

<u>No:</u>	BH2020/01548	<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>	North Laine	<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 be **GRANT** planning permission subject to the following Conditions and Informatives as set out hereunder.

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
Report/Statement	Management Strategy		21 August 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 premises hereby permitted shall only be occupied by customers between the hours of 11:00-22:00 Monday to Sunday, including Public and Bank

Holidays. With the exception of a maximum of two customers without beverages, the outside rear patio area shall be closed at 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.

4. 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.

5. The premises hereby permitted shall not be first used until the soundproofing details shown on drawing nos. 09-04, 09-05 and 09-06 have been installed in accordance with those specifications and they shall be retained in perpetuity in accordance with those details thereafter.

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 on 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 (Planning Use Class C3) on the first and second floors. This parade is comprised of commercial uses on the basement and ground floors (all Planning Use Class A1) apart from an NHS dental practice (Planning 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 (Planning Use Class A1) to a mixed use of retail and drinking establishment (Planning 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 and new ramped access to the front. The proposed development to be considered is within the current use classes, as advertised, since the application was submitted before the 1st September 2020.

3. RELEVANT HISTORY

3.1. **BH2020/00215:** 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. Refused at Planning Committee 6th May 2020 and decision issued 21st May 2020 for the following reasons:

1. The proposal will lead to an unacceptable loss of residential amenity by reason of noise and nuisance contrary to Policy QD27 of the Brighton & Hove Local Plan.
2. The proposal would primarily be for a use falling within Use Class A4 and, as a consequence, would lead to an unacceptable loss of retail (Use Class A1) within a Prime Retail Frontage of the Regional Shopping Centre and an over-provision of non-retail and evening / night-time economy uses along Trafalgar Street, contrary to Policies SR4 in the Brighton & Hove Local Plan in addition to SA2 and CP4 of the City Plan Part One.

4. REPRESENTATIONS

4.1. **Two (2) objections** have been received to the proposal for the following grounds:

- The revised scheme does not allay concerns set out in the previous letter.
- Works are already underway, including the removal of a tree in the rear garden of no. 22 that provide a habitat for birds.
- The outdoors area will continue to be open to smokers until 22:00 and Sussex Police's letter also notes the potential for noise and the need for a condition that alcohol is ancillary to food prepared on the premises and served at tables, which doesn't appear to be the case.
- There may be additional noise from people leaving and entering the premises, if there's music being played and / or air conditioning units.
- The restrictions on not taking drinks out and there being a maximum number of people allowed will not be regularly enforced.
- Arguments about the establishment being frequented by a different class of people, inferring less noise and other anti-social behaviour, is an example of classist discrimination.
- The use is inappropriate for the site's location and it is a pub by stealth.
- It is not the case that the layout has changed dramatically between the previously refused application and the current one.

- The provision of only one toilet shows that the building, having been built to be a shop, is wholly unsuited for its proposed use as a drinking establishment.
- 4.2. An objection has been received from the **North Laine Community Association** raising the following points:
- Whilst the scheme has been significantly revised to increase the emphasis on the A1 space, this proposal is for a mixed A1/A4 use and both these uses are complementary to one another and the way in which the shop is used will fluctuate throughout the day / evening and the year.
 - The proposed use is inappropriate for the site's location and we agree with the Planning Committee that it is a pub by stealth, without the offer of food.
 - The proposal contravenes Policies SR4 in the Local Plan in addition to SA2 and CP4 of City Plan Part 1 resulting in an over-provision of non-retail and evening and night-time economy in Trafalgar Street.
 - The proposed outdoor rear area remains a concern as it is unclear how any conditions on its use will be enforced. Customers still being able to smoke in the area until 10pm, but without their drinks, will affect the residents above, on either side and at the rear, added to by live or recorded music and the noise from the air conditioning units. These concerns therefore contravene Policy QD27.
 - It is not the case that the layout has changed dramatically between the previously refused application and the current one, and it is hoped that this was an error by the applicant.
- 4.3. 84 letters of support have been received on the following grounds:
- A whisky specialist retailer with a tasting / sampling area is something that this City does not have and would put it "on the map" for whisky drinkers.
 - There is substantial existing demand for a whisky specialist retailer.
 - The building would be better controlled and better suited as a whisky bar rather than an off licence given its proximity to a college.
 - This is good for the local community and the leisure / tourism industry, and more individual enterprises such as this should be supported.
 - As a specialist whisky venue, this would not cause any social issues and would not become another "night out" type establishment.
 - It would play an important role in creating jobs and boosting the local economy. This also increases commercial revenues for the Council.
 - It is a great idea and vision for the building, which was in desperate need of repair, and offered nothing that wasn't already well catered for on the same road. This should not be rejected.
 - This is an ideal location, being within walking distance to the station.
 - Serious whisky connoisseurs tend to be thoughtful people, are not in it for the alcohol and so would tend not to be inconsiderate or rowdy for the neighbourhood.
 - Granting this permission will not harm the local amenities of other retail and residents occupiers in any way. Licencing are happy with the proposed use.
 - The proposed scheme will have only positive impact on the appearance of the Conservation Area and will enhance the character of the building.

- 4.4. **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:**

There are no major concerns with the proposals at this location, however, additional measures to mitigate against any identified local crime trends and site specific requirements should be considered.

- 5.2. There is a cumulative impact policy in place within Brighton and it is suspected they are aware 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 in relation to licensed premises in the Cumulative Impact Area.

- 5.3. Having re-consulted with Sussex Police Licensing it is understood that the applicant has talked at length with them about this resubmission.

- 5.4. 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.

- 5.5. As the premises will be stocking bottles of high value alcohol the installation of an intruder alarm system is recommended.

- 5.6. 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.

- 5.7. It is noted that there will be a reduction in opening hours, the doors and windows are to be closed after 21:00, the garden area is to be closed and cleared at 18:00, and any smokers using the garden area after this hour will be limited to two, but will not be permitted to take drinks with them.

- 5.8. Implementing these measures will reduce disturbance to neighbouring residential properties, but there are still some concerns as to potential associated noise within the garden area when being used by smokers as the premises will still be open until 22:00. Essentially if this application is granted it will be a matter for staff to manage this in the most appropriate manner due to the potential for the surrounding amenities to be disturbed.

5.9. **Environmental Health:**

No objection since details of the acoustic separation are noted on the section drawings and are considered adequate always provided that a high level of workmanship is employed in their implementation.

- 5.10. The voluntary conditions noted in the applicant's agent's letter regarding hours and limited numbers are acceptable.

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);
 - 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 Two

Policies in the Proposed Submission City Plan Part 2 do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications but any greater weight to be given to individual policies will need to await the outcome of the Regulation 19 consultation. The Council will consider the best time to carry out the consultation after the coronavirus (Covid-19) restrictions are lifted.

Brighton & Hove City Plan Part One

SA2	Central Brighton
SS1	Presumption in Favour of Sustainable Development
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, design and heritage, the impact on neighbouring amenity and on the highways network.

In view of the ongoing COVID-19 travel restrictions a site visit has not been conducted. It has been possible to fully assess the application based on available photographic records of the site and surrounding area.

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 (financial services), A3 (food and drink), A4 (pubs/bars) or A5 (hot food takeaway) 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 would not result in the loss of the entire A1 (retail) usage. The applicant has advised that the mixed use is approximately half A1 (retail), half A4 (drinking establishment) and the proposed floor plans submitted with this application now show that. As opposed to the previous application where the ground floor was to be mainly used as a bar with consumption on the premises mainly occurring within the basement and in the rear patio outside, the ground floor would now be more representative of an A1 use with display and payment areas, and no seating. The basement would be used as tasting lounge also with a till point with the outside rear patio area offering spill-out space for customers drinking beverages exclusively bought on the premises. As such, it has been demonstrated that the proposal would not primarily be for a use falling within Use Class A4, rather a mix of A1 and A4.
- 8.6. The latter part of the second reason for refusal is based on the proposal causing an unacceptable loss of retail within the Prime Retail Frontage and an over-provision of non-retail and evening / night-time economy uses along Trafalgar Street. The most recent retail survey of Trafalgar Street by the Council (the Brighton & Hove Retail Study Update 2011) found that there were 22 shop units within the prime retail frontage, of which 20 were A1 retail units. Whilst there are still the same number of shop units, 18 (81.8%) are now in A1 use so the proposal would result in 77.3% of the prime retail frontage being in sole A1 use. This therefore complies with the requirement of Local Plan Policy SR4 for at least 25% of the units to be in non-retail use.
- 8.7. The proposal complies with Policy SA2 given that it supports a small independent / local trader and provides a complementary evening / night-time economy use. Furthermore, it is considered to encourage combined trips and would attract pedestrian activity.
- 8.8. Local Plan Policy SR12 relating to large Use Class A4 (pubs and bars) is not relevant here since the total resultant internal 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.
- 8.9. 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 and SR4.

Design and Heritage:

- 8.10. 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.
- 8.11. Case law has held that the desirability of preserving the character or appearance of a conservation area must be given "considerable importance and weight".
- 8.12. 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.
- 8.13. 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 would 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 appearance of the conservation area.
- 8.14. 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.
- 8.15. 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. The applicant has confirmed in writing that a lightwell is now not a possibility.
- 8.16. 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 80cm higher and the exterior raised planter would help to soften the hard paved yard area.

- 8.17. 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:

- 8.18. 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.
- 8.19. 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.
- 8.20. The main impact from the proposal would be on the maisonette on the upper floors of the host building, the three flats at 22 and the flat 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.
- 8.21. The existing opening hours of the retail unit are unknown. However, those proposed for the mixed A1/A4 use are 11:00-22:00 Monday to Sundays including Public / Bank Holidays. It is noted that the applicant's licencing application for those hours has been approved. These hours are a reduction from the previous application which proposed closing times of 01:00 Monday to Saturdays and 00:00 on Sundays. Furthermore, the outside rear patio area is proposed to be closed to customers at 18:00 every day with the exception of two smokers at a time without their drinks until the premises closes, which is also a condition of the premises' alcohol licence. The doors and windows are to be kept closed after 21:00 hours apart from for access and egress. It is recommended that the proposed hours of operation are secured via condition. None of the other licence restrictions are considered to meet the NPPF tests for conditions and would be enforced by the Council's licencing team in any case.
- 8.22. However, Officers consider that a condition is required to prevent the playing or generation of live music 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 outside area.

- 8.23. Noise transfer to the nearby dwellings would still occur through patrons using the premises. To that end, drawings have been submitted showing the extent of sound proofing that would be installed, which details the following:
- The floor construction between basement and ground floors in addition to between ground and first floors would achieve a reduction in airbourne noise of approx. 51dB and in impact noise of 55dB.
 - The wall around the double height void would achieve a reduction in airbourne noise of approx. 11dB over the existing structure.
 - The wall to the residential staircase would achieve a reduction in airbourne noise of approx. 48dB.
 - The entrance wall to the premises would feature a total of 160mm thick Rockwool mineral wool insulation.
 - The new fixed rear window would be a bespoke 6mm thick toughened double glazed piece of glass.
 - The shopfront would feature a 8.8mm thick piece of acoustic glass fitted at a slight angle thus rebounding sound back into the building rather than into the street.
- 8.24. Part E of Building Regulations requires that the acoustic performance targets for flats is met or surpassed where shops are the subject of a material change of use. These targets of 43dB for walls and for floors should be exceeded for airbourne noise and should be lower for impact noise at 62dB. As such, the proposal demonstrably achieves these and offers significant reductions. Therefore, noise emanating from the proposed use within the building would be minimal and would not cause a material disturbance to neighbouring occupiers.
- 8.25. Compliance with the specifications on the drawing is recommended to be secured by condition.
- 8.26. Besides noise, any disturbance from patrons is likely to occur outside and at the entrance to the premises on the ground floor. Given that smokers can use the outside patio area to the rear, it is unlikely that customers would loiter at the entrance. 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. As such, the proposal is considered to be in accordance with Policy QD27.
- Impact on Highways:**
- 8.27. 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 streets 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.
- 8.28. No cycle parking spaces are required. It is expected that refuse and recycling arrangement would remain as existing.

- 8.29. 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.