

Recommendation: **REFUSE PERMISSION**

1.4 The outbuilding has a fully glazed elevation with folding doors facing into the garden ie south west elevation, with wooden cladding on its other elevations. Its roof is louvered allowing opening for extra ventilation. Internally it is fitted out with typical table and chairs for customers and soft furnishings including rugs have been added to help soften and mitigate noise. A wood pellet burner is installed inside the outbuilding, with associated external flue on its rear (eastern elevation) as well as some CCTV cameras that have been erected on both the outbuilding and office shed to the rear. These were granted retrospective planning permission in February 2020 under ref

APP/19/01802. Beyond this outbuilding is a further shed used as an office, and small graveled parking area with a rear vehicular access taken off Pelham Terrace via a private garage court.

2 Planning History

90/55604 - Change of use of ground floor from retail shop to cafe/coffee lounge and erection of covered way to rear. Refused 22/01/1991

Allowed on Appeal May 1991 - but no hours conditions imposed

APP/18/00721 - Retention of enclosed seating area and outbuilding for office use., PERM, 18/06/2019

APP/19/01082 - Erection of CCTV and wood pellet burner flue to the rear seating area 'pod' (Retrospective)., PERM, 19/02/2020

3 Proposal

Variation of Condition 2 of Planning permission APP/18/00721 relating to amendment of opening hours of approved enclosed seating area to allow customer or business use between the hours of 09:00 and 22:00 hours daily.

4 Policy Considerations

National Planning Policy Framework

Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS12	(Chichester Harbour Area of Outstanding Natural Beauty (AONB))
CS16	(High Quality Design)
CS4	()
DM10	(Pollution)
DM5	(Control of Class A3, A4 and A5 Food, Drink and Entertainment Uses)

Havant Borough Local Plan (Allocations) July 2014

DM20	(Historic Assets)
AL1	(Presumption in Favour of Sustainable Development)
AL3	(Town, District and Local Centres)

Havant Borough Pre Submission Local Plan 2036

E22	(Amenity and pollution)
E5	(Chichester Harbour Area of Outstanding Natural Beauty)
C4*	(Emsworth District Centre)
C8*	(Food, drink and entertainment uses)
E13	(Historic environment and heritage asset)

Emsworth Neighbourhood Plan Post Examination Version 2020

ENP_C2	(Retail, High Street & Food/Drink Uses)
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Listed Building Grade: Not applicable.
Conservation Area: Emsworth

5 Statutory and Non Statutory Consultations

Chichester Harbour Conservancy

None received

Conservation Officer

The site is located in the High Street in Emsworth Town Centre and within the Emsworth Conservation Area. It comprises a ground floor café with external seating area.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires planning authorities, when considering whether to grant planning permission for development which affects a Conservation Area, to have special regard to the desirability of preserving or enhancing the character and appearance of that area.

The application relates to a variation in opening hours to allow the rear external seating area. With regards to the impact on the designated heritage asset, that being the conservation area in this case, it is considered that the impact would be negligible. Overall is considered that the proposal will meet the test to preserve and enhance the character and appearance of the conservation area.

Conclusion - No objection

Environmental Health Manager

Ive reviewed this application but our view remains that use of the structure has the potential to have an adverse effect on nearby residential neighbours.

The structure is located nearer to neighbours then the existing premises. The slated/louvered roof will allow noise to escape from the premises. As background sound levels drop into the evening, the noise from patrons etc., may cause more disturbance to nearby neighbours. For this reason we object to the proposed amendment to the hours of use of the enclosed seating area .

Natural England Government Team

We have reviewed this for potential impacts on designated sites and landscapes. Natural England currently has no comment to make on the variation of condition 2 of planning permission APP/18/00721.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 24

Number of site notices: Not applicable.

Statutory advertisement: 25/09/2020

Number of representations received: 0

Comment	Officer Comment
None received	

7 **Planning Considerations**

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon the character and appearance of the area, AONB, Listed Buildings and Conservation Area
- (iii) Impact upon residential amenity

(i) Principle of development

7.1 The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. The site lies within a Conservation Area and is also adjacent Listed Buildings in Queen Street (numbers 4, 6, 10 and 12). Therefore Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is relevant to the determination of this application requiring special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest, as well as the desirability of preserving or enhancing the character or appearance of a conservation area. Being within the town centre then the existing cafe use is acknowledged as an appropriate use that both supports the local economy, provides jobs and also provides a tourist attraction for the town.

(ii) Impact upon the character and appearance of the area, AONB, Listed Buildings and Conservation Area

7.2 The outdoor seating building the subject of this application is located within the enclosed rear garden of Driftwood cafe. As such there are no wider public views of the structures which can only be seen from private areas. The proposal to extend the opening hours would not result in any detrimental harm to the character of Emsworth town centre, the AONB, and would continue to preserve the character of the Conservation Area. Overall the proposal is not considered harmful to the setting of nearby Listed Buildings or the character of the wider area.

(iii) Impact upon residential amenity

7.3 The key consideration in the determination of this application relates to the potential harm to neighbouring amenity from additional noise and disturbance associated with the proposed additional evening use. When the outbuilding was permitted retrospectively under APP/18/00721 the application was subject to objections based on noise due to the proximity of the building to quiet residential gardens. At the time Environmental Health colleagues carefully assessed the proposal and were concerned that the minimalist design with hard floors and walls resulted in the noise generated within the building being amplified and reverberated and escaping through the louvre roof and open side. Following some sound checks the applicants worked with Environmental Health to add some internal acoustic improvements, and cladding and absorption measures - these included laying an outdoor carpet; installing hit and miss boarding with acoustic absorbing material behind on the side walls; rugs added to the chairs; and internal plants.

- 7.4 On that basis Environmental Health accepted the noise levels generated from the use of the outbuilding were appropriate in the day time when background levels were higher due to the town centre location and use of the existing outdoor garden by customers. However they remained concerned that when the ambient evening noise drops, the potential for disturbance increased and to protect neighbouring amenity from any noise from extended evening use, they recommended that the use should be limited between 9am and 6pm. Accordingly condition 2 was imposed.
- 7.5 It is now sought to vary this condition to allow use until 10pm daily. It is noted that the hours of use of the ground floor of the site and the outside garden area is unrestricted by planning condition and hence no control exists over the hours of use of these areas. It is understood that the site has a licence to serve alcohol on the whole site ie including garden outbuilding, until 11pm daily.
- 7.6 It is considered that evening use of the ground floor of the main cafe is remote and sufficiently separated and enclosed to pose limited noise and disturbance to nearby residents. Use of the outdoor garden area would have more direct impact but its use would be limited due to climate and seasons. However the use of the outbuilding which provides indoor warm seating (due to presence of wood pellet burner) would allow a significant intensification of use of the site. The proposal would allow for the outbuilding to be used for customer seating to enjoy evening meals until 10pm seven days a week all year round. Arguably, with alcohol being served, this changes the nature of the use from a cafe to a fully serviced restaurant serving evening meals. Customers could comprise small groups or the outbuilding would lend itself to group bookings for parties and celebrations. The noise associated with people chatting and enjoying an evening meal would increase with group parties. Customers would also have to cross the garden to access the outbuilding at the start and end of the evening, as well as to use the facilities of the main cafe. This would lead to increased noise and disturbance at a time when the surrounding area is much quieter. This additional activity would introduce unsociable noise and disturbance in the quieter evening times when adjacent families would wish to enjoy their own properties and gardens.
- 7.7 In particular number 8 Queen Street has a small courtyard garden that sits at a higher level, immediately adjacent the outbuilding. It also has a kitchen diner area with direct access to the courtyard garden and this back area of the dwelling provides a main habitable area for occupants. It is considered that any noise from the cafe use would be tolerable during the day when general activity is greater in the area, but when families wish enjoy their own properties and gardens for quiet evening sitting out, it would be intrusive to have the continued background noise of customers in the outbuilding. Due to the tight relationship of the outbuilding immediately adjacent the private garden area of number 8, with louvered roof set at 2m high from the garden of number 8, the potential for noise escaping and disturbance continuously until 10pm every night of the week would be harmful to the otherwise quiet amenity of the occupiers of this dwelling.
- 7.8 Policies CS16, DM5 and DM10 are all relevant to this assessment. Policy CS16 relates to high quality design and seeks development that does not cause unacceptable harm to amenity from, amongst other things, noise. Policy DM5 relates specifically to food, drink and entertainment uses and criteria 6 requires development not to cause unacceptable disturbance to nearby residents "at times when activity in the immediate vicinity would otherwise be at a relatively quiet level". Furthermore policy DM10 considers Pollution and recommends that development that may cause noise should only be permitted if the health and safety of nearby occupiers and residents is not put at risk. It is considered that the potential for noise generation from the proposed extra

evening usage in such close proximity to quiet residential properties, at a time when the ambient noise levels are naturally reduced, would be harmful to the amenity of neighbours, contrary to all these policies. Emerging policy C8 of the HBLP 2036 also requires the operating hours to not cause unacceptable disturbance to nearby occupiers.

- 7.9 The submitted Design & Access Statement addresses the potential for noise and suggests mitigation by closing the door and roof louvres by 9pm; having last orders at 9pm with all customers and staff leaving by 10pm; no amplified music played in the outbuilding at any time. It also notes the current Covid 19 restrictions and due to the need to socially distance the reduced number of covers and therefore noise from the outbuilding. However regrettable the current Covid restrictions, nonetheless these are temporary only but any planning permission would be permanent and this application must be assessed assuming full capacity of the outbuilding. It is also considered that any condition restricting the opening and closing of the doors and louvre roof would be difficult to enforce and customer behaviour impossible to truly control. Overall these suggested mitigation measures are not considered sufficiently related and precise enough to planning to appropriately mitigate the potential noise nuisance.

8 Conclusion

- 8.1 It is acknowledged that the increased opening times would help economically with supporting this business, but it is considered that the environmental impacts of doing so would outweigh the benefits, such that the proposal would not represent sustainable development. Environmental Health continue to object to the evening use of the outbuilding due to the potential adverse effect on residential neighbours from noise when background levels drop. Overall the increased evening usage in close proximity to residential properties and gardens is considered likely to be harmful to the otherwise quite amenity of neighbours and contrary to policies CS16, DM5 and DM10, as well as emerging policy C8 and is recommended for refusal.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/20/00769

(A) for the following reasons

- 1 Due to the siting of the outbuilding in close proximity to residential properties, the proposed additional hours of use in the evenings would result in increased noise and disturbance when the ambient background levels are reduced. This would be intrusive and harmful to the otherwise quiet amenity of the adjacent residential properties, particularly number 8 Queen Street. It is therefore contrary to policies CS16, DM5 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011; emerging policy C8 of the Pre-Submission Havant Borough Local Plan 2036 and the National Planning Policy Framework.