

APPLICATION NO: 21/02385/FUL		OFFICER: Mr Ben Warren
DATE REGISTERED: 4th November 2021		DATE OF EXPIRY : 30th December 2021
WARD: Park		PARISH:
APPLICANT:	Mr Graham Rix	
LOCATION:	76 Andover Road, Cheltenham, Gloucestershire	
PROPOSAL:	To demolish the unauthorised 1970s garage at the rear of the plot and replace with a double garage/annexe.	

ADDITIONAL REPRESENTATION

13th December 2021


74 Andover Road
Cheltenham
Gloucestershire
GL50 2TW

Comments: 13th December 2021
Letter attached.

**Misleading, Irrelevant or Inaccurate Statements in the Supporting Documents for
21/02385/LBC & 21/02385/FUL**

If officers intend to make a fair and objective determination, it seems reasonable for this to be based on a case made clearly, without obfuscation. The applicant's supporting documents do not do that, they misrepresent certain aspects or use words with a specific legal or heritage meaning out of context, again, creating a misleading impression. They also refer to ourselves in ways that are either simply untrue or misrepresent the wider context and correspondence.

Grateful for your attention.

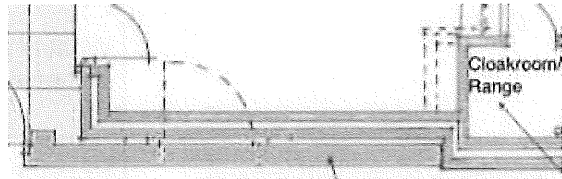

74 Andover Road
6th December 2021

Extract from 17 November revised supporting statement	
"All three revisions were found to be acceptable by the Planning Department" (p1)	<p>We are not aware that a determination was made on those applications? This statement is either untrue, misrepresentative, or <i>is</i> true and speaks to officers acting with prejudice. Which would be odd given that the conservation officer previously commented that para 194 of the NPPF was, and is still, not fulfilled.</p> <p>We refer to separate correspondence, where we have raised very real concerns about a procedural approach that is, in the opinion of counsel, "fatally flawed".</p>
"Impossibility of integrating the wall..." "Wholly unsatisfactory" (p2)	<p>The document contains many general statements and illogical conclusions that are drawn without supporting evidence, or when there is clear expert and physical evidence to the contrary.</p>
Images of leaning wall (p3)	<p>We have commissioned two specialists to review and provide expert opinion on the wall, one of which has been previously provided to the LPA and the second of which we can submit on request. The applicant has not only <i>not</i> commissioned any specialist assessment, but has refused our repeated request for an accurate measured survey of the bottom and top of the wall and the boundary line. These statements and images might be visually representative from a certain angle but the applicant draws unsubstantiated (and thus irrelevant and misleading) conclusions about the condition of the wall.</p>

<p>“existing wall retained and rebuilt” in relation to 72 Andover Road / 1 Hatherley Villas (p7)</p>	<p>The inclusion of this reference is completely misleading because it is not at all what the applicant is proposing to do, as is clear from his drawings (which show a cavity wall at one end, and a void (to incorporate retracting garage doors) at the other). More detail is available on the nature and categorisation of works on heritage assets in Historic England guidance documents and the details of 72 Andover Road's application are available to view and show that the new building proposed and the one already built retain and retained the garden walls on both sides as independent free-standing walls.</p>
<p>“Re-erecting, using lime mortar, is not the loss of the original wall” (p7)</p>	<p>This would be true if it is what the applicant is proposing to do. But it is not.</p> <p>Any demolition is 'loss' as defined under the NPPF, Historic England guidance, and any normal reasonable understanding of language. Erecting a new, 15 foot, cavity wall is not 're-erecting' a like-for-like six-foot free-standing boundary enclosure.</p>
<p>“similar garden wall, between 4 and 5 Lypiatt Terrace, which are grade II* listed buildings, was granted Planning and Listed Building Consent on 11th August 2020.”</p>	<p>This is true, although it is an irrelevant and misleading reference in this context. However, the comparison <i>is</i> instructive because it seems to make the case for a <i>refusal</i> of this application.</p> <p>Permissions 20/00939/FUL & 20/00939/LBC were granted for works at Lypiatt Terrace, but there is no new development proposed. That proposal, and we encourage officers to review and compare it for themselves, was a straightforward case of sympathetically re-constructing a garden wall, as a garden wall, like for like. There is no new-build garage replacement as part of the application or anywhere at all on the property.</p> <p>In fact the conservation officer specifically noted that it is usually unacceptable to demolish and rebuild listed or curtilage listed walls precisely because of the loss of significance, and approvals were only given for this sympathetic re-build after many attempts at repair (which has not happened in the case of our shared wall.)</p>
<p>“This proposal will not cause harm to the remainder of the old wall.” (p7)</p>	<p>This statement is highly unlikely to be true and runs counter to all the evidence. We do not understand why the applicant continues to make unsubstantiated claims</p>

	<p>about the impact of his works, and repeatedly refuses to properly protect the remaining section of the wall. Likewise, the LPA has a legal duty to ensure that consequential harm is not knowingly being done.</p> <p>The nature of the bonding pattern, as well as the age, mean that walls of this type are particularly vulnerable to consequential collapse when sections are removed. An example of this is available to view at a neighbouring house where a small incident at one end of a wall caused a 10m section to have to be rebuilt.</p> <p>These are frivolous and unsubstantiated statements and misrepresent the impact of the proposal in this regard.</p>
<p>The adding of a pier was “acceptable under the (now withdrawn) Minor Material Amendments.” (p8)</p>	<p>This statement is either untrue or speaks to prejudice at the LPA. We are not aware that a full determination was made nor was sufficient information available that would allow such a determination.</p> <p>We refer to the comment above about the lack of an accurate measured survey of the site which would show that the position of the pier on the applicant’s drawing bears no relation to the position of the wall as it currently stands.</p>
<p>“The work accords with the LPA’s policies. Policy 5.31 stipulates that boundary enclosures in conservation areas should be in historically appropriate form. Clearly my proposal entirely respects 5.31. Similarly, policy 5.48 stipulates that boundary enclosures to listed buildings should be of the same or similar design and material as the historically original enclosure. And that is exactly what I’m proposing.” (p8)</p>	<p>This is a misrepresentation of the policy which states that “<i>boundary enclosures should be preserved in their original form.</i>”</p> <p>The use of historically appropriate materials refers to <i>new</i> boundary enclosures, which is not what this application is for.</p> <p>Even if it were a new boundary enclosure, the actual statement from BE5 is that “<i>where new enclosures are proposed, erected in suitable and authentic materials, height and form.</i>”</p> <p>The overarching Joint Core Strategy requires the need “<i>to manage change in a way that realises the regeneration potential of the area while protecting and capitalising on its unique heritage.</i>”</p> <p>Both change and protection can easily be achieved, and yet are not what is described here.</p>

	<p>The JCS requires that plans “<i>should demonstrate a consideration of heritage assets and their setting, assessing the effects of the proposed development and measures proposed to avoid substantial harm;</i>”</p> <p>This kind of assessment, which is consistent with the NPPF, is a very specific process and has not been done, nor do any of the paragraphs 4.8.6 to 4.8.13 appear to have been fulfilled.</p> <p>To draw the conclusion that this application is “exactly” consistent with CBC BE policies seems inaccurate and is, therefore, misleading.</p>
<p>“Little or no reference to foundations is entirely normal. Foundations are generally viewed as a Building Control matter. Heritage England appear to be largely silent on the matter of foundations in situations like this.” (p8)</p>	<p>Actually this is <i>not</i> true and consideration of foundations is <i>highly relevant</i> in the context of preservation and protection of a heritage asset and the veteran tree.</p> <p>Historic England guidance is very clear on this and states that one of the options available to LPAs is to insist on appropriate <i>means</i> of development. Examples are specifically mentioned in the guidance, one of which is raft foundations as a way to better protect historic assets.</p>
<p>Discussion of internal walls between 76&78 and (p8 and also later references)</p>	<p>This is irrelevant in the context of the demolition of the wall between 74&76, although it has relevance later.</p>
<p>“This sounds very similar...” in relation to planned works and a planning approval at 72 Andover Road / 1 Hatherley Villas.</p>	<p>In relation to the planning approval to which the applicant refers, his proposal is not at all similar.</p> <p>The proposed development at 72 Andover Road / 1 Hatherley Villas will be built within the garden wall, retaining the wall as a free-standing wall, to its <i>existing height and form</i>, with the new extension built within, as shown below, and as would be compliant with CBC’s own policy.</p>



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This is exactly what was required by the LPA of the completed annexe at 72 Andover Road / 1 Hatherley Villas, where the LPA required the development to be built *within the original walls and that the walls should not be raised in height.*

It seems highly misleading to make this comparison.

This comparison also raises, again the question of potential prejudice, when one applicant is able to cause harm to a heritage asset, demolition and loss of significance, without any justification (and without any seeming to exist, not just that it has not been described), and another applicant is required to retain the heritage asset, as is consistent with national and local policy.

Paragraph starting "The erection of the new coach house will stabilise the old garden wall... it will only have a positive effect." (p9)

This is an unsubstantiated opinion that runs counter to the advice of experts we have engaged.

Cutting into and demolishing this long section of wall will create, as surely as it's possible to be sure, consequential harm to further sections of the wall, most likely further collapse. Elsewhere the applicant seems to use this same argument in favour of his application, where he talks about underpinning causing likely collapse.

The LPA has a duty for preservation and applicants are obliged, as described in the planning guidance, to explain how they intend to *preserve and enhance* historic assets.

In carrying out that duty, the LPA is also able to apply conditions on the *means* of development as well as the form, and foundations are specifically mentioned, as stated above, so that these fragile assets are protected and preserved.

	<p>What is proposed is very likely to result in the opposite outcome.</p>
<p>“It’s not possible to repair that without removing and repositioning almost all the bricks...” (p9)</p>	<p>Repair has a very specific meaning in relation to heritage assets and “removing and repositioning almost all the bricks” goes far beyond that definition into the definition of either restoration or alteration.</p> <p>However, as we know, this is not what is being applied for here, and so the statement itself is misleading.</p> <p>It is also untrue.</p> <p>It is perfectly possible to repair and make the wall structurally stable by leaving “nearly all” the bricks in situ, retaining the character of the heritage wall. We are not at all opposed to a sympathetic partial repair, and have had a quote and a description of such work from a specialist masonry company who do these kinds of works, and more complex ones, on historic assets. This work <i>would</i> fall into the category of ‘repair’, and it is the least invasive category of doing work on the wall or on any heritage asset.</p> <p>However, the relevant matter is that <i>repair</i> is not the proposal that is under consideration here, it is <i>demolition</i> and permanent loss of a heritage wall, to be replaced with a 15 foot new cavity wall.</p>
<p>“And when my neighbours build their own coach house...” (p9)</p>	<p>Any intentions we or a future occupant have are irrelevant, but, in fact, this statement is also misleading because we have no intention to build a coach house, as we said, in an email to the applicant on 6th August this year (see below for context.)</p> <p>Furthermore, if we, or any future owner wanted to build a coach house we would expect those plans to be respectful of conservation policy, statutory heritage protection, and trespass considerations, and we would expect the LPA to fulfil its relevant duties to ensure that was the case.</p>
<p>Paragraph starting “Repairs to the brickwork, without dismantling and reassembling the wall...” (p10)</p>	<p>This is untrue and, as we describe above, a ‘repair’ is perfectly possible without taking the wall apart or demolishing it. Other methods are available but no method of ‘repair’ that involved demolishing a structure,</p>

	<p>creating 1.7m foundations, and building a cavity wall to a height of some 15 feet, changing both the height and the form of the boundary enclosure, would meet Historic England's definition of 'repair', nor would it meet any normal interpretation of the word.</p> <p>This paragraph is misleading, as well as being untrue.</p>
<p>"The apple tree is around 2m from the rear wall of the proposed coach house. However, this application will have no greater effect on the tree than would be the case with the current approvals." (p10)</p>	<p>This statement is a non sequitur, internally contradictory and very likely untrue.</p> <p>Since the apple tree did not appear in the 2019 permissions to which the applicant refers, how is it possible to say whether the current works will have any more, or less, impact on the tree?</p> <p>Under this application, a tree plan has been requested for this tree and the birch on site, exactly <i>so that</i> relevant experts and ourselves can understand, and comment on the impact.</p> <p>So far none has been supplied and works are being done that are not in compliance with BS5837 (2012).</p> <p>Furthermore this new application proposes to dig 1.7m deep foundations by the apple tree, whereas the previous proposal was for a steel beam to be erected without the need to deep foundations at all close to the wall or the tree.</p> <p>Since the LPA also has the authority to require the <i>means</i> of development, it would seem appropriate to consider what those might be in here, once impact is better understood.</p>
<p>"Carefully dismantling an old 'heritage asset' cleaning it and reassembling it to match the original construction, is not the loss of a heritage asset: it's the preservation of a heritage asset."</p>	<p>This paragraph is misleading as it is not at all what is proposed.</p> <p>A careful dismantling and rebuild would probably be an 'alteration' rather than 'repair' under Historic England definitions (the most harmful of the three categories of works), rather than repair, but it would at least preserve the form and height of the asset.</p> <p>However, this is not what is being proposed. What is being proposed is the <i>demolition and permanent loss</i> of a section of the heritage asset. It seems, therefore, that the statement is irrelevant to the application and</p>

	<p>creates a misleading impression of the nature of the works.</p>
<p>“Visit from enforcement officer...” and that DL “visited the site at the request of my neighbour at 74.”</p>	<p>This is a very important point, and it is crucial to understand why the matter was raised with the LPA.</p> <p>In the previous application to demolish the wall between 74&76 Andover Road the applicant claimed, in order to support his application, that the council had <i>already approved</i> the demolition of the walls between 76&78 and 78&30 Tivoli Walk.</p> <p>It was unclear whether this was the case and we did not want the LPA to be making a determination based on untrue or misleading statements, and so we asked, simply, whether this was true that permissions had been granted.</p> <p>The important point here has nothing to do with the visit, but is about the <i>veracity of statements being made in planning applications by the applicant</i>.</p> <p>Whatever the applicant thinks he has applied for or been granted permission for, any lack of clarity in an application will create uncertainty about what is being approved, and, thus, when the applicant makes general statements, even if he believes them to be the case, it is very hard to know what is factually, unequivocally true.</p> <p>The point here, has nothing to do with planning enforcement, but is about the clarity and accuracy of statements the applicant makes when he attempts to support his proposals.</p> <p>We asked a very simple question because it was not obvious from his plans: did he, or did he not have planning permission and listed building consent for the demolition that he carried out?</p> <p>As it turns out, he did not. But, too late, the section of wall had already been demolished by the time the Enforcement Officer visited the site.</p> <p>This is exactly why we want officers to understand exactly what is being proposed, and make a proper and lawful assessment, before any unauthorised demolition takes place.</p>

<p>“These revised submissions are a very modest change from the current approvals. Almost insignificant yet, for practical purposes, the rebuilding of a section of the garden wall is essential.” (p12)</p>	<p>This is highly misleading.</p> <p>Removal of the garden wall is neither “insignificant” in planning and conservation terms, nor is it “essential”.</p> <p>The national legislative and policy framework does not consider it ‘insignificant’ to lose a heritage asset, and the relevant acts and the NPPF give very precise guidance to LPA’s on their statutory duty of preservation and the process they should follow in order to assess applications. Personal opinions of applicants are irrelevant.</p> <p>It is also not ‘essential’. Both flank walls of 74 are original, neither run straight, and both lean to some greater or lesser degree in parts.</p> <p>It is still perfectly possible to build inside the walls, and, if one neighbour is <i>obliged</i> to do so by the LPA, and <i>can</i> do so successfully, why is the other neither obliged or able to do this?</p> <p>Although not relevant to this application, since it is not for a ‘repair’, we in no way oppose a sympathetic and non-invasive repair. However, demolition is <i>not</i> a “very modest repair” and to represent it as such is misleading and technically wrong.</p>
<p>Reference to removal of walls behind Hatherley Villas. (p12)</p>	<p>We do not dispute that small, almost negligible sections of wall, at the rear of the properties, fronting onto Tivoli Walk have been given approval for removal and replacement. However, these are not flank walls, it does not affect the integrity (meaning wholeness and completeness) of the, quite unique, 30m stretch of wall running the whole length of the gardens.</p>
<p>Reference to the removal of the wall at the rear of 4&5 Lypiatt Terrace. (p12)</p>	<p>We find this reference misleading because no permission was given to <i>remove</i> the wall in this application.</p> <p>As stated above, permissions 20/00939/FUL & 20/00939/LBC were for a sympathetic re-assembly of the garden wall, as is, retaining it in its exact height and form, as well as function, and preserving the significance and the setting of the listed building.</p> <p>The conservation officer specifically comments that it is normally unacceptable to demolish and rebuild listed or</p>

	<p>curtilage listed walls.</p> <p>This reference in the applicant's summary is irrelevant and misleading.</p>
<p>"The revised proposal constitutes a repair." etc (p12)</p>	<p>This is untrue, as has been said many times already. We can't say if it is <i>intentionally</i> misleading, but that is the result.</p> <p>A repair has a very specific definition in relation to works on heritage assets, and this is not it. It is a very minor piece of work, slightly more than maintenance, leaving the asset entirely in place to be enjoyed by future generations.</p> <p>We are more than happy, as we have said what now seems like countless times, to work with the applicant to <i>repair</i> the wall, but that is not what is proposed, nor what he intends. A repair definitely does not require total dismantling and the digging of 1.7m foundations, as deep as the wall itself, nor would it destroy the heritage asset, only to replace it with the cavity side-wall of a garage replacement.</p> <p>A demolition, as is being applied for here, causes the permanent loss of at least the section demolished, and perhaps some further length through consequential harm.</p> <p>What is there left under the statutory protection once the original wall has been removed? Why the need to cause a loss of significance to neighbouring listed properties with no public benefit or justification, when it is perfectly possible to go ahead with the development <i>while preserving the wall in its original form and materials</i>.</p> <p>This single point alone seems highly relevant to considerations of heritage and conservation, consistent with CBC policy and national planning frameworks, to say nothing of the LPA's obligations under the law.</p>
<p>"This was accepted by Cheltenham Borough Council in the (now withdrawn) MMAs." (p12)</p>	<p>Again, as has been stated, this is either untrue and a misrepresentation of conversations that have taken place (and, therefore, misleading), or it is true, and it speaks to a determination already having been made, which is clearly prejudicial.</p> <p>Whatever the conversation that went on, there was no</p>

	<p>actual determination on the parts of that previous application relating to demolitions, nor was there enough information to allow a determination to be lawfully made.</p> <p>We refer to separate correspondence with the LPA's legal officer, which raised serious concerns about procedural issues and also about the council's approach to determining that application from a heritage perspective, an approach that our legal counsel considered "fatally flawed".</p>
<p>Comments in the original supporting statement, now superseded.</p>	
<p>"where they asked if I were still prepared to design and submit, pro bono, a similar application for 2 Hatherley Villas. Such a proposal would, of course, have the effect of entirely obliterating the garden wall (or 'heritage asset')." (p 8 of original DAS)</p>	<p>On 24th July this year, in an email, the applicant did indeed offer to draw up plans for us <i>pro bono</i>.</p> <p>On 6th August, we responded to say</p> <p>"Firstly, thank you for the very kind offer to draw up plans for us. Since we don't plan to build it seems premature, but it might be instructive to imagine in theory how something would be constructed on our side."</p> <p>At a subsequent meeting in August, to which we assume the applicant is referring, and of which we have a full record, we discussed party wall notices given to us by the applicant and wanted to know how a future resident of our property could 'attach' a similar development to the one he was giving us party wall notice about. We were simply attempting to understand his proposals in the context of the parallel party wall discussions.</p> <p>We did not ask the applicant to draw up plans for us, pro bono or otherwise. This statement is irrelevant and also misleading.</p>
<p>"exchanged over a hundred emails on this subject over the last three years, in an amicable manner, and no concern over the loss of a 'heritage asset' has been mentioned." (p 8 of original DAS)</p>	<p>We're not clear if the reference to 'over a hundred emails' is correct but, setting that aside, the misleading term here is 'on this subject' (meaning 'loss of a heritage asset') which is simply untrue.</p> <p>The first notification we had of 'demolition' was on 8th July this year. Over the few months since then, we</p>

have been attempting to understand his intentions so that we can comment and engage on them, as they relate to our shared wall and the trespass issues.

We have come to realise that the words obscure the detail, and where the loss of the asset is mentioned at all (which it is usually not) the applicant uses terms like 'reassembly'. After much confusion, we have realised that it is his drawings that are important and that his intention is in fact to demolish a listed heritage asset in order to construct the side-wall of his new garage replacement.

And yes, we have concerns about that, wanting due process to be followed, appropriate statutory protection for heritage assets, and basic civil law, like trespass, followed.

This statement is another non sequitur; how were we meant to have asked about something we were not aware of? (and in any case it seems irrelevant to the planning considerations).