



East Sussex
Fire & Rescue Service

EAST SUSSEX FIRE & RESCUE SERVICE
PROHIBITION NOTICE

Notice No: ESFRS/EA/KC/1015/P1/19

Notice requiring the use of the premises to be Prohibited or Restricted under Article 31 of the Regulatory Reform (Fire Safety) Order 2005

Name of Premises: LUSITANO CAFE
Address of Premises: 126-128 Seaside, Eastbourne, BN21 3PF
Responsible Person: The Responsible Person

I, Kelly Connolly, on behalf of East Sussex Fire Authority, hereby give you notice that the Fire Authority is of the opinion that the following use of the said premises as occupied by you, namely Lusitano, involves or will involve a risk to persons on the premises in case of fire so serious that use of the premises ought to be restricted.

The Fire Authority is further of the opinion that the matters which give rise to the said risks are: -

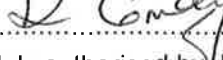
- Inadequate protection to the means of escape from the basement.
- Lack of early warning in the event of a fire.

and the Fire Authority hereby directs that the use of the premises to which this Notice relates is restricted as follows: -

- The basement is not to be used to provide sleeping or resting until the matters specified above have been remedied.

- * The Fire Authority is of the opinion that the risk of injury would be imminent and the restriction is to take effect immediately.
- * This Notice continues in force until the specified matters have been remedied or the Fire Authority withdraws it.
- * The Fire Authority further directs that the steps specified in the Schedule, which forms part of this Notice, shall be taken to remedy the said matters.

You have the right to appeal against the Notice (see notes), by way of complaint for an order, to the Clerk to the Court of the Magistrates' Court acting for the petty sessions area in which your premises is located. If you wish to bring an appeal, you must do so within 21 days of the date this Notice is served on you. The Magistrates' Courts Act 1980 will apply to the proceedings. The bringing of an appeal does not have the effect of suspending this Notice, unless on the application of the appellant, the Court so directs (and then only from the giving of the direction).

Signature  Date: 15 October 2019
(on behalf of, and duly authorised by, East Sussex Fire Authority)

SCHEDULE REFERRED TO IN PROHIBITION NOTICE NO ESFRS/EA/KC/1015 Error! Reference source not found./P1/19 **REQUIRING STEPS TO BE TAKEN UNDER ARTICLE 31 OF THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005 ISSUED BY EAST SUSSEX FIRE AUTHORITY ON 15 OCTOBER 2019.**

Name of Premises: Lusitano Café

Address of Premises: 126-128 Seaside, Eastbourne, BN21 3PF

Where appropriate, a plan may form part of this Schedule to illustrate the measures, which in the opinion of the Fire Authority, need to be taken in order to reduce the excessive risk to an acceptable level.

Note: Notwithstanding any consultation undertaken by the Fire Authority, **before** you make any alterations to the premises, **you** may need to apply for approval from either the Local Authority Building Control or an Approved Inspector and/or the approval of any other local bodies having a statutory interest in the premises.

SCHEDULE

The location and details of matters which are considered to be a risk to relevant persons so serious that the use of the premises ought to be prohibited or restricted, and the measures considered necessary to reduce the excessive risk to an acceptable level, are detailed below.

1. Risk to relevant persons

In case of fire there is no protected escape route from the basement to a place of safety. There is no adequate fire resisting separation between the basement, café, kitchen and the means of escape. A fire will fill the escape route with heat and/or smoke and would prevent people making a safe escape from the premises.

Measures necessary to reduce risk

Provide a protected route from the basement that leads directly to a place of safety. The protected route must be able to withstand the effects of fire and/or heat and smoke for a minimum period of thirty minutes in accordance with current guidance.

2. Risk to relevant persons

There is no adequate system for detecting and giving warning in case of fire in the areas used as habitable accommodation on the premises. In the event of fire, heat and/or smoke would likely block the means of escape before people could make their escape from the premises to a place of ultimate safety.

Measures necessary to reduce risk

Provide early warning by means of smoke and /or heat detectors to the escape route from the basement.

The Fire Authority considers that the above detailed steps will reduce the excessive risk to an acceptable level in the premises. Alternative ways of achieving an equivalent standard may be available and any request for the Fire Authority to consider alternative proposals should be submitted as a matter of urgency.

**NOTES TO ACCOMPANY PROHIBITION NOTICE
SERVED UNDER ARTICLE 31 OF THE
REGULATORY REFORM (FIRE SAFETY) ORDER 2005**

1. Contravention of any requirement imposed by a Prohibition Notice is an offence under Article 32 of The Regulatory Reform (Fire Safety) Order 2005 and renders the offender liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to an unlimited fine, or imprisonment for a term not exceeding two years, or both.
2. In any proceedings for an offence referred to in Note 1, where the commission by any person of an offence under the Order is due to the act or default of some other person, that person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.
3. Nothing in the Order operates so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of an employee or person nominated to implement measures for fire-fighting and procedures for serious and imminent danger and for danger areas, and appointed to assist him/her in undertaking such preventive and protective measures as necessary.
4. Subject to Note 3, in any proceedings for an offence under the Order, except for a failure to comply with articles 8(a) (Duty to take general fire precautions) or 12 (Elimination or reduction of risks from dangerous substances), it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of such an offence.
5. In any proceedings for an offence under the Order consisting of a failure to comply with a duty or requirement so far as is reasonably practicable, it is for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.
6. A person on whom a Prohibition Notice is served may under Article 35 of the Order appeal to the Magistrates' Court within 21 days from the date on which the Prohibition Notice was served. The bringing of an appeal does not have the effect of suspending this Notice, unless on the application of the appellant, the Court so directs (and then only from the giving of the direction).
7. If you are the responsible person you are under an obligation to comply with the provisions of the Order or of any regulations made under it. If you have failed to comply and you and the Fire Authority cannot agree on the measures that are necessary to remedy the failure(s), the question may be referred to the Secretary of State for his determination under Article 36 of the Order.
8. To satisfy the 'Environment and Safety Information Act 1988' the Fire Authority is obliged to enter details of this Prohibition Notice into a register to which the public have access. If you feel that any such entry would disclose secret or confidential trade or manufacturing information, then you should appeal in writing to the Authority within a period of fourteen days following; a) the day on which the appeal period in Note 6 above expires, or b) the day on which the appeal is finally disposed of, where an appeal is brought. The following summary of the contents of the notice will be entered on the public register: -

Served On	Notice Type	Premises Name	Location	Notice Number
15/10/19	Prohibition	Lusitano Café	Eastbourne	ESFRS/EA/KC/1015/P1/19

The Public Register can be accessed via the Internet at www.esfrs.org and this actual Notice may be viewed by clicking on the link shown in the table above.

9. The works or actions specified in the Notice are only intended to reduce the excessive risk to an acceptable level. The Notice is issued without prejudice to any other enforcement action that may be taken by this or any other enforcement authority.
10. The Fire Authority would be willing to consider and reasonably assist with any proposals you may have to remedy the matters specified in the Notice.
11. To assist with administration procedures, it would be helpful if you could quote the reference number (at the top of this notice) when dealing with the Fire Authority.