



Planning Committee

Application Address	Lower Gardens, Bournemouth BH2 5AU
Proposal	Temporary installation of winter event (temporary period from 27 October 2025 to 25 January 2026 including the installation and removal of structures)
Application Number	P/25/02126/FUL
Applicant	Mr Simon Smith
Agent	Mr John White
Ward and Ward Member(s)	Bournemouth Central Cllr Hazel Allen Cllr Jamie Martin
Report Status	Public
Meeting Date	20 November 2025
Summary of Recommendation	Refuse for the reason(s) set out below
Reason for Referral to Planning Committee	The Head of Planning Operations considers the application to be potentially contentious and raise material planning issues.
Case Officer	Eden Evans
Is the proposal EIA Development?	No

Description of Proposal

1. This application proposes the temporary installation of a winter event (temporary period from 27 October 2025 to 25 January 2026 including the installation and removal of structures). The main structures proposed are as follows:
 - An outdoor ice rink with two associated marquees
 - An alpine chalet
 - A games stall

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 comprises areas of lawn and landscaping and footpath between Bournemouth Square and Pier Approach.

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 an ice rink 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 its currently proposed siting. From planning application 7-2017-15898-AG to the most recent application in 2024, temporary permission has been granted for the ice rink installation to be on the current application site where Bournemouth Eye balloon was previously tethered. Festive decorations and installations have historically been installed in the other sections of the Lower Gardens.

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.

7-2024-15898-AN Temporary Christmas lighting installations throughout the Lower Gardens and Pier Approach to include a ride on Santa's train and Christmas themed simulator. Withdrawn

7-2024-15898-AO 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). Approved October 2025.

Constraints

6. In considering whether to grant planning permission or permission in principle for development which affects a listed building special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest - section 66 - Planning (Listed Buildings and Conservation Areas) Act 1990.
7. With respect to any buildings or other land in a Conservation Area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area – section 72 - Planning (Listed Buildings and Conservation Areas) Act 1990.
8. The following site constraints are relevant to the proposal:
 - Grade II Listed Registered Park and Garden
 - Setting of the Grade II listed Pavilion Theatre
 - Mature trees within and around the site
 - Flood zone 3 and some Flood Zone 2
 - 1 in 30 annual likelihood of surface water flooding

Public Sector Equalities Duty

9. 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

10. 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.
11. With regard to sections 28G and 28I (where relevant) of the Wildlife and Countryside Act 1981, to the extent consistent with the proper exercise of the function of determining this application and that this application is likely to affect the flora, fauna or geological or physiographical features by reason

of which a site is of special scientific interest, the duty to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

12. 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”.
13. 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.
14. 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

15. Historic England – no comment
Dorset Wildlife Trust – no response
Dorset Police Licensing – no response
Wessex Water – no response
The Gardens Trust – commented that annual events have led to almost permanent damage and loss of the area as a garden, this harm to the significance of the registered park and garden must be justified.
LPA Ecologist – confirmed the modified grassland is in poor condition. No objection in principle to the application but issues raised by the BNG officer must be addressed.
Heritage – objection due to impact on Grade II listed gardens and Pavilion, this harm must be justified
Urban Design – objection due to visual harm to the Listed Gardens and to the condition of the grassed areas
Waste & Recycling – no response
BCP BNG Officer – proposal is not compliant with BNG legislation
Lead Local Flood Authority – no objection subject to conditions
Environmental Health – no objection
Trees and Landscaping – There are discrepancies between various submissions.
Officer note: These discrepancies are likely drawing mistakes. These can be addressed by conditions.
Local Highway Authority – no objection subject to compliance with submitted information
BCP Environmental Services (Parks & Open Spaces joint response) – Comments note the value of the proposal and of the gardens but raise concerns about the impact on the gardens, deterioration of the grass and the lack of detail in the Design and Access Statement. Recommendations include that in future years a fund is secured annually for works to the gardens.
Officer Note: The recommendation for financial contribution is made in reference to future years rather than the current application. On the basis of the detail and justification provided in this consult response, the case officer notes that this may not meet the requirements of Section 122 of The Community Infrastructure Levy Regulations 2010.

Representations

16. Site notices were erected in the vicinity of the site on 06/08/2025 with an expiry date of 28/08/2025. A press notice was also issued with an expiry date of 06/09/2025.
17. One representation was received in objection from Councillor Bartlett. Issues raised comprise the following (summary):-
- Development contrary to the Town Centre Area Action Plan
 - Development will cause significant and lasting damage
 - Prevents sites intended use as a garden and does not respect the public realm
 - Proposal is not an appropriate, scale, height, mass or form
 - Impact on key views, skyline and townscape
 - Anti-social behaviour resulting from the bar, increased activity, noise and fume levels
 - Repeated use of the gardens for the temporary ice rink has resulted in permanent damage to the lawns
 - Harmful to designated heritage assets

Key Issue(s)

18. 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 & landscaping
 - Biodiversity Net Gain
 - Impact on residential amenity
 - Impact on highways/footways
 - Flooding and drainage
19. These issues will be considered along with other matters relevant to this proposal below.

Policy context

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the development plan for an area, except where material considerations indicate otherwise. The development plan in this case comprises the Bournemouth Local Plan Core Strategy 2012, District Wide Local Plan 2002; and Bournemouth Town Centre Area Action Plan 2013.

Core Strategy (2012)

- Policy CS4 – Surface Water Flooding
- Policy CS7 – Bournemouth Town Centre
- Policy CS29 – Protecting Tourism and Cultural Facilities
- Policy CS30 – Promoting Green Infrastructure
- 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
- Policy T1 – Overarching transport and movement considerations
- Policy T2 – Walking and Cycling

Other

- BCP Parking Standards SPD (2021)
- Bournemouth Public Realm Strategy (2013)
- Town Centre Development Design Guide SPD
- 'Temporary Structures in Historic Places' – Historic England Publication

21. National Planning Policy Framework ("NPPF" / "Framework")

- Section 2 – Achieving Sustainable Development

Paragraph 11 states that,

"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 and safe communities, in particular paragraph 96
- Section 9 – Promoting Sustainable Transport, in particular paragraphs 116 and 117
- Section 15 – Conserving and enhancing the natural environment, in particular paragraph 187
- Section 16: Conserving and enhancing the historic environment.

Planning Assessment

Principle and benefits of development

22. Policy 7.10 of District Wide Local Plan 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 town centre 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 a range of development type including leisure uses.

23. This application proposes the temporary installation of a winter event (temporary period from 27 October 2025 to 25 January 2026 including the installation and removal of structures). The proposal is considered to comply with the aims of the policies listed above in providing a leisure and entertainment offering in the town centre which provides a notable public benefit, discussed below.
24. 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 offering in the town centre along with other installations through the gardens and onto Pier Approach, and the Christmas market in Bournemouth Square.
25. A Public Benefits Statement was submitted with this application and states that in 2023 more than 5.68 million people visited Bournemouth town centre and Christmas Tree Wonderland during the seven-week festive period, averaging around 125,000 visitors each day. It is considered that the Christmas event in the Lower Gardens would provide a significant draw for visitors to the town centre. The proposal is accordingly considered to provide significant 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.
26. Furthermore, the principle of the temporary ice rink and Christmas installations 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 is a material consideration in this case.
27. Overall, the principle of a temporary ice rink in the Lower Gardens is considered acceptable and in line with the aims of policies on 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.

Impact on character and appearance

28. 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. Policy CS7 and CS41 require that development maintains or enhances character.
29. 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 town centre is reflected in the surrounding main streets including Commercial Road, Westover Road and Old 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.
30. 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.
31. The proposal comprises an ice-skating rink area in a large parcel of land bound by footpaths on three sides and the River Bourne to the northeast. The ice rink structure comprises the skating area, a bar area, ticket area, plant equipment and other ancillary elements. The footprint of this area measures approximately 2,576m². There are two marquees, measuring approximately 6.45m in height. Around the marquee are glass panels, with scaffold railing to the northwest of the site and

ramps and wooden garden fencing along the front of the structure. Wooden features and cladding screen some of the glass frontage where the back of house areas are sited.

32. To the southwest of the ice rink area are a number of other installations; noted on the proposed layout plan as: Walkthrough Christmas Tree Display, Christmas Tree maze, Wonderland Tipis, Alpine Chalet, Christmas Train, Games Stalls and Christmas Ride. Most substantial of these in terms of the structures proposed are the alpine chalet and games stall. The Alpine chalet measures 3m in height with a footprint of 16m by 8m. The total footprint of the structure measures approximately 20.3m by 8m including ramps and stairs. The two games stalls each measure 6m by 2m in footprint with a height of 3m. These structures are timber with pitched roofs.
33. Concern has been raised by the Urban Design Officer about the scale, design and siting. Concern has been raised that, the proposals, particularly the marquees are visually dominant and disrupt the open character of the Lower Gardens.
34. The ice-skating rink has been a key part in the annual winter festivities over the past several years, see the planning history of the site above. It is acknowledged that the current proposal is larger than the schemes that were approved in the past in terms of both the ice rink structure and the inclusion of other installations and structures leading down to Pier Approach. Consequently, the current proposal will be visually prominent with a resultant impact on views across the gardens compared to the historic permissions. However, the development will be temporary and installed only during the winter festivities when the garden is not typically 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. The presence of temporary structures within the town centre and the gardens, particularly in the winter months, is well established and it is accordingly considered that the proposal would not be out of character on a temporary basis. The proposed structures, although large, are considered to clearly appear as a temporary seasonal event.
35. Concern has also been raised by various consultees relating to impact on grass, particularly the longer-term impact on grass when the structures have been removed. It is highlighted in objections that following previous installations, the grass has remained in poor condition in the summer months and that the prolonged deterioration of the reseeded areas may continue to restrict public access and diminish the overall enjoyment of the gardens throughout the year. Since the size and scale of the current scheme is larger than previous years, it will potentially have greater impact on grass reinstatement.
36. In previous years, the permissions included a grass reinstatement condition which required the grass to be re-seeded. However, as noted by the consultees, this approach has not been successful for the grass recovery in the previous years. Consequently, a new condition is recommended for impacted areas to be re-turfed should the application be recommended for approval.
37. The structures themselves, whilst in situ on a temporary basis, are considered to have an acceptable impact on character and appearance for the reasons provided above. The grass recovery can be secured by condition. Overall, subject to conditions requiring development to be carried out in accordance with the submitted material details, the grass reinstatement plan and for re-turfing impacted areas, the scheme is considered to have an acceptable impact on character and appearance, in accordance with Policies CS7 and CS41.

Impact on designated heritage assets

38. Policy CS39 requires that designated heritage assets are protected. 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. The southern section of the application site is also within the setting of the Grade II listed Pavilion Theatre.

39. Paragraph 212 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 213 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'*. Paragraph 215 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'*.
40. The Heritage Officer advises that the proposal is not supported from a heritage perspective and concludes that it would result in less than substantial harm to the significance of the designated heritage assets. The Heritage Officer and the Gardens Trust have stressed the requirement for the proposal to be justified that there are significant public benefits to outweigh the harm.
41. As described in the previous section, the proposal involves sizeable structures in height and footprint, most notably the marquees associated with the ice rink area. 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'*.
42. By way of visual intrusion, it is agreed by the case officer that the proposal would result in less than substantial harm to the designated heritage assets. It is also acknowledged, as in the previous section, that the size of the structures associated with the ice rink have increased compared to previous permissions and that the proposal also includes a number of other structures in the southern areas of the gardens. Nevertheless, considering the less than substantial harm, it is considered that the harm to the designated heritage asset is significantly moderated by the temporary duration of the proposal. The structures would also be temporary in appearance. Specifically in relation to the additional structures in proximity to the Pavilion Theatre, it is highlighted that these are set on lower ground than the heritage asset and measure only 3m in height. For these reasons, the less than substantial harm to both heritage assets is considered by the case officer to be moderate in nature. As required by the NPPF (2024) this harm must be weighed up against the public benefits of the scheme.
43. Overall, it is considered that the proposal would lead to less than substantial harm to designated heritage assets which is moderate in nature. This harm will be weighed up the planning balance.

Impact on residential amenity

44. Policy U9 of the Town Centre Area Action Plan (2013) as well as CS39 and CS41 of the Core Strategy (2012) seek to protect residential amenity.
45. 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 considered to not 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. Environmental Health Officers have also raised the issue of lighting having the potential to impact on neighbouring residents.
46. An Event Management Plan (EMP) and associated documents were submitted which include noise management measures. Environmental Health stated that having reviewed this document, they have no significant concerns with the proposals and historically have not received complaints in relation to this event over the last couple of years. Environmental Health also note that if concerns arise with regards to noise and lighting, these can be dealt with under Licensing and nuisance regimes if necessary.

47. Overall, subject to a condition requiring compliance with the EMP, the proposal is considered to have an acceptable impact on neighbouring residential amenity

Impact on highways/footways

48. 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*”.
49. Following concerns raised about the lack of information on route closures and other highway/footway impacts, additional information was submitted with the application and was reviewed by the Local Highway Authority (LHA). Information submitted details the delivery routes through the gardens, confirming that larger vehicles will reverse in. In addition, the plan also shows that vehicles can exit onto Gervis Place. This is considered acceptable.
50. The applicant has provided a plan to show the pedestrian route during the build. The layout drawing also shows the location of the bins for collection which is at Exeter Crescent. Bins are already collected from the public highway on Exeter Crescent, and this is considered a logical place to collect by the LHA.
51. The LHA have stated that it is unfortunate that the main pedestrian route through the gardens, which is a desire line to the seafront is closed off from the 27th of October, which is half term, until the 13th of November to enable the build but overall, no objections are raised to the proposal subject to compliance with the information submitted.
52. Overall, on balance, the proposal is considered to have an acceptable impact on highways and footways, compliant with Policies T1 and T2 of the Town Centre Area Action Plan.

Impact on flooding

53. The application site is located in flood zones 2 and 3. The site is at risk of flooding from tidal, fluvial, surface water and sewer sources and has a known history of flooding.
54. Paragraph 176 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 63*”. As a change of use application, on a temporary basis, it is considered that the sequential test is not required in this instance.
55. 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.
56. The submitted Flood Risk Assessment (FRA) has been assessed by the Local Lead Flood Authority (LLFA). The LLFA confirmed that they do not object on flooding and drainage grounds and are satisfied with the emergency plan in the event of flooding. In addition to compliance conditions with the submitted information, the LLFA recommended that, in relation to rainwater run-off, further details are provided. However, considering the potential for displaced flood risk, it is acknowledged by the LLFA that this risk of surface water flooding would be to the Lower Gardens rather than to properties. In this case, the temporary event and application site extends almost the full length of the bowl-shaped Lower Gardens down to Pier Approach. The displaced flood risk would accordingly be largely restricted to other parts of the temporary event applied for.
57. It is noted that an application for a summer event installation was refused, in part on flooding grounds. However, in this case the application site comprised a small part of the Lower Gardens with the rest of the Lower Gardens in busy use as a space of public recreation. Displaced flooding,

which is at higher risk in summer due to the likelihood of flash flooding, would therefore have a harmful impact on public use of the Lower Gardens outside of the application site. For this application there would not be this harm and accordingly it is not considered necessary to require further information by way of condition.

58. Overall, subject to compliance with the submitted information, it is considered that the impact on flooding is acceptable and compliant with the aims of the NPPF (2024).

Impact on trees

59. Policy 4.25 of the District Wide Local Plan 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.
60. A revised tree protection scheme was submitted by the applicant during the course of the application. The Council's Tree and Landscaping Officer reviewed the scheme and commented that one of the palm trees now appear be lost due to a change in position of tree protective fencing. Since only one palm is shown in the amended plan, it is assumed the other is to be removed. However, it was not clear if this will actually happen since the removal of the palm tree is not required for the proposed development. Additionally, an area of shrubs at the eastern end of the site also appears to be affected, and no protection is shown for them, currently. The shrubs should also be retained and protected. It is considered that the omission of the palm tree and lack of protection around the shrubs are likely to be drawing mistakes that has been confirmed by the applicant and as such, can be overcome by condition requiring their retention. It is also to be noted that the loss of palms or shrubbery would have further implications for Biodiversity Net Gain, which is discussed in a later section.
61. Aside from the above issues, following assessment of submitted arboricultural information and tree protection plans, the Tree and Landscaping Officer consider that trees on and around the site, including the two main trees at the western end of the ice rink site are to be suitably protected and no works are to take place within their root protection areas.
62. It has come to the attention of the LPA that during the course of the application, one cherry tree has been removed from the ice rink area of the application site, which has not been detailed within the application. Subject to suitable replacement planting, it is likely that there would be no arboricultural objection to the loss of this tree. However, the removal of this tree has wider BNG implications – see the following section.
63. Overall, the impact on trees and landscaping is considered to be acceptable subject to conditions in relation to replacement tree planting and revised tree protection details. Subject to these conditions the proposal is considered to have an acceptable on trees and landscaping, compliant with Policies 4.25, CS39 and CS41 in this regard.

Biodiversity

64. The NPPF at chapter 15 'conserving and enhancing the natural environment' sets out government views on minimising the impacts on biodiversity, providing net gains where possible and contributing to halt the overall decline in biodiversity. The Local Plan CS30 promotes biodiversity and wildlife habitat. In addition, a 10% biodiversity net gain (BNG) is required as per the Environment Act 2021, though exemptions apply.
65. The application claimed the 'De Minimis' exemption and submitted a supporting statement to demonstrate this. The statement focused on the grass as the only habitat impacted by the proposal. The statement detailed the poor condition of the grass to demonstrate that it could be restored to its present condition within 2 years. Due to the fact that the grass could be restored within the two-year threshold, this impact is not counted as a habitat impact within the BNG framework. The proposal

could therefore benefit from the 'De Minimis' exemption which applies where less than 25 sqm of habitats are impacted.

66. The Council's Ecologist visited the site and advised that the modified grassland is 'poor' condition and therefore the development would not result in an 'impact' to this habitat in terms of the calculation of the biodiversity value in the metric. Consequently, the BNG Policy officer advised that the proposal would benefit from the De Minimis exemption however details of protection of the trees and other habitat in and around the site will be required to be agreed to ensure that the de minimis exemption remains applicable. Should trees or more than 25sqm of other habitat be impacted by the site, the de minimis exemption may no longer apply.
67. During the course of the application, it has come to the attention of the Local Planning Authority that a cherry tree was removed from the application site. Whilst the size of the removed tree is not clear, a small tree (with a diameter at breast height of 7.5cm to 30cm) has an equivalent area value of 41sqm on the biodiversity metric. Accordingly, the loss of this tree would mean that the de minimis exemption would not be applicable as the habitat impacted would exceed 25 sqm.
68. The statutory condition requires all development to provide a net gain in biodiversity of 10% unless exempt. Given that the proposal does not benefit from an exemption to Biodiversity Net Gain, a 10% net gain will need to be demonstrated for area habitat and this would need to be in accordance with the trading rules. This means that the lost tree units would need to be compensated for with other tree units or habitat from a higher distinctiveness. The 10% net gain could be provided from any area habitat. Because the site boundary is within the riparian zone of the Bourne Stream (within 10m of the top of the bank of the Bourne Stream), the adjacent length of watercourse must be included in the baseline habitat metric calculation, and the riparian zone on the opposite bank will also need to be included.
69. To demonstrate compliance with the BNG legislation, the applicant is required to submit a Biodiversity Metric mapping of the baseline habitats on the site and details of how the Biodiversity Net Gain will be achieved, in compliance with the Biodiversity Gain Hierarchy. No such information has been submitted and accordingly the proposal is not compliant with the required legislation.
70. As such, the local planning authority cannot be confident that the statutory biodiversity gain condition is capable of being discharged in accordance with the Biodiversity Gain Hierarchy. Consequently, the proposal is contrary to Policy CS30 and the relevant legislation.

Other Matters

71. Anti-social behaviour was raised as an issue in the objections received. An Events Management Plan has been submitted with this application which contains measures to manage the risk of this occurring and these are acceptable. It is also noted that Dorset Police were consulted with this application and have not submitted a response. Consequently, it is considered that there would not be a significant risk of anti-social behaviour in association with the proposed development warranting refusal or additional conditions.

Planning Balance / Conclusion

72. The proposal is considered to be acceptable in principle, considering such a use on a temporary basis in the Lower Gardens. Whilst it is acknowledged that the structures would be substantial, it would not be considered out of character for the reasons explained above. The temporary nature of the development and the character of the gardens during the winter festivities reduces this harm to some extent.
73. 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 215 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 significant public benefits, 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, given the temporary nature of the proposal.

74. Subject to the relevant conditions, the impacts on trees, grass, residential amenity, flooding and highways are considered to be acceptable.
75. However, Biodiversity Net Gain is a legislative requirement for all development unless exempt. The Local Planning Authority must be satisfied that the statutory condition can be discharged. In this case, the application has failed to submit the required information in relation to BNG and accordingly it cannot be supported.

Recommendation

Refusal for the following reason:

By reason of the unauthorised removal of a cherry tree, the application does not benefit from the de minimis exemption in relation to biodiversity net gain and the statutory biodiversity gain condition applies.

The applicant has failed to provide the minimum information required by Article 7(1A) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) and therefore the application is not compliant with the requirements of the legislation.

Furthermore, as no information has been provided to demonstrate how the development will achieve the statutory 10% net gain in biodiversity required by legislation, the Local Planning Authority cannot be confident that the statutory biodiversity gain condition is capable of being discharged in accordance with the Biodiversity Gain Hierarchy. As such the proposal is contrary to Schedule 7A of the Town and Country Planning Act 1990 (inserted by Schedule 14 of the Environment Act 2021) and Policy CS30 of the Bournemouth Local Plan: Core Strategy (2012).

Informatives

1. For the avoidance of doubt the decision on the application hereby determined was made having regard to the following plans:
 - Location plan; dwg no. P001
 - Proposed block plan; dwg no. P002
 - Existing site layout 1 of 2; dwg no. P003
 - Existing site layout 2 of 2; dwg no. P004
 - Proposed site layout; dwg no. 1 of 2; dwg no. P005
 - Proposed site layout dwg no. 2 of 2; P006
 - Proposed skate floor plan; dwg no. P007
 - Proposed skate elevations; dwg no P008
 - Tipi plan; dwg no. 2024_067a_03 Rev. P01
 - Games stall plans; dwg no. 2024_067a_04 Rev. P01
 - Alpine chalet elevations; dwg no. 2024_067a_02 Rev. P01
 - Alpine chalet plans; dwg no. 2024_067a_01 Rev. P01
2. In accordance with paragraph 39 of the revised NPPF the Council, as Local Planning Authority, takes a positive, creative and proactive approach to development proposals focused on solutions.

The Council works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible suggesting solutions. In this instance:

- The applicant was offered the opportunity to submit additional information to overcome problems identified by the case officer but chose not to do so. As the proposal is clearly contrary to legislation, it has been recommended for refusal.

Background Documents:

P/25/0216/FUL

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