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## Appeal Decision

Site visit made on 12 January 2021

**by C Osgathorp BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 January 2021**

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**Appeal Ref: APP/Q1445/W/20/3254242**

**23 Trafalgar Street, Brighton BN1 4EQ**

- 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 Mr Woolf (Woolf Sung Limited) against the decision of Brighton & Hove City Council.
  - The application Ref BH2020/00215, dated 22 January 2020, was refused by notice dated 21 May 2020.
  - The development proposed is installation of a new shop front, change of use from A1 Retail to mixed A1 Retail and A4 Drinking Establishment and associated internal and external alterations.
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### Decision

1. The appeal is allowed and planning permission is granted for installation of a new shop front, change of use from A1 Retail to mixed A1 Retail and A4 Drinking Establishment and associated internal and external alterations at 23 Trafalgar Street, Brighton BN1 4EQ in accordance with the terms of the application, Ref BH2020/00215, dated 22 January 2020, subject to the conditions set out in the attached Schedule.

### Preliminary Matter

2. The description of proposed development shown on the Council's decision notice and the appellant's appeal form is different to that shown on the planning application form. There is no information before me to show that an amended description had been agreed by the appellant, therefore I have determined the appeal on the basis of the description shown on the planning application form.

### Application for costs

3. An application for costs was made by Mr Woolf (Woolf Sung Limited) against Brighton & Hove City Council. This application is the subject of a separate Decision.

### Main Issues

4. The main issues are:
  - The effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance; and,

- The effect of the proposed development on the provision of retail (Use Class A1) within a Prime Retail Frontage of the Regional Shopping Centre; and, whether or not the proposal would lead to an over-provision of non-retail and evening / night-time economy uses along Trafalgar Street.

## **Reasons**

### *Living conditions*

5. The appeal property consists of a mid-terrace shop unit on the ground floor and basement of a 3 storey building, which is within a designated Prime Retail Frontage. The first and second floors of the building are occupied by a 2-bedroom flat and there are also upper floor flats at adjoining properties. There is a small courtyard to the rear of the property.
6. The appeal scheme proposes change of use from retail (Use Class A1) to a mixed-use comprising retail (Use Class A1) and drinking establishment (Use Class A4). The nature of activities associated with an A4 use is such that without appropriate safeguards, there would be potential for noise and disturbance to the occupiers of nearby residential properties. The Council's Environmental Protection Team raised no objection to the proposal, subject to conditions. The appellant sets out that the Council has granted a licence for sale of alcohol on and off the premises and has indicated a willingness for planning conditions to be imposed to accord with the terms of the licence.
7. This includes restrictions on opening hours so the premises can only open to customers between 11:00 – 22:00 hours; requires use of the rear yard to close at 18:00 hours; and prevents the playing of live music. Without prejudice to its case in respect of this appeal, the Council has also suggested a condition to require the submission of a soundproofing scheme for approval and implementation.
8. The restrictions relating to hours of opening and the use of the yard would control noise and activity during sensitive times. The closing of the rear yard to customers at 18:00 hours is appropriate given its location outdoors and the proximity of neighbouring properties. The prevention of the playing of live music would limit noise emissions from the premises, and a sound proofing scheme would restrict noise transmission to neighbouring residential properties. Having regard to these measures and the small size of the premises, I am satisfied that this would minimise noise and disturbance to the occupiers of neighbouring residential properties.
9. For these reasons, I conclude that the proposed development would not cause significant harm to the living conditions of the occupiers of neighbouring properties. The proposal would therefore accord with saved Policy QD27 of the Brighton & Hove Local Plan 2005 (the Local Plan), which states that planning permission will not be granted where it would cause material nuisance and loss of amenity to the existing and / or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

### *Provision of retail*

10. The proposed mixed use includes a retail element that would involve the sale of alcohol for consumption off the premises. There is no substantive evidence before me to support the Council's concern that the premises would be used for

purposes primarily falling within Use Class A4. The retail element of the proposal would maintain the primary retail function of the designated Prime Retail Frontage and it would encourage pedestrian activity, which would preserve the vitality and viability of the centre.

11. Notwithstanding that the proposal includes retail use, the appellant sets out that the most recent retail survey undertaken by the Council found that there were 22 shop units in the Prime Retail Frontage of Trafalgar Street, of which 2 were A3 café uses and the remaining 20 were A1 retail units – resulting in 91% of the Prime Retail Frontage being within Use Class A1. This has not been disputed by the Council. The Council has produced no substantive evidence to support its case that the proposal would lead to an over-provision of non-retail and evening / night-time economy uses along Trafalgar Street. I note that due to the small size of the premises, the criteria contained in saved Policy SR12 relating to large Use Class A4 uses is not applicable to the proposal.
12. I saw that the Prime Retail Frontage in Trafalgar Street predominantly consists of retail uses, which supports the figures indicated by the appellant. The proposed A4 element would provide a complimentary use which would be beneficial to the night-time economy and support the growth of a small business. Consequently, even if the proposal were regarded as a non-retail use, the evidence before me indicates that it would not result in either the number of non-retail units or the proportion of frontages exceeding 25% of the shopping street to which it relates, in accordance with criterion (b) of saved Policy SR4.
13. Furthermore, the proposal would not result in a significant break in the shopping frontage of more than 10 metres, and it would encourage combined trips and attract pedestrian activity to the centre, in accordance with criterion (a) and (c) of Policy SR4. Given my findings on the first main issue, the proposal would comply with criterion (d) and the Council has raised no concerns with respect to the effect of the proposal on the general character of the area. The proposal would therefore comply with saved Policy SR4 of the Local Plan.
14. For these reasons, I conclude that the proposed development would not be harmful to the provision of retail use within the Prime Retail Frontage of the Regional Shopping Centre, and it would not lead to an over-provision of non-retail and evening / night-time economy uses along Trafalgar Street. The proposal would therefore accord with saved Policy SR4 of the Local Plan and Policies SA2 and CP4 of the Brighton & Hove City Plan Part One March 2016, which, amongst other things, seek to maintain the primary retail function of the Regional Shopping Centre.

### **Other Matters**

15. The appeal site is within the North Laine Conservation Area (the CA). I have had regard to the statutory duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
16. The Committee Report sets out that none of the existing shopfront appears to be original and therefore there is no objection to its removal. The proposed shopfront would be of a modern style, however its detailing, materials and

design would provide an acceptable appearance in keeping with shopfronts on surrounding buildings. The alterations including the replacement of the existing plastic illuminated fascia sign with a painted timber fascia board; the provision of a timber panelled stallriser and a recessed doorway, would enhance the character and appearance of the building and the CA. The design of the security grilles would not appear obtrusive and it would be sensitive to the appearance of the shopfront. Furthermore, the alterations to the rear of the property would be of a minor nature and would not be visible in the public realm.

17. I have had regard to the objections from a local resident, a Ward Councillor and North Laine Community Association, however these representations would not alter my decision.

### **Conditions**

18. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is for the avoidance of doubt and in the interests of certainty.
19. A condition to require details of works to the front lightwell is necessary to preserve the character and appearance of the Conservation Area.
20. Conditions to restrict opening hours for customers to 11:00 – 22:00 hours; to require use of the rear yard to close to customers at 18:00 hours; to prevent the playing of live music; and to require the submission for approval of a soundproofing scheme to be implemented are necessary to protect the living conditions of the occupiers of neighbouring properties.

### **Conclusion**

21. For the above reasons, I conclude that the appeal should be allowed.

*C Osgathorp*

INSPECTOR

### **Schedule of conditions**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 01-01; 01-02; 02-01 Rev C; 09-01 Rev B; 09-02 Rev B; and 09-03 Rev B.
3. The works to the front lightwell hereby permitted shall not commence until full details, including 1:20 scale plans and sections, photos and materials, have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter.
4. The premises shall only be open for customers between the hours of 11:00 – 22:00 Monday to Sunday, including Public and Bank Holidays. With the exception of a maximum of two customers without beverages, the outside rear patio area shall be closed to customers between the hours of 18:00 – 11:00 Monday to Sunday, including Public and Bank Holidays.
5. The playing or generation of live music and the provision of any kind of associated entertainment shall not take place either inside or outside the premises.
6. The use hereby permitted shall not begin until details of soundproofing, which shall include its specification and section drawings through it, have been submitted to and approved in writing by the Local Planning Authority and the soundproofing has been installed in accordance with the agreed details. The soundproofing shall be retained in perpetuity in accordance with the approved details thereafter.

The submission shall be accompanied by a noise assessment that recommends the necessary mitigation to be provided by the soundproofing as well as the glazing specification within the rear windows and door hereby approved. The soundproofing shall provide sufficient mitigation against noise generated by users of the premises such that the Rating Level measured or calculated at 1 metre from the façade of the nearest existing noise sensitive premises shall not exceed 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 as subsequently amended).