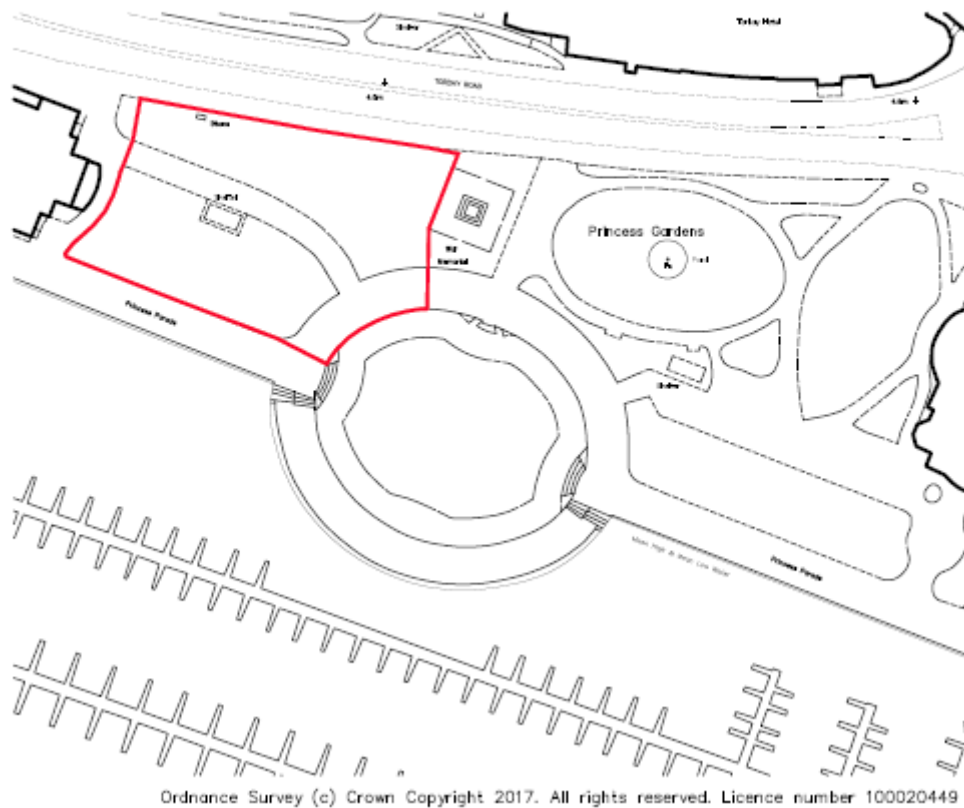


TORBAY COUNCIL

Application Site Address	Land At Princess Gardens Off Torbay Road Torquay TQ2 5EY
Proposal	Change of use of land for the temporary erection and operation of a 45m high observation wheel and ancillary development, for a one-year season (between the period of March to October 2024).
Application Number	P/2024/0138
Applicant	James Mellor Ltd
Agent	GPS Planning and Design Ltd
Date Application Valid	23.02.2024
Decision Due Date	19.04.2024
Extension of Time Date	
Recommendation	Refusal: Reasons of; The development, for reasons of its scale, form and location, would cause harm to the character and appearance of the Princess Gardens and Royal Terrace Gardens Registered Park and Garden and the Torquay Harbour Conservation Area, and cause harm to the setting of the Grade II listed Pavilion, War Memorial and Fountain. The level of harm is not mitigated by the proposed conservation benefits and public benefits and as such the proposals are considered to be contrary to Policies SS10, HE1, DE1 and DE3 of the Torbay Local Plan and Policies TT2 and TH8 of the Torquay Neighbourhood Plan, and guidance contained within Paragraphs 203, 205 and 208 of the NPPF.
Reason for Referral to Planning Committee	Torbay Council Land.
Planning Case Officer	Scott Jones



Site Details

The site is in a sensitive location, it is prominent within the Torquay Harbour Conservation Area, near to a Grade II Listed building (Torquay Pavilion) and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. It is adjacent to the War Memorial and near to the Fountain, which are both also Grade II listed structures.

The Registered Park and Garden is on Historic England's 'Heritage at Risk' register, with an improving trend, as confirmed by Historic England.

The site is also in a Core Tourism Investment Area (CTIA), a Coastal Change Management Area, and a Flood Risk Area, as designated within the Torbay Local Plan. The site and wider area is also a Local Green Space, as designated within the Torquay Neighbourhood Plan.

The land is owned by Torbay Council.

Description of Development

This application seeks the erection of a 45m observation wheel, ticket office, and an ancillary catering unit with seating area, within Princess Gardens, Torquay. The

application seeks the temporary change of use of land for these purposes between March and October 2024.

The observation wheel is to be sited between the War Memorial and Princess Theatre, perpendicular to the adjacent highway.

The ticket office is set at the foot of the wheel at the point of entry for customers and is a flat roofed portable building that is 3.5m by 3.5m and 2.3m high. The catering unit is 6m wide by 2.5m deep and 3.7m high (to the top of an affixed signage panel), to be located just to the seaward side of the wheel with a seating area adjacent. Revised plans have removed a proposed 'back-of-house' compound from the proposed layout.

The submission includes a revised draft legal document outlining the Developers' undertaking to pay the sum of £30,000 for conservation purposes, namely towards a resurfacing scheme for the pathways within the Registered Park and Garden, as identified within the submitted Princess Gardens Masterplan Update Report (LHC).

Pre-Application Enquiry

N/A.

Relevant Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Torquay Neighbourhood Plan (TNP)

Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

Relevant Planning History

Observation Wheels:

P/2012/0690: Temporary consent for Observation Wheel between 13th August and November 2012. Approved.

P/2013/0167: Temporary Consent for period 24th May- 5th November. Approved.

P/2014/0193: Temporary consent for period March-October 2014. Approved.

P/2015/0042: Temporary consent for period March-November 2015. Approved.

P/2016/0384: Temporary consent for a period until 31st October 2016. Approved.

P/2017/0092: Change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5-year period between the period of March to the 31st October). Approved.

P/2021/0708: Variation of Condition relating to application P/2017/0092 (Change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5-year period between the period of March to the 31st October)). Condition: 01 - Temporary Use (Mar-Oct). Extension of usage time ending from October 2020 to October 2021. Approved.

P/2022/0211: Change of use of land for temporary erection/operation of observation wheel, with ancillary development. One-year season (between period of March to October 2022). Approved.

P/2022/1032: Change of use of land for temporary erection/operation of observation wheel, with ancillary development. One-year season (between period of March to October 2023). Approved.

Summary of Representations

4 submissions received from the Torbay Heritage Trust.

Summary of key comments:

- Not truly temporary.
- There is connected parking of vehicles within the gardens that is not considered.
- Trees previously removed and trees lopped to permit access.
- Impact of waste storage being visible.
- The wheel is contrary to Historic England advice on settings and views in terms of the listed pavilion and listed structures within the park and garden.
- Heritage impacts have consistently been downplayed.
- There are no very special circumstances to allow the wheel in this Local Green Space.

Note: Full responses are available to view on the public access system.

Summary of Consultation Responses

Note: Full responses are available to view on the public access system.

Historic England

Historic England's position:

Historic England remains strongly concerned about the harm that the wheel demonstrably generates to the heritage assets, in particular the Registered Park and Garden (RPG), the conservation area, Torquay Pavilion and the war memorial. The wheel is an overtly alien and dominant presence within the RPG that causes harm to the significance of the various heritage assets, through change to character, setting, views and experience.

The catering unit, seating area, fencing, storage container (with associated Astro-Turf overlying the grass) are additional features that cause harm to the RPG through the introduction of clutter, blocking impacts on views within and across the RPG, and harm

to the grass. We consider that these elements of the proposals are even less justified than the wheel and ticket booth.

Historic England's recommendation:

Historic England has concerns regarding the application on heritage grounds. Ideally the wheel would not be permitted. However, if your authority does allow its seasonal occupation of this part of the RPG we recommend that the associated paraphernalia. is not permitted, that the wheel is reoriented, and that all money raised contributes towards works to remove the RPG from the 'at risk' register.

Consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 205, 206 and 208 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess; and section 72(1) of the same Act, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas; and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Torbay Council Principal Historic Environment Officer

In terms of context the Princess Gardens (and Royal Terrace Gardens) are the subject of a specific action within the Torbay Heritage Strategy (2021-2026) to remove the gardens from the Heritage at Risk Register. In addition, the Princess Gardens Registered Park and Garden (RPG) is currently on the Historic England 'At Risk Register' where its condition is identified as being "generally satisfactory but with significant localised problems" this includes "the seasonal installation of a Ferris wheel".

Through various consents the wheel has been in place (seasonally) for a total of 12 years.

The wheel and its associated structures appear as alien and incongruous features, wholly at odds with the character and appearance of the Registered Park and Garden (RPG) and the Torquay Harbour Conservation Area. As well as causing physical damage to the park and garden, the proposed development would block views of and out of the RPG as well as views within. It would also dominate the space thereby removing the sense of tranquillity of the gardens which would directly impact on the setting of the Grade II listed War Memorial and Fountain as well as the wider setting of the Pavilion, also a Grade II listed building.

The level of overall impact on the various heritage assets is as follows:

- Torquay Harbour Conservation Area: Moderate impact.
- Princess Gardens and Royal Terrace Gardens RPG: High impact.
- War Memorial (Grade II listed): High impact.

- Fountain (Grade II listed): Moderate impact.
- Pavilion (Grade II listed building): Low impact.

Following the above assessment the proposed development is considered to cause harm to the significance of a number of identified designated heritage assets. The level of harm varies from low to high within the 'less than substantial' category to a number of individual assets. However, when considering the number of heritage assets affected by the proposals, coupled with the 12 years impact the proposals have accrued, it is assessed that the proposals would ultimately cause a degree of harm which would be classed as a high level of 'less than substantial'.

In accordance with the requirements of Paragraph 208 of the NPPF, such level of harm should be weighed against the public benefits of the proposals whilst being mindful of the great weight which should be afforded to the conservation of heritage assets. The proposals include an amount of funding formed from the proportion of the rental yield for the siting of the wheel to be put towards to the resurfacing and improvement works to some of the pathways within the RPG. Whilst this can be classed as providing a heritage benefit, the benefit is low. The existing red tarmac pathways would benefit from resurfacing to a more traditional and aesthetically pleasing material; however, this would only act as a minor benefit to the significance of the RPG as a whole. The benefit would also be limited to a small proportion of the existing tarmacked paths within the park (indicated as Paving Improvement 1 within the submitted documentation). The proposed works identified as 'Paving Improvement 2' would provide negligible heritage benefit to the RPG as a whole.

As a result, it is assessed that the proposed heritage benefits which would result from the proposed development would fall considerably short of the level required to mitigate the harm caused.

Conclusion:

It is clear that the proposed development would cause clear harm to a number of identified heritage assets and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policies SS10, HE1, TO2 and DE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan which requires development to conserve and enhance the conservation area and to respect local character.

In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation of heritage assets and the requirements of Section 66 (1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This would be a matter for the overall planning assessment of the proposals.

Green Infrastructure Manager (SWISCo)

Following the receipt of revised information, where Section 8.2.2 of the revised AMS identifies that no tree works are required in terms of access facilitation and operation,

we are therefore satisfied with the information submitted. In respect of the Palm tree previously identified (T27) we are still of the opinion that it will be retained.

Maintained that if funds are available for the betterment or improvement to provide a net gain to the Registered Park and Garden then consideration can be given to green infrastructure improvements works.

Torbay Council Drainage Engineer

The development lies within Flood Zones 1 and 2 and therefore the developer has submitted a site specific flood risk assessment, which addresses these issues.

The application form identifies that surface water run-off from the new development will be discharged to a soakaway.

Based on the above comments, I can confirm that that as the developer is proposing to discharge his surface water drainage to a soakaway, please use the recently agreed standing advice for this planning application.

Community Safety Officer

No objection to planning permission being granted.

Highway Authority (Swisco):

No objection. Request a pre commencement condition to secure a Traffic and Operational Management Plan.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of the development,
2. Impact on heritage assets,
3. Design and visual impact
4. Impact on adjacent amenity,
5. Impact on trees,
6. Ecology and the marine environment.
7. Flood risk

1. Principle of the development

The site is a designated Local Green Space within the Torquay Neighbourhood Plan under Policy TE2 (TLGST2). The policy guides that development is ruled out, other than in very special circumstances. The policy cites that very special circumstances may include minor improvements to community access, or facilities that support their use for public recreation or amateur sports, or development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation. The proposal is temporary in nature and is a unique tourism facility within an area that is also part of a wider Core Tourism Investment Area. In the context of the greenspace being part of a wider public frontage and key tourism area, and the development being contained within part of the wider park and thus retaining areas of openness for wider public use, and the development

being temporary and tourism related, the development, subject to wider considerations, is considered to accord with the ambitions of the policy and the guidance contained within Policy TE2, and thus is an acceptable form of development within the designated greenspace.

In terms of the Torbay Local Plan Policies SDT2 (Torquay Town Centre and Harbour), TC1 (Town centres), TO1 (Tourism, events and culture) and TO2 (Change of use of tourism accommodation and facilities) provide relevant policy guidance on the principal of a leisure attraction on the edge of Torquay Town Centre and Harbour.

Policy SDT2 seeks to reinforce Torquay Town Centre as the principal retail and leisure area, to become the key sub-regional retail and leisure destination and to provide a vibrant and more enjoyable shopping and leisure environment.

Policy TC1 centres on retail and town centre uses and reinforces the town centre first approach. Two criteria apply and there is a notion of support for development for mixed use edge of centre developments that help achieve more balanced communities by delivering a mix of uses including employment and leisure, which is relevant (Criterion v), and the use of heritage assets, public art and public space, events, exhibitions and festivals to provide a more enjoyable, creative environment (Criterion viii).

Policy TO1 seeks that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. It furthers that tourist facilities will be improved, and modernised and new tourism facilities provided, in order to attract new visitors. The policy supports in principle the provision of new tourist attractions, subject to other Policies in the Local Plan. The policy supports the retention, improvement and creation of high-quality tourism and leisure attractions in sustainable, accessible, locations with a particular focus on Core Tourism Investment Areas as the areas for investment in tourism.

Policy TO2 seeks that within Core Tourism Investment Areas that the role of premises should be retained and enhanced commensurate with their contribution to the area's tourism offer.

The provision of an a 45m observation wheel, together with a ticket office, small catering unit and an associated outdoor seating area will temporarily remove a small section of the public park and will impact views in and around the areas. However, the public use of the park in terms of formal and informal seating, passage through, and general enjoyment, will be largely retained with the wheel sitting as a tourism facility within the space. When considering the location is a well-located local greenspace, which is in a central and sustainable location and within a Core Tourism Investment Area, the development is broadly considered to be supported in principle when considering the greenspace, town centre and tourism policies cited above.

In conclusion the principle of the temporary provision of an observation wheel and ancillary development is considered to align with the development plan aspirations in terms of supporting and promoting tourism facilities and the management of Local Green Spaces. This conclusion is however one of general principle and is subject to wider considerations which will be considered below, including the heritage impacts,

as the site is within a Registered Park and Garden and within the setting of the Pavilion, a Grade II listed building, and the setting of Grade II listed structures within the area (the Fountain and War Memorial).

2. Impact on the Heritage Assets

This is a sensitive location, it is prominent within the Torquay Harbour Conservation Area, is near to a Grade II Listed building (Pavilion) and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. It is also adjacent to the War Memorial and near to the Fountain, which are both also Grade II listed structures.

In terms of the Torquay Neighbourhood Plan Policy TT2 (Change of Use in Conservation Areas and Listed Buildings) provides some key guidance. The policy guides that within designated Conservation Areas or where Listed Buildings are involved, whether inside or outside of a CTIA, change of use from tourist accommodation and other development proposals requiring consent will be supported in principle (subject to other policies in the Plan) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

Policies SS10 and HE1 provide key advice within the Torbay Local Plan. Policy SS10 requires development to sustain and enhance assets and adds that all assets will be conserved proportionate to their importance and concludes that proposals that enhance heritage assets or their setting will be supported. Policy HE1 offers central guidance in that development proposals should have special regard to the desirability of preserving any listed building and its setting.

It is also relevant that the Council adopted a Heritage Strategy in November 2020 within which objective RST04 is that Princess Gardens and Royal Terrace Gardens are maintained and protected for the future. The measure of success is cited as being that the Gardens continue to be maintained to a high quality and the Gardens are removed from the Heritage at Risk Register. As noted with the consultation response from Historic England the park and garden continues to be on Historic England's 'Heritage at Risk' register but with an improving trend.

The NPPF also provides guidance on heritage assets and cites that such assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (Paragraph 195). The guidance furthers within Paragraph 203 that in determining applications, local planning authorities should take account of;

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

The NPPF also provides key advice in terms of considering potential impacts, with Paragraph 205 guiding that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraphs 206, 207 and 208 provide further guidance relative to level of harm, which will be explored in more detail within this section below.

In terms of key considerations, the proposal is considered to present a significant change to the character of the registered park and garden for a temporary period, in this case one extended summer period (detailed as March to October). This is due to consideration that a large, modern, observation wheel is considered an overtly alien and dominant presence within the historic parkland setting. This conclusion is aligned with the views of Historic England and the Council's Principal Historic Environment Officer. There is also concern aligned to this conclusion within the public representations made by the Torbay Heritage Trust.

In addition to the temporary harm to the Registered Park and Garden the wheel would also present some temporary harm to the setting of the nearby Grade II listed Pavilion building and Grade II listed structures within the park (War Memorial and Fountain). The cumulative harm to a number of heritage assets is a relative matter to consider in the balancing exercise.

The application is supported by a heritage assessment and an updated conservation management plan for the registered park and garden. The supporting information seeks to identify the harm and propose mitigation to balance the harm.

In terms of heritage considerations, the key consideration is an assessment and judgment on the short term harm of placing the wheel and associated development, over the medium/long term benefit of any direct 'conservation gain' proposed and what works it could secure. In this application the proposal is to provide £30,000 for identified improvements works to the internal pathway network of the park and garden, towards a scheme to replace the existing red tarmac routes with a more contextual surface finish suitable for the heritage setting. The resurfacing proposals are detailed within the updated conservation plan for the park and garden. This obligation has been increased from £26,000 initially suggested and would part-fund a scheme costing circa £90,000.

The concept of seeking to offset short term harm with longer term conservation gains follows the concepts tabled and accepted within previous applications for the temporary placement of a wheel in the park. Notably a previous 5-year temporary permission for a wheel and carousel secured circa £130,000 that directly funded the recent restoration of the adjacent listed fountain, and more recent 1-year permissions providing funding of £40,000 across two permissions towards the renovation works to the War Memorial (£20,000 per annual permission).

In terms of the level of impact and harm to the various heritage assets the Council's Principal Historic Environment Officer concludes that the harm varies from low to high within the 'less than substantial' category, with the highest level of harm being to the registered park and garden and the setting of the listed war memorial, which sits immediately adjacent to the proposed location of the wheel. There is also some appreciation of the longer term impact of successive consents and with this in mind

the development would ultimately cause a degree of harm which would be classed as a high level of 'less than substantial' harm.

As detailed within the consultation response Historic England retain very strong concerns about the presence of the wheel in what is a prominent position in Torquay, which they consider causes a high degree of less than substantial harm to several heritage assets. They do however recognise the presence of the wheel has generated some heritage benefits in the past but continue to consider that the clear and convincing justification for the harm is very weak. They also offer opinion that the remaining elements identified within the Master Plan for the Registered Park and Garden are becoming relatively minor and thus they are becoming increasingly insufficient to demonstrate heritage gains. Historic England's ultimate position is that the wheel should not be permitted. However, if it is permitted that all of the revenue should contribute to towards works to remove it from the 'at risk' register.

There is also concern within public representations regarding the wheels impact upon heritage assets and also the harm presented from the ancillary elements, associated waste storage, parking, works to and loss of trees etc. Following discussions with the applicant the ancillary development has been reduced with the back-of-house compound removed and the enclosure of the seating area being confirmed as a visually inobtrusive post and cord detail. Taking these concerns and amendments into account any grant of consent should seek to ensure there is no external waste storage through a planning condition (excluding small scale customer bins), to ensure the loss of the compound doesn't expose unsightly storage. In terms of parking there is no parking areas proposed and it appears the vehicular access is restricted through bollards near to the Theatre. Parking is not considered a matter relevant to this application as none is proposed and access to the site for staff etc can be gained through sustainable travel modes to this central site or via public parking nearby. In terms of tree impacts the revised supporting tree detail has confirmed that there is no impact on the nearby street trees, which are a prominent and positive feature at the edge of the park and garden.

As detailed the proposal is expected to ultimately cause a degree of harm which would be classed as a high level of 'less than substantial' harm. This considers the high level of harm to the character and appearance of the Registered Park and Garden and setting of the listed War Memorial, more moderate harm to the listed Fountain and Torquay Harbour Conservation Area, and lower harm to the listed Pavilion.

For development proposals that present less than substantial harm to heritage assets the NPPF guides that the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Paragraph 208). This advice is tied to that detailed in Paragraph 205, in that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

The submission presented that the heritage impact of granting permission for one season (March to October) could be offset through the proposed ring-fenced investment in the Registered Park and Garden of £26,000 to part-fund a resurfacing scheme within the park to remove the red tarmac path network with a surface treatment more appropriate for the heritage context, which had an initial projected cost

of £60,000. The resurfacing scheme being identified within the submitted Conservation Management Plan for the registered park and garden.

Considering of the level of harm to the various heritage assets impacted by the wheel, and considering the comments of consultees and public representations, concerns were raised with the applicant regarding the level of conservation gain / funding, in that it would not adequately mitigate the harm when considering the great weight that should be afforded the conservation of heritage assets. This judgment was informed by the heritage value of resurfacing footways and the extent that the funding would support. There was also a concern raised that the proposed resurfacing scheme excluded key pathway routes from the Banjo to the theatre and the pathway and hard realm area flanking the Pavilion. The applicant has considered these concerns and raised the proposed conservation obligation to £30,000 and has presented a more holistic pathway improvement plan that includes the additional key routes identified. The cost of the scheme is now projected to be circa £90,000. In addition, as detailed the concerns raised regarding the proliferation of the development have been considered by the applicant and the compound area has been removed and the enclosure detail of the seating area has been confirmed as a visually unobtrusive post-and-cord detail.

In terms of drawing matters of heritage impact together, it is not disputed that the form of the development has been moderately improved through revised plans and the level of consideration gain has seen a minor increase of £4,000 to £30,000, which will approximately provide a third of the funding necessary to deliver a pathway resurfacing scheme through the area of the Registered Park and Garden between the Theatre and the Pavilion. Although these are positive revisions it remains clear that the development would still cause clear harm to a number of identified heritage assets and would be considered to be contrary to heritage-based policies within the Development Plan. In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation of heritage assets and the requirements of Section 66 (1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

In terms of the balancing exercise of heritage harm and heritage benefit despite the removal of the compound and slight rise in the level of the conservation gain obligation there is a retained concern that the level of conservation gain is not sufficient to outweigh the harm to the various heritage assets. Weighing in favour is that the harm is short term, and the benefit will be seen over a number of years in terms of any delivered resurfacing scheme. Weighing against the proposal is that funding a contextual surface treatment will provide a limited heritage gain and the proposal itself will not fund the whole scheme but only around one-third of the necessary funding. It is accepted that an improved surface treatment would enhance the character and appearance of the historic park and garden and would strengthen its historic character and appearance, and thus would itself be aligned with guidance contained within Paragraph 212 of the NPPF, which guides that local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance, and furthering that proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

However, there is some tension retained as the short term impact of the wheel remains substantial and the heritage value of the longer term gain is questionable when considering the advice from Historic England and the Council's Principal Historic Environment Officer.

Despite changes to the scheme that have reduced some of the 'clutter' of the ancillary development, and the increase proposed in the conservation gain, it is reasonable to conclude that there remains immediate short-term harm and that harm, notwithstanding the conservation obligation, is not mitigated by partial funding of a resurfacing scheme.

Where there is harm in accordance with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits. In terms of public benefits, it remains pertinent that wheel has been popular and has no doubt attracted tourists to the seafront area. It does also create a striking feature within the townscape. However, counter to this it can be argued that the wheel may also lessen the visitor experience for some and lessen the public enjoyment of the historic park and garden due to its bold and alien presence in the park. As a positive there is some likely tourism 'spend' benefits within the area and some benefits to Torbay in terms of general visitor experience, and a small degree of economic benefit from seasonal job creation. All matters considered the public benefits are possibly limited but accepted as minorly beneficial.

In the circumstances, balancing the conservation harm and gain, and with assessment of the likely limited level of public benefit, the proposal is considered unacceptable on heritage grounds. This conclusion considers the aims and ambitions of Policies SS10 and HE1 of the Torbay Local Plan and Policy TT2 of the Torquay Neighbourhood Plan, and advice contained within the NPPF regarding heritage assets and less than substantial harm. It is also made having considered the duty to have special regard to (1) the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses and (2) the desirability of preserving or enhancing the character or appearance of any conservation area, as detailed within the Planning (Listed Buildings and Conservation Areas) Act 1990.

3. Design and visual impact

Regarding the general impact of the development upon the wider townscape Policy DE1 (Design) provides pertinent advice, stating that development should be well-designed, respecting and enhancing Torbay's special qualities, with design considerations on (i) function, (ii) visual appeal and (iii) quality of public space.

The NPPF within Section 12 "Achieving well-designed and beautiful places" broadly seeks the creation of high quality, beautiful and sustainable buildings and places (Paragraph 131), and seeks that decisions should ensure that developments function well and add to an area, are visually attractive, and are sympathetic to local character (whilst not preventing or discouraging change), as outlined within broader guidance contained within Paragraph 135.

In terms of function the development is temporary in nature and the impact of placing

the wheel and associated ancillary development within Princess Gardens will not alter the adaptability of the space in terms of future change and need. The development is also aligned with functionality in terms of providing diversity to the park's longstanding tourism and recreation use. The development will also integrate within the constraints of the green infrastructure and principal routes through the park, with the main thoroughfares unaffected.

In terms of visual appeal, the observation wheel is a very prominent and distinguished structure that would be very striking within the townscape. The character and permeability of the wheel will however largely protect long-distance public views and, through its use, the wheel will also introduce new view-points for residents of and visitors to Torbay. Overall, in terms of visual appeal the wheel will have an impact upon the townscape due to its scale and prominence, however the impact is considered limited as the structure is temporary in character, lightweight in terms of how it retains views through it. As previously concluded though there is however visual impact concerns when considering the heritage context.

In terms of the quality of the public space the location of the development seeks to respond to and address the key public routes through the park and limit the impact upon these routes. As a unique attraction that is only in a handful of locations nationally the development has the potential to enlighten the experience of the park and wider promenade as a recreational destination. However as previously detailed the wheel also has the potential to detrimentally impact the public experience of the park in terms of enjoyment of the space as a historic park and garden, as it's a very large and imposing structure that is an alien presence.

Considering the character, form and location the development is considered generally suitable for the context and in accordance with the aims and objectives of Policy DE1 of the Local Plan 2012-2030 and guidance contained within the NPPF. This consideration does not consider the heritage impact of the development.

4. Amenity

Policy DE3 (Development amenity) of the Torbay Local Plan seeks to secure development that does not unduly impact upon the amenity of neighbouring and surrounding uses, with impact being assessed to include noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution.

The scale and location are consistent with a previous consents. Its form and location would have little impact upon the commercial operations around the gardens and immediate area, due to its form and location. The development may have a more demonstrable beneficial impact on neighbouring commercial operations where they may benefit from the additional footfall and tourism interest that the wheel and carousel is likely to generate.

In terms of residential impact, the nearest adjacent properties on Warren Road sit on higher ground to the north of the wheel, approximately 100 metres from the proposed location. It has previously been determined that the impact on privacy and noise nuisance to residential properties 100 meters away are not sustainable reasons to resist the wheel, subject to conditions to restrict the hours of operation and lighting.

This opinion is maintained. It is noted that the wheel is slightly smaller in scale than the previously consented 45m wheel in this location, which limits the impact on properties on higher ground. Previous consents have permitted a wheel of 50m in scale, which is a relevant material consideration.

The wheel will be lit in a similar way to the previous operations/consents. The lighting has been previously considered acceptable and if similarly lit the wheel would not unduly impact neighbours.

In terms of amenity the wheel would be acceptable and compliant with Policy DE3 of the Torbay Local Plan.

5. Arboricultural impact

There is a linear row of mature London Plane trees to the north of the proposed location, which are set along the adjacent footpath and frame the highway. These provide significant visual benefits to the character of the area and the setting of the Registered Park and Garden.

The location of the wheel appears to respond to the crown and rooting protection area of these trees and would appear to present a sustainable relationship. This location was previously considered acceptable on arboricultural grounds under the previous planning permissions for the wheel.

Following the receipt of revised supporting information that confirms that there will be no direct spatial conflict between the wheel and the adjacent trees, i.e. require no lopping etc, the proposal is considered acceptable and is now supported by the Council's Tree Officer.

The proposal is considered acceptable on arboricultural merit and aligned with policies DE1 and C4 of the Torbay Local Plan.

6. Ecology and Marine Environment

Policy TE7 - Marine Management Planning of the Torquay Neighbourhood Plan states that development proposals on land adjacent to the coastline will be supported where they do not have an adverse effect on a marine policy or management plan.

The proposal is not considered to present any ecological or marine impacts due to its location within an urban location and managed (closely mown) habitat.

Although close to the coast the development is temporary in nature and sits above ground without disturbing the land. The operation is unlikely to impact the adjacent marine environment for these reasons. The development is not in conflict with ecology-based policies of the development plan or guidance within the NPPF.

7. Flood Risk

The development is temporary in nature and involves limited areas where development/structures sit on top of the established land without presenting

permanent change. These are the foot pads for the wheel, the small catering and kiosk units, and the Astro turf covering.

The application form identifies that surface water run-off from the new development will be discharged to a soakaway.

The development is not considered likely to increase flood risk. There is no objection to the proposal from the Councils Drainage Officer.

Subject to a planning condition to secure the proposed surface water management, the development is considered to accord with Policies ER1 and ER2 of the Torbay Local Plan and is considered acceptable on flood risk grounds.

Sustainability

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

The Economic Role

Tourism is an important economic sector and there would be economic benefits of from the wheel in supporting this sector and enhancing the facilities available during tourism trips and possible temporary employment opportunities. There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is in favour of the development.

The Social Role

The principle social benefit of the proposed development is that it would help deliver job opportunities in the local area. The development will support this aspiration. The short terms benefits weigh in favour of the development.

The Environmental role

The environmental benefits are considered negative due to the heritage impacts of the proposals, which is not adequately mitigated by the 'conservation gain' proposed.

Sustainability Conclusion

Having regard to the above assessment the proposed development is not considered to represent sustainable development when considering the negative environmental outcomes.

Statement on Human Rights and Equalities Issues

Human Rights Act - The development has been assessed against the provisions of the Act, and in particular Article 1 of the First Protocol and Article 8 of the Act. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the

applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Local Finance Considerations

The development as a tourist attraction and is likely to increase footfall in the gardens to the benefit of local businesses.

There is proposed conservation payment of £30,000 to aid fund a resurfacing plan for the park and garden between the theatre and the Pavilion, to provide a more contextual heritage-informed surface treatment for the paths.

EIA/HRA

EIA: Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

HRA: Due to the scale, nature and location this development is not considered to have a likely significant effect on European Sites.

Planning Balance

The planning assessment considers the policy and material considerations in detail. There are no wider material considerations beyond the development plan.

Conclusions and Reasons for Decision

The development presents harm to a number of heritage assets, which is considered to be classed as a high level of 'less than substantial' harm.

To offset the harm the proposal presents a financial obligation of £30,000 to be spent specifically on a heritage-based resurfacing scheme as identified within the supporting updated conservation plan. This will deliver around one-third of the funding necessary to resurface the internal pathways between theatre and the pavilion (excluding the Banjo and promenade).

The resurfacing of pathways is deemed to present a relatively minor heritage benefit and the current proposal is not considered sufficient to offset the harm presented by permitting the continued presence of the wheel and its associated development within the Registered Park and Garden.

Considering the identified harm consideration must be given to the public benefits of the development which, as detailed within this report, are considered to be relatively minor and do not outweigh the identified harm to the number of heritage assets impacted by the development.

Having regard to the Development Plan as a whole (and regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, to determine planning applications in accordance with the development plan unless material considerations indicate otherwise), and guidance contained within the NPPF regarding considerations towards heritage assets and development, the development is recommended for refusal, as the public benefit does not outweigh the harm to heritage assets and material considerations do not indicate that the development should be approved where it is contrary to the Development Plan and NPPF.

The conclusions have regard to the duty to have special regard to the desirability of preserving the setting of listed buildings and to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas outlined within the Planning (Listed Buildings and Conservation Areas) Act 1990.

Officer Recommendation

Refusal: Reasons of;

The development, for reasons of its scale, form and location, would cause harm to the character and appearance of the Princess Gardens and Royal Terrace Gardens Registered Park and Garden and the Torquay Harbour Conservation Area, and cause harm to the setting of the Grade II listed Pavilion, War Memorial and Fountain. The level of harm is not mitigated by the proposed conservation benefits and public benefits and as such the proposals are considered to be contrary to Policies SS10, HE1, DE1 and DE3 of the Torbay Local Plan and Policies TT2 and TH8 of the Torquay Neighbourhood Plan, and guidance contained within Paragraphs 203, 205 and 208 of the NPPF.

Informative(s)

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has sought to work positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval.

Relevant Policies

Development Plan Relevant Policies

- DE1 - Design
- DE3 - Development Amenity
- TC1 - Town Centres
- TC5 - Evening and night time economy
- TO1 - Tourism, events and culture

TA2 - Development access
HE1 - Listed Buildings
ER1 - Flood Risk
SS4 - The economy and employment
SS10 - Conservation and Historic Environment
SDT2 - Torquay town centre and harbour
C4 - Trees, hedgerows and natural landscape
NC1 - Biodiversity and Geodiversity_

TT2 - Change of Use in Conservation Areas and Listed Buildings
TE2 – Local Green Spaces
TS4 - Support for Brownfield and Greenfield development
TH8 - Established architecture
TE5 - Protected species habitats and biodiversity