

<u>No:</u>	BH2022/03260	<u>Ward:</u>	South Portslade Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	Le Carbone The Old Brewery 37 South Street Portslade BN41 2LE		
<u>Proposal:</u>	Change of use definition from Class B1 to Class E to previously approved commercial areas (Part retrospective)		
<u>Officer:</u>	Liz Arnold, tel: 291709	<u>Valid Date:</u>	19.10.2022
<u>Con Area:</u>	Portslade Old Village	<u>Expiry Date:</u>	14.12.2022
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	
<u>Agent:</u>	Mr Colin Sharpe The Grange Market Square Westerham TN16 1HB United Kingdom		
<u>Applicant:</u>	Mr N Albay Le Carbone Gb Ltd, South Street Portslade BN41 2LH		

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	Location, Ground and First floor plans	19889-PL100	19 October 2022

2. Within 2 months of the permission hereby granted, the refuse and recycling storage facilities for the Class E uses hereby approved, as indicated on the approved plans of application BH2016/02459 for the commercial units, shall have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to comply with Policies DM18 and DM20 of Brighton & Hove City Plan Part 2, policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan.

3. Unless otherwise agreed in writing by the Local Planning Authority, within 6 months of the development hereby permitted, a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM New Construction rating of 'Very Good' has been submitted to, and approved in writing by, the Local Planning Authority.

Reason: To ensure that the development is sustainable and makes efficient use of energy, water and materials and to comply with policy CP8 of the Brighton & Hove City Plan Part One.

4. Unless otherwise agreed in writing, within 3 months of the permission hereby permitted, a Car Park Management Plan, which includes full details of how the car parking spaces will be managed and allocated to the end users of the Class E commercial units hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. All management and allocation of all spaces for the commercial units shall thereafter be carried out in accordance with the approved plan

Reason: In order to provide an appropriate level of car parking and to limit the potential for overspill car parking and ensure that the development is in accordance with policy CP9 of the Brighton & Hove City Plan Part One policy DM33 of Brighton & Hove City Plan Part 2 and SPD14 Parking Standards

5. Unless otherwise agreed in writing, within 3 months of the permission hereby permitted, details of disabled car parking provision for the users of the Class E commercial units hereby approved, shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and made available for use within 2 months of the details being agreed and shall thereafter be retained for use at all times.

Reason: To ensure the development provides for the needs of disabled staff and visitors to the site and to comply with policy DM36 of Brighton & Hove City Plan Part 2, and SPD14: Parking Standards.

6. Unless otherwise agreed in writing, within 3 months of the permission hereby permitted, a Delivery & Service Management Plan for the gym unit hereby approved, which includes details of the types of vehicles, how deliveries will take place and the frequency of deliveries shall be submitted to and approved in writing by the Local Planning Authority. All deliveries shall thereafter be carried out in accordance with the approved plan.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with polices DM20, DM33 and DM40 of Brighton & Hove City Plan Part 2.

7. Unless otherwise agreed in writing, within 3 months of the first use of the first floor Class E unit hereby approved, a Delivery & Service Management Plan for the first floor commercial Class E unit, which includes details of the types of vehicles, how deliveries will take place and the frequency of deliveries shall be submitted to and approved in writing by the Local Planning Authority. All deliveries shall thereafter be carried out in accordance with the approved plan.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with polices DM20, DM33 and DM40 of Brighton & Hove City Plan Part 2.

8. Unless otherwise agreed in writing, within 3 months of the permission hereby permitted, the details of secure cycle parking facilities for the staff of, and visitors to the ground and first floor Class E units hereby approved, shall be fully

implemented and made available for use in accordance with the details approved under application BH2019/03633, and shall thereafter be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy CP9 of the Brighton & Hove City Plan Part One, DM33 of Brighton & Hove City Plan Part 2, and SPD14: Parking Standards.

9. All Party Ceilings, Floors and Walls separating the residential and non-residential uses shall be designed to achieve airborne sound insulation values of at least 5dB higher than that required by Approved Document E performance standards within 2 months of the permission hereby approved.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.
10. No vehicular deliveries to or from the commercial premises shall occur except between the hours of 07.00 and 21.00 Monday to Saturday, and 09.00 to 19.00 on Sundays, Bank or Public Holidays.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.
11. The first floor Class E use hereby permitted shall not operate except between the hours of 08:00 and 16:00 Monday through to Friday (inclusive) and between the hours of 08:00 and 13:00 on Saturday.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.
12. The gym use at ground floor hereby permitted shall not operate except between the hours of 06:00 and 20:00 Monday through to Saturday (inclusive)
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.
13. 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 occupiers of adjoining properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

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 is advised that details of the BREEAM assessment tools and a list of approved assessors can be obtained from the BREEAM websites (www.breeam.org).
3. The applicant should be aware that the indication in the submission that 2 car parking spaces are to be provided for the Class E units hereby approved is not considered to be an adequate provision to accommodate the likely demand generated by the commercial units and as such condition 4 is attached.

2. SITE LOCATION

- 2.1. The application relates to the former Portslade Brewery Site, located to the east of South Street and to the north of High Street. The former site comprised a mix of industrial buildings of different scales, design and age. The last occupier was Mersen UK Ltd (formally Le Carbone Ltd), a manufacturer of various composites for electrical uses. The site is currently under re-development to provide a mix of new residential units, the conversion of former buildings into residential and commercial units as set out in more detail below.
- 2.2. A number of buildings on the site are locally listed whilst there are also listed buildings in close proximity outside the site. The site is located within the Portslade Old Village Conservation Area.

3. RELEVANT HISTORY

- 3.1. **BH2022/02824** - Application for approval of details reserved by condition 40 (Emergency Flood and Evacuation Plan) of application BH2021/02558. Approved 28.11.2022
- 3.2. **BH2022/02585** - Non-material amendment to application BH2021/02558 to amend hard landscaping materials. Approved 13.09.2022
- 3.3. **BH2022/01676** - Application for approval of details reserved by condition 6 (Phase 2- archaeological site investigation and post investigation assessment) of application BH2021/02558. Approved 13.07.2022
- 3.4. **BH2022/00936** - Non-Material Amendment to application BH2021/02558 to omit the stated B1 use so the development description reads as follows: Application for variation of condition 1 of BH2018/02373 (application for the variation of condition 1 of BH2016/02459 (Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed use development comprising self-contained flats (C3), 674 sqm of employment floorspace (B1) . Erection of new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping.) to allow amendments to the approved drawings. Variation of conditions 4,8,10,11,17,18,28,29,31,35,40 and 43 to allow phasing of project. Variation of condition 7 regarding accessibility, 39 regarding surface water maintenance and management and 41 regarding flooding. Approved 04.04.2022

- 3.5. **BH2022/00088** - Application for approval of details reserved by condition 6 (Phase 2- archaeological site investigation and post investigation assessment) of application BH2021/02558. Refused 09.03.2022
- 3.6. **BH2021/04480** - Application to vary condition 1 of planning permission BH2021/02558 to permit amendment of first floor commercial area to 4no residential flats (C3) and to add use class E to ground floor commercial area. Under Consideration
- 3.7. **BH2021/02574** - Application for approval of details reserved by conditions 4 (Phase 2 - external surface materials) and 18 (Phase 2 - windows, doors, cills & canopies details) of application BH2018/02373. Approved 20.10.2021
- 3.8. **BH2021/02558** - Application for variation of condition 1 of BH2018/02373 (Application for variation of condition 1 of BH2016/02459 (Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed use development comprising 37 self-contained flats (C3), 674 sqm of employment floorspace (B1) (art studios and ancillary galleries, shared community space and café). Erection of 11 new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping.) to allow amendments to the approved drawings. Variation of conditions 4,8,10,11,17,18,28,29,31,35,40 and 43 to allow phasing of project. Variation of condition 7 regarding accessibility, 39 regarding surface water maintenance and management and 41 regarding flooding.) to allow amendments to the approved drawings. Approved 25.10.2021
- 3.9. **BH2019/03633** Application for approval of details reserved by condition 29 (cycle parking) of application BH2018/02373. Approved 26.08.2021
- 3.10. **BH2019/00583** - Application for Approval of Details reserved by condition 31 of application BH2016/02459. Approved 05.06.2019
- 3.11. **BH2019/00519** - Application for approval of details reserved by conditions 4, 18 and 20 of application BH2016/02459. Approved 09.04.2020
- 3.12. **BH2018/02548** - Application for approval of details reserved by condition 37 of application BH2016/02459. Approved 12.11.2018
- 3.13. **BH2018/02373** - Application for variation of condition 1 of BH2016/02459 (Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed use development comprising 37 self-contained flats (C3), 674 sqm of employment floorspace (B1) (art studios and ancillary galleries, shared community space and café). Erection of 11 new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping.) to allow amendments to the approved drawings. Variation of conditions 4,8,10,11,17,18,28,29,31,35,40 and 43 to allow phasing of project. Variation of condition 7 regarding accessibility, 39 regarding surface water maintenance and management and 41 regarding flooding. Approved 29.10.2019
- 3.14. **BH2018/01242** - Application for approval of details reserved by condition 22 of application BH2016/02459. ul Approved 15.11.2018.

- 3.15. **BH2018/01008** - Application for Approval of Details reserved by conditions 6(i), 30, 35(i) and 42 of application BH2016/02459. ul Approved 14.11.2018.
- 3.16. **BH2016/02459** - Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed use development comprising 37 self-contained flats (C3), 674 sqm of employment floorspace (B1) (art studios and ancillary galleries, shared community space and café). Erection of 11 new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping. Approved 03.11.2017
- 3.17. **BH2015/04293** - Prior approval for change of use of the third, fourth and fifth storeys of the tower building from storage (B8) to residential (C3) to form 8no residential dwellings. Refused 20 January 2016
- 3.18. **BH2015/04291** - Prior approval for change of use of cottages, drying hall and first and second floor of tower building from offices (B1) to residential (C3) to create 45no self-contained flats. Refused 20 January 2016
- 3.19. **BH2015/04288** - Prior approval for change of use of workshop building from storage (B8) to residential (C3) to form 9no residential dwellings. Refused 20 January 2016

4. APPLICATION DESCRIPTION

- 4.1. Permission was granted (under application BH2016/02459) in November 2017 for the redevelopment of the former Brewery site involving the demolition and conversion of the existing buildings (B2) to provide a mixture of commercial and residential uses.
- 4.2. Application BH2016/02459 granted planning permission for the “Partial demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed use development comprising 37 self-contained flats (C3), 674 sqm of employment floorspace (B1) (art studios and ancillary galleries, shared community space and café). Erection of 11 new dwellings (C3). Formation of 47 parking spaces, soft and hard landscaping”.
- 4.3. As set out in the history section of this report, a number of S73 applications and Non-Material Amendments (NMA's) applications have been accepted since application BH2016/02459 was approved, making various alterations/amendments to the approved scheme.
- 4.4. NMA application BH2022/00936 (approved April 2022) resulted in the omission of reference to specific B1 use classes within the development description as a non-material amendment to approved S73 application BH2021/02336. NMA application BH2022/02585 (approved September 2022) allowed for non-material amendments to 3 of the hard landscaping materials approved in S73 application BH2021/02558.

- 4.5. Concurrent S73 application BH2021/04480 seeks to permit amendments to the approved scheme by way of converting the first-floor commercial area to 4no residential flats (C3) and to add use class E to the ground floor commercial area. Due to viability issues, this application is still under consideration.
- 4.6. This application relates solely to the approved ground and first floor commercial units and seeks to allow the change of use from B1 to Class E. A gym has been operating from within the ground floor unit since the end of November 2022 but no tenant/occupier for the first-floor unit has yet been identified. As such the application is part-retrospective.
- 4.7. No external alterations are proposed.

5. REPRESENTATIONS

- 5.1. **Thirteen (13)** letters have been received objecting to the proposed development for the following reasons:
- Concerns regarding the accommodation being used as a hostel,
 - Area subject to the application was originally approved for community hub/an Art Studio, Galleries, Community Space and Café - object to such loss - do not see the need to change this as there are interested parties to support this arrangement, is a loss to local residents and schools,
 - Change of use suggests an indoor sports or fitness centre - this should not be approved,
 - Adverse effect on listed building,
 - Adverse effect on Conservation Area,
 - The existing original buildings in the village are unique and should be treated sensitively, it is a local landmark and a beacon for the local community so should stay in use for the community. The area needs to be rejuvenated for the residents to use,
 - Additional traffic, exacerbation of existing parking/highway issues,
 - Adverse harm to residential amenity
 - Overdevelopment,
 - The gym has a very expensive membership so will not be a community gym, is unaffordable for most local residents,
 - Over 100 people objected to the earlier application, just by removing the proposed 4 additional flats does not remove objectors' concerns, previously stated objections still apply,
 - A business has already moved in, advertising in the windows and is selling membership on their website, even though planning permission has not been granted,
 - Portslade Village was promised and needs community facilities, the Brewery is a historic building at the very heart of the village and its redevelopment should benefit the local community.
 - Another gym in the area is not needed,
 - A community use would mean less parking/traffic issues as would be used by local residents,

- Original planning consent was granted due to a carefully planned project between the council, architects. Developer and Phoenix Arts Organisation - and was actually what Portslade Village Community needs. Noise, disturbance etc suffered/endured during development by local residents was worth it in order to end up with a creative community space for the neighbourhood. The community facilities was a main factor in selling the development to local residents not the first place. If not honoured the whole plan seems like a waste of time, sets a bad precedent and would erode community trust,
- Lack of communication and local resident engagement by developer, not all local residents are aware of new proposal for commercial only.

5.2. **Councillor Hamilton** has objected to the application. A copy of the objections is attached.

Note of clarification:

5.3. As discussed elsewhere in this report, as a result of NMA BH2022/00936, the description of the re-development of the site was amended in order to omit the specified B1 uses (namely art studios and ancillary galleries, shared community space and café), whilst retaining the specification of a B1 use class within the description. As such the loss of the art studios and ancillary galleries, shared community space and a café are not material planning consideration in the determination of this application. This application also does not seek to alter the currently approved C3 units to a hostel. Issues regarding the membership cost of the proposed gym, the fact that there are other gyms in the area and the retrospective nature of the application are not material planning considerations.

6. CONSULTATIONS

6.1. Environmental Health

Comments 30/11/2022 There is insufficient information on which to comment and details of upgraded walls, floors and wall linings and any subsequent post completion testing which was carried out for building regulations should be made available along with proposed hours of use to provide the local planning authority assurance on the separation between units/spaces.

6.2. Further comments 2/12/2022 following correspondence and further information from agent Recommends approval subject to conditions regarding hours of use and noise transmission.

6.3. **Planning Policy:** Comments not required

6.4. **Transport:**

No objections raised subject to conditions.

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 JAAP (adopted October 2019).

8. 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
CP4 Retail provision
CP8 Sustainable buildings
CP9 Sustainable transport
CP10 Biodiversity
CP12 Urban Design
CP15 Heritage
CP17 Sports provision
CP18 Healthy city

Brighton & Hove City Plan Part Two:

DM18 High quality design and places
DM20 Protection of Amenity
DM26 Conservation Areas
DM33 Safe, sustainable and active travel
DM35 Travel Plans and Transport Assessments
DM36 Parking and servicing
DM37 Green Infrastructure and Nature Conservation
DM40 Protection of the Environment and Health - Pollution and Nuisance
DM44 Energy Efficiency and Renewables

Supplementary Planning Documents:

SPD03 Construction & Demolition Waste
SPD11 Nature Conservation and Development
SPD14 Parking Standards

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations relating to the determination of this application are the principle of the proposed development, the impact on neighbouring residential amenity and highways implications.
- 9.2. As set out earlier, under application BH2016/02459 (as amended by various applications as out above) planning permission was granted for the re-development of the former Brewery site to a mixed-use development, comprising residential (new build and conversion) and commercial premises with associated parking and landscaping. The ground and first floor of the part of the re-developed part of the site relevant to this application was permitted to be used as a B1 commercial premises. However, no interest in these commercial areas have transpired and as such the commercial units have not been occupied as B1 Use Class premises. As a result of changes to the Use Classes Order in September 2020, B1 uses now fall within Use Class E. As the B1 uses have never been occupied, planning permission is now sought to utilise the ground floor as a gym (Class E use) with another, currently unidentified, Class E use on the first floor within operating as a B Class use first.
- 9.3. 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.
- 9.4. Case law has held that the desirability of preserving the character or appearance of a conservation area must be given "considerable importance and weight".
- 9.5. The use of the commercial areas approved as part of the re-developed Brewery site as a gym and other Class E use/s would allow a viable future of the locally listed building in which they are located. It is however important that the proposed use does not harm the significance of the locally listed building and also preserves the Conservation Area. No external alterations are proposed as part of this application and therefore no adverse harm to the surrounding Conservation Area is identified.

Principle of the Development:

- 9.6. It is acknowledged that since the original 2016 application was approved, on the 1st September 2020, the government have amended the Use Classes Order and have introduced a new Class E which encompasses Shops, Financial & Professional Services, Food & Drink, Business, Non-residential institutions such as medical or health services, crèches, day nurseries and centres, and Assembly and Leisure (indoor sport, recreation or fitness, gyms). As a result of the new use class order, a former classified B1 use could operate as a use within the new wider Class E. However, as the approved B1 employment space (and that is any B1 use due to the S73/NMA applications discussed elsewhere in this report) has not yet been occupied and used as such, a planning application is required for the use as a gym or other uses within the new Class E.

- 9.7. As set out above, planning permission has previously been granted (as a result of the 2016 application and subsequent amendments) for the demolition of existing buildings, conversion of remaining buildings from industrial (B2) to a mixed-use development comprising 37 flats (C3) and employment floorspace (B1) and the erection of 11 new dwellings (C3) formation of 47 parking spaces, soft and hard landscaping.
- 9.8. A number of objections received in response to the consultation of this application refer to the loss of the previously approved art studio, ancillary galleries, shared community space and café.
- 9.9. However, under application BH2022/00936, a Non-Material Amendment (NMA) was approved to remove the specified reference to B1 use (art studios and ancillary galleries, shared community space and a café) from the description, whilst retaining the B1 use class. In this previous NMA application it was noted that the original planning permission and a subsequent 2018 S73 application (which amended the approved scheme) did not include conditions to specify the B1 use as described in the application description. It was also noted that within the officer report for the original application, BH2016/02459, when discussing the loss of employment space as part of there-development of the site it was explicitly outlined that the approval would allow for a range of B1 type uses as follows:
- 9.10. "It is further noted that whilst the scheme proposes that the commercial space will be used as artist's studios the B1 use class would also provide opportunity for more traditional light industrial / office uses under the B1 class ensuring flexibility in the future use of the commercial space."
- 9.11. It was also noted in the assessment of the NMA application that:
- 9.12. "The minutes of the committee meeting and officer report do not seek to secure the facilities which would be removed from the description and no planning conditions to this extent are imposed on the original consent. For these reasons, and on the basis that a material change of use over that permitted would not occur, the proposal to reword the application description is not considered to be a material change which would require planning permission or take the proposed development outside the scope of the original permission."
- 9.13. As a result of the above it is considered that the removal of the art studios and ancillary galleries, shared community space and café from the development description has already been agreed via the earlier NMA application and as such no further assessment of this or the loss of such facilities raised by objectors, is required in this application.
- 9.14. The widening of the use class of the B1 space to Class E, as a result of changes to the Use Classes Order since the 2016 approval, is considered to increase the flexibility to let / sell this space to a business/es and is considered not preclude a community user coming forward on this site in the future. Furthermore, if the use had commenced as a B1 space, once commenced, it would have been possible, following the changes to the Use Classes for the applicant to operate

the site from the wider E class. This application is only required as the B1 space did not commence.

- 9.15. It is also acknowledged that whilst no comments from the Policy team have been provided in response to the current application, with regards to concurrent application BH2021/04480, which seeks to alter the earlier planning permission by way of converting the first floor commercial area to 4no residential flats (C3) and to add use class E to ground floor commercial area, it is noted that no objection to the loss of the approved B1 facilities at first floor level was raised, as evidence had been submitted as part of the application to demonstrate that the marketing of the facilities has been on-going since November 2020 with no sale or let being agreed.
- 9.16. It is stated on the submitted application form that the ground floor gym would result in the provision of 3 full time employees. An occupier for the first floor Class E use is yet to be established.
- 9.17. The current application seeks to allow commercial uses that falls within the wider E class. As previously stated, the former B1 uses now falls within the wider E class that has been introduced since the original application. The proposal would retain the same number/amount of commercial areas approved under the earlier applications (approximately 674sqm) and as such no loss of employment floorspace would occur and the proposal is in accordance with policies listed above.

Impact on Amenity:

- 9.18. Policy DM20 of the City Plan Part Two 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.
- 9.19. As set out above the relaxation of the use class order in September 2020 has resulted in gyms being classified under the same use class as uses in a business/commercial/service/retail environment. However as planning permission is required on this occasion, it is important to assess the impacts of the proposed uses on the amenity of neighbouring properties including the new residential units approved via the re-development of the site that surround the commercial floor areas, subject of this application.
- 9.20. It has been confirmed, since submission of the application, that the gym currently occupying the ground floor unit operates as a small group personal training gym where every session is delivered by a coach. The groups operate from 1 to 6 members plus a coach. Group training classes, also run by a coach, are also provided in groups of 1 to 12 members per session. It is stated that it is vital that the member can hear the coach during each session to background music levels are kept to a minimum and as such operates very differently to a 'normal' commercial gym.
- 9.21. It is acknowledged that approved application BH2016/02459 allowed the re-development of the site for mixed commercial and residential units. An acoustic

report was submitted as part of this earlier application and reviewed by the Council's Environmental Health Officers. Conditions were attached to the earlier permission relating to enhanced glazing/vents and improvements to party walls/floors beyond those levels in building regs (ie 5dBbetter). Such conditions were included in the subsequent S73.

- 9.22. For the avoidance of doubt the areas of concern, regarding this current application, from an Environmental Health perspective are the ground floor gym area and the class E space at first floor level which does not yet have a tenant.
- 9.23. Since submission of the application, sound testing results have been provided by the agent which show good results for the residential-to-residential demises, there is no apparent testing between the commercial and residential areas, which is key to ensuring that the two uses are capable of mutual existence in such a mixed-use scheme. As such it is considered that there is insufficient information provided as part of this application regarding sound insulation performance and a condition should be attached to safeguard the amenities of surrounding residential properties, especially those above or next to the related Class E units. The sound testing details provided as part of this application have been reviewed by an Environmental Health Officer, and due to the lack of information provided with regards to areas between the commercial and residential areas, conditions have been recommended.
- 9.24. Since submission of the application the hours of use for the gym have been confirmed as 6am to 8pm Monday to Saturday and closed on Sunday, but no hours have been confirmed at this stage for the first-floor commercial unit as the occupier of this Class E use unit is unknown. It is considered that hours of operation can be secured via conditions. If a future occupier wishes to alter the hours of operation of the first-floor commercial space, it would be possible to vary the condition and this will be considered on its merits.
- 9.25. The earlier approved applications and this application do not propose or consider any mechanical ventilation required by any Class E use, should such element be required in the future a separate planning application would be required. An application looking to install any plant machinery would need to be accompanied by an acoustic report and details of the proposed location.
- 9.26. Overall, it is considered that the uses as now proposed would not have a significant adverse impact upon the amenities of neighbouring properties, including the residential units within the re-development site, subject to conditions relating to hours of use for both units and sound insulation.
- 9.27. It is acknowledged that the Environmental Health officer requested that condition 32 of application BH2021/02558 is carried over to this consent as well as condition 33 (sound insulation) however condition 32 relates to glazing performance of habitable rooms. As no habitable rooms are proposed within this application it is not considered reasonable to re-attach such condition, to this application. It has however been confirmed that the windows relating to the gym have good acoustic glazing as per condition 32 of the earlier planning permission (with min 29dB Rw+Ctr acoustic glazing.)

Sustainable Transport:

- 9.28. City Plan Part One policy CP9 sets out the Council's approach to sustainable transport and seeks, generally to further the use of sustainable forms of transport to reduce the impact of traffic and congestion and in the interests of health to increase physical activity.
- 9.29. The gym at ground floor and the other Use Class E unit at first floor are expected to result in a comparable level of trip generation from a transport trip generation perspective to the commercial uses approved under application BH2016/02459.
- 9.30. A number of transport/highway related conditions were attached to the 2016 permission and subsequent S73 applications. Some of these conditions remain as outstanding and as such the Transport Officer has requested that the relevant conditions, relating to the commercial uses, are re-attached to this current application if approved (including a car park management plan, disabled car parking details, delivery and servicing management plan, delivery vehicle time restrictions). Other elements relating to transport/highways for the wider re-development of the site are covered by the earlier planning permission and as such are not re-attached to this planning permission.
- 9.31. As part of this application, it has been stated that two car parking spaces are proposed for the ground floor and first floor commercial uses proposed. This proposed provision is not considered adequate to accommodate the likely demand generated by the ground floor gym and first floor commercial use. It is understood that the wider Old Brewery site has on-site parking for 47 vehicles within an on-site central courtyard, 11 spaces of which are allocated for the consented 11 new build residential dwellings. The remaining 36 parking bays were to be split between the on-site residential and commercial uses, indicating there is on-site capacity to increase the commercial on-site parking offering/provision, and so the proposed provision can be reviewed and updated through the submission of a Car Park Management Plan relating to the commercial units proposed.
- 9.32. It is acknowledged that details required by condition 24 (Car Park Management Plan), 27 (Disabled Car Parking) and 28 (Delivery & Service Management Plan) of application BH2016/02459 have been submitted via application BH2019/03048 to deal with but the Local Highway Authority has objected to the details submitted and as such the conditions remain outstanding.
- 9.33. Whilst the submitted drawings in support of this application omit details of cycle parking, the applicant, via application BH2019/03633, has submitted cycle parking details (which include provisions for the proposed residential and commercial uses) to satisfy Condition 29 attached to approved application BH2021/02558 for the wider site, which have been approved. Such facilities should be made available for use by the staff and visitors to the commercial units which this application relates to.

Conclusion

- 9.34. The use of the approved B1 commercial spaces as use within the new Class E is considered acceptable, subject to conditions regarding impacts on transport and protection of amenity issues. The application is considered to be in accordance with policies of the Brighton and Hove City Plan Part One of the City Plan Part Two.

10. EQUALITIES

- 10.1. Level access from both South Street and High Street is provided.

11. CLIMATE CHANGE/BIODIVERSITY

- 11.1. A condition regarding the post construction sustainability level of the non-residential elements of the re-development of the former Brewery site was required via a condition attached to the earlier planning permission. No such evidence has yet been submitted and as such a condition is recommended to be attached to this application to ensure that the commercial elements of the development are sustainable and make efficient use of energy, water and materials in accordance with policy CP8 of Brighton and Hove City Plan Part One.
- 11.2. As the application relates to a change of use only, it is not considered that there are any opportunities as part of this application to secure any additional biodiversity or sustainability measures above those secured via the previous planning applications for the re-development of the whole former Brewery site.

