

<u>No:</u>	BH2020/00215	<u>Ward:</u>	St. Peter's And North Laine Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	23 Trafalgar Street Brighton BN1 4EQ		
<u>Proposal:</u>	Change of use of basement and ground floors from retail (A1) to mixed use retail and drinking establishment (A1/A4), installation of new shopfront incorporating separate entrance to upper floor maisonette, installation of external stairs and seating to rear, revised fenestration and associated works.		
<u>Officer:</u>	Russell Brown, tel: 293817	<u>Valid Date:</u>	04.02.2020
<u>Con Area:</u>		<u>Expiry Date:</u>	31.03.2020
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Lewis And Co Planning SE Ltd 2 Port Hall Road Brighton BN1 5PD		
<u>Applicant:</u>	Woolf Sung Limited C/O Lewis & 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 **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.

Plan Type	Reference	Version	Date Received
Location and block plan	01-01		22 January 2020
Proposed Drawing	09-01	B	4 February 2020
Proposed Drawing	09-02	B	4 February 2020
Proposed Drawing	09-03	B	6 March 2020
Proposed Drawing	02-01	C	6 March 2020

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
3. The works to the front lightwell hereby permitted shall not take place until full details, including 1:20 scale plans and sections, photos and materials, have been submitted to and approved in writing by the Local Planning Authority.

The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter.

Reason: As insufficient information has been submitted, to ensure the satisfactory treatment of the front lightwell and the protection of the conservation area in compliance with Policies HE6 of the Brighton & Hove Local Plan and CP15 of the Brighton & Hove City Plan Part One.

4. The premises hereby permitted shall only be occupied by customers between the hours of 11:00-23:00 Monday to Saturday and 11:00-22:30 on Sundays, Public and Bank Holidays. No customers or staff shall be within the beer garden past 18:00 Monday to Sunday, including Public and Bank Holidays.

Reason: To safeguard the amenities of the locality and to comply with Policies SU10 and QD27 of the Brighton & Hove Local Plan.

5. The playing or generation of live music and the provision of any kind of associated entertainment shall not take place either inside or outside the premises hereby permitted.

Reason: To safeguard the amenities of the locality and to comply with Policies SU10 and QD27 of the Brighton & Hove Local Plan.

6. The premises hereby permitted shall not be first used until details of soundproofing, which shall include its specification and section drawings through it, have been submitted to and approved in writing by the Local Planning Authority. The submission shall be accompanied by a noise assessment that recommends the necessary mitigation to be provided by the soundproofing as well as the glazing specification within the rear windows and door hereby approved. The soundproofing shall be installed in accordance with the agreed details prior to first use of the premises hereby approved and shall be retained in perpetuity in accordance with the approved details thereafter.

The soundproofing shall provide sufficient mitigation against noise generated by users of the premises such that the Rating Level measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises shall not exceed the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS 4142:2014 (or as subsequently amended).

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with Policies SU10 and QD27 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. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1. The application relates to the basement and ground floor of a three storey terraced property within a terrace of six properties, only one of which (no. 20) is not three storey. The building is located to the south side of Trafalgar Street opposite the junction with Whitecross Street.
- 2.2. The ground floor of the site currently comprises a retail unit with associated storage at basement level and a rear yard. There is a two bedroom maisonette (Use Class C3) on the first and second floors. This parade is comprised of commercial on the basement and ground floors (all Use Class A1) apart from the NHS dental practice (Use Class D1) over the upper floors of no. 21 with residential on the upper levels.
- 2.3. The building is within the North Laine Conservation Area and subject to an Article 4 direction, but is not a listed building or in the vicinity of one. The site is also within Controlled Parking Zone (CPZ) Y and is within the Prime Retail Frontage.
- 2.4. The current application seeks planning permission for the change of use of the basement and ground floors from retail (Use Class A1) to a mixed use of retail and drinking establishment (Use Classes A1 and A4). This would involve the installation of a new shopfront incorporating a separate entrance to the existing upper floor maisonette, the installation of external stairs and seating to the rear, revised fenestration to the rear, new ramped access to the front and the reinstatement of a front lightwell.

3. RELEVANT HISTORY

None

4. REPRESENTATIONS

- 4.1. **One (1)** letter has been received objecting to the proposal on the following grounds:
 - Works are already underway
 - There are too many drinking establishments in the area and the premises in in a CIZ (Community Impact Zone) where licences for no further drinking establishments are awarded.
 - The use is inappropriate for the site's location
 - The plans show only one unisex toilet for a pub serving 40 customers
 - The size of the unit is not suitable
 - The outdoor seating area would impact on neighbouring residents and once closed would be at the front of the premises, on the narrow pavement
 - The changes to the façade are not in keeping with the area.
- 4.2. An objection has been received from the **North Laine Community Association** raising the following points:
 - There are too many drinking establishments in the area (14 on Trafalgar Street, two of which are 24 hours) and the premises is in a CIZ

(Community Impact Zone) where licences for no further drinking establishments are awarded.

- The proposed use is inappropriate for the site's location and should not be approved as a drinking establishment, in effect, a pub without food.
- The proposed use would have a detrimental effect on the shopping environment by its very nature and by not attracting both retail and leisure users as well as on the character of the conservation area
- The proposed outdoor rear seating area causes concern as it would impact on neighbouring residents above, on both sides and to the rear;
- Overcrowding could lead to vertical drinking

4.3. **Councillor Deane** has objected to the application. A copy of the correspondence is attached to the report.

5. CONSULTATIONS

5.1. Designing Out Crime Officer:

- As the premises falls within the cumulative area / centre of the night time economy, the applicant and their partners are strongly advised to take note of the Brighton & Hove City Council Statement of Licensing Policy and to consult directly with Police Licensing at Sussex Police before making plans for licensed premises serving alcohol or conducting other licensable activities at this site.
- The main concerns would be that of noise as there is a residential upper floor maisonette situated above and the surrounding community is made up of several residential properties and from the air conditioning units as well as about associated cigarette smoke from patrons using this area.
- It is unknown at present as to the number of covers that may be associated with this proposal and, as such, the exterior terrace has the potential to become overcrowded thus encouraging vertical drinking.
- Conditions need to be put into place to ensure that access and egress to the exterior terrace is limited to a reasonable hour.
- Any permission for this or a future application for the premises is conditional that alcohol is ancillary to food prepared on the premises and served at table by waiters/waitresses. Substantial food shall be available at all times.
- Requisite sound proofing to windows and doors would help reduce any associated anti-social noise pollution to the ground floor area spilling out to residential areas.
- As the premises will be stocking bottles of high value alcohol the installation of an intruder alarm system is recommended.
- To enable staff on the ground floor to monitor the basement level and exterior terrace the installation of a CCTV system to monitor all levels is also recommended.
- There are no major concerns with the proposals, however, additional measures to mitigate against any identified local crime trends and site specific requirements should be considered.

5.2. Environmental Health:

Approve with suggested conditions relating to opening hours; restriction of machinery and / or plant usage; hours of servicing, deliveries and collections; and soundproofing. They add that there is also a current licencing application to include sales on the premise and for live and recorded music. The proposed closing time is 23:00 (22:30 on Sundays) and 22:00 for the beer garden. They consider that it is unlikely to be possible to hold live music events in the commercial part of the premises without the risk of statutory noise nuisance to the occupiers of the flat above.

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 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

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);
- Shoreham Joint Area Action Plan (October 2019)

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. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SA2	Central Brighton
SS1	Presumption in Favour of Sustainable Development
CP4	Retail provision
CP8	Sustainable buildings
CP10	Biodiversity
CP12	Urban design
CP15	Heritage

Brighton & Hove Local Plan (retained policies March 2016)

TR7	Safe Development
SU9	Pollution and nuisance control
SU10	Noise nuisance

QD5	Design - street frontages
QD8	Shopshutters
QD10	Shopfronts
QD14	Extensions and alterations
QD15	Landscape design
QD27	Protection of amenity
SR4	Regional shopping centre
HE6	Development within or affecting the setting of conservation areas

Supplementary Planning Documents:

SPD02	Shop Front Design
SPD11	Nature Conservation and Development
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 principle of development, the design of the alterations, the impact on the conservation area, on neighbouring amenity and on the highways network.

Principle of development:

- 8.2. The application site falls within Special Area SA2 of the Brighton and Hove City Plan Part One which aims to reinforce Central Brighton's role as the city's vibrant, thriving regional centre for shopping, leisure, tourism, cultural, office and commercial uses by, in this case:
- Supporting proposals to improve and refurbish existing retail units and shop frontages and recognise the role of small independent/local traders in maintaining the Regional Centre's viability and attractiveness.
 - Promoting a balanced range of complementary evening and night-time economy uses which appeal to a wide range of age and social groups, avoid a spread of large bars/pubs and night clubs and address public safety concerns.
- 8.3. City Plan Part One Policy CP4 identifies Brighton as being a Regional Centre and aims to maintain and enhance Brighton & Hove's hierarchy of shopping centres by encouraging a range of facilities and uses, consistent with the scale and function of the centre, to meet people's day-to-day needs, whilst preserving the predominance of A1 use classes.
- 8.4. Local Plan Policy SR4 outlines that the change of use of existing Class A1 use shops to Class A2, A3, A4 or A5 uses within the defined prime frontages of the regional centre will be permitted provided that all of the following criteria are met:
- a. as a result of the proposal there would not be a significant break in the shopping frontage of more than 10m;
 - b. it would not result in either the number of non-retail units or the proportion of frontages exceeding 25% of the shopping street(s) to which it relates;

- c. it would have a positive effect on the shopping environment of the area by encouraging combined trips and attracting pedestrian activity to the centre; and
 - d. the development would not be significantly detrimental to the amenities of occupiers of nearby properties or the general character of the area.
- 8.5. In this case, the change of use proposal does not result in the loss of the entire A1 usage. The applicant has advised that the mixed use is approximately half A1, half A4. The ground floor would be mainly used as a bar, offering alcoholic drinks for take home sales and for consumption on the premises, which would occur on the ground floor, but mainly within the basement and outside in the rear patio area. As such, the proposal complies with Policies CP4 and SR4 whilst also supporting a small independent/local trader and providing a complementary evening/night-time economy use. Furthermore, it is considered to encourage combined trips and would attract pedestrian activity. It is noted that four of the other ground floor units within this terrace would be in A1 usage, albeit the clothes shop 'FOLD' occupies nos. 20-21 and the D1 use's presence on the ground floor is limited to an entrance only.
- 8.6. Local Plan Policy SR12 relating to large Use Class A4 (pubs and bars) is not relevant here since the total resultant public floorspace is 43m², not the 150m² required to invoke the policy. It is worth noting that as the premises would not be an A3 unit, the condition requiring that alcohol is ancillary to substantial food (which is prepared on the premises, served at a table and is available at all times) cannot be added.
- 8.7. As such, no in-principle objection is raised to the change of use from A1 to a mixed A1/A4 use. As such, subject to a consideration of part (d) of Policy SR4 (which is assessed later in this report), the proposal is compliant with Policies SA2, CP4 and SR4.

Design and Heritage:

- 8.8. When considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
- 8.9. Case law has held that the desirability of preserving the character or appearance of a conservation area must be given "considerable importance and weight".
- 8.10. None of the shopfront appears to be original and even the Victorian style black and white tiles between the red brick public footway and the shopfront seem to be a later addition. The shopfront does, however, feature a stallriser and a sign that fits the size of the fascia board behind.
- 8.11. Given the above, no in-principle objection is raised to the removal of the existing shopfront. The proposed shopfront, although timber, would also be of a modern style. However, it does feature a recessed doorway (which may have been an original feature), a new painted timber fascia board and panelled

stallriser. Given that it would be unreasonable to insist on a shopfront being installed that is faithful to what was original, it is considered that the proposed shopfront is in keeping with examples on surrounding buildings, if not an improvement. It is a cohesive approach, through the detailing, colour scheme, materials and overall design strategy, which is in line with Local Plan Policy QD10. The large 'glass plate' shopfront is a distinctive modern element and causes less than substantial harm, considered to be outweighed by the provision of a ramp to provide access for those with a mobility-based disability. As a whole, the shopfront is considered to be an improvement on the existing and would therefore enhance the special appearance of the conservation area.

- 8.12. In terms of the shop shutters, Local Plan Policy QD8 outlines that solid shutters, including those with the "pin hole" design, that obscure the window display are not permitted. In this case a thin-framed roller grille over the shopfront window and a demountable security grille over the entrance door are proposed, which would be hung on wall hooks when not in use. These are therefore considered to be acceptable. Furthermore, concealing the housing for the roller grille behind the new fascia boxing is supported.
- 8.13. In terms of the other changes to the front, the provision of separate access to the existing maisonette and proposed A1/A4 unit is supported. There is also the possibility of a lightwell, or pavement lights, being reinstated. No objection is raised to these given their prevalence within the parade and elsewhere along the street subject to detailed treatment, which can be secured by condition in the event of an approval.
- 8.14. Numerous, although largely minor changes, are proposed to the rear of the building. This is not visible from the public realm and therefore the alterations are considered to have very little impact on the character and appearance of the conservation area. Whilst the loss of the bay window is regrettable, this would not warrant a refusal of the application. The treatment of the new and replacement rear fenestration - aluminium frames - is uniform and therefore supported. The increased amount of glazing would help to bring light into the rear of the seating and bar areas. The provision of a new handrail and balustrade to the existing steps is welcomed as is the slatted timber enclosure to hide the pipework. No objection is raised to painting the rear boundary wall white or moving the AC condenser unit higher and the exterior raised planter would help to soften the hard paved yard area.
- 8.15. As such the proposal is considered to be compliant with City Plan Part One Policies CP12 and CP15, Local Plan Policies QD8 and QD10 as well as SPD02.

Impact on Neighbouring Amenity:

- 8.16. Paragraph 127 of the NPPF outlines that planning decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users.
- 8.17. The responsibility for mitigating the impact of noise is firmly on the new development. The onus is on new noise-generating uses proposed close to

existing noise-sensitive uses to ensure its building or activity is designed to protect existing users or residents from noise impacts. Measures such as soundproofing can be put in place to mitigate any noise impacts for neighbouring residents and businesses.

- 8.18. The main impact from the proposal would be on the maisonette on the upper floors of the host building and the three flats at 22 and one at 24 Trafalgar Street in terms of noise and general disturbance from the proposed A4 element. None of the windows would provide opportunities for overlooking into adjacent residential properties, and the door would be installed into an existing opening, and therefore would not result in any additional overlooking.
- 8.19. The existing opening hours of the retail unit are unknown. However, those proposed for the mixed A1/A4 use are 11:00-01:00 Monday to Saturday and 11:00-00:00 on Sundays and Public / Bank Holidays. In light of a current licencing application that proposes a closing time of 23:00 Monday to Saturday and 22:30 on Sundays (and 22:00 for the beer garden every day), the Environmental Health Officer has recommended that the closing times be restricted to those hours, and that the beer garden be closed between 22:00 and 10:00. Those for the premises itself are considered more appropriate because it is considered that allowing it to remain open beyond 23:00 would result in an adverse impact on the neighbouring dwellings. However, it is considered that given it is outside and the proximity of residential properties, the beer garden should close at 18:00. This has been discussed with the applicants who are aware that the hours would be secured via condition in the event of an approval.
- 8.20. Officers also agree that a condition is required to prevent the playing or generation of live music (as proposed in the licencing application) to prevent the risk of statutory noise nuisance to the occupiers of the maisonette above, which would sufficiently restrict the activities which could be carried out within the premises and beer garden.
- 8.21. Noise transfer to the nearby dwellings would still occur through patrons using the premises. In light of no acoustic details having been submitted, it is considered that details of the soundproofing that would need to be installed are secured by condition in the event of an approval. This must also be accompanied by a noise assessment that recommends the necessary mitigation to be provided by the soundproofing as well as the glazing specification within the new rear windows and door. It should be noted that in order for noise levels to be acceptable, they should not exceed the existing LA90 background noise level.
- 8.22. Besides noise, any disturbance from patrons is likely to occur outside and at the entrance to the premises on the ground floor. Sussex Police have not raised this as a significant issue. However, they do advise that CCTV should be provided, with care taken to ensure any lighting is commensurate with the CCTV equipment.

Impact on Highways:

- 8.23. It is not anticipated that the provision of a mixed A1/A4 use at this premises would lead to increased traffic generation or parking stress on surrounding street given that the site is within CPZ Y, which would therefore prevent overspill parking. No car parking spaces are proposed, but since this is commercial development, a condition cannot be added to prevent future occupiers from applying for a parking permit.
- 8.24. No cycle parking spaces are required. It is expected that refuse and recycling arrangement would remain as existing.
- 8.25. It is not considered that the proposed ramp at the front entrance, as it is wholly within the demise of private land, would cause an obstruction to those using the adjacent public footway.

9. CONCLUSIONS

- 9.1. The proposal, by reason of the retention of the A1 element, would continue to contribute to the Regional Centre's viability and attractiveness, whilst also providing a complementary evening/night-time economy use, encouraging combined trips and attracting pedestrian activity through the provision of the A4 component. Subject to conditions, the latter would not have any significantly adverse impact on neighbouring amenity. Furthermore, the proposed shopfront and other alterations would largely enhance the special appearance of the conservation area. This application is therefore recommended for approval.

10. EQUALITIES

- 10.1. As previously noted, the proposal would provide a ramp to provide access for those with a mobility-based disability, which is welcomed given the premises currently features a large step up to shop floor level.