

|                                      |   |                            |                     |
|--------------------------------------|---|----------------------------|---------------------|
| <b><u>No:</u></b>                    | <b>BH2025/01338</b>   | <b><u>Ward:</u></b>        | <b>Regency Ward</b> |
| <b><u>App Type:</u></b>              | <b>Removal or Variation of Condition</b>  |                            |                     |
| <b><u>Address:</u></b>               | <b>10 Dukes Lane Brighton BN1 1BG</b>   |                            |                     |
| <b><u>Proposal:</u></b>              | <b>Application to vary Condition 2 of planning permission BH2005/02302/FP to permit customer opening hours of 08:00 to 22:30 daily.</b> |                            |                     |
| <b><u>Officer:</u></b>               | Jack Summers,<br>tel: 296744  | <b><u>Valid Date:</u></b>  | 23.05.2025          |
| <b><u>Con Area:</u></b>              | Old Town  | <b><u>Expiry Date:</u></b> | 18.07.2025          |
| <b><u>Listed Building Grade:</u></b> | N/a   | <b><u>EOT:</u></b>         | 08.10.2025          |
| <b><u>Agent:</u></b>                 |   |                            |                     |
| <b><u>Applicant:</u></b>             | Barlogic Ltd Flat 4 1 New Church Road Hove BN3 4AA  |                            |                     |

## 1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

### Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

**Reason:** For the avoidance of doubt and in the interests of proper planning.

| Plan Type        | Reference      | Version | Date Received |
|------------------|----------------|---------|---------------|
| Proposed Drawing | 38019-10DL-LP1 | Issue 1 | 23-May-25     |
| Proposed Drawing | 38019-10DL-LPG | Issue 1 | 23-May-25     |

2. No customers shall remain on the premises outside the hours of 08:00 and 22:30 daily. No activity within the site shall take place between the hours of 23.30 and 06.30 daily.

**Reason:** To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies D20 and DM40 of the Brighton & Hove City Plan Part Two.

3. Not Used.

4. No machinery and/or plant shall be used at the premises except between the hours of 08:00 and 22:30 daily.

**Reason:** To safeguard the amenities of the occupiers of nearby properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the Council from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.

**Biodiversity Net Gain**

Based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply. These can be found in the Environment Act 2021.

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that, unless an exception or a transitional arrangement applies, the planning permission granted for the development of land in England is deemed to have been granted subject to the condition ("the biodiversity gain condition") that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

**2. SITE LOCATION**

- 2.1. The application site is a ground and first floor commercial (E Use Class) planning unit located on the south side of Dukes Lane, within the Old Town Conservation Area. The pedestrianised Dukes Lane runs along the north of the site, whilst to the rear there is a private car park. The local area is a mix of residential and commercial (including late night economy) uses.
- 2.2. There are several listed buildings in the vicinity, with the closest being the Grade II\* listed Hippodrome, and the grade II listed The Victory, and Seven Stars public houses. The site is also within an Archaeological Notification Area.
- 2.3. A site visit has not been undertaken in this instance; however, the impacts of the development can be clearly assessed from the plans and photos provided and from recently taken street-level and aerial imagery of the site.

### 3. RELEVANT HISTORY

- 3.1. **BH2005/02302/FP** Partial change of use from class A1 (retail) to class A1 (retail) and A3 (cafe) and extension of existing extract ductwork at rear. (Part-retrospective) Approved
- 3.2. Condition 2 states:  
*The cafe (A3) and retail unit (A1) shall not be open or in use except between the hours of 8am until 6pm on Mondays to Sundays.*  
**Reason:** *To safeguard the amenities of the locality and to comply with QD27 of the Brighton and Hove Local Plan.*

### 4. APPLICATION DESCRIPTION

- 4.1. Planning permission was granted under application BH2005/02302/FP, for a change of use class from A1 (shop) to a mixed A1/A3 (shop/café) use.
- 4.2. It should be noted that use classes A1 and A3 were revoked and replaced with class E under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
- 4.3. As set out above this earlier permission was granted subject to a condition restricting opening hours to 08:00-18:00 daily.
- 4.4. Permission is now sought from the Local Planning Authority (LPA) to grant planning permission without complying with these conditions, under Section 73 of the Town and Country Planning Act 1990 (as amended).
- 4.5. The permitted scheme would be varied to instead permit opening hours of 08:00 to 22:30 daily.
- 4.6. It should be noted that there have been some alternative proposed opening times mentioned across various documents; for clarification, planning permission is sought for the opening hours of 08:00 to 22:30 daily. The operating hours initially including opening at 09:00 or 10:00 (depending on the day), but the LPA has amended this to 08:00 daily (as per the current permitted opening hours)

### 5. REPRESENTATIONS

- 5.1. **Five (5)** representations have been received, objecting to the proposal on the following grounds:
- The red line on the site location plan does not include the outside area, nor did it on the original planning permission (BH2005/02302)

- It would not be lawful or reasonable to prescribe opening hours to the outside space; furthermore, there is objection to use of this space beyond 19:00 Monday to Saturday and 17:00 Sundays and Bank Holidays.
- There should be no music played that is audible outside of the application building
- There is a local covenant in place regarding music.
- Storage of seating after business closure will lead to noise nuisance.
- The use of the property as a 'drinking establishment' would constitute an unauthorised change of use class.
- Lack of 'evidence of a Premises Licence or Personal Licence holder'
- Creation of a drinking establishment in the area, resulting in noise nuisance and antisocial behaviour

## 6. CONSULTATIONS

### Internal:

- 6.1. **Art & Culture Team:** No Comments to make.
- 6.2. **Environmental Health Team:**  
There are concerns that extending trading hours may also result in extended use of the extractor fan, which could lead to increased noise levels later into the evening when ambient noise levels are lower.
- 6.3. **Sustainable Transport:** No Objection
- 6.4. **Sussex Police Community Safety:**  
The primary concern with additional hours of trading is the amenity of the surrounding local community who may be adversely affected with longer opening times.
- 6.5. A large degree of sensitivity will be required to make sure the surrounding local community is not unduly disturbed, and it will therefore be a matter for the applicant to ensure that this is managed in the most appropriate manner.

## 7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report.

The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove City Plan Part Two (adopted October 2022)

- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013; revised October 2024)
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017)
- Shoreham Harbour Joint Area Action Plan (adopted October 2019)

## 8. **RELEVANT POLICIES & GUIDANCE**

### The National Planning Policy Framework (NPPF)

#### Planning Practice Guidance (PPG)

#### Brighton & Hove City Plan Part One (CPP1)

|      |  |
|------|--|
| SS1  | Presumption in Favour of Sustainable Development |
| SA2  | Central Brighton                                 |
| CP2  | Sustainable Economic Development                 |
| CP10 | Biodiversity                                     |
| CP15 | Heritage   |

#### Brighton & Hove City Plan Part Two (CPP2)

|      |   |
|------|---|
| DM20 | Protection of Amenity   |
| DM26 | Conservation Areas  |
| DM29 | The Setting of Heritage Assets                                    |
| DM31 | Archaeological Interest   |
| DM33 | Safe, Sustainable and Active Travel                               |
| DM37 | Green Infrastructure and Nature Conservation                      |
| DM40 | Protection of the Environment and Health - Pollution and Nuisance |

#### Conservation Area Character Statements

Old Town (2017)

## 9. **CONSIDERATIONS & ASSESSMENT**

- 9.1. The main considerations in the determination of this application relate to the principle of development, and the potential impacts on the amenities of local residents and business-users; on highway safety; and on the significance of heritage assets in the vicinity.
- 9.2. Concerns have been raised that the operator plans to place tables and chairs outside the business (upon Dukes Lane itself), and that this area is outside the bounds of the red line upon the proposed plans; this is outside the scope of the application since the condition for which a variation is sought applies only to the building itself and not to any external space. The placement on unfixed furniture outside does not constitute development and is therefore outside of bounds of planning; it may be managed through licencing, but this is a separate regime and is not a material consideration in this assessment.

#### Principle of Development

- 9.3. Concerns have been raised in the representations received that the proposed business would constitute an unauthorised change of use class, away from Class E to a Sui Generis use, which would be in conflict with the development plan, in the loss of a commercial use, within the primary shopping area. No change of use class is sought under this application, which relates solely to amended opening hours; therefore, any impacts that might result from a change of use class is not a material planning consideration to be given any weight in this assessment. Unauthorised development (including changes of use class) can be investigated via planning enforcement.
- 9.4. Permitting extended opening hours would improve the commercial offer of the property, which would be in accordance with the aims of CPP1 policies SA2 and CP2, encouraging sustainable economic development within the Central Brighton area.

#### Impact on Amenities

##### **Noise Nuisance**

- 9.5. The proposed development will result in additional trips to the site between the hours of 18:00 and 22:30, which has the potential to impact on the amenity of residents and visitors to the area.
- 9.6. The hours proposed are suitable for a restaurant-style evening use but would not permit a use extending into unsocial hours (such as a nightclub). The presence of *Mowgli* at 12-14 Dukes Lane (within a larger planning unit) shows that such operating hours would not be unique along Dukes Lane. It is considered that in this city-centre location, permitting use within evening hours would maintain the character of the local built environment, and though there would be an increased impact on residents, this would not be beyond what is acceptable nor justify the refusal of planning permission.
- 9.7. Concerns raised by the Environmental Health Team concerning use of an extraction vent are noted. Whilst the hours of use for said equipment were not controlled by condition under the original permission and may be used without restriction, the original application assessment was made with the understanding operating hours would cease at 18:00. Later opening hours are likely to require use of the machinery at later hours, and the additional impact justifies a condition restricting use of said machinery to the opening hours of the business and the proposal is considered to be acceptable in the regard.
- 9.8. The council will retain the authority to investigate under the Environmental Protection Act 1990, should any complaints be received. Operation of the business would also be done under licence.

#### Impact on Heritage Assets

- 9.9. In considering whether to grant planning permission for development which affects a listed building or its setting, the Council has a statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Moreover, when considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

- 9.10. Case law has held that the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, and the desirability of preserving or enhancing the character or appearance of a conservation area should be given "considerable importance and weight".
- 9.11. The proposed alterations are limited to the change of opening hours; it is considered that it would have a neutral impact on the historic significance of the Old Town Conservation Area and the setting of the surrounding listed buildings; the LPA has no concerns in this regard.

#### **Archaeology**

- 9.12. The site lies within an archaeological notification area but given the lack of significant below-ground works it is not considered likely that the works will cause any harm to ancient remains that may be present.

#### Impact on the Public Highway

##### **Pedestrians**

- 9.13. The development is not anticipated to result in a significant uptake in foot traffic to and from the site, that would be beyond the capacity of the existing highway infrastructure to accommodate; the LPA has no concerns in this regard.

##### **Public Transportation**

- 9.14. The site is centrally located with convenient access to public transportation, including buses, taxis, rail, and cycles; the LPA has no concerns in this regard.

#### Biodiversity

- 9.15. Based on the information available this permission is not considered to be one which would require the approval of a biodiversity gain plan before development is begun due to the fact that the planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
  - (i) the original planning permission to which the section 73 planning permission relates was granted before 12th February 2024; or
  - (ii) the application for the original planning permission to which the section 73 planning permission relates was made before 12th February 2024.

#### Other Considerations

- 9.16. Concerns have been raised regarding the lack of licencing information contained within the planning application; licencing is separate to planning and there is no requirement for this information to be disclosed as part of the planning application. Matters regarding licencing should not be given any weight in this assessment for planning permission. It is the operator's responsibility to conduct their business in accordance with both planning and licencing legislation.

- 9.17. Concerns have been raised that the playing of loud music would be contrary to a private covenant on the land. Private covenants are separate from the planning process and cannot be afforded any weight in this assessment.

#### Conclusion & Planning Balance

- 9.18. The proposed development would improve the flexibility of the building to provide for the class E use to operate in the evening, improving the commercial offer of the area. The proposed opening hours extending until 22:30 daily is considered to be acceptable in terms of its impacts on the amenity of residents
- 9.19. For the foregoing reasons the proposal is considered to be in accordance with policies SA2, CP2 and CP15 of the Brighton and Hove City Plan Part One, and DM20, DM26, DM29, DM31, DM33 and DM40 of the City Plan Part Two.
- Condition 2 shall be varied to reference the amended opening hours.
  - Condition 3 shall be removed as it is no longer relevant.

## **10. EQUALITIES**

- 10.1. Section 149(1) of the Equality Act 2010 provides:
- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
    - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
    - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
    - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.