result in noise and disturbance which would adversely affect the residential amenity of nearby residents contrary to policies DM5 and DM22 of the Worthing Local Plan (2023).

Informatives / Notes to Applicant

01. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2015

YOUR ATTENTION IS DIRECTED TO THE FOLLOWING NOTES FROM THE ABOVE ORDER. THEY ARE FOR INFORMATION ONLY AND DO NOT PRETEND TO SET OUT THE WHOLE OF THE LAW ON THE SUBJECT. IT WOULD BE WELL FOR YOU TO CONSULT YOUR SOLICITOR IF YOU ARE IN ANY DOUBT

Appeals to the Secretary of State

1. If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

2. If the decision relates to a householder application, and you want to appeal, then you must do so within 12 weeks of the date of this notice. If the decision relates to a non-householder application, an appeal must be lodged within 6 months of the date of the decision notice. Appeals can be made online at: https://www.gov.uk/planning-inspectorate. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

3. The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

4. The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements to the provisions of any development order and to any directions given under a development order.

5. In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Purchase Notices

6. If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the District Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Planning Act 1990.

7. Where this notice conveys approval or permission, conditional or unconditional, please note that the decision given does not purport to convey any consent or approval which may be required under the Building Act and Building Regulations, or any other legislation.