

<u>No:</u>	BH2018/00224	<u>Ward:</u>	Central Hove Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	56 Church Road Hove BN3 2FP		
<u>Proposal:</u>	Change of use of basement from retail (A1) to fitness studio (D2).		
<u>Officer:</u>	Joanne Doyle, tel: 292198	<u>Valid Date:</u>	23.01.2018
<u>Con Area:</u>	The Avenues	<u>Expiry Date:</u>	20.03.2018
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	
<u>Agent:</u>	Roger Fagg Architect Ltd 14C Fourth Avenue Hove BN3 2PH		
<u>Applicant:</u>	Barakat 2a Church Road Hove BN3 2FL		

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 Plan	17/405/OS	-	23 January 2018
Floor Plans Proposed	17/405/02A (BASEMENT)	-	23 January 2018
Floor Plans Proposed	17/405/03 (GROUND)	-	23 anuary 2018

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 premises shall be used as a fitness studio (Use Class D2) (classes such as yoga, pilates and tai chi with no gym equipment installed on the premises as set out in paragraph 3.1 and 5.4 of the Planning Statement, received 23.01.2018) only and for no other purpose (including gymnasium or any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of

use shall occur without planning permission obtained from the Local Planning Authority.

Reason: The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of safeguarding the amenities of the area and to comply with policy QD27 of the Brighton & Hove Local Plan.

4. The use hereby permitted, shall not be carried out except between the hours of 08:00 and 21:00 on Mondays to Fridays, 09:00 and 18:00 Saturdays and 10:00 and 16:00 Sundays, including Bank or Public 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 windows and door to the rear elevation (basement) of the development hereby permitted shall be shut during classes when amplified music is played.

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

6. Amplified music or other entertainment noise from within the premises shall not be audible within any adjacent premises.

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. The installation of an external air conditioning unit would require a separate application for planning permission.

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1 The application site relates to mid terrace commercial property currently in use as retail at ground floor and ancillary storage/workshop at basement level, located on the south side of Church Road. To the rear of the site lies Albert Mews which is accessed from a door at basement level. The property lies within The Avenues conservation area and forms part of the primary shopping frontage to the designated Hove Town Shopping Centre.

- 2.2 Planning permission is sought for the change of use from retail (A1) to fitness studio (D2) at basement level.

- 2.3 This application follows the previously refused prior approval application BH2017/03245 for the change of use of retail (A1) to gymnasium (D2) at basement level. The reasons for the refusal of this previous application are set

out below. This change of use application proposes a change to a fitness studio rather than gymnasium.

3. RELEVANT HISTORY

- 3.1 BH2017/03245- Prior approval for Change of Use from retail (A1) to gymnasium (D2) at basement level with associated internal alterations. Prior approval is required and refused 21.11.2017. The reasons for the refusal were as follows:
1. The building is on article 2(3) land and as such does not benefit from the rights set out in Schedule 2, Part 3, Class J. 1 (d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 2. Notwithstanding Reason 1, it is considered that in accordance with Paragraph W(3)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) insufficient information has been submitted to demonstrate that the gymnasium use would not result in amenity harm to adjacent occupiers with regard to noise nuisance. Accordingly, the application is refused.
- 3.2 52 Church Road
BH2009/02988 - Change of Use of lower ground floor from A2 to medical/educational/classrooms (D1) and leisure facilities (D2). Approved 22.02.2010.

4. REPRESENTATIONS

- 4.1 Five (5) letters of representation have been received objecting to the proposal for the following reasons:
- Security issues to Albert Mansions
 - Noise and disturbance
 - Parking issues
 - Additional opening hours
 - Unsociable hours
 - Better suited to offices
 - Could to another use within D2 class
 - Noise from vibrations of class
 - Rights of way dispute
 - Access to Albert Mews would result in overdevelopment
 - Access should be from Church Road
 - Affect the viability of the ground floor retail unit and storage and waste removal
- 4.2 **Councillor Wealls** has **objected** to the planning application, a copy of the letter is attached to this report.

5. CONSULTATIONS

- 5.1 **Sussex Police:** No objection

No.56 Church Road is a 5-storey mixed-use building which fronts on to Church Road, Hove. The ground floor shop is occupied by Bang & Olufsen (music equipment specialists). The upper floors (54-56 Church Road) are in residential use (Albert Mansions). The proposed fitness studio would be located in the basement and would be separate from the ground floor shop and accessed from the rear via Albert Mews.

In order to assist in creating a safe and secure environment at the location, I direct the applicant or their agent to our website at www.securedbydesign.com where the Secured by Design (SBD) Commercial Development 2015 document can be found. This is a comprehensive document that encapsulates both commercial developments where the public have no formal access, e.g. factory or office buildings, and those where public access is integral to the commercial use such as retail premises, leisure centres and public buildings. This document will be able to provide the applicant with indepth advice pertinent to the design and layout. Accredited products that are fit for purpose and appropriate along with natural surveillance, lighting and access control will assist the development in creating a safe and secure environment in which partake in leisure and retail activities.

I ask the applicant or their agent to check to ensure any existing doors along with any easily accessible windows that are being retained, are checked to ensure they adequate and fit for purpose, with locks that conform to BS 3621 / 8621 respectively. Any new doors or windows are to conform to the recommendations within SBD Commercial 2015.

5.2 Sustainable Transport: No objection

The site is located within one of the City's Controlled Parking Zones (CPZ) and therefore on street parking is available within the vicinity of the site. The central location means the site is accessible by car/bus/cycle and walking. The internal store could be used for staff cycle parking. No condition is required for cycle parking as there is nearby on street cycle parking for customers.

5.3 Environmental Health: No objection

The proposal is not for a gym with weights, running machines, rowing machines, cross trainers etc but rather classes such as yoga and pilates and therefore there are no noise concerns.

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

CP4 Retail provision

CP9 Sustainable transport

CP15 Heritage

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

TR7 Safe Development

TR14 Cycle access and parking

QD27 Protection of amenity

SR5 Town and district shopping centres

HE6 Development within or effecting the setting of conservation areas

Supplementary Planning Guidance:

SPD14 Parking Standards

8. CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to the to the principle of the change of use, the amenities of adjacent occupiers and transport matters,

8.2 Principle of Development:

The application site falls within the primary frontage of the Hove Town Centre therefore policy SR5 of the Brighton & Hove Local Plan applies. The policy aims to ensure that a healthy balance and mix of uses is retained and concentrations of uses other than Class A1 are avoided.

8.3 The application site comprises a retail unit (A1) at ground floor currently being occupied by Bang & Olufsen an electronics store. The basement area, of which the change of use would take place, is currently being used as storage for the A1 unit.

8.4 Policy SR5 seeks to preserve only the ground floor retail frontage only. The change of use would occur within the basement and therefore the provision of a ground floor retail frontage would be preserved. An A1 use would be retained at ground floor level, retaining the A1 service and it is considered that the loss of the basement storage area would not harm the viability of the ground floor retail unit with an adequate amount of storage space being retained within the ground floor unit.

It is therefore considered that the use of basement as a fitness studio (D2) would not notably alter the prevailing character of the Hove Town Centre and would not affect the retail viability of the ground floor unit, in compliance with SR5.

8.5 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.

- 8.6 The proposal for a fitness studio (D2 use) could have the potential to result in noise nuisance toward the adjoining residential units in the nearby vicinity. Within section 3.1 of the submitted Planning Statement it is stated that the fitness studio would accommodate the following types of leisure activities- yoga, pilates, physiotherapy, meditation, tai chi and Oigong and pregnancy and post natal classes.
- 8.7 Environmental Health when considering the previous application for the change of use to a gymnasium (prior approval), raised concerns regarding the transmission of noise and vibration from music, instructors or structure borne noise from equipment associated with the gym. No acoustic report had been submitted with the application to confirm that the gymnasium would not result in amenity harm. This was one of the reasons of refusal of this application.
- 8.8 Environmental Health in considering this application for a change of use to a fitness studio, consider that given the unit would be used for classes such as yoga and pilates rather than a gym there would be no noise concerns.
- 8.9 The studio would be accessed to the rear of the site via a door from Albert Mews. The premise is below a commercial unit, with residential at upper floors and not directly adjoining residential properties. The residential properties of Airlie House and Grand Avenue Mansions to the rear of the premises are not directly adjoining. The residential properties of Albert Mansions to the east of the site comprise of residential at upper floors. It is also noted that Albert Mews consists of a motor garage and art studio, and therefore there is already the presence of a mix of commercial with residential uses. Given the use of the premise as a fitness studio with classes such as yoga and pilates it is not considered that noise or disturbance from the use would result in amenity harm.
- 8.10 Conditions are recommended to ensure that the windows and door to the rear are shut during classes when amplified music is played. It is also considered necessary to restrict the use of the premise to a fitness studio only in accordance with the details set out in the application and for no other purpose within the D2 Use Class.
- 8.11 The opening hours between the hours of 08:00 and 21:00 on Mondays to Fridays, 09:00 and 18:00 Saturdays and 10:00 and 16:00 Sundays, including Bank or Public Holidays are considered acceptable for this type of use. A

condition is recommended to restrict the opening hours to protect neighbouring amenity.

8.12 The application does not include the installation of air conditioning. An informative is attached advising the applicants that a further application would be required for such works.

8.13 **Transport:**

The site is located within one of the City's Controlled Parking Zones (CPZ) and therefore on street parking is available within the vicinity of the site. This level of provision and existing controls of surrounding streets is considered sufficient to ensure the development would not create a harmful demand for travel.

8.14 No cycle parking is proposed. Given the site constraints and on street cycle parking within the vicinity of the site, it is not considered necessary to secure a condition for details of cycle parking in this instance.

8.15 **Other Matters:**

Objectors have raised concern regarding access rights to Albert Mews by the use of customers using the fitness studio. Objectors have noted that the use of Albert Mews is for the residents of the Albert Mews properties and that the applicant does not have rights to use Albert Mews as an access road. The agent has confirmed that the property (56 Church Road) has 24 hour access to Albert Mews including vehicle access. Notwithstanding this, rights of way and private access disputes are a civil matter and do not form part of the determination of a planning application.

9. EQUALITIES

9.1 None identified

