

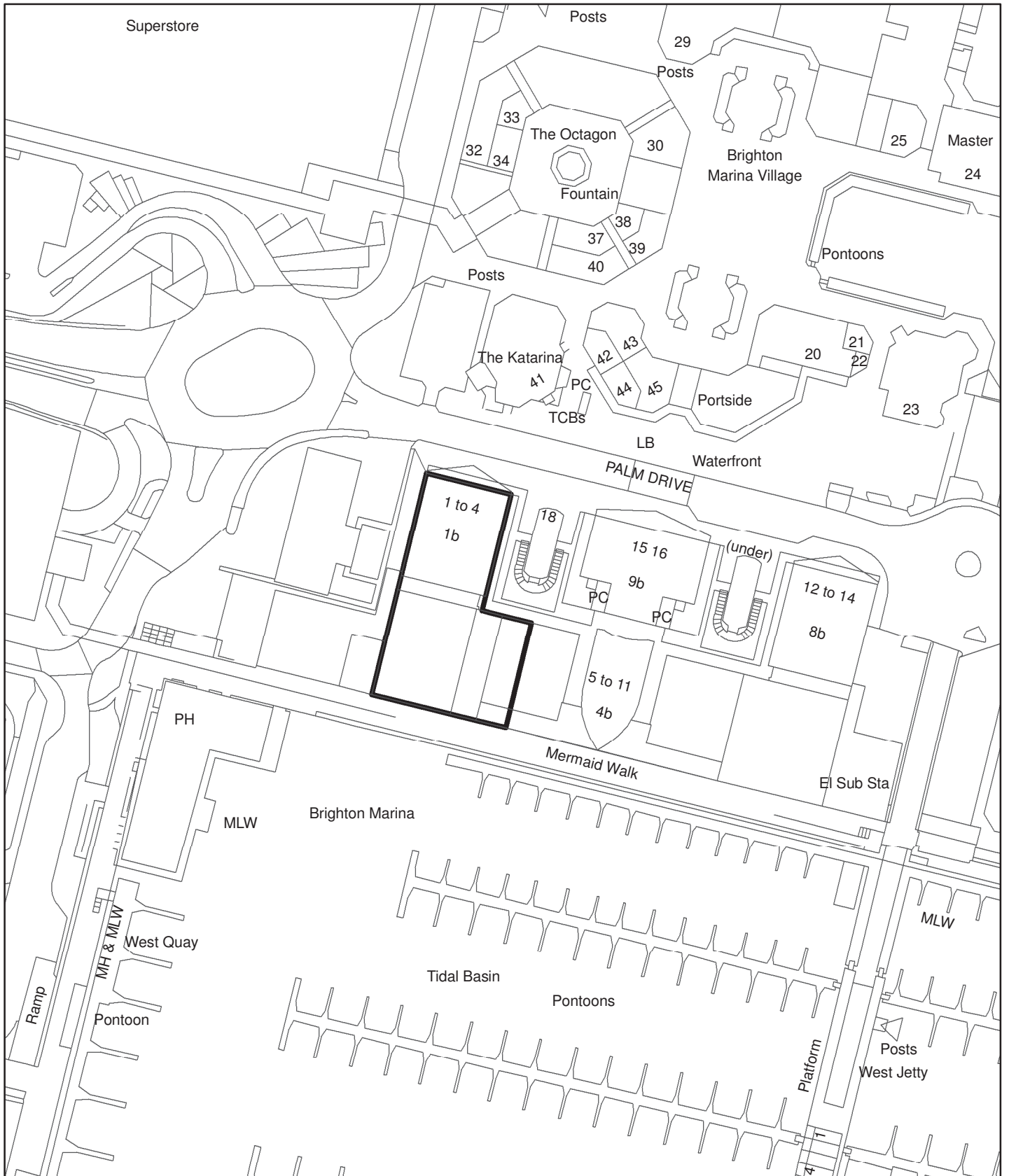
**PLANS LIST
ITEM C**

**Units 1-5 Ground Floor & Unit 1 First Floor,
Waterfront, Brighton Marina**

**BH2012/03813
Full planning consent**

13 MARCH 2013

BH2012/03813 Units 1-5 Grd Fl & Unit 1 1st Fl, Waterfront, Brighton Marina.



N



Scale: 1:1,250

<u>No:</u>	BH2012/03813	<u>Ward:</u>	ROTTINGDEAN COASTAL
<u>App Type:</u>	Full Planning		
<u>Address:</u>	Units 1–5, Ground Floor & Unit 1 First Floor Waterfront, Brighton Marina, Brighton		
<u>Proposal:</u>	Change of Use from retail (A1) on ground floor and drinking establishment (A4) on first floor to restaurant (A3).		
<u>Officer:</u>	Anthony Foster, tel: 294495	<u>Valid Date:</u>	20/12/2012
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	21/03/2013
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Indigo Planning, Swan Court, Worple Road, London		
<u>Applicant:</u>	X-Leisure Ltd, C/O Indigo Planning		

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 units 1-5 at ground floor level and Unit 1 at first floor level of the Waterfront building, which is located on the southern side of Palm Drive within Brighton Marina. The Waterfront building is a four-storey building whereby the ground floor comprises 5 commercial units fronting onto Palm Drive. These units currently have a lawful A1 retail use. At first floor level Unit 1 is currently vacant, however its lawful use is as an A3/A4 restaurant/drinking establishment. The remainder of the Waterfront building comprises a hotel at second and third floor levels, fronting onto the sea.
- 2.2 A number of the units at ground floor level are currently occupied. Units 1 & 2 are in use as a single retail unit and unit 3 is also in use as retail. The remaining units which are subject to this application are vacant.
- 2.3 The site is located opposite the defined District Centre of Brighton Marina as defined by the proposals map, and is not located within.

3 RELEVANT HISTORY

BH2011/03105: Change of Use from retail (A1) to mixed use children's activity club, café and retail incorporating installation of external extraction duct. (A3/A1/D1) Approved 13/01/2012

BH2007/03016: Change of use from retail (Class A1) to indoor simulated golf centre (Class D2). Approved 11/12/2007

BH2006/01424: Variation of Condition 14 relating to planning permission BH2000/02665, to allow extended opening hours from 1am to 3.30am for Fridays and Saturdays (Retrospective). Also Variation of Condition 18 to remove restriction that no more than 80 standing drinkers may be accommodated within the unit at any one time. Approved 27/06/2006

BH2000/02665: Proposed mixed use development including 3483m² A1 (shops) retail space 4665m² A3 (food and drink), retail space and 100 bedroom hotel (amended design to that approved under BH1999/02001/FP). Approved 03/08/2001

4 THE APPLICATION

- 4.1 Planning permission is sought for the change of use of the existing retail units at ground floor level and the amalgamation of the units with Unit 1 at first floor level to form a single A3 unit comprising circa 1,557sqm of floorspace. The application is a speculative application as there is no identified end user for the unit. No external alterations are proposed.

5 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours:** None received.
- 5.2 **Sussex Police Crime Prevention Design Adviser:** Comment. As the application is for the amalgamation of 5 units over 2 floors, I urge the applicant to check that all doors to the units are fit for purpose and consideration is to be given to changing the locals to ensure complete security of the new restaurant.

- 5.3 **Environment Agency:** No comment.

Internal:

- 5.4 **Environmental Health:** No Objection. Subject to conditions in relation to noise and odour
- 5.5 **Planning Policy:** Comment. The application should be determined in accordance with the Local Plan and emerging policies in the City Plan Part 1
- 5.6 **Sustainable Transport:** Comment. Recommended approval subject to conditions relating to cycle parking

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 & 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:

- SR5 Town and district shopping centres
- SR12 Large Use Class A3 (food and drink) venues and Use Class A4 (pubs and clubs)
- SR17 Smaller scale sporting and recreational facilities
- TR1 Development and the demand for travel
- TR7 Safe development
- TR14 Cycle access and parking
- TR19 Parking standards
- SU9 Pollution and noise control
- SU10 Noise nuisance
- QD7 Crime Prevention through environmental design
- QD14 Extensions and alterations
- QD27 Protection of Amenity

Draft City Plan – Part 1

None relevant

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the principle of the proposed change of use, transport impact and parking and impact upon the amenity of neighbouring occupiers.

Principle

- 8.2 There have been a number of previous applications on the site which have considered the change of use to be acceptable. The application site falls outside of the defined District Shopping Centre and as such Local Plan Policy SR5 does not therefore apply. Local Plan Policy SR7 is in relation to local parades. The term 'local parade' refers to a cluster of three or more A1 retail units such as newsagent, convenience store or off-licence, together with A2 uses, for example estate agents or A3, A4 or A5 uses, that function as a group and are capable of

servicing the convenience needs of a local residential catchment population. The application site forms part of a purpose built development and does not provide for the convenience needs of the local catchment area as these are provided by the District Centre itself.

- 8.3 The application documents detail that the unit was constructed in 2002 and since this time has only been occupied for a short period in late 2007/early 2008 following the grant of permission ref. BH2007/03016, functioning as an indoor golf centre. It is the case that for a period of approximately 10 years the unit has never functioned as a retail unit and has been vacant for approximately 9 years.
- 8.4 The application units and some neighbouring units in a similar location have been subject to extended periods of vacancy. The units are set away from the main pedestrian routes through the Marina site and therefore do not benefit from significant passing trade.
- 8.5 The loss of A1 retail within unit 5 has been accepted by the grant of planning permission reference BH2011/03105, which is still extant. As part of that application the officer considered that it was clear that given the extensive marketing exercise which had taken place, securing occupiers for vacant units in the Marina has been challenging for a number of years, and the application site in particular, being of a relatively large size and poor location, has for the majority of its existence failed to contribute to the vitality of the Marina.
- 8.6 Whilst two of the units are currently occupied the applicant has indicated that the current occupiers are in liquidation and as such the units will become vacant within the near future. As the units are located outside of the defined shopping centre and given the supporting letter it is considered that a flexible approach is required in this case.
- 8.7 The proposed change of use would result in the creation of an A3 restaurant of circa 1,500sqm and as such Local Plan Policy SR12 applies. Policy SR12 relates to 'large' Use Class A3 and A4 premises. The policy aims to safeguard nearby residents and the wider public from potential noise, disturbance and public disorder which could result from such premises in isolation, or from concentrations of such 'large' establishments in a particular area. In particular the policy states that applications for new A3/A4 establishment or extensions to such with a resultant public floor space in excess of 150 sqm will be permitted providing that:
 - a. the premises would not be within 400m of another establishment falling into the above category (evidence to demonstrate this must be supplied by the applicant);
 - b. the premises do not, or will not, operate within, or abutting, premises containing residential accommodation except that occupied by staff of the premises;
 - c. that having regard to the location of the premises and the type of building in which it is accommodated, the use will not, in the opinion of the local planning authority, be likely to cause nuisance or an increase in disturbance to nearby residents by reason of noise from within the premises;

- d. that having regard to the location of the premises in relation to other similar establishments; the customer capacity of on or off site parking facilities; and public transport facilities, in the opinion of the local planning authority, the use is unlikely to result in increased levels of public disorder or nuisance and disturbance to nearby residents as a result of people leaving the premises late at night and dispersing to transport and other destinations.
- 8.8 Whilst the proposed development may not be able to comply with these criteria due to the presence of other A3/A4 establishment in the vicinity, exceptions to this policy may be permitted providing that any public floor space in excess of 150 sqm is for service for seated customers in the manner of a restaurant or café.
- 8.9 In relation to the criteria detailed above there are other 'large' A3/A4 premises within 400m, however an exception may be allowed if the sale of alcohol is restricted to those persons who are taking meals on the premises and who are seated at tables. This may be controlled by a suitably worded condition.
- 8.10 Policy QD27 of the Brighton & Hove Local Plan 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. Policy SU10 of the Local Plan relates to developments likely to generate significant levels of noise which could adversely affect occupiers of neighbouring properties and the surrounding environment.
- 8.11 Environmental Health has raised no objection to the application as previously discussed the proposal is not considered to have a material impact upon the amenity of adjoining occupiers.
- 8.12 As the application is speculative the proposed hours of use have not been provided as part of this application. Whilst the premises do not adjoin residential accommodation and as such the use is not considered to cause a nuisance or an increase in disturbance to nearby residents by reason of noise from within the premises. To ensure that the potential for disturbance within the local vicinity is reduced it is considered that the hours of opening should be restricted inline with those of the remaining establishments within the marina and as such hours of 09:00 to 23:00 are proposed and considered appropriate.
- 8.13 In regard to transport it is considered the increase in trips that the proposed use would be likely to cause would not be of a magnitude that would have a material impact on the operation of the highway. There is substantial public parking available for motor vehicles at the Marina and some cycle parking. These facilities are considered to have adequate capacity to absorb the demand generated by the proposed use.
- 8.14 The proposed change of use, if implemented, would result in the occupation of the unit and would attract additional visitors to the Marina who would be likely to carry out combined trips by visiting other businesses within the Marina site. This would be to the benefit of the units within the defined centre and beyond. The

proposed use would also generate employment which would be likely to be equal to or greater than that which a retail use would generate.

- 8.15 In conclusion, the proposed use is considered to be acceptable in this location and no significant harm would result. Approval is recommended.

9 CONCLUSION

- 9.1 The proposed change of use is considered acceptable in this location, significant harm to the amenity of neighbouring occupiers will not result and the development will sufficiently address transport considerations.

10 EQUALITIES

- 10.1 No alterations are proposed to the main entrance of the premises.

11 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
Site Location Plan	18800001/1		20/12/2012
Ground Floor Restaurant Unit 1-5 Lease Plan	2404/DQ/01		20/12/2012
Fist Floor Restaurant Unit 1 Lease Plan	2404/DQ/02		20/12/2012

- 3) The premises shall not be in use except between the hours of 09.00 and 23.00.

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

- 4) 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 noise sensitive premises, shall not exceed a level 5dB below the existing LA90 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. The methodology of the background noise survey shall be agreed with the local planning authority prior to commencement.

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.

- 5) No intoxicating liquor shall be sold or supplied within the A3 unit hereby approved except to persons who are taking meals on the premises and who are seated at tables. 'Meals' means food that has been cooked or prepared and purchased within the premises. Any bar area shall be ancillary to the approved A3 restaurant use.

Reason: In the interest of general amenity and public order and to comply with policies QD27 and SR12 of the Brighton & Hove Local Plan.

11.2 Pre-Occupation Conditions:

- 6) No development shall commence until a scheme for the fitting of odour control equipment to the building has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.

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

11.3 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 considered acceptable in this location, significant harm to the amenity of neighbouring occupiers will not result and the development will sufficiently address transport considerations.
2. In accordance with the National Planning Policy Framework 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.
3. The applicant should be aware that approval of this application does not prevent future complaints in regards to noise and odour being investigated under the Environmental Protection Act 1990.
4. 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).

