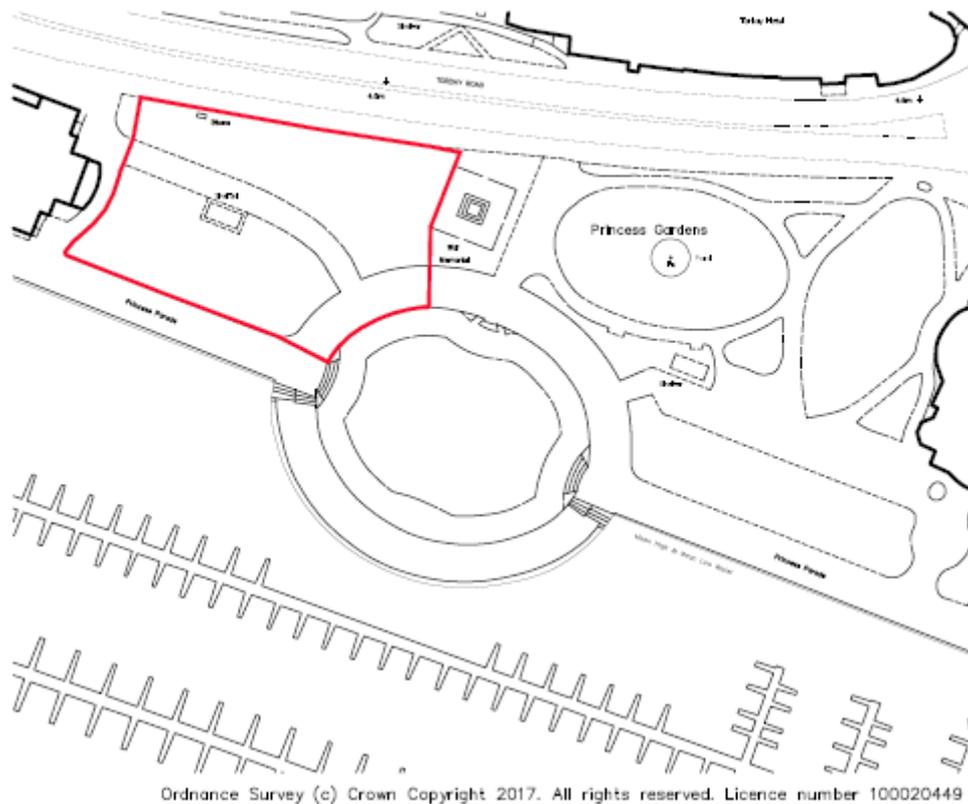


Application Site Address	Land At Princess Gardens Off Torbay Road Torquay TQ2 5EY
Proposal	Change of use of land for the temporary erection and operation of an observation wheel and ancillary development, for a one-year season (between the period of March to October 2023)
Application Number	P/2022/1032
Applicant	James Mellor Ltd
Agent	GPS Planning and Design Ltd
Date Application Valid	15.09.2022
Decision Due Date	10.11.2022
Extension of Time Date	
Recommendation	<p>Approval: Subject to;</p> <p>Prior to the grant of planning permission a 'Conservation Mitigation Obligation' to the sum of £20,000 secured through legal agreement, for restoration works to the adjacent listed War Memorial.</p> <p>The conditions as outlined, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Torbay Council Land.
Planning Case Officer	Scott Jones



## **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.

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 33m observation wheel, two ticket offices, 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 for one 'summer' season (between period of March to October 2023).

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

Ticket offices are set either side of the wheel, one being 3.5m by 3.5m and one being 4m by 2m. The catering unit is 6m by 2.5m and is proposed just to the seaward side of the wheel, with a seating area temporarily dressed with AstroTurf.

The submission includes a draft legal document outlining the Developers' undertaking to pay the sum of £20,000 for conservation purposes, namely the restoration and related works to the adjacent listed War Memorial.

### **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.

### **Summary of Representations**

5, 4 from the Torbay Heritage Trust and one from an individual.

Summary of key comments:

- Harmful Impact, to the Grade II Listed Gardens.
- Highly detrimental preventing, removal of Princess Gardens from at risk register.
- Omission of essential report by an independent specialist Conservation Officer.
- No report signed by member of Institute of Historic Building Conservation IHBC
- Torbay Cultural Heritage 2021-2030. Non-compliant with mission statement.
- Challenge to the findings in the supporting information, Planning Statement.
- Fails government desire and legislation NPPF for building beautiful.
- Omission of a finance statement of income and defined direction of expenditure.
- Failure to apply for available Heritage funding for Listed Structures.
- Proposals contrary to the NPPF and Local Plan Heritage policies
- Proposals do not preserve or enhance the character or appearance of the Conservation Area.
- Detrimental to the important settings of the Listed Buildings and Listed structures.
- Noise Level has removed the tranquility and character of the Listed Park
- There are no special circumstance to permit this high impact development.
- Supporting Historic England, the proposals are : "an overly alien presence"
- Detrimental the overall design and visual impact.
- Design not reviewed by an Independent Design Review Panel
- No forward planning to site the Wheel outside the boundary of the Listed Gardens.
- Lack of planning proposal for nature and tree planting,
- Poorly designed visitor development.
- Permitting heavy vehicle parking and addition steel accommodation units within Wheel site.
- Princess Gardens Masterplan, 2017. Retaining policy, the wheel for permanent" siting,
- The consecrated War Memorial landscape, is not honoured and conserved.

### **Summary of Consultation Responses**

#### **Historic England**

Historic England's position:

We have continuing concerns about the presence of the wheel in this prominent position in Torquay, which causes a high degree of less than substantial harm to a number of heritage assets. Notwithstanding these concerns, if the revenue from the

wheel can bring forward defined improvements to the Registered Park and Garden and will result in the RPG being removed from the Heritage at Risk register than your authority should consider these in the balance between harm and public benefit.

Historic England's recommendation:

Historic England recommends that any consent issued by your authority (should it find the development acceptable) should be closely tied via condition or legal obligation to identifiable public (heritage) benefits. We recommend that you liaise with your local conservation advisor in relation to this list, and that the outcome is closely monitored. We 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 199, 200 and 202 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.

#### Torbay Council Heritage Advisor

The adopted Torbay Heritage Strategy includes an objective to ensure 'Princess Gardens and Royal Terrace Gardens are maintained and protected for the future'. I am therefore conscious of this proposal and its impact on the registered Princess Garden and the character and appearance of the Torquay Harbour Conservation Area.

I note the planning history and continued evolving discussion around the public benefits and heritage gain associated with this and previous applications. The restoration of the fountain and recent public realm works, including surfacing, have been a positive step forward in terms of heritage gain.

We clearly need to resolve the issues around the inclusion of the gardens within the Heritage at Risk Register, particularly given the link to our Heritage Strategy. This current application could contribute to resolving features which keep the gardens at risk. It is important we consider and protect the overall integrity of the gardens and understand what is the next priority for repair and restoration. In my view, there are a range of options available including the war memorial, potential repair to the original harbour railings and posts, public shelters, particularly the shelter to the west of the Torbay Hotel. These features are all located within the designated asset.

In terms of this current application and heritage gain, the war memorial seems the most logical choice as it is listed in its own right. I would like to see an assessment demonstrating the potential for restoration particularly of the stonework and lettering.

As for future applications and the long term siting of the wheel, it is clear that the gardens have seen recent improvements and there could be other prioritised works described above which could be defined as being of public benefit. However, it is unlikely that this could be a rolling programme and there will come a time when the

issues are resolved and we can request that the gardens be removed from the Heritage at Risk Register.

Returning to my first point, the wheel has a significant visual impact on the highly sensitive Princess Gardens and the Torquay Harbour Conservation Area. The surfacing, additional supporting structures and buildings also contribute to the impact on the gardens. I would therefore welcome a continued dialogue on the future use of the gardens for the wheel.

In conclusion, the siting of the wheel is considered to be less than substantial harm which is short-term and temporary in nature, subject to my comments above. Material considerations should ensure that the benefits outweigh that harm in order to align with the NPPF paragraphs 199, 200 and 202, Local Plan policy and objectives set out within Torbay Heritage Strategy. It is clear that weight should be afforded to the protection and enhancement of assets. Whilst there are demonstrable long term heritage gains identified within the RPG, in this case proposed funding towards restoration works to the listed war memorial, it is reasonable to conclude that the harm is appropriately mitigated.

#### Drainage Engineer (Swisco)

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)

The Local Highway Authority would raise no objection to the catering unit. However, a Pavement Cafe Licence may be required.

### **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, over period from March 2023 to October 2023. In the context the development, subject to wider considerations, is considered to accord with the principles 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 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.

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

In conclusion the principle of the temporary provision of an observation wheel is considered to align with the development plan aspirations in terms of supporting and

promoting tourism facilities, subject to wider considerations, including the heritage impacts.

## **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 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 central guidance is that development proposals should have special regard to the desirability of preserving any listed building and its setting.

The Council adopted a Heritage Strategy in November 2020. 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.

The NPPF also provides advice, with Para 197 citing that 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.

The NPPF also provides key advice in terms of considering potential impacts, with Para 199 guiding that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), and Paras 200-202 furthering that any harm should require clear and convincing justification and the judgments to be made.

The proposal presents a significant change to the character of the registered park and

garden for a temporary period, in this case one (extended) summer period. This presents some harm to the character of the park and some harm to the setting of the nearby listed Pavilion building and listed structures within the park. The key consideration is the judgment on the temporary harm of placing the wheel and associated temporary structures over the medium/long term benefit of the direct 'conservation gain' being proposed. In this application the proposal is to provide £20,000 for identified improvements works to the nearby listed war memorial. Works to the memorial are identified within the Council's Heritage Management Plan for Princes Gardens.

This concept of seeking to offset short term harm with demonstrable conservation gain follows the concepts tabled and accepted within previous applications for the temporary placement of a wheel in the park. Notably the previous 5-year temporary permission secured around £130,000 that directly funded the recent restoration of the adjacent listed fountain, and the more recent 1-year temporary permission for the summer season of 2022 provided £20,000 towards the renovation works to the War Memorial.

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 retained horizontal and vertical space, and retained 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.

More broadly in terms of the visual prominence and setting of the Registered Park and Garden the observation wheel, when approached from the east (from Cary Green / the Pavilion) the wheel will again 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.

Regarding the other forms of development proposed these elements are far more diminutive 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. It is however considered fair to assume that the accumulation of structures will present some form of harm, which is less than substantial, but again these are temporary and should be considered against the short and longer term public benefits.

The submission presents that the heritage impact of granting permission for one summer would be offset through the proposed ring-fenced investment in the Registered Park and Garden of £20,000. 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.

Historic England have commented on the application and although they have offered continuing concerns about the presence of the wheel, they have also recognised that revenue from the wheel can bring forward defined heritage improvements, and if it aids the Gardens being removed from the Heritage at Risk register then the Authority should consider the balance between harm and public benefit. Their recommendation furthers that any consent issued by the authority (should it find the development acceptable) should be closely tied via condition or legal obligation to identifiable public (heritage) benefits, in order for the application to meet the requirements of paragraphs 199, 200 and 202 of the NPPF.

The council's conservation advisor has advised that the concept of securing improvements to what is an 'at risk' registered park and garden is aligned with the Council's recently adopted Heritage Strategy, and that funding of the war memorial is a logical step. The summary of the advice is that the siting of the wheel is considered to be less than substantial harm which is short-term and temporary in nature, that material considerations should ensure that the benefits outweigh that harm in order to align with the NPPF paragraphs 199, 200 and 202, and in this case the proposed funding towards restoration works to the listed war memorial, it is reasonable to conclude that the harm is appropriately mitigated.

In terms of the balance of heritage harm and heritage benefit it is considered that the impacts are short term and reversible in nature, and any harm would be sufficiently offset by the 'conservation gain', which is funding towards the restoration of the listed War Memorial. This aligns with local conservation advice.

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 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, and subject to achieving the identified conservation 'gains' to offset the less than substantial harm, there would appear sufficient public benefit to permit a one year (extended summer season) 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, Policy TT2 of the Torquay Neighbourhood Plan, and advice contained within the NPPF regarding heritage assets and less than substantial harm.

The above conclusion has 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 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 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 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 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 100meters 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 a smaller scale than previously consented 50m wheel, which reduced the impact on properties on higher ground.

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 permission for the wheel, P/2017/0092 and more recently P/2022/0211. As the wheel is smaller its distance to the adjacent trees should be greater than the 50m wheel previously consented via the 2017 application. There has been no comments or objections from the Councils Tree Officer (Swisco) to counter the conclusions above.

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 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 do not have an adverse effect on a marine policy or management plan. No comment has been received from the Marine Management Organisation, and it is noted that no objection was offered to the 5-year consent applied for in 2017.

The proposal is not considered to present any ecological 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 Section (Swisco).

Subject to a planning condition to secure the proposed surface water management, the development is considered to accord with Policy ER1 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 neutral, with the form of development and planning conditions principally aligned with encouraging a sustainable form of development without impact. It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

## **Sustainability Conclusion**

Having regard to the above assessment the proposed development is considered to represent sustainable development when considered in the round.

## **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 is a significant tourist attraction and is likely to increase footfall in the gardens.

There is proposed conservation payment of £20,000.00 to aid fund the restoration of a listed war memorial within what is a very prominent public area.

## **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**

It has always been accepted that a permanent occupation of land within the park for an observation wheel would be, in the long term, harmful to the architectural and historical character of the site. This is a short-term temporary application.

The proposed location is again in the less impacting position on the Grade II Listed Pavilion building (than the earlier location adjacent to it). It is also considered the least impacting location within the Registered Park and Garden.

Historic England has continuing concerns about the presence of the wheel, which it considered to cause less than substantial harm to heritage assets. Notwithstanding this stated position they do recognise that, if the revenue from the wheel can bring forward defined improvements to the Registered Park and Garden, then there is a balancing process between harm and public benefit.

The proposal presents a financial obligation of £20,000.00 to be spend specifically on restoration works to the Listed War Memorial and other projects defined within the Council's Heritage Plan for the Park. This presents a not insignificant degree of funding towards the project partly funded by the 2022 permission and a clear public and heritage benefit. There is also some economic public benefit from the wheel as an attraction for residents and tourists, and is a landmark attraction.

When taken in the round the medium and long term heritage benefits, and the economic and tourism benefits, are considered to outweigh the short-term temporary heritage harm to the Registered Park and Garden and setting of the Listed Structures within the Park and nearby Listed Buildings.

Subject to securing £20,000.00 as a financial obligation to secure conservation gain the development proposal, for a one 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, Policies TT2 and TE2 of the Torquay Neighbourhood Plan, and advice contained within the NPPF.

### **Officer Recommendation**

Approval: Subject to;

Prior to the grant of planning permission a 'Conservation Mitigation Obligation' to the sum of £20,000 secured through legal agreement, for restoration works to the adjacent Listed War Memorial.

The conditions as outlined, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.

The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **Time Limit**

01. The permission, allowing occupation of the site by the observation wheel and ancillary development, shall be for a temporary period only between the periods of March 2023 and October 2023 inclusive. The observation wheel and ancillary development shall be removed before 1<sup>st</sup> November 2023 and following removal the gardens shall be reinstated in accordance with details that shall have previously been submitted to and agreed in writing with the Local Planning Authority. The agreed scheme of reinstatement shall be implemented in full within 10 days 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 and Policies TT2 and TE2 of the Torquay Neighbourhood Plan.

#### Lighting condition

02. The development shall at all times accord with the approved lighting scheme. The development shall only be lit during the approved operational hours.

Reason: To ensure that disturbance to residents who overlook the site is minimised and to protect the wider visual character of the area, in accordance with Policies DE1 and DE3 of the Torbay Local Plan 2012-2030.

#### Operating hours

03. The observation wheel and the associated ancillary catering facilities shall only operate, and be lit, 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.

#### Operational management

04. 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 construction, operations and its removal, 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 C4, HE1 and SS10 of the Torbay Local Plan 2012-2030 and Policy TT2 of the Torquay Neighbourhood Plan.

### **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 worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is 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