

<u>No:</u>	BH2011/03483	<u>Ward:</u>	CENTRAL HOVE
<u>App Type:</u>	Full Planning		
<u>Address:</u>	52 Church Road, Hove		
<u>Proposal:</u>	Change of use from office accommodation (A2) to restaurant/bar (A3/A4) including rear extraction flue and proposed air conditioning units on east elevation.		
<u>Officer:</u>	Clare Simpson	<u>Valid Date:</u>	27/01/2012
<u>Con Area:</u>	The Avenues	<u>Expiry Date:</u>	23 March 2012
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Roberts & Wrigley Associates, 27a Goring Road, Goring By Sea, Worthing		
<u>Applicant:</u>	Mr K Churchill, Lower Ground Floor, 52 Church Road, Hove		

1 RECOMMENDATION

That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and the policies and guidance in section 7 of this report and resolves to be **MINDED TO GRANT** planning permission subject to no new additional representations and subject to the following Conditions and Informatives:

Regulatory Conditions:

- 1) 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.
- 2) The development hereby permitted shall be carried out in accordance with the approved drawings no. drawing 1 received on 17th January 2012, drawing no.001 kitchen extract ducting received on the 16th January 2012, proposed layout received on 27th January 2012 'proposed layout' received on 10th February 2012 and the proposed air conditioning units on 14 May 2012.
Reason: For the avoidance of doubt and in the interests of proper planning.
- 3) The use hereby permitted shall not be open to customers except between the hours of 10.00 to 00.00 Monday to Friday, 10.00 to 02.00 Saturday and 10.00 to 00.00 Sunday and Bank and 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 kitchen ventilation unit and flue shall be installed in accordance with drawing number 001 submitted on 16th January 2012 and the acoustic testing report by Airtight dated 13-14th April and received 30th April 2012
Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 5) Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing L_{A90} background

noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:1997. In addition, there should be no significant low frequency tones present.

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

- 6) The air conditioning units shall be installed within an acoustic enclosure as per the acoustic report by Airtight received 30th April 2012 and the enclosure shall be retained in place thereafter.

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

Informatives:

1. This decision to grant Planning Permission has been taken:
 - (i) having regard to the policies and proposals in the National Planning Policy Framework and the Brighton & Hove Local Plan, including Supplementary Planning Guidance and Supplementary Planning Documents:
(Please see section 7 of the report for the full list); and
 - (ii) for the following reasons:-

The proposed change of use is acceptable in planning policy terms and would bring an empty space in to use. The activity associated with the bar and restaurant should not have a detrimental impact on the residential amenity of neighbouring occupiers subject to compliance with the planning conditions attached. The proposed extraction flue to the rear of the property and air conditioning units to the rear of the property would have limited visual impact and would be seen in context with other plant and machinery on neighbouring properties. It would not detract from the character and appearance of the Conservation Area.
2. The applicant is advised that this permission relates only to the change of use, rear extraction flue and air conditioning units.
3. The applicant should be aware that whilst the requisite planning permission or consents might be held, should the Environmental health department receive complaints, they are duty bound to investigate and have powers under the Environmental Protection Act 1990 to abate nuisance with regards to either noise or odour.
4. The applicant should also be aware that whilst a planning permission is held, they are personally responsible for ensuring that the correct consents are held with regards to both food safety and licensing legislation.
5. The applicant is advised that this planning permission does not override the need to obtain a licence under the Licensing Act 2003. Please contact the Council's Licensing team for further information. Their address is Environmental Health & Licensing, Bartholomew House, Bartholomew Square, Brighton BN1 1JP (telephone: 01273 294429, email:

ehl.safety@brighton-hove.gov.uk,
hove.gov.uk/licensing).

website: www.brighton-hove.gov.uk

2 THE SITE

The application relates to a vacant basement of this end-of-terrace property on the south side of Church Road. The building is four storey above ground floor with the residential uses on the upper floors accessed from Grand Avenue. Sawyer and Co. estate agents operate from the ground floor of the property. This section of terrace is mixed in use with ground floor commercial uses and residential flats above ground floor.

The rear of the property is accessed from Second Avenue where there is vehicle access to serve the properties in the terrace. A range of extract flues and air conditioning units can be seen from this access road.

The property lies within The Avenues Conservation Area.

3 RELEVANT HISTORY

There are two related applications which are currently under-consideration.

BH2012/01055: (full planning permission) Blocking up of existing doorway, replacement of existing window with new timber double doors, installation of canopy at basement level and installation of new balustrading with glazed panels to existing entrance steps – under consideration.

BH2012/01049: (advertisement consent) Display of internally and externally illuminated fascia signs, an internally illuminated menu display box and a non-illuminated canopy - under consideration.

There is also recent history for determined applications for the site.

BH2009/02988: Change of Use of lower ground floor from A2 to medical/educational/classrooms (D1) and leisure facilities (D2). Approved 22/02/2010

BH2006/02856: Variation of condition 2 of planning permission BH2005/00285/FP to allow premises to be open between 09.00 and 24.00. Refused 13/08/2008 for the following reason:

“The Local Planning Authority were justified to limit the opening hours of the new A3 use to 23.00 hrs. The premises are in the basement of a building and in close proximity to neighbouring premises. In the absence of a record of successful operations, the applicant has failed to demonstrate that the A3 use can operate extended opening hours without harming the amenity of neighbouring properties. Therefore the application to increase opening hours is contrary to policy QD27 of the Brighton & Hove Local Plan”.

BH2006/01757: Amendments to previous consent BH2005/00285/FP to include new external staircase and new front entrance. Approved 18/05/2007

BH2005/00285/FP: Change of use of lower ground floor from A2 to A3. Approved 08/11/2005

4 THE APPLICATION

Planning permission is sought for the change of use from office accommodation (A2) to restaurant/bar (A3/A4) including rear extraction flue and proposed air conditioning units on east elevation.

The hours of use proposed by the applicant are:
Mon – Fri 10.00-00.00,
Sat - 10.00-02.00
Sunday and Bank and Holidays - 10.00-00.00

5 CONSULTATIONS

External

Neighbours: Seven (7) letters of representation have been received from **3 Coombe Lea (x2), Flat 5 11 Grand Avenue, 5 Albert Mansions (x2), Albert Mansions 54-56 Church Road, flat 5 50 Church Road, objecting** to the application for the following reasons:

- concern about noise disturbance and safety,
- elderly residents live close-by,
- people will congregate in the outdoor spaces,
- antisocial behaviour,
- existing flats adjacent to the premises are poorly insulated,
- people will stand outside smoking,

26 Grand Avenue Comment

There is insufficient information on how the external works are going to look.

Sussex Police Comment

The level of crime and anti social behaviour in this area is average when compared with the rest of Sussex and I do not identify any major concerns with the proposals, however, following consultation with my Licensing Team colleagues I would urge consideration of the following:-

In order to minimise the proliferation of ‘vertical drinking’ and ensure that there is not a disproportionate use, a minimum of 70% of the available floor space should be allocated to A3 use where alcohol is ancillary to meals taken by persons who are seated at tables.

The application seeks to extend the previous conditioned closing hours from 23.00 Monday to Sunday to Midnight Monday to Friday and Sunday and 02.00 on Saturday. These conditioned hours were to safeguard the amenity of the locality and to comply with policy QD27 of the Brighton & Hove Local Plan. An application to vary the conditioned hours was refused in 2006 as being contrary to this policy. In the event that this application is approved, I asked for a condition of a 12 month temporary consent for the proposed hours in order that any impact on the amenity of neighbouring residents and any crime and disorder and Anti-social behaviour associated with the premises can be assessed. I am encouraged by the applicants Dispersal Policy.

Internal:

Environmental Health Team:

First comment

Insufficient information to comment. The submitted acoustic report requires raises a number of questions which require answering/ resolution before a full comment can be made.

Second Comment: No objection

The Environmental Health Team have noted receipt of a new acoustic report from Airtight. Comments have since received from both the planning agents and the report authors which address the points made in my previous memo. This goes onto suggest that with the relatively low levels observed for day and in particular night time operation, that the addition of the heating/cooling air conditioning unit will not comply with the City Councils noise requirements. The kitchen extract system which terminates at height is not deemed to be a problem and calculations have been provided to confirm this. The report goes onto provide a solution with an enclosure unit which will remedy the problem for operation of the air conditioning units. The units should therefore be installed in accordance with the measures listed in the acoustic report by Airtight.

A noise condition which will stay on the application for life and ensure that the levels remain inline with what is expected from the City Councils noise standard.

Heritage: No comment.

Planning Policy: No comment.

Sustainable Transport: No comment received.

6 MATERIAL CONSIDERATIONS

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

The development plan is:

- The Regional Spatial Strategy, The South East Plan (6 May 2009);
- East Sussex and Brighton & Hove Minerals Local Plan (November 1999);
- East Sussex and Brighton & Hove Waste Local Plan (February 2006);
- Brighton and Hove Local Plan 2005 (saved policies post 2004).

The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.

Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF. At the heart of the NPPF is a presumption in favour of sustainable development.

All material considerations and any policy conflicts are identified in the considerations and assessment section of the report.

7 RELEVANT POLICIES & GUIDANCE

Brighton & Hove Local Plan:

TR1	Development and the demand for travel
TR7	Safe development
TR14	Cycle access and parking
TR19	Parking standards

SU2	Efficiency of development in the use of energy, water and materials
SU9	Pollution and nuisance control
SU10	Noise nuisance
QD1	Design – quality of development and design statements
QD2	Design – key principles for neighbourhoods
QD3	Design – efficient and effective use of sites
QD27	Protection of Amenity
SR5	Town and District Shopping Centres
HE6	Development within or affecting the setting of Conservation Areas

Supplementary Planning Guidance:

SPGBH4 Parking Standards

The National Planning Policy Framework (NPPF)

8 CONSIDERATIONS

The main considerations in the determination of this application relate to the principle of the change of use and the impact on the vitality of the area, issues relating to the activities associated with the proposed use in terms of noise and disturbance and late night activity and the impact of the extraction systems in terms of design and appearance and impact on amenity.

Planning Policy:

The ground floor is currently vacant but was previously used as an estate agent (Class A2) with the basement used as ancillary storage. Whilst it is understood that the basement of the property may have been separated from the ground floor since approval was given for A3 consent in 2005, the basement has been vacant since this time. The use of the basement was most recently used for A2 use in association with ground floor Estate Agents pre-2005. It therefore follows that the lawful use of the basement is A2. There have been successful applications for both an A3 (restaurant use) and D1/D2 (medical and leisure facilities) uses for this basement area. Neither of these uses have been implemented and therefore the principle of the change of use from A2 must be assessed as part of this application.

The unit is located in the Town and District Shopping Centre as defined by policy SR5 of the Brighton & Hove Local Plan. Outside the prime retail frontage, in which the property is located, the policy states that a loss of retail use will be permitted provided that a healthy balance and mix of uses is retained and concentrations of uses other than Class A1 are avoided. The proposed use should attract pedestrian activity to the centre and should not have a significantly harmful impact on the amenity of the area.

A recent retail study suggests that outside the prime retail frontage there is already a predominance of non-A1 uses. However, the authorised use of the premises is already non-A1 and therefore the change of use from A2 to A3 will not increase the proportion of non-A1 uses in the centre. Furthermore, the application relates to the basement area, which would be accessed independently from the accommodation at ground floor level and will not affect the character of the shopping frontage. It is considered that the use of the

basement as an A3/A4 consent use would attract pedestrian activity, and as the premises are already non-A1, will not affect the balance of uses across the centre. The proposed use should not have a negative impact on the viability of the Shopping Centre.

The proposal would also result in vacant floor of commercial floor space coming back in to use.

Design and Impact on The Avenues Conservation Area.

The alteration to the rear of the building comprises of an extraction flue which would run from basement level up to the chimney level. This would extend the full height of the building and would be located close to the existing redundant fire- escape.

Public views of the installation would be very limited because of the close proximity to the fire escape. Many of the rear elevation of the buildings to the east of the site are dominated by similar extraction flues. These do not make a positive contribution to the rear elevation or the Conservation Area, however with limited impact on public vantage points, the impact of this installation would actually be negligible. It would be seen on context with the other installations to the rear of the Church Road properties

During the course of the application, clarification has been received on the need for the proposed air conditioning units for the property. These were not shown on the initially submitted drawings. Proposed elevations have now been submitted and revised consultation with neighbours is on-going. The air conditioning units would be located at lower ground floor level on the eastern elevation of the building. They would be located in an acoustic enclosure to limit noise emissions (see section below). In terms of the impact, the air conditioning units would not have an impact on any public views of the building and would not harm the overall character and appearance of the development.

There are other external works proposed for the site which have been applied for under a recent application (ref: BH2012/01055). This includes the provision of revised alterations to the elevations and this application is currently under consideration.

Impact on Amenity:

Letters of representation have been received from neighbours concerned over the potential for noise and disturbance from a late-night drinking establishment. There are residential flats adjoining the site in 50 Church Road and 12 Grand Avenue. The ground floor of the building is in use as Sawyers Estate Agent.

Sussex Police have commented on the application and have not raised an objection to the proposal. The opening hours for the venue are in excess of those previously granted for a restaurant use for the site where permitted opening hours were until 23.00. It should be noted that the proposed restaurant was never implemented and there was a previously refused application for opening hours until midnight refused in 2006.

This application seeks consent for the following.

Mon – Fri 10.00 - 00.00

Sat - 10.00 - 02.00

Sunday and Bank and Hols - 10.00 – 00.00

It is acknowledged that there is no history of a A3 or A4 consent for the site and therefore the Local Planning Authority and Sussex Police do not have the assurances from monitoring a previous use on the site. Sussex Police have therefore suggested that the opening hours are granted on a temporary consent to be reviewed after a period of 12 months. However, the Environmental Health Team do not see the need for a temporary consent in this instance and have no objection with the opening hours being sought by the applicant. The application is accompanied by some information about the future management of the site and further controls are available through licensing legislation if required.

Sussex Police have also suggested restrictions to the layout of the bar/restaurant to limit the amount of vertical drinking on the site. It is generally considered that alcohol served at tables, and/or associated with the consumption of food results in less intensive alcohol consumption and potentially less activity. The applicants have submitted some information about the proposed layout of the property. This includes 70sqm designated for the restaurant area and 60.5sqm for the lounge and bar area. This plan is useful in indicating the likely proportion of dining to drinking floor area for the venue although the floor area for the restaurant is not the 70% of the total floor area sought by the Sussex Police. The proportion of dining to drinking remains consistent with the mixed A3/A4 consent which is being sought.

The Environmental Health Team had an initial concern regarding the proposed plant and machinery for site. An acoustic report was submitted with the application and further clarification and amendments to this report were made following discussions between the Environmental Health Team and the acoustic engineers. The submitted information is considered to demonstrate that noise and disturbance for the plant and machinery would occur.

Given that the Environmental Health Team have examined the application and not raised an objection to the proposed change of use or opening hours proposed, it is considered that the proposed change of use of the property would not have a significant impact on the residential amenity of neighbouring properties.

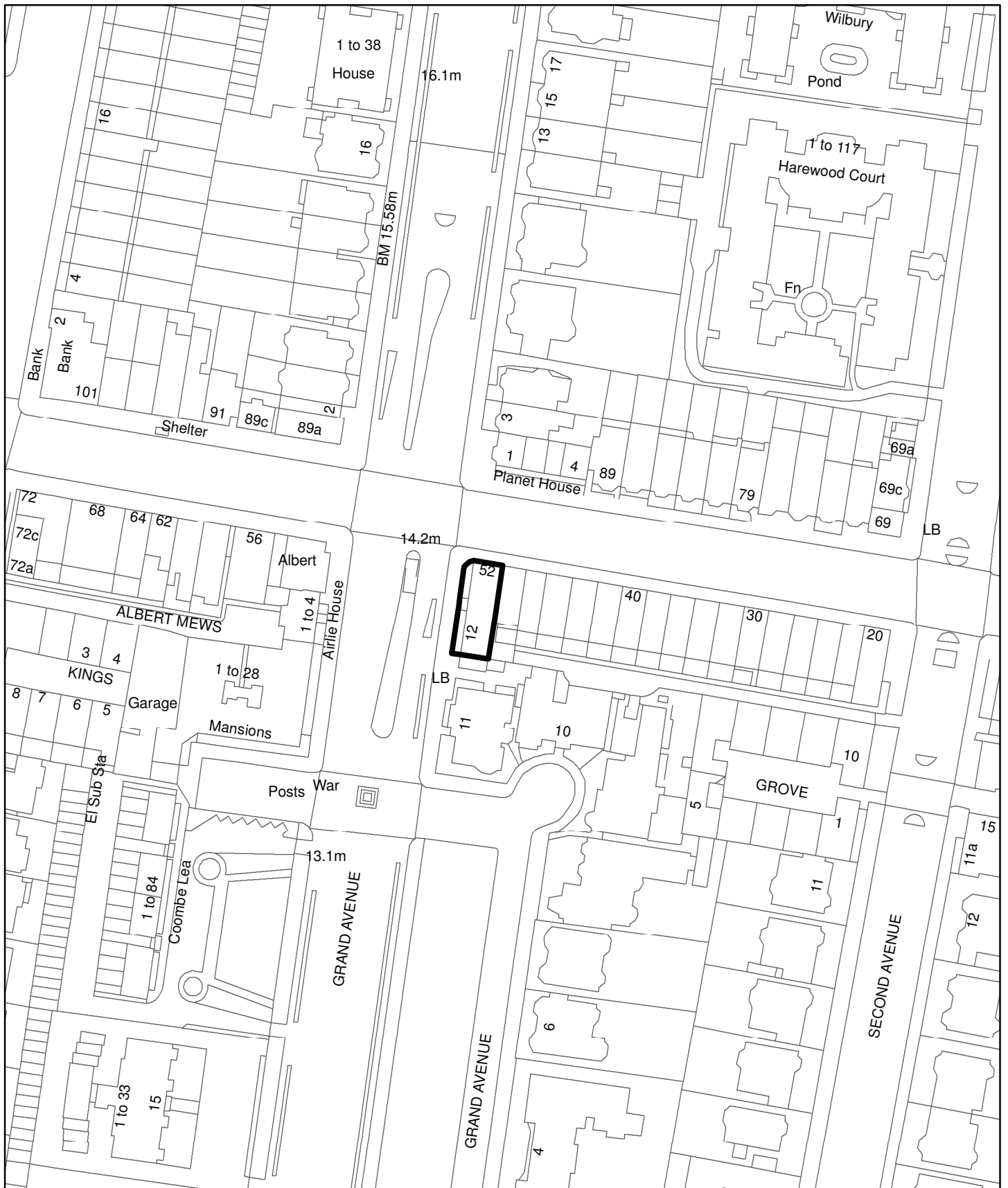
9 CONCLUSION

The proposed change of use is acceptable in planning policy terms and would bring an empty space in to use. The activity associated with the bar and restaurant should not have a detrimental impact on the residential amenity of neighbouring occupiers with planning conditions attached. The proposed extraction flue and air conditioning units to the rear of the property would have limited visual impact and would be seen in context with other plant and machinery on neighbouring properties.

10 EQUALITIES IMPLICATIONS

The site is accessed from steep steps from pavement level to the basement. There is no potential for ramped access and therefore this restricts the potential for equal access to the site.

BH2011/03483 52 Church Road, Hove.



**Brighton & Hove
City Council**



Scale: 1:1,250