Planning Inspectorate

Appeal Decision

Site visit made on 7 July 2026

by J Heppell BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2026

Appeal Ref: 6008717
82-84 Montague Street, Worthing, BN11 3HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr Alistair Wilson on behalf of Slots Trading Ltd against the decision of Worthing Borough Council.
- The application Ref AWDM/1153/25 dated 8 September 2025 was refused by notice dated 5 November 2025.
- The application sought planning permission for a change of use from retail (Class E) to an arcade incorporating bingo (Sui Generis) without complying with a condition attached to planning permission Ref AWDM/0371/25 dated 23 July 2025.
- The condition in dispute is No 3 which states that: *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.*
- The reason given for the condition is: *In the interests of residential amenity in accordance with Policy DM5 and DM22 of the Worthing Local Plan.*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was accompanied by a Field Test of Acoustic Performance of Proposed Arcade (FTAP). The *Procedural Guide: Planning Appeals – England* advises that the appeal process should not be used to evolve a scheme. In this instance, the additional information does not alter the scheme. I am satisfied therefore that no parties are prejudiced, and I have determined the appeal on the basis of the additional information.

Main Issue

3. The planning permission granted under Ref AWDM/0371/25 was subject to a number of conditions, including No 3 which limited customer trade and business to the hours of 09:00hrs and 23.00hrs on Sunday to Thursday and 09:00hrs and 23.59hrs on Friday and Saturday. The reason for the condition was stated as being in the interests of residential amenity in accordance with Policy DM5 and DM22 of the Worthing Local Plan.

4. Under Ref AWDM/1153/25, the appellant sought to vary Condition 3 to extend the opening hours to 07:00 and 23:59 from Sunday to Thursday and 07:00 and 02:00 on Friday and Saturday. The Council refused the application, citing an adverse

effect on the amenity of nearby residents, contrary to policies DM5 and DM22 of the Worthing Local Plan (2023).

5. The main issue is the effect on the living conditions of existing residents of extended opening hours, having particular regard to noise and disturbance.

Reasons

6. Planning permission was granted for an arcade which is now trading. The appellant originally sought 24 hour opening, but subsequently agreed opening hours of 07:00am-11.00pm on Sunday to Thursday and 07:00am-2.00am on Friday and Saturday with officers. Planning Committee however imposed shorter opening hours, which the appellant now seeks to extend. The views of officers are not binding, and Planning Committee was entitled to debate the merits of the scheme and reach a different view.

7. The appeal site forms part of a secondary shopping frontage in a pedestrianised part of Montague Street, which is one of the main streets in Worthing town centre. The commercial units in the vicinity of the appeal site are mainly shops, but there are also restaurants and cafes, and hot food takeaways, several of which had outside seating areas when I visited. It was not evident whether the upper floors of premises in Montague Street were in residential use, but the appeal site is located diagonally opposite Prospect Place, which contains houses and flats.

8. The appellant's FTAP tested the acoustic performance of the arcade, in accordance with the Environmental Noise (England) Regulations 2006 and ISO 140-4. The FTAP concluded that, with appropriate mitigation measures installed, including an air-lock style entrance lobby and acoustic ceiling tiles, the arcade would not give rise to significant noise leakage, and would not therefore cause noise nuisance. I have no reason to doubt the findings of the report nor its conclusion that the arcade itself would not disturb nearby residents.

9. However, it is evident from the Council's submissions that the intention of the condition was to avoid attracting customers to the immediate area beyond the current night time economy's closing time. The Council's Officer Report refers to previous noise reports which demonstrated that the background noise levels in the locality are below 30dB in the early hours of the morning, although without sight of these reports I cannot draw any meaningful conclusions from their findings. Nonetheless, on the basis of my observations during the day, I find no reason to disagree with the Council's assessment that this likely to be a quiet area once local business have closed and customers have gone home.

10. Traffic noise would be low as Montague Street is pedestrianised and Prospect Place is a narrow cul-de-sac. Although the nearby Londis convenience store opens from 7am-12am Sunday-Wednesday and 7am-1am Thursday-Saturday, a convenience store would not trade strongly late in the evening, and its customers are unlikely to be representative of the night time economy. I am not aware of the closing times of nearby cafes and hot food takeaways, and therefore cannot make a judgement regarding their impact on late night activity.

11. Policies DM5 and DM22 of the Worthing Borough Council Local Plan 2020-2036 Adopted 28th March 2023 (WBCLP) set out the Council's approach to managing noise and disturbance. They require new development not to contribute to noise pollution or to cause an unacceptable increase in noise which has significant

adverse impacts on the occupiers of adjacent dwellings. The fact that the policy indicates that new development must not give rise to unacceptable noise which has significant adverse impacts implies that a degree of noise and disturbance is not harmful to living conditions.

12. The Council's Environmental Protection Officer has highlighted that, in contrast to regular noise such as traffic, conversations are more likely to disrupt sleep patterns because the brain associates such conversations with a potential threat. Extended opening hours would increase night time activity associated with customers leaving the arcade. Since customer behaviour is by its nature unpredictable, the conversations of customers leaving the arcade up until midnight on weekdays and until 2am at weekends would have the potential to generate noise that could disrupt the sleep of nearby residents.

13. In the absence of data on existing background noise levels, the expected frequency of night time use of the arcade, and the noise typically generated by customers departing from an arcade, I am unable to conclude that the levels of noise generated would not disturb nearby residents. Moreover, no mitigation measures to control the impact of customer noise outside the premises late at night have been put forward. In the worst case scenario, there would be an unacceptable increase in noise and disturbance, with potentially significant adverse impacts on the occupiers of dwellings in Prospect Place and elsewhere.

14. Although not referred to in the reason for refusal, the Council has drawn my attention to Policy DM13 of the WBCLP which, amongst other things, seeks to avoid an overconcentration of uses such as takeaways and other uses which have closed or inactive street frontages. Part of the policy's aim is to avoid harm to the amenity of local residents which cannot be adequately mitigated. However, notwithstanding my conclusions regarding the impact of the proposal on living conditions, I have not been presented with evidence that there is an overconcentration of such uses in the vicinity of the appeal site. I do not therefore find conflict with Policy DM13.

15. Although the arcade benefits from a 24 hour licence, this has a limited bearing on the appeal, since the licensing regime is predicated on public nuisance, which is not the same as the impact on residents' living conditions. The fact that there have been no reported issues to date with the operation of the arcade carries limited weight since the arcade has not been open long and currently operates to the hours imposed by the planning condition, meaning that the impact of later opening cannot be assessed.

16. I therefore conclude that varying the condition to allow extended opening hours would result in noise and disturbance which would harm the living conditions of existing residents. The proposal would be contrary to policies DM5 and DM22 of the WBCLP, the aims of which I have outlined above.

Other Matters

17. The site is situated within Montague Street Conservation Area (CA), whose significance derives from its emergence in the 1880s as an important commercial and retailing street, a function which it continues to serve. Two buildings within it are listed and several others have local historic or architectural interest, with the north side of the street possessing a particular townscape quality. Buildings exhibit a regular building line and are faced with stucco or red brick and roofed with slate.

They incorporate nineteenth century architectural detailing such as string courses, parapets, quoins and sash windows.

18. S72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 places a statutory duty on decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA. An intensification of night time activity within the CA would be in keeping with the CA's origins and continuing function as a commercial street, and would not adversely affect it. I conclude that the proposal would preserve the character and appearance of the CA, thereby meeting the statutory test and according with paragraph 212 of the Framework, which requires that great weight should be given to the conservation of heritage assets.

Conclusion

19. As I have concluded that varying the condition would harm the living conditions of existing residents, the appeal is dismissed.

J Heppell

INSPECTOR