



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

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 Promenade¹; 129 and 131 Promenade² (which are semi-detached); and 133 Promenade³ (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

¹ List Entry Name: Numbers 125 and 127 and Attached Railings. List Entry Number: 1387685.

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

³ 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 asset⁴. 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.

⁴ 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)⁵ 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.

⁵ 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