

<b>APPLICATION NO:</b> 22/01373/FUL		<b>OFFICER:</b> Mrs Lucy White
<b>DATE REGISTERED:</b> 30th August 2022		<b>DATE OF EXPIRY:</b> 25th October 2022
<b>DATE VALIDATED:</b> 30th August 2022		<b>DATE OF SITE VISIT:</b> 7 <sup>th</sup> October 2022
<b>WARD:</b> Lansdown		<b>PARISH:</b>
<b>APPLICANT:</b>	Lucky Onion Group	
<b>AGENT:</b>	SF Planning Limited	
<b>LOCATION:</b>	129 - 133 Promenade Cheltenham Gloucestershire	
<b>PROPOSAL:</b>	Retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period	

**RECOMMENDATION:** Refuse



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site comprises of a group of 3no., two storey over basement grade II\* listed Regency villas (Nos 125-133), located prominently within the Central Conservation Area (Montpelier Character Area).
- 1.2 The application proposes the retention of all existing temporary marquees at 125, 127, 129, 131 and 133 Promenade for a further two year period.
- 1.3 The applicant (Lucky Onion Group) benefitted from the Council's relaxation of enforcement proceedings for temporary, moveable structures which was put in place to help and support the successful running of businesses and organisations within the town to ensure they remained open and viable during the pandemic. The Council's relaxation measures allowed businesses to provide more physical space or utilise existing external areas to allow the required social distancing and safer operations during the COVID-19 periods of government imposed restrictions.
- 1.4 The marquees present on site today were erected in June and October 2020 in response to the above relaxations of enforcement. These temporary structures replaced, in part, a number of existing parasol structures within the frontages and external side and rear areas of 131 and 133 Promenade.
- 1.5 The Council decided to bring an end to the temporary relaxation of enforcement on 30th September 2022 given that government imposed COVID-19 restrictions had ceased by this time. Subsequently, all businesses that had notified the Council previously of their intention to erect temporary structures were notified in writing of the need to remove the structures. Any businesses seeking to retain their structures past this date, were required to seek the necessary planning consents for their retention and provide clear and convincing justification for doing so.
- 1.6 The application is accompanied by a Heritage Appraisal and covering letter setting out the applicant's justification for the proposed retention of the marquees.
- 1.7 It is important to note that consent is being sought for the retention of similar temporary structures located within Montpelier Gardens and the Pump Rooms. These proposals (under application references 22/01438/FUL and 22/01438/FUL) are also being considered by Members at the October Planning Committee.
- 1.8 This application is before Planning Committee at the request of Councillor Wilkinson. The reasons given for the referral are as follows:

*local hospitality businesses, including the applicant, are facing extreme cost pressures as a result of increased energy bills. Consequently, I feel a public discussion about the retention of temporary structures that enable extra revenue generation is appropriate. Inevitably, similar discussions will take place about other businesses and it is clearly desirable that this discussion and decision-making process takes place in the most public forum. I feel this will benefit the decision making process and lead to wider understanding of the pertinent issues among members of the public, various interested stakeholders and the business community.*

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### Constraints:

Airport Safeguarding over 45m  
Business Improvement District  
Listed Buildings Grade 2star

Principal Urban Area

**Relevant Planning History:**

**12/01392/COU 7th March 2013 PER**

Change of use from B1 (Office) to C1 (Hotel) and A3 (Restaurant)

**12/01392/LBC 7th March 2013 GRANT**

Works in association with change of use from B1 (Office) to C1 (Hotel) and A3 (Restaurant)

**13/00957/LBC 6th August 2013 GRANT**

Treatment of dry rot by removing existing affected timber, treat all sub-strates adjacent and and re-instate as per existing

**14/00150/FUL 21st May 2014 PER**

Provision of temporary generator in car park with temporary acoustic fence to enclose the generator (retrospective)

**15/02243/COU 20th December 2016 PER**

Change of use from offices (B1) to hotel accommodation as part of existing hotel facilities at 129-131 Promenade with landscaped front amenity area new ground floor extension/link and formation of external courtyard to 133 Promenade (and associated internal and external alterations)

**15/02243/LBC 20th December 2016 GRANT**

Change of use from offices (B1) to hotel accommodation as part of existing hotel facilities at 129-131 Promenade with landscaped front amenity area and erection of ground floor extension/link and formation of external courtyard to 133 Promenade (and associated internal and external alterations) Proposed change of use from offices to hotel with new link to 133 Promenade

**16/00254/CLBW 25th February 2016 CERTPU**

Like for like remedial works - remove existing capping to the parapet, supply and fix new code 5 lead capping to the parapet, redress lead gutter, clean out the associated lead gutters and outlets, replace missing slates and any rotten batten and felt membranes to the affected area with new to match existing.

**16/00999/LBC 20th July 2016 GRANT**

Miscellaneous remedial works due to dry rot outbreak

**16/01169/ADV 12th August 2016 GRANT**

Advertising on hoarding (retrospective)

**16/01428/LBC 4th October 2016 GRANT**

Removal and restoration of entrance gate piers and re-erection in original position

**16/01704/LBC 24th November 2016 GRANT**

Removal and restoration of veranda on front elevation

**16/01738/LBC 15th December 2016 GRANT**

Proposed Re roofing and misc internal restoration works

**17/00556/FUL 26th September 2017 PER**

Erection of external toilet block, side extension to provide new bar facilities, external seating area, 3 no. boiler flues and landscaping (part revisions to planning permission 15/02243/COU)

**17/00556/LBC 26th September 2017 GRANT**

Erection of plant room, new external toilet block, external seating and new bar extension, 3 no. boiler flues, landscaping and internal alterations (part revisions to planning permission 15/02243/LBC)

**18/00567/LBC 20th July 2018 GRANT**

Repositioning in basement of plant room and toilets on ground floor and repositioning of 3 no. flues to north west elevation (revision to listed building consent 17/00556/LBC)

**18/02503/FUL PCO**

Extension of external seating/dining area at rear of building including additional landscaping (part revision to 17/00556/FUL\_LBC)

**18/02503/LBC PCO**

Extension of external seating/dining area at rear of building including additional landscaping (part revision to 17/00556/FUL\_LBC)

### **3. POLICIES AND GUIDANCE**

#### **National Planning Policy Framework**

Section 2 Achieving sustainable development

Section 4 Decision-making

Section 6 Building a strong, competitive economy

Section 7 Ensuring the vitality of town centres

Section 8 Promoting healthy and safe communities

Section 11 Making effective use of land

Section 12 Achieving well-designed places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 16 Conserving and enhancing the historic environment

#### **Saved Local Plan Policies**

RT 2 Retail development in the core commercial area

RT 3 Non-A1 uses in primary shopping frontages

#### **Adopted Cheltenham Plan Policies**

D1 Design

SL1 Safe and Sustainable Living

#### **Adopted Joint Core Strategy Policies**

SD2 Retail and City / Town Centres

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality

INF1 Transport Network

INF5 Renewable Energy/Low Carbon Energy Development

#### **Supplementary Planning Guidance/Documents**

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

Cheltenham Climate Change (2022)

### **4. CONSULTATIONS**

#### **Historic England**

*5th October 2022* - Dear Ms White

T&CP (Development Management Procedure) (England) Order 2015  
& Planning (Listed Buildings & Conservation Areas) Regulations 1990

125 - 133 PROMENADE CHELTENHAM GLOUCESTERSHIRE

Application No. 22/01373/FUL

Thank you for your letter of 16 September 2022 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

#### **Historic England Advice**

##### **Significance of the designated heritage asset**

Located in the heart of historic Cheltenham, the semi-detached villas at no 125-133 are highly representative of blossoming of Cheltenham as a Regency Spa town, between the end of the 18th and the beginning of the 19th century. Built in the early 1830s and attributed

mainly to architect John Forbes, the paired villas sit within their own garden plot behind railings and gated walls.

They present a double pile plan and rise for two storeys plus attic over basement. Internally they retain much of their plasterwork and in some cases further original features such as staircases and fireplaces survive.

Externally, despite some differential treatment in the fenestration and architectural detailing of their elevations, they are unified in materiality and massing, and clearly exemplify the formal and elegant Regency development phase of the area.

The villas are located on The Promenade, one of the spinal axis of Montpelier Character Area, part of the Central Conservation Area. This is an area that, particularly where the properties in questions are located, is characterised by spaciousness, a loose urban grain around wide tree lined roads and formal green spaces, and medium and long vistas that open up towards larger public buildings or even surrounding countryside.

The properties subject to this application both contribute to and are enhanced by the distinctive character and appearance of Montpelier, which is to be considered part of their immediate setting.

Because of their more than special historic and architectural interest, they have been designated as Grade II\* listed buildings, which places them among the top 8% of the most important buildings in the country.

#### Impact of the Proposals

The application seeks consent for the retention of the 13 marquees installed in 2020 for a further period of two years.

The installation relates to Cheltenham Borough Council's permission to erect moveable structures in front of the above properties on an emergency and temporary basis as a response to the outbreak of Covid-19 pandemic 2020.

As the temporary permission has now come to an end, Historic England considers it would be beneficial for your Authority to assess the current proposals following established principles for such developments.

A useful stepped approach is given by our guidance on temporary structures produced in 2010 (<https://historicengland.org.uk/images-books/publications/guidance-ontemporary-structures-for-events/>).

This will allow an informed review of the current proposals, their impact and their benefits, and in particular it will highlight what further information might be required by your Authority to arrive to that comprehensive and balanced assessment (we refer you in particular to the checklist on chapters 6 and 8 of the above guidance).

Historic England considers that the structures do cause a degree of harm to the significance of the designated heritage assets.

Although physically detached from the buildings, their scale, design and density do have a detrimental visual impact on the Grade II\* villas, as they substantially screen off the buildings both in close up and long views.

The temporary structures do not respond to the architectural character of the buildings they serve. Instead, their tent like profile substantially obscure the ground floor and detract, with their apex, from the elegant prominence of the first floor. The continued infilling of the space

between the buildings and the walls or railings also compromises the distinctive spaciousness of the larger plots on which the villas sit.

These plots, larger compared to later developments in other sub-areas of the town, are an integral and distinctive part of these Regency villas, shaped by and illustrating the social trends of the day. Therefore, they inherently contribute to the significance of the assets and the erosion of their legibility is of concern.

#### Planning Policy Context

The National Planning Policy Framework (NPPF) sets out that when considering a proposed development, irrespective of the level harm, great weight should be given to heritage asset's conservation', with higher designated building commanding greater weight (Paragraph 199). The high designation of the villas would therefore warrant higher weight to be given to their conservation.

Paragraph 195 also sets out the need to avoid and minimise any conflict between the asset's conservation and any aspect of the proposal. And, should a proposal still prove harmful to the significance of the heritage asset, that harm should be clearly and robustly justified (Paragraph 200). In this case, the emergency nature of the existing installation has prevented the exploration of less harmful options. However, should the need for the temporary structures be evidenced, alternatives which address the above concerns on design, positioning and density should also be explored.

For instance, the space to the rear and side on no 133 is by the nature of its double aspect and use of solid boundaries naturally more screened off from public views and may therefore lends itself more to temporarily accommodating a small quantum of ancillary structures. In the absence of a meaningful assessment of alternatives, the harm brought about by the proposal cannot be considered justified.

#### Historic England's Position

The emergency nature of the original installation may have resulted in the adoption of a solution that, though functional, does not better reveal or enhance the form and architectural interest of the buildings' façade and plot. Instead it visually detracts from both, causing harm to the overall significance of the designated heritage assets. Should the continued need for temporary structures be evidenced, the visual harm currently derived from the existing structures should be avoided or minimised or if, still occurring, needs to be justified.

#### Recommendation

Historic England has concerns regarding the application on heritage grounds. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 195, 199 and 200 of the NPPF. In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

#### **Heritage And Conservation**

*5th October 2022 –*

The proposed works are for the retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period. The marquees are comprised of several interconnected structures with translucent plastic walls, white coloured soft plastic roof, timber entrances and bar structures located internally. The marquees extend around most of the external garden area of both the front, side and rear of 125, 127, 129, 131 and 133 Promenade.

The marquees are used as a temporary restaurant/bar. Notably the marquees were originally constructed without planning permission, with the knowledge of the local planning authority, when planning enforcement was relaxed to address social distancing concerns during the Covid 19 pandemic. These restrictions have now ended. The applicant was previously made aware of the temporary nature of this relaxation and constructed the marquees with this understanding. Notably various unauthorised temporary structures outside these properties pre-date the Covid pandemic.

It is important to consider the policy context in which the proposal needs to be determined. The cornerstone of heritage legislation is the Planning (Listed Building and Conservation Area) Act 1990. In determining this application it is important to note the statutory duty of local planning authorities under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

A core principle of the National Planning Policy Framework 2019 (NPPF) is heritage assets be conserved in a manner appropriate to their significance. Chapter 16, paragraphs 199-208 set out how potential impacts on heritage assets need to be considered. This assessment takes account of the relevant considerations in these paragraphs, including paragraph 197 of the NPPF, which requires the significance of heritage assets to be sustained and enhanced, with paragraph 199 requiring great weight be given to the asset's conservation.

The context of the development site is highly sensitive in heritage terms. The development proposal is within the curtilages of 125, 127, 129, 131 and 133 Promenade, grade II\* listed buildings. The site is prominently visible from the Promenade, Imperial Gardens and within the context a number of listed buildings whose setting is affected by the proposed works, including: 99-119 Promenade, a grade II listed terrace of regency townhouses; The Queen's Hotel, Imperial Square, a grade II\* listed Regency Hotel; Crimean War memorial, a grade II listed memorial; x2 pairs of gates pier and railing and pier adjacent to 131 Promenade which are each separately grade II listed; Queens Circus 1-6 Montpellier Avenue, a grade II listed Regency shop terrace; 14-34 Imperial Square, a grade II\* listed terrace of Regency townhouses; and Cheltenham Town Hall, a grade II listed Edwardian municipal building.

The site is also located within the Central Conservation Area: Montpellier Character Area. The area is noted within the Central Conservation Area Montpellier Character Area Appraisal and Management Plan adopted 2007 (the Appraisal) for predominantly containing Regency buildings, with the presence of many complete and uniform formal terraces, large villas set within spacious grounds. It is also noted within the Appraisal for containing three important areas of public open space, which includes Imperial Gardens. These formal gardens are stated as greatly enhancing the character and appearance of the Montpellier, and the setting of surrounding buildings. The Appraisal also notes the Promenade, which contains the town centre's southern spine and one of the town's most visually striking streets.

Regarding the justification for the proposed works in heritage terms, it is considered the supporting information within the application does not fully recognise the significance of the site and its context and the impact the development proposal has on them. It is also considered unclear from the submitted application why the continued need for a temporary orangery structure is required given the lifting of Covid restrictions and why this use cannot be accommodated within the existing grade II\* listed buildings. It is considered this can be used as a reason for refusal.

The proposal is considered to fail to meet the requirement of paragraph 194 of the NPPF, which requires an applicant to describe the significance of any heritage assets affected by a development proposal, including any contribution made by their setting, with the level of detail proportionate to the assets' importance and sufficient to understand the potential impact of the proposal on their significance. It also fails to address paragraph 200 of the NPPF, which requires any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), to require clear and convincing justification.

In terms of the design of the marquee structures, the cumulative impact of their temporary appearance, bulky scale and massing, exacerbated by their inappropriate materials, result in a development proposal that is prominent, intrusive and obscures views of the elevations of grade II\* listed 125, 127, 129, 131 and 133 Promenade, significantly undermining their setting, to the detriment of their special interest. Because of this impact the marquees also detract from views along the Promenade, views within Imperial Gardens, views along Imperial Square, views north from Imperial Gardens which affects the setting of the numerous listed buildings located here (listed above) and the Central Conservation Area: Montpellier Character Area. The proposed marquee structures therefore harm the immediate and wider setting of the affected listed buildings and the character and appearance of the conservation area. Given the highly sensitive nature and its context in heritage terms, this impact is considered unacceptable even on a temporary basis and should be removed without delay to address the harm it is causing.

It is important to note outside the context of the social distancing required by the Covid pandemic this or any similar such proposal would be have been supported because of its harmful impact on the setting of heritage assets. A concern is also raised accepting this impact on a temporary basis would set an unwelcome precedent to allow similar such harmful development within the setting of listed buildings elsewhere.

The impact of the temporary proposed works on the heritage assets is considered to neither sustain or enhance their special interest as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight be given to the asset's conservation, which includes setting. The temporary retention of the existing marquees and associated structures harm the heritage assets, considered to be less than substantial harm for the purposes of the NPPF. The supporting information within the application demonstrates a poor understanding of the affected heritage assets and offers no meaningful justification for the proposed works in heritage terms. The development proposal does not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the NPPF requires this harm be weighed against the public benefits of the proposal. It is important this exercise be undertaken as a separate exercise to the general planning balance as it is distinct from it.



In relation to application 22/01373/FUL for the retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period, there are no objections from Environmental Health for the retention of these structures.

The rationale for this is the limited number of recorded complaints we hold on this address and the period of time which has passed since a complaint was received by this department.

### **Building Control**

25th August 2022 - This application may require Building Regulations approval. Please contact Cheltenham and Tewkesbury Building Control on 01242 264321 for further information.

### **Cheltenham Civic Society**

22nd September 2022 - 3 22/01373/FUL | Retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period | 129 - 133 Promenade Cheltenham Gloucestershire

### **OBJECT**

This very handsome group of buildings are grade II\* listed. The tents are already starting to look tatty and detract from their setting.

Despite the obvious economic benefits of these temporary structures, they were only permitted as a special measure to address the Covid crisis, and not as a long term solution. The applicants should comply with the class BB regulations which permit temporary structures for 120 days.

## **5. PUBLICITY AND REPRESENTATIONS**

Number of letters sent	<b>23</b>
Total comments received	<b>10</b>
Number of objections	<b>10</b>
Number of supporting	<b>0</b>
General comment	<b>0</b>

**5.1** The application was publicised by way of letters sent to 23 neighbouring properties, a site notice displayed within the vicinity of the site and an advert placed in the Gloucestershire Echo. A total of 10 representations were received following the publicity. The comments/concerns raised, in summary, are as follows:

- Marquees only allowed in response to Covid-19 lockdown requirements
- Elegant and attractive listed building frontage obscured by canvas, large ugly tents and the appearance of a camp site
- Harmful impact on the character and aesthetic value of iconic grade II\* listed Regency terrace and the conservation area/Montpellier Character Area
- Frontages and elevations of listed buildings obscured and impact on important views/vistas within the Conservation Area
- Proposals fail to enhance the significance of heritage assets - retention of marquees beyond pandemic will not protect the buildings' heritage
- Marquees more visible after leaf fall in autumn

- No longer a pandemic requirement to eat outdoors as opposed to inside the hotel
- Proposals have allowed expansion of business/covers and do not provide an alternative or a continuation at a lower than pre-covid level
- Internal restaurant now used as a Japanese restaurant
- Previous parasol structures allowed adequate shading for customers
- Increase in noise and disturbance affecting neighbouring properties and area in general
- High energy costs in heating inefficient tent structures during winter periods
- Further temporary extension approval will lead to a permanent extension
- Proposals in conflict with Historic England advice on temporary structures
- Proposals not in the public interests of Cheltenham as a whole
- Area already well served by bars and restaurants

## **6. OFFICER COMMENTS**

### **6.1 Determining Issues**

**6.2** The key matters for consideration are as follows;

- The impact on designated heritage assets (subject grade II\* listed buildings, other nearby listed buildings and Central Conservation Area)
- The public benefits and wider economic benefits of retaining the structures
- The impact on amenities of neighbouring properties, in terms of noise and disturbance
- Sustainable development and energy costs
- Impact on trees.

### **6.3 The site and its context/Planning History**

**6.4** The application site comprises of 3no grade II\* listed Regency villas which are located prominently on the north side of the Promenade, one of the spinal axis of the Montpellier Character Area of Cheltenham's Central Conservation Area. The buildings form the end of the Promenade (Nos 125-133 Promenade) and are part of an important group of large detached, former residential properties, now almost entirely in commercial use. These buildings are of considerable aesthetic and historic significance and there are long distance and important views of three elevations of No 133 (Clarence House) and the front and rear of 125-131 from Queen's Circus, Montpellier Street, Montpellier Gardens and the Promenade.

- 6.5** Surrounding development is a mix of residential, commercial, restaurant/bar/cafe uses; the site being located within the Core Commercial area of Cheltenham's town centre.
- 6.6** Montpellier Street runs along the rear boundary of the site, beyond which is the Cheltenham Ladies College. There are a number of other key grade II and II\* listed buildings and listed terraces within the vicinity of the site, notably the Queens Hotel, properties surrounding Imperial Gardens, the Town Hall and properties surrounding Montpellier Gardens. A number of large, mature street trees are located in front of all three buildings.
- 6.7** Clarence House (133) is a substantial two storey detached villa with two lower side wings and the only detached villa in this location sitting alongside the three pairs of equally imposing, semi-detached Regency villas. The gate and boundary piers to Clarence House are listed separately as grade II. Planning permission was granted in 2015 for the change of use from offices (B1) to hotel accommodation forming part of the existing hotel facilities at 129-131 Promenade (ref 15/02156/COU).
- 6.8** Nos 129-131 were originally a semi-detached pair of Villas and were substantially refurbished in 2016. As part of these works, the front façade of the building was altered to appear as a single detached building. Nos 125-127 Promenade is a semi-detached pair of villas; planning permission granted in 2017 for the change of use of the property from offices to hotel accommodation in associated with Nos 129-133 Promenade. (17/01438/COU & LBC)
- 6.9** The application site (Nos 125-133) is entirely in use as a hotel with bar and restaurant facilities; 131 being the original hotel and providing the guest reception and main bar and restaurant facilities of the hotel. Part of the basement of 129-131 and the external areas of 133 are operated as a bar (Gin and Juice).
- 6.10** As outlined in the introduction, marquee structures were first erected outside 131 and 133 Promenade in June 2020; shortly after the Council adopted its relaxation of enforcement measures in relation to temporary structures. In October 2020, during the second wave of COVID-19, further temporary structures were erected at 125, 127, 129, 131 and 133 Promenade. A total of 13 temporary marquees/canvas structures have been erected within both the front and side curtilages of the three buildings). They are all of a similar 'hat' type appearance and broadly similar in height and size; albeit some of the canopies/structures at the side and rear of No 133 covering the external bar/drinking areas have a larger footprint and roof span.
- 6.11** The marquees were erected by the applicant in full knowledge of the temporary nature of the Council's planning enforcement relaxation measures. It should be pointed out that, prior to the COVID-19 pandemic, there were already several unauthorised 'temporary' structures outside of Nos 129-133.
- 6.12** In addition, the outside areas of No 133 were being used for external dining/catering purposes and subject to planning and listed building consent applications, submitted in 2018 (ref 18/02503/FUL&LBC). These applications remain undetermined, pending the submission of revised details from the applicant. Given the Council's enforcement relaxation measures in force from June 2020, officers did not seek to progress these applications during the pandemic and are now minded to await the outcome of the current application before pursuing matters further. Furthermore, the use of the side and rear curtilages of No 133 for external dining/drinking purposes has intensified noticeably since 2019, when these applications were first submitted. The use has since extended to the side of 133 and the overall number of covers increased at the rear. As mentioned previously, the external areas of No 133 are now used entirely in association with the Gin

and Juice Bar which also occupies a large part of the basement of 131; this basement area once providing the largest of the hotel's restaurant facilities.

- 6.13** It should also be noted that prior to June 2020, the area at the front of Nos 125-127 was not being used for any catering purposes and there was no planning consent in place to do so.
- 6.14** The marquees fronting the promenade are entirely enclosed and include timber doors, and connecting doors leading to the stairs and front entrances of 129-131 and 125-127 Promenade. The marquee/canopy structures at the side and rear of 133 are predominantly enclosed, either by canvas or existing brick boundary walls. The applicant states in the supporting information that the marquees are regularly inspected and are anchored by weights.
- 6.15** The marquees fronting the Promenade are heated by way of 4no. fan heaters which are powered by 4 diesel generators located just outside of the marquees, plus several internally mounted electric heaters. The generators are thermostatically controlled, meaning that they switch off automatically when the temperature reaches a certain point. Officers have been informed that the generators do not run during the night. The remaining marquee/canopy structures are similarly heated by diesel generators.
- 6.16** During the site visit, the applicant confirmed that the business has an on-site 800 persons capacity at any one time (including all staff and registered hotel guests). The internal and external areas provide approximately 525 covers in total (excluding standing customers where permissible); 140 covers in the marquees in front of 125-131 Promenade, 45 in the Japanese restaurant, 80 covers in the basement Gin and Juice Bar and the remainder under cover externally.

#### **6.17 Heritage Impacts**

- 6.18** As stated previously, the application site comprises of grade II\* listed buildings, located centrally and prominently within the conservation area. These buildings are of considerable aesthetic and historic significance and there are long distance and important views of the three elevations of No 133 (Clarence House) and the front and rear of 125-131 from Queen's Circus, Montpellier Street, Montpellier Gardens and the Promenade. Given the highly sensitive nature of the site's location, the potential impact of the proposals on the significance of designated heritage assets must be considered very carefully.
- 6.19** Policy SD8 of the Joint Core Strategy requires development to make a positive contribution to local character and distinctiveness, having regard to the valued elements of the historic environment. It states how '*Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance*'.
- 6.20** Section 16 of the NPPF sets out the importance of conserving and enhancing heritage assets. Paragraph 192 of the NPPF advises that in determining planning applications, local planning authorities should take into account:
- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation*
  - *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
  - *the desirability of new development making a positive contribution to local character and distinctiveness.*

**6.21** Paragraph 199 of the NPPF states:

*“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”*

**6.22** Paragraph 200 of the NPPF states:

*“Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.”*

**6.23** The Council’s Conservation Officer and Historic England have considered the submitted Heritage Appraisal and applicant’s justification for the proposals. Both raise significant concerns about the proposed retention of the marquees. The Civic Society has also raised an objection to the proposals. Their comments are set out in full in section 4 above.

**6.24** Conservation Officer

**6.25** In summary, the Council’s Conservation Officer (CO) identifies that the site is prominently visible from the Promenade, Imperial Gardens and within the context a number of listed buildings whose setting is affected by the proposed works. The CO considers that the justification for the proposed works in heritage terms does not fully recognise the significance of the site and its context and the impact of the proposals on these heritage assets. The continued need for the structures following the removal Covid-19 restrictions is also considered unclear.

**6.26** Concerns are raised regarding the cumulative impact of the temporary appearance, bulky scale and massing of the marquees structures, exacerbated by their inappropriate materials. The CO considers the marquee development prominent, intrusive and obscures views of the elevations of grade II\* listed 125, 127, 129, 131 and 133 Promenade, significantly undermining their setting, to the detriment of their special interest. The marquees also detract from views along the Promenade, views within Imperial Gardens, views along Imperial Square, views north from Imperial Gardens which affects the setting of the numerous other listed buildings and the Central Conservation Area: Montpellier Character Area. The proposed marquee structures therefore harm the immediate and wider setting of the affected listed buildings and the character and appearance of the conservation area. Given the highly sensitive nature and its context in heritage terms, this impact is considered unacceptable by the CO even on a temporary basis.

**6.27** The impact of the temporary proposed works on the heritage assets is considered to neither sustain or enhance their special interest as required by Paragraph 197 of the NPPF and does not meet the requirement of paragraph 199 of the NPPF, which requires great weight be given to the asset’s conservation, which includes setting. The identified harm to the heritage assets is considered to be less than substantial harm for the purposes of the NPPF. terms. The proposals therefore fail to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

**6.28** Historic England

**6.29** Historic England (HE) similarly point out the sensitive location and context of the site and considers that the proposals do cause a degree of harm to the significance of the designated heritage assets. Although physically detached from the buildings, the scale, design and density of the temporary structures are considered to have a detrimental visual

impact on the Grade II\* villas, as they substantially screen off the buildings both in close up and long views; their tent like appearance substantially obscuring the ground and first floors. Neither do they respond to the architectural character of the buildings they serve and the infilling of the space between the buildings and railings compromises the spaciousness of the larger plots on which the villas sit.

**6.30** In conclusion, HE considers that this temporary solution to the pandemic, though functional, visually detracts from the architectural interest of the building's facade and plot, causing harm to the overall significance of the designated heritage assets. If there is evidence of a continued need for the temporary marquee structures, HE advise that any visual harm will need to be avoided or minimised. Should there be continued harm, this will need to be justified.

**6.31** Officers have also had regard to Historic England's published general advice on the erection of temporary structures.

### **6.32 Public Benefits**

**6.33** As discussed above, the proposed development is considered to result in harm to the significance of these important grade II\* listed buildings, other listed buildings within the vicinity of the site and the wider conservation area. The conservation officer considers the level of harm to be less than substantial.

**6.34** Paragraph 202 of the NPPF states:

*"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal..."*

**6.35** There is no definition of public benefits within the NPPF. However, the nPPG offers further guidance on this matter and refers to public benefits as anything that delivers the economic, social or environmental objectives of sustainable development described in paragraph 8 of the NPPF. The nPPG makes it clear that the public benefits must flow from the development and must be of a nature or scale that would benefit the public at large.

**6.36** The applicant has submitted supporting information which sets out the below justification for the proposed further temporary retention of the marquee structures. Any economic, social and environmental benefits identified as part of the applicant's justification must therefore be considered very carefully.

### **6.37 Applicant's Justification**

**6.38** The applicants supporting information sets out several reasons for needing to retain the marquees for a further temporary period. Firstly, they '*create a suitable outdoor dining experience over the cooler and less clement months of the year, as well as providing much needed shade during the increasingly warmer summer months*'.

**6.39** Secondly, following recent changes to permitted development rights, pubs and restaurants occupying listed buildings are able to erect a moveable structure outside of premises for 120 days in a 12 month period, subject to the prior approval of the local planning authority. The applicant considers this to be an important fall-back position and a material consideration; this application seeking to simply extend the period already allowed via permitted development.

**6.40** The applicant states that the external catering facilities have enabled the business to continue trading over last two years at a '*reasonable level... to ensure a degree of viability*', but not to the same pre-COVID levels.

**6.41** The applicant also points to increasing post pandemic customer expectations on being able to use outdoor space. The applicant therefore needs to maximise the use of its outdoor spaces for both staff and customers, in as safe a way as possible,. In addition, the structures have helped the business to adapt *to challenging and evolving social and economic circumstances* whilst also benefitting the wider, more economic activity of Cheltenham. As such, the applicant considers the proposals will complement the temporary structures referred to in the notifications made to the Council in June and October 2020 and will allow time for the applicant to create a *more sensitive and bespoke* long-term design solution to outdoor dining at 131.

**6.42** The applicant also cites the apparent lack of complaints received by the Council in relation to the design, appearance and impact of the marquees on heritage assets, as further justification for their retention.

#### **6.43 Economic and Social Benefits**

**6.44** It is quite clear that the hotel business has been able to trade successfully and remain viable during the post lockdown periods of the COVID-19 pandemic. It is also evident, based on the number of marquees installed to the front and side of all three buildings, that there has likely been an increase in overall covers for the both the restaurant and bar elements. Without clear evidence presented by the applicant to the contrary, external dining and drinking capacity was most likely lower pre-pandemic; given that the marquee structures now extend across all frontages.

**6.45** In light of the above, the retention of the 13 marquees would maintain this level of trade for 131 Promenade, contributing (but not essential) to the overall viability and vitality and retail/leisure and accommodation offer within the town centre. As such, the proposals provide some economic and social benefits to the wider public and the town centre economy.

**6.46** It is also worth pointing out that the marquees are largely, fully enclosed and heated during the autumn and winter months. As such, the applicants need to provide a 'safer' environment for its staff and customers is considered somewhat counter-intuitive. In essence, officers question whether a suitable, all year round, outdoor environment for the consumption of food and drink is actually provided. Whilst there may be an element of natural ventilation during the winter months, these are not all outdoor spaces in the traditional sense; rather they offer additional seating and cover outside of the hotel buildings.

#### **6.47 Environmental Benefits**

**6.48** Officers consider that there is no evidence of the proposals offering any environmental benefits. The identified harmful impact of the proposals on the significance of designated heritage assets is discussed above.

**6.49** The applicant has not addressed climate change and the guidance set out in the relevant SPD. No alternative solution to the use of diesel fuelled generators has been provided.

#### **6.50 Impact on heritage assets versus public benefit test**

**6.51** As set out and discussed above, harm to the significance of designated heritage assets has been identified. The identified harm is considered to be *less than substantial* and will therefore need to be weighed against the public benefits of the proposals, as required by paragraph 202 of the NPPF.

**6.52** In summary and as set out above, there are limited public benefits associated with the retention of the marquees. Furthermore, these benefits existed pre-COVID/prior to the installation of the marquees and it is likely that the additional marquees and increase in

external covers are now allowing the business to trade more successfully. If this is the case, it also does not amount to a public benefit.

- 6.53** The town centre offers a wide range of alternative catering facilities and hotel accommodation. Put simply, the retention of the 13 marquees for a further two years is not considered to be essential to maintain the viability/vitality of the town centre economy.
- 6.54** Neither do the proposals constitute enabling development that would bring about the public benefits necessary to justify the retention of the marquees.
- 6.55** Whilst officers acknowledge fully that there are some social and economic benefits associated with the retention of the marquees, these benefits are not considered to outweigh the identified harm to the significance (including setting) of designated heritage assets. Neither does the temporary nature of the proposals alleviate the concerns or change the opinion of officers.
- 6.56 Impact on neighbouring property**
- 6.57** Section 12 of the NPPF requires development to create places with a high standard of amenity for existing and future users. Policy SL1 of the Cheltenham Plan advises that development will only be permitted where it will not cause unacceptable harm to the amenity of adjoining land users or the locality. In assessing impact on amenity, the Council will take account of matters including, but not limited to, loss of privacy, loss of light and outlook, noise and disturbance. The policy is consistent with adopted JCS policy SD14.
- 6.58** Due to the location and the number and size of the marquees, there is potential for the proposals to impact upon the amenities of neighbouring land users, in terms of noise and disturbance and possibly light spill. In addition to the use of the marquees as an external dining area, the noise impacts of the diesel fuelled generators used to heat the marquees must also be considered. However, the marquees are not considered to result in any unacceptable loss of light or overbearing impact on any neighbouring land user.
- 6.59** Whilst the predominant use of surrounding development is commercial (retail, restaurant, bar, café uses), there are many dwellings located on Imperial Square.
- 6.60** The Council's Environmental Health team (EHO) was consulted on the proposals. No objection is raised and the reasons for reaching this recommendation is the limited number of recorded complaints held for this address and the length of time since a complaint was last received by the EHO.
- 6.61** Given the above EHO comments and the distance of the application site from the nearest residential properties, officers consider that the retention of the marquees for a further two year period should not result in an unacceptable impact on the amenities of neighbouring land users. However, any future application for the permanent retention of the marquees or proposals for an alternative permanent solution, would require a more detailed consideration of potential noise impacts.
- 6.62 Access and highway issues**
- 6.63** The Highway Authority was not consulted and, despite a potential increase in the use of the premises over the last couple of years, there are no relevant highway and access matters to consider as part of this application. This is an existing commercial operation within the town centre and, in the main, the proposals relate to on-site activity associated with the authorised use of the premises as a hotel with restaurant and bar. In this respect, no material change of use has occurred.
- 6.64 Sustainability**



**6.65** In June 2022, Cheltenham's Climate Change SDP was adopted which identifies and provides guidance for how development can contribute to the aims of sustainability to achieve net zero carbon by 2030 and how applicants can successfully integrate a best-practice approach towards climate and biodiversity in their development proposals. The SPD is now a material consideration in the determination of applications.

**6.66** Given the temporary nature of the proposals, officers acknowledge that there is perhaps little opportunity to include specific low carbon technologies within the proposed development. The applicant has not provided a sustainability statement or offered any information on energy/climate change/sustainability.

**6.67** Notably, during the autumn, winter and early spring months the marquees and canopy structures are heated during the day by a number of diesel powered generators and internally mounted electric heaters.

**6.68** The proposals are therefore in conflict with the objectives of the SPD.

### **6.69 Other considerations**

#### **6.70 Trees**

**6.71** There a number of large, mature Plane trees located adjacent to and in close proximity of the site. The canopies of some of the trees overhang the marquees. These trees contribute to one of the finest avenues of trees within Cheltenham.

**6.72** The proposals have been discussed with the Council's Tree Officer who raises no concerns. There is no evidence that the marquees under the large plane trees are being damaged by or are damaging the street trees. The proposals are not therefore considered to result in any harmful impact on the existing trees and therefore accord with Cheltenham Plan Policy G12.

**6.73** Any proposal for the permanent retention of the marquees or an alternative design solution, would require further consideration of the long term impacts on existing trees.

#### **6.74 Public Sector Equalities Duty (PSED)**

**6.75** As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to this duty. There are three main aims:

Removing or minimising disadvantages suffered by people due to their protected characteristics;

Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and

Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

**6.76** Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have "regard to" and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

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

## **7. CONCLUSION/PLANNING BALANCE AND RECOMMENDATION**

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 NPPF paragraph 11 sets out a '*presumption in favour of sustainable development*' which in decision making means '*approving development proposals which accord with an up-to-date development plan*'.
- 7.3 Harm to the significance of designated heritage assets has been identified. The identified harm has been weighed against the public benefits of the proposals, as required by paragraph 202 of the NPPF. Whilst officers acknowledge that there are some social and economic benefits associated with the retention of the marquees, these benefits are not considered to outweigh the identified harm to the significance of the heritage assets.
- 7.4 The information and reasons set out within the applicant's covering letter have been considered very carefully but are not considered to provide clear and sufficient justification for the proposed development or outweigh the identified harm to designated heritage assets.
- 7.5 Officers note that the application is seeking consent for a further temporary 2 year period to allow time for the applicant to consider an alternative permanent solution. As such, the identified harm could be considered as temporary. However, the applicant was aware of the temporary status of the Council's relaxation of enforcement in relation to temporary structures during the pandemic. To date, no alternative (permanent) solutions or scheme have been presented to the Council or discussed informally with officers; this forming part of the applicant's justification for the retention of the marquees.
- 7.6 Furthermore, there is evidence to suggest that the marquees have resulted in an increase in overall covers/dining capacity at 131 and it is therefore likely that the retention of the marquees will allow the business to continue to trade more successfully in comparison with pre-COVID levels. Officers consider therefore, that the benefits associated with the existing marquees could be achieved without the need for their retention, whether on a temporary or permanent basis.
- 7.7 In light of the above and having also considered the extent to which the proposals amount to sustainable development, the identified harm to heritage assets outweighs the public benefits and there are no other benefits or reasons that would demonstrably outweigh the identified adverse impacts of the proposals.
- 7.8 The proposed retention of the marquee structures for a further two years is therefore considered to be unacceptable and conflicts with relevant local and national planning policy and guidance.
- 7.9 The recommendation is to therefore refuse the application for the following reasons.

## **8. REFUSAL REASONS**

- 1 Nos 125, 127, 129, 131 and 133 Promenade are grade II\* listed Regency villas located prominently within Cheltenham's Central Conservation Area (Montpellier Character Area). As required by paragraph 197 of the NPPF, the impact of the proposed temporary retention of existing temporary marquees on the designated heritage assets, by virtue of their location, number, form and design, scale and prominence, is considered to neither sustain or enhance the buildings' special interest and would harm the setting of nearby listed buildings and the character and appearance of the conservation area. Neither do the proposals meet the requirements of paragraph 199 of the NPPF, whereby great weight should be given to the assets' conservation, which includes setting.

The identified harm to the heritage assets is considered to be less than substantial harm for the purposes of paragraph 202 of the NPPF. The public benefits of the proposals are not considered to outweigh the identified harm to the heritage assets. In addition, the supporting information within the application demonstrates a poor understanding of the affected heritage assets and offers no clear or convincing justification for the proposed works in heritage terms. Therefore, the development proposals do not to comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policies SD4 and SD8 of the Joint Core Strategy 2017 and Policy D1 of the Cheltenham Plan (2020).

## **INFORMATIVES**

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the authority cannot provide a solution that will overcome the identified harm to designated heritage assets.

As a consequence, the proposal cannot be considered to be sustainable development and therefore the authority had no option but to refuse planning permission.