

Planning Committee

19th February 2015

Present:

Members (13)

Councillors Barnes, Chair (GB); Fletcher, Vice-Chair (JF); Baker (PB); Chard (AC); Fisher (BF); Colin Hay (CH); McCloskey (HM); McKinlay (AM); Seacome (DS); Stennett (MS); Sudbury (KS); Thornton (PT).

Substitute: Councillor Chris Mason (CM)

Present as observers: Councillors Payne, Wheeler and Coleman.

Officers

Martin Chandler, Team Leader, Development Management (MJC)

Craig Hemphill, Principal Planner (CHemphill)

Michelle Payne, Senior Planning Officer (MP)

Karen Radford, Heritage and Conservation Manager (KR)

Daniel Lewis, Enforcement Officer (DL)

Cheryl Lester, Legal Officer (CL)

1. Apologies

Councillors Clucas, Lillywhite and Babbage.

2. Declarations of interest

14/02039/COU Land Adjacent To 6 Saville Close

Councillor Fisher – sits on Asset Management Committee, and was involved in negotiating for the lease on this land. Will leave the Chamber for the debate.

Councillor Mason and Councillor Stennett – also sit on Asset Management Committee but as it was not involved in any negotiations on the planning application, will take part in the debate.

3. Declarations of independent site visits

Councillor Mason – visited all sites independently.

Councillor Baker – visited Fairview Road and Keynsham Road.

4. Public Questions

There were none.

5. Minutes of last meeting

Resolved, that the minutes of the meeting held on 22nd January 2015 be approved and signed as a correct record ~~with~~ *without corrections*

6. Planning applications

Application Number:	14/01304/FUL		
Location:	One Stop Shop, 62 Alma Road, Cheltenham		
Proposal:	Proposed residential development comprising 11no. dwellings (7no. three bed houses and 4no. two bed flats) with associated car parking and vehicular access following demolition of existing shop, lock-up garages and Alma Road Garage		
View:	Yes		
Officer Recommendation:	Permit		
Committee Decision:	Refuse		
Letters of Rep:	6	Update Report:	None

MP introduced the application as above, at Committee at the request of Councillor Regan on behalf of local residents. Permission was granted to develop eight dwellings on a large portion of the site, shop and lock-up garages in 2007, and extended in 2012 – this is therefore extant, and the principle of building on this site is established. The main consideration of the current application relates to the loss of employment land, as set out in Local Plan policy EM2, brought about by the addition of three further terraced houses on the Alma Road Garage site. The developers have stated that eight units on the site is unviable, due to remediation costs. They have provided a viability report, verified by the DVS, to demonstrate this. The extant permission will not proceed for this reason, so Members have to consider what is more valuable – employment land or dwellings. There is an argument for departure from the development plan, which would unlock the consented unviable scheme. On balance, therefore, the recommendation is to permit.

Public Speaking:

Mrs Godwin, neighbour, in objection

Has lived directly behind the development site for 36 years, and is most concerned with two important issues arising from this proposal. Firstly, the intrusion of privacy: three two-storey houses will be positioned adjacent to her back garden with a direct view into her home and garden, thus totally compromising her privacy, unlike other neighbouring properties which only have bungalows behind them. Privacy and security are particularly important to her and her family, having suffered from harassment and racial abuse for many years. The second concern is for the health and safety of her family and neighbours: the garages have asbestos roofing and the land is contaminated by heavy metals, inorganics, petroleum hydrocarbons and other carcinogenic substances identified by a ground investigation in 2014. Would like to request that exhaustive testing be carried out to confirm that contamination is not presently affecting water supply and soil in her back garden, and that, during removal of the contaminants from the site, dust particles be extracted from inside neighbouring homes and gardens to verify that no contaminants are reaching them.

Mr Kendrick, agent, in support

This land has long been earmarked for redevelopment, with planning permission for the majority of the site already in place. This cannot proceed, however, without the removal of the garage. Realises that this is a valued facility for some residents, although others do not enjoy the noise and parking issues. By its nature, customers have to drive to a garage, so its location is not as critical as, say, a medical centre. The existing landowner has been very reasonable, making the garage owner aware of his intentions over a year ago and allowing him the opportunity to relocate. This has not happened, and it is unfair to penalise the landowner who has acted reasonably. Regarding overlooking of the property behind, permission is already approved to build on the site. Regarding criminal activity, houses on the site will increase the natural surveillance. Regarding contaminated land, development of the site will clean up the land. To sum up, without the development, anti-social behaviour will continue, the

contaminated land issue will not be remedied, and much-needed housing will not be delivered in a sustainable location. Asks Members to endorse the officer recommendation.

Councillor Regan, in objection

The historic beginnings of this application date back to March 2005; objected to the first proposal, which was followed by a second in 2007, meeting with great opposition from local residents – a petition of 428 signatures of people objecting to the loss of the shop and the garage was produced, but permission was granted for eight dwellings. There are now strong objections to the loss of Alma Road Garage, based primarily on the loss of employment. The garage provides for the needs to local people, who have used it for 20 years, and is strongly supported by both parish councils. It is used by large numbers of people, especially the elderly, and provides exceptional benefit in this locality. The Cheltenham Local Plan states that existing employment sites should be safeguarded for local companies; there are eight members of staff at the garage, and this should be acknowledged in the debate. The Local Plan also acknowledges the limited opportunities for development of any new employment sites – we cannot afford to lose sites such as this to alternative uses. In addition, notes that three pieces of evidence are required to demonstrate that an existing site is unsuitable for its current use, and is not aware that this has been provided. The extant planning permissions exist for the majority of the site, for eight dwellings, without the need to lose this important community facility. The question must be whether the loss of the garage and its eight employees is worth three additional houses?

There are concerns about contaminated land which have not been fully quantified – no risk assessment is provided. Full removal of all underground storage tanks is not always necessary, but this casts doubt on safety aspects.

The above points in the Local Plan should be carefully considered, together with the comments of Warden Hill and Leckhampton Parish Council, to allow the garage business to proceed with the good work it does on the south of the town.

Member debate:

JF: finds conflicting comments in the report which could tip the balance either way. Taking policy EM2 into consideration, the garage employs eight people and provides good MOT service – there are no suitable alternative sites for this type of work on the south side of the town. It is not worth losing this valuable site for the sake of three houses. The NPPF Paragraph 70 stresses the importance of building healthy communities; this application is the wrong way forward. The garage is an established business, providing a valuable service to the community, and people object to its loss in every way. Agrees with the parish councils. We have to go on providing for this type of facility. There is not enough employment land in the town; we need every square inch, and should refuse this application on the above grounds.

AC: when the existing planning permission was granted, was the site considered viable for eight dwellings?

CM: the agent talking about the landowner being generous with the tenant is a red herring; the tenant should be protected under the Landlord and Tenant Act 1954. If he is, did the original lease have security? If the tenant is holding a lease which could be taken away, is this a planning issue; if it is permanent, it will be protected by the Act.

MP, in response:

- to AC, the original planning application was not assessed on viability grounds, as there was no requirement to do so at the time.

AC: presumably the developer thought it was viable at the time?

MP, in response:

- to CM, the lease is not a planning issue.

PB: the local resident spoke about the impact the development will have on her property and garden. Would like to see on a map how this works and hear the officer comment on this issue of loss of privacy and over-looking.

MP, in response:

- the extant scheme includes a terrace of four houses in a very similar position to the current scheme. The first floor windows achieve an excess of the 10.5m distance we look for, and the proposed houses also achieve that distance.

PT: to digress slightly, agrees with JF, but also notes that there is nothing in the report from the police about the horrendous anti-social behaviour incidents that have been happening in this area. Wonders how long it has been going on. Is also puzzled as the footpath is a right of way, and understands that these cannot be built on. This path has been used for many years on a regular basis, and even if it isn't a right of way, don't long-term custom and practice make it one? Asks for CL's guidance on this. Noted on Planning View that the path is currently shut off.

MP, in response:

- the path is not a designated right of way through the site – it is used for access and not protected. There have been no objections to its loss from any local residents or the parish council;
- regarding anti-social behaviour, received a response from the constabulary, which mostly viewed the proposal as an improvement, removing the access where anti-social behaviour takes place and offering additional protection to gardens.

BF: has no real issue with this scheme, but notes that the rear boundary with the bungalow in Dinas Road appears to be a stone boundary. Is there any way, if permitted, that this can be protected and remain as brick and render, in view of the improvements made by the residents of Dinas Road to reflect light back into their garden? Is surprised at the concern about the loss of the employment land – this is happening every month, with offices being turned into flats and the GCHQ Oakley site being used for housing. If the site has been advertised as employment land for a certain amount of time and has not been taken up, it can be used for housing. In addition, this site isn't particularly good employment land. There are a lot of garages in Cheltenham, and even if the proposal is turned down, there is no guarantee that this one will still be there in 12 months – it depends on the lease, and as the officer has said, this is not a planning issue.

CH: the loss of employment land is the issue for him, not just because it is employment land but because of what precisely it is. Regularly uses a garage near his home in Fairview, and the argument that this is a garage and it doesn't matter where in the town it is situated misses the point. The garage is well liked; people find it useful, use it because it is local. It would be a shame to lose this kind of local facility, particularly as it is in walking distance for a lot of people. It has been said that a garage is noisy and causes disturbance, but hasn't found this the case in his experience, and considers it would be a real shame if the town is denuded of this type of community business and shops. It would spoil the mix and leave an area solely residential, which is a big danger in this part of town. In the town centre, we are trying to introduce residential property so that it isn't all employment-based. We need to be mindful not to lose small businesses in local areas. People like them; there have been no other objections. There is already planning permission for the adjacent land, and this additional bit of land won't make a lot of difference.

AC: hears what BF has said, but the point is that this is a viable existing business – it isn't an empty site or lacking a tenant. As CH has said, it works well, and is a popular local facility.

MP, in response:

- reminds Members that it is the land which is protected, not the existing garage facility. They need to weigh the loss of the garage against the unlocking of the site for development of 11 houses.

KS: this is a really difficult application. What is proposed looks good and will improve the area, but the employment use in the area is crucial – there isn't all that much employment in this part of town; it is a massive area of housing with very few opportunities for people to work locally. Her head tells her that housing here will be good, but heart regrets the advent of communities with nothing in them but houses.

GB: with no more hands on show, will move to the vote.

Vote on officer recommendation to permit

5 in support

8 in objection

NOT CARRIED

JF: moves to refuse on grounds of policy EM2 and NPPF paragraph 70

Vote on JF's move to refuse on EM2 and NPPF paragraph 70

8 in support

5 in objection

REFUSE

Application Number:	14/01586/LBC
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)
View:	Yes
Officer Recommendation:	Grant
Committee Decision:	Grant
Letters of Rep:	28
Update Report:	Officer update and letter from property owner's solicitor

MC described the proposal as above, a retrospective application for listed building consent for the Banksy mural and communication dish on the gable end of this property. The application seeks to authorise the works and no more. Officers have asked the applicant to consider how the artwork can be retained in view of the poor condition of the render – this is set out in the officer report. Officers are confident that repairs can take place without compromising the mural, and the recommendation is therefore to permit. As stated in the conclusion of the report, authorisation does not and cannot automatically mean retention. The applicant does not own the building. If authorised, there may be further applications concerning the mural – the current application is just to authorise the work.

Public Speaking:

Mr Possee, owner of 159 Fairview Road, in objection

The Banksy mural was created without the permission of the property owner, and on a listed building is not only unauthorised but also a criminal offence. The building is currently empty and uninhabitable, in need of damp-proofing repairs, with the render in a state of disrepair which makes it dangerous to the public. The applicant has only given vague reassurance to officers on how he intends to fix it.

This architectural style of building was not intended to have any kind of art on its wall; the building may be in a poor state, but it is valuable due to its age and architectural design, and the mural does nothing to protect the character of the building. By adding it to the building's listed status, there are many unanswered questions: how it will be retained in the long term; how can the unstable render be repaired while keeping the mural in place; how can the house continue to be used as a residence. The applicant has failed to answer these questions, and the repair of the defective render is not being considered. The retention of the mural is impeding the repairs, and until this can be done, the listed building must remain unoccupied.

Mr Kaveh, applicant, in support

Thanked officers for their clear and well-balanced report. A number of people have given up a lot of time to secure this artwork for Cheltenham, including Martin Horwood MP and the business community. There has been national and international press interest in the case, and the local economy has benefited from the tourism that it has brought and continues to bring to the town. It only makes sense for this artwork to stay in Cheltenham. If listed building consent for it is granted today, this won't be the end of his investment of time and financial input – it will only be the beginning. The Banksy has been vandalised but has now been treated with anti-graffiti paint, which will continue at all times until the graffiti has been removed and the Banksy restored. Is prepared to fund any work and work with officers to ensure the long-term protection of the Banksy. If permission is granted today, will move to the next stage of the restoration. Has faith in himself, the business community, and the residents of Cheltenham to ensure support for the its retention. Is also willing to pay for any render work necessary, and more than happy to ensure that everything is safe at the property.

Member debate:

JF: will permission be granted for six months, as suggested by the conservation officer?

MJC, in response:

- the recommendation is to grant permanent consent. The original recommendation from the conservation officer was not a valid way to proceed, and her advice was subsequently revised, once they felt comfortable with the proposal.

CM: asked for clarification that the telephone box isn't actually part of the mural and isn't included in the application – the artwork loses its significance without it.

MJC, in response:

- confirmed that this is the case – the telephone box does not form part of the application..

BF: this is the oddest application he has every heard. If the artwork was of no value, it would be long gone. The property was tenanted when the Banksy first appeared, and there have been various claims of ownership. The telephone box has to be retained for it to have any significance. Why is the satellite dish included in the application but not the telephone box, which together make this a humorous piece of art. Banksy is admired all over the world. Feels sure the artwork can be saved, and that it should be saved where it is. Regarding the render, believes this can be repaired to alleviate the damp. We have to approve this application and protect the artwork, in view of its significance to this town only.

MS: agrees with BF. It is unfortunate in many ways for the owner of the property to have this valuable artwork donated to the side of his house, but we are very lucky to have an applicant prepared to take on responsibility for protecting it for future generations. This artwork is unique and a real tourist attraction - there is nothing like it anywhere else, and its value can be enhanced once it's fully protected. We need to talk to BT or someone about the telephone box and how this can be retained.

The Banksy should be supported, and Cheltenham is very lucky to have someone prepared to fund the work.

AM: feels much the same as MS. When the Banksy was first revealed, it was wonderful – appropriate, witty, Cheltenham-esque – but after the euphoria died down, the problems began to emerge. This is street art, on an unstable wall. Considers the proposed way forward to be sensible, offering the opportunity to protect the mural and keep it in the public domain. The telephone box is not significant; if BT remove it, it would not be beyond wit to put another one there. We have to take this forward; we have spent too long waiting to work out what to do. This is a viable solution and we should progress with it.

PT: regarding the telephone box, we have listed telephone boxes on the Promenade, and could presumably list this one too in due course, as it is so much part of the mural and Cheltenham scene. Is sorry that the owner of the building doesn't see this the same way as Members do. Is ashamed of the people who defaced the artwork – this is appalling behaviour, not seen anywhere else. It is a shame the owner can't see the value of what he has on the end of his building. Doesn't consider it devalues the house – it could be repaired, let, lived in, sold. The Banksy should be retained and we should do the best we can to protect it over the years to come.

GB: is fairly sure the owner of the building does realise the value of what he has, but is concerned about other issues.

CH: is very supportive of retaining the Banksy. Lives locally and it is amazing to see how many people came to visit it as soon as it was done. Weeks later, just before the hoardings went up, people were still visiting, taking photos. It is a real asset to the town, and local shops and businesses are really pleased to have it as it has made such a difference to the community, so much so that the business community is prepared to do all sorts of things and offer monetary backing to keep this important feature in Cheltenham. It is sad that the artwork has been blocked off for so long, but as an aside, the comments and additional graffiti that appeared on the hoarding were all interesting too. The telephone box is not an insurmountable issue. In a very short space of time, the Banksy has become an integral part of that area of town, and it's very important that it stays in Cheltenham. This application has his whole-hearted support.

DS: understands that this is only Stage One of a lengthy process. Where do we stand legally regarding who owns and/or maintains the artwork at present, and what happens when the work is paid for by someone who doesn't own the building. It is a legal minefield.

KS: the practical question is what will happen if we approve this application. The render should have been repaired a long time ago. There is clearly no love lost between the owner and the applicant, so what will be done? Will the building be left to rot? Will it be in CBC's hands, and be subject to enforcement action? What if the mural falls off the wall, or if the wall falls off the mural? This ordinary phone box is now a local landmark; it's really important that the artwork is retained and better if it is retained where it is. Is disappointed that work has already been done inside the building without permission. Would the Banksy be better protected at The Wilson? Is worried that it will be subject to attack by passers-by for ever. This is quite a saga: it shows Cheltenham in a good light, that we can laugh at ourselves, but also in a poor light that this work of art has been defaced and attempts made to take the side of the wall off to make money. We have to find a way to move forward. The render on the side of the house needs to be sorted out.

PB: the phrase 'looking a gift horse in the mouth' comes to mind here. Cheltenham is very lucky to have this fantastic piece of art donated to it, as a centre for tourism, arts, culture, festivals and so on. It is a shame common sense can't prevail here; people love the Banksy and want to retain it. The

applicant wants to help, as does the business community. The applicant, owner and council officers need to sit round a table a sort it out.

CL, in response:

- the question of who owns the Banksy is an interesting one. It is understood that the owner of the building owns the wall, although there had been some suggestions that it was owned by the County; what is clear is that the applicant doesn't own it;
- regarding future maintenance, this application is purely retrospective, concerning the artwork already painted on the wall. It is an unauthorised alteration to the listed building, and it was a criminal offence to put it there in the first place. If it wasn't already done, would we be happy to give permission for it? The issue today is, going forward, whether to authorise it or not.

MJC, in response:

- Members have answered their own questions about the phone box. There are limitations to what this particular application can achieve, but the phone box can be retained in some way;
- to KS, officers have reflected long and hard in considering this application, who will maintain the artwork in the future, and how CBC can influence that. By granting listed building consent, we will give the applicant a greater level of confidence to proceed with conversations with the owner;
- however, CBC has had no influence over those discussions or conclusions. The render is in a poor state and we can influence its improvement – the council has been aware of this since January 2014, before the Banksy was added, and can issue an S215 notice to ensure the work is done, as it is in the public interest to improve the quality of the land. This, however, is a last resort, and it's hoped that the work can be done through discussions between the owner and the applicant, with the council in the background;
- the NPPF is relevant in this case, with its advice to look for solutions rather than problems. The solution here is to retain this important piece of art, but we cannot give a definitive answer to this yet – each application will have to be considered at the right time, on its own merits;
- the first stage is to grant listed building consent and see what the owner and the applicant can come up with.

KS: if we authorise the listing and someone attacks the artwork, they will be committing a criminal offence. How can we ensure it is protected? What security measures can be used?

CM: has listened to the debate and understands that the applicant is in negotiations and is prepared to pay for the repairs to the wall, but what will happen if the negotiations break down and the owner is left with the burden of the repair and maintenance?

DS: if listed building consent is granted, will we not be encouraging people to go round painting on other people's houses?

MJC, in response:

- the burden of repair of the render was with the property owner long before the Banksy appeared in April 2014, so there is no shifting of responsibility here. What we now have is an applicant willing to take it on and facilitate the repairs; if the discussions fail, the situation will be no different from what it was before the Banksy, although this is an added complication;
- at the nub of the issue, however, is the written assurance from a surveyor that the remediation work can take place without compromising the Banksy itself;
- the ongoing protection of the Banksy is one of the unknowns. The applicant doesn't own the building so is not responsible for protecting it, but it is hoped that by authorising the Banksy, discussions with the property owner can be advanced;
- if the application is refused, there will be no encouragement for these discussions to take place. This is why officers feel it is right to take a positive approach in facilitating the retention of the Banksy, and consider any further applications on their own merits in time;

- everyone acknowledges that the work is important and brings many benefits to the town, which is why the Committee would be right to support its retention.

CM: this must be considered a win-win situation, if the applicant is prepared to pay for the work.

BF: to DS's comment that granting permission could encourage anyone to paint on any building, it is only being retained because it is a Banksy.

JF: most graffiti has no artist merit, and any other graffiti art in the area would be removed.

KS: on the issue of money and how much is the Banksy worth to the person who owns the house if he was to remove and sell it, its retention on the building is in the interest of the building itself. It is not just the render that would have to be removed; the property is built with very old bricks, and it would be difficult to remove these without removing the render and damaging the Banksy. To preserve the artwork in situ is the only option, and hopes that this moves forward soon before it is further defaced.

AM: Members are making very heavy weather of this. At the moment, the Banksy has no legal rights – it is a piece of vandalism on the side of a listed building. All Members are being asked to do tonight is to give it the right to exist – that is the sum total – to be followed by further discussions between the owner and the applicant.

GB: that is right. The issue has been debated well.

Vote on officer recommendation to grant

12 in support

1 in objection

GRANT

Application Number:	14/02039/COU
Location:	Land adjacent to 6 Saville Close, Saville Close, Cheltenham
Proposal:	Change of use of land to a community orchard garden, planting 31 fruit trees and the erection of a shed
View:	Yes
Officer Recommendation:	Permit
Committee Decision:	Permit
Letters of Rep:	1
Update Report:	None

BF left the Chamber before the beginning of this debate.

MJC introduced this material change of use application, on land adjacent to Saville Close and Albemarle Gate, on the edge of the conservation area. It is at Committee because the land is council-owned.

Public Speaking:

There was none.

Member debate:

PT: asked for clarification – is it two *beeches* or two *benches* indicated on the drawing?

PB: this is a lovely application to consider, and a considerable enhancement of this part of town.

MP, in response:

- to PT, the drawing shows two benches, but is only an indicative lay-out. The actual use of the land is being looked at.

CM: hopes that Members will agree to this land being put to community use, and that all the fruit produced can be used and sold locally.

Vote on officer recommendation to permit

12 in support – unanimous

PERMIT

Application Number:	14/02174/FUL
Location:	7 Keynsham Road, Cheltenham
Proposal:	Erection of part single-storey/part two-storey side/rear extension, and rear dormer in connection with loft conversion, following demolition of existing garage
View:	Yes
Officer Recommendation:	Permit
Committee Decision:	Permit
Letters of Rep:	2
Update Report:	None

BF returned to the Chamber before the beginning of this debate.

MP described this householder application as above. This is a semi-detached property in the conservation area, and revised drawings have been submitted to address officers' initial concerns about the design. It is at Planning Committee at the request of Councillor Sudbury, following objections from two neighbours.

Public Speaking:

None.

Member debate:

KS: this is one of those difficult applications for ward councillors to deal with - an extension which the neighbours object to – and trying to take a balanced view isn't easy. The occupant of a house nearby is extremely distressed about the proposal, which is why KS asked for a Committee decision, as it is more transparent and should offer peace of mind. Revisions have been made to reduce the impact on neighbours, although KS remains concerned about the neighbour who is still not happy. It is for Members to decide if this is a reasonable extension, on planning grounds.

MS: as these schemes go, this one looks quite good. If it difficult to find any planning reason to refuse it.

Vote on officer recommendation to permit

12 in support

1 abstention

PERMIT

The meeting ended at 7.30pm.