

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

## Update to Officer Report

### 1. OFFICER COMMENTS

- 1.1. Attached is a representation received this afternoon on behalf of the owner of the application site which sets out two points that warrant further clarification.
- 1.2. Firstly, it is suggested that the owner was not made aware of the application when first submitted and that he was also unaware of the committee meeting until “*a few days ago*”. The point relating to notification was raised with the applicant shortly after the application was received in October 2014 with the applicant advising that notice was indeed served in the correct manner. Since the submission of the application, officers have had a number of discussions with the owner of the building about the application and whilst he is obviously disappointed that the application has been submitted without his input, the planning system does allow for this.
- 1.3. Secondly, the attached letter states that the officer recommendation is based on “*some sort of ‘verbal assurance’*.” This is not correct and the officer report makes this quite clear; officers have received written assurance in relation to the repair works and this is set out at paragraph 6.3.3 on page 89 of the committee papers.
- 1.4. Officers have considered the full content of this representation and advise members that the recommendation to grant listed building consent remains unchanged. That being said, members are directed back to the conclusion of the officer report that authorising this work does not automatically mean retention of the mural in the long term. Future applications may be submitted by the land owner, the current applicant or indeed a further third party and these applications will be considered on their merits in accordance with the relevant national guidance and legislation.

Mr Martin Chandler  
Planning Services  
Cheltenham Borough Council  
Municipal Office  
Promenade  
Cheltenham  
GL50 9SA

Your ref: 14/01586/LBC  
Our ref: BG/POS/1-1  
Email: ben.garbett@keystonelaw.co.uk

19 February 2015

Dear Sirs,

**Our client – Mr David Possee**  
**Listed Building consent application ref: 14/01586/LBC – 159 Fairview Road, Cheltenham**

We act on behalf of Mr David Possee, who is the owner of the listed building. We object most strongly to the application in light of the matters appearing below:-

#### Procedural errors

We are instructed that the application has been submitted without our client's knowledge or consent. He was in fact unaware of the committee meeting until a few days ago, and was not formally notified of the application by the Council before that. He did not receive notice from the applicant either, which is contrary to the declaration given at section 15 of the application form. Nor did he give any authority for the survey work which appears to have been carried out.

It is extremely poor that discussions surrounding the application have been conducted privately to the complete exclusion of our client. It is pretty obvious that the owner himself should be fully aware of the current plans, whilst our advice and assistance has now been sought as a matter of extreme urgency.

All this is highly significant given what has already occurred (uninvited) to bring about this situation, and what the applicant and Council officers can realistically hope to achieve without reaching a consensus.

#### Details of the objection

Regardless of one's view of the artistic merits, it is extremely important to remember that the Banksy artwork was itself a surprising revelation created without this owner's permission. By law these listed building works were not just unauthorised; they involve the commissioning of a criminal offence.

This now causes a significant financial problem for the owner because the building is currently empty, and uninhabitable, until urgent damp-proofing repairs have been carried out to the same flank wall. The building would normally be tenanted so this is lost revenue. The serious state of disrepair is also a current danger to passing members of the public. The Council will be well

aware of its own liabilities in respect of making planning decisions which create a danger to life and limb: *Kane v New Forest District Council* [2001] All ER (D) 397 (Nov). Granting consent will impede our client's attempts to carry out the badly needed repairs, and prolong these issues.

The feasibility of carrying out economic repairs is a critical issue to be satisfied, and yet the surveyor's report has not been published for public consumption. The owner himself has not seen it, and nor have we. The reporting officer has stated that some sort of "verbal assurance" has been received from the applicant's agent, but of far greater significance is that the writer of the report, upon which professional reputation rests – and liabilities too – was evidently not prepared to give any such assurance himself.

Our client's own knowledge lies with repair and restoration of buildings, and his own advisor states that it is impossible to repair the damp problems without causing serious damage to the mural. There is no rational basis for granting consent without an unequivocal guarantee that the needed repairs can be effected at reasonable economic cost, without causing lasting damage to the Banksy mural. In truth there can be no lasting solution whilst the artwork remains in situ.

There is a general consensus that both the artwork and the listed building should be preserved, but preservation in situ leads to an insoluble problem – that even after several months of wrangling there is no clear path as to how all this is to be achieved without landowner consent. The Council's attempted justification is vague and highly aspirational. It is simply not placed to direct the final outcome it so keenly desires. This fails the relevant national policy (para. 132 of the NPPF) which requires that "*any harm or loss should require clear and convincing justification*".

The Council states that it is seeking to "encourage" its preferred solution, but is not prepared to give any guarantee of what might happen if consent is granted. In plain language what this means is authorising an uninvited criminal act irrespective of the wishes of the owner himself, whilst shackling him with an unquantified financial burden. The owner would also face possible criminal prosecution in future if the listed building and the artwork are not preserved, regardless of any personal culpability. No guarantees are being offered, so how can this be right?

No property owner should be forced into a position where, unwittingly and through no fault of his own, he has to become a forced seller. The English legal system does not sanction such arcane interference with property rights. This is also embedded firmly in the justice principles of the European Convention on Human Rights: Article 6 (the right to a fair hearing); Article 8 (a right to respect for one's private and family life, his home and his correspondence); and Article 1 of the First Protocol (peaceful enjoyment of possessions).

It is incredible that such an ill-thought out strategy should have reached this committee vote, and we urge Committee members to refuse the application without hesitation. There are any number of places the artwork could ultimately be displayed, locally or nationally, which would also deliver a significant public benefit. That would truly mean securing the piece permanently, free from the sporadic acts of unwanted vandalism it presently attracts, and allowing the dwelling to be repaired and used once again for its proper purpose.

Yours faithfully,

**Keystone Law**