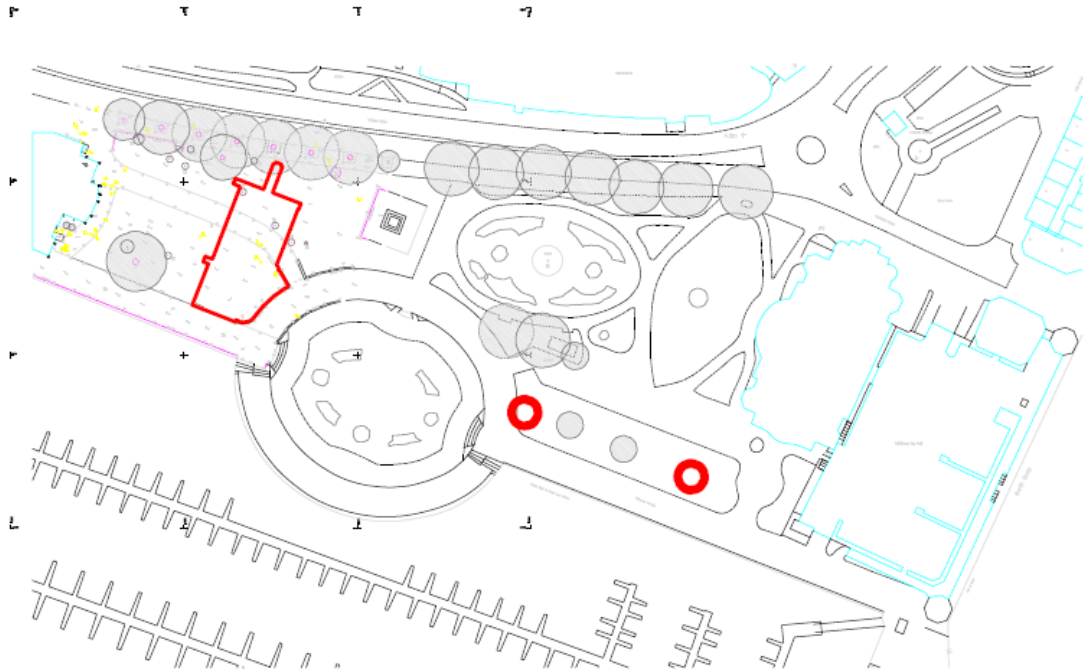


# TORBAY COUNCIL

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 45m high observation wheel and ancillary development, for four seasonal years (between the period of March to October 2025-2028).
Application Number	P/2025/0061
Applicant	James Mellor Ltd
Agent	GPS Planning and Design Ltd
Date Application Valid	28.01.2025
Decision Due Date	25.03.2025
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 £110,000 be secured through a legal agreement, for improvement works identified within the submitted Princess Gardens Masterplan Report Update, for the Registered Park and Garden.</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**

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 mid-March to October for the years 2025 through to 2028 (4 season/years).

The observation wheel is to be sited between the War Memorial and Princess Theatre, perpendicular to the adjacent highway, in the location where previous 'wheels' have been sited.

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.

The submission includes a draft legal document outlining the Developers' undertaking to pay the sum of £110,000 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 31<sup>st</sup> 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.

P/2024/0138: Change of use of land for temporary erection/operation of 45m observation wheel, and ancillary development. One-year season (between period of March to October 2024). Approved.

### **Summary of Representations**

2 submissions received from the Torbay Heritage Trust objecting. Summary of key comments:

Four Years in the Grade II Listed Princess Gardens and Royal Terrace Gardens – to remain on the Historic England “At Risk Register”, due solely to the annual Presence of the fairground wheel and ancillary buildings.

Explained as a Heritage crime, as defined by Historic England, and Torbay Heritage Strategy - “is any offence which harms the value of heritage assets and their settings.”

Proven by Historic England Objections in Writing in their last letters. include this unbelievable Heritage Crime.

Establishing a Precedent for the Fairground Wheel Permanent Occupation.

The Wheel causes harm should be considered to be near Permanent.

Holm Oaks to facilitate location of Wheel have not been replaced & Planted and Historic England remains strongly concerned about the harm that the wheel demonstrably generates to the Listed Historic Gardens Heritage Assets.

Significant visual impact into the highly sensitive area of Listed Princess Gardens and the Torquay Harbour Conservation Area.

Temporary structure lacks any refinement or architectural merit in design.

The surfacing and ancillary buildings add to the utilitarian quality.

Availability of heritage funding causing Historic England to state public benefits could be achieved in an alternative manner and quote that the wheel is an overtly alien and dominant presence’ and concerns quote ‘East end of the of the gardens lies Torquay Pavilion, a grade II building of architectural an artistic quality’ in Setting of Princess Gardens.

In Breach of Revised 2024 Princess Gardens Masterplan omitting Ferris Wheel.

Location damage in the Setting of the Listed War Memorial

1 comment from the English Riviera BID Company in support:

The English Riviera Wheel has become an iconic a very popular summer attraction on Torquay seafront and we would welcome it’s return again this year. It is widely photographed and supports our Destination Marketing activities.

Note: Full comments 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.

### **Torquay Neighbourhood Forum**

The application relates to a tourist offering in Torquay's economy and is in line with aspirations to promote the tourist offering. It is in a Conservation Area and close to the Pavilion. Both the wheel and the Pavilion can be considered as tourist facilities, although the Pavilion needs restoration to function in this way. The visual impact of the wheel in the context of the Pavilion and Princess Gardens is subjective, and the Forum appreciates that there may be differences of opinion in this regard. Overall, the Forum has not been concerned about the presence of the wheel in previous seasons, except for excessive music noise on occasions.

The Application was discussed at the Meeting of the Steering Group on 11 February, and it was agreed that we should support the proposal with Conditions to address the issue of music noise, and to ensure proper maintenance and restoration of the Princess Gardens grounds.

In conclusion, on balance the Forum supports a recommendation for Approval.

### **Historic England**

#### **General position:**

We have continuing very strong 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. It is particularly disappointing that the wheel is repeatedly given consent despite our concerns given the Council's recent positive engagement with Historic England and other heritage organisations, and its allocation of heritage funding.

The presence of the wheel has generated some heritage benefits in the past. We continue to strongly recommend that, should your authority give permission for the wheel for a further term, the revenue that this generates is tied to specified beneficial heritage outcomes.

Those remaining elements identified within the Master Plan for the Registered Park and Garden (RPG) are becoming relatively minor – they are increasingly insufficient to demonstrate heritage gains. We encourage the Master Plan to be updated with our input to identify the current position and confirm defined beneficial outcomes and timescales for the removal of the RPG from the 'at risk' register.

Historic England has concerns that the longer repeated temporary consents are granted on an annual basis, the greater the risk is that the wheel and associated structures will be considered a permanent summer feature of the RPG – something that Historic England would not find acceptable. We encourage your authority to

consider if relocating the wheel elsewhere within Torquay or Paignton would be more appropriate.

Recommendation:

Historic England has strong 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 all money raised contributes towards specified works that will result in the removal of the RPG from the 'at risk' register.

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 212, 213 and 215 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 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.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice.

**The Gardens Trust**

We have considered the information provided in support of the application and have liaised with our colleagues in the Devon Gardens Trust.

The RPG is currently on the heritage at risk register (HAR) and the observation wheel has been used as a tourist attraction to attract revenue towards the restoration of degraded heritage features. In our opinion, the ancillary temporary refreshment hut and seating area with white plastic furniture extends the area of impact of the ferris wheel. The Planning Statement outlines future areas where it is hoped funding might be able to address decline. The applicant suggests that the temporary harm to the setting of the RPG is offset by the public benefit accruing from the money raised for restoration.

The Local Heritage Society in its online response cites that the only reason the RPG is still on the HAR is due to the presence of the ferris wheel. Looking at the HAR entry it states 'Important formal Victorian seaside park with later phases and additions. Major development agreed, including a multi-storey, mixed-use building to be attached to the grade II listed Pavilion and the seasonal installation of a Ferris wheel. A condition report and management plan for the gardens was completed in early 2017.' The vulnerability category is classed as 'Medium.'

We ask that your officers satisfy themselves that the public benefit outweighs the temporary disbenefit of having this structure in a prominent position within the RPG. On this basis, we confirm we do not wish to comment further on the proposals at this stage.

### **Torbay Council Principal Historic Environment Officer**

Conclude that 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, and thus is 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.

It is noted that planning history on the site has demonstrated that it is considered that the public benefit associated with the proposed development is sufficient to outweigh the harm caused to designated heritage assets, despite concerns raised by various heritage organisations, most notably Historic England.

Should the application be approved, it is strongly recommended that the masterplan for the site be updated and agreed with Historic England to identify the current position and confirm defined beneficial outcomes and timescales for the removal of the RPG from the 'at risk' register. This should include the possibilities for the relocation of the wheel to a less sensitive location within the bay which would deliver the same public benefits to the area without the associated harm to designated heritage assets. This could allow the RPG to be removed from the 'at risk' register which is a clear objective of the Torbay Heritage Strategy.

### **Green Infrastructure Manager (SWISCo)**

No comments offered.

### **Tree Officer**

No objections to proposed development. Conditions should be applied to ensure tree protection and site management does not impact on retained trees.

### **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**

The lighting impact assessment submitted with the application demonstrates that the

proposed lights should not result in nuisance light spill. The scheme should be implemented as specified in the report.

The observation wheel and ancillary developments shall not operate between the hours of 23:00 and 08:00 daily.

Further discussion regarding noise concerns raised by the Torquay Neighbourhood Forum offered the recommendation of an informative to be added to any formal decision regarding noise nuisance.

**Highway Authority (Swisco):**

The Local Highway Authority requires the following to be resolved before a positive recommendation can be made in respect to this planning application:

- The cycle parking provision for employees does not comply with local planning standards. Cycle parking for visitors should also be considered.
- The access, egress, and turning arrangements for construction vehicles should be demonstrated.
- The MSTP does not provide details on parking arrangements for operative vehicles and site visitors during the site set up.

Once the above is resolved, the application will be subject to a suitably worded planning condition, as mentioned in the emergency access section of this response.

**Devon County Council Ecology**

No objection subject to conditioning of the lighting report and a biodiversity net gain condition.

Confirmation offered that lighting report as previously submitted would be acceptable.

**Police Designing Out Crime Officer**

No objections.

**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, biodiversity 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.

As a material consideration it is noted that the English Riviera BID Company Ltd supports the proposal stating that "*The English Riviera Wheel has become an iconic a very popular summer attraction on Torquay seafront and we would welcome it's return again this year. It is widely photographed and supports our Destination Marketing activities*".

It is also noted that the Torquay Neighbourhood Forum supports the principle of development in the location proposed in terms of how it supports the tourism offer in the area and aligns with objectives to support tourism and the economy.

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 one of general principle and is subject to wider considerations which will be considered below.

## **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 and the wheel is an identified harming element.

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 202). The guidance further within Paragraph 210 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 212 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 213, 214 and 215 provide further guidance relative to level of harm, which will be explored in more detail within this section below.

In terms of key considerations, it is accepted that 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 four extended summer periods (detailed as mid-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 and The Gardens 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 matters, 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 £110,000 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 would be paid across the 4 years of any potential permission with £30,000 paid in 2024 and 2025 and £25,000 paid in 2027 and 2028.

The concept of seeking to offset short term harm with longer term conservation gains follows those 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), and most recently in 2024 permission providing £30,000 for pavement improvement works.

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. In terms of the balance of heritage harm and heritage benefit it is considered that the impacts are short term and reversible in nature

The submission presents that the heritage impact of granting permission for four 'seasons' would be offset through the proposed ring-fenced investment in the Registered Park and Garden of £110,000. 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.

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.

It is noted that planning history on the site has demonstrated that it is considered that the public benefit associated with the proposed development is sufficient to outweigh the harm caused to designated heritage assets, despite concerns raised by various heritage organisations, most notably Historic England. This is a relative material consideration notwithstanding some minor variances across the applications on the level of funding and works expected.

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 four year (extended summer season) permission in the location proposed when considering the level of harm to heritage assets and the previous planning consents as a material consideration.

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 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 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 are 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 is 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 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. Previous consent has 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 and aligned with guidance contained within the NPPF regarding protecting and delivering appropriate levels of amenity.

#### **5. Arboricultural impact**

Policy C4 of the Local Plan states that development will not be permitted when it would seriously harm, either directly or indirectly, protected trees or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. Policy C4 goes on to state that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

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 consistent with previous years, which established a suitable relationship with consideration of the crown and rooting protection area of these trees. This location was previously considered acceptable on arboricultural grounds under the previous planning permissions for the wheel.

The application is supported by a tree report, tree protection plan and method statement consistent with previous applications. In the absence of any comments of objection from the Council's tree officer the proposal is considered acceptable on arboricultural grounds.

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

## **6. Ecology, Biodiversity and Marine Environment**

Policy NC1 outlines that the Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity. 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.

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.

In terms of further matters Biodiversity Net Gain (BNG) is now mandatory subject to certain exemptions. This means where applicable development must deliver a 10% gain in biodiversity. In terms of this application the submission is accompanied by the statutory Biodiversity Net Gain Metric, which ultimately proposes the planting of two trees within the site to positively address the statutory requirement. Devon County Council's Ecologist is satisfied with the information submitted.

For the reasons above 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. It is noted that the English Riviera BID Company Ltd supports the proposal stating that it has become an iconic and very popular summer attraction on Torquay seafront welcome it's return, furthering that it is widely photographed and supports our Destination Marketing activities.

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, however the impact is largely mitigated by the longer term heritage gains secured via funding for improvement works with the Registered Park and Garden. The proposals present biodiversity net gain as a positive matter.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is on balance considered to represent sustainable development when considering the positive tourism and economic benefits weighed against the short term heritage harm that is itself largely mitigated by the longer term heritage gains that will be delivered via the funding mechanism.

### **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.

The development will present additions spend within the area through inward operational staff.

There is proposed conservation payment of £110,000 to aid fund a resurfacing plan for the park and garden, 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 that weigh against the scheme. To offset the harm the proposal presents a financial obligation of £110,000 to be spent specifically on a heritage-based resurfacing scheme as identified within the supporting updated conservation plan. The resurfacing of pathways is deemed to present a heritage benefit that presents some mitigation in terms of long-term benefits seeking to offset the short term harm of placing the wheel and associated development in the park on a temporary basis.

Aside the heritage considerations there is clearly tourism and economic benefits to the scheme in terms of a tourism attraction, a somewhat iconic visual feature that is a prominent feature within the wider seafront. It is noted that the English Riviera BID Company Ltd supports the proposal stating that it has become an iconic and very popular summer attraction on Torquay seafront welcome it's return, furthering that it is

widely photographed and supports our Destination Marketing activities. It is also supported by the Neighbourhood Forum.

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), the development is recommended for approval as the harm to heritage assets is considered mitigated by the proposed conservation gain, and the economic and tourism benefits of the facility.

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**

Planning permission is granted, with conditions relating to the temporary timing, hours of operation, lighting, operational management, restrictions on external storage, and restriction on means of enclosures, and subject to a legal agreement to secure £110,000 for improvement works within the registered park and garden.

### **Proposed Conditions**

#### **Temporary period:**

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 15<sup>th</sup> to October 31<sup>st</sup> inclusive for the years 2025-2028. The observation wheel and ancillary development shall be removed before 1st November each year 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.

#### **Hours of operation**

The observation wheel and the associated ancillary catering facilities shall only operate, and be lit, between the hours of 08.00 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.

#### **Lighting**

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.

### **Operations and traffic statement**

The development shall at all times be managed and operated in full accordance with the submitted and approved Method Statement & Traffic Plan (RMS-CS-UK-01).

Reason: In order to protect the structural integrity of the site and amenity, in accordance with Policies DE1, DE3, TA2, C4, HE1 and SS10 of the Torbay Local Plan 2012-2030 and Policy TT2 of the Torquay Neighbourhood Plan.

### **Tree Protection**

The development shall proceed in accordance with the submitted and approved Arboricultural Method Statement Ref: RSKHL\_8315.24 and Tree Protection Plan Ref: RSKHL\_8315.24\_TPP.

All tree protection measures shall be installed prior to the commencement of both the installation and removal phases each season and shall be retained in full during both processes.

Reason: To secure development that is acceptable on arboricultural merit and in accordance with policies DE1 and C4 of the Torbay Local Plan.

### **Storage**

At all times there shall be no external storage, including waste storage (excluding reasonable customer-facing waste bins) within the site, ancillary to the development hereby approved.

Reason: To provide an acceptable form of development within the public setting of the Registered Park and Garden and Core Tourism Investment Area, in accordance with Policies DE1, DE3, T01, SS10 and HE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan.

### **Means of enclosure**

No additional means of enclosure other than those shown on the approved plans shall be erected in association with the development.

Reason: To provide an acceptable form of development within the public setting of the Registered Park and Garden and Core Tourism Investment Area, in accordance with Policies DE1, DE3, T01, SS10 and HE1 of the Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan.

### **Informative(s)**

#### **Noise**

The operation of the development hereby approved could affect neighbours as a result of noise or other disturbance if it is not well managed. The operator should be mindful of this. If complaints of disturbance are received by the Council, these would be investigated and formal action taken under the Environmental Protection Act 1990, Anti-Social Behaviour, Crime and Policing Act 2014 or other relevant legislation if required. The grant of this planning consent would not automatically prevent such action

## **Biodiversity Net Gain**

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition)" that development may not begin unless:

- a. a Biodiversity Gain Plan has been submitted to the planning authority, and
- b. the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information provided to determine the application this permission is considered to be one which will require the approval of a biodiversity gain plan before development can begin because none of the statutory exemptions or transitional arrangements are considered to apply.

## **Positive and Proactive Working**

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 with the applicant in a positive and proactive way by clearly setting out concerns relating to the proposal and providing an opportunity for the applicant to withdraw the application. However, the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

## **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