

## **DELEGATED APPLICATION REPORT FOR REMOVAL/VARIATION OF CONDITIONS**

**Ward:** Caversham Ward

**App Ref:** PL/25/0345

**Address:** 18 PROSPECT STREET, CAVERSHAM, READING, RG4 8JG

**Proposals:**

**Proposal:** Change of use from an A1 shop to an A3 restaurant under Schedule 2, Part 3, Class C of the General Permitted Development Order 2015.

[Variation of Condition 2 of application PL/16/0183 to allow for extended opening hours.]

**Case Officer:** Mishga Marshall

**Date received (valid from):** 05/03/2025

**Target Decision date:** 30/04/2025

### **SITE DESCRIPTION**

Prospect Street is in the District Centre of Caversham and there are a mixture of business types operating under Class E business at both ground floor and first floor levels, including restaurants, retail shops and professional services together with a range of other uses, including bars.

The site currently hosts Angel Bar, a bar located on the north west side of Prospect Street in Caversham, Reading. It appears that this use may not fall within Class E. However the extent to which the current use of the premises is lawful and the possibility of granting a new permission under s.73 are two separate matters. It will be a matter for the occupier to ensure that the use carried on fits within the lawful use.

**Constraints:**

- Air Quality Management Area
- District and Local Centres
- Key Frontage in Centres

### **PROPOSAL AND SUPPORTING INFORMATION**

This application seeks to amend condition 2 of PL/16/0183 to allow for extended opening hours on Friday and Saturday evenings. As it stands, condition 2 limits hours of operation to 11pm. This application seeks to vary that condition to allow the premises to operate between 8am and 12am midnight on Fridays and Saturdays. Hours of operations on other days (Sunday to Thursdays) would remain unchanged.

### **SITE VISIT**

**Site visit date:** 16/04/2025

### **PLANS AND DOCUMENTS CONSIDERED RECIEVED [05/03/2025]**

- Planning Statement - Angel Bar
- Location Plan
- Site Plan

### **RELEVANT PLANNING HISTORY**

|                        |            |         |                      |
|------------------------|------------|---------|----------------------|
| Application Reference: | PL/90/0707 | Status: | Historic Application |
|------------------------|------------|---------|----------------------|

|                        |                                                                                                                                                      |         |                        |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------------------------|
| Description:           | First floor rear extension to existing flat to form bedroom; erection of second 1 bedroom flat at first floor level; installation of new shop front. |         |                        |
| Application Reference: | PL/16/0183                                                                                                                                           | Status: | Approved on 29/03/2016 |
| Description:           | Change of use from an A1 shop to an A3 restaurant under Schedule 2, Part 3, Class C of the General Permitted Development Order 2015                  |         |                        |
| Application Reference: | PL/94/0991                                                                                                                                           | Status: | Historic Application   |
| Description:           | Alteration of existing shop front.                                                                                                                   |         |                        |

## **CONSULTATIONS**

### **Internal Consultations:**

RBC Transport: No objection.

Environmental Protection: No objection, however requested some clarification of noise insulation to upper floor residential use.

### **EQUALITY ACT 2010:**

In determining this application, the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore, in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

## **RELEVANT PLANNING POLICY AND GUIDANCE**

Section 73 of the Town and Country Planning Act allows persons to apply for to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

S73(2) states: “On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

In a recent high court appeal case, it was noted that “section 73 cannot be used to alter the operative part of a permission in any way unless the change is de minimis (Test Valley Borough Council v Fiske [2024] EWCA Civ 1541 (10 December 2024)).

## OFFICER ASSESSMENT

This application seeks to vary that condition to allow the premises to operate between 8am and 12am midnight on Fridays and Saturdays. Hours of operations on other days (Sunday to Thursdays) would remain unchanged. The assessment is based on the permitted use as a restaurant which falls under Use Class E.

The site is characterised by a mix of commercial and residential uses. While residential accommodation exists in the vicinity, including above nearby commercial units, it is acknowledged that some degree of activity during evening hours is expected and acceptable within a local centre environment.

It is noted that the original planning permission for the premises was granted on 29th March 2016 under application reference PL/16/0183 for a use now falling within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). For the purposes of this application, it is important to distinguish between the assessment of the proposed variation to the hours of operation and the lawfulness of the current use being carried out at the premises where any discrepancy exists.

The determination of this Section 73 application relates solely to the proposed amendment of the operating hours condition and does not constitute a reassessment or formal confirmation of the existing use of the premises. Should there be any deviation from the permitted Class E use, this would be a separate planning matter and may require the submission of an application for a certificate of lawfulness or a further planning application, depending on the nature and extent of any material change of use.

The proposed extended opening hours are considered reasonable in respect of a Class E use and would remain consistent with the character and function of the area and the additional hour, twice a week, for uses falling within Class E would not result in significant harm to residential amenity. The Council's Environmental Protection Officer has raised no objection to the proposal, subject to queries regarding noise transfer to the upper floors. It is considered that this would become more pertinent if a bar/drinking establishment or other night-time economy use were proposed as opposed to a relatively quiet restaurant use. This is not proposed under the current application.

It is considered that the extended hours, under Class E usage, would not give rise to significant harm to residential amenity, particularly given the existing commercial activity in the area and the local centre setting.

Furthermore, appropriate planning conditions can be re-imposed to ensure that noise levels associated with the premises, including any external plant or equipment, remain controlled and that the premises are managed responsibly during extended hours, consistent with the existing permission.

Matters relating to bin storage and noise were addressed under application for approval of details reserved by Condition 16/0699 and these approved details are now incorporated into conditions 3 and 4.

## OTHER MATTERS

It has been noted during the course of this application that there is some uncertainty regarding the precise nature of the use currently being operated from the premises, and

whether this remains consistent with the lawful Class E use originally granted under planning reference PL/16/0183 on 29th March 2016. While the assessment of this Section 73 application relates solely to the proposed variation of the operating hours condition, it is recognised that the question of the lawful use of the site is a separate matter which may warrant further investigation.

### **CONCLUSION**

The application seeks permission to vary the approved hours of operation for the premises to allow an extension from 23:00 to 00:00 (midnight) on Fridays and Saturdays, with no change to the hours on other days. Given the site's town centre location, the established mixed-use character of the area, it is considered that the proposed extension of hours for the existing permitted restaurant use would not result in an unacceptable impact on the amenity of nearby residential occupiers or cause additional harm in any other respect.

The proposal is therefore considered acceptable, subject to the conditions set out in this report.

### **OFFICER RECCOMENDATION**

**APPROVE WITH CONDITIONS**

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Planning Statement - Angel Bar

Location Plan

Site Plan

Received by the Local Planning Authority on 5 March 2025

Site plan, as received 15 April 2016

Refuse Location Plan (annotated version of drawing DN63/200), as received 21 June 2016

Email containing further information regarding refuse storage, received 21 June 2016

Noise Assessment Report - 0119 PROSPECT - as received 15 April 2016

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

2. The premises shall not operate outside the following hours at any time:

0800hrs to 2300hrs - Sundays to Thursdays

0800hrs to 0000hrs (midnight) - Fridays and Saturdays

Reason: In order to protect local residents from unreasonable disturbance arising from the use and in accordance with Policies CC8 and EN16 of the Reading Borough Local Plan 2019.

3. The bin storage area as shown on the following approved documents: Site plan, as received 15 April 2016; Refuse Location Plan (annotated version of drawing DN63/200) as received 21 June 2016; Email containing further information regarding refuse storage, received 21 June 2016

shall be retained and maintained in accordance with the approved details at all times and shall not be used for any purpose other than bin storage at any time.  
Reason. To ensure that adequate provision is maintained for storage and collection of refuse in accordance with Policies CC5 and CC8 of the Reading Borough Local Plan 2019.

4. The use hereby approved shall not be carried out otherwise than in accordance with Noise Assessment Report - 0119 PROSPECT - as received 15th April 2016.  
Reason. To protect the amenity of neighbouring residents of the proposed development and to comply with Policies CC8 and EN16 of the Reading Borough Local Plan 2019.

5. No extraction or ventilation systems shall be installed on this site at any time until a noise and odour control scheme has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that the plant noise rating level will not cause an increase in existing background noise level when measured / predicted in accordance with BS 4142:1997 methodology. An odour control statement shall be submitted with the scheme and shall include: Type of food to be prepared; Details of any proposed filtration / deodourisers; Elevation plan to show extraction unit location and discharge height; Scheduled maintenance plan based on manufacturer's instructions. No extraction or ventilation system shall be installed otherwise than in accordance with the approved noise mitigation and odour control scheme and the system shall be retained and maintained as such at all times thereafter.  
Reason: to protect the amenity of neighbouring residents of the proposed development and to comply with Policy CC8 and EN16 of the Reading Borough Local Plan 2019.