

<u>No:</u>	BH2016/02431	<u>Ward:</u>	Regency Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	East Street Bastion Grand Junction Road Brighton		
<u>Proposal:</u>	Erection of refreshment kiosk formerly located above the west street shelter hall with A5 use.		
<u>Officer:</u>	Maria Seale, tel: 292175	<u>Valid Date:</u>	14.09.2016
<u>Con Area:</u>	Old Town	<u>Expiry Date:</u>	09.11.2016
		<u>EoT/PPA Date</u>	19.12.2016
<u>Listed Building Grade:</u>	Adj to seafront railings, within setting of Palace Pier		
<u>Agent:</u>	Solar Architecture Ltd 2 Hobs Acre Upper Beeding Steyning BN44 3TZ		
<u>Applicant:</u>	Mr Mark Prior Transport Strategy & Projects Transport Group Room 400 Kings House Grand Avenue Hove BN3 3BQ		

1. RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to GRANT planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan	PL/02	A	22 November 2016
Elevations Proposed	PL/03	C	9 November 2016
Elevations Proposed	PL/04	C	9 November 2016
Block Plan Proposed	PL/20	A	9 November 2016
Elevations Proposed	PL/25		9 November 2016
Elevations Proposed	PL/38		9 November 2016
Floor Plans Proposed	PL/15		30 June 2016
Elevations Proposed	PL/11		30 June 2016
Elevations Proposed	PL/12		30 June 2016

- 2 The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
- 3 The kiosk hereby permitted shall not be open to customers except between the hours of 07.00 and 00.00.

Reason: To safeguard the amenities of occupiers of nearby properties and users of the seafront and in the interests of crime prevention, to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

- 4 Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:2014. In addition, there should be no significant low frequency tones present.

Reason: To protect amenity of occupiers of nearby properties and users of the seafront to comply with policies QD27 and SU10 of the Brighton and Hove Local Plan.

- 5 No internal or external ventilation/odour control extract ducts or plant shall be incorporated within the kiosk without details first being submitted to and approved in writing by the Local Planning Authority. This shall include a scheme for odour control together with associated the sound insulation of it. The measures shall be implemented in strict accordance with the approved details prior to the first occupation of the development and shall thereafter be retained as such.

Reason: To protect amenity of occupiers of nearby properties and users of the seafront and to ensure the special character and appearance of the listed structure is preserved, to comply with policies QD27, SU9, SU10, HE1, HE2 and HE4 of the Brighton and Hove Local Plan and CP15 of the Brighton and Hove City Plan Part One.

- 6 The kiosk shall not be first brought into use until details of the number and location of proposed outdoor seating associated with the development hereby approved, including details of how this will be stored overnight, shall be submitted to and approved in writing by the Local Planning Authority. The approved seating arrangements shall be implemented.

Reason: In the interests of highway safety and visual amenity, to comply with policies TR7, HE3 and HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.

- 7 The roof of the kiosk shall be constructed in copper material and the colours for the kiosk shall be either Colour Scheme A or B as detailed on drawing number 21505/PL/25 submitted on 9/11/16. Any damage to the tarmac surfacing immediately adjacent to the site as a result of construction shall be made good before first occupation. The hanging signage hereby approved shall be painted and un-illuminated.

Reason: To ensure a satisfactory appearance to the development and to comply with policies HE1, HE3, HE4 and HE6 of the Brighton & Hove Local Plan and CP12 and CP15 of the Brighton & Hove City Plan Part One.

- 8 The kiosk shall not be first brought into use until details of the proposed external lighting and guttering system have been submitted to and approved in writing by

the Local Planning Authority. The approved details shall be implemented within the development before it is first occupied.

Reason: To ensure a satisfactory appearance to the development and to comply with policies HE1, HE4 and HE6 of the Brighton & Hove Local Plan and CP12 and CP15 of the Brighton & Hove City Plan Part One.

- 9 Prior to the first occupation of the development hereby approved a Delivery & Service Management Plan, which includes details of how deliveries will take place to the consented development and adjacent premises and the frequency of deliveries shall be submitted to and approved in writing by the Local Planning Authority. All deliveries shall thereafter be carried out in accordance with the approved plan.

Reason: In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, visitors and businesses in accordance with policies SU10, QD27 and TR7 of the Brighton & Hove Local Plan.

- 10 The kiosk shall not be first occupied until a scheme demonstrating how refuse and recycling storage to serve the commercial user of the kiosk will be provided has been submitted to and approved in writing by the Local Planning Authority. Use of the kiosk and associated storage of refuse and recycling shall be carried out as per the approved scheme.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and to comply with policy QD27 of the Brighton & Hove Local Plan.

- 11 No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.

Reason: To safeguard the appearance of the building and the visual amenities of the locality and to comply with policies HE6 of the Brighton & Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

- 2 The applicant is advised that this planning permission does not override the need to obtain a licence for the tables and chairs or a-boards on the highway under the Highways Act 1980. The applicant must contact the Council's Highway Enforcement team for further information. Tel: 01273 292 071, Email: street.licensing@brighton-hove.gov.uk.

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1 The site forms part of the open upper promenade of the seafront in Grand Junction Road next to the 'Kiss Wall', close to the junction with East Street.

- 2.2 The site is centrally located in the city and the area is made up of predominantly commercial and tourist uses and there are some residential properties in properties to the north. The site is located within the Old Town Conservation Area. The site lies within the setting of a number of listed buildings, including the grade II star listed Palace Pier and grade II listed East Street Groyne and seafront railings.
- 2.3 The application proposes to permanently relocate an A5 takeaway refreshment kiosk (48.4sqm floor area) which used to be sited on the seafront at the bottom of West Street to a new location at East Street Bastion (some 200 metres eastwards). It is understood there will be associated temporary outdoor seating although this does not form part of the proposal and would be subject to a separate highways licence.
- 2.4 The kiosk is grade II listed and was originally a lantern associated with the Shelter Hall building below at lower promenade level. The Shelter Hall site including the upper promenade where the kiosk was previously is currently being redeveloped for a mixed use development as part of a highway safety scheme to repair the supporting structure to the A259 seafront road (see history section below). Listed Building Consent was approved in March this year for the removal of the kiosk, its restoration off site and its relocation to East St Bastion to facilitate the Shelter Hall project (see history below). This current application seeks planning permission for its new position.
- 2.5 There are concurrent applications to discharge conditions attached to the listed building consent (see history below), therefore there is a degree of overlap with this planning application and some of the details associated with those applications are considered as part of this application proposal.
- 2.6 Some changes are proposed to the fabric and appearance of the kiosk, the main ones being:
- Restoration of missing features such as iron fretting
 - Introduction of timber security shutters in place of temporary metal shutters
 - Revised serving hatch design
 - Revised door openings
 - Removal of modern lighting and signage and replacement with more sympathetic design
 - Repainting different colours (green and cream) based on analysis of paint flakes on building
 - Removal and replacement of the vast majority of timber
 - Retention of some of original structural frame
 - Introduction of new copper roof
 - Installation of modern extract/ventilation
- 2.7 Subject to agreement with Historic England, the intention is that listing of the kiosk will be amended to take into account its new location.

3 RELEVANT HISTORY

BH2016/05972 Application for approval of Details reserved by Conditions 2, 3, 4, 5 and 6 of application BH2015/04609. Under consideration

BH2016/02436 Application for approval of details reserved by condition 1 of application BH2015/04609. Under consideration

BH2016/01877 Demolition of existing Shelter Hall building and external steps. Erection of two-storey building at lower promenade level incorporating mezzanine floor and a single storey rotunda building on the upper promenade level on raised plinth to provide mixed use development comprising retail/café/restaurant/public toilets (A1/A3/sui generis uses) and new external steps. Approved 25/10/16.

BH2015/04609 Removal of kiosk to facilitate its repair, restoration and relocation to East Street Bastion and removal of a section of seafront railings and lamppost. (part-retrospective). Approved 31/3/16

4. REPRESENTATIONS

4.1 Five (5) letters have been received from **1 Clarendon Mansions 80 East Street(x2), 244 The Artist Quarter Kings Road Arches, Flat 5 Clarendon Mansion 80 East Street, Tye Chalet Tye Close**, objecting to the proposed development for the following reasons:

- Noise and disturbance, especially late at night
- Will play loud amplified music as did at previous location
- Cooking smells as they sell fast food, was an issue at previous location
- Will attract crime and anti-social behaviour, comments of police concurred with
- Kiosk is too large for site
- Will create more congestion in a very busy area, especially if has outdoor seating and will be a safety issue as more people pushed into cycle lane and emergency access route, and will impeded access by disabled people
- Will adversely affect safety as will prevent emergency services (police/RNLI/fire/ambulance) parking and accessing the site
- Not clear how deliveries to kiosk will take place
- Will impede or make the very many deliveries to seafront businesses very difficult
- Will impede refuse collection vehicles
- Site is prime viewpoint of pier and meeting point for visitors/school children
- Site was excavated before public consultation
- Heritage concerns, kiosk needs to be restored sympathetically

4.2 **Clarendon Mansions Residents Association:** Objection.

- Site unsuitable for large structure, it is currently used by delivery vehicles
- Will lead to congestion on emergency access routes
- Will prevent emergency vehicles parking, compromising health and safety

- If music is proposed it will adversely affect residents amenity
- Site is in cumulative impact zone and proposal will provide another gathering point for potentially disruptive people
- Kiosk previously has strong odour of cooking smells, even if extractor fans are at rear winds will blow into residential properties, affecting their amenity
- Lack of consultation

5. CONSULTATIONS

5.1 External:

5.2 East Sussex Fire and Rescue Service: No response.

5.3 CAG: Support

This kiosk has been dismantled in accordance with agreed plans and is to be relocated on the Bastion opposite East Street by the groyne. The intention is to re-construct the building retaining as much as possible of the original fabric, much of which was crumbling. A great deal of effort has been put into restoring it.

5.4 The usage will be the same, which the Group thought was unfortunate as it would potentially be defaced by signage/advertising, although the Council, as landlord, should be able to manage this.

5.5 The kiosk was previously listed Grade 2, which is now referred to as "former listing" and the process of delisting is complete. In terms of listing it is likely that the kiosk is compromised by its re-siting and by the reinstatement process. The entire wooden structure has been replaced, but the steel frame, which is an important historical feature, was conserved. Listed status is moot until it is inspected again.

5.6 The Group welcomed the intention to reconstruct this building and retain as much of the fabric as possible. They suggested that, if possible, a historic paint analysis should be undertaken to establish the original colour. If not, it should be the colour it was at the bottom of West Street. It recommended that every effort should be made to preserve the protection provided by listed status to the building. Subject to these comments, the group recommend approval.

5.7 Historic England: Comment.

HE has previously provided advice on the wider seafront improvement scheme involving works to the Shelter Hall, kiosk, steps and railings on the Lower and Upper Esplanade (BH2016/01877). HE also provided comments on the Listed Building Consent application (BH2015/04609) for the removal of the grade II listed Kiosk from its original location and its repair and re-erection further along the Upper Esplanade at East Street Bastion.

5.8 The Kiosk and the Shelter Hall were part of a series of civic and recreational improvements to the seafront carried out between 1883-7 as part of the widening of the Kings Road, designed to provide sheltered seating and viewing areas. Originally there was a glass dome in the Shelter Hall and the Kiosk was built on top of this to act as a lantern to fill the hall with light below. It was also

designed in a similar decagon shape. Whilst it no longer performs this purpose, as the ceiling of the Shelter Hall was subsequently filled in, the physical connection between the two structures explains why the Kiosk was designed in the way it was as well as contributing to our appreciation of its original function.

- 5.9 In more recent times the Kiosk has been used as small shop and takeaway establishment. In HE's advice on the Listed Building Consent application, we explained that the relocation of the Kiosk will cause harm to significance by removing it from its original location. However, HE recognised that its relocation is justified in order to deliver a much wider highway safety and seafront improvement scheme that has received a substantial amount of funding. In addition as the Shelter Hall was in a very poor condition and could not be saved, the historic relationship between the two structures would no longer exist when this was demolished. HE also felt that its repair and proposed relocation to East Street Bastion went some way to offsetting the harm to significance by retaining its wider historic seafront context. HE therefore did not oppose the proposal.
- 5.10 We advise that the Kiosk is repaired, restored and re-erected in accordance with the submitted method statement and the detailed conditions applied to the Listed Building Consent (ref BH2015/04609). The report and photographs supplied to support Condition 1 of this consent provides a record of the dismantling process as well as highlighting the poor condition of most of the timber work which, following further inspection at the off-site workshop, has needed to be replaced. The Local Authority should ensure that the new replacement timber work, (and that of any other historic fabric that clearly needs to be replaced) matches the profiles and finishes of the original, based on the accurate recordings (photographs and drawings) that were taken when the structure was dismantled, as well as any original drawings that are available. HE also agree with other consultees that the materials for the roof should be copper and that the choice of paint colour for the re-assembled kiosk should be based on proper evidence in the form of paint analysis.
- 5.11 HE do not object to some of the modifications that are proposed such as those to the door openings, window hatches and security shutters which have been subject to discussions with your own Conservation Officer. These affect non-original features, are sympathetic to the original appearance of the structure and are needed to support the use of the Kiosk. It is suggested that your Conservation Officer closely supervises the repair and re-erection works to ensure, that as much historic fabric as possible is retained, high quality detailing and materials are used and that works are as authentic a restoration of the original structure as possible.
- 5.12 Finally, HE recommend that once the Kiosk is repaired and re-erected in its new location that an application is made to HE's Designation Team for an amendment of the List entry to re-map it in its new location and to add a note to acknowledge its short move eastwards.
- 5.13 **RNLI:** No response.

- 5.14 **Sussex Police** Objection It is noted that this is a relocation of an existing A5 usage refreshment kiosk from its previous location above the West Shelter Hall to the above location. The area is within the parameter of the late night economy of the City centre and as such it experiences large amounts of footfall, noise, litter and acts of anti-social behaviour, in fact the level of crime and anti-social behaviour here is high when compared to the rest of Sussex. It is disappointing to note that no opening times had been disclosed within the application or the type of take away food to be provided. The concern regarding the opening hours and type of food is; if the opening hours were to be into the early hours of the morning this could have the potential to add to the existing footfall within the already saturated Centre of the night time economy and impact upon the local community's amenity and Sussex Police resources. The type of food can encourage members of the public to stay on the street longer after exiting the licensed premises. Should the Kiosk opening hours follow a day time opening schedule, Sussex Police would have no concerns. At present given the above concerns, Sussex Police do not support this application.
- 5.15 **UK Power Networks:** No Objection
- 5.16 **Internal:**
- 5.17 **City Clean:** No response
- 5.18 **Environmental Health:** Comment The application is to move a kiosk which is used for storage and preparation of food. The applicant has submitted additional details of proposed ventilation extraction and fan but has not submitted an acoustic survey detailing how their choice of fan and the extraction unit will meet the criteria of 5dB below background. The applicant needs to complete and submit an acoustic report before they start operating the kiosk. There are no details of the type of food which will be prepared or any odour control measures which may be required if the food being prepared is likely to cause odour eg fried or spicy food.
- 5.19 Notwithstanding the lack of further details, appropriate conditions to secure additional details can satisfactorily address any potential concerns. Opening hours until midnight would be acceptable.
- 5.20 **Heritage:** Comments on original scheme:
Statement of Significance:
The kiosk is listed grade II. It dates from 1883-7 and was built on Kings Road at the junction with West Street at the time of the widening of Kings Road, along with other Victorian seafront structures and street furniture which provide Brighton's seafront with its distinctive historic character. The site to which this application applies lies within the Old Town Conservation Area. The original function of the Kiosk and its association (in its original position) with the Shelter Hall below was an elaborate lantern, providing light to the centre of the Shelter Hall and views into it from Kings Road. Prior to its removal from this position that relationship had already been lost, by the separation of the two structures with a solid roof to the Shelter Hall (its self not listed). The original lightweight, glazed character of the Kiosk has also been changed over time and some of the

delicate decorative ironwork had been damaged and lost. Also in association with its use as a food outlet there was some unsympathetic signage and other alterations which detracted from the original architectural qualities of the building, providing scope for improvement. The removal of the kiosk from its original site entirely severed its relationship with the Shelter Hall, however it retains value and significance as an historic structure due to its relationship with the development of Brighton's Victorian seafront and the other seafront structures, its architectural and historic interest and (once repositioned in the public realm) its townscape interest.

- 5.21 Relevant Design and Conservation Policies and Documents:
NPPF, Planning Practice Guidance, Historic England Good Practice Advice Notes, HE1, HE2, HE4, HE6, HE9.
- 5.22 The Proposal and Potential Impacts:
- 5.23 Location:
The principle of relocation of the kiosk to the East Street Bastion was accepted during consideration of the previous application to remove it to allow the repair of the highway structure and re-development of the Shelter Hall site earlier this year. Sadly, the exact position now proposed does not align with the entrance to East Street and will not form the focal point at the end of the route from the north as it used to in its previous position, and the limitations of the site available should be set out to justify this.
- 5.24 Details of re-construction:
The application form states the roof material to be confirmed. This should be amended to state copper (as original). There are also inaccuracies such as proposed windows and doors described as 'as existing' and the door openings & shutter designs illustrated in the submitted drawings are due to change following discussions.
- 5.25 Review of Planning Statement:
Certain statements made are disputed and it needs to be revised for accuracy and to include more information including evidence of how kiosk was dismantled, extent of loss of original fabric and justification for new fabric, design changes, colour choice, location of extract fan, and confirmation of copper roof material.
- 5.26 Setting of nearby listed buildings:
The site is surrounded by listed buildings that would be affected by the positioning of the kiosk in this location. It is not considered that the proposal would have a harmful impact on the setting of any of these structures. Only the seafront railings are immediately adjacent, and the impact on these will be the same as that on the railings at the original kiosk location. The bastion itself and listed buildings on the north side of Grand Junction Road are of a scale and relative position that will enable a positive relationship between these buildings and the kiosk.

- 5.27 The Kiosk will have an impact on the existing open view of the Palace Pier from the West, however the relative scales of the two structures and the gap between them will mean that the pier will not be obscured by the kiosk in medium or longer views. These buildings are historic seafront structures that complement each other, and although not originally intended as close neighbours it is not considered that the kiosk in this new location would be incongruous.
- 5.28 Further comments received following receipt of clarification/correction/further information to address the above:
The further information submitted (in conjunction with details received in relation to discharge of conditions) is considered acceptable and approval is recommended. The choice of copper for the roofing material is welcomed and the revised elevations showing the shutters and fans are considered acceptable. Two options are shown for the colour scheme. The Heritage Team has preference for a scheme based on any evidence of a historic scheme. It is understood that the works to the kiosk have revealed some dark green paint on parts of the decorative ironwork and pale cream has been found on timber, although the earliest treatment for the timber is thought to have been oil. On this basis here is no objection to either of the suggested schemes.
- 5.29 **Seafront Team:** Support The Team supports the proposal to locate the restored Shelter Hall Kiosk on East Street Bastion. The Seafront Team are responsible for the management of the Seafront Property portfolio of which this kiosk is part. The Team consider the location to be suitable for this use and have studied the footprint of the proposed site as well as the impact on the surrounding areas. The emergency access routes for the lower promenade sit either side of the site but will not be impeded by the installation of the kiosk. We have confirmation from the Seafront Office who coordinate emergency response on the seafront that the proposed siting of the kiosk creates no issues or hindrance for emergency access.
- 5.30 If the application is successful the tenant of the kiosk would be granted a patio licence which would entitle them to put out tables and chairs in the south east corner of the Bastion. Again, this would not impede on either of the 2 emergency access routes or impact on the current flows of pedestrians and cyclists. There is a standard clause in our seafront leases that states that the tenant is not to install in the Demised Premises or any part thereof any machine which maybe audible outside the Demised Premises not to use any amplifying equipment for the purpose of touting or attracting custom. We therefore do not envisage any impact for local business or residents with regards to noise. There has been a worsening problem with illegal parking in this area over the past year and we believe that the introduction of the kiosk into this space will prevent this from happening in future.
- 5.31 **Sustainable Transport:** No Objection subject to inclusion of a necessary condition relating to servicing and deliveries.
- 5.32 Pedestrian Access:

The proposed kiosk will be set back from the main promenade and would not obstruct the flow of pedestrians and cyclists either travelling along the seafront or using the toucan crossing to and from East Street.

5.33 Vehicle Access and Servicing

The area where it is proposed the kiosk will be relocated is used for emergency vehicle access as well as servicing of businesses occupying the arches below. Whether accessing the ramps or not, vehicles are required to turn on the bastion to exit on to the A259.

5.34 It is understood that the council's Seafront Office and East Sussex Fire and Rescue (ESFR) have both been consulted on the proposals. The Seafront Office have raised no objections and have indeed commented that emergency access would not be impeded by the proposed location. At the time of writing comments had not been received from ESFR.

5.35 Whilst vehicle swept paths have not been included in the application, a site plan showing the proposed location together with marked access areas has been submitted. It is also noted that until recently, the area in which vehicles could manoeuvre on the bastion was restricted by bollards on the southern side which have since been removed. When this is accounted for, the area taken by the proposed kiosk is effectively reduced. On this basis, it is considered that loading and servicing could continue to take place on the bastion, though it is unclear exactly where this will take place. It is therefore recommended that further details be provided via a Delivery and Servicing Management Plan condition.

5.36 Car Parking

No car parking is proposed which represents no change from when the kiosk was located in its original location south of West Street. The area is very well located for travel by sustainable modes and trips are likely to be linked to other seafront uses meaning additional demand is not generated.

5.37 Cycle Parking

No cycle parking is proposed. SPD14 requires a minimum of one space per 250 sqm plus one per five staff for A5 uses. For the proposed kiosk of 48.5 sqm, this would equate to two spaces. However, there would not be an opportunity to provide this within the kiosk and the Highway Authority would not ordinarily seek a contribution for this level of cycle parking unless forming part of a larger S106 agreement. It is also noted that cycle parking is typically installed in the form of banks rather than individual stands as detailed in the council's Streetscape Design Guidance.

5.38 Trip Generation

It is considered that trips associated with the relocated kiosk are likely to be linked to other seafront businesses and attractions and it would not in itself be expected to generate substantial numbers of additional trips. It is therefore not considered that there would be an impact on surrounding highway and transport networks in this respect.

6. MATERIAL CONSIDERATIONS

6.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report

6.2 The development plan is:

- Brighton & Hove City Plan Part One (adopted March 2016)
- Brighton & Hove Local Plan 2005 (retained policies March 2016);
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
- East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only - site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.

6.3 Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

7. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1 Presumption in Favour of Sustainable Development
CP2 Sustainable economic development
CP4 Retail provision
CP5 Culture and Tourism
CP8 Sustainable buildings
CP9 Sustainable transport
CP12 Urban design
CP13 Public streets and spaces
CP15 Heritage
SA1 Seafront
SA2 Central Brighton

Brighton & Hove Local Plan (retained policies March 2016):

TR4 Travel plans
TR7 Safe Development
TR14 Cycle access and parking
TR15 Cycle network
TR18 Parking for people with a mobility related disability
SU9 Pollution and nuisance control
SU10 Noise Nuisance
QD5 Design - street frontages
QD15 Landscape design
QD25 External lighting
QD27 Protection of amenity
HE1 Listed buildings

- HE3 Development affecting the setting of a listed building
- HE4 Reinstatement of original features on listed buildings
- HE6 Development within or affecting the setting of conservation areas
- HE9 Advertisements and signs within conservation areas and on, or in the vicinity of a listed building

Supplementary Planning Documents:

- SPD09 Architectural features
- SPD14 Parking Standards

8. CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to:

- Principle of locating an A5 takeaway use with associated ancillary outdoor seating at this location
- Principle of locating a structure in this location in terms of impact on the character and appearance of the conservation area and setting of listed buildings
- Impact of proposed changes to the design and fabric of the listed kiosk to its special architectural and historic character and appearance
- Impact to tourism and the economy
- Impact on the amenity of occupiers of nearby properties
- Crime prevention
- Impact in terms of sustainable travel and highway safety

8.2 Planning Policy Context:

Policy SA1 'The Seafront' of the Brighton and Hove City Plan Part One states that the council will encourage regeneration of the seafront and that proposals should support the year round sport, leisure and cultural role of the seafront for residents and visitors whilst complementing its outstanding historic setting and natural landscape value. Proposals should ensure a good marine environment, enhance biodiversity and consider options for small scale renewable energy provision.

8.3 The policy sets out priorities for the whole seafront which include enhancement of public realm, provision of adequate facilities for residents and visitors and improvements to beach access. The priority is also to secure high quality architecture which complements the natural heritage of the seafront and historic built environment. Securing improvements to sustainable transport infrastructure along the A259 including pedestrian and cycle routes and crossing opportunities is a priority.

8.4 The specific priorities for the central area of the seafront (Medina Terrace to Palace Pier) include securing on going improvements to and maintenance of the upper and lower promenade and securing improvements to traffic flow, air quality and pedestrian and cycle routes.

8.5 The site is located on the edge of the Central Brighton area as defined in policy SA2. The main aim of this policy is to reinforce central Brighton's role as the

city's vibrant thriving regional centre for shopping, leisure, tourism, cultural, office and commercial uses. The policy goes on state that the focus for new retail development is the regional shopping centre and it seeks to promote a balanced range of complementary evening and night time economy uses, avoid a spreads of large bars/pubs and seeks to address public safety concerns. The policy seeks to secure urban realm improvements to reduce congestion and it encourages improved pedestrian and cycling movements within the city centre.

- 8.6 City Plan policy CP4 is relevant as a town centre 'A' use (A5 takeaway) is proposed and the site is located close to the defined Regional Shopping Centre. It states that Brighton & Hove's hierarchy of shopping centres will be maintained and enhanced by encouraging a range of facilities and uses, consistent with the scale and function of the centre, to meet people's day-to-day needs, whilst preserving the predominance of A1 use classes. It states that applications for all new edge and out of centre retail development will be required to address the tests set out in the NPPF.
- 8.7 Policy CP5 is relevant as it seeks to maintain and enhance the cultural and tourism offer of the city to benefit residents and visitors. It supports the role of the arts, creative industries and sustainable tourism sector in creating a modern and exciting visitor destination with a range of high quality facilities, spaces, events and experiences.
- 8.8 With regard to design and heritage, policies CP12, CP13 and CP15 of the City Plan Part One, and policies HE1, HE3, HE4, HE6, HE9, QD5, and QD15 of the Brighton & Hove Local Plan are relevant.
- 8.9 City Plan policy CP12 expects all new development to be built to a high quality standard and seek to ensure places that are created are safe, and incorporate design features which deter crime and the fear of crime. CP15 states that the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated assets. Local Plan policies HE1, HE3, HE4, HE6 and HE9 seek to conserve or enhance the special architectural character and appearance of listed buildings and the setting of Conservation Areas. Local Plan policy QD5 states that all new development should present an interesting and attractive frontage at street level for pedestrians. QD15 requires all proposals for development to have adequate consideration to landscape design.
- 8.10 The Council has statutory duties under the Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to development affecting listed buildings and conservation areas:
- 8.11 S66 (1) "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses";

- 8.12 S72 (1) "In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2) [N.B. these include the Town and Country Planning Act 1990], special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".
- 8.13 The NPPF states that in determining planning applications, local planning authorities should take account of: the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation assets can make to sustainable communities including their economic vitality and the desirability of new development making a positive contribution to local character and distinctiveness (para 131).
- 8.14 Para 132 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.
- 8.15 Paras 133 & 134 of the NPPF state that where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 8.16 With regard to amenity, Local Plan policies QD25, QD27, SU9 and SU10 are relevant to this development and they seek to protect the general amenity of the locality and that of neighbouring occupiers/users from undue noise, odour and general disturbance. Policy QD27 states that planning permission for any development will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Policy QD25 seeks to control external lighting and SU9 and SU10 seek to control adverse impact in terms of noise and pollution specifically.
- 8.17 With regard to transport, City Plan policies CP9 (Sustainable Transport) and Local Plan Policies TR4 (Travel Plans), TR7 (Safe Development), TR14 (Cycle access and parking), TR15 (Cycle network) and TR18 (Parking for people with a mobility related disability) are relevant. These seek to ensure development is safe, meets the demand for travel it creates and maximises use of sustainable modes. TR15 states that development that affects proposed or existing cycle routes should protect and enhance their alignment, and identifies the A259 National Cycle Route 2 as a key route. SPD14 Parking Standards sets out

maximum parking standards for development and minimum standards for disabled parking.

- 8.18 With regard to sustainability, City Plan Policies CP8 and CP10 are relevant and they seek to ensure all development incorporates sustainable design features and net gains in terms of biodiversity wherever possible. City Plan policy CP11 seeks to manage and reduce flood risk.
- 8.19 **Principle of developing the site for a A5 takeaway use**
The introduction of a hot food takeaway is considered appropriate in this location. This part of the seafront is a busy and well-established area with existing commercial premises and the proposal would complement the other uses in this location and add to the facilities on offer for residents and visitors. It would help generate footfall, add vibrancy to the area and help support the year round use of the seafront and its role as a tourist destination. The proposal is therefore considered to meet the objectives of policies SA1, SA2 and CP5. The primary retail function of the nearby regional shopping centre would not be undermined by this small scale 'A' use, in compliance with policy CP4.
- 8.20 The site is located close to numerous commercial properties and is in a busy central location, and the nearest residential properties are located to the north, beyond the seafront road. Provided potential adverse impacts from the proposed use are controlled by condition such as opening hours, playing of amplified music and extract/ventilation the proposal should not, in principle, result in a loss of amenity or increase in anti-social behaviour. See section on amenity below for more detail in this regard.
- 8.22 The proposal is welcomed in principle as it would provide an attractive high quality restored kiosk which would be a significant improvement upon its previous appearance, and it would be an asset for the city and complement the historic built environment of the seafront. See section on design below for more detail in this regard.
- 8.23 Introduction of a kiosk in this particular location is considered acceptable in principle as East Street Bastion is a large open space which is considered to be sufficient in scale to satisfactorily accommodate this relatively modest structure and associated outdoor seating. Sufficient space would be left for satisfactory movement of pedestrians, cyclists and emergency vehicles and general public realm would not be unduly compromised. See section on transport below for more detail on such matters.
- 8.24 **Design and Appearance:**
The site is within a very prominent seafront location, and is sensitively located within a conservation area and within the setting of nearby listed buildings.
- 8.25 Removal of the listed kiosk for restoration off-site was granted in exceptional circumstances in connection with necessary highway safety works at the Shelter Hall site. Its relocation to East Street bastion is considered acceptable in principle and has already received listed building consent. Retention of the kiosk within a seafront setting close to the original site is welcomed. The council's

Heritage team confirm that even though the historic link with the Shelter Hall will cease to exist, the kiosk would retain value and significance as an historic structure due to its relationship with the development of Brighton's Victorian seafront and the other seafront structures, its architectural and historic interest and (once repositioned in the public realm) its townscape interest. The Heritage Team confirm that the kiosk would not unduly compromise the setting of nearby buildings.

- 8.26 The kiosk was discovered to be in very poor condition and a large degree of replication has been needed. This is considered to be satisfactorily evidenced and justified in supporting information forming part of concurrent applications to discharge conditions. The kiosk had features which detracted significantly from its appearance such as modern signage, shutters and lighting as well as incomplete original architectural features. The kiosk had incorporated non-original features and changed in appearance over the years and there is no objection to removal of unsympathetic additions and alterations. The proposed scheme includes many positive aspects such as more sympathetically designed timber shutters, more discreet signage, reinstatement of original features, materials and colours etc. The proposal would result in a much improved appearance which is welcomed and the restored kiosk would be a significant asset to the seafront.
- 8.27 Changes to the original design are largely to non-original features and were considered carefully in conjunction with the Heritage Team and have been based on historical evidence, and the Heritage Team confirm they raise no objection to the scheme. Precise details of any outstanding matters can be controlled by further conditions.
- 8.28 Historic England raise no objection to the current proposal and have worked closely with officers in relation to the wider Shelter Hall scheme.
- 8.29 The proposal is therefore considered to comply with relevant local policies and the NPPF which seek to preserve and enhance the special character and appearance of Conservation Areas and setting of listed buildings.
- 8.30 **Impact on Amenity:**
The site is located directly on the seafront on a busy and prominent site in a mainly commercial location. The nearest residential properties are located across the busy A259 seafront road to the north in Clarendon Mansions. There are no other immediate residential neighbours. This is a central site used by large numbers of residents and tourists and it therefore experiences relatively high levels of background noise. In this context, introduction of an A5 takeaway use is considered acceptable in principle in terms of amenity.
- 8.31 Concerns expressed regarding potential for noise, disturbance, odour and anti-social behaviour are noted, however, it is considered that restrictive conditions can satisfactorily address any such concerns and the council's Environmental Health Team raise no objection.

- 8.32 It is recognised this new site is closer to residential properties than the previous one at the bottom of West Street, and also the concerns of the police regarding late night opening and associated anti-social behaviour are noted. On this basis it is not considered appropriate to allow late night opening to 3am as was previously enjoyed, and a closing time of midnight would be more appropriate, and is broadly in line with similar developments in such locations. Conditions will ensure provision of up to date modern ventilation/extraction which complies with stringent standards with regard to odour and noise. A condition will ensure that noise levels from the premises, including any music, it kept to a satisfactorily level. Details of external lighting are also to be controlled.
- 8.33 Separate to planning, it is noted that the Seafront Team confirm that there is a standard clause in the council's seafront leases that states that the tenant is not to install in the premises or any part thereof any machine which maybe audible outside the premises and not to use any amplifying equipment for the purpose of touting or attracting custom.
- 8.34 The proposal is therefore not considered to cause any adverse impacts to the amenity of nearby occupiers or users of the seafront generally, in compliance with policies SU9, SU10, QD25 and QD27.
- 8.35 **Sustainable Transport and Access:**
In terms of demand for travel created by the kiosk and issues of highway safety, the council's Highways Team raise no objection to the proposal.
- 8.36 No car parking is proposed, which is considered appropriate for this modest kiosk and in addition it represents no change from when the kiosk was located in its original location south of West Street. The area is very well located for travel by sustainable modes and trips are likely to be linked to other seafront uses meaning additional demand is not generated.
- 8.37 SPD14 requires a minimum of one space per 250 sqm plus one per five staff for A5 uses. For the proposed kiosk of 48.5 sqm, this would equate to two spaces. Whilst no cycle parking forms part of the scheme, this is only a modest proposal and there would not be an opportunity to provide this within the kiosk and could result in clutter on the promenade. Also the Highway Authority would not ordinarily seek a contribution for this level of cycle parking unless forming part of a larger S106 agreement and cycle parking is typically installed in the form of banks rather than individual stands. On this basis the lack of cycle parking is considered acceptable.
- 8.38 Concerns raised by residents regarding impact to access and congestion are noted, however, the Highways team confirm the kiosk would be set back from the main promenade and in their view would not obstruct the flow of pedestrians and cyclists either travelling along the seafront or using the toucan crossing to and from East Street. No responses have been received from the fire service or the RNLI with regard to emergency access, and vehicle swept paths have not been included in the application, however, a site plan showing the proposed location together with marked access areas has been submitted, which is considered demonstrates that access either side of the kiosk would be

satisfactory maintained. The Seafront Team confirm that the Seafront Office, who coordinate emergency response on the seafront, are satisfied that the proposed siting of the kiosk creates no issues or hindrance for emergency access.

- 8.39 It is understood deliveries and parking for seafront businesses currently take place on the Bastion sometimes, however, the Seafront Team have confirmed that the majority of businesses ensure their deliveries occur between 6am-11am when the gate to the lower promenade is open for this purpose. The Highways Team consider that occasional loading and servicing could continue to take place near to or on the bastion, though it is unclear exactly where this will take place, therefore further details are to be secured via a Delivery and Servicing Management Plan condition to ensure this takes place safely. The Seafront Team state there has been a worsening problem with illegal parking on the Bastion particularly at night over the past year and they believe that the introduction of the kiosk into this space will prevent this from happening in future, which is welcomed.
- 8.40 There are no details of where any associated tables and chairs would be located, although it appears the only location possible for this is the south east corner of the Bastion. This is a small area and would not compromise access on the main promenade. Precise details can be secured by condition and will also be subject to a highways licence.
- 8.41 **Other Considerations:**
The small scale of the kiosk means that space to provide storage for on-site refuse and recycling is limited. There are communal bins nearby where commercial waste is collected from. In the absence of any details confirming the proposed refuse/recycling arrangements, a condition requiring confirmation of this is recommended. There are two public bins in close proximity to the kiosk which would adequately serve kiosk customers.
- 8.42 Whilst City Plan Policy CP8 and CP10 seek to ensure all development incorporates sustainable and biodiversity design features, this has not been possible given the building is listed and is of a modest scale, which is acceptable.

9. EQUALITIES

- 9.1 There is no public access into the kiosk itself. East Street Bastion is level.

