

<u>No:</u>	BH2022/02842	<u>Ward:</u>	Regency Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	94 Western Road Brighton BN1 2LB		
<u>Proposal:</u>	External alterations including installation of flue at rooftop level and awning on front elevation, with associated alterations.		
<u>Officer:</u>	Jack Summers, tel: 296744	<u>Valid Date:</u>	28.09.2022
<u>Con Area:</u>	Regency Square	<u>Expiry Date:</u>	23.11.2022
<u>Listed Building Grade:</u>		<u>EOT:</u>	08.12.2022
<u>Agent:</u>	Mrs Derya Yilmaz Teke Villa Maria The Lees Manor Road Brighton BN2 5YU		
<u>Applicant:</u>	Mr Zeki Isik 22 Richmond Court 28 Osmond Road Hove BN3 1TD		

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
Proposed Drawing	02	-	8 September 2022
Detail	Detail of Awning	-	1 November 2022
Block Plan	-	-	8 September 2022
Location Plan	-	-	8 September 2022

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. 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 existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS 4142:2014 (or the relevant updated Standard). In addition, there should be no significant low frequency tones present.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of the Brighton & Hove City Plan Part Two.

4. The flue and associated equipment hereby permitted shall be used only between the hours of 07:00 and 22:00 on Mondays to Saturdays, and between the hours of 07:00 and 21:00 on Sundays, Bank and Public Holidays.

Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies DM20 and DM40 of the Brighton & Hove 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 advised to ensure that any advertisements they wish to display benefit from advertisement consent under The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) prior to their display.
3. The applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the department from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.
4. The applicant is advised to contact permit.admin@brighton-hove.gov.uk if they wish to suspend parking outside the application site during the delivery and construction period.
5. The applicant is advised that they must apply for a license for proposals for 'A' boards/banners/barriers/balustrades/tables/chairs/planters/structures on the public highway under Section 115e of the Highways Act 1980. The applicant is further advised to contact the Council's Highway Enforcement Team (street.licensing@brighton-hove.gov.uk 01273 292090) for further information if they wish to place anything on the public highway at their earliest convenience to avoid delay. The reasons behind this licence system is to ensure emergency access, for the proposal to be safe and secure, to not be the source of a nuisance (for example out of hours) and to maintain enough footway width for all users to easily and safely pass and repass as is their legal right.

2. SITE LOCATION

- 2.1. The application site is a two-storey attached building located on the southern side of Western Road, at its junction with Western Terrace, a small cul-de-sac running along the western side of the site. The site is within the Regency Square Conservation Area. It has most recently been in lawful use as a hairdressers (planning use class E) but is currently vacant.

- 2.2. The site adjoins the grade II* listed building Western Pavilion (and attached railings) and is adjacent to the Eastern Part of Debenhams Store (and attached wall) which is grade II listed. Just southwest of the site are Sillwood Hall and no.8A Western Terrace, also grade II listed.

3. STATEMENT OF SIGNIFICANCE

- 3.1. 94 Western Road is an unlisted building in the Regency Square Conservation Area. It is an early twentieth century building on the corner of Western Terrace. The building itself is a two-storey property with a retail frontage and full height glazing on both floors and both elevations and is not of major historical or architectural significance.
- 3.2. To the rear of the property facing onto Western Terrace is the grade II* listed no.9 Western Terrace. No.9 Western Terrace was built in the 1820s, it is a part two-, part three-storey building and clearly is strongly influenced by the Brighton Royal Pavilion, being designed in an interpretation of an Indian Oriental style. It is therefore the proposal site's effect on the setting of that listed building on its western and southern elevation of 94 Western Road that is of the greatest significance to this proposal.

4. RELEVANT HISTORY

- 4.1. **BH2022/01801** Change of use from hairdressers (E) to restaurant and hot foot takeaway (E/sui generis) with internal flue to extract from flat roof above. External alterations including installation of awning to front elevation. Withdrawn

5. RELEVANT HISTORY AT OTHER SITES

- 5.1. **BH2017/03720 - no.95 Western Road** Change of use from restaurant (A3) to restaurant (A3) and takeaway (A5), replacement of condensers on roof, creation of external seating area with installation of railings, replacement of existing ventilation and associated alterations. Approved

6. APPLICATION DESCRIPTION

- 6.1. Planning permission is sought to install an external flue at rooftop level and an awning on the front (north) elevation.

7. REPRESENTATIONS

- 7.1. Twelve (12) representations have been received, objecting to the proposal on the following grounds:
- Noise nuisance
 - Odour nuisance from extractor equipment

- Detrimental impact on listed building
 - Proposed awning is presumably to cover external seating area, impacting on footway width
 - There is an unauthorised aerial upon the application property
 - Application is the same as withdrawn application BH2022/01801.*
 - Increase traffic from general deliveries and takeaway delivery vehicles*
 - Increased likelihood of anti-social behaviour*
 - Detrimental impact on highway safety*
 - Proliferation of hot food takeaway businesses in the area*
 - Lack of drainage on Western Terrace*
- 7.2. Four representations have been received, supporting the proposal on the following grounds:
- Bringing use back to a vacant commercial unit
 - Increased tax revenue
- 7.3. Officer Note: this application solely relates to the installation of an awning and flue, not the change of use of the site, because the previous hairdresser use falls within the same use class as that of a restaurant, namely Class E. Therefore those matters marked with an asterisk cannot be taken into account in the determination of this application.
- 7.4. *There was some confusion as when the current application was submitted, the applicant had not updated the proposal to remove references to a hot food takeaway business, and the description of the development was not corrected until after consultation with local residents had already been undertaken. The description was thereafter corrected, and a new consultation was undertaken.*

8. CONSULTATIONS

- 8.1. Heritage
All of the important objections to the previous proposal [Ref: BH2022/01801] have been ameliorated so that the railings are not opened up by a new gate to the street, the ducting does not travel along the rear face of the building next to the listed building, and the ducting on the roof and its exhaust system is set back for the edge of the building so that it will not be visible from the street.
- 8.2. Therefore, on balance there are no further objections on conservation grounds to this proposal.
- 8.3. Policy
No Comment
- 8.4. Sussex Police
Some concern raised over cumulative impact of change of use to restaurant/takeaway [but as noted, no change of use is proposed in this application].

Transport

- 8.5. Some concern raised over the increase in customer trips, deliveries/pick-ups etc. resulting from the change of use [but as noted, this does not form part of this application].
- 8.6. It is noted that the proposal includes an awning. Should the applicant wish to place tables and chairs on the highway in front of the development, the applicant is advised to apply for a licence. However, the placement of furniture on Western Road footway would reduce the footway, negatively affecting pedestrian comfort levels in a busy city centre retail area that experiences high levels of footfall. The applicant is advised to contact the Council's Streetworks Team (permit.admin@brighton-hove.gov.uk 01273 290729) for further information at their earliest convenience to avoid any delay.

9. MATERIAL CONSIDERATIONS

- 9.1. 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.
- 9.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove City Plan Part Two (adopted October 2022);
 - 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 Harbour Joint Area Action Plan (JAAP) 2019.

10. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One (CPP1)

SS1	Presumption in Favour of Sustainable Development
SA2	Central Brighton
CP4	Retail Provision
CP9	Sustainable Transport
CP12	Urban Design
CP13	Public Streets and Spaces
CP15	Heritage

Brighton & Hove City Plan Part Two

DM12	Regional, Town, District and Local Shopping Centres
DM18	High quality design and places
DM20	Protection of Amenity

DM21	Extensions and alterations
DM23	Shop Fronts
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

11. CONSIDERATIONS & ASSESSMENT

- 11.1. The main considerations in the determination of this application relate to the design and appearance of the proposed development; and the potential impacts on the amenities of local residents and business-users; on highway safety; and on the significance of heritage assets in the vicinity.
- 11.2. A site visit has not been undertaken in this instance; however, the impacts of the development can be clearly assessed from the plans and photos provided and from recently taken street-level and aerial imagery of the site.
- 11.3. It should be clarified that no change of use class has been applied for as part of this application, as the previous use (a hairdressers) and the proposed restaurant use both fall under the E Use Class. The previous application (ref: BH2022/01801) proposed a change of use class from (E) to restaurant/hot food takeaway (E/sui generis) but was withdrawn following concerns being raised by the Highway Authority. The current application seeks planning permission only for the external works (an awning and an extraction flue) that would facilitate a restaurant operation on the premises.

Design and Appearance

- 11.4. The proposed development is considered to be acceptable in terms of appearance. The front awning is of a fairly standard design that would be similar in appearance to many similar awnings along Western Road. The applicant has confirmed that no advertisements will be displayed upon the awning, and it is noted that this would require express advertisement consent from the Local Planning Authority.
- 11.5. The applicant has advised that the existing poorly designed signage (left in situ after the previous business relocated) will be removed, and this is welcomed.
- 11.6. The proposed flue was initially positioned upon the rear elevation of the building (under application BH2022/01801) but the Local Planning Authority raised concerns over the impact of this on the setting of the Western Pavilion. At the request of the LPA the flue was relocated so it would run internally up to the rooftop.
- 11.7. One representation has raised concerns that the flue would detract from views of the building and the setting of the Western Pavilion. However, while the flue will likely be somewhat visible from Western Terrace, it would be a modest addition to the building and is not considered to be visually impactful. Views from along Western Road are likely to be minimal; although the balustrade is not solid

(so would permit views of the flue) the flue itself is set back from the edge of the building and angles where it would be visible are expected to be few and would be from a distance. The representation has asserted that the flue would have a visual impact comparable to that of an unauthorised aerial that can be seen on the building; however, the submitted proposed elevations demonstrate that the proposed flue sits below the height of the balustrade, so it is considered that this is not a reasonable comparison.

Impact on Heritage

- 11.8. In considering whether to grant planning permission for development which affects a listed building or its setting, the Council has a statutory duty to have special regard to the desirability of preserving the building or 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.
- 11.9. Case law has held that the desirability of preserving a listed building or its setting 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".
- 11.10. The proposed development, as abovementioned, is considered to be acceptable in terms of visual appearance. Concerns have been raised in the representations received that the emissions created by the proposed flue would have a detrimental impact on the grade II* listed Western Pavilion, but this concern is not shared by the LPA. It is considered that the development would have a neutral impact on the setting of the nearest listed buildings and the Regency Square Conservation Area; there are no concerns in this regard.

Impact on Amenities

- 11.11. The physical alterations for which planning permission is sought are not considered to cause any risks to amenities in terms of visual impact, loss of privacy or loss of light/overshadowing; there are no concerns in this regard.
- 11.12. The proposed flue would create a noise output that could cause nuisance to occupants of the adjoining building, no.93 Western Road, particular those who occupy at first floor level adjacent to where the flue would be sited. However, there are no windows in the western elevation of no.93, but front- and rear-facing windows may be impacted upon. It is considered necessary that planning permission be granted only subject to conditions to (a) restrict the noise output of the flue and (b) limit the hours of use of all plant equipment. The council will retain the authority to investigate under the Environmental Protection Act 1990, should any noise or odour complaints be received.

Impact on the Public Highway

- 11.13. It is asserted in the representations received that the proposed awning is meant to provide shelter for outside seating associated with the proposed restaurant. However, it is noted that there is insufficient space between the front elevation of the application property and the public footpath for seating to be placed upon

the applicant's own land, so any seating would require a licence from the Council as Highway Authority. In their comments, the Highway Officer has stated concerns about the likelihood that a licence would be granted given the detrimental impact seating would likely have on the smooth running of the public footway. In summary, this issue falls outside the remit of planning and need not be given any weight in this assessment.

- 11.14. It is noted that the Highway Authority have suggested planning conditions restricting takeaway services from the site and securing a delivery and service management plan. It is not considered reasonable to include such conditions given the creation of a restaurant in this location does not require planning permission. It is not considered necessary to restrict takeaway deliveries from the site as under a pure E Use Class the business would not be authorised to conduct takeaway business in any case. If hot food takeaway business is conducted on the site, then this could represent an unauthorised change of use and could be investigated.

Conclusion

- 11.15. The proposed development is considered to be acceptable in terms of appearance, the impact it would have on the significance of heritage assets in the vicinity, and on the amenities of local residents. The noise output of the proposed flue, and the hours it may be used shall be secured by condition. For the foregoing reasons the proposal is considered to be in accordance with policies CP12, CP13 and CP15 of the Brighton and Hove City Plan Part One, and DM12, DM20, DM21, DM23, DM26, DM29, DM33 and DM40 of the City Plan Part Two.

- 12. EQUALITIES**
None identified

13. CLIMATE CHANGE/BIODIVERSITY

- 13.1. The proposed works will facilitate a restaurant use on the premises, making effective re-use of an existing building.