

APPLICATION NO: 20/00369/FUL		OFFICER: Mrs Victoria Harris
DATE REGISTERED: 28th February 2020		DATE OF EXPIRY: 29th May 2020
DATE VALIDATED: 28th February 2020		DATE OF SITE VISIT:
WARD: Lansdown		PARISH:
APPLICANT:	Cheltenham Bid	
AGENT:	n/a	
LOCATION:	Imperial Garden, Promenade, Cheltenham	
PROPOSAL:	Erection of temporary structures in connection with festivals and special events including ice rink in Imperial Gardens for a maximum of 75 days for one period being 2020/2021 (November 2020 - January 2021) inclusive of rig and de-rig and Christmas Markets on the Promenade for a maximum of 41 days, inclusive of rig and de-rig for a period of 2 periods being 2020 (November - December 2020) and 2021 (November - December 2021) in addition to the current planning permissions 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 an ice rink in connection with festivals and special events for a maximum of 75 days, for 1 period being 2020/2021 (November 2020 - January 2021) inclusive of rig and de-rig. 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. Also Cheltenham Bid, seeks planning permission for the extension of the Christmas Markets along the Promenade for a maximum of 41 days, for 2 periods being 2020 (November & December) and 2021 (November & December) inclusive of rig and de-rig. This will be in addition to the current planning permission 06/00524/COU of 21 days for use of land for the stationing of timber structures in connection with the Christmas Market.
- 1.2 The ice rink proposal is an amendment to 19/01370/FUL permitted by Committee on November 2019. As detailed for the period of September 2020 to January 2021 the redevelopment of the Quadrangle Plaza will unfortunately make it impossible to accommodate the location of the ice rink as approved. Therefore for only 1 period November 2020 - January 2021 the location of the ice rink will be relocated to the south-west quadrant of Imperial Gardens. The supporting information clearly confirms that for the period November 2020 - January 2021 the North West quadrant of Imperial Gardens as approved in 19/01370/FUL will not be used as an ice rink.
- 1.3 As identified within the submitted Planning, Heritage and Design and Access statement, the temporary structures would comprise mainly of an outdoor covered ice rink, supporting marquees for skate hire, 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 but a layout plan and example images have been submitted. The Christmas Market will be mainly wooden chalets. Consent is being sought for the principle of the land use rather than for specific structures.
- 1.4 As identified in the supporting information the Ice Rick will be located in the South West quadrant of the gardens. The remaining Imperial Gardens will be unused by the event and will remain open to the public. The Christmas Market will comprise of 3 sections, along the Long Gardens which will house up to 41 stalls, The Promenade (west pavement) which will house up to 30 stalls and The Promenade (east pavement) which will house up to 9 stalls.
- 1.5 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.
- 1.6 The application is before the Planning Committee because the Council own Imperial Gardens.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

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 amendment 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

19/01370/FUL 26th November 2019 PER

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

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

Ward Member Comments:

No Comments received

Other Member Comments:

No Comments received

Tree Officer

24th March 2020

As this proposal does not appear to impact on adjacent trees, the CBC Tree Section does not object to this application.

Environmental Health

25th March 2020

Environmental Protection terms are covered in the Land Use Agreement, including noise from construction and dismantling works, noise during the events themselves and fumes from generators.

No objections for planning application.

GCC Highways Planning Liaison Officer

11th March 2020

No Highways comments.

Heritage and Conservation

16th April 2020

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 in connection with festivals and special events including ice rink in Imperial Gardens for a maximum of 75 days for one period being 2020/2021 (November 2020 - January 2021) inclusive of rig and de-rig and Christmas Markets on the Promenade for a maximum of 41 days, inclusive of rig and de-rig for a period of 2 periods being 2020 (November - December 2020) and 2021 (November - December 2021) in addition to the current planning permissions for festivals and special events on Montpellier Gardens and Imperial Gardens. 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. Notably consent was granted under 19/01370/FUL for similar works within Imperial Gardens.

As with 19/01370/FUL there is a lack of detailed information submitted within the application concerning the proposal. It gives no detail of the size, appearance and layout of the works 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 fully recognises the relationship between Imperial Gardens and the heritage assets is impacted upon by the proposal.

Having considered the proposal, the temporary period of the proposal between the months of November and January and the notable public benefits associated, it is concluded there would not 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 works 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	122
Total comments received	4
Number of objections	4
Number of supporting	0
General comment	0

5.1 122 letters were sent to neighbouring properties, 6 site notices were displayed and an advert was published in the Gloucestershire Echo.

5.2 In response to this publicity, 4 objections were received. A summary of the planning objections are below;

- Impact on neighbouring amenity,
- Impact on the Central Conservation Area and the setting of listed buildings,
- Unacceptable level of use of the garden for special events,
- Lack of details,
- Increase pressure on the highway.

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 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 and Friends of Imperial Square and Gardens raised concerns with the noise generated by the proposed use and the use of generators.
- 6.6** Every event organiser including the proposed ice rink and the Christmas market 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.
- 6.7** 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 is responsible, 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.
- 6.8** The agreements will detail the specific 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.
- 6.9** If planning permission were to be granted for the additional use of the Gardens for the Ice Rink, the Borough Council will continue to apply control over these events through these Land Use Agreements, informed by its experience of the use of the gardens.
- 6.10** In addition, all licensable activities associated with special events such as outdoor regulated entertainment and the sale of alcohol can only be carried out under conditions of the premises licences. A licence exists for Imperial Gardens. It contains conditions governing how the event is organised in relation to nuisance and noise, and the event organiser is required to satisfy the Council's Public Protection Division that satisfactory measures are in place to manage and monitor these issues. It is anticipated that a new licence will be required for the ice rink and the Christmas markets as the Council cannot take enforcement action against itself in the event of a breach of licencing conditions.
- 6.11** 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.

6.12 The Planning, Heritage, Design and Access Statement addresses concerns with regards to generators and states that should the ice rink be powered by generators alone 2 x 350kva units would be required. During the development of the Quadrangle the current mains supply available for outdoor events has been increased to 100amps which will provide most of the power for the chillers (they require up to 125 amps).

Cheltenham BID is also having initial conversations with The Queens Hotel to source additional power for the rink operation. This may not remove the need for generators for the ice rink but will reduce the amount and the reliance on them.

6.13 The statement confirms that for the Christmas market, mains power will be made available to the market operator from the Long Gardens. Any additional power required along the Promenade will require generators.

6.14 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.

6.15 Conservation area

6.16 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 and has no objection to the application.

6.17 Policy GE1 states that '*The development of areas identified as 'Public Green Space' or 'Proposed Public Green Space' will not be permitted*'.

6.18 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.

6.19 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; "*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 for 1 period being 2020/21 and the use of the Promenade for a period of 41 days 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 Benefits

6.23 The Planning, Heritage, Design and Access Statement details the economic benefits of the proposed development. It states;

The use of the gardens and surrounding area 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, nationally and international profile and adding to the vibrancy, excitement and attractiveness of the town centre to visitor.

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.

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.

The survey identified that the majority of visitors to Cheltenham spend between £50-£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.

The Christmas Market and festive atmosphere is currently the biggest draw to Cheltenham during the festive period.

Though not taking place during the Christmas period, the Big Wheel as part of Light Up Cheltenham could be considered as a similar attraction as the ice rink.

The Big Wheel received 10,000 visitors in 2019 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.

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.

The presence of an ice rink and improved Christmas markets would increase markets 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.

6.24 Land use agreements

- 6.25** The Council owns the garden to which this application part 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;

"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)."

- 6.26** 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.*

6.27 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.

6.28 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.

6.29 Access and highway issues

6.30 Adopted JCS policy INF1 advises that all development proposals should provide for safe and efficient access to the highway network for all transport needs. The policy identifies that planning permission should be granted where the highway impacts of the development would not be severe.

6.31 The local highway authority, in this case is Gloucestershire County Council (GCC), has been consulted for this application.

6.32 GCC has not objected to the proposal, therefore it is considered to be acceptable from a highway safety standpoint.

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 and an extension along the Promenade for 41 days as a Christmas market 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 and Promenade 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 part of the Promenade and considering what the special event will bring to the town the proposal is supported. The recommendation is to permit the application.

8. CONDITIONS / INFORMATIVES

1. The use of temporary structures including ice rink in Imperial Gardens in connection with festivals and special events as identified in appendix C Ice Rink location shall be for a maximum of 75 days, inclusive of rig and de-rig for 1 period being 2020/21 (November 2020 - January 2021) and the Christmas Markets on the Promenade as identified in appendix D site layout plan shall be for a maximum of 41 days, inclusive of rig and de-rig for 2 periods being 2020/21 (November 2020 - December 2020) and 2021/22 (November 2021- December 2021).

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 in accordance with a land use agreement as referred to in the Planning, Heritage, Design and Access Statement. The permission hereby granted shall be implemented in accordance with appendix F (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.