

**PLANS LIST
ITEM E**

10 Upper Market Street, Hove

**BH2012/01764
Full planning consent**

29 AUGUST 2012

BH2012/01764 10 Upper Market Street, Hove.



**Brighton & Hove
City Council**



Scale: 1:1,250

<u>No:</u>	BH2012/01764	<u>Ward:</u>	BRUNSWICK AND ADELAIDE
<u>App Type:</u>	Full Planning		
<u>Address:</u>	10 Upper Market Street, Hove		
<u>Proposal:</u>	Change of use from retail (A1) to mixed use retail (A1) and restaurant (A3).		
<u>Officer:</u>	Christopher Wright Tel: 292097	<u>Valid Date:</u>	13/07/2012
<u>Con Area:</u>	Brunswick Town	<u>Expiry Date:</u>	07/09/2012
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	N/A		
<u>Applicant:</u>	Little Fish Market, Miss Tina Sparsis, 10 Upper Market Street, Hove		

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 **GRANT** planning permission, subject to the Conditions and Informatives set out in section 11.

2 SITE LOCATION & DESCRIPTION

- 2.1 The application relates to an end-of-terrace three storey building with basement and accommodation in the roof space.
- 2.2 The building has frontages onto both Upper Market Street and Brunswick Street East, and the flank elevation of the building is opposite The Old Market and is also visible from the street.
- 2.3 With the exception of The Old Market, the area is predominantly characterised by residential terraced buildings with pitched roofs and between two and three storeys in height. There are some restaurant uses along Western Road, which is within walking distance of the application site.
- 2.4 The application site is situated in the Brunswick Town Conservation Area. The building is not Listed.
- 2.5 The site is located within the Cumulative Impact Zone for Licensing purposes and is situated in a Controlled Parking Zone.
- 2.6 During the day motor traffic is light in the vicinity of the application site but several cars are parked on-street.
- 2.7 The ground and basement levels of the building are in use as retail Use Class A1 for fish sales, with some ancillary seating. The upper floors are in use as self contained flats with their own separate entrance.

3 RELEVANT HISTORY

BH2011/01697: Display of 2 no. trough externally illuminated fascia signs, 4 no. internal vinyl graphic signs and 2 no. non-illuminated projecting signs. Granted consent for the display of advertisements on 7 September 2011.

BH2003/03724/FP – Change of use of 1st/2nd/3rd floors into 2 self-contained flats. Approved 8 January 2004.

BH2003/03643/FP: Change of use from photographic laboratory and gallery to form self-contained flat on the ground and basement floors. Refused on 23 December 2003.

BH2003/01365/FP: Formation of roof terrace. Alterations to 1st floor rear to provide access. Refused on 18 June 2003.

BH2003/00312/FP: Change of use from photographic laboratory and gallery to form self-contained flat on the ground and basement floors. Refused on 21 March 2003.

3/96/0440(F): Change of use to professional black and white photographic laboratory and gallery. Approved 5 September 1996.

3/96/0101(F) & 3/96/0102(CA): Conversion of existing shop to residential unit. Approved 22 May 1996.

3/81/0175 – Installation of floodlight above fascia of Café de Flore, to light Old Market Arts' Centre (OMAC) during hours of darkness – Dusk to 11.30pm. Approved 22 April 1981.

MV/1191/67 – Double sided projecting illuminated box sign. Approved 15 December 1967.

4 THE APPLICATION

- 4.1 Full planning permission is sought for a change in the use of the premises from retail Class A1 (52m²) use to a mixed use comprising retail Class A1 and restaurant Class A3 use. It is proposed that 20m² would be used for A3 and that 32 m² would remain in retail
- 4.2 The proposal would allow the premises to continue functioning as a retail shop whilst at the same time allowing for food and drink to be cooked and consumed on the premises.
- 4.3 The existing layout comprises retail display areas and a long retail sales counter on the ground floor together with a small number of chairs and tables which it is estimated could seat 8 to 10 customers. The basement level contains a kitchen area and storage.
- 4.4 The existing layout would remain unchanged.
- 4.5 The proposed odour control and cooking extraction system for the basement kitchen has been installed.
- 4.6 The existing use employs 1 full time and 2 part time staff. The proposed use would employ 2 more full time staff, making 4 full time staff in total.
- 4.7 The planning submission includes a petition with 60 signatures prepared and submitted by the applicant in support of the proposal.

5 PUBLICITY & CONSULTATIONS

External

5.1 Neighbours:

Eight (8) letters of representation have been received from 1 Old Market Cottages (x 4); 3 Old Market Cottages; 39 Brunswick Street East; 41 Lansdowne Place (Lansdowne Area Residents' Association); and Flat 2, 23 Waterloo Street, objecting to the application for the reasons summarised as follows:-

- Not an acceptable use in this area.
- Proposed opening hours are inappropriate for the area.
- Residential area, not part of the city centre.
- No need for another restaurant in this area.
- Area is in Cumulative Impact Zone recognised by Police to have problems with night time noise level.
- Close to existing licensed premises including Conqueror Pub, The Old Market, Paris House bar, Medicine Chest café/bar and two off-licences.
- Excessive late night activity.
- More people, noise and taxis late at night.
- Disturbance and noise from outdoor smokers.
- Noise from extractor fans.
- Smells of smoking and fish being cooked.
- Extension of the alcohol licence is not supported.
- Will add to noise generated by existing uses including The Old Market and The Medicine Chest.
- Loss of privacy – customers will be able to see into the windows of neighbouring residences.
- Will add to disturbance from existing bars and restaurants in the vicinity.
- Applicant is not intending to open as late at night as stated on application forms.
- Notwithstanding current owners of the site, another business may move into the premises in future.

5.2 Nine (9) letters of representation have been received from 1, 7 and 11 Lower Market Street; 12a (x 3) and 14a Upper Market Street; 15 Upper Market Street; 3 Ivy Place; 6 Brunswick Street East; and Flat 1, 62 Brunswick Place (x 2), in support of the application for the reasons summarised as follows:-

- Creates future employment opportunities.
- Local fishmonger, supplying local fish, supplying local fisheries and fishermen.
- Much loved local business and source of healthy food for the community.
- To allow cooked food would provide for a broader range of services to the local community.
- The use will not attract noisy customers.
- No problems experienced by way of noise or smells to date.
- The current owners are well able to manage customers such that they do not disturb local residents and are sensitive to local residents concerns.
- Excellent local amenity.

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- The business is an asset to the area.
- The shop/restaurant looks good and fits in well with the general area.
- Restaurant use is commercially important for the applicant.
- Stimulates interest in health food.
- Will enrich local social environment without loud music or nuisance to neighbours.

5.3 **Friends of Brunswick Square and Terrace Residents Association** Object:

- No need for another restaurant in this densely populated residential area.
- Already 5 other licensed premises within walking distance of this site.
- Later opening time will cause noise and disturbance (slamming taxi/car doors, talking in the street) from groups leaving at 11.00pm.

5.4 **Sussex Police Crime Prevention Design Adviser:** No objection.

Internal

5.5 **Environmental Health:** No objection. No adverse comments to make on food hygiene issues. The premises has an existing Licence and there are no complaints from the current operation based on noise or odour and impact on nearby sensitive properties. The current Licence applies until 8.00pm and will need to be extended by an application to vary the current premises Licence.

5.6 The premises is in the Cumulative Impact Area (CIA) and the Council's Statement of Licensing Policy states that applications for new premises Licences within the CIA will normally be refused following representations. Any variation application to an existing premises Licence will also potentially come within this special policy, including those for extensions of hours, and will always be subject to an applicant satisfying the authority that there will be no adverse effect or cumulative impact. Each application will be considered on its own individual merits. In this case consideration would be given to the fact that the premises has an existing premises Licence and is a restaurant as opposed to a nightclub or off-licence for example.

5.7 The kitchen extraction system installed has been examined and if maintained and serviced in line with manufacturer recommendations the functioning of the extraction systems will not present an odour or noise disturbance to nearby properties.

5.8 Smokers outside the premises can be managed and controlled so as to not cause intrusive disturbance to local residents. This can be done through the implementation of a written smoking policy which all customers have to abide by when dining at the restaurant. Also, the variation of the premises Licence which is likely to be required by the applicant, will necessitate the licensing objective of the prevention of public nuisance having to be satisfied. If concerns remain over smokers outside, the numbers of smokers allowed outside or the times that they are allowed outside can be formalised as a Licence condition attached to any variation granted.

5.9 Any other concerns local residents may have about public nuisance should also be controlled by the premises Licence. For example, currently the premises

does not have Licence to provide regulated entertainment – i.e. live or recorded music. To do so they would have to vary the Licence. This variation would either be refused or strict conditions would be applied to satisfy the licensing objectives of the prevention of public nuisance. The three other licensing objectives – prevention of crime and disorder, protection of children from harm, and public safety, would also have to be satisfied with any premises Licence variation.

- 5.10 **Sustainable Transport:** No objection. The proposed change of use is unlikely to generate a significant increase in trips from the existing use and, due to the site's central location these are likely to be linked to existing trips made to other retail establishments or other land uses in the surrounding area or will occur outside the busiest times of the day for vehicular traffic. The site is also highly accessible to local bus services using Western Road.
- 5.11 Cycle parking is not being proposed on the site as required by the City Council's parking standards (SPG4). However it is acknowledged that due to the constraints of the site this may not be possible and that the temporary recession measures approved by the Council mean this size of development is below the threshold at which financial contributions (to facilitate on-street cycle parking) can be sought presently.
- 5.12 **Planning Policy:** No objection. SR8 (a) is met as the site lies close to the defined boundary of the regional shopping centre and (c) will be assessed and controlled as part of the application process. In respect of SR8(b) it is recognised this proposal is subject to unique circumstances which are felt to satisfy the aim of this criteria or could be controlled via condition. The established A1 retail use will remain within the unit albeit with a lower floorspace, in this particular case the impact on the viability of the retail use from this reduction is not considered to be negative. Indeed it may help increase the viability of the premises A1 use (as it is assumed the A3 will be a fish restaurant thus promoting the consumption of fish). It is therefore considered the aim of SR8(b) is met in principle.
- 5.13A condition should be imposed to require the A3 use section to revert back to A1 should it no longer be required in order to ensure the aim of SR8(b) is not undermined should the A3 element no longer be required. This is considered necessary because the proportion in A3 use would no longer be protected by SR8 it is therefore reasonable to ensure the viability of the A1 use is not undermined as a consequence and that alternative uses are tested within the context of SR8.

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 comprises:
- 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 & 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) March 2012

Brighton & Hove Local Plan 2005:

TR1	Development and the demand for travel
TR7	Safe development
TR14	Cycle access and parking
TR19	Parking standards
QD27	Protection of Amenity
SU9	Pollution and nuisance control
SU10	Noise nuisance
SR8	Individual shops
HE6	Development within or affecting the setting of a Conservation Area

Supplementary Planning Guidance:

SPGBH4	Parking Standards 2000
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8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the principle of the change of use; the impact on residential amenity; and implications for sustainable transport.

Planning Policy:

- 8.2 Policy SR8 of the Brighton & Hove Local Plan states planning permission for changes of use of individual shops from Class A1 use will be permitted provided that 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.
- 8.3 Policy QD27 states that planning permission for any development 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.
- 8.4 Policy SU9 of the Local Plan relates to pollution and nuisance control. Pollution and nuisance can include noise, dust, dirt, fumes, gases, steam, smell, radiation, vibration, light, smoke, heat and other polluting and nuisance emissions. All proposed developments that have potential to cause pollution and/or nuisance are required to incorporate measures to minimise the pollution/nuisance. Where appropriate planning conditions will be imposed in order to secure the necessary requirements.
- 8.5 Policy SU10 of the Local Plan states developments likely to generate significant levels of noise will be permitted only where appropriate noise attenuation measures are incorporated which would reduce the impact on the surrounding land uses, existing or proposed, to acceptable levels in accordance with government guidance. Where necessary, planning conditions will be imposed in order to specify and secure acceptable noise limits, hours of operation and attenuation measures.

Principle:

- 8.6 The application site is not situated in the designated Regional Shopping Centre which runs along Western Road (Policy SR4) and as an individual shop the principle of the change of use should be assessed against Policy SR8.
- 8.7 The application site is within easy walking distance of Western Road, which is part of the Regional Shopping Centre where shops and services are available locally, to residents in the catchment area.
- 8.8 The proposal is for a mixed use and the current established retail sales use would continue from the premises. For this reason it is not considered necessary for the applicant to demonstrate that a retail use is no longer viable from the premises and no objection is raised by Planning Policy. The additional A3 use to operate alongside the A1 use is considered to be a diversification which should enhance the viability of the premises as opposed to the 'loss' of a retail use.
- 8.9 The proposal would not be materially detrimental to the general character of the area. Although predominantly residential, this densely built-up locality is interspersed with small commercial enterprises including shops, The Old Market and a small number of public houses. The proposal to add a restaurant use to the existing retail use would not be detrimental to the unique and historic general character of the area and is limited to the constraints of the footplate.

- 8.10 No external alterations are proposed and the cooking extraction system would not feature an external outlet or any external ductwork.
- 8.11 There is no objection to the principle of this change of use.

Impact on residential amenity:

- 8.12 Some concerns have been raised about future uses. The proposal is for a restaurant use, and any subsequent proposal for a bar, public house or nightclub use would be subject to a separate planning application.
- 8.13 According to the Council's Statement of Licensing Policy, the application site lies within the Cumulative Impact Zone of the city centre. This means that the concentration of licensed premises in this part of the city centre is causing problems of crime and disorder and public nuisance, and therefore an approach to the cumulative impact is necessary as part of licensing policy. The impact of licensed premises such as restaurants is different to the impact of bars, pubs and nightclubs. For example, at a restaurant drinks will be served with food and a planning condition can be imposed to ensure this is the case.
- 8.14 The Council's Statement of Licensing Policy would normally allow a restaurant in the Cumulative Impact Zone provided it closes at midnight, whereas in mainly residential areas the Statement of Licensing Policy would normally allow a restaurant to open until 11.30pm.
- 8.15 The hours of opening of the restaurant use are proposed from 9.30am until 11.00pm Mondays to Saturdays inclusive, and from 9.30am until 10.00pm on Sundays and Bank Holidays and are therefore in accord with the Council's Statement of Licensing Policy for a residential area (and being within the Cumulative Impact Zone).
- 8.16 Neighbouring residents express concerns in relation to noise from customers smoking outside the premises and also that there would be additional noise and comings and goings in the evenings and more taxis and vehicles arriving and leaving the premises.
- 8.17 The applicant proposes to manage customers who choose to smoke outside of the premises and such a management strategy may form part of Licensing requirements. However, in planning terms, the number of customers likely to be outside smoking, together with the premises closing at 11.00pm, is not likely to have a significant adverse impact on neighbour amenity in this location.
- 8.18 The small size of the establishment together with the fact the streets are within a Controlled Parking Zone and that the site is in a very sustainable location, close to frequent bus routes along Western Road and near to the seafront, means that noise and disturbance from extra traffic is not likely to have a significant adverse impact on residential amenity.
- 8.19 Neighbouring residents also express concerns over noise from the kitchen extraction system and cooking odours.

- 8.20 Environmental Health has raised no objection and is satisfied with the odour control and sound levels of the equipment proposed to be used. This detail can be controlled by planning condition.
- 8.21 In view of the above the proposal is considered to comply with policies SU9, SU10 and QD27 of the Local Plan.

Sustainable Transport:

- 8.22 Policy TR1 of the Local Plan requires development to provide for the transport demand generated. Requirements for cycle parking provision and car parking standards are set out in policies TR14 and TR19 of the Local Plan and within SPGBH4: Parking Standards.
- 8.23 For A3 restaurant uses within Controlled Parking Zones in the central area, a maximum of one car parking space per 5 square metres of public floor area plus one car parking space per 4 full time equivalent staff members.
- 8.24 These are maximum parking standards. The applicant proposes no off-street parking spaces and indeed this would not be practicable because the three sides of the end-of-terrace building adjoin the street directly. No off-street secure cycle parking provision could be provided for the same reason but SPGBH4 requires only a minimum of 1 cycle parking space for the proposal, which is not considered significant.
- 8.25 However, this is considered acceptable because the site is in a very sustainable location whereby customers and visitors would not need to be reliant on using a private car to use the premises. The site is within walking distance of Western Road which has frequent bus routes across the city, to the railway station and farther afield.
- 8.26 No objection has been received from Sustainable Transport, and the proposal is not considered likely to materially worsen existing highway conditions or be detrimental to highway safety.

9 CONCLUSION

- 9.1 The proposed change of use is acceptable in principle and would retain a retail sales element.
- 9.2 The proposal would not have a significant adverse impact on residential amenity or materially worsen existing highway conditions.

10 EQUALITIES

- 10.1 The applicant should take steps where appropriate to ensure the premises are accessible for those with mobility difficulties.

11 PLANNING OBLIGATION / CONDITIONS / INFORMATIVES

11.1 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 listed below.
Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan			4 July 2012
Existing and Proposed Floor Plans			13 June 2012
BT Ventilation Services Ltd kitchen extract system data			13 June 2012
Longar Industries Ltd carbon filter specification			13 June 2012
Photographs x 2			11 June 2012

- 3) No alcohol shall be served in the premises except to persons seated and consuming food prepared in, and purchased from, the premises.
Reason: To safeguard the amenities enjoyed by neighbouring properties, in the interests of public order and crime prevention and in accordance with policy QD27 of the Brighton & Hove Local Plan.
- 4) The use hereby permitted shall not be open to customers except between the hours of 9.30am and 11.00pm from Mondays to Saturdays inclusive, and from 9.30am until 10.00pm on Sundays, Bank or Public Holidays.
Reason: To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 5) No machinery or plant (e.g. kitchen extraction and odour control equipment) shall be used at the premises except between the hours of 9.30am and 11.00pm from Mondays to Saturday inclusive, and from 9.30am until 10.00pm on Sundays, Bank or Public Holidays.
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 premises shall only be used for a mixed use comprising (32 m²) for Class A1 retail use and (20m²) Class A3 restaurant use, and for no other purposes (including any other purpose in Classes A1 and A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
Reason: The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of safeguarding the amenities of the area and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

11.2 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 Development 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 principle and would retain a retail sales element. The proposal would not have a significant adverse impact on residential amenity or materially worsen existing highway conditions.
2. 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, website: www.brighton-hove.gov.uk/licensing).

