

Report to: PLANNING COMMITTEE

Date of Meeting: 12 August 2020

Report from: Assistant Director of Housing and Built Environment

Application address: 40 Marina, St Leonards-on-sea, TN38 0BU

Proposal: Proposed new shop front, rear fenestration changes, minor internal changes and change of use to mixed use A1 and D1

Application No: HS/FA/20/00230

Recommendation: Grant Full Planning Permission

Ward: CENTRAL ST LEONARDS 2018
Conservation Area: Yes - Burtons' St. Leonards
Listed Building: Grade II

Applicant: Mr Ballon per Mr Derhun 1 Crown Studio 1 Crown Lane Hastings TN34 3DJ

Public Consultation

Site notice:	Yes
Press advertisement:	Yes - Affects a Listed Building Amended Plans
Neighbour Letters:	Yes
People objecting:	10
Petitions of objection received:	0
People in support:	6
Petitions of support received:	0
Neutral comments received:	0

Application status: Not delegated - 5 or more letters of objection received

1. Site and surrounding area

40 Marina comprises of a small shop unit with a basement below and flats above totalling 4 storeys. Originally developed as the Eastern colonnade of the Burton St Leonards development, each shop front is fronted by columns of the doric order that support the roof of the covered colonnade. The shop front for No. 40 has been removed and boarded over, though No. 40A which neighbours 40 to the west does possess a shop front of what appears to be a late 19th Century/ early 20th Century design with fluted mullions and some curved transoms. Previous uses of the neighbouring No. 40A includes a post office which is evident

by steel clad walls in some areas of No. 40. Historically, No. 40 was part of a much larger department store 'Philpots', which spanned Nos. 37-40 Marina from the 1930's until its closure in the 1980's. Following the closure of Philpots, Hampdens opened for business and remained there until the 1990's. Since then further subdivision has been undertaken and the implications of this are further discussed under section 5.

Although the Eastern Colonnade was originally a residential development, shops and retail in particular has been established here since the 1920's.

Constraints

Burton St Leonards Conservation Area

Grade II Listed Building

SSSI Impact Risk Zone

Cultural Quarter

Local Shopping Area

2. Proposed development

The proposal seeks to install a new shopfront to the front elevation, install sound insulation and a new ceiling, create toilet facilities on both floors, install a floating floor in the basement area, repair and or replace windows to the rear, block up access apertures at ground floor level to 39 Marina, and carry out refurbishment works to a room to the rear basement. To install a wall subdividing Nos. 39 and 40 Marina. Removal of concrete wall and 1970's shopfront. The application also seeks a change of use of the ground floor and basement level from an abandoned A1 use to A1 retail and D1 gallery use throughout.

The application is supported by the following documents:

- A Clarification of Use Document
- Heritage Statement
- Site waste minimisation statement
- Various letters to case officer from agent

Relevant planning history

Application No.	HS/FA/19/00620
Description	Proposed new shop front, rear fenestration changes and minor internal changes
Decision	Withdrawn on 10/03/20

Application No.	HS/LB/19/00621
Description	Proposed new shop front, rear fenestration changes and minor internal changes
Decision	Withdrawn on 10/03/20

Application No.	55/00823
Description	Removal of cornice at rear.
Decision	Permission with conditions on 10/01/56

Application No.	75/0448
Description	REMOVAL OF EXISTING IRON RAILINGS FROM BALCONY AND REPLACEMENT BY TEAK AND ARTIC GLASS.
Decision	Refused on 13/10/75

Application No.	HS/FA/98/00039
Description	CHANGE OF USE TO INTERNATIONAL CHESS CENTRE.
Decision	Permission with conditions on 18/03/98
Application No.	HS/FA/04/00529
Description	CONVERSION OF FIRST FLOOR TO RESIDENTIAL USE. (SELF CONTAINED FLAT)
Decision	Permission with conditions on 01/10/04
Application No.	HS/LB/04/00531
Description	FORMATION OF FIRST FLOOR APARTMENT
Decision	Listed Building Refusal on 13/10/04
Application No.	HS/LB/05/00631
Description	Conversion & internal alterations to form self-contained apartment
Decision	Withdrawn on 17/10/05
Application No.	HS/LB/06/00192
Description	Conversion and internal alterations to form self contained apartment.
Decision	Listed Building Consent with Conditions on 24/05/06
Application No.	HS/LB/09/00462
Description	Reinstatement of original architectural features to front elevation of building and repairs to Grade II Listed Building. Removal of existing shopfronts and replacement with new shopfronts (HS/FA/09/00461 also applies).
Decision	Withdrawn on 06/10/09
Application No.	HS/FA/09/00461
Description	Reinstatement of original architectural features to front elevation of building and repairs to Grade II Listed Building. Removal of existing shopfronts and replacement with new shopfronts (HS/LB/09/00462 also applies).
Decision	Withdrawn on 07/10/09
Application No.	HS/FA/09/00644
Description	Restoration of external building envelope, including: Re-instatement of original architectural features to front elevation, replacement of 2no. shop fronts, re-modelling of dormers & stair 'tower', removal of roof coverings and replacement with slate and lead, re-instatement of pavement lights, replacement of 'modern' windows with traditional sliding sash windows, rationalisation of satellite dishes & drainage.
Decision	Permission with conditions on 11/02/10
Application No.	HS/LB/09/00645
Description	Restoration of external building envelope, including: Re-instatement of original architectural features to front elevation, replacement of 2no. shop fronts, re-modelling of dormers & stair 'tower', removal of roof coverings and replacement with slate and lead, re-instatement of pavement lights, replacement of 'modern' windows with traditional sliding sash windows, rationalisation of satellite dishes & drainage.
Decision	Listed Building Consent with Conditions on 11/02/10
Application No.	HS/LB/17/00354
Description	Proposed sealing up of existing openings between numbers 37 and 38 and numbers 39 and 40.
Decision	Listed Building Consent with Conditions on 26/07/17
Application No.	60/00599
Description	Installation of boiler and erection of flue.
Decision	Permission with conditions on 26/07/60

Application No.	HS/71/01222
Description	Erection of fire escape at the rear.
Decision	Permission with conditions on 26/11/71
Application No.	73/01233
Description	Installation of new shop front
Decision	Permission with conditions on 09/10/73
Application No.	HS/AA/76/00366
Description	Erection of four Flag Poles on front elevation at first floor balcony level.
Decision	Permission with conditions on 20/08/76
Application No.	HS/AA/81/00508
Description	Erection of an illuminated projecting sign 10'0" x 1'10"
Decision	Refused on 09/09/81
Application No.	HS/AA/81/00631
Description	To illuminate existing fascia sign and columns with five 5ft neon tubes
Decision	Permission with conditions on 11/11/81

National and local policies

Hastings Local Plan – Planning Strategy 2014

- Policy FA2 - Strategic Policy for Central Area
- Policy FA6 - Strategic Policy for The Seafront
- Policy SC1 - Overall Strategy for Managing Change in a Sustainable Way
- Policy EN1 - Built and Historic Environment

Hastings Local Plan – Development Management Plan 2015

- Policy LP1 - Considering planning applications
- Policy DM1 - Design Principles
- Policy DM3 - General Amenity
- Policy DM4 - General Access
- Policy CQ1 – Cultural Quarters
- HN1 - Development Affecting the Significance and Setting of Designated Heritage Assets (including Conservation Areas)
- HN2 - Changing Doors, Windows and Roofs in Conservation Areas
- HN3 - Demolition involving Heritage Assets
- Policy SA2 – Local Shopping Area

National Planning Policy Framework (NPPF)

Paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

Paragraph 7 states that the purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Paragraph 11 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay.

Paragraph 12 of the NPPF states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Three dimensions of sustainability given in paragraph 8 are to be sought jointly: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (providing housing, creating high quality environment with accessible local services); and environmental (contributing to, protecting and enhancing natural, built and historic environment) whilst paragraph 9 advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Section 12 of the NPPF sets out the requirement for good design in development. Paragraph 124 states: "The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."

Paragraph 127 of the NPPF requires that decisions should ensure developments:

- Function well;
- Add to the overall quality of the area for the lifetime of that development;
- Are visually attractive in terms of:
 - * Layout
 - * Architecture
 - * Landscaping
- Are sympathetic to local character/history whilst not preventing change or innovation;
- Maintain a strong sense of place having regard to:
 - * Building types
 - * Materials
 - * Arrangement of streets
- Optimise the potential of the site to accommodate an appropriate number and mix of development;
- Create safe places with a high standard of amenity for future and existing users

Paragraph 130 states permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way that it functions.

Paragraph 130 also seeks to ensure that the quality of an approved development is not materially diminished between permission and completion through changes to the permitted scheme.

Paragraph 170 states that Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Paragraph 180 states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

Paragraph 192 states that in determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 193 states: When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 194 states: Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear

and convincing justification. Substantial harm to or loss of:

- a) Grade II listed buildings, or Grade II registered parks or gardens, should be exceptional;
- b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, Grade I and II* listed buildings, Grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

Paragraph 196 states: Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3. Consultation comments

Conservation Officer – **The case officer is a qualified building conservation officer. As such further comment is not required.**

Environmental Health - Noise – **No Objection subject to conditions:**

- The use hereby permitted shall not commence until details of the acoustic insulation have been submitted to and approved in writing by the Local Planning Authority. The acoustic insulation, as approved, shall then be installed prior to the use hereby approved commencing (condition no 4)
- Work which is audible at the site boundary and deliveries to and from the premises, during construction, shall not take place before 08:00 and after 18:00 hours Monday-Friday or before 08:00 and after 13:00 on Saturdays and at no time on Sundays or Bank Holidays (condition no 5)

4. Representations

In respect of this application a site notice was displayed outside the property and an advert placed in the local paper.

1 General comment neither supporting nor objecting to the scheme was received supporting the application but raising concern regarding the long term plan for the area.

6 Comments of support from 6 different properties were received generally citing:

- The opportunity for the reuse of the shop.
- The associated enhancement to the character and appearance of the Conservation Area.
- The enhanced offering of the shopping area.
- The additional cultural offering

16 letters of objections from 9 different properties were received citing reasons including:

- The development would cause noise disturbance that would have an adverse effect on neighbouring residential amenity and thus failing to satisfy paragraph 170 (e) of the NPPF.
- Potential for commercial deliveries to be made to the rear door of the building creating disturbance
- The insensitive nature of the proposal with little background historical research
- The building was constructed as a residential dwelling in 1828 and should remain so.
- Introduction of a new shopfront and door where there is no historical precedent.
- Inaccuracies on the application form.
- Concerns regarding work that has already been carried out both in terms of heritage value and structural safety.
- 2 shopfronts will be present within the freehold area of 40 Marina. Namely the proposed and 40A Marina which is considered by objectors as unsympathetic and an irregularity when compared to surrounding shops.
- Lack of specified trading hours

5. Determining issues

The main issues for determination are the impact of the new shopfront on the character and appearance of the conservation area, the proposed use of the unit and the potential impact upon neighbouring amenity.

a) Principle

The site is in a sustainable location and the application is therefore in accordance with policy LP1 Hastings Local Plan - Development Management (2015) in this respect and acceptable in principle subject to other local plan policies.

b) Impact on character and appearance of the Conservation Area

Shopfront and fenestration changes

The main bulk of the proposal that affects the character and appearance of the Conservation Area is the installation of a new shopfront. Although the unit does not currently have a

shopfront in place, it has had until recently a glazed elevation wall with no entrance door. The previous installation carried no architectural merit and did not contribute to the heritage values that make up the overall significance of the Grade II Listed Building or the wider Conservation Area. The absence of a shopfront in this section was due to the unit being part of a larger development 37-40 Marina up until relatively recently. Access was gained previously by way of entering via 38 Marina. The recent subdivision of the larger planning unit by the blocking up of the walls took the layout back to the original shop form within no 40, however this had also created a situation where there was no access from Marina into the shop. This is considered as a clear and convincing circumstance where a shopfront layout including entrance door is required. The blocking up of the walls at ground floor level did not benefit from listed building consent; however HS/LB/17/00354 did provide consent for similar works at basement level. That issue is now being addressed in this application, where works already carried out are submitted for approval as part of this application. Those works are listed at paragraph 2 and include insertion of walls to separate nos.39 and 40 Marina. It is considered that the blocking up reverts the shop unit back to a pre-Philpotts state, reflects a previous layout of the building, which in conservation terms is considered acceptable.

It is acknowledged that works to the listed building had commenced without listed building consent being granted. The elements removed were modern interventions in the form of a concrete block wall as part of an extension to the rear and a 1970's shopfront glazing arrangement without a door to the front. However, the applicants were advised to cease works until a full assessment of the demolished areas could be made in this application and the associated listed building consent application. It is considered that the small flat roof extension at the rear basement level and previous glazed shopfront that was in place until July 2019 were of little significance and did not contribute positively to the aesthetic value of the designated heritage asset. It should also be noted that being of relatively recent construction (mid to late 20th Century) the areas demolished had no evidential, historical or communal value. These values are the main factors adopted by Historic England when assessing the significance of a heritage asset.

Restoration implies that a building is restored to a previous point in the buildings history. This proposal reverts the building back to a 1920's external state which giving consideration to the economic and residential provision in the immediate vicinity; is fully supportable and is appropriate for our current circumstances.

The proposed design for the shopfront was initially unsuitable but revision in design replicates the design of the neighbouring shopfront of 40A Marina which is traditional in form and proportion. A reclaimed shop door carries the required proportion and suitably reflects an appropriate traditional design. This element of the proposal is to great advantage and shows that the applicant has considered the context of the building and the desire to enhance the character of the Conservation Area. The need for a shopfront is both clear and convincing, and in the public interest. Therefore it is considered that the proposal satisfies paragraphs 194 and 196 of the NPPF with the harm to the significance of the Conservation Area being negligible. The proposal also satisfies paragraph 192 of the NPPF by way of showing the positive contribution the shopfront makes to enhancing character and distinctiveness of the Conservation Area including returning the shop to a viable use that will also enhance the economic vitality of the immediate area.

Change of use of the shop and internal alterations

Objectors have stated that 40 Marina should not be used for commercial use on the ground floor and basement levels. Although the property was originally built as a 17 bedroom house for residential use, it is clear by way of its location, size, lack of outdoor amenity space and ownership over several separate leases makes the prospect of a whole house restoration

remote. It is also considered reasonable that commercial use of the ground floor is consistent along the terrace and beyond to Marine Court, noting its location in a designated shopping area, and should be the case in 40 Marina. Therefore to allow residential use of the ground level would cause harm to the appearance of the conservation area, be contrary to policy HN1 of the Local Plan and remove a viable ongoing use which would be considered as being against the public interest contrary to paragraph 196 of the NPPF.

The use of the ground floor as a shop would contribute to sustaining the viability and vitality of the shopping area which in turn is beneficial to the character and appearance of the Conservation Area.

The change of use of the building will not impact on the character and appearance of the Conservation Area and the proposed commercial use is in accordance with the character of this area of St Leonards.

Separation into 2 shopfronts

Objectors have also cited that the proposal will result in 2 shopfronts being present within the freehold area of 40 Marina. Namely the proposed location and 40A Marina. This is considered by objectors as unsympathetic and an irregularity when compared to surrounding shops. In response to this the site location plan shows the applicant to be the leaseholder of the entirety of the basement level, at this level the original width of the building can be appreciated, however the shop width was reduced at ground floor level due to the introduction of 40A as a separate shop in the 1920's.

It is acknowledged that there is an irregularity with regard to shopfront consistency and the overall width of each unit however it is not possible to amalgamate 40 and 40A back to one single unit.

Whereas objectors have cited this issue, the same objectors also cite the use of 40 Marina as 2 shops dating back to 1923.

*'1900 Archive records show 40 Marina still listed as a single dwelling house. Around 1910 onwards a watchmaker is listed living & working at the property.
1923 Archive plans show 40 Marina ceases to be a dwelling house. It was converted into two shops with three residential flats above.
From 1923 archive records show a Post Office was based in shop 40A, remaining there until 2007.
The resident & watchmaker is listed in the other shop up until the 1930's.'*

Historical images show 'Cave Austin and Co Ltd' Occupying 41 Marina and the signage of 40 Marina being half of the size. What is now 40A Marina displays the sign 'tobacconist' and the other half is not identifiable but is assumed to be Philpotts as the photo appears to be from the late 1950's or early 1960's. Nevertheless the photo confirms the separation into 2 retail units. A 1973 application for a new shopfront was made by Philpotts department store in which the council officer in charge of the case lamented in the resulting loss of a 'Victorian shop front' and 'loss of the western door' this information is publicly available on request in the planning archive: MA40037V document folder 1. This western door that was lost could have been in the façade of 40 Marina, but it cannot be confirmed as the archived details are incomplete.

With no clear evidence and only some minor indications, the original form of the shopfront cannot be confirmed without doubt. The proposed development will provide another shopfront which is an irregularity within the street scene albeit with a historic precedent. This irregularity is relatively minor and not considered to harm the listed building, the setting of

neighbouring listed buildings or the character and appearance of the Conservation Area at this point. It is considered unreasonable to not allow the installation of a new shopfront with a door for access to the shop. It is also considered that the previous glazed installation was detrimental to the wider character of the area.

The current proposal therefore is reflective of a plausible and attainable approach to external restoration. The only other alternative is no access to a shop unit which is contrary to public interest as detailed in paragraph 196 of the NPPF.

Summary

The demolition carried out is considered to enhance the character and appearance of the Conservation Area and Grade II Listed Building and satisfies Policy HN3 of the Hastings Development Management Plan.

Overall, with regard to Policy HN1 of the Hastings Development Management Plan the proposal is considered to enhance the heritage asset and the Conservation Area in terms of appearance, design and demonstrating how the proposed scheme better reveals the significance of the Conservation Area.

c) Proposed use

Information gathered shows that the ground floor of the building had been used as a retail shop since early in the 20th Century and prior to the 1947 Planning Act. The unit was amalgamated with nos 37,38, and 39 to form a department store 'Philpots' which remained trading until the late 1980's. Following the closure of Philpots, Hampdens opened for business from the amalgamated shop units 37-40. Hampdens closed its doors in the 1990's.

In 1998 a planning application was made by Hastings Borough Council to change the use of the former shop units to a D2 sports club use for the Hastings International Chess Club to use as a base. The applicant has provided evidence from the Chess Club that despite planning permission for the change of use being granted, it was never implemented. As such, the time for commencement of the D2 use permission has expired and the lawful use remained as retail. Until 2012 it was believed that the property continued as a retail shop in the form of a Mace convenience store, after which it remained vacant.

Objectors to the proposal have cited 40 Marina as being storage use. There has been no evidence of this being the case in planning use terms. It is accepted that the unit whilst part of the amalgamation (37-40 Marina) may have been ancillary storage to the retail use, but no history of planning permission or business rates valuation show the principal use for storage for either 40 Marina or any of the other units that were part of the previously amalgamated shop.

In 2017 listed building consent was granted to reverse the amalgamation of the units 37-40 Marina and return them to individual units at basement level. No such consent was granted at ground floor level but at some point subdividing walls have been erected blocking access between the units. This issue is addressed in the associated listed building consent to regularise these works. Therefore with regard to clear access to the retail areas, it is unknown when ground floor access from 37-39 to 40 was ended.

Based on the evidence supplied and the planning history of the unit it is noted that the unit in both the original and amalgamated forms has been used for A1 retail use. The subdivision of the units meant that there is now no internal access between nos 39 and 40 and moreover that there was no direct access from customers or staff from Marina into the unit. As such whilst the last known permission would have been retail, the works carried out and vacancy of

the unit is such that it is considered that the retail use has been abandoned and a new planning unit has been created at ground and basement levels which has nil use.

Abandonment is not a term defined in legislation but a common law principle. Abandonment is where a property has been disused to the extent that it has lost its existing use rights and has zero status in planning terms. It is a subjective test based on a matter of fact and degree. In *Hartley v Minister of Housing and Local Government* the court found clear authority to confirm that an existing use can be abandoned and that abandonment is decided as an objective question of fact.

There are three main factors in determining whether a property has been abandoned or not:-

- The physical condition of the property
- The length of non-occupation – this can be extremely variable and to a large extent relies on the level of physical deterioration
- How a property has been used / any alternative uses
- The intentions of the owners or occupiers of the property.

Where it is unclear when the property was last occupied, the onus is on the applicant to demonstrate that the use has not been abandoned.

This essentially means that no use in planning terms can be confirmed and a new application must include a use element to rectify the issue.

Therefore this application includes a change of use to A1 retail and D1 art gallery to rectify the abandonment issue.

It is considered that the site is ideally located for use as a retail unit and photographic art gallery. The installation and use of a large scale inkjet printer in the basement is considered reasonable for the types of work being carried out. The A1 retail use shall occupy approximately 25% of the 192 sqm total. The remaining 75% shall consist of the D1 space and ancillary areas, such as an office, DDA compliant toilet facility and small store room. The two uses (A1 and D1) will coexist within the same areas on both ground floor and basement levels allowing for a modern approach to retail and the display of photographic art.

Whereas the site is located within the Burton St Leonards Conservation Area, it is also within a Local Shopping Area and within the St Leonards Cultural Quarter as detailed in the Hastings Development Management Plan Policies SA2 and CQ1 respectively. This proposal increases A1 retail use and as such satisfies Policy SA2. With regard to Policy CQ1 the proposal is considered to contribute to a mix of offerings that will enhance the attraction of the area to visitors, and as such satisfies that policy. It is considered therefore that the proposed uses will be in keeping with the aims of these policies and are acceptable.

d) Impact on neighbouring residential amenities

It is considered reasonable to have a door to enter a shop unit from the front elevation and the disturbance caused by the operation of an A1 retail unit and D1 art gallery is considered to be low. Its location, in a designated shopping area is considered to be a reasonable location for such activities. It is also considered to be reasonable that a separate retail unit has a way of gaining access from the front elevation of the building in the same way as neighbouring retail units.

It is suggested by an objection letter that 40A Marina benefits from sound insulation which protects the property above from noise disturbance, and that 40 Marina does not have such

insulation.

Many objections have cited noise and disturbance as a main issue for consideration. The application and drawings show that sound proofing will be installed between ground floor (commercial) and first floor (residential) levels to address this concern. It should be noted that the change of use permitted within this report obliges the applicant to apply for building regulations approval separately, which provides the legal framework for such issues, it is not the function of Local Planning Authority to assess the suitability of such detail.

Guidance from the councils Environmental Health team was sought to provide advice regarding the potential for noise disturbance. The advice received did not clarify whether the proposed noise insulation should be secured by condition. However subsequent advice from Environmental Health states that a condition should be placed on the permission, in the event planning permission is granted to secure noise insulation. As such condition 4-5 requires that the noise insulation should be provided prior to occupation of the premises.

Therefore it is considered that the proposed development together with its obligation to comply with Building Regulations will not contribute to unacceptable risk from noise pollution and any noise disturbance is considered to be of a reasonable and acceptable level when considering the residential accommodation is situated above a shop. Moreover it is considered that the proposal satisfies para170 section E of the NPPF in relation to matters of noise.

e)Waste

Trade effluent is any liquid waste (effluent), other than surface water and domestic sewage that is discharged from premises being used for a business, trade or industrial process. It is considered reasonable that trade effluent requiring disposal would not be generated at this location given the nature of the uses proposed, however it is reasonable to suggest that some trade waste will be generated by the business. Further information was received confirming the nature of any waste and its storage location. Waste will be stored in bins located in the rear courtyard and placed at the front of the shop for collection on collection day. Based on the nature of the waste and the method of storage it is considered that the risk of an increase of vermin activity is not increased and the arrangements are acceptable on days of collection. However a condition (condition no 6) shall be imposed requiring that details of waste storage shall be provided to the authority for approval.

f) Highway safety, Access and parking

The site is located in a parade of shops situated on the seafront to the east of the St Leonards district centre. Although immediate parking is somewhat limited for a small district shopping area, the parking situation does benefit from a public car park within a short distance. The shop also benefits from being on a local bus route and directly opposite the national cycle route. Therefore additional parking facilities are not considered to be required due to its sustainable location.

Objections have suggested that the use of the rear door of the premises be used for commercial deliveries and commercial/public access. It would not be appropriate to have deliveries to the lower rear door on Undercliff when a loading bay is within an extremely short distance of the shop at the front of the building. Moreover the use of the rear door for public access is not required as this proposal introduces a front access door in the shopfront.

It is considered to restrict the use of the rear door by condition is unreasonable, Deliveries would then be made via a route which is more difficult to park and move through than the

existing arrangements on Marina. The same applies to public access, where the public would enter via a rear door when a full shopfront with access will be installed on Marina.

g) Other objections

Other grounds for objection were considered and are examined below

Structural Damage – The proposed works do not appear to affect the overall structure of the building and a substantial RSJ was observed above the shopfront that appears to support the building above. The removal of the shopfront or block walls to the rear did not appear to result in a structural change as the elements did not accommodate a structural load. Moreover, the need to ensure proposed works are structurally adequate is the responsibility of Building Control. The NPPG states that matters of structural stability are the owner's responsibility and is not a planning matter.

Inaccuracies on the application form - In order to address the inaccuracies the applicant submitted a new revised application form. The application was re-advertised for a further period of 2 weeks. Further comments were received from original objectors citing similar grounds as previous. Further queries were made with the applicants to clarify any points.

The new application lacked confirmation that the Certificate B notices had been issued to all parties with an interest in the property. This was later carried out, another application was received and another period of public consultation was conducted. Therefore the application is valid, the application form correct, the necessary publicity carried out and the correct notices served

Following the amendments to the application form and serving of relevant notices, the application form is now reflective of the proposal and public consultation has been conducted for 8 weeks in total.

Lack of specified trading hours – trading hours have since been specified in the 'Clarity regarding use document' and are considered as reasonable for a cultural offering combined with a retail element. However to ensure neighbouring amenity is not adversely effected an hours of opening condition will be imposed, (condition no 5).

6. Conclusion

Although the proposal has attracted some objection this report demonstrates that the applicant has addressed many of the concerns where appropriate. The use as an art gallery and retail space is considered appropriate and not likely to cause unacceptable levels of disturbance to neighbouring residents. The applicant will have to comply with current Building Regulations which include the control of sound. The proposal enhances the cultural and retail offering of the area and is satisfactory when considered against Policy CQ1 and SA2 of the Hastings Development Management Plan.

The proposal satisfies Policy HN1 and Policy HN2 of the Hastings Development Management Plan with regard to understanding the significance of the building, demonstrating how the chosen scheme enhances the building and Conservation Area, materials, finish and

appearance. Where any harm is caused it is considered that the harm is less than substantial and carries 'clear and convincing justification' to mitigate that harm. This is in accordance with paragraph 194 of the NPPF. In addition to this the reopening of a retail unit will stem the aesthetic decline and lack of retail offering in the immediate vicinity, this is not only beneficial for the local economy but also gives a designated heritage asset a viable on going use which is considered that both reasons being clearly in the public interest and satisfies paragraph 196 of the NPPF.

The proposal satisfies Policies DM3 and DM4 in terms of utilising considerate design solutions to avoid adverse impact on the amenity of neighbouring properties, and providing good access for all in terms of creating access to the shop from Marina and providing Disability Discrimination Act compliant toilet facilities within the shop unit.

The proposal has been fully considered in accordance with the Hastings Development Management Plan, reflects relevant international obligations and statutory requirements as per paragraph 2 of the National Planning Policy Framework

These proposals comply with the Development Plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The Human Rights considerations have been taken into account fully in balancing the planning issues.

7. Recommendation

Grant Full Planning Permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

SD/725/01a, SD/725/02c, SD/725/03b, SD/725/04d, SD/725/05a and SD/725/06
3. With the exception of internal works the building works required to carry out the development allowed by this permission must only be carried out within the following times:-

08.00 - 18.00 Monday to Friday
08.00 - 13.00 on Saturdays
No working on Sundays or Public Holidays.

4. The use hereby permitted shall not commence until details of the acoustic insulation have been submitted to and approved in writing by the Local Planning Authority. The acoustic insulation, as approved, shall then be installed proper to the use hereby approved commencing.
5. Work which is audible at the site boundary and deliveries to and from the premises, during construction, shall not take place before 08:00 and after 18:00 hours Monday-Friday or before 08:00 and after 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
6. The development shall not be occupied until details of refuse storage have been submitted to and approved in writing by the Local Planning Authority. If the refuse bins or storage area is located within a building, suitable ventilation and sound proofing, where appropriate, shall be included within the details. Details shall also include refuse bin collection points, where relevant.

The use approved shall not commence until the all the approved details have been implemented. The refuse store and bin collection point (if required) shall thereafter be retained in perpetuity.

Reasons:

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To safeguard the amenity of adjoining residents.
4. To safeguard the amenity of adjoining residents.
5. To safeguard the amenity of adjoining residents.
6. In order to secure a well-planned development that functions well, protects the visual amenities of the area and the living conditions of future residents.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraph 38 of the National Planning Policy Framework.
3. The proposal is a material change of use to which the Building Regulations 1991 apply and a building regulation submission is necessary before the occupation of the property and change of use takes place.

Officer to Contact

Mr Simon Richard, Telephone 01424 783320

Background Papers

Application No: HS/FA/20/00230 including all letters and documents