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## Appeal Decision

Site visit made on 13 May 2020

**by AJ Steen BA(Hons) DipTP MRTPI**

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

**Decision date: 14 July 2020**

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**Appeal Ref: APP/Q1445/C/19/3239731**

**Land at 75-77 Church Road, Hove BN3 2BB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by The Company Secretary of the Barley Pub Company Limited against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice, numbered ENF2018/00549, was issued on 18 September 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of a front boundary wall.
- The requirements of the notice is to remove in its entirety the front boundary wall.
- The period for compliance with the requirements is three weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. The breach of planning control alleged in the enforcement notice and requirements of the notice refer to the erection of a front boundary wall. However, the development comprises timber boxes that contain planting placed on the ground. They are not constructed in a manner more normally associated with a wall, such as being built in brick or stone and their thickness is excessive compared to their length and height. I consider that they would be more clearly described as “planters”.
2. The appellant raised this during the appeal process but has not appealed under ground (b) that the matters described in the notice have not occurred, or under ground (c) that those matters (if they occurred) do not constitute a breach of planning control. Nevertheless, changing the description to “planters” could have other implications as to whether the development had taken place and, if so, whether it had planning permission. I asked the parties whether there would be any implications were I to change the wording to refer to “planters”.
3. The planters are held down by their own weight. Although the appellant suggests that it would be possible to move them around the forecourt, in practice they are substantial in size and heavy structures with limited space for movement. Consequently, their size, permanence and physical attachment to the ground means that they are buildings. As such, they constitute

development under the definition of Section 55 of the Town and Country Planning Act 1990. As a result, they require planning permission.

4. I understand that a direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) means that the area does not benefit from the planning permission to construct fences, gates or walls ordinarily granted by the GPDO. However, I have concluded that the planters do not constitute walls and there is no suggestion that they would constitute fences or gates. The Article 4 direction does not remove the similar planning permission granted for other forms of enclosure.
5. The appellant has stated that the primary purpose of the planters is to provide a decorative frontage to the forecourt of the Blind Busker public house and that the planters can be moved around the forecourt with relative ease. In addition, they suggest that the planters also have an incidental function of enclosing the forecourt to prevent customers from spilling out onto the pavement.
6. The planters extend across the front of the property, with a gap in the centre for access, narrower gap between the end planter and metal fence to the neighbouring property at 79 Church Road and end adjacent to the path from the door to the upper floors above the public house and pavement. There is no fence, wall or other form of enclosure separating the forecourt from the path to the door to the upper floors. Given that the planters do not extend around the open forecourt or link to fences, walls or other means of enclosure, I do not consider that the planters are a form of enclosure. They do not, therefore, benefit from the planning permission granted by the GPDO.
7. As the Council and appellant have had the opportunity to comment on the implications of changing the definition of the development from a front boundary wall to planters, I do not consider that amending the notice will cause injustice to either party. Section 176 of the Act allows me to correct any defect, error or misdescription in the enforcement notice. As a result, I will correct the notice to refer to "planters" in the allegation and requirements.
8. During the course of the appeal I queried with the Council and appellant the period of compliance with the requirements of the notice due to the Covid-19 epidemic and the short period in which the appellant was required to comply. This would normally fall within the terms of a ground (g) appeal so I have considered this matter under that ground of appeal.
9. A discontinuance notice has been served on the non-illuminated fascia advertisement on the front of the building that has been appealed<sup>1</sup> and is subject of a separate decision.

## **The Appeal on Ground (a) and the Deemed Planning Application**

### *Main issue*

10. Whether the planters preserve or enhance the character or appearance of The Avenues Conservation Area.

### *Reasons*

11. 75-77 Church Road, Hove contains a public house known as The Blind Busker at ground floor level, with a modest seating area to the front of the building.

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<sup>1</sup> Appeal reference APP/Q1445/G/19/3242641

The seating area is separated from the pavement by planters that contain evergreen planting and a display containing advertisements relating to the pub projects from one of the planters. The building is in a terrace of three storey properties on a main road, with most of the adjoining buildings in office and similar uses. Most of these properties have low rendered walls with metal railings above and taller pillars to either side of their entrances.

12. I understand that planning permission was granted some years ago for alterations to the frontage, including retractable awnings, decked seating area and planting boxes under reference BH/2005/06726.
13. The site is located within The Avenues Conservation Area that comprises most of this section of Church Road and the avenues leading down to Kings Lawns on the seafront. This section of Church Road comprises predominantly commercial activities, particularly at ground floor level. The remainder of the conservation area is residential, with houses and flats along the wide avenues.
14. The planters are taller than the planting boxes they replaced and the low rendered walls of other buildings in the terrace. The planters are similar in height to the pillars to either side of the entrances to neighbouring buildings. Nevertheless, they appear somewhat incongruous given the front boundary treatments of the other buildings in this terrace. The front elevation of the pub contrasts with the remainder of the terrace, but that does little to mitigate the effect of the appearance of the planters on the building and wider conservation area.
15. The planting introduces some green elements that soften the street scene and the planters delineate the edge of the property frontage, reducing the potential for chairs and customers to spill onto the pavement. The appellant suggests that the planters could be painted a softer colour to reflect those of surrounding buildings. However, these factors do not overcome the effect of the planters on the character and appearance of the area.
16. For the above reasons, I conclude that the planters fail to preserve or enhance the character or appearance of The Avenues Conservation Area. As such, the proposal is contrary to Policy QD14 and HE6 of the Brighton and Hove Local Plan (LP), Policies CP12 and CP15 of the City Plan Part One (CP) and the Framework that seek to raise the standard of design, including conserving and enhancing the historic environment with a high standard of design and detailing, including in relation to alterations to properties, reflecting the scale and character of the property, adjoining properties and the surrounding area.
17. Reference has been made to Streetscape Design Guidelines, although no copy has been provided. I understand this encourages planting within the street scene. Nevertheless, this does not outweigh my conclusion that these planters conflict with policies of the LP and CP.
18. The effect on character and appearance would be harmful to the conservation area's significance as a designated heritage asset. In the terms of the National Planning Policy Framework (the Framework), the harm would be 'less than substantial'. However, that does not mean it should be regarded as minor or unimportant. The Framework states that great weight should be attached to the conservation of heritage assets. Paragraph 196 of the Framework requires harm to heritage assets to be weighed against any public benefits of the scheme.

19. I understand that the previous low planters caused a trip hazard for patrons of the pub. Their removal and replacement with a more visible barrier reduces the chance of injury from people tripping over the planting boxes. However, it is not clear that this is best achieved with barriers of this style and size. The planting provides a minor contribution toward ecology and biodiversity in the area. However, I do not consider that the public benefits of the scheme outweigh the harm to the significance of the conservation area.

#### Conclusion

20. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

#### **The Appeal on Ground (g)**

21. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The period specified in the notice for compliance was given as three weeks. This is a modest period to remove the planters as required.
22. I understand that most staff of the appellant company have been on furlough leave during the Covid-19 pandemic and that all of its units have been required to close for a significant period. The appellant has requested that the period of compliance be extended until the end of October. The Council indicate that the period for compliance should be extended to four weeks as the works could take place without heavy duty tools.
23. Taking account of the uncertainty at the present time and the issues raised by the appellant, I consider that the period for compliance should be extended. Due to the difficulties of the appellant company and implications of having staff on furlough leave, I consider a period of two months would be reasonable.
24. For these reasons, I conclude that the appeal under ground (g) should succeed.

#### **Formal Decision**

25. It is directed that the enforcement notice is corrected and varied by:
- the deletion of the words "without planning permission the erection of a front boundary wall" and the substitution of the words "without planning permission the erection of planters on the front boundary" in section 3 the matters which appear to constitute the breach of planning control;
  - the deletion of the words "remove in its entirety the front boundary wall" and the substitution of the words "remove in their entirety the planters on the front boundary" in section 5 what you are required to do; and
  - the deletion of "three weeks" and the substitution of "two months" as the time for compliance.
26. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*AJ Steen* INSPECTOR