

<b>APPLICATION NO: 24/01762/FUL &amp; 24/01763/FUL</b>		<b>OFFICER: Mrs Lucy White</b>
<b>DATE REGISTERED: 8th November 2024</b>		<b>DATE OF EXPIRY: 3rd January 2025</b>
<b>DATE VALIDATED: 8th November 2024</b>		<b>DATE OF SITE VISIT:</b>
<b>WARD: Lansdown</b>		<b>PARISH:</b>
<b>APPLICANT:</b>	The Lucky Onion LLP	
<b>AGENT:</b>	SF Planning Limited	
<b>LOCATION:</b>	129 - 133 Promenade Cheltenham Gloucestershire	
<b>PROPOSAL:</b>	<p><u>24/01762/FUL</u> Erection of glazed structures within the front curtilages of Nos 125-127, 129-131 and 133 Promenade to provide external restaurant, dining and drinking facilities associated with 131 Promenade and existing hotel. Installation of PV panels to roofs of 125-127 and 133 Promenade and removal of existing conservatory to side of 133 Promenade.</p> <p><u>24/01763/FUL</u> Erection of metal-framed pergola structures within the front curtilages of Nos 125-127, 129-131 and 133 Promenade to provide external restaurant, dining and drinking facilities associated with 131 Promenade and existing hotel. Installation of PV panels to roofs of 125-127 and 133 Promenade and removal of existing conservatory to side of 133 Promenade.</p>	

**RECOMMENDATION:** Refuse/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 on the west side of the Promenade and within the Central Conservation Area (Montpelier Character Area).
- 1.2** The applicant has submitted two applications for the replacement of the existing, temporary marquee structures with permanent buildings within the front curtilages of the listed buildings. The applications were submitted concurrently and this report considers the merits of both.
- 1.3** Application 24/01762/FUL proposes the erection of glazed structures within the front curtilages of Nos 125-127, 129-131 and 133 Promenade to provide external restaurant, dining and drinking facilities associated with 131 Promenade and the existing hotel. The installation of PV panels to the roofs of 125-127 and 133 Promenade and the removal of the existing conservatory to the side of 133 Promenade are also proposed.
- 1.4** Application 24/01763/FUL proposes for the erection of metal-framed pergola structures within the front curtilages of Nos 125-127, 129-131 and 133 Promenade to provide external restaurant, dining and drinking facilities associated with 131 Promenade and existing hotel. Again, the proposals include the installation of PV panels to the roofs of 125-127 and 133 Promenade and the removal of an existing conservatory to side of 133 Promenade.
- 1.5** Although the two applications have been submitted concurrently and the matters for consideration are similar, they will need to be determined separately and on their individual merits. Officers also emphasise that a decision should not be taken simply on an either/or basis or which scheme is preferred. These are stand-alone applications and both may be considered acceptable or unacceptable, for example.
- 1.6** A listed building consent application for the proposed works affecting the fabric of the listed building (PV panel installation and removal of the conservatory) has also been submitted (24/02041/LBC). This application sits alongside the two subject applications and will be determined separately. The merits of the listed building consent elements of the proposals are discussed within the relevant section of the report.
- 1.7** Both applications are supported by various supplementary information, namely a planning statement (PS) heritage impact assessment (HIA), energy statement and an economic statement (ES). The PS, HIA and ES for each application discuss the design and layout elements of the scheme, the heritage impacts and set out the reasoning behind the proposals and the applicant's (economic) justification for the proposed development.
- 1.8** The above applications follow a pre application submission in October 2023, detailing a permanent solution for the marquees. The advice given by officers and consultees at pre-application stage concluded that the principle of erecting buildings within the front curtilages of the listed buildings could not be supported. This is reflective of the planning and listed building legislation, NPPF, statutory consultee advice and the findings of the Planning Inspector appointed to determine appeal ref APP/B1605/W/23/3314132.
- 1.9** Members will recall that there have been two recent applications refused and the appeal, noted above dismissed the retention of the existing marquees for a temporary period. An Enforcement Notice, that required the removal of the marquees, was served by the Council in January 2024. The applicant lodged an appeal against this Notice and, at the time of writing, the appeal decision is still awaited.
- 1.10** Members are reminded that 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 Covid-19 pandemic. This intervention was made in recognition of the challenges to the hospitality sector during that time. Cheltenham was the first council to bring forward this initiative which was subsequently supported by government Covid-19 relaxations across England. The existing marquee structures were erected in response to these temporary relaxation rules, which ceased in September 2022, at which point the marquees should have been removed from site. There were many businesses who took advantage of the relaxation, including in close vicinity to 131; the Queens Hotel and Imperial Garden Bar. As far as officers are currently aware, all temporary structures, with the exception of those at 131, the Rotunda and possibly a gazebo still at 15 Rotunda Terrace, have been removed or have planning permission for their retention and/or alteration.

**1.11** The appeal decision and conclusions reached by the appeal Inspector, as they relate to the current proposals, will be discussed later in the report. The appeal decision is appended to this report for ease of reference.

**1.12** This application is before Planning Committee at the request of Councillors Paul Baker and Ben Orme. The reasons given (respectively) are as follows:

*The importance of the applications to our regency heritage, the prominence of the locations, the fact that previous applications have been considered by the planning committee and the high degree of local interest*

*The public interest in this application, a full discussion and public decision should be made.*

**1.13** The Director of Community and Economic Development (Tracey Birkinshaw) also requested a Committee determination, reflecting the public interest in this case and in the context that previous applications had been determined by Committee.

## **2. CONSTRAINTS AND RELEVANT PLANNING HISTORY**

### **Constraints:**

Business Improvement District

Principal Urban Area

Central Conservation 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)

**15/01810/PREAPP 22nd December 2015 CLO**

Internal alterations to form hotel and link to adjacent property 131 Promenade to extend existing hotel facilities

**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

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

Miscellaneous remedial works due to dry rot outbreak

**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.

**16/01428/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

**17/01438/COU 27th December 2017 PER**

Change of use from office (B1) to hotel accommodation (C1) to be used as part of existing hotel facilities at 129-131 Promenade (with associated internal and external alterations).

**17/01625/LBC 27th December 2017 GRANT**

Change of use from office (B1) to hotel accommodation (C1) to be used as part of existing hotel facilities at 129-131 Promenade, with associated internal and external alterations.

**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)

**18/00555/AMEND 20th July 2018 PAMEND**

Non material amendment to planning permission 17/00556/FUL - repositioning in basement of plant room and toilets on ground floor, repositioning of 3 no. boiler flues to north west (rear) elevation.

**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)

**19/00534/LBC 24th June 2019 GRANT**

Proposed complete re-roofing of both buildings

**19/01332/FUL 12th September 2019 PER**

Erection of electricity sub-station including erection of new garden/boundary walls and gates.

**19/01332/LBC 12th September 2019 GRANT**

Erection of electricity sub-station including erection of new garden/boundary walls and gates.

**19/01594/CONDIT 26th September 2019 PER**

Variation of condition 2 of 17/01438/COU - Revisions to landscaping/treatment of the road frontage

**19/01595/CONDIT 26th September 2019 PER**

Variation of condition 2 of 17/01625/LBC - Revisions to proposed landscaping/treatment of the road frontage

**19/01618/LBC 1st November 2019 GRANT**

Proposed louvred plant room door at rear

**19/01876/LBC 14th November 2019 GRANT**

Restoration of lower treads to entrance steps and new handrails

**22/01373/FUL 21st October 2022 REF**

Retention of existing temporary marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham for a further two year period

**23/01209/PREAPP 8th May 2024 CLO**

Removal of existing temporary marquees and replacement with bespoke, architect designed, permanent, alternative solution (Conservation Area)

**23/01118/FUL 20th July 2023 DECACC**

Retention of reduced number of marquees at 125, 127, 129, 131 and 133 Promenade, for a further 12-month period. (Revised scheme following application 22/01373/FUL)

**23/01597/FUL 18th December 2023 REF**

Retention of and alterations to a reduced number of marquees at 125, 127, 129, 131, and 133 Promenade, Cheltenham for an additional 12-month period (revision to planning application ref: 22/01373/FUL)

**24/02041/LBC PCO**

Installation of PV panels to the roof of 125 and 127 and 133 Promenade, and removal of modern conservatory at 133 Promenade.

### **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)

#### 4. CONSULTATIONS

See appendix at end of report

#### 5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	171
Total comments received	143
Number of objections	24
Number of supporting	117
General comment	1

5.1 The application was publicised by way of letters sent to 171 neighbouring properties, site notices displayed within the vicinity of the site and an advert published in the Gloucestershire Echo. A total of 168 representations were received following the publicity. The comments and concerns raised, in summary, are set out below.

5.2 Representations of support are drawn from:

- Members of the public, including customers of the 131 Promenade restaurant/hotel
- Employees of 131 Promenade, and
- Suppliers to the business.

5.3 Some representations simply stated support, others provided commentary, and these are summarised below.

5.4 Historic England, the Georgian Group, Civic Society and Cheltenham's Architects Panel have raised objection to both applications. Their comments are set out in full in the Consultations section and summarised later within the report.

5.5 Summary of representation comments:-

##### Objection

- Harmful impact on the character and aesthetic value of iconic grade II\* listed Regency terrace and the conservation area/Montpellier Character Area. Listed building frontages and elevations would continue to be obscured by inappropriate structures
- This development risks altering the visual appeal, heritage value, and architectural cohesion of the area. It would also adversely impact the other nearby listed buildings and the ambiance of Imperial Gardens.
- These listed buildings dominate the main entrance into Cheltenham. The buildings are beautiful and should not be hidden by modern day structures.
- The proposed development extends beyond the established build line of other properties in this section of The Promenade.
- Impact on important views/vistas within the most prominent, prestigious and historically significant part of the town centre Conservation Area
- Glass structures would be poorly insulated. Lack of information on energy usage and heating requirements for the restaurant.

- Applicant's disregard of the planning system and the impact of the proposals on designated heritage assets.
- The business operated successfully without the marquees prior to the Covid-19 pandemic.
- The continued presence of these additions offers an unfair economic advantage to this business. Cheltenham's historic character should not be sacrificed for the financial benefit of one entity.
- No hard data to show that there is likely to be a material increase in visitors to Cheltenham and that any such increase will be to the economic benefit of the town, and not just to the 131 businesses.
- Local business owners who have bought properties or established businesses in this area should have a reasonable expectation that their operations would not face competition from a large commercial space set directly outside a listed building.
- The charm and heritage of the area must be preserved without exceptions for commercial gain.
- The massive extension of catering provision at the front of the Villas is detrimental to the appearance of each effected building, the Square and the image of Cheltenham as a whole.
- Change to the appearance of these buildings should only be accepted in exceptional circumstances and not where the justification is based on relatively short term outcomes or on private gains.
- The 131 Group were financially viable prior to expanding these seating areas to the front and have also since increased capacity in the rear and the basement.
- Similar additions would not be permitted for other listed properties.
- The front curtilages should be returned to how they looked pre-Covid
- Proposals not an improvement on the tents and would result in another modern eyesore
- Ample space at the rear of their buildings that could be utilised which would not detract on the beauty of the buildings.
- The immediate surrounding area has abundance places to eat and drink
- It is Cheltenham's Heritage and Culture that attracts visitors, its beautiful buildings, its Gardens, its Cultural events, not 131.
- Claims of employment benefits are misleading. The hospitality sector as a whole faces recruitment challenges, and a reduction in operations for one business would redistribute staff opportunities elsewhere
- The bar and restaurant facilities created by this development are much too large for the location and have severely affected business at other small hospitality venues nearby



- Impact on amenities of nearby residential properties – noise disturbance, audible all year round music playing

### Support

- Proposals address previous negative aspects
- Proposed replacement buildings are well designed, aesthetically pleasing and would enhance the setting of the listed buildings and character of the conservation area.
- Design is both contemporary and traditional and a light touch and would therefore fit in well. The design of the proposed structures complements the architectural design of the existing buildings
- A lovely outdoor space without taking away from the beautiful regency architecture of the original building
- Investment like this is needed within the town centre
- This is a destination venue which should be allowed to continue. 131 is a flagship venue that contributes significantly to Cheltenham's late-night dining and nightlife economy
- Regularly visit 131 which is a nice place to drink and dine
- Clever use of space to create great customer experience using period buildings and their exteriors.
- Proposals would ensure the viability of a cherished local business: No. 131 is a vital part of our community, offering delicious food, friendly service, a lively atmosphere. This structure will allow them to operate throughout the year, protecting local jobs and contributing to a thriving local economy.
- The proposed establishment is well-positioned to complement nearby businesses
- The design of the venue and its potential to host a variety of events will add to the cultural vibrancy of Cheltenham
- Proposals would result in employment retention and economic growth
- Much-needed venue for entertainment and dining. They contribute greatly to the prosperity of the town, provide jobs, attract visitors to the town and help keep the night-time economy vibrant

## **6. OFFICER COMMENTS**

### **6.1 Determining Issues**

**6.2** The key matters for consideration in relation to both applications are as follows:-

- The impact on the significance (notably setting) of the designated heritage assets (subject grade II\* listed buildings, other nearby listed buildings/structures, Imperial Gardens and the Central Conservation Area)

- The public benefits and wider economic benefits of the proposed development
- The potential impact on the amenities of neighbouring properties, in terms of noise and disturbance and light spill
- Sustainable development and energy efficiency/costs
- Drainage
- Impact on trees

### **6.3 The site and its context**

- 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. 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 extremely carefully.
- 6.5** The villas have been significantly restored in recent years and make a significant contribution to the Central Conservation Area and the street scene.
- 6.6** Surrounding development is a mix of residential, commercial, restaurant/bar/cafe uses; the site also being located within the Core Commercial area of Cheltenham's town centre.
- 6.7** 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 and Montpellier Gardens and the Town Hall. A number of large, mature street trees are located in front of the three buildings.
- 6.8** Clarence House (133) is a substantial two storey detached villa with two lower side wings and the only detached villa in this location. It sits alongside the three pairs of equally imposing, semi-detached Regency villas. The gate and boundary piers to Clarence House are listed separately at 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).
- 6.9** 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.
- 6.10** Nos 125-127 Promenade is a semi-detached pair of villas; planning permission was granted in 2017 for the change of use of the property from offices to hotel accommodation, again in association with Nos 129-133 Promenade (17/01438/COU & LBC).
- 6.11** The application site (Nos 125-133) is therefore entirely in use as a hotel with internal and external restaurant and bar facilities, including the Gin and Juice Bar that occupies parts of the lower ground floor of 129-131 and the external areas of 133.

- 6.12** As outlined in the introduction, the existing, temporary, 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 125-133 Promenade. The marquees to the side of 133 were removed towards the end 2023. Currently, there are 13 temporary marquees/canvas structures within both the front curtilages of all the three buildings. They are all of a similar 'top hat' type appearance and broadly similar in height and size.
- 6.13** In addition to the marquee structures to the front, the applicant has recently erected timber pergola structures at the rear of 133; the majority of which includes a roof covering. Planning and listed building consent have not been sought for these structures and, in similarity with the frontage marquees, are therefore unauthorised. The applicant was asked to include these recent additions within the current applications, but declined to do so. The Council's Enforcement team has been notified of these unauthorised works.
- 6.14** In addition, the use of the outside areas of No 133 for dining/catering purposes is subject to two undetermined planning and listed building consent applications, submitted in 2018 (ref 18/02503/FUL&LBC). These applications remain undetermined, pending the submission of revised and corrected details from the applicant. Officers sought not to progress these applications during the pandemic due to the relaxations put in place and are now minded to await the outcome of the current applications and outstanding appeal decision 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. As mentioned previously the external areas of No 133 appear to be used entirely in association with the Gin and Juice Bar which also occupies a large part of the lower ground floor of 131; this area once providing the largest of the hotel's restaurant facilities.
- 6.15** 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.

## **6.16 Design and Layout**

- 6.17** Both applications propose permanent buildings (of varying size, length and appearance) within the front curtilages of each listed building. These buildings would provide restaurant and bar facilities for use by hotel guests and the general public. The exact amount of covers is not known, but estimated to be similar to that currently accommodated within the temporary marquees.
- 6.18** Both schemes are single storey in height and comprise of metal framed structures, covering the majority of the front curtilage of each listed building.
- 6.19** The design and layout elements of each scheme are discussed in more detail below.
- 6.20** Application 24/01762/FUL
- 6.21** The applicant's Design and Access Statement (DAS) states that "*the proposals aim to replace the existing temporary marquee structures with a historically sensitive scheme that integrates harmoniously within the street scene of Cheltenham.... a 'light touch' approach to construction that causes minimal harm to the existing buildings and landscape, and incorporates modular off-site construction*".
- 6.22** In terms of site layout, a restaurant area with an unspecified number of covers, would be located within the front of Nos 129-131 and 125-127. A bar for events and meetings would be located to the front of 133. There would be a glazed link from the proposed

restaurant to the existing lower ground floor kitchen in 129-131 via the existing right side stair core.

- 6.23** The massing and positioning of the proposed restaurant buildings have been designed to maintain the visual gap between each of the 3 listed buildings; the proposals also including the removal of the existing conservatory to the side of 133. This would allow glimpsed views of the historic buildings of the Ladies College behind.
- 6.24** There is a drop in land levels running north/south but the eaves height is kept consistent across each building frontage with the exception of two lower bay elements. Each proposed building incorporates a low pitched roof. The front elevation fenestration of each proposed building has been designed to follow, as far as possible, the column spacing and upper floor window pattern of the listed buildings. A typical elevation would include solid lower panels and sliding glazed doors, plus a modular, glazed sliding, opening roof. Similarly, the DAS indicates that the roof design has been inspired by the hood canopies of the first floor balconies. The key element of the proposals is the non-structural decorative ironwork trellis panels which project out from the main structural frame and glazed sections. Architectural cues have been taken from the existing buildings and those within the Montpellier Character Area.
- 6.25** The lightweight steel frame would be constructed off site with the modular glazed units and decorative ironwork applied thereafter. The foundations would consist of ground screws set in certain locations across the site with lightweight steel grillage above ground, where required.
- 6.26** Full details of the design approach and construction method are set out within the DAS.
- 6.27** Application 24/01763/FUL
- 6.28** The DAS states that *“the proposals aim to replace the existing temporary marquee structures with a ‘light-touch’ scheme that integrates harmoniously within the street scene of Cheltenham”*.
- 6.29** In similarity with the above scheme, there would be a restaurant area with an unspecified number of covers located within the front of Nos 129-131 and 125-127. A bar for events and meetings would be located to the front of 133. There would again be a glazed link from the proposed restaurant to the existing lower ground floor kitchen in 129-131.
- 6.30** In summary, the proposals comprise of a slim metal framed pergola structure with a low pitched, retractable fabric, awning type roof, covering an area of 459sqm. The notable difference with this scheme is the continuous, extended building footprint across the entire frontage areas of Nos 125-133 with no (visual) gaps retained between the listed buildings.
- 6.31** Eaves height would remain consistent across all building elevations, but are staggered down where necessary to take account of site level differences. The pergola posts and bay spacing are positioned to correspond roughly with the window pattern and columns of the principal elevations behind. An off-site modular construction method is again proposed with light touch ground screw foundations.
- 6.32** Note that, although the proposed construction methods and lightweight nature of the steel frames for both applications suggest these structures could be removed from the site fairly easily, both applications must be determined on the basis that these are permanent buildings.
- 6.33 Heritage Impacts/Policy Context**
- 6.34** 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 prominence and highly sensitive nature of the site location, the potential impact of the proposals on the significance of the designated heritage assets must be considered extremely carefully.

**6.35** When determining planning applications, the local planning authority must take account of 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. Similarly, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid the desirability of preserving or enhancing the character or appearance of conservation areas.

**6.36** 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*'.

**6.37** Section 16 of the NPPF (2024) sets out the importance of conserving and enhancing heritage assets. Paragraph 203 of the NPPF advises that in determining planning applications, local planning authorities should take into account:

*d) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;*

*e) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;*

*f) the desirability of new development making a positive contribution to local character and distinctiveness; and*

*g) opportunities to draw on the contribution made by the historic environment to the character of a place*

**6.38** Paragraph 208 of the NPPF states:

*"Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal...."*

**6.39** Paragraph 212 goes on to state that:

*"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."*

**6.40** Paragraph 213 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....substantial harm to assets of highest significance, notably.....grade II\* listed buildings, should be wholly exceptional.”.”*

- 6.41** Paragraph 215 requires that *“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 including, where appropriate, securing its optimum viable use.”*
- 6.42** The Council’s Conservation officer (CO) and Historic England (HE) have considered both applications, alongside the supporting documents. Both the CO and HE raise significant concerns over the principle of the proposed development. Neither has commented in great detail on the architectural design and layout merits/acceptability of each proposal or set out the differences/preferences between them, as their representations are submitted on the basis of concerns in respect of the fundamental principle of development within the front curtilages of the listed buildings.
- 6.43** The Georgian Group has also raised an objection on similar grounds. The Civic Society and Architects Panel also raise objection to the proposals.
- 6.44** All of the above consultee comments are set out in full at the end of report. The below paragraphs summarise the key areas of concern raised by the CO, HE and the Georgian Group.

**6.45 Conservation Officer**

- Due to the location of the proposed buildings directly in front of the principal facades and covering almost the entire front curtilage of each building, the setting of the listed buildings (viewed both separately and collectively) would be permanently and significantly harmed.
- The skeletal frames and flat roof structures will represent a permanent presence within the front curtilages and would remove important open space. The collective hierarchy and Grade II\* status of the Villas is reflected (in part) by the open spaces between the buildings and Promenade. The proposed development will remove these spaces (former front gardens) to form the new buildings.
- The proposals would therefore represent an unprecedented form of development within the curtilages of Grade II\* listed buildings in Cheltenham.
- Significance would be permanently harmed by the proposed buildings blocking views of the lower ground and ground floors of each building. The aesthetically sensitive architectural composition of the principal facades, including the sweeping entrance steps, most of the entrance columns and delicately detailed and ornate upper floor balconies would be screened from public view and their overall appreciation lost.
- The setting of grade II listed railings at 133 would be harmed by their proximity to the proposed buildings.
- North/south views of the buildings (separately and collectively) from both sides of the Promenade and from Imperial Gardens would be significantly harmed.
- Views from the listed buildings would be significantly impacted. Instead of an open frontage, from the upper ground floor windows there would be foreground views of the roofs and internal restaurant paraphernalia of the proposed buildings. Views of Imperial Gardens would be limited or entirely lost. Sound transmission from the restaurant would also impact the ground and upper floors.

- Typically, in Regency architecture, the greater the spatial area beyond the footprint of the building, the greater the historic and architectural status of the original building/s. In this context, the Villas have limited open space at the rear of the properties but have always enjoyed the benefit of generous open spaces to the front for a town centre location.
- The original plan form of historic development around the edge of Imperial Gardens and on the east side of the Promenade indicates a strong characteristic in relation to the original building line. In stark contrast, the proposals would introduce new buildings significantly forward of the established building line and historic plan form and footprint. In this context, the proposal would be setting a precedent.
- It would appear that the buildings have been designed to be as visually permeable as possible. However, the submitted drawings do not include the inevitable restaurant paraphernalia such as large planters, tables, chairs, blinds, lighting and heating equipment, external plant enclosures and the customers and staff occupying the buildings. The CO comments further that the perception of visual permeability would be significantly reduced when the demountable glazed panels are installed or during opening hours and when the interior of the spaces is illuminated by artificial light. In this regard, the submitted drawings/illustrations are somewhat misleading as to the resultant visual impact of the proposals.
- This part of the Conservation Area (Montpellier Character Area) is characterised by spacious and loose urban grain around wide tree lined roads and formal green spaces, and medium and long vistas that open towards larger public buildings. The subject listed buildings contribute to and their setting enhanced by the distinctive character and appearance of Montpellier.
- Subject to further detail, the introduction of PV panels on existing flat roof areas to the listed buildings is welcomed. The proposed loss of a modern side conservatory is also supported.

**6.46** The CO also comments that the proposed development (increase in restaurant covers) could be achieved (in part) by reviewing internal restaurant opportunities and capacity and the possibility of single storey additions elsewhere within the site, thereby avoiding the principal elevations of the existing buildings.

**6.47** The CO considers that the proposed development is close to resulting in ‘substantial harm,’ but acknowledges that, in heritage terms, this threshold is high and no historic fabric would be harmed. As such, the upper end scale of ‘less than substantial harm’ is considered appropriate in relation to the impact on setting.

**6.48** The CO concludes that it is the principle of development in such a sensitive location which is the overriding concern.

#### **6.49 Historic England – 24/01762/FUL**

- While the proposed design has been steered by a more contextual approach and is an improvement on the existing temporary marquees, the significance of the three Grade II\* buildings would be harmed by the proposed development within their principal setting; for reasons that have already been extensively rehearsed and covered in the planning appeal Inspector’s report.
- The architectural composition of each building, their separation and rhythm within the Conservation Area, and also the setting of each, would still be obscured by the proposed additions.

- The design approach (embellishment and interpretation of the Regency ironwork of local balconies and canopies), and the internal furniture and lighting would have the effect of drawing the eye and this would distract from the aesthetic heritage value that contributes highly to the significance of the Grade II\* buildings.
- There would be no adverse impact or harm as a result of removing the modern conservatory. However, this would not mitigate the harm caused by the proposed development to the front of the buildings
- There would be no potential for visual impact caused by the erection of PV panels on the roofs of Nos 125-127 and no. 133; albeit there is insufficient information relating to the construction and fixings of the panels and how these might impact upon the historic fabric of the roofs. Further detail would be required.
- Consideration should be given to some careful development to the rear of the buildings and the front cleared of the existing marquees. HE does not oppose the use of the front terraces for external dining/drinking and seating, but does not support any temporary or significant permanent structures located on the most significant architectural aspect of each of the Villas.
- Approval would serve as a very harmful precedent for similar developments elsewhere within sensitive areas of the historic environment.
- The existing structures have never had formal planning permission and should not be considered as a precedent for considering alternative designs.
- HE has concerns regarding the applications on heritage grounds and are not persuaded that harm has been minimised or indeed justified, and therefore concludes the LPA would be justified in rejecting the proposals.

**6.50 Historic England – 24/01763/FUL.** See above for a summary of general comments (as they relate to both applications) with the addition of the following design related concerns:-

- While the proposed design has a lower roof profile than that of the existing structures, the principle of any development to the front of the principal elevations of the Grade II\* Regency villas would be harmful to their significance
- The frame is visually unrefined and would be experienced as a utilitarian and unrelenting structure against the principal elevations of the Grade II\* villas. The submitted elevations and perspective images do not include the roof fully open and therefore do not exhibit the full visual impact of the structure.
- Unlikely that the roof would be often be retracted, as this would be difficult to secure through planning conditions. Therefore the impacts of the structure should be based upon the frame and the fully opened fabric roof, giving the appearance of a temporary marquee structure, but with a less assertive roof than the existing arrangement.
- The proposed steel frame and obscuring fabric roof would therefore distract from the aesthetic heritage value that contributes highly to the significance of the Grade II\* buildings. The harm would be less than substantial.

**6.51 Georgian Group – 24/01762/FUL & 24/01763/FUL**



- The significance of the three Grade II\* buildings would be harmed by the proposed development on their principal elevations and within their immediate setting.
- The objection is a matter of principle and there is therefore little merit in offering comment on the specifics of each scheme's materiality and detailing. Both proposals constitute an unacceptable visual distraction obscuring original features and competing with and dominating the highly-designated assets. The Group place this harm at the high end of less than substantial in NPPF terms.
- The argument made by the applicant (Heritage Statement 5.2) that the visual harm accruing from the current proposals 'is far less than the Covid scheme' should be dismissed. The correct baseline for comparison, cannot be the marquee structures as these never had formal planning permission and are not a relevant consideration.
- The key policy tests or NPPF Paragraphs 212 and 213 are not met in that there is clear and convincing justification for the harm that would arise from development within the setting of the grade II\* buildings.

#### **6.52 Civic Society - 24/01762/FUL & 24/01763/FUL**

- The Society objects in the strongest terms
- False premise that the proposals represent an improvement on the existing tents. The proper comparison is with the setting and appearance of nos. 127-133 facing the Promenade as they were before COVID
- Huge damage to the setting and appearance of three exceptionally fine buildings. Proposals would also be completely out of place in a highly sensitive part of the Conservation Area. The harm to the Grade II\* listed buildings would be "substantial" in terms of Government policy and therefore should not be allowed.
- Inspector found the temporary nature of the tents to cause less than substantial harm, not the tents in themselves.
- The impact of this scheme on the main views from the Promenade will be very damaging
- The structures in front of nos. 127-133 hide the main entrance to no. 131 which should be made the focal point for the entire enterprise.
- The Society know of nowhere else where planning permission has been given for a major new development right in front of the main façade of Grade II\* buildings. To do so would be an insult to the quality of their fine architecture.
- The illustrations that accompany these proposals are very misleading. They give the impression of a transparent structure with nothing within it. In reality it will be covered over much of the time, with lots of activity within it. It will be the dominant feature looking towards nos. 127-133, obscuring many of the details and greatly reducing the overall impact of Forbes's fine architecture.
- The Civic Society representation includes a number of day and night time photographs of the listed building frontages and elevations taken before the pandemic and marquee installation.
- The applicant needs to make a wholly exceptional case in support of the application. The applicant's economic case is weak. The document submitted is

not an economic impact analysis but more an estimate of the financial benefit the tents currently provide to no. 131. The commercial benefits since Covid are discussed but little is said about the wider public benefits. No evidence is presented that 131 is a 'destination' restaurant which induces visits to Cheltenham that would otherwise not have taken place. There is an assumption that any reduction in dining revenue at no. 131 would be a significant net loss to the town, but that seems unlikely, and no evidence is presented in support of this claim. It is more likely that if restaurant revenues fell, spend would be transferred to other restaurants in town. The report does not show that the enterprise would be unviable without the increase in revenue generated by the marquee restaurant. No. 131 has enjoyed an unfair advantage over its competitors.

- The Society suggests an alternative scheme - permanent structure to the south-west of 133, perhaps in the form of an elegant curved contemporary building facing Queens Circus and stretching round to Montpellier Street - the return of tables with small parasols in front of the three buildings - the use of Class BB of the General Permitted Development Order to provide more substantial temporary accommodation at times of peak visitor numbers.

### **6.53 Architects Panel - 24/01762/FUL**

- The principle of permanent development in front of the listed building is a concern
- The impact on the setting of the listed buildings is too great and too obstructive of the elevations of the listed buildings and hence harmful to their setting as well as the wider conservation area
- The solid roof to the structure would create a significant visual barrier between the street scene and the elevations of the buildings behind.

### **6.54 Architects Panel - 24/01763/FUL – General comments as above with the addition of:-**

- Whilst the glazed proposal is more light weight in terms of its visual impact on the buildings behind the visualisations suggest that the spaces will be empty. In reality they will be filled with all of the restaurant paraphernalia which is currently housed in the tents and as such will have just as much visual impact on the setting of the listed buildings and the wider conservation area.

### **6.55 Appeal Decision**

**6.56** Although the current applications relate to permanent buildings within the front curtilages as opposed to temporary structures, the recent appeal decision for the retention of the marquees is relevant. The key planning matters considered by the Inspector are very similar to those of the current proposals. Officers have therefore considered very carefully, the extent to which the current proposals address the concerns raised by the appeal Inspector. A number of key themes can be drawn from the appeal decision, and they are:

- Impact on the setting and thereby the significance of the grade II\* listed buildings
- Views and appreciation of the ground and upper floor elements of the listed buildings
- Wider impact on the setting (significance) of other nearby listed buildings and the character and appearance of the conservation area

**6.57** The following extracts from the appeal decision relate to the above considerations.

- 6.58** Impact on setting and significance - (para 16) *The open spaces around the buildings remain a key aspect of how the assets are appreciated today. Moreover, the open nature of these spaces allow the aforementioned ground floor elements that contribute to the significance of the buildings to be viewed and seen in the context of the building as a whole. The neoclassical detailing and the hierarchy of windows are particularly important aspects of how the buildings were designed. The open space forming the appeal site thus makes a major contribution to the significance of 125 and 127 Promenade, 129 and 131 Promenade and 133 Promenade.*
- 6.59** *The scale of the development has drastically reduced the degree of spaciousness within the appeal site (despite three proposed marquees being absent on my visit). The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance. Moreover, the tented form and irregular positioning of the marquees within the site jars with the formal symmetry of the Regency buildings. This also has the effect of reducing the individuality between the three buildings and blurring the definition between them.*
- 6.60** Views of the ground and upper floors - (para 23) *Owing to their considerable height, spread and form, the marquees almost completely obscure the ground and basement elevations of the buildings, radically reducing the visibility of their architectural detailing, such as the arcading and balconies to the ground floor areas referred to above. The peaks of the marquees also obscure parts of the first floors of the buildings. Visibility of the buildings in views from outside the site as well as from the entrance to Imperial Gardens opposite and from further along Promenade has been radically reduced. This severely restricts the ability to appreciate the significance of the buildings.*
- 6.61** Legibility/Impact on setting – (para 25) *The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance*
- 6.62** Wider impacts - (para 30) *the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting. In addition, it would fail to preserve or enhance the character or appearance of the CA. As such, it would cause harm to the significance of these designated heritage assets.*
- 6.63** *Although the current applications propose permanent buildings, the following extract is equally relevant, in that the Inspector raised concerns over the continued harm caused by the retention of marquees within the front curtilages.*
- 6.64** Extending the temporary period - (para 29-30) *to retain the marquees for a further two years, this harm would continue at least for the duration of that period.....As such, for the above reasons, I conclude that the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting.*
- 6.65** *What is clear from the appeal decision is that the Inspector considered that the marquees obscured the valuable architectural detailing of the ground and basement elevations of the buildings and thereby the ability to appreciate the significance of the buildings. The current proposals fail to address this concern in that the ground and upper ground floors would be largely hidden from view and obscured. The single storey nature of the two schemes may allow more of the first floor elevations to be visible to users within the site and from the public realm, but this does not in any way overcome the overriding concerns over the restriction of views of the ground and basement elevations. Historic England, the Georgian Group, and the Council's Conservation officer all conclude that, by obscuring the lower elevations, the appreciation of the entire building elevations is lost.*

**6.66** Nor do the proposals overcome the current footprints of the marquees and ancillary structures, in that the permanent buildings would again cover almost the entire frontages of these grade II\* listed buildings. Furthermore, the lack of breaks/gaps between the buildings, particularly in relation to the continuous metal framed structure of application 24/01763, prevents a clear appreciation of the individuality of the three buildings.

**6.67** Equally, and despite the proposed reduction in height in comparison with the marquees, the proposals fail to address the harmful impact on the special interest and significance of other nearby listed buildings, notably the grade II\* Queens Hotel and the grade II listed gate piers of No 133. At paragraph 31, the Inspector comments that *'through interrupting the spacious character and views between the two buildings the development has adversely affected the significance of the Grade II\* listed Queens Hotel through development within its setting.* Similarly, the Inspector considers that the listed gate piers have been partly or totally subsumed by the structures, eroding their legibility within the site. The proposed permanent buildings would have the same affect.

#### **6.68 Additional Officer Comments/Observations**

**6.69** As highlighted by the Civic Society and other consultees, the appropriate, existing baseline when considering the impact of the proposals on heritage assets is the use, character and appearance of the site pre-Covid (marquee installation). Whilst any direct comparison with the existing marquees is not wholly irrelevant to the considerations, as matters relating to the principle of development in this location are the same, these are clearly unauthorised structures and an appeal for their (temporary) retention has been dismissed. In other words, the presence of marquees should not be considered as a precedent for considering alternative designs. As such, no weight should be given to any perceived visual improvement on the existing marquee scenario resulting from the proposed development.

**6.70** The submitted details are unclear as to whether additional/ancillary structures would be required within the front curtilages to serve the restaurant e.g. plant equipment enclosures, storage, reception/entrance areas and circulation corridors between the proposed buildings.

**6.71** Although various measures have been put forward, including roof mounted solar PV, the proposed heating system for the new building(s) is unclear. Air source heat pumps (ASHPs) are considered a possibility, but a thorough feasibility study has not been undertaken. The ASHPs would be located on the flat roof adjacent to existing ventilation units but there is no further detail provided with regards connection to the external site areas. There could also be noise impacts associated with ASHPs, affecting both hotel guests and neighbouring residents. A definitive alternative to ASHPs is not mentioned within the report and as such, the continued use of fossil fuels cannot be ruled out.

**6.72** The submitted drawings for application 23/01762/FUL (decorative ironwork/individual buildings) indicate that there would be no link corridor attached to two of the separate structures. If these individual buildings are to serve as a restaurant, officers question the functionality and practicalities of doing so (as currently proposed) without a physical connection between each building, particularly given that the wider areas have been discounted by the applicant for this purpose.

**6.73** The applicant has confirmed that there would be no physical attachment of the proposed buildings to the main façades of the listed buildings. Again, this is questionable since the corridor links to the main building to access the lower ground restaurant kitchen would not be sealed from the elements. Further detail on any type of fixings to the main façade would be required and this may necessitate a further listed building consent application.

- 6.74** Although the proposed construction methods and lightweight nature of the steel frames suggests that these are (potentially) removable structures, both applications must be determined on the basis that these are permanent buildings.
- 6.75** When viewing the application site from either a north or south direction on the east side of the Promenade, the individual buildings aspect of application 24/01762/FUL would not be entirely apparent, if at all. Furthermore, walking alongside the existing site and marquees on the east side of the road, pedestrians are unable to see very much of the upper levels of the principal elevations above the roof lines of the tents. The current proposals would have a lesser but similar affect.
- 6.76** Given the length of the existing restaurant/marquee enclosure, the amount of activity within and the sounds emanating, the whole enterprise deters proper appreciation of the historic significance and aesthetic qualities of these listed buildings, both individually and as a group. The proposed development does little to mitigate these affects and the result would be more or less the same, other than a slight reduction in overall height of structures.
- 6.77** Both Historic England and the Conservation Officer suggest that the applicant explore the potential for more sensitive development at the rear and side of 133. This would provide some of the restaurant capacity currently sought. The DAS discusses this alternative location but discounts it due to the location of the main hotel restaurant and resultant functionality of the on-site catering operation. This alternative has not therefore been discussed directly with the applicant during the course of these applications, as this is not the scheme presented and before Committee to determine. However, the applicant was fully aware of the advice provided and the justification for that advice.
- 6.78** Members may also be aware of examples of development within the curtilages of town centre listed buildings which are similar in type and function to that proposed. One such recent example is the metal framed, glazed covered seating/dining area located within the side, garden curtilage of the Grade II listed Belgrave House on Imperial Square (the former Pizza Express, now Settebello). Although this structure fronts Imperial Square and is visible within the public realm/conservation area, it does not obscure the principal elevation of the listed building, it is significantly smaller in size, and the immediate historic environment context and character is very different from that of 125-133 Promenade. In this case the Conservation officer accepted the principle of an outdoor seating area, covered or otherwise in this location, which would allow an appreciation and the effective use of the garden of the listed building. Although this recent example is not a material consideration when determining the two current applications (as each planning application must be determined on its individual merits), it nonetheless demonstrates that the erection of large structures within the curtilages of listed buildings is not precluded and may be deemed acceptable in some circumstances.

#### **6.79 Public Benefits**

**6.80** 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 side and the wider conservation area. The conservation officer considers the level of harm to be less than substantial.

**6.81** Paragraph 215 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, where appropriate, securing its optimum viable use...”*

**6.82** The applicant considers that the proposed development (retention of the increased restaurant facilities) generates significant wider public benefits and that these far outweigh the less than substantial harm caused.

**6.83** The application details include an Economic Statement (ES) produced by the applicant. This sets out the potential economic impact of the proposals and the applicant's (economic/public benefits) justification for the proposed development. It *"demonstrates the vital economic contribution of 131 to Cheltenham's hospitality sector and wider economy, and how the space provided by marquees, or an appropriate alternative, is now fundamental to the long-term viability of the premises and the associated many benefits arising from the site.* Any economic or other social and environmental benefits identified as part of the applicant's justification must therefore be considered very carefully. The ES is discussed in more detail at paragraphs 6.88-93 below.

#### **6.84** Economic and Social Benefits

**6.85** It is 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 been a significant increase in overall covers for the both the restaurant and bar elements.

**6.86** Without clear evidence presented by the applicant to the contrary, external dining and drinking capacity was almost certainly significantly lower pre-pandemic; given that the existing marquee structures now extend across all frontages. Indeed, the ES identifies an 858% increase in profitability in the period 2019/20 – 2020/21 (table 3.10). Furthermore, the appeal Inspector notes that *"having regard to the significant number of tables located within the areas covered by marquees, I do not doubt that these areas generate a substantial income throughout the year, as they are essentially an extension of the internal dining areas and bars, allowing for significantly more tables and more customers"*.

**6.87** In light of the above, both proposed schemes would maintain this level of trade for the business, contributing 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 town centre economy.

**6.88** The appeal Inspector considered the limited financial information submitted by the applicant as part of the appeal process (to substantiate an economic argument for retention). The Inspector considered there was a lack of supporting evidence with regard to the financial implications of the marquees and the extent to which the businesses are dependent on them. The Inspector also concluded that *'There is no evidence before me that the appeal proposal is the only means of providing outdoor dining'*. Nor is the Inspector convinced *'that the marquees are fundamental to maintaining the buildings' optimum viable use'*.

**6.89** In summary, the Inspector afforded limited weight to any social and economic benefits of the proposals which were not sufficient to outweigh the considerable importance he attached to the identified harm to the significance of the designated heritage assets.

#### **6.90** Applicant Economic Statement/Review

**6.91** In response to the above, the applicant submitted an ES, which seeks to provide the economic justification for the proposed development which the applicant considers outweighs the less than substantial harm caused to the designated heritage assets. The ES, in summary, makes the following claims and sets out details of changes within the hospitality sector in general and the revenue and profits accrued since the marquees were installed:

- The year-round capacity of the covered terrace space generates over 50% of 131's revenues from dining and drinking. Removing this would necessitate making 62 staff immediately redundant – and threaten further job losses amongst the 100+ employed at 131 and those within the supply chain due to the risk to its viability overall.
- Revenue increase of 39% from £4.38m (over 11 months pre-marquees) to £6.07m (over 11 months with the marquees). This resulted in a 858% profit increase post-marquees in comparison with a marginal profit margin of £51,000 pre-marquees.
- Marquees accounted for £9.34m in revenue from April 2020 - March 2023, representing a 53% share of the total £17.33m turnover over the 3 year COVID trading period. Without the marquees, the business would have collapsed during the pandemic.
- Spending with local suppliers increased by £820,264 post marquees.
- Commercial viability of business following previous £19m investment across the site the covered terrace offers opportunity for events, year-round trading and the assistance to the local evening economy. Neighbouring businesses, uses and activities benefit from linked trips.
- 131 offers a unique experience and is a 'pull' in terms of visitor numbers and spend to the local economy. The advantages to the vitality of the town, the activity and ambience created around this part of town are all significant benefits.
- The trajectory without a permanent replacement for the marquee space, a lack of viability and ultimately the threat of closure, plus the associated loss of all the many benefits (direct and indirect) the site as a whole generates.

**6.92** Given the applicant's reliance on an economic justification for the proposed development and their views on the wider public benefits of the proposals, the Council has sought an independent review of the applicant's ES, noting also that the submitted ES has been prepared by the applicant's agent, not an economic specialist and cannot therefore be treated as impartial.

**6.93** The (South West Research Company) independent review of the data used to support the economic benefits of the proposals set out by the applicant, is attached in full as an Appendix. In summary, the review comments as follows:-

1. There are many instances where claims are made without evidence to support these, particularly with regard to the figures used to demonstrate the economic impacts of the existing business and the supply chain spend and jobs impacted without the proposed development. Modelling methods exist for this and could be utilised.
2. Out of date (2019) statistics have been used in relation to hospitality/tourism in Cheltenham. There have been many changes in the sector post-Covid. In addition, the figures for the size and scale of the business are out of date, ending in March 2023.
3. The reliance on Covid lockdown periods and restrictions has the potential to skew the figures provided and over-estimate the impact of the business. This is due to the changes in consumer activity, the limited choice of venues with outdoor seating and a surge in domestic tourism during these times. Business data from 2022 would provide a more realistic overview of business performance, plus tourism in 2023 and 2024 has generally, been more challenging.

4. The report concludes that the figures and data used in the ES should not be relied upon as a solid evidence base for the proposed development.

**6.94** To supplement the above, officers point to a number of broad statements made without supporting evidence e.g. '*this unique venue strengthens tourism*' and '*the importance of [the venue's] pull in terms of visitor numbers*'. There is also a lack of supporting evidence/data on the claimed linked trips and associated/non direct spend by those visiting Cheltenham. In terms of potential job losses, there is no full time equivalent data for the part time jobs at risk.

**6.95** Some of the data provided in the tables is unclear/potentially misleading and some of the tables appear to be incomplete. Although the £820,000 increase in spending with local suppliers resulting from the marquees is acknowledged, it is unclear whether this increased spend has continued each year since the marquees were installed, or how much is directly attributable to the marquees.

**6.96** Whilst there is no doubt that the marquees and additional covers have had a positive outcome in terms of business revenue and profits, the ES cannot be relied upon by Members as evidence of the impact of the marquees (and current proposals) on the future vitality of the town centre economy.

**6.97** Environmental Benefits

**6.98** Officers consider that there is little evidence of the proposals offering any environmental benefits.

**6.99** The applicant has sought to address climate change and the guidance set out in the relevant Supplementary Planning Document (SPD). The submitted Energy Statement is discussed at paragraphs 6.114-120 below. Roof mounted solar are proposed but it is not clear whether alternative/additional heating systems or ancillary plant would be required to serve the restaurant. It is possible that the use of diesel fuelled generators would continue, given the location and severance of the proposed development from the main listed buildings.

**6.100** Impact on Heritage Assets versus Public Benefit Test

**6.101** As set out and discussed above, harm to the significance (setting) 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 215 of the NPPF.

**6.102** In summary and as set out above, officers consider there to be limited public benefits associated with the proposed development. Furthermore, these benefits existed pre-Covid/prior to the installation of the marquees and it is evident that the existing marquees and increase in external covers are now allowing the business to trade more successfully. This increase in profitability does not amount to a public benefit in itself.

**6.103** The town centre offers a wide range of alternative catering facilities and hotel accommodation. The proposed development, on its own, is not considered to be essential to maintain the viability/vitality of the town centre economy.

**6.104** Neither is there any evidence to suggest that the proposals constitute enabling development that would bring about public benefits necessary to justify the harm that would be caused.

**6.105** Whilst officers acknowledge that there are some social and economic benefits associated with the proposals, these benefits are not considered to outweigh the identified harm to the significance (including setting) of the designated heritage assets.



**6.106** In conclusion, the current proposals, in terms of cover numbers and use, are not materially different from that considered by the appeal Inspector. As such, there is no reason for officers to reach a different conclusion to that of the appeal Inspector with regard to the public benefits of the proposals.

#### **6.107 Impact on neighbouring property**

**6.108** 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.

**6.109** Whilst the predominant use of surrounding development is commercial (retail, restaurant, bar, café uses), there are many dwellings located on Imperial Square and the Promenade.

**6.110** Due to the location and size of the buildings proposed, there is potential for the proposals to impact upon the amenities of neighbouring land users and users of the hotel and entertainment facilities at 131; in terms of noise and disturbance and possibly light spill. In addition, there may also be noise impacts associated with any heating systems installed (diesel fuelled generators, Air Source Heat Pumps). However, the proposed development not considered to result in any unacceptable loss of light or overbearing impact on any neighbouring land user.

**6.111** The Council's Environmental Health team (EHO) raise no concerns on the basis of the limited number of recorded complaints held for the address and the length of time since a complaint was last received by the EHO.

**6.112** In light of the above, officers consider that the proposed development should not result in an unacceptable impact on the amenities of neighbouring land users or occupiers of the applications site. This would be subject to the imposition of planning conditions requiring details of extraction/plant equipment, heating systems, and restrictions on playing amplified and live music.

#### **6.113 Access and highway issues**

**6.114** Due to the potential, permanent increase in customer numbers at the premises, the County Council Highways Development Management Team, acting as local Highway Authority (HA), was consulted on both applications.

**6.115** The HA raise no objection to either proposal and comment that the proposed structures would not impact pedestrian movements on the adjacent public footways.

#### **6.116 Sustainability**

**6.117** NPPF paragraph 161 states that:

*'The planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure'*

**6.118** NPPF paragraph 164 b) goes on to state that new development should be planned for in ways that *'can help to reduce greenhouse gas emissions, such as through its location, orientation and design'*.

**6.119** Policy SD3 of the JCS requires all new development to be designed to contribute to the aims of sustainability by increasing energy efficiency and minimising waste and air pollution. Development proposals are also required to be adaptable to climate change in respect of the design, layout, siting, orientation and function of buildings. Similarly, Policy INF5 of the JCS sets out that proposals for the generation of energy from renewable resources or low carbon energy development will be supported.

**6.120** In June 2022, Cheltenham's Climate Change SPD 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 planning applications.

**6.121** The application includes an Energy Statement which sets out the following anticipated energy efficiencies and low carbon measures incorporated into the scheme(s), having regard to national policy guidance and the above SPD guidance for non-domestic development:

- Fabric first approach
- Installation of roof mounted solar PV array
- Passive heating and fenestration low U-values, high performance windows and solar control glazing to limit heat loss
- Possibility of roof mounted air source heat pump (ASHP) installation
- Retractable glazing/roof to maximize ventilation
- Use of sustainable building materials and locally sourced where possible
- Energy efficient lighting
- A Site Waste Management Plan would be produced

**6.122** Given the nature and scale of the proposed development, the above measures (applicable to both applications) are, on balance, considered an appropriate and proportionate response to the SPD, provided each scheme delivers a non-fossil fuel alternative system for all space and water heating.

**6.123** Currently, 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. Officers would have significant concerns if these methods continued, and in direct conflict with the SPD guidance.

#### **6.124 Other considerations**

#### **6.125 Trees**

**6.126** In addition to a number of trees planted within the site, there are 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 existing marquees and would also overhang the proposed buildings. These trees contribute to one of the finest avenues of trees within Cheltenham.

**6.127** Given the potential for damage to root protection areas, the Council's Tree Officer (TO) was consulted on the proposals. The TO confirms that the proposed structures would all be (at least partially) within the rooting areas (and zone of influence) of significant and mature street trees. The seasonal tree debris drop, blocking of light and perceived overbearing may lead to increased pressure for potentially inappropriate pruning or removal of the trees. However, this would probably be less apparent for application 24/01762/FUL. Similarly, the proposed retractable fabric for this scheme would minimise the increased sense of overbearing by the trees and compared with glass, the nature of the material would probably give less concern over the potential for breakage or soiling by tree debris drop.

**6.128** An opaque roof is suggested for application 24/01763/FUL (the glass roof scheme) and for both schemes consideration should be given to how and how often the roofs of the buildings are cleaned, as there will be debris drop.

**6.129** The applicant's design and access statement proposes screw pile foundations which the TO considers would be a potential damage-mitigating method of construction. As such, an arboricultural method statement was requested that should also specify all surfacing materials and the method of surfacing within RPAs. This statement has not yet been provided. An update report will follow should this information be submitted prior to the Planning Committee meeting and/or a potential additional reason for refusal added.

**6.130** The TO is also concerned about the potential for water diversion away from trees but this is most likely to occur in relation to application 24/01763/FUL. Consideration should therefore be given to maintaining soil moisture content by diverting water back into the rooting environment. This could be dealt with via a subsequent detailed drainage scheme condition, and the TO consulted.

**6.131** The County Council's Tree officers were also contacted for their thoughts on each scheme, as the proposals affect street trees managed by GCC. GCC has confirmed their agreement with CBC's Tree officer comments and no further concerns are raised.

#### **6.132** Drainage

**6.133** The Council's Drainage officer (DO) confirms that a sustainable drainage (SUDS) strategy would be required to mitigate the impacts of the impermeable surfaces and an agreed high level strategy required prior to determination of the applications, to demonstrate that the SUDS hierarchy would be followed and surface water not disposed to a combined sewer. The finer details of the drainage could be dealt with via a SUDS condition.

**6.134** Unfortunately, the requested high level drainage strategies have not been submitted, which are in part, related to the tree related concerns raised by the TO. Again, an update report will follow should the drainage strategy be submitted ahead of the Committee meeting, or potentially, an additional reason for refusal added.

**6.135** The DO notes the Tree officer's comments with regards drainage around the rooting environment of the existing trees. The infiltration of the first 5mm of rainfall, as per SUDS guidance, is therefore considered an important aspect of any future drainage design.

#### **6.136** Public Sector Equality Duty (PSED)

**6.137** As set out in the Equality 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.

**6.138** 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.

**6.139** 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*’, unless:

*i. the application of policies in this Framework that protect areas or assets of particular importance<sup>7</sup> provides a strong reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places....*

**7.3** When considering the impact of a proposed development on the significance of a designated heritage asset, paragraph 212 of the NPPF stipulates that “*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.*”

**7.4** All key/statutory heritage consultees (Historic England, The Georgian Group and the Council’s Senior Conservation officer) raise strong and unequivocal objections to the principle of the erecting any permanent structures within the front curtilages of the listed buildings. The proposals would represent an unprecedented form of development within the curtilages of Grade II\* listed buildings in Cheltenham and would therefore serve as a very harmful precedent for similar developments elsewhere within sensitive areas of the historic environment.

**7.5** Due to the location of the proposed buildings directly in front of the principal facades and covering almost the entire front curtilage of each building, the setting of the listed buildings (viewed both separately and collectively) would be permanently and significantly harmed. The architectural composition of each building, their separation and rhythm within the Conservation Area, the sweeping entrance steps, most of the entrance columns and delicately detailed and ornate upper floor balconies, would be largely screened from public view and the listed buildings’ overall appreciation lost.

**7.6** Although there is a fundamental objection to the principle of development, concerns are also raised over aspects of the architectural design of the proposed structures and their

impact on the setting of the Grade II\* listed buildings. For example, the lightweight metal frame and the fully opened fabric roof of the pergola scheme (24/01763/FUL), gives the appearance of a temporary marquee structure and the visual gaps between the listed buildings would be harmed and permanently reduced. The embellishment and interpretation of the Regency ironwork of the individual buildings scheme (24/01762/FUL), in combination with the internal furniture and lighting, would draw the eye and distract from the aesthetic heritage value that contributes highly to the significance of these Grade II\* buildings.

- 7.7** Whilst the addition of roof mounted solar PV panels would be a welcome initiative, there are doubts and concerns about the applicant's low carbon and sustainability proposals/intentions in general, particularly in relation to the potential continued use of non-fossil fuels for space and water heating and thereby compliance with the Climate Change SPD.
- 7.8** Officers also consider that the proposals fail to address the fundamental heritage impact concerns raised by the appeal Inspector, in so far as they are relevant to the current applications.
- 7.9** The applicant's economic and public benefits justification for the proposed development has been carefully considered and the Economic Statement independently reviewed. The review findings conclude that the figures and data used in the ES should not be relied upon as a solid evidence base for the proposed development. Numerous claims are made without the evidence, up-to-date data and correct time period assessments to support these, particularly with regard to the figures used to demonstrate the economic impacts of the existing business and the supply chain spend, and jobs impacted without the proposed development.
- 7.10** As required by NPPF paragraph 207, the applicant continues to have not fully considered the significance of the heritage assets affected, including the contribution made by their setting. Equally, the applicant has provided no evidence to suggest that alternatives to development at the front of the buildings have been fully tested and that there are no other viable uses for the listed buildings that would be consistent with their conservation.
- 7.11** The (upper end) of less than substantial 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 215 of the NPPF. Whilst officers acknowledge that there are some wider economic and social benefits associated with both proposed schemes, these benefits are found to be limited and are not considered to outweigh the identified harm to the significance of the heritage assets.
- 7.12** In light of the above concerns, the applicant has not provided clear and convincing justification for the harm that would be caused to the significance of the designated heritage assets, as required by paragraph 213 of the NPPF. With regard to NPPF paragraph 11, and having also considered the extent to which the proposals amount to sustainable development, officers conclude that the identified harm to the significance (setting) of designated heritage assets significantly and demonstrably outweighs the benefits and there are strong reasons for refusing the development proposed.
- 7.13** Neither scheme proposed is considered acceptable and both conflict with local and national planning policy and guidance.
- 7.14** The recommendation is therefore for Members to refuse both applications for the following reasons.

## 8. INFORMATIVES / REFUSAL REASONS

### 24/01762/FUL

- 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). They form part of an important group of large detached and terraced, Grade II\* listed properties on the west side of the Promenade. They are of considerable aesthetic and historic significance and there are long distance and important views of the buildings from Queen's Circus, Montpellier Street, the Promenade and Imperial Square and Gardens. NPPF paragraph 212 stipulates that great weight should be given to an 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, or less than substantial harm to its significance.

Having regard to paragraphs 208, 210, 212 and 213 of the NPPF, the impact of the proposals on the significance of designated heritage assets (which includes their setting), by virtue of the location, size, form and overall appearance of the buildings proposed, is considered to neither sustain or enhance the buildings' special interest. The proposed development would occupy the majority of the front curtilages of the three listed buildings, remove important open space, obscure the lower ground and ground floor principal elevations and elements of the aesthetically sensitive architectural composition of these principal facades. The proposals would therefore result in significant harm to the setting of the listed buildings, those of adjacent structures and nearby listed buildings and the character and appearance of the Central Conservation Area. Development of this nature within the front curtilages of the listed buildings is considered fundamentally unacceptable and, if approved, could set an undesirable precedent for wholly inappropriate development elsewhere within the historic environment.

The identified harm to the heritage assets is considered to be at the upper end of less than substantial, for the purposes of paragraph 215 of the NPPF. The public benefits of the proposals are limited and not considered to outweigh the identified harm to the heritage assets. In addition, the supporting information within the application continues to demonstrate a poor understanding of the affected heritage assets and offers no clear or convincing justification for the proposed works in heritage or economic terms. The development proposals therefore fail to comply with the policy and guidance of Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Part 16 of the National Planning Policy Framework (2024), Policies SD4 and SD8 of the Joint Core Strategy (2017) and Policy D1 of the Cheltenham Plan (2020).

### 24/01763/FUL

- 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). They form part of an important group of large detached and terraced, Grade II\* listed properties on the west side of the Promenade. They are of considerable aesthetic and historic significance and there are long distance and important views of the buildings from Queen's Circus, Montpellier Street, the Promenade and Imperial Square and Gardens. NPPF paragraph 212 stipulates that great weight should be

given to an 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, or less than substantial harm to its significance.

Having regard to paragraphs 208, 210, 212 and 213 of the NPPF, the impact of the proposals on the significance of designated heritage assets (which includes their setting), by virtue of the location, size, form and overall appearance of the buildings proposed, is considered to neither sustain or enhance the buildings' special interest. The proposed development would occupy the majority of the front curtilages of the three listed buildings, remove important open space, obscure the lower ground and ground floor principal elevations and elements of the aesthetically sensitive architectural composition of these principal facades. The proposals would therefore result in significant harm to the setting of the listed buildings, those of adjacent structures and nearby listed buildings and the character and appearance of the Central Conservation Area. Development of this nature within the front curtilages of the listed buildings is considered fundamentally unacceptable and, if approved, could set an undesirable precedent for wholly inappropriate development elsewhere within the historic environment.

The identified harm to the heritage assets is considered to be at the upper end of less than substantial, for the purposes of paragraph 215 of the NPPF. The public benefits of the proposals are limited and not considered to outweigh the identified harm to the heritage assets. In addition, the supporting information within the application continues to demonstrate a poor understanding of the affected heritage assets and offers no clear or convincing justification for the proposed works in heritage or economic terms. The development proposals therefore fail to comply with the policy and guidance of Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Part 16 of the National Planning Policy Framework (2024), Policies SD4 and SD8 of the Joint Core Strategy (2017) and Policy D1 of the Cheltenham Plan (2020).

## **INFORMATIVE**

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 harm caused to the significance (setting) of the 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.

## Consultations Appendix

### National Amenity Societies – The Georgian Group

6th December 2024 -

#### 24/01762/FUL

Erection of glazed structures within the front curtilages of Nos 125-127, 129-131 and 133 Promenade to provide external restaurant, dining and drinking facilities associated with 131 Promenade and existing hotel. Installation of PV panels to roofs of 125-127 and 133 Promenade and removal of existing conservatory to side of 133 Promenade.

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#### 24/01763/FUL

Erection of metal-framed pergola structures within the front curtilages of Nos 125-127, 129-131 and 133 Promenade to provide external restaurant, dining and drinking facilities associated with 131 Promenade and existing hotel. Installation of PV panels to roofs of 125-127 and 133 Promenade and removal of existing conservatory to side of 133 Promenade.

Thank you for consulting the Georgian Group on the above applications for planning permission which propose, respectively, the addition of glazed or metal-framed permanent structures against the principal elevations of three Grade II\* listed buildings within the Montpellier Character Area of the Central Conservation Area. The Group objects to the principle of adding permanent structures to the most significant architectural elements of each of these villas.

#### Understanding the significance of the listed buildings

The Promenade was laid out in 1818 across undeveloped marshland as a tree-lined ride to connect the Sherborne Spa with the Colonnade off the High Street. By 1826, the Promenade was a carriage drive with gravel walks to either side. The subject buildings form part of the North West side which was the first area of the route to be developed. As the Heritage Impact Assessment (2.2) notes: '125-133 Promenade, along with 121 and 123, form a group of Regency villas on the north-west side which "best preserves the original character of The Promenade"'. The applicant therefore accepts the special significance of this distinguished grouping on the Promenade - an axial route of prime historic importance which is key to understanding the development of Cheltenham as a fashionable Regency spa town. As the list entry notes, Clarence House 'forms part of an outstanding group of villas overlooking Imperial Gardens with Nos 121 and 123, 125 and 127 and Nos 129 and 131 and The Queen's Hotel' and is 'a delightful little building to an intimately domestic scale' (Pevsner). Sherborne and Gloucester Lodges, designed by John Forbes c. 1833, are noted for their 'idiosyncratic capitals, a charming fantasy based on the Prince of Wales feathers' (Pevsner).

#### The proposals

Following the refusal of a scheme to retain temporary marquee structures ('the Covid scheme') along the front of three villas and the subsequent dismissed appeal (a complex planning history which we do not rehearse here), these applications propose a series of glazed or metal-framed permanent structures to serve as catering spaces for the 131 Hotel.

We have reviewed the drawings for both schemes and are very clear that the significance of the three Grade II\* buildings would be harmed by the proposed development on their principal elevations and within their immediate setting. Our objection is a matter of principle and there is therefore little merit in offering comment on the specifics of each scheme's materiality and detailing. In their different ways, both constitute an unacceptable visual distraction obscuring original features and competing with and dominating the highly-designated assets. We place this harm at the high end of less than substantial in NPPF terms.



## Our recommendation

We recommend your authority dismisses the argument made by the applicant (see Heritage Statement 5.2) that the visual harm accruing from the current proposals 'is far less than the Covid scheme'. The correct baseline for comparison, as Historic England states (letter of 25 November), cannot be the marquee structures; these never had formal planning permission and are not a relevant consideration.

Paragraph 205 of the NPPF requires the decision maker to attach 'great weight' to a designated heritage asset's conservation when considering the impact of a proposed development. The NPPF goes on to state (paragraph 206) that any harm to a designated heritage asset - including harm that would arise from development within its setting - should require 'clear and convincing justification'. Although the buildings affected are highly-graded assets, at present neither of these key policy tests has been met.

We take this opportunity to remind your authority that a Conservation Area is a designated heritage asset for the purposes of the NPPF and that under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 local authorities have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

Historic England has advised the applicant to explore a less harmful permanent solution to the rear of the building. It is to a meaningful exploration of options for this solution that we urge the applicant to return. We recommend that your authority refuses the present applications.

## **Historic England – 24/01762/FUL**

*25<sup>th</sup> November 2024-*

Thank you for your letter of 7 November 2024 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

### Summary

While the proposed design has been steered by a more contextual approach, the principle of any development to the front of the principal elevations of the Grade II\* Regency villas would be harmful to their significance. As we have consistently advised in the past, consideration should be given to some careful development to the rear of the buildings and the front cleared of the existing marquees. We do not oppose the use of the front terraces for external dining, but rather do not support any temporary or permanent structures here. We do not object to the removal of the modern conservatory or the principle of photovoltaic panels on the roof, subject to further information.

### Significance of Designated Heritage Assets

Located in the heart of historic Cheltenham, the semi-detached villas at no 125-133 are highly representative of the 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 (separately listed Grade II).

They present a double pile plan and rise for two storeys plus attics over basements. 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 axes of Montpelier Character Area, part of the Central Conservation Area. This is an area characterised by spaciousness, a loose urban grain around wide tree-lined roads and formal green spaces, with medium and long vistas that open up towards larger public and civic buildings. These properties contribute to and are enhanced by the distinctive character and appearance of Montpelier, considered as part of their immediate setting.

The terrace of villas is designated as Grade II\*, and as such is in the top 8% of listed buildings. Therefore, greater weight should be given to its conservation. The National Planning Policy Framework (NPPF) defines 'conservation' as 'the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance'.

#### Summary of proposals.

Following the refusal of the previous scheme to retain the existing marquee structures along the front of three villas and the subsequent dismissed appeal, the application proposes a revised scheme for an alternative design approach for a range of glazed structures to serve as catering spaces for the hotel.

#### Impact of the Proposed Development

As per our previous advice on the existing structures, and a subsequent application to amend the roof profile, we concluded that any development on the south side of the villas would be harmful to their heritage significance, for reasons that have already been extensively rehearsed and covered in the Planning Inspectors report.

The revised layout and particularly the design approach, which is clearly articulated and referenced in the submitted documents, is an improvement on the existing temporary marquees. There is clarity and legibility from a contextual steer and certainly in some parts of Cheltenham, this would seem a perfectly valid design approach for a garden-type building. However, the heritage values that make up the significance of all three Grade II\* villas would be significantly diminished by any form of development on this elevation.

The architectural composition of each building, their separation and rhythm within the Conservation Area, and also the setting of each, would still be obscured by the proposed additions. We acknowledge that the revised layout has proposed a degree of separation in plan form; however the benefit of this would only be apparent from limited positions.

While the design has included a degree of embellishment, interpreting the Regency ironwork of local balconies and canopies, this would tend to have the effect of drawing the eye and visually distracting from the upper floors of the three villas, compromising their aesthetic heritage value.

There would be no adverse impact or harm as a result of removing the modern conservatory, which we believe was added during 2018. However, this would not be considered to mitigate the harm caused by the proposed development to the front of the buildings, on account of partially reinstating views and separation between nos 131 and 133.

There is no potential for visual impact caused by the erection of PV panels on the roofs of nos 125-127 and no. 133. However, there is insufficient information relating to the construction and fixings of the panels and how these might impact upon the historic fabric of

the roofs. If these proposals were to be pursued as part of this application or a future submission, we would expect additional supporting information to make our assessment.

#### Planning Legislation & Policy Context

Central to our consultation advice is the requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 in Section 66(1) for the local authority to “have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses”. Section 72 of the act refers to the council’s need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in the exercise of their duties.

When considering the current proposals, in line with paragraph 200 of the NPPF, the significance of the asset requires consideration, including the contribution of its setting. The setting of The Promenade is a major aspect of its significance. Paragraph 205 states that in considering the impact of proposed development on significance, great weight should be given to the asset’s conservation and that the more important the asset the greater the weight should be. The Promenade is Grade II\*, a heritage asset of the highest significance. Paragraph 206 goes on to say that clear and convincing justification is needed if there is loss or harm.

Historic England’s advice is provided in line with the importance attached to significance and setting with respect to heritage assets as recognised by the Government’s revised National Planning Policy Framework (NPPF) and in guidance, including the Planning Practice Guidance (PPG), and good practice advice notes produced by Historic England on behalf of the Historic Environment Forum (Historic Environment Good Practice Advice in Planning Notes (2015 & 2017)).

The significance of a heritage asset can be harmed or lost through alteration or destruction of the asset or development within its setting. As heritage assets are irreplaceable, any harm (whether substantial or less than substantial) is to be given great weight, and any harm to, or loss of, the significance of a designated heritage asset (or site of equivalent significance) should require clear and convincing justification.

#### Position.

We have visited the site and have been shown around the building complex and associated structures by the applicant. The function of each of each of the spaces, both internal and external (within the marquees) was explained, together with the business rationale. The bar and restaurant offer between the three villas is substantial and we still believe that there is still some scope to deliver a permanent solution to the rear of the building, which could also provide a more fit-for-purpose wedding function space, as we understand this to be another offer of the venue. While an extension or extensions here would still impact on the setting of the GII\* villas, this is likely to be significantly less than that resulting from anything on the principal aspect.

The NPPF requires the applicant to provide clear and justification where harm to significance has been identified. The justification provided in the Heritage Statement rests on the need to ensure that the listed buildings are in a long term sustainable and viable use, and that the additional space will contribute to this, and the contribution to local jobs and the economic vitality of Cheltenham. We certainly concur that all listed buildings need a long term sustainable use. However, your authority should assess whether or not the proposed development is required to deliver the optimum viable use for the three villas.

The impact and harm to the significance of the heritage assets will need to be balanced against the perceived public benefit, for which Historic England has no locus. However, the Planning Inspector made a point in their decision (para 40) relating to the impact of providing space for eating/drinking versus the provision of covered structures. We concur with this view

that the issue of concern does not lie with aspirations to provide outside seating for customers, but solely the proposed buildings to the front of the three villas.

We have no issue with the front terraces to each villa being used for outside seating, providing additional restaurant covers in the same way as many other catering businesses in Cheltenham. However, it is rather the principle of significant structures located on the most significant architectural aspect of each of the villas that Historic England opposes. Furthermore, any approval would serve as a very harmful precedent for similar developments elsewhere within sensitive areas of the historic environment.

The Appeal Decision also recognised that there was insufficient information provided to fully assess the public benefits of the scheme. We note, however, that an Economic Impact Statement has now been submitted. It is not for Historic England to make comments on such matters, but your authority will be tasked in assessing this as part of making the planning balance. However, the NPPF requires local planning authorities to give great weight to the conservation of heritage assets and that the more significant the asset is, the greater the weight shall be given.

We recognise that the revised approach to providing a permanent solution to replacing the existing tented marquees would reduce the visual impact on the principal elevations of the GII\* villas. However, the existing structures have never had formal planning permission and should not be considered as a precedent for considering alternative designs.

The significance of the three Grade II\* buildings would be harmed by the proposed development within their principal setting. The Regency-inspired ironwork and leaded canopy roofs would deliver an architectural statement in front of the formal faces of each of the villas, and in addition to the internal furniture, lighting etc, this would distract from the aesthetic heritage value that contributes highly to the significance of the Grade II\* buildings. While the harm would be less than substantial (NPPF 208), this does not mean your authority should immediately proceed to the “balancing exercise” of weighing the harm we have identified against any wider public benefits.

We still believe that the areas to the rear of the villas, while still contributing positively to their significance and the character and appearance of the Conservation Area, is less sensitive to change and alternatives should be further explored here. Page 37 of the Heritage Impact Assessment responds to our previous advice that development to the rear of the buildings should be considered. However, the applicant does not explain why this option has not been considered or options here tabled for discussion. Therefore, we are not persuaded that harm has been minimised or indeed justified, and therefore your authority would be justified in rejecting the proposals

#### 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 205, 206 and 212 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. If there are any material changes to the proposals, or you would like further advice, please contact us.

**Historic England – 24/01763/FUL**

*25th November 2024 –*

Thank you for your letter of 7 November 2024 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

#### Summary

While the proposed design has a lower roof profile than that of the existing structures, the principle of any development to the front of the principal elevations of the Grade II\* Regency villas would be harmful to their significance. As we have consistently advised in the past, consideration should be given to some careful development to the rear of the buildings and the front cleared of the existing marquees. We do not oppose the use of the front terraces for external dining, but rather do not support any temporary or permanent structures here. We do not object to the removal of the modern conservatory or the principle of photovoltaic panels on the roof, subject to further information.

#### Significance of Designated Heritage Assets

Located in the heart of historic Cheltenham, the semi-detached villas at no 125-133 are highly representative of the 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 (separately listed Grade II).

They present a double pile plan and rise for two storeys plus attics over basements. 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 axes of Montpellier Character Area, part of the Central Conservation Area. This is an area characterised by spaciousness, a loose urban grain around wide tree-lined roads and formal green spaces, with medium and long vistas that open up towards larger public and civic buildings. These properties contribute to and are enhanced by the distinctive character and appearance of Montpellier, considered as part of their immediate setting.

The terrace of villas is designated as Grade II\*, and as such is in the top 8% of listed buildings. Therefore, greater weight should be given to its conservation. The National Planning Policy Framework (NPPF) defines 'conservation' as 'the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance'.

#### Summary of proposals

Following the refusal of the previous scheme to retain the existing marquee structures along the front of three villas and the subsequent dismissed appeal, the application proposes an alternative revised scheme for a steel-framed pergola to serve as catering spaces for the hotel. Proposals also include the removal of a modern conservatory attached to the north-east side of no.133 and PV arrays on the roofs of no. 133 and nos. 125-127.

#### Impact of the Proposed Development

As per our previous advice on the existing structures, and a subsequent application to amend the roof profile, we concluded that any development on the south side of the villas would be harmful to their heritage significance, for reasons that have already been extensively rehearsed and covered in the Planning Inspectors report.

The proposed revised design is for a continuous (in length) steel framed pergola with a retractable canopy roof. The frame is visually unrefined and would be experienced as a utilitarian and unrelenting structure against the principal elevations of the Grade II\* villas. The submitted elevations and perspective images do not include the roof fully open and therefore do not exhibit the full visual impact of the structure. It would be assumed that it is unlikely that the roof would be often be retracted, particularly as this would be difficult secure through planning conditions. Therefore the impacts of the structure should be based upon the frame and the fully opened fabric roof, giving the appearance of a temporary marquee structure, but with a less assertive roof than the existing arrangement.

The heritage values that make up the significance of all three Grade II\* villas would be significantly diminished by any form of development on this elevation and the proposed frame would appear incongruous in its form, detailing and materiality.

There would be no adverse impact or harm as a result of removing the modern conservatory, which we believe was added during 2018. However, this would not be considered to mitigate the harm caused by the proposed development to the front of the buildings, on account of partially reinstating views and separation between nos 131 and 133.

There is no potential for visual impact caused by the erection of PV panels on the roofs of nos 125-127 and no. 133. However, there is insufficient information relating to the construction and fixings of the panels and how these might impact upon the historic fabric of the roofs. If these proposals were to be pursued as part of this application or a future submission, we would expect additional supporting information to make our assessment.

#### Planning Legislation & Policy Context

Central to our consultation advice is the requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 in Section 66(1) for the local authority to “have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses”.

Section 72 of the act refers to the council’s need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in the exercise of their duties.

When considering the current proposals, in line with paragraph 200 of the NPPF, the significance of the asset requires consideration, including the contribution of its setting. The setting of The Promenade is a major aspect of its significance. Paragraph 205 states that in considering the impact of proposed development on significance, great weight should be given to the asset’s conservation and that the more important the asset the greater the weight should be. The Promenade is Grade II\*, a heritage asset of the highest significance. Paragraph 206 goes on to say that clear and convincing justification is needed if there is loss or harm. Historic England’s advice is provided in line with the importance attached to significance and setting with respect to heritage assets as recognised by the Government’s revised National Planning Policy Framework (NPPF) and in guidance, including the Planning Practice Guidance (PPG), and good practice advice notes produced by Historic England on behalf of the Historic Environment Forum (Historic Environment Good Practice Advice in Planning Notes (2015 & 2017)).

The significance of a heritage asset can be harmed or lost through alteration or destruction of the asset or development within its setting. As heritage assets are irreplaceable, any harm (whether substantial or less than substantial) is to be given great weight, and any harm to, or loss of, the significance of a designated heritage asset (or site of equivalent significance) should require clear and convincing justification.

### Position.

We have visited the site and have been shown around the building complex and associated structures by the applicant. The function of each of each of the spaces, both internal and external (within the marquees) was explained, together with the business rationale. The bar and restaurant offer between the three villas is substantial and we still believe that there is still some scope to deliver a permanent solution to the rear of the building, which could also provide a more fit-for-purpose wedding function space, as we understand this to be another offer of the venue. While an extension or extensions here would still impact on the setting of the GII\* villas, this is likely to be significantly less than that resulting from anything on the principal aspect.

The NPPF requires the applicant to provide clear and justification where harm to significance has been identified. The justification provided in the Heritage Statement rests on the need to ensure that the listed buildings are in a long term sustainable and viable use, and that the additional space will contribute to this, and the contribution to local jobs and the economic vitality of Cheltenham. We certainly concur that all listed buildings need a long term sustainable use. However, your authority should assess whether or not the proposed development is required to deliver the optimum viable use for the three villas.

The impact and harm to the significance of the heritage assets will need to be balanced against the perceived public benefit, for which Historic England has no locus. However, the Planning Inspector made a point in their decision (para 40) relating to the impact of providing space for eating/drinking versus the provision of covered structures. We concur with this view that the issue of concern does not lie with aspirations to provide outside seating for customers, but solely the proposed buildings to the front of the three villas.

We have no issue with the front terraces to each villa being used for outside seating, providing additional restaurant covers in the same way as many other catering businesses in Cheltenham. However, it is rather the principle of significant structures located on the most significant architectural aspect of each of the villas that Historic England opposes. Furthermore, any approval would serve as a very harmful precedent for similar developments elsewhere within sensitive areas of the historic environment.

The Appeal Decision also recognised that there was insufficient information provided to fully assess the public benefits of the scheme. We note, however, that an Economic Impact Statement has now been submitted. It is not for Historic England to make comments on such matters, but your authority will be tasked in assessing this as part of making the planning balance. However, the NPPF requires local planning authorities to give **great weight** to the conservation of heritage assets and that the more significant the asset is, the greater the weight shall be given.

We recognise that the revised approach to providing a permanent solution to replacing the existing tented marquees would marginally reduce the visual impact on the principal elevations of the GII\* villas. However, the existing structures have never had formal planning permission and should not be considered as a precedent for considering alternative designs.

The significance of the three Grade II\* buildings would be harmed by the proposed development within their principal setting. The proposed steel frame and obscuring fabric roof would distract from the aesthetic heritage value that contributes highly to the significance of the Grade II\* buildings. While the harm would be less than substantial (NPPF 208), this does not mean your authority should immediately proceed to the “balancing exercise” of weighing the harm we have identified against any wider public benefits.

We still believe that the areas to the rear of the villas, while still contributing positively to their significance and the character and appearance of the Conservation Area, is less sensitive to change and alternatives should be further explored here. The Design and Access Statement provides some explanation to why routes from the existing kitchen to the rear of no.133

would be difficult. However, there is little in the way of alternative options that could deliver a viable alternative for the business. Therefore, we are not persuaded that harm has been minimised or indeed justified, and your authority would be justified in rejecting the proposals.

### 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 205, 206 and 212 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. If there are any material changes to the proposals, or you would like further advice, please contact us.

### **Heritage and Conservation – 24/01762/FUL**

*31<sup>st</sup> January 2025-*

125. 127, 129. 131 and 133 Promenade. Proposed development within the curtilages of Grade II (starred) listed buildings.

The application lies on the northern edge of Imperial Gardens, facing Promenade with Montpellier Street directly to its western boundary.

The proposal seeks to replace the existing range of adjoining marquees. They were constructed as a temporary use to ensure the existing restaurant and bar trading continued during the period of Covid restrictions. The temporary use and nature of construction contribute to the appearance of a large tent - like enclosure.

The structure was erected without the benefit of planning permission and is subject to ongoing Planning Enforcement proceedings. Comparisons of scale, size, height, footprint or bulk of the current application and the existing unauthorised structure are considered inappropriate as the existing built form has no validity.

### Relevant Legislation and Policy

Of particular importance is the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 16 (2) requires local planning authorities to have special regard to the desirability of preserving the special architectural or historic interest of listed buildings and their setting and Section 72 (1), which requires local planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

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'.

A core principle of the National Planning Policy Framework 2024 (NPPF) is for heritage assets to be conserved in a manner appropriate to their significance. Chapter 16, paras 202 - 216 set out how potential impacts on heritage assets shall be considered.

In addition, the National Planning Policy Framework (NPPF) 2024, states: 'The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.....' (NPPF, Annex 2: Glossary).

The assessment takes account of the relevant considerations in these paragraphs, including para.203 of the NPPF, which requires heritage assets to be sustained and enhanced and



para 207, which requires clear and convincing justification for any harm to, or loss of, the significance of a designated heritage asset and para. 214, which addresses harm, specifically where a development 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 including, where appropriate, securing its optimum viable use.

### Proposed design

The application involves the construction of four large, predominately glazed, single storey, flat roofed buildings which align with the villas located directly behind. The buildings represent separate, independent construction, set parallel to the front façades of the five Grade II\* listed buildings.

The single storey buildings will not be physically linked to their host buildings and will be identified as stand-alone structures. They will appear contemporary but with the addition of metal framing, mimicking historic Regency detailing found elsewhere within the conservation area. In this context, the design represents pastiche; it attempts to replicate details of period buildings but it is clearly of a modern form.

The application includes the introduction of PV panels on existing flat roof areas to provide heating within the proposed development. The principle of these alterations and introduction is welcomed. In addition, a modern side conservatory will be removed which is supported.

There are vistas through gaps between the proposed restaurant buildings which will allow views beyond the existing villas of Cheltenham Ladies College. Except for views approximately perpendicular to the front elevations, the perception of the four buildings visually 'merging' will prevail from many viewing points. In addition, due to the height of the proposed development, public views from the north side of Promenade will ensure most of the lower half of the buildings will be obscured.

### Setting

Due to the location of the proposed development directly in front of the principal facades, the setting of the buildings (viewed separately and collectively) will be permanently harmed due to the development within their curtilages. In addition, their significance will be permanently harmed due to the lower and ground floor windows being substantially blocked visually by the single storey structures. In addition, the sweeping entrance steps will be hidden from public view, most of the entrance columns and delicately detailed and ornate upper ground floor balconies will also be screened by the proposed buildings. The Grade II listed railings will be impacted due to the proximity of the buildings. Although designed to be as visually permeable as possible, the application proposals do not indicate the restaurant paraphernalia such as large planters, tables, chairs and constant and movement from staff and those frequenting the restaurant and bar. The perception of visual permeability will be significantly reduced when the demountable glazed panels are installed or during opening hours and when the interior of the spaces is illuminated by artificial light.

The principal facades of the villas affected by the proposals were designed to delight and impress those in the vicinity and for those inside the buildings to enjoy unrestricted views across Imperial Gardens. They convey aesthetically sensitive architectural composition for those viewing the principal façades from the public domain. The views are most prominent when approached from the north, south and from many vantage points within and around the boundary of Imperial Gardens.

The original plan form of historic development around the edge of Imperial Gardens indicates a strong characteristic in relation to the original building line around the Gardens. In stark contrast, the proposal will introduce new buildings significantly forward of the established building line within the open space in the curtilage of properties 125 – 133 Promenade. In

addition, the buildings are viewed collectively as well as individually in a very prominent and sensitive location within the Central Conservation Area (Montpellier Character Area).

### Impact on setting

NPPF (2024) states: 'The surroundings in which a heritage asset is experienced, its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset may affect the ability to appreciate that significance or may be neutral'. (Annex 2: Glossary)

It is clear the issue of setting is not fixed by any specific distance and will vary from one situation from another. In this context, the proposed development within the curtilages of 125-127, 129-131 and 133 will significantly affect a wider area beyond its immediate vicinity.

The setting of the following statutory protected heritage assets will also be also impacted:

- The setting of five Grade II\* buildings. The application proposes development in the front curtilage of all of them.
- The setting of the Grade II listed railings and gates forming the boundary of their curtilage
- The setting of the adjacent Grade II\* listed Queen's Hotel.
- The setting of the adjacent Grade II listed memorial.
- The setting of many Grade II listed buildings which are located on the boundary which forms Imperial Gardens.
- The setting of Imperial Gardens.
- The impact on the Central Conservation Area (Montpelier Character Area).

The Setting of Heritage Assets (Historic England – Historic Environment Good Practice Advice, Planning Note 3 (2nd Edition) states:

Item 3 – 'The statutory obligation on decision-makers to have special regard to the desirability of preserving listed buildings and their settings, and the policy objectives in the NPPF and the PPG establishing the twin roles of setting: it can contribute to the significance of a heritage asset, and it can allow that significance to be appreciated. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the heritage asset's conservation, including sustaining significance'.

The skeletal frames and flat roof structures will represent a permanent presence in front of the existing principal façades directly behind and significantly impact upon their setting and significance and remove the important open space ( the original front gardens) within their curtilage.

Item 4 - 'Consideration of the contribution of setting to the significance of heritage assets, and how it can enable that significance to be appreciated, will always include the consideration of views....'

Views from the villas and how they will be impacted are an important consideration but are not mentioned within the applicant's submission. From the upper ground floor windows there will be views in the foreground of the roofs of the proposed structures instead on an open space.

Item 5 - 'Consideration of the contribution of setting to the significance of heritage assets, and how it can enable that significance to be appreciated, will almost always include the consideration of views.....'

The significance of the heritage assets will be compromised due to the detrimental impact of their setting by the front curtilage development. Typically, in Regency architecture, the greater the spatial area beyond the footprint of the building, the greater the historic and architectural status of the original building/s. In this context, the villas have limited open space at the rear of the properties but have always enjoyed the benefit of generous open

spaces to the front for a town centre location. The proposed development will consume most of these spaces with buildings directly in front of the front facades. This will represent an unprecedented form of development within the curtilage of a Grade II (starred) building within Cheltenham. In addition, the proposed buildings will be highly detrimental to the significance of all the villas by virtue of the loss of the sense of openness between the listed buildings and the Promenade and the visual loss of much of the historic, architectural and the aesthetic composition of most of the lower areas of buildings which will vary regarding the position of views within the public realm.

Item 8 - 'While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset.....'

Item 9 - 'Setting and the significance of heritage assets is not a heritage designation, although land compromising a setting may itself be designated. Its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance.....'

The collective hierarchy and Grade II\* status of the villas is reflected (in part) by the open spaces between the buildings and Promenade. The proposed development will remove these spaces (former front gardens) to form the new buildings.

Item 9 also states:

'Sustainable development under the NPPF can have important positive impacts on heritage assets and their settings, for example by bringing an abandoned building back to in to use or giving a heritage asset further life. However, the economic viability of a heritage asset can be reduced if the contribution made by its setting is diminished by badly designed or insensately locate development.....'

Item 10 relates to views and setting – 'The contribution of setting of the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, long, short or of lateral spread, and include a variety of views of, from, across or including the asset.'

Views from listed buildings are important. From the upper ground floors, views will be altered; the open space in front of the windows (the former front gardens) will be replaced with by four large buildings with limited views of Imperial Gardens now only having a background setting. The foreground views from the villas will show the visual prominence of the roof structures of the proposed four buildings with views within the proposed interiors and all of restaurant paraphernalia clearly visible. Sound transmission from the proposed development will also impact the upper ground floor of the villas. In addition, unrestricted views across the open green space directly opposite will be compromised due to the proposed roofscape of the development.

### Character of Central Conservation Area

The Villas are located on the Promenade, one of the spinal axis roads of Montpellier Character Area, part of the Central Conservation Area. This area is an area that, particularly where the properties in question are located, is characterised by spacious and loose urban grain around wide tree lined roads and formal green spaces, and medium and long vistas that open towards larger public buildings. The properties subject to this application both contribute to and are enhanced by the distinctive character and appearance of Montpellier, which is to be considered part of their immediate setting.

The detailed character of the area is documented in the Central Conservation Area (Montpellier Character Area) Appraisal. One of its outstanding features and characteristics the area offers is the numerous, extensive and diverse range of cafes, bars and restaurants

within walking distance of the Promenade. The application seeks a substantial increase in the capacity of the existing restaurant. The potential collateral, long-term economic impact and sustainability on existing bars or restaurants in the conservation area which may be impacted due the proposal has not been appraised.

#### Mitigating the harmful impact

The applicant's Heritage Impact Assessment (produced by Donald Insall Associates) confirms an "audit" has taken place and the increase in the number of required covers cannot be achieved without the new buildings. However, some of the proposed development (essentially to increase restaurant covers) may be able to be achieved (in part) without the proposed development located within the front curtilage of the listed buildings whilst preserving the character and appearance of the character on the conservation area. Such options may include reviewing the internal restaurant seating configuration to increase covers, single storey extension/s elsewhere and away from the principal elevations or additional premises elsewhere for example. The planning authority would welcome such discussions at a future date.

#### Conclusion

The proposal would be detrimental to the significance and setting the Grade II\* listed buildings due to the proposed development within their curtilages. Due to the location of the proposed buildings, it will visually shroud much of the upper ground and lower ground floors of the villas and physically dominate the area of proposed development, with the existing prominence and significance of the listed building facades being 'devalued'; they will form the background, and the new development set forward, very close to the adjacent public pedestrian thoroughfare. In addition, it will have a negative impact on numerous statutory listed heritage assets within the southern, eastern and western residential properties forming the boundary of Imperial Gardens as highlighted above. It will create a row of alien and uncharacteristic structures in one of the most prominent, architecturally significant and sensitive areas within the whole of Cheltenham and will not 'preserve or enhance' the character or appearance of the conservation area. The scale of heritage assets affected is wide-ranging and significant.

There is acknowledgement that there will be public benefits. The proposal will increase employment opportunities associated with the bar/restaurant which will be generated due to the enlargement of the existing facilities. It will introduce vibrancy to the street scene in the immediate area (which existed prior to the unauthorised existing structures) in the form of outside eating/drinking facilities as the design includes the option of demountable glazed walls, thus creating the option of an outside experience. However, the limited public benefits do not outweigh the harm of the proposal.

The setting and significance of so many heritage assets will be significantly compromised. The proposal is close to 'substantial harm,' but this threshold is high. I am also aware no historic fabric will be harmed. I therefore consider the upper end scale of 'less than substantial harm' is appropriate in relation to the impact on setting and significance.

Where appropriate, the principle of achieving the optimum viable use for the site is supported. However, this proposal will be to the detriment of the setting and significance of the designated heritage assets within the proposed site area and part of the conservation area where it is sited.

There are no other examples within this part of the conservation area of a similar scale or indeed any new development being constructed directly in front of the principal façade/s of any listed building/s. In this context, the proposal would be setting a precedent.

It is the principle of development in such a sensitive location which remains the overriding concern. For the above reasons I recommend planning permission is refused.

## **Heritage and Conservation 24/01763/FUL**

31<sup>st</sup> January 2025-

125, 127, 129, 131 and 133 Promenade. Proposed development within curtilage of the listed buildings.

The application site lies on the northern edge of Imperial Gardens, facing Promenade with Montpellier Street directly to its Weston boundary.

The proposal seeks to replace the existing range of adjoining marquees. They were constructed as a temporary use to ensure restaurant and bar trading continued during the period of Covid restrictions. The temporary use and nature of construction contribute to the appearance of a large tent - like enclosure for a special event and then to be dismantled.

The structure was erected without the benefit of planning permission and is subject to ongoing Planning Enforcement Notice. Comparisons of scale, size, height, footprint or bulk of the current application and the existing unauthorised structure are considered inappropriate as the existing built form has no validity.

### Proposed design

The application involves the construction of a long, ranging, predominately glazed single storey, flat (demountable) roof building with Nos 125,127,129,131 and 133 villas located directly behind. The design represents a detached construction set parallel to the front façades of the Grade II\* buildings. The single storey structures will not be physically linked to their host building and will be identified as a stand-alone building. It will represent a contemporary form and design, seen in the context of one of most sensitive historic areas within Cheltenham.

The application includes the introduction of PV panels on existing flat roof areas to the listed buildings to provide heating within the proposed development. Subject to further detail, the principle of these alterations and introduction is welcomed. In addition, the proposal includes the loss of a modern side conservatory which is supported.

Due to its alien and incongruous form in relation to its historic context, the building will visually dominate the listed villas, particularly when viewed in twilight or darkness due to its high degree of glazing, internal illumination and continuous activity from within it.

### Relevant legislation and Policy

Of particular importance is the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 16 (2) requires local planning authorities to have special regard to the desirability of preserving the special architectural or historic interest of listed buildings and their setting and Section 72 (1), which requires local planning authorities to pay special regard to the desirability of preserving or enhancing the character or appearance of a conservation area.

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'.

A core principle of the National Planning Policy Framework 2004 (NPPF) is for heritage assets to be conserved in a manner appropriate to their significance. Chapter 16, paras 202 – 2016 set out how potential impacts on heritage assets shall be considered.

In addition, the National Planning Policy Framework (NPPF) states: 'The value of a heritage to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting....' (NPPF, Annex 2 – Glossary).

This assessment takes account of the relevant considerations in these paragraphs , including para 203 of the NPPF, which requires heritage assets to be sustained and enhanced and para 207 , which requires clear and convincing justification for any harm to, or loss of, the significance of a designated heritage asset and para 214, which addresses harm ,specifically where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm is to weighed against the public benefits of the proposal including , where appropriate , securing its optimum viable use.

### Setting

National Planning Policy Framework (NPPF), 2024 states: ‘The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting.....’ (NPPF, Annex 2: Glossary).

Due to the location of the proposed development directly in front of the principal facades, the setting of the buildings (viewed separately and collectively) will be permanently harmed by virtue of the structures within their curtilages. In addition, their significance and public appreciation will be permanently and adversely harmed due to the lower and upper ground floor windows being substantially blocked by the single storey structure. In addition, it will hide/screen significant architectural detail including sweeping entrance steps, intricate and ornate upper ground floor cast iron balconies, and the lower areas of entrance doors. Although designed to be as visually permeable as possible, the application drawings do not indicate restaurant paraphernalia such as large planters, tables, chairs and constant movement from staff and those frequenting the restaurant and bar. The perception of visually permeability will be significantly reduced when the demountable glazed panels are installed or during opening hours when the interior of the spaces is artificially illuminated.

The villas affected by the proposals were designed to delight and impress others in the vicinity; they offer aesthetically sensitive, architectural composition exemplified by the principal façade designs. The views are most prominent when approached from the north, south and from many vantage points within and around the boundary of Imperial Gardens.

The original plan form of historic development around the edge of Imperial Gardens indicates a strong characteristic in relation to the original building line around the Gardens. In stark contrast, the proposal will introduce new structures (significantly forward of the established historic building line) and within the open spaces within the curtilages of the proposed development . In addition, it is situated in a very prominent and sensitive location within the Central Conservation Area (Montpellier Character Area).

### Impact on setting

NPPF (2024) states: ‘The surroundings in which a heritage asset is experienced. Its extent is not fixed and may changes as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset may affect the ability to appreciate that significance or may be neutral’. (Annex 2: Glossary)

It is clear the issue of setting is not fixed by any specific distance and will vary from one situation from another. In this context, the proposed development within the curtilages of 125-127, 129-131 and 133 will significantly affect a wider area beyond its immediate vicinity. The setting of the following statutory protected heritage assets will also be also impacted:

- The setting of five Grade II\*listed buildings. The application proposes development in the curtilage of all of them.
- The setting of the assisted Grade II listed railings and gates forming the boundary of their curtilage
- The setting of the adjacent Grade II\* listed Queen’s Hotel.

- The setting of the adjacent Grade II listed memorial
- The setting of many Grade II listed buildings which are located on the boundary which forms Imperial Gardens.
- The setting of Imperial Gardens
- The impact on the Central Conservation Area (Montpelier Character Area).

The Setting of Heritage Assets (Historic England – Historic Environment Good Practice Advice, Planning Note 3 (2nd Edition) states:

Item 3 – ‘The statutory obligation on decision-makers to have special regard to the desirability of preserving listed buildings and their settings, and the policy objectives in the NPPF and the PPG establishing the twin roles of setting: it can contribute to the significance of a heritage asset, and it can allow that significance to be appreciated. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the heritage asset’s conservation, including sustaining significance’.

The skeletal frame and flat roof structure will represent a permanent presence in front of the principal façades and a significantly impact upon their setting and remove the important open space (the original front gardens) within their curtilage.

Item 4 - ‘Consideration of the contribution of setting to the significance of heritage assets, and how it can enable that significance to be appreciated, will always include the consideration of views....’

Views from the Villas and how they will be altered are an important consideration but have not been appraised within the applicant’s submission.

Item 5 - ‘Consideration of the contribution of setting to the significance of heritage assets, and how it can enable that significance to be appreciated, will almost always include the consideration of views.....’

The significance of the heritage assets will be compromised due to the detrimental impact of their setting by the front curtilage development. Typically, in Regency architecture, the greater the spatial area beyond the footprint of the building, the greater the historic and architectural status of the original building/s. In this context, the villas have limited open space at the rear of the properties but have always enjoyed the benefit of generous front open space for a town centre location. The proposed development will consume most of the original front gardens with buildings directly in front of the front facades. This will represent an unprecedented form of development within the curtilage of a Grade II (starred) buildings within Cheltenham. In addition, the proposed buildings will be highly detrimental to the significance of the villas due to the loss of the sense of openness between the listed buildings and the Promenade and the visual loss of much of the historic, architectural and the aesthetic composition of most of the lower areas of the buildings which will vary depending on the viewing position within the public realm.

Item 8 - ‘While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset.....’

Item 9 - ‘Setting and the significance of heritage assets is not a heritage designation, although land compromising a setting may itself be designated. Its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance.....’

The hierarchy and Grade II\* status of the villas is reflected (in part) by the open space between the buildings and Promenade. The proposed development will remove this important space (the original front gardens).

Item 9 also states:

'Sustainable development under the NPPF can have important positive impacts on heritage assets and their settings, for example by bringing an abandoned building back to in to use or giving a heritage asset further life. However, the economic viability of a heritage asset can be reduced if the contribution made by its setting is diminished by badly designed or insensately locate development.....'

Item 10 relates to views and setting – 'The contribution of setting of the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, long, short or of lateral spread, and include a variety of views of, from, across or including the asset.'

Views from the listed buildings are important. From the upper ground floor, such views will be altered; the open space in front of the windows will be replaced with a linear roof with views of Imperial Gardens now only having a background setting.

### Character of Central Conservation Area

The villas are located on the Promenade, one of the spinal axis roads of Montpellier Character Area, part of the Central Conservation Area. This area is an area that, and loose where the properties in question are located, is characterised by spacious and loose urban grain around wide three lined roads and formal green spaces, and medium and long vistas that open towards larger public buildings. The properties subject to this application both contribute to and are enhanced by the distinctive character and appearance of Montpellier, which is to be considered part of its immediate setting.

The detailed character of the area is documented in the Central Conservation Area (Montpellier Character Area) Appraisal. One of its outstanding features and characteristics the area offers is the numerous, extensive and diverse range of cafes, bars and restaurants within walking distance of the Promenade. The application seeks a substantial increase in the seating capacity of the existing restaurant. The potential collateral, long-term economic impact and sustainability on existing bars or restaurants in the conservation area caused by the proposal has not been assessed.

### Mitigating the harmful impact

The applicant's Heritage Impact Assessment (produced by Donald Insall Associates) confirms an "audit" has taken place and the increase in the number of required covers cannot be achieved without the new buildings. However, some of the proposed development (essentially to increase restaurant covers) may be able to be achieved (in part) without the proposed development being located within the front curtilage of the listed buildings and preserving the character and appearance of the conservation area. Such options may include reviewing the internal restaurant seating configuration to increase covers, single storey extension/s elsewhere and away from the principal elevations or additional premises elsewhere in the vicinity for example. The planning authority would welcome such discussions at a future date.

### Conclusion

The proposal development will be detrimental to the significance and setting the Grade II\* listed buildings on the site due to the proposed development within their curtilages. Due to the location of the proposed structure, it will shroud much of the upper ground and lower ground floors and physically dominate the area, with the existing prominence of the listed building facades being 'devalued' to form the background and the new development set forward close to the adjacent public pedestrian thoroughfare. In addition, it will have a negative impact on numerous statutory listed heritage assets within the southern, eastern and western residential properties forming the structure in one of the prominent, architecturally significant and sensitive areas within the whole of Cheltenham and will not 'preserve or enhance' the character or appearance of the conservation area. The scale of heritage assets affected is wide-ranging and significant.



There is acknowledgement that there will be public benefits. The proposal will increase employment opportunities associated with the bar/restaurant which will be generated due to the enlargement of the existing facilities. It will also reintroduce vibrancy to the street scene in the immediate area (which existed prior to the unauthorised existing structures) in the form of outside eating/drinking facilities as the design includes the option of demountable glazed walls, thus creating the option of an outside experience. However, the limited public benefits do not outweigh the harm of the proposal.

Due to the scale of the negative impact, in my view the proposal almost represents 'substantial harm'. However, I am aware no historic fabric is harmed by the proposal. I therefore consider the upper end scale of 'less than substantial harm' is appropriate in relation to the negative impact of setting and significance.

Where appropriate, the principle of achieving the optimum viable use for the site is supported. However, the proposal will be to the detriment to the setting and significance of the designated heritage assets within the proposed site area and part of the conservation area where it is sited.

There are no other comparable examples within this part of the conservation area of a similar or indeed any new development being constructed directly in front of the principal façade/s of any listed building/s. In this context, the proposal will be setting a precedent.

It is the principle of development in such a sensitive location which remains the overriding concern. For the above reasons I recommend planning permission is refused.

### **Cheltenham Civic Society**

*14th November 2024 –*

#### Summary

The Cheltenham Civic Society objects in the strongest terms to this application. It is based on the false premise that the proposals represent an improvement on the existing tents - which ought, in fact, to have been removed a few years ago. The proper comparison is with the setting and appearance of nos. 127-133 facing the Promenade as they were before the COVID emergency.

To allow this proposal would do huge damage to the setting and appearance of three exceptionally fine buildings; it would also be completely out of place in a highly sensitive part of the Conservation Area. The harm that would be done by this proposal to the Grade II\* listed buildings would be "substantial" in terms of Government policy and therefore should not be allowed.

The so-called economic analysis offered in support of the development is unconvincing.

There exists the possibility of an alternative approach that would meet the applicant's aspirations without doing harm to the heritage asset.

We call on Cheltenham Borough Council to stand by the logic of their previous decisions and reject this proposal. Failure to do so would be wrong in itself and set a dangerous precedent, not just for Cheltenham but for other heritage settings.

#### Overview

In this response to 24/01762/FUL we:

- recall the policy context and background against which this application must be considered,
- consider the impact of this proposal, showing the substantial harm that it will do the group of Grade II\* buildings and to the Conservation Area,
- review the economic arguments made in support of the scheme and show that these fail to make a convincing case,

- suggest a possible alternative approach which would provide seating for a significant number of guests, with expansion to meet surge demand, and
- conclude with a summary of our reasons for strongly objecting to this proposal.

### The policy context

The main policy considerations we have taken into account in preparing our comments are:

- The report of the Inspector following the applicant's appeal against the planning authority's refusal to grant permission for the retention of the temporary marquees (August 2023)
- The National Planning Policy Framework (especially section 16. Conserving and enhancing the historic environment- paragraphs 195 to 214)
- The Cheltenham Local Plan 2020 (especially chapter 9: Historic Environment).

### Background to the proposals

The existing tents were erected as a temporary response to the COVID pandemic, and the permission expired in 2021. The correct planning starting point therefore is the last most recent consents granted to the applicant before COVID. Several buildings and many planning applications were involved but in essence the schemes put forward between 2015 and 2018 were for changes of use of the buildings from offices and retail to hotel and related uses, along with plans for landscaped amenity areas in front of the buildings, including for the service of drinks. At the time, the Civic Society congratulated the owners on the sensitive restoration work undertaken on the buildings and the quality of the landscaping. For example, in July 2016 we said: "we welcome this. It is an appropriate use for this fine house". We consider the restoration of the frontages of nos.127-133 to be exemplary and were pleased to award our coveted Civic Design Award to the Lucky Onion group for its work here a few years ago.

The COVID permissions were a response to a crisis, which allowed temporary outdoor catering all over the country. Everywhere else, including in Cheltenham, the vast majority of these permissions have been terminated or given up. But here the applicants wish to enshrine a temporary arrangement into a permanent right. It is not clear why this privilege should be granted.

In fact, the present structures are unlawful as they do not have consent. The applicant has lost two planning applications and one appeal, and has lodged another appeal against enforcement action to remove them. The tents should have been removed by now. Thus, the correct planning starting point is the most recent consents granted to the applicant before COVID. In other words, without the tents present.

### Impact of the proposals

All parties agree that the existing tents are an eyesore and should go as soon as possible. But as these as were only ever intended to be temporary, it is wrong to argue (as the application does) that the proposals represent an improvement upon them and should therefore be allowed. The correct comparison is with the situation before the tents were put up.

The quality of the buildings and their setting are described in the listing of the structures, the Inspector's report and elsewhere, but words are a poor substitute for pictures. In considering what is now proposed, we need to look at the appearance of this exceptionally fine group of buildings as it was before Covid – see photos 1 and 2 below.

Photo 1 – no. 131 before the tents

Photo 2 - a nighttime view of 131 before the tents

The impact of this scheme on the main views from the Promenade will be very damaging and will be greatly inferior in appearance to what was there before the tents.

The illustrations that accompany this scheme are very misleading. They give the impression of a transparent structure with nothing within it. In reality it will be covered over much of the time, with lots of activity within it. It will be the dominant feature looking towards nos. 127-133, obscuring many of the details and the greatly reducing the overall impact of Forbes's fine architecture. Quite rightly, both Historic England and the Council's conservation officer consider this proposal to be just as damaging to the Grade II\* buildings and to the Conservation Area as the temporary tents.

It is right to recall the inspector's words about the tents: "The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance" (para 25) and "I conclude that the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting. In addition, it would fail to preserve or enhance the character or appearance of the CA. As such, it would cause harm to the significance of these designated heritage assets" (para 30). These criticisms are equally true of the present proposal.

In his report about the retention of the tents, the Inspector said: "Having regard to the temporary nature of the proposal, I am satisfied that the harm is less than substantial as described in the Framework" (emphasis added). So, the Inspector did not say the tents caused "less than substantial harm" in themselves, but he thought that their temporary nature reduced their impact to that level. Our view is that the permanent structures now proposed constitute "substantial harm" as defined in para. 208 of the NPPF, which – in respect of Grade II\* buildings – it would be "wholly exceptional" to permit (para 206(b)). In fact, we know of nowhere else where planning permission has been given for a major new development right in front of the main façade of Grade II\* buildings as is proposed here. To do so would be an insult to the quality of their fine architecture.

We think the extent of the damage proposed to the settings of these three beautiful buildings is such that no economic analysis would justify going ahead with a scheme like this (but see our comments below).

Finally, we have a number of other comments which might be borne in mind if a better alternative is eventually forthcoming:

- Contrary to CBC requirements, there is no full sustainability assessment. And no consideration is given to the environmental issues raised by these outdoor structures, such as heating, when many of the activities could be accommodated within the buildings re. sustainability assessment. Although the Design & Access statements refer to 'an Energy Strategy Report that [...] is submitted as part of this application', this document is not present.
- We have no objections to the installation of solar panels on the roofs of nos.127-129 and 133
- We have no objection to the removal of the glass conservatory alongside no. 131
- The structures in front of nos. 127-133 hide the main entrance to no. 131, which should be made the focal point for the entire enterprise.

#### The economic case made by the proposers

For the reasons argued above, the applicant needs to make a wholly exceptional case in support of the application. In practice, the case made is a weak one: indeed, the document submitted is not really an economic impact analysis so much as an estimate of the financial benefit the tents currently provide to no. 131. It makes a lot of the commercial benefits that have accrued to Lucky Onion since the Covid exemptions were given, but little to say about the wider public benefits.

It alleges that no. 131 offers a unique experience and that 'the importance of its 'pull' in terms of visitor numbers and spend to the local economy cannot be underestimated' (it surely means 'cannot be overestimated', or 'should not be underestimated'?). Actually, it is not estimated at all, and no evidence is presented that no. 131 is a 'destination' restaurant which

induces visits to Cheltenham that would otherwise not have taken place. There is an assumption that any reduction in dining revenue at no. 131 will be a significant net loss to the town, but that seems unlikely, and no evidence is presented in support of this claim. It is much more likely that if restaurant revenues fell, spend would be transferred to other restaurants in town. Consequently, the claimed indirect and induced adverse impacts - losses down the supply chain - will not occur, or at least will do so on a far smaller scale than is implied.

S3 of the report shows that the tents generate considerable revenues for no. 131 and points to a 858% increase in profitability 2019/20 - 2020/21 (3.10), which is no doubt welcome. However, it does not show that the enterprise is unviable without them, nor does it substantiate the claim that no. 131 'attracts visitors from afar' (3.14) - who, it is implied, would not otherwise come to the town.

We do not believe that the report 'demonstrates significant economic benefits provided by the temporary marquees'. Instead, it shows that no. 131 has gained very substantial increased revenues by retaining temporary structures and failing to comply with decisions of the LPA and the Planning Inspector that they should be removed. Consequently, no. 131 has enjoyed an unfair, perhaps illegitimate, advantage over its competitors and made extraordinarily large profits as a result.

Given the limitations of this report, it is clear that wholly exceptional economic case this has not been made to permit this proposal to go ahead.

#### An alternative

The applicant suggests an alternative, which is unconvincingly rejected (Design and Access Statement, page 9). This was also briefly discussed when the applicants' architect met with us in October to give us a preview of the scheme (we should stress that this was not a consultation but a courtesy briefing as it was made clear that there was no room for changes to be made in the plans in the light of our comments).

We believe that there is a perfectly sound alternative available to the applicants which would protect their current business model and respect the heritage. The elements of this alternative are:

- The creation of a permanent structure to the south-west of no. 133, perhaps in the form of an elegant curved contemporary building facing Queens Circus and stretching round to Montpellier Street. This would provide additional space for eating out
- The return of tables with small parasols in front of the three buildings for drinking out
- The use of Class BB of the General Development Order to provide more substantial temporary accommodation at times of peak visitor numbers, for example during race week and festivals.

This would no doubt require some internal reorganisation within nos. 127-133, but this approach would allow a lot of all-weather seating outside the buildings, and some extra seating when most needed. Also, it would preserve one of the most valuable assets the business has to offer: an outstandingly fine suite of buildings that customers and passers-by could once again enjoy. Without this fine backdrop, the business would not exist.

#### **Architects Panel – 24/01762/FUL**

*12th December 2024 –*

#### Design Concept:

The principle of permanent development in front of the listed buildings is a concern.

#### Design Detail:

The impact on the setting of the listed buildings is felt to be too great and is too obstructive of the elevations of the listed buildings and hence harmful to their setting as well as the wider

conservation area. The solid roof to the structure will create a significant visual barrier between the street scene and the elevations of the buildings behind.

Recommendation:

Not supported

**Architects Panel – 24/01763/FUL**

*12th December 2024 –*

Design Concept:

The principle of permanent development in front of the listed buildings is a concern.

Design Detail:

The impact on the setting of the listed buildings is felt to be too great and is too obstructive of the elevations of the listed buildings and hence harmful to their setting.

Whilst the glazed proposal is more light weight in terms of its visual impact on the buildings behind the visualisations suggest that the spaces will be empty. In reality they will be filled with all of the restaurant paraphernalia which is currently housed in the tents and as such will have just as much visual impact on the setting of the listed buildings and the wider conservation area.

Recommendation:

Not supported

**GCC Highways Planning Liaison Officer**

*9th December 2024 –*

Gloucestershire County Council, the Highway Authority acting in its role as Statutory Consultee has undertaken a full assessment of this planning application. Based on the appraisal of the development proposals the Highways Development Management Manager on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure)(England) Order, 2015 has no objection.

The justification for this decision is provided below.

The proposed structures will not impact pedestrian movements on the adjacent public footways. There are no justifiable grounds on which an objection could be maintained.

The Highway Authority therefore submits a response of no objection

**Drainage And Flooding**

*26th November 2024 –*

A sustainable drainage (SUDS) strategy will be required to mitigate the impacts of the impermeable surfaces. A high level strategy is required as part of the main application to show that the SUDS hierarchy will be followed and surface water will not be disposed to a combined sewer, as there are other options further up the hierarchy available including the surface water sewer on Montpellier Street. Finer details of the drainage design such as sizing of flow control devices can be provided through a SUDS condition if preferred by the applicant. The comments by the Trees officer are noted with regards drainage around the rooting environment of the existing trees. The infiltration of the first 5mm of rainfall, as per SUDS guidance, is therefore considered an important aspect of the drainage design.

**Trees Officer – 24/01762/FUL**

*21st November 2024-*

Given that the proposed structures will all be (at least partially) within the rooting areas (and zone of influence) of significant and mature street trees, some further consideration should be given to how the proposed buildings and existing trees may interact.

There is potential for an increased sense of overbearance by the trees, especially where glass structures are concerned. Similarly, the trees may be perceived as the source of nuisance (tree debris, seasonal leaf drop etc). And although the trees will provide welcome shade in the hotter months, this may be perceived as blocking of light. These factors have the potential to increase pressure for (possibly inappropriate) pruning (or indeed removal) of the trees. It should be noted that the trees are managed by Highways Gloucestershire who are unlikely to prune (or indeed remove) the trees unless to remedy a safety concern or to abate a legally actionable nuisance. Furthermore, the trees are legally protected by the Conservation Area regulations and Cheltenham Borough Council would require sound arboricultural reasoning for proposed tree works, which should be in line with BS3998 (2010).

BS5837 (2012) states that RPAs of trees should be excluded from construction activities. The design and access statement proposes screw pile foundations which would be a potential damage-mitigating method of construction. This should be formalised in a suitable arb method statement that will also describe the surfaces and method of surfacing within RPAs (assuming that new surfacing will be installed).

It is possible that the structures will divert water away from the rooting environment of the trees (e.g. into drains). If possible, consideration should be given to maintaining soil moisture content by diverting water back into the rooting environment.

Of the two schemes currently under consideration at this address, the potential negative impact on or potential for conflict with the street trees is likely to be greater with this scheme. If this scheme is successful, the potential for conflict could be reduced by making the roof opaque (reducing the sense of overbearance to customers and staff within the structures). Any gutters should be covered to avoid becoming blocked. The applicant should give due consideration to how and how often the roofs of such structures could be cleaned.

It is unclear if the small birches (or other trees) will need to be removed to accommodate the scheme. If so, this should be clarified. It would be preferable for any tree removed to be replaced elsewhere on site. If these trees are to be retained then suitable tree protections should be described on additional / revised drawings.

Reason: to protect the amenity value of trees in the Borough as per Policies GI2 and GI3 of the Cheltenham Plan.

#### **Trees Officer – 24/01763/FUL**

*21st November 2024 –*

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Reason: to protect the amenity value of trees in the Borough as per Policies GI2 and GI3 of the Cheltenham Plan.

**CBC Ecologist**

*12th November 2024 –*

Thank you for consulting me on this app but I do not have any comments to make regarding ecology.

**Environmental Health**

*13th November 2024-*

In relation to 24/01762/FUL, 129 - 133 Promenade, Cheltenham, please note the below from Environmental Health.

The application form states that the hours of opening are not relevant here, so please could it be confirmed that the hours of operation will be the same existing?

If so, please note that there are no comments/conditions from Environmental Health. This is due to EH last receiving 2 noise complaints in 2020 (race week 2020 and Sept 2020, with the later receiving no log sheets back from the complainant so no further investigation was carried out).

**Gloucestershire Centre For Environmental Records**

*8th November 2024 - Report in documents tab.*



## Appeal Decision

Site visit made on 6 June 2023

**by Paul Martinson BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 August 2023**

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**Appeal Ref: APP/B1605/W/23/3314132**

**125, 127, 129, 131 & 133 Promenade, Cheltenham GL50 1NW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Lucky Onion Group against the decision of Cheltenham Borough Council.
  - The application Ref 22/01373/FUL, dated 26 July 2022, was refused by notice dated 21 October 2022.
  - The development proposed is described as: 'Temporary Marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the site address and description of development from the appeal form as they more accurately describe the appeal site and the proposal.
3. The marquees are understood to have been installed at the appeal site in June and October 2020 and replaced existing parasols within the frontages and external areas of 131 and 133 Promenade.
4. As part of the Council's response to the Covid-19 pandemic, it relaxed planning enforcement against temporary, moveable structures in order to allow businesses such as bars and restaurants to utilise external spaces and meet social distancing requirements. The appeal structures benefitted from these measures.
5. As the appeal site is located adjacent to listed buildings and within a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
6. Whilst I have based my decision on the proposed plans, the appeal proposal is partly retrospective in that the marquees are predominantly in situ. Nonetheless, On the site visit I saw that the three marquees shown on the proposed plans immediately adjacent to the side elevation of No 133 were not present.
7. The appeal proposal seeks the retention of the marquees for an additional two years. As they are predominantly in place already, I was able to take into account the effects of the structures on the designated heritage assets that I observed on site. My assessment considers the effect of the proposed retention of the marquees for a further two years, notwithstanding that the appellant's final comments suggest that the structures could be removed by 20 October



2024. In this regard I am mindful that the appeal process should not be used to evolve a scheme and that it is important that what is considered at appeal is essentially the same as was considered by the local planning authority and interested parties at the application stage.

### **Main Issue**

8. The main issue is the effect of retaining the marquees for a further two years on the special interest of the adjacent Grade II\* buildings, with particular regard to setting, and whether their retention for this period would preserve or enhance the character or appearance of the Cheltenham Central Conservation Area.

### **Reasons**

#### *Special Interest and Significance of Listed Buildings*

9. The appeal site comprises the outdoor spaces associated with a hotel and restaurant. The hotel/restaurant is comprised of three Grade II\* listed buildings: 125 and 127 Promenade<sup>1</sup>; 129 and 131 Promenade<sup>2</sup> (which are semi-detached); and 133 Promenade<sup>3</sup> (detached). The three buildings are all sizeable elegant Regency villas constructed in the early 1830s and generally attributed to the architect John Forbes. The buildings are set back from the street edge, and each other, behind their own spacious garden plots, enclosed by railings and gated walls. The three sets of gate piers adjacent to No 133 are also individually Grade II listed.
10. Externally all three buildings are faced with stucco with individual architectural detailing, reflective of the neoclassical Regency style, primarily to the front facing elevations. No 133 has Doric pilasters with arcading details to the ground floor openings, whilst No 129 and 131 has four fluted central columns atop plinths with Prince of Wales capitals. No 125 and 127 has six central pilasters with entablature between the ground and first floor and includes prominent ground floor Doric porches to each end.
11. The ground floor of each of the buildings is elevated above street level and typically accessed via a series of steps which are often individually detailed. The ground floor windows to each villa are tall and elegant and an indication of the historical importance of the rooms on this level. Each ground floor features balconies with metal railings. Continuous balconies are present for much of the ground floor at No 133 and No 125 to 127, with tent roofs above those at No 133, whilst those at No 129 and No 131 are individual balconies served by French windows.
12. The design detailing of the appeal buildings contributes to an elegant appearance, reflective of the increasing prosperity of Cheltenham as a Regency Spa town. Whilst each building has individual design features, their materials, scale and spacious siting are unifying characteristics. Together they form part of an outstanding group of Regency villas along this part of Promenade overlooking Imperial Gardens and the Queens Hotel, also Grade II\* listed. The elevated ground floor levels of the appeal buildings along with their elegant

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<sup>1</sup> List Entry Name: Numbers 125 and 127 and Attached Railings. List Entry Number: 1387685.

<sup>2</sup> List Entry Name: Gloucester Lodge (No 129) and Sherborne House (No 131) Gate Piers and Gates. List Entry Number: 1387686.

<sup>3</sup> List Entry Name: Clarence House and Attached Railings. List Entry Number: 1387687.

ground floor windows and balconies allow key views of the planned tree-lined avenue and Imperial Gardens beyond.

13. The special interest and significance of the Regency villas derives from, in part, their architectural and historic interest as high quality examples of Regency buildings within a planned setting. Important contributors in this regard are their elegant neo-Classical architectural detailing, spacious character, location within a formally planned street, grand proportions with a legible hierarchy across their floors, and their contribution to the consciously designed townscape. Their significance also stems in part from their value as a group.
14. Pertinent to the appeal, it is common ground between the parties that the appeal site lies within the setting of the three Grade II\* listed buildings referred to above. The setting of a heritage asset is defined as the surroundings in which it is experienced, and its importance therefore lies in what it contributes to the significance of the heritage asset<sup>4</sup>. The buildings' consciously larger plots are distinctive compared to nearby terraces and, as noted by Historic England in its comments, are shaped by, and illustrate, the social trends of this part of the nineteenth century. The space around them adds to the spacious character of this part of Promenade and the deliberate setback from the road allows these sizeable buildings to be better appreciated by those walking along Promenade, a clear intention of the design of the buildings in the nineteenth century.
15. As noted in the historical note forming part of the List Description, Promenade was laid out in 1818 as a tree-lined avenue from the Colonnade in the High Street to the Sherborne Spa (on the site of the Queen's Hotel) and by 1826 it was a carriage drive with spacious gravelled walk on each side.
16. The open spaces around the buildings remain a key aspect of how the assets are appreciated today. Moreover, the open nature of these spaces allow the aforementioned ground floor elements that contribute to the significance of the buildings to be viewed and seen in the context of the building as a whole. The neoclassical detailing and the hierarchy of windows are particularly important aspects of how the buildings were designed. The open space forming the appeal site thus makes a major contribution to the significance of 125 and 127 Promenade, 129 and 131 Promenade and 133 Promenade.

#### *Significance of Conservation Area*

17. The CA encompasses a large area of the town which developed as a Regency spa town with many of the buildings here constructed in the early part of the nineteenth century. Stucco, painted a consistent colour, predominates as a characteristic external treatment and provides cohesion to the CA. Buildings typically comprise of formally laid out terraces and large villas set in spacious grounds. Trees are prevalent and streets are often tree lined. Formally laid out gardens including public spaces are features of the streetscene here that also contribute to the spacious feel.
18. Described in the Montpellier Character Area Appraisal (2007) (the CAA) as one of Cheltenham's most striking streets, and, as set out in the List Description, Promenade is a planned tree-lined space. Today Promenade is a wide and spacious thoroughfare bounded by Regency development, still lined by trees.

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<sup>4</sup> National Planning Policy Framework – Glossary.

19. The spacious, verdant character, prevalence of neoclassical Regency architecture and the resulting consistency in terms of architectural features, materials and detailing are characteristics of the streetscene that contribute to the significance of the CA insofar as it relates to this appeal.
20. The appeal buildings, being elegant Regency villas in a spacious and planned setting and forming a high-quality building group, reinforce those characteristics. All of these elements positively contribute to the CA's significance as a designated heritage asset. My conclusions in this regard are supported by the conclusions set out in the CAA.

### *Proposal and Effects*

21. When considering the impact of a development on the significance of a designated heritage asset, the National Planning Policy Framework (the Framework) also provides that great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be.
22. The marquees consist of a large number of adjoining individual units spread across the frontage of the three listed buildings. The marquees occupy much of the frontage of each of the buildings, whilst they are also shown on the proposed plans to the side of No 133. The roof of each unit is white in colour and typically takes the form of a square tent, peaking in the centre. On the site visit I saw that some had translucent plastic walls infilling the space between the floor and roofs. In some cases, the plastic had been pulled back in the manner of a curtain whilst in other instances, this was absent entirely. Within the units I saw that covered porches, doorframes and doors had been erected.
23. Owing to their considerable height, spread and form, the marquees almost completely obscure the ground and basement elevations of the buildings, radically reducing the visibility of their architectural detailing, such as the arcading and balconies to the ground floor areas referred to above. The peaks of the marquees also obscure parts of the first floors of the buildings. Visibility of the buildings in views from outside the site as well as from the entrance to Imperial Gardens opposite and from further along Promenade has been radically reduced. This severely restricts the ability to appreciate the significance of the buildings.
24. Within the site, views of the exterior of the buildings are extremely limited and diners within this space, in my view, are unlikely to be able to gain a realistic appreciation of the significance of the buildings that they are visiting. Similarly, views from inside the building, gained from the elegant windows and balconies, are predominantly obscured by the roofs of the marquees.
25. The scale of the development has drastically reduced the degree of spaciousness within the appeal site (despite three proposed marquees being absent on my visit). The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance. Moreover, the tented form and irregular positioning of the marquees within the site jars with the formal symmetry of the Regency buildings. This also has the effect of reducing the individuality between the three buildings and blurring the definition between them.

26. Having regard to the above, the marquees have become a prominent and incongruous feature of the streetscene along Promenade and due to their scale, colour and form are visible for much of its length. They are also prominent in views from Imperial Gardens. The marquees intrude into the space adjacent to the street trees, imposing upon them, unbalancing the symmetry of the avenue in views looking down Promenade from the Queens Hotel and adversely affecting the spacious, verdant character of the CA as a whole.
27. The submitted heritage statement sets out that retaining the marquees for two years would not be *'to the detriment of any of the features described in the Historic England listing details and will not result in the significant loss of any historical internal features or fabric'*. However, I have found that the development is harmful to the significance of the listed buildings through the development within their setting.
28. The appellant has set out that retaining the marquees for a further two years would allow time for the appellant to conceive an alternative, presumably more permanent, solution for external dining. In that regard, the appellant has provided a copy of a draft submission for pre-application advice to the Council. Whilst there may or may not be a suitable long-term solution, it is not for the appeal process to pre-determine this matter.
29. Nonetheless, I am mindful of the high importance of the heritage assets and that, were I to allow the appeal and grant permission to retain the marquees for a further two years, this harm would continue at least for the duration of that period.
30. As such, for the above reasons, I conclude that the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II\* listed buildings, particularly their setting. In addition, it would fail to preserve or enhance the character or appearance of the CA. As such, it would cause harm to the significance of these designated heritage assets.
31. Lying within its setting, the appeal site also contributes to the special interest and significance of the Grade II\* listed Queens Hotel. This is through reinforcing the spacious character of the area and allowing views across it to the appeal buildings' facades as part of a conscious grouping of Regency buildings and development along this part of Promenade. Through interrupting the spacious character and views between the two buildings the development has adversely affected the significance of the Grade II\* listed Queens Hotel through development within its setting.
32. Much of the significance of the Grade II listed gate piers located along the frontage of No 133 derives from their association with No 133, which lies within their setting. A further consequence of the appeal development has been that these gate piers have also been partly or totally subsumed by the structures, eroding their legibility within the site, to the detriment of their significance.
33. Whilst the effect on the special interest and significance of the Queens Hotel or the gate piers did not form part of the Council's reasons for refusal, I have a statutory duty under section 66(1) of the Act to have special regard to the desirability of preserving listed buildings or their settings. In that regard, my findings add to the harm to heritage assets I have described above.

### *Public Benefits and Balance*

34. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use.
35. Having regard to the temporary nature of the proposal I am satisfied that the harm is less than substantial as described in the Framework. In that regard I note that the appellant has never disputed that the marquees affect the settings of the listed buildings and in this respect harms their significance.
36. The appellant argues that the harm arising is at the '*lower end of that less than substantial scale*'. However, I would note that case-law has confirmed that decision makers are not obliged to place harm that would be caused to the significance of a heritage asset, or its setting, somewhere on a spectrum in order to come to a conclusion. The only requirement is to differentiate between 'substantial' and 'less than substantial' harm for the purposes of undertaking the weighted balancing exercise.
37. The appellant is of the view that the marquees generate significant public benefits and that these '*far outweigh*' the less than substantial harm caused. The appellant sets out that the marquees allow the bar and restaurant to accommodate more customers '*across the less clement months of the year*', supporting the business and resulting in employment and economic benefits. In this regard the appellant has calculated that approximately 50 members of staff (a third of the workforce) would be made redundant, were the marquees required to be removed. The appellant also notes the potential for further job losses in the supply chain including food and drink suppliers and maintenance staff.
38. Whilst the appellant has not provided detailed evidence supporting the employment figures and their reliance on the marquees, a table showing financial information has been provided as part of their final comments. Whilst limited in detail, this table sets out that the external areas around the buildings generate a substantial portion of the income of the business.
39. I agree with the Council that there is a lack of supporting evidence with regard to the precise financial implications of the marquees and the extent to which the businesses are dependent upon them. However, having regard to the significant number of tables located within the areas covered by marquees, I do not doubt that these areas generate a substantial income throughout the year, as they are essentially an extension of the internal dining areas and bars, allowing for significantly more tables and more customers. This in turn will result in employment and a benefit to the local economy, including through diners going on to visit the nearby bars after a meal.
40. However, I would note that the issue is not that outdoor dining in itself is unacceptable in principle, the harm considered above is based around the number and form of the marquees covering these spaces. There is no evidence before me that the appeal proposal is the only means of providing outdoor dining and indeed, I saw no similar marquee structures at nearby restaurants and bars, which often included outdoor seating. I therefore attribute limited weight to the economic benefits described above.

41. The appellant argues that the marquees help to maintain the buildings in their optimum viable use. However, notwithstanding that the buildings were vacant for a period of time before being incorporated into the current business, the appellant has not demonstrated why they consider the buildings' current use is their optimum viable use. In this regard I note the Planning Practice Guidance (PPG)<sup>5</sup> sets out that where there are other economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, and, that this may not necessarily be the most economically viable one.
42. I accept that the economic climate has changed since the buildings were developed into their current uses by the appellant, and that these are challenging times for such businesses. However, the original investment in the buildings does not appear to have required provision of substantial areas of undercover dining areas and these only became necessary in order for the business to survive during the restrictions in place during Covid-19. Having regard to the PPG, and on the basis of the evidence before me, I am therefore not convinced that the marquees are fundamental to maintaining the buildings' optimum viable use.
43. I accept that, following the pandemic, there may be some people who remain nervous of being in crowded, indoor spaces, and that they may prefer to socialise in well-ventilated spaces where greater distancing can be achieved. However, given that the marquees predominantly have walls, internal doors and a roof, it is unclear how well-ventilated these spaces are. Nonetheless, the marquees may reassure some customers in this respect and may provide an option to those people at times where temperatures and weather conditions inhibit outside dining. This therefore represents a limited benefit.
44. Nonetheless, collectively, the limited weight I have attributed to recognised public benefits, are not sufficient to outweigh the considerable importance and weight I attach to the identified harm to the significance of the designated heritage assets.
45. The retention of the marquees for a further two years would adversely affect the special interest and significance of the adjacent Grade II\* buildings, with particular regard to their setting. Similarly, the proposal would also fail to preserve or enhance the character or appearance of the CA. The retention of the marquees would not sustain or enhance the significance of the designated heritage assets and would not conserve them in a manner appropriate to their significance.
46. This harm would be contrary to the requirements of sections 66(1) and 72(1) of the Act and the provisions within the Framework which seek to conserve and enhance the historic environment. The harmful impact would also be contrary to Policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Core Strategy (2017) and Policy D1 of the Cheltenham Local Plan (2020) which together seek to conserve and enhance heritage assets and safeguard local distinctiveness and the historic environment.

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<sup>5</sup> Paragraph: 015 Reference ID: 18a-015-20190723.

### **Other Matters**

47. The appellant has referred to a previous decision of the Council relating to the construction of an orangery in Imperial Gardens. I have been provided with limited details of this decision. However, I was able to view this development on the site visit. This structure does not appear to obscure buildings in the manner of the appeal scheme, nor does it appear to involve the settings of multiple Grade II\* listed buildings. I am therefore not convinced that this development represents a parallel with the appeal proposal. The Council's previous decision in this regard therefore carries little weight.
48. I note that there is some public support for the proposal. However public support does not necessarily equate to a lack of harm. Moreover, a number of third-party objections were also received as part of the appeal.

### **Conclusion**

49. The proposed development would conflict with the development plan. There are no material considerations which indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*Paul Martinson*

INSPECTOR

**Independent review of the Economic Impact Statement for 125-133 Promenade, Cheltenham (SF Planning October 2024 - Planning References 24/01762/FUL and 24/01763/FUL)**

This short overview, prepared by The South West Research Company Ltd, is produced at the request of Cheltenham Borough Council to provide a professional review of the data used to support the proposal put forward in the Economic Impact Statement for 125-133 Promenade report (SF Planning October 2024), and the subsequent claimed economic impacts.

In our opinion we consider the main issues with the data used in the report to be:

- **Lack of clarity, detail and evidence in areas** – There are many instances in the report where claims are made without the provision of suitable evidence to support these. There are a number of examples of this throughout the report but particularly with regard to the figures used to demonstrate the economic impacts of the existing business and the supply spend chain spend/jobs impacted without support for the new development. There are models which would be able to estimate this but also the business should have knowledge of what it is spending and where, which would allow for estimates of impacts to be made which were based upon a clear process and method.
- **Out of date statistics being used** – There are instances of figures being used to set the scene for the importance of tourism/hospitality in Cheltenham which are taken from 2019, for a development proposed in 2024. Much has changed in the sector since pre-Covid times and more recent data is readily available online for most, if not all of the areas covered. In addition, the figures provided for the size and scale of the business itself are also somewhat out of date ending in March 23.
- **Basis for economic estimates is potentially skewed** – A large proportion of the data upon which the estimates are based are impacted by Covid lockdowns and restrictions. Whilst this is acknowledged in the report to some degree, the inclusion of these periods has the potential to skew the figures provided and over estimate the impact of the business. Various lockdowns and restrictions were in place across the country from March 2020 which continued to impact businesses until late July 2021 when all restrictions were lifted. The inclusion of data from this period has the potential to skew the impacts because consumer behaviour was very different as a result of these restrictions and the choice of venues was also limited so those with large outdoor areas had the potential to perform better as a result. In addition, tourism behaviour was also very different during these periods as people were unable to travel overseas and there was a big surge in domestic tourism as a result when people were eventually able to holiday. As such, we would suggest that business data from 2022 onwards would provide a more realistic overview of business performance. In terms of tourism performance, generally speaking 2023 and 2024 have certainly been a lot more challenging.

As a result of all the above, we would consider that the figures and data currently being used in the report should not be relied upon as a solid evidence base for this proposal.