



Report by the Director for Economy

ENFORCEMENT REPORT

Complaint in connection with graffiti/artwork at The Egremont Public House, 32 Brighton Road (AWEN/0070/19) and consideration of other graffiti/artwork across the town.



Not to Scale

BACKGROUND

On 21st March 2019 a complaint was received regarding graffiti on The Egremont Public House, Brighton Road, Worthing. An Enforcement Officer conducted a site visit and discovered a portrait of the musician Billy Idol painted on an east-facing elevation of The Egremont. The Officer spoke with two members of staff in the pub who explained that the owner had given permission for the graffiti. Staff also claimed that the Billy Idol graffiti was part of a series of portraits of local Worthing artists, musicians and celebrities by an individual working under the name of Horace Art.

Details were furnished of the other exhibits featured on various buildings in Worthing. All sites were subsequently visited and the following graffiti was found, all exhibits are 'tagged' and numbered by Horace Art:

- 2) Tank Girl – 20 Bath Place – south elevation
- 3) Gwendoline Christie – Blush, 40 Selden Road – south elevation
- 4) Oscar Wilde – The Corner House, 80 High Street
- 5) Kenny Tutt – 28 Warwick Street, east elevation (**Listed building**).
- 6) Horace Duke – Reginald Ballum Decorative Antiques, Newland Road
- 7) Simon Mayo – 50 Heene Road
- 8) Royal Blood – Blann & Co Accountants, 111 Broadwater East, Beaumont Road elevation
- 9) Nicolette Sheridan – Broadway Barbers Shop, 9 The Broadway, Warwick Gardens elevation
- 10) Horace Duke – Rose & Crown public house, 173 Montague Street
- 11) Dave Benson Philips – New Amsterdam Public House, front elevation (**Listed building**).

Planning Assessment

The main consideration in this case is whether a breach in planning control has occurred and if so whether enforcement action is expedient.

DEFRA defines Graffiti as “any informal or illegal marks, drawings or paintings that have been deliberately made by a person or persons on any physical element comprising the outdoor environment, with a view to communicating a message or symbol etc. to others”. Despite this clear definition Graffiti remains a complex area for public policy makers as what constitutes Graffiti is often a subjective matter with major variances in opinion across different groups.

Some public opinion on what constitutes graffiti has changed and that some “Graffiti” is now considered to be “Street art” and that some members of the community now consider that “Street Art” makes a positive contribution to the urban environment.

The Council remains committed to reducing and removing undesirable graffiti, and considers that any graffiti that appears on buildings and other structures without the

owner's consent is an interference with the property owner's rights and as such that person has committed a criminal offence under the Criminal Damage Act 1971.

In addition the Anti-Social Behaviour Act 2003 confers power on the Council to secure the removal of graffiti, even where the owner does not object to it remaining on their property. Likewise, the Town and Country Planning Act s225 (F) (Power to remedy defacement of premises) can also be applied. In these circumstances the Council could reserve the right to take formal action against the owner to secure removal and if the owner does not take action then the Council may enter the land, clear or otherwise remedy the graffiti and recover any costs incurred from the owner.

Graffiti with the owner's permission does not appear to be a breach of planning control unless the building is listed. In this case two of the buildings are listed (No 5 on the list Kenny Tutt located on east elevation of 28 Warwick Street) and nine are not.

Your Officers are aware that the owner of 9 of the premises that have been painted with local celebrities gave permission for the work to be undertaken.

In terms of other legislation, graffiti normally would not be considered an advert and as such is not controlled by the Town and Country Planning Act (Control of Advertisements) Act Regulations 2007. Furthermore, your Officers would not currently consider it to be an untidy site which could be controlled by taking action under s215 of the Planning Act. However, this may change in time should peeling and deterioration render the artwork more unsightly.

With regard to the listed buildings (28 Warwick Street – Kenny Tutt), (New Amsterdam pub – Dave Benson Philips), The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the provisions. Section 7 provides that:

Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised under section 8.

Painting the building or a part of (including the paintings in this case) can fall within these provisions provided the council is satisfied that the works affect the character of the building. It is possible to prosecute for a breach of the act, consequently on the basis of this, the 'artist' (who is easily identifiable) could face charges. However, this in itself will not secure removal of the paintings. Section 38 provides that where works have been carried out to a listed building and that the works are an offence the Council can, where it can be demonstrated that the works cause harm to the character of the building as one of special architectural or historic importance, issue a listed building enforcement notice. The notice can require steps to be taken to restore the building to its former state therefore securing the removal of the graffiti.

Finally, there is a danger that this type of 'artwork' could spiral into a proliferation of graffiti which occurs without the owner's permission as has been the case in Brighton over the past ten years. Graffiti has currently been among the top policy

issues for Councillors standing in the recent local Brighton and Hove City Council elections as it is understood a high proportion of residents feel that graffiti is affecting the overall appearance of the City.

CONSULTATIONS

The Head of Environment has been consulted on this issue and it has been confirmed that the Street Cleansing team would only take action if it was clear that the owner had not given consent for the graffiti or the graffiti was offensive in any way.

CONCLUSION

With regard to the 9 unlisted properties, planning permission is not required for the works undertaken. Should the appearance of the graffiti/street art on the properties worsen over time, since further consideration could be given to serving a Section 215 Notice, but the current appearance of the graffiti on these properties would not justify such action.

Permission is required, though, for the works on the listed buildings and the Council has a statutory duty to preserve and enhance the character of such buildings. It is not considered that the 'artwork' on these buildings meets these requirements and hence it is recommended that enforcement action is taken to ensure the removal of the artwork on these buildings. Members could consider inviting a listed building consent application to retain the artwork and grant a temporary permission as an alternative, however, your Officers are concerned about setting a precedent and encouraging such graffiti on our best heritage assets in the town.

RECOMMENDATION

The Committee is recommended to note that the Council cannot take action against 9 of the art installations but action should be taken to seek the removal of the two installations on the listed buildings - 28 Warwick Street and the New Amsterdam Public House. Members are further recommended that,

1. The owner of No 28 Warwick Street and the New Amsterdam Public House be requested to remove the unauthorised artwork within 28 days. If the artwork remains after this period the decision to serve a Listed Building Enforcement Notice be delegated to the Head of Planning and Development in consultation with the Head of Legal Services.

Schedule of other matters

1.0 Council Priority

1.1 To support and contribute to the health, safety and well-being of the area

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 The location at this level in a flood zone is unsustainable.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 None in this context.

6.0 Human Rights Issues

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

7.0 Reputation

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

8.0 Consultations

8.1 As referred to in the above report.

9.0 Risk Assessment

9.1 As referred to in the above report.

10.0 Health & Safety Issues

10.1 As referred to in the above report.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

13.0 Legal

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

14.0 Financial implications

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.

APPENDIX



1. BILLY IDOL – The Egremont, 32 Brighton Road, Warwick Road elevation



2. TANK GIRL – 20 Bath Place, south elevation



3. GWENDOLINE CHRISTIE – Blush, 40 Selden Road – south elevation



4. OSCAR WILDE – The Corner House, 80 High Street



5. KENNY TUTT – 28 Warwick Street, east elevation (Listed building)



6. HORACE DUKE – Rose & Crown, 173 Montague Street



7. SIMON MAYO – Istanbul Café – 50 Heene Road



8. ROYAL BLOOD – Blann & Co Accountants, 111 Broadwater East, Beaumont Road elevation



9. NICOLETTE SHERIDAN – Broadway Barbers Shop, 9 The Broadway, Warwick Gardens elevation



10. HORACE DUKE – Reginald Ballum Decorative Antiques, Newland Road



11. DAVE BENSON PHILIPS – New Amsterdam public house (formerly The Swan Inn), 79 High Street, front elevation – Listed Building