

Cheltenham Borough Council Planning Committee

Meeting date: 16 November 2023

Meeting time: 6.00 pm

Meeting venue: Council Chamber - Municipal Offices

Membership:

Councillor Paul Baker (Chair), Councillor Garth Barnes (Vice-Chair), Councillor Glenn Andrews, Councillor Adrian Bamford, Councillor Bernard Fisher, Councillor Paul McCloskey, Councillor Emma Nelson, Councillor Tony Oliver, Councillor Diggory Seacome, Councillor Simon Wheeler and Councillor Barbara Clark

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Agenda

1 Apologies

2 Declarations of Interest

3 Declarations of independent site visits

4 Minutes of the last meeting (Pages 3 - 10)

To approve the minutes of the meeting held on 21 September 2023.

5 Public Questions

6 Planning Applications

6a 23/01597/FUL, 129-133 Promenade (Pages 11 - 44)

[Planning application documents](#)

6b 23/01314/FUL, Car Park, Synagogue Lane (Pages 45 - 54)

[Planning application documents](#)

6c 23/00808/TREEPO, 87 - 99 Beeches Road (Pages 55 - 58)

7 Appeals Update (Pages 59 - 76)

8 Any other items the Chairman determines urgent and requires a decision



Cheltenham Borough Council Planning Committee Minutes

Meeting date: 21 September 2023

Meeting time: 18.00

In attendance:

Councillors:

Paul Baker (Chair), Glenn Andrews, Adrian Bamford, Bernard Fisher, Paul McCloskey, Tony Oliver, Simon Wheeler and Barbara Clark

Also in attendance:

Claire Donnelly (Planning Officer), Victoria Harris (Planning Officer), Michelle Payne (Senior Planning Officer) and Mike Holmes

1 Apologies

Apologies were received from Councillors Barnes and Seacome.

2 Declarations of Interest

There were none.

3 Declarations of independent site visits

There were none.

4 Minutes of the last meeting

The minutes of the meeting held on 17 August were approved as a true record and signed accordingly.

5 Public Questions

There were none.

6 Planning Applications

7 23/00813/FUL 170-172 Leckhampton Road, Cheltenham, GL53 0AA

The planning officer introduced the report as published.

Public speaking

The Resident in objection made the following points:

- Residents do not object to the redevelopment of the site or the co-op relocating there.
- They are objecting to its current plan and proposed buildings, size, mass and scale. It is an overdevelopment of the site and out of character for the area.
- The concern is primarily about the impact the development will have on traffic, parking and safety of pedestrians.
- Although the scheme has been revised to drop the height the building still remains too large and overbearing and has little relationship to the surrounding area.
- The developer has missed an opportunity to design a group of buildings that would enhance the plot and local area.

Agent on behalf of applicant made the following points:

- They have sought to improve the scheme following public consultation exercise, by making amendments to the building including changing the facing material and reducing its height.
- The layout and landscaping for the site has also been improved.
- The development makes effective use of the site by providing housing and improving the offer of the convenience store, along with parking and well considered arrangement for deliveries.
- Technical consultants are fully supportive of the scheme with no objections raised in relation to environmental health or highway safety.

Councillor Horwood as Ward Councillor made the following points:

- The proposal has 30 objections and 30 in support. There is overwhelming support for co-op to move to new site.
- A positive is that the site is providing 14 new dwellings, 12 of them relatively affordable by Leckhampton standards, the biodiversity net gain and it incorporates renewable energy.
- The site does tackle many of the issues of the current site of the Co-op, such as the delivery bay being separate from car park and the pedestrian access being separate from both the car park and delivery bay access. Also, the buildings will be further from neighbours' properties than the current garage buildings due to the separation by the car park.
- There are drawbacks to the design as it really isn't very pretty although the applicant has modified it somewhat.
- It is a shame that there isn't enough parking for one space per flat. The objections are really about scale and mass of the development.

- On balance would ask Members to support the application for the following three reasons:

- Benefit over the existing co-op site.
- Overwhelming support in the wider community of Leckhampton for change to happen.
- Have to accept more intensive development within the town to offset being able to maintain green fields.

The democratic services officer read out the Parish council's objection which made the following points:

- Scale, mass, height and overdevelopment of the site. Creates a building out of character with its surroundings as well as privacy issues for residents who will be overlooked.
- There is a lack of parking for both the dwellings and the shop. The street parking in Pilley Lane is already chaotic.
- Concerns that the junction of Pilley Lane and Leckhampton Road will become busier and impacting safety and air quality. The predicted increase in two-way journeys during morning and evening rush hour will cause additional congestion also impacting safety and air quality.

Response to members questions:

- Highways recommended a condition of how the delivery bay will be used and trust that the applicant will stop people from using the delivery bay for parking.
- Condition 24 is about hours of opening and deliveries the planning department do not know how the store will be laid out or what the store will provide.
- The site will have biodiversity net gain. Legislation Environment Act provisions come in in November this year for major sites, which this site may not necessarily fall within. However, local authorities haven't been given any detailed guidance of the implementation of the provisions as yet. In terms of minor sites, it will come in next April.
- Planning is not able to attach any conditions to prevent the new apartments which will be privately owned from becoming Airbnbs as we do not have any control over properties being used in this way at any location.
- Highways are satisfied that both junctions Pilley Lane with Leckhampton Road and Pilley Lane with Old Bath Road have sufficient visibility for vehicles and the approach for both junctions there is still stopping sight distant for vehicles. The application does confirm that there will be a maximum of five deliveries per day and they will range in vehicle size from vans to heavy goods vehicles.
- The Co-op are not the applicant they would be the occupier of the retail store. Planning do not know who the owner of the flats will be as they may be in separate ownership and would not expect a management plan for the flats and not something that is required.
- Highways deemed that on balance request for any amendments on the existing infrastructure on the network failed the test of necessity as they are satisfied that both junctions can operate safely.

- Highways is satisfied with the assessment that was carried out with regards to traffic movement.
- There is no lift for the apartments.
- The existing floor space of the buildings is offset against the residential floor space proposed resulting in planning being unable to seek affordable housing.
- Transport statement applicant did state that deliveries will be made through Leckhampton Road, and the egress would be made onto old Bath Road.
- Planning do not think it would be appropriate to limit the size of the vehicles considering the previous use of the site.
- Any Section 106 needs to be tested, related directly to the development and reasonably related in scale. Highways deemed that the site did not meet those tests to require mitigation, therefore none were requested.
- It would be difficult to enforce a condition for a restriction for deliveries not being made during school times.

Member Debate

In debate, Members made the following comments:

- The existing site is a problem for traffic, they do have concerns as there will be consequences for the local community but the overall the benefits outweigh the problems.
- Not sure the traffic will create much of a problem as new site.
- There are other buildings near to the site which are similar in scale if not larger.
- There were concerns about traffic, parking and road safety issues and think that Gloucestershire County Council and CBC need to work together to improve road safety in the area.
- There were also concerns of overlooking from residents is about a feeling of being overlooked rather than actual reality.
- Given that we need a five year supply of housing and Cheltenham only has 1.7 years, we need these 14 properties.
- Will support scheme as it's a good scheme but concerned more flats being built without lifts.
- Will support the scheme but thinks the applicant could have reduced the height of the scheme, also sad that there are no affordable homes in the scheme. Accepts it will be a positive contribution to the wider area.

Vote on proposal to have an additional condition that construction and deliveries will not happen between arrival and departure times for schools.
Carried

Vote on officer recommendation to permit

9 in support - Unanimous

8 23/01324/CONDIT Imperial Garden, Cheltenham, Glos

The Officer presented the report as published.

The objector then spoke and made the following points:

- He stated that it was a myth reporting that the fuel that was being proposed.
- The report talks about the harm that the fuel will have on the ozone not on local pollution.
- There will be pollution released into Imperial Square.
- The application states that there will be no generators.
- Outdoor ice rinks in temperate zones are not good for the environment.
- The ice rink will burn more than 30000 litres of fuel.

The matter then went to Member questions the responses were as follows:

- There are no experts present who can answer the question as to what we are calling bio diesel hydro treated vegetable oil is used. We can not condition what exactly it is.
- It was confirmed that there was not enough time to defer the item to the next committee.

The matter then went to Member debate where the following points were raised:

- The application was effused last year and the matter of electricity in the park was due to be looked into, this doesn't appear to have happened.
- There has been a funfair in Montpellier Gardens burning diesel and the cost of this is not known.
- Bio diesel is made from vegetable oil, tallow and animal fats it also has the addition of palm oil because of the combustion point. Given all this would move to vote to refuse.
- Another Member agreed as last year when the application came to the committee the committee were unequivocal in its refusal.
- The point was made that the rink was greatly missed when it wasn't there last year. The point definitely does remain that there should be a power source and the environmental issue should be considered should still support the application as the ice rink does bring a lot to the town.
- There are definitely concerns with regard to the use of palm oil due to the damage it does.
- Power in the parks has been pushed back further and further, unless there can be given a concrete time when there will be power in the parks will not support the application.
- The importance of the rink cannot be underestimated, the excitement that it brings for children and it definitely brings more visitors to the area.
- It is extremely disappointing that the Council hasn't got its act together with regards to the power in the park.
- Propose that permission is granted for one year and this will be the final year unless the power in the parks is sorted out.
- Did not support the application last year as the rink was being flown from Italy, but does see what the application will bring to the area.

The matter then went to the vote for refusal which was as follows:

Refusal: 3

Against refusal: 6

The application then went to the vote to grant for one year. The result was as follows:

For: 7

Abstentions: 2

9 23/00809/FUL 1 The Grove, Hales Road, Cheltenham GL52 6SU

The Planning Officer presented the report as published.

The objector then addressed the committee and made the following points:

- The proposal will overlook her garden and conservatory.
- The dormer windows will be less than 10 meters away from her conservatory.
- No amount of screening will provide the light that believes in entitled to.
- The objector invited the committee to attend her property and see what the impact of the proposal would be to her property.
- The only objection that she has to the application is the rear dormers.

Cllr Chidley then addressed the committee and made the following points:

- He supports the objector and his objection is not to the whole application just the dormers.
- The dormers would have a big effect on the neighbouring property and would invade the privacy of the neighbour.
- The Council states in SD14 02 that they will apply a 21 metre distance for properties facing each other and whereas these properties do not face each other the application does not meet the requirement of 21 meters.
- It is usual for properties in the area to have velux windows rather than dormers.
- A representation in support of the application has not come from a neighbour as stated but from someone who lives some distance away and her representation appears to be to discredit the objector.
- He requested a condition on the application to use velux rather than dormer windows that will allow privacy and then could support the application going ahead.

The matter then went to Member questions and the responses were as follows:

- The application would be out of time if a visit to the objectors property.
- A condition cannot be added, the application needs to be determined as it is at the moment.
- Officers have not had a discussion with the applicant to change the application as officers deemed the proposal acceptable.
- Whether the dormer windows are permitted development or not will depend on the material that is use for them,

- Officers did not visit the objectors property as they did not feel that it was necessary.

The interim head of planning explained that there needs to be planning ground reasons to refuse the application. It was also explained that if the item was deferred with a planning reason the applicant could appeal against non-determination which would leave grounds for the applicant to claim costs. Member were reminded to consider the application that had been received.

The matter then went to Member debate, where the following points were raised:

- There appears to be no other choice other than support the application as the element in question could be carried out under permitted development.
- There was a suggestion to refuse based on SD14, however the Interim Head of Planning stated that SD14 says that the new development must not cause harm and that the planning officer has addressed the amenity in the report.
- From the visit to the applicants property on planning view felt that it was reasonable and would be supporting the application.
- Totally understood the neighbours view although in reality would the neighbour peer in through the window.
- The length of the window seems to be a key issue.

It was proposed to refuse the application based on SD14 – this was not supported.

The matter then went to the vote on the officers recommendation to permit.

For- 8

Against – 1

PERMITTED

10 23/01132/FUL 6 Saville Close, Cheltenham, GL50 4NE

The planning officer introduced the report as published.

There were no speakers on this item.

Responses to members questions:

- Highways raised no objection on parking or highways grounds to the two parking spaces for both of the five-bed houses.
- The extra bit of green land is excluded from development due to being local green space.
- Garage that is on site at the moment will be retained and the site will be alongside the garage.

The matter went to Member debate, where Members made the following comments:

- support this mainly due to Cheltenham not having a five-year housing supply.

- As the landowners it would have been nice for a development for Cheltenham Borough Homes and affordable housing.

Vote on officer recommendation to permit

9 in support - Unanimous

11 23/01226/CONDIT Car Park, Chester Walk, Cheltenham

The planning officer introduced the report as published.

There were no public speakers.

There were no Member questions and no Member debate.

The matter went straight to the vote

Vote on officer recommendation to permit

8 in support

1 in objection

12 Appeal Update

The appeals update had been circulated and was noted.

13 Enforcement Update

The Interim Head of Planning said that since enforcement had come back under the planning banner, he was aware that Members of Planning Committee wasn't getting any information about what was happening - about the number and scale of complaints being dealt with – and thought it would be a good idea to bring report on quarterly basis, to track how enforcement was going and share some cases. He acknowledged that it is a difficult area and there will be legal implications which prevent discussion of individual cases, but hoped that sharing this information about cases coming forward and action being taken would be useful and give Members the opportunity to ask questions, outside of the meeting if preferred.

14 Any other items the Chairman determines urgent and requires a decision

There were none.

APPLICATION NO: 23/01597/FUL	OFFICER: Mrs Lucy White
DATE REGISTERED: 20th September 2023	DATE OF EXPIRY: 15th November 2023
DATE VALIDATED: 20th September 2023	DATE OF SITE VISIT:
WARD: Lansdown	PARISH:
APPLICANT:	Lucky Onion Group
AGENT:	SF Planning Limited
LOCATION:	129 - 133 Promenade Cheltenham Gloucestershire
PROPOSAL:	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 (Montpelier 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.

- 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 13th July 2023. However, the detail to accompany the application wasn't received until 24th 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

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	49
Total comments received	15
Number of objections	11
Number of supporting	4
General comment	0

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 are 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

27th 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

5th 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,

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 not 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.

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 243m² 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.

APPLICATION NO: 23/01597/FUL		OFFICER: Mrs Lucy White
DATE REGISTERED: 20th September 2023		DATE OF EXPIRY : 15th November 2023
WARD: Lansdown		PARISH:
APPLICANT:	Lucky Onion Group	
LOCATION:	129 - 133 Promenade Cheltenham Gloucestershire	
PROPOSAL:	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	16
Number of objections	11
Number of representations	0
Number of supporting	5

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.

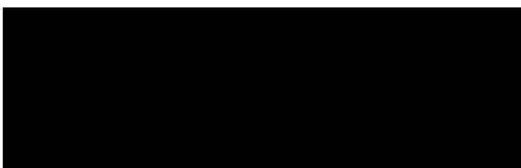
Prior to this Application the Planning Inspectorate dismissed an appeal by the Applicant to retain the tents for two years.

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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APPLICATION NO: 23/01314/FUL	OFFICER: Mrs Lucy White
DATE REGISTERED: 24th August 2023	DATE OF EXPIRY: 19th October 2023/Agreed Ext of Time 20 th November 2023
DATE VALIDATED: 24th August 2023	DATE OF SITE VISIT:
WARD: Lansdown	PARISH:
APPLICANT:	Cheltenham Borough Council
AGENT:	Evans Jones Ltd
LOCATION:	Car Park, Synagogue Lane, Cheltenham
PROPOSAL:	Retention of a temporary public, pay and display car park (forming an extension to an existing car park) for an additional period of 3 years

RECOMMENDATION: Permit



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site comprises of a temporary, public pay and display car park, forming an extension of the adjoining Chelt Walk town centre car park. The mesh and gravel infill surfacing material and applied space markings over much of the site are reflective of the car park's temporary nature. Prior to site clearance to form the current car park the site was previously occupied by the vacant and dilapidated historic buildings associated with the former Shopfitters site.
- 1.2 The site is located within the Old Town Character Area of Cheltenham's Central Conservation Area, within the Core Commercial Area and Flood Zone 3. The site is bounded by a number of key-unlisted and Grade II listed buildings, including the Grade II* listed Synagogue to the north; a public house and public footpath adjacent to the River Chelt to the south; and Chelt Walk car park to the west.
- 1.3 The applicant seeks planning permission for the provision of a temporary public, pay and display car park for an additional 3 year period (renewal of planning permission 20/01655/FUL). There are no proposed alterations to the existing car park layout, access arrangements, surfacing material, associated lighting or fixtures or opening hours.
- 1.4 Planning permission for use of the land as a temporary car park was originally granted in 2015 (ref 15/00954/FUL). Condition 2 of this planning permission required the use of the land as a temporary car park to cease from September 25th 2020. A further 3 year temporary use of the land as a car park was granted in 2020 and this three year period ends 22nd January 2024.
- 1.5 The application is before planning committee because the applicant and landowner is Cheltenham Borough Council.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Land Allocated for Mixed Use
Airport Safeguarding over 45m
Central Conservation Area
Core Commercial Area
Employment Land
Flood Zone 2
Flood Zone 3
Principal Urban Area
Residents Associations
Residents Associations
Smoke Control Order

Relevant Planning History:

85/00768/ZHIST 22nd August 1985 PER

Land At Synagogue Lane Cheltenham Gloucestershire - Change Of Use To Car Park

87/01110/PR 26th November 1987 PER

Land At Synagogue Lane Cheltenham Gloucestershire - Renewal Of Permission For Car Parking

15/00954/FUL 25th September 2015 PER

79 St Georges Place - Provision of a temporary public, pay and display car park (forming an extension to an existing car park) for a period of 5 years following demolition of existing buildings on the site and with associated lighting, part re-surfacing and remedial repairs to existing boundary walls.

20/01655/FUL 22nd January 2021 PER

Provision of a temporary public, pay and display car park (forming an extension to an existing car park) for an additional period of 3 years (renewal of planning permission 15/00954/FUL)

3. POLICIES AND GUIDANCE

National Planning Policy Framework

Section 4 Decision-making

Section 7 Ensuring the vitality of town centres

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

Adopted Cheltenham Plan Policies

EM1 Employment Land

D1 Design

H2 Land Allocated for Mixed-Use Development

SL1 Safe and Sustainable Living

TN2 Long-stay car parking

Adopted Joint Core Strategy Policies

SD1 Employment

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality

INF1 Transport Network

INF2 Flood Risk Management

Supplementary Planning Guidance/Documents

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

Cheltenham Climate Change (2022)

4. CONSULTATIONS

Building Control

30th August 2023 - No comment

Heritage and Conservation

9th October 2023 - No observations.

Gloucestershire Centre For Environmental Records

25th August 2023 - Report available to view in documents tab

Drainage and Flooding 1

30th August 2023 - A maintenance plan for the Sustainable Drainage System (SUDS) should be added to the flood risk assessment to ensure that the drainage system and devices remain operational over the proposed lifetime, and to identify if any immediate maintenance is required for the continued use of the system given that it has already been operational for a number of years.

The flood risk assessment is otherwise considered appropriate for the applied additional period of 3 years as it provides an appropriate level of mitigation with regards to latest guidance. Any future retentions beyond this period would need to be re-reviewed against the latest design and climate change guidance.

Drainage and Flooding 2

11th September 2023 -

Comments have now been addressed and the flood risk assessment is therefore considered appropriate for an additional 3 year period

Highways

26th September 2023-

Gloucestershire County Council, the Highway Authority acting in its role as Statutory Consultee has undertaken a full assessment of this planning application. Based on the appraisal of the development proposals the Highways Development Management Manager on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure)(England) Order, 2015 has no objection.

The justification for this decision is provided below.

The application site is located to the south of Synagogue Lane, Cheltenham, within the town centre. The application seeks permission for the retention of a temporary public, pay and display car park (forming an extension to an existing car park) for an additional period of 3 years at Car Park, Synagogue Lane, Cheltenham.

Vehicular access to the application site is via a mini-roundabout junction off St James' Square, a two-way single carriageway road subject to a design speed of 30mph. Adjacent to the application site the carriageway is bordered by footways and grass verge. Regarding highway safety, there are no recorded instances of a personal injury collisions within 50m of the application site within the most recent 5-years.

The proposal satisfies the requirements for the following:

Turning facility - suitable provision for a vehicle to manoeuvre about the site and depart in a forward gear.

Junction to existing network - access to the existing network is gained through existing mini-roundabout junction onto St James' Square. No changes are proposed to the existing vehicle access.

Emergency access

Parking provision - no changes to the existing car parking provision which is considered suitable.

Highway Impact - Given the nature and scale of the proposal, it is not considered that the proposal will result in an adverse impact on highway safety or congestion.

The Highway Authority has undertaken a robust assessment of the planning application. Based on the analysis of the information submitted the Highway Authority concludes that there would not be an unacceptable impact on Highway Safety or a severe impact on congestion. There are no justifiable grounds on which an objection could be maintained.

The Highway Authority therefore submits a response of no objection.

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	65
Total comments received	0
Number of objections	0
Number of supporting	0
General comment	0

- 5.1** Letters of notification were sent to 65 neighbouring properties and businesses. In addition, site notices were displayed within the vicinity of the site and an advert placed in the Gloucestershire Echo. No representations were received following the publicity.

6. OFFICER COMMENTS

6.1 Determining Issues

- 6.2** The principle of using the site as a temporary car park is established through the previous planning permissions. The key issue is limited therefore, to the acceptability of extending temporary use of the land as a car park for a further three years; having regard to relevant policies of the development plan.

- 6.3** Matters relating to neighbour amenity, heritage and conservation, access and highway safety, flood risk, archaeology and site contamination were considered as part of the original 2015 application. Other than neighbour amenity, highway safety, flooding and drainage, the above matters will not be re-examined as part of the current application.

6.4 Officer Comments

- 6.5** Policy EM1 of the Cheltenham Plan identifies the application site and adjoining Chelt Walk car park (and a number of other sites across the Borough) as locations for new employment development. The application site is included within Plan E4 of the Cheltenham Plan Proposals Map; the red lines on Plans E1-E4 marking the boundaries of the allocations which are separately and collectively part of policy EM1.

- 6.6** The supporting text of the Cheltenham Plan at paragraphs 3.18-3.20, discusses the potential of the redevelopment of Chelt Walk car park for employment purposes. Although the site and surrounding land is located within flood zone 2 and 3, the land is considered to be a prime employment site and capable of accommodating a modern office development. As such, the proposed, further extended period of use of the land as a temporary car park must be considered very carefully.

- 6.7** The applicant's agent has submitted a supporting statement which sets out the reasons for extending the temporary period. In summary, comments are made about the lack of any employment use of the site for several decades and the increased demand for car parking in the area due to parking pressure and reduced capacity in the town centre. The previous extended use of the car park similarly sought to maintain temporary relief from parking pressure and reduced town centre car parking capacity. This was, in part, a result of the recent new office development in Jessop Avenue and other town centre and car park development projects. This has increased demand generally for car parking provision in this part of the town centre and the Jessop Avenue office quarter generates significant demand on the use of Chelt Walk car park.

- 6.8** The application supporting statement highlights that the use of both Chelt Walk and Synagogue Lane car parks has, more or less, returned to pre Covid 19 pandemic levels of occupancy. The car parks are frequently full during working hours. The statement rightly

also sets out the constraints of the site which may hinder/delay future development opportunities and also comments on office occupancy levels and investment in office development generally which are still in a period of adjustment following the pandemic. That said, allowing the site to continue as a temporary surface level car park would not hinder the long term re-development opportunities for the site.

- 6.9** Any future proposals for the re-development of the Synagogue Lane car park combined with Chelt Walk car park, would be facilitated and likely brought forward by the Council. However, there has been no recent developer interest in the site. At the time of the 2020 application and notwithstanding all of the above, the Property and Assets department of Cheltenham Borough Council was engaged in feasibility studies and pre-contractual work to develop the application site in accordance with the objectives of development plan policy. A timeframe of 2-3 years was anticipated for completion of this preparatory work.
- 6.10** In light of the above, officers have again had discussions with the Property team over the long term use of this site. The post pandemic office market has not fully recovered and there is a surplus of office space currently available within the market, alongside a general increase in construction costs. As such, the Property team consider that the future of this site and how it could best offer a link between the St James's commercial quarter and the town centre, will be reassessed as part of the ongoing work associated with the Joint Local Plan preparation and Cheltenham's Car Parking Strategy.
- 6.11** The options therefore, in terms of this application, are either to leave the site empty until such a time as market conditions improve and the site comes forward for redevelopment. Or alternatively, continue the beneficial use of the site as a car park for a further temporary period; noting that, extending the temporary use of the land would not sterilise the site's future redevelopment for commercial purposes.

6.12 Impact on neighbouring property

- 6.13** 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 owners or the locality. These requirements are reiterated in adopted JCS policy SD14. In addition, NPPF paragraph 127 highlights the need to secure a high standard of amenity for existing and future users.
- 6.14** The continued use of the car park for a further 3 years should not increase the potential for any noise and disturbance to neighbouring properties. There are no additional spaces, lighting columns or structures proposed and there are no changes to the surfacing material or the daily operation/hours of the temporary car park.
- 6.15** Furthermore, no objections or concerns have been raised by local residents or businesses.
- 6.16** In light of the above, the proposed development adheres to Policy SL1 of the Cheltenham Plan and Policy SD14 of the JCS.

6.17 Access and highway issues

- 6.18** The Highway Authority concludes that there would not be an unacceptable impact on highway safety or a severe impact on congestion. There are therefore no justifiable grounds on which an objection on highway grounds could be maintained.

6.19 Sustainability

- 6.20** 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.

6.21 Given the nature of the proposals there are limited opportunities to address the SPD guidance.

6.22 Other considerations

6.23 Flood Risk

6.24 The application site is located adjacent to the River Chelt which is classified as a main river. The site is also located within Flood Zone 3, bringing with it a 'high probability' of fluvial flooding and comprising land assessed as having a 1 in 100 year or greater annual probability of river flooding. The application submission therefore includes a Flood Risk Assessment.

6.25 The Council's Drainage officer (DO) requested a maintenance plan for the Sustainable Drainage System (SUDS) be added to the flood risk assessment to ensure that the drainage system and devices remain operational over the proposed lifetime, and to identify if any immediate maintenance is required for the continued use of the system given that it has already been operational for a number of years.

6.26 The DO subsequently reviewed the revised Flood Risk Assessment and raised no further concerns. The flood risk assessment is considered appropriate for an additional 3 year period.

6.27 The Environment Agency (EA) has not commented on the application. However, the EA raised no objection to the previous temporary planning permission, commenting that there is no built development and the proposal is purely to provide an extension of time to an already established use. The EA suggested condition is carried over from the previous consent.

6.28 Public Sector Equalities Duty (PSED)

6.29 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.

6.30 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.

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

7. CONCLUSION AND RECOMMENDATION

7.1 The extended temporary use of this land as a car park would not sterilise the site's future redevelopment for commercial purposes; having regard to Policy EM1 of the Cheltenham

Plan. The proposals also present an opportunity to continue to relieve pressure on town centre parking capacity and retain public car parking facilities for the Jessop Avenue office quarter, in a location currently under provided.

- 7.2** The recommendation is therefore to grant temporary planning permission subject to the following conditions.

8. CONDITIONS / INFORMATIVES

- 1 The use hereby permitted shall be discontinued on or before 18th November 2026.

Reason: In the interests of good planning. The application seeks permission on these terms and given the wider development aspirations for the site, in accordance with the objectives of Policy EM1 of the Cheltenham Plan (2020), it is considered appropriate to limit any additional restrictions to bringing forward such redevelopment.

- 2 The planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 There shall be no new structures (including gates, walls and fences) or raising of ground levels on land below 56.66m AOD, within the 100 year plus climate change floodplain, or within 8 metres of the top of bank of the River Chelt, inside or along the boundary of the site, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To prevent any impact on flood flows and flood risk elsewhere, having regard to Policy INF2 of the Joint Core Strategy (2017).

- 4 Within two months of the date of this decision, a Flood Evacuation Management Plan shall be submitted to the Local Planning Authority for their written approval in consultation with the Local Authority Emergency Planning Officer and Emergency Services. The Plan shall include full details of proposed awareness training and procedure for evacuation of persons and property (including vehicles); and method and procedures for timed evacuation. It shall also include a commitment to retain and update the Plan and include a timescale for revision of the Plan.

Reason: To minimise the flood related danger to people in the flood risk area, having regard to Policy SL1 of the Cheltenham Plan (2020) and Policies SD14 and INF2 of the Joint Core Strategy (2017).

- 5 The development hereby permitted shall be carried out in accordance with the requirements set out in the revised (Curtins) Flood Risk Assessment (ref 084526 Rev 02 dated 6th September 2023), received 8th September 2023.

Reason: To ensure sustainable drainage of the development and to minimise the flood related danger to people in the flood risk area, having regard to Policy SL1 of the Cheltenham Plan (2020) and Policies SD14 and INF2 of the Joint Core Strategy (2017).

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 application constitutes sustainable development and has therefore been approved in a timely manner.

Approved Plans

Reference	Type	Received	Notes
1314.01.	OS Extract	31st July 2023	
P 01 Rev C.	Drawing	31st July 2023	

CASE OFFICER: Mrs Lucy White

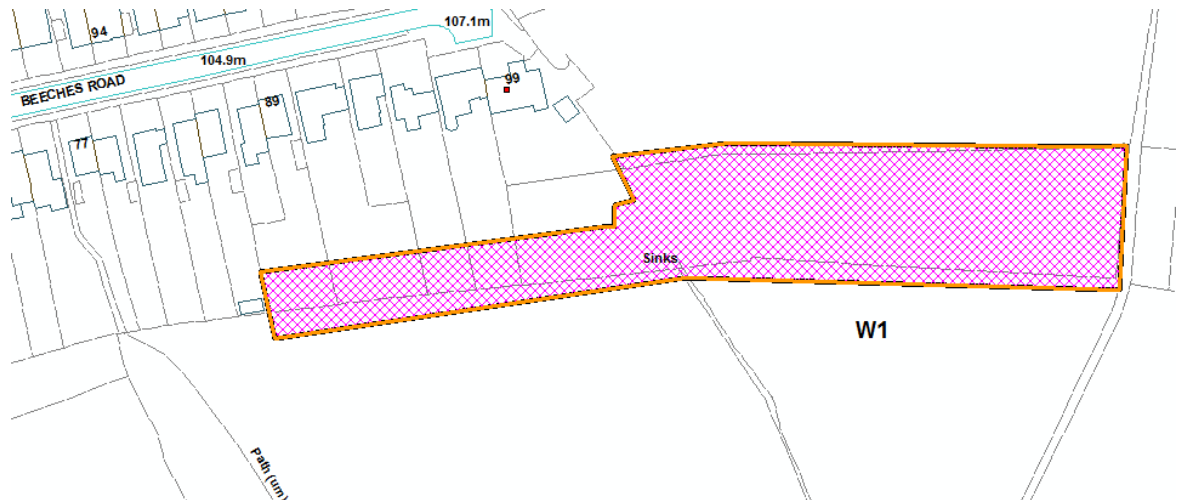
AUTHORISING OFFICER:

DATE:

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APPLICATION NO: 23/00808/TREEPO		OFFICER: Sam Reader
DATE REGISTERED: 5/7/23		DATE OF EXPIRY: 5/1/24
WARD: Charlton Kings		PARISH: Charlton Kings
LOCATION:	South of 87-99 Beeches Road	
PROPOSAL:	Woodland TPO	

RECOMMENDATION: Confirm without modification



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 Area of mixed species trees stretching along the former railway line. Spans gardens 87 to 99 Beeches Road. The latter has a garden which extends eastwards along the old railway line, containing many trees. Tree population is varied in species and is fairly densely populated.
- 1.2 The site is outside of the Conservation Area and accordingly consent would not be required from the Local Planning Authority before tree works / removals could commence (if a TPO had not been made here)
- 1.3 The proposal is to protect the trees within the outlined area with a Woodland TPO.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Relevant Planning History

21/02789/PREAPP - Siting of up to 6 short term holiday let accommodation units at Land to the rear of 99 Beeches Road.

Application was closed after pre-app report delivered.

23/00353/CLPUD - The construction of an outbuilding in the rear garden and the provision of a hard surface to provide vehicular access to the outbuilding.

Certificate of Lawful Proposed Use granted.

23/00948/FUL - Subdivision of garden, construction of new single storey dwelling and associated access drive.

Application permitted.

3. POLICIES AND GUIDANCE

National Planning Policy Framework 2021 (NPPF)

Chapter 12, sub-article 131

Town and Country Planning Act 1990

Part 8, Chapter 1 – Trees

Cheltenham Plan

Policy GI2 and GI3

4. CONSULTATION RESPONSES

4.1. The provisional TPO received two objections within the allotted consultation period (and three outside of the period). One letter of support was received.

The two objections received in time were from 99 Beeches Road and 97 Beeches Road. They are identical in content. In summary they state:

- The owners have no intention of inappropriate tree management or removal

- The Woodland TPO type is inappropriate in this case as the Secretary of State has stated in Government guidance that:

“It is unlikely to be appropriate to use the woodland classification in gardens.”

- The Woodland TPO will without justification hinder the enjoyment of their gardens and that working within the parameters of a Woodland TPO will be unfairly burdensome.
- There are fruit trees within the area to the east of the block of trees which have no public visual amenity value. There are also self-seeded trees which require management. A Woodland TPO would be too onerous for management of these trees.

The three objections received out of time are, in summary:

- That a TPO on a private and residential garden, is a needless and unjustifiable restriction on any activity in their own garden
- That a Woodland TPO would be too restrictive – e.g. of removal of seedlings, pruning to maintain a view for the householders.
- The area was not a woodland at the time of purchase (1963).
- The Woodland TPO category was not explained in the information sent to homeowners when the TPO was served.
- There is no threat to the trees.

5. PUBLICITY AND REPRESENTATIONS

- The owners of 87 to 99 Beeches Road were all served with a copy of the TPO and details of how to object. Also sent was a government publication explaining TPOs. Three site notices were posted.

6. OFFICER COMMENTS

- 6.1 The area of trees spans many gardens and shows the line of the former railway. They all appear to be in fair condition, have very good visibility to the public from many angles (i.e. from the street scene, from local public footpaths). They are mostly large trees in the mature age class, although trees within the garden to the east of 99 Beeches Road appear to have been planted more recently, and all at a similar time. Nonetheless, these trees all appear to be mature. There are some ash trees contained within the area but the ash die-back appears to be limited to early stages at worst.
- 6.2 The threat to these trees has been established by three planning applications at 99 Beeches Road. This has set a precedent that could be followed in adjacent properties. As the most recent application permits the building of a house in direct shade of a number of the trees, a TPO was considered expedient and appropriate.
- 6.3 The Woodland TPO was created as it was considered the most appropriate form of TPO. This TPO also protects new trees (planted or self-sown) into the future. The trees ‘read’ as woodland. They are densely and variedly populated. To survey each tree individually for a TPO listing each individual tree would create a very confused (and therefore difficult to legally defend) document. TPO guidance recommends that Area TPOs are only used in an emergency as a short-term measure. A Group Order is open to interpretation – a listing is given of the number and species of trees within the group but no further details are recorded. Therefore, larger trees could be removed in favour of e.g. saplings. It is therefore a difficult document to legally defend.
- 6.4 The TPO was served in order to maintain the wooded, largely uninterrupted nature of the area. Whilst it is recognised that a Woodland TPO is unusual in a domestic situation, the

intention of the TPO is not to stymie good management of the trees. Trees Officers will assess the merits of all applications to fell or prune without prejudice. Should a refusal to an application be issued, there is a right of appeal to the Planning Inspectorate. The process of application to the LPA should not be seen as a reason to not protect trees with TPOs. It's free of charge and is mostly undertaken by tree surgery contractors on behalf of tree owners. A response is usually issued within two or three weeks and there is a maximum response time of eight weeks.

- 6.5 The Woodland TPO does not change the designation of the land (from domestic garden) and therefore no felling licences would be necessary from Forestry England should any pruning or removals be required.
- 6.6 The trees are important in the landscape and provide valuable screening from the AONB to the South looking north. Their largely continuous canopy cover provides excellent amenity value from many angles and from distance, given the size of the trees. They create a visual barrier between suburbia and the countryside. Their habitat value should not be underestimated. As the trees to the rear of the properties are deciduous (and elsewhere are overwhelmingly deciduous), views to the south from the properties will be maintained through the winter months.

7. CONCLUSION AND RECOMMENDATION

- 7.1 A threat to the trees has been established. The amenity value of the trees has been established. Therefore a TPO is expedient and appropriate on these trees. Given the density of the trees, a Woodland TPO is the only viable option to ensure their retention into the future.
- 7.2 On this basis the recommendation is to confirm the TPO without modification.

REPORT OF THE HEAD OF PLANNING ON PLANNING APPEALS

OVERVIEW

The purpose of this report is to provide Members of the Planning Committee with an overview of all planning appeals that have been received by the Council since the previous meeting of the Planning Committee. It further provides information on appeals that are being processed with the Planning Inspectorate and decisions that have been received.

RECOMMENDATION

To note the contents of the report.

Appeals Received

October/November 2023

Address	Proposal	Delegated or Committee Decision	Appeal Type	Anticipated Appeal Determination Date	Reference
10 Selkirk Street	Erection of 1no. three storey self-build dwelling on land adjacent to 10 Selkirk Street	Committee Decision	Written Representations	n/a	22/01441/FUL
3 Rotunda Tavern Montpellier Street	Retention of temporary canopy structure for two years	Delegated Decision	Written representations	n/a	22/01681/FUL

The Forge, Branch Road, The Reddings	Use of land as a caravan site without restriction as to layout or numbers of caravans. (Revised application to 23/00936/CLEUD)	Delegated Decision	Written representations	n/a	23/01678/CLEUD
Eagle Star Tower Montpellier Drive Cheltenham Gloucestershire	Application seeks confirmation that works undertaken in accordance with a previously approved change of use under Class J, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 ref: 15/01237/P3JPA enables the rest of the conversion to lawfully continue at any stage	Delegated Decision	Written representations	n/a	23/01347/CLPUD

Appeals being processed

Address	Proposal	Delegated/Committee Decision	Appeal Type	Outcome	Reference
Land at Shurdington Rd	Full planning application for residential development comprising 350 dwellings, open space, cycleways, footpaths, landscaping, access roads and other	Committee Decision	Written Representation (New procedure Change now a hearing date is 4th July 2023)	Not Decided (Decision issued on or before 10 th Jan 2024)	Planning ref: 20/01788/FUL Appeal ref: 23/00005/PP1
8 Imperial Square	Proposed change of use from C3 (dwelling house) to mixed use of C1 (hotel) and E (bar and restaurant).	Delegated Decision	Written representation	Not Decided	Planning ref: 22/00334/COU Appeal ref: 23/00009/PP3

Land Adjacent To Oakhurst Rise Cheltenham Gloucestershire	Outline application for residential development of 25 dwellings - access, layout and scale not reserved for subsequent approval	Committee Decision	Written representation	Not decided	Planning ref: 22/00112/OUT Appeal Ref 23/00020/PP1

12 Pilford Road Cheltenham	Erection of a Garden Room	n/a	Written representation (Enforcement)	Not decided	Planning ref: 23/00001/DCUA Appeal ref: 23/00025/ENFAPP
1 Michaelmas Lodge Lypiatt Terrace Cheltenham	Use of area of land for vehicle parking	Delegated Decision	Written representation	Not decided	Planning ref: 23/00262/Cleud Appeal Ref: 23/00023/PP1
Telecommunications Mast And Cabinet CLM24981 Princess Elizabeth Way	Proposed 5G telecoms installation: H3G 20m street pole and additional equipment cabinets	Delegated Decision	Written Representation	Not decided	Planning ref: 22/01937/PRIOR Appeal ref: 23/00026/PP1
6 Marsh Lane	Change of use from a single dwelling (Class C3) to a four bed House in Multiple Occupation (HMO) (Class C4)	Delegated Decision	Written Representation	Not decided	Planning Ref: 22/01864/COU Appeal Ref: 23/00027/PP1

218 High Street	Change of use of the ground floor from a retail unit (Class E) to an Adult Gaming Centre (Sui Generis) and first floor to associated storage and staff area with external alterations and associated works.	Delegated Decision	Written Representations	Not decided	23/00452/COU Appeal Ref: 23/00028/PP1
Telecommunications Mast And Cabinet Prestbury Road Cheltenham Gloucestershire	Proposed 5G telecoms installation: H3G 15m street pole and additional equipment cabinets	Delegated Decision	Written representation	Not Decided	Planning Ref: 23/00431/PRIOR Appeal Ref: 23/00029/PP1

Appeals Decided

Address	Proposal	Delegated/Committee Decision	Appeal Type	Outcome	Reference
Adey Innovation Ltd Gloucester Road	Demolition of the existing office building and erection of a 66 bedroom care home for older people (Use Class C2) including associated access, parking and landscaping.	Delegated Decision	Appeal Hearing (25.01.23)	Appeal Allowed	Planning ref: 21/02700/FUL Appeal Ref: 22/00027/PP1
The Hayloft The Reddings	Conversion of the existing dwellinghouse into 9 self-contained apartments, and associated works	Committee Decision	Written Representation	Appeal Allowed	Planning ref: 22/00749/FUL Appeal Ref: 22/00028/PP1

159 High Street	Proposed installation of 1no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens, plus the removal of associated BT kiosk(s) on Pavement Of Winchcombe Street Side Of Hays Travel 159 High Street	Delegated Decision	Written Representation	Appeal A and Appeal B Dismissed	Planning ref: 22/00322/ADV and FUL Appeal ref:22/00021/PP1 and 22/00022/ADV1
3 Apple Close, Prestbury	Replacement of existing conservatory with single storey rear extension. Increase in ridge height to facilitate loft conversion with rear dormer.	Delegated Decision	Written Representation	Appeal Allowed	Planning ref: 22/01145/FUL Appeal Ref: 23/00003/PP1

37 Market Street	Proposed side and rear extensions (revised scheme following refusal of application ref. 21/02361/FUL	Committee Decision	Written representations	Appeal Allowed Appeal Costs (Allowed)	Planning Ref: 22/00708/FUL Appeal Ref: 23/00004/PP1
Brecon House Charlton Hill Cheltenham Gloucestershire GL53 9NE	Construction of a paragraph 80 dwelling, estate management building, and associated landscaping, ecology enhancements,	Committee Decision	Appeal Hearing (date 22/03/23)	Appeal Hearing Dismissed	Planning ref: 21/02755/FUL Appeal ref: 23/00001/PP1
30 St Georges Place	Conversion to form 7no. dwellings, together with extensions and construction of new mansard roof	Delegated Decision	Written representations	Appeal Allowed	Planning ref: 22/00839/FUL appeal ref: 23/00002/PP1

10 Suffolk Road	First floor extension at rear of 10 Suffolk Road on top of existing kitchen roof, comprising of 1 new bedroom and ensuite bathroom (revised scheme 22/00966/FUL)	Delegated Decision	Written Representations Householder Appeal	Appeal Dismissed	Planning ref: 22/01340/FUL Appeal ref: 23/00011/PP1
101 Ryeworth Road	Erection of two storey and single storey rear extensions and single storey front extension.	Non-Determination	Written Representation	Appeal Dismissed	Planning ref: 22/01162/FUL Appeal Ref: 23/00006/PP2

o/s 195 High Street Cheltenham	Proposed installation of 1no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens, plus the removal of associated BT kiosk(s)	Delegated Decision	Written Representation	Appeal A Dismissed Appeal B Dismissed	Planning Ref: 22/00328/ADV and FUL Appeal Ref: 23/00013/PP1 23/00014/ADV1
o/s 23 and 23 A Pittville Street	Proposed installation of 1no. new BT Street Hub, incorporating 2no. digital 75" LCD advert screens,	Delegated Decision	Written representation	Appeal A Dismissed Appeal B Dismissed	Planning ref: 22/00326/ADV and FUL Appeal Ref: 23/00015/PP1 23/00016/ADV1
St Edmunds, Sandy Lane Road	Conversion and extension of an existing coach house/garage to a single dwelling with new access off Sandy	Delegated Decision	Written Representation	Appeal Decision Dismissed Cost Decision Dismissed	Planning ref: 22/02064/FUL Appeal Ref: 23/00008/PP1
Telecommunications Mast And Cabinet CLM26321 Glenfall Way	Proposed 5G telecoms installation: H3G 16m street pole and additional equipment cabinets	Delegated Decision	Written Representation	Appeal Dismissed	Planning ref: 22/02190/PRIOR Appeal Ref: 23/00018/PP1

4 Dymock Walk	Application for prior approval for the construction of one additional storey atop the existing dwelling (increase in height of 2.13 metres)	Delegated Decision	Written representation (Householder)	Appeal Dismissed	Planning ref: 22/01075/FUL Appeal ref: 23/00019/PP1
28 Westdown Gardens	Erection of detached garage (revised scheme to ref: 21/01789/FUL)	Delegated Decision	Written Representations Householder Appeal	Appeal Dismissed	Planning ref: 22/01679/FUL Appeal ref: 23/00012/PP1
129 – 133 Promenade	Retention of existing temporary marquees at 125, 127, 129, 131 further two year period and 133 Promenade,	Committee Decision	Written representation	Appeal Dismissed	Planning ref: 22/01373/FUL Appeal Ref: 23/00007/PP1
4 Red Rower Close	Two storey and single storey extension to the front and loft extension and dormer	Delegated Decision	Written representation	Appeal Dismissed	Planning Ref: 23/00361/FUL Appeal Ref: 23/00021/PP1

Land Adjoining Leckhampton Farm Court Farm Lane Leckhampton Cheltenham Gloucestershire	Residential development of 30 no. dwellings (Class C3); vehicular, pedestrian and cycle access from Church Road; pedestrian and cycle access from Farm Lane; highways improvement works; public open space,	Delegated Decision	Appeal Hearing (Date of hearing 18 th July 2023 (rescheduled for 12th July 2023))	Appeal Allowed	Planning Ref: 21/02750/FUL Appeal Ref: 23/00010/PP1
53 Alstone Lane	Erection of a single storey dwelling on land to rear of the existing property	Delegated Decision	Written representation	Appeal Dismissed	Planning ref: 22/02201/FUL Appeal ref: 23/00017/PP1
201 Gloucester Road	Installation of raised, split level patio area with boundary treatments (Retrospective).	Delegated Decision	Written representation	Appeal allowed	Planning Ref: 22/00022/PP1 Appeal ref: 23/00022/PP1

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT, ENFORCEMENT AND COMPLIANCE ON PLANNING APPEALS AND LEGAL CHALLENGES

LEGAL CHALLENGES

Address	Description	Reference	Reason
Telecommunications Mast Site CLM26627 Lansdown Road Cheltenham Gloucestershire	Installation of 15m pole inc. antennas, ground based apparatus and ancillary development	23/00551/PRIOR	Alleged lack of consideration of health grounds in granting Prior Approval

Authorised By: Chris Gomm 7th November 2023

Application No.	Appeal Ref	Site Address	Appeal Type	Start Date	Questionnaire	Statement	Final Comments	Decision	Date of Decision	Costs Deci	Hearing Date	Costs awarded
21/02755/FUL	23/00001/PP1	Land at Brecon House	Hearing	10.01.2023	17.01.2023	14.02.2023	14.02.2023	Dismissed	27.04.2023	n/a	22.03.2023	
22/00839/FUL	23/00002/PP1	30 St Georges Place	written	16.01.2023	23.01.2023	20.02.2023	20.02.2023	Allowed	18.05.2023			
22/01145/FUL	23/00003/PP1	3 Apple Close	written	24.01.2023	31.01.2023	28.02.2023	28.02.2023	Allowed	19.04.2023			
22/00708/FUL	23/00004/PP1	37 Market Street	written	24.01.2023	31.01.2023	28.02.2023	28.02.2023	Allowed	19.04.2023	Allowed		4,860
20/01788/FUL	23/00005/PP1	Land at Shurdington Road	Hearing	17.04.2023	24.04.2023	22.05.2023	22.05.2023				04.07.2023	
22/01162/FUL	23/00006/PP2	101 Ryeworth Road	written	08.03.2023	15.03.2023	12.04.2023	12.04.2023	Dismissed	08.06.2023	n/a		
22/01373/FUL	23/00007/PP1	129-133 The Promenade	Written	08.03.2023	15.03.2023	12.04.2023	12.04.2023	Dismissed	17.08.2023			
22/02064/FUL	23/00008/PP1	St Edmunds, Sandy Lane F	written	28.03.2023	04.04.2023	02.05.2023	16.05.2023	Dismissed	19.06.2023	Refused		
22/00334/COU	23/00009/PP3	8 Imperial Square	written	29.03.2023	05.04.2023	03.05.2023	17.05.2023					
21/02750/FUL	23/00010/PP1	Land Adjoining Leckhampt	Hearing	30.03.2023	06.04.2023	04.05.2023	18.05.2023	Allowwved	12.09.2023		12.07.2023	
22/01430/FUL	23/00011/PP1	10 Suffolk Road	HAS	31.03.2023	07.04.2023	n/a		Dismissed	19.05.2023			
22/01679/FUL	23/00012/PP1	28 West Down Gardens	HAS	03.04.2023	10.04.2023	N/a		Dismissed	17.08.2023			
22/00328/FUL	23/00013/PP1	os 195 High Street	Written	18.04.2023	25.04.2023	23.05.2023	06.06.2023	Dismissed	16.06.2023			
22/00328/ADV	23/00014/ADV1	os 195 High Street	Written	18.04.2023	25.04.2023	23.05.2023	06.06.2023	Dismissed	16.06.2023			
22/00326/FUL	23/00015/PP1	23 Pittville Street	Written	18.04.2023	25.04.2023	23.05.2023	06.06.2023	Dismissed	16.06.2023			
22/00326/ADV	23/00016/ADV1	23 Pittville Street	Written	18.04.2023	25.04.2023	23.05.2023	06.06.2023	Dismissed	16.06.2023			
22/02201/FUL	23/00017/PP1	Phylnor, 53 Alstone Lane	Written	17.05.2023	24.05.2023	21.06.2023	05.07.2023	Dismissed	14.09.2023			
22/02190/PRIOR	23/00018/PP1	5G Mast, Glenfall Way	written	18.05.2023	25.05.2023	22.06.2023	06.07.2023	Dismissed	08.08.2023			
22/02075/FUL	23/00019/PP1	4 Dymock Walk, Cheltenham	HAS	26.06.2023	03.07.2023	n/a	n/a	Dismissed	09.08.2023			
22/00112/OUT	23/00020/PP1	Land adj to Oakhurst Rise	Written	24.07.2023	31.07.2023	28.08.2023	11.09.2023					
23/00361/FUL	23/00021/PP1	4 Red Rower Close, Chelte	HAS	31.07.2023	07.08.2023	n/a	n/a	Dismissed	12.09.2023	n/a		
22/01964/FUL	23/00022/PP1	201 Gloucester Road, Che	HAS	04.08.2023	11.08.2023	n/a	n/a	Allowed	06.11.2023			
23/01236/CLEUD	23/00023/PP1	1 Michaelmas Lodge	Written	06.09.2023	20.09.2023	18.10.2023	08.11.2023					
	23/00024	System Error	System Error									
23/00001/DCUA	23/00025/ENFAPP	12 Pilford Road	Written	05.09.2023	19.09.2023	17.10.2023	07.11.2023					
22/01937/PRIOR	23/00026/PP1	5G Princess Elizabeth Way	Written	12.09.2023	19.09.2023	17.10.2023	31.10.2023					
22/01864/COU	23/00027/PP1	6 Marsh Lane, Cheltenham	written	13.09.2023	20.09.2023	18.10.2023	01.11.2023					
23/00452/COU	23/00028/PP1	218 High Street, Cheltenham	written	06.10.2023	13.10.2023	10.11.2023	24.11.2023					
23/00431/PRIOR	23/00029/PP1	Area grass verge Barley R	written	01.11.2023	08.11.2023	06.12.2023	20.12.2023					

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Appeal Decision

Site visit made on 23 October 2023

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

APP/B1605/W/23/3319581

201 Gloucester Road, Cheltenham, Gloucestershire, GL51 8NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Alexis Wain against the decision of Cheltenham Borough Council.
 - The application Ref 22/01964/FUL, dated 2 November 2022, was refused by notice dated 17 February 2023.
 - The development proposed is 'Retrospective application for the installation of raised - split level patio area with boundary treatments'.
-

Decision

1. The appeal is allowed and planning permission is granted for 'Retrospective application for the installation of raised - split level patio area with boundary treatments' at 201 Gloucester Road, Cheltenham, Gloucestershire, GL51 8NJ in accordance with the terms of the application, Ref 22/01964/FUL, dated 2 November 2022, and the plans submitted with it.

Preliminary Matter

2. The patio has been erected and therefore I am considering this appeal retrospectively.

Main Issue

3. The main issue is the effect of the development upon the living conditions of occupiers of neighbouring houses, with particular regard to privacy.

Reasons

4. The appeal site relates to a 2 storey semi-detached house with a relatively long rear garden. The patio extends from the rear of the property overlooked by the existing kitchen and dining area. The latter has floor to ceiling windows with a door opening onto the patio which has a glass canopy extending out approximately the same width as the dining area. To the side of the patio a ramped access leads to the garden which slopes down away from the house.
5. The boundary with the adjoining house, No 203, comprises an approximately 2m high brick wall extending from the rear elevation. A slightly lower horizontal board fence joins it and steps down following the gradient of the garden. These and the high hedges within 203's rear garden prevent any views from the patio into that neighbour's garden.

6. There are 2 storey flats in Stow Court to the rear of No 203. They are built on lower ground than the house and adjoining appeal site. Consequently, the first floor window in the appeal property overlooks first floor windows in the nearest flat, which are also clearly visible from the patio and rear garden below it. The Council acknowledge that a patio could have been built under permitted development rights and consider that to be an important fall-back position, which I also accord significant weight. The development is 55cm higher than that which would be permitted. However, because the appeal site is already on higher ground there would be little difference in the degree of overlooking if the fall-back position were implemented instead or as is already the case from the first floor and garden.
7. The boundary fence with No 199 and planting on its side of the fence significantly screens views into its rear garden from the appeal site. Even without the patio there is the potential for overlooking into No 199's gardens from the existing rear windows on the appeal property. Taking into account the fallback position described above, I do not consider that the patio has significantly reduced the privacy of occupiers of No 199 to a degree that it would warrant withholding planning permission. Overall, I consider that the development has not led to significant harm to the living conditions of occupiers of neighbouring properties from a loss of privacy and does not therefore conflict with Policy SL1 of the Cheltenham Plan (2020); Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017); the Council's Supplementary Planning Document - Residential Alterations and Extensions (2008) and Section 12 of the National Planning Policy Framework (2021) which only permit development which would not cause unacceptable harm to the amenity of adjoining land users.

Other Matters

8. I have had regard to comments regarding the potential increase in noise and disturbance and the effect of the boundary fence on the outlook from, and light to, No 199. I do not consider the noise and disturbance caused by the occupiers of the appeal property, and visitors to it, would be any greater if they congregated on the patio or in the rear garden. The orientation of No 199's garden is such that existing buildings already cause some level of overshadowing to the garden area closest to the house for most of the day. The gap between the boundary fence and the windows on No 199 is enough to ensure that it does not appear overbearing, and that overshadowing would not be so significant as to harm the living conditions of neighbouring occupiers.

Conclusion and conditions

9. Planning permission is sought retrospectively therefore no time limit for commencement is required. Because the development has already been constructed, there is no need to specify the plans to be followed or the materials to be used in construction. No other conditions are necessary.
10. For the reasons given above I conclude that the appeal should be allowed.

P D Sedgwick

INSPECTOR