

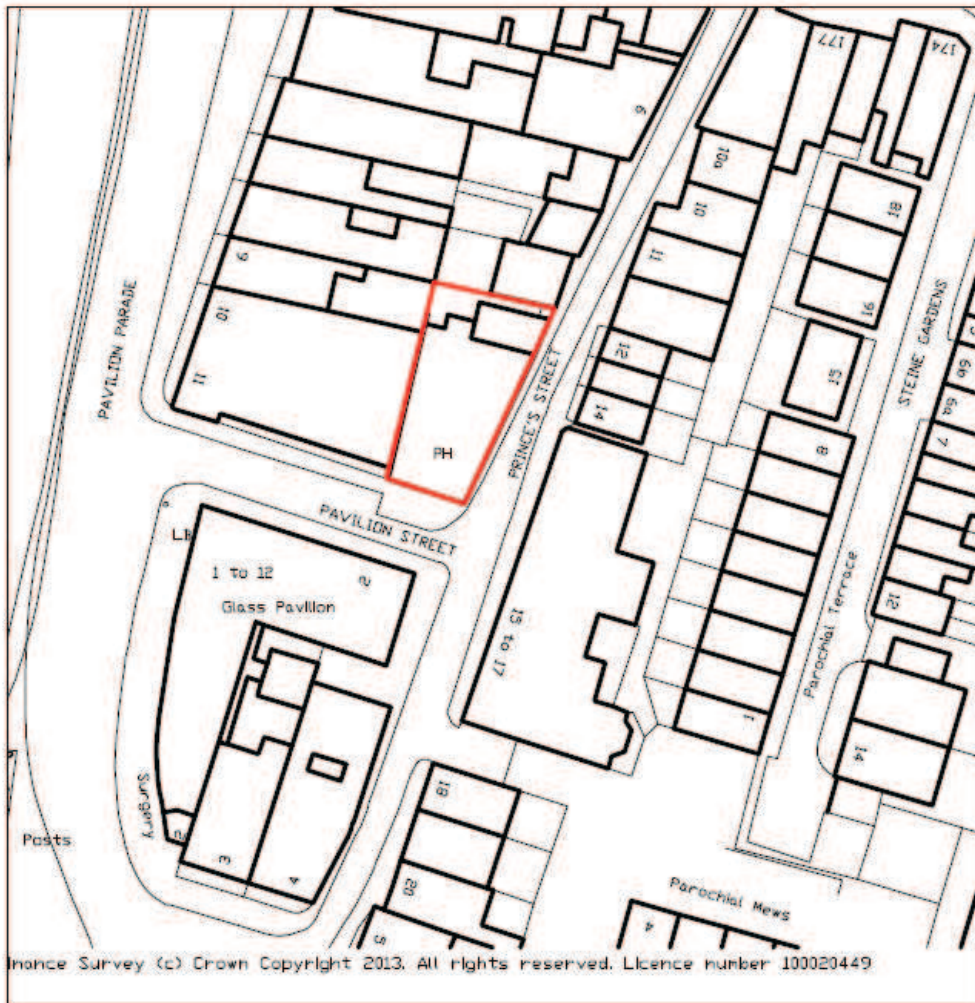
# **ITEM D**

**The Marlborough, 4 Princes Street, Brighton**

**BH2013/02540**  
**Full planning**

**09 OCTOBER 2013**

BH2013/02540 The Marlborough, 4 Princes Street, Brighton



**Location Plan 1:1250**

<b><u>No:</u></b>	<b>BH2013/02540</b>	<b><u>Ward:</u></b>	<b>QUEEN'S PARK</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>The Marlborough 4 Princes Street Brighton</b>		
<b><u>Proposal:</u></b>	<b>Formation of beer garden to replace existing garage incorporating blocking up of garage entrance, relocation of toilets and associated works.</b>		
<b><u>Officer:</u></b>	Liz Arnold Tel 291709	<b><u>Valid Date:</u></b>	26/07/2013
<b><u>Con Area:</u></b>	East Cliff	<b><u>Expiry Date:</u></b>	20 September 2013
<b><u>Listed Building Grade:</u></b>	N/A		
<b><u>Agent:</u></b>	Lewis and Co Planning SE Ltd, Lewis & Co Planning 2 Port Hall Road Brighton BN3 5SG		
<b><u>Applicant:</u></b>	Mr P Bennett, C/O Lewis & Co Planning Lewis & Co Planning 2 Port Hall Road Brighton BN3 5SG		

## 1 RECOMMENDATION

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 a property located on the western side of Prince's Street, on the corner of Pavilion Street. The four storey property is currently in use as a public house with a theatre above.
- 2.2 Currently a garage, store room and toilets are located towards the northern side of the site along with a fire escape which provides access from the upper floor theatre to Prince's Street via a doorway within the existing east facing wall of the rear section of the public house.
- 2.3 The site is located within the East Cliff Conservation Area and adjacent to the Valley Garden Conservation Area. The site is also located in close proximity to Listed Buildings including nos. 15 to 17 Prince's Street and 10 to 11 Pavilion Parade.

**3 RELEVANT HISTORY**

**BH2004/02124/FP** - Change of use of second and third floors from part use as house in multiple occupation (HMO) to form 2 No. self-contained flats. Withdrawn 06/09/2004.

**BH2003/03592/CL** - Certificate of lawfulness for an existing use to continue to use the property as Public House, Theatre and Hotel. Refused 19/12/2003.

**BH1999/00003/FP** - Alterations to existing external fire escape. Approved 01/03/1999.

**4 THE APPLICATION**

Planning permission is sought for the formation of a beer garden at the rear of the public house, to replace the existing garage. Works also include the blocking up of the existing garage door opening, the re-location of the toilets and associated works.

**5 PUBLICITY & CONSULTATIONS**

**External**

5.1 **Neighbours: Five (5)** letters of representation have been received from **6, 7, 12 and 13 (x2) Prince's Street**, objecting to the application for the following reasons;

- Disturbed by noise from outdoor patrons using existing outdoor seating area at front of pub,
- Constant feeling of “something going on” up the road. In the small and narrow space of Prince's Street this is discomfoting, irritating and a tangible intrusion into nearby homes and quality of life,
- The small space proposed is enclosed by high brick walls, sound would reverberated wildly and amplify,
- The beer garden would, no doubt, be wired for loud speakers as this pub is very insistent on club-type music,
- As the area is currently part of a fire escape from the pub and the theatre upstairs, suppose the present doorway will be retained and perhaps increased in size, affording not only an escape in emergencies but an easy means for patrons to spill out to smoke and drink in Prince's Street,
- Currently patrons spill out in excessive numbers onto surrounding pavements and Prince's Street during special events such as Pride and more often theatre performances,
- The existing garage is used as a store for refuse from the pub and kitchen. There is not provision for waste storage indicated on the proposed plans. If the garage door were to be blocked and the bins stored outside they would permanently block the pavement if they were left in front of the wall,
- The site a confined space but high walls do little to contain noise. As this site the extremely high walls to the north and south will ensure that rising sound will reverberate only one way to Prince's Street.
- The submitted plans show the provision of 6 trestle tables with 12 benches which could easily seat 36 people and probably up to 50 on a busy night, this will be a noisy garden,

- The height of the surrounding buildings and walls precludes the access of sunlight during most of the licensing hours, this will not be a sunny garden,
- The application mentions the use of the site as a smoking area. However if any kind of awning or umbrella provision were to be provided the enclosed nature of the site would break the 'less than 50% enclosure' rule that controls smoking areas. This would not be a smoking garden,
- The beer garden would contribute to devaluing properties, and
- Generally Princes Street is a quiet walk through residential area, albeit noisy at times of festivals but constant banter from the proposed beer garden would not be acceptable.

5.2 **Three (3)** letters of representation have been received from **Flat 8 and 10 Glass Pavilion and Flat 1 The Old Court House, Prince's Street, supporting** the application for the following reasons;

- Agree with the application that the noise from customers at the pub in the seated area on the street is too loud and does create conflict. The proposal should deal with that in a sensible way by moving customers sitting outside to the back of the pub.

5.3 **Flat 2, The Old Court House, 15-17 Prince's Street, Comments** that at present the patrons are provided with outside seating and tables on the public pavement in front of the pub. This is not only inconvenient to pedestrians but of great annoyance to neighbouring residents. The pub's patrons can be extremely noisy late at night in this public space, causing considerable disturbance to neighbouring properties. Would favour the creation of a beer garden providing the pub removes its present outside seating area from the pavement and contains it within the confines of the newly formed gardens.

5.4 **Sussex Police:** Whilst there are no concerns over the design and layout of the proposal, it is the amenity of residents in the neighbouring properties that gives cause for concern. Noise travels far at night and it is considered that should the beer garden's proposed midnight closure and Saturday closure of 02:00 hours be accepted, it would cause unacceptable high noise levels to the immediate neighbours.

A more acceptable time limit of 23:00 Sunday to Thursday and Midnight Friday and Saturday should be considered for the use of the beer garden.

**Internal:**

5.5 **Environmental Health (Noise):**

(Original comments) The location of the site with regards to the close proximity to local residents has led to a conclusion that the hours of use of the beer garden should be restricted to 10pm. After this, the beer garden should be shut and not in use until the pub opens the following day.

The application proposes the addition of a beer garden to the existing pub. Concerned about the location of the site with regards to the close proximity of local residents. There is also a lack of detail about managing the noise from the proposed beer garden.

The use of the outside beer garden, combined with the hours proposed is likely to have an adverse affect on the local residents with regards to noise nuisance. People noise is intermittent with laughing and shouting and it is difficult to control, especially in the context of people drinking in a beer garden.

Recommend condition restricting use of the beer garden in addition to informative regarding the Environmental Protection Act 1990 and Licensing Act 2003.

(Additional comments) The location of the site with regards to close proximity to local residents has lead to recommendation that conditions regarding the hours of use of the beer garden being restricted to 10pm and no live or amplified music in the beer garden should be attached.

There is a history of noise complaints associated with the pub. Live or amplified music in the beer garden, with such close proximity to neighbouring residents is also likely to cause a noise nuisance to local residents.

**5.6 Environmental Health (Health and Safety):**

(Original comments) It appears that the garage will be removed to leave a four walled beer garden without a roof. Without a roof there is no shelter which means smoking cannot be prevented there. If there is a structure with a roof would then look at the percentage of wall area which is open to the air in order to calculate whether the shelter is complaint or not.

(Additional comments) Regarding the possibility of the pub putting up umbrellas in the beer garden, for smoking would need to assess the arrangement of the umbrellas in relation to the nearest wall or building as there is no clear cut guidance in the smoke free legislation. The offence is not the umbrellas being there, it occurs if there is less than 50% of the wall area open to the air (as with any smoking shelter) and a person or persons smoke there. As umbrellas are usually circular it would be easier for them to comply than square or rectangular structures unless they were grouped together and touching the walls in more than one place. Would need to individually asses each case if there was a complaint.

**5.7 Heritage:** (Verbal comments) Have no concerns regarding the removal of the existing garage door despite resulting in the provision of a blank wall but ideally would like the existing metal coping strip and vent in the wall to be removed as part of the proposal.

**5.8 Sustainable Transport:** Recommends approval as the Highway Authority does not wish to object to the application.

**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:
- Brighton & Hove Local Plan 2005 (saved policies post 2007);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (Adopted February 2013);
  - East Sussex and Brighton & Hove Minerals Local Plan (November 1999); Saved policies 3,4,32 and 36 – all outside of Brighton & Hove;
  - East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only – site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.
- 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.
- 6.5 The Brighton & Hove City Plan Part One (submission document) is an emerging development plan. The NPPF advises that weight may be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies in the NPPF.
- 6.6 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:

TR19	Parking standards
SU9	Pollution and nuisance control
SU10	Noise nuisance
QD5	Design - street frontages
QD14	Extensions and alterations
QD27	Protection of Amenity
HE6	Development within or affecting the setting of conservation areas
HE3	Development affecting the setting of a Listed Building

#### Brighton & Hove City Plan Part One (submission document)

SS1	Presumption in Favour of Sustainable Development
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## **8 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to the impacts that the proposal would have upon the visual amenities of the parent property, the Prince’s Street street scene and the wider area, including the

surrounding East Cliff Conservation Area, the setting of the Valley Garden Conservation Area and the setting of the Listed Buildings located within the vicinity of the site. The impacts upon the amenities of neighbouring properties must also be assessed.

Visual Amenities

- 8.2 Policy QD14 of the Brighton & Hove Local Plan states that planning permission for extensions or alterations to existing buildings, including the formation of rooms in the roof, will only be granted if the proposed development:
- a) is well designed, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area;
  - b) would not result in significant noise disturbance or loss of privacy, outlook, daylight/sunlight or amenity to neighbouring properties;
  - c) takes account of the existing space around buildings and the character of the area and an appropriate gap is retained between the extension and the joint boundary to prevent a terracing effect where this would be detrimental to the character of the area; and
  - d) uses materials sympathetic to the parent building.
- 8.3 In considering whether to grant planning permission for extensions to residential and commercial properties, account will be taken of sunlight and daylight factors, together with orientation, slope, overall height relationships, existing boundary treatment and how overbearing the proposal will be.
- 8.4 At present a single storey flat roofed garage, a store and toilet block are located on the northern side of the main part of the building. The applicant seeks permission to remove these existing facilities and to provide an external beer garden. In addition the proposal includes the re-location of the toilets and store area and the infilling of the existing garage door opening with the eastern boundary of the site.
- 8.5 The east facing elevation of the existing garage would be retained, the existing garage door removed and opening in-filled, to match the rest of the elevation. Since submission of the application amended plans have been received upon which it is stated that the existing metal coping along the top of the retained garage elevation and the vent in the same elevation would be removed as part of the proposal, as requested by the Council's Heritage Officer.
- 8.6 The existing doorway in the eastern boundary would also be retained as part of the proposal although its width would be widened slightly in order to allow for the collection of bins, discussed in further detail below.
- 8.7 The proposed new toilet block would be located further to the west than the current. A new access door from the main bar area of the public house would be provided in the north facing elevation of the new toilet block. The existing internal toilet areas would also be altered as part of the proposal.
- 8.8 The new toilet extension would be finished in painted render to match the existing building and would have a felt flat roof.



- 8.9 Subject to the compliance with the recommended conditions it is not considered that the proposal would have an adverse impact upon the visual amenities of the parent property, the Prince's Street street scene or the wider area, including the setting of the surrounding East Cliff Conservation Area and the adjacent Valley Gardens Conservation Area or the setting of Listed Buildings located within the vicinity of the site.

Impact Upon Neighbouring Properties

- 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.
- 8.11 A number of residential properties are located within the vicinity of the site on Prince's Street, Pavilion Street and Pavilion Parade. The northern boundary of the site adjoins no. 6 Prince's Street. No windows relating to this neighbouring property are located within the southern elevation of this neighbouring property, which forms part of the northern boundary of the proposed beer garden however windows in the rear elevation of no. 6 and a rear external amenity area are located directly to the north of the proposed beer garden area.
- 8.12 Within the application form it is stated that the hours of opening would be Midday to Midnight Monday to Friday, Midday Saturday to 2am Sunday and Midday to Midnight on Sundays and Bank Holidays. Environmental Health have commented on the application and have advised that the suggested hours of use of the proposed beer garden are considered harmful to the amenities of the neighbouring properties. Due to the location of the site and the close proximity to neighbouring residential properties it is considered that the use of the proposed beer garden should be restricted to 10pm, an issue which can be ensured via the attachment of a condition.
- 8.13 It is also considered that in order to protect the amenities of neighbouring properties a condition should be attached prohibiting the playing of live or amplified music within the beer garden area.

Other Issues

- 8.14 Since submission of the application an amendment to the proposal has been made with regards to the identification of a bin store area within the proposed rear beer garden area to address concerns raised by a neighbour regarding the loss of the storage facilities within the existing garage. In association with this amendment the retained doorway within the eastern boundary of the site would be altered to be wide enough to allow bins to be emptied from Prince's Street.
- 8.15 Third party correspondence also raised queries regarding the use of umbrellas in the proposed beer garden and utilising the area for smoking. Although the proposed beer garden would be surrounded by four high walls no roof structure would be provided and therefore smoking in the beer garden does not need prohibiting. If umbrellas are to be utilised in the proposed garden area an assessment would need to be made with regards to calculating wall openings

as to whether the area would become smoking complaint. It is recommended that an informative is attached to an approval advising the applicant of this issue.

## 9 CONCLUSION

- 9.1 In conclusion it is considered that, subject to the compliance with the attached conditions, the proposed development would not be of detriment to the visual amenities of the parent property, the Prince’s Street street scene and the wider area, including the surrounding East Cliff Conservation Area and the setting of the Valley Gardens Conservation Area and the Listed Building location with the vicinity of the site. Furthermore subject to compliance with the attached condition, it is not considered that the proposal would have a significant adverse impact upon the amenities of neighbouring properties. The proposal accords with policies of the Brighton & Hove Local Plan.

## 10 EQUALITIES

None identified.

## 11 PLANNING OBLIGATION / CONDITIONS / 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 listed below.  
**Reason:** For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan/Block Plan	-	-	25 <sup>th</sup> July 2013
Existing Plans	01	-	25 <sup>th</sup> July 2013
Existing Elevations	02	-	25 <sup>th</sup> July 2013
Proposed Plans and Elevations	03	A	12 <sup>th</sup> September 2013

- 3) The external finishes of the development hereby permitted shall match in material, colour, style, bonding and texture those of the existing building.  
**Reason:** To ensure a satisfactory appearance to the development and to comply with policy HE6 of the Brighton & Hove Local Plan.

- 4) The beer garden hereby approved shall not be in use from 22:00pm hours until 09.00am the following morning Monday to Sunday The rear access door to the garden area shall remain closed and not be opened for any purpose, other than for emergency access, whilst the beer garden area is not in use.  
**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 live or amplified music shall be played in the beer garden at anytime.  
**Reason:** To safeguard the amenities of the locality and to comply with policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One (submission document) the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. 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:-  
Subject to the compliance with the attached conditions, the proposed development would not be of detriment to the visual amenities of the parent property, the Prince's Street street scene and the wider area, including the surrounding East Cliff Conservation Area, the setting of the Valley Gardens Conservation Area and the Listed Building location with the vicinity of the site. Furthermore subject to compliance with the attached condition, the proposal would not have a significant adverse impact upon the amenities of neighbouring properties.

