

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/1534	Case Officer:	Rachel Richardson
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of condition 23 relating to planning reference DM/24/0981 to amend the hours of business.		
Site:	219 - 225 London Road, East Grinstead, West Sussex, RH19 1HA, , , ,		
Validation Date	12 Jun 2025	Overall Expiry Date:	18 Jul 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	18 Sep 2025
Target Date:	11 Sep 2025	Recommending Officer Signature:	Rachel Richardson

Date Legal Agreement Completed: (if applicable)		No of Representations:	1
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Signed and Agreed By:	Steven King	Date:	22 Sep 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/1534

**219 - 225 London Road, East Grinstead, West Sussex, RH19 1HA, , ,
Variation of condition 23 relating to planning reference DM/24/0981 to amend the hours of
business.**

Adam Forsdick

SUMMARY OF REPRESENTATIONS

One letter of representation has been received which is neutral and asking what the proposed opening hours will be.

SUMMARY OF CONSULTEES

Environmental Protection: No objection.

TOWN/PARISH COUNCIL OBSERVATIONS

East Grinstead Town Council has no comment.

INTRODUCTION

Permission is sought for a variation of condition 23 relating to planning reference DM/24/0981 to amend the hours of business.

RELEVANT PLANNING HISTORY

DM/24/0981 - Demolition of existing DIY retail unit and construction of Class E(a) retail foodstore with associated parking, landscaping and access works. Additional drawing received on 01.05.2024 to show height comparison between existing and proposed south west elevations. Permission 11.10.2024

DM/20/2826 - external alterations to the existing retail unit, including removal of the entrance canopy; installation of full height glazing to the shopfront and a replacement roof with solar panels; construction of a new delivery bay; reconfiguration of the customer car park to provide trolley storage, covered cycle parking and parking for disabled and parents; and a change of use to allow the sale of convenience and comparison goods. Permission 08.01.2021

14/04624/CND - variation of condition 11 of planning permission GR/035/98 to allow for an Argos to trade within the existing Homebase store. Permission 13.02.2015

GR/035/98 - Construction of 1 no. non- food retail unit with associated car parking/landscaping and servicing. Permission 17.06.1988

SITE AND SURROUNDINGS

The site extends to approximately 0.77 hectares.

The site is bounded to the northwest by a disused railway line and to the northeast by housing, with the rear gardens of the houses along Green Hedges Avenue backing onto the site. The boundary treatment adjacent to the delivery yard comprises a 2.5-3m high boundary fence. The eastern and western boundaries are characterised by 1.8m high fence panels and close boarded fencing. The boundary to the south and adjoining the A22, London Road, comprises a 1m high brick wall with 2m high brick columns.

To the southwest lies the A22 London Road on the opposite side of which there is four storey flatted development. At the southern corner of the site there is a garage/tyre workshop.

A double lane access serves the site within a relatively central position off the London Road.

The site is located approximately 600m northwest of East Grinstead Town Centre and is within the built up area boundary as defined in the District Plan. It also lies within the Ashdown Forest special area of protection (SPA) and special area of conservation (SAC). The disused railway line to the northwest is a local wildlife site known as Worth Way with the trees protected under a blanket Tree Preservation Order, reference GR/11/TPO/87.

APPLICATION DETAILS

The application is submitted under Section 73 of the Town and Country Planning Act 1990. 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.'

An application from Lidl GB Ltd has been submitted under Section 73 of the Town and Country Planning Act 1990 to vary condition 23 of full planning permission DM/24/0981.

This application seeks to vary the trading hours set out in condition 23 of full planning permission DM/24/0981 in order to allow the store to open from 08:00 to 20:00 on Bank Holidays. The existing condition reads as follows:

'The store hereby permitted shall not be open for trade or business except between the hours of 07:00 to 22:00 Mondays to Saturdays and 10:00 to 16:00 on Sundays and 08:00 to 18:00 on Bank Holidays.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to accord with policies DP26 and DP29 of the Mid Sussex District Plan 2014 - 2031 and policy EG3 of the East Grinstead Neighbourhood Plan.'

Lidl wish to vary the condition to read:

'The store hereby permitted shall not be open for trade or business except between the hours of 07:00 to 22:00 Mondays to Saturdays and 10:00 to 16:00 on Sundays and 08:00 to 20:00 on Bank Holidays.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to accord with policies DP26 and DP29 of the Mid Sussex District Plan 2014 - 2031 and policy EG3 of the East Grinstead Neighbourhood Plan.'

The change is sought to extend trading on bank holidays to provide an additional two hours in the evening, this will still mean the store closing 2 hours earlier than standard weekday trading.

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:

a) The provisions of the development plan, so far as material to application,

- b) Any local finance considerations, so far as material to the application, and
- c) Any other material considerations.'

Section 38(6) 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 District Plan, Site Allocations Development Plan Document (DPD) and East Grinstead Neighbourhood Plan.

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

Mid Sussex District Plan

The District Plan was adopted at Full Council on 28th March 2018.

Relevant policies:

DP26 - Character and Design

DP29: Noise, Air and Light Pollution

Site Allocations DPD

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

No relevant policies.

Neighbourhood Plan

The Neighbourhood Plan was made on the 2nd November 2016 and relevant Policies include:

No relevant policies.

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 the 31st 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:

DPN7: Noise Impacts

DPB1: Character and Design

Mid Sussex Design Guide Supplementary Planning Document (SPD)

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 4th 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.

National Planning Policy Framework (NPPF) (December 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 objectives to sustainable development, such that the planning system needs to perform an economic objective, a social objective and an environmental objective.

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.

ASSESSMENT

This application is made under section 73 of the Town and Country Planning Act 1990 to vary condition 23 of planning permission reference DM/24/0981 to extend the trading hours until 20:00 on bank holidays.

S73 applications allows for developers to amend conditions attached to planning permissions. Such an application only allows the conditions to which have been granted as part of the original planning permission and cannot amend the operative part of the planning permission i.e. the description of the development. This was recently clarified in case law of *Finney v Welsh Ministers* [2019] EWCA Civ 1868 where the Court of Appeal held that S73 applications cannot be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission.

In this instance, the application is for the amendment to the condition relating to the approved opening hours under DM/24/0981 which granted permission for construction of class E (A) retail foodstore with associated parking, landscaping and access works. As the operative part of the permission does not specify the hours of trading, an application under S73 to allow changes to the condition can be considered relevant.

The principle of the development has been established by virtue of the previous permission under DM/24/0981.

Even though the result of this application would result in the issuing of a new planning permission, it is not considered necessary to go through all the planning issues. The only issue that is pertinent is to consider the specific changes that are proposed from the previous approval.

As such the main issue for consideration is impact on neighbouring amenity.

Neighbouring Amenity

Policy DP26 of the District Plan states in part that proposals should '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'.

It is not considered that the extended hours would have any impact in relation to overlooking, loss of privacy, reduction in sunlight and daylight and a loss of outlook. The main consideration is noise and disturbance and light pollution. In addition to DP26, Policy DP29 in part states:

'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....

The impact on local amenity, intrinsically dark landscapes and nature conservation areas of artificial lighting proposals (including floodlighting) is minimised, in terms of intensity and number of fittings;

- The applicant can demonstrate good design including fittings to restrict emissions from proposed lighting schemes;'

The applicants have confirmed the following:

'Elsewhere Lidl generally seek and are granted permission to trade the same hours on bank holidays as on general weekdays, which here would mean 07:00 to 22:00 hours. However, they are not seeking that for East Grinstead and will be satisfied with 08:00 to 20:00 hours; this would mean that as a bank holiday they would open one hour later and close two hours earlier than on a non-holiday.

I hope that you will appreciate that the provision of this new store will constitute a significant investment in the town, and how important it will be that it should be able to compete effectively with existing stores, notably the Aldi which is only a short distance to the south along London Road. That store is permitted to trade from 08:00 to 22:00 on bank holidays, so requiring Lidl to close four hours earlier would not be reasonable.'

The Council's Environmental Protection Officer has been consulted on this application and has no objection.

Allowing the store to trade until 20:00 hours on public holidays will not have any significant adverse impact on the amenity of neighbouring residents, and deliveries will still be restricted to 18:00 hours under Condition 22. The issue of noise and lighting was not considered to be contentious under the original permission DM/24/0981.

It is therefore considered that the proposal will be compliant with policies DP26 and DP29.

Biodiversity Net Gain

Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. This planning permission is being granted on an application made under Section 73 of the Town and Country Planning Act 1990 and the original planning permission to which the Section 73 planning permission relates was granted before 12th February 2024. This application is therefore exempt from the requirement to provide biodiversity net gain.

PLANNING BALANCE AND CONCLUSION

Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the Development Plan and then to take account of other material planning considerations including the NPPF. The Development Plan in this instance consists of the Mid Sussex District Plan, the Site Allocations Development Plan Document and the East Grinstead Neighbourhood Plan.

Courts have confirmed that the Development Plan must be considered as a whole, not simply in relation to any one individual policy. It is therefore not the case that a proposal must accord with each and every policy within the Development Plan.

For the reasons mentioned above, it is recommended that permission be granted and the proposal is considered to be acceptable and is in accordance with policies DP26 and DP29 of the MSDP and national guidance contained within the NPPF.

Decision: Permission

Case Officer: Rachel Richardson