



# Appeal Decision

Site visit made on 25 November 2008

by **Andrew M Phillipson** BSc CEng FICE  
MIHT

an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**17 December 2008**

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## Appeal Ref: APP/Q1445/A/08/2077677

### Kiosk adjacent to Browns Bar and Restaurant, 33 Ship Street, Brighton BN1 1AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mitchells and Butlers Retail Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2007/03452, dated 17 September 2007, was refused by notice dated 19 December 2007.
- The development proposed is the extension of Browns Bar and Restaurant into the retail kiosk at 33 Ship Street.

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### Decision

1. I dismiss the appeal.

### Main Issue

2. The site is located within the defined prime frontage of Brighton's regional shopping centre. The sole matter at issue is the effect the proposed change of use would have on the character and vitality of the centre.

### Reasons

3. Policy SR4 in the Brighton and Hove Local Plan and the text accompanying it sets out the Council's policy governing changes of use within the prime frontages of the regional shopping centre. Paragraph 6.21 of the plan notes that the Council "*considers it particularly important to maintain at least 75% Class A1 uses*" in these frontages. This is reflected in the policy itself which states, amongst other matters, that changes of use from Class A1 shops to Class A2, A3, A4 or A5 uses will only be permitted where the change would not result in either the number of non-retail units or the proportion of frontages exceeding 25% of the shopping street(s) to which it relates.
4. The premises in question comprise a small retail unit in Ship Street, on one side of which is a section of Browns Bar and Restaurant. The proposal is to incorporate the unit in the bar/restaurant.
5. As to the effect of the proposal, the Council calculate (and the appellant company does not dispute) that the proportion of Class A1 use units in the Ship Street/Duke Street frontage is currently 57%. As such, it is already well below the minimum proportion required by the policy. If the change of use were permitted, the percentage would fall to 54%. It is accordingly not in dispute

that the change of use proposed would conflict with Policy SR4 of the Brighton and Hove Local Plan.

6. As to the effect of this on the shopping centre, the unit in question is currently vacant and it is my understanding that this has been the case for several years. There is no evidence to suggest that the failure to find an occupier for the unit is due to a fundamental lack of demand for retail premises in the area, however, or to some inherent defect in the unit itself that would make it unsuitable for Class A1 use. Rather, its ongoing vacancy is attributed to an unwillingness on the part of the landlord to agree terms that would allow the appellant company to sub-let it, coupled with a lack of desire on the part of the appellant company to themselves use the unit for Class A1 purposes.
7. This is plainly regrettable, and I accept that in its current state the unit does nothing to enhance the character or vitality of the street or the shopping area. That this is the case is reflected in the petitions that were submitted in support of the application and the appeal. I am conscious, however, that circumstances and attitudes can change, as indeed can landlords and tenants. Permitting the change of use sought would fly in the face of the development plan policy governing proposed changes of use in Brighton's regional shopping centre, and this is a matter that should not be set aside lightly. I accordingly take the view that, on balance, the appeal should be dismissed.

*Andrew M Phillipson*

Inspector