

<u>No:</u>	BH2019/00591	<u>Ward:</u>	St. Peter's And North Laine Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	125 Gloucester Road Brighton BN1 4AF		
<u>Proposal:</u>	Roof alterations to create first floor semi-external terrace, front rooflights, revised fenestration, refurbishment of chimney stacks and associated works.		
<u>Officer:</u>	Laura Hamlyn, tel: 292205	<u>Valid Date:</u>	28.02.2019
<u>Con Area:</u>	North Laine	<u>Expiry Date:</u>	25.04.2019
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	
<u>Agent:</u>	Mr Damon Webb Unit D Level 8 North New England House Brighton BN1 4GH		
<u>Applicant:</u>	Indigo Pub Company 63 Western Road Hove BN3 1JD		

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	A000		28 February 2019
Proposed Drawing	D001		28 February 2019
Proposed Drawing	D002	A	30 April 2019
Proposed Drawing	D003	A	30 April 2019
Proposed Drawing	D004	A	15 April 2019
Proposed Drawing	D005	B	30 April 2019

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 rooflights hereby approved shall have steel or cast metal frames colour-finished black or dark grey, fitted flush with the adjoining roof surface and shall not project above the plane of the roof.

Reason: To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan and CP15 of the Brighton & Hove City Plan Part One.

4. The roof terrace hereby permitted shall not be occupied until the remaining roof has been recovered in natural slate.
Reason: To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan and CP15 of the Brighton & Hove City Plan Part One.
5. Prior to the commencement of the development hereby approved, a photographic record of the existing roof structure, internally and externally shall be submitted to and approved in writing by the Local Planning Authority.
Reason: In order to provide a reasonable opportunity to record and advance the understanding of the conservation area heritage asset to be lost in part, to make this evidence publically accessible, and to comply with paragraph 199 of the National Planning Policy Framework.
6. The roof terrace hereby permitted shall not be occupied until the acoustic panelling has been installed to the east internal wall and the underside of the remaining roof to the terrace as detailed on drawings D002 A, D003 A and D005 B received 30 April 2019. The acoustic mitigation shall be retained as such thereafter, unless otherwise agreed in writing with the Local Planning Authority.
Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
7. The roof terrace hereby permitted shall not be occupied until further details with regard to the condenser unit within the 'yard' has been submitted to and approved in writing by the Local Planning Authority. These details shall include a schedule for a re-conditioning and maintenance schedule, as well as an acoustic enclosure to suitably reduce the transmission of sound and vibration. The re-conditioning shall be carried out in full in accordance with the approved details prior to first occupation of the development. The acoustic enclosure shall be implemented in full prior to first occupation of the terrace and shall be retained as such thereafter. The maintenance plan shall be carried out in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.
Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
8. The access door to the roof terrace hereby permitted shall be kept closed except for entering and leaving the roof terrace.
Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
9. The roof terrace hereby permitted shall not be open to customers or staff except between the hours of 07:00 and 23:00 on Mondays to 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.
10. No amplified music or other amplified entertainment is permitted on the roof terrace hereby approved.

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

11. Access to the flat roof annotated as 'yard' on drawing 1864 D002 A received 30 Apr 2019 shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.

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

12. The roof terrace hereby permitted shall not be occupied until:
 - i) details of external lighting, which shall include details of; levels of luminance, hours of use, predictions of both horizontal illuminance across the site and vertical illuminance affecting immediately adjacent receptors, hours of operation and details of maintenance have been submitted to and approved in writing by the Local Planning Authority and,
 - ii) the predicted illuminance levels have been tested by a competent person to ensure that the illuminance levels agreed in part i) are achieved. Where these levels have not been met, a report shall demonstrate what measures have been taken to reduce the levels to those agreed in part i).

The external lighting shall be installed, operated and maintained in accordance with the approved details and thereafter retained.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies QD25 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. Planning permission is no defence against a statutory noise nuisance investigation. The council is required to investigate under the provisions of the Environmental Protection Act 1990 to determine whether or not a statutory nuisance is occurring and if any action is appropriate.
3. The applicant should note that any planning permission does not override the need to obtain any licenses under the Licensing Act 2003 or the Regulation (EC) No. 852/2004 on the Hygiene of Foodstuffs, Article 6(2). Note that where there is a difference between the operating hours allowed for licensable activities and the hours granted under planning permission *the shorter of the two periods will apply*.
4. It should be noted that any shelter which is 'substantially enclosed' will be required to be smokefree in accordance with the Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006.

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1. This application relates to a two and three storey public house, The Eagle, located on the corner of Gloucester Road with Gloucester Passage. There are both residential and commercial properties within the immediate vicinity. The site is within the North Laine Conservation Area, but is not Listed or in the setting of a Listed Building.
- 2.2. The application seeks permission to remove part of the existing roof to create a first floor semi-external terrace, to install front rooflights, revise the fenestration, refurbish the chimney stacks and associated works.

3. RELEVANT HISTORY

- 3.1. **BH2007/02243-** Erection of new awning to front elevation (Resubmission of BH2007/01114/FP). Approved 06/08/2007.
- 3.2. **BH2007/01114-** New awning to front elevation. Refused 06/06/2007.
- 3.3. **BH2001/00047/FP-** External alterations to side elevation and installation of extract duct terminating at roof level. Approved 14/06/2001.

4. REPRESENTATIONS

- 4.1. **Eight (8)** representations have been received, objecting to the proposed development on the following grounds:
 - when the chef stands outside and talks on his phone his voice reverberates loudly around the yard
 - no amount of plants can mitigate the voices of people drinking/ talking/ shouting
 - cigarette smoke would carry to Gloucester Yard
 - amplified music likely to be heard in Gloucester Yard
 - there are incorrect assumptions in the acoustic report
 - management has not shown concern regarding impact of customer behaviour on neighbours
 - there are terraces associated with Gloucester Yard
 - it won't be possible to keep windows open in the summer
 - litter, cigarette ends and glass could be thrown into Gloucester Yard
 - diminished security for Gloucester Yard
 - loss of privacy
 - adversely affects conservation area, visual intrusion
 - detrimental effect on property value
- 4.2. The neighbours provided a joint representation in addition to their individual representations, a review of the applicants' acoustic report, and a further response to the applicant's subsequent Technical Memo.

5. CONSULTATIONS

5.1. Environmental Health: Comment

There is a risk of noise and light nuisance to neighbours.

5.2. The 7th Wave acoustic report (17th March 2019) has not taken account of the various attenuation features mentioned in the application -'acoustic baffles', 'acoustic material' on the inside of the remaining ceiling and 'absorbent features'; thus installing such measures, as specified in the application will improve the attenuation. Conclusions have also been based on an assumption that there are 74 people in the area at any one time. The increase in noise from the terrace is proposed to be partly offset by moving the 24/7 condenser fan from the rear area.

5.3. The key to avoiding neighbour nuisance here is management controls - as specified in the report. Also not allowing customers of staff onto the terrace between 11pm and 7am and restricting the numbers of people using the area through by allowing only the number of people seated at tables set out to fill the area.

5.4. It is unlikely that smoking will be possible in this substantially enclosed terrace and therefore there may be no increased odour, nor impact on the number of smokers congregating on the street.

5.5. There is no assessment of the effect the lighting for the proposed terrace would have.

5.6. Heritage:

Update 23 Sep 2019 following submission of further information: No objection.

A document has been submitted with internal photos of the existing roof. The previously recommended condition should still be applied, as the record does not adequately describe which parts of the roof each of the photos relates to.

5.7. Update 04 Sep 2019: No objection.

It would have been helpful to have a full understanding of the construction of the existing roof. However, SPD09 Architectural Features states in respect of historic buildings in conservation areas that "where a roof is visible from the street, its form and shape must not be altered". Therefore if, as the comments suggest, the area of roof to be altered in this case is not publicly visible, the alterations would be acceptable irrespective of whether or not its form and construction is original or historic. It is recommended that a condition be applied requiring the submission of a photographic record of the existing roof structure, to be submitted within 3 months of works commencing.

5.8. *Comment on original submission:* Seek further information.

The proposal involves the partial removal of the hipped roof to the two-storey element to form a semi-opened roof terrace.

- 5.9. Although the two formerly separate buildings have been joined internally, evidence of the separate structures is present in the form of wall thicknesses and decoration details. The existing drinking area of the first floor contains a Victorian fireplace and surround centered in the room (unfortunately the chimney has been lost) which allows the historic room proportions to be understood. It appears that the ceiling in this space has undergone modern alterations with boxed in sections forming a grid on the ceiling (likely concealing steel beams).
- 5.10. As described above, there is evidence of alterations to the ceiling structure to the second storey; therefore it is unlikely that the existing roof frame is original. Photographs of the roof structure should be submitted. It is unlikely that support would be gained for the removal or partial removal of an original roof structure.
- 5.11. The North Laine Conservation Area Study and HE6 require that the ridge height and roof-scape of conservation areas are maintained. The proposal does not include any increase in ridge height.
- 5.12. Due to the existing three-storey element, the proposed roof terrace would be screened from the east and the height and angle of the front roof plane would obscure the terrace from Gloucester Road in front of the pub.
- 5.13. The proposal to remove the rear roof plane of the U-shaped hipped roof of the two-storey building to form a roof terrace would be unlikely to have an adverse impact on the character and appearance of the North Laine conservation area.
- 5.14. Re-roofing the existing roof in natural slate is welcomed.
- 5.15. **Sustainable Transport:** No objection.
As there is no increase in floorspace, the proposal would not have a transport impact and there is no objection to the proposal.

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
CP5	Culture and tourism
CP8	Sustainable buildings
CP9	Sustainable transport
CP12	Urban design
CP15	Heritage

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

TR7	Safe Development
TR14	Cycle access and parking
SU10	Noise Nuisance
QD5	Design - street frontages
QD14	Extensions and alterations
QD25	External lighting
QD27	Protection of amenity
HE6	Development within or affecting the setting of conservation areas

Supplementary Planning Documents:

SPD09	Architectural Features
SPD12	Design Guide for Extensions and Alterations

Planning Advice Notes:

Sussex Planning Noise Advice Document 2015

8. **CONSIDERATIONS & ASSESSMENT**

- 8.1. The main considerations in the determination of this application relate to the character and appearance of the resulting building and its impact on the North Laine Conservation Area, and the impact on neighbouring amenity.

Planning Policy:

- 8.2. The proposal is for physical changes to the building, which would affect the patterns of use of the building by providing outdoor space within the curtilage of the site, however the existing use as a public house (A4) is established, and the proposal would not result in a material change of use.

Design and Appearance:

- 8.3. The part of the roof proposed to be removed would not be visible from the street and could only be viewed from limited private vantage points. In

addition, it is proposed to recover the remaining roof in natural slate, and to insert rooflights to the front roofslope. It is considered that the proposal would preserve the character and appearance of the North Laine Conservation Area. It is recommended that, if approved, conditions be applied to require conservation style rooflights and the implementation of the proposed natural slate roof.

- 8.4. While the principle of the alterations is accepted, paragraph 199 of the NPPF states that 'Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible'. Following the submission of a photographic record, it is considered that the document does not adequately describe which part of the roof each photo relates to. It is therefore recommended that a condition be applied to secure a photographic record of the existing roof structure, internally and externally.

Impact on Amenity:

- 8.5. 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 submission includes an Acoustic Report (dated 11 Mar, received 18 Mar), which concluded that there was likely to be a potential increase of up to 3dB at the closest receptors. In subjective loudness terms these level changes could be just audible however the noise impact is deemed to be low. The Environmental Protection Team reviewed this submission and found no major issues with the report.
- 8.7. Neighbouring residents commissioned a review of the applicant's Acoustic Assessment (dated 21 Mar, received 02 Apr). This raised potential issues with regard to:
- 1) geometry of the building model
 - 2) assumptions on patrons speaking patterns, it is likely that there would be bursts of loud speech
 - 3) number of patrons present
 - 4) assessment of L_{Amax} levels at night
 - 5) acoustic baffles
 - 6) absorption by planting or hanging features
 - 7) effectiveness of notices
 - 8) effectiveness of soft landscaping
- 8.8. The applicant responded with a Technical Memo (dated 17 Apr, received 23 Apr) providing a response to the issues raised by the neighbours:
- 1) software constraints meant the pitched roof could not be modelled, but represent an accurate presentation of the leading barrier edge

- 2) 'raised' rather than 'loud' speech levels is a reasonable assumption, as there will be periods where speech will be quieter
- 3) assessment based on 74 people with 50% speaking concurrently
- 4) no L_{Amax} noise assessment required as the proposal provides for a closing time of 11pm
- 5) no allowance made in the assessment for acoustic baffles
- 6) no allowance made in the assessment for planting or hanging features
- 7) signs are part of a management commitment aimed at encouraging good behaviour
- 8) no allowance made in the assessment for soft landscaping

8.9. Neighbours provided a further response (dated 16 May, received 22 May). This follows a different format, and begins with welcoming the closing time of the rooftop seating to 11pm. The statement primarily deals with how the proposal for rooftop seating would not comply with the inaudibility criteria of the Sussex Planning Noise Advice Document 2015. They disagree with the assessment that the additional noise is unlikely to be readily noticeable and of low impact for the following reasons:

- 1) character of the noise. Noise from patrons, including raised voices, loud voices, laughter, possible shouts, impulsive sounds and revelry will have a character likely to attract attention to itself and to be intrusive in a way that anonymous noise does not.
- 2) the criterion internal noise level before 11pm is 35dB for anonymous noise, and should be reduced by 5 or 10dB for noise that is non-anonymous
- 3) elevated levels of noise are likely to occur more frequently than assumed
- 4) 'Lombard Effect' where reverberant noise levels are high due to the number of patrons present and speaking simultaneously, this will result in individuals raising their voices in order to be heard within the high ambient noise level
- 5) patrons do not just smoke in outdoor areas, but also converse and drink

8.10. Neighbour representations objecting to the proposed development have also raised critiques of the applicant's Acoustic Assessment.

8.11. There is no reason to doubt the existing noise assessment which includes the noise source of the existing air conditioning unit. The disagreement between the applicant's and the neighbours' assessments of the likely impacts on neighbouring amenity stem from different baseline assumptions with different professional judgements.

8.12. It is considered that the inaudibility guidance of Sussex Planning Noise Advice Document 2015 relates to new proposed entertainment premises rather than alterations to existing premises. It would be unreasonable to require the existing public house to meet this guidance. Furthermore while additional patrons can lead to raised voices, their presence can also help absorb noise. It is also considered that the applicant's Acoustic Assessment likely underestimates the impact of the proposal on neighbouring amenity, as the relatively even sound of a condenser unit could more easily be ignored,

whereas the sound of public house patrons talking, laughing and occasionally shouting would be comparatively more disruptive.

- 8.13. Having due regard to both the applicant's and the neighbours' assessments, it is considered that the impacts of the proposed terrace can be adequately mitigated through the use of conditions. It is recommended that the opening hours of the terrace be restricted to 11pm at the latest, that amplified entertainment on the terrace be prohibited, that details of the lighting be secured, and that access to the area annotated as 'yard' be for maintenance or emergency access only.
- 8.14. Where planning conditions and licensing requirements are inconsistent the lower limit applies. Therefore although the licence allows late night refreshment (food) outdoors up until 1am, this would not be allowed on the proposed terrace as its use would be restricted to 11pm at the latest.
- 8.15. There is a discrepancy in the Acoustic Report (dated 11 Mar, received 18 Mar), which was done on the basis that the condensing unit would be removed, and the drawings which are annotated to state that the 'existing cellar condenser [is] to be re-conditioned'. It is considered that requiring the removal of the condensing unit would not be reasonable, when it is possible to secure details of an acoustic enclosure to the unit, and a maintenance schedule. The drawings show clearly that BAUX acoustic wood wool panels (25mm thick) would be installed to the east internal wall, and the underside of the remaining roof. The installation of this acoustic mitigation should be required by condition.
- 8.16. It is considered that a condition restricting the patrons using the terrace to those seated at tables would be unenforceable and as such should not be used.
- 8.17. Neighbour representations raised concerns around the loss of privacy and overlooking as a result of the proposed terrace. However the northern wall to the roof terrace would be 3.3m high, and a partial roof would remain near the boundary with 5 Gloucester Yard. It is considered that the height of the north wall and the retained roof to the northern wall would adequately obscure views towards Gloucester Yard. The height of the north wall also means that the proposal would not diminish security to Gloucester Yard or allow littering of Gloucester Yard.
- 8.18. Neighbour representations have also raised concerns with regard to cigarette smoke. Given that the proposal retains a partial roof, the terrace would be considered 'substantially enclosed', and smoking would be prohibited in accordance with the Health Act 2006.
- 8.19. No.4 Gloucester Passage to the north appears to be in commercial use as offices, and would not be adversely affected by the proposed development.

- 8.20. In consideration of all of the above and the responses received from consultees, it is considered that the proposal would not be demonstrably harmful to local amenity.

Sustainable Transport:

- 8.21. The existing use as a public house is already established and the proposals would not impact the transport network in terms of trip generation or parking demand. It is noted that the public house is in a central location well connected with public transport options.

Other rooftop terraces to public houses:

- 8.22. The Design and Access Statement sets out that other upper floor external terraces in the city were researched with a Freedom of Information request. It was determined that The Walrus in Ship Street has had no noise complaints since its opening in 2016, despite having a similar configuration and a larger floor area. More established premises, The Grand Central in Surrey Street (opened in 2003) and Bohemia in the Lanes (opened in 2012) which both also have high level terraces have had 7 and 3 complaints since their opening, respectively. Environmental Protection has confirmed that noise at these existing terraces has been controlled by agreement, rather than through formal action such as serving notices.

Conclusion:

- 8.23. The proposed development would require the partial demolition of the roof of a building within the North Laine Conservation Area, however as the alterations would not be visible from the street and only limited private views, it is considered that the character and appearance of the conservation area would be preserved. The proposed development would likely have an impact on neighbouring amenity; however it is considered that this can be adequately mitigated through conditions such that the proposal would not result in significant harm. This conclusion is reached taking into account the fact that the proposal would not result in a change of use away from the existing use as a public house (A4), previous decisions by the LPA with regard to roof terraces associated with public houses in the city and further to advice received from the Environmental Protection Team.

9. EQUALITIES

None identified.

