



Appeal Decisions

Site visit made on 10 July 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2023

Appeal Ref A: APP/Q1445/C/22/3306953 196 Church Road, Hove BN3 2DJ

- 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 appeal is made by Mr. Robert Cupi on behalf of Olas Bar against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 23 August 2022.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a structure to the rear of the building which includes a roof, glazing and metal lattice panels and which is attached to the building at ground floor level and to the existing brick walls enclosing the rear outdoor area.
 - The requirements of the notice are:
 - Remove in its entirety the unauthorised structure including all associated fixings.
 - The period for compliance with the requirements is 2 months.
 - 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 an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal Ref B: APP/Q1445/W/22/3306152 196 Church Road, Hove BN3 2DJ

- 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 Rob Cupi on behalf of Olas Bar against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/00554, dated 10 February 2022, was refused by notice dated 16 May 2022.
 - The development proposed is described as: "Replacement of an existing structure to the rear of 196 Church Road, Ola's Bar."
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Decisions

Appeal A:

1. The appeal is dismissed, and 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.

Appeal B:

2. The appeal is dismissed.

Preliminary matters

3. During the course of this appeal, The Brighton & Hove Local Plan (LP), and policies contained within it, has been replaced with The Brighton and Hove City Plan Part Two, adopted in October 2022 (CP2). This must now be given full weight in the decision-making process. Both parties have been given the opportunity to comment on the new Local Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded LP.
4. As set out above there are two appeals on this site. The appeal on Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal (Appeal B) is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together to avoid duplication, except where otherwise indicated.

Ground (a) appeal and the Deemed Planning Application, and Appeal B

Main Issues

5. The main issue is:
 - whether the unauthorised development preserves or enhances the character or appearance of the Old Hove Conservation Area (CA); and
 - the effect of the unauthorised development on the living conditions of nearby residential occupiers of Church Road and Vallance Road, with particular regard to noise and disturbance.

Reasons

Old Hove Conservation Area (CA)

6. The appeal site relates to the ground floor bar/restaurant within a four-storey mid terrace property, and forms part of a terrace of similar traditional properties, which comprise commercial units on the ground floor with predominantly flats above. The site lies within the CA.
7. With regards to the effect on designated heritage assets, Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
8. The National Planning Policy Framework, 2021 (Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 of the Framework states that 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 200 of the Framework states that 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.

9. The Old Hove Conservation Area Character Statement (OHCACS) states that the CA contains principally late C19 century development with housing to the north and south of Church Road, and commercial and community uses along Church Road itself. St. Andrew's Church and the Public Library are important listed buildings at the centre of the CA. However, in Vallance Road and Vallance Gardens the smaller domestic houses date from the 1920s, and much of Hove Street dates from the 1930s.
10. The OHCACS also states that on the south side of Church Road, there is a very important terrace (Nos 186-216) of four storey buildings with Dutch gables to the street and ground floor shopfronts, and that many of the buildings display a wealth of architectural detail and original features which add to the character of the CA, which must be protected from unsympathetic alteration. Indeed, I observed that the terrace has a cohesive character and distinctive rhythm, and that the appeal building exhibits many of these traditional features including the front Dutch gable, bay window at first floor level, sash windows and decorative parapets, and therefore makes a positive contribution to the CA.
11. Despite the rear structure being openable with a retractable roof, the development extends the building considerably, covering the rear yard, infilling the space between the buildings on Church Road and Vallance Road. In this respect the development fails to have regard to the existing urban grain and historical pattern of the area. In addition, the materials used in the construction of the development, including its metal lattice fencing and plastic roof is jarring and fails to integrate satisfactorily with the existing traditional building and the appeal terrace.
12. I appreciate that there are no public views of the structure from the street. Nevertheless, it is clearly visible from a number of neighbouring properties. Whilst reasonably localised in its extent, the effect of the development diminishes unacceptably the character and appearance of the host building with consequent harm to the character and appearance of the CA.
13. Whilst the appellant considers that there have been a number of developments over the years with large sheds, no further details of those developments have been provided. Therefore, I'm unable to be certain that the circumstances of those cases are similar to the current appeal development which extends the full length of the rear yard of the premises. No further evidence has been provided to show that this form of development is characteristic of the appeal site and terrace of which it forms part of.
14. In the terms of the Framework and paragraph 202, the harm that the development causes to the significance of the designated heritage asset, that is the CA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development. I appreciate that the development provides a benefit to the local business, by creating a smoking area and allowing the use of this outside space in inclement weather throughout the year. However, the benefits of the development in these respects are insufficient, in my view, to outweigh the harm I have identified to the CA, and to which I afford considerable importance and weight. Furthermore, there are also alternative options which could be explored without causing harm to the CA.
15. I therefore conclude that the unauthorised works result in a visually discordant and incongruous addition, which is harmful to the character and appearance of

the CA, as a whole. As such, it fails to preserve or enhance the character or appearance of the CA, contrary to policies CP12 and CP15 of the Brighton and Hove City Plan Part One, 2016 (CP1), and Policies DM18, DM21, DM26 of the CP2. Amongst other things these state that the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets and their settings, and that development would be expected to take account of the existing character of the area, and particular regard to the urban grain and/or historic development pattern of the area.

16. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it would not preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

Living conditions of the neighbouring occupiers – noise and disturbance

17. The appeal terrace comprises commercial uses at ground floor and predominantly residential uses located on the floors above. The site also backs on to residential properties and gardens of the two storey residential properties on Vallance Road.
18. However, I observed during my site visit when walking along Vallance Road, and away from Church Road that background noise levels noticeably fall. As such, Vallance Road has a residential character, where noise levels are likely to be relatively lower, and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use of a commercial site.
19. I also observed that the single storey structure extends the footprint of the commercial establishment closer to neighbouring residential properties on Vallance Road and increases the number of covers for the existing business throughout the year, including during inclement weather, with the potential for more noise and disturbance to these nearest neighbouring residential occupiers. The premises is open until 24:00 hours Mondays to Sundays, and therefore the use occurs during the day and until late in the evenings and weekends, when neighbouring residential occupiers should reasonably expect a quieter living environment. Furthermore, as the roof is openable, it would appear that any noise generated from within the structure would not be contained.
20. I consider that the noise generated from within the structure late in the evening, including Sundays, when background noise levels are typically lower, are likely to be more intrusive and consequentially more harmful. In addition, noise from the rear structure is expected to be particularly harmful during summer months when neighbouring occupiers are likely to have windows open for ventilation, and more likely to be using their gardens for play space/relaxation.
21. Noise associated with a bar/restaurant use includes music playing and customers conversing whilst eating, drinking, and smoking. In addition to music playing, I also witnessed a large television screen within the outside seating area. I also note objections has been raised from a number of neighbouring occupiers on Vallance Road complaining that since the structure

has been erected noise is audible from within their properties late at night. In the absence of any details of appropriate sound mitigation measures, I consider that the unauthorised development, in such close proximity to neighbouring residential properties, results in additional noise and disturbance to neighbouring occupiers.

22. The appellant highlights that the rear garden area can already be used for activities in connection with the established business, and therefore, the provision of the rear structure, enclosing this area assists in mitigating noise. However, the rear structure increases the likelihood that the outside seating area would be used, for longer periods of the year, including during inclement weather, including autumn and winter. In this regard, the extension would increase the use of the outside area as a smoking/seating area, and the lightweight materials used in its construction are unlikely to mitigate against increased noise levels/music playing.
23. The appellant states that the structure replaced a pre-existing one. However, no documentary evidence has been submitted of this earlier structure. As such, it has not been demonstrated that there was a previous structure and that it was lawful. Therefore, I attach limited weight to this argument.
24. I therefore conclude that the development fails to provide acceptable living conditions for the neighbouring residential occupiers on Vallance Road and Church Road, with particular regard to noise and disturbance. Accordingly, the development conflicts with policy DM20 of the CP2. Amongst other things, this requires that planning permission for development including change of use will be granted where it would not cause unacceptable loss of amenity to the proposed, existing, adjacent, or nearby users, residents, occupiers.

Conclusions

25. **Appeal A:** For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
26. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R. Satheesan

INSPECTOR