

<b><u>No:</u></b>	<b>BH2017/03651</b>	<b><u>Ward:</u></b>	<b>Regency Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Brighton Square And Units 12, 13, 14, 15 And 16 Brighton Square Brighton BN1 1HD</b>		
<b><u>Proposal:</u></b>	<b>Erection of pavilion structure to Brighton Square for the creation of additional restaurant space (A 3). Alterations to dolphin fountain including new plinth &amp; increased height of fountain. Installation of new shopfronts to 12, 13, 14, 15 and 16 Brighton Square.</b>		
<b><u>Officer:</u></b>	Luke Austin, tel: 294495	<b><u>Valid Date:</u></b>	02.11.2017
<b><u>Con Area:</u></b>		<b><u>Expiry Date:</u></b>	28.12.2017
<b><u>Listed Building Grade:</u></b>		<b><u>EOT:</u></b>	
<b><u>Agent:</u></b>	Lewis And Co Planning SE Ltd 2 Port Hall Road Brighton BN1 5PD		
<b><u>Applicant:</u></b>	Strada Trading Limited C/O Lewis And Co Planning 2 Port Hall Road Brighton BN1 5PD		

## 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 **REFUSE** planning permission for the following reasons:

1. The proposed development would result in a loss of identified open space within a ward with an over-riding deficiency in open space, contrary to City Plan Policy CP16 of the Brighton & Hove City Plan Part One.
2. The proposed development, by reason of its excessive footprint, scale and site coverage would enclose a large proportion of the existing square, thereby restricting public usability whilst impeding on pedestrian orientation and legibility of the open space, resulting in significant harm to the open character and proportions of Brighton Square. The proposal is therefore contrary to Policies CP12 and CP13 of the Brighton & Hove City Plan Part One.

### 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.
3. This decision is based on the drawings received listed below:

Plan Type	Reference	Version	Date Received
Location and block plan	J925_A102		2 November 2017
Floor Plans Proposed	J925-A10_00		2 November 2017
Roof Plan Proposed	J925-A10_01		2 November 2017
Sections Proposed	J925-A10_03		2 November 2017
Sections Proposed	J925-A10_04		2 November 2017
Elevations Proposed	J000925-A4_01		2 November 2017
Detail	J000925-A4_02	SHOPFRONT DETAIL	2 November 2017

## 2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1 The application site forms the north/north-eastern frontage of Brighton Square in addition to the central section of the Square within the Old Town Conservation Area and part of the South Lanes. The site is formed of a ground floor parade of shops with two storeys of residential accommodations above in addition to the central square area which includes planters and a fountain water feature.
- 2.2 **BH2017/00768** permission was recently granted for the change of use of units 12 - 16 from A1 to A3 under application BH2017/00768. The proposal seeks consent for the erection of a pavilion seating structure within the square which would be used in association with the approved restaurant within the adjacent units. Alterations to the shopfronts are also sought.
- 2.3 The site forms part of a wider redevelopment proposal and includes planning permissions and pending applications for a new lane from North Street and the proposals in this application support the wider masterplan.

## 3. RELEVANT HISTORY

**BH2017/00768** - Change of use of 5no units from retail (A1) to restaurant (A3) with erection of rear extension, formation of basement level and associated alterations. Installation of condenser units to rear. Approved 13.06.2017.

**BH2017/00762** - Erection of an external Awning (A3) to Brighton Square. Installation of new shopfronts to 12, 13, 14, 15 and 16 Brighton Square. Withdrawn.

**BH2016/02889** - Change of use of 4no units from retail (A1) to restaurant (A3) with erection of rear extension . Approved 23.02.2017.

**BH2014/01117** - Erection of single storey rear extensions to units at 11-16 Brighton Square with infill of rear access way. Replacement of existing external access stair to rear of 16 Brighton Square. Approved 25.04.2016.

**BH2014/01118** - Demolition of existing buildings at 21, 22, 23 and 37 Brighton Square. Conversion and extension of existing dwellings at 38, 39 and 40 Brighton Square to create additional 8no residential units (C3) and 2no restaurant units (A3) with associated works. Erection of four storey building fronting Brighton Place comprising 1no retail unit (A1) and offices (B1) above,

with revised access from Brighton Place to existing underground car park.  
Approved 15/04/2015.

Various other minor applications relating to approval of details reserved by conditions, advertisement consents and other shop front alterations for multiple properties within the Brighton Square area.

#### **4. REPRESENTATIONS**

##### **4.1 One Hundred and Thirty Eight (138)** letters has been received in support the proposed development for the following reasons:

- The area is in constant need of improvement
- The proposal would be positive for the area
- It would attract pedestrian activity
- The square is run down and in need of a massive improvement
- The local traders will benefit
- It will make the area an attraction
- The positive gains outweigh the slight reduction in visibility of shopfronts
- Perfect spot for restaurants and cafes
- New jobs in the area
- The amended design with a 3m walkway is an improvement
- Keeping the dolphin is a positive
- The square is currently empty and uninviting
- The design is exciting, attractive and practical
- Would help increase footfall during the winter
- The proposals will complement the wider development
- It will have a favourable knock-on effect on the surrounding area
- A major restaurant chain will attract activity and vibrancy

##### **4.2 Thirty Four (34)** letters have been received objecting to the proposed development for the following reasons:

- Inappropriate for the square both visually and functionally
- Staff would have to carry food and tableware across the square in all weather across the flow of pedestrians
- The sculpture should not be altered and isolated from the public
- Poor design
- The construction swallows up the square and drowns the central sculpture
- The principle of the use of public spaces for private commercial purposes should not be supported
- Brighton has already lost other public squares to commercial premises
- A permanent building is not suitable
- Temporary chairs and tables would be more appropriate
- The fountain would be concealed
- The materials would not contribute to the cohesive character
- Will be vulnerable to vandalism and attack
- It would be detrimental to the Conservation Area
- The design of the pavilion is overbearing
- Overly strong message of private space
- Poor quality

- The open square provides a pleasant contrast to the surrounding area
- There are already cafes and restaurants within the square and its vicinity
- Not in keeping
- Overbearing
- Will attract rough sleepers
- No sympathy for the conservation area
- The area has been used successfully with chairs and tables for years
- It is too large for the space available
- There are better more appropriate uses for this space
- It will damage the individual character of the area
- The square is a wonderful example of 60s design
- Large chain companies should not be permitted in the lanes

4.3 **Councillor Druitt** supports the application. A copy of the representation is attached.

## 5. CONSULTATIONS

### 5.1 **County Archaeology:** No objection

Although this application is situated within an Archaeological Notification Area, based on the information supplied, I do not believe that any significant below ground archaeological remains are likely to be affected by these proposals. For this reason I have no further recommendations to make in this instance.

### 5.2 **Brighton & Hove Archaeological Society** No objection

This proposed development lies in the archaeologically sensitive centre of Old Brighton. It is possible that Palaeolithic deposits may remain or vestiges of the medieval or Reformation periods.

5.3 The Brighton and Hove Archaeological Society would suggest that you contact County Archaeology for recommendations.

### 5.4 **Heritage:** No objection

No objection subject to conditions securing landscaping details, details of the new fountain structure, details of the finish to the shop fronts and retention of the flint faced pilasters.

### 5.5 **Sussex Police:** Comment

The reduced external circumference of the pavilion will provide a better flow of pedestrians around the structure. However there may still be a conflict with passing pedestrian traffic, customers and waiting staff going to and from the units 12 to 16 and crossing into the newly proposed pavilion. Particularly during the busy summer months when this area tends to become congested with pedestrian traffic. The solid structure of the pavilion in the middle of the square will prevent the public cutting across the previously open area to relieve congestion round the footpath when it is busy.

Adequate security measures are recommended including security lock, reinforcement and low level internal illumination outside of opening hours.

Concerns are raised in relation to vulnerability of the structure to vandalism and rough sleepers.

Alcohol should be ancillary to food and should only be available via table service.

- 5.6 Sustainable Transport:** No objection  
No objection. No suggested conditions.

## **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, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);

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  
CP3 Employment land  
CP4 Retail provision  
CP5 Culture and tourism  
CP8 Sustainable buildings  
CP9 Sustainable transport  
CP10 Biodiversity  
CP11 Flood risk  
CP12 Urban design  
CP13 Public streets and spaces  
CP14 Housing density  
CP15 Heritage  
CP16 Open space

CP18 Healthy city  
CP19 Housing mix  
SA2 Central Brighton

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

TR4 Travel plans  
TR7 Safe Development  
TR14 Cycle access and parking  
SU9 Pollution and nuisance control  
SU10 Noise Nuisance  
QD5 Design - street frontages  
QD15 Landscape design  
QD27 Protection of amenity  
SR4 Regional shopping centre  
HE6 Development within or affecting the setting of conservation areas  
HE12 Scheduled ancient monuments and other important archaeological sites

Supplementary Planning Documents:

SPD02 Shopfront Design  
SPD03 Construction & Demolition Waste  
SPD09 Architectural Features

**8. CONSIDERATIONS & ASSESSMENT**

8.1 The main considerations in the determination of this application relate to the principle of the development, the proposed design, the impact of the proposed use on the amenity of neighbouring occupiers and consideration of the wider conservation area.

**8.2 Principle of Development:**

The proposal seeks consent for the erection of an external seating area to be used in conjunction with the adjacent restaurant within units 12-16 Brighton Square. External alterations are also proposed to the shopfront of the restaurant.

The site falls within the area identified within City Plan policy SA2 as Central Brighton and is located outside of the prime retail frontage.

Policy SA2 paragraph 1 states;

'To reinforce central Brighton's role as the city's vibrant, thriving regional centre for shopping, leisure, tourism, cultural, office and commercial uses: 1. The Council will strengthen the distinctiveness and legibility of the 'cultural quarter' and ensure its long term success and viability through ongoing improvements to the attractiveness of the physical environment and public realm; ensuring that historic buildings are maintained and enhanced and by requiring new development to support and maintain the vibrant mix of cultural activities, business, retail, leisure and tourism uses'.

The site falls within the regional shopping centre within an area of predominantly commercial uses including a mixture of retail and restaurant / café / bars. The

planning statement and a number of letters of support from local business owners have indicated that the pedestrian footfall and quality of the area has declined over the last decade and therefore development which would improve the centre and attract tourism/leisure activity should be encouraged. The proposed seating area would be used with the adjacent restaurant for which the principle was agreed within application BH2017/00768.

Restaurants can be considered as part of the 'night time economy' which is generally held to be a key component of vital and vibrant city centres. It is agreed that the proposed use is likely to attract activity and atmosphere to the square and the proposed development is not objected to in this regard, however this is subject to the detailed assessment of other implications relating to design and impact on the public realm below.

The site is a designated open space within the built up area, which is protected under City Plan Policy CP16.

Policy CP16 states;

'Planning permission resulting in the loss of open space, including the beach, will only be granted where:

- a) The loss results from a development allocation in a development plan and regard has been given to maintaining some open space (physically and visually); or
- b) The site is not part of a playing field (current or historical) and the loss is necessary to bring about significant and demonstrable long term enhancements to the city's public open space offer as a whole; or
- c) The proposed development is ancillary to the use of the open space and will result in only a small loss of open space, provides improvements to and better use of the remaining space and optimises public access; or;
- d) The site is:
  - physically incapable of meeting the city's wider open space needs;
  - is not part of the beach or a playing field (current or historical); and,
  - in accordance with the Open Space Study Update 2011 (or subsequent approved revisions), is of a poor quality without potential for improvement (current and potential) and there is an identified surplus (current and future) in all types of open space within the locality (ward and sub area). In order to test the importance of the site to the local community the site must be actively marketed at a price that reflects its use, condition and local market prices for at least a year with no success before alternative proposals can be considered'.

The site has been audited as forming a civic space and is located within a built up area within the Regency Ward. With regards to CP16 points a) and b), the site is a central location within a built up area and does not form part of development allocation or a playing field. The proposed development would facilitate additional seating which would retain an element of the existing usage of the site as an informal seating area; however it would result in a loss of a

large proportion of the open space within the square by privatising and enclosing the central section

The Open Space Study update 2011 indicates that the site is currently considered an above average site, functioning quite well as an open space, where some improvements would be required to improve the offer. The study also indicates that the site has very poor potential to be improved and little potential for change.

Furthermore the Open Space Study Update indicates that the Regency Ward does have an over-riding deficiency in open space across all typologies. Given the size of the unit relative to the size of the square, the rating of the existing site with the Open Space Study and the overall deficiency of open space within the surrounding ward, the loss of identified open space fails to accord with City Plan Policy CP16 parts c and d. Refusal is therefore recommended on this basis.

### **8.3 Design and Appearance:**

#### External Seating Area

City Plan Policy CP13 states that 'the quality, legibility and accessibility of the city's public urban realm will be improved in a comprehensive manner, in conjunction with other partners, through new development schemes, transport schemes and regeneration schemes. Such improvements will be required to produce attractive and adaptable streets and public spaces that enrich people's quality of life and provide for the needs of all users by:

1. Positively contributing to the network of public streets and spaces in the city;
2. Enhancing the local distinctiveness of the city's neighbourhoods;
3. Conserving or enhancing the setting of the city's built heritage;
4. Reducing the adverse impact of vehicular traffic and car parking;
5. Utilising high quality, robust and sustainable materials for all elements of the street scene;
6. Incorporating street trees and biodiversity wherever possible;
7. Encouraging active living and healthier lifestyles;
8. Helping to create safe and inclusive public spaces;
9. Incorporating an appropriate and integral public art element; and
10. Reducing the clutter of street furniture and signage.'

Brighton Square is located within the Old Town Conservation area, within a section known as The Lanes and forms part of a 1960s redevelopment of the area including commercial units at ground floor with residential above flats. The square itself is unique in character and creates a welcome open and light environment in contrast to the tight, high density nature of the lanes and surrounding area. The square includes a central fountain and sculpture in addition to street furniture at each corner. The area is currently used for informal seating in relation to the adjacent units, which maintains the openness and desire lines into / across the square.



The proposal seeks permission for the erection of an enclosed seating area located within the central section of the square to be used in conjunction with the recently approved restaurant within units 12-16 to the north of the square. Alterations to the shopfront of the restaurant are also sought.

The seating area would comprise a laminated timber framed pod which would be glazed in a mixture of polycarbonate fixed and sliding panels in order to allow access. The roof would also be finished in sliding polycarbonate panels in addition to pre-tensioned fabric sections. The structure would be set centrally in the square and would create a new fountain base whilst integrate the sculpture from the existing fountain. Internally, the structure would include a number of seating areas with tables centralised around the fountain.

In isolation, the proposal represents a high standard of design which would be welcome in other more open areas of the city. The structure would, however, cover a substantial portion of the square leaving narrow sections to either side for pedestrian traffic and public usage. The structure would enclose and restrict the existing open space which, as identified above, is one of the key definitive characteristics of the site and is inherent to the nature of a public square. It is considered that the structure would obscure the site and views through the site, thereby impeding on pedestrian orientation and legibility. As one enters the existing square, two/three exits are clearly visible. The development would obscure these exits which block desire lines thereby undermining the positive intention of the development to attract pedestrian footfall.

It is considered that any development within squares should take account of the scale and proportions of the square itself and should leave the majority of the area open. This proposed development would cover the entire central section within the square, leaving only the narrow areas to the perimeter to allow for pedestrian movement around and through the site. The scale of the development is considered excessive in relation to the modest scale of the square and as a result would be a dominant addition within the currently open area.

#### Shopfront Alterations

The proposal also seeks permission for the alterations to the adjacent shop fronts within units 12 - 16 Brighton Square. As identified above the shopfronts would be associated with the restaurant within the units as approved within application BH2017/00768 and would be used in association with the proposed seating area within the square. The proposed shopfronts would include five units with glazed doors and a fascia board displaying the restaurant logo over four of the entrances.

There is no objection to the removal of the existing shop fronts and the new shop fronts are considered to be acceptable provided that the existing flint-faced pilasters are retained as existing and not over-clad. This could be addressed by condition in the event of an approval. The application details refer to timber shop fronts with a decorated finish and it is not clear whether this refers to painting or staining/varnishing. Painted timber is traditional to Old Town but again this could be controlled by condition.

#### **8.4 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.

The application form indicates that the proposed external seating area would be available for use by customers of the restaurant between the hours of 08:00 and 23:00 seven days a week including bank holidays. It is acknowledged that the proposed development would intensify the existing use of the square significantly, which would likely increase the activity and associated disturbance within the square during evening hours.

It is considered, given the central location and existence of other commercial units within the square, that the level of harm is considered acceptable as neighbouring occupiers cannot expect the same levels of noise and activity that would be experienced within a predominantly residential area.

Opening hours could be restricted by condition if considered necessary in the event of an approval.

#### **8.5 Sustainable Transport:**

The sustainable transport team have not raised any objection to the proposal. Although the proposed development may increase person trips to and from the square, this is not considered significant enough to warrant and form of mitigation / contribution.

#### **8.6 Sustainability:**

City Plan Policy CP8 states that all non-major non-residential development should achieve a BREEAM rating of 'Very Good'. This development, at approximately 100m<sup>2</sup>, falls below the non-major threshold of 236m<sup>2</sup> and therefore is not required to meet BREEAM standards. Furthermore, as the structure is an external open seating area with openings and a glass frame, it is not considered reasonable to secure sustainability measures and mitigation in this instance.

#### **8.7 Conclusion**

Overall it is acknowledged that there are benefits of the proposal including improving the economic vibrancy by attracting activity and customers into the square year round, which is likely to have a knock on benefit to the surrounding commercial units and the character of the area. It is considered however that the benefits identified above would not outweigh the fundamental concerns relating to the scale of development within the square and the impact such a structure would have on the character of the open space that would occur as a result of the development.

#### **9. EQUALITIES**

None identified