

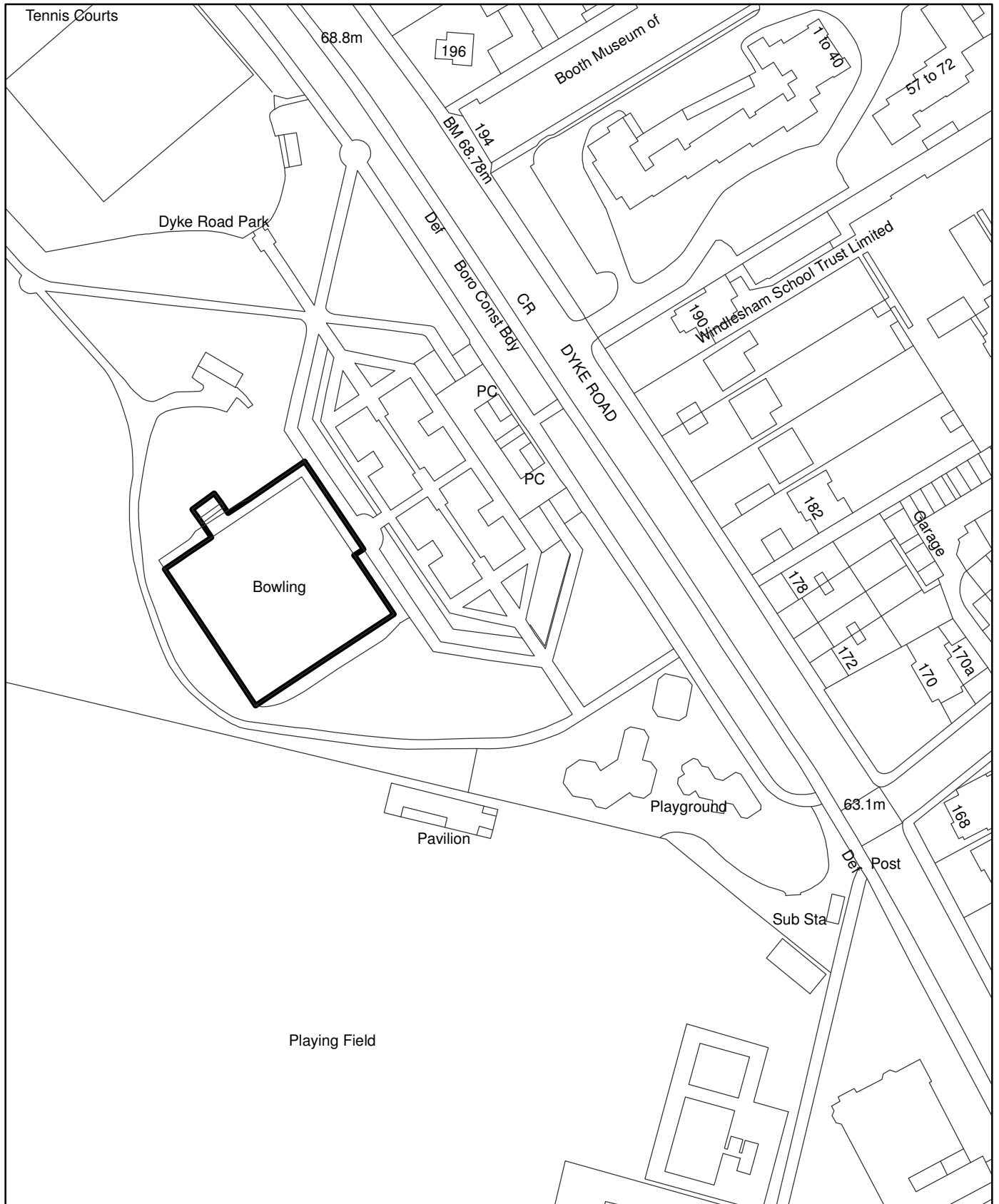
ITEM B

**Bowling Green, Dyke Road Park, Dyke Road,
Hove**

**BH2013/03930
Full planning**

08 OCTOBER 2014

BH2013/03930 Bowling Green, Dyke Road Park, Dyke, Hove.



**Brighton & Hove
City Council**



Scale : 1:1,250

No:	BH2013/03930	Ward:	HOVE PARK
App Type:	Full Planning		
Address:	Bowling Green Dyke Road Park Dyke Road Hove		
Proposal:	Change of use of Bowling Green (D2) to open air theatre (sui generis) with associated alterations including landscaping and erection of acoustic wall.		
Officer:	Clare Simpson / Paul Earp Tel 292454	Valid Date:	28 November 2013
Con Area:	N/A	Expiry Date:	27 February 2014
Listed Building Grade:	N/A		
Agent:	Miller Bourne Architects , 332 Kingsway, Hove BN3 4QW		
Applicant:	Brighton Open Air Theatre CIO, Maritime House , Basin Road North Hove BN41 3WR		

This application was deferred at Committee on 2 April 2014 at the applicant's request for further clarification on the days of use of the proposed theatre and the maximum number of performances per month.

1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 11 and the policies and guidance in section 7 and resolves to be **MINDED TO GRANT** planning permission subject to a S106 agreement and the Conditions and Informatives set out in section 11.

2 SITE LOCATION & DESCRIPTION

- 2.1 The application relates to the former bowling green which is located to the south west corner of Dyke Road Park. The green is a flat piece of land with vegetation around the side and rear boundaries giving a feeling of seclusion. It is accessed from the rose garden. High fencing runs along the front of the bowling green and the gate is currently locked preventing any access in to the space. The existing redundant bowling green has an area of 1444m² and the wider site, including the adjacent hut and surrounding landscape, adds a further 667m² giving the application site a total area of 2111m².

3 RELEVANT HISTORY

BH2003/00808/FP: Replacement bowls pavilion – approved 02/05/2003.

4 THE APPLICATION

- 4.1 Planning permission is sought for the change of use of the bowling green (D2) to an open air theatre (sui generis) with associated alterations including landscaping and erection of acoustic wall to form the Brighton Open Air Theatre (BOAT).

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- 4.2 The proposal is for the proposed theatre to operate:
- from the beginning of May to end of September, 7 days a week.
 - Most performance would be held Wednesday to Saturday until 10pm (no start time specified) and Sunday matinees until 6pm, but the applicants would like the option to operate any day of the week so that performance which are cancelled due to poor weather etc can be rescheduled.
 - Maximum capacity: 425.
 - Maximum days of operation sought per month: 22.
 - Amplified music: maximum 28 times between May to September.
 - The programme will primarily be theatre and spoken word but will also include screenings and public lectures.
- 4.3 The site is owned by the City Council. The bowling green closed on 1 April 2013 due to budget pressures and diminishing membership of the club. City Parks stopped maintaining the green and the area has been permanently fenced off since that time. Subsequently the Council asked the local community to submit alternative plans for the use of the bowling green. Two schemes were originally proposed but after initial interest from the Friends of Dyke Road Park who wanted to establish a community garden, the group now support the applicants BOAT (Brighton Open Air Theatre) and this is now the only proposal for the site. BOAT is in the process of registering as a charitable incorporated organisation with the aim to promote the arts through the establishment of an open air theatre in the city for use of residents and visitors.
- 4.4 The theatre would be a grassed amphitheatre with terraces leading down to a flat lawned stage. The site would be "cut and filled" to form the amphitheatre on the area of the bowling green with the stage being 1.45m below the adjoining footpath, and the highest point of the seating terraces 1.49m above the footpath. The facility would be below the level of the adjacent Dyke Road. Timber sleepers would be used to stabilise the front of the terraces and Astroturf used to edge the horizontal seating areas. The grass terracing and embankments themselves, together with additional planting in small areas not needed for circulation and seating, would form landscaping. The theatre is proposed to have a maximum seating capacity of 425. An acoustic wall 3m in height would be located to the rear of the stage, and a new gate would be formed in the existing fence in the northern corner of the site to provide the main access.
- 4.5 Temporary lighting will be erected when required. The stage would be lit by conventional luminaries which are robust enough to be used outdoors. These fixtures would be grouped six at a time onto internally-wired scaffolding bars which can be affixed to portable wind up stands or upright truss fixed into permanently set floor plates. They will be powered by portable generators. Lighting to the entrance will be provided when required.
- 4.6 The theatre would operate from May to September each year and will provide a space for local artists, schools, colleges and community groups alongside touring productions. The programme will primarily be theatre and spoken word and will operate as both a main Brighton Festival and a Fringe site during May. BOAT will also have an educational focus in June, linking in the curriculum

requirements as well as providing performance space for outdoor classrooms for local schools and associated groups. It is anticipated that there will be one-week runs. The planning application states that performances will run mainly from Wednesday to Saturday, finishing no later than 10pm. The subsequent Business Plan state that performances will usually take place Thursday to Saturday and with matinees on Sundays finishing by 6pm. The Business plan includes a calendar of events which shows that some performances may occur on Monday as well. The applicants have clarified that whilst the majority of performances are likely to be from Wednesday to Saturday they seek an unrestricted approval to give flexibility to programme performances to suit weather and other events taking place in the city. Whilst an approval is sought which does not restrict the days of use the applicants are willing to accept a limit on the maximum number of performances to 22 per month with a maximum occupancy of 425, with performances finishing no later than 10pm Monday to Saturday and 6pm on Sundays.

- 4.7 The space is intended to be open to the public during the day as a sitting out area and will only be closed at night for security reasons and when general access is difficult for health and safety reason during setting up operations, or because there is a ticketed show. In due course the space is intended to have free Wi-fi.
- 4.8 The existing Bowling Green Pavilion, which has a floorspace of 24m², would be used as ancillary office, providing hot desk facilities and workshop spaces for the local and visiting performers.

5 PUBLICITY & CONSULTATIONS

External

5.1 Neighbours:

Comments on the application as originally advertised:

Twelve (12) letters of representation have been received from 1 Ashdown Road, 16 Bute Street, 61 Chester Terrace, 127a Ditchling Road, 17 Franklin Road, 73 Highfield Crescent, 22 Montefiore Road, 88 Montgomery Street, 1 Norfolk Square, flat 2 - 14 Stafford Road, 32 Stanford Road, 23 Upper Rock Gardens,

supporting the application for the following reasons:

- This location would provide a perfect permanent setting for outdoor performances and represent a huge asset to the cultural stock of the City and a welcome addition to the Brighton arts and theatre scene,
- Regeneration of the park,
- The proposal for this underused area would bring people to the park and help it realise its full potential,
- There is little in the way of cultural venues in this area of Brighton,
- It will help in the City's aim to promote arts and culture,
- It is a forward thinking project,
- More people will use it than the bowling green,
- The location would provide a perfect permanent setting for outdoor theatre performances,
- It would benefit schools and amateur theatre production,

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- Additional disabled parking bays should be made available in Dyke Road, alongside the park.

5.2 Comments on the re-advertised application:

Two (2) further letters of representation have been received from the occupiers of:

15 Fairways, Dyke Road: Object. Concerned about the lack of restrictions with particular respect to noise. There is no noise report. Research demonstrates a link between insufficient sleep and negative impacts on health. The hours of operation are not stated which means it would be possible to have 28 days of continuous amplified noise in the summer, when windows are open. Whilst this is not the intention it leaves the option open, therefore there must be specific conditions to control noise and times of performances. This should not be maximum decibel levels but relevant to the locations of the impact of that noise. Feel that the theatre will benefit the city but there needs to be sufficient conditions to avoid problems for neighbours.

188 Dyke Road: Not against the proposal in principle. Amendments are for longer and more frequent opening times and the use of amplified music for some performances which raises concerns:

- There will be an increase in audience arrivals and the number of vehicles. Question whether there has been any provision to accommodate the increase in traffic and parking which will exacerbate existing problems.
- With one or two week long performances there will be a lot of equipment and sets. How will these deliveries be dealt with?
- Amplified sound will be used a maximum of 28 times during May to September which is about a week every month. This could have serious consequences for local residents

5.3 **Brighton & Hove Archaeological Society:** No objection. The area around this part of Dyke Road has in the past produced a significant amount of archaeological findings including flint work from the Neolithic period. It is possible that vestiges of an ancient landscape may still be present.

5.4 **County Archaeologist** No objection subject to conditions. The site is situated within an Archaeological Notification Area of prehistoric and Saxon activity. Large concentrations of prehistoric flint tools were found in close proximity of the site in the early 20th century, suggesting the site of a settlement or activity area. As the proposal will involve cut and fill groundwork, mitigation of damage to archaeological remains will be required. The development of the area should be the subject of a programme of archaeological works.

5.5 **Theatres Trust:** Support. The Trust supports the application in principle because it provides a new and unique theatre space not currently provided in the local catchment area that could become a valued arts facility specialising and nurturing professional local talent and promoting new work.

5.6 **City Parks:** Support the schemes as long as the project is self sustaining and would not have an adverse affect on the park or place burden regarding litter clearing around events etc. The green was abandoned as there is no longer the

demand for its use. The applicant needs to provide robust evidence that the use is viable and sustainable in the long term, and if built and proves to be unsuccessful, an exit strategy so that the facility does not leave the park with a liability. There is no proposal to provide additional sports facilities to replace the loss of this space.

5.7 **East Sussex Fire Rescue Service** No objection.

5.8 **Environment Agency:** No comment.

Internal:

5.9 **Environmental Health:** Following the deferment of the application a Planning Application Noise Assessment has been submitted, dated 23rd July 2014.

5.10 This application is for an open air theatre with an audience capacity of 425 people, approximately 120m from local residents. It is proposed to operate for 5 months, from early summer (May) through to late summer (September) with 22 events a month; up to 28 amplified events during the 5 months; seven days a week with a Monday to Saturday finish at 10pm and a Sunday finish at 6pm.

5.11 The information in the Noise Assessment has been summarised in tables which examine noise sources of ambient and background noise levels from crowd talking, crowd laughing both normally and loudly, and end of show clapping and cheering etc. The values used in the assessment are average sound pressure levels and even if the averages are below ambient or background noise levels, it does not mean that an event will be completely inaudible. It is quite possible that peaks of noise during an event will be heard by local residents even if the average noise level indicates there will not be a problem. There are also some gaps in the Noise Assessment, such as the sound levels of any finale's, louder crowd conversation and car door slamming etc.

5.12 From the Assessment it seems that performance noise may occasionally be noticeable, but crowd noise could be significant, particularly after 21:45 when ambient noise levels drop and background noise levels are low. Unfortunately, crowd noise is extremely difficult to control. Whilst the current location includes reasonable levels of traffic noise, it is otherwise a quiet location. Local residents are not currently subjected to frequent events in the evenings which are proposed to occur during the summer months when they are most likely to have their windows open and will be using gardens and balconies. It is not certain that events would generate noise complaints as it is accepted that there is going to be a range of different types of events with different sized crowds. However, it is considered that crowd noise in particular with talking, laughing and cheering etc, in combination with any other entertainment noise does have the potential to generate complaints especially for events that finish at 10pm. This is especially likely if inclement weather conditions result in a string of events occurring over several evenings and there is no break for the local residents from such noise.

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- 5.13 Any noise complaints would be investigated under Statutory Noise Nuisance legislation and assessed according to the frequency, duration and character of the noises in question. There is the potential that noise from this venue could constitute a Statutory Noise Nuisance under the Environmental Protection Act 1990. For these reasons conditions are recommended which restrict hours of operation to between the hours of 09:00 to 21:30 Monday to Saturday and 11:00 to 18:00 Sunday, sound levels not to exceed 85dB; the number of events not to exceed to 3 per week and 2 per day with a maximum of 12 events per month, and with a total maximum number of 28 amplified events of which there should be no more than 2 per week. The restrictions are to reduce the potential for complaints and noise which would constitute a Statutory Nuisance. If over a period of time no complaints are received, it may be possible to relax these conditions. However, due to the potential range of events that could take place at this outdoor venue with little noise mitigation in place, especially for the control of crowd related noise, conditions should be stringent to start with especially as events are proposed to take place over the five months of summer, every year, when local residents will want to enjoy their gardens and balconies and have windows open.
- 5.14 The conditions would still give the organisers some of the flexibility they require to negotiate inclement weather, but it will mean that they must tightly control their scheduling. It is strongly recommended that the noisiest and largest events, including those which will involve higher levels of crowd noise and participation only occur during the day. It should also note that such conditions may not be a defence if noise complaints result in the assessment of a Statutory Noise Nuisance.
- 5.15 **Planning Policy:** Comment: The principle of this proposal in respect of the offer it will provide the city is supported. Proposals which seek to expand the diverse range of experiences, enhance and enable more effective and appropriate use of open space are welcomed and accord with policies QD20 and CP16. Since the submission of the application further information has been submitted in response to queries raised (eg loss of outdoor sport space, reduction in future flexibility in use due to the proposed permanent ground level changes, future maintenance arrangements, proposed intensity of use, future use of the hut). It had been suggested it would help in the determination of this application if the following were submitted/addressed: a funded maintenance plan and sinking fund, a business plan, a strategy to justify the loss of outdoor sports space, measures to mitigate for the potential reduction in flexibility of use/ability to revert to sport use.). It is considered the proposal does not comply with policy QD20 and SR20 (or CP16 and CP17). It therefore depends on whether it justifies an exception to policy (eg will its benefits override the loss of the sports spaces and where there is uncertainty in respect of the benefits can solutions be found to facilitate a favourable decision).
- 5.16 **Sustainable Transport:** Comment. The Highway Authority has no objection to the application subject to the inclusion of necessary conditions and that the applicant contributes £26,250 towards sustainable transport improvements on Dyke Road secured through S106. Payment should be subject to a trigger, which could be that if the average number of people attending per week was higher than

750 people in any given year. The trigger could either require a total payment of £26,250 once this scenario occurs or be phased over 5 years so if it happens in year one the applicant pays £5250 and so on for each year this happens. This requirement on the developer would expire after 5 years or when the all highway works are completed. As part of the Travel Plan the applicant must enter into a monitoring framework for a minimum of 5 years to record the number of attendees for each event and submit the results annually to the Council's Travel Plan officer. This must include the average weekly number of attendees.

6 MATERIAL CONSIDERATIONS

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
- 6.2 The development plan is:
- Brighton & Hove Local Plan 2005 (saved policies post 2007);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (Adopted February 2013);
 - East Sussex and Brighton & Hove Minerals Local Plan (November 1999); Saved policies 3,4,32 and 36 – all outside of Brighton & Hove;
 - 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 The National Planning Policy Framework (NPPF) is a material consideration.
- 6.4 Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF.
- 6.5 The Brighton & Hove City Plan Part One (submission document) is an emerging development plan. The NPPF advises that weight may be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies in the NPPF.
- 6.6 All material considerations and any policy conflicts are identified in the "Considerations and Assessment" section of the report.

7 RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove Local Plan:

TR1	Development and the demand for travel
TR2	Public transport accessibility and parking
TR7	Safe development
TR8	Pedestrian routes

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TR9	Pedestrian priority areas
TR13	Pedestrian network
TR14	Cycle access and parking
TR18	Parking for people with a mobility related disability
TR19	Parking standards
TR20	Coach parking
SU2	Efficiency of development in the use of energy, water and materials
SU9	Pollution and noise control
SU10	Noise nuisance
SU13	Minimisation and re-use of construction industry waste
QD2	Design – key principles for neighbourhoods
QD15	Landscape design
QD16	Trees and hedgerows
QD20	Urban open space
QD25	External lighting
QD26	Floodlighting
QD27	Protection of Amenity
QD28	Planning obligations
SR20	Protection of public and private outdoor recreation space
HO19	New community facilities
HE12	Scheduled ancient monuments and other important archaeological sites

Supplementary Planning Guidance:

SPGBH4 Parking Standards

Supplementary Planning Documents:

SPD03 Construction & Demolition Waste
SPD06 Trees & Development Sites

Brighton & Hove City Plan Part One (submission document)

SS1 Presumption in Favour of Sustainable Development
CP5 Culture and tourism
CP16 Open Space
CP17 Sports provision

Waste & Minerals Local Plan

WMP3d Minimising and managing waste during construction, demolition and excavation
WMP3e Waste management in new development

Open Space and Recreation Study 2008

Open Space and Recreation Study Update 2011

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the loss of the existing sports use, the acceptability of the proposed use and physical alterations to the land, the impact upon the amenities of the occupiers

of surrounding properties of the proposed use by way of noise and light intrusion, impact on the biodiversity of the site, transport and sustainability issues, and proposed future maintenance arrangements.

Principle of Development:

- 8.2 The site forms part of Dyke Road Park and whilst the bowling green has been out of use since April 2013 it is able to contribute to the outdoor sports needs of the city.
- 8.3 Planning policies QD20 and SR20 seeks to retain existing open space in order to help meet current and future open space requirements, and the thrust of emerging policy CP16 Open Space and CP17 Sports Provision is to retain current open space and sports provision in the city. Policy HO19 encourages the provision of new community facilities which would have no adverse impact on residential amenity and is readily accessible with adequate car and cycle parking, including provision for people with disabilities.
- 8.4 The Open Space Studies and the City Plan identifies that by 2030 more than 200 hectares of additional open space is needed to meet the requirements of an increasing population. However City Parks have resolved [that](#) there is no strategy in place to provide additional sport facilities to replace the loss of this outdoor sports space and in the current financial climate it is likely the site could only be maintained as mown grass without formal sports demarcation or equipment. The proposal could therefore enable a more effective use of the open space if managed and maintained appropriately. Whilst Hove Park Ward, within which the site lies, is meeting its outdoor sport standard, the adjacent Goldsmid ward, and Brunswick and Adelaide, Regency and St Peter's and North Laine to the south, have existing deficiency of all typologies of open space provision including outdoor space. It is considered that due to its unique use, the proposed theatre could help draw people from these areas with open space deficiency to use the sports provision within the park.
- 8.5 The compatibility of the proposed use with other aspects of the park is considered important. The site will remain accessible to the public whilst ticketed performances are not being held. The proposed new land use and facility would be at least as accessible to current and potential new users, and at least equivalent in terms of size, usefulness, attractiveness and quality compared to the bowling green and when assessed in terms of the contribution to the attractiveness and functionality of the wider Dyke Road Park, the proposed use is considered to be compatible with the enjoyment of this space.

Site selection

- 8.6 Whilst it is acknowledged that the proposal would result in the loss of a piece of level land to terracing, site selection has been explored within the application. Stammer Park, Whitehawk Hill and Queens Park were considered as potential options but it has been stated that the Council could not make the sites available. The redundant bowling green at Queens Park was given some consideration, but being close to a dense residential area and with little seclusion there was a concern over the wider impact of a theatre provision in this space.

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- 8.7 Whilst it is acknowledged that the terracing of the land may result in a loss of flexibility to other sports uses, it could also be seen to provide an attractive outdoor space. Funding is to be set aside so that the land could be restored to a level surface, to enable future uses, should the theatre use fail.
- 8.8 No alternative site for the sports space is being proposed. It is therefore considered that whilst this proposal is contrary to SR20 and QD20 in that there would be a loss of a sports facility, there needs to be consideration to the likelihood of the existing open space and sports provision being offered up again for public use. Given the adequate outdoor sports provision within the ward, the lack of demand for bowling facilities in the area and the fact that the land will be made available as an outdoor landscaped area to the public when not in use as a theatre, it is considered that the provision of the proposed cultural venue outweighs the loss of the bowling green and make full an effective use of the site. In this respect the proposed use would conform with policy HO19 by providing a unique open air facility which would make a welcome contribution to the stock of cultural venues within the city. The application has attracted eleven letters of support which state that the proposed open air theatre would benefit everyone from schools to the Brighton Festival, adding to the city's vibrant enthusiasm for the arts.
- 8.9 The applicant has confirmed the use of the hut will be ancillary to the use of the open space providing a hot-desk facility and office space for users.

Impact on Amenity:

- 8.10 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.
- 8.11 The nearest residential premises are to the east of the site on the opposite side of Dyke Road. A distance of over 120 metres separates the proposed theatre from these residents. This is considered to be a sufficient distance to prevent the development feeling imposing or un-neighbourly for the occupiers of the properties. The theatre would be below the level of Dyke Road and not readily visible from neighbouring properties at ground floor level given the planting existing planting in the park which would provide a visual buffer.
- 8.12 Whilst the theatre would be mainly be in use Wednesday to Saturday, finishing no later than 10pm, and for Sunday matinees finishing no later than 6pm, the applicant ideally seeks the flexibility to programme performances to suit weather and other city events so therefore would like to operate without restrictions on the days of use. The applicants state that they would be willing to limit the number of performances to a maximum of 22 per month. Amplified events are likely to occur 28 times a year. The rest of the time the area would be open to use by the public as part of the park.
- 8.13 The Environmental Health Team consider that the use, with a capacity of 425 people, operating potentially seven days a week from May to September

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(inclusive) has the potential to adversely impact on nearby residents, particularly given that the months of use are in the summer when residents will want to enjoy the use of their gardens and have windows open. Following bad weather, it is possible that there could be a string of events in a row, resulting in more than one event a day over several days. Therefore due to the close proximity of neighbours to this venue an acoustic survey was requested to assess the potential impact on local residents of noise from the proposed events and whether such noise might constitute a Statutory Noise Nuisance under the provisions of the Environmental Protection Act 1990.

- 8.14 It should be emphasised that this is a permanent outdoor installation which does not contain significant physical noise mitigation methods incorporated into it. It is also not an event that runs for only a few days. This means that if this application is granted permission, any noise problems that occur will be difficult, if not impossible, to resolve and mitigate. Some resolution of potential noise complaints may be possible by reducing the hours of the events, changing the type of events and reducing the numbers of events. The introduction of some physical screening may possibly reduce noise levels at receptors, but screening would not be effective for the upper floors of the flats opposite which would have a direct line of sight with the venue. Whilst spoken word appears to be the main type of event proposed, other productions could include amplified and unamplified music, children's events, spoken word events with unamplified and / or amplified sound effects, and visual art type installations with bass heavy sound tracks etc, may occur.
- 8.15 The diverse character of the entertainment and the varying character and size of the crowd cannot comprehensively be assessed in an acoustic report. The acoustic assessment is also difficult because a Statutory Noise Nuisance can occur even if noise complies with various standards that are used in Environmental Noise Assessments. Sporadic entertainment noise, if frequently occurring and loud enough to be noticeable and disturbing could be judged to be a Statutory Nuisance. Over the proposed five month period enough evidence might be gathered to suggest noise from the venue does constitute a Statutory Noise Nuisance and does affect the enjoyment of local residents in their homes, which includes gardens.
- 8.16 Investigation of other outdoor theatres indicates that they tend to be set up for limited runs of events and not over an entire summer. Additionally they tend to be placed further away from residential receptors, such as in the gardens of National Trust properties. Potential noise from the operation of a permanent outdoor theatre that may attract the attention of local residents includes the audience chatting, clapping, laughing, cheering and participating in the events. Such noise is almost impossible to mitigate in an open environment. In addition, other noise that could attract attention include streamed music from events elsewhere, such as Glyndebourne. The events themselves include sound effects incorporated into the event and car door slamming when people park or leave the venue. Events will therefore contain peaks and troughs of noise which will be intermittent in nature. This means they have the potential to attract attention, to annoy and to result in complaints.

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- 8.17 Environmental Health have carefully considered the Noise Assessment, which includes a noise survey taken on 25th June 2014 between 21:24 and 22:04, and made a site on 21st August at 9am and noted that traffic is the main noise source in the area and when traffic levels drop, ambient noise levels also drop significantly. For clarity, ambient noise levels can be considered as the overall average noise level measured over the time period used for assessment, which is due to all noise sources in the area. Background noise levels can be considered to be the noise level measured over the time period, above which 90% of all other noise readings occur. It is the underlying level of sound that is experienced when specified events are not taking place. The time at which the survey was undertaken, 9pm to 10pm, would be when ambient and background noise levels will likely be lower and local residents will want to relax, therefore the potential impact of noise from the theatre would be at it greatest at such a time. It is noticeable that noise measurements close to the noise sensitive receptors (NSR) show that the ambient and background noise levels drop as time approaches 10pm. At the most sensitive time assessed, closest to the NSR from 21:49 to 22:04, the ambient noise level measured was 55dB(A) and the background noise level was 38dB(A). This can be considered as a quiet background noise level.
- 8.18 The consultants have split their assessment into different types of noise that will occur at the theatre, namely entertainment sound such as streaming of Glyndebourne, audience chatting, normal audience laughter and loud audience laughter. It has incorporated British Standards such as BS8233:2014 and WHO Community Noise. Environmental Health have assessed this report having regard to the above accepted standards but also with regard to issues such as will the residents hear it, has it got the potential to annoy them and could it constitute a Statutory Noise Nuisance according to the frequency, duration and character of the noise associated with the venue.
- 8.19 From their analysis Environmental Health recommends that the scheduling of the events is such that only unamplified spoken word events are held in the evenings and on Sundays. Any perceived noisier events should be held during the day. With regard to streaming of live performances from other venue controlling amplified music so that it is on average 85dB(A) on stage is easier than controlling unamplified noise where electronic control is not possible. It is judged that during the quietest period of the evening, occasional noise from the streaming of music noise at BOAT could be audible to local residents.
- 8.20 The issue of audiences chatting outside is a serious consideration particularly when ambient levels drop such as when traffic levels fall and particularly later in the evening when audience chatting will occasionally be heard by the local residents. As the evening progresses people noise will likely become more noticeable in-between the traffic noise as background noise levels fall further. Consequently it is judged that depending on the timing of events, the frequency of events and the type of events, people noise does have the potential to generate noise complaints. Late evening and Sunday events would be of particular concern. Controlling people noise, stopping them chatting and laughing, is also extremely difficult to control, if not impossible. Similarly noise

from laughter and at the end of shows will be more audible when there is a drop in traffic noise.

- 8.21 In summary, the noise assessment examines various types of noise with ambient and background noise level assumptions and concludes whilst some type of noise may not be noticeable through traffic noise, some will be very noticeable when traffic levels drop. For these reasons it is recommended that approval be granted with conditions to safeguard the amenities of nearby residents, which would still give the applicants some flexibility to schedule events. Whilst the proposed conditions restrict the number and times of performances less than sought, issues such as crowd noise, especially for events that finish at 10pm, are likely to be above ambient and background noise levels and could lead to a Statutory Noise Nuisance. The conditions could be reviewed over a period of time once the impact on residential amenity becomes evident.
- 8.22 Whilst lighting does not form part of the planning application, details are contained in the supporting information which states that when lighting is required it will be in the form of temporary installations specific to the performance needs.

Physical alterations / waste management:

- 8.23 The proposal involved cut and fill to form the amphitheatre. Policy QD2 relates to design and requires all new development to enhance the positive qualities of the neighbourhood, taking into account factors including the natural and developed background against which the development will be set. Policy WMP3d of the Waste and Minerals Local Plan, and SPD03 Construction and Demolition Waste require developments to minimise the amount of waste from construction, demolition and excavation activities.
- 8.24 Whilst the application is not accompanied with a Waste Minimisation Statement the cross sections on the submitted drawings show that the works are likely to have a neutral cut and fill impact. It is anticipated that the soil removed to lower the level of the ground shall be sufficient to form the terracing although a small amount of soil may have to be imported. In this location against the backdrop of the park, it is not considered that the proposed reshaping of the land would have an adverse impact on the setting of the area.

Sustainable Transport:

- 8.25 Policy TR1 of the Local Plan requires development proposals to provide for the demand for travel which they create and maximise the use of public transport, walking and cycling. Policy TR7 will permit developments that would not increase the danger to users of adjacent pavements, cycle routes and roads. Policies TR14, TR18, and TR19 requires the provision of adequate cycle parking, parking for people with mobility related disability, and car parking, respectively. Policy QD28 seeks planning obligations where necessary to secure the provision of contributions towards the provision of public transport and pedestrian and cycle route infrastructure where necessary.

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- 8.26 The Sustainable Transport Team have not objected to the application but acknowledged that the proposed change of use is likely to have a material impact on the highway due to an increase in trip generation. With regard to servicing, the park has a vehicular access from Dyke Road which is used by Council vehicles in relation to maintaining the park rather than the general public. Given that the proposed transport scheme for Dyke Road may introduce loading restrictions on Dyke Road it is unlikely that loading/unloading will be able to occur from the adopted highway. It is therefore recommended that a Delivery and Servicing Management Plan be secured by condition.
- 8.27 Whilst it was recommended at the pre-application stage that a Transport Statement to forecast the likely trip generation associated with the site should accompany the application, none has been submitted. Based on the operational times of the theatre and seating capacity, and making allowance for the existing trips generated by the use as a bowling green, and that some performances would not operate at full capacity, it is calculated that the development could generate around 175 new trips. Assuming this level of new trips, based on the Council's standard S106 formula, a contribution of £26,250 towards providing pedestrian and cycle improvements on Dyke Road is sought by S106.
- 8.28 As a charity BOAT have expressed concerns that they are unable to pay the contribution and negotiations have taken place to seek a way forward. The applicants have submitted projected performance figures which help inform the impact of the use on the transport network. Whilst performances would take place in the evening outside rush hour and school dropping-off/picking up times, the use has the potential for large movements of people and traffic generation at the start and finish of performances, adding to pressure on the transport network. It is recommended that to manage and mitigate the impact of the proposed development on the highway network that the financial contribution be made with phased contributions triggered by a level of use. Therefore details of attendance numbers shall be submitted annually to the Council's Travel Plan Officer as part of an ongoing monitoring scheme as part of the Travel Plan. The Travel Plan would also to be secured as part of the S106 as it is linked to the financial contribution. The Plan will also promote the use of walking, cycling and public transport use to and from the site.
- 8.29 In relation to parking, no car parking is proposed due to the nature and constraints of the site which is within a park. However there is the potential for the BOAT users to park in the car parks for BHASVIC and Cardinal Newman School which are both within close walking distance to the venue. With many of the performances expected in the summer months this could have the potential for coinciding with school holidays. Letters of support from both schools have been submitted with the application and BHASVIC state that they may be able to offer assistance with regard to car-parking.
- 8.30 A cycle parking scheme could also be secured by condition.

Ecology/Nature Conservation/Landscaping:

- 8.31 The application is accompanied with a Biodiversity checklist which indicates that the development should have little impact on the natural environment. None of

the indicators on the Checklist have been triggered, and the area is to remain as a green open space which it to be enhanced with further landscaping.

Archaeology

- 8.32 Policy HE12 states that development proposals must preserve and enhance sites of known and potential archaeological interest and their setting. The site is situated within an Archaeological Notification Area of prehistoric and Saxon activity and large concentrations of prehistoric flint tools were found in close proximity of the site in the early 20th century. Both the Brighton & Hove Archaeological Society and the County Archaeologist recommend conditions to ensure that as the proposal involves cut and fill groundwork, that mitigation of damage to archaeological remains are attached.

Financial issues

- 8.33 A Business Plan which covers the development management, and operational programmes and financial projections up to 2016 accompanies the application. This sets out capital build and start-up costs, finance and fund-raising plan and financial projections. It is anticipated that the theatre will cost £75,000 to build and with a capital of £45,000, fundraising is required. Projected income has been calculated on a prediction of 50% capacity in the first year rising to 75%. It is proposed to build a Sinking Fund of £5,000 by the end of the third year which will help to return the site to flat earth as an emergency contingency. A reserve of a minimum of £10,000 (3 months running costs) as a maintenance and contingency fund is sought by 2018.
- 8.34 Issues relating to maintenance, and litter collection would be considered as part of the lease with the Council as landowners.

9 CONCLUSION

- 9.1 The principle of the acceptability of the change of use is considered to be balanced. The site is not in use and there appears to be no plans to bring the site back to providing a sports facility. The proposed community facility would remain publically accessible and provide a new cultural offering which has received some local support. The proposal would expand on the range of activities offered in the park and is considered an appropriate use of open space. The loss of the sports facility has not been fully justified but given the proposed provision of a community facility, it is considered the proposal complies with the broad objectives of policy QD20.
- 9.2 The main concerns relate to the use on residential amenity and the traffic implications. With regard to transport matters, whilst the proposed use has the potential for large movements of people at one time, it is considered that the financial contribution sought, which would be used to improve pedestrian and cycle provision on Dyke Road, would mitigate the impact. A phased programme of contributions is seen as appropriate as full payment in one sum is likely to make the scheme undeliverable.
- 9.3 With regard to impact on residential amenity, given the proximity of neighbours to the venue, the fact that this is a permanent outdoor venue which contains little

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significant physical noise mitigation measures and the diverse character of the proposed entertainment which the applicants would like to use for up to 22 events per month, the use has the potential to be a Statutory Noise Nuisance. For these reasons it is considered necessary to apply conditions limiting the times of, and number of events. Such conditions could be reviewed once the impact on residential has been established.

- 9.4 Subject to compliance with the suggested conditions and S106 Obligation it is considered that the proposed open air theatre would provide a suitable alternative public use for the site, ensuring that it remains as a community facilities whilst not impacting negatively on neighbouring properties or the local transport network. Approval is recommended.

10 EQUALITIES

- 10.1 The park has wheelchair access and venue has been designed to be fully accessible to wheelchair users.

11 PLANNING OBLIGATION / CONDITIONS / INFORMATIVES

11.1 S106 Heads of Terms

- A contribution of £26,250 to help finance pedestrian and cycle improvements on Dyke Road. A trigger for these payments will be linked to the monitoring framework within the Travel Plan, as set out in the comments made by the Highway Authority.
- A Travel Plan to assist in the mitigation of the likely transport impact of the development. The Plan shall include a monitoring framework where the applicant is required to submit a record of the number of attendees for a minimum of 5 years, and

subject to the following Conditions and Informatives:

11.2 Regulatory Conditions:

- 1) 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.
- 2) 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
Site Location Plan	4344 AD20		18 th November 2013,
Existing Block Plan and Section	4344 AD24		27 th November 2013
Photomontage	4344 AD23		18 th November 2013
Section AA	4344 AD22		18 th November

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			2013
Design and Access Statement			18 th November 2013
Noise Assessment	Acoustic Associates Sussex Ltd		12 th August 2014

- 3) No events shall occur outside of the hours of 09:00 to 21:30 Monday to Saturday and 11:00 to 18:00 on Sundays. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 4) The development hereby approved shall hold a maximum of 12 performances/events per month. **Reason:** To safeguard the amenities of the locality and to ensure that the development has an acceptable impact upon the operation of the transport network and to comply with policies SU10, QD27 and TR1 of the Brighton & Hove Local Plan.
- 5) The development hereby approved shall hold no more than 3 events per week. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 6) The development hereby approved shall hold no more than 2 events per day. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 7) The development hereby approved shall hold no more than 28 amplified events over the period of May to September inclusive. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 8) The development hereby approved shall hold no more than 2 amplified events per week. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 9) All events shall have a maximum $L_{Aeq,15min}$ sound pressure level on the stage of 85dB. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 10) For all events 63Hz and 125Hz shall not respectively exceed 85dB and 80dB $L_{Aeq,15min}$ on stage. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
- 11) There shall be no pyrotechnics involved in any events. **Reason:** To safeguard the amenities of the locality and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

11.3 Pre-Commencement Conditions:

- 12) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times. **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.
- 13) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to

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and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. **Reason:** To ensure a satisfactory appearance to the development and to comply with policy QD1 of the Brighton & Hove Local Plan.

- 14) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping, which shall include hard surfacing, boundary treatments, planting of the development, indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development. **Reason:** To enhance the appearance of the development in the interest of the visual amenities of the area and to comply with policies QD1 and QD15 of the Brighton & Hove Local Plan.
- 15) No development shall commence until fences for the protection of trees to be retained have been erected in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority. The fences shall be erected in accordance with BS5837 (2012) and shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences. **Reason:** To protect the trees which are to be retained on the site in the interest of the visual amenities of the area and to comply with policies QD1 and QD16 of the Brighton & Hove Local Plan.
- 16) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times. **Reason:** To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan.
- 17) Any topsoil to be removed from the site shall be retained and used within the park. **Reason:** In the interests of sustainability and waste elimination and to comply with policy SU13 of the Brighton & Hove Local Plan.
- 18) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not be brought into use until the programme of archaeological work has been completed in accordance with the approved Written Scheme of Archaeological Investigation. **Reason:** To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply with policy HE12 of the Brighton & Hove Local Plan.
- 19) The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 8 and that provision for analysis, publication and dissemination of results and archive deposition has been secured. **Reason:** To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply with policy HE12 of the Brighton & Hove Local Plan.

11.4 Pre-Occupation Conditions:

- 20) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied. **Reason:** To enhance the appearance of the development in the interest of the visual amenities of the area and to comply with policies QD1 and QD15 of the Brighton & Hove Local Plan.
- 21) Prior to the first use of the development hereby approved a Delivery & Service Management Plan, which includes details of the types of vehicles, how deliveries will take place 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, in accordance with policies S10, QD27 and TR7 of the Brighton & Hove Local Plan.
- 22) The use of the hut/pavilion shall remain ancillary to the use of the open space and not used as an independent unit. **Reason:** To safeguard accommodation needed in association with the use of the land as a community facility and to comply with policy QD20 of the Brighton & Hove Local Plan.

11.5 Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One (submission document) 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. This decision to grant Planning Permission has been taken:
 - (i) having regard to the policies and proposals in the National Planning Policy Framework and the Development Plan, including Supplementary Planning Guidance and Supplementary Planning Documents:
(Please see section 7 of the report for the full list); and
 - (ii) for the following reasons:-

The proposed use would provide a new cultural facility and expand the range of activities within the park. An open air theatre is considered an appropriate use of this open space and the provision of a community facility complies with the objectives of policy QD20 and subject to compliance with the above conditions the scheme will not have a detrimental impact on amenity.