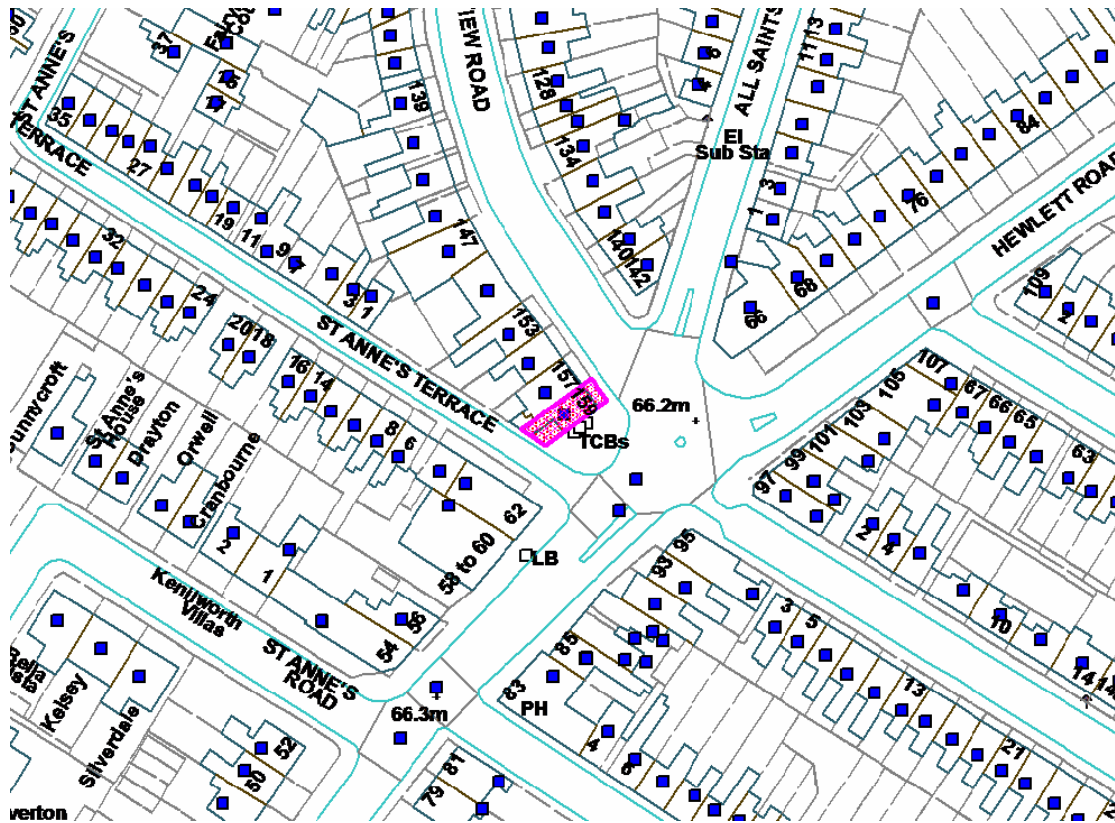


APPLICATION NO: 14/01586/LBC		OFFICER: Mr Martin Chandler
DATE REGISTERED: 5th September 2014		DATE OF EXPIRY: 31st October 2014
WARD: All Saints		PARISH:
APPLICANT:	Mr Hekmat Kaveh	
AGENT:	SF Planning Limited	
LOCATION:	159 Fairview Road, Cheltenham	
PROPOSAL:	Installation of a Banksy mural on south east facing flank wall (incorporating the artwork and a communication dish) (Retrospective application)	

RECOMMENDATION: Grant



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 This application seeks retrospective listed building consent for the installation of a Banksy mural on the south east facing flank wall of 159 Fairview Road. The application relates to the artwork and the communications dish.
- 1.2 The mural itself depicts three 1950s style secret agents carrying listening devices, appearing to 'eavesdrop' on the telephone box that is central to the work. The relevance of the mural stems from the presence of GCHQ within the town and the mural was confirmed as a genuine piece of work by the internationally renowned graffiti artist, Banksy, on his official website. The mural appeared on 13 April 2014.
- 1.3 The application relates purely to the flank wall of the property and this is reflected by the red line on the site location plan. The building is grade II listed and is prominently located within the Central Conservation Area. Members are advised that the applicant does not own the application site but has served the relevant notice on the owner; this is an entirely legitimate way to make an application.
- 1.4 Members will be aware that until recently, the mural has been protected by ply-board and scaffolding. This was removed in early February 2015.
- 1.5 The application is before members due to the level of interest in the case. Members will visit the site on planning view.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Conservation Area
Listed Buildings Grade 2
Smoke Control Order

Relevant Planning History:

96/00068/LA 22nd February 1996 PER
Removal of Timber Framed Lean To At Rear of Property

3. POLICIES AND GUIDANCE

Adopted Local Plan Policies

CP 4 Safe and sustainable living
CP 7 Design
BE 9 Alteration of listed buildings

Supplementary Planning Guidance/Documents

Central conservation area: Fairview and All Saints Character Area and Management Plan (July 2008)

National Guidance

National Planning Policy Framework

4. CONSULTATIONS

Heritage and Conservation

26th September 2014

1. REASONS FOR LISTING 159 FAIRVIEW ROAD:

- a. There are four reasons for a building or structure to be statutorily listed by the DCMS. These reasons are as follows: architectural interest, historic interest, close historical association and group value. Government advice on selection of buildings for listing is quoted: "In addition age and rarity are relevant considerations.... and most buildings of about 1700 to 1840 are listed, though some selection is necessary....."
- b. The building being considered in this application was listed in 1972 on its architectural and historic merits, age and its group value with its adjacent neighbours.

2. APPEARANCE OF THE AREA PRIOR TO THE ROAD WORKS:

- a. From considering the historic maps it is apparent the (now demolished) end house had a front door and front garden facing on to Hewlett Road, which would have given the end of the Fairview Road terrace a considered and well designed architectural corner relationship, as well as a street presence to Hewlett Road.

3. CURRENT APPEARANCE OF THE FLANK WALL TO 159 FAIRVIEW ROAD AND THE CURRENT APPEARANCE OF THE IMMEDIATE AREA:

- a. The current external appearance of this listed 19th century building is poor and its historic windows have been replaced with UPVC. However despite its current poor appearance it is not beyond repair or restoration and many of its historic features remain intact and it remains an historic building worthy of its listed status, albeit in need of repairing.
- b. It is noted that the side flank wall of this application building is currently a masonry brick wall which has been finished externally with a rendered coating. This external rendered wall finish is very typical of Cheltenham buildings. However the plain and undecorated nature of this flank wall in such a prominent position is very untypical of Cheltenham flank walls and its unadorned appearance is undoubtedly the result of the aftermath of the road works scheme. Usually Cheltenham corner buildings have flank walls with blind windows and render details, thus giving an architectural street presence in two directions.
- c. However it is also noted that this existing external render coat on this application building is very cracked and in parts it is quite unstable. It is understood that this cracked and unstable render has allowed rain penetration, causing the interior of the property to become very damp.
- d. Remedial works are needed to rectify this current situation regarding the rendering and the property has been deemed to be hazardous (as defined by the Housing Health and Safety Rating System (HHSRS)) until that render is replaced. The removal and re-rendering of a substantial area of external rendering on a listed building is a repair which affects its character and which will require LBC. However this current application neither considers the current parlous state of the render or how this render may be stabilised or replaced.
- e. It is understood that there is a risk of render at the higher levels of the flank wall falling on to passing pedestrians. The scaffolding which is currently on the pavement against the flank wall prevents this falling render causing injury.

- f. Also on the flank end wall is a satellite dish. This dish would have required listed building consent and this dish has been fitted to this listed building without the benefit of listed building consent.
- g. Following the demolition of the end of terrace property and the subsequent road work, the remaining adjacent land not used for the road works has become an unusually wide pavement which is covered in a large expanse of tarmac and also accommodates a modern style public telephone kiosk.
- h. On 13th April 2014, a mural/art work/graffiti appeared on this flank wall of this listed building. It has been applied to the surface of the unstable and cracked render finish on the flank wall. The installation of this mural/art work/graffiti was clearly an alteration which affected the character of the listed building and therefore required listed building consent but it had been applied without the benefit of listed building and it is considered to be an unauthorised alteration. This application for listed building consent is to regularise the current unauthorised mural and satellite dish on this flank wall of this listed building.

4. THE APPEARANCE OF THE MURAL AND ITS IMPACT ON THE LISTED BUILDING AND WIDER CONSERVATION AREA:

- a. The mural/art work/graffiti depicts 1950s style secret agents listening in on the public phone kiosk by using a satellite dish. The three figures of the secret agents is an applied two dimensional paint image on the existing poor render and the satellite dish and telephone kiosk are real functioning three dimensional objects.
- b. It is believed that this mural/artwork/graffiti is by the internationally renowned artist called Banksy, whose real identity remains a mystery. Banksy is known for his art work often being witty and having a political content.
- c. The architectural style of this 19th century house is such that it would not have been intended to have an art mural or any other form of graffiti or art painted in its flank wall, irrespective of the artist or quality of the art work. This building despite its currently poor state remains a valued building because of its age, history, its architectural design and being part of a terrace of similar houses. Therefore this mural/art work/graffiti does not preserve the character of this historic building and it harms the historic character of this listed building.
- d. However the architectural style of typical 19th century Cheltenham buildings would have never had a blank plain rendered flank wall and this end of terrace house would have traditionally had a street presence on to Hewlett Road. This historic building and this part of the conservation area has already suffered harm and architectural vandalism when the road works were carried out. The setting of this historic building has further deteriorated by the expanse of tarmac, wide pavement and phone box, all of which are either of a poor design quality and/or poorly maintained and bear no logical relationship to their surroundings or adjacent buildings.
- e. So the Banksy mural/art work/graffiti is able to provide a visual focus to this end flank wall of this listed building, and is also able to provide a logical relationship to the phone box and the flank wall, albeit that this relationship is formed by a visual political satirical statement in the form of a mural/art work/graffiti. When considering the particular setting of this listed building 159 Fairview Road and the form and appearance of this particular mural/art work/graffiti, then the art work improves the setting of the listed building. That is not to say that there are not a number of other ways that the building's setting could be improved, but this application is considering this particular mural/art work/graffiti on this listed building and not other ways of improving the setting.

- f. Similarly because the mural/art work/graffiti creates a visual focus to this previously blank wall in a prominent location of the street scene, it does preserve and enhance the character and appearance of the conservation area.
- g. However the current situation on this site is a Banksy mural/art work/graffiti protected by ply boards to prevent attack or damage to it and two storey scaffolding erected on site which prevents injury to passers-by from falling defective render, and an historic house unable to be used as a dwelling due to damp penetration.

5. LONG TERM CONCERNS:

- a. This application is solely for the regularisation of the Banksy mural, which was applied to the wall of the listed building without listed building consent. This application does not consider the more complex and fundamental issues which are as follows:
 - i. How the mural can be retained long term on unstable render?
 - ii. How the render will be repaired or replaced whilst also retaining the mural at the same time?
 - iii. How can the house be used in the future as a residence without repairing the defective render which is causing damp penetration?
 - iv. If the render is not repaired is this listed building condemned to remaining empty and subject to further decay?
 - v. How can members of the public be protected from falling render without the retention of extensive scaffolding remaining in-situ or without the repair or replacement of the defective render?
 - vi. How can the mural/art work/graffiti be protected from attack by other graffiti artists or by being painted over?

6. SUMMARY

- a. The fact that the mural is by the internationally renown artist Banksy is a consideration because it is accepted that a number of visitors from a very wide area have come to see the mural/art work/graffiti. It is noted these visitors and interest from the general public have had a positive indirect influence on the local economy and the community spirit in the neighbourhood.
- b. The mural/art work/graffiti is not of a traditional historic form or design which relates to this historic listed building and is considered not to preserve the historic character of this building.
- c. However the mural/art work/graffiti is witty, well executed, visually eye catching, and gives a visual logic to the location of the phone box in this blank anonymous public space and gives a prominence of this end wall and all of these aspects are appropriate and traditional. Therefore this mural/art work/ is considered to preserve the setting of the listed building; and also preserves and enhances the character and appearance of the conservation area.
- d. However I have considered this application in terms of regularising the mural/art work/graffiti. Consequently because the application is not proposing to offer solutions to the long terms consequences of the retention of the art work and how this is done on unstable render, I am unable to suggest planning conditions on how the render problem

can be resolved. Therefore I strongly suggest that this application is only granted a temporary listed building consent of six months, which should be sufficient time to allow the applicant to offer answers to the render problem at the same time as keeping the art work. A time limited approval also will enable the Council to reconsider the situation of the scaffolding and ply protection boarding if these are still in place in six months time; and the deteriorating state of the listed building if it remains empty.

- e. Therefore when considering the conflicting impacts of this mural on the listed building and the conservation area, then overall consideration is that it causes harm but that harm is less than significance and the harm is outweighed by the public benefits. Therefore on balance my recommendation is to approve this application for a time limited period of six months.

CONCLUSION: approve for a maximum period of six months.

Additional comments following receipt of further information in relation to the render
15th December 2014

Comments:

1. I had previously written very full and detailed comments to this application and these revised comments should be read in conjunction with the previous comments which were dated 26th September 2014.

2. Previous comments noted and which remain relevant are as follows:

- a. The existing external render coat on this application building is very cracked and in parts it is quite unstable. It is understood that this cracked and unstable render has allowed rain penetration, causing the interior of the property to become very damp.
- b. Remedial works are needed to rectify this current situation regarding the rendering and the property has been deemed to be hazardous (as defined by the Housing Health and Safety Rating System (HHSRS)) until that render is replaced. The removal and re-rendering of a substantial area of external rendering on a listed building is a repair which affects its character and which will require LBC. However this current application neither considers the current parlous state of the render or how this render may be stabilised or replaced.
- c. It is understood that there is a risk of render at the higher levels of the flank wall falling on to passing pedestrians. The scaffolding which is currently on the pavement against the flank wall prevents this falling render causing injury.
- d. Also on the flank end wall is a satellite dish. This dish would have required listed building consent and this dish has been fitted to this listed building without the benefit of listed building consent.
- e. The Banksy mural/art work/graffiti creates a visual focus to this previously blank wall in a prominent location of the street scene, it does preserve and enhance the character and appearance of the conservation area.
- f. However the current situation on this site is a Banksy mural/art work/graffiti protected by ply boards to prevent attack or damage to it and two storey scaffolding erected on site which prevents injury to passers-by from falling defective render, and an historic house unable to be used as a dwelling due to damp penetration.
- g. Long terms concerns:

This application is solely for the regularisation of the Banksy mural, which was applied to the wall of the listed building without listed building consent. This application does not consider the more complex and fundamental issues which are as follows:

- i. How the mural can be retained long term on unstable render?
- ii. How the render will be repaired or replaced whilst also retaining the mural at the same time?
- iii. How can the house be used in the future as a residence without repairing the defective render which is causing damp penetration?
- iv. If the render is not repaired is this listed building condemned to remaining empty and subject to further decay?
- v. How can members of the public be protected from falling render without the retention of extensive scaffolding remaining in-situ or without the repair or replacement of the defective render?
- vi. How can the mural/art work/graffiti be protected from attack by other graffiti artists or by being painted over?

3. Revised comments following receipt of render report:

- a. The application was registered on 5th September 2014 and the above comments were originally written on 26th September 2014.
- b. The applicant has now submitted a report on the state of the render and this report is dated 24th November 2014. The submission of this report is welcomed.
- c. However the conclusions of this report are fairly limited and the areas in the report which cause me concern are as follows:
 - i. Page 1 (bottom para) states: The render behind the Banksy mural is covered with a hard sand and cement render. This was tap tested and found to be quite sound but all noted to be cracked, probably induced by original shrinkage due to strong render mix but the rendering fairly sound. My concern over this point is the cracking and whether that cracking is letting rain penetrate into the interior of the building? The report remains silent on this point.
 - ii. Page 2 (top para) states: We would report that all the render to the mural area was tap tested and approximately 1m further from the painted area including the high level sky dish incorporated within the mural. The report states that the area tested was approximately 1m from the painted area. It would be helpful to have the area of sound render identified on an elevation drawing rather than relying on references to approximately 1m distance. The vagueness of the report is unhelpful.
 - iii. Page 2 (4th para) states: At high level to this wall which was not accessible we noted the render was well weathered and is breaking down.....However the full extent of repairs can only be determined by having full scaffolding access. This report clearly concludes that the render at high level is in a poor state but fails to comment on the full extent of repairs. Again such vagueness and incompleteness is unhelpful.

4. Conclusion of reading the report:

On 26th Sept 2014 I set out a number of questions which needed to be addressed and it would be helpful to revisit those questions following the receipt of the report:

i. How the mural can be retained long term on unstable render? The applicant's report has stated that the render under the mural is not unstable, although the precise area of render which was tested is vague.

ii. How the render will be repaired or replaced whilst also retaining the mural at the same time? The applicant's report has stated that the render under the mural is stable, but the render above the mural is unstable. However the report has not confirmed that this unstable render is intended to be repaired or how this can be repaired at the same time as keeping the mural in place.

iii. How can the house be used in the future as a residence without repairing the defective render which is causing damp penetration? The applicant has failed to answer this question. Without consideration of how the repair can be tackled and how such a repair will be possible with the mural being retained, implies that the repair of defective render is not being considered. If the retention of the mural is in anyway impeding repair of the historic building, then this is not good for the listed building.

iv. If the render is not repaired is this listed building condemned to remaining empty and subject to further decay? The applicant has failed to answer this question. If the retention of the mural is in anyway impeding repair of the historic building, then this is not good for the listed building.

v. How can members of the public be protected from falling render without the retention of extensive scaffolding remaining in-situ or without the repair or replacement of the defective render? Again the applicant has failed to answer this question.

vi. How can the mural/art work/graffiti be protected from attack by other graffiti artists or by being painted over? Again the applicant has failed to answer this question.

SUMMARY

At the end of September I suggested that whilst the principle of the mural might be acceptable, a number of questions needed to be answered. So now some 3 months later the majority of these fundamentally important questions remain unanswered. I cannot see how this application can be considered without those answers to the questions itemised above.

CONCLUSION

Please ask for more information and then re-consult when this information has been received.

Cheltenham Civic Society

25th September 2014

We support the retention of this mural on this site. It is witty, has captured the public imagination and is a suitable reminder of the presence of GCHQ in the town

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	14
Total comments received	28
Number of objections	5
Number of supporting	23
General comment	0

- 5.1 To publicise this application, letters were sent to 14 neighbouring properties. In addition, a site notice was erected adjacent to the site and advertisement placed within the Gloucestershire Echo. In response to this publicity, 28 representations have been received, of which 23 are in support of the proposal and 5 raise objection. The representations are attached as an appendix to this report, but the comments are summarised below.
- 5.2 Those in support of the application state that the work in question is good for the town, attracting visitors and adding to the character of the wider area. It is stated that the work is bespoke to Cheltenham and given the status of the artist who conducted the work, consider that the mural should be retained.
- 5.3 Those against state that the work is criminal damage/vandalism and therefore should be treated as such. It is also suggested that if approved, the decision represents a dangerous precedent for further graffiti in the town.
- 5.4 These matters will be considered in the main body of the report set out below.

6. OFFICER COMMENTS

6.1 Determining Issues

- 6.1.1 The key consideration when assessing this application is the impact the mural has on the Listed Building and the wider conservation area. Given the nature of the application, the public interest surrounding the mural is also a material consideration.

6.2 Impact on the Listed Building and Conservation Area

- 6.2.1 When assessing applications for Listed Building Consent, Section 16(2) of the Planning (Listed Building and Conservation Areas) Act 1990 requires Local Planning Authorities to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Given that the application site is located within the central conservation area, the above act, at section 72(1) also requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 6.2.2 Within the NPPF, listed buildings and conservation areas are referred to as 'Designated Heritage Assets'. For the purpose of this report, this is the term that will be used.
- 6.2.3 The Conservation and Heritage Manager has been actively involved in the assessment of this application and her comments are set out above, in full, at section 4 of this report. Members will note from the analysis that the following conclusions have been reached;
- a) The mural harms the listed building;
 - b) The mural improves the setting of the listed building;

c) The mural preserves and enhances the character and appearance of the conservation area.

- 6.2.4** At face value, these may seem like a contradictory set of conclusions but the analysis that supports them is sound. Essentially, you would not expect to see a graffiti mural on the gable end of a building of this nature; in this respect, the work is harmful to the listed building. Nevertheless, typically in Cheltenham, you would also not expect to see blank gable ends in such prominent locations; buildings of this nature would have blind windows and render detailing, giving them a greater degree of architectural presence. The mural acts in a similar manner, giving the gable end more interest; in this respect one can argue that the setting of the building within the street scene is indeed improved. For the very same reason, the proposal preserves and enhances the wider conservation area.
- 6.2.5** Given the analysis provided by the Conservation and Heritage Manager concludes that there is harm to the listed building itself, the NPPF advice in relation to harm to designated heritage assets is of distinct relevance. Section 12 of the NPPF refers to two types of harm; substantial and less than substantial. Officers are firmly of the view that the harm to the listed building associated with the mural is less than substantial. Members are advised that the NPPF offers no guidance on what constitutes substantial harm but given that it is used in the same phrase as “total loss of significance”, it is considered that this level of impact has not been met.
- 6.2.6** It is paragraph 134 which refers to less than substantial harm and it is stated that where a development will lead to such harm, this should be weighed against the public benefit of the proposal. In this instance, it is quite apparent that the mural has generated a significant level of public interest, greater than the 23 letters of support that this application has received. The mural has been the subject of national media attention and attracts visitors to the site. It is the view of officers that this interest is a public benefit brought about by the mural and that this benefit outweighs the harm to the building that has been identified, particularly given the other benefits that the mural brings in terms of enhancement to the conservation area and setting of the listed building.
- 6.2.7** Notwithstanding the above, this public benefit can only be realised if the mural is exposed within the public realm and as members will be aware, until recently the mural has been hidden/protected by ply-board and scaffolding. Whilst this application seeks to retain the work, it would be a fruitless exercise to authorise the work and then not achieve the important benefits. This is a consideration that the Conservation and Heritage Manager has given thought to and it will form the next section of this report.

6.3 The future of the mural

- 6.3.1** Members may be aware that the render of the side elevation of the application site is in poor condition; it is cracked, unstable, not weather proof and the property has been deemed hazardous (as defined by the Housing Health and Safety rating system) until the render has been made good. With this in mind and whilst not within the applicant’s ownership, officers asked the applicant to conduct some work to further consider the condition of the render. It is accepted that the application simply seeks to retain the mural but it is the view of your officers that it would be a superficial exercise to authorise the mural without understanding the long-term implications. The applicant was also asked to consider how any necessary repair works could be conducted without impacting upon the mural.
- 6.3.2** In response to this request, the applicant undertook a survey of the external walls of the application site, with particular attention being paid to the flank wall. The survey found that the render to the flank wall is a hard sand and cement render. The render upon which the mural has been painted (and approximately 1 metre further from the painted area) was tap tested and whilst cracked, was found to be quite sound. It is at high level that the condition of the render worsens with damp problems. The full extent of these problems are not

established by the report and whilst this is unfortunate, importantly the report does confirm that the render behind the mural is essentially sound.

- 6.3.3** Despite these findings, the report remained silent on potential ways of carrying out the necessary repair works, something that disappointed officers. This was discussed further with the applicant, to which their Chartered Surveyor has provided written assurance that in his opinion, all of the necessary repair works can be undertaken without directly affecting the artwork. In light of this assurance, and having discussed the matter further with the Conservation and Heritage Manager, officers are now satisfied that the important repair works to the gable end can be carried out without compromising the mural. This is an important consideration given the hazardous condition of the render and the importance of bringing the listed building back into an active use.
- 6.3.4** Having established that the works can indeed be executed successfully, the difficulty which then arises is how to ensure that they do actually take place. If the applicant owned the building, it would be quite appropriate to recommend that certain conditions were attached to any consent to ensure that within a reasonable time frame, the render to the gable end was improved. This would help to preserve the long term future of the mural and would therefore be fully compliant with the relevant tests that apply to the use of conditions. In this instance however, the applicant does not own the application site and therefore it would be impossible to ensure compliance with any conditions which require further work to the building.
- 6.3.5** This presents a dilemma; without work taking place to the existing render, the public benefits identified above cannot be fully realised, but, without ownership of the property, it is impossible, through this application, to ensure that these works take place. Officers have reflected on this conundrum and consider that the appropriate course of action is to indeed regularise the work. What this cannot ensure, however, is that the necessary repair works do happen, or that they happen in a timely manner; this will need the consent of the owner of the building. Nevertheless, what a consent may help achieve, is to advance these discussions where appropriate and given the assurances from the applicant that the repair work is a viable option, officers see no reason to delay these discussions from continuing.
- 6.3.6** It is accepted that this is a difficult argument to swallow and that members are being asked to authorise works based on benefits that cannot yet be fully realised. Nevertheless, these benefits *can* be achieved without compromising the mural, and given the understandable limitations of the application that is before members, officers do not see any value in refusing listed building consent. Refusing listed building consent would be counter-intuitive in encouraging the necessary improvement works and given that the harm to the building caused by the mural is less than substantial, it is considered that encouraging these works to take place rather than stifling them is truly in the spirit of the NPPF which advises local planning authorities to look for solutions rather than problems.

7. CONCLUSION AND RECOMMENDATION

- 7.1** To conclude, it is apparent that what at face value appears to be a straight forward application, the proposal to retain the mural brings with it a number of important considerations. The application site is currently vacant with the render to the side elevation hazardous. To aid habitation, the render has to be repaired but given the public benefit associated with the Banksy mural, it is important that this can be achieved without compromising the mural itself.
- 7.2** The applicant has surveyed the render and has provided assurances that the necessary repair work can be executed without affecting the mural but given the ownership of the building, this cannot be secured through this application.

- 7.3** Having assessed all of the material considerations associated with this application, officers have concluded that it is one that should be supported. The mural, when exposed to the public realm, preserves and enhances the conservation area and preserves the setting of the listed building. It is considered to be harmful to the listed building itself, but a level of harm (less than substantial) that is outweighed by the public benefits of the work. Furthermore, if authorised, officers consider that the likelihood of the work being retained in situ will increase.
- 7.4** This cannot be guaranteed however, and members are advised that should you resolve to grant consent, this will not prevent future applications relating to this site coming before you. Authorisation does not automatically mean retention; what it would achieve, in the opinion of officers, is a greater level of certainty for the mural. Nevertheless, any future applications will have to be considered on their merits in the same way this application has been with the requirements of the Planning (Listed Buildings and Conservation Area) Act 1990 and the advice within the NPPF at the forefront of our minds.
- 7.5** It is recommended that listed building consent be granted for the authorisation of the mural and the associated communications dish.

8. CONDITIONS / INFORMATIVES

To follow as an update.