

**PLANS LIST
ITEM H**

8 & 8A Western Street, Brighton

**BH2012/01358
Full planning**

08 AUGUST 2012

BH2012/01358 8 & 8a Western Street, Brighton



**Brighton & Hove
City Council**



Scale: 1:1,250

<u>No:</u>	BH2012/01358	<u>Ward:</u>	BRUNSWICK AND ADELAIDE
<u>App Type:</u>	Full Planning		
<u>Address:</u>	8 & 8A Western Street, Brighton		
<u>Proposal:</u>	Change of use from ground floor retail (A1) and first and second floor maisonette to consulting rooms (D1).		
<u>Officer:</u>	Jason Hawkes Tel: 292153	<u>Valid Date:</u>	29/05/2012
<u>Con Area:</u>	Regency Square	<u>Expiry Date:</u>	24 July 2012
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Mr Richard York, 6 The Knoll, Hayes, Bromley, Kent		
<u>Applicant:</u>	Mrs Melanie Withers, 113 Freshfield Road, Brighton		

1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 11 and the policies and guidance in section 7 and resolves to **REFUSE** planning permission for the reasons set out in section 11.

2 SITE LOCATION & DESCRIPTION

- 2.1 The application site relates to a three-storey and basement terraced building on the western side of Western Street. The property comprises a vacant retail unit at ground floor and self contained maisonette at first and second floor. The ground floor retail unit has use of the basement level and there is a small terrace at first floor level. The maisonette has a separate entrance adjacent the shopfront and is currently occupied. The property does not include a rear garden or yard area.
- 2.2 This area is predominately residential with dwellinghouses immediately adjacent the property. The Bedford Tavern Public House is immediately opposite the proposed site. Embassy Court, a large block of flats, lies just south of the site. To the rear of the property is a shared amenity area for the occupiers of the Golden Lane, a residential development just north of the site. The site is within the Regency Square Conservation Area.

3 RELEVANT HISTORY

- 91/1170/FP:** Alterations at first floor rear to provide access to flat roof and part enclosure of the roof with railings. Approved November 1991.
- 90/1505/F:** Erection of mansard roof to provide additional living accommodation. Refused 1990.
- 82/413 (LBC 1204):** Demolition of 5-14 Western Street as part of Golden Lane development. Refused 1982.

4 THE APPLICATION

- 4.1 Planning permission is sought for the change of use from ground floor retail (Class A1) and first and second floor maisonette to consulting rooms (Class

D1). The scheme involves internal alterations to form one unit. No external alterations are proposed.

5 PUBLICITY & CONSULTATIONS

External

5.1 **Neighbours: Seventeen (17) representations have been received from 5, 6, 7 (x2), 9 Western Street (x2), Flat 1, 10 Western Street (x2), 19, 20, 32 Western Street, Flat 2, 23 Waterloo Street, 12 Brunswick Terrace & 4 representations with no address given objecting to the application for the following reasons:**

- The Rock Clinic proposes 7 consulting rooms, plus a group room and staff facilities. The number of staff and visitors this will generate a day during their 12 hour operation period will result in a significant amount of extra flow through a predominantly residential street.
- The previous dance shop and flat had a low impact on adjacent neighbours. The scheme results in 10 to 12 staff and 84 plus clients. This results in a noise impact due to the number of visitors and the use of the property.
- There is concern that the proposed use for a consulting room could lead to other uses under Class D1 which would be further detrimental to the street.
- The scheme does not include sound proofing to minimise its noise impact.
- Litter (including smoke related litter) will increase with the amount of people using the property.
- Parking is already a problem on the street and this scheme will put further strain on parking putting residents at a disadvantage. Users of the clinic will also bring their bicycles and attach them to adjacent railings which will result in damage and difficulties.
- Western Street is a narrow one way street and is a bit of rat run. This scheme raises concern regarding traffic / highway safety.
- There is concern that the scheme will result in the loss of dedicated disabled parking spaces.
- The opening hours of 9am-9pm should not be agreed.
- The property has a for sale sign on display. If adjacent residents did this they would be fined.
- Waste collection and storage has not been mentioned in the application. An increase in the use of the existing bins will result in further noise problems and disturbance.
- The clinic does not allow people to enter early, meaning a lot of people will be hanging around on the street outside the premises. This is already a problem in the area and this scheme will lead to an increase of people congregating on the street.
- Adjacent properties including patio areas will be overlooked by the clinic.
- There is a shortage of residential properties in this area. It seems inappropriate to change a retail / residential property into a commercial one when there are empty existing commercial sites a short distance away on Western Road.
- There is concern that the proposal may include the use of the flat roof to the rear.

- The rear south elevation of the property includes obscure windows facing the garden of no.7 Western Street. The resident of this property is concerned that if the windows are replaced they should also be obscure glazed.
- 5.2 **Twenty three (23)** representations have been received from **268, 272 Eastern Road, 9 Albion Street, 18 Bedford Place, Ground Floor Flat, 42 Brunswick Road, 107 Albion Hill, 79 Buckingham Road x 2, 13 Clermont Terrace & 14 representations with no address given** supporting the application for the following reasons:
- Residents who have lived next door to the Rock Clinic have stated that they have never found any cause for concern with the clinic. They have always found them quiet and respectful neighbours.
 - The users of the clinic have always come and gone quietly.
 - The use is likely to elevate the area where it is established.
 - The clinic provides an invaluable service and affordable therapy for people in stress or experiencing trauma.
 - Local GPs have stated that they refer people to the clinic and support its expansion. The clinic has been undertaking important work in the city and there is an increasing demand for counselling.
 - Its location in the west of the city will make the clinic more accessible for people in this part of Brighton & Hove.
 - The clinic offers opportunities for trainee counsellors. The clinic is also well run and professionally managed.
- 5.3 **East Brunswick Residents Association: Object.** The premises are not suitable for the proposed use. The siting of the clinic here will have an adverse impact on the amenity of adjacent properties. The use of premises for counselling with group rooms raises concern regarding its noise impact. There are also health and safety concerns regarding means of fire escape and disabled access.
- Internal:**
- 5.4 **Planning Policy: Object.** The property has been marketed as one single unit for a period of eleven months in a challenging economic climate. This limited time period and the apparent requirement for potential retail occupiers to purchase the occupied maisonette above as well mean that it is not considered that redundancy has been adequately demonstrated in accordance with policy SR8. The proposed clinic, whilst welcome as a new community facility, does not outweigh the loss of an occupied and self contained maisonette or the failure to demonstrate that the retail unit is not economically viable. The proposal is contrary to policies SR8 and HO8 of the Brighton and Hove Local Plan and refusal is recommended.
- 5.5 **Sustainable Transport: No objection.** No objection subject to a condition requiring details of cycle parking to be submitted for approval by the Local Planning Authority prior to commencement of works.
- 5.6 **Environmental Health: No objection.**

6 MATERIAL CONSIDERATIONS

- 6.1 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.”
- 6.2 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).
- 6.3 The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.
- 6.4 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.
- 6.5 All material considerations and any policy conflicts are identified in the considerations and assessment section of the report.

7 RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

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
SU10	Noise nuisance
SU13	Minimisation and re-use of construction industry waste
QD27	Protection of Amenity
HO8	Retaining housing
HO19	New community facilities
SR8	Individual shops
HE6	Development within or affecting the setting of conservation areas

Supplementary Planning Guidance:

SPGBH4	Parking Standards
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8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the principle of the loss of the retail unit, the loss of the self-contained residential

unit, the provision of a new community facility, the impact of the proposal on the amenity of adjacent properties, highway / traffic implications and sustainability.

Background Information:

- 8.2 The Rock Clinic Association, a registered charity, is a co-operative association of psychotherapists and counsellors which has been providing therapy to the community of Brighton for the past 22 years. It currently operates from 279 Eastern Road, Brighton. The main services the clinic offers are appointment only sessions in counselling, psychotherapy, cognitive behavioural therapy, couple therapy and group therapy. The clinic receives referrals from local GPs and has recently been awarded a contract to provide counselling to registered carers.
- 8.3 The clinic is looking to expand its service to the west of the city in Hove. They see 8 & 8A Western Street as an ideal location. The building is currently split into two uses. The ground floor and basement were formerly occupied by a retail unit which sold dance related goods. The shop has recently relocated to Portslade and the unit is currently empty. The building also includes a separate maisonette at the first and second floor which is accessed by a separate door next to the shopfront and is currently occupied.
- 8.4 The proposal converts the two units into one building through the removal of an internal wall. The scheme also involves the reconfiguration of the internal layout of the building to provide consulting rooms and office space. As this is not a listed building, there is no objection in principle to the internal layout of the proposed unit, which does not detract from the character or appearance of the building.

Planning Policy:

- 8.5 Policy HO8 of the Brighton & Hove Local Plan states that planning permission will not be permitted for proposals involving a new loss of units of residential accommodation unless one or more of the following exceptional circumstances applies:
- a. the residential accommodation is classified as unfit for human habitation and it can be demonstrated that it cannot be made fit for habitation;
 - b. a separate access to the residential accommodation is impracticable;
 - c. where it can be demonstrated that the change of use is the only practicable way of preserving the existence or special architectural or historic character of a listed building or other building of architectural or historic interest;
 - d. where the proposal would result in a net gain in units of affordable housing;
or
 - e. where previous use of a building would be a material consideration.
- 8.6 As stated the scheme results in the loss of the maisonette within the upper floors of the building. There are strict limitations on the number of new sites available for housing development in Brighton & Hove. The need to make the best use of the sites and properties that are available means that it will continue to be important to retain existing houses, flats and other residential accommodation. Policy HO8 helps to ensure that measures aimed at delivering

additional housing, including rehabilitation and repair, are not undermined by losses to the existing stock.

- 8.7 The existing maisonette is in a reasonable state of repair and is currently occupied. Additionally, this is not a listed building and the scheme is not required to preserve the character of the building. It is therefore felt that the loss of maisonette has not been fully justified in accordance with the criteria of policy HO8. Given the importance of retaining housing, the scheme is considered contrary to the policy.
- 8.8 Policy SR8 of the Brighton & Hove Local Plan states that planning permission for changes of use of individual shops from Class A1 use will be permitted provided all of the following criteria are met:
- a. the shop is within easy walking distance of a local, district, town centre or the regional shopping centre and local residents within its catchment would still be within easy walking distance of a comparable shop;
 - b. it has been adequately demonstrated that an A1 retail use is no longer economically viable in that particular unit; and
 - c. the development would not be significantly detrimental to the amenities of occupiers of nearby residential properties or the general character of the area.
- 8.9 Applicants will be expected to submit documentary evidence, including a comparison with units in a similar location, to demonstrate active marketing of the unit on competitive terms in support of their proposal.
- 8.10 The applicant has submitted a marketing report by Oakley Commercial. Although there is a public house opposite, the retail unit itself is freestanding and policy SR8 on individual shops applies. The policy sets out three criteria against which proposals involving the loss of a retail unit will be assessed. The proposal is approximately 180 metres from the secondary frontage of the Regional Shopping Centre. This is acceptable as an 'easy walking distance' as required in the first test in the policy.
- 8.11 The property has been marketed as a single unit comprising a shop and maisonette for a period of eleven months. There have been a reasonable number of viewings given the difficult economic climate. The council would normally expect a marketing period of 12-18 months to demonstrate redundancy. It may be that the owner was willing to accept an offer for either the maisonette or shop unit, but this is not clear from the marketing details. Whilst this may not be a prime retail location, offering the building as a single unit, including an occupied maisonette, may have affected interest in the property from potential retail users. Given the inadequate length of time that the property has been marketed and the marketing solely as a single unit it is not felt that redundancy has been sufficiently demonstrated in this application.
- 8.12 The proposed use is not considered detrimental to adjoining occupiers and is therefore acceptable under the last test of SR8. Overall though, the proposal is considered to be contrary to policy SR8 due to the failure to fully demonstrate that retail use is no longer economically viable.

- 8.13 Policy HO19 states that planning permission will be granted for community facilities (including places of worship, day care and health centres, libraries and archives, schools, churches and community halls) where it can be demonstrated that:
- a. the design and use of the facility will ensure its accessibility to all members of the community and include:
 - i. demonstrable benefits to people from socially excluded groups; and
 - ii. the provision of suitable childcare and toilet facilities;
 - b. there is no unacceptable impact on residential amenities or on the amenities of the surrounding area;
 - c. the location is readily accessible by walking, cycling and public transport; and
 - d. adequate car and cycle parking, including provision for people with disabilities, is provided.
- 8.14 Provision of a psychotherapy and counselling clinic would be supported as an additional community facility by policy HO19 of the Brighton and Hove Local Plan. However, the proposal would involve the loss of a retail unit and maisonette in order to provide the clinic. No evidence has been submitted by the applicant to set out alternative premises that have been considered by the clinic. Whilst the affordability issue raised in the covering letter is noted, in the absence of information to demonstrate that there are no suitable alternative premises for the clinic, it is felt that the provision of the community facility does not outweigh the loss of an occupied and self contained residential unit or the failure to demonstrate redundancy of the shop unit.
- 8.15 Therefore, on balance, the provision of the community use does not outweigh the loss of the residential units or the failure to fully demonstrate that retail use is no longer economically viable. The proposal is therefore considered contrary to policies HO8 and SR8 of the Brighton & Hove Local and is recommended for refusal on these grounds.

Design:

- 8.16 The scheme does not involve any external alterations to the building.

Impact on Amenity:

- 8.17 Policy QD27 that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
- 8.18 As the scheme does not involve any external alterations to the building, there are no issues in relation to loss of light, increased sense of enclosure or loss of outlook. Adjacent residents have raised concerns regarding the potential use of the rear terrace and flat roof of the ground extension as an amenity. The property includes a small terrace at first floor level. This terrace is already in use by the maisonette and is a relatively small area. It is felt that its use by the clinic as an amenity area would not lead to any more overlooking or noise disturbance than already exists.

- 8.19 The flat roof area does appear to be currently used by the residents of the maisonette as an amenity and storage area. This area does not include any balustrades and is not recognised as an existing amenity area. Its use would lead to a noise disturbance and overlooking of the adjacent patio areas and windows of the adjacent properties. If approved a condition could be imposed requiring this area not to be used as an outside amenity area to protect the amenity of the adjacent residents.
- 8.20 A number of residents have raised concerns regarding the proposed use of the building. They feel that the clinic will result in increased noise and disturbance. The clinic has proposed hours of use between 9am and 9pm, Monday to Saturday and at no time on Sundays or Bank Holidays. It is felt that generally speaking counselling is normally a use which does not generate high levels of noise or disturbance. The clinic operates on an appointment basis only. The proposed plan indicates 6 consulting rooms. It is not felt that the use of the rooms for counselling is likely to result in a significant noise disturbance to adjacent properties. If recommended for approval, conditions could be imposed which could mitigate its impact on adjacent properties such as limiting the hours of use of the clinic.
- 8.21 Overall, it is felt that the use of the clinic would not result in a significant impact on the amenity on adjacent properties and the scheme is deemed in accordance with policy QD27.

Sustainable Transport:

- 8.22 8 Western Street is within Controlled Parking Z and is within close proximity of local bus services in a central location in the city. In terms of trip generation, there is likely to be a change in the type of people trips generated by the proposed change of use from a retail unit to an appointments only clinic being less linked with trips to other retail units. There is also likely to be an increase in the number of trips on the site due to the change of use of the maisonette to a clinic. Due to the limitations of the site, no parking spaces have been provided as part of the application. Therefore any such parking would occur on the highway. There appear to be no significant circumstances in the surrounding area that would be exacerbated by this proposal. It would therefore not be reasonable to make recommendation based upon a lack of car parking.
- 8.23 Overall, the Highway Authority has raised no objection to the scheme on grounds of its affects to public safety or the capacity on the highway network. The Highway Authority has recommended approval subject to a condition requiring details of cycle parking to be submitted to the Local Planning Authority for approval prior to commencement of development. There is some scope for cycle parking to the front of the property in a small forecourt area. Additionally, the property does include a basement level where cycles could also be stored. Therefore, if recommended for approval, a condition could be imposed requiring details of cycle parking to be submitted for approval.

Sustainability:

- 8.24 Supplementary Planning Document 8 on Sustainable Building Design states that planning applications for the change of use to a non-residential unit (under 235sq^m) requires the submission of details outlining reduction in energy and water. No details have been submitted with the application. If approved, a condition could be recommended requiring the submission of these details prior to commencement of development. Further there are no details submitted regarding waste or recycling storage. Again, these details could be secured by condition and a refusal based on these ground could not be justified.

Other Considerations

- 8.25 The proposed use as clinic for counselling purposes falls under Class D1. Class D1 includes other uses such as crèches, day nurseries, health centres, museum and places of worship. If approved, it would be reasonable to impose a condition limiting the use of the premises for counselling purposes to prevent the property converting to another use within Class D1 which could result in a detrimental impact on the amenity of adjacent properties.
- 8.26 The letters of objection raised concern regarding the number of people outside the property. The clinic is appointment only and it is not felt that the proposed use would lead to a significant increase in the number of people outside the property at any one time.

9 CONCLUSION

- 9.1 The scheme is deemed appropriate in terms of its impact on adjacent properties, highway considerations and sustainability.
- 9.2 However, as outlined above, the proposal has failed to justify the loss of the existing retail unit and residential unit. The provision of a community use does not overcome these concerns and the scheme is considered contrary to policies HO8 and SR8 of the Brighton & Hove Local Plan.

10 EQUALITIES

- 10.1 The scheme provides suitable access for people with disabilities.

11 REASON FOR REFUSAL / INFORMATIVES

11.1 Reasons for Refusal:

1. Policy HO8 of the Brighton & Hove Local Plan states that planning permission will not be permitted for proposals involving a net loss of residential accommodation unless exceptional circumstances apply. The application results in the loss of an occupied maisonette which provides an acceptable standard of accommodation. The application does not involve any exceptions circumstances which would justify the loss of the residential accommodation and the scheme is deemed contrary to the above policy.
2. Policy SR8 of the Brighton & Hove Local Plan states that planning permission for changes of use of individual shops from Class A1 will be

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permitted provided that it has been adequately demonstrated than the A1 retail use is no longer economically viable. The applicant has failed to fully demonstrate that the retail use is no longer economically viable. The scheme is therefore considered contrary to the above policy.

11.2 Informative:

1. This decision is based on the supporting documents and drawings listed below:

Plan Type	Reference	Version	Date Received
Basement Floor Existing and Proposed			29 th May 2012
Ground Floor Existing and Proposed			29 th May 2012
First Floor Existing and Proposed			29 th May 2012
Second Floor Existing and Proposed			29 th May 2012