



Planning Committee

Application address	Lower Pleasure Gardens, Lower Gardens, Bournemouth, BH1 2AQ
Proposal	Temporary installation of winter ice rink with cafe/bar attached (temporary period from 28 th October 2024 to 25th January 2025 including the installation and removal of structures)
Application Number	7-2024-15989-AO
Applicant	This Event Co.
Agent	Mr. John White
Ward & Ward Councillors	Bournemouth Central Councillor Hazel Allen Councillor Jamie Martin
Status	Public report
Meeting Date	24 October 2024
Summary of Recommendation	GRANT subject to conditions
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 installation of winter ice rink with cafe/bar attached (temporary period from 28th October 2024 to 25th January 2025 including the installation and removal of structures).

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 Lower Gardens are a public green space which includes 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 where the ice rink has been sited in previous years. The site is bound by public footpaths on three sides and the River Bourne channel. There are mature trees along the northwestern boundary of the site and a single tree along the southwestern boundary along with shrubbery.

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 a parcel of land to the southwest of the application site. From 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 on the current application site where 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. An application for a temporary roller rink and associated facilities over the summer months was recently refused on the parcel of the land where the ice rink was previously sited prior to 2016.

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.

7-2024-15898-AM 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. Refused July 2024.

Reason for refusal:

'The applicant has failed to demonstrate that the de minimis exemption to Biodiversity Net Gain would apply, resulting in insufficient information for the Local Planning Authority 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). Furthermore, 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 would have an adverse visual impact on the Lower Gardens which are designated as a heritage asset. The proposal is overall contrary to Policies 3.28, CS4, CS39, CS41 and the NPPF (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. Police licensing – no response
Policy Architectural liaison – no response
The Gardens Trust – no response
National Amenity Society – no response
Wessex Water – no response
Historic England – deferred to local heritage department, should consider a grass recovery plan

Informal discussion with Planning Policy and LPA Ecologist on Biodiversity Net Gain – proposal is exempt

Informal discussion with Emergency Planning

Waste & Recycling – no comment
Greenspace development – confirmed that a grass management plan in place
LPA Ecologist – no comment on other ecological issues
LLFA – no objection raised but advises there should be an emergency plan in the event of flooding
Trees – no objection
Local Highway Authority – no objection subject to conditions
Environmental Health – no objection
Urban Design – objection
Heritage – objection due to impact on listed gardens

Representations

13. Site notices were posted in the vicinity of the site on 10/09/2024 with an expiry date for public consultation of 1/10/2024. A press notice was also issued. One public representation has been received, in objection.

Issue raised in the objections comprise (summary):-

- impact on the gardens and grass following the events

Key Issue(s)

14. 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
- Biodiversity Net Gain
- Impact on residential amenity
- Impact on highways/footways
- Impact on flooding

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

Policy context

16. 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 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

The BCP Local Plan is emerging but has not yet been through examination. Whilst some policies would be relevant to the proposal, at this time all policies listed below carry very limited weight.

Emerging Local Plan

*Policy C6: Flood risk
Policy NE1: Natural Environment
Policy NE7: Open space
Policy BE1: Design and high quality places
Policy BE2: Townscape
Policy BE6: Heritage assets
Policy E1: Nurturing our economy
Policy E10: Visitor attractions
Policy E11: Retail and town centres
Policy E12: Community, sports and leisure facilities
Policy T2: Transport and development*

17. 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...
- b) are safe and accessible...
- c) enable and support healthy lifestyles...”

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...
- 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...
- 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...'

Section 16 – Conserving and Enhancing the Historic Environment

Paragraph 195

"Heritage assets ...should be conserved in a manner appropriate to their significance."

Paragraph 200 - '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..."

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..."

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..."

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

18. Policy 7.10 promotes the development of public or private sports and recreation facilities providing that the benefits arising from the development outweigh the 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.
19. The proposal is considered to comply with the aims of the policies listed above and to provide notable public benefit, discussed below.
20. 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. This is considered particularly important in the winter months when less time is likely to be spent on the beach. Seasonal leisure facilities can help draw people to Bournemouth and notably to the town centre. The ice rink has historically formed part of the winter festival in the town centre along with other installations through the gardens and onto Pier Approach, and the Christmas market in Bournemouth Square.
21. As well as a leisure and tourist offering, the proposal is likely to provide economic benefits to the town centre. These benefits weigh positively in favour of the scheme in the planning balance and have been accorded significant weight.

22. Furthermore, the principle of the temporary ice rink has been long established in the Lower Gardens and on the application site specifically 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 a temporary ice rink in the Lower Gardens is considered acceptable and supported by policies relating to development in the town centre. The proposal is considered to provide significant public benefits comprising its contribution to the leisure offering of the town centre, particularly in the winter months, and economic benefit which promotes the vitality and viability of the town centre. The proposal is considered to comply with the aims of the policies listed in paragraph 18.

Impact on character of the area

24. The Town Centre Area Action Plan (2013) identifies the application site as within the core of the town centre where the 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 are existing commercial facilities within the Lower Gardens which provide both seasonal and year-round offerings. This includes mini golf and a number of food and drink kiosks.
26. Whilst there are both year-round and summer hospitality and leisure offerings within the Lower Gardens, the character of the Lower Gardens during the winter festival is to some extent distinct from the character at other times of the year due to the winter festival facilities and installations. Bournemouth Square leading to Pier Approach is busy, with many sources of artificial lighting, music and a variety of temporary structures.
27. The proposed structures are the same as the structures approved on a temporary basis in 2023. The site plan shows decking with associated steps and ramps from the public path, the ice rink, two marquees (the smaller marquee for skate hire and the larger serving as a bar area), a ticket office and small gazebo for first aid, a toilet trailer, the ice rink and the chiller area where the bins are also stored.

28. The most prominent structures are considered to be the marquees, which measure approximately 5.92m and 4.5m in height above the decking and approximately 6.92m and 5.5m in height from ground level. The outer walls of the two marquees predominantly comprise glazed panels with some smaller areas of PVC marquee side and hard wall marquee panel.
29. Concern has been raised by the Urban Design Officer and the Heritage Officer about the impact of the Grade II Listed Registered Park and Garden which will be discussed in the following section. The Urban Design Officer states that the proposal is excessive in scale and size and raises concern in particular about the height of the marquees and resultant impact on views across the gardens. Concern is also raised about the impact on grass following the event. This will be discussed in a later section.
30. The proposed structures are the same as approved last year in 2023 and similar to those proposed and approved over the past several years in terms of footprint and siting. With the previous application, approved in 2023 the area of both ice rink and decking around the marquees had been increased compared to previous years. It was considered that this did not significantly change the character and appearance of the development from previously approved schemes. It was noted that the larger decking area would allow for a better customer experience by better organized customer flow from queuing through to viewing areas for non- skaters. The large viewing platform and larger bar/café areas were considered to contribute positively to the overall experience of the attractions.
31. Proposals last year also amended the marquee design with the height of the main marquee increased by approximately 0.5m and height of the smaller marquee reduced by 0.7m. The agent confirmed that this was done to improve the drainage through the gutter. It was not previously considered that the additional 0.5m in height of the main marquee would have such additional visual prominence as to warrant a reason for refusal of the application. As with the previous application, the proposals are considered to be an acceptable design on a temporary basis. Other changes from previous applications that were implemented last year and repeated with the current proposal are considered positive, including the reduction in height of the smaller marquee.
32. As with last year, the scale and size of the proposal, on a temporary basis, is considered to be acceptable and not materially harmful to the character and appearance of the area. Regarding the impact on views across the gardens,

whilst it is noted that the proposal is substantial and visually prominent with some resultant impact on views, it is also held that at this time of the year during the winter festivities the garden is not characterized by the same openness and long range views as at other times of the year due to the extensive festive installations of lighting and sculpture.

33. Overall, whilst the proposal would be visually prominent within the setting, on a temporary basis, the proposal is not considered to be materially harmful to the character and appearance of the area. On balance, the proposal is not considered contrary to design policies CS41 and D4.

Impact on the heritage assets (Grade II Listed Gardens)

34. 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. In the winter months, the winter festival provision is a significant draw for visitors to the gardens.
35. 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*.'
36. Historic England have responded to this application stating that the LPA internal conservation specialists are best placed to comment on the design of the proposed temporary structure but stated that the LPA might consider requiring there to be a grass recovery plan as part of any planning conditions. It has been confirmed by the Council Parks team that there is a grass recovery plan in place, as will be discussed in a later section, and compliance with this recovery plan has been added as a condition to this recommended approval.
37. The LPA Heritage Officer has reviewed the proposal and raised objections to the scheme, citing harm to the designated heritage asset. In the objection, the

Heritage Officer raises concern about the adverse visual impact of the marquee structures and overall site coverage, the impact on the grass, time taken for grass recovery and the fencing off of open space which is considered to harm the appreciation of the gardens. The Heritage Officer also considers it unjustified that there is a food/bar offering and associated seating.

38. Concern regarding a longer period applied for has been raised by both the Heritage Officer and the Urban Design Officer. The Events Management Plan provides the following dates:
 - Build beginning on 28th October 2024
 - Site opening on 14th November 2024
 - Site closing on 5th January 2025
 - De rig complete/off-site on 25th January 2025.
39. Following discussion with the agent, the description of development has been revised to align with these proposed dates. The application does not propose a longer period than previously granted. The proposed dates are shorter than the four months granted in 2023.
40. The LPA Heritage Officer asserts that the proposal would be harmful to designated heritage assets and that this harm would be less than substantial. The assessment that there is harm and that this harm is less than substantial, is agreed with. As described in the previous section, the proposal involves sizeable structures in height and footprint, most notably the marquees.
41. However, Historic England Guidance 'Temporary Structures in Historic Places' states '*There should not be a presumption against temporary structures simply because they are visible in the historic environment...the duration of the structure and the season of the event can be important factors*'. It is considered that the harm to the designated heritage asset is reduced by the distinct character of the gardens at this time of year due to the winter festival, and also by the temporary duration of the proposal. The structures would also be temporary in appearance. In relation to the refreshment provision offered, this is considered to be clearly ancillary to the ice rink proposed and not to result in a disproportionate increase in the scale of the proposal. For these reasons, the less than substantial harm identified is considered to be moderate in nature.
42. It is noted that an application was recently refused in July 2024, for a roller rink on a nearby parcel of land within the Lower Gardens. Whilst the officer assessment found that the heritage harm was outweighed by the public benefits

of the scheme, the refusal reason from members included harm to the designated heritage asset. During the Committee, concerns from members regarding the impact on the listed gardens included the impact on the grass, which is discussed in a later section, as well as the intrusion of the big screen proposed. Whilst each application is assessed on its own merits, it is noted that there is no big screen associated with the ice rink proposal and that the character of the gardens in the wintertime is to some extent distinct from at other times of the year.

43. Paragraph 208 of the NPPF (2023) states 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.*' It is considered that the development is a viable use of the heritage asset which allows residents and visitors to enjoy the listed heritage asset in the winter months.
44. Overall, the proposal is considered to result in less than substantial harm to designated heritage asset, which is moderate in nature. The harm to the designated heritage asset is contrary to Policy CS39. This will be weighed up against the public benefits in the planning balance.

Impact on trees

45. Policy 4.25 promotes soft landscaping. The site is located in the Lower Gardens where trees form an essential component of the parks character therefore Policies CS39 and CS41 of the Core Strategy are also relevant. Along the northwestern boundary is a Category B blue cedar tree and a Category B wellingtonia tree. Along the southwestern boundary is a cherry tree as well as an area of shrubbery in the southwestern corner of the plot.
46. The LPA Tree Officer has assessed the proposals for this site along with the arboricultural information submitted in their support. No trees will be lost with this proposal and no tree pruning will be required. There are no works within root protection areas. It is considered that the tree protection proposed is suitable and no objection has been raised in relation to trees, subject to a condition requiring compliance with the submitted arboricultural method statement and tree protection plan and compliance with the arboricultural constructional method statement.

47. Overall the proposal is not considered harmful to trees, and there is no breach of Policy 4.25, CS39 or CS41 in this regard.

Biodiversity Net Gain/Impact on the grass

48. 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.
49. The application form submitted states 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.
50. 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 two years of the development commencing, the loss or harm to the habitat would not need to be recorded as an impact for the purposes of BNG calculations.
51. In the context of modified grassland, if the habitat is currently in poor condition, it can reasonably be restored to that condition within two years subject to the appropriate protection and restoration measures. This is not the case for modified grassland in better condition.
52. In order to establish that the proposal is exempt from Biodiversity Net Gain, the applicant must evidence the baseline condition of the habitat which could be impacted as well as the mitigation and restoration in place for it to be restored to this condition within two years. If modified grassland is in poor condition, it is feasible, subject to the appropriate measures being taken, for the habitat to be restored within two years. However, if the habitat is in good condition, the guidance asserts it will take longer than two years and accordingly the impact must be taken into account for the purposes of BNG.
53. The grassed area has been damaged by previous installations at the site. With this application, a Biodiversity Net Gain Statement prepared by a suitably competent person has been submitted. This includes field survey data to assess the baseline condition of the modified grassland on-site. The conclusion of this report is that the

modified grassland is in poor condition and that any damage caused to the habitat during development can be restored once the temporary structures have been deconstructed and removed. Restoration will involve the replanting of the area with native fast-growing grasses. The report recommends that the area be temporarily cordoned off while the grass regrows.

54. BCP Parks Department have confirmed that there is an agreement in place for re-seeding and after care of the grass and that the area will be fenced off while the seed establishes. The Events Management Plan provided with the application also includes grass protection measures including that no vehicles will be allowed on the grass and that trackway matting will be used.
55. The LPA Ecologist has stated that they have no comment to make on other ecological issues including protected species 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. As bats are in hibernation during the time period proposed with this application, bats will not be affected and are accordingly not a material consideration with this application.
56. Overall, it is considered that the applicant has satisfactorily demonstrated the baseline condition of the habitat and that it can be restored to this baseline condition within 2 years, accordingly the proposal is considered exempt from BNG. In terms of the impact on the grass, this is considered acceptable given the appropriate measures in place to restore the grass.

Impact on residential amenity

57. 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.
58. The Events Management Plan details that the sound from the chillers are measured at 62 dB(A) from a distance of 10m and that the nearest house/hotels on Exeter Park Road are located a minimum of 50m away. The EMP also includes a noise monitoring plan and a map of noise monitoring locations.

Environmental Health have reviewed the proposal and Events Management Plan and concluded that this is satisfactory.

59. Environmental Health also note that no noise complaints have been received over the past couple of years. The EHO commented that if noise issues arise, action can be taken under the Premises License as well as other legislation and regimes.
60. The hours of operation for the ice rink have historically been conditioned so that the use hereby permitted shall not be open to customers outside of the following times: 10:00 to 23:00 hours. This also accords with the licensing hours.
61. Subject to conditions regarding opening hours, and compliance with the Events Management Plan the impact on noise is considered acceptable, with no harm to neighbouring residential amenity resulting from the proposal.

Impact on highways/footways

62. 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 ensure “appropriate servicing arrangements”. In addition, Policy T2 seeks to promote walking and cycling by “ensuring routes are direct”.
63. The proposal involves vehicular movement within the park, notably at the time of build and take down of the structures as well as for deliveries. The Local Highway Authority (LHA) requested maps and details of route closures and path diversions within the Lower Gardens including the dates and times these are proposed to be in effect. The details subsequently received in Appendix B of the Events Management Plan show these routes for the build period from the morning of Monday 28th October to 14:00 on Thursday 14th November, and for the de-rig period from the morning of 6th January to 20th January. The agent has advised that the takedown of structures is affected by weather conditions but it is likely that it will be completed prior to 20th January, in which case the fencing will be removed earlier than scheduled. These details are considered acceptable by the LHA.
64. The Events Management Plan details Exeter Crescent as the proposed location for refuse with 8 bins collected three times a week by BCP Council waste

services. This location is next to BH2 where bins are already collected. This location is considered acceptable by the Local Highway Authority and no objection is raised.

65. Overall, the proposals are considered acceptable in terms of highway safety and policies T1 and T2 on walking and cycling provision.

Impact on flooding

70. 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.
71. 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*”. As a change of use application, on a temporary basis, it is not considered that the sequential test must be followed. The proposal, as outdoor sports and recreation, is classed as ‘Water Compatible development’ as per the classifications set out in Annex 3. However, a Flood Risk Assessment is required given the flood risk on site.
72. The applicant has submitted a Flood Risk Assessment which outlines the flood risk to the site and states that ‘*flood risk assessments for the previous ice rink site in Bournemouth Lower gardens and similar proposals stated that a location in the gardens could not be changed. The Square does not offer available space and Pier Approach is exposed in the winter months.*’
73. The LLFA states that the applicant should accept that damage to structures or equipment from flooding is a possibility. The FRA submitted states that the design of the Christmas ice rink installation 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 FRA also denotes that due to the design and raising of the structures, they will not increase the flood risk elsewhere.
74. The LLFA asserts that placing structures within the flood extent will displace flood risk. Whilst the LLFA advise that the extent of flood risk can only be confirmed by modelling, it is likely that this would only be displaced to other parts of the gardens rather than to buildings. It is noted that the Lower Gardens are a bowl shape which affects how flooding is likely to be displaced.

75. It is understood from previous discussions with the LLFA that the site is at most risk of flooding in summertime. On balance therefore it is considered that the risk of flooding, over the temporary period to which this application relates, is not sufficient as to warrant a refusal reason of this application, providing that there is a sufficient emergency procedure in place should flooding occur.
77. On balance, the impact on flooding is considered acceptable and an informative note regarding a flooding evacuation plan has been added. The proposal is not considered to contradict the aims of Policy CS4 or section 14 of the NPPF (2023)

Planning Balance / Conclusion

78. 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 the structures are substantial. The temporary nature of the development and the character of the gardens during the winter festivities reduces this harm to some extent.
79. It is considered that the proposal would result in less than substantial harm to the Listed Gardens, a designated heritage asset and that this harm would be moderate in nature. 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 economic benefit to the town. During the winter months, the winter festival, which has historically included the ice rink, is a significant draw for visitors to both the Lower Gardens and to Bournemouth Town Centre. These benefits have been accorded significant weight and it is considered that the benefits outweigh the harm to the designated heritage assets, especially given the temporary nature of the proposal. The impacts on trees, grass, residential amenity, flooding and highways are considered to be acceptable. The proposal has sufficiently demonstrated exemption from Biodiversity Net Gain.
80. Therefore, having considered the appropriate development plan policies and other material considerations, including the NPPF, it is considered that the development is acceptable.

Recommendation

GRANT subject to conditions.

1. Temporary Use from 28th October 2024 to 25th January 2025 only

This permission is limited for a temporary period from 28th October 2024 to 25th January 2025 only. On or before the 5th January 2025 the use hereby permitted shall be discontinued, all structures shall be removed by 25th January and the land shall be restored to its former condition in accordance with a scheme of work, including grass reinstatement, as agreed with the Council's Parks Department.

Reason: To enable the Local Planning Authority to review the situation at the end of the period and in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

2. Development to be carried out in accordance with plans as listed

The development hereby permitted shall be carried out in accordance with the following approved plans:

- P001 Location Plan
- P002 Rev. A Proposed Block Scheme, as submitted on 27/09/2024
- P003 Site Plan – Proposed Floor Plan
- P006 Elevations AA, BB, CC, DD

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Hours of Operation

The use hereby permitted shall not be open to customers outside the following times: 10.00 to 23.00 hours.

Reason: To safeguard the amenities of occupiers of nearby properties and in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

4. Event Management Plan

All works relating to the installation and removal of the structures and chillers hereby approved; management of the site; and mitigation measures; shall be carried out in accordance with the approved documents 'SKATE - Bournemouth Lower Gardens Event Management Plan 2024/25' version v.3 dated 30.09.2024; Appendix B as submitted on 15/10/2024, 'Planning Design Access and Heritage Statement' version v.2 dated 2024, 'SKATE Bournemouth 2024 – Planning Statement' and the unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of occupiers of adjoining and nearby properties and in the interest of highway safety in accordance with Policies CS38, CS41 and CS14 of the Bournemouth Local Plan: Core Strategy (October 2012).

5. Tree Protection

Prior to the commencement of the development, the tree protection measures as detailed in the 'Arboricultural Impact Appraisal and Method Statement' (16296-AA5-DC dated 12 October 2023) and 'Arboricultural Method Statement SKATE Bournemouth 2023/24' (Completed & Reviewed 15.09.2023) shall be implemented in full and maintained and supervised until completion of the development.

Reason: To ensure that trees and other vegetation to be retained are not damaged during construction works and to accord with Policy 4.25 of the Bournemouth District Wide Local Plan (February 2002).

6. Grass Protection

Grass protection measures shall be implemented in accordance with the approved documents and retained as such throughout the duration of the event and time that the decking is in situ on site, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of the landscape and visual amenity of the area in accordance with Policy 4.25 of the Bournemouth District Wide Local Plan (February 2002).

Informatives

- **Flooding Evacuation Plan**

The applicant is reminded that a warning and evacuation plans, including a contingency plan in the event of flooding to the Bourne will have to be in place prior to the first use of the development.

- **Environment Agency Permit**

The applicant's attention is drawn to the fact that in order to discharge ice scrapings into a watercourse, an environmental permit to discharge to a controlled water is likely to be required.

Background Documents:

Documents uploaded to that part of the Council's website (Ref 7-2024-15989-AO) 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.