

<b><u>No:</u></b>	<b>BH2016/01870</b>	<b><u>Ward:</u></b>	<b>Queen's Park Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>51 St James's Street, Brighton, BN2 1QG</b>		
<b><u>Proposal:</u></b>	<b>Erection of covered seating area on raised decking to rear courtyard. (Retrospective)</b>		
<b><u>Officer:</u></b>	Charlotte Bush, tel: 292193	<b><u>Valid Date:</u></b>	22.07.2016
<b><u>Con Area:</u></b>	EAST CLIFF	<b><u>Expiry Date:</u></b>	16.09.2016
		<b><u>EoT/PPA Date</u></b>	17.01.2017
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>			
<b><u>Applicant:</u></b>	Nafiz Karaca	Anatolia Cuisine	51 St James's Street Brighton BN2 1QG

## 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.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Elevations Proposed	010-04	REV D	30 September 2016
Floor Plans Proposed	010- 03	REV B	26 September 2016
Location and block plan	010 - 03	REV B	26 September 2016

- 2 The garden area shall remain closed between 23:00 and 9:00 the following day, and the door shall remain shut during these times unless being used for emergency purposes.  
**Reason:** In order to protect adjoining properties from noise disturbance and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.
- 3 No amplified music shall be permitted in the garden area at any time.  
**Reason:** In order to protect adjoining properties from noise disturbance and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.

- 4 Proposed alterations to stain the wood fence and gate dark brown/black, and remove steel security spikes as shown in proposed plans 04D shall be implemented within 6 months of the date of this permission, and retained as such thereafter.

**Reason:** To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan.

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 decision hereby issued relates to the covered seating area only and does not relate to any other works indicated in the submitted drawings.

**2. SITE LOCATION & APPLICATION DESCRIPTION**

- 2.1 The application relates to the ground floor A3 (restaurant) unit of a three storey end of terrace building located on the corner of St. James's Street and New Steine Mews, which is situated with the East Cliff Conservation Area.
- 2.2 The majority of works to create the additional seating area have already been completed, but amendments would be required to make the design acceptable, as illustrated in Proposed Plans 04D. These works can be secured by condition.
- 2.3 A single storey extension is located at the rear of the property, but no planning application has been received for these works. This application seeks consent for the covered seating area only, and no other works will be considered. An informative will be added clarifying this point.

**3. RELEVANT HISTORY**

**BH2004/02792/FP** - Installation of a new shopfront with restaurant name on fascia. Approved 05/11/2004

**BH1997/01948/AD** - Installation of timber painted fascia and hanging signs illuminated by individual spot lights. Approved 14.01.1998

**BH1997/01829/FP** - Installation of new shop front and replacement windows on upper floors. Approved 12.01.1998

**4. REPRESENTATIONS**

- 4.1 **Six (6)** letters have been received from **Flat 4, 1 St James's Avenue, Flat 2, 1 St James's Avenue, Flat 3, 1, St. James's Avenue, 53a St. James's Street, 52b St James's Street, 52a St James's Street,** objecting to the proposed development for the following reasons:

- The restaurant is already noisy and disturbs the occupiers of neighbouring residential properties. This will be made worse with the outdoor seating area.
- The chimney is very noisy and the black smoke that belches out when they fire it up is disgusting and choking.
- The smell of the barbeque is very strong, and windows have to be kept shut in the summer.
- There is already a homeless hostel behind and this can be noisy and chaotic especially during summer months.
- The noise, lights and cigarette smoke has a strong effect on local residents and is very offensive.
- The proposed covered seating area has already been erected.
- The late-night (after 11pm) noise of music and conversation disturbs the sleep of local residents - there should be no music after 10pm in this seating area. There should be no conversation after 11pm.
- The last 15mths or so since they extended their restaurant into their back yard, has become annoying and aggravating.

## 5. CONSULTATIONS

### 5.1 **Environmental Health:** No Objection

5.2 The Environmental Protection Team is currently investigating a noise complaint from a neighbour in respect of these outdoor arrangements. It is noted that further noise and smoke complaints from neighbours have been notified to the planning department in response to the planning application.

5.3 While the investigation is being undertaken, it is premature to say that a problem exists but based on the balance of probability evidential test required to serve a notice under s80 the Environmental Protection act 1990 it is likely that one could be served once the new complainants have been contacted and evidence evaluated. In the meantime it would be unsafe to recommend approval.

### 5.4 Further comment received on the 6/12/2016

Have heard nothing since from the original complainant and no further complaints to Environmental Protection there is no evidence to support a refusal from Environmental Protection .

### 5.5 **Heritage:** Comment

The Heritage Team does not wish to make a comment on this application.

### 5.6 **Sussex Police:** Objection

There are no opening times given within the application and as such I have looked at the opening times as advertised on the internet. These are given as Midday to Midnight.

5.7 Given the advertised opening hours of the above premises are correct, I have concerns that the proposed outside seating area could have a detrimental effect upon the local amenity in the form of noise and smells from food, particularly

cigarette smoke. Sussex Police fully support Brighton & Hove Local Plan policies SU9, SU10 & QD27.

- 5.8 I note from the drawings submitted within the application that steel security spikes are proposed on the rear of the property. I recommend that the applicant seeks advice with respect to the Occupiers Liability Act 1984 when using anti climb measures with injurious toppings.
- 5.9 Where softwood screening and fencing has been installed to the perimeter; in order to deter access it will be imperative to ensure that no hand or footholds have been created that enables easy access over the perimeter fencing.
- 5.10 In the interests of the local community's amenity, Sussex Police do not support this application.
- 5.11 **Sustainable Transport:** No objection

## **6. MATERIAL CONSIDERATIONS**

- 6.1 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
- 6.2 The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
  - Brighton & Hove Local Plan 2005 (retained policies March 2016);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
  - East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only - site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.
- 6.3 Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

## **7. POLICIES**

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove City Plan Part One

- SS1 Presumption in Favour of Sustainable Development
- CP2 Sustainable economic development
- CP4 Retail provision

#### Brighton & Hove Local Plan (retained policies March 2016):

- TR14 Cycle access and parking
- SU9 Pollution and nuisance control

SU10 Noise Nuisance  
QD27 Protection of amenity  
SR5 Town and district shopping centres  
HE6 Development within or affecting the setting of conservation areas

Supplementary Planning Documents:

SPD12 Design Guide for Extensions and Alterations  
SPD14 Parking Standards

**8. CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to the impact of the development on the appearance of the existing property and the surrounding area and the effect of the proposed extension on the residential amenity of neighbouring properties.
- 8.2 This retrospective application is for the erection of a covered seating area to the rear of the Anatolia Cuisine restaurant which is located on the corner of St. James's Street and New Steine Mews. This area forms part of the St. James's Street District Centre, and as such there is a varied mixture of restaurants, bars, retail shops and residential accommodation in the local vicinity. The property is located with the East Cliff Conservation Area.
- 8.3 The covered seating required amendments to make the design acceptable, and these amendments have been illustrated on proposed plan 04D. The amendments include:
- The steel security spikes will be removed in accordance with comments from Sussex Police.
  - The fence panels and gate on Elevation A-A (along New Steine Mews) will be stained dark brown or black.
  - The fence panels and gate on Elevation A-A (along New Steine Mews) will be reduced in height so that the top of it is in-line with the surrounding brick wall.
- 8.4 Subject to these alterations being implemented, the design of the seating area is considered acceptable.
- 8.5 The fence panels and gate are visible from New Steine Mews and the wider East Cliff Conservation Area. The requirement for the fence panels and gates to be stained dark brown or black will ensure that they in keeping with the local area and do not cause harm to the character and appearance of the conservation area. These works can be secured by condition.
- 8.6 A single storey extension is located at the rear of the property, but no planning application has been received for these works. This application seeks consent for the covered seating area only, and no other works will be considered. An informative will be added clarifying this point.
- 8.7 **Impact on Amenity:**

Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

- 8.8 The scheme has the potential to have a negative impact on neighbouring amenity due to increased noise disturbance, and several representations have been received regarding environmental health issues. The Environmental Protection Team were therefore asked to provide comments on this matter.
- 8.9 The Environmental Protection Team confirmed that they had received noise and smoke complaints from concerned residents and could not recommend approval until an investigation had been undertaken. Further comments from the Environmental Protection Team received on the 6/12/2016 confirmed that there was no evidence to support a refusal.
- 8.10 A condition is recommended to ensure that the doors to the garden area remain closed after 23:00, thereby restricting the use of the area and protecting the amenity of local residents.
- 8.11 The scheme is not considered to pose any additional harm to neighbouring properties in terms of overlooking, loss of privacy, overshadowing or loss of light.
- 8.12 The attached condition is considered to mitigate the potential noise pollution from the seating area, and as such the application will not result in significant harm to the amenities of neighbouring residents and as such is considered acceptable.

## **9. EQUALITIES**

- 9.1 None identified.