

<b>APPLICATION NO:</b> 23/01324/CONDIT	<b>OFFICER:</b> Mrs Victoria Harris
<b>DATE REGISTERED:</b> 2nd August 2023	<b>DATE OF EXPIRY:</b> 1st November 2023
<b>DATE VALIDATED:</b> 2nd August 2023	<b>DATE OF SITE VISIT:</b>
<b>WARD:</b> Lansdown	<b>PARISH:</b>
<b>APPLICANT:</b>	Cheltenham Borough Council
<b>AGENT:</b>	
<b>LOCATION:</b>	Imperial Garden Promenade Cheltenham
<b>PROPOSAL:</b>	Variation of condition 5 of planning permission 22/01200/FUL, to allow the use of biofuel generators and batteries for the periods 2023/2024 and 2024/2025

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site is located in the South West and North West quadrant of Imperial gardens. The site is wholly located within the Montpellier Character Area of Cheltenham's Central Conservation Area; and in proximity to a number of grade II and II\* listed buildings, including the grade II listed Town Hall.
- 1.2 Planning permission (22/01200/FUL) was granted by the planning committee in September 2022 for the use of the 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 3 periods being 2022/2023, 2023/2024 and 2024/2025 (November and January ) inclusive of rig and de-rig.
- 1.3 This application is seeking to vary condition 5 (power source) on planning permission ref. 22/01200/FUL, under Section 73 of the Town and Country Planning Act 1990, to allow for minor material changes to the previously approved scheme. Condition 5 reads:

*The development hereby approved shall not use 100% diesel generators and only hybrid or biofuel generators are permitted in accordance with full specification details that shall first be submitted to and approved in writing by the Local Planning Authority.*

*Any generators to be used as part of the development are only permitted for use during the 2022/2023 period. Prior to their use/installation, full details of the proposed power source(s) for the periods 2023/2024 and 2024/2025 shall be submitted to and approved in writing by the Local Planning Authority.*

*Any generators and other power source equipment to be used as part of the development shall be installed and carried out strictly in accordance with the approved details.*

*Reason: In order to control the nature of generators to be used and to restrict the use of generators to the 2022/2023 period only in the interests of sustainable development and the reduction of carbon emissions having regard to Section 14 of the NPPF, adopted policy INF5 of the Joint Core Strategy (2017) and the aims of the Cheltenham Climate Change SPD (Adopted June 2022).*

- 1.4 The proposed changes essentially involve the use of biofuel generators and batteries for the periods being 2023/2024 and 2024/2025 (November and January).
- 1.5 As before, the application is before the Planning Committee because the Council is the applicant, and own Imperial Gardens.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### **Constraints:**

Conservation Area  
Core Commercial Area  
Principal Urban Area  
Public Green Space (GE36)  
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 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

**20/00369/FUL 1st June 2020 PER**

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

**21/01856/FUL 20th October 2021 PER**

Erection of temporary structures in connection with festivals and special events including an ice rink in Imperial Gardens for a maximum of 75 days for one period being 2020/2021 (November 2021 January 2022) inclusive of rig and de rig.

This is in addition to the current planning permissions for festivals and special events on Montpellier Gardens and Imperial Gardens

**21/02476/DISCON 11th November 2021 DISCHA**

Discharge of condition 3 (noise impact assessment) of planning permission 21/01856/FUL

**22/01117/FUL 19th August 2022 PER**

Erection of temporary structures on pedestrian pavement along Promenade and Imperial Gardens, and long gardens in relation to Christmas markets for a maximum of 41 days for two periods 2022 (November - December 2022) and 2023 (November - December 2023) including set-up and take-down

**22/01200/FUL 28th September 2022 PER**

Erection of temporary structures in connection with festivals and special events including an ice rink in Imperial Gardens for a maximum of 75 days for 3 periods being 2022/2023, 2023/2024 and 2024/2025 (November and January ) inclusive of rig and de-rig, this is in addition to the current planning permissions for festivals and special events on Montpellier Gardens and Imperial Gardens

### **3. POLICIES AND GUIDANCE**

**National Planning Policy Framework**

Section 2 Achieving sustainable development

Section 4 Decision-making

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 14 Meeting the challenge of climate change, flooding and coastal change

Section 16 Conserving and enhancing the historic environment

**Adopted Cheltenham Plan Policies**

D1 Design

HE1 Buildings of Local Importance and Non-Designated Heritage Assets

SL1 Safe and Sustainable Living

GI2 Protection and replacement of trees

GI3 Trees and Development

**Adopted Joint Core Strategy Policies**

SD2 Retail and City / Town Centres

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD8 Historic Environment

SD14 Health and Environmental Quality

INF1 Transport Network

INF5 Renewable Energy/Low Carbon Energy Development

**Supplementary Planning Guidance/Documents**

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

Climate Change (2023)

### **4. CONSULTATIONS**

See appendix at end of report

## 5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	126
Total comments received	14
Number of objections	14
Number of supporting	0
General comment	0

5.1 Letters of notification were sent out to 126 neighbouring properties, a site notice was displayed, and an advert was published in the Gloucestershire Echo. 14 representations have been received in response to the publicity. The comments made, in summary relate to the following:

- pollution
- lack of plans
- impact on neighbouring amenity
- impact on gardens
- harm to conservation area and listed buildings
- biofuel generators not sustainable and CO2 emissions

## 6. OFFICER COMMENTS

- 6.1 Planning Practice Guidance (PPG) acknowledges that “New issues may arise after planning permission has been granted, which require modification of the approved proposals” (Paragraph: 001 Reference ID: 17a-001-20140306) and that where less substantial changes are proposed, an application made under Section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing condition associated with a planning permission (Paragraph: 013 Reference ID: 17a-013-20230726). If granted, a section 73 application results in a new, independent planning permission which sits alongside the original permission.
- 6.2 The principle of the proposal was accepted through the granting of the earlier consent. As such the key issues in determining this application is whether the proposed amendment to condition 5 responds to the interests of sustainable development and will not have an unacceptable impact on neighbouring amenity.
- 6.3 If granted, the application results in the issuing of a new planning permission, which sits alongside the original permission that remains intact and un-amended (Paragraph: 015 Reference ID: 17a-015-20140306).
- 6.4 As such, the only consideration in the determination of this application is the acceptability of the proposed amendment to condition 5. The principle of the ice rink in Imperial Gardens for 3 periods, neighbouring amenity, impact on the conservation area and surrounding listed buildings, highway safety and trees have been established through the original grant of planning permission.
- 6.5 As previously noted, the proposed changes essentially involve the use of biofuel generators and batteries for the periods 2023/2024 and 2024/2025. At the time of the previous application, Cheltenham Borough Council were working towards a direct energy supply within the gardens, that would have been in place to power the ice rink for the

periods 2023/2024 and 2024/2025. Work has been ongoing to provide the electrical infrastructure within the gardens, however, the energy supply will not be in place for the 2023/2024 period. In addition, given that this project is ongoing, it is uncertain if the electrical infrastructure will be in place for the 2024/2025 period. The Cabinet report (25th July 2023) details that work has been ongoing to understand the technical and practical issues involved in delivering fixed power infrastructure to Imperial Gardens. Moreover, the report confirms a comprehensive approach is needed to move the project forward with the support of a professional team of engineers.

- 6.6** The submitted Climate Impact Assessment states that the generators will run from Hydro-treated Vegetable Oil (HVO) exclusively which improves CO2 emissions by approximately 86% compared to traditional diesel. In addition to this, batteries will be utilised to ensure any surplus power from the generators is captured and contribute to power provision overnight. It also confirms that HVO is a renewable energy source.
- 6.7** The Environmental Health Officer does not have an objection to the principle of the use of biofuel generators and batteries. EHO concerns with the generators can be addressed through planning conditions 3 and revised condition 5.
- 6.8** Concerns have been raised regarding the use of the batteries and if the batteries would provide the necessary power provision overnight because the power required will vary according to weather conditions. Whilst the use of the batteries overnight is welcomed, it cannot be guaranteed that the generators will not be required. Therefore, the noise management plan and acoustic assessment, as required by condition 3, would need to consider the generators being used overnight.

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1** Ultimately, officers are satisfied that the amended scheme, when taken as a whole, is one which is not substantially different from that originally approved; and given the temporary nature of the proposal that will only use part of Imperial Gardens, and considering what the special event will bring to the town the proposal is supported.
- 7.2** It is unfortunate that the fixed power infrastructure is not in place to provide a direct energy supply to the ice rink, but diesel generators will not be used, and only biofuel generators and batteries are proposed.
- 7.3** For the reasons outlined above the proposal is considered to be acceptable, and as such the recommendation is to permit the application. Condition 5 has been updated to reflect the current position.
- 7.4** The new permission would sit alongside the original permission, which would remain intact and un-amended.

## **8. CONDITIONS / INFORMATIVES**

- 1** The use of temporary structures including the ice rink in Imperial Gardens in connection with festivals and special events shall be for a maximum of 75 days, inclusive of rig and de-rig for 3 periods being 2022/2023, 2023/2024 and 2024/2025 (November and January).

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 the Land Use Agreement Summary.

Reason: To ensure the successful implementation of this planning permission and therefore ongoing compliance with Cheltenham plan policy SL1 relating to neighbouring amenity.

- 3 Prior to the installation of the external generators, full details of the generators including a noise management plan and an acoustic assessment detailing the appropriate acoustic controls shall be submitted to and approved in writing by the Local Planning Authority. The external generators and lighting shall be installed, inspected and approved in writing by the Local Planning Authority. The approved noise mitigation measures shall be implemented prior to first beneficial use of the generators, and shall be retained as such thereafter.

Reason: To safeguard the amenities of adjacent properties, having regard to Cheltenham plan policy SL1 and Joint Core Strategy policy SD14.

- 4 Prior to the commencement of development (including demolition and site clearance), a Tree Protection Plan (TPP) to BS5837:2012 (or any standard that reproduces or replaces this standard) shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall include the methods of tree and /or hedge protection, the position and specifications for the erection of tree protective fencing, and a programme for its implementation. The works shall not be carried out unless in accordance with the approved details, and the protective measures specified within the TPP shall remain in place until the completion of the construction process.

Reason: To safeguard the existing tree(s) in the interests of visual amenity, having regard to adopted policies GI2 and GI3 of the Cheltenham Plan (2020). Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 5 The development hereby approved shall not use 100% diesel generators and only biofuel generators and batteries are permitted in accordance with full specification details that shall first be submitted to and approved in writing by the Local Planning Authority.

Prior to their use/installation, full details of the proposed power source(s) for the periods 2023/2024 and 2024/2025 shall be submitted to and approved in writing by the Local Planning Authority.

Any generators and other power source equipment to be used as part of the development shall be installed and carried out strictly in accordance with the approved details.

Reason: In order to control the nature of generators to be used and in the interests of sustainable development and the reduction of carbon emissions having regard to Section 14 of the NPPF, adopted policy INF5 of the Joint Core Strategy (2017) and the aims of the Cheltenham Climate Change SPD (Adopted June 2022).

## Consultations Appendix

### Environmental Health

*6th September 2023* - At the current time, the Environmental Protection team are neither minded to object or support this application. This is based on the grounds of the potential impact of noise the proposed activity would have on neighbouring residential properties and due to insufficient information as submitted by the applicant in relation to our concerns.

Overall, we will require a great deal more detail and information on a number of points prior to being near to giving our support to this application.

Span of application:

An initial concern is that this application is to span the festive seasons of November 2023 - January 2024 and November 2024 - January 2025.

Should EH be in a position to recommend approval for the application for the equipment for 2023/24, it would automatically mean approval for a bio fuel generator to be utilised in 2024/25, yet EH would not be consulted on any points as the approval would be in place. Plus it could be that even if this approval was made, that the exact same equipment to power/chill the ice rink, may not be in use or available for 2024/25, meaning new equipment with differing noise etc. which could in turn be not of the same specification.

Should we be in a position to recommend our approval for the equipment/plans/assessments etc. for the 2023/24 season, we would be requesting that the permission is granted for this season only. Therefore, a follow up application would need to be made to provide for the 2024/25 season. Alternatively, an option could be to condition that if permission is granted for 2023/24 and 2024/25 that the equipment for 2024/25 must be proven in writing for EH approval, to meet or exceed specification for the equipment in 2023/24.

Equipment and noise assessments:

- EH would request a plan of the gardens as a whole (with the nearest noise sensitive receptors marked) with where the following will be located: ice rink, battery pod, chillers, generator(s) and any other ancillary equipment
- The specific equipment proposed to be utilised, on each of the product sheets submitted there are multiple models detailed
- Prior to any installation or use of any power unit for this application, full details of the operation including noise levels subject to BS4142:2014, shall be submitted to and approved in writing by the Local Planning Authority. This is to assess the expected noise levels from the proposed plant/equipment installation at the nearest noise sensitive premises and will be undertaken based on the worst case scenario of the generator operating 24/7 for the duration of the project. Should this assessment detail that the proposed plant will exceed the levels as set in BS4142, the applicant will, in line with the contractor/consultant providing the assessment, set out any proposed noise mitigation measures. These will be made available in writing for review and approval by the EH team prior to the operation commencing. After written approval from this department, the noise control scheme shall be implemented on site for the first use of any power units and shall thereafter be maintained and operated in accordance with the approved scheme
- Please can the applicant provide further details as to the battery capability in relation to the temperatures it could operate in? The submitted document entitled "power solution and noise mitigation" (no author stated), details the following: "Subject to ambient temperatures, the capacity of three batteries will provide adequate power to run the chillers

overnight without the support of generators..." If temperatures were to be above average, there should be an expectation built in that they could be, how high could temperatures be and the batteries still be sufficient enough to keep the ice at necessary temperatures overnight.

- Please can the applicant detail to date the contact they have had with the residents most likely to be impacted by the application proposal?

### **Environmental Health**

*6th September 2023* - - Please can my initial queries/comments as per the below (sent on 17/08/23 at 12.26), be kept in mind when assessing this application

- We would wish for all original Environmental Health comments on the original application for the ice rink to remain (pending of course the amendment to condition 5 which we are aware is the purpose of the 23/01324/CONDIT application)

- We are in principle satisfied for this condition to be amended, but this is only with the knowledge from the Planning Officer for the then requirement for DISCON application to be submitted. This discharge DISCON app will need to satisfy conditions 3 and 5 below

- This DISCON application must include the submission of a suitable acoustic assessment, plans of the layout of the site (with all equipment and residential properties marked), any proposed noise mitigation in direct link to the acoustic assessment, details of the exact proposed model of generator and/or chiller/battery unit. All of this detail must be submitted well within a reasonable time frame for assessment by Environmental Health, all prior to commencement as per the conditions

- Furthermore, in terms of the overall amendment to condition 5, we would also request that this, if to be discharged as per the future submitted DISCON app, to only be in part discharged for the 2023/24 season and to then for the 2024/25 for another DISCON app to be submitted for the following season