

PLANNING STATEMENT

IN RELATION TO:

‘Variation of Condition 2 pursuant to planning permission DM/25/3134 (retrospective planning application for change of use from Use Class B2 (general industrial) to Use Class B8 (storage and distribution), relating to hours of use’

**21 Victoria Gardens, Burgess Hill,
West Sussex, RH15 9NB**

June 2026

1.0 INTRODUCTION

- 1.1 This application is submitted on behalf of our clients, Ebiss Limited, who are the occupiers of the subject premises.
- 1.2 Pursuant to Section 73 of the Town & Country Planning Act 1990, this application seeks permission to amend Condition 2 to allow vehicle movements into and out of the site daily between 0400 and 2200 hours. Movements will be restricted to a maximum vehicle size of 3.5 tonnes between the hours of 1900 to 0400 the following day (which aligns with the occupier's operator's license). Between 1900 hours and 0400 hours the following day there will be no forklift operation or audible reversing signals.
- 1.3 This Planning Statement is submitted in support of the above application. This statement should be read in conjunction with the accompanying 'Noise Assessment: Extension of Hours' document, which has been prepared on behalf of the Applicants by Acoustic South East.

2.0 SITE CIRCUMSTANCES

- 2.1 The Application Site is described within the recent Planning Officer report relating to application DM/25/3134 as *“an existing commercial site lying on an industrial estate close to the centre of Burgess Hill. Originally constructed in the early 1980's the site is consists of one large building primarily two storeys in height where the primary storage takes place with a single storey element to the front containing offices ancillary to the primary use. Access is to the east of the site with a large parking area and turning area for delivery vehicles. Access to the main storage area of the building is via two large roller shutter doors on the eastern elevation.*

To the south of the site lies the main access and remainder of the industrial estate which also lies to the east and west. To the north of the site lie the residential properties fronting Victoria Close. These are terraced Victorian properties with gardens approximately 15m in length. The mutual boundary between the application site and the residential gardens is made up of 2m high close boarded fencing”.

- 2.2 In terms of site designations, the site lies within the built-up area of Burgess Hill where the principle of new development is accepted subject to other policies in the plan. To our knowledge no other planning constraints or restrictions relate to the site.

3.0 PLANNING HISTORY

- 3.1 This S73 application relates to the following planning application: -
- **Planning ref: DM/25/3134/:** Retrospective planning application for change of use from Use Class B2 (general industrial) to Use Class B8 (storage and distribution). Approved 2nd February 2026.
- 3.2 There has also been a more recent discharge of condition application in relation to the site.
- **Planning ref: DM/26/0547/:** Discharge of condition 3 relating to planning reference DM/25/3134. Approved 4th March 2026.
- 3.3 Accordingly to the Councils online planning records, the site also has the following planning history: -
- **Planning ref: BH/134/79/:** Light industrial building with office accommodation and off street parking. Approved 04/09/79.
 - **Planning ref: BH/232/94/:** Change of use to B8 for storage and warehousing. Approved 22/12/94.
 - **Planning ref: DM/18/3781/:** Retrospective application to change the building use from B8 to B2. Approved 21/12/18.
 - **Planning ref: DM/23/0680/:** Change of Use from B2 to Sui Generis Funeral Directors Facility (to include 24 hour access). Withdrawn 08/08/23.
 - **Planning ref: DM/25/3133/:** Retrospective Planning Application for the permanent siting of 3 No. storage containers on the site. Pending determination.

4.0 THE PROPOSALS

- 4.1 This s73 application seeks to vary the wording of Condition 2 of planning permission **DM/25/3134** to allow vehicle movements into and out of the site daily between 0400 and 2200 hours. Movements will be restricted to a maximum vehicle size of 3.5 tonnes between the hours of 1900 to 0400 the following day (which aligns with the occupier's operator's license). Between 1900 hours and 0400 hours the following day there will be no forklift operation or audible reversing signals.
- 4.2 In all other respects the development is to remain as previously permitted, under planning ref: **DM/25/3134**.
- 4.3 The original planning permission was retrospective, so the works have been completed on site. The relevant legislation confirms, however, that S73 applications can be made post grant of this application in respect of the same details, if appropriate.

5.0 PLANNING POLICY

(i) National Planning Policy Framework

- 5.1 The National Planning Policy Framework (NPPF) was originally published in 2012, and has been subject to a number of revisions, most recently in December 2024.
- 5.2 The NPPF confirms that planning law, as set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, requires that applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

(ii) National Planning Policy Guidance

- 5.3 The following extracts of the National Planning Policy Guidance are considered relevant to this s73 application:

Amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)

How are the conditions attached to a planning permission amended?

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

Paragraph: 013 Reference ID: 17a-013-20140306

Revision date: 06 03 2014

Are there any restrictions on what section 73 can be used for?

Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development.

Paragraph: 014 Reference ID: 17a-014-20140306

Revision date: 06 03 2014

What is the effect of a grant of permission under section 73?

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. Further information about conditions can be found in the [guidance for use of planning conditions](#).

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

Paragraph: 015 Reference ID: 17a-015-20140306

Revision date: 06 03 2014

Is there a definition of ‘minor material amendment’?

There is no statutory definition of a ‘minor material amendment’ but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

Pre-application discussions will be useful to judge the appropriateness of this route in advance of an application being submitted.

Paragraph: 017 Reference ID: 17a-017-20140306

Revision date: 06 03 2014

Can section 73 be used to make minor material amendments if there is no relevant condition in the permission listing approved plans?

Section 73 cannot be used to make minor material amendments if there is no relevant condition in the permission listing the originally approved plans.

It is possible to seek the addition of a condition listing plans using an application under section 96A of the Town and Country Planning Act 1990. This would then enable the use of a section 73 application to make minor material amendments.

Paragraph: 018 Reference ID: 17a-018-20140306

Revision date: 06 03 2014

Use of Planning Conditions

What are the main legal powers relating to use of conditions?

The main powers are in sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990. Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act. In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

Section 70(1)(a) of the Act enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power needs to be interpreted in light of material considerations such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

A pre-commencement condition must not be imposed on the grant of permission (other than a grant of outline planning permission within the meaning of Section 92 of the 1990 Act) without the written agreement of the applicant except in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

Paragraph: 002 Reference ID: 21a-002-20190723

Revision date: 23 07 2019

What options are available to an applicant who does not wish to comply with a condition?

Following the decision of a local planning authority to grant planning permission subject to conditions, an applicant may consider taking the following actions if they do not wish to be subject to a condition.

These options remain available where the applicant has agreed a pre-commencement condition, or the pre-commencement condition has been imposed where the applicant has not responded within the time limit set out in a notice served under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018:

- Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990. In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.*
- Appeal to the Secretary of State against the decision of the local planning authority to grant planning permission subject to conditions. An appeal must be received within 12 weeks of the date on the decision notice for householder planning applications or 6 months for other planning decision types. A Planning Inspector on behalf of the Secretary of State will re-determine the whole application (not only the decision to impose the conditions) – so there is a risk that the Inspector could refuse planning permission and therefore reverse the decision of the local planning authority. Further guidance on appeals.*

Development that is taken forward in breach of conditions may be subject to local authority enforcement action. It is also possible to apply for retrospective planning permission under section 73A of the Town and Country Planning Act 1990. Further guidance on enforcement (including section 73A).

Paragraph: 031 Reference ID: 21a-031-20180615

Revision date: 15 06 2018

How are conditions treated under section 73?

The original planning permission will continue to exist whatever the outcome of the application under section 73. The conditions imposed on the original permission still have effect unless they have been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. For the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

Any pre-commencement conditions may not be imposed without the written agreement of the applicant to the terms of the condition (except in the case of a condition imposed on the grant of outline planning permission within the meaning of section 92 of the 1990 Act or in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018). Further guidance on section 73.

Paragraph: 040 Reference ID: 21a-040-20190723

Revision date: 23 07 2019

(iii) Mid Sussex District Plan

5.4 The District Plan was adopted at Full Council on 28th March 2018. The following policies are considered to be of relevance: -

- **Policy DP1** – Sustainable Economic Development
- **Policy DP17** – Ashdown Forest
- **Policy DP21** – Highways and Parking
- **Policy DP26** – Neighbour Amenities
- **Policy DP27** – Pollution.

(iv) Neighbourhood Plan

5.5 The Burgess Hill Neighbourhood Plan was made in 2016. No policies are considered relevant to this application that seeks to vary the hours of use.

(v) Local Plan review

5.6 The District Council is in the process of reviewing and updating the District Plan, where necessary. The Council's website states that *"Mid Sussex District Council's draft District Plan is currently being independently examined by a government-appointed Planning Inspector. As part of that process, the Inspector has asked the council to increase the amount of housing it is planning for to help to meet the need for housing in local council areas where they are unable to meet the need"*.

5.7 Due to the new Plan being subject to further change and public consultation (main modifications), it is therefore considered that no weight can be given to this emerging policy document at the current time.

6. PLANNING ASSESSMENT

- 6.1 Section 73 of the Town & Country Planning Act 1990 allows applications to be made for permission to develop without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original conditions should continue.
- 6.2 The original planning permission will continue to subsist whatever the outcome of this further application under section 73.
- 6.3 Section 73 cannot be applied if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun.
- 6.4 In this case, the original planning permission (**DM/25/3133**) was approved by the Council via decision notice dated 2nd February 2026. Further, the planning application was retrospective (*‘retrospective planning application for change of use from Use Class B2 (general industrial) to Use Class B8 (storage and distribution)’*, and as such, the use was existing at the time of planning permission being granted.
- 6.5 Condition 2 of planning permission **ref: DM/25/3133** relates to hours of use and reads as follows: -
“2. All deliveries, collections, loading, unloading, and any external operations associated with the use shall only take place between the hours of 07:00 and 19:00 Monday to Saturday. No such activities shall take place on Sundays or Bank Holidays. Reason: To protect the amenities of residential neighbours and to accord with policies DP26 and DP29 of the Mid Sussex District Plan 2014-2031”.

- 6.6 At the time of the planning application being determined, the Council considered the hours of use. The Planning Officer noted in their report that *“the site is in close proximity to residential neighbours and has the potential to cause harm primarily through noise from vehicle movements delivering and collecting from the premises. No noise assessment has been with the application, however, it is noted the premises have been in recent B2 use and former B8 use. The planning permission which secured the B8 use (BH/232/94) included conditions requiring deliveries and collections to be made between the hours of 7am and 7pm. The Council's Environmental Protection Officer has been consulted on the application and in the absence of any noise assessment has also recommended planning conditions preventing deliveries and collections otherwise than between the hours of 7am and 7pm.*
- Noting the previous use of the building it is not considered that the use will cause unacceptable harm to amenity subject to conditions being imposed. In the absence of any evidence to support otherwise the control of deliveries and collections would otherwise than between the hours of 7am and 7pm would appear appropriate. It is noted the applicant states that they may require deliveries outside of these hours, however, to do so without permission and evidence would represent a breach of planning control. This would therefore mean an alteration to the operation of the business which the applicant has accepted and is willing to accept the proposed condition. **Should they later wish to vary the hours then it would be open to them to submit a s.73 application to the Council to consider and determine on its own merits.** Therefore subject to the imposition of appropriate conditions relating to hours of deliveries and collections the development would be considered to comply with the requirements of policies DP26 and DP29 of the Mid Sussex District Plan.”*
- 6.7 Having further reviewed their position, the Applicant's position is that they need to have some limited movements and activity associated with the use of the premises outside of the hours prescribed in Condition 2 of planning permission DM/25/3133. Therefore this S73 application seeks to amend Condition 2 to allow vehicle

movements into and out of the site daily between 0400 and 2200 hours. Movements will be restricted to a maximum vehicle size of 3.5 tonnes between the hours of 1900 to 0400 the following day (which aligns with the occupier's operator's license). Between 1900 hours and 0400 hours the following day there will be no forklift operation or audible reversing signals.

- 6.8 The Applicant has advised that the *“Operators License states that the vehicles must be kept at the site overnight and not parked on a road. If we cannot pre-load our vehicles and leave them in the secure yard, we will have to turn down business. We cannot leave our vehicles on the road else that violates our Operators License let alone the risk of theft or damage. Our business and therefore our income is affected and the knock on effects to the company, are huge. We are only asking to be able to remove our vehicles from the yard within the hours 4am - 10pm.”*
- 6.9 This application is accompanied by a report entitled ‘Noise Assessment: Extension of Hours’, which has been prepared by Acoustic South East.
- 6.10 The report confirms that *“Acoustic South East have been appointed to undertake a noise impact assessment relating to the proposed extension of hours for EBISS UK Ltd. The current permitted hours of operation are 07:00 – 19:00hrs (Monday to Saturday, excluding bank holidays). The proposed hours of operation are 04:00 – 22:00hrs, 7 – days a week...The reason for needing the extension in the morning is for drivers to be able to leave the secure yard between the time period of 04:00hrs – 07:00hrs in order to be able to arrive on exhibition hall sites in London etc on time but with the knowledge that the freight can be pre-loaded on vehicles the day before and remain secure in their yard overnight allowing the driver to just start the engine and drive out of the yard...The same reasons are for extending into the evening from 19:00 – 22:00hrs: It allows drivers to arrive back to the yard with the freight in the vehicle, knowing that it is in a secure compound overnight until staff arrive in the*

morning to unload after 07:00hrs...All loading and unloading of vehicles will remain in the existing 07:00 – 19:00hrs time window”.

- 6.11 The report states that *“it is important to note that the site is part of an active industrial estate. The NSRs along Victoria Close are the only residential dwellings in the area and they are situated between two portions of the Victoria Industrial Estate...The main point of context here is that all loading and unloading of vehicles will already have been carried out during the currently licensed operating hours of 07:00 – 19:00hrs. The extended hours are ONLY for being able to depart the yard during a time which would allow drivers and the business to be significantly more efficient whilst also ensuring all freight remains in a secured compound. The same goes for the arrival back to the yard: The driver will simply drive into the yard, park the vehicle and then leave, ensuring the vehicle and its freight is in a secure location so that it can be unloaded during current daytime operating hours...The times that vehicles will be operating on site is a small fraction of the reference time. Often less than 1-minute and it will not be every day”.*
- 6.12 District Plan Policy DP26 advises that *“applicants will be required to demonstrate that development... does not cause significant harm to the amenities of nearby residents... including taking account of the impact on... noise, air and light pollution”.*
- 6.13 Policy DP29 expands on this insofar that it relates specifically to noise pollution, and it says that *“the quality of people’s life will be protected from unacceptable levels of noise”.* It goes onto say that development will only be permitted where *“it is designed, located and controlled to minimise the impact of noise on health and quality of life, neighbouring properties and the surrounding area. If it is likely to generate significant levels of noise it incorporates appropriate noise attenuation measures”.*

- 6.14 The submitted Noise Assessment report concludes as follows: *“Assessment of existing L90 Background Sound Levels have been carried out for the proposed new hours of operation against which the specific sound levels (rated in accordance with BS4142 requirements) can be assessed. This shows that for the time period of 04:00 – 07:00, the representative L90 Background Sound Level is 36dBA. For the time period of 19:00 – 22:00, the representative L90 Background Sound Level is 32dBA. BS4142:2014-A1:2019 states that if the Rating Level is at Parity with the L90 Background Sound Level, then Adverse Impact is unlikely. It also states that the lower the Rating Level is in comparison to the Background Sound Level, the likelihood of impact decreases further. The results of the survey and assessment show that in all cases during the time frame of 04:00 – 07:00hrs, the worst-case scenario Rating Level for a vehicle departing the yard is below the L90 Background Sound Level. The results also show that for vehicles arriving back to the yard during the time period of 19:00 – 22:00hrs, the worst-case scenario Rating Level is only 1dB above the L90 Background Sound Level. However, this is not a typical situation: a typical situation is more likely to be below background for any of the vehicles arriving back. Based on the above and the context around the situation, it is recommended that Planning Consent for the hours-of-operation extension is not refused on noise grounds, albeit with the understanding that a condition stating that no loading or unloading occurs during these extra hours”.*
- 6.13 The Council originally imposed condition 2 out of an abundance of caution due to the lack of a noise assessment. The accompanying noise assessment, which has been prepared in support of this S73 application, has satisfactorily demonstrated that the variation to hours of operation associated with the approved use of the premises, would be entirely acceptable. The proposed hours of use would not result in any undue harm to nearby residents’ amenities through the creation of noise from vehicle movements delivering and collecting from the premises. A condition stating that no loading or unloading occurs during these extra hours is recommended to be imposed and our client is agreeable to this suggested condition.

- 6.14 We are of the opinion that this Application submission satisfactorily demonstrates that the variation of condition 2 of planning permission DM/25/3134, to allow amended hours of use of the premises, is entirely acceptable and conforms with the relevant planning policies.

7. CONCLUSIONS

- 7.1 In submitting this application regard has been given to the relevant Local and Neighbourhood Plans, in addition to the guidance contained in the NPPF and NPPG.
- 7.2 Paragraph 57 of the revised NPPF states that *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”*. It is considered that the proposed revision to condition 2 of planning permission **DM/25/3134** is entirely compliant with the NPPF’s guidance in this respect.
- 7.3 The proposed variation of Condition 2 clearly constitutes a ‘minor material amendment’ to the approved use of the premises. Importantly the application description remains unchanged, as does the nature of the use of the premises. The application therefore accords with the guidance set out in the NPPG. The proposed variation of Condition 2 will ensure that the development will accord with the relevant Development Plan policies, most pertinent of which are **Policies DP21** (Highways and Parking), **DP26** (Neighbour Amenities) and **DP29** (Noise, Air And Light Pollution) of the Mid Sussex District Plan.

June 2026