

<b><u>No:</u></b>	<b>BH2022/00632</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>4 Prince's Street Brighton BN2 1RD</b>		
<b><u>Proposal:</u></b>	<b>Formation of beer garden to replace existing WC block and garage, incorporating blocking up of garage entrance and associated works.</b>		
<b><u>Officer:</u></b>	Russell Brown, tel: 293817	<b><u>Valid Date:</u></b>	14.03.2022
<b><u>Con Area:</u></b>	East Cliff	<b><u>Expiry Date:</u></b>	09.05.2022
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	
<b><u>Agent:</u></b>	Paul Joyce Lewis And Co Planning SE Ltd 2 Port Hall Road Brighton BN1 5PD		
<b><u>Applicant:</u></b>	Peter Bennett Laine Pub Company C/o Lewis And Co Planning SE Ltd		

This application was deferred from Planning Committee on the 8<sup>th</sup> June.

## 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 **APPROVE** planning permission subject to the following Conditions and Informatives as set out hereunder.

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.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location and block plan			6 April 2022
Proposed Drawing	02.A		21 June 2022
Proposed Drawing	326	C3	13 December 2021

2. 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.

3. The external finishes of the development hereby permitted shall match in material, colour and style those of the existing building.

**Reason:** To ensure a satisfactory appearance to the development, to protect heritage assets and to comply with Policies QD14 and HE6 of the Brighton & Hove Local Plan, CP12 and CP15 of the Brighton & Hove City Plan Part One and DM18, DM21 and DM26 of the Brighton & Hove Proposed Submission City Plan Part Two.

4. The beer garden hereby approved shall not be in use from 22:00 until 12:00 the following day from Monday to Sunday, including Public and Bank Holidays. The rear access doorway to the beer garden from Princes Street shall remain closed and only be opened for the purpose of removing refuse from the facilities and for emergency access.

**Reason:** To safeguard the amenities of the occupiers of adjoining properties and to comply with Policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan and DM20 and DM40 of the Brighton & Hove Proposed Submission City Plan Part Two.

5. No live or amplified music shall be played or otherwise generated in the beer garden at any time.

**Reason:** To safeguard the amenities of the locality and to comply with Policies SU9, SU10 and QD27 of the Brighton & Hove Local Plan and DM20 and DM40 of the Brighton & Hove Proposed Submission City Plan Part Two.

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.
2. The applicant is reminded of their duties under the Equalities Act 2010 in terms of accessibility to the beer garden.

## **2. SITE LOCATION**

- 2.1. The application relates to a four storey property located on the western side of Prince's Street, on the corner with Pavilion Street. The ground floor is currently in use as a public house known as the Actors (Sui Generis use) with a theatre (Sui Generis) above. 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 theatre to Prince's Street via a doorway within the existing east-facing wall. The public house is amongst a mix of leisure and entertainment premises, including theatres, restaurants, museums and public houses.
- 2.2. The site is located within the East Cliff Conservation Area and adjacent to the Valley Garden Conservation Area. The site is also located within the setting of the Grade II listed buildings at 10 - 11 Pavilion Parade and The Old Court House (15 - 17 Prince's Street). Additionally, it is within an Archaeological Notification Area, an Air Quality Management Area (AQMA) and Controlled Parking Zone (CPZ) C.

## **3. RELEVANT HISTORY**

- 3.1. **BH2013/02540:** Formation of beer garden to replace existing garage incorporating blocking up of garage entrance, relocation of toilets and associated works. Approved 17 October 2013 - decision made by Planning Committee
- 3.2. **BH2003/03592/CL:** Certificate of lawfulness for an existing use to continue to use the property as Public House, Theatre and Hotel. Refused 19 December 2003
- 3.3. **BH1999/00003/FP:** Alterations to existing external fire escape. Approved 1 March 1999

#### **4. APPLICATION DESCRIPTION**

- 4.1. The current application seeks the formation of a beer garden to replace an existing WC block and flat-roofed garage to the north of the main building, incorporating the blocking up of the garage entrance to the eastern boundary and the widening of a gated opening.
- 4.2. A change has been made during the course of the application so that the widened gate would open inwards rather than onto the highway.

#### **5. REPRESENTATIONS**

- 5.1. **Five (5) objections** were received during the consultation period, all from persons who are considered to be potentially directly affected by the scheme. The objections raised the following issues raising the following concerns:
  - Noise and disturbance at antisocial hours from customers, and also from glass disposal and collection.
  - The extra garbage and waste created could cause an eyesore and block the pavement.
  - The blank wall would be out of character for a residential area.
  - What is proposed has previously occurred.
  - Light spill
  - Invasion of privacy and loss of peaceful enjoyment.
  - This application is in direct opposition to Articles 1 and 8 of the Human Rights Act 1998.
  - Unsuitable for an area surrounded by residential properties.
  - Inappropriate size and capacity of the beer garden.
  - Easy access to the base of the fire escape in the garden could be a temptation to patrons.
  - There won't be a direct view from the bar into the beer garden and so staff will not know how raucous their patrons are being, and CCTV does not provide sound.
  - The existing garage provides a valuable enclosed space which helps the pub function in a neighbourly way.

- 5.2. **One (1)** representation was received in support, noting that the recent changes to the pub have already improved the area and that this application continues to do the same.

## 6. CONSULTATIONS

### External:

- 6.1. **Brighton and Hove Archaeological Society:** Recommendation to contact the County Archaeologist for their recommendations
- 6.2. **Designing Out Crime Officer (Sussex Police):** No objection, subject to a condition on hours of trading in order to protect the amenity of nearby residential occupiers at unsocial hours

### Internal:

- 6.3. **Environmental Health:** No comments received
- 6.4. **Heritage:** Approve
- 6.5. **Tourism & Leisure Department:** Support
- 6.6. **Transport:** Acceptable, subject to the gate opening inwards

## 7. MATERIAL CONSIDERATIONS

- 7.1. 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.

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

- 7.2. 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);
  - Shoreham Joint Area Action Plan (October 2019)
- 7.3. 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.

## 8. RELEVANT 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 & Hove Local Plan (retained policies March 2016)

TR7 Safe Development

SU9 Pollution and nuisance control

SU10 Noise nuisance

QD5 Design - street frontages

QD14 Extensions and alterations

QD27 Protection of amenity

HE3 Development affecting the setting of a listed building

HE6 Development within or affecting the setting of conservation areas

#### Brighton & Hove City Plan Part 2:

Policies in this Plan do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications. Some policies have gained further weight following the CPP2 examination hearings and publication of the Post Hearing Action points by the Inspector (INSP09) and Main Modifications for consultation March 17th (BHCC44 Schedule of Main Modifications).

DM10 - Public Houses

DM18 - High quality design and places

DM20 - Protection of Amenity

DM21 - Extensions and alterations

DM26 - Conservation Areas

DM29 - The Setting of Heritage Assets

DM33 - Safe, Sustainable and Active Travel

DM40 - Protection of the Environment and Health – Pollution and Nuisance

## 9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the principle of development, the impact of the design on the host property, streetscene, designated heritage assets and on the amenities of neighbouring properties as well as the highways implications.

#### **Principle of Development:**

- 9.2. Weight must be given to the fact that planning permission has previously been given for a very similar development, albeit in 2013 (ref. BH2013/02540), with the present application proposing a slightly larger beer garden and an extra

table. Since that decision, City Plan Part 2 (CPP2) has progressed, with Policy DM10: Public Houses (which can be given significant weight) to protect pubs, highlighting the 'important contribution' they make to the character and vitality of communities.

- 9.3. The retention and enhancement of the existing pub use is therefore given weight, along with the previous planning permission for the pub garden area.
- 9.4. It is also noted that the Council's Tourism & Leisure Department considers that the proposal enhances the night time economy facility, consistent with their development and augmentation to continue the success of this economy.

**Design and Heritage:**

- 9.5. In considering whether to grant planning permission for development which affects the setting of a listed building, the Council has a statutory duty to have special regard to the desirability of preserving its setting or any features of special architectural or historic interest which it possesses. Moreover, when considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
- 9.6. Case law has held that the desirability of preserving the setting of a listed building or any features of special architectural or historic interest it possesses, and the desirability of preserving or enhancing the character or appearance of a conservation area should be given "*considerable importance and weight*".
- 9.7. The east-facing elevation of the rear part of the site would be altered by the removal of the existing garage door and would be infilled with blue painted rendered blockwork to match the existing side wall.
- 9.8. The location of the existing doorway in the eastern boundary would also be retained as part of this proposal, although it would be widened slightly in order to allow for the collection of bins. These are to be stored to the west side of the rear part of the site and whilst it is not ideal for them to be taken up two steps on collection day, this is an existing situation. Following amendments, the doorway would open inwards and, once altered, would be sufficiently wide to allow bins to be emptied from Prince's Street. The new door to the widened opening would be of the same style and type as the existing and would be painted blue to match the rendered wall.
- 9.9. Subject to compliance with a condition to ensure the external finishes match the material, colour and style of the existing, it is considered that the proposal would have an acceptable impact upon the visual amenities of the subject property, the Prince's Street streetscene and the wider East Cliff and Valley Gardens Conservation Areas. The proposal is not considered to materially affect the setting of the nearby listed buildings.

**Impact on Neighbouring Amenity:**

- 9.10. Paragraph 130 of the NPPF outlines that planning decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users. Paragraph 187 highlights the need to protect pubs and other venues, albeit from new development, noting that *“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.”*
- 9.11. A number of residential properties are located within the vicinity of the site on Prince’s Street, Pavilion Street and Pavilion Parade. The rear part of the site, in which the beer garden would be located, adjoins 6 Prince’s Street (a residential property) to the north and 9 Pavilion Parade (a commercial property) to the west. No windows relating to the former are located within its southern elevation, but there are windows to its rear (eastern) elevation and the rear external amenity areas to both properties would directly adjoin the proposed beer garden.
- 9.12. No hours of opening are given in the application form, but for the public house they are 12:00–00:00 Sunday to Thursday and 12:00–01:00 on Fridays and Saturdays. The former presumably includes Public and Bank Holidays. Whilst it would be unreasonable to limit the existing hours of the public house when the application relates solely to a beer garden, it is important to control the opening hours of this space given its location and close proximity to neighbouring residential properties, and the need to not unreasonably disturb their amenity and sleep. It is therefore considered necessary to condition its usage to 12:00–22:00 Monday to Sunday including Public and Bank Holidays. The condition will also ensure that the rear access to the beer garden remains closed other than for emergency access or moving the bins.
- 9.13. It is also considered necessary to attach a condition prohibiting the playing or generation of live or amplified music within the beer garden at any time. This is also to protect the amenities of neighbouring properties.
- 9.14. Objections from local residents have raised multiple issues on the grounds of residential amenity, but noise and disturbance at antisocial hours from customers and glass disposal and collection either currently occurs or has the potential to occur and are not likely to be worsened were the current application to be approved and implemented. It is acknowledged that extra waste may be generated by an increased capacity, but not a significant amount, and the additional impact is not considered to be unacceptable. Matters of its storage and collection fall under separate legislation and Council departments.
- 9.15. It should be noted that Sussex Police’s Designing Out Crime Officer has reviewed this application and has not raised any concerns about the design and layout of the proposal, or anti-social behaviour resulting from it. Her concerns have been addressed by the opening hours condition.

- 9.16. The proposed beer garden would be surrounded by four high walls and therefore views are limited upwards from within it. As such, no views could be had into neighbouring windows or external amenity areas.
- 9.17. It is noted that string lighting with festoon bulbs is proposed to be hung externally over the proposed beer garden. It is recognised that these would be visible from neighbouring properties, as evidenced in photos submitted, but given their relatively low brightness (modern LED bulbs are very efficient and therefore the brightness emitted is much lower) and purpose as mood lighting, these would not cause an adverse impact or a significant amount of light spill.
- 9.18. Subject to the aforementioned conditions being added, it is considered that the proposed beer garden would not be unsuitable for this area and there would not be a need to further control its size or capacity than that shown.

**Impact on Highways:**

- 9.19. As previously stated, the doorway within the widened opening would now open inwards to avoid causing an obstruction to the public highway or striking pedestrians, which is supported.
- 9.20. The loss of the garage has previously been found to be acceptable and, whilst it has been re-built since then, no objections are raised to its demolition, particularly since it does not benefit from having a vehicle crossover and the visibility for any vehicles entering and existing is poor.
- 9.21. The proposal is considered unlikely to generate a material uplift in trips, many of which would be linked to other amenities in the area.

**10. CONCLUSIONS**

- 10.1. 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 subject property, the Prince's Street streetscene and the wider East Cliff and Valley Gardens Conservation Areas, or to the setting of the nearby listed buildings and the amenities of neighbouring properties. Further, the benefit of the scheme to retaining and enhancing the use of the site as a public house, and the contribution it makes to the community must be given weight. Therefore, the proposal would be compliant with Policies CP12 and CP15 of the City Plan Part One, TR7, SU9, SU10, QD5, QD14, QD27, HE3 and HE6 of the Local Plan and DM10, DM18, DM20, DM21, DM26, DM29, DM33 and DM40 of the emerging City Plan Part Two. As such, this application is recommended for approval.

**11. EQUALITIES**

- 11.1. Internal door widths and a stepped access restrict access to the beer garden from within the pub. However, a widened gate access in the side fencing would



allow wheelchair access to the proposed beer garden. The gate provides level access from the pavement to the beer garden.

## **12. CLIMATE CHANGE / BIODIVERSITY**

- 12.1. The site has good links to local amenities and is well served by public transport. The works would make better use of land to the rear of the existing building.

