

<u>No:</u>	BH2022/02809	<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>	Installation of translucent glazed privacy screens 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
Proposed Drawing	0578.PL.1002	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, the obscure screening hereby permitted shall be installed in accordance with the approved drawings, 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.

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. **BH2022/02810** 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. 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 for the installation of obscure screening along the east and west ends of the terrace on the south side of the building, fronting Newtown Road. The screening would be composed of glazed panels that reach to a height of 2.0m above the floor level of the terrace before stepping down to 1.8m.
- 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 2023 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:
- The screening will be upon a terrace that is unauthorised.
 - Use of the terrace will cause loss of privacy and noise nuisance.
 - Creation of terraces on the building have historically been refused.
 - Detrimental impact on property value
- 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.

7. MATERIAL CONSIDERATIONS

7.1. 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.

7.2. 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.

8. 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

9. CONSIDERATIONS & ASSESSMENT

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.
- 9.4. Therefore, although the doorway is not included in the application description it is included in the assessment of this application as it facilitates access to the terrace upon which the screening would be sited.

Principle of Development

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

Design and Appearance

- 9.6. The proposed screening would be comprised of panels of obscured glazing. This is considered to be a relatively lightweight choice of material and should not appear significantly intrusive visually.
- 9.7. 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

- 9.8. The doorway and screening in terms of physical development are not considered to cause any harm in terms of lost privacy, or noise nuisance, or overshadowing.
- 9.9. 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.
- 9.10. 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.
- 9.11. 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.
- 9.12. The use of the terrace would result in a loss of privacy 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. The proposed obscure-glazed screening would reduce this impact by blocking 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 not be high enough to fully block views; this is a concern but on balance it is not considered that the harm would be significant enough to warrant refusal of the permission. The views across the terrace are unlikely to be significantly harmful as it relates to a business use rather than private dwelling.
- 9.13. Limiting the hours of use of the balcony would also partly help to reduce this harm and remove any views during unsocial hours.

- 9.14. On this basis, the scheme is considered acceptable in terms of its impact on the amenity of neighbouring residents.

Other Considerations

- 9.15. Concerns have been raised that the proposed screening would be sited upon an unauthorised terrace, with the implication that it should be refused for this reason. As aforementioned, use of the terrace itself is under consideration as part of this assessment, and the fact that the application is part-retrospective has not been weighed against the developer in this instance.
- 9.16. 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.
- 9.17. In the representations received it has been asserted that use of the terrace as an accessible space has historically been resisted. It should be noted, however, that permission BH2008/01824 was granted for conversion of the topmost floors of the building into five residential units that each had part of the terrace as a patio area; therefore, it is considered that use of the terrace as an accessible area has precedent, albeit for a different use.

Conclusion

- 9.18. The proposed development is considered to be acceptable in terms of appearance and the impacts it is anticipated to have on the amenities of local residents. Compliance with the measures detailed in the Noise Management Plan would be secured by condition, in the interests of safeguarding the amenities of the closest neighbouring residents, as would the installation of the screening prior to first use of the terrace. 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.

10. EQUALITIES

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

11. CLIMATE CHANGE/BIODIVERSITY

None identified.