

APPLICATION NO: 22/00728/LBC		OFFICER: Mr Nikita Hooper	
DATE REGISTERED: 17th August 2022		DATE OF EXPIRY: 12th October 2022	
DATE VALIDATED: 17th August 2022		DATE OF SITE VISIT: 6 th September 2022	
WARD: All Saints		PARISH:	
APPLICANT:	Vineyard Practive		
AGENT:	SF Planning Limited		
LOCATION:	The Vineyard Berkeley Street Cheltenham		
PROPOSAL:	Repair works to parapet wall (regularisation)		

RECOMMENDATION: Refuse



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The subject building is located on the western side of Berkeley Street.
- 1.2 "Repair works to parapet wall (regularisation)".
- 1.3 For clarity, the work has been undertaken without listed building consent. The application form at 'Description of proposed works' indicates that it was started on 2 March 2020 and completed on 9 March 2020. The Planning Enforcement Team is aware of the work.
- 1.4 The application is before committee at the request of Councillor Clark, as the Councillor believes that the applicant was acting in good faith to address urgent works.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Airport Safeguarding over 45m
Conservation Area
Core Commercial Area
Listed Buildings Grade 2
Principal Urban Area
Smoke Control Order

Relevant Planning History:

01/01059/CACN 14th September 2001 NOOBJ

Crown lift Ash tree by 4 to 5 metres

91/01019/PF 21st November 1991 PER

Alterations To Forecourt To Provide Enlarged Parking Area

91/01023/LA 21st November 1991 PER

Alterations To Forecourt To Provide Enlarged Parking Area

92/00020/PC 27th February 1992 PER

Change Of Use Of Ground Floor For The Purposes Of An Osteopathic Practice

92/00023/LA 27th February 1992 PER

Subdivision Of One Ground Floor Room To Create Surgery

93/00136/PF 27th May 1993 PER

Two Self Contained Flats To Basement

93/00139/LA 27th May 1993 PER

Two Self Contained Flats To Basement

93/00614/PC 29th July 1993 PER

Change Of Use Of Rear Flat To Treatment Rooms Etc.

93/00623/LA 29th July 1993 PER

Construction Of Partition In Front Ground Floor Room

07/00598/CACN 5th June 2007 NOOBJ

Sycamore - fell and replce with a Laburnum

12/00311/CACN 26th March 2012 NOOBJ

1) Ash tree-fell. 2) Purple leaved plum-crown lift to 2.5 metres. 3) Liquidambar-crown lift to 2 metres 4) Whitebeam-crown lift to 2.5 metres.

5) Sycamore-crown lift to 12 metres

13/00463/COU 19th June 2013 PER

Change of use of ground floor rear flat to chiropractic clinic
13/00463/LBC 19th June 2013 GRANT
Change of use of ground floor rear flat to chiropractic clinic
17/00141/CACN 17th March 2017 NOOBJ
Sycamore - fell

3. POLICIES AND GUIDANCE

National Planning Policy Framework

Section 16 Conserving and enhancing the historic environment

Saved Local Plan Policies

Adopted Cheltenham Plan Policies

Adopted Joint Core Strategy Policies

SD8 Historic Environment

Supplementary Planning Guidance/Documents

Other

4. CONSULTATIONS

Building Control

18th August 2022 - No comment

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	24
Total comments received	0
Number of objections	0
Number of supporting	0
General comment	0

5.1 A site notice was displayed and the application listed in the Gloucestershire Echo.

6. OFFICER COMMENTS

- 6.1 Section 7 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Listed Buildings Act 1990) states "Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised."
- 6.2 Section 16 (2) of the Listed Buildings Act 1990 requires the local planning authority when considering whether to grant listed building consent to "have special regard to the desirability of preserving the building...or any features of special architectural or historic interest which it possesses."

- 6.3** Paragraph 189 of the National Planning Policy Framework (MHCLG: 2021) (the framework) states that “Heritage assets...are an irreplaceable resource, and should be conserved in a manner appropriate to their significance”.
- 6.4** Paragraph 197 of the framework states that “In determining applications, local planning authorities should take account of...the desirability of sustaining and enhancing the significance of heritage assets”.
- 6.5** Policy SD8 (Historic Environment) of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2013 (adopted December 2017) (JCS) states that “Designated...heritage assets and their settings will be conserved and enhanced as appropriate to their significance.”
- 6.6** The building is included on the National Heritage List for England at Grade II. First listed on 12 March 1955. List entry number: 1386762.
- 6.7** The subject building (The Vineyard) was formerly known as Berkeley Villa and it was used as preparatory school for boys from 1832 to 1867.
- 6.8** The significance of the building lies principally in its architectural value as an example of polite domestic architecture of the first half of the nineteenth century. The use of historically traditional building materials such as render, brick and stone adds to the architectural value.
- 6.9** With reference to drawing 2202 04 (proposed section), the subject lead-work which has been installed completely covers the parapet (or blocking course) and the upper face of the cornice.
- 6.10** The principal (front) elevation (south-east) of the subject building is of stucco over brick, with two full height bowed bays, architectural features include a band at first floor level, frieze and cornice, with a stone parapet (blocking course) (now covered in lead) to the top. Most of these elements continue on the side elevations (north-east and south-west).
- 6.11** A fundamental component of the architecture of the period is an elegant uniformity, which includes materials and colours, as can be seen in photos of the building prior to the work being undertaken. The lead-work has disrupted this, detracting from the appearance and therefore the architectural value of the building.
- 6.12** The framework states that “Any harm to, or loss of, the significance of a designated heritage asset (from its alteration...), should require clear and convincing justification” (para. 200).
- 6.13** The application provides very limited justification for the work via the covering letter/heritage statement (the statement). It refers to the roof being in a “considerable state of disrepair with many of the rear surfaces flaking badly...the roof was very badly leaking...and urgent repair work was needed at short notice to protect the internal fabric from further damage...The stonework of the parapet was too fragile to have leadwork rebated into the rear face of the parapet” (p. 4).
- 6.14** Any perceived urgent necessity is not supported by any evidence. It is unclear as to why the stonework could not have been suitably repaired and/or replaced and there is no comment on what temporary mitigation works were considered and why they were discounted. The application clearly fails to meet the requirements of paragraph 200 of the framework.
- 6.15** There is of course no objection to the prevention of water ingress. However, the introduction of a non-porous material that wholly covers the parapet will not allow the natural material to ‘breathe’ and it is therefore likely to exacerbate any issues with damp,

particularly if the fragile stonework was not suitably repaired prior to the application of the lead. Though lead was a material that was used in the construction of buildings of the period, it was generally limited to flashings, valley gutters and as a covering to verandahs and canopy roofs. It was not historically used to cover stone work as the practice was to allow the natural material to 'breathe': to absorb water and then allow it to escape externally through evaporation. If the parapet was failing then repair with suitable traditional materials would ensure that it functioned correctly.

- 6.16** Whilst each application is considered on its own merits, the Local Planning Authority (the LPA) refused application 19/01781/LBC on 4 December 2019. The scheme related to a polite nineteenth century Grade II listed building and the proposed covering of the stone coping of a parapet with lead. The officer stated, "The use of non-breathable materials is very likely to exacerbate any issues of damp to the detriment of the physical integrity of the building detracting from its architectural/aesthetic value to the detriment of the significance of the building" (para. 6.16, Delegated Officer Report).
- 6.17** The decision of the LPA was appealed and the Inspector found that "The proposed works could lead to harm to the fabric, continuity, integrity and thereby the significance of the listed building...the limitations of the information provided fails to give necessary justification for the works or assurance that they would be either effective or not in themselves harmful" (paras. 10 and 11, Appeal Decision, 12 June 2020). The appeal was dismissed.
- 6.18** The principle of consistency in decision making is explored in the judgement in the case of *DLA Delivery Ltd v Baroness Cumberlege of Newick & Anor (Rev 1) [2018] EWCA Civ 1305 (08 June 2018)*.
- 6.19** The work has detracted from the architectural value of the building in terms of its appearance and is very likely to harm to its fabric. No substantiated justification for this approach over any other has been offered, and there is no indication that the lead-works as carried out would be effective, or indeed not harmful.
- 6.20** The framework at paragraph 199 requires the decision maker(s), when considering the impact of a proposed development on the significance of a designated heritage asset, to give great weight to the conservation of the asset; and the more important the asset, the greater the weight should be. This is irrespective of whether any potential harm equates to substantial harm, total loss or less than substantial harm to its significance.
- 6.21** Paragraph 202 of the framework states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, that this harm should be weighed against the public benefits of the proposal.
- 6.22** Planning Practice Guidance (Historic environment) published by Central Government (23 July 2019) states, "Public benefits should...be of a nature or scale to be of benefit to the public at large and should not just be a private benefit" (paragraph: 020, reference ID: 18a-020-20190723).
- 6.23** It is considered that the work is detrimental to the significance of the listed building; the degree of harm is considered to be less than substantial. When balancing the harm against the public benefits of the proposal the framework requires great weight to be given to the conservation of the heritage assets. It is not apparent what public benefit the scheme provides and the application appears to be silent on this issue. Given this, the greater weight is clearly with the conservation of the designated heritage asset in the balancing exercise.

7. Public Sector Equalities Duty (PSED)

7.1 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.

7.2 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 application the planning authority has taken into consideration the requirements of the PSED.

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

8 CONCLUSION AND RECOMMENDATION

8.1 The work has detracted from the significance of the listed building through the application of an inappropriate material.

8.2 The scheme is contrary to Section 16 (2) the Listed Buildings Act 1990, section 16 (conserving and enhancing the historic environment) of the framework and Policy SD8 of the JCS. Therefore, it is recommended that the application is refused.

9. REFUSAL REASONS

- 1 The work has led to less than substantial harm to the significance of the listed building by detracting from its architectural value through the use of an inappropriate material. This harm is not outweighed by any substantiated public benefit.

The scheme is contrary to Section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the National Planning Policy Framework (2018) and Policy SD8 (Historic Environment) of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2013 (adopted December 2017).