

Delegated Decision

Sign off Sheet

Ref. No:	DM/26/1564	Case Officer:	Deborah Lynn
Application Type:	Full Application		
Proposal:	Variation of Condition 2 of planning permission 11/00860/FUL to allow operation of a Pilates studio between 07:00 and 20:30 Monday to Saturday and 08:00 to 15:00 on Sundays and Bank Holidays.		
Site:	Upmarket 22, 22 Church Road, Burgess Hill, West Sussex, RH15 9AE, , ,		
Validation Date	24 Jun 2026	Overall Expiry Date:	22 Jul 2026
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	8 Sep 2026
Target Date:	19 Aug 2026	Recommending Officer Signature:	Deborah Lynn

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
--	--	-------------------------------	---

Signed and Agreed By:	Steven King	Date:	9 Sep 2026
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/26/1564

**Upmarket 22, 22 Church Road, Burgess Hill, West Sussex, RH15 9AE, ,
Variation of Condition 2 of planning permission 11/00860/FUL to allow operation of a Pilates studio between 07:00 and 20:30 Monday to Saturday and 08:00 to 15:00 on Sundays and Bank Holidays.**

Amy Bennett

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTEES

MSDC Environmental Protection

No objection, subject to condition.

BURGESS HILL TOWN COUNCIL OBSERVATIONS

The Committee of 13th July would Recommend Approval.

INTRODUCTION

This application seeks planning permission for the variation of condition 2 of planning permission 11/0860/FUL to allow the operation of a Pilates studio between 07:00 and 20:30 hours Monday to Saturday and 08:00 to 15:00 on Sundays and Bank Holidays.

RELEVANT PLANNING HISTORY

00/02434/FUL - Single storey extension to rear of shop. Permission granted 24.01.2001.

11/00860/FUL - Refurbishment of shop to create cafe/creche. Permission granted 18.05.2011.

SITE AND SURROUNDINGS

No. 22 Church Road is a class E commercial unit located within a secondary shopping frontage within the town centre of Burgess Hill. The premises comprises the ground floor of a three storey building with flats located above. The building has previously been extended to the rear to form flats at Burrell Court.

The unit adjoins Neyo Dental Specialists to the northwest and William Hill Bookmakers to the southeast. The MSDC Church Road Public Car Park also adjoins the site to the northwest.

The unit was previously occupied by Upmarket / Franks Diner, an American style diner and gift shop but has been vacant since May 2025.

APPLICATION DETAILS

Whilst the description of the application refers to varying a previous planning condition which restricted opening hours, a full planning application has been submitted to allow the premises to operate as a Pilates Studio between the hours of 07:00 to 20:30 hours Mondays to Fridays and between 08:00 and 15:00 hours on Sundays and Bank Holidays.

A proposed floor plan shows that partitions will be installed inside the unit to form a reception area fronting Church Road, with 2 separate studios created, served by a long corridor which leads to a wc. A separate store / private area lies towards the rear of the building. An internal ventilation system is proposed to be installed. No external alterations are proposed to the building.

The proposed internal works have been carried out during the application process so that the Pilates studios are now open to the public.

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 the Burgess Hill 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:

- DP2 town centre development
- DP17 Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)
- DP21 transport
- DP24 leisure and cultural facilities and activities
- 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.

Relevant policies:

SA38 air quality

Burgess Hill Neighbourhood Plan

The Neighbourhood Plan was made on the 28th January 2016.

Relevant policies:

TC4 the Retail Quarter

LR3 protect and improve existing leisure and recreational facilities.

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 is currently at Examination with initial hearings held in February/March 2026. The Council is consulting on Main Modifications which are required to ensure the plan is legally compliant and sound. The District Plan remains at Examination until the Inspector has published his report, until that time 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:

DPS6 health and wellbeing

DPN6 pollution

DPN7 noise impacts

DPN9 air quality

DPC6 Ashdown Forest SPA and SAC

DPT1 placemaking and connectivity

DPE4 town and village centre development

DPE5 within town and village centre boundaries

DPI5 open space, sport and recreational facilities

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) (August 2026)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 17 sets out the three overarching objectives to sustainable development, such that the planning system needs to perform an economic objective, a social objective and an environmental objective.

Paragraph 18 advises that *'these objectives should be delivered through the preparation and implementation of development plans and the application of the policies in this Framework; they are not criteria against which every development proposal can or should be judged. Development plans 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.'*

Policy S3 of the NPPF concerns the presumption in favour of sustainable development and advises:

'1. Decisions on development proposals should apply a presumption in favour of sustainable development. This means:

- a. Policy S4 in this Framework should be applied when considering development proposals within settlements;*
- b. Outside settlements, policy S5 should be applied; and*
- c. In all locations, development proposals that accord with both an up-to-date development plan and the decision-making policies in this Framework should be approved without delay.'*

Policy S4 states at section 1 that *'development proposals within settlements should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework.'*

Paragraph 2 of Appendix A advises that *'development plan policies (or parts of those policies) which are materially inconsistent with national decision-making policies in this Framework should be given very limited weight. The only exception to this is where they have been examined and adopted or made against this Framework. Other development plan policies should not be given reduced weight simply because they were adopted prior to the publication of this Framework.'*

ASSESSMENT

As no external alterations are proposed to the building, the main issues deemed relevant to the consideration of this application are:

- Principle of development;
- Impact on neighbouring amenities;
- Impact on Ashdown Forest;
- Highways Impact.

Principle of development

This application seeks permission to operate a Pilates Studio from the premises between the hours of 07:00 and 20:30 Monday to Saturday and 08:00 to 15:00 on Sundays and Bank Holidays.

As the site lies within a secondary shopping frontage within Burgess Hill town centre, policy DP2 of the District Plan is relevant. This states that development within such areas will be permitted provided that:

- *'The proposal would sustain and enhance the vitality and viability of the shopping area;*
- *The cumulative effect of non-Class A1 - A5 shop uses is not so great as to undermine the attractiveness of the shopping area.'*

Policy TC4 of the Neighbourhood Plan requires that the existing retail offer is maintained and enhanced in this area.

Both policies can be attributed full weight, as they reflect the stance of policy TC2 of the NPPF which concerns development in town centres and states that substantial weight should be given to the benefits of supporting the overall vitality and viability of the centre, including where this can be achieved through the diversification of uses, plus improving or retaining access to local shops and other facilities which provide day-to-day services for the local community.

Policy DP24 of the District Plan concerns leisure and cultural facilities and activities and states in part that developments that provide new and/or enhanced leisure facilities will be supported. A similar stance is followed by policy LR3 of the Neighbourhood Plan. However, they are considered to have very limited weight as they are not materially consistent with the NPPF. Also of relevance to the application is policy HC4 of the NPPF which states that substantial weight should be given to the benefits where development proposals would make a demonstrable contribution towards promoting good health.

The proposed Pilates use would benefit from planning use class E which covers shops and cafes amongst other uses. As such, the proposed use is considered compatible with a town centre location and would bring a vacant commercial unit back into use, thereby adding to the vitality and viability of the shopping area.

In addition, the proposed use is considered to make a positive contribution to promoting good health within the local community, as encouraged by NPPF policy HC4.

The proposed Pilates studio is therefore considered acceptable in principle.

Impact on neighbouring amenities

The opening hours of the commercial unit are currently restricted from 09:00 to 17:30 hours on Mondays to Saturdays with no use permitted on Sundays or bank holidays due to a condition imposed under planning permission 11/00860/FUL. The proposed Pilates studio seeks to extend opening hours from 07:00 to 20:30 hours Monday to Saturday and 08:00 to 15:00 hours on Sundays and Bank Holidays.

Policy DP26 of the District Plan refers to amenity and states that development 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*'.

Policy DP29 concerns noise, air and light pollution and states in part that the quality of people's life will be protected from unacceptable levels of noise, light and air pollution.

Both policies are considered to carry very limited weight, in view of NPPF policy P3 which states in part that development proposals should not give rise to or contribute to unacceptable levels of air, noise, artificial light, water, soil or other forms of pollution on or beyond the site and should mitigate and reduce to a minimum potential adverse impacts resulting from noise.

The Council's Environmental Protection Team has been consulted on the proposal and has advised that a sound proofing condition imposed under planning permission 11/00860/FUL does not appear to have been discharged, indicating that the previous café / creche use was in breach of the planning permission.

As there are no records to indicate that sound proofing works have previously been carried out at the unit, the Environmental Protection Officer has expressed concerns that the proposed opening time of 07:00 hours could potentially give rise to amenity impacts if the sound insulation between the premises and residential accommodation above is poor, although they acknowledge that the proposed Pilates use is a low impact activity which is likely to generate less noise and disturbance than the previous café use. They have therefore recommended that a pre-commencement condition is imposed requiring the applicant to submit an acoustic report to demonstrate that adequate sound attenuation measures are in place between the commercial premises and flat above.

Unfortunately, as refurbishment works have already been carried out, with the premises recently opening for business, the applicant is reluctant to carry out any further works at this stage. In such cases, the local planning authority would ordinarily require such works to be carried out to establish acoustic performance prior to the development being brought into use and prior to applications being determined where the development is retrospective in nature. However, given that the proposed use is relatively low impact the Council's Environmental Protection Officer has recommended that a pragmatic approach is taken, and that a condition is placed on the planning permission requiring an acoustic assessment to be provided within 3 months' time. The applicant has advised that they would be willing to do this.

In view of the above and subject to condition, the proposal is deemed acceptable in that it should not create unacceptable levels of noise and disturbance, thereby according with aforementioned policies.

Impact on the Ashdown Forest

Under the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats Regulations'), the competent authority - in this case, Mid Sussex District Council - has a duty to ensure that any plans or projects that they regulate (including plan making and determining planning applications) will have no adverse effect on the integrity of a European site of nature conservation importance. The European site of focus is the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

The potential effects of development on Ashdown Forest were assessed during the Habitats Regulations Assessment (HRA) process for the Mid Sussex District Plan 2014-2031. This process identified likely significant effects on the Ashdown Forest SPA from recreational disturbance and on the Ashdown Forest SAC from atmospheric pollution.

A Habitats Regulations Assessment has been undertaken for the proposed development in this planning application.

Recreational disturbance

Increased recreational activity arising from new residential development and related population growth is likely to disturb the protected near-ground and ground nesting birds on Ashdown Forest.

In accordance with advice from Natural England, the HRA for the Mid Sussex District Plan 2014-2031, and as detailed in District Plan Policy DP17, mitigation measures are necessary to counteract the effects of a potential increase in recreational pressure and are required for developments resulting in a net increase in dwellings within a 7km zone of influence around the Ashdown Forest SPA. A Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) mitigation approach has been developed. This mitigation approach has been agreed with Natural England.

This planning application does not result in a net increase in dwellings within the 7km zone of influence and so **mitigation is not required**.

Atmospheric pollution

Increased traffic emissions as a consequence of new development may result in additional atmospheric pollution on Ashdown Forest. The main pollutant effects of interest are acid deposition and eutrophication by nitrogen deposition. High levels of nitrogen may detrimentally affect the composition of an ecosystem and lead to loss of species.

The potential effects of the proposed development are incorporated into the overall results of the transport model prepared for the Mid Sussex Transport Study, which indicates there would not be an overall impact on Ashdown Forest. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

Conclusion of the Habitats Regulations Assessment

The Habitats Regulations Assessment concludes that there would be no likely significant effects, alone or in combination, on the Ashdown Forest SPA and SAC from the proposed development.

No mitigation is required in relation to the Ashdown Forest SPA or SAC.

A full HRA (that is, the appropriate assessment stage that ascertains the effect on integrity of the European site) of the proposed development is not required.

Highways impact

Policy DP21 of the District Plan relates to Transport and requires development proposals to be sustainably located and that schemes protect the safety of road users and pedestrians, amongst other criteria. However, the policy is considered to have very limited weight as it is materially inconsistent with the NPPF, with greater weight given to NPPF policy TR3. Policy TR3 requires proposals that generate a significant amount of movement to be situated in sustainable locations and states that any significant adverse impacts from the development on the transport network or on highway safety should be mitigated to an acceptable degree.

There is no associated parking with the premises, however, on street parking and a public car park are available within the vicinity of the site. Considering the previous café / creche use it is not anticipated that the proposal would result in an increase in traffic movements to and from the site. In addition, the site is located within a sustainable town centre location where there is access to alternative modes of transport to the car. The proposed development is therefore deemed acceptable from a highways perspective.

Biodiversity Net Gain

Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. Under the statutory framework for biodiversity net gain this application comprises development below the de-minimis threshold meaning that this development is exempt from providing biodiversity net gain.

PLANNING BALANCE AND CONCLUSION

The proposed Pilates Studio would bring a vacant commercial unit back into use, adding to the vitality and viability of the shopping area, and is considered compatible with its town centre location. The proposal, subject to condition, is not considered to have an unacceptable impact upon neighbouring amenities in terms of creating noise and disturbance. Nor should the proposal adversely affect highway safety or have a likely significant impact upon the Ashdown Forest. The proposed development therefore accords with policies DP2, DP17, DP21, DP24, DP26 and DP29 of the Mid Sussex District Plan, policy SA38 of the Mid Sussex Site Allocations DPD, policies TC4 and LR3 of the Burgess Hill Neighbourhood Plan and relevant policies of the NPPF.

Decision: Permission

Case Officer: Deborah Lynn