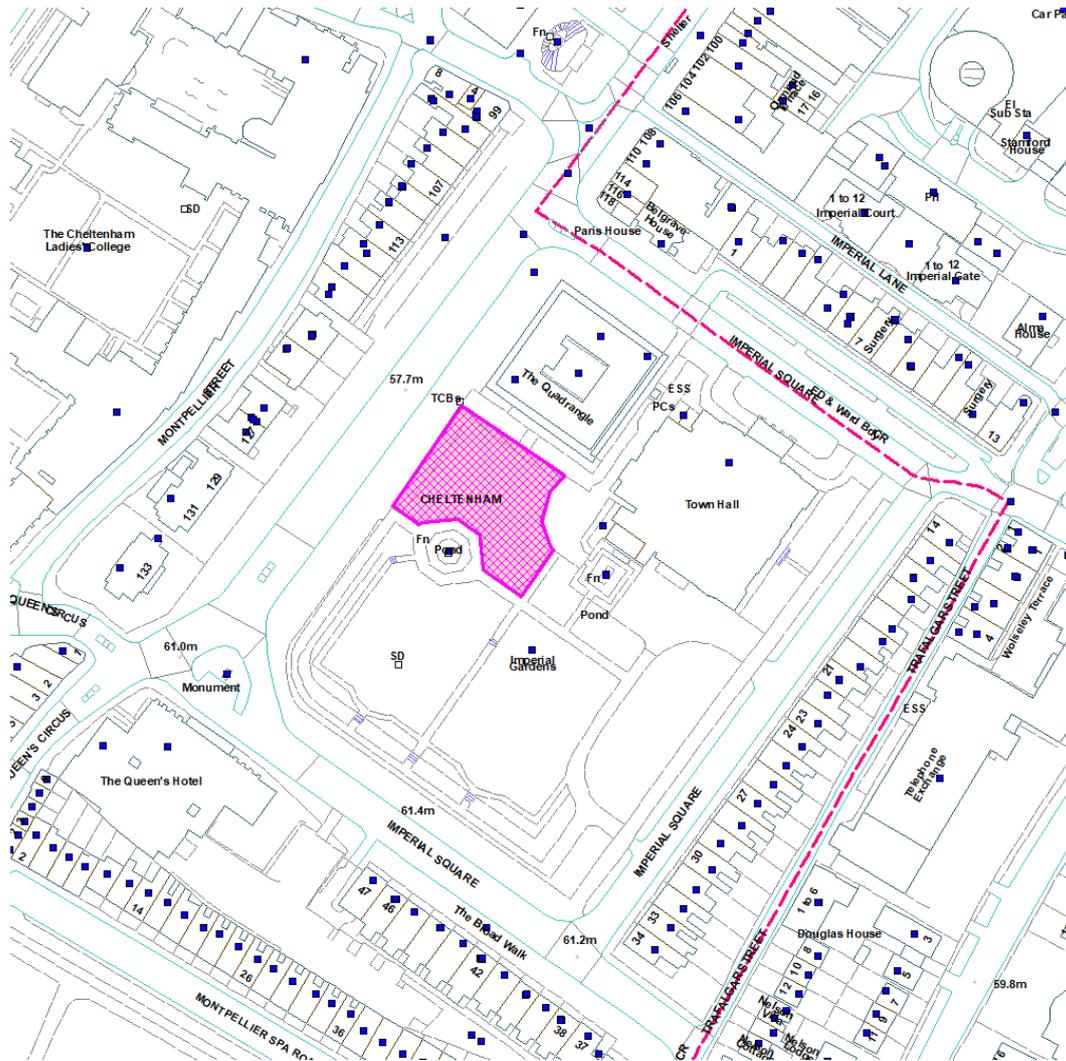


APPLICATION NO: 19/01370/FUL		OFFICER: Mrs Victoria Harris
DATE REGISTERED: 2nd August 2019		DATE OF EXPIRY: 27th September 2019
DATE VALIDATED: 2nd August 2019		DATE OF SITE VISIT: 17th July 2019
WARD: Lansdown		PARISH:
APPLICANT:	Cheltenham Bid	
AGENT:		
LOCATION:	Imperial Garden, Promenade, Cheltenham	
PROPOSAL:	Erection of temporary structures including ice rink in Imperial Gardens in connection with festivals and special events for a maximum of 75 days, inclusive of rig and de-rig for 2 periods being 2020/21 (November 2020 - January 2021) and 2021/22 (November 2021- January 2022). In addition to the current planning permission for festivals and special events on Montpellier Gardens and Imperial Gardens	

RECOMMENDATION: Permit



1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 This application, made by Cheltenham Bid, seeks planning permission for the use of Imperial Gardens for the erection of temporary structures including ice rink in connection with festivals and special events for a maximum of 75 days, inclusive of rig and de-rig for 2 periods being 2020/21 (November 2020 - January 2021) and 2021/22 (November 2021-January 2022). This will be in addition to the current planning permission 12/01843/FUL of 70 days for festivals and special events within Montpellier Gardens and Imperial Gardens.
- 1.2 As identified within the submitted Planning, Heritage and Design and Access statement, the temporary structures would comprise mainly of an outdoor ice rink, marquees, food provision and bar, to a lesser degree temporary office and other such structures normally associated with events. The design of the ice rink and temporary structures are unknown at this stage and therefore consent is being sought for the principle of the land use rather than for specific structures.
- 1.3 An indicative layout plan has been submitted (DN.1370:01A), which shows that the Ice Rink will be located North West of the gardens close to The Quadrangle, with the land to the front and rear of the town hall bar managed by Cheltenham Trust. The retail component of the proposal has been amended. The original application proposed an additional space to the south (originally outlined in yellow) to be used for this activity. The revised proposal has removed this area, meaning the retail component will be contained to the proposed ice rink layout (outlined in purple) and the area managed by Cheltenham Trust (outlined in blue). The remaining Imperial garden will be unused by the event and will be open to the public.
- 1.4 The number of days being applied for includes the time taken for the construction and dismantling of the temporary structures as well as the time the structures are in place for the events themselves. The number of days does not include the time taken for re-instatement works.
- 1.5 The application is before the Planning Committee because the Council own Imperial Gardens and Councillor Chris Mason has requested the application to go to planning committee on the reasons being visual impact, loss of amenity, noise and loss of privacy.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Airport Safeguarding over 45m
Conservation Area
Core Commercial Area
Principal Urban Area
Smoke Control Order

Relevant Planning History:

87/01253/AN 17th December 1987 REF

External Bar Wall Cheltenham Gloucestershire - Display Of Non Illuminated Advertisement

87/01254/AN 17th December 1987 REF

Imperial Gardens Cheltenham Gloucestershire - Display Of Non Illuminated Advertisement

07/00740/FUL 20th July 2007 PER

Erection of Holst memorial statue within gardens

07/00741/CAC 29th May 2007 NOTREQ

Remove outer bed

11/01290/FUL 21st November 2011 PER

Formation of new gateway to Skillicorne Gardens and alterations to plinth in SE corner of Imperial Square garden to accommodate new pedestrian access

11/01292/LBC 21st November 2011 GRANT

Works to provide new entrance to Skillicorne Gardens and alterations to stone plinths forming boundary to Imperial Square gardens.

11/01807/FUL 27th January 2012 PER

Erection of temporary structures in Montpellier Gardens and Imperial Gardens in connection with festivals and special events for a maximum of 75 days in each garden

12/00099/FUL 23rd March 2012 PER

Reinstatement of railings to the perimeter of Imperial Gardens, including refurbishment of original railings adjacent to the town hall and repair and re-use of existing original plinth stones where possible

12/00099/LBC 23rd March 2012 GRANT

Reinstatement of railings to the perimeter of imperial gardens, including refurbishment of the remaining original railings adjacent to the front of the town hall and the repair and retention of existing of existing original plinth stones wherever possible

12/01843/FUL 18th January 2013 PER

Erection of temporary structures in Montpellier Gardens and Imperial Gardens in connection with festivals and special events for a maximum of 75 days in each garden in 2013 and a maximum of 70 days in each garden in each calendar year thereafter

13/00195/AMEND 26th February 2013 NOT

Non-material admendment to planning ref: 12/00099/FUL and associated Listed Building Consent ref: 12/00099/LBC to reinstate railings to the perimeter of Imperial Gardens, including refurbishment of original railings adjacent to the town hall and repair and re-use of existing original plinth stones where possible

13/00301/AMEND 24th May 2013 PAMEND

Non material amendment to planning permission 12/00099/FUL to reduce the height of the new railings from 1.8m to 1.5m, including corresponding adjustments to the sizings of the railing components

13/00302/LBC 24th May 2013 GRANT

Reinstatement of railings to the perimeter of Imperial Gardens, including refurbishment of the remaining original railings adjacent to the front of the Town Hall and the repair and retention of existing original plinth stones wherever possible (Revised scheme for 12/00099/LBC - to reduce height of railings)

15/01515/DISCON 9th April 2018 DISCHA

Discharge of conditions 4 - railing section, 8 - scheme for the treatment of the north east corner of the gardens on planning permission 13/00302/LBC

18/00473/AMEND 12th March 2018 PAMEND

Non-material amendment to planning permission ref. 12/00099/FUL to reduce width of G4 South-East Gateway from 5 metres to 2.5 metres, centred on adjacent Gardens pathway

3. POLICIES AND GUIDANCE

National Planning Policy Framework

Section 6 Building a strong, competitive economy

Section 7 Ensuring the vitality of town centres

Section 8 Promoting healthy and safe communities

Section 9 Promoting sustainable transport

Section 12 Achieving well-designed places

Section 16 Conserving and enhancing the historic environment

Saved Local Plan Policies

CP 4 Safe and sustainable living

CP 7 Design

GE 1 Public green space

GE 5 Protection and replacement of trees

GE 6 Trees and development

Adopted Joint Core Strategy Policies

SD2 Retail and City / Town Centres

SD4 Design Requirements

SD8 Historic Environment

Supplementary Planning Guidance/Documents

Central conservation area: Montpellier Character Area and Management Plan (Feb 2007)

4. CONSULTATIONS

Tree Officer

13th August 2019

Appendix A Layout Plan shows the ice rink area to cover a proportion of the gardens which is host to several mature trees. However para 6.15 of the Design and Access Statement states that secateurs based tree pruning only would be necessary.

A detailed access facilitation plan is necessary to show what pruning is required precisely (assuming that no tree felling is to take place).

Similarly the D& A statement reads that a method statement for the installation to include tree protection measures should be submitted. It would be preferable if such detail could be submitted as a part of the application rather than by a planning permission condition.

It is anticipated that the bespoke tree protection plan which gives robust protection to adjacent young trees in the Garden as well as nearby street trees, is submitted and agreed. Similarly, ground protection boards should be laid down within the root protection areas of adjacent trees (based on BS5837 (2012)) as well as queueing areas, skate changing areas etc. It is likely that the ground will be very soft at this time of year and as such it will be susceptible to damage which is difficult/expensive to repair.

GCC Highways Planning Liaison Officer

6th August 2019

I can't see any reason for a highways objection as I note historically this location has been used for events. I haven't seen anything in terms of how the 'development' is set up and how much highway space is needed for this.

Condition for a construction & decommission method statement (if appropriate)

Heritage And Conservation

3rd September 2019

A core principle of the National Planning Policy Framework 2018 (NPPF) is heritage assets should be conserved in a manner appropriate to their significance. Chapter 16, paragraphs 193-196 set out the framework for decision making in applications relating to heritage assets and this assessment takes account of the relevant considerations in these paragraphs.

Paragraph 192 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset... taking into account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.

Paragraph 193 of the NPPF states, "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."

The proposed works within Imperial Gardens are for the erection of temporary structures, including ice rink, in connection with festivals and special events. The use would take place for up to 75 days between the months of November and January for a period of 2 years only, 29 days for construction and dismantling and 46 days for the operation of the ice rink and associated uses. The proposal is in addition to the current planning permission for festivals and special events on Montpellier Gardens and Imperial Gardens which are currently restricted to 70 days.

There is a lack of detailed information submitted within the application concerning the proposal. While the submitted details identify the location of the proposed works within Imperial Gardens to the south-west of the Quadrangle and the Town Hall, it gives no detail of the size, appearance and layout of the ice rink and the structures associated with this use. Consent is being sought for the principle of the land use rather than for specific structures. It is therefore only possible to comment on the proposal in general terms.

Notably there are a number of listed buildings within the immediate surrounding area and the site lies within the Central Conservation Area: Montpellier Character Area. The Planning, Heritage, Design and Access Statement submitted with the application identifies these heritage assets and considers the impact of the works on them in detail. It recognises relationship between Imperial Gardens and the heritage assets is impacted upon by the proposal.

Given the temporary two year period of the proposal between the months of November and January and the public benefits associated with it, it is not considered there would be a lasting impact on Imperial Square, the setting of the adjacent listed buildings and this part of the Central Conservation Area: Montpellier Character Area. If this period is to be extended or made permanent more careful consideration of its longer term acceptability will need to be made. For clarity it is suggested a condition be attached to any approval requiring details of the size, appearance and layout of the ice rink and associated structures and functions.

The proposed works are therefore considered to not harm the designated heritage assets in the long term and comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	121
Total comments received	12
Number of objections	11
Number of supporting	0
General comment	1

- 5.1 121 letters were sent to neighbouring properties, 3 site notices were displayed and an advert was published in the Gloucestershire Echo.
- 5.2 In response to this publicity, 7 objections were received. The planning objections related to;
- Unacceptable level of use of the garden for special events,
 - Impact on neighbouring amenity,
 - Impact on highway safety and extra traffic,
 - Impact on the Central Conservation Area, the setting of listed buildings and Imperial Garden.
- 5.3 Following revised plans and a change in the proposals' description neighbouring properties were re-consulted, which included 121 letters sent to neighbouring properties, 3 site notices displayed and an advert published in the Gloucestershire Echo.
- 5.4 In response to this revised publicity, 5 objections were received. The planning objections related to;
- Unacceptable level of use of the garden for special events,
 - Impact on neighbouring amenity,
 - Impact on the Central Conservation Area and Imperial Garden.

6. OFFICER COMMENTS

6.1 Determining Issues

- 6.2 The key issues to consider in the determination of this proposal are the impact on neighbouring amenity, the impact on the conservation area and important trees in the gardens, and also the benefits that the festivals and other events are said to bring to the town.

6.3 Impact on neighbouring property

- 6.4 Section 12 of the NPPF highlights that development should promote a high standard of amenity for existing and future users. This is further emphasised in policy SD14 of the JCS and Local Plan policy CP4 which set out the requirement for development not to cause unacceptable harm to the amenity of adjoining land users and the locality.

- 6.5** The objections from residents have raised concerns with the noise generated by the proposed use and the associated amplified music during the evenings and weekends.
- 6.6** The original application proposed an additional space to the south (originally outlined in yellow) to be used for retail structures. Neighbouring properties raised concerns with this so the retail offering has now been reduced in size, meaning the retail component will be contained to the proposed ice rink layout (outlined in purple) and the area managed by Cheltenham Trust (outlined in blue).
- 6.7** Every event organiser including the proposed ice rink and associated temporary structures needs to sign up to a Land Use Agreement (LUA) which controls noise from construction and dismantling works, noise during the events themselves and fumes from generators.
- 6.8** The Planning, Heritage, Design and Access Statement confirms that *Cheltenham Borough Council as landowner of the Gardens enters into Land Use Agreements with the event organisers. The agreements seek to ensure that the event organiser acts responsibly, amongst many other things, for the protection of the park during the event, and meeting the costs associated with re-instating damage to council property caused by the event including damage to the grass.*
- 6.9** *The agreements will specify the dates that event organisers can construct, operate and dismantle and the times on these days within which they can construct, operate and dismantle and the times on these days within which they can construct and fit out temporary structures. The degree of control over the use of the gardens during the events afforded to the Council under these agreements is more far-ranging and effective than could be achieved under a planning condition even if such conditions could be reasonably imposed.*
- 6.10** The LUA listed a number of conditions below which represent a comprehensive set of restrictions that will help to ensure the event proceeds with limited impact on neighbouring amenity. The most relevant parts of the LUA are copied below for the benefit of members;

Compliance with the requirements of:

- *The council's tree protection officers*
- *The council's Green Spaces Development Manager*
- *The fire authority*
- *The council's Environmental Protection department. Environmental Protection has been consulted and it requires the terms listed below to be included in the LUA. The council's wellbeing and culture division agrees with these clauses and will include them in the LUA.*
- *The licensee shall submit a noise risk assessment for each noise source (including those associated with event site construction and dismantling) at least two months prior to the event, as detailed in the council's code of practice on the control of noise at outdoor events, and will implement it in such a way as to comply with the agreed noise limit. Guidance on how to complete the noise risk assessment accompanies the cost of practice. Following receipt of the noise risk assessment Environmental Protection shall decide the noise levels for that particular event.*
- *The control limits set at the mixer position shall be adequate to ensure that the Music Noise Level, at 1m from the façade of any noise sensitive premises shall not exceed the background noise level** by more than 15dB(A) over a fifteen minute period*

*throughout the duration of the concert or event. **the background noise level as agreed with the council's Public & Environmental Health Team prior to the event.*

- *All amplified music in an outside marquee or in the open air shall finish no later than 23:00 hours.*
- *Music from the concert or event (including rehearsals and sound checks) is permitted only between the hours agreed in the LUA.*
- *Noise from other sources (e.g. food traders, fairground rides, generators) is permitted only between the hours agreed in the LUA.*
- *The Licensee shall have full control over the sound amplification equipment and the volume shall be adjusted according to the requirements of the Environmental Protection.*
- *The Licensee shall ensure that all persons (including individual sound engineers) involved with the sound system are informed of the sound control limits and that any instructions from the Environmental Protection regarding noise levels are complied with on request.*
- *All complaints about noise received by the licensee shall be logged, and shall be notified to Environmental Protection by the next working day of the complaint being received, or that same day if possible.*
- *The Licensee shall effect full control over traders or other organisations on site where there is amplified music being played. At the request of Environmental Protection the Licensee shall arrange for the volume to be reduced or the playing to cease, or if necessary the equipment to be confiscated.*
- *Unrestricted access to the front of house position and backstage areas will be allowed at all times to Environmental Protection for the purpose of sound level measurements and communications with the nominated noise consultant/sound engineer, or other representative of the licensee.*

6.11 The Planning, Heritage, Design and Access Statement addresses concerns with regards to generators and states *the applicant/ice rink operator will seek to use a mains electricity supply and attempt to reduce long-term reliance upon portable generators. It is currently proposed the operator will be provided with mains electricity from the Quadrangle.*

6.12 Officers consider that the noise and disruption can be adequately controlled through appropriate restrictions in any land use agreements and therefore planning permission could not be reasonably withheld due to impact on neighbouring amenity.

6.13 Conservation area

6.14 The Council's senior Conservation Officer has considered very carefully the impact on the surrounding listed buildings, the impact on Imperial Garden and Central Conservation Area: Montpellier Character Area. Given the temporary nature of the proposal he did not consider that there would be a *lasting impact on Imperial Square, the setting of the adjacent listed buildings and this part of the Central Conservation Area: Montpellier Character Area.*

6.15 The Conservation Officer made the conclusion *that the proposed works are therefore considered to not harm the designated heritage assets in the long term and comply with Section 16 of the Planning (Listed Building and Conservation Area) Act 1990, Chapter 16 of the National Planning Policy Framework and Policy SD8 of the Joint Core Strategy 2017.*

- 6.16** Policy GE1 states that ‘The development of areas identified as ‘Public Green Space’ or ‘Proposed Public Green Space’ will not be permitted’.
- 6.17** Imperial Garden is designated as a public green space but it is important to be mindful of what is being proposed as part of this application. The proposal seeks a temporary planning permission for the erection of temporary structures in only part of the garden.
- 6.18** The Local Plan, at paragraph 6.20, confirms the importance of public green space and this sets the context for policy GE1. The Local Plan states;
- 6.19** *“The Council itself owns a substantial amount of Cheltenham’s green space, including some of the most prominent and significant. The visual, environmental and recreational value of this space is enhanced by its public accessibility. The Council, in recognising its own role of stewardship of this green space, will safeguard it from loss or erosion as a result of development”.*
- 6.20** It is quite clear in this preamble to policy GE1 that the Council recognises the importance of public green space and whilst the proposed structures associated with special events do affect the gardens, it is not true to say they will result in the permanent loss or erosion of the green space. The application is for a temporary use which goes beyond that which is Permitted Development; officers cannot therefore agree that the proposal fails to comply with policy GE1. Indeed, there is an argument to be made that the proposal brings with it visual, environmental and recreational value but in a way that differs from the tranquil environment that the gardens benefit from at other points throughout the year.
- 6.21** Whilst the application may appear short of information in terms of design and scale of the ice rink and structures, this is the nature of the proposal. The applicant seeks the use of Imperial Gardens for a period of 75 days each for 2 periods being 2020/21 and 2021/22. The application cannot include specific details as this is unknown. Instead the Local Planning Authority should take this opportunity of influencing the relevant land use agreements with each venue operator by stipulating what they expect to see within such agreements. It is accepted that this would not be binding on the planning permission as the Council cannot enforce against itself, but such an approach would set out the expectations from the Local Planning Authority on the Council as a public authority that owns the relevant land.

6.22 Trees

- 6.23** The Senior Tree Officer has carefully considered the application, and does not have an objection to the application subject to a number of conditions. The details requested would be appropriately covered by land use agreement. The land use agreement ensures the event organiser complies with the requirements of the Council’s Tree Officer. It is accepted that the ice rink is located close to several mature trees but officers consider that this matter is something that the Council, as land owner, needs to give due consideration to as and when the special events are coordinated.

6.24 Benefits

- 6.25** The Planning, Heritage, Design and Access Statement details the economic benefits of the proposed development. It states;
- 6.26** *The use of the gardens has a significant positive economic impact on the local economy. Comments from previous planning applications for special events in Imperial Gardens have suggested that festivals are part of Cheltenham’s unique appeal in increasing and enhancing its regional, national and international profile and adding to the vibrancy, excitement and attractiveness of the town centre to visitors.*

- 6.27** *Cheltenham already has existing Christmas activities that support the economy in the town including The Christmas Light Switch On. There was a significant increase in activity for the switch on in 2018 which saw an increase in footfall by 10.5% compared to the same event the previous year. During the course of November the town's footfall increased by 2%, which was above both regional (-3.8%) and national (-5%) trends.*
- 6.28** *A visitor survey ("the survey") was conducted in December 2018 to assess the impact of Christmas Markets on Cheltenham. Over half of the respondents were visiting the town to visit the Christmas Markets, with 70% coming from outside of Gloucestershire.*
- 6.29** *The survey identified that the majority of visitors to Cheltenham spend between £50 and £200 per visit directly into the local economy. Families were most likely to spend £76 to £100 per visit and would form a core audience for the ice rink.*
- 6.30** *The Christmas Market and festive atmosphere is currently the biggest draw to Cheltenham during the festive period.*
- 6.31** *Though not taking place during the Christmas period, the Big Wheel as part of Light Up Cheltenham could be considered as a similar attraction to the ice rink.*
- 6.32** *The Big Wheel received 10,000 visitors during its 3 weeks in situ, with an increased town footfall of 3.8%. The event had no negative impact on residents of Imperial Square.*
- 6.33** *During February, the footfall across Cheltenham increased by 1.41% compared to the previous year whilst the South West saw a decline of 3.16% in February compared to the same period in 2018. The national average had a slightly smaller decline of 1.53%. It is likely, but we cannot categorically state, that the presence of the observation wheel in Cheltenham had a significant bearing on the number of people who came to town.*
- 6.34** *The presence of an ice rink would increase Cheltenham's festive offering. It is evident that additional attractions to the town increases new and repeat visitors for the period they are in situ. However it is also felt that having attracted new visitors to Cheltenham, attractions help increase repeat visitors in the following months as well.*
- 6.35** *In light of the above, it is apparent that when considered from an economic and cultural perspective, the festivals and other special events have a positive impact on the town.*

6.36 Land use agreements

- 6.37** *The Council owns the land to which this application relates and therefore has complete control over how the gardens are used and by whom. This can be managed through a Land Use Agreement (LUAs) with the user of the garden. The application has been submitted with a document that summarises what a LUA actually is. Within this document it is stated that;*
- 6.38** *"LUAs are used where a person or organisation wants to hold events in the Council's parks and gardens. The LUA is also known as a licence to occupy land and it is prepared by One Legal upon instructions from the Wellbeing and Culture division. The contents of the LUA are then agreed with and signed by the event organisers (the licensees)."*
- 6.39** *The document goes on to state that the LUAs contain the terms and conditions upon which the licensee is permitted to use the gardens. If these are breached, the Council has the following options (with advice from One Legal being sought before any action is taken);*
- *Ask the licensee to put right the breach of the LUA. For example, if a marquee is erected in the wrong position, the council can ask for it to be dismantled and erected in the correct position;*

- *Terminate the LUA early which means the licensee no longer has the permission from the council to use the gardens for the event;*
- *If the council has suffered financial losses as a consequence of the non-compliance with the LUA, it can seek a payment to compensate for that loss.*

6.40 The content of the LUA shapes how the gardens are used in a way that a planning permission could never do. For example, it can require bonds in case of damage and can include specific penalties if the agreement is breached in any way. The LUA can also specify in detailed terms the requirements of the Council's Environmental Protection team. Most importantly however, the LUA enables the Council to be proactive in what it deems to be an acceptable use of the gardens.

6.41 A number of issues need to be carefully managed if the gardens are to be used successfully. These include matters relating to neighbouring amenity, the setting of listed buildings, the impact on the wider conservation area, the impact on important trees and highway safety; all of these and more can be referenced within LUAs and officers consider that this is a robust mechanism to manage successfully the use of the gardens.

7. CONCLUSION AND RECOMMENDATION

7.1 In conclusion, it is apparent that the use of Imperial Gardens for an additional 75 days for a temporary period on top of the existing 70 day planning permission for festivals and special events has generated some objections.

7.2 Officers are certainly sympathetic to the views of local residents in terms of the impact to amenity in terms of noise and disruption and the increase in use of the garden for special events. Notwithstanding this concern, on balance it is considered given the temporary nature of the proposal which will only use part of Imperial Gardens and considering what the special event will bring to the town the proposal is supported. The recommendation is to permit the application.

8. CONDITIONS

- 1 The use of temporary structures including an ice rink in Imperial Gardens in connection with festivals and special events as identified in drawing number 1370:01A shall be for a maximum of 75 days, inclusive of rig and de-rig for 2 periods being 2020/21 (November 2020 - January 2021) and 2021/22 (November 2021- January 2022).
Reason: The use Imperial Gardens for festivals and special events may detract from the amenity of the locality and impact on neighbouring amenity. The Local Planning Authority wishes to monitor and review these impacts before considering any further applications for a longer period of time.
- 2 The permission hereby granted shall be implemented strictly in accordance with the requirements of the Council's Environmental Protection department set out on page 3 and 4 of appendix B (land use agreement summary) to the Planning, Heritage, Design and Access Statement.
Reason: To ensure the successful implementation of this planning permission and therefore ongoing compliance with Local Plan policy CP4 relating to neighbouring amenity.