

<b>APPLICATION NO:</b> 23/01597/FUL	<b>OFFICER:</b> Mrs Lucy White
<b>DATE REGISTERED:</b> 20th September 2023	<b>DATE OF EXPIRY:</b> 15th November 2023
<b>DATE VALIDATED:</b> 20th September 2023	<b>DATE OF SITE VISIT:</b>
<b>WARD:</b> Lansdown	<b>PARISH:</b>
<b>APPLICANT:</b>	Lucky Onion Group
<b>AGENT:</b>	SF Planning Limited
<b>LOCATION:</b>	129 - 133 Promenade Cheltenham Gloucestershire
<b>PROPOSAL:</b>	Retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12-month period (revision to planning application ref: 22/01373/FUL)

**RECOMMENDATION:** Refuse



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site comprises of a group of 3no. two storey over basement grade II\* listed Regency villas (Nos 125-133), located prominently within the Central Conservation Area (Montpellier Character Area).
- 1.2 The applicant seeks planning permission for the retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade for an additional 12-month period. The application is a revision to planning application ref: 22/01373/FUL which sought the retention of all existing temporary marquees at 125, 127, 129, 131 and 133 Promenade for a further two year period. This application was refused by the Council in October 2022 and a subsequent appeal dismissed in August 2023. As such, the existing structures on the site do not have the benefit of planning permission.
- 1.3 Application 22/01373/FUL was refused for the following reasons:

*Nos 125, 127, 129, 131 and 133 Promenade are grade II\* listed Regency villas located prominently within Cheltenham's Central Conservation Area (Montpellier Character Area). As required by paragraph 197 of the NPPF, the impact of the proposed temporary retention of existing temporary marquees on the designated heritage assets, by virtue of their location, number, form and design, scale and prominence, is considered to neither sustain or enhance the buildings' special interest and would harm the setting of nearby listed buildings and the character and appearance of the conservation area. Neither do the proposals meet the requirements of paragraph 199 of the NPPF, whereby great weight should be given to the assets' conservation, which includes setting.*

*The identified harm to the heritage assets is considered to be less than substantial harm for the purposes of paragraph 202 of the NPPF. The public benefits of the proposals are not considered to outweigh the identified harm to the heritage assets. In addition, the supporting information within the application demonstrates a poor understanding of the affected heritage assets and offers no clear or convincing justification for the proposed works in heritage terms. Therefore, the development proposals do not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policies SD4 and SD8 of the Joint Core Strategy (2017) and Policy D1 of the Cheltenham Plan (2020).*

- 1.4 The appeal decision and conclusions reached by the appeal Inspector, as they relate to the current proposal, will be discussed later in the report. The appeal decision is appended to this report for ease of reference.
- 1.5 Members may recall that the applicant (Lucky Onion Group) benefitted from the Council's relaxation of enforcement proceedings for temporary, moveable structures which was put in place to help and support the successful running of businesses and organisations within the town to ensure they remained open and viable during the Covid-19 pandemic. The Council's relaxation measures allowed businesses to provide more physical space or utilise existing external areas to allow the required social distancing and safer operations during the pandemic periods of government imposed restrictions.
- 1.6 Due to an applicant error in completing the application form, a revised application form and correct Ownership Certificate B are now required. Unfortunately, this validation error was brought to officers' attention at a late stage in the application process. Therefore, a decision on the application cannot be issued until the consultation date following the serving of the Certificate B Notice on the other landowners has expired. Members are therefore being asked to resolve to determine the application on the basis of the officer recommendation. The decision would be issued pending the outcome of serving the Certificate B notice and having considered any additional representations made by relevant third parties.

## Page 3

- 1.7** At the time of writing, the applicant has not submitted revised details requested. Members will be updated prior to or at the November Committee meeting.
- 1.8** The application is accompanied by three supporting statements, a Planning, Design and Access Statement (PDAS), a Design, Access and Heritage Statement (DAHS) and Sustainability Statement. Both the PDAS and DAHS set out the reasoning behind the proposed alterations to the existing marquees and applicant's justification for their retention for a further 12 months.
- 1.9** A pre-application proposal with the description 'Removal of existing temporary marquees and replacement with bespoke, architect designed, permanent, alternative solution' was received by the Council on 13<sup>th</sup> July 2023. However, the detail to accompany the application wasn't received until 24<sup>th</sup> October 2023. Therefore, at the time of writing, pre-application discussions are yet to begin.
- 1.10** It should also be noted that, in July 2023 the Council declined to accept a similar application for the retention of a reduced number of marquees for a further 12 month period (ref 23/01118/FUL). The reasons given for the Council's decision not to determine this application are as follows:

*The Local Planning Authority declines to determine this application in accordance with the powers set out at section 70B(3) of the Town & Country Planning Act 1990 (TCPA). A similar application (planning reference 22/01373/FUL) for the retention of marquees at 125-133 Promenade for a temporary period is on an appeal under section 78 of the TCPA and the Secretary of State for the Environment has not issued his decision.*

- 1.11** In summary, the difference between the two applications related to just 3 (out of 19) fewer marquees/structures and for a temporary period of 12 months rather than two years. The application site was the same and the determinative issues in respect of continuing harm to the setting of Grade II\* buildings and the conservation area remained. Overall, the Council's conclusion was that the applications were substantially the same.
- 1.12** However, the Council has accepted and validated the current application because the proposed alterations to the existing marquees are considered to result in a sufficiently different proposal from that of the appeal scheme.
- 1.13** This application is before Planning Committee at the request of Councillors Wilkinson, Andrews and Baker. The various reasons given for the referral are as follows:

*131 The Promenade is a successful business that provides jobs and generates wealth for Cheltenham in our thriving hospitality sector. I am aware of the planning background to this site, including heritage concerns, which I am sure will be considered by you and colleagues as part of this application.*

*Having read the documents relating to the application, I understand that as part of this process, the applicants have adjusted their designs in an attempt to address those concerns. In the event that officers are minded to refuse the application, I would be grateful if you would refer the application to the planning committee. I feel that the matter is worthy of a discussion relating to the balance between economic benefits to the town brought by the business, during a cost of living crisis, and the protection of heritage buildings (Wilkinson).*

*I suspect there are a number of interested parties that would wish to make a more formal submission and a more open process would be beneficial. (Andrews)*

*To ensure consistency with how the previous application was considered and there will inevitably be a considerable amount of public interest. (Baker)*

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### Constraints:

Airport Safeguarding over 45m  
Business Improvement District  
Listed Buildings Grade 2star  
Principal Urban Area

### Relevant Planning History:

**12/01392/COU 7th March 2013 PER**

Change of use from B1 (Office) to C1 (Hotel) and A3 (Restaurant)

**12/01392/LBC 7th March 2013 GRANT**

Works in association with change of use from B1 (Office) to C1 (Hotel) and A3 (Restaurant)

**13/00957/LBC 6th August 2013 GRANT**

Treatment of dry rot by removing existing affected timber, treat all sub-strates adjacent and re-instate as per existing

**14/00150/FUL 21st May 2014 PER**

Provision of temporary generator in car park with temporary acoustic fence to enclose the generator (retrospective)

**15/02243/COU 20th December 2016 PER**

Change of use from offices (B1) to hotel accommodation as part of existing hotel facilities at 129-131 Promenade with landscaped front amenity area new ground floor extension/link and formation of external courtyard to 133 Promenade (and associated internal and external alterations)

**15/02243/LBC 20th December 2016 GRANT**

Change of use from offices (B1) to hotel accommodation as part of existing hotel facilities at 129-131 Promenade with landscaped front amenity area and erection of ground floor extension/link and formation of external courtyard to 133 Promenade (and associated internal and external alterations) Proposed change of use from offices to hotel with new link to 133 Promenade

**16/00254/CLBW 25th February 2016 CERTPU**

Like for like remedial works - remove existing capping to the parapet, supply and fix new code 5 lead capping to the parapet, redress lead gutter, clean out the associated lead gutters and outlets, replace missing slates and any rotten batten and felt membranes to the affected area with new to match existing.

**16/00999/LBC 20th July 2016 GRANT**

Miscellaneous remedial works due to dry rot outbreak

**16/01169/ADV 12th August 2016 GRANT**

Advertising on hoarding (retrospective)

**16/01428/LBC 4th October 2016 GRANT**

Removal and restoration of entrance gate piers and re-erection in original position

**16/01704/LBC 24th November 2016 GRANT**

Removal and restoration of veranda on front elevation

**16/01738/LBC 15th December 2016 GRANT**

Proposed Re roofing and misc internal restoration works

## Page 5

### **17/00556/FUL 26th September 2017 PER**

Erection of external toilet block, side extension to provide new bar facilities, external seating area, 3 no. boiler flues and landscaping (part revisions to planning permission 15/02243/COU)

### **17/00556/LBC 26th September 2017 GRANT**

Erection of plant room, new external toilet block, external seating and new bar extension, 3 no. boiler flues, landscaping and internal alterations (part revisions to planning permission 15/02243/LBC)

### **18/00567/LBC 20th July 2018 GRANT**

Repositioning in basement of plant room and toilets on ground floor and repositioning of 3 no. flues to north west elevation (revision to listed building consent 17/00556/LBC)

### **18/02503/FUL PCO**

Extension of external seating/dining area at rear of building including additional landscaping (part revision to 17/00556/FUL\_LBC)

### **18/02503/LBC PCO**

Extension of external seating/dining area at rear of building including additional landscaping (part revision to 17/00556/FUL\_LBC)

### **22/01373/FUL 21st October 2022 REF**

Retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period

### **23/01118/FUL 20th July 2023 DECACC**

Retention of reduced number of marquees at 125, 127, 129, 131 and 133 Promenade, for a further 12-month period. (Revised scheme following application 22/01373/FUL)

## **3. POLICIES AND GUIDANCE**

### **National Planning Policy Framework**

Section 2 Achieving sustainable development

Section 4 Decision-making

Section 6 Building a strong, competitive economy

Section 7 Ensuring the vitality of town centres

Section 8 Promoting healthy and safe communities

Section 11 Making effective use of land

Section 12 Achieving well-designed places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 16 Conserving and enhancing the historic environment

### **Saved Local Plan Policies**

RT 2 Retail development in the core commercial area

RT 3 Non-A1 uses in primary shopping frontages

### **Adopted Cheltenham Plan Policies**

D1 Design

SL1 Safe and Sustainable Living

### **Adopted Joint Core Strategy Policies**

SD2 Retail and City / Town Centres

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality  
INF1 Transport Network  
INF5 Renewable Energy/Low Carbon Energy Development

**Supplementary Planning Guidance/Documents**

Central conservation area: Montpellier Character Area and Management Plan (Feb 2007)  
Cheltenham Climate Change (2022)

**4. CONSULTATIONS**

See appendix at end of report

**5. PUBLICITY AND REPRESENTATIONS**

Number of letters sent	<b>49</b>
Total comments received	<b>15</b>
Number of objections	<b>11</b>
Number of supporting	<b>4</b>
General comment	<b>0</b>

**5.1** The application was publicised by way of letters sent to 49 neighbouring properties, a site notice displayed within the vicinity of the site and an advert placed in the Gloucestershire Echo. A total of 15 representations were received following the publicity. The comments and concerns raised, in summary, are as follows:

- Marquees only allowed in response to Covid-19 lockdown requirements. Other local business have removed their temporary structures.
- Listed building frontages and elevations would continue to be obscured by ugly and inappropriate tents
- Harmful impact on the character and aesthetic value of iconic grade II\* listed Regency terrace and the conservation area/Montpellier Character Area
- Impact on important views/vistas within the Conservation Area
- Marquees thin skinned with no insulation and heated by fossil fuels
- Repeated applications via the planning system are being used as a route to delaying their removal
- A business plan should not be based on a temporary structure. The business operated without the marquees until the temporary relaxation of the planning rules during the Covid pandemic.
- Temporary structures rules were intended to help businesses survive, not to take advantage of these changes.
- Applicant could utilise new Class BB permitted development option
- Application too similar to the previous which was dismissed on appeal. Appeal Inspector dismissed the appeal based on the proposed reduced number of marquees.
- Applicant has had 3 years to design a permanent solution
- Information regarding the economic and social benefits of the proposal but this is not shared with the public.
- Difficulties in hospitality sector generally. This business should not be treated differently from the rest.
- Greenhouse at the Pump Rooms has been allowed to remain on a temporary basis
- Proposals address previous negative aspects, are good for employment and would allow the visual and commercial impacts to be reviewed.
- Marquees are a sophisticated and vibrant asset to Cheltenham
- Much-needed venue for entertainment and dining. They contribute greatly to the prosperity of the town, provide jobs and help keep the night-time economy vibrant.

## **6. OFFICER COMMENTS**

### **6.1 Determining Issues**

**6.2** This is a revised application following refusal of a similar proposal for the retention of marquees for a further temporary period. The key matters for consideration are therefore limited to the following;

- The extent to which the revised proposals (reduction in the height and number of the marquees) address the previous reasons for refusal and the appeal Inspector's reasons for dismissing the appeal.
- The impact on designated heritage assets (subject grade II\* listed buildings, other nearby listed buildings and Central Conservation Area)
- The public benefits and wider economic benefits of retaining the structures
- The impact on amenities of neighbouring properties, in terms of noise and disturbance
- Sustainable development and energy costs
- Impact on trees.

**6.3** This report should be read in conjunction with the officer report for 22/01373/FUL. This sets out the detail of site context, planning history, heritage impacts, layout of the marquees and what they provide in terms of facilities and covers.

**6.4** The previous officer report and the appeal decision letter are appended to this report for ease of reference.

### **6.5 Initial Officer Comments**

**6.6** Firstly, the total number of marquees and associated smaller structures on site is currently 17. These 17 structures were present on site at the time of the appeal Inspector's site visit. The Inspector therefore determined the appeal based on both the 17 structures seen on site and the larger number proposed by the appeal scheme.

**6.7** The marquee/canopy structures within the front and side curtilages of 133 Promenade have been removed. However, the remaining marquees/structures fronting the Promenade within the curtilages of 131, and 125-127 Promenade continue (for the majority of the year) to be entirely enclosed and include timber doors, and connecting doors/lobbies leading to the stairs and front entrances of 129-131 and 125-127 Promenade. The marquees fronting the Promenade also continue to be heated by 4no. fan heaters powered by 4 diesel generators located just outside of the marquees.

**6.8** Similarly, it is assumed that the business continues to have an on-site 800 persons capacity at any one time (including all staff and registered hotel guests). The internal and external areas provide approximately 525 covers in total (excluding standing customers where permissible); 140 covers in the marquees in front of 125-131 Promenade, 45 in the Japanese restaurant, 80 covers in the basement Gin and Juice Bar and the remainder provided within other external areas (some of which are undercover).

- 6.9** Members may recall that the marquees present on site today were erected in June and October 2020 in response to the above relaxations of enforcement. These temporary structures replaced, in part, a number of existing parasol structures within the frontages and external side and rear areas of 131 and 133 Promenade.
- 6.10** The Council decided to bring an end to the temporary relaxation of enforcement on 30th September 2022, given that government imposed Covid-19 restrictions had ceased by this time. Subsequently, all businesses that had notified the Council previously of their intention to erect temporary structures were notified in writing of the need to remove the structures. Any businesses seeking to retain their structures past this date, were required to seek the necessary planning consents for their retention and provide clear and convincing justification for doing so.
- 6.11** The proposals include alterations to the retained 13 marquee tents to reduce their height by approximately 2 metres. This would involve the removal of the 'central peaks' of the marquees and their replacement with a lower, domed shaped covering; albeit there is little detail provided as to the materials and appearance of these alterations, other than the elevation images provided at page 3 of the DAHS. It is assumed that the ancillary tents/structures would remain unaltered.
- 6.12** Both the PDAS and DAHS state that additional information on the economic and social benefits arising from the development are to be submitted separately due to their confidential and sensitive nature. However, this additional information was not provided during the course of the application.
- 6.13 Heritage Impacts**
- 6.14** As stated previously, the application site comprises of grade II\* listed buildings, located centrally and prominently within the conservation area. These buildings are of considerable aesthetic and historic significance and there are long distance and important views of the three elevations of No 133 (Clarence House) and the front and rear of 125-131 from Queen's Circus, Montpellier Street, Montpellier Gardens and the Promenade. Given the highly sensitive nature of the site's location, the potential impact of the proposals on the significance of designated heritage assets must be considered very carefully.
- 6.15** Policy SD8 of the Joint Core Strategy requires development to make a positive contribution to local character and distinctiveness, having regard to the valued elements of the historic environment. It states how 'Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance'.
- 6.16** Section 16 of the NPPF (2023) sets out the importance of conserving and enhancing heritage assets. Paragraph 197 of the NPPF advises that in determining planning applications, local planning authorities should take into account:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation
  - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - the desirability of new development making a positive contribution to local character and distinctiveness.
- 6.17** Paragraph 199 of the NPPF 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.”*

**6.18** Paragraph 200 of the NPPF 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.”*

**6.19** The Council’s Conservation officer (CO) and Historic England (HE) have considered the revised scheme, alongside the supporting documents and applicant’s justification for the continued retention of the marquees following the recent appeal decision. Both the CO and HE continue to raise significant concerns over the continued retention of the marquees.

**6.20** The Civic Society has also raised an objection to the proposals. Their comments are set out in full at the end of report.

### **6.21** Conservation Officer

**6.22** The Conservation officer considers the revised proposals to only ‘tokenistically’ reduce the visual impact of the development on the immediate setting of the host grade II\* listed villas, the setting of the neighbouring listed buildings and views within the Central Conservation Area. The proposals do not meaningfully address the concerns raised in respect of planning application 22/01373/FUL, which remain a significant concern of the CO.

**6.23** The impact of the amended temporary proposed works on the affected heritage assets is therefore still considered to neither sustain or enhance their special interest of the listed buildings, as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight be given to the asset’s conservation, which includes setting.

### **6.24** Historic England

**6.25** Historic England (HE) were consulted and in summary, are similarly not persuaded that the revised proposals for temporary marquees would reduce the harm caused to the setting of the Grade II\* listed buildings and Conservation Area. The proposed revised design and height of the replacement marquees has not meaningfully reduced from that of the existing arrangement. HE therefore continue to oppose any structures against the principal façade of the villas.

**6.26** HE previously advised that the refused scheme, although physically detached from the buildings, would have a detrimental visual impact on the Grade II\* villas, as they substantially screen the buildings both in close up and long views. Furthermore, the design and construction of the marquees do not respond to the architectural character of the buildings they serve. Instead, *their tent like profile substantially obscure the ground floor and detract, with their apex, from the elegant prominence of the first floor.*

**6.27** Given the significance of this group of villas, HE point to their important setting within the Conservation Area and other grade II\* listed buildings. With that in mind, the NPPF requires great weight to be given to their conservation and that the harm caused requires clear and convincing justification.

**6.28** In conclusion, HE consider that the *proposed revised scheme for lower structures would marginally reduce the visual impact on the immediate setting of the Grade II\* villas, but, from street level, would still cause a similar harm by virtue of obscuring the architectural*

*composition of the villas, which contribute highly to their heritage significance. Similarly, a reduction in the number of structures does not make any meaningful difference to the refused scheme.*

### **6.29** Appeal Decision

**6.30** The recent appeal decision and the extent to which the current proposals address the concerns raised by the appeal Inspector, have been considered very carefully. A number of key themes can be drawn from the appeal decision and they are:

- Impact on the setting and thereby the significance of the listed buildings
- Views and appreciation of the ground and upper floor elements of the listed buildings
- Wider impact on the character and appearance of the conservation area
- Extending the temporary period for use for a further two years

**6.31** The following extracts from the appeal decision relate to the above considerations.

**6.32** Impact on setting and significance - (para 16) *The open spaces around the buildings remain a key aspect of how the assets are appreciated today. Moreover, the open nature of these spaces allow the aforementioned ground floor elements that contribute to the significance of the buildings to be viewed and seen in the context of the building as a whole. The neoclassical detailing and the hierarchy of windows are particularly important aspects of how the buildings were designed. The open space forming the appeal site thus makes a major contribution to the significance of 125 and 127 Promenade, 129 and 131 Promenade and 133 Promenade.*

**6.33** *The scale of the development has drastically reduced the degree of spaciousness within the appeal site (despite three proposed marquees being absent on my visit). The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance. Moreover, the tented form and irregular positioning of the marquees within the site jars with the formal symmetry of the Regency buildings. This also has the effect of reducing the individuality between the three buildings and blurring the definition between them.*

**6.34** Views of the ground and upper floors - (para 23) *Owing to their considerable height, spread and form, the marquees almost completely obscure the ground and basement elevations of the buildings, radically reducing the visibility of their architectural detailing, such as the arcading and balconies to the ground floor areas referred to above. The peaks of the marquees also obscure parts of the first floors of the buildings. Visibility of the buildings in views from outside the site as well as from the entrance to Imperial Gardens opposite and from further along Promenade has been radically reduced. This severely restricts the ability to appreciate the significance of the buildings.*

**6.35** Wider impacts - (para 30) *the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting. In addition, it would fail to preserve or enhance the character or appearance of the CA. As such, it would cause harm to the significance of these designated heritage assets.*

**6.36** Extending the temporary period - (para 29-30) *to retain the marquees for a further two years, this harm would continue at least for the duration of that period.....As such, for the above reasons, I conclude that the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting.*

- 6.37** What is clear from the appeal decision is that the Inspector considered that the marquees obscured the valuable architectural detailing of the ground and basement elevations of the buildings and thereby the ability to appreciate the significance of the buildings. Whilst a reduction in the height of the existing marquees, by removing the central peaks, may allow parts of the first floor elevations to be more visible to diners within the site and from the public realm, this does not in any way, overcome the overriding concerns over the restriction of views of the ground and basement elevations. In the officer's opinion, by obscuring the lower elevations, the appreciation of the entire building elevations is lost. Nor do the proposals overcome the current footprints of the marquees and ancillary structures, in that they cover almost the entire frontages of these grade II\* listed buildings. Furthermore, the lack of breaks/gaps between the marquees, prevent a clear appreciation of the individuality of the three buildings.
- 6.38** Equally, and despite the proposed reduction in height, the proposals fail to address the harmful impact on the special interest and significance of other nearby listed buildings, notably the grade II\* Queens Hotel and the grade II listed gate piers of No 133. At paragraph 31, the Inspector comments that *'through interrupting the spacious character and views between the two buildings the development has adversely affected the significance of the Grade II\* listed Queens Hotel through development within its setting.* Similarly, he considers that the listed gate piers have been partly or totally subsumed by the structures, eroding their legibility within the site.

### **6.39 Public Benefits**

- 6.40** The applicant considers that the marquees generate significant public benefits and that these far outweigh the less than substantial harm caused.
- 6.41** As discussed above, the proposed development is considered to result in harm to the significance of these important grade II\* listed buildings, other listed buildings within the vicinity of the site and the wider conservation area. The conservation officer considers the level of harm to be less than substantial.
- 6.42** Paragraph 202 of the NPPF 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..."*

- 6.43** The applicant has submitted supporting information which sets out the below justification for the proposed further temporary retention of the marquee structures. Any economic, social and environmental benefits identified as part of the applicant's justification must therefore be considered very carefully.

### **6.44 Economic and Social Benefits**

- 6.45** It is quite clear that the hotel business has been able to trade successfully and remain viable during the post lockdown periods of the Covid-19 pandemic. It is also evident, based on the number of marquees installed to the front and side of all three buildings, that there has been an increase in overall covers for the both the restaurant and bar elements. Without clear evidence presented by the applicant to the contrary, external dining and drinking capacity was most likely lower pre-pandemic; given that the marquee structures now extend across all frontages. Indeed the appeal Inspector notes that *'having regard to the significant number of tables located within the areas covered by marquees, I do not doubt that these areas generate a substantial income throughout the year, as they are essentially an extension of the internal dining areas and bars, allowing for significantly more tables and more customers'.*

- 6.46** In light of the above, the retention of the 11 marquees and their ancillary structures would maintain this level of trade for 131 Promenade, contributing (but arguably not essential) to the overall viability and vitality and retail/leisure and accommodation offer within the town centre. As such, the proposals provide some economic and social benefits to the wider public and the town centre economy.
- 6.47** The Inspector considered the limited financial information submitted by the applicant as part of the appeal process (to substantiate an economic argument for retention). The Inspector considered there was a lack of supporting evidence with regard to the financial implications of the marquees and the extent to which the businesses are dependent on them. The Inspector also concluded that *'There is no evidence before me that the appeal proposal is the only means of providing outdoor dining'*. Nor is he convinced *'that the marquees are fundamental to maintaining the buildings' optimum viable use'*.
- 6.48** Other than what is set out in the PDAS, the applicant has provided no further substantive financial information to support their economic argument.
- 6.49** It is also worth pointing out that the marquees are largely, fully enclosed and heated during the autumn and winter months. As such, the applicant's need to provide a 'safer' environment for its staff and customers is considered somewhat counter-intuitive. In essence, officers question whether a suitable, all year round, outdoor environment for the consumption of food and drink is actually provided. Whilst there may be an element of natural ventilation during the winter months, these are not all outdoor spaces in the traditional sense; rather they offer additional seating and cover outside of the hotel buildings. Similarly, the Inspector considers the 'outdoor dining' offer to be of limited benefit.
- 6.50** In summary, the Inspector affords limited weight to any social and economic benefits of the proposals which are not sufficient to outweigh the considerable importance he attaches to the identified harm to the significance of the designated heritage assets.
- 6.51** Environmental Benefits
- 6.52** Officers consider that there is no evidence of the proposals offering any environmental benefits.
- 6.53** The applicant has sought to address climate change and the guidance set out in the relevant SPD. The submitted Sustainability Appraisal is discussed at paragraphs 6.74-9 below. However, no alternative solution to the use of diesel fuelled generators has been provided.
- 6.54** **Impact on Heritage Assets versus Public Benefit Test**
- 6.55** As set out and discussed above, harm to the significance of designated heritage assets has been identified. The identified harm is considered to be less than substantial and will therefore need to be weighed against the public benefits of the proposals, as required by paragraph 202 of the NPPF.
- 6.56** In summary and as set out above, there are limited public benefits associated with the retention of the marquees. Furthermore, these benefits existed pre-Covid/prior to the installation of the marquees and it is likely that the additional marquees and increase in external covers are now allowing the business to trade more successfully. If this is the case, it also does not amount to a public benefit.
- 6.57** The town centre offers a wide range of alternative catering facilities and hotel accommodation. Put simply, the retention of the 17 marquees/structures for a further 12-

month period is not considered to be essential to maintain the viability/vitality of the town centre economy.

**6.58** Neither do the proposals constitute enabling development that would bring about public benefits necessary to justify the retention of the marquees.

**6.59** Whilst officers acknowledge that there are some social and economic benefits associated with the retention of the marquees, these benefits are not considered to outweigh the identified harm to the significance (including setting) of the designated heritage assets. Neither does the temporary nature of the proposals alleviate the concerns. The harm exists whether the marquees continue to be sited on a temporary basis (now approaching 4 years) or on a permanent basis.

**6.60** In conclusion, the current proposals, in terms of cover numbers and use, are no different from that considered by the appeal Inspector. As such, there is no reason for officers to reach a different conclusion to that of the appeal Inspector with regard to the public benefits of the proposals.

### **6.61 Impact on neighbouring property**

**6.62** Section 12 of the NPPF requires development to create places with a high standard of amenity for existing and future users. Policy SL1 of the Cheltenham Plan advises that development will only be permitted where it will not cause unacceptable harm to the amenity of adjoining land users or the locality. In assessing impact on amenity, the Council will take account of matters including, but not limited to, loss of privacy, loss of light and outlook, noise and disturbance. The policy is consistent with adopted JCS policy SD14.

**6.63** Whilst the predominant use of surrounding development is commercial (retail, restaurant, bar, café uses), there are many dwellings located on Imperial Square and the Promenade.

**6.64** Due to the location and the number and size of the marquees, there remains potential for the proposals to impact upon the amenities of neighbouring land users, in terms of noise and disturbance and possibly light spill. In addition to the use of the marquees as an external dining area, the noise impacts of the diesel fuelled generators used to heat the marquees must also be considered. However, the marquees are not considered to result in any unacceptable loss of light or overbearing impact on any neighbouring land user.

**6.65** The Council's Environmental Health team (EHO) raise no objection on the basis of the limited number of recorded complaints held for the address and the length of time since a complaint was last received by the EHO.

**6.66** In light of the above, officers consider that the retention of the marquees for a further 12-month period should not result in an unacceptable impact on the amenities of neighbouring land users. However, any future application for an alternative permanent solution, would require a more detailed consideration of potential noise impacts.

### **6.67 Access and highway issues**

**6.68** The Highway Authority was not consulted. Despite an increase in the use of the premises over the last couple of years, there are no relevant highway and access matters to consider as part of this application. This is an existing commercial operation within the town centre and, in the main, the proposals relate to on-site activity associated with the authorised use of the premises as a hotel with restaurant and bar. In this respect, no material change of use has occurred.

### **6.69 Sustainability**

**6.70** In June 2022, Cheltenham's Climate Change SDP was adopted which identifies and provides guidance for how development can contribute to the aims of sustainability to achieve net zero carbon by 2030 and how applicants can successfully integrate a best-practice approach towards climate and biodiversity in their development proposals. The SPD is now a material consideration in the determination of applications.

**6.71** Given the temporary nature of the proposals, officers acknowledge that there is perhaps little opportunity to include specific low carbon technologies within the proposed development. However, the applicant has provided a Sustainability Appraisal which sets out the following energy efficiencies and low carbon measures:

- Natural solar gain achieved by clear sides of marquees
- Natural ventilation achieved by removing the side panels during warmer weather, plus natural shade afforded by vegetation. In cooler weather the side panels are kept closed to retain heat.
- LED energy efficient heating
- Marquees heated independent of the gas network by fuel heaters. Fuel heaters more energy efficient than alternative heaters serving parasols.
- Marquees are light weight and durable structures

**6.72** Notably, during the autumn, winter and early spring months the marquees and canopy structures are heated during the day by a number of diesel powered generators and internally mounted electric heaters. Despite the measures set out in the accompanying Sustainability Appraisal, the proposals are therefore considered to be in conflict with the objectives of the SPD.

### **6.73 Other considerations**

#### **6.74 Trees**

**6.75** In addition to a number of trees planted within the site, there a number of large, mature Plane trees located adjacent to and in close proximity of the site. The canopies of some of the trees overhang the marquees. These trees contribute to one of the finest avenues of trees within Cheltenham.

**6.76** The Council's Tree Officer comments that the replacement of the marquees with lower-roofed marquees does nothing to improve the cramped condition for the trees planted at this site. Although many of the trees are in pots, some trees (e.g. the birch outside No 129) are in the ground and have limited lateral growing space. This is not an ideal situation for trees which have been hemmed in by or are growing underneath the marquees. These trees should be provided with adequate space to grow.

**6.77** Any proposal for the permanent retention of the marquees would require further consideration of the long term impacts on existing trees, both on and off site.

#### **6.78 Public Sector Equalities Duty (PSED)**

**6.79** As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to this duty. There are three main aims:

Removing or minimising disadvantages suffered by people due to their protected characteristics;

Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and

Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

**6.80** Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

**6.81** In the context of the above PSED duties, this proposal is considered to be acceptable.

## **7. CONCLUSION AND RECOMMENDATION**

**7.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

**7.2** NPPF paragraph 11 sets out a ‘presumption in favour of sustainable development’ which in decision making means ‘approving development proposals which accord with an up-to-date development plan’.

**7.3** Harm to the significance of designated heritage assets has been identified. The identified harm has been weighed against the public benefits of the proposals, as required by paragraph 202 of the NPPF. Whilst officers acknowledge that there are some social and economic benefits associated with the retention of the marquees, these benefits are limited and not considered to outweigh the identified harm to the significance of the heritage assets.

**7.4** Officers also consider that the proposals fail to address the concerns raised by the appeal Inspector.

**7.5** To date, no alternative (permanent) solutions have been approved by Council, this forming part of the applicant’s justification for the retention of the marquees. Pre-application proposal details for a permanent solution were received in October 2023, therefore pre-application discussions are still at a very early stage.

**7.6** In light of the above and having also considered the extent to which the proposals amount to sustainable development, officers conclude that the applicant has failed to provide clear and sufficient justification for the proposed development. The identified harm to the significance of the heritage assets is considered to outweigh the public benefits and there are no other reasons that would demonstrably outweigh the identified adverse impacts of the proposals.

**7.7** The proposed retention of the marquee structures, in their altered form, for a further 12-month period, is therefore considered to be unacceptable and conflicts with relevant local and national planning policy and guidance.

**7.8** The recommendation is for Members to resolve to refuse the application for the following reasons. The decision will be issued pending the outcome of serving the Certificate B notice and having considered any additional representations made by relevant third parties.

## 8. INFORMATIVES / REFUSAL REASONS

- 1 Nos 125, 127, 129, 131 and 133 Promenade are grade II\* listed Regency villas located prominently within Cheltenham's Central Conservation Area (Montpellier Character Area). As required by paragraph 197 of the NPPF, the impact of the proposals on the designated heritage assets, by virtue of their location, number, form and design, scale and prominence, is considered to neither sustain or enhance the buildings' special interest and would harm the setting of the listed buildings and structures, those of nearby listed buildings and the character and appearance of the Central Conservation Area. Neither do the proposals meet the requirements of paragraph 199 of the NPPF, whereby great weight should be given to the assets' conservation, which includes setting.

The identified harm to the heritage assets is considered to be less than substantial harm for the purposes of paragraph 202 of the NPPF. The public benefits of the proposals are not considered to outweigh the identified harm to the heritage assets. In addition, the supporting information within the application continues to demonstrate a poor understanding of the affected heritage assets and offers no clear or convincing justification for the proposed works in heritage terms. Therefore, the development proposals do not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework (2023) and Policies SD4 and SD8 of the Joint Core Strategy (2017) and Policy D1 of the Cheltenham Plan (2020).

### INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the authority cannot provide a solution that will overcome the identified harm to designated heritage assets.

As a consequence, the proposal cannot be considered to be sustainable development and therefore the authority had no option but to refuse planning permission.



## Consultations Appendix

### **Environmental Health**

*6th October 2023*

In relation to 23/01597/FUL, 129 - 133 Promenade, please note that there are no objections from Environmental Health.

The rationale for this is the limited number of recorded complaints we hold on this address and the period of time which has passed since a complaint was received by this department.

### **Conservation and Heritage**

*27<sup>th</sup> October 2023*

The proposed works are for the retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12-month period. The application is a revision of planning application 22/01373/FUL for retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period. This application was refused and dismissed at appeal.

Much of the below conservation advice is repeated from the conservation advice previously offered for planning application 22/01373/FUL.

It is important to consider the policy context in which the proposal needs to be determined. The cornerstone of heritage legislation is the Planning (Listed Building and Conservation Area) Act 1990. In determining this application it is important to note the statutory duty of local planning authorities under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

A core principle of the National Planning Policy Framework 2019 (NPPF) is heritage assets be conserved in a manner appropriate to their significance. Chapter 16, paragraphs 199-208 set out how potential impacts on heritage assets need to be considered. This assessment takes account of the relevant considerations in these paragraphs, including paragraph 197 of the NPPF, which requires the significance of heritage assets to be sustained and enhanced, with paragraph 199 requiring great weight be given to the asset's conservation.

The context of the development site is highly sensitive in heritage terms. The development proposal is within the curtilages of 125, 127, 129, 131 and 133 Promenade, grade II\* listed buildings. The site is prominently visible from the Promenade, Imperial Gardens and within the context a number of listed buildings whose setting is affected by the proposed works, including: 99-119 Promenade, a grade II listed terrace of regency townhouses; The Queen's Hotel, Imperial Square, a grade II\* listed Regency Hotel; Crimean War memorial, a grade II listed memorial; x2 pairs of gates pier and railing and pier adjacent to 131 Promenade which are each separately grade II listed; Queens Circus 1-6 Montpellier Avenue, a grade II listed Regency shop terrace; 14-34 Imperial Square, a grade II\* listed terrace of Regency townhouses; and Cheltenham Town Hall, a grade II listed Edwardian municipal building.

The site is also located within the Central Conservation Area: Montpellier Character Area. The area is noted within the Central Conservation Area Montpellier Character Area Appraisal and Management Plan adopted 2007 (the Appraisal) for predominantly containing Regency buildings, with the presence of many complete and uniform formal terraces, large villas set within spacious grounds. It is also noted within the Appraisal for having three important areas of public open space, which includes Imperial Gardens. These formal gardens are stated as

greatly enhancing the character and appearance of the Montpellier, and the setting of surrounding buildings. The Appraisal also notes the Promenade, which contains the town centre's southern spine and one of the town's most visually striking streets.

It was previously advised, planning application 22/01373/FUL was unacceptable in terms of the design of the marquee structures, the cumulative impact of their temporary appearance, their bulky scale and massing, exacerbated by the use of inappropriate materials, as they were prominent, intrusive and obscured views of the elevations of grade II\* listed 125, 127, 129, 131 and 133 Promenade, significantly undermining their setting, to the detriment of their special interest. The marquees were also considered to detract from views along the Promenade, views within Imperial Gardens, views along Imperial Square, views north from Imperial Gardens, which affects the setting of the numerous listed buildings located here and the Central Conservation Area: Montpellier Character Area. The proposed marquee structures proposed in planning application 22/01373/FUL were considered to harm the immediate and wider setting of the affected listed buildings and the character and appearance of the conservation area and were subsequently refused and dismissed at appeal.

The proposed revised development proposal, which includes a slightly reduced number of marquees with a lower roofline, achieved through a dome like roof, is considered to only tokenistically reduce the visual impact of the development proposal on the immediate setting of the host grade II\* listed villas, the setting of the neighbouring listed buildings and views within the Central Conservation Area: Montpellier Character Area and does not meaningfully address the concerns raised over planning application 22/01373/FUL, which remain a significant concern.

The impact of the amended temporary proposed works on the affected heritage assets is still considered to neither sustain or enhance their special interest as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight be given to the asset's conservation, which includes setting. The temporary marquees and associated structures harm the affected heritage assets, considered to be less than substantial harm for the purposes of the NPPF. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF requires this harm be weighed against the public benefits of the proposal. It is important this exercise be undertaken as a separate exercise to the general planning balance as it is distinct from it.

The development proposal does not comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

### **Historic England**

*2nd October 2023*

Thank you for your letter of 20 September 2023 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

### Summary

We are not persuaded that the revised proposals for temporary marquees would reduce the harm caused to the setting of the Grade II\* listed buildings and Conservation Area. We still strongly advise that proposals for a permanent solution are brought forward for discussion.

### Historic England Advice

### Significance of Designated Heritage Assets

Located in the heart of historic Cheltenham, the semi-detached villas at no 125-133 are highly representative of blossoming of Cheltenham as a Regency Spa town, between the end of the 18th and the beginning of the 19th century. Built in the early 1830s and attributed mainly to architect John Forbes, the paired villas sit within their own garden plot behind railings and gated walls.

They present a double pile plan and rise for two storeys plus attic over basement. Internally they retain much of their plasterwork and in some cases further original features such as staircases and fireplaces survive. Externally, despite some differential treatment in the fenestration and architectural detailing of their elevations, they are unified in materiality and massing, and clearly exemplify the formal and elegant Regency development phase of the area.

The villas are located on The Promenade, one of the spinal axis of Montpelier Character Area, part of the Central Conservation Area. This is an area that, particularly where the properties in questions are located, is characterised by spaciousness, a loose urban grain around wide tree lined roads and formal green spaces, and medium and long vistas that open up towards larger public buildings or even surrounding countryside.

The properties subject to this application both contribute to and are enhanced by the distinctive character and appearance of Montpelier, which is to be considered part of their immediate setting.

The terrace is designated as Grade II\*, and as such is in the top 8% of listed buildings. Therefore, greater weight should be given to its conservation. The National Planning Policy Framework (NPPF) defines 'conservation' as 'the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance'.

### Summary of proposals

Following a recent refusal to retain the existing array of marquees along the principal elevation of the row of villas, and the subsequent dismissed planning appeal, the revised application proposes an alternative array of tented structures, without the central peaks, but similar in construction and position. The refused scheme is for 16 marquees, a reduction in three from the existing arrangement.

### Impact of the Proposals

We previously advised that the refused scheme, although physically detached from the buildings, would have a detrimental visual impact on the Grade II\* villas, as they substantially screen the buildings both in close up and long views. Furthermore, the design and construction of the marquees do not respond to the architectural character of the buildings they serve. Instead, their tent like profile substantially obscure the ground floor and detract, with their apex, from the elegant prominence of the first floor.

The proposed revised scheme for lower structures would marginally reduce the visual impact on the immediate setting of the Grade II\* villas, but, from street level, would still cause a similar harm by virtue of obscuring the architectural composition of the villas, which contribute highly to their heritage significance. We do not consider that a reduction in the number of structures makes any meaningful difference to the refused scheme, which is demonstrated by the compared elevations on page 3 of the Design and Access Statement.

Given the significance of the array of villas, their important setting within the Conservation Area and other highly graded listed buildings, the NPPF requires great weight to be given to

their conservation and that the harm caused requires clear and convincing justification. We previously suggested that a more permanent solution should be explored to the rear of the properties, as this aspect is less sensitive to change (but would still have an impact). However, it appears that this, or any other alternative options, have not been progressed further.

### Planning Legislation & Policy Context

Central to our consultation advice is the requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 in Section 66(1) for the local authority to "have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses". Section 72 of the act refers to the council's need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in the exercise of their duties.

When considering the current proposals, in line with Para 194 of the NPPF, the significance of the asset's setting requires consideration. The setting of 125-133 The Promenade is a major aspect of their significance. The principal elevation is the most sensitive aspect to change and therefore the harm is greatest here within the immediate and wider setting.

Para 199 states that in considering the impact of proposed development on significance great weight should be given to the asset's conservation and that the more important the asset the greater the weight should be. The terrace of villas is Grade II\*, heritage assets of the highest significance. Para 200 goes on to say that clear and convincing justification is needed if there is loss or harm.

Historic England's advice is provided in line with the importance attached to significance and setting with respect to heritage assets as recognised by the Government's revised National Planning Policy Framework (NPPF) and in guidance, including the Planning Practice Guidance (PPG), and good practice advice notes produced by Historic England on behalf of the Historic Environment Forum (Historic Environment Good Practice Advice in Planning Notes (2015 & 2017)).

Heritage assets are an irreplaceable resource NPPF 189 and consequently in making your determination your authority will need to ensure you are satisfied you have sufficient information regarding the significance of the heritage assets affected, including any contribution made by their settings to understand the potential impact of the proposal on their significance NPPF 194, and so to inform your own assessment of whether there is conflict between any aspect of the proposal and those assets' significance and if so how that might be avoided or minimised NPPF 195.

The significance of a heritage asset can be harmed or lost through alteration or destruction of the asset or development within its setting. As heritage assets are irreplaceable, any harm (whether substantial or less than substantial) is to be given great weight, and any harm to, or loss of, the significance of a designated heritage asset (or site of equivalent significance) should require clear and convincing justification.

Position.

The revised design and height of replacement marquees do not persuade us that the harm they would cause has been meaningfully reduced from that of the existing arrangement. We still oppose any ancillary structures against the principal façade of the villas.

Over a year has elapsed since the former application was submitted, seeking a temporary permission while a permanent solution to the accommodation needs of the business were investigated. The current proposals are certainly not a permanent solution and should not be seen to be, despite another temporary permission being sought. The applicant should therefore be encouraged again to develop plans that would deliver a permanent solution. This should be informed by a proportionate assessment of the significance of all heritage

assets being affected. There is presently no proper assessment included with the application, or the previous application, and this must be carried out before any alternative proposals are considered.

We remain concerned over the proposals, despite a marginal change in appearance of the proposed replacement marquees. However, their impact and harm to significance will still be unacceptable and your authority would be justified in rejecting the alternative plans.

### Recommendation

Historic England has concerns regarding the application on heritage grounds. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 194, 199, 200 and 206 of the NPPF.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

### **Heritage and Conservation**

*5<sup>th</sup> October 2023*

The proposed works are for the retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further one year period. The marquees are comprised of several interconnected structures with translucent plastic walls, white coloured soft plastic roof, timber entrances and bar structures located internally. The marquees extend around most of the external garden area of both the front, side and rear of 125, 127, 129, 131 and 133 Promenade.

The marquees are used as a temporary restaurant/bar. Notably the marquees were originally constructed without planning permission, with the knowledge of the local planning authority, when planning enforcement was relaxed to address social distancing concerns during the Covid 19 pandemic. These restrictions have now ended. The applicant was previously made aware of the temporary nature of this relaxation and constructed the marquees with this understanding. Notably various unauthorised temporary structures outside these properties pre-date the Covid pandemic.

It is important to consider the policy context in which the proposal needs to be determined. The cornerstone of heritage legislation is the Planning (Listed Building and Conservation Area) Act 1990. In determining this application it is important to note the statutory duty of local planning authorities under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

A core principle of the National Planning Policy Framework 2019 (NPPF) is heritage assets be conserved in a manner appropriate to their significance. Chapter 16, paragraphs 199-208 set out how potential impacts on heritage assets need to be considered. This assessment takes account of the relevant considerations in these paragraphs, including paragraph 197 of the NPPF, which requires the significance of heritage assets to be sustained and enhanced, with paragraph 199 requiring great weight be given to the asset's conservation.

The context of the development site is highly sensitive in heritage terms. The development proposal is within the curtilages of 125, 127, 129, 131 and 133 Promenade, grade II\* listed buildings. The site is prominently visible from the Promenade, Imperial Gardens and within the context a number of listed buildings whose setting is affected by the proposed works,

## Page 22

including: 99-119 Promenade, a grade II listed terrace of regency townhouses; The Queen's Hotel, Imperial Square, a grade II\* listed Regency Hotel; Crimean War memorial, a grade II listed memorial; x2 pairs of gates pier and railing and pier adjacent to 131 Promenade which are each separately grade II listed; Queens Circus 1-6 Montpellier Avenue, a grade II listed Regency shop terrace; 14-34 Imperial Square, a grade II\* listed terrace of Regency townhouses; and Cheltenham Town Hall, a grade II listed Edwardian municipal building.

The site is also located within the Central Conservation Area: Montpellier Character Area. The area is noted within the Central Conservation Area Montpellier Character Area Appraisal and Management Plan adopted 2007 (the Appraisal) for predominantly containing Regency buildings, with the presence of many complete and uniform formal terraces, large villas set within spacious grounds. It is also noted within the Appraisal for containing three important areas of public open space, which includes Imperial Gardens. These formal gardens are stated as greatly enhancing the character and appearance of the Montpellier, and the setting of surrounding buildings. The Appraisal also notes the Promenade, which contains the town centre's southern spine and one of the town's most visually striking streets.

Regarding the justification for the proposed works in heritage terms, it is considered the supporting information within the application does not fully recognise the significance of the site and its context and the impact the development proposal has on them. It is also considered unclear from the submitted application why the continued need for a temporary orangery structure is required given the lifting of Covid restrictions and why this use cannot be accommodated within the existing grade II\* listed buildings. It is considered this can be used as a reason for refusal.

The proposal is considered to fail to meet the requirement of paragraph 194 of the NPPF, which requires an applicant to describe the significance of any heritage assets affected by a development proposal, including any contribution made by their setting, with the level of detail proportionate to the assets' importance and sufficient to understand the potential impact of the proposal on their significance. It also fails to address paragraph 200 of the NPPF, which requires any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), to require clear and convincing justification.

In terms of the design of the marquee structures, the cumulative impact of their temporary appearance, bulky scale and massing, exacerbated by their inappropriate materials, result in a development proposal that is prominent, intrusive and obscures views of the elevations of grade II\* listed 125, 127, 129, 131 and 133 Promenade, significantly undermining their setting, to the detriment of their special interest. Because of this impact the marquees also detract from views along the Promenade, views within Imperial Gardens, views along Imperial Square, views north from Imperial Gardens which affects the setting of the numerous listed buildings located here (listed above) and the Central Conservation Area: Montpellier Character Area. The proposed marquee structures therefore harm the immediate and wider setting of the affected listed buildings and the character and appearance of the conservation area. Given the highly sensitive nature and its context in heritage terms, this impact is considered unacceptable even on a temporary basis and should be removed without delay to address the harm it is causing.

It is important to note outside the context of the social distancing required by the Covid pandemic this or any similar such proposal would have been supported because of its harmful impact on the setting of heritage assets. A concern is also raised accepting this impact on a temporary basis would set an unwelcome precedent to allow similar such harmful development within the setting of listed buildings elsewhere.

The impact of the temporary proposed works on the heritage assets is considered to neither sustain or enhance their special interest as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight

be given to the asset's conservation, which includes setting. The temporary retention of the existing marquees and associated structures harm the heritage assets, considered to be less than substantial harm for the purposes of the NPPF. The supporting information within the application demonstrates a poor understanding of the affected heritage assets and offers no meaningful justification for the proposed works in heritage terms. The development proposal does not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF requires this harm be weighed against the public benefits of the proposal. It is important this exercise be undertaken as a separate exercise to the general planning balance as it is distinct from it.

### **Building Control**

*27th September 2023*

This application will require Building Regulations approval. Please contact Cheltenham and Tewkesbury Building Control on 01242 264321 for further information.

### **Cheltenham Civic Society**

*20th October 2023 - 23/01597/FUL* | Retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12-month period (revision to planning application ref: 22/01373/FUL) | 129 - 133 Promenade Cheltenham

### **OBJECT**

The issue in this case remains the preservation or enhancement of the Conservation Area and the Grade II\* listed buildings, as required by sects 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This was highlighted by the Planning Inspector at the last appeal.

This application still fails to address these negative impacts. Indeed, the applicant admits the application still offers a degree of harm. That harm was also identified by the Planning Inspector at appeal yet it has not been adequately addressed so the application fails to satisfy NPPF para 199. The proposed reduction in the number of tents to the side and front of the building from 19 to 16 (16%) is far from sufficient and the buildings' principal elevations are still partially obscured.

The Planning Inspector said, 'The harmful impact would also be contrary to Policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Core Strategy (2017) and Policy D1 of the Cheltenham Local Plan (2020) which together seek to conserve and enhance heritage assets and safeguard local distinctiveness and the historic environment.' There is nothing in this application that addresses those concerns. This application still fails to demonstrate how the development plan's requirements will be met.

The applicant has considerable freedoms under Class BB yet has failed to address those provisions and why they cannot be used. These provisions allow for temporary uses in a way that reduces harm to listed buildings so are critical to this case.

Class BB permits temporary structures for 120 days in a 365 day period, restricted to a height of not more than 3m, and no more than 50% of floor area of host building or 50 square metres, whichever is the lesser.

## Page 24

The proposed reduction in height of the tents in front of the building would still be 30% higher than the 3m permitted under Class BB provisions. They still block the views of the principal elevations, and the revised shape of the reduced tents detract from the attractiveness of the frontage. The application fails to address the provisions of NPPF chapter 16, JCS policy SD8 and the Cheltenham Plan Chapter 9.

The business case has not been shared publicly so we can't comment on it, but we note that the hospitality sector in Cheltenham appears to be flourishing with numerous new openings within the last year, including 3 at the Quadrangle, which have not required any changes to their outside areas. Other town centre hospitality businesses have complied with the current regulations and have removed their temporary covid structures and/or sought Class BB consent. The applicant's focus on the tents alone instead of the capacity (personnel, covers, etc) prevents proper consideration of the financial case.

We are still uncertain as to what the 12-month extension will achieve, as there is still no suggestion of what an acceptable permanent solution could look like after that. As there is no evidence that any progress has been made in preparing a long term solution over the past few years, there is a justifiable fear that this latest submission is just a way of further kicking the can down the road.

The necessity of heating the temporary structures is not properly addressed in the sustainability statement so it is not possible to ascertain compliance with Cheltenham's Climate Change SPD.

Acknowledging there is a need to balance conservation and financial considerations, we would like to suggest a compromise.

The large brown tent at the rear on the corner of Montpellier Street (which is not included on the existing layout plans submitted with this application) has a floor area of approximately 243m<sup>2</sup> which would meet the 50 square metres per host building criterion of Class BB. We are prepared to support its retention for 12 months as its impact on the principal elevations of the host buildings is not as great as the proposed retained structures. We are also prepared to accept its current height, even though it exceeds the Class BB 3m height provision. In conjunction with this, we would also accept the installation of parasols to the front elevation, which would enable the principal elevations to be seen more clearly while offering shelter.

### **Tree Officer**

*3rd October 2023*

No trees are to be removed as part of the proposal. However, it should be noted that the replacement of the marquees with lower-roofed marquees does nothing to improve the cramped condition for the trees planted at this site. Although many of the trees there are in pots, some trees (e.g. birch outside 129) are in the ground and have limited lateral growing space. This is obviously not ideal for those trees that are have been hemmed in by (or are growing underneath) the marquees. It would be preferable to give those trees adequate space to grow, and for their amenity to be improved by not being impeded by the marquees.



<b>APPLICATION NO: 23/01597/FUL</b>		<b>OFFICER: Mrs Lucy White</b>
<b>DATE REGISTERED:</b> 20th September 2023		<b>DATE OF EXPIRY :</b> 15th November 2023
<b>WARD:</b> Lansdown		<b>PARISH:</b>
<b>APPLICANT:</b>	Lucky Onion Group	
<b>LOCATION:</b>	129 - 133 Promenade Cheltenham Gloucestershire	
<b>PROPOSAL:</b>	Retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12-month period (revision to planning application ref: 22/01373/FUL)	

## REPRESENTATIONS

Number of contributors	<b>16</b>
Number of objections	<b>11</b>
Number of representations	<b>0</b>
Number of supporting	<b>5</b>

4 Taylors End  
Cheltenham  
Gloucestershire  
GL50 2QA

### Comments: 15th October 2023

These marquees are thin-skinned structures with no insulation and are heated by an inefficient fossil-fuel fired system. As a result there will be enormous greenhouse gas emissions associated with use of these structures through the winter. If the owners used the adjoining solid buildings instead, the greenhouse gas emissions would be substantially reduced.

This situation has been going on for some years now. Why should repeated applications for use of temporary, poorly insulated structures be an allowable route to avoid the insulation normally required of owners of structures in the town (assuming those structures were constructed to meet building regulations)?

In view of the council's professed policy of sustainability, this application should be refused.

322 London Road  
Charlton Kings  
Cheltenham  
Gloucestershire  
GL52 6YJ

**Comments:** 20th September 2023

I support this new plan. It addresses previous negative aspects of the design and would allow for a short period of time for its visual and commercial impact to be reviewed. It is good visually and in keeping with the tented events often permitted in Imperial Gardens and Montpellier Park. It is good for employment and in keeping with a "Festival" town.

Flat 4  
40 Evesham Road  
Cheltenham  
Gloucestershire  
GL52 2AH

**Comments:** 29th September 2023

Dear Mrs White,

Many thanks for the letter received regarding the proposed revised planning application by Lucky Onion concerning 129-133 Promenade.

I am saddened that there are still applications coming regarding this, I feel that not only the actual buildings concerned obstructed still but also the view down the Prom is dramatically modified which surely is far from "in keeping" with the Regency façade of that part of Cheltenham? I reiterate what I said previously regarding the erection of the encampment, it was an understandable request, granted during a very difficult time as a temporary solution to give the business and customers an opportunity to socialise. There was ample time for the business to prepare for the culmination of these special conditions. One does not produce a business plan that bases itself on a temporary structure? It does not benefit the aesthetic of our town in any way.

There are a number of unoccupied premises around the town centre which would perhaps benefit from a relocation of the business from its temporary location?

I trust this helps

Sincerely

32 Imperial Square  
Cheltenham  
Gloucestershire  
GL50 1QZ

**Comments:** 6th October 2023

In essence, this Application is very similar to a previous Application (22/01373/FUL) which was refused. The Applicant appealed the Decision. The HM Inspector refused the Appeal.

All the matters of substance given by HM Inspector in his detailed report are relevant to the current Application and should be taken into account.

The Application offers a small reduction in the number of marquees, from 19 to 16. However, this is not a reason for allowing the Application. The number of marquees on site at the time of HM Inspector's visit was already 16 and the Inspector not only rejected the 16 marquees that he saw; he went further and rejected all the marquees on the basis of the harm that they caused.

The Application does offer to reduce the height of the marquees. This was a point mentioned by the Inspector. However, it is not greatly significant. The Inspector rejected the case for the marquees. He did not indicate that a reduction in height would make them acceptable.

It is nonsense to forward an argument that the marquees should be retained because of the redundancies that may result from their removal. The business operated without the marquees until the temporary relaxation of the planning rules during the Covid pandemic. It was always known that the Covid planning relaxations were temporary. Any extra staff taken on must likewise have been viewed as temporary. Obviously and inevitably, the additional staff would not be required when the Covid planning relaxations came to an end.

This Application is yet another attempt to drag out the removal of the temporary marquees. Other businesses have had to remove their temporary structures and the Applicant should be required to do the same.

The Application should be refused.

17 The Pavilions  
Sandford Road  
Cheltenham  
Gloucestershire  
GL53 7AR

**Comments:** 21st September 2023

I would like to reconfirm my strong objection to the retention of any marquees whatsoever outside these premises.

This Grade 2 Listed building should grace the approach into Cheltenham town centre and should not be shrouded by this unsightly tented frontage.

These marquees have been allowed to remain in place far too long after fulfilling their purpose during the Covid restrictions.

Outside tables and umbrellas as previously utilised are not unattractive and can usefully be sited to increase covers without obscuring the beauty of this building.

36D The Broad Walk  
Imperial Square  
Cheltenham  
Gloucestershire  
GL50 1QG

**Comments:** 29th September 2023

This application is based on the following:

1. A minimal change to the number of marquees, 19 to 16
2. A reduction in their height.
3. Retention reduced from 2 years to 1 year.
4. Additional information regarding the economic and social benefits of the proposal but this is not shared with the public.

Dealing with each individually.

1. The Inspectorates report was explicit in describing how the open spaces around the buildings remain a key aspect of how the assets are appreciated. Pointing out that the open nature of these spaces allow the ground floor elements that contribute to the significance of the buildings to be viewed and seen in the context of the building as a whole. Stating that the open space forming the appeal site thus makes a major contribution to the significance of 125 and 127 Promenade, 129 and 131 Promenade and 133 Promenade. At the time of his observation there were only 16 marquees on the site so suggesting that a reduction from 19 to 16 is significant is nonsensical and irrelevant.

2. The 30% reduction in height is made up of the peaked roofs so this only translates as a reduction of approximately 15% in the degree of obscuration the marquees create and is therefore insignificant

3. The marquees should have been removed a year ago. Previous applications and appeals have just delayed their removal. The applicant has had 3 years to design and apply for a permanent structure. To apply for another year is just more delay and an attempt to postpone of their removal.

4. Additional information regarding the economic and social benefits of the proposal is not in itself significant. As far as social benefit goes there are numerous similar businesses in the location, many offering outdoor dining and many have removed their temporary structures. When considering the economic case for the business it must be remembered that the short-term changes to rules concerning Temporary Structures were intended to help businesses survive. The Lucky Onion decided to take advantage of these changes to increase the size and offer of the 131 operation. Taking on more permanent staff would seem a poor management decision given the changes to the rules were always intended to be temporary. The hospitality industry in general is feeling the pinch but there is no reason that this particular business should be treated differently from the rest. It took a risk in expanding its offer based on temporary rules changes. Now it wants rules to be ignored to make its offer permanent.

This application must be rejected and the marquees removed as quickly as possible.

6 Imperial House  
Lypiatt Road  
Cheltenham  
Gloucestershire  
GL50 2QJ

**Comments:** 12th October 2023

I have just returned from holiday and I wish to object to this application on the following grounds: a) these 3 buildings are beautiful and sit on Cheltenham's main square; b) they presently look like part of a circus with those awful tents that have been erected; c) nothing is acceptable to us at the front of these buildings, barring what was originally there (tables, chairs and umbrellas); d) why can't they erect something at the back of the buildings?

1 Claremont Lodge  
Montpellier Spa Road  
Cheltenham  
Gloucestershire  
GL50 1UG

**Comments:** 24th September 2023

I would like to reconfirm my existing objection to the retention of any marquees whatsoever outside these premises.

These Grade 2 Listed buildings on Cheltenham's once-prestigious Promenade should not be obscured by unsightly marquees whatever their shape or size.

Outside tables/chairs/umbrellas are in use at many hospitality establishments (eg the new restaurants in the Quadrangle) and 'special treatment' should not be afforded to one particular establishment. The new application also seems to fly in the face of the spirit of the recent Inspector's report and his rejection of The Lucky Onion Group's appeal.

32 Imperial Square  
Cheltenham  
Gloucestershire  
GL50 1QZ

**Comments:** 6th October 2023

I object to this repeated Application. The number of Marquees had already been reduced but still cover the front of 3 listed buildings. HM inspector has refused the appeal, and other than lowering the marquees slightly and reducing the period to 1 year (they have already been there a year since they should have been removed) nothing has really changed. They still block the view of 3 listed buildings. The application should be refused again.

37 Montpellier Villas  
Cheltenham  
Gloucestershire  
GL50 2XQ

**Comments:** 10th October 2023

I totally support this application as these premises are a great sophisticated and vibrant asset to Cheltenham.

Parkgate House  
West Approach Drive  
Cheltenham  
Gloucestershire  
GL52 3AD

**Comments:** 20th October 2023

These polythene tents are ugly beside the Regency architecture and should be refused. Nevertheless it's interesting that Cheltenham Trust, a charity whose sole function is to run a few public buildings for Cheltenham Borough Council has been allowed to keep a prefabricated greenhouse with a white polythene roof running as a café beside Cheltenham's only Grade 1 listed building despite the planning application being rejected last October. 22/01439/FUL  
131 has at least had to appeal and then make a modified application.  
Without an appeal and with no changes made Cheltenham Trust were allowed to keep the greenhouse by saying they would change the roof to clear plastic like those in 131 ( 23/00372/FUL) but the roof was never altered.  
The plastic tents in 131 are equally unattractive and equally environmentally disastrous but at least they are only beside a grade 2 building of which there are many in Cheltenham not the iconic Grade 1 Pump Room.  
Both structures should be removed as soon as possible.  
There is plenty of space inside those buildings to run cafes/restaurants without defacing the classical architecture.

10 College Road  
Cheltenham  
Gloucestershire  
GL53 7HX

**Comments:** 21st September 2023

These tents are obviously an eyesore and ruin the, what should be, a beautiful drive into the heart of our beautiful town. Also as a business owner I would not be allowed to put up a marquee in my garden. Why should Lucky Onion be allowed to put up 16? If I put a marquee up in our garden then I would create more jobs but it's not allowed so I cannot. There would not be 50 redundancies, a simple look at the recruitment website Indeed shows us that there are more than 50 vacancies in the Cheltenham hospitality sector and surely the removal of the tents will make it busier inside? More personnel needed there I presume?

13 Rotunda Terrace  
Montpellier Street  
Cheltenham  
Gloucestershire  
GL50 1SW

**Comments:** 26th October 2023

Following the CBC's decision to extend similar planning applications, such as 23/00372/FUL for the Pittville Pump Rooms (a temporary structure on a Grade 1 listed building), it seems grossly unfair to not allow a similar extension on a lesser Grade 2 historic building that does not have links with the CBC.

Businesses should be given a level playing field, and the precedent for extending temporary structures has unfortunately been set by the council's planning department

3 Montpellier Gardens  
Montpellier Terrace  
Cheltenham  
Gloucestershire  
GL50 1UZ

**Comments:** 5th October 2023

I do not think that the marquees are unsightly and they provide a much-needed venue for entertainment and dining. They contribute greatly to the prosperity of the town, provide jobs and help keep the night-time economy vibrant.

Red Stables  
Yokehouse Lane  
Stroud  
GL6 7QS

**Comments:** 3rd October 2023

Hello, I am a resident of Gloucestershire and have been for 23 years. I come into Cheltenham 2-3 times every week and visit 131 on many of my trips. 131 is a draw for me and I plan shopping and other Cheltenham activities around meeting friends in the lovely outside/inside space. I urge you to allow 131 to keep this space as I would not be inclined to visit Cheltenham so often otherwise nor bring my guests. I love the ambience and the vibe of the space. It is sophisticated and very cool.

40B The Broad Walk  
Imperial Square  
Cheltenham  
Gloucestershire  
GL50 1QG

**Comments:** 4th October 2023

Letter attached.



**40B THE BROADWALK  
IMPERIAL SQUARE  
CHELTENHAM GL50 1QG**



3/10/2023

BY HAND

The Planning Officer  
Cheltenham Borough Council  
Municipal Offices  
The Promenade  
Cheltenham GL50 9SA

Dear Planning Officer,

**23/01597/FUL | Retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12-month period (revision to planning application ref: 22/01373/FUL) | 129 - 133 Promenade Cheltenham Gloucestershire**

I refer to the above Application to retain the tents in front of 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12 month period.

Prior to this Application the Planning Inspectorate dismissed an appeal by the Applicant to retain the tents for two years.

The Inspector's report gave comprehensive and detailed reasons why the tents should not be allowed to remain.

I agree, totally, with the Inspector's findings and object to the tents remaining any longer. The modification to their tops does not significantly change their visual impact on the street scene.

Following the due process and decision of the Appeal the tents should be removed. This further Application would seem to be a ploy to prolong their presence.

Yours faithfully,



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<b>APPLICATION NO:</b> 22/01373/FUL		<b>OFFICER:</b> Mrs Lucy White
<b>DATE REGISTERED:</b> 30th August 2022		<b>DATE OF EXPIRY:</b> 25th October 2022
<b>DATE VALIDATED:</b> 30th August 2022		<b>DATE OF SITE VISIT:</b> 7 <sup>th</sup> October 2022
<b>WARD:</b> Lansdown		<b>PARISH:</b>
<b>APPLICANT:</b>	Lucky Onion Group	
<b>AGENT:</b>	SF Planning Limited	
<b>LOCATION:</b>	129 - 133 Promenade Cheltenham Gloucestershire	
<b>PROPOSAL:</b>	Retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period	

**RECOMMENDATION:** Refuse



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site comprises of a group of 3no., two storey over basement grade II\* listed Regency villas (Nos 125-133), located prominently within the Central Conservation Area (Montpelier Character Area).
- 1.2 The application proposes the retention of all existing temporary marquees at 125, 127, 129, 131 and 133 Promenade for a further two year period.
- 1.3 The applicant (Lucky Onion Group) benefitted from the Council's relaxation of enforcement proceedings for temporary, moveable structures which was put in place to help and support the successful running of businesses and organisations within the town to ensure they remained open and viable during the pandemic. The Council's relaxation measures allowed businesses to provide more physical space or utilise existing external areas to allow the required social distancing and safer operations during the COVID-19 periods of government imposed restrictions.
- 1.4 The marquees present on site today were erected in June and October 2020 in response to the above relaxations of enforcement. These temporary structures replaced, in part, a number of existing parasol structures within the frontages and external side and rear areas of 131 and 133 Promenade.
- 1.5 The Council decided to bring an end to the temporary relaxation of enforcement on 30th September 2022 given that government imposed COVID-19 restrictions had ceased by this time. Subsequently, all businesses that had notified the Council previously of their intention to erect temporary structures were notified in writing of the need to remove the structures. Any businesses seeking to retain their structures past this date, were required to seek the necessary planning consents for their retention and provide clear and convincing justification for doing so.
- 1.6 The application is accompanied by a Heritage Appraisal and covering letter setting out the applicant's justification for the proposed retention of the marquees.
- 1.7 It is important to note that consent is being sought for the retention of similar temporary structures located within Montpelier Gardens and the Pump Rooms. These proposals (under application references 22/01438/FUL and 22/01438/FUL) are also being considered by Members at the October Planning Committee.
- 1.8 This application is before Planning Committee at the request of Councillor Wilkinson. The reasons given for the referral are as follows:

*local hospitality businesses, including the applicant, are facing extreme cost pressures as a result of increased energy bills. Consequently, I feel a public discussion about the retention of temporary structures that enable extra revenue generation is appropriate. Inevitably, similar discussions will take place about other businesses and it is clearly desirable that this discussion and decision-making process takes place in the most public forum. I feel this will benefit the decision making process and lead to wider understanding of the pertinent issues among members of the public, various interested stakeholders and the business community.*

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### Constraints:

Airport Safeguarding over 45m  
Business Improvement District  
Listed Buildings Grade 2star

Principal Urban Area

**Relevant Planning History:**

**12/01392/COU 7th March 2013 PER**

Change of use from B1 (Office) to C1 (Hotel) and A3 (Restaurant)

**12/01392/LBC 7th March 2013 GRANT**

Works in association with change of use from B1 (Office) to C1 (Hotel) and A3 (Restaurant)

**13/00957/LBC 6th August 2013 GRANT**

Treatment of dry rot by removing existing affected timber, treat all sub-strates adjacent and and re-instate as per existing

**14/00150/FUL 21st May 2014 PER**

Provision of temporary generator in car park with temporary acoustic fence to enclose the generator (retrospective)

**15/02243/COU 20th December 2016 PER**

Change of use from offices (B1) to hotel accommodation as part of existing hotel facilities at 129-131 Promenade with landscaped front amenity area new ground floor extension/link and formation of external courtyard to 133 Promenade (and associated internal and external alterations)

**15/02243/LBC 20th December 2016 GRANT**

Change of use from offices (B1) to hotel accommodation as part of existing hotel facilities at 129-131 Promenade with landscaped front amenity area and erection of ground floor extension/link and formation of external courtyard to 133 Promenade (and associated internal and external alterations) Proposed change of use from offices to hotel with new link to 133 Promenade

**16/00254/CLBW 25th February 2016 CERTPU**

Like for like remedial works - remove existing capping to the parapet, supply and fix new code 5 lead capping to the parapet, redress lead gutter, clean out the associated lead gutters and outlets, replace missing slates and any rotten batten and felt membranes to the affected area with new to match existing.

**16/00999/LBC 20th July 2016 GRANT**

Miscellaneous remedial works due to dry rot outbreak

**16/01169/ADV 12th August 2016 GRANT**

Advertising on hoarding (retrospective)

**16/01428/LBC 4th October 2016 GRANT**

Removal and restoration of entrance gate piers and re-erection in original position

**16/01704/LBC 24th November 2016 GRANT**

Removal and restoration of veranda on front elevation

**16/01738/LBC 15th December 2016 GRANT**

Proposed Re roofing and misc internal restoration works

**17/00556/FUL 26th September 2017 PER**

Erection of external toilet block, side extension to provide new bar facilities, external seating area, 3 no. boiler flues and landscaping (part revisions to planning permission 15/02243/COU)

**17/00556/LBC 26th September 2017 GRANT**

Erection of plant room, new external toilet block, external seating and new bar extension, 3 no. boiler flues, landscaping and internal alterations (part revisions to planning permission 15/02243/LBC)

**18/00567/LBC 20th July 2018 GRANT**

Repositioning in basement of plant room and toilets on ground floor and repositioning of 3 no. flues to north west elevation (revision to listed building consent 17/00556/LBC)

**18/02503/FUL PCO**

Extension of external seating/dining area at rear of building including additional landscaping (part revision to 17/00556/FUL\_LBC)

**18/02503/LBC PCO**

Extension of external seating/dining area at rear of building including additional landscaping (part revision to 17/00556/FUL\_LBC)

### **3. POLICIES AND GUIDANCE**

#### **National Planning Policy Framework**

Section 2 Achieving sustainable development

Section 4 Decision-making

Section 6 Building a strong, competitive economy

Section 7 Ensuring the vitality of town centres

Section 8 Promoting healthy and safe communities

Section 11 Making effective use of land

Section 12 Achieving well-designed places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 16 Conserving and enhancing the historic environment

#### **Saved Local Plan Policies**

RT 2 Retail development in the core commercial area

RT 3 Non-A1 uses in primary shopping frontages

#### **Adopted Cheltenham Plan Policies**

D1 Design

SL1 Safe and Sustainable Living

#### **Adopted Joint Core Strategy Policies**

SD2 Retail and City / Town Centres

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality

INF1 Transport Network

INF5 Renewable Energy/Low Carbon Energy Development

#### **Supplementary Planning Guidance/Documents**

Central conservation area: Montpellier Character Area and Management Plan (Feb 2007)

Cheltenham Climate Change (2022)

### **4. CONSULTATIONS**

#### **Historic England**

*5th October 2022* - Dear Ms White

T&CP (Development Management Procedure) (England) Order 2015  
& Planning (Listed Buildings & Conservation Areas) Regulations 1990

125 - 133 PROMENADE CHELTENHAM GLOUCESTERSHIRE

Application No. 22/01373/FUL

Thank you for your letter of 16 September 2022 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

#### **Historic England Advice**

##### **Significance of the designated heritage asset**

Located in the heart of historic Cheltenham, the semi-detached villas at no 125-133 are highly representative of blossoming of Cheltenham as a Regency Spa town, between the end of the 18th and the beginning of the 19th century. Built in the early 1830s and attributed

mainly to architect John Forbes, the paired villas sit within their own garden plot behind railings and gated walls.

They present a double pile plan and rise for two storeys plus attic over basement. Internally they retain much of their plasterwork and in some cases further original features such as staircases and fireplaces survive.

Externally, despite some differential treatment in the fenestration and architectural detailing of their elevations, they are unified in materiality and massing, and clearly exemplify the formal and elegant Regency development phase of the area.

The villas are located on The Promenade, one of the spinal axis of Montpelier Character Area, part of the Central Conservation Area. This is an area that, particularly where the properties in questions are located, is characterised by spaciousness, a loose urban grain around wide tree lined roads and formal green spaces, and medium and long vistas that open up towards larger public buildings or even surrounding countryside.

The properties subject to this application both contribute to and are enhanced by the distinctive character and appearance of Montpelier, which is to be considered part of their immediate setting.

Because of their more than special historic and architectural interest, they have been designated as Grade II\* listed buildings, which places them among the top 8% of the most important buildings in the country.

### Impact of the Proposals

The application seeks consent for the retention of the 13 marquees installed in 2020 for a further period of two years.

The installation relates to Cheltenham Borough Council's permission to erect moveable structures in front of the above properties on an emergency and temporary basis as a response to the outbreak of Covid-19 pandemic 2020.

As the temporary permission has now come to an end, Historic England considers it would be beneficial for your Authority to assess the current proposals following established principles for such developments.

A useful stepped approach is given by our guidance on temporary structures produced in 2010 (<https://historicengland.org.uk/images-books/publications/guidance-ontemporary-structures-for-events/>).

This will allow an informed review of the current proposals, their impact and their benefits, and in particular it will highlight what further information might be required by your Authority to arrive to that comprehensive and balanced assessment (we refer you in particular to the checklist on chapters 6 and 8 of the above guidance).

Historic England considers that the structures do cause a degree of harm to the significance of the designated heritage assets.

Although physically detached from the buildings, their scale, design and density do have a detrimental visual impact on the Grade II\* villas, as they substantially screen off the buildings both in close up and long views.

The temporary structures do not respond to the architectural character of the buildings they serve. Instead, their tent like profile substantially obscure the ground floor and detract, with their apex, from the elegant prominence of the first floor. The continued infilling of the space

between the buildings and the walls or railings also compromises the distinctive spaciousness of the larger plots on which the villas sit.

These plots, larger compared to later developments in other sub-areas of the town, are an integral and distinctive part of these Regency villas, shaped by and illustrating the social trends of the day. Therefore, they inherently contribute to the significance of the assets and the erosion of their legibility is of concern.

### Planning Policy Context

The National Planning Policy Framework (NPPF) sets out that when considering a proposed development, irrespective of the level harm, great weight should be given to heritage asset's conservation', with higher designated building commanding greater weight (Paragraph 199). The high designation of the villas would therefore warrant higher weight to be given to their conservation.

Paragraph 195 also sets out the need to avoid and minimise any conflict between the asset's conservation and any aspect of the proposal. And, should a proposal still prove harmful to the significance of the heritage asset, that harm should be clearly and robustly justified (Paragraph 200). In this case, the emergency nature of the existing installation has prevented the exploration of less harmful options. However, should the need for the temporary structures be evidenced, alternatives which address the above concerns on design, positioning and density should also be explored.

For instance, the space to the rear and side on no 133 is by the nature of its double aspect and use of solid boundaries naturally more screened off from public views and may therefore lends itself more to temporarily accommodating a small quantum of ancillary structures. In the absence of a meaningful assessment of alternatives, the harm brought about by the proposal cannot be considered justified.

### Historic England's Position

The emergency nature of the original installation may have resulted in the adoption of a solution that, though functional, does not better reveal or enhance the form and architectural interest of the buildings' façade and plot. Instead it visually detracts from both, causing harm to the overall significance of the designated heritage assets. Should the continued need for temporary structures be evidenced, the visual harm currently derived from the existing structures should be avoided or minimised or if, still occurring, needs to be justified.

### Recommendation

Historic England has concerns regarding the application on heritage grounds. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 195, 199 and 200 of the NPPF. In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

### **Heritage And Conservation**

*5th October 2022 –*



## Page 41

The proposed works are for the retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period. The marquees are comprised of several interconnected structures with translucent plastic walls, white coloured soft plastic roof, timber entrances and bar structures located internally. The marquees extend around most of the external garden area of both the front, side and rear of 125, 127, 129, 131 and 133 Promenade.

The marquees are used as a temporary restaurant/bar. Notably the marquees were originally constructed without planning permission, with the knowledge of the local planning authority, when planning enforcement was relaxed to address social distancing concerns during the Covid 19 pandemic. These restrictions have now ended. The applicant was previously made aware of the temporary nature of this relaxation and constructed the marquees with this understanding. Notably various unauthorised temporary structures outside these properties pre-date the Covid pandemic.

It is important to consider the policy context in which the proposal needs to be determined. The cornerstone of heritage legislation is the Planning (Listed Building and Conservation Area) Act 1990. In determining this application it is important to note the statutory duty of local planning authorities under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

A core principle of the National Planning Policy Framework 2019 (NPPF) is heritage assets be conserved in a manner appropriate to their significance. Chapter 16, paragraphs 199-208 set out how potential impacts on heritage assets need to be considered. This assessment takes account of the relevant considerations in these paragraphs, including paragraph 197 of the NPPF, which requires the significance of heritage assets to be sustained and enhanced, with paragraph 199 requiring great weight be given to the asset's conservation.

The context of the development site is highly sensitive in heritage terms. The development proposal is within the curtilages of 125, 127, 129, 131 and 133 Promenade, grade II\* listed buildings. The site is prominently visible from the Promenade, Imperial Gardens and within the context a number of listed buildings whose setting is affected by the proposed works, including: 99-119 Promenade, a grade II listed terrace of regency townhouses; The Queen's Hotel, Imperial Square, a grade II\* listed Regency Hotel; Crimean War memorial, a grade II listed memorial; x2 pairs of gates pier and railing and pier adjacent to 131 Promenade which are each separately grade II listed; Queens Circus 1-6 Montpellier Avenue, a grade II listed Regency shop terrace; 14-34 Imperial Square, a grade II\* listed terrace of Regency townhouses; and Cheltenham Town Hall, a grade II listed Edwardian municipal building.

The site is also located within the Central Conservation Area: Montpellier Character Area. The area is noted within the Central Conservation Area Montpellier Character Area Appraisal and Management Plan adopted 2007 (the Appraisal) for predominantly containing Regency buildings, with the presence of many complete and uniform formal terraces, large villas set within spacious grounds. It is also noted within the Appraisal for containing three important areas of public open space, which includes Imperial Gardens. These formal gardens are stated as greatly enhancing the character and appearance of the Montpellier, and the setting of surrounding buildings. The Appraisal also notes the Promenade, which contains the town centre's southern spine and one of the town's most visually striking streets.

Regarding the justification for the proposed works in heritage terms, it is considered the supporting information within the application does not fully recognise the significance of the site and its context and the impact the development proposal has on them. It is also considered unclear from the submitted application why the continued need for a temporary orangery structure is required given the lifting of Covid restrictions and why this use cannot be accommodated within the existing grade II\* listed buildings. It is considered this can be used as a reason for refusal.

The proposal is considered to fail to meet the requirement of paragraph 194 of the NPPF, which requires an applicant to describe the significance of any heritage assets affected by a development proposal, including any contribution made by their setting, with the level of detail proportionate to the assets' importance and sufficient to understand the potential impact of the proposal on their significance. It also fails to address paragraph 200 of the NPPF, which requires any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), to require clear and convincing justification.

In terms of the design of the marquee structures, the cumulative impact of their temporary appearance, bulky scale and massing, exacerbated by their inappropriate materials, result in a development proposal that is prominent, intrusive and obscures views of the elevations of grade II\* listed 125, 127, 129, 131 and 133 Promenade, significantly undermining their setting, to the detriment of their special interest. Because of this impact the marquees also detract from views along the Promenade, views within Imperial Gardens, views along Imperial Square, views north from Imperial Gardens which affects the setting of the numerous listed buildings located here (listed above) and the Central Conservation Area: Montpellier Character Area. The proposed marquee structures therefore harm the immediate and wider setting of the affected listed buildings and the character and appearance of the conservation area. Given the highly sensitive nature and its context in heritage terms, this impact is considered unacceptable even on a temporary basis and should be removed without delay to address the harm it is causing.

It is important to note outside the context of the social distancing required by the Covid pandemic this or any similar such proposal would be have been supported because of its harmful impact on the setting of heritage assets. A concern is also raised accepting this impact on a temporary basis would set an unwelcome precedent to allow similar such harmful development within the setting of listed buildings elsewhere.

The impact of the temporary proposed works on the heritage assets is considered to neither sustain or enhance their special interest as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight be given to the asset's conservation, which includes setting. The temporary retention of the existing marquees and associated structures harm the heritage assets, considered to be less than substantial harm for the purposes of the NPPF. The supporting information within the application demonstrates a poor understanding of the affected heritage assets and offers no meaningful justification for the proposed works in heritage terms. The development proposal does not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF requires this harm be weighed against the public benefits of the proposal. It is important this exercise be undertaken as a separate exercise to the general planning balance as it is distinct from it.

In relation to application 22/01373/FUL for the retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period, there are no objections from Environmental Health for the retention of these structures.

The rationale for this is the limited number of recorded complaints we hold on this address and the period of time which has passed since a complaint was received by this department.

**Building Control**

25th August 2022 - This application may require Building Regulations approval. Please contact Cheltenham and Tewkesbury Building Control on 01242 264321 for further information.

**Cheltenham Civic Society**

22nd September 2022 - 3 22/01373/FUL | Retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period | 129 - 133 Promenade Cheltenham Gloucestershire

**OBJECT**

This very handsome group of buildings are grade II\* listed. The tents are already starting to look tatty and detract from their setting.

Despite the obvious economic benefits of these temporary structures, they were only permitted as a special measure to address the Covid crisis, and not as a long term solution. The applicants should comply with the class BB regulations which permit temporary structures for 120 days.

**5. PUBLICITY AND REPRESENTATIONS**

Number of letters sent	23
Total comments received	10
Number of objections	10
Number of supporting	0
General comment	0

5.1 The application was publicised by way of letters sent to 23 neighbouring properties, a site notice displayed within the vicinity of the site and an advert placed in the Gloucestershire Echo. A total of 10 representations were received following the publicity. The comments/concerns raised, in summary, are as follows:

- Marquees only allowed in response to Covid-19 lockdown requirements
- Elegant and attractive listed building frontage obscured by canvas, large ugly tents and the appearance of a camp site
- Harmful impact on the character and aesthetic value of iconic grade II\* listed Regency terrace and the conservation area/Montpellier Character Area
- Frontages and elevations of listed buildings obscured and impact on important views/vistas within the Conservation Area
- Proposals fail to enhance the significance of heritage assets - retention of marquees beyond pandemic will not protect the buildings' heritage
- Marquees more visible after leaf fall in autumn

## Page 44

- No longer a pandemic requirement to eat outdoors as opposed to inside the hotel
- Proposals have allowed expansion of business/covers and do not provide an alternative or a continuation at a lower than pre-covid level
- Internal restaurant now used as a Japanese restaurant
- Previous parasol structures allowed adequate shading for customers
- Increase in noise and disturbance affecting neighbouring properties and area in general
- High energy costs in heating inefficient tent structures during winter periods
- Further temporary extension approval will lead to a permanent extension
- Proposals in conflict with Historic England advice on temporary structures
- Proposals not in the public interests of Cheltenham as a whole
- Area already well served by bars and restaurants

### **6. OFFICER COMMENTS**

#### **6.1 Determining Issues**

#### **6.2** The key matters for consideration are as follows;

- The impact on designated heritage assets (subject grade II\* listed buildings, other nearby listed buildings and Central Conservation Area)
- The public benefits and wider economic benefits of retaining the structures
- The impact on amenities of neighbouring properties, in terms of noise and disturbance
- Sustainable development and energy costs
- Impact on trees.

#### **6.3 The site and its context/Planning History**

#### **6.4** The application site comprises of 3no grade II\* listed Regency villas which are located prominently on the north side of the Promenade, one of the spinal axis of the Montpellier Character Area of Cheltenham's Central Conservation Area. The buildings form the end of the Promenade (Nos 125-133 Promenade) and are part of an important group of large detached, former residential properties, now almost entirely in commercial use. These buildings are of considerable aesthetic and historic significance and there are long distance and important views of three elevations of No 133 (Clarence House) and the front and rear of 125-131 from Queen's Circus, Montpellier Street, Montpellier Gardens and the Promenade.

- 6.5** Surrounding development is a mix of residential, commercial, restaurant/bar/cafe uses; the site being located within the Core Commercial area of Cheltenham's town centre.
- 6.6** Montpellier Street runs along the rear boundary of the site, beyond which is the Cheltenham Ladies College. There are a number of other key grade II and II\* listed buildings and listed terraces within the vicinity of the site, notably the Queens Hotel, properties surrounding Imperial Gardens, the Town Hall and properties surrounding Montpellier Gardens. A number of large, mature street trees are located in front of all three buildings.
- 6.7** Clarence House (133) is a substantial two storey detached villa with two lower side wings and the only detached villa in this location sitting alongside the three pairs of equally imposing, semi-detached Regency villas. The gate and boundary piers to Clarence House are listed separately as grade II. Planning permission was granted in 2015 for the change of use from offices (B1) to hotel accommodation forming part of the existing hotel facilities at 129-131 Promenade (ref 15/02156/COU).
- 6.8** Nos 129-131 were originally a semi-detached pair of Villas and were substantially refurbished in 2016. As part of these works, the front façade of the building was altered to appear as a single detached building. Nos 125-127 Promenade is a semi-detached pair of villas; planning permission granted in 2017 for the change of use of the property from offices to hotel accommodation in associated with Nos 129-133 Promenade. (17/01438/COU & LBC)
- 6.9** The application site (Nos 125-133) is entirely in use as a hotel with bar and restaurant facilities; 131 being the original hotel and providing the guest reception and main bar and restaurant facilities of the hotel. Part of the basement of 129-131 and the external areas of 133 are operated as a bar (Gin and Juice).
- 6.10** As outlined in the introduction, marquee structures were first erected outside 131 and 133 Promenade in June 2020; shortly after the Council adopted its relaxation of enforcement measures in relation to temporary structures. In October 2020, during the second wave of COVID-19, further temporary structures were erected at 125, 127, 129, 131 and 133 Promenade. A total of 13 temporary marquees/canvas structures have been erected within both the front and side curtilages of the three buildings). They are all of a similar 'hat' type appearance and broadly similar in height and size; albeit some of the canopies/structures at the side and rear of No 133 covering the external bar/drinking areas have a larger footprint and roof span.
- 6.11** The marquees were erected by the applicant in full knowledge of the temporary nature of the Council's planning enforcement relaxation measures. It should be pointed out that, prior to the COVID-19 pandemic, there were already several unauthorised 'temporary' structures outside of Nos 129-133.
- 6.12** In addition, the outside areas of No 133 were being used for external dining/catering purposes and subject to planning and listed building consent applications, submitted in 2018 (ref 18/02503/FUL&LBC). These applications remain undetermined, pending the submission of revised details from the applicant. Given the Council's enforcement relaxation measures in force from June 2020, officers did not seek to progress these applications during the pandemic and are now minded to await the outcome of the current application before pursuing matters further. Furthermore, the use of the side and rear curtilages of No 133 for external dining/drinking purposes has intensified noticeably since 2019, when these applications were first submitted. The use has since extended to the side of 133 and the overall number of covers increased at the rear. As mentioned previously, the external areas of No 133 are now used entirely in association with the Gin

and Juice Bar which also occupies a large part of the basement of 131; this basement area once providing the largest of the hotel's restaurant facilities.

- 6.13** It should also be noted that prior to June 2020, the area at the front of Nos 125-127 was not being used for any catering purposes and there was no planning consent in place to do so.
- 6.14** The marquees fronting the promenade are entirely enclosed and include timber doors, and connecting doors leading to the stairs and front entrances of 129-131 and 125-127 Promenade. The marquee/canopy structures at the side and rear of 133 are predominantly enclosed, either by canvas or existing brick boundary walls. The applicant states in the supporting information that the marquees are regularly inspected and are anchored by weights.
- 6.15** The marquees fronting the Promenade are heated by way of 4no. fan heaters which are powered by 4 diesel generators located just outside of the marquees, plus several internally mounted electric heaters. The generators are thermostatically controlled, meaning that they switch off automatically when the temperature reaches a certain point. Officers have been informed that the generators do not run during the night. The remaining marquee/canopy structures are similarly heated by diesel generators.
- 6.16** During the site visit, the applicant confirmed that the business has an on-site 800 persons capacity at any one time (including all staff and registered hotel guests). The internal and external areas provide approximately 525 covers in total (excluding standing customers where permissible); 140 covers in the marquees in front of 125-131 Promenade, 45 in the Japanese restaurant, 80 covers in the basement Gin and Juice Bar and the remainder under cover externally.

### **6.17 Heritage Impacts**

- 6.18** As stated previously, the application site comprises of grade II\* listed buildings, located centrally and prominently within the conservation area. These buildings are of considerable aesthetic and historic significance and there are long distance and important views of the three elevations of No 133 (Clarence House) and the front and rear of 125-131 from Queen's Circus, Montpellier Street, Montpellier Gardens and the Promenade. Given the highly sensitive nature of the site's location, the potential impact of the proposals on the significance of designated heritage assets must be considered very carefully.
- 6.19** Policy SD8 of the Joint Core Strategy requires development to make a positive contribution to local character and distinctiveness, having regard to the valued elements of the historic environment. It states how '*Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance*'.
- 6.20** Section 16 of the NPPF sets out the importance of conserving and enhancing heritage assets. Paragraph 192 of the NPPF advises that in determining planning applications, local planning authorities should take into account:
- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation*
  - *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
  - *the desirability of new development making a positive contribution to local character and distinctiveness.*

**6.21** Paragraph 199 of the NPPF 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.”*

**6.22** Paragraph 200 of the NPPF 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.”*

**6.23** The Council’s Conservation Officer and Historic England have considered the submitted Heritage Appraisal and applicant’s justification for the proposals. Both raise significant concerns about the proposed retention of the marquees. The Civic Society has also raised an objection to the proposals. Their comments are set out in full in section 4 above.

**6.24** Conservation Officer

**6.25** In summary, the Council’s Conservation Officer (CO) identifies that the site is prominently visible from the Promenade, Imperial Gardens and within the context a number of listed buildings whose setting is affected by the proposed works. The CO considers that the justification for the proposed works in heritage terms does not fully recognise the significance of the site and its context and the impact of the proposals on these heritage assets. The continued need for the structures following the removal Covid-19 restrictions is also considered unclear.

**6.26** Concerns are raised regarding the cumulative impact of the temporary appearance, bulky scale and massing of the marquees structures, exacerbated by their inappropriate materials. The CO considers the marquee development prominent, intrusive and obscures views of the elevations of grade II\* listed 125, 127, 129, 131 and 133 Promenade, significantly undermining their setting, to the detriment of their special interest. The marquees also detract from views along the Promenade, views within Imperial Gardens, views along Imperial Square, views north from Imperial Gardens which affects the setting of the numerous other listed buildings and the Central Conservation Area: Montpellier Character Area. The proposed marquee structures therefore harm the immediate and wider setting of the affected listed buildings and the character and appearance of the conservation area. Given the highly sensitive nature and its context in heritage terms, this impact is considered unacceptable by the CO even on a temporary basis.

**6.27** The impact of the temporary proposed works on the heritage assets is considered to neither sustain or enhance their special interest as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight be given to the asset’s conservation, which includes setting. The identified harm to the heritage assets is considered to be less than substantial harm for the purposes of the NPPF. terms. The proposals therefore fail to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

**6.28** Historic England

**6.29** Historic England (HE) similarly point out the sensitive location and context of the site and considers that the proposals do cause a degree of harm to the significance of the designated heritage assets. Although physically detached from the buildings, the scale, design and density of the temporary structures are considered to have a detrimental visual

impact on the Grade II\* villas, as they substantially screen off the buildings both in close up and long views; their tent like appearance substantially obscuring the ground and first floors. Neither do they respond to the architectural character of the buildings they serve and the infilling of the space between the buildings and railings compromises the spaciousness of the larger plots on which the villas sit.

**6.30** In conclusion, HE considers that this temporary solution to the pandemic, though functional, visually detracts from the architectural interest of the building's facade and plot, causing harm to the overall significance of the designated heritage assets. If there is evidence of a continued need for the temporary marquee structures, HE advise that any visual harm will need to be avoided or minimised. Should there be continued harm, this will need to be justified.

**6.31** Officers have also had regard to Historic England's published general advice on the erection of temporary structures.

### **6.32 Public Benefits**

**6.33** As discussed above, the proposed development is considered to result in harm to the significance of these important grade II\* listed buildings, other listed buildings within the vicinity of the site and the wider conservation area. The conservation officer considers the level of harm to be less than substantial.

**6.34** Paragraph 202 of the NPPF 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..."*

**6.35** There is no definition of public benefits within the NPPF. However, the nPPG offers further guidance on this matter and refers to public benefits as anything that delivers the economic, social or environmental objectives of sustainable development described in paragraph 8 of the NPPF. The nPPG makes it clear that the public benefits must flow from the development and must be of a nature or scale that would benefit the public at large.

**6.36** The applicant has submitted supporting information which sets out the below justification for the proposed further temporary retention of the marquee structures. Any economic, social and environmental benefits identified as part of the applicant's justification must therefore be considered very carefully.

### **6.37 Applicant's Justification**

**6.38** The applicants supporting information sets out several reasons for needing to retain the marquees for a further temporary period. Firstly, they '*create a suitable outdoor dining experience over the cooler and less clement months of the year, as well as providing much needed shade during the increasingly warmer summer months*'.

**6.39** Secondly, following recent changes to permitted development rights, pubs and restaurants occupying listed buildings are able to erect a moveable structure outside of premises for 120 days in a 12 month period, subject to the prior approval of the local planning authority. The applicant considers this to be an important fall-back position and a material consideration; this application seeking to simply extend the period already allowed via permitted development.

**6.40** The applicant states that the external catering facilities have enabled the business to continue trading over last two years at a '*reasonable level... to ensure a degree of viability*', but not to the same pre-COVID levels.



**6.41** The applicant also points to increasing post pandemic customer expectations on being able to use outdoor space. The applicant therefore needs to maximise the use of its outdoor spaces for both staff and customers, in as safe a way as possible,. In addition, the structures have helped the business to adapt *to challenging and evolving social and economic circumstances* whilst also benefitting the wider, more economic activity of Cheltenham. As such, the applicant considers the proposals will complement the temporary structures referred to in the notifications made to the Council in June and October 2020 and will allow time for the applicant to create a *more sensitive and bespoke* long-term design solution to outdoor dining at 131.

**6.42** The applicant also cites the apparent lack of complaints received by the Council in relation to the design, appearance and impact of the marquees on heritage assets, as further justification for their retention.

### **6.43** Economic and Social Benefits

**6.44** It is quite clear that the hotel business has been able to trade successfully and remain viable during the post lockdown periods of the COVID-19 pandemic. It is also evident, based on the number of marquees installed to the front and side of all three buildings, that there has likely been an increase in overall covers for the both the restaurant and bar elements. Without clear evidence presented by the applicant to the contrary, external dining and drinking capacity was most likely lower pre-pandemic; given that the marquee structures now extend across all frontages.

**6.45** In light of the above, the retention of the 13 marquees would maintain this level of trade for 131 Promenade, contributing (but not essential) to the overall viability and vitality and retail/leisure and accommodation offer within the town centre. As such, the proposals provide some economic and social benefits to the wider public and the town centre economy.

**6.46** It is also worth pointing out that the marquees are largely, fully enclosed and heated during the autumn and winter months. As such, the applicants need to provide a 'safer' environment for its staff and customers is considered somewhat counter-intuitive. In essence, officers question whether a suitable, all year round, outdoor environment for the consumption of food and drink is actually provided. Whilst there may be an element of natural ventilation during the winter months, these are not all outdoor spaces in the traditional sense; rather they offer additional seating and cover outside of the hotel buildings.

### **6.47** Environmental Benefits

**6.48** Officers consider that there is no evidence of the proposals offering any environmental benefits. The identified harmful impact of the proposals on the significance of designated heritage assets is discussed above.

**6.49** The applicant has not addressed climate change and the guidance set out in the relevant SPD. No alternative solution to the use of diesel fuelled generators has been provided.

### **6.50** **Impact on heritage assets versus public benefit test**

**6.51** As set out and discussed above, harm to the significance of designated heritage assets has been identified. The identified harm is considered to be *less than substantial* and will therefore need to be weighed against the public benefits of the proposals, as required by paragraph 202 of the NPPF.

**6.52** In summary and as set out above, there are limited public benefits associated with the retention of the marquees. Furthermore, these benefits existed pre-COVID/prior to the installation of the marquees and it is likely that the additional marquees and increase in

external covers are now allowing the business to trade more successfully. If this is the case, it also does not amount to a public benefit.

**6.53** The town centre offers a wide range of alternative catering facilities and hotel accommodation. Put simply, the retention of the 13 marquees for a further two years is not considered to be essential to maintain the viability/vitality of the town centre economy.

**6.54** Neither do the proposals constitute enabling development that would bring about the public benefits necessary to justify the retention of the marquees.

**6.55** Whilst officers acknowledge fully that there are some social and economic benefits associated with the retention of the marquees, these benefits are not considered to outweigh the identified harm to the significance (including setting) of designated heritage assets. Neither does the temporary nature of the proposals alleviate the concerns or change the opinion of officers.

### **6.56 Impact on neighbouring property**

**6.57** Section 12 of the NPPF requires development to create places with a high standard of amenity for existing and future users. Policy SL1 of the Cheltenham Plan advises that development will only be permitted where it will not cause unacceptable harm to the amenity of adjoining land users or the locality. In assessing impact on amenity, the Council will take account of matters including, but not limited to, loss of privacy, loss of light and outlook, noise and disturbance. The policy is consistent with adopted JCS policy SD14.

**6.58** Due to the location and the number and size of the marquees, there is potential for the proposals to impact upon the amenities of neighbouring land users, in terms of noise and disturbance and possibly light spill. In addition to the use of the marquees as an external dining area, the noise impacts of the diesel fuelled generators used to heat the marquees must also be considered. However, the marquees are not considered to result in any unacceptable loss of light or overbearing impact on any neighbouring land user.

**6.59** Whilst the predominant use of surrounding development is commercial (retail, restaurant, bar, café uses), there are many dwellings located on Imperial Square.

**6.60** The Council's Environmental Health team (EHO) was consulted on the proposals. No objection is raised and the reasons for reaching this recommendation is the limited number of recorded complaints held for this address and the length of time since a complaint was last received by the EHO.

**6.61** Given the above EHO comments and the distance of the application site from the nearest residential properties, officers consider that the retention of the marquees for a further two year period should not result in an unacceptable impact on the amenities of neighbouring land users. However, any future application for the permanent retention of the marquees or proposals for an alternative permanent solution, would require a more detailed consideration of potential noise impacts.

### **6.62 Access and highway issues**

**6.63** The Highway Authority was not consulted and, despite a potential increase in the use of the premises over the last couple of years, there are no relevant highway and access matters to consider as part of this application. This is an existing commercial operation within the town centre and, in the main, the proposals relate to on-site activity associated with the authorised use of the premises as a hotel with restaurant and bar. In this respect, no material change of use has occurred.

### **6.64 Sustainability**

- 6.65** In June 2022, Cheltenham's Climate Change SDP was adopted which identifies and provides guidance for how development can contribute to the aims of sustainability to achieve net zero carbon by 2030 and how applicants can successfully integrate a best-practice approach towards climate and biodiversity in their development proposals. The SPD is now a material consideration in the determination of applications.
- 6.66** Given the temporary nature of the proposals, officers acknowledge that there is perhaps little opportunity to include specific low carbon technologies within the proposed development. The applicant has not provided a sustainability statement or offered any information on energy/climate change/sustainability.
- 6.67** Notably, during the autumn, winter and early spring months the marquees and canopy structures are heated during the day by a number of diesel powered generators and internally mounted electric heaters.
- 6.68** The proposals are therefore in conflict with the objectives of the SPD.
- 6.69 Other considerations**
- 6.70 Trees**
- 6.71** There a number of large, mature Plane trees located adjacent to and in close proximity of the site. The canopies of some of the trees overhang the marquees. These trees contribute to one of the finest avenues of trees within Cheltenham.
- 6.72** The proposals have been discussed with the Council's Tree Officer who raises no concerns. There is no evidence that the marquees under the large plane trees are being damaged by or are damaging the street trees. The proposals are not therefore considered to result in any harmful impact on the existing trees and therefore accord with Cheltenham Plan Policy G12.
- 6.73** Any proposal for the permanent retention of the marquees or an alternative design solution, would require further consideration of the long term impacts on existing trees.
- 6.74 Public Sector Equalities Duty (PSED)**
- 6.75** As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to this duty. There are three main aims:
- Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.
- 6.76** Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have "regard to" and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.
- 6.77** In the context of the above PSED duties, this proposal is considered to be acceptable.

## **7. CONCLUSION/PLANNING BALANCE AND RECOMMENDATION**

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 NPPF paragraph 11 sets out a '*presumption in favour of sustainable development*' which in decision making means '*approving development proposals which accord with an up-to-date development plan*'.
- 7.3 Harm to the significance of designated heritage assets has been identified. The identified harm has been weighed against the public benefits of the proposals, as required by paragraph 202 of the NPPF. Whilst officers acknowledge that there are some social and economic benefits associated with the retention of the marquees, these benefits are not considered to outweigh the identified harm to the significance of the heritage assets.
- 7.4 The information and reasons set out within the applicant's covering letter have been considered very carefully but are not considered to provide clear and sufficient justification for the proposed development or outweigh the identified harm to designated heritage assets.
- 7.5 Officers note that the application is seeking consent for a further temporary 2 year period to allow time for the applicant to consider an alternative permanent solution. As such, the identified harm could be considered as temporary. However, the applicant was aware of the temporary status of the Council's relaxation of enforcement in relation to temporary structures during the pandemic. To date, no alternative (permanent) solutions or scheme have been presented to the Council or discussed informally with officers; this forming part of the applicant's justification for the retention of the marquees.
- 7.6 Furthermore, there is evidence to suggest that the marquees have resulted in an increase in overall covers/dining capacity at 131 and it is therefore likely that the retention of the marquees will allow the business to continue to trade more successfully in comparison with pre-COVID levels. Officers consider therefore, that the benefits associated with the existing marquees could be achieved without the need for their retention, whether on a temporary or permanent basis.
- 7.7 In light of the above and having also considered the extent to which the proposals amount to sustainable development, the identified harm to heritage assets outweighs the public benefits and there are no other benefits or reasons that would demonstrably outweigh the identified adverse impacts of the proposals.
- 7.8 The proposed retention of the marquee structures for a further two years is therefore considered to be unacceptable and conflicts with relevant local and national planning policy and guidance.
- 7.9 The recommendation is to therefore refuse the application for the following reasons.

## 8. REFUSAL REASONS

- 1 Nos 125, 127, 129, 131 and 133 Promenade are grade II\* listed Regency villas located prominently within Cheltenham's Central Conservation Area (Montpellier Character Area). As required by paragraph 197 of the NPPF, the impact of the proposed temporary retention of existing temporary marquees on the designated heritage assets, by virtue of their location, number, form and design, scale and prominence, is considered to neither sustain or enhance the buildings' special interest and would harm the setting of nearby listed buildings and the character and appearance of the conservation area. Neither do the proposals meet the requirements of paragraph 199 of the NPPF, whereby great weight should be given to the assets' conservation, which includes setting.

The identified harm to the heritage assets is considered to be less than substantial harm for the purposes of paragraph 202 of the NPPF. The public benefits of the proposals are not considered to outweigh the identified harm to the heritage assets. In addition, the supporting information within the application demonstrates a poor understanding of the affected heritage assets and offers no clear or convincing justification for the proposed works in heritage terms. Therefore, the development proposals do not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policies SD4 and SD8 of the Joint Core Strategy 2017 and Policy D1 of the Cheltenham Plan (2020).

### **INFORMATIVES**

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the authority cannot provide a solution that will overcome the identified harm to designated heritage assets.

As a consequence, the proposal cannot be considered to be sustainable development and therefore the authority had no option but to refuse planning permission.

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# Appeal Decision

Site visit made on 6 June 2023

**by Paul Martinson BA (Hons) MSc MRTPI**

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

**Decision date: 17 August 2023**

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**Appeal Ref: APP/B1605/W/23/3314132**

**125, 127, 129, 131 & 133 Promenade, Cheltenham GL50 1NW**

- 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 Lucky Onion Group against the decision of Cheltenham Borough Council.
  - The application Ref 22/01373/FUL, dated 26 July 2022, was refused by notice dated 21 October 2022.
  - The development proposed is described as: 'Temporary Marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the site address and description of development from the appeal form as they more accurately describe the appeal site and the proposal.
3. The marquees are understood to have been installed at the appeal site in June and October 2020 and replaced existing parasols within the frontages and external areas of 131 and 133 Promenade.
4. As part of the Council's response to the Covid-19 pandemic, it relaxed planning enforcement against temporary, moveable structures in order to allow businesses such as bars and restaurants to utilise external spaces and meet social distancing requirements. The appeal structures benefitted from these measures.
5. As the appeal site is located adjacent to listed buildings and within a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
6. Whilst I have based my decision on the proposed plans, the appeal proposal is partly retrospective in that the marquees are predominantly in situ. Nonetheless, On the site visit I saw that the three marquees shown on the proposed plans immediately adjacent to the side elevation of No 133 were not present.
7. The appeal proposal seeks the retention of the marquees for an additional two years. As they are predominantly in place already, I was able to take into account the effects of the structures on the designated heritage assets that I observed on site. My assessment considers the effect of the proposed retention of the marquees for a further two years, notwithstanding that the appellant's final comments suggest that the structures could be removed by 20 October

2024. In this regard I am mindful that the appeal process should not be used to evolve a scheme and that it is important that what is considered at appeal is essentially the same as was considered by the local planning authority and interested parties at the application stage.

### **Main Issue**

8. The main issue is the effect of retaining the marquees for a further two years on the special interest of the adjacent Grade II\* buildings, with particular regard to setting, and whether their retention for this period would preserve or enhance the character or appearance of the Cheltenham Central Conservation Area.

### **Reasons**

#### *Special Interest and Significance of Listed Buildings*

9. The appeal site comprises the outdoor spaces associated with a hotel and restaurant. The hotel/restaurant is comprised of three Grade II\* listed buildings: 125 and 127 Promenade<sup>1</sup>; 129 and 131 Promenade<sup>2</sup> (which are semi-detached); and 133 Promenade<sup>3</sup> (detached). The three buildings are all sizeable elegant Regency villas constructed in the early 1830s and generally attributed to the architect John Forbes. The buildings are set back from the street edge, and each other, behind their own spacious garden plots, enclosed by railings and gated walls. The three sets of gate piers adjacent to No 133 are also individually Grade II listed.
10. Externally all three buildings are faced with stucco with individual architectural detailing, reflective of the neoclassical Regency style, primarily to the front facing elevations. No 133 has Doric pilasters with arcading details to the ground floor openings, whilst No 129 and 131 has four fluted central columns atop plinths with Prince of Wales capitals. No 125 and 127 has six central pilasters with entablature between the ground and first floor and includes prominent ground floor Doric porches to each end.
11. The ground floor of each of the buildings is elevated above street level and typically accessed via a series of steps which are often individually detailed. The ground floor windows to each villa are tall and elegant and an indication of the historical importance of the rooms on this level. Each ground floor features balconies with metal railings. Continuous balconies are present for much of the ground floor at No 133 and No 125 to 127, with tent roofs above those at No 133, whilst those at No 129 and No 131 are individual balconies served by French windows.
12. The design detailing of the appeal buildings contributes to an elegant appearance, reflective of the increasing prosperity of Cheltenham as a Regency Spa town. Whilst each building has individual design features, their materials, scale and spacious siting are unifying characteristics. Together they form part of an outstanding group of Regency villas along this part of Promenade overlooking Imperial Gardens and the Queens Hotel, also Grade II\* listed. The elevated ground floor levels of the appeal buildings along with their elegant

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<sup>1</sup> List Entry Name: Numbers 125 and 127 and Attached Railings. List Entry Number: 1387685.

<sup>2</sup> List Entry Name: Gloucester Lodge (No 129) and Sherborne House (No 131) Gate Piers and Gates. List Entry Number: 1387686.

<sup>3</sup> List Entry Name: Clarence House and Attached Railings. List Entry Number: 1387687.



ground floor windows and balconies allow key views of the planned tree-lined avenue and Imperial Gardens beyond.

13. The special interest and significance of the Regency villas derives from, in part, their architectural and historic interest as high quality examples of Regency buildings within a planned setting. Important contributors in this regard are their elegant neo-Classical architectural detailing, spacious character, location within a formally planned street, grand proportions with a legible hierarchy across their floors, and their contribution to the consciously designed townscape. Their significance also stems in part from their value as a group.
14. Pertinent to the appeal, it is common ground between the parties that the appeal site lies within the setting of the three Grade II\* listed buildings referred to above. The setting of a heritage asset is defined as the surroundings in which it is experienced, and its importance therefore lies in what it contributes to the significance of the heritage asset<sup>4</sup>. The buildings' consciously larger plots are distinctive compared to nearby terraces and, as noted by Historic England in its comments, are shaped by, and illustrate, the social trends of this part of the nineteenth century. The space around them adds to the spacious character of this part of Promenade and the deliberate setback from the road allows these sizeable buildings to be better appreciated by those walking along Promenade, a clear intention of the design of the buildings in the nineteenth century.
15. As noted in the historical note forming part of the List Description, Promenade was laid out in 1818 as a tree-lined avenue from the Colonnade in the High Street to the Sherborne Spa (on the site of the Queen's Hotel) and by 1826 it was a carriage drive with spacious gravelled walk on each side.
16. The open spaces around the buildings remain a key aspect of how the assets are appreciated today. Moreover, the open nature of these spaces allow the aforementioned ground floor elements that contribute to the significance of the buildings to be viewed and seen in the context of the building as a whole. The neoclassical detailing and the hierarchy of windows are particularly important aspects of how the buildings were designed. The open space forming the appeal site thus makes a major contribution to the significance of 125 and 127 Promenade, 129 and 131 Promenade and 133 Promenade.

#### *Significance of Conservation Area*

17. The CA encompasses a large area of the town which developed as a Regency spa town with many of the buildings here constructed in the early part of the nineteenth century. Stucco, painted a consistent colour, predominates as a characteristic external treatment and provides cohesion to the CA. Buildings typically comprise of formally laid out terraces and large villas set in spacious grounds. Trees are prevalent and streets are often tree lined. Formally laid out gardens including public spaces are features of the streetscene here that also contribute to the spacious feel.
18. Described in the Montpellier Character Area Appraisal (2007) (the CAA) as one of Cheltenham's most striking streets, and, as set out in the List Description, Promenade is a planned tree-lined space. Today Promenade is a wide and spacious thoroughfare bounded by Regency development, still lined by trees.

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<sup>4</sup> National Planning Policy Framework – Glossary.

19. The spacious, verdant character, prevalence of neoclassical Regency architecture and the resulting consistency in terms of architectural features, materials and detailing are characteristics of the streetscene that contribute to the significance of the CA insofar as it relates to this appeal.
20. The appeal buildings, being elegant Regency villas in a spacious and planned setting and forming a high-quality building group, reinforce those characteristics. All of these elements positively contribute to the CA's significance as a designated heritage asset. My conclusions in this regard are supported by the conclusions set out in the CAA.

#### *Proposal and Effects*

21. When considering the impact of a development on the significance of a designated heritage asset, the National Planning Policy Framework (the Framework) also provides that great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be.
22. The marquees consist of a large number of adjoining individual units spread across the frontage of the three listed buildings. The marquees occupy much of the frontage of each of the buildings, whilst they are also shown on the proposed plans to the side of No 133. The roof of each unit is white in colour and typically takes the form of a square tent, peaking in the centre. On the site visit I saw that some had translucent plastic walls infilling the space between the floor and roofs. In some cases, the plastic had been pulled back in the manner of a curtain whilst in other instances, this was absent entirely. Within the units I saw that covered porches, doorframes and doors had been erected.
23. Owing to their considerable height, spread and form, the marquees almost completely obscure the ground and basement elevations of the buildings, radically reducing the visibility of their architectural detailing, such as the arcading and balconies to the ground floor areas referred to above. The peaks of the marquees also obscure parts of the first floors of the buildings. Visibility of the buildings in views from outside the site as well as from the entrance to Imperial Gardens opposite and from further along Promenade has been radically reduced. This severely restricts the ability to appreciate the significance of the buildings.
24. Within the site, views of the exterior of the buildings are extremely limited and diners within this space, in my view, are unlikely to be able to gain a realistic appreciation of the significance of the buildings that they are visiting. Similarly, views from inside the building, gained from the elegant windows and balconies, are predominantly obscured by the roofs of the marquees.
25. The scale of the development has drastically reduced the degree of spaciousness within the appeal site (despite three proposed marquees being absent on my visit). The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance. Moreover, the tented form and irregular positioning of the marquees within the site jars with the formal symmetry of the Regency buildings. This also has the effect of reducing the individuality between the three buildings and blurring the definition between them.

26. Having regard to the above, the marquees have become a prominent and incongruous feature of the streetscene along Promenade and due to their scale, colour and form are visible for much of its length. They are also prominent in views from Imperial Gardens. The marquees intrude into the space adjacent to the street trees, imposing upon them, unbalancing the symmetry of the avenue in views looking down Promenade from the Queens Hotel and adversely affecting the spacious, verdant character of the CA as a whole.
27. The submitted heritage statement sets out that retaining the marquees for two years would not be *'to the detriment of any of the features described in the Historic England listing details and will not result in the significant loss of any historical internal features or fabric'*. However, I have found that the development is harmful to the significance of the listed buildings through the development within their setting.
28. The appellant has set out that retaining the marquees for a further two years would allow time for the appellant to conceive an alternative, presumably more permanent, solution for external dining. In that regard, the appellant has provided a copy of a draft submission for pre-application advice to the Council. Whilst there may or may not be a suitable long-term solution, it is not for the appeal process to pre-determine this matter.
29. Nonetheless, I am mindful of the high importance of the heritage assets and that, were I to allow the appeal and grant permission to retain the marquees for a further two years, this harm would continue at least for the duration of that period.
30. As such, for the above reasons, I conclude that the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting. In addition, it would fail to preserve or enhance the character or appearance of the CA. As such, it would cause harm to the significance of these designated heritage assets.
31. Lying within its setting, the appeal site also contributes to the special interest and significance of the Grade II\* listed Queens Hotel. This is through reinforcing the spacious character of the area and allowing views across it to the appeal buildings' facades as part of a conscious grouping of Regency buildings and development along this part of Promenade. Through interrupting the spacious character and views between the two buildings the development has adversely affected the significance of the Grade II\* listed Queens Hotel through development within its setting.
32. Much of the significance of the Grade II listed gate piers located along the frontage of No 133 derives from their association with No 133, which lies within their setting. A further consequence of the appeal development has been that these gate piers have also been partly or totally subsumed by the structures, eroding their legibility within the site, to the detriment of their significance.
33. Whilst the effect on the special interest and significance of the Queens Hotel or the gate piers did not form part of the Council's reasons for refusal, I have a statutory duty under section 66(1) of the Act to have special regard to the desirability of preserving listed buildings or their settings. In that regard, my findings add to the harm to heritage assets I have described above.

*Public Benefits and Balance*

34. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use.
35. Having regard to the temporary nature of the proposal I am satisfied that the harm is less than substantial as described in the Framework. In that regard I note that the appellant has never disputed that the marquees affect the settings of the listed buildings and in this respect harms their significance.
36. The appellant argues that the harm arising is at the '*lower end of that less than substantial scale*'. However, I would note that case-law has confirmed that decision makers are not obliged to place harm that would be caused to the significance of a heritage asset, or its setting, somewhere on a spectrum in order to come to a conclusion. The only requirement is to differentiate between 'substantial' and 'less than substantial' harm for the purposes of undertaking the weighted balancing exercise.
37. The appellant is of the view that the marquees generate significant public benefits and that these '*far outweigh*' the less than substantial harm caused. The appellant sets out that the marquees allow the bar and restaurant to accommodate more customers '*across the less clement months of the year*', supporting the business and resulting in employment and economic benefits. In this regard the appellant has calculated that approximately 50 members of staff (a third of the workforce) would be made redundant, were the marquees required to be removed. The appellant also notes the potential for further job losses in the supply chain including food and drink suppliers and maintenance staff.
38. Whilst the appellant has not provided detailed evidence supporting the employment figures and their reliance on the marquees, a table showing financial information has been provided as part of their final comments. Whilst limited in detail, this table sets out that the external areas around the buildings generate a substantial portion of the income of the business.
39. I agree with the Council that there is a lack of supporting evidence with regard to the precise financial implications of the marquees and the extent to which the businesses are dependent upon them. However, having regard to the significant number of tables located within the areas covered by marquees, I do not doubt that these areas generate a substantial income throughout the year, as they are essentially an extension of the internal dining areas and bars, allowing for significantly more tables and more customers. This in turn will result in employment and a benefit to the local economy, including through diners going on to visit the nearby bars after a meal.
40. However, I would note that the issue is not that outdoor dining in itself is unacceptable in principle, the harm considered above is based around the number and form of the marquees covering these spaces. There is no evidence before me that the appeal proposal is the only means of providing outdoor dining and indeed, I saw no similar marquee structures at nearby restaurants and bars, which often included outdoor seating. I therefore attribute limited weight to the economic benefits described above.

41. The appellant argues that the marquees help to maintain the buildings in their optimum viable use. However, notwithstanding that the buildings were vacant for a period of time before being incorporated into the current business, the appellant has not demonstrated why they consider the buildings' current use is their optimum viable use. In this regard I note the Planning Practice Guidance (PPG)<sup>5</sup> sets out that where there are other economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, and, that this may not necessarily be the most economically viable one.
42. I accept that the economic climate has changed since the buildings were developed into their current uses by the appellant, and that these are challenging times for such businesses. However, the original investment in the buildings does not appear to have required provision of substantial areas of undercover dining areas and these only became necessary in order for the business to survive during the restrictions in place during Covid-19. Having regard to the PPG, and on the basis of the evidence before me, I am therefore not convinced that the marquees are fundamental to maintaining the buildings' optimum viable use.
43. I accept that, following the pandemic, there may be some people who remain nervous of being in crowded, indoor spaces, and that they may prefer to socialise in well-ventilated spaces where greater distancing can be achieved. However, given that the marquees predominantly have walls, internal doors and a roof, it is unclear how well-ventilated these spaces are. Nonetheless, the marquees may reassure some customers in this respect and may provide an option to those people at times where temperatures and weather conditions inhibit outside dining. This therefore represents a limited benefit.
44. Nonetheless, collectively, the limited weight I have attributed to recognised public benefits, are not sufficient to outweigh the considerable importance and weight I attach to the identified harm to the significance of the designated heritage assets.
45. The retention of the marquees for a further two years would adversely affect the special interest and significance of the adjacent Grade II\* buildings, with particular regard to their setting. Similarly, the proposal would also fail to preserve or enhance the character or appearance of the CA. The retention of the marquees would not sustain or enhance the significance of the designated heritage assets and would not conserve them in a manner appropriate to their significance.
46. This harm would be contrary to the requirements of sections 66(1) and 72(1) of the Act and the provisions within the Framework which seek to conserve and enhance the historic environment. The harmful impact would also be contrary to Policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Core Strategy (2017) and Policy D1 of the Cheltenham Local Plan (2020) which together seek to conserve and enhance heritage assets and safeguard local distinctiveness and the historic environment.

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<sup>5</sup> Paragraph: 015 Reference ID: 18a-015-20190723.

### **Other Matters**

47. The appellant has referred to a previous decision of the Council relating to the construction of an orangery in Imperial Gardens. I have been provided with limited details of this decision. However, I was able to view this development on the site visit. This structure does not appear to obscure buildings in the manner of the appeal scheme, nor does it appear to involve the settings of multiple Grade II\* listed buildings. I am therefore not convinced that this development represents a parallel with the appeal proposal. The Council's previous decision in this regard therefore carries little weight.
48. I note that there is some public support for the proposal. However public support does not necessarily equate to a lack of harm. Moreover, a number of third-party objections were also received as part of the appeal.

### **Conclusion**

49. The proposed development would conflict with the development plan. There are no material considerations which indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*Paul Martinson*

INSPECTOR