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Application No: 21/2449/FH

Location of Site: 7 The Old High Street, Folkestone

Development: Section 73 application for the variation of condition 2 (hours of opening) of planning permission Y18/0168/SH to allow public use of existing outbuilding 08.00 to 21.00 on any day.

Applicant: Mr A. Shorten

Agent: N/A

Officer Contact: Ross McCardle

SUMMARY

This application seeks to vary condition 2 of planning permission Y18/0168/SH to allow longer hours of use of an outbuilding within the rear garden/yard of the premises, which operates as a pub/restaurant. Condition 2 restricts use of the outbuilding and rear yard to between 0800 and 2000hrs; this application seeks to extend those hours to 0800 and 2200hrs. The Council's Environmental Health manager has no objections to extended hours, but recommends 2100 rather than 2200hrs, and suggests this can be reviewed in future. The applicant has agreed to this suggestion. Subject to this restriction it is considered that the development would not give rise to any unacceptable harm to residential amenity within this otherwise vibrant town centre location, and the application is therefore recommended for approval.

RECOMMENDATION:

That planning permission be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. INTRODUCTION

1.1. The application is reported to Committee because of an objection from Folkestone Town Council.

2. SITE AND SURROUNDINGS

2.1. The application site is a mid-terrace property situated on the upper section of The Old High Street. It features a traditional shopfront leading to a bar/pub inside, with a rear garden providing outside seating for customers.

2.2. The site is within the Leas & Bayle conservation area, the Secondary Shopping Area, and the designated town centre.

2.3. The wider area is characterised by pubs/bars, restaurants, and retail units.

2.4. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

- 3.1 This application seeks permission to vary condition 2 (hours of opening) of planning permission Y18/0168/SH to allow public use of the rear yard/outside space and an existing outbuilding therein between the hours of 08.00 to 22.00 on any day.
- 3.2 Y18/0168/SH granted retrospective planning permission for the erection of a single-storey outbuilding for use as a bar and seating area, together with use of the rear yard as part of the bar. Condition 2 of that planning permission restricts *“the use of the outbuilding hereby permitted and rear yard/outside area”* to between 0800 and 2000hrs on any day. (Condition 3 of that permission prevents live or recorded music within the rear yard to between 12.00 and 18.00; it is not proposed to alter the terms of condition 3.)
- 3.3 The application form states that the proposed change to condition 2 is intended *“to bring us in line with other town centre / neighbouring businesses that also have close adjacencies to residential properties, such as Market Square and Lucky Chip.”*

4. RELEVANT PLANNING HISTORY

- 4.1 The relevant planning history for the site is as follows:

Y18/0168/SH	Retrospective application for the erection of a single storey outbuilding for use as a bar and seating area, together with change of use of rear yard to an ancillary use in association with the retail (A1), drinking establishment (A4) and exhibition space (D1) mixed use of the main building.	Approved
Y17/0403/SH	S.73 application for variation of conditions 3 and 4, and removal of condition 5 of planning permission Y16/1125/SH to allow live/amplified music three days per week. Condition 3 of this permission allows use of the building as a drinking establishment until 23.30 weekdays and Sundays, midnight on Fridays and Saturdays, and up to 02.00 on certain bank holidays/special occasions (Valentine’s, Halloween, etc.	Approved
Y16/1125/SH	Change of use from retail to drinking establishment and exhibition space.	Approved
Y10/0111/SH	Change of use of the upper floors from office to residential flat.	Approved

- 4.2 Also of note (and as referred to within the applicant’s submission – see 3.3 above) are:

- Y18/0474, which granted planning permission for change of use from retail to drinking establishment at 2 Church St (Lucky Chip) subject to a condition restricting opening hours to between 10.00 and 23.00 (23.30 Friday and Saturday); and

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- Y18/0603/FH, which granted planning permission for change of use from retail to café/restaurant at 19-21 Rendezvous Street (Market Square) subject to a condition restricting opening hours to between 09.00 and 21.00 (22.00 on Saturdays, and 18.00 on Sundays).

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: Object *“due to noise implications on local residents.”*

Environmental Protection Officer: No objection subject to hours being amended to 08.00 – 21.00. They comment that *“if the applicant can demonstrate they can successfully manage this area without generating complaints from nearby residential neighbours, the Environmental health would consider extending the opening times to 22.00 at a later date.”*

Local Residents Comments

- 5.2 46 neighbours directly consulted and a site notice posted. 5 letters of objection received in response.
- 5.3 I have read all of the letters received. The key issues are summarised below:

Objections

- Noise and disturbance to neighbouring residential properties;
- Light pollution; and
- Different circumstances to other businesses in terms of relationship to residential properties.

5.4 Responses are available in full on the planning file on the Council’s website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

- 6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review 2022.
- 6.2 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1 (general criteria)
RL2 (Folkestone Main Town Centre)
NE5 (light pollution and external illumination)
HE1 (heritage assets)

Policy RL2 supports development that would contribute to the evening economy and vibrancy of the town centre, and states that *“within the designated town centre area*

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(as identified on the Policies Map), planning permission will be granted for development that provides for a range of town centre uses that adds to the vitality and viability of the town centre, particularly where it can be demonstrated that the proposal would enhance the evening economy.” It continues on to note that “within the Secondary Shopping Frontages (as defined on the Policies Map) proposals for development, redevelopment or change of use for Class A1 (shops), A2 (financial and professional services) and A3 (restaurants and cafes), A4 (drinking establishments) and A5 (hot food takeaways) uses will be permitted.”

Core Strategy 2022

CSD6 (central Folkestone strategy)

6.3 The following are also material considerations to the determination of this application.

National Planning Policy Framework (NPPF) 2019

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF are relevant to this application:-

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Principle of development
- b) Residential amenity
- c) Other

a) Principle of development

7.2 The site lies within the designated town centre where “night time economy” uses such as pubs, bars, and restaurants are actively encouraged by adopted policy RL2 (as set out at para. 6.3 above) in the interest of promoting a thriving economy and vibrant, viable town centre. In this regard the principle of using an external seating area and outside bar to support an existing establishment is acceptable in principle.

b) Residential amenity

7.3 As set out within the planning history above: the property has permission to operate as a drinking establishment until at least 23.00 throughout the week, with longer hours at weekends and bank holidays. It is only the use of the outside space and outside bar which is restricted beyond 20.00 and which this application seeks to amend.

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- 7.4 The Council's Environmental Health officer has recommended that the opening hours of the outside area and outside bar be extended by a maximum of one hour, from 20.00 as currently permitted to 21.00 (rather than 22.00 as applied for). They consider that this would give the applicants additional benefit while still maintaining some degree of control over potential late-night noise and disturbance for neighbouring residents, and would serve as a "trial period" of sorts in which the applicant would have opportunity to demonstrate that noise and disturbance within the rear yard could be effectively managed. The applicant has agreed to this suggestion.
- 7.5 Officers note the applicant's reference to Market Square and Lucky Chip (as above), but the current application site differs from those units in that their outside space is on the street frontage whereas the outside space for no.7 is to the rear and overlooked by residential properties. However all of these sites are within the designated town centre where one would expect a certain degree of noise and disturbance from the public, especially during the evenings.
- 7.6 It is considered that this additional hour would not be so harmful (over and above the current permitted hours) as to justify a refusal of planning permission in this instance, particularly with reference to policy RL2 and its broad support of night-time economy uses.
- 7.7 Conditions can be applied to ensure any external lighting is angled / shielded so as to prevent overspill into neighbouring premises.
- 7.8 With regard to the above it is considered that a one-hour extension to the approved hour of the outside space would not be significantly harmful to residential amenity.

c) Other

- 7.9 The site lies within the Leas & Bayle conservation area; no physical works are proposed and the development would therefore not affect the character or appearance thereof.
- 7.10 Conditions to reflect those on previous permissions have been set out below, as well as additional conditions to minimise light spill.

Environmental Impact Assessment

- 7.11 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.12 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.

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7.13 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. This application is not liable for the CIL charge as it is a change of use and would not create any additional floor space.

Human Rights

7.14 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

7.15 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.16 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 This application seeks to vary condition 2 of planning permission Y18/0168/SH to allow public use of an outbuilding within the rear garden/yard of the premises

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

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That planning permission be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

Conditions:

1. The outbuilding and rear yard/outside area subject to this application shall not be open to the public outside the hours of 0800 to 2100 on any day.

Reason: In the interest of residential amenity.

2. Live or recorded music in the rear yard/outside area shall be restricted to the hours of 1200 to 1800.

Reason: In the interest of residential amenity.

3. Any lighting within the rear yard/outside area shall be sited, angled, and shielded to ensure that the light falls wholly within the curtilage of the site.

Reason: In the interests of residential and visual amenity.