



Worthing Planning Committee

25th May 2022

Agenda Item no.7

WORTHING BOROUGH
COUNCIL

Ward: Heene

Enforcement report Karma Lounge, 171-173 Tarring Road, Worthing

Report by the Director for Economy

1.0 Background

- 1.1 Karma Lounge is situated on the corner of Tarring Road and St Botolphs Road, occupying 171 and 173 Tarring Road which was formerly a furniture and house clearance shop for many years.
- 1.2 AWDM/1375/21 was received on 20th July 2021 which was an application for permitted development for prior approval for change of use from shop to cafe/restaurant (Class E) with extraction on roof. This application was subsequently withdrawn as a change in national planning regulations resulted in the need neither for planning permission nor prior approval for change of use from retail to cafe/restaurant as both are now in Class E.
- 1.3 There is no other planning history relevant to this site.

2.0 Enforcement Investigations and alleged Breaches of Planning Control

- 2.1 Complaints were received in August 2021 regarding the enclosing of a rear yard area with a roof. An Enforcement Officer and Planning Officer visited the site and advised the tenant that planning permission was required for enclosing the rear yard.
- 2.2 Further complaints were also received during August regarding the erection of a breeze block wall around the forecourt of the property - this was established to be permitted development. In September further complaints were received regarding the addition of external seating attached to the wall. The tenant was advised that these works (and the proposed addition of tables) required planning permission.

- 2.3 In November 2021, complaints were received regarding the erection of a wooden pergola to the north of the building (fronting Tarring Road). This structure was subsequently removed at our request following contact with the freeholder.
- 2.4 The premises appeared to start trading during late January/early February and Officers were advised during a site visit on 8th February that the premises was just serving snacks such as crisps, nuts and pastries along with alcoholic drinks and both hot and cold non alcoholic beverages. No menu was available at this time.
- 2.5 During March there was advertising for a cocktail party every Monday in March and the premises was open and there was evidence of drinking whilst watching a football match on screen. Other advertisements show availability for celebrations catering up to 200 people with a late bar and reference to Worthing's newest micropub.
- 2.6 On 5th April 2022, the tenant was advised by email that planning permission was required for a change of use from Use Class E to a sui generis use together with the other operational development referred to above.
- 2.7 The owner agreed that an application would be submitted by 26th April, however, no application has been forthcoming. The Owner also advised that the premises were open 10:00 to 21:00 or 22:00 on Mondays to Thursdays and 10am to 11pm on Fridays and Saturdays (closed on Sundays). A copy of the menu was also provided which indicated lunchtime sandwiches served between 10:00 to 15:00 hours and in the evenings pizzas served between 17:00 to 22:00 hours. However, depending on bookings the kitchen would often be closed between 20:00 and 21:00 hours.
- 2.8 A number of the complaints refer to vertical drinking, service of drinks from the bar and drinking without food - some of which are in breach of the premises licence. The premises licence permits opening times of 09:00 - 23:00 and alcohol sales 11:00 - 22:40 Monday to Sunday. The following condition is within the licence - alcohol will be served by waiter/waitress service to customers seated at tables. There will be no vertical drinking.
- 2.9 During a visit for hygiene rating it was witnessed that customers were seated at the bar, consuming alcoholic drinks without food. There were some customers seated at tables with alcoholic drinks but not ordering food and the food handler was no longer on site at the time of the visit.

- 2.10 Several complaints were received after the Easter weekend following "KarmaFest" at the premises. A Temporary Events Notice was applied for which allowed opening until 01:00 on each morning of the following day over the bank holiday weekend. Complaints suggested that on 15th, 16th and 17th April there was loud recorded and live music, along with other disturbances including cheering, drunken behaviour and other issues.
- 2.11 The most recent complaint relates to the use of the outdoor seating area by a group of individuals in the early hours of 24th April. It is reported that the group had a takeaway from one of the establishments nearby and sat at the tables eating, having loud conversation, laughing and joking.

3.0 Consultation Responses

- 3.1 The **Head of Environmental Health** comments that:

The Licence application for the Karma Lounge described it as a Bakery and Pizzeria that will serve coffee and bakery products along with pizzeria for in house family dining. The licence allows opening hours 9am to 11pm, 7 days a week with the sale of alcohol on and off the premises. The external forecourt is part of the premises for the purpose of the licence.

The Legislative Reform (Entertainment Licensing) Order 2014 and Deregulation Act 2005 came into force in 2015. This legislation deregulated some of the activities under the Licensing Act 2003. As a consequence, the playing of live and recorded music on the premises from 8am to 11pm no longer needs a licence so long as the audience is less than 500 people. However, if there is evidence of public nuisance arising from the premises the public or the responsible authorities such as EH can call for a review of the licence.

Planning looks at land use and the suitability of that land to be used in a particular way, whereas licensing is a mechanism for regulating that land use. Planning looks to preserve and protect amenity whereas the licensing objectives aim to prevent crime and public nuisance. Although there is some overlap, they are very different objectives.

Regrettably, the changes to licensing and planning laws prevents us from dealing with any potential noise issues proactively and if problems do occur with this land use in the future, regardless of occupier, then we will have to revert to statutory nuisance provisions.

My main concerns would be disturbance to local residences from the outside use of the forecourt. External seating is seasonal, its use coinciding with the good weather when residences want windows open for ventilation. In public spaces around the town where there is a mixture of commercial and residential premises, we restrict pavement licences to 10 pm and I would normally have recommended we look at something similar here. I would also have requested restrictions on the external playing of music.

Internally, I would have recommended just background music, as the premises conversion is unlikely to be able to contain sound effectively given its age and shop window facades at the front.

A pizza restaurant is low risk for odour, but we would need to see details of the kitchen extraction including odour abatement and detailed noise information. So far there is insufficient information to determine what impact if any the proposed extract will have on neighbouring property.

4.0 Planning Assessment

- 4.1 The current use of the premises requires planning permission as the latest amendments to the Use Classes Order defines drinking establishments (with or without food) as *sui generis* uses (latin for, in this context, a class of its own). Previously these were in a separate use class (4).
- 4.2 Before the premises opened there was some doubt as to which use class the premises might fall into - particularly as a restaurant / cafe could be operated from the premises under Use Class E.
- 4.3 The current use is unauthorised as it appears to be predominantly a bar and the other operational developments (including the roofing of the rear yard and outside seating areas) are also unauthorised. The key issue is whether any harm is being caused and whether any harm can be mitigated by imposing planning conditions on the use. In cases such as this where the use is unauthorised the Council can serve an enforcement notice allowing the use to continue but only by complying with certain planning conditions.
- 4.4 As stated by Environmental Health the main concerns with the current use of the premises relate to the level of noise and disturbance created primarily on the forecourt of the premises. Although Tarring Road is a commercial area the premises is located on the corner of St Botolphs Road which is predominantly

in residential use and there is a house immediately adjacent to the premises. As the forecourt area extends along the St Botolphs frontage, noise and activity generated from this forecourt has affected the residential amenity of adjoining residents.

- 4.5 The alterations to the forecourt with the addition of the front wall and permanent seating has exacerbated the problems for local residents. In addition the KarmaFest event held at the premises involved large speakers being placed on the forecourt causing noise and disturbance to local residents. Normally a wall less than one metre in height would not require planning permission as it would be permitted development. However, in this case the breeze block wall has fixed seating attached and is clearly linked to the change of use of the forecourt as a drinking establishment.
- 4.6 As indicated by Environmental Health normally they would recommend planning conditions to control the use but in this instance the owner has failed to submit a planning application to try and regularise the unauthorised use. It is considered that enforcement action would be expedient in this case to control the use of the premises.
- 4.7 In principle, a change of use to a relatively small drinking establishment would normally be considered acceptable. However, where there are residential properties close by there is a need for careful control of any outside areas and restrictions on live music and events. In other locations outside drinking has been restricted to certain hours and in some instances tables and chairs moved inside to ensure less noise is generated. The majority of these issues can be resolved with effective management of the premises and consideration of neighbouring residents. However, past experience has shown that such consideration has not been given and planning conditions are necessary.
- 4.8 Following further discussions with Environmental Health it is recommended that an enforcement notice is served seeking to restrict the hours of use of the premises to 11.00 pm and that no drinks shall be taken outside after 10.00 pm. In addition, recorded or live music shall be restricted to background noise levels within the premises and there shall be no playing of recorded or live music in the external seating area areas. The new blockwork wall is unattractive and detracts from the visual amenities of the area. As this and the associated seating is unauthorised it is recommended that the wall be rendered and painted to a colour to be agreed before issuing the enforcement notice.

- 4.9 The enclosure of the rear yard is hidden from any public viewpoint. Whilst it is visible from the garden of the adjoining property it does not have an adverse impact to that extent that enforcement action could be justified.
- 4.10 The extraction system at the rear for the kitchen is still in place but not in use as Air Fryers are being used. There are no windows in the kitchen but there is an open hatch to the restaurant. Environmental Health confirms that the complaint they had relating to the extraction has been withdrawn on the basis of no noise or odour. The extractor is not visible from a public viewpoint and given that it is not in use it is not considered expedient to pursue enforcement action at this time.

5.0 Recommendation

- 5.1 **The Committee is recommended to delegate authority to the Head of Legal Services to serve an enforcement notice in connection with the unauthorised use and associated operational development to ensure that the use can only continue in accordance with the following planning conditions:**

1. The premises shall only open between the hours of 0900 hours and 1100 hours
2. There shall be no use of the outside tables and chairs after 10.00 pm and there shall be no amplified or live music played outside of the building at any time.
3. Only unobtrusive ambient/background music shall be played within the premises within opening hours. For this purpose the music noise level shall not exceed 75dB (L_{Aeq}15min) anywhere 1m from any speaker inside the premises.
4. Within 1 month of the date the notice is effective, the wall surrounding the forecourt of the premises shall be rendered and painted in a colour agreed before serving the enforcement notice.

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Schedule of Other Matters

1.0 Council Priority

- 1.1 Compliance with planning policies as set out in the adopted Local Plan.

2.0 Specific Action Plans

- 2.1 Planning Enforcement and Policy Guidance

3.0 Sustainability Issues

- 3.1 Matter considered and no issues identified

4.0 Equality Issues

- 4.1 Matter considered and no issues identified

5.0 Community Safety Issues (Section 17)

- 5.1 Matter considered and no issues identified

6.0 Human Rights Issues

- 6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns noninterference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those who have carried out unauthorised developments as well as those affected by them and the relevant considerations which may justify interference with human rights has formed part of the assessment process in deciding whether enforcement action is expedient.

7.0 Reputation

- 7.1 Residents and Members would expect that effective enforcement action is taken when it is expedient to do so having regard to all material planning considerations.

8.0 Consultations

8.1 Internal consultation with technical consultees

9.0 Risk Assessment

9.1 Enforcement action is a discretionary activity which should only be taken where there is clear evidence to do so.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified

11.0 Procurement Strategy

11.1 Matter considered and no issue identified

12.0 Partnership Working

12.1 Matter considered and no issue identified