

<u>No:</u>	BH2016/01673	<u>Ward:</u>	St. Peter's And North Laine Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	79-81 Ditchling Road Brighton		
<u>Proposal:</u>	Creation of external seating area and associated alterations. (Retrospective)		
<u>Officer:</u>	Wayne Nee, tel: 292132	<u>Valid Date:</u>	20.10.2016
<u>Con Area:</u>	VALLEY GARDENS	<u>Expiry Date:</u>	15.12.2016
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	
Agent:	N/A		
Applicant:	Mr Paul De Souza 79-81 Ditchling Road Brighton BN1 4SD		

1. RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. 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	209/AS/01		5 October 2016
Existing Floor Plans and Elevations	209/AS/02		4 July 2016
Existing Floor Plans and Elevations	209/AS/03		4 July 2016
Existing Floor Plans	N/A		4 July 2016

- 2 The use hereby permitted shall not be open to customers except between the hours of 12.00 and 23.00 Mondays to Sundays, including 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.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One 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.

- 0 The applicant should be aware that whilst the requisite planning permission may be granted this does not preclude the Council from carrying out an investigation under the provisions of either the Environmental Protection Act 1990 and/or the Licensing Act 2003 should any complaints subsequently be received with regards to nuisance.

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1 The site relates to The Druids Public House which is a two storey end of terraced property that is situated on the corner of Ditchling Road and Baker Street. The site is within the Valley Gardens Conservation Area. The public house use is located on the ground floor of the building, and a residential flat is on the first floor. To the south of the site is the recently redeveloped Open Market site.
- 2.2 In between the application building and the Open Market there is an outdoor yard that forms part of a footpath that runs to the rear of the properties on Baker Street and links Ditchling Road to London Road. This area immediately adjoining the public house contains tables and benches and is used as an external amenity area. There is also an existing telecommunication cabinet located within the yard. The yard can be accessed via gates on either end.
- 2.3 The outside space within the boundary of the site is under the freehold ownership of the Council, and is leased to Hyde Housing.
- 2.4 Planning permission is sought for the creation of external seating area and associated alterations. This is a retrospective application.

3. RELEVANT HISTORY

BH2012/03754 Installation of new telecommunications cabinet on pavement - Refused 21/02/2013

Open Market

BH2015/00052 Application for Approval of Details Reserved by Condition 41 of application BH2010/03744 - Approved 18/09/2017

BH2010/03744 Redevelopment of Open Market and Francis Street car park comprising: a new partly covered market with 44 permanent market stalls, 12 B1/A1 (light industrial/retail) workshops, 8 loading bays, central square/market space, public toilets, offices and meeting room, ancillary market accommodation and plant, new gates to Marshalls Row and Ditchling Road entrances and 87 residential units in 3no 1-6 storey blocks, refuse and recycling stores, cycle parking, 5 car ports together with landscaping including alterations to carriageway and footway in Francis Street. Proposals to include a temporary market during construction - Approved 09/03/2011

Condition 41 of BH2010/03744 states:

41. Within 3 months of first occupation, an Acoustic Report shall be provided demonstrating that the predicted internal noise levels in the submitted Anderson Acoustic Report dated October 2010 and associated noise mitigation measures, such as glazing to the residential units and ceiling and wall construction of the loading bay and workshops, has been satisfactorily achieved. The parameters and scope of this Acoustic Report shall be agreed with the Local Planning Authority. If the report shows non-compliance with the predicted noise levels then details of further mitigation measures shall be submitted to and agreed in writing by the Local Planning Authority. The approved further mitigation measures shall implemented.

4. REPRESENTATIONS

4.1 **Councillor Lizzie Deane** objects to the application and has requested that the application is determined at Planning Committee (comment attached).

4.2 Six (6) letters have been received from 3, 4, 7, 8 & 9 Aster House Ditchling Road, and Hyde Housing objecting to the proposed development for the following reasons:

- Beer garden is close to windows of flats resulting in noise;
- Loud music from within pub until the early hours;
- Door from pub generates further noise;
- The pub do not even own the land of that the beer garden is on;
- Seating placed on street already causes problems with bins and fire hazards.

5. CONSULTATIONS

5.1 **Environmental Health:** No objection

Initial comments -

After the Open Market re-development and the creation of the flats adjacent to the Druids Arms (Aster House), since 2014 the team has received complaints about noise from customers outside the pub.

5.2 An acoustic report was submitted as part of Open Market re-development (planning app BH2010/03744). It concluded that:

5.3 'The potential noise impacts arising from music events and patrons outside the Druids Arms Public House have also been considered. It is concluded that the provision of triple glazing and the whole house ventilation system will provide adequate attenuation of music and patron noise from the Druids Arms.'

5.4 The report did not specifically assess noise from customers using the external seating area that is the subject of this application as it did not exist at that time.

5.5 However, it did involve a visit to measure noise from the pub on a busy night and this assessment included noise from customers both outside the front and rear of the premises, and I quote, 'at times when there were lots of people outside (circa 45).'

- 5.6 To arrive at the above conclusion, the report also made the following assumptions:
- 1) The windows of the pub will remain closed throughout the night.
 - 2) The first floor layout of the flats nearest to the Druids had been amended to minimise potential noise impacts from the pub (following the second floor layout).
 - 3) The internal noise levels in the flats assume that the windows are triple glazed and remain closed.
- 5.7 With regards to the first point, a condition on the premises licence (issued in accordance with the Licensing Act 2003) for the Druids Arms specifies:
- 1) 'For The Prevention of Public Nuisance: Windows and doors to be kept shut during performance of live music and DJs.'
- 5.8 With regards to points 2 and 3, following complaints about noise from patrons using the new external seating area that is the subject of this application, a late night visit was made to one of the flats nearest to the pub which overlooks the space. While in the flat, it was noted that with the windows closed, the trickle vents in the room were piping through a considerable amount of noise from pub customers using the outdoor area. It is therefore reasonable to assume that the trickle vents in the flat are not acoustically clad or treated.
- 5.9 In January 2015 an Application for Approval of Details Reserved by Condition 41 of application BH2010/03744 was made. The team commented on the application and concluded that there was insufficient information on which to comment.
- 5.10 Since the original visit there have been sporadically received complaints from one particular occupant and have offered dedicated out of hours visits and advised them to call the councils noise patrol service if they are disturbed either on a Friday or Saturday between 10pm and 3am. The team has not yet gathered evidence to substantiate that a statutory noise nuisance exists.
- 5.11 However, even if a noise nuisance in one of the flats was established, when considering the above and the fact that the planning condition regarding the achievement of satisfactory internal noise levels in the flats has still not been discharged, currently it would seem inappropriate to serve a noise abatement notice upon the operators of the pub as the persons responsible.
- 5.12 Therefore, the team do not recommend refusal of this planning application. However, while the applicant has stated hours of opening in their application, it is recommended that these hours are formally restricted by applying a condition.
- 5.13 Further comments - (following the submission of an acoustic report for BH2015/00052 Approval of Details application for Open Market) -

- 5.14 The outdoor seating at the Druids Arms was in use when the music event was measured (BH2015-00052- Condition 41- Acoustic vent)
- 5.15 Specifically, in the acoustic report provide by Acoustic Associates Sussex Ltd, entitled 'Indoor Noise Measurements' it is stated:
- 5.16 'Particularly noticeable in the lounge area of Flat 7, was the generation of people noise from the in-situ beer garden belonging to the Druids Arms. The noise was not entirely anonymous and contained the odd cheering or laughter which drew the listener's attention.
- 5.17 It was noted that the newly installed vents had the function which allowed the resident the choice to have these vents either open or closed. To assess the difference with the vents both open and closed in the lounge, measurements were made and compared. Subjectively, the two wall mounted vents being closed removed the majority of the people noise heard and reduced noise levels considerably. The closed vents according to the data measured improved the LAeq or the averaged noise energy, by 4dB.'
- 5.18 The last complaint my department received with regards to noise from the outdoor seating area of the Druids Arms was in November 2016.
- 5.19 No statutory noise nuisance was established under the provisions of the Environmental Protection Act 1990 and the case is currently closed.
- 5.20 **Licensing: Comment**
The site was recently visited for a routine licensing inspection. At that inspection, the applicant was advised that they would need to alter the plans of the premises licence once they had established where their smoking area or garden was going to be, as it is not on the current plans.
- 5.21 The Licensing Team have not investigated any complaints since 2014 for Licensing breaches but it is understood that the Environmental Protection team have been investigating noise complaints.
- 5.22 The applicant was also reminded of the Licensing Conditions that the premises must adhere to:
- 5.23 Annex 2 - Conditions consistent with the Operating Schedule:
- 5.24 For the prevention of crime and disorder:
- Outside benches will be cleared away by midnight.
 - At night, an enclosed smoking area that is located away from any local residential areas and accessed through the pub will be used.
- 5.25 For public safety:

- The Designated Premises Supervisor (DPS), or other personal licence holder, will be on the premises during live performance of music and DJs to assess and monitor capacity of premises.
- If personnel are engaged to control or restrict access to the premises - ie act in a 'door supervisory' capacity - they must be registered with the Security Industry Authority (SIA) and hold a current, valid SIA badge.
- A SIA registered door supervisor must operate from the premises on Saturday from 21.00 hours until close
- The premises will become a member of Night Safe or any similar 24 hour emergency response organisation set up to replace this.

5.26 For the prevention of public nuisance:

- Live music performances will end midnight every day
- Amplified sound equipment shall be governed by a sound limiting device set at a level approved by the licensing authority
- Windows and doors to be kept shut during performance of live music and DJs
- Prominent, clear and legible notices at all exits asking customers to respect the needs of local residents and leave the premises and the area quietly.
- DPS or other personal licence holder to monitor outside premises to check sound levels.
- For the protection of children from harm:
- Photographic proof of age will be required to be shown by anyone seeking to purchase alcohol who appears to be under 21.

6. MATERIAL CONSIDERATIONS

6.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report

6.2 The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove Local Plan 2005 (retained policies March 2016);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);

6.3 Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

7. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1 Presumption in Favour of Sustainable Development

CP12 Urban design

CP15 Heritage

Brighton and Hove Local Plan (retained policies March 2016):

TR7 Safe Development

SU9 Pollution and nuisance control

SU10 Noise Nuisance

QD14 Extensions and alterations

QD27 Protection of amenity

HE6 Development within or affecting the setting of conservation areas

8. CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to the character and appearance of the property and the wider conservation area, and the effects upon the residential amenity of the neighbouring properties.

8.2 Design and Appearance:

Policy QD14 of the Brighton and Hove Local Plan seeks extensions and alterations that are well designed and detailed in relation to the building and adjoining properties and the surrounding areas, among other things, and Policy HE6 is specific to development in conservation areas and is consistent with the requirement of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

8.3 The proposal is not prominently visible from public view as it is sited between the application building and the north-east building of the Open Market Development. It is also set behind a 2m high metal gate. A physical boundary gate was approved as part of the Open Market development (BH2010/03744) and this replaced a timber fence of a more temporary appearance in 2015.

8.4 The seating area itself consists of wooden picnic tables, benches, and movable plant pots, all underneath a retractable awning on the south wall of the building. The seating area can be accessed via the gates (although according to the applicant these are permanently locked), or more recently via a south elevation door of the public house. The new door has replaced a pre-existing window.

8.5 The seating area is barely visible from the street, and then only to a small degree through the gate. The movable garden furniture (which are not development themselves) and awning are structures that are in keeping with traditional pub garden appearance. The door also has limited visibility from the street and does not visually impact on the more characteristic features of the building to any significant degree.

8.6 It is therefore considered that the seating area and associated alterations are not detrimental to the character and appearance of the property or the street

scene or the wider conservation area, and as such the development is compliant with policies CP12 and CP15 of the City Plan Part One, and QD14 and HE6 of the Local Plan.

8.7 Impact on Amenity:

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.

8.8 Policy SU10 states that developments likely to generate significant levels of noise will be permitted only where appropriate noise attenuation measures are incorporated and where necessary, planning conditions will be imposed to secure acceptable noise limits, hours of operation and attenuation measures.

8.9 A sitting out area has been informally established at the public house for many years, normally by way of picnic tables and chairs placed either on the street and/or within the yard space. The outside seating area that forms part of this application was within the site boundary of the Open Market development (approved under BH2010/03744). A formal outdoor seating area is not shown on the approved plans, although it is clear from the decision that the intention was for at least part of this space to be used as outdoor seating for the public house. The drawings also indicate that this area should provide access between Ditchling Road and the bin storage further down the yard.

8.10 An informative on the decision notice states that 'The developer is advised to liaise with the operators and users of the Druids Arms Public House to seek to secure a satisfactory outcome with regard to a) refuse storage and arrangement for collection, and b) the provision of an area of outdoor space for customers.'

8.11 Immediately to the south, above the commercial units, there are first and second floor flats (Aster House). Objections have been received from a number of these adjoining flats, primarily in relation to noise from the outdoor seating area, but also in relation to noise from the pub itself.

8.12 It appears that the flats were designed in order for the main habitable windows of the flats to face directly onto Ditching Road, and intentionally away from the public house.

8.13 At the time of the 2010 application, the noise impacts of the traffic noise and commercial noise (including that of the pub) were considered in a submitted noise report. The committee report states:

8.14 '...the noise report confirms that noise levels from the pub (including when bands play) would not cause undue disturbance to new residents (given type and location of new windows) so the pub's viability should not be compromised.'

- 8.15 The approved application was subject to a condition to secure appropriate soundproofing measure for the flats (Condition 41). An Approval of Details Application was subsequently submitted (under BH2015/0052).
- 8.16 Environmental Health has received complaints of noise from the public house and the outdoor space/street seating, the last of which was received in November 2016. Environmental Health did not identify a statutory noise nuisance and the case is currently closed. Environmental Health highlighted an outstanding issue with regard to the soundproofing of the windows of flats within Aster House. For the recently approved conditions application BH2015/0052, recent building works occurred in March 2017 to retro fit acoustically treated air vents into the flats. An acoustic report dated July 2017 was submitted, which stated:
- 8.17 'Particularly noticeable in the lounge area of Flat 7, was the generation of people noise from the in-situ beer garden belonging to the Druids Arms. The noise was not entirely anonymous and contained the odd cheering or laughter which drew the listener's attention.
- 8.18 It was noted that the newly installed vents had the function which allowed the resident the choice to have these vents either open or closed. To assess the difference with the vents both open and closed in the lounge, measurements were made and compared. Subjectively, the two wall mounted vents being closed removed the majority of the people noise heard and reduced noise levels considerably. The closed vents according to the data measured improved the LAeq or the averaged noise energy, by 4dB.'
- 8.19 The Environmental Health Team were in agreement with the conclusions. The Approval of Details application was approved in September 2017.
- 8.20 Given the proximity of the public house, it is likely that neighbouring residents suffer from some noise disturbance, as outlined within the objections. Some of this noise would be from the on street tables, and also from live/amplified music from within the pub itself, and these noise impacts cannot be considered as part of this application. It is also likely that over time the more formalised seating arrangement has intensified its use. However as this outdoor space has previously been used as a drinking area with tables and chairs available for customers, it is not considered the formalising of this arrangement has led to a significant increase noise and disturbance for occupiers of adjoining properties. A condition to control the hours of use would however be necessary to protect the residential amenity of neighbouring residents from late night disturbance.
- 8.21 The proposed door may also have resulted in increased noise from the inside the pub itself, especially if the door is opened when live/amplified music occurs in the evening. However there is a condition on the premises licence stating that: 'For The Prevention of Public Nuisance: Windows and doors to be kept shut during performance of live music and DJs.'

- 8.22 Notwithstanding the outcome of this planning application, within the pub premises, Environmental Health has powers under the Environmental Protection Act to investigate for statutory noise nuisance.
- 8.23 Given the noise assessment made within BH2015/00052, and given the assessment above, subject to recommended conditions, the proposal is considered to accord with the provisions of Local Plan policies QD14 and QD27 in this regard.

9. EQUALITIES

- 9.1 None identified