

DEVELOPMENT PLAN

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

Unitary Development Plan - current status

The Unitary Development Plan for Sunderland was adopted on 7th September 1998. In the report on each application specific reference will be made to those policies and proposals, which are particularly relevant to the application site and proposal. The UDP also includes a number of city wide and strategic policies and objectives, which when appropriate will be identified.

STANDARD CONDITIONS

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

SITE PLANS

The site plans included in each report are illustrative only.

PUBLICITY/CONSULTATIONS

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (General Development Procedure) Order 1995.

LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees;
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the Office of the Chief Executive in the Civic Centre or via the internet at www.sunderland.gov.uk/online-applications/

Janet Johnson
Deputy Chief Executive

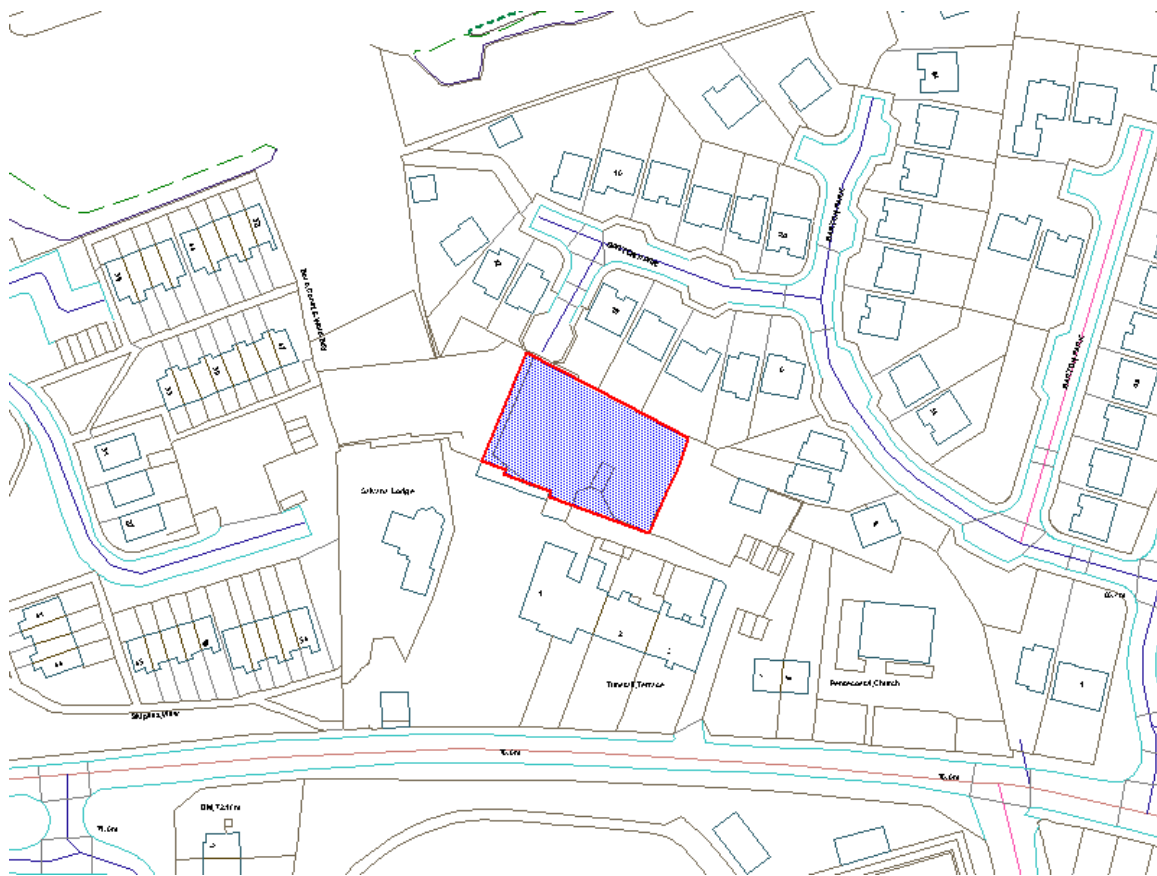
Reference No.: 08/04460/FUL Full Application

Proposal: **Erection of 4 dwelling houses with associated access taken from Barton Park.**

Location: Land To The Rear Of Tunstall Terrace Ryhope Sunderland

Ward: Ryhope
Applicant: Mr Gary Hepple
Date Valid: 6 August 2009
Target Date: 1 October 2009

Location Plan



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PROPOSAL:

Planning permission is sought to erect 4no. semi-detached dwellings on a currently vacant site. Each dwelling would be two-storeys in height and would incorporate an additional habitable floor in the roof space. The height of each dwelling was originally proposed at 9.1m to ridgeline with 1no. dormer in the front and rooflights in the rear of the roof. However, amended plans were subsequently received proposing a height of 8.35m to ridgeline, a single dormer in the rear and a rooflight in the front of the roof of each dwelling. The eaves of

the dwellings would allow a clearance of 5.1m from ground level and the roof would be of a gabled style. Three bedrooms would be incorporated into each dwelling and each pair of semis would measure 9.4m in width (to be evenly divided) and 8.9m in depth, with handed 2.3m wide gabled porches projecting 500mm beyond the front building lines.

Access to the proposed dwellings is proposed via a 13m long southward extension to Barton Park, at the end of which a hammerhead would be incorporated. A total of 5no. parking spaces would be provided, 1no. for each proposed dwelling in addition to a visitor space to be incorporated to the north of the site. This arrangement superseded a previously proposed arrangement of 4no. unsuitably located spaces.

The site lies within a predominantly residential area. It comprises an area of disused former allotment land which divides the Barton Park estate to the north and Tunstall Terrace, off Tunstall Bank, to the south. The site is currently accessed via a gated, but damaged, entranceway off the rear alleyway of Tunstall Terrace and steel palisade fencing divides the site from Barton Park. An outbuilding, various mounds of rubble and building materials can be found within the site, which slopes notably upward from west to east and is raised above the ground level of several properties in Barton Park. Trees exist in the rear gardens of a number of the properties in Barton Park which border the application site. The site is bordered by timber fencing, the western section of which is damaged and appears to have been recently repositioned.

There is no record of any previous planning applications relating to this site.

Whilst applications of this nature would normally be determined under delegated powers, a letter was submitted by Councillor D. R. Wares on 28.08.2009 requesting that the application be referred to the Development Control Sub-Committee.

TYPE OF PUBLICITY:

Site Notice Posted
Neighbour Notifications

CONSULTEES:

Northumbrian Water
Director Of Community And Cultural Services

Final Date for Receipt of Representations: **04.09.2009**

REPRESENTATIONS:

The LPA have received representations from residents of nine neighbouring properties as well as a letter on behalf of the Church Commission and a petition signed by residents of thirteen properties in Barton Park (this was only circulated amongst the properties which the resident who submitted the petition felt would be directly affected by the proposal). The concerns raised within these representations are summarised as follows:

- Numerous ownership issues were raised and, accordingly, the application was made invalid. The applicant subsequently provided the requisite notice by way of local advertisement published in the Sunderland Echo and signed Certificate C, in accordance with the protocol provided by the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) for situations where some or all of the site is of unknown ownership. Notwithstanding the provision of the GDPO, it should be noted that the issue of ownership is strictly a civil matter.
- The proposed development would encroach into a section of the alleyway running along the rear of Tunstall Terrace which is used as a vehicular turning area.
- Barton Park comprises exclusively of two-storey detached executive-style properties, contrary to a statement made in the applicant's Design and Access Statement and, as such, the proposed semi-detached properties comprising three floors are not in-keeping with those which exist within the street.
- The proposed dwellings would overlook the gardens of nos. 8, 9 and 10 Barton Park and the living area of no. 10, to the detriment of the privacy of residents of these properties, and that the proposed dwellings, by means of their height and raised ground levels, would overshadow properties on Barton Park and would appear overbearing when viewed from the curtilage of these properties.
- The proposed parking arrangement is not sufficient to cope with the ensuing increase in the number of cars using Barton Park, which would have a negative impact upon the estate by exacerbating existing congestion problems. Access to the site is poor and the access of emergency service vehicles would be compromised by the proposal.
- Development work would cause disturbance to residents of Barton Park and could pose a danger, particularly to small children. In addition, Barton Park would be used as an access for construction vehicles which would leave dirt on the street.
- The application indicates that there are no trees on adjoining properties, however the rear gardens of properties on Barton Park which adjoin the application site all have trees and shrubs along their boundaries and the proposed development may result in damage to this planting. These issues were brought to the applicant's attention and, accordingly, the former matter was addressed with the amended site plan received 17.09.2009, which indicates the positions of trees to the rear of nos. 8, 9 and 10 Barton Park. Grievances have also been expressed over the number of trees which were removed from site prior to the submission of the application.
- The proposal would represent an over-development of the site; residents are generally of the opinion that, should the site be developed for residential use, this should be limited to 2no. detached dwellings.
- Concerns have been expressed over the LPA and applicant's lack of consultation with local residents. However, the correct notification has been provided by the LPA, in accordance with the requirements as set out in the GDPO, in the form of letters to neighbouring residents and the erection of site

notices and The Validation of Applications in Tyne and Wear checklist states that a Statement of Community Involvement will normally only be required for major development applications. Given that the proposal is for fewer than 10no. houses, and is therefore classed as a 'minor' development, the LPA were unable to insist upon such a level of consultation to be undertaken by the applicant in this instance.

- The proposed development would compromise the ability of nos. 8, 9 and 10 Barton Park to extend in the future.
- Surface water drains would have to be adopted by Northumbrian Water. Concerns were also raised regarding the potential impact of the proposed development on existing drains.
- Construction work within such close proximity to the boundary of no. 9 Barton Park, particularly by using scaffolding, would render the rear garden of this property unusable during this time.
- The proposal would adversely affect local property values and the saleability of properties within the area. However, this is not a material planning consideration and, as such, shall not influence the determination of this application.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments
B_24_Appropriate provision for utility services in building development
CN_17_Tree Preservation Orders and replacement of trees
CN_18_Promotion of nature conservation (general)
CN_22_Developments affecting protected wildlife species and habitats
CN_23_Measures to conserve/ improve wildlife corridors
EN_1_Improvement of the environment
EN_10_Proposals for unallocated sites to be compatible with the neighbourhood
EN_14_Development on unstable or contaminated land or land at risk from landfill/mine gas
H_1_Provision for new housing
H_4_Density of housing development to at least reflect that of the locality
L_7_Protection of recreational and amenity land
T_14_Accessibility of new developments, need to avoid congestion and safety problems arising
T_22_Parking standards in new developments
R_1_Working towards environmentally sustainable development

COMMENTS:

The main issues to be considered in assessing the application are:

- The principle of the residential development of the site.
- The scale, external appearance and layout of the proposed dwellings.
- Residential amenity.
- The highway implications of the proposal, and

- Any potential impact upon existing trees and local wildlife (particularly protected species).

PRINCIPLE

The site in question is not allocated for any specific land use by the UDP and, as such, is subject to policy EN10. This policy dictates that, where the UDP does not indicate any proposals for change, the existing pattern of land use is intended to remain. Therefore, proposals for development in such areas must be compatible with the principal use of the neighbourhood. Given that the area is predominantly residential in character and the site is situated between, and adjoins, 2no. residential areas the proposal complies with policy EN10.

Given that the site was formerly used as an allotment, policy L9 of the UDP is also applicable in this instance, which states that land used for allotments will be retained for this purpose except where:

- (i) alternative provision is made in the locality;
- (ii) the site is allocated for another purpose elsewhere in the plan;
- (iii) the site is identified by the Council as surplus to requirements;
- (iv) a site has become disused or significantly under used through lack of local demand. In this case the Council will give prior consideration to the need for public open space or other recreational uses of the site.

Use of allotments for business/industrial purposes will be resisted.'

Being formerly used as allotments, the site is classified as Greenfield land, having regard to Annex B of PPS3). However, its location and closed access from the nearby open space, namely the Ryhope Golf Course, makes the site somewhat unsuitable for recreational use, nor does it appear likely that it will be re-established as an allotment in the foreseeable future.

Policy R1 of the UDP states that proposals 'will be considered in relation to achieving a satisfactory balance between accommodating change and protecting valued and important aspects of the natural and built environment' and 'the impact of development will be considered against the need to respect the long term welfare of the environment by making the most efficient use of land, energy and other resources'. Given the residential nature of the area surrounding the site, it is considered that its residential development offers a more effective and realistically achievable use of the land than its conversion to a recreational use. As such, the principle of the proposed residential development of the site is considered to be acceptable.

SCALE, EXTERNAL APPEARANCE AND LAYOUT

Policy B2 of the UDP requires that the scale, massing, setting and layout of new developments should respect and enhance the best qualities of nearby properties and the locality and retain acceptable levels of privacy.

Numerous concerns have been voiced by neighbouring residents to this regard, in particular the relationship between the proposed dwellings, which would be

semi-detached providing 3no. floors (including that in the roof space) and the existing dwellings within Barton Park, all of which are two-storey, detached properties. Whilst it is appreciated that the proposed dwellings would not be of the same type as those within Barton Park (i.e. semi-detached as opposed to detached), from which the site would be accessed, it must be noted that the dwellings within Barton Park are varied in design and are of differing heights, so there is no established building pattern or single scale of accommodation or design concept within the estate. In addition, there is a terrace of 3no. properties to the south of the site and a pair of semi-detached dwellings to the east of this terrace, so there exists examples of various house types locally. Whilst several residents have described the proposed dwellings as three-storey buildings, they would only appear as being two-storeys in height, given that one of the floors would be incorporated in the roof space of each dwelling.

The proposed dwellings are considered to be of an appropriate design in this instance in terms of their scale and external appearance and, due to their siting, would not appear unduly obtrusive when viewed from Barton Park or the rear alleyway of Tunstall Terrace. The position of the pair of semis would be staggered, which is a feature of Barton Park, and the proposed fenestration would provide a positive degree of symmetry between the properties. The proposed dormers would be situated to the rear and the previously proposed roof has been lowered by approximately 760mm, which is considered to be far more proportionate to the remainder of the dwellings as that previously proposed. In order to ensure that the proposed dwellings are finished to an acceptable standard, it is recommended that a condition be imposed, should Members be minded to approve the application, requiring samples of all external materials to be submitted and approved by the LPA prior to the commencement of the development.

Upon compliance with such a condition, the scale, external appearance and layout of the proposed dwellings is considered to be acceptable, in accordance with the requirements of policy B2 of the adopted UDP.

RESIDENTIAL AMENITY

In order to make such an assessment, due regard must be given to policy B2 of the adopted UDP which relates to new developments and extensions to existing buildings and states that their scale, massing, layout or setting should, 'respect and enhance the best qualities of nearby properties and the locality and retain acceptable levels of privacy'.

Given the site's close proximity to existing residential properties, the Local Authority's minimum spacing standards, as set out within the Council's adopted Residential Design Guide Supplementary Planning Document (SPD), should be given due regard. Of particular interest is Section 10C, which indicates a minimum gap of 21 metres between main facing windows and 14 metres between main windows facing onto secondary windows or blank gables. This Section goes on to state that for every one metre in difference of ground levels an additional two metres should be added to the aforementioned distances.

The proposed dwellings are orientated at a somewhat oblique angle to the neighbouring properties to the north in Barton Park which, it is considered, would be most significantly affected by the proposal. The northernmost plot (Plot 1) would be sited directly to the rear of no. 9 Barton Park and a number of primary

windows exist in the rear elevation of this property. Given its orientation, this plot would be situated a maximum of 14.3 metres and a minimum of 13.6 metres from the rear facing windows of no. 9 Barton Park. Whilst this is only marginally substandard, having regard to the guidance set out in the adopted Residential Design Guide SPD, it must also be noted that the ground floor level of Plot 1 would be slightly higher than the ground level of no. 9 Barton Park and, as such, the aforementioned spacing standards should be rigorously applied in this instance. The proposed dwellings would have gabled roofs with maximum heights of 8.4m from ground level, which it is considered would appear particularly overbearing from the rear garden of no. 9 Barton Park. As such, it is considered that the proposal would unduly compromise the outlook from the rear facing windows and would appear overbearing from the rear garden of this property.

Despite the concerns raised by the occupant of no. 10 Barton Park, given that none of the proposed dwellings would be sited directly to the rear of this property it is not considered that the proposal would appear unduly obtrusive from the curtilage of this neighbouring property.

It must also be noted that the site slopes significantly downward from east to west and less notably downward from south to north so, given the orientation of the site in relation to the existing dwellings, the proposed units would result in a degree of overshadowing of the rear garden of, not only no. 9 Barton Park, but also that of no. 10, the adjacent property to the west in particular. Such overshadowing would be at its fullest during mornings and early afternoons and would lessen later in the day, although at such times no. 8 would experience a degree of overshadowing. However, on balance, it is not considered that such overshadowing would occur to such an extent as to reasonably warrant refusal of planning permission in this instance.

Concerns were also raised by neighbouring residents that the proposed dwellings would overlook the gardens of nos. 8, 9 and 10 Barton Park. However, whilst 1no. window is proposed in the gable end of each unit, these would serve bathrooms and, as such, a condition could be reasonably imposed requiring these windows to be obscurely glazed and have restrictive opening in order to protect the privacy of neighbours.

Further concerns were raised by neighbouring residents that the proposal represents an over-development of the site. The Design and Access Statement indicates that the site equates to 1105 square metres (0.11 hectares). Based upon the density ratio of 30no. (d.p.h.), the site could accommodate 3no. dwellings and, in applying the ratio of 40no. d.p.h., could accommodate 4no. dwellings. Policy SP5 of the Interim Strategy for Housing Land (ISHL) recommends a minimum net density of 30no. d.p.h. and 40no. d.p.h. where development exploits or delivers accessibility by public transport. Whilst public transport is not particularly accessible from the site, it would appear that all proposed dwellings would offer sufficient internal and external amenity space to potential occupants. As such, it is not considered that the proposal would constitute an over-development of the site and, given that it constitutes a small 'windfall' site, it is not considered that the proposal would compromise the aims of the ISHL.

However, with regards to the impact of the proposal on the outlook from the rear facing windows of no. 9 Barton Park and its overbearing impact on the rear

garden of this property, it is considered that the proposal would be unduly detrimental to residential amenity, contrary to policy B2 of the adopted UDP and Section 10C of the Residential Design Guide SPD.

HIGHWAYS IMPLICATIONS

Topic 13 of the adopted Development Control Supplementary Planning Guidance (SPG), which expands upon policy T22 of the adopted UDP, indicates that a minimum of five spaces must be provided in this instance, based upon the standard of one space per dwelling for residents in addition to one space per three dwellings for visitors. The proposal indicates the provision of a single space in front of each plot in addition to a single visitor space adjacent to the space intended for Plot 1 to the north of the site. Such an arrangement complies with the aforementioned standards and each proposed space is considered to be adequately accessible, to the proposed parking layout is considered to be acceptable and, as such, it is not considered that any unacceptable levels of congestion would ensue, or existing levels unduly worsened, as a direct result of the proposed development.

Concerns were raised by neighbouring residents regarding the adequacy of the access into the site and queried whether this would be adequate to cater for emergency vehicles. The original site plan proposed a block paved private drive, however an access configured as a street serving 4no. or more dwellings must be constructed to adoptable standards to comply with the Highways Act 1980; a revised plan was subsequently submitted proposing asphalt. The proposed road width within the development is 4.8 metres, which is the minimum width of a road as cited by the aforementioned Act. An adequate turning head has also been incorporated, however this would not allow for the turning of refuse vehicles, which would therefore be required to park within Barton Park during refuse collection. Although an improved arrangement would be preferred, the submitted access layout complies with minimum standards and is therefore considered to be acceptable.

The southern extent of the development, including part of Plot 4, would encroach into a section of highway running along the rear of Tunstall Terrace which is used as a vehicular turning area; this lane is not adopted but has the appearance and features of a privately maintained street which has an established use as highway after 20 years unfettered use, so its status is considered to be classed as highway. Such an encroachment would therefore require a 'stopping-up' of the highway under Section 116 of the Highways Act 1980. However, such an encroachment is considered to be unacceptable given that it would unduly restrict manoeuvrability of motorists within this rear lane, to the detriment of the free flow of traffic and the safety of motorists and pedestrians using this lane.

As such, it is considered that the proposal would create conditions prejudicial to highway safety, contrary to policies T14 and T22 of the adopted UDP and Topic 13 of the adopted Development Control SPG.

IMPACT ON TREES AND LOCAL WILDLIFE

It has been pointed out that the application indicates there are no trees on adjoining properties, however the rear gardens of properties on Barton Park which adjoin the application site all have trees and shrubs along their boundaries and the proposed development may result in damage to this planting. These

issues were brought to the applicant's attention and, accordingly, the former matter was addressed with the amended site plan received 17.09.2009, which indicates the positions of trees to the rear of nos. 8, 9 and 10 Barton Park. Grievances have also been expressed over the number of trees which were removed from site prior to the submission of the application, although these were not subject to preservation orders and, as such, no breach appears to have been made. Notwithstanding this, a condition could reasonably be imposed on any approval of planning permission requiring a scheme of landscaping to be submitted to the satisfaction of the LPA to include a level of tree planting.

Whilst part of the site is situated within a Wildlife Corridor, as allocated by policy CN23 of the adopted UDP, it should be noted that the majority of this particular Corridor has already been redeveloped, namely Barton Park. There does not appear to be any evidence of protected species within the site and there are no buildings of any merit proposed for demolition. As such, it is not considered that the proposal is likely to compromise the existence of any protected species or their habitats.

OTHER ISSUES

Local residents also raised concerns that development work would cause disturbance and could pose a danger, particularly to small children and that Barton Park would be used as an access for construction vehicles which would leave dirt on the street. However, it is considered that conditions requiring a suitable construction methodology to be submitted, including hours of construction, and a wheel washing facility to be provided would adequately address such concerns.

The residents of nos. 8, 9 and 10 Barton Park raised concerns that the proposal would compromise their ability to extend in the future, however the current proposal must only be considered having regard to the site and its surroundings as they exist.

The occupant of no. 9 also raised concerns that the required construction work within such close proximity to the boundary of this site, particularly by using scaffolding, would render their rear garden unusable during such time. Such an issue could constitute a civil dispute and, as such, cannot be considered as a material planning consideration. It is accepted that development works can produce temporary problems, but these can be controlled to some extent through the imposition of conditions.

Another resident also expressed strong anxieties over the potential impact of the proposed development on the drainage network within and around the site and that surface water drains would have to be adopted by Northumbrian Water. This resident was advised that Northumbrian Water were consulted and raised no objections to the development and the submitted site plan indicates the position of an existing main sewer, which would not be affected. Notwithstanding this, the submission of details of foul and surface water drainage could reasonably have been imposed as a condition on any planning permission to further allay such concerns.

CONCLUSION

It is considered that the proposed development would unduly compromise highway safety and the amenities of no. 9 Barton Park, contrary to the requirements of policies B2, T14 and T22 of the adopted UDP and section 10C of the adopted Residential Design Guide Supplementary Planning Document (SPD) and the application should be refused accordingly.

RECOMMENDATION: Refuse

Reasons:

- 1 The proposed development would create conditions prejudicial to highway safety through encroachment onto the highway which runs along the rear of Tunstall Terrace, hereby compromising the manoeuvrability of motorists by reducing the 'turning area' of this rear alleyway, contrary to Policy T14 of the Unitary Development Plan.
- 2 The proposed development, by virtue of the position, scale and design of the northernmost plot, would unduly compromise the outlook from, and will represent an overbearing and overly dominant feature when viewed from the rear garden of, no. 9 Barton Park, to the detriment of residential amenity and contrary to policy B2 of the adopted Unitary Development Plan and Section 10C of the adopted Residential Design Guide Supplementary Planning Document.

CITY
CENTRE

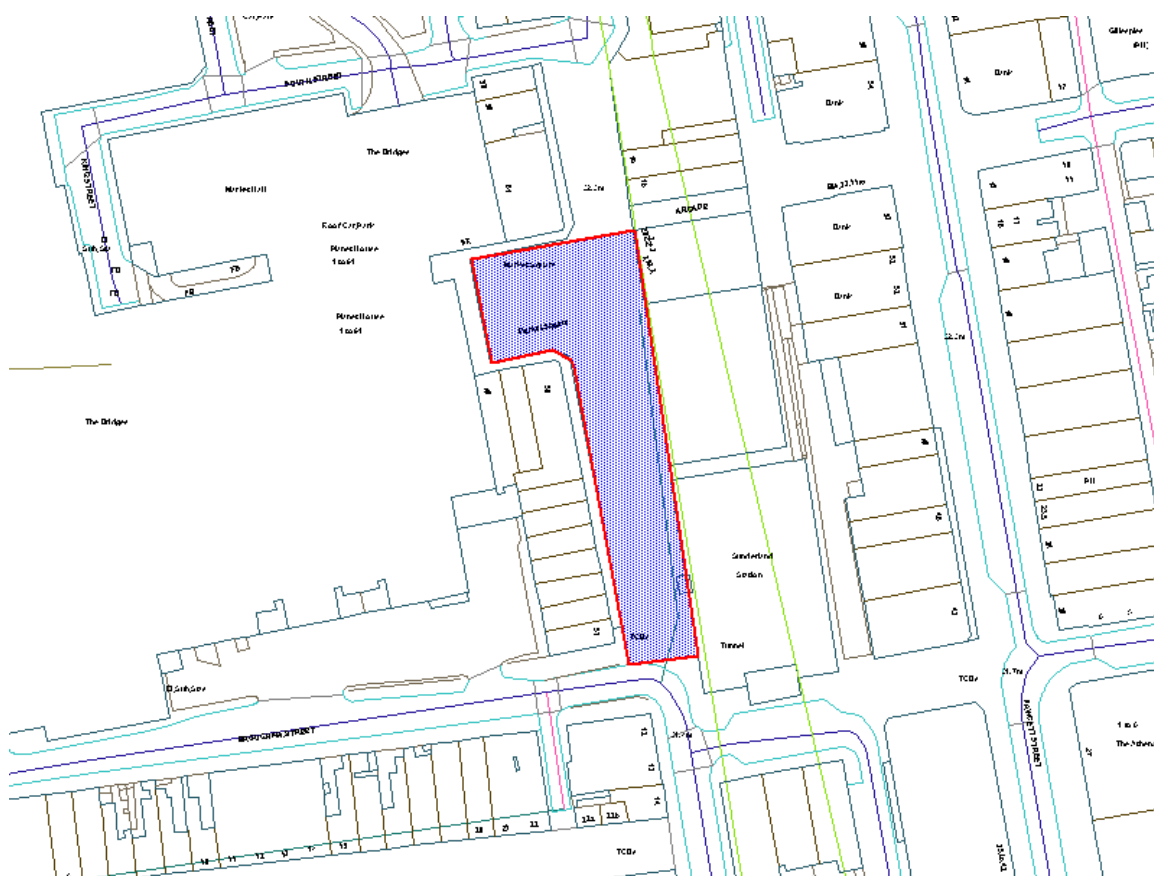
Reference No.: 09/03523/LAP Development by City(Regulation 3)

Proposal: Temporary change of use of land to provide Christmas food court, including erection of Christmas tree and carousel.

Location: Market Square Sunderland SR1 3HW

Ward: Millfield
Applicant: SCC Culture And Tourism
Date Valid: 24 September 2009
Target Date: 19 November 2009

Location Plan



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PROPOSAL:

Planning permission is sought for the temporary change of use of land to a Christmas food court, including erection of Christmas tree, German foodstalls and carousel at Market Square, Sunderland city centre, SR1 3WH.

The proposed temporary development affects the Market Square in Sunderland city centre, a pedestrianised thoroughfare stretching from the junction of Waterloo Place/Brougham Street in the south to the junction of Union Street and

South Street to the north. The Square widens at the entrance to The Bridges indoor shopping mall and is flanked by shops, food outlets, banks and building societies on all sides, as well as buildings associated with Sunderland's central railway/Metro station at its south-east. The temporary use of the land is proposed for the period between 19th November 2009 and 3rd January 2010, with de-rig on 4th January 2010.

The development associated with the temporary change in the use of the land centres on the widest area of the Market Square. It is intended to erect a Christmas tree outside the entrance to The Bridges, and a carousel slightly further to the east, which will be enclosed by a 1.8-metre high fence at the end of each day of operation.

To the south of the carousel, on either side of the pedestrian street, it is intended to erect three food stalls, one of which will sell confectionery, one which will sell bratwurst and one which will operate as a bar. The stalls are to be positioned to permit emergency vehicle access to the Market Square and allow ease of pedestrian movement throughout the operation of the food court without restricting access to adjacent shops or the entrance to The Bridges.

Members will recall that four similar applications (refs. 04/02273/LAP, 05/03642/LAP, 06/04327/LAP and 08/03759/LAP) for temporary German/Christmas markets at this site were approved by this Committee in 2004, 2005, 2006 and 2008 respectively. In 2007, the market was held for a period of time short enough to benefit from the permitted development rights afforded by Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 1995, which allows the temporary use of land for the purpose of holding a market for 14 days per calendar year.

It should be noted at this stage that the information submitted in respect of this application is based upon the Christmas food court of 2008. It is expected that the programme and activities this year will be similar, and the submitted site plan and design and access statement reflects this. However, definitive elevations and dimensions of the buildings and structures associated with the food court are not available until contracts with a provider have been agreed.

TYPE OF PUBLICITY:

Site Notice Posted
Neighbour Notifications

CONSULTEES:

Director Of Community And Cultural Services

Final Date for Receipt of Representations: **20.10.2009**

REPRESENTATIONS:

No letters of representation have been received in response consultation.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments

EN_10_Proposals for unallocated sites to be compatible with the neighbourhood

T_14_Accessibility of new developments, need to avoid congestion and safety problems arising

S_11_Restriction of non retail uses in parts of the city centre and Washington town centre

SA_71_Criteria for change of use to non-retail uses within the City Centre

COMMENTS:

The main issues to consider in the assessment of this application are:

- The principle of the change of use the of land to a Christmas food court,
- Impact of the temporary development on visual and residential amenity
- Impact of the development on highway/pedestrian safety

PRINCIPLE OF THE CHANGE OF USE

The site is not allocated for any specific land use within the Council's adopted Unitary Development Plan (1998) and, as such, is subject to policy EN10. This policy dictates that, where the UDP does not indicate any proposals for change, the existing pattern of land use is intended to remain. However, the Market Square, The Bridges and adjacent streets are identified as forming a 'prime shopping area' within the City Centre, and as such are subject to policy S11 of the UDP. This states that non-retail use will be restricted within such areas, in line with the proportions and recommendations set out in policy SA 71.1.

Given that the Christmas food stalls essentially introduce a further retail use into the Market Square, and the associated carousel and Christmas tree are likely to attract visitors to this area of the City Centre during the Christmas period, the proposed temporary development is not considered to compromise the existing prime retail function of the Market Square, The Bridges or adjacent streets. An increased footfall in the Market Square created by visitors to the temporary development may ultimately lead to increased custom for existing retailers in the vicinity for that period. As such, the proposed temporary development is argued to comply with policies EN10, S11 and SA71 of the UDP and is therefore considered to be acceptable in principle.

IMPACT OF DEVELOPMENT ON VISUAL AND RESIDENTIAL AMENITY

Policy B2 of the UDP requires any new development to respect and enhance the qualities of nearby properties and the locality and retain acceptable levels of privacy.

Given the City Centre location of the development site, it is generally remote from residential dwellings, with the nearest being the residential tower blocks of Planet House, to the west of the Market Square. In addition, as the proposed structures are of a lightweight appearance and temporary in nature, the proposal is not considered to raise any significant concerns with regard to visual and residential

amenity and the temporary development is therefore also compliant with policy B2 of the UDP.

IMPACT OF DEVELOPMENT ON PEDESTRIAN/HIGHWAY SAFETY

Policy T14 requires proposals for new development to be readily accessible by pedestrians, cyclists and users of public transport; not cause traffic congestion or highway safety problems on existing roads; make appropriate safe provision for access and egress by vehicles, pedestrians, cyclists and other road users; make provision for the loading and unloading of commercial vehicles and indicate how parking requirements will be accommodated.

The proposed development is not considered to raise any concerns with regard to highway and pedestrian safety. The safe movement of emergency services and delivery vehicles within the Market Square will be maintained during the lifetime of the temporary development. As such, the proposal is also considered to comply with policy T14 of the UDP.

CONCLUSION

The proposed temporary change of use and associated buildings and structures are considered to be acceptable and without harm to the prime retail function of the Market Square, visual and residential amenity or highway safety. As such, the proposal is considered to comply with policies B2, EN10, S11, SA71 and T14 of the adopted UDP.

However, given the absence of definitive details of the buildings and structures to be erected in association with the proposed use, it is recommended that a condition be imposed requiring the submission of plans depicting the temporary built development at the site prior to the use of the land for the proposed purpose on an annual basis. This will allow for an assessment of the temporary physical development associated with the use of the land as a Christmas food court to be undertaken each year.

Given that the proposed Christmas food court and associated temporary structures form part of the annual programme of Christmas events in the City and is likely to occur each year for the foreseeable future, it is suggested that if a planning application for the proposal is submitted again next year, it would be expedient to grant consent for the use of this site for the proposed purpose for the period between November and January for the following three years. This will avoid the repeated annual submission of applications for temporary development which has been found to be acceptable in previous years and has been undertaken without having a negative impact on the site.

It is therefore recommended that consent should be granted for the temporary period between 1st November 2009 and 15th January 2010 in accordance with Regulation 3 of the Town and Country Planning General Regulations (1992), subject to the following conditions.

RECOMMENDATION: GRANT CONSENT in accordance with Regulation 3 of the Town and Country Planning General Regulations 1992 subject to the following conditions:

Conditions:

- 1 Notwithstanding the submitted details, the temporary use of the land as a Christmas food court shall be granted only for the following limited period of time: 1st November 2009 to 15th January 2010. At the end of each of this period of time, the site shall be reinstated to its former condition within three working days of the cessation of the use of the land for the approved purpose. Any proposed variation to these dates must first be agreed in writing with the City Council in its capacity as Local Planning Authority, in order to achieve a satisfactory form of development and comply with policies B2 and EN10 of the UDP.
- 2 Notwithstanding any details of the proposed structures given in the application, the use of the land as a Christmas food court during the period specified by Condition 1 of this approval shall not be commenced until full details of all temporary buildings and structures proposed to be erected on the site have been submitted to and approved in writing by the City Council as Local Planning Authority. For the avoidance of doubt, the details to be submitted shall include elevations of the buildings and structures proposed to be erected at the site to a scale of 1:50 or 1:100 and a proposed site layout to a scale of 1:200 or 1:500. The temporary development shall then be carried out in complete accordance with the details approved, unless first agreed in writing with the City Council in its capacity as Local Planning Authority, in the interests of visual amenity and highway safety and to comply with policies B2 and T14 of the UDP.

Reference No.: 09/03531/LAP Development by City(Regulation 3)

Proposal: **Siting of outdoor ice rink for temporary period to include skate changing area and ticket office using temporary structures and siting of four number wooden chalets on terrace adjacent to Museum/Winter Gardens.**

Location: Mowbray Park Mowbray Gardens Burdon Road Sunderland

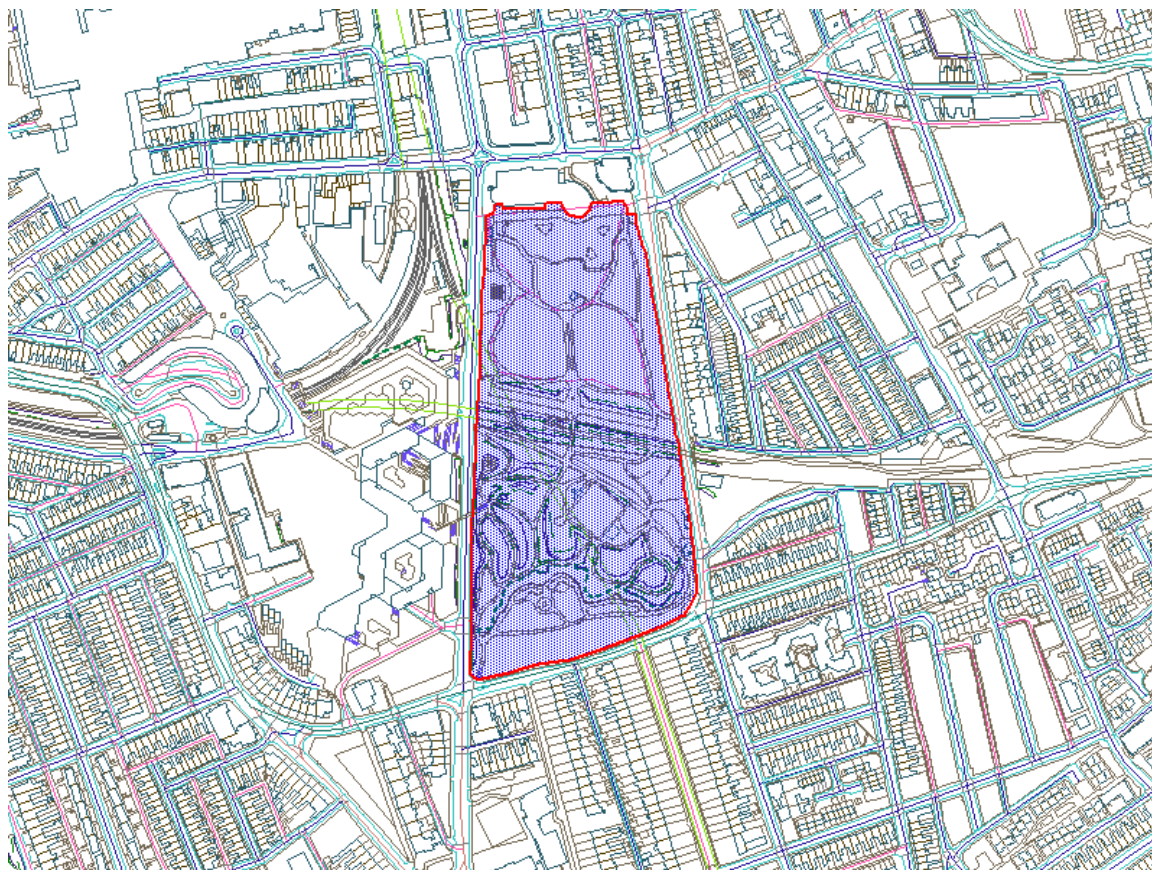
Ward: Hendon

Applicant: Director Of Community And Cultural Services

Date Valid: 7 October 2009

Target Date: 2 December 2009

Location Plan



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PROPOSAL:

Planning permission is sought for the siting of an outdoor ice rink for a temporary period, to include skate changing area and ticket office using temporary structures and siting of four number wooden chalets on terrace adjacent to Museum/Winter Gardens at Mowbray Park, Mowbray Gardens, Burdon Road, Sunderland, SR2 7DN.

The proposed temporary development affects Mowbray Park, an attractive Victorian park included on English Heritage's register of Historic Parks and Gardens (Grade II listing), situated within Sunderland city centre. The park, which is roughly rectangular in shape, is bounded by Borough Road to the north, Toward Road to the east, Park Road to the south and Burdon Road to the west. The Sunderland Museum (also Grade II Listed) and Winter Gardens, stand immediately to the north of the park, backing on to its lake, whilst the park also contains a number of listed structures, including a war memorial, drinking fountain, footbridge and numerous statues. The temporary development is proposed to operate from 19th November 2009 to 3rd January 2010.

The proposed ice rink, skate changing area and ticket office will occupy a grassed, landscaped area at the west of the park, adjacent to the bandstand (not Listed). The landscaped area is bounded on all sides by the network of pedestrian walkways serving the park and contains a number of mature trees, particularly along its western flank. The proposed ice rink will occupy the northern part of the landscaped area and is surrounded by lighting columns and perimeter fencing. Immediately to its south, at a perpendicular angle to the rink, is to be erected a marquee, which will provide changing facilities and a ticket office. A plant area will be located to the rear of the rink.

It is also intended to erect four wooden stalls on the terrace to the rear of the Museum/Winter Gardens at the northern end of the Park. The stalls will be used for the display/sales of arts and crafts.

Members may recall that in 2008, approval was given for a temporary ice rink and the associated structures at the same location (app. no. 08/03907/LAP), whilst in 2007, the rink was located outside the former fire station on High Street West in the City Centre (app. no. 07/04564/LAP).

It should be noted at this stage that the information submitted in respect of this application is based upon the ice rink of 2008, apart from the wooden chalets, which were not erected last year. It is expected that the programme and activities this year will be similar, and the submitted site plan and design and access statement reflects this. However, definitive elevations and dimensions of the buildings and structures associated with the ice rink and chalets are not available until contracts with a provider have been agreed.

TYPE OF PUBLICITY:

Press Notice Advertised
Site Notice Posted
Neighbour Notifications

CONSULTEES:

Director Of Community And Cultural Services
The Garden History Society
Sunniside Partnership

Final Date for Receipt of Representations: **07.11.2009**

REPRESENTATIONS:

No letters of representation have been received to date. However, the period for public consultation does not expire until 7th November 2009, three days after the date of this meeting. Any objections received prior to the Committee meeting will be reported at the meeting.

No responses have yet been received from Sunderland ARC, the Sunnyside Partnership or the Garden History Society. Any responses received by the end of the consultation period (30th October 2009) will be reported at the Committee meeting.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments
B_3_Protection of public/ private open space (urban green space)
B_10_Development affecting the setting of listed buildings
B_18_Protecting the character/ setting of historic parks and gardens
CN_17_Tree Preservation Orders and replacement of trees
CN_21_Developments affecting designated / proposed LNR's, SNCI's or RIGS
L_2_Redressing indoor sport/recreation deficiencies through new development/dual uses
L_3_Encouragement to regional recreational developments in appropriate locations
L_5_Ensuring the availability of Public Parks and amenity open space
L_7_Protection of recreational and amenity land
T_14_Accessibility of new developments, need to avoid congestion and safety problems arising
SA_75_Retention/enhancement of existing public open space

COMMENTS:

The main issues to consider in the assessment of this application are:

- The principle of the proposed temporary built development,
- Impact of the development on the character and appearance of the historic park and residential amenity
- Impact of the development on mature trees and ecology of the park
- Impact of the development on highway/pedestrian safety

PRINCIPLE OF THE TEMPORARY DEVELOPMENT

Mowbray Park is identified as an area for new and upgraded open space/leisure use by the proposals map of the City Council's adopted Unitary Development Plan (1998). As such it is subject to policies L2, L3, L5, L7, B3 and SA75.2 of the UDP. Policies L2, L3 and L5 outline the City Council's commitment to the provision of both indoor and outdoor sports and leisure facilities, public parks and recreational open space. Policy L7 states that land allocated for open space or outdoor recreation will be retained in its existing use unless: alternative provision of an equivalent scale, quality and accessibility is made available; the

development is for educational purposes and there would be no significant effect on the amenity, recreational and wildlife habitat value of the site.

Policy B3 reiterates this by stating that public and private open space will be protected from development which would have a serious impact on its amenity, recreational or nature conservation value.

Policy SA75.2 states that City Centre parks and open spaces will be retained and enhanced. Proposed works to Mowbray Park include major improvements to the lake, promenade and footpaths and renewal of tree planting. Given the park's historic nature, it will be protected from development that will have an adverse impact on its character and setting.

The proposed ice rink and associated buildings and wooden chalets will provide a temporary recreational facility during the festive period. As such, it is not considered that the erection of these structures for a limited period will compromise the use of the park; indeed, the proposal is considered to complement the leisure function of the park and is likely to attract further visitors to it for the duration of the proposed temporary development. As such, the proposal is considered to comply with policies L2, L3, L5, L7, B3 and SA75.2 and is therefore, in principle, acceptable.

IMPACT OF DEVELOPMENT ON CHARACTER AND SETTING OF THE HISTORIC PARK AND RESIDENTIAL AMENITY

Policy B2 of the UDP requires any new development to respect and enhance the qualities of nearby properties and the locality and retain acceptable levels of privacy. Policy B18 states that the character and setting of historic parks and gardens will be protected from adverse impact by development. Policy B10 states that the City Council will seek to ensure that development proposals in the vicinity of listed buildings do not adversely affect their character or setting.

The erection of relatively lightweight temporary buildings for recreational purposes within the park is not considered to be harmful to its appearance or setting. The provision of such a recreational facility for a temporary period is argued to be an appropriate form of development within such a park and will therefore not be detrimental to its character. However, a condition will be imposed requiring the site of the ice rink and associated buildings to be made good and the lawn reinstated when the development has been removed to ensure there is no long-lasting damage to the fabric of the park.

The site of the rink and associated structures is in proximity to two of the aforementioned Listed structures present in the park, namely the Grade II Listed William Hall drinking fountain, the Grade II Listed war memorial, railings and gates and four surrounding lamp standard, whilst the wooden chalets are to the rear of the Grade II Listed Museum and Winter Gardens. The erection of the rink and associated buildings is not considered to adversely affect the setting of these listed structures given the temporary nature of the development and is therefore considered to comply with policy B10 of the UDP.

In addition to the above, given the City Centre location of the development site, it is remote from residential dwellings - the nearest being the residential apartments at the site of the former Mowbray Park Hotel, to the north-east of the development site.

With regard to the above, it is considered that the impact of the development on visual and residential amenity is acceptable and the proposal therefore complies with policies B2 and B18 of the adopted UDP.

IMPACT OF DEVELOPMENT ON ECOLOGY AND TREES

Mowbray Park is identified as a Site of Nature Conservation Importance by the proposals map of the UDP, and as such is subject to policy CN21 therein. This policy states that development which will adversely affect a designated or proposed Local Nature Reserve, Site of Nature Conservation importance or regionally important geological/geomorphological site either directly or indirectly will not be permitted unless no alternative site is reasonably available and the benefits of the proposed development would outweigh the regional or local value of the site or any loss of nature conservation interest can be fully compensated elsewhere within the site or its immediate environs.

Policy CN17 states that the City Council will encourage the retention of trees which make a valuable contribution to the character of an area by the making of tree preservation orders - the retention of trees, hedges and landscape features in all new development will be required where possible.

The application has been accompanied by a statement from the City Council's Countryside Officer, who is satisfied that the proposal will not adversely affect the ecological interest of the site or any legally protected species such as bats and breeding birds. It is not considered necessary to provide an ecological assessment or mitigation and enhancements for biodiversity.

As such, the proposal is not considered to raise any implications with regard to the ecological interest of the site and therefore complies with policy CN21 of the UDP.

In addition to the above, the park contains a number of fine mature trees, a proportion of which border the landscaped area on which the ice rink and associated buildings are proposed to be erected. It is not intended to remove, prune or cut any of the trees within the vicinity of the rink and associated buildings to allow for their erection. As such, the temporary development will not harm any of the trees within and the Park and so the proposal is also considered to comply with the requirements of policy CN17 of the UDP.

IMPACT OF DEVELOPMENT ON PEDESTRIAN/HIGHWAY SAFETY

Policy T14 requires proposals for new development to be readily accessible by pedestrians, cyclists and users of public transport; not cause traffic congestion or highway safety problems on existing roads; make appropriate safe provision for access and egress by vehicles, pedestrians, cyclists and other road users; make provision for the loading and unloading of commercial vehicles and indicate how parking requirements will be accommodated.

The proposed development is not considered to raise any concerns with regard to highway and pedestrian safety, and as such, the proposal is considered to comply with policy T14 of the UDP.

CONCLUSION

The proposed temporary development is considered to be acceptable in principle and not to compromise the status of the protected open space of the park. Neither is it considered to be harmful to the character and setting of the historic park, the listed buildings within and adjacent to the park, residential amenity, the ecology of the park, mature trees within the park or highway and pedestrian safety. As such, the proposal is considered to comply with policies B2, B3, B10, B18, CN21, L2, L3, L5, L7, SA75 and T14 of the adopted UDP.

However, in the absence of definitive details of the buildings and structures to be erected in association with the proposed use, it is recommended that a condition be imposed requiring the submission of plans depicting the temporary built development at the site prior to the use of the land for the proposed purpose on an annual basis. This will allow for an assessment of the temporary physical development associated with the use of the land as an ice rink to be undertaken each year.

Given that the proposed ice rink and associated temporary structures form part of the annual programme of Christmas events in the City and is likely to occur each year for the foreseeable future, it is suggested that if a planning application for the proposal is submitted again next year, it would be expedient to grant consent for the use of this site for the proposed purpose for the period between November and January for the following three years. This will avoid the repeated annual submission of applications for temporary development which has been found to be acceptable in previous years and has been undertaken without having a negative impact on the park.

With regard to the above comments, Members are therefore advised to be minded to grant consent for the proposed development for a temporary period between 1st November 2009 and 15th January 2010 in accordance with Regulation 3 of the Town and Country Planning General Regulations 1992 to enable the formal consultation period, which expires on the 7th November 2009, to expire and allow the application to be determined without undue delay. However, in the event of any new objections are received prior to the meeting then these will be detailed in either a supplement or report to be circulated at the meeting. Alternatively should any further representations be received following the meeting then the application will be reported to the next available Development Control (Sub Committee).

RECOMMENDATION: Members be minded to grant consent in accordance with Regulation 3 of the Town and Country Planning General Regulations 1992 subject to the following conditions:

Conditions:

- 1 Notwithstanding the submitted details, the temporary use of the land for the erection of an ice rink and chalets shall be granted only for the following limited period of time: 1st November 2009 to 15th January 2010. At the end of this period of time, the site shall be reinstated to its former condition within three working days of the cessation of the use of the land for the approved purpose. Any proposed variation to these dates must first be agreed in writing with the City Council in its capacity as Local Planning

Authority, in order to achieve a satisfactory form of development and comply with policies B2 and EN10 of the UDP.

- 2 Notwithstanding any details of the proposed structures given in the application, the use of the land for the erection of an ice rink and chalets during the period specified by Condition 1 of this approval shall not be commenced until full details of all temporary buildings and structures proposed to be erected on the site have been submitted to and approved in writing by the City Council as Local Planning Authority. For the avoidance of doubt, the details to be submitted shall include elevations of the buildings and structures proposed to be erected at the site to a scale of 1:50 or 1:100 and a proposed site layout to a scale of 1:200 or 1:500. The temporary development shall then be carried out in complete accordance with the details approved, unless first agreed in writing with the City Council in its capacity as Local Planning Authority, in the interests of visual amenity and to comply with policies B2, B10, B18, CN17 and CN21 of the UDP.
- 3 No tree shown to be retained on the approved plans shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 "Tree Work", in the interests of visual amenity and to comply with policy CN17 of the UDP.