



Planning Committee

Application Address	Land at Lower Gardens, Lower Gardens, Bournemouth, BH2 5AU
Proposal	Temporary use of land as a roller-skating rink including the stationing of stretch tent roof, flooring, fencing, lighting, big screen and mobile bar and catering cabin and toilet
Application Number	7-2024-15898-AM
Applicant	Seventa Events
Agent	Mr Matt Annen
Ward & Ward Councillors	Bournemouth Central Councillor Hazel Allen Councillor Jamie Martin
Status	Public Report
Meeting Date	8 July 2024
Summary of Recommendation	REFUSAL
Reason for Referral to Planning Committee	Referred for consideration by the Director of Planning and Destination as BCP Council is the landowner.
Case Officer	Eden Evans
Is the proposal EIA Development?	No

Description of Proposal

1. This application proposes the temporary use of land in the Lower Gardens as a roller-skating rink including the stationing of stretch tent roof, flooring, fencing, lighting, big screen and mobile bar and catering cabin and toilet. The temporary consent relates to the inclusive dates 19th July-26th August 2024.

Description of Site and Surroundings

2. The application site is located within the Grade II Listed 'Upper, Central and Lower Pleasure Gardens, and Coy Pond Gardens' within the Bournemouth Town Centre area. Developed over several decades on both sides of River Bourne, the Pleasure and Coy Pond Gardens follow the river for more than 3 kilometres and are highly valued for amenity and recreational use. They are included in the Historic England's Registered Parks and Gardens (RPG) list (list entry no. 1000724).
3. The Listed Gardens is a public green space with the lower sections including small kiosks offering food and drink, a bandstand, and a minigolf course. During the winter months, the Lower Gardens have been used for the winter festival with decorative installations and a temporary ice rink. The application site is a lawn area to the southeast of the section most recently used for the temporary ice rink, to the northwest of a small kiosk. The site is bound by public footpaths on three sides and the River Bourne channel. The eastern section of the site contains mature trees.

Relevant Planning History:

4. The provision of a winter ice rink in the Lower Gardens has been considered acceptable previously with temporary planning permissions granted for this in the Lower Gardens from 2013 onwards.
5. Prior to 2016, the ice rink was located on the application site. From the planning application 7-2017-15898-AG to the most recent application in 2023, temporary permission has been granted for the ice rink installation to be in a larger area just northwest of the application site where the Bournemouth Eye balloon was previously tethered. The most recent permission granted for the ice rink was for a temporary period of 4 months expiring on 29 February 2024. Applications relating to the ice rink are listed below.

7-2013-15898-Z – Siting of Christmas festival attractions incorporating an outdoor ice-skating rink, a Santa's Grotto and ten interactive light experience Light Pods - Temporary period from 8th November 2013 until 13th January 2014 (including installation and removal of structures). – Approved (Temporary permission) November 2013.

7-2014-15898-AB – Siting of Christmas festival attractions incorporating an outdoor ice skating rink and ten interactive light experience Light Pods - Temporary period from 17th November 2014 until 7th January 2015 – Approved (Temporary permission) November 2014.

7-2015-15898-AC – Installation of Christmas festival ice rink with food and drink uses - Temporary period from 3rd November 2015 until 10th January 2016 including the installation and removal of structures – Approved (Temporary permission) December 2015.

7-2016-15898-AE: Installation of Christmas festival ice rink and erection of marquee to provide temporary cafe/bar and skate hire facility - (temporary period from 24 October 2016 until 10th January 2017 including the installation and removal of structures) – Withdrawn.

7-2016-15898-AF – Installation of Christmas festival ice rink and erection of marquee to provide temporary cafe/bar and skate hire facility - (temporary period from 24 October 2016 until 10th January 2017 including the installation and removal of structures) – Withdrawn.

7-2017-15898-AG – Annual installation of Christmas festival ice rink with food and drink uses (temporary period from late October to early January each year including the installation and removal of structures) – Approved (Temporary permission of 5 years) November 2017.

7-2018-15898-AI – Annual installation of Christmas festival ice rink with food and drink uses (temporary period from late October to early January each year including the installation and removal of structures) – Approved (Temporary permission of 4 years) October 2018.

7-2019-15898-AK – Non-material amendment to application no. 7-2018-15898-AI for changes to the two existing structures to be changed with 2 new marquees with different layout. Removal of smaller ice rink to make one single larger ice rink. Approved (Temporary permission) November 2019.

7-2023-15898-AL – Annual installation of winter ice rink with cafe/bar attached (temporary period from late October to early January each year including the installation and removal of structures) - Approved (Temporary permission for the Christmas season 2023-2024) November 2023.

Constraints

6. The following constraints apply to the application site:
- Grade II Listed Registered Park and Garden
 - A number of mature trees within and around the site
 - Flood zone 3

Public Sector Equalities Duty

7. In accordance with section 149 Equality Act 2010, in considering this proposal due regard has been had to the need to —
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Other relevant duties

8. In accordance with regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitat Regulations”), for the purposes of this application, appropriate regard has been had to the relevant Directives (as defined in the Habitats Regulations) in so far as they may be affected by the determination.
9. For the purposes of section 40 Natural Environment and Rural Communities Act 2006, in assessing this application, consideration has been given as to any appropriate action to further the “general biodiversity objective”.
10. For the purposes of this application, in accordance with section 17 Crime and Disorder Act 1998, due regard has been had to, including the need to do all that can reasonably be done to prevent, (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area; and (c) re-offending in its area.
11. For the purposes of this report regard has been had to the Human Rights Act 1998, the Human Rights Convention and relevant related issues of proportionality.

Consultations

12. Historic England – deferred to LPA Heritage department
Police Licensing – no response
Police Architectural Liaison – no response
Wessex Water – no response (awaiting)

The Gardens Trust – objection raised due to impacts on grass, trees and to the setting and enjoyment of the public park.

Trees – initial objection withdrawn subject to conditions, following receipt of arboricultural information however the retention of the Liquidamber tree not supported.

Heritage – objection to proposal due to impact on the Listed Registers Park and Garden

Flood Management – objection raised due to concerns around displaced flood risk and flood management

Urban Design – objection raised due to impact on listed gardens

The Local Highway Authority – objection raised due to pedestrian safety and impact on bus operators

Environmental Health – objection raised due to noise management

Waste & Recycling – awaiting response

Ecologist – holding objection raised due to impact on protected species from lighting, the application has failed to demonstrate it is BNG exempt or compliant.

Policy – the application has failed to demonstrate that it is BNG exempt or compliant.

Tourism – no response.

Strategic Green Spaces – comments made in response to Tree Officer comments – does not support the officer proposal for the replacement of the Liquidamber tree.

Emergency Planning & Resilience – condition requested regarding the Events Management Plan

Representations

13. Site notices were erected on 03/05/2024 and a press notice was issued. The expiry date for public consultation was 28/06/2024. One public representation has been received in objection. The key issue raised relates to the condition of the site following the removal of the installation. The objection also raises concerns which are financial and therefore not a material planning consideration.
14. One representation in objection has been received from Councillor Bartlett relating to the commercial use of the gardens and the impact on the listed heritage asset.

Key Issue(s)

15. The key issue(s) involved with this proposal are:

- Principle of development and benefits
- Impact on character and appearance of the area
- Impact on heritage assets
- Impact on trees
- Impact on protected species
- Biodiversity Net Gain
- Impact on residential amenity
- Impact on highways/footways
- Impact on flooding

16. These issues will be considered along with other matters relevant to this proposal below.

Policy context

17. Local documents:

Core Strategy

Policy CS4 – Surface Water Flooding
 Policy CS7 – Bournemouth Town Centre
 Policy CS29 – Protecting Tourism and Cultural Facilities
 Policy CS31 – Open Spaces
 Policy CS30 – Promoting Green Infrastructure
 Policy CS39 – Designated Heritage Assets Policy
 Policy CS41 – Quality Design

District Wide Local Plan

Policy 3.28 – Flooding
 Policy 4.25 – Landscaping
 Policy 7.10 – Indoor and outdoor sport and recreation facilities

Town Centre Area Action Plan

Policy D4 – Design Quality
 Policy U8 – Leisure, Culture and Entertainment
 Policy U9 – Evening and Night-Time Uses

18. National Planning Policy Framework (“NPPF” / “Framework”)

Including in particular the following:

Section 2 – Achieving Sustainable Development

Paragraph 11 –

“Plans and decisions should apply a presumption in favour of sustainable development.

.....

For **decision-taking** this means:

- (c) approving development proposals that accord with an up-to-date development plan without delay; or
- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear 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 of this Framework taken as a whole.”

Section 8 – Promoting Healthy & Safe Communities

Paragraph 96

“Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:

- a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
- b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and
- c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.”

Section 9 – Promoting Sustainable Transport

Paragraph 115

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

Paragraph 116

“Within this context, applications for development should:

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and ...”

Section 15 – Conserving and Enhancing the Natural Environment

Paragraph 180

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

...

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and ...’

Section 16 – Conserving and Enhancing the Historic Environment

Paragraph 195

“Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”

Paragraph 203

“In determining applications, local planning authorities should take account of:

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

b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) the desirability of new development making a positive contribution to local character and distinctiveness”

Paragraph 205

“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.”

Paragraph 206

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 or loss of: a) grade II listed buildings, or grade II registered

parks or gardens, should be exceptional; b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional”

Paragraph 208

“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”

Paragraph 212

“Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably”

Planning Assessment

Principle and benefits of development

19. Policy 7.10 promotes the development of public or private indoor and outdoors sports and recreation facilities providing that the benefits arising from the development outweigh adverse effects of the development. The Town Centre Area Action Plan states that the experience on offer in the area needs to be further enhanced, whilst Policy U8 of the Town Centre Area Action Plan (2013) states ‘*Planning permission will be granted for the development of new art, leisure, cultural and entertainment facilities that would be attractive for a wide range of visitors and residents of all ages in the Town Centre....*’ Policy CS7 furthermore establishes the town centre as the most appropriate location in the borough for development including leisure uses.
20. The proposal is considered to comply with the aims of the policies listed above and to provide notable public benefit. Other potential adverse impacts will be discussed later in the report.
21. Bournemouth capitalises on its natural resources in attracting tourists. However, there are supporting facilities that make an important contribution to the quality of the overall experience of visiting Bournemouth and provide a variety of leisure uses for its residents. These facilities can provide particular attractions that draw people to the town, and notably to the town centre. The provision of a roller rink and associated facilities contributes to the leisure offering which in turn promotes the vitality and viability of the town centre. The revenue generated by the proposals will contribute to economic development. These benefits weigh positively in favour of the scheme in the planning balance and have been accorded significant weight.
22. Furthermore, the principle of such a temporary change of use and commercial operational development has been long established in the Lower Gardens with temporary planning

permissions granted for the ice rink over a number of years. This principle comprises a material consideration in this case.

23. Overall, the principle of such a facility in the Lower Gardens is considered acceptable and supported by policies relating to development in the town centre. It is considered that there are significant public benefits associated with the proposal in terms of an additional leisure offering and economic benefit which promotes the vitality and viability of the town centre.

Impact on character of the area

24. The Town Centre Area Action Plan (2013) identifies the applicant site as within the core of the town centre where the town's main leisure attractions are found.
25. The character of this section of the town centre is mixed and many commercial uses can be found including leisure, hospitality and retail. The commercial character of this section of the centre is reflected in the surrounding main streets including Commercial Road, Westover Road and Christchurch Road. There is also an existing commercial offering within the Lower Gardens including mini golf and a number of food and drink kiosks. As noted in previous sections, the principle of additional seasonable leisure offerings in the garden is well established. It is accordingly not considered that such an offering would be out of character, and enhancing the commercial offering within the town centre is considered to align with the aims of the Town Centre Area Action Plan, as well as policies U8 and CS7.
26. In terms of the physical structures proposed, the proposal comprises an area enclosed by picket fencing. From the elevations provided this measures approximately 1.1m in height with posts measuring approximately 1.4m in height. Within this, the roller rink itself measures 10m by 15m on an area of hard surfacing measuring 18m by 20m. Over the roller rink area, a stretch tent is proposed to a height of approximately 8m. To the southeast of the roller rink itself, the site includes assorted event paraphernalia including an area for trading, a television screen, a small toilet block and seating areas.
27. The application site is currently open space and it is acknowledged that the proposal would to some extent reduce the feeling of openness within this section of the park. However, the fencing proposed, whilst not insignificant in the context of open green space is considered of acceptable height which reduces its impact.
28. The most conspicuous elements of the proposal in terms of visual impact are considered to be the stretch tent and television screen. The stretch tent is considerable in height. The proposed elevations show it to be approximately 8m to the highest point. It is noted however that given the form of the tent which comprises a series of conical tensile canopies, the bulk of the stretch tent would be considerably less tall. The canopy is positioned approximately 3.55m above ground level. The tent furthermore covers only part of the proposed application site, to the northwest over the proposed roller rink. The application site in turn is much smaller than the ice rink site, the acceptability of which has been repeatedly established with previous planning permissions, as outlined above.
29. It has been highlighted by the Urban Design Officer and the Heritage Officer that the proposal would obstruct views across the garden. To the northwest of the site, the topography of the garden slopes up considerably, which would greatly reduce the visibility of the proposal when viewed from the northwest. This would reduce the impact of the bulk and height of the proposed application site when viewed from this section of the garden, Westover Road and Gervis Place which are all on higher ground. However, it is agreed that the proposal, notably the stretch tent and the big screen below would impact on views across the gardens and would be visually prominent in the setting.

30. The big screen would be visually conspicuous and also noisy. However, during the summer months the Lower Gardens and surrounding areas are bustling with people and a variety of activities therefore this impact would be reduced. It is noted also that a television screen has previously been sited in the gardens, for instance during the Royal Coronation in 2023.
31. Overall, it is acknowledged that the proposal would impact on the character and appearance of the area, most notably in terms of its visual presence which would impact on views. However, given the temporary nature of the proposal, this is not considered to be materially harmful to the character of the area. It is also not considered that this would be strictly out of character given existing commercial uses within the gardens and surrounding area. The proposal is accordingly considered compliant with Policies CS7, CS41 and U8.

Impact on the heritage assets (Grade II Listed Gardens)

32. The proposal is sited within the Grade II Listed Parks and Gardens (Registered Parks and Gardens, RPG) that are described as being ‘*a good example of a series of mid-19th Century public seaside gardens*’ (Historic England official list entry). The Gardens are a major tourist attraction receiving a significant number of visitors each year.
33. Paragraph 205 of the NPPF states 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.*’ Paragraph 206 states that ‘*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.*’
34. The LPA Heritage Officer has reviewed the proposal and raised objection to the scheme, citing harm to the designated heritage asset. In the objection, the LPA Heritage Officer notes the cumulative impact of development around and within the gardens and raises a number of concerns about the current proposal. The Heritage Officer considers that the fencing off and commercial use of the area would go against the philosophy of the gardens as an area of public space. The officer also raises concerns about the visual and audio intrusion of the proposal which would impact on views. Harm is also identified in terms of potential long-term damage to grass and trees. The Heritage Officer overall takes the view that the harm to the garden would be less than substantial and considerable in nature and that this harm would not be justified.
35. It is agreed that the proposal would be harmful to designated heritage assets and that this harm would be less than substantial. As described in the previous section, particularly due to the significant height of the stretch tent and presence of the big screen, the proposal would be visually imposing with obstruction to views and would result in increased noise. However, it is noted that the proposal is for a temporary consent which would take place in the busy summer period where the area is bustling with visitors and activities and likely to be noisy in any case. Given the temporary nature of the proposal the visual impact of the development is considered acceptable.
36. Considering longer term impacts, potential harm to trees and grass are a serious consideration given the proposals siting, with the preservation of trees and grass essential to the preservation of the designated heritage asset. These will be discussed in the following sections.

37. Whilst it is acknowledged that the application site will be fenced off rather than remaining an open green space and would be commercial, the nature of a Pleasure Garden is a public park for recreation and entertainment. Paragraph 203 of the NPPF provides that (amongst other matters) in determining applications the significance should be sustained including with viable uses consistent with their conservation. The proposal for a recreational facility open to the public is accordingly considered consistent with this use. As a temporary permission it would also not close off the section for free use by the public in the long-term.
38. Overall whilst the proposal is considered harmful to the designated heritage assets, given the temporary nature of the proposal, it is considered to result in less than substantial harm which is moderate in nature. Due to the harm identified there is accordingly conflict with CS 39 of the Core Strategy that seeks to preserve or enhance designated heritage assets.

Impact on trees

39. Policy 4.25 promotes soft landscaping. The site is located in the Lower Gardens where trees form an essential component of the parks character. Policies CS39 and CS41 of the Core Strategy are also relevant.
40. Information initially submitted with the application in relation to trees was limited with no arboricultural information. The LPA Tree Officer accordingly raised objection requesting full arboricultural information.
41. The trees which present material considerations to the proposal are at the eastern end of the site. At the far eastern end is a group of mature Pine trees considered by the Tree Officer to be very fine. There is one tree in the open grass area at the sites eastern end which is a Liquidamber tree that has suffered from past installations at the site. The Tree Officer suggested that this tree should be replaced given their assessment that it would be harmed by the proposal and given that its protection would be very difficult. The agent confirmed they would not be looking to replace the tree. Concern was raised around the suggestion of felling the tree by the LPA's Strategic Green Spaces team. The Greenspace Officer stated that they *'do not support the principle of felling and removing the Liquid Amber tree but that the event proposal should adequately protect the tree... this view is based on the principle of protecting our green space assets...'* The Greenspace Officer further detailed that in the event of a replacement tree, financial mitigation would be required from the applicant to cover remedial works to the current tree area, the replacement specimen, and its care. It is also noted that the felling of the tree would have resultant impacts on Biodiversity Net Gain, which is discussed in a later section of this report.
42. Arboricultural information was subsequently received and assessed by the LPA Tree Officer. The LPA Tree Officer withdrew his earlier objection, however, he does not support the retention of the Liquidamber Tree and preferred the removal of this tree and sought agreement for replacement planting. Notwithstanding this the Tree Officer is satisfied with the tree protection measures set out in the Arboricultural Report and has recommended tree protection conditions.
43. In order to reduce the impact on the tree, the arboricultural information provided includes tree fencing and protection measures and a changed layout of the southwestern area of the site with benches repositioned and the screen moved out of the route protection area, amongst other measures.
44. Overall, the tree is considered to have limited amenity value and is in decline, therefore whilst there may be some associated impact from the proposal, subject to the relevant tree protection conditions the impact is considered to be small.

Impact on protected species

45. Circular 06/2005 – Biodiversity and Geological Conservation states that the presence of a protected species is a material consideration when a development proposal is being considered, which would be likely to result in harm to the species or its habitat.
46. The LPA Ecologist has raised a holding objection until a lighting impact map has been produced and considered. This application has the scope to have adverse impacts on bats, which has not previously been an issue for the temporary ice rink as bats hibernate in winter. There are recorded bats bracketing the site including on Tregonwell Road and Bath Road, as well as further upstream along the River Bourne. The impact on bats as a protected species is accordingly a material consideration in this case.
47. Lighting is included in the description of development however no information on lighting was provided with the application and lighting is not shown on the plans submitted. The LPA Ecologist has stated that an acceptable lighting plan would show a maximum of 5 lux within the red line site boundary and then up to 1 lux in the area surrounding the red line, at a distance of up to 10m. In order that the lighting is not harmful to bats, luminaires must have a colour temperature of 2700 K or lower. With peak wavelengths greater than 550nm; luminaires should be mounted horizontally, with no light output above 90° and/or no upward tilt as in accordance with 'GN08/23 Bats and Artificial Lighting at Night' by Institution of Lighting Professionals'. Only luminaires with a negligible or zero Upward Light Ratio, and with good optical control, should be considered.
48. Overall whilst the proposal has failed to demonstrate an acceptable impact on ecology with regards to protected species, it is considered that this matter could be addressed by way of a pre-commencement condition. Subject to this, the proposal is considered to have an acceptable impact on protected species.

Biodiversity Net Gain

49. Policy CS30 of the Core Strategy (2012) and paragraph 180 of the NPPF (2023) promote biodiversity enhancement. This has now been mandated *under Schedule 7A of the Town and Country Planning Act 1990* (as inserted by Schedule 14 of the Environment Act 2021). All developments must comply with this unless exempt.
50. The application form submitted holds that the development is subject to the de minimis exemption. This exemption applies where the development does not impact a priority habitat and impacts less than 25 square metres (5m by 5m) of on-site habitat and less than 5 metres of on-site linear habitat such as hedgerows.
51. Whilst temporary development is not explicitly exempt from Biodiversity Net Gain (BNG), guidance makes it clear that where the condition of a habitat at the time of application (known as the baseline condition) has been agreed, and it can be demonstrated that the habitat would be restored to that baseline condition within 2 years of the development commencing, the loss or harm to the habitat would not need to be recorded for the purposes of BNG calculations.

52. In other words, where it can be shown that the quality of a habitat could be restored within a 2-year period, and there would not be any other harm that would take the application above the 25 square metre threshold of area habitat impacted by the development, the 'de minimis' exemption would apply.
53. The proposed roller rink itself covers a far larger area than 25 square metres and there would clearly be some impact on the grass, classified as modified grassland within the BNG framework. What is not clear from the limited information provided is what the current 'condition' of the grassland is, and this could have implications in terms of the time that it would take for the habitat to be restored to its 'baseline condition'.
54. In order to establish the timescale that the modified grassland could be-reasonably restored to its current condition within the BNG framework categories, requires specialist assessment by an ecologist and for details of proposed protection and mitigation measures to restore the habitat to be submitted with the application. It is considered by the LPA Ecologist, that the modified grassland on the site may be either in poor condition or in moderate condition. It is highly unlikely that the grass is in good condition. If the grass is in poor condition, then, subject to satisfactory protection and mitigation measures, the Biodiversity Metric indicates that it can be reasonably considered restorable within 2 years. This being the case, the impacted grassland would not count towards the area of habitat affected.
55. However, if the modified grassland is in moderate condition, then the Biodiversity Metric suggests that it could take up to 4 years for the habitat to be restored. This being the case, the area of impacted grassland may not meet the requirement of being restored within 2 years to enable it to be discounted from the BNG calculations.
56. If this were to be the case then because the area of affected grassland would exceed 25 square metres, the de minimis exemption would not apply. This would mean that all habitats within the site would then automatically be subject to the mandatory 10% net gain in biodiversity requirement: the 10m riparian zone (buffer area) around the Bourne Stream and the onsite trees. There would therefore be a requirement for the applicant to identify how they propose to achieve the required 10% uplift in biodiversity value either on-site, off-site or a combination of both.
57. The LPA has sought to work proactively with the agent to attain the required information in order to demonstrate that the proposal is either exempt from, or otherwise compliant, with the BNG legislation, mandated by the Environment Act (2021). The legislation requires applicants where the de minimis exemption is claimed to provide reasons, and Planning Policy Guidance on BNG advises applicants to provide sufficient evidence to support these reasons. The agent has failed to supply this information.
58. In the absence of evidence to demonstrate that the de minimis exemption would apply, we must assume that the application would need to comply with the standard Biodiversity Gain condition requiring 10% uplift in biodiversity. In determining the application, the local planning authority must therefore consider whether or not the proposal would be capable of discharging this condition.
59. As no details have been provided on how the BNG requirement will be met, it is not possible to assess whether there is an appropriate balance between onsite and offsite habitat creation/enhancements would be provided to accord with the Biodiversity Hierarchy. It is also not possible to assess whether BNG proposals would align with or be in conflict with other local plan policies, or whether a legal agreement would be required to secure the habitat creation/enhancement. This also raises questions about who (the applicant or council as landowner) would be liable for providing the habitat creation/enhancement.

60. It is also unclear whether the applicant would be in a position to satisfy the standard condition within the timescale stated on the application form. Given the Government website suggests that the process for purchasing national biodiversity credits could take up to 8 weeks which would be beyond the date that the applicants have indicated they would need to be on site.
61. Therefore, in the absence of sufficient evidence to demonstrate that the de minimis exemption would apply, and in the absence of sufficient information to provide assurance that the standard Biodiversity Net Gain condition can be discharged, the LPA cannot be confident that the proposal complies with the *Schedule 7A of the Town and Country Planning Act 1990* (as inserted by Schedule 14 of the Environment Act 2021). This amounts to a reason for refusal as the LPA cannot assess this aspect of the proposal.

Impact on residential amenity

62. Policy U9 of the Town Centre Area Action Plan (2013), CS39 and CS41 of the Core Strategy (2012) promote protection of residential amenity. The proposed development is located some distance away from residential properties and is on lower ground than the nearby streets Gervis Place and Westover Road. The proposal is accordingly not considered to result in harmful loss of privacy, overshadowing or overbearing impacts to neighbouring residents. The nature of the proposal however may result in additional noise being generated. Following discussions with the Environmental Health Officer, there are no concerns that the lighting associated with the proposal would be harmful to residential amenity given the location.
63. An Environmental Health Officer has reviewed the submitted Noise Management Plan and has raised concerns regarding the management of low frequency (Bass) noise and the management of noise complaints. It is noted that there are no residential properties in the immediate vicinity of the site. The application form proposes the opening hours of 09:00-22:30. This is considered reasonable in a town centre location where you would expect to find a thriving night time economy.
64. It is accordingly considered that residential amenity, of which concerns raised relate to noise, could be addressed by condition. If this application were recommended for approval, a condition on noise management as well as a condition on approved opening hours would be recommended in order to safeguard neighbouring residential amenity from noise, in compliance with Policies U9, CS39 and CS41.

Impact on highways/footways

65. Policy T1 of the Town Centre Area Action Plan states proposals should “*place the highest priority on making it easier for pedestrians, disabled and cyclists to move around*”. In addition, it states that proposals “*should improve safety for all users*” and should “*improve conditions for public transport*” and ensure “*appropriate servicing arrangements*”. In addition, Policy T2 seeks to promote walking and cycling by “*ensuring routes are direct*”.
66. A Local Highways Authority (LHA) officer has reviewed the proposal and raised objection. Two issues have been raised by the LHA which regard pedestrian safety and interference with the operation of buses.
67. The Event Management Plan submitted with the application states that “there will be no vehicular access to the site once it is open unless by an emergency vehicle which will be bank onto the site. All deliveries will be taken via Exeter Crescent. The only vehicles

accessing the site will be during build if we are unable to carry the load through via Exeter Crescent. A risk assessment has been completed.”

68. Nevertheless, no information has been provided regarding the closures of the footways in order to build and break down the roller rink and associated structures. The LHA has raised concern that the proposal will introduce vehicles into the pedestrianised areas during the peak time of the year (summer holidays) when the footpath between the square and the seafront is heavily used. This is an important safety consideration and careful thought must be given to this aspect of the proposal.
69. The LHA has noted that no mitigation is shown and no information has been provided as to how construction traffic will be managed and what this impact will be on residents and visitors of the lower gardens. To promote pedestrian safety, the LHA has requested that full details are provided upfront to ensure that the main accesses linking the Square to the seafront are not adversely affected. Full details regarding route closure during construction and the relocation of pedestrian flow should be submitted. Without the full information, the LHA has been unable to complete a full assessment and therefore ensure that existing pedestrian routes are not unacceptably compromised.
70. Concern has also been raised regarding the location of Euro bins awaiting collection as shown on the site plan. The bins would be located on the public highway with a refuse vehicle stopping on Gervis Place. The Euro bins would need to be pulled up the hill to Gervis Place. This section of Gervis Place has a bus stop running parallel with the footway which may accordingly be adversely affected by the location and collection point of the bins.
71. The stopping of a refuse vehicle and time taken to empty the Euro bins must not affect the ability of buses to use the designated bus stop. No information has been provided regarding the times the bins will be collected and no consideration has been given to the impact on the bus operator and the ability for buses to pull into the designated stop. Policy T4 of the AAP is clear that development should not prejudice the aim of improved bus services on high frequency routes around the town centre through the provision of additional bus priority measures and attractive bus waiting areas.
72. The LHA also raises concerns about the Euro bins placed on the public highway with no information on how they can be stored safely, given they are proposed to be sited adjacent to people waiting at the bus stops. An alternative collection point should therefore be sought.

Impact on flooding

73. Policy 3.28 states that *‘development will not be permitted in or in the vicinity of, areas liable to flood... where it would impede floodwater flows... increase flooding risks elsewhere, lead to life, damage to property...’* Policy CS4 also aims to safeguard against the risk of surface water flooding. Chapter 14 of the NPPF sets out requirements for development in relation to flood risk.
74. The application site is located in flood zone 3. The site is at risk of flooding from tidal, fluvial, surface water and sewer sources and has a known history of flooding. From discussions with the Lead Local Flood Authority (LLFA) it is understood that the time of year results in a serious risk of flooding given the likelihood of summer thunderstorms and flash flooding.
75. Paragraph 174 of the NPPF states – *“Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 59”*. The

structures are not considered to be buildings therefore it is not considered that they need to follow the sequential test. The NPPF paragraph 169 states that '*The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.*' The proposal, as outdoor sports and recreation, is classed as 'Water Compatible development' as per the classifications set out in Annex 3 and on this basis would not require the submission of the exception test to determine alternative sites. However, a Flood Risk Assessment is required given the flood risk on site.

76. The applicant has submitted a flood risk assessment which states that the design has taken into account the risk that flooding can occur, with the level of the structures being raised and all electrical equipment being suitably waterproofed and sheathed. The Event Management Plan submitted also references flooding.
77. The Event Management Plan has been considered by the BCP Safety Advisory Group. From discussions from the Council's Emergency Planning and Resilience Team it is understood that whilst heavy rain and flooding is covered in the Event Management Plan, aspects of this should be strengthened with trigger points and additional actions in the plan. The location is not covered by an Environment Agency warning and can be quick reacting. The LLFA have also noted that '*Whilst the event management plan has a heading of 'rain and flooding' it does not contain any actions of what to do during a flood for the purposes of public safety.*' It is considered that this must be addressed by the applicant in order to ensure the proposal is acceptable in terms of flood risk on-site. It is considered however that this can be addressed by a condition requiring the submission of a more detailed plan for managing public safety and evacuation in the event of flash flooding.
78. Concern was also raised by the LLFA about displaced flooding. The location of the development, even if temporary, should not displace flood risk to others. Placing structures within the flood extent could impede or displace flows. The LLFA has stated that this should be more clearly addressed in the FRA with inclusion of anticipated flood levels and the impact of the proposed structures. In order for the LPA to be confident the proposal will not have a harmful impact on the surrounding area by means of displaced flooding, the applicant should more clearly demonstrate that the proposals will not displace flood risk. The FRA supplied states that the development will not displace flood risk elsewhere however this is not adequately substantiated. The statement also provides that the structures will be raised however details of the raised platforms have not been provided and there is a discrepancy between the supporting documentation and the proposed elevations in this regard.
79. The LLFA has provided that this should not be addressed by condition. Given the high flood risk to the site and failure to demonstrate the proposal would not result in displaced flood risk, the proposal is accordingly not considered compliant with Policy 3.28 on flooding or the aims of CS4 of the Core Strategy (2012).

Planning Balance / Conclusion

80. The proposal is considered to be acceptable in principle, considering such a use on a temporary basis in the Lower Gardens. It is not considered out of character for the location however it is acknowledged that it would be visually imposing and impact on views. Given the temporary nature of the development, this is accordingly not considered to be materially harmful.

81. It is considered that the proposal would result in less than substantial harm to the Listed Gardens, a designated heritage asset. Paragraph 208 of the NPPF states that 'where a proposed 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. The proposal has public benefits associated, comprising an enhanced leisure offering in the town centre which would benefit residents and tourists as well as providing an economic benefit to the town. This has been accorded significant weight and given that the proposal is temporary, with the harm considered less than substantial and moderate in nature, this is on balance considered to be acceptable.
82. The proposal has the potential to impact on protected species, trees and residential amenity however it is considered that these impacts would be acceptable subject to the relevant conditions.
83. However, the applicant fails to demonstrate an exemption from BNG. Furthermore, the application fails to provide sufficient information for the LHA to assess the impact on pedestrian safety within the Lower Gardens. Concerns have been raised about the impact on the bus network as well as highways and footways, particularly given the high pedestrian flow during the time of the temporary period sought. In addition, the application site is at high risk of flooding and the application fails to demonstrate it would not result in unacceptable displaced flooding. The proposal is accordingly considered contrary to Policies 3.28 of the District Wide Local Plan (2002), CS4, CS18, CS30, CS41 of the Core Strategy (2012), Policies T1, T2 and T4 of the Area Action Plan (2013).
84. Therefore, having considered the appropriate development plan policy and other material considerations, including the NPPF, it is considered that the development would not be in accordance with the Development Plan.

Recommendation

REFUSE for the following reasons

- 1. Insufficient information on Biodiversity Net Gain**
- 2. Failure to demonstrate an acceptable impact on pedestrian safety**
- 3. Harmful impact on bus operations**
- 4. Failure to demonstrate acceptable impact on flooding**
- 5. Contrary to Schedule 7A of the Town and Country Planning Act 1990, Policies 3.28, CS4, CS18, CS41, T1, T2, T4 and the NPPF (2023).**

The applicant has failed to demonstrate that the de minimis exemption to Biodiversity Net Gain would apply, resulting in insufficient information for the LPA to assess that the proposal complies with the Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

The applicant has failed to clearly demonstrate the impact the development has on pedestrian safety which in turn fails to help achieve the Councils strategic objective of facilitating and increased levels of walking in the local area. In addition, the applicant has failed to locate the bins awaiting collection in a safe and convenient location that does not interfere with the bus operator.

Finally, the proposals fail to demonstrate that it would not result in unacceptable displaced flood risk to the surrounding area due to its location in flood zone 3 where the risk of flooding is high.

The proposal is overall contrary to Policies 3.28, CS4, CS18, CS41, T1, T2, T4 and the NPPF (2023).

Informatives

INFORMATIVE NOTE: For the avoidance of doubt the decision on the application hereby determined was made having regard to the following plans:

Installation of the ice rink plan; dwg no. 10

Site layout with dimensions; as submitted on 23/05/2024

Site layout; as submitted on 23/05/2024

Site location plan; as submitted on 23/05/2024

Proposed north and south elevations; dwg no. 00-0001-P01

Proposed west and east elevations; dwg no. 00-0002-P01

Background Documents:

Documents uploaded to that part of the Council's website that is publicly accessible and specifically relates to the application the subject of this report including all related consultation responses, representations and documents submitted by the applicant in respect of the application.

Notes.

This excludes all documents which are considered to contain exempt information for the purposes of Schedule 12A Local Government Act 1972.

Reference to published works is not included.

Case file: 7-2024-15898-AM