

<u>No:</u>	BH2016/00945	<u>Ward:</u>	Queen's Park Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	38 Upper St James Street Brighton		
<u>Proposal:</u>	Change of use from retail (A1) to café/restaurant (A3) (Retrospective).		
<u>Officer:</u>	Charlotte Bush, tel: 292193	<u>Valid Date:</u>	01.08.2016
<u>Con Area:</u>	EAST CLIFF	<u>Expiry Date:</u>	26.09.2016
<u>Listed Building Grade:</u>			
<u>Agent:</u>			
<u>Applicant:</u>	Metrodeco Ltd Ms Maggie Morgan 38 Upper St James Street Brighton BN2 1JN		

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
Floor Plans Proposed	02		23 September 2016

- 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 use hereby permitted shall not be open to customers except between the hours of 08.30 - 22.00 Monday to Saturday and 08.30 - 21.30 on Sundays.
Reason: To safeguard the amenities of the locality and to comply with policy QD27 of the Brighton & Hove Local Plan.
- 4 The sale of alcohol at the premises is restricted to 11.00 - 21.30 Monday to Saturday and 11.00 - 21.00 on Sunday.
Reason: To safeguard the amenities of the locality and to comply with policy QD27 of the Brighton & Hove Local Plan.
- 5 Alcohol can only be sold at the premises to seated customers eating food on the premises.
Reason: To safeguard the amenities of the locality and to comply with policy QD27 of the Brighton & Hove Local Plan.

6 The proposed layout, as shown in amended drawing 02, shall be retained at all times.

Reason: To safeguard the amenities of the locality and to comply with policy 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 a ground floor and lower ground floor commercial unit located in a 4 storey (plus basement) end of terrace building on the corner of Upper St. James's Street and Charlotte Street.

2.2 There is a wide mixture in the type of properties in the local vicinity, including residential houses and apartments, assisted housing for the elderly, pubs, hotels and shops.

2.3 The application site has been operating with temporary mixed A1/A3 for the last two years, as permitted under The Town and Country Planning (Use Classes) Order 1987 (as amended). The shop sells tea bags and tea related paraphernalia, which is also stored and packaged for the ancillary on-line business. In February 2014 the occupiers of the property notified the Local Authority that they would be operating within A3 use class for two years; functioning as a café selling hot and cold non-alcoholic drinks, a limited range of alcoholic drinks, and a selection of pre-prepared food. There are limited cooking facilities on site, including a single ring convector hob, two sandwich/panini makers, and a microwave.

2.4 The business does hold events at the premises and Temporary Events Notice is applied for on these occasions for extended opening and alcohol hours.

3 RELEVANT HISTORY

3.1 None relevant

4 REPRESENTATIONS

4.1 **Ten (10)** letters of representation have been received from **36 Upper St. James's Street (x5), Flat 2, 12 Charlotte Street (x2), Flat 1, 12 Charlotte Street, 11 Charlotte Street, 88a St James Street**, objecting to the proposed development for the following reasons:

- Was not sent a consultation letter or neighbour reference number.
- Neighbours were not notified of the temporary A3 change of use.

- Change to A3 use could facilitate the installation of a commercial kitchen.
- Number 38 lease is for A1 only.
- The proposed change of use does not meet all criteria a) to e) of policy SR6 to change this building's use.
- It is difficult to manoeuvre past groups of people sitting outside on the pavement or standing outside to smoke on the pavement.
- Patrons, deliveries and the tenants park on double yellow lines
- The loss of an A1 shop would reduce retail viability
- 38 Upper St James's Street is in a secondary retail and is a quiet area of East Brighton just outside the Cumulative Impact Zone and within the Special Stress Area designated by the Council. There is already provision of local drinking and eating establishments nearby.
- Noise pollution to local residents.
- Loss of privacy to No. 36 due to the noise and smoke pollution from those standing outside.
- The basement adjoins two residential homes, and the walls are Bungaroosh, i.e. porous and allowing for noise to carry. The parties are noisy and cause disruption to neighbouring properties.
- There can be considerable damp to Number 38's basement which is unsuitable for customers to sit in damp conditions.
- There is inadequate provision of toilet facilities with only one toilet for staff and customers and no accessible toilets for the disabled.
- Failure to abide by planning legislation.
- The drawing does not represent the correct size of the basement.
- The tenant of the lock-up shop at number 35 Upper St James's Street has commented in support of the application although he is not a resident of the street.
- Increased fire risk to the building and its residents from the preparation of hot food and drink.
- Increased safety risk to customers as the commercial unit only has escape routes on the ground floor and not any in the basement area.
- Increased health risk to the residents as the unsightly bin is situated outside the residential access front door.
- No provision or existing flue in the building to extract smoke, heat and smell from the commercial unit.
- Failure by the occupants to abide by an initial highways requirement in 2009 to provide a landscape barrier for the residents when granting a licence to place tables and chairs outside - only recently rectified.

4.2 **Councillors Daniel Chapman and Karen Barford** object to the proposed development. A copy of their representation is appended to the report.

4.3 **Two (2)** letters of representation have been received from **35 Upper St. James's Street** and an **unknown address in Bedford Street** supporting the proposal for the following reasons:

- The cafe is a great tea/coffee/restaurant not only to Kemptown but to Brighton as a whole.

- One of the foremost things that residents and visitors love about Brighton (Particularly North Laines and Kemp Town) are the individually owned/ run businesses that cannot be found anywhere else in the UK.
- It is a great restaurant that welcomes dogs, kids and people and serves great food and drink.
- Metrodeco does not encourage antisocial or unsavoury behaviour.
- Metrodeco has undoubtedly attracted more custom to the area.

5 CONSULTATIONS

5.1 Environmental Health: Informal comment in response to queries regarding complaints about the changes to the use class over the last two years

- 5.1 The department hasn't received any issues in the last two years.
- 5.2 In November 2010 the department received complaints that the premises did not have the correct licences but were applying for lots of temporary event licences till late at night, which were disturbing residents. The nuisance was never substantiated.
- 5.3 The premises applied for a alcohol and late night refreshment licence in 2011 in which the department made comments. By this time the premises had managed a number of temporary events without issue and the licence was granted.
- 5.4 In August 2011 the department were notified of an issue with the fan unit. This appeared to be an issue with the Temperature setting and was resolved quickly.
- 5.5 In August 2013 the department had a complaint about loud music from the premises but this was never substantiated.

6 Planning Policy: No objection

6.1 No comment

7 Sustainable Transport: No objection

- 7.1 Recommended approval as the Highway Authority has no objections to the above planning application.
- 7.2 Car Parking:
Car parking arrangements would be as existing. Although, compared to the permitted use, a restaurant use may increase demand outside the hours of operation of the surrounding Controlled Parking Zone, it is not considered that this would be of a level where refusal would be warranted
- 7.3 Cycle Parking:
SPG4 requires a minimum of two cycle parking spaces for a use of this nature. However, it is recognised that there are site constraints and as such this is not requested in this instance.

- 7.4 Trip Generation:
Although the profile of trips may vary between retail and restaurant uses, it is not considered that there will be a substantial uplift as a result of the proposals.

8 MATERIAL CONSIDERATIONS

- 8.1 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

- 8.2 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.

- 8.3 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.

9 POLICIES

- 9.1 The National Planning Policy Framework (NPPF)

- 9.2 Brighton & Hove City Plan Part One

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

- 9.3 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
SR6 Local centres
HE6 Development within or affecting the setting of conservation areas

- 9.4 Supplementary Planning Documents:

SPD12 Design Guide for Extensions and Alterations
SPD13 Parking Standards

10 CONSIDERATIONS & ASSESSMENT

- 10.1 The main considerations in the determination of this application relate to the acceptability of the change of use and its impact on the vitality and viability of the shopping centre and upon the amenities of the surrounding area.

- 10.2 The proposal is for the permanent change of use of the basement and ground floors from A1 (retail) to A3 (restaurants and cafes), consisting of:
- 10.3 Basement: storage areas and office, toilet, customer seating area.
Ground floor: food preparation area with a single ring convector hob, two sandwich/panini makers, and a microwave; customer seating area, and retail area.
- 10.4 The application site has been operating with temporary A3 use for the last two years, as permitted under The Town and Country Planning (Use Classes) Order 1987 (as amended). The shop sells tea bags and tea related paraphernalia, which is also stored and packaged for the ancillary on-line business. The café offers hot and cold drinks, a limited food menu, afternoon teas, cocktails, beers and spirits.
- 10.5 The application site is located within the St George's Road local shopping centre where policy SR6 applies. Policy SR6 recognises the importance of maintaining retail shops which serves the local community.
- 10.6 Policy SR6 states that:
- The change of use of existing Class A1 use shops to Class A2, A3, A4 or A5 uses will be permitted, provided that all of the criteria, a) to e), are met:
- a. it would not result in either the number of non-retail units or the proportion of frontages exceeding 35% of the centre;
 - b. it has been adequately demonstrated that a Class A1 retail use is no longer economically viable in that particular unit or the centre as a whole;
 - c. the proposed use would attract pedestrian activity (particularly in the daytime) which would make a positive contribution to the vitality and viability of the centre;
 - d. the development would not be significantly detrimental to the amenities of occupiers of nearby residential properties or the general character of the area; and
 - e. the location and prominence of the proposed use would not lead to a significant break of more than 10 metres in the frontage.
- 10.7 A mapping exercise has taken place and 61.86% of the shop fronts in this local shopping centre are A1 retail use class. It is therefore considered that there are adequate retail units to serve the local community and would ensure a healthy balance and mix of uses is provided. The proposal will still attract pedestrian activity to the centre. Given the limited parking facilities in the area, it can be reasonably assumed at that least some of the patrons will walk to the venue.
- 10.8 It is therefore considered in this instance, where the a significant number of A1 retail units will remain, that the granting of permanent A3 usage is appropriate and will enable an established local business to continue; attracting visitors to the area and improving local economic viability.

- 10.9 It is considered that the proposed use would make a positive contribution to the vitality and viability of the local shopping centre.
- 10.10 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.
- 10.11 The main concern from neighbours is the impact of the proposed use on the amenities of adjacent occupiers and the wider area.
- 10.12 The use of the premises as a café/restaurant (A3) could potentially result in a more intensive use of the property than A1 use. However, the Environmental Health team has reported that they have not received any complaints in the two years since the temporary licence to A3 use has been granted. The permanent change in use class is therefore not considered to pose any additional harm on local amenity. However, conditions to limit the sale of alcohol to 11.00 - 21.30 pm Monday to Saturday, 11.00 - 21.00 on Sundays and 11.00 - 01.00 on New Year's Eve; and restricting the opening hours to 08.30 - 22.00 Monday to Saturday and 08.30 - 21.30 on Sundays are attached. This condition will limit disruption and noise pollution to nearby properties. An additional condition restricting the sale of alcohol to seated customers eating food on the premises is also required to protect the amenity of neighbouring properties.
- 10.13 A condition securing the current layout is also recommended to be attached. The existing store rooms and office are located on the lower ground floor, below the adjoining property and with a shared party wall with a residential property. Securing the current layout will ensure that these areas are not used for additional seating for customers, and protect the adjoining properties from associated noise.
- 10.14 Sustainable Transport:
There is not forecast to be a significant increase in person or vehicle trip generation as a result of the change of use. No cycle parking is proposed, however it is recognised that site constraints limit the opportunities for providing it on this occasion.

11 EQUALITIES

- 11.1 None identified

