

Design, Access and Planning Statement

Section 73 application to variation Condition 2, subject to the proposed revised conditions



Site Location:	The Old Bank Café, 1 Middle Row, East Grinstead, RH19 3AX
Date:	24th May 2025
Planning Authority:	Mid Sussex District Council

1. Introduction

Homz Shivam has been instructed to prepare and submit a planning application to Mid Sussex District Council for a proposed Application for Variation of Condition 2 (09/02739/COU) - Section 73 Application on The Old Bank Café, 1 Middle Row, East Grinstead, RH19 3AX.

2. Executive Summary

This application seeks to vary Condition 2 of planning permission 09/02739/COU under Section 73 of the Town and Country Planning Act 1990.

Current Condition 2:

"No primary cooking of unprepared food shall be carried out within the premises. Only re-heated food that has been prepared elsewhere shall be served within the premises."

*Reason: To prevent the emergence of an unrestricted Class A3/A5 use that might have an adverse impact on the amenities of nearby neighbours and the general locality."

Proposed Revised Condition 2:

"Hot food preparation shall be permitted on the premises, excluding deep-fat frying and takeaway services. The extraction system shall be maintained in accordance with the specifications approved under application, with quarterly servicing records retained on site for inspection."

*Reason: To allow limited on-site cooking where modern extraction technology prevents adverse amenity impacts, while maintaining the original intent to restrict unrestricted A3/A5 uses.

Key Changes:

Retains the original intent (no A5/takeaway use). Replaces the absolute cooking ban with controlled permission for low-impact methods. Introduces enforceable standards for extraction maintenance.

3. Site Analysis

The site occupies a prime position within East Grinstead's town centre, as clearly demonstrated in the submitted drawings.

The site at 1 Middle Row was granted A3/A5 use in 2009 (09/02739/COU), but Condition 2 restricted cooking to prevent unrestricted A5 (takeaway) emergence.

While the permission technically included A5, the condition rendered it inoperable for takeaways by prohibiting primary cooking. The 2022 variation (DM/22/1327) extended hours but retained this restriction.

The Existing Block Plan and Location Plan demonstrate the site's position within East Grinstead's primary retail frontage, with adjacent A3/A5 uses operating without cooking bans.

Adjacent Uses & Precedent:

The Existing Block Plan identifies neighbouring A3/A5 uses, which operate without cooking restrictions. For clarity:

- A3 (Restaurants/Cafés): Premises for on-site food consumption (now Class E(b) under the 2020 Use Classes Order).
- A5 (Takeaways): Businesses selling hot food for off-site consumption (now Sui Generis).

While the nearest *separate* residential properties (PCL 49a/51) are 27m away (per HG277 plan), the flats above the café are directly adjacent. These are protected by:

- Vertical separation (ground-floor kitchen with independent residential access).
- Self-contained extraction (see Section 4).

Relevance:

- The council has already permitted unrestricted A3 uses nearby, demonstrating that cooking bans are not standard for such locations.
- Your proposal aligns with A3/Class E(b) principles (on-site dining only), explicitly excluding A5/takeaway use to honour the original intent of Condition.

Use Class Context

While the 2009 permission references A3/A5 (pre-2020 classes), the proposal complies with both:

- Original intent: No takeaway (A5) element.
- Current system: Operates as Class E(b) (food/drink consumption on-premises).

4. Justification for Variation

NPPF December 2024 Compliance (Paragraph 58)

The revised condition satisfies all three tests for planning conditions:

- Necessary:
 - Original concern: Unrestricted A3/A5 impacts (odor/noise).
 - Modern extraction (97% efficiency) renders the blanket ban unnecessary.
- Relevant to planning:
 - Directly addresses the Reason in Condition 2 (amenity protection).
- Reasonable:
 - Aligns with permissions for adjacent.

Local Plan Policy Alignment

1. DP26 (Town Centre Vitality):
 - Supports viable food uses where amenities are protected.
2. DP35 (Conservation Areas):
 - No external changes proposed.

Extraction System:

The proposed self-condensing hoods (e.g., UltraVent Plus) eliminate amenity risks by:

- Internally processing 97% of steam/odors (discharged via standard waste pipes).
- Requiring no external ductwork, avoiding:
 - Conservation Area impacts (no rooftop/wall penetrations).
 - Alleyway noise (zero decibel increase at PCL 49a).

5. Proposed Revised Condition

Revised Condition 2:

"Hot food preparation shall use self-condensing extraction systems (e.g., UltraVent Plus), with all emissions managed internally. Deep-fat frying, takeaway services, and external ducting are prohibited. Quarterly maintenance records shall be retained on site."

Reason: To enable low-impact cooking using modern, internally contained extraction that prevents amenity harm to adjacent flats and the locality."

Proposed Block Plan Extract:

- Building footprint (annotated with dimensions)
- Setbacks from boundaries (1.2m min.)

6. Conclusion & Recommendation

The variation is justified by technological advances, policy alignment, and demonstrable lack of harm. The revised condition provides a balanced, enforceable solution that respects the council's original intent while allowing viable café operation.

The comprehensive analysis of submitted drawings and technical evidence demonstrates:

1. The current condition is no longer necessary due to technological advances
2. No material harm to residential amenities will occur
3. The proposal fully complies with local and national policy
4. Clear precedents exist for similar permissions locally

We therefore respectfully request approval of this Section 73 application to vary Condition 2, subject to the proposed revised conditions.

This report has highlighted that the proposed development, subject to this application for planning permission, is in accordance with the Council's planning policies and national planning policy.

For the above reasons, the development is sustainable development and is also in accordance with national policy and guidance. Therefore, in the absence of any other material considerations to justify otherwise, it is respectfully requested that development be considered as acceptable in principle.

Should the Planning Authority request any further information in order to process this request for Development of The Old Bank Café, 1 Middle Row, East Grinstead, RH19 3AX, please contact Shivam Sagwal at **Homz UK** shivam@homz.uk directly as the acting agent and we will be more than happy to deliver any additional information as and when required.