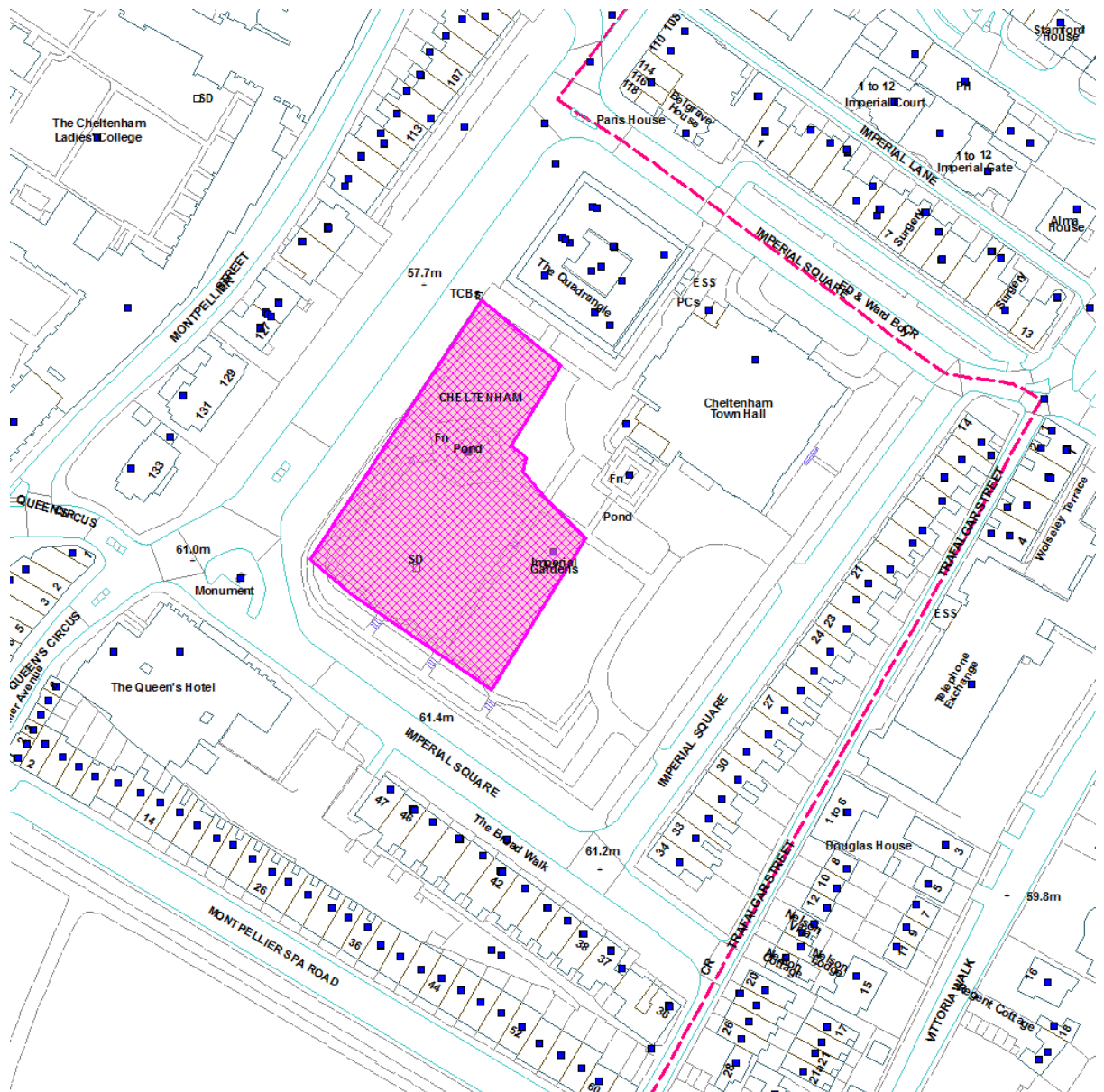


<b>APPLICATION NO:</b> 24/00605/CONDIT	<b>OFFICER:</b> Mr Ben Warren
<b>DATE REGISTERED:</b> 9th April 2024	<b>DATE OF EXPIRY:</b> 9th July 2024
<b>DATE VALIDATED:</b> 9th April 2024	<b>DATE OF SITE VISIT:</b>
<b>WARD:</b> Lansdown	<b>PARISH:</b>
<b>APPLICANT:</b>	Cheltenham Borough Council
<b>AGENT:</b>	
<b>LOCATION:</b>	Imperial Garden Promenade Cheltenham
<b>PROPOSAL:</b>	Variation of condition 5. (generators) of granted permission 22/01200/FUL. To enable the use of a generator, running exclusively on certified sustainably sourced HVO, in 2024-25, as part of a hybrid power set-up alongside the existing electrical infrastructure and a high-capacity mobile battery unit.

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site relates to the south western section of Imperial Gardens which is a public green space located within Cheltenham's Central Conservation Area and within the Montpellier Character Area. A number of listed buildings are located within close proximity of the site, this includes Grade II and Grade II\* listed buildings, the surrounding uses include a range of commercial uses and residential properties.
- 1.2 Planning permission was granted in 2022 under planning ref: 22/01200/FUL for the erection of temporary structures in connection with festivals and special events, and included the use of an ice rink in imperial gardens. The permitted ice rink was granted for a maximum period of 75 days (November to January), for 3 separate periods, 2022/2023, 2023/2024 and 2024/2025.
- 1.3 The permitted application was subject to a number of conditions, the condition most relevant to this application is condition 5 which relates to the use of generators. This condition reads:  
  
*'The development hereby approved shall not use 100% diesel generators and only hybrid or biofuel generators are permitted.*  
  
*Reason: 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 applicant, Cheltenham Borough Council (CBC) is seeking permission to vary condition 5 of this original consent to enable the use of a generator, running exclusively on certified sustainably sourced HVO (Hydrotreated Vegetable Oil) for the 2024 – 2025 period, as part of a hybrid power set up, alongside existing electrical infrastructure and a high-capacity mobile battery unit.
- 1.5 This application is similar to that considered last year under planning ref: 23/01324/CONDIT, which was permitted for the 2023-2024 period.
- 1.6 The application is at committee as CBC is the applicant.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### **Constraints:**

Airport Safeguarding over 45m  
Conservation Area  
Core Commercial Area  
Principal Urban Area  
Public Green Space (GE36)  
Smoke Control Order

### **Relevant Planning History:**

**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

**23/01324/CONDIT 25th September 2023 PER**

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

**23/01815/DISCON 13th November 2023 DISCHA**

Discharge of condition 5 (power source) of granted permission 23/01324/CONDIT and condition 3 (external generators) of granted permission 22/01200/FUL

**23/01890/DISCON 7th November 2023 DISCHA**

Discharge of condition 4 (Tree Protection Plan) of granted permission 22/01200/FUL

### **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

**Cheltenham Civic Society**

*18th April 2024 - 24/00605/CONDIT*

Variation of condition 5. (generators) of granted permission 22/01200/FUL. To enable the use of a generator, running exclusively on certified sustainably sourced HVO, in 2024-25, as part of a hybrid power set-up alongside the existing electrical infrastructure and a high-capacity mobile battery unit. | Imperial Garden Promenade Cheltenham Gloucestershire

NEUTRAL

Support in principle as an interim arrangement. We look forward a sustainable, permanent solution coming to fruition.

**Environmental Health**

*29th April 2024 -* At the current time, the Environmental Protection team are neither minded to object nor support this application. This is based on the grounds of the potential impact of noise the proposed activity would have on neighbouring residential properties.

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. 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.

## 5. PUBLICITY AND REPRESENTATIONS

- 5.1 123 letters were sent to neighbouring land users, 4 site notices were displayed (one on each side of Imperial Gardens) and an advert was published in the Gloucestershire Echo. 2 letters of objection have been received in response to this neighbour notification process. The concerns raised have been summarised but are not limited to the following:
- Questions over the financial success of the ice rink in 2023-2024 period
  - Sustainability concerns

## 6. OFFICER COMMENTS

### 6.1 Determining Issues

- 6.2 Under section 73 of the Town and Country Planning Act, applications can be made to vary or remove conditions associated with a planning permission. In this instance the applicant has submitted a Section 73 application to vary condition 5 of the original planning permission (22/01200/FUL). As noted in the introduction, condition 5 excluded the use of 100% diesel generators and only permitted the use of hybrid or bio-fuel generators. The applicant, CBC, is seeking consent to enable the use of a generator, running exclusively on certified sustainably sourced HVO for the 2024 – 2025 period, as part of a hybrid power set up, alongside existing electrical infrastructure and a high-capacity mobile battery unit.
- 6.3 The principle of development has already been considered as acceptable under the originally permitted application, the development was also considered to be acceptable in terms of its impact on designated heritage assets, highway safety and impact on existing trees. As this is only an application to vary condition 5 of the original consent, these matters remain acceptable and are not for consideration as part of this application. The considerations of this application therefore only relate to the acceptability of using a generator in terms of its impact on neighbouring amenity and sustainability/climate change.
- 6.4 The details of the application contain a number of supporting documents, this includes information regarding the type and specification of plant/equipment, a letter from CBC's Climate Emergency Officer, an Economic Impact Assessment, a letter from CBC's Director of Finance and Assets, additional environmental information, and a report on the ice rink operations for the 2023 – 2024 period.
- 6.5 The supporting information explains that the long-term solution for the ice rink power supply is still a wholly electric provision via a National Grid connection. CBC's Director of Finance and Assets confirms that the council has engaged a specialist engineering company to support the delivery of the project and that survey work relating to flooding, ground conditions, topography and tree roots has already been completed. However, whilst CBC are in discussions with the National Grid, they have experienced long delays in obtaining quotations from the National Grid for the connection works. This delay, in combination with the length of time the connection is likely to take to implement, means that this form of power supply is not likely to be possible for the 2024 – 2025 period. As such, an alternative power supply is required in order to continue to provide the Ice Rink facility.
- 6.6 CBC's Climate Change Officer confirms that *'the emissions associated with the operational phase of the ice rink in December 2023 was better than had been forecast. The use of combined generator and battery solution meant that the generator was only required to run for a couple of hours each day and the ice rink used only 12.7% of the fuel that was previously used to run the ice rink in 2021'*. The Climate Change officer concludes that whilst a main grid connection is explored *'the combined use of battery and Hydrogenated Vegetable Oil (HVO) has the potential to provide an effective transitional solution'*.
- 6.7 The application is also supported by an Economic Impact Assessment, which identifies that the Ice Rink played a key role in Cheltenham's Economy for the period between 17<sup>th</sup> November 2023 and 1<sup>st</sup> January 2024. The assessment identifies that users of the ice rink were also involved in other activities elsewhere in Cheltenham and therefore generated new spend elsewhere in the town. In addition, a report on the successes of the 2023 Ice

Rink has been provided, this discusses, amongst other matters, the environmental sustainability of the project and economic benefits. The document also identifies that no complaints were received by local residents with regards to the operational period of the Ice Rink and its power supply.

- 6.8 The Councils Environmental Health Officer (EHO) raises no objection to the application, but suggests a condition which requires the submission of a noise survey, a condition that was also attached to the previous variation of condition application in 2023.

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1 It is unfortunate that the National Grid connection has not yet been secured, however officers acknowledge that the supporting information demonstrates that this is clearly being pursued and the Council has employed specialist engineers to help progress this matter further.
- 7.2 The considerations of this application are whether the use of a generator, fuelled by HVO, in combination with batteries is acceptable in terms of its impact on neighbouring amenity, with regard to noise and disturbance, and whether the equipment is acceptable in terms of sustainability and climate change.
- 7.3 With regards to noise and disturbance, no objection has been raised by the councils EHO, subject to a condition which requires the submission of a noise survey and potential mitigation measures. The submission demonstrates that this same power supply was successfully used for the 2023 – 2024 period without resulting in any operational noise complaints from local residents. Officers are satisfied that the equipment is unlikely to result in any unacceptable impact on neighbouring amenity, however a noise survey does need to be provided in order to determine if any mitigation measures such as an acoustic barrier is necessary. As such, a suitable condition has been suggested.
- 7.4 In terms of sustainability and climate change, CBC's Climate Change Officer considers the proposed power supply to be a suitable interim solution whilst a national grid connection is secured. The supporting information demonstrates that 2023 – 2024 resulted in a significant reduction in fuel consumption and emissions from that of 2021 – 2022 period.
- 7.5 It is also clear that the ice rink provides an important attraction to Cheltenham during its festival period and contributes to the towns economy, whether this be a facility that directly attracts new visitors/users, or one that supports other facilities and attractions that the town has to offer.
- 7.6 Having considered all of the above, for the reasons discussed, the proposal is considered to be acceptable and the recommendation is to permit the application. Condition 5 has been amended to allow for the use of the plant/equipment specified in the application, the other conditions have been amended accordingly, as set out below;

## **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 or use of any power unit/equipment, 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.

The assessment shall provide details of 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. Should the assessment detail that the proposed plant will exceed the levels as set in BS4142, details of the proposed noise mitigation measures shall be submitted to and approved in writing by the Local Planning Authority, prior to the operation of any equipment.

The proposed equipment shall be installed, operated, and maintained in accordance with the details so approved.

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

- 4 The works shall be carried out in accordance with the approved tree protection measures approved under ref: 23/01890/DISCON.

Prior to the commencement of development (including demolition and site clearance), the tree protection measures shall be installed and 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).

- 5 The development hereby approved shall only use generators operated by sustainably sourced Hydrogenated Vegetable Oil (HVO) and shall be installed and operated in accordance with the plant specification details set out in document 00605.01, unless otherwise first submitted to and approved in writing by the Local Planning Authority.

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).

## **INFORMATIVES**

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.