

<u>No:</u>	BH2024/02981	<u>Ward:</u>	Central Hove Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	119 Church Road Hove BN3 2AF		
<u>Proposal:</u>	Part-retrospective application for replacement boundary fencing and installation of a retractable canopy with associated works.		
<u>Officer:</u>	Jack Summers, tel: 296744	<u>Valid Date:</u>	06.12.2024
<u>Con Area:</u>	The Avenues	<u>Expiry Date:</u>	31.01.2025
<u>Listed Building Grade:</u>	Listed Building	<u>EOT:</u>	
	Grade II		
<u>Agent:</u>	Darby Architectural Ltd 84 Westbourne Street Hove BN3 5FA		
<u>Applicant:</u>	Paris Wine Bar Ltd 119 Church Road Hove BN3 2AF		

1. RECOMMENDATION

REFUSE planning permission for the following reasons:

The development would cause harm to the historic significance of the grade II listed terrace and wider The Avenues and Cliftonville Conservation Areas due to its form, scale and materiality. It would remove the open rear garden/yard area and reduce the legibility of the historic plan form, and has introduced an alien, incongruous structure to the rear, visible from the public highway. For these reasons, the development is contrary to policies CP12 and CP15 of the Brighton & Hove City Plan Part One, and DM18, DM26, DM27 and DM29 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. This decision is based on the drawings received listed below:

Plan Type	Reference	Version	Date Received
Proposed Drawing	P.01	-	06-Dec-24
Proposed Drawing	P.02	-	06-Dec-24
Proposed Drawing	P.03	-	06-Dec-24
Proposed Drawing	P.04	-	06-Dec-24

2. SITE LOCATION

- 2.1. The application site is a wine bar ((sui generis – outside any planning use class) on the northern side of Church Road within The Avenues Conservation Area, immediately adjacent to the Cliftonville and Willett Estate Conservation Areas. The building is part of a grade II listed terrace (nos.94-108 Church Road). The application proposal relates to the rear of the site, which is used as an external customer seating area.
- 2.2. A site visit was undertaken in September 2024 as part of the ongoing Enforcement investigation. The site was also viewed from the top of the Norton Road Car Park in January 2025.

3. RELEVANT HISTORY

Enforcement Investigation Ref: ENF2022/00031

- 3.1. The rear of the building has been enlarged with a timber rear extension which is the subject of an ongoing enforcement investigation (Ref: ENF2022/00031). A Listed Building Enforcement Notice (LBEN) has been served requiring the removal of the extension, the applicant's appeal against said notice (Ref: APP/Q1445/F/22/3309018) has been dismissed by the Planning Inspectorate (PINS) and the complete removal of the unlawful development was due in June 2024. To date, the canopy has been removed but the walls remain in place, contrary to the requirements of the Notice. A tent-like canopy roof has been erected over the majority of the rear yard, which also has no planning permission or listed building consent.
- 3.2. **BH2024/02982:** Part-retrospective application for replacement boundary fencing and installation of a retractable canopy with associated works. (*Concurrent Listed Building Consent application*)
- 3.3. **BH2022/01095 & BH2023/00086** Enclosure of rear courtyard with a retractable roof. (Retrospective). Refused for the following reason
“1. *The extension as built causes harm to the historic significance of the grade II listed terrace and wider The Avenues and Willett Estate Conservation Areas due to its form, scale and materiality. It has removed the open rear garden/yard area, reducing the legibility of the historic plan form, and has introduced an alien, incongruous structure to the rear, visible from the public highway. For these reasons, the development is contrary to policies CP12 and CP15 of the Brighton & Hove City Plan Part One, and DM18, DM26, DM27 and DM29 of the Brighton & Hove City Plan Part Two.*”
- 3.4. **BH2020/02402 & BH2020/002403** Erection of a single storey rear extension. Refused for the following reason
“1. *The proposed rear extension, by reason of its scale and form, wrapping around the rear outrigger and utilising the full width of the site, would cause harm to the special architectural and historic interest of the host grade II listed building and the character and appearance of the wider The Avenues*

conservation area, contrary to policies HE1, HE3 and HE6 of the Brighton and Hove Local Plan and CP15 of the City Plan Part One."

- 3.5. **BH2019/00627** Erection of a single storey rear extension. Refused for the following reason
"1. *The proposed rear extension, by reason of it (in conjunction with an existing non-original addition) wrapping around the rear outrigger and its material finishes, causes harm to the historic character and appearance of the host grade II listed building and wider conservation areas, contrary to policies QD14, HE1 and HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the City Plan Part One.*"
- 3.6. **BH2013/02074 & BH2013/02075** Erection of single storey rear extension. Approved
- 3.7. **BH2012/03725** Erection of single storey rear extension. Refused for the following reasons
"1. *The proposed extension, due to its size, siting, design and materials would form an inappropriate and incongruous feature that would significantly harm the historic character and appearance of the existing listed building and would detract from the surrounding conservation area in which it is located. The development is therefore contrary to policies QD1, QD2, QD14, HE1 & HE6 of the Brighton & Hove Local Plan.*
2. *The proposed extension would result in the loss of an original window from the rear elevation of the property which would be detrimental to the historic character of the listed building and the character and appearance of the surrounding conservation area. The development is therefore contrary to policies HE1 & HE6 of the Brighton & Hove Local Plan.*
3. *Insufficient information has been submitted regarding how the proposed development would affect the basement level of the proposed extension, which contains windows that are currently served by an existing light well that it is intended to build over. Accordingly, the proposal cannot be properly assessed in respect of its impact on the usability of the basement area and the proposal is thereby considered contrary to the provisions of policy QD27 of the Brighton & Hove Local Plan.*"

4. APPLICATION DESCRIPTION

- 4.1. Part-retrospective Planning Permission is sought from the Local Planning Authority (LPA) for boundary fencing around the rear garden/yard and the installation of a retractable canopy/roof. The boundary fencing is all in situ, retained since c.2020 as part of the works subject to the LBEN. The retractable canopy/roof is not currently in situ; the previous canopy/roof was removed in 2024 following the LBEN appeal decision.

5. MATERIAL CONSIDERATIONS

- 5.1. 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.

- 5.2. 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; revised October 2024)
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017)
 - Shoreham Harbour Joint Area Action Plan (adopted October 2019)

6. RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

Brighton & Hove City Plan Part One (CPP1)

SS1	Presumption in Favour of Sustainable Development
CP2	Sustainable Economic Development
CP8	Sustainable Buildings
CP10	Biodiversity
CP12	Urban Design
CP15	Heritage

Brighton & Hove City Plan Part Two (CPP2)

DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM26	Conservation Areas
DM27	Listed Buildings
DM29	The Setting of Heritage Assets
DM37	Green Infrastructure and Nature Conservation
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents (SPD)

SPD09	Architectural Features (2009)
SPD12	Design Guide for Extensions and Alterations (2020)

Conservation Area Character Statements

The Avenues (1997)
Cliftonville (1997)
Willett Estate (1997)

7. REPRESENTATIONS

- 7.1. Eleven (11) representations have been received, supporting the proposal on the following grounds:

- The canopy encourages use during winter months
- The viability of the business will be threatened without the development
- No complaints about previous canopy
- The canopy would reduce noise output
- The development looks good
- The development is popular
- Other historic buildings in the city have replaced original windows with uPVC, thus setting a precedent for harmful works to historic buildings.
- The Council should stop concentrating on housebuilding and instead concentrate on supporting existing businesses.

8. CONSULTATIONS

Heritage Team

- 8.1. This is a grade II listed building in the Avenues Conservation Area and adjacent to the Cliftonville and Willett Estate Conservation Areas. Although some internal character has been lost from this property it retains most of its original external form which some other properties in this terrace have lost.
- 8.2. The rear boundary of the property is marked by a characterful historic wall which is considered to be part of the listing and contributes to the significance of the building. The wall also makes a positive contribution to the character of the Willett Estate Conservation Area which shares the rear boundary.
- 8.3. The rear elevation of this building is readily visible from the multi-storey car park to the north, and therefore any proposal at the rear of the property should be particularly carefully designed to respect the listed building and the conservation area generally.
- 8.4. This site has a history of applications for rear extensions that would extend beyond the width of the existing outrigger, which have been robustly resisted. An application (BH2012/03725) was refused in January 2013. This was narrower and shorter than subsequent proposals. The latest application was submitted in 2019 (BH2019/00627). The heritage team considered that the form of the proposed extension would not respect the traditional form of terrace development typical of 19th century housing. Along with unsympathetic rear extensions of neighbouring properties (built prior to listing) such full width rear extensions would further erode the outrigger arrangement, a characteristic feature that should not be lost.
- 8.5. A Heritage Statement has been submitted. This is basic and does not robustly assess the impact of the proposals on significance, the justification appears to be that incremental change has already taken place, the works would be reversible and that the rear of the building would remain legible.
- 8.6. The proposal is part retrospective as unauthorised works have taken place. The proposal is for replacement fencing (higher than the existing) and a retractable canopy which, combined with the fencing/posts when fully extended reads as a rear addition extension. Regardless of the lack of junctions with the building

itself/flint walls and retractability, the resulting 'addition' is substantial and at odds with the character and appearance of the conservation and legibility of the rear of the listed building.

- 8.7. The proposed plans only fundamentally differ from the aforementioned proposal in that the timber posts which support the feather edged fencing are set inside the flint walls and are not fixed to the walls and the retractable canopy is not fixed to fabric.
- 8.8. As such the earlier comments from the heritage team remain relevant. The form of the proposed addition would not respect the traditional form of terrace development, typical of 19th century housing. Along with unsympathetic rear extensions of neighbouring properties (built prior to listing) such full width rear extensions would further erode the outrigger arrangement, a characteristic feature that should remain the dominant secondary element of the building. As it stands, the single storey addition currently in place/proposed challenges this historic arrangement.
- 8.9. The conclusion is that the proposal would result in less than substantial harm to heritage assets due to its bulk/scale and use of inappropriate materials. It would fail to appear subservient to the listed building and the historic outrigger and conceals the curtilage listed walls within the courtyard. Use of stained timber in terms of materiality is considered inappropriate.

9. CONSIDERATIONS & ASSESSMENT

- 9.1. 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; and on the significance of heritage assets in the vicinity.

Design and Appearance

Scale and Materiality

- 9.2. The development is not considered to be acceptable in terms of design and appearance. It is broadly speaking the same development as has already been refused consent and dismissed at appeal; the minor changes in design have not mitigated the harm to the historic environment, which concern the scale, form and materiality.
- 9.3. The development would enclose the entirety of the rear garden/yard, and when the rooftop is closed would appear as a dominant rear extension with materials that have no relation to the host building; in this regard it fails to appear as a subservient addition to the site. The fact that the roof of the development can retract (resulting in an open roof across much of the garden/yard) does not improve the relationship the development has with the host building; moreover, a sustainable development would not rely on the roof retracting to result in an acceptable impact.

- 9.4. Although it is to the rear of the building it is highly visible from the public realm as it extends above the boundary wall (presenting incongruous materials such as unpainted close board timber and what appears to be plastic cladding at eaves level) fronting the carriageway running around the back of Norton Road Car Park. It is also highly visible from the upper levels of this multi-storey car park. Although this carriageway is not an area of high visual amenity (containing a lot of refuse and recycling bins, and parked cars) the development as carried out has caused further harm by introducing an incongruous built form into the public realm.
- 9.5. The raised walls would conceal views from within the site itself of the historic flint walls and dominate them in views from outside the site. The internal finish of the walls relates poorly to the historic character of the building and wider area and would be highly visible from neighbouring buildings when the roof is retracted. The Design & Access Statement states that materials were carefully selected to fit in with the local area; however, the materials are the same as that on the unlawful development. PINS stated:
- *“The extension represents an unsympathetic addition to the listed building and wider terrace and there is little evidence that consideration has been given to the character of the original building, in terms of overall form, scale and materials.*
 - *...[T]he materials used are unsympathetic and uncharacteristic of the sensitive historic surroundings and there is little evidence that the overall design and form of the extension has had regard to the special features of the Conservation Area, including styles of building, materials used and detailing.”*

Impact on Heritage Assets

- 9.6. 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.
- 9.7. 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".
- 9.8. The applicant has sought to draw a comparison between the current proposal and a pre-existing pergola that was present on the site. The LPA contends that the two developments are incomparable as the pergola was a subservient structure within the garden/yard and contributed to a garden character, unlike the proposal which encloses the entirety of the curtilage.
- 9.9. The applicant has also sought to compare the development to other extensions and alterations in the local area, which they consider detract from the historic significance of the grade II listed terrace and wider conservation area. These

other developments were brought up in the assessment of the previous applications (BH2022/01095 & BH2023/00086) and were not considered to set an acceptable precedent; these developments are not directly comparable, and each proposal must be assessed on its own merits. Significantly, they were mostly erected prior to the listing of the terrace (1992) and so would have been subject to a different planning assessment. It is not considered that they should be used as examples to inform future development; furthermore, the presence of such development should not justify development that may further reduce the heritage value of the building and wider area. This position was supported in the Enforcement Appeal where the Planning Inspectorate (PINS) considered that:

- *"...[T]he harmful effects of other works or developments do not justify the impact upon the architectural and historic character and appearance of the listed building or the harm to The Avenues Conservation Area or the setting of the Cliftonville Conservation Area."*

- 9.10. Due to the development's form, scale and materiality it is considered that it would cause harm to the historic significance of the host grade II listed building and the wider The Avenues Conservation Area, and the adjacent Cliftonville Conservation Area.
- 9.11. Although the development abuts the Willett Estate Conservation Area, in the aforementioned appeal PINS did not agree with the LPA's consideration that harm would be caused to this heritage asset; in accordance with this decision, the LPA considers that the development would have a neutral impact in this regard. Significant weight should still be given to the harm caused to the host building (and wider grade II listed terrace), and The Avenues and Cliftonville Conservation Areas.

Comparable Developments

- 9.12. The applicant has sought to draw a comparison between the current proposal and a pre-existing pergola that was present on the site. The LPA contends that the two developments are incomparable as the pergola was a subservient structure within the garden/yard and contributed to a garden character, unlike the proposal which encloses the entirety of the curtilage.
- 9.13. The applicant has also sought to compare the development to other extensions and alterations in the local area, which they consider detract from the historic significance of the grade II listed terrace and wider conservation area. These other developments were brought up in the assessment of the previous applications (BH2022/01095 & BH2023/00086) and were not considered to set an acceptable precedent; these developments are not directly comparable, and each proposal must be assessed on its own merits. Significantly, they were mostly erected prior to the listing of the terrace (1992) and so would have been subject to a different planning assessment. It is not considered that they should be used as examples to inform future development; furthermore, the presence of such development should not justify development that may further reduce the heritage value of the building and wider area. This position was supported in the Enforcement Appeal where the Planning Inspectorate (PINS) considered that:
- *"...[T]he harmful effects of other works or developments do not justify the impact upon the architectural and historic character and appearance of the*

listed building or the harm to The Avenues Conservation Area or the setting of the Cliftonville Conservation Area.”

Impact on Amenities

Environmental Nuisance

- 9.14. The rear garden/yard has been in established use for seating of wine bar patrons for a significant period of time and the proposed development would facilitate year-round covered seating, intensifying the use particularly in winter months.
- 9.15. Given the established use of the external space and length of time the business has been operating, the LPA has no significant concerns about noise nuisance. Nevertheless, it has been asserted that the development would mitigate noise-spill and so the development should be seen as a benefit in terms of the business' impact on residents. The Council holds records that noise complaints were received during the time the unlawful extension was in situ (from c.2020-2024), so it is not considered that the development would deliver a benefit in this regard. Regardless, issues regarding noise nuisance can be managed through alternative regimes (such as Environmental Health legislation) and would not justify the development.

Biodiversity

Biodiversity Net Gain (BNG)

- 9.16. Based on the information available this permission is not considered to be one which would require the approval of a biodiversity gain plan due to the fact that the permission which has been granted is for development which is exempt being development below the de minimis threshold, meaning development which:
- i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
 - ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

Bee & Swift Bricks

- 9.17. The Council has adopted the practice of securing minor design alterations to schemes with the aim of encouraging the biodiversity of a site, particularly with regards to protected species such as bumblebees and swifts. Given the nature of the application, it is not considered appropriate to secure biodiversity improvement in this instance.

Planning Balance

- 9.18. As abovementioned, the development is not considered to be a sympathetic addition to the listed host building. Little or no regard is given to the special character of the original building or its wider historic setting, either in terms of form, scale, or materiality. Given its scale and siting to the rear of the building, it is considered that the harm caused is 'less than substantial' and as such paragraph 215 of the NPPF is relevant; it 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.”*

9.19. The benefits of the scheme are limited to providing additional cover for a single business with the associated increase in capacity. The public benefits are not significant enough to outweigh the 'great' weight that the NPPF requires be ascribed to harm to a designated heritage asset. This position was agreed with by PINS during the Enforcement Notice Appeal, with them clarifying that the public benefits were insufficient to outweigh the harm. In this regard, there have been no changes in the planning context.

9.20. It has been asserted in the representations received that the Council should be seen to be supporting independent businesses. CPP1 policy CP2 states that the LPA will support improvements to businesses; it is recognised that the applicant wishes to expand their business beyond what the small internal floor space can accommodate, and that the business is clearly popular with those who have submitted representations. However, policy CP2 does not grant carte blanche to enlarge a business regardless of other material planning considerations, which in this instance includes the preservation of irreplaceable heritage assets, which is required by the NPPF.

9.21. It has also been asserted that without the floor space provided by the (unauthorised) development to the rear, the viability of the business would be threatened. It should be noted that no financial evidence of this has been submitted to support the application. It should also be noted that the business operated up until 2020 with no covered seating development to the rear beyond a simple pergola. It is unclear from the submission why that position has changed, but even if it had, again that is not considered sufficient ground to allow such heritage harm. Moreover, if the business were to become unviable because of compliance with the Listed Building Enforcement Notice, there is no evidence to suggest that an alternative business model could not be successfully run from this property, so the long-term vacancy of the building is by no means a foregone conclusion.

9.22. It is stated that the development would help the business to thrive during a 'challenging period'. During the course of the previous applications the applicant stated that the works were set up during the COVID-19 pandemic, and sought to use this as justification for retention despite the fact that COVID-related restrictions had long since ceased. PINS did not accept this as justification for retention of the development, and there have been no changes in planning context in the time since. The applicant has not explained what the current challenging times are that require a significant extension to the business, but it is not considered that they would be more severe than during 2020/2021 so should be given greater weight than the appeal decision. PINS stated:

- *“Restrictions associated with Covid 19 have been lifted and the need for the business to provide increased covered seating in a well-ventilated area is no longer a justification for the development in place.”*

Conclusion

- 9.23. The proposed development is considered to have an unacceptable impact on the historic significance of the host listed building and the wider Cliftonville and The Avenues Conservation Areas. The development is very similar to a development that has been judged as unacceptable by PINS during a recent appeal, and which remains the subject of a Listed Building Enforcement Notice. This previous decision is given significant weight. The scale, form and materiality of the development relate poorly to the character of the building and would detract from its historic significance; there are no public benefits significant enough to outweigh the harm in this regard. For the foregoing reasons the proposal is considered to be in conflict with policies CP12 and CP15 of the Brighton and Hove City Plan Part One, and DM18, DM26, DM27 and DM29 of the City Plan Part Two.

10. EQUALITIES

- 10.1. Section 149(1) of the Equality Act 2010 provides:
- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.

