

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/2413	Case Officer:	Andrew Watt
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of Condition 2 of planning application 08/03019/FUL- to allow to open extra 2.5 hours on Friday and Saturday from midnight to 2:30am		
Site:	Savannah Cafe Bar, 44 - 46 The Broadway, Haywards Heath, West Sussex, RH16 3AL, , ,		
Validation Date	15 Jan 2025	Overall Expiry Date:	5 Feb 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	21 Mar 2025
Target Date:	12 Mar 2025	Recommending Officer Signature:	Andrew Watt

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Steven King	Date:	21 Mar 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/2413

**Savannah Cafe Bar, 44 - 46 The Broadway, Haywards Heath, West Sussex, RH16 3AL, ,
Variation of Condition 2 of planning application 08/03019/FUL- to allow to open extra 2.5 hours on
Friday and Saturday from midnight to 2:30am**

Mr Michael Green

SUMMARY OF REPRESENTATIONS

None received to this referenced application, but 1 letter of objection received to the concurrent application DM/24/2894 as follows:

- Site backs onto several private properties with residents and children
- Current 0130am opening hours at the weekend are always accompanied by considerably increased noise levels
- Noise from customers continues in the street after closing, but cannot be enforced
- This includes bottles being emptied into recycling bins
- Not in accordance with the Licensing Act 2003 in terms of responsible drinking

SUMMARY OF CONSULTEES

MSDC Environmental Protection Officer

Objects.

Sussex Police

There have been a small number of incidents reported to the Police during the last 12 months around the above location. [But] no major concerns.

TOWN / PARISH COUNCIL OBSERVATIONS

No comment.

INTRODUCTION

Permission is sought under Section 73 of the Town and Country Planning Act 1990 for a variation of condition 2 of planning permission 08/03019/FUL to allow the usage of the forecourt for an extra 2.5 hours on Fridays and Saturdays from midnight to 2:30am.

RELEVANT PLANNING HISTORY

In April 2007, an application to allow the removal of empty bottles from 12:00 noon to 10:00 pm and extend the opening hours to conform with the licensing hours (Monday to Thursday 12:30 am, Friday and Saturday 01:30 am, Sunday 12:30 am) and for early opening for breakfast was approved (07/00439/COND). Condition 2 states:

'The use should not be carried on and no customers shall be present on the premises except between the hours of 6:00 am - 00:30 am from Mondays to Thursdays, 6:00 am to 1:30 pm Fridays and Saturdays and 10:00 am to 00:30 am on Sundays.'

Reason: To safeguard the amenities of neighbouring properties and to accord with Policy B3 of the Mid Sussex Local Plan.'

In October 2007, planning permission was refused for an awning over the external patio area (07/02210/FUL). This was dismissed on appeal in June 2008.

In March 2008, planning permission was refused for an extension of the opening hours of the premises to 0130hrs on Thursdays, 0230hrs on Fridays and Saturdays and 0300hrs on Christmas Eve and New Years Eve (08/00184/COND).

In October 2008, planning permission was granted for the installation of an awning (patiola) on the forecourt (08/03019/FUL). This was subject to conditions controlling the hours of use of the forecourt and specifying the materials to be used. Condition 2 reads as follows:

'The forecourt shall not be used for the sale and consumption of food and drink except between the hours of 06:00am to 00:00am Mondays to Thursdays, 06:00am to 00:00am Friday and Saturday and 10:00 am to 00:00 am Sundays.'

Reason: To protect the amenities of the occupiers of the adjacent properties and to comply with Policy B3 and B23 of the Mid Sussex Local Plan.'

In December 2010, planning permission was granted to vary condition 2 of application 08/03019/FUL to allow use of the forecourt between the hours of 0900 and 0030 Sunday to Thursday and 0900 and 0130 Friday and Saturday to match the rest of the premises for a temporary period of 12 months (10/02878/COND). This permission has expired.

In July 2012, planning permission was granted for a temporary period of 12 months to vary Condition 2 of HH/07/00439/COND to allow opening on a maximum of 10 nights per year until 1:30 am Sunday - Thursday and until 2:30 Friday and Saturday. Except New Years Eve which would have a 2:30 am Closure (Regardless of what day of the week it falls on) (12/01954/COND). Condition 1 stated:

'The premises (excluding the outdoor seating area) shall not be open for trade or business except between the hours of 0900hrs and 0030hrs Sundays to Thursdays and 0900hrs and 0130hrs Fridays and Saturdays, except on no more than 10 (ten) days in any calendar year, when the premises (excluding the outdoor seating areas) shall not be open for trade or business except between the hours of 0900hrs and 0130hrs Sundays to Thursdays and 0900hrs and 0230hrs Fridays and Saturdays, except for New Years Eve, which can be up to 0230hrs regardless of which day of the week it falls on. The applicant shall notify the Local Planning Authority in writing at least 14 days in advance of any extended opening hours, which may be done on an individual or collective basis, to allow the Local Planning Authority to monitor the number of days the premises will be open for these extended hours. These hours shall be permitted for a 12 month period until 27 July 2013, and after this period the premises shall revert back to the former (permanent) hours of use specified under permission ref: 07/00439/COND, unless otherwise agreed in writing with the Local Planning Authority, to whom a planning application must be made.'

Reason: To allow a trial run of the extended hours of use and to protect the amenities of the occupiers of the adjacent properties, to comply with Policy B3 and B23 of the Mid Sussex Local Plan.'

In May 2014, planning permission was granted to vary Condition 2 of HH/07/00439/COND to allow opening on a maximum of 10 nights per year until 1:30 am Sunday - Thursday and until 2:30 Friday and Saturday. Except New Years Eve which would have a 2:30 am Closure (Regardless of what day of the week it falls on) (14/00858/CND). Condition 1 states:

'The premises (excluding the outdoor seating area) shall not be open for trade or business except between the hours of 0900hrs and 0030hrs Sundays to Thursdays and 0900hrs and 0130hrs Fridays and Saturdays, except on no more than 10 (ten) days in any calendar year, when the premises (excluding the outdoor seating areas) shall not be open for trade or business except between the hours of 0900hrs and 0130hrs Sundays to Thursdays and 0900hrs and 0230hrs Fridays and Saturdays, except for New Years Eve, which can be up to 0230hrs regardless of which day of the week it falls on. The applicant shall notify the Local Planning Authority in writing at least 14 days in advance of any extended opening hours, which may be done on an individual or collective basis, to allow the Local Planning Authority to monitor the number of days the premises will be open for these extended hours. These hours shall be permitted for a 12 month period until 27 July 2015, and after this period the premises shall revert back to the former (permanent) hours of use specified under permission ref: 07/00439/COND, unless otherwise agreed in writing with the Local Planning Authority, to whom a planning application must be made.'

opening hours, which may be done on an individual or collective basis, to allow the Local Planning Authority to monitor the number of days the premises will be open for these extended hours.

Reason: To protect the amenities of the occupiers of the adjacent properties, to comply with Policy B3 and B23 of the Mid Sussex Local Plan.'

An application for the variation of Condition 1 of planning permission 14/00858/CND to allow the premises (but excluding the forecourt) to open an extra hour on Fridays and Saturdays to 2:30 am is awaiting determination (DM/24/2894).

SITE AND SURROUNDINGS

The site is a single storey mid-terraced building located on the eastern side of The Broadway in the built-up area of Haywards Heath. The premises are in use as a café bar (Savannah). There is a patio area at the front of the premises, with a full-width open canopy structure enclosing part of it. Adjoining the site to the north is a pizza restaurant (Caprinos); to the south is a bar (Bar 42); while to the east is a communal service passageway/car parking area, with residential dwellings at Ashurst Place beyond and on higher ground.

APPLICATION DETAILS

Permission is sought under Section 73 of the Town and Country Planning Act 1990 for a variation of condition 2 of planning permission 08/03019/FUL to allow the usage of the forecourt for an extra 2.5 hours on Fridays and Saturdays from midnight to 2:30am.

LEGAL FRAMEWORK AND LIST OF POLICIES

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70(2) of the Town and Country Planning Act 1990 states:

'In dealing with such an application the authority shall have regard to:

- *The provisions of the development plan, so far as material to the application,*
- *Any local finance considerations, so far as material to the application, and*
- *Any other material considerations.'*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides:

'If regard is to be had to the development plan for the purposes 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 requirement to determine applications "in accordance with the plan" does not mean applications must comply with each and every policy, but is to be approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the Courts, that development plans can have broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another.

Under Section 38(5) of the Planning and Compulsory Purchase Act 2004, if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Using this as the starting point, the development plan for this part of Mid Sussex consists of the Mid Sussex District Plan, Site Allocations Development Plan Document (DPD) and the Haywards Heath Neighbourhood Plan.

National policy (which is contained in the National Planning Policy Framework and National Planning Practice Guidance) does not form part of the development plan, but is an important material consideration.

Mid Sussex District Plan (Mar 2018)

The Mid Sussex District Plan 2014-2031 was adopted at Full Council on 28 March 2018.

Relevant policies:

Policy DP26: Character and Design

Policy DP29: Noise, Air and Light Pollution

Site Allocations DPD

The SADPD was adopted on 29 June 2022. It allocates sufficient housing and employment land to meet identified needs to 2031.

There are no relevant policies.

Haywards Heath Neighbourhood Plan (Dec 2016)

Mid Sussex District Council formally 'made' the Haywards Heath Neighbourhood Plan part of the Local Development Plan for the Haywards Heath Neighbourhood Plan area as of 14 December 2016. The policies contained therein carry full weight as part of the Development Plan for planning decisions within the Haywards Heath Neighbourhood Plan area.

Relevant policies:

Policy E9: Local Character

Other Material Considerations

Mid Sussex District Plan 2021-2039 - Submission Draft (Regulation 19)

The District Council is reviewing and updating the District Plan. Upon adoption, the new District Plan 2021-2039 will replace the current District Plan 2014-2031 and its policies will have full weight. In accordance with the NPPF, Local Planning Authorities may give weight to relevant policies of the emerging plan according to the stage of preparation; the extent to which there are unresolved objections to the relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the NPPF. The draft District Plan 2021-2039 (Regulation 19) is currently at Examination and the Stage 1 hearings were concluded on 31 October 2024. There are unresolved objections to some of the Policies in the draft District Plan and as such, only minimal weight can be given to the Plan and this planning application has been assessed against the policies of the adopted District Plan.

Relevant policies:

DPN6: Pollution

DPN7: Noise Impacts

DPB1: Character and Design

Mid Sussex Design Guide Supplementary Planning Document (Nov 2020)

The Council has adopted a 'Mid Sussex Design Guide' SPD that aims to help deliver high quality development across the district that responds appropriately to its context and is inclusive and sustainable. The Design Guide was adopted by Council on 4 November 2020 as an SPD for use in the consideration and determination of planning applications. The SPD is a material consideration in the determination of planning applications.

Relevant design principles include:

Principle DG48: Design to minimise the impact of noise, air and light pollution

National Planning Policy Framework (NPPF) (Dec 2024)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three overarching objectives to sustainable development, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three objectives are economic, social and environmental.

Paragraph 9 of the NPPF states *'these objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.'*

Paragraph 11 of the NPPF sets out that for both plan-making and decision-taking, the presumption in favour of sustainable development should apply.

Paragraph 12 of the NPPF states:

'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'

Paragraph 39 of the NPPF states:

'Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.'

With specific reference to decision-taking, paragraph 48 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

In addition, paragraphs 96 (achieving healthy, inclusive and safe places and beautiful buildings), 98 (social, recreational and cultural facilities and services) and 198 (noise and light pollution) are also considered to be relevant to this application.

ASSESSMENT

This application is made under Section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. The Act states that *'On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and-*

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.'

Accordingly it is not necessary to reassess all of the issues from the original planning application; it is only necessary to assess the issues that are relevant in relation to the condition/s that are proposed to be amended.

It is considered that the main issue that need to be considered in the determination of this application is as follows:

- Impact on Residential Amenity
- Planning Balance and Conclusion

Impact on neighbouring amenity

Policy DP26 of the Mid Sussex District Plan states (in part):

'All applicants will be required to demonstrate that development:

- does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP29)'*

Policy DP29 states (in part):

'The environment, including nationally designated environmental sites, nationally protected landscapes, areas of nature conservation or geological interest, wildlife habitats, and the quality of people's life will be protected from unacceptable levels of noise, light and air pollution by only permitting development where:

Noise pollution:

- o It is designed, located and controlled to minimise the impact of noise on health and quality of life, neighbouring properties and the surrounding area;*
- o If it is likely to generate significant levels of noise it incorporates appropriate noise attenuation measures;*

Noise sensitive development, such as residential, will not be permitted in close proximity to existing or proposed development generating high levels of noise unless adequate sound insulation measures, as supported by a noise assessment are incorporated within the development.

In appropriate circumstances, the applicant will be required to provide:

- o an assessment of the impact of noise generated by a proposed development; or*
- o an assessment of the effect of noise by an existing noise source upon a proposed development.'*

Design Principle DG48 of the Mid Sussex Design Guide states:

'Noise disturbance and air/light pollution can be reduced through careful design including the following measures:

- Orientating or organising buildings so that the principal habitable rooms and sitting-out areas face away from the source of the pollution;*
- Incorporating design features such as recessed balconies and acoustic lobbies;*
- Constructing barriers such as garages or walls between the source of the pollution and dwellings;*
- Using landscape features (including trees and earth mounding) to absorb noise/air pollution and deflect light; and*
- Avoiding parking where it will create noise and headlight nuisance from vehicle movements.'*

Policy E9 of the Neighbourhood Plan states (in part):

'Policy E9: Developers must demonstrate how their proposal will protect and reinforce the local character within the locality of the site. This will include having regard to the following design elements:

Will not result in unacceptable levels of light, noise, air or water pollution.'

The Council's Environmental Protection Officer has made the following comments:

'I am concerned that if customers are allowed to use the outside area to the front of the bar between midnight as they are currently permitted and 02.30, that this could have a significant impact on the amenity of residents in the area. I am aware that Savannah operates in accordance with their Premises Licence which doesn't restrict use of the outside area however, this licence was issued before the Council's current licensing policy. This policy states that:

The Licensing Authority is not prepared to grant permission for outside patio/garden areas to be used by the public beyond 2300 hours throughout the district other than in exceptional circumstances. We do not consider a record of good management or financial considerations to constitute exceptional circumstances.

The Licensing Authority believes that this measure is necessary to address the licensing objective of Public Nuisance.

I appreciate that Licensing and Planning are different regimes however, given the above policy, I cannot support this application.'

These comments are agreed with. Given that both the Council's Environmental Protection team and Sussex Police have received complaints around this location, and it is not possible for the Local Planning Authority to contain the noise levels within the premises or prevent patrons from spilling out onto the surrounding area and causing noise levels late into the early hours, it is considered that the proposal would harm neighbouring residential amenity. It is therefore considered that the proposal would fail to comply with Policies DP26 and DP29 of the Mid Sussex District Plan, Policy E9 of the Neighbourhood Plan, the Mid Sussex Design Guide SPD and the NPPF.

PLANNING BALANCE AND CONCLUSION

Given that both the Council's Environmental Protection team and Sussex Police have received complaints around this location, and it is not possible for the Local Planning Authority to contain the noise levels within the premises or prevent patrons from spilling out onto the surrounding area and causing noise levels late into the early hours, it is considered that the proposal would harm neighbouring residential amenity. Accordingly it would fail to comply with Policies DP26 and DP29 of the Mid Sussex District Plan, Policy E9 of the Neighbourhood Plan, the Mid Sussex Design Guide SPD and the NPPF and should be refused.

Decision: Refusal

Case Officer: Andrew Watt