

Application Number

P/2017/0092

Site AddressLand At
Princess Gardens
Off Torbay Road
Torquay
TQ2 5EY**Case Officer**

Mr Scott Jones

Ward

Tormohun

Description

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).

Executive Summary/Key Outcomes

This is the sixth application for consent for the erection of a 50m observation wheel with associated development on land within Princess Gardens, which is a Registered Historic Park and Garden.

The application seeks permission for a five year period and follows five previous temporary one-year consents for an observation wheel within Princess Gardens.

The application proposes a different location for the observation wheel within Princess Gardens. It is located away from its previous position immediately adjacent to the Grade II Listed Pavilion building, to a location approximately 110 metres to the west, on land between the War Memorial and the Princess Theatre.

The application includes the provision of a carousel within the 'Banjo' area of Princess Gardens, which is an addition to the previous applications which were solely for an observation wheel with ancillary development.

The application proposes annual use between the period of mid-March and 31st October (2017-2021).

Previously it was considered that a more permanent permission in the 'old' location would not be considered acceptable due to the impact upon the setting of the Grade II Listed Pavilion building. The new location for the observation wheel is considered to have a reduced impact upon the setting of the Grade II Listed Pavilion building.

Previously it was stressed that any future, more regular, use of the Gardens for an observation wheel should be subject to a more rigorous assessment as

requested by Historic England and also be linked to mitigation to achieve some conservation benefit for the 'at risk' gardens.

The application is supported by an appraisal of other possible sites for the observation wheel within Torbay. The appraisal discounted the other possible sites identified as being viable options. Assessment was also undertaken of other potential positions for the wheel within Princess Gardens to see whether there was a less harmful location upon the setting of the heritage asset/s. The assessment of locations within the gardens concluded that the proposed position is less damaging on the heritage asset/s, principally as it is less harmful on the setting of the Grade II Listed Pavilion building. Conservation benefits to offset the harm have also been explored and there is agreement between the Applicant and the Council that a portion of the annual rental yield will be ring-fenced for improvements to Princess Gardens in accordance with works that are currently being formally identified within an emerging Council Management and Development Plan for Princess Gardens. It is proposed that over the five year period £60,000 of the rental stream would be used for improvement works. Comment is awaited from the Council's Conservation Officer and English Heritage as to whether this is enough to mitigate the harm of development over a five year period.

At the time of writing the report there are detailed design elements awaited in terms of the form of the wheel, carousel and ancillary development, and these are necessary to inform the decision in regard to the likely visual impact.

It was previously concluded that in the old location of the wheel the erosion of privacy was not a sustainable objection to the scheme. The new location presents a similar distance to properties on Warren Road, where the observation wheel will be circa 100metres from the nearest properties. The impact on privacy is similar and the conclusion that erosion of privacy is not a sustainable ground for objection remains.

Previously light pollution had been a concern in terms of amenity. Mitigation in the form of vinyl overlays to the pod lighting was secured by condition to lessen the impact of light-spill. The impact of light pollution requires re-assessing due to the new location and re-orientation of the wheel. Further information has been requested.

Previous concerns have been expressed about the impact of vehicles loading and moving the wheel on the structural stability of the site. This was and could again be ameliorated through a traffic management plan and more effective operational control during construction and dismantling, achieved by means of a condition. Due to the close proximity of trees arboricultural impact should be considered within this.

At the time of writing 17 letters of objection and one letter of support have been

received.

Subject to the satisfactory resolution of the outstanding matters the wheel, carousel and associated development, placed for a period of five years within the extended 'summer' season identified, would continue to provide a high profile tourist attraction and one that would help fund necessary improvement works to the 'at risk' Registered Park and Garden.

Subject to satisfactory heritage mitigation and due consideration of detailed design elements and lighting impact, the proposal is considered to provide a satisfactory location for a longer term arrangement over five years.

Recommendation

Approval, temporary five year consent to be granted for the period between 15th March and 31st October annually up to and including 2021, subject to;

1. The receipt of further detailed information in regard to the form of the observation wheel, carousel, catering unit, compound and seating area, and Flood Risk Assessment, to the satisfaction of Officers,
2. The receipt of an updated lighting impact assessment that concludes no undue harm to amenity, and the provision of any detailed mitigation measures identified, to the satisfaction of Officers,
3. Resolution, in consultation with Historic England, of adequate mitigation to offset the impact of the observation wheel and the associated development on the Registered Park and Garden, in terms of a level of funding achieved to directly invest in conservation works to be identified in the Council's evolving Management and Development Plan for Princess Gardens,
4. Achieving a Planning Obligation, sum to be agreed, either through an upfront payment or signed S106 Legal Agreement, prior to the 30.03.2017 or within 3 months of the date of this committee if an extension of time is agreed with the applicant, to mitigate the impact of the development upon Princess Gardens from additional footfall and movement resulting from the development, and
5. Conditions, delegated to the Head of Business Services, to include those outlined within this report (hours of use, reinstatement of land, traffic management, and no storage within tree protection zones).

Statutory Determination Period

This application should be determined within an 8 week period and the target date for determination is the 30th March 2017.

Site Details

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 adjacent to the War Memorial and near to the Fountain, which are

both also Grade II listed structures. Development is also proposed within the Banjo area of Princess Gardens, the circular feature that is circled by footpaths close to the outer harbour.

The site is also in a Core Tourism Investment Area (CTIA).

The application site is owned by Torbay Council.

Detailed Proposals

This application is for a five year consent for the erection of a 50m observation wheel, carousel, ticket office, ancillary catering unit and seating area, yearly from mid-March until the 31st October, from 2017 to 2021, within Princess Gardens, Torquay.

The observation wheel is to be sited between the War Memorial and Princess Theatre, at an oblique angle to the adjacent highway with a northeast-southwest orientation. A scaled elevation of the observation wheel has been requested.

A ticket office 2.8m wide by 2.2m deep is to be positioned adjacent to the existing entrance point between the observation wheel and the Banjo, abutting the existing low wall.

A catering unit 5m by 2.5 will sit adjacent to the observation wheel and will back on to a small compound area. The elevation detail of the catering unit and detail of the means of enclosure behind it has been requested, along with detail on the seating area.

A Carousel with a 14m diameter is proposed within the Banjo area of the gardens. The elevation detail has been requested.

Summary Of Consultation Responses

Historic England: Comments awaited.

Whilst a formal response has not been received at the time of writing, Historic England have consistently expressed concerns about the potential harm that an observation wheel could cause to the Heritage Asset/s.

Previously, given that the proposals were temporary and short term (one year permissions) harmful impacts were short term and a pragmatic approach was taken. HE have previously stressed that if the proposal was to become more permanent in nature, then a better assessment of its impact on Heritage Significance should be made. It was also previously suggested that if more permanent the impact of the structure should be assessed against the criteria in HE's Temporary Structures in Historic Places'. It was also suggested that as Princess Gardens is 'at risk' some mitigation or conservation gain should be achieved if more permanent.

Conservation Officer: Minor reservations in principle about the wheel. The new location is in the narrowest part of Princess Garden where it is constrained by the war memorial, the theatre, the theatre's 'service area', and the 1904 seawall subsumed by the 1938 reclamation. The wheel at the location will affect the setting of the grade II registered park and the listed war memorial.

However the harm is much less than substantial and in conservation terms easily reversible - as is evident by its proposed removal between October and March. It is permeable so no views are permanently obscured.

The supporting planning statement and heritage impact assessment talk about the planning gain, and monetise it at £50,000 over five years for the wheel, and £10,000 for the carousel, but no schedule of recognised works is set out, though it is evident from the plan [drawing 0108 -(20)004] that the westernmost shelter will need to be demolished and the central area of the banjo and its fountain similarly so.

The natural environment section have recently commissioned a conservation management plan, which I have seen and commented upon in draft, and is understood to be due for completion. This should have informed any temporary or permanent works of enhancement and provided a means of effectively conditioning the work and the schedule of development.

The Devon Gardens Trust: The heritage asset of Princess Gardens comprises the late C19 seafront public garden which is a grade II Registered landscape, Princess Parade, the Pavilion, a cast iron fountain and the early C20 war memorial, all listed grade II.

The supporting Planning Statement confirms that a substantial part of the rental income from the observation wheel would go towards improvements to Princess Gardens. The improvements previously discussed include the removal of the inappropriately designed seating shelters (which are often subject to vandalism), the repair and maintenance of both the War Memorial and the cast iron Fountain. The removal of the seating shelters would be a considerable improvement to the character and appearance of the gardens.

In view of the conservation gains The Devon Gardens Trust do not object.

Environment Agency: The application is not supported by a Flood Risk Assessment.

A Flood Risk Assessment is required prior to the determination of the application as part of the site is within an area with a high risk of flooding.

It is noted that previous applications were accompanied by a Flood Risk

Assessment and the applicant is advised to refer back to previous applications and submit an up to date Flood Risk Assessment.

Drainage/Engineers: A Flood Risk Assessment is required prior to determination to support the application.

The application should be accompanied by a detailed surface water drainage design.

Community Safety Officer: An updated lighting assessment is necessary to consider any impact and design mitigation.

The Principal Natural Environment Officer: Comments awaited, however at the time of writing it has been expressed that a Management and Development Plan for Princess Gardens is being evolved and there has been discussion on a ring-fenced revenue stream towards works identified.

Arboriculture Officer: Advise that no significant arboricultural constraints exist in relation to the spatial requirements of the structures in terms of footprint or vertically.

Any tree loss should be holistically addressed by incorporation into emerging document 'Landscape, Masterplan and Conservation Management Plan' for the wider Princess Gardens.

That the scheme be suitable for approval on arboricultural merit subject to a condition requiring no storage of materials within the defined Root Protection Area depicted in plan ref. CT_4423.17_TCP

Green Infrastructure Co-Ordinator: No objection.

Strategic Transport/Highways: Comments awaited.

Engineers: Previous settlement levels at the wheels' previous location have been reassuring and it is expected that the location between the War Memorial and Princess Theatre would have a similar degree of 'satisfactory' bearing capacity as it also sits within the 1894 development line.

South West Water: No objection.

Marine Management Organisation: No Objection.

Ecological Advisor: Verbal confirmation that an ecological assessment is not required and although a representation has referenced that there are bats in the locality they are likely to be the more common and light-tolerant species rather than, for example, Greater Horseshoe Bats. In the context of the location no

further assessment is required.

Summary Of Representations

17 letters of objection and one letter of support has been received at the time of writing.

Relevant planning concerns include:

- impact upon the townscape and character of the area
- impact upon views of the area
- noise and nuisance to residents adjacent
- loss of privacy to adjacent residents who live on Warren Road
- impact of the lighting, which has previously changed colour and flashed
- impact of the additional timescale
- there are better locations for the wheel
- noise from the carousel
- impact on bats.

Supportive comments include that it provides a spectacular tourist attraction, provides jobs and supports the area generally.

Relevant Planning History

Observation Wheels:

P/2012/0690: Temporary consent for Observation Wheel between 13th August and November 2012: Approved 15.08.12.

P/2013/0167: Temporary Consent for period 24th May- 5th November: Approved 8.04.13.

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

Approved: 15.04.14.

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

P/2016/0384: Temporary consent for a period until 31st October 2016.
Approved: 19.05.2016

Pavilion Proposals:

P/2015/0961: Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016). Approved at Development Management Committee 27.02.2017.

P/2015/0962: Refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer, including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel (proposal revised 5 July 2016). Approved at Development Management Committee 27.02.2017.

Key Issues/Material Considerations

This is the sixth application for consent for the erection of a 50m observation wheel with associated development but the first for a period longer than one year, as it seeks a five year permission.

It is also the first that proposes a location other than immediately adjacent to the Pavilion building and the first that proposes a carousel within the Banjo area of Princess Gardens.

The setting remains that of development within a Grade II entry on the Register of Historic Parks and Gardens and the Grade II listed Pavilion building.

Relevant policies are paragraphs 132-134 of the NPPF and Policies TO1 (Tourism, events and culture), TC1 (Town centres), DE1 (Design), DE3 (Development amenity), HE1 (Listed buildings), SS10 (Conservation and the historic environment), SDT1 (Torquay) and SDT2 (Torquay Town Centre and Harbour) of the Torbay Local Plan 2012-2030 apply.

The key issues are:

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. Structural stability of the site.

1. Principle of the development

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 centre of the Bay, 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.

Then provision of an observation wheel within a well-located, central and sustainable location within what is a Core Tourism Investment Area is considered to be supported in principle when considering the town centre and tourism policies cited above, subject to other material consideration.

2. Impact on the Heritage Assets

Previous applications have recognised that a permanent occupation of the land adjacent to the Pavilion by the observation wheel would be, in the long term, harmful to the architectural and historical character of the site. Alongside this it was also anticipated that works could commence on the restoration of the Pavilion which would preclude continued occupation of this site by the wheel in the event that planning permission and listed building consent being granted for proposals involving the Pavilion. Such proposals have now been recently approved by the Development Management Committee.

In-line with advice from the Council and Historic England the applicant has undertaken an alternative sites assessment in order to consider other potentially viable and more appropriate (i.e. less impacting upon heritage assets) locations for a longer term arrangement (in this case five years).

Sites outside of the Registered Park and Garden across Torbay have been considered, including Torre Abbey Park, Torbay Park in Paignton, and Paignton Green. These sites have been discounted as viable options for reasons such as limited footfall and conflict with other uses (such as the air show) including reasons such as health and safety.

An assessment of alternative locations within Princess Gardens has also been undertaken by the applicant, prepared with consideration of the known constraints such as stability, the listed building and listed structures within the park, tree constraints, and the size requirements of the observation wheel.

The assessment of alternative locations has concluded that the application site, is the location with the least impact within the Registered Park and Garden.

The proposed location is approximately 110 metres to the west of its former location and the impact upon the setting of the Grade II Listed Pavilion building is significantly reduced, as it no longer crowds or obscures the western elevation of this building, which is one of the two principal elevations of the building.

The observation wheel will be close to the Listed War Memorial and within the setting of the Listed Fountain, but care has been taken to ensure a suitable gap to the War Memorial and retain horizontal and vertical space and retain circulation, so as not to unduly crowd or restrict access around this structure. The proposal does have an impact upon the setting but does not impact the Listed structure itself. The impact upon the setting of the Listed Fountain is less due to the distance and again the impact is one of setting and it does not impact the Listed Structure itself. The proposal does seek to offset the impact by providing funding towards the restoration of these structures, which is covered below.

More broadly in terms of the visual prominence and setting of the Registered Park the observation wheel, when approached from the east (from Cary Green / the Pavilion) the wheel will be partially set against the backdrop of the theatre building, which will lessen its visual prominence. From the west the theatre building will partially obscure views on the approach. From the north along Torbay Road and/or Rock Walk, the wheel will be partially obscured by the line of mature London Plane trees. From the south, from the sea or pier, the cliffs of rock walk provide a frame behind the structure that will also lessen its visual prominence. Having considered the context and constraints it is considered that the site appears the least harmful location for the wheel if it is to be placed within the Registered Park and Garden, but it still presents harm, which is considered less than substantial, due to the temporary nature of the development and the permeability of the structure in terms of views through the wheel.

In regard to the other forms of development proposed these elements are far more di minimus in scale and hence the potential harm is more limited. The proliferation of clutter is however an issue of concern for the Registered Park and Garden and hence the form and location of these needs to be duly considered and at the time of writing the report certain detailed information has yet to be submitted. It is however considered fair to assume that the accumulation of structures will present some form of harm, which is less than substantial.

The NPPF provides relevant advice.

Para 131 cites that in determining planning applications, local planning authorities should take account of:

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

It further adds in Para 134 that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

The submitted planning statement presents that the granting of permission for a longer period would provide the operator with greater commercial security and that this in turn provides the ability to secure a direct revenue stream for ring-fenced investment in the Registered Park and Garden. It is suggested that the potential conservation gains proposed, together with the economic and tourism benefits, adequately offset the less than substantial harm on the heritage assets, in accordance with the NPPF guidance.

The proposal is that over the five year period £60,000 of the rental stream would be ring-fenced for improvement works to the 'at risk' Registered Park and Garden, which would be invested in works identified within the Council's evolving Management and Development Plan for the Princess Gardens.

Early discussions between the applicant and the Council's Principal Natural Environment Officer have identified that the evolving Management and Development Plan is likely to include already identified necessary remedial works to the Grade II Listed Fountain and the Grade II Listed War Memorial and that the development could provide funding to the sum of £30,000 for each of these projects. Discussions have also been held in regard to achieving funding to replace the two shelters in the Park which are subject to vandalism and anti-social behaviour with alternative and more appropriate seating arrangements within the Park. Funding towards the shelter works is absent from the proposal and certainty on this have been requested from the applicant and the Council's Principal Natural Environment Officer.

Comments are awaited from the Council's Conservation Officer and Historic England as to whether the conservation gain is significant enough to mitigate the less than substantial harm of the development over a five year period. Comment is also awaited from the Principal Natural Environment Officer over the terms and security of the income stream .

It is considered that the impacts remain short term and reversible in nature notwithstanding the longer permission sought, and this remains an important consideration. The proposal would principally duplicate the five one-year consents that have seen the wheel positioned in a more prominent and impacting location in the gardens and the Grade II Listed Pavilion building.

It also remains pertinent that wheel has been immensely popular, has attracted tourists, created a dramatic and striking feature within the townscape and has generated economic benefits for the town in terms of increased spend. Once removed, the former site has been quickly and reinstated to its former condition and such arrangements could again be secured by condition for its new location.

In the circumstances, given the conservation, economic and tourism benefits of the wheel, subject to the outstanding comments of the Councils' Conservation Officer and Historic England and agreement on achieving sufficient conservation 'gains' to offset the less than substantial harm, there would appear sufficient public benefit to permit a five year permission in the location proposed when considering the level of harm to heritage assets.

The scheme, subject to the above, would be compliant with Policies SS10 and HE1 of the Torbay Local Plan and advice contained within the NPPF in regard to heritage assets and less than substantial harm, as indicated within Paragraphs 131 and 134.

3. Design and visual impact

In regard to the impact of the development upon the wider townscape Policy DE1 (Design) provides pertinent advice.

Policy DE3 states the 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.

In terms of function the structures are temporary in nature and the temporary impact of placing them 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 function development should avoid light and noise pollution and as matters stand further information has been requested in terms of a lighting specification. Members will be up-dated on this matter at the Development Management Committee.

In terms of visual appeal the observation wheel is a very prominent and distinguished structure that would, as will almost all locations, be very striking

within the townscape. The character and permeability of the wheel will however 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.

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.

Considering the character, form and location the development is considered suitable for the context and in accordance with the aims and objectives of Policy DE1 of the Local Plan 2012-2030.

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 revised location will remain within a public setting and would have little impact upon the commercial operations around the gardens and immediate area, due to its form and location. The development may actually 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 100meters away are not sustainable reasons to resist the wheel, subject to conditions to restrict the hours of operation. This opinion is maintained with the proposed new location of the wheel.

Previously light pollution has been a concern and earlier permissions did achieve a form of vinyl to the underside of the cabins in order to lessen the impact of the lighting. The supporting light assessment has not been updated to assess the impact of the revised location and the revised orientation of the wheel on adjacent occupiers. There is a lack of clarity on the extent of lighting, whether the lighting is directional and/or to either of both sides. Further information has been requested to address this.

In terms of amenity, providing a further lighting assessment is received that concludes that the lighting is adequately designed to limit harm on amenity and/or there is adequate mitigation proposed to achieve this, the wheel would be acceptable on amenity terms 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.

There appears sufficient access to the site from the northwest adjacent to the Theatre which presently receives heavy goods vehicles to service theatre productions.

The Council's Arboricultural Officer has advised that there is an appropriate spatial relationship with notable trees in the area and there is no objection to the proposal on arboricultural grounds.

The proposal is considered acceptable on arboricultural merit and aligned with policies DE1 and C4.

6. Structural Stability of the site

Previously the occupation of the site by the Pavilions posed no threats to the structural integrity of the gardens which comprise reclaimed land.

The Council's Engineer has advised that on the assumption that the now-proposed site area between the War Memorial and the Theatre is of similar material to that of the site previously utilised, it is anticipated that there is a similar degree of 'satisfactory' bearing capacity from the soil.

The design of the wheel spreads the load of the structure by using load bearing plates, which historically have been agreed and verified by the Council's structural engineers. Matting, sleepers and boards have been historically used to minimise the impact of footfall on the ground around the wheel.

There was historical concern that the weight and size of vehicles delivering the wheel may have caused some damage to the structural integrity of the gardens and the means of accessing the site appeared to have caused some damage to footways and kerbs. These matters are largely of an operational nature and should be picked up in the lease.

It is important that the site is reinstated following occupation and this needs to be secured by condition.

S106/CIL

The development is a significant tourist attraction and is likely to increase footfall in the gardens. Mitigation for the harm of the additional footfall should be achieved either through an upfront payment or through a signed Section 106 Legal Agreement. The level of mitigation is to be identified and Members will be updated.

The Council's Strategic Project Delivery Officer has been asked to provide advice on the likely level of impact and level of mitigation that should be achieved.

In order to mitigate the harm caused to the architectural and historical character of the site the developer will be required to make an additional financial contribution (amount to be confirmed) which will be used by the Council to carry out works of repair and renovation to the Registered Park and Garden

Conclusions

It has always been accepted that a permanent occupation of the land adjacent to the Pavilion by the observation wheel would be, in the long term, harmful to the architectural and historical character of the site.

The proposed location is considered less impacting on the Grade II Listed Pavilion building. It is also considered the least impacting location within the Registered Park and Garden.

Conservation gain is proposed to offset the less than substantial harm caused to the heritage asset/s. Comment is awaited from the Council's Conservation Officer and Historic England as to whether this gain is sufficient at the level indicated.

Additional detail is required in regard to the precise form of the development and the lighting detail.

Mitigation for the impact of additional footfall is necessary and this should be achieved through a S106 Legal Agreement. The level of impact and mitigation, and works to be carried out is to be confirmed.

Subject to the resolution of the outstanding matters the development proposals for a five year period will accord with the aims and objectives of policies TC1, TO1, TO2, HE1, SS10, C4, DE1 and DE3 of the Torbay Local Plan 2012-2030.

Recommendation

Approval; to include the following conditions.

01. The permission, allowing occupation of the site by the observation wheel, carousel and ancillary development, shall be for a temporary period only between the periods of March 15th and the 31st October, for the years 2017 to 2021. Following removal of the observation wheel, carousel and ancillary development after each period of operation or before this date, the gardens shall be reinstated in accordance with details that shall have previously been submitted to and agreed in writing with the LPA. The agreed scheme of reinstatement shall be implemented in full within two weeks following the removal of the development.

Reason: The use of the site by the development is only acceptable on a short term basis and more lengthy occupation would be harmful to the setting of the listed buildings, to the character of the Registered Gardens and the wider Torquay Harbour Conservation Area contrary to policies HE1 and SS10 of the Torbay Local Plan 2012-2030.

02. The observation wheel, carousel and the associated ancillary catering facilities shall only operate between the hours of 10.00 and 22.00 hours daily.

Reason: To ensure that disturbance to residents who overlook the site is minimised in accordance with policy DE3 of the Torbay Local Plan 2012-2030.

03. Prior to the wheel arriving on site a traffic and operational management plan and details of the operational control during construction and dismantling, which shall include due consideration and information regarding the protection afforded adjacent trees during operations, shall be submitted to and approved by the Local Planning Authority. The operation of moving the wheel onto and off the site shall accord with the approved details.

Reason: In order to protect the structural integrity of the site, in accordance with Policies HE1 and SS10 of the Adopted Torbay Local Plan 2012-2030.

04. No storage of materials within the defined Root Protection Area depicted in plan ref. CT_4423.17_TCP.

Reason: To protect the rooting area of significant trees within the locality, in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

Relevant Policies

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