

<u>No:</u>	BH2022/02810	<u>Ward:</u>	Goldsmid Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	St Agnes Church Newtown Road Hove BN3 7BA		
<u>Proposal:</u>	Retrospective application for the installation of high level ventilation grilles to gable ends, handrail to parapet wall of roof and external up/down lighting to south elevation at second floor.		
<u>Officer:</u>	Jack Summers, tel: 296744	<u>Valid Date:</u>	21.09.2022
<u>Con Area:</u>		<u>Expiry Date:</u>	16.11.2022
<u>Listed Building Grade:</u>		<u>EOT:</u>	08.06.2023
<u>Agent:</u>	ABIR Architects Ltd Unit 1, Beta House St Johns Road Hove BN3 2FX		
<u>Applicant:</u>	Natural Fit Gym St Agnes Church Newtown Road Hove BN3 7BA		

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
Existing Drawing	0578.PL.1001	A	13 January 2023
Report/Statement	Noise Management Plan (NMP)- External Seating Area	1	4 August 2023

2. Prior to first use of the terrace hereby approved, details of obscure screening to be positioned along the east and west edges of said terrace shall be submitted to and approved in writing by the Local Planning Authority. The obscure screening shall be implemented in accordance with the approved details prior to first use of the terrace, and shall thereafter be retained at all times, being repaired and maintained at all times in the event of damage, unless otherwise agreed in writing by the Local Planning Authority.
Reason: To safeguard the privacy of the occupiers of nearby properties and to comply with policy DM20 of the Brighton & Hove City Plan Part Two.
3. Use of the terrace hereby permitted shall be in accordance with the measures detailed within the Noise Management Plan prepared by Acoustic South East, received by the Local Planning Authority on 4th August 2023.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

4. Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below 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 + A1:2019. In addition, there should be no significant low frequency tones present.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

5. No externally audible machinery and/or plant shall be used at the premises except between the hours of 07:00 and 21:15.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

6. The external lighting hereby approved shall not be illuminated except between the hours of 07:00 and 09:00, and 16:00 and 21:15.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

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 applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the department from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.

2. SITE LOCATION

- 2.1. The application site is an early 20th century church building on a corner plot, on the north side of Newtown Road and east side of Goldstone Lane. The main body of the building features a steep pitched roof with gable ends on the east and west elevations. The Newtown Road frontage is single-storey and features a flat roofed element. A contemporary glazed single-storey extension adorns the west end of the building, fronting Goldstone Lane, and this features the main entrance.

- 2.2. It is currently in lawful use as a gymnasium (planning use class E), but some unauthorised development has taken place in the form of the following:
- (i) a doorway accessing the first floor flat roof on the south side of building,
 - (ii) handrails around the edge of said flat roof area, and
 - (iii) external lighting on the south elevation.
- 2.3. Items (i) and (ii) have been installed to facilitate the use of the flat roof area as a terrace associated with the gymnasium use.

3. RELEVANT HISTORY

- 3.1. **BH2022/02809** Installation of translucent glazed privacy screens to south elevation at second floor. Under Consideration
- 3.2. **BH2022/02808** Retrospective application for the installation of ventilation ducts to north elevation at first floor. Approved
- 3.3. **BH2021/03453** Retrospective application for the insertion of high level ventilation grilles to gable ends, creation of new door opening and installation of screens, handrail and external lighting to second floor south elevation, to facilitate the permitted use of the terrace area as part of the gym planning unit. Withdrawn
- 3.4. **BH2019/02794** Part-retrospective application for the extension and alterations to existing structure adjacent to North boundary at lower ground floor level with alterations including new fire escape door. Approved
- 3.5. **BH2017/02960** Alterations incorporating creation of first and second floors, glazed entrance to side, new roof to South, fire escape and sun tunnels to North, solar panels to roof and associated works. Approved
- 3.6. **BH2011/03836** Application to extend the time limit for implementation of previous approval BH2008/01824 for the conversion of existing roof void to form 5 maisonettes with associated alterations. Continued use of ground and lower ground floors as gymnasium. Approved
- 3.7. **BH2008/01824** Conversion of existing roof void to form 5 maisonettes with associated alterations. Continued use of ground and lower ground floors as gymnasium. Approved
- 3.8. **BH2000/01750/FP** Erection of 3no dwellinghouses. Approved
- 3.9. **3/78/0255** Change of use from church to gymnasium. Approved

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought retrospectively under Section 73a of the Town and Country Planning Act 1990 for the installation of high level ventilation grilles

on the east and west gable ends, galvanised steel handrails around the edge of the terrace, and the external lighting attached to the south façade at second floor level.

- 4.2. The doorway that has been created to facilitate access to the balcony, and use of the balcony itself as an external amenity space, is also under consideration as part of this application. The applicant and the Local Planning Authority disagree on the lawful status of the doorway; this is explained in more details later in this report.
- 4.3. This application is one of three that were submitted at the same time by the applicant for an assortment of works to the church building. They were advised by the Local Planning Authority that it would be preferred for all the works to be assessed under a single application in the interests of simplicity and good planning but have decided to continue with the development split across three applications. However, the cumulative impact of the three aspects must be considered in deciding each of the applications.
- 4.4. One of the three applications, BH2022/02808 (the installation of venting ducts), was approved at the May Planning Committee. The remaining two applications (including the current proposal) were deferred subject to the submission of a Noise Management Plan, that the Committee wished to assess prior to making a decision.

5. REPRESENTATIONS

- 5.1. Three (3) representations have been received, objecting to the proposal on the following grounds:
 - Light pollution
 - Noise nuisance
 - Creation of terraces on the building have historically been refused.
 - Detrimental impact on property value
 - Loss of privacy
- 5.2. A representation has also been received from **Ward Councillor O'Quinn**, objecting to the proposed development. A full copy of the email is attached to this report.
- 5.3. A representation has also been received from former **Ward Councillor Alcock**, objecting to the proposed development. A full copy of the email is attached to this report.

6. CONSULTATIONS

6.1. Environmental Health

No objection subject to suitable conditions as set out below. Having reviewed the Noise Impact Assessment there is no reason to question the methodology or conclusions.

- 6.2. From the assessment, regarding the usage of the balcony area for visiting patrons at the gym, there are several concerns. The music and associated gym activity has been found to be barely audible at 14 Fonthill Road (not audible at all from two receptors). However, the balcony usage demonstrated a +6.6 dB at worst in respect of the effect at 14 Fonthill Road. This would suggest a possible adverse impact on the residents at 14 Fonthill Road.
- 6.3. As a consequence of these findings, I would suggest the following (total or in part) conditions be considered if permission is granted for the balcony to be utilised by patrons of the establishment.
- The balcony area only to be open during certain times of the day, i.e. 0800 to 1800 (Monday to Friday). 0900 to 1700 (Saturday), Closure Sunday.
 - Music level within the gym should always be monitored. If it is raised to a level that causes the patrons to raise their voice to communicate, then it is likely that a re-assessment is required. No microphones should be used.
 - No music should be played on the balcony.
 - Balcony area monitored with staff trained to intervene if patron noise levels exceed normal speaking levels.
 - Signage placed on the balcony to remind patrons that this is residential area and to keep noise to a minimum when outside or leaving the premises.
 - A complaints procedure provided to local residents.
 - All complaints to be investigated, the cause identified and necessary alteration to working practices made.
 - Periodic review of noise management plan.
 - Acoustic screening to be considered, in order to minimise impact on 14 Fonthill Road.
- 6.4. Throughout the assessment, it makes reference to the applicable British standard (BS4142), noise polices and international noise guidelines. The noise survey itself, and the results gathered have been interpreted and applied to the proposal correctly.
- Further Comments upon receipt of Noise Management Plan
- 6.5. Problems are not anticipated with use of the balcony based on the Noise Management Plan provided by the applicant which includes confirmation that the balcony will not be used for exercise classes, acoustic screens will be installed to manage noise levels, the capacity of the balcony is adequate for the intended number of patrons, hours of use will be restricted, and alcohol will not be served in this space.
- 6.6. However, the applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the department from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.
- 6.7. UK Power Network**
No Objection.

MATERIAL CONSIDERATIONS

- 6.8. 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.
- 6.9. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove City Plan Part Two (adopted October 2022);
 - 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 Harbour Joint Area Action Plan (JAAP) 2019.

7. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One (CPP1)

SS1	Presumption in Favour of Sustainable Development
CP2	Sustainable Economic Development
CP12	Urban Design

Brighton & Hove City Plan Part Two (CPP2)

DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM40	Protection of the Environment and Health - Pollution and Nuisance

8. CONSIDERATIONS & ASSESSMENT

- 8.1. The main considerations in the determination of this application relate to the design and appearance of the proposed development and the potential impacts on the amenities of local residents. A site visit was undertaken most recently in May 2023.
- 8.2. The applicant and Local Planning Authority (LPA) disagree on the lawful status of a doorway that has recently been created to facilitate access to the terrace fronting Newtown Road. The LPA's view is that the creation of the doorway constitutes development for which express planning permission is required. The applicant's view has not been fully clarified but they assert that the works required to install the doorway do not require express planning permission. The LPA has invited the applicant to apply for a Lawful Development Certificate to test the validity of their assertion, but they have not chosen to pursue this.

- 8.3. This is relevant since it means that access to the terrace can be managed through the planning system. It is common ground that the building is in lawful use as a (E) gymnasium, and this use would extend to the terrace; therefore, the LPA would be unjustified in limiting - for instance - opening hours of the business as a whole since the use is permitted. But given the terrace can only be made accessible through development that itself requires express planning permission - the doorway - the LPA is justified in taking measures to manage the potential impacts from the terrace.
- 8.4. Therefore, although the doorway is not included in the application description it shall be included in the assessment of this application as it facilitates access to the terrace upon which the screening would be sited.

Principle of Development

- 8.5. The development has facilitated improvements to the sports/leisure offer at the site and this is of minor public benefit and in accordance with the aims of policy CP2 of the CPP2, which encourages improvements to existing businesses.

Design and Appearance

- 8.6. The two ventilation grilles on the gable ends have not been well designed in terms of materiality or siting and are considered to cause some harm to the visual appearance of the church. The vent on the west elevation is particularly prominent, an unattractive intrusion into the architecture of the building, cutting directly through some stone banding. However, it is not considered to be so harmful to the building as to warrant a refusal of planning permission in this instance. The vent on the east elevation is less prominent as it is mostly concealed behind properties fronting Fonthill Road.
- 8.7. The handrail is made from metal and has a simple design; it is visible from the public highway but is fairly unobtrusive and it is not considered that it causes any significant visual harm. The anthracite colour also reduces its visual impact.
- 8.8. The doorway has been neatly cut out of the original building façade and has not interrupted any of the decorative architectural features; it is not highly visible from the public highway and is considered to be acceptable in terms of appearance.

Impact on Amenities

- 8.9. The doorway, vents and handrails in terms of physical development are not considered to cause any harm in terms of lost privacy or overshadowing; however, the related use of the terrace by the gymnasium business does raise significant concerns. The eastern end of the terrace is proximate to the rear facades of nos.14-18 Fonthill Road (dwellings granted permission under BH2000/01750/FP) and indiscriminate use of the terrace could cause harm in terms of lost privacy and noise nuisance.
- 8.10. The Environmental Health Officer advised that a Noise Management Plan should be secured which would restrict the use of the terrace in the interest of safeguarding the amenities of local residents. The following measures were requested:

- Restriction on the hours of use of the terrace
 - Restriction on the playing of music on the terrace
 - Music levels within the gymnasium to be monitored.
 - Staff to monitor use of the terrace and be trained to intervene if noise levels exceed normal speaking levels.
 - Signage to be displayed reminding patrons that the site is within a residential area and to keep noise to a minimum.
 - A complaints procedure to be provided to local residents, with all complaints being investigated.
 - Periodic reviews of noise management plan.
 - Acoustic screening to be installed to minimise the impact on no.14 Fonthill Road.
- 8.11. A Noise Management Plan has been submitted and has been found acceptable by the Environmental Health Officer. A condition is proposed requiring operation of the business in compliance with this Noise Management Plan, thus safeguarding the amenities of local residents. The council will also retain the authority to investigate under the Environmental Protection Act 1990, should any noise complaints be received.
- 8.12. The noise output of the ventilation ducts was observed on the site visit and no significant noise output was detected. The acoustic assessment submitted in support of the application has demonstrated that the development does not generate enough noise to constitute a statutory noise nuisance. It is considered that any potential harm can be successfully mitigated with planning conditions managing the noise output and the hours of use of the equipment. As abovementioned, the council has the authority to investigate under the Environmental Protection Act 1990, should any noise complaints be received.
- 8.13. The use of the terrace would create privacy issues for neighbouring residents as there would be unobstructed views into the rear windows of no.14 Fonthill Road and (at a greater distance) windows on the block of flats directly west of the application site. It is considered that privacy screening along the east and west edges of the terrace would be essential to safeguard the privacy of local residents. Although screening has been proposed under application BH2022/02809, there is no mechanism in place to ensure that this development (if granted planning permission) would be implemented; therefore, it is considered essential for a condition to be attached to any permission granted requiring further details of screening to be submitted to and approved in writing by the LPA, then implemented prior to first use of the terrace. The screening would be required to block lines of sight to the flats west of the site, and the first floor window of no.14 Fonthill Road. The second floor rear window of no.14 Fonthill Road would overlook the terrace and there would be some return views into that room, since the screening would be unlikely to be high enough to fully block views without appearing visually harmful; this is a concern but on balance it is not considered that the harm would be significant enough to warrant refusal of the permission.
- 8.14. The external lighting has the potential to cause light nuisance to residents of no.14 Fonthill Road if illuminated at unsocial hours. It is considered necessary

for the lighting to be subject to a condition limiting the hours of illumination to 07:00 and 09:00, and 16:00 and 21:15; such a condition will also be of benefit in terms of visual amenity and sustainability.

Other Considerations

- 8.15. The planning system does not exist to protect private interests such as the value of land or property, and as such the affect the proposed development could have upon property values does not hold weight in the determination of this planning application.
- 8.16. To seek planning permission retrospectively is a valid course of action in the development process and has not been weighed against the developer in the assessment of the propriety of this proposal.

Conclusion

- 8.17. The high-level ventilation grilles on the gable ends are poorly designed and have caused some degree of harm to the appearance of the church; however, in this instance it is not considered that this harm is significant enough to warrant refusal of planning permission. The other aspects of the development, the handrails and external lighting, are considered to be acceptable in terms of appearance, and the scheme as a whole is considered acceptable in terms of the impacts it is anticipated to have on the amenities of local residents subject to the aforementioned conditions. Compliance with the measures detailed in the Noise Management Plan, installation of the screening prior to first use of the terrace, and restrictions on the hours of use of the lighting and plant machinery shall be secured by condition in the interest of safeguarding the amenities of the closest neighbouring residents. For the foregoing reasons the proposal is considered to be in accordance with policies CP2 and CP12 of the Brighton and Hove City Plan Part One, and DM20, DM21 and DM40 of the City Plan Part Two.

9. EQUALITIES

- 9.1. The terrace has stepped access so is not equally accessible for all persons.

10. CLIMATE CHANGE/BIODIVERSITY

None identified.

