

<u>No:</u>	BH2019/00293	<u>Ward:</u>	East Brighton/Queens Park Wards
<u>App Type:</u>	Full Planning		
<u>Address:</u>	Former Peter Pan Playground Site Madeira Drive Brighton BN2 1PS		
<u>Proposal:</u>	Erection of outdoor swimming pool (25m x 12.5m) and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-2 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat. Temporary (meanwhile use) for 5 years.		
<u>Officer:</u>	Nick Eagle, tel: 2106	<u>Valid Date:</u>	04.02.2019
<u>Con Area:</u>	East Cliff	<u>Expiry Date:</u>	06.05.2019
<u>Listed Buildings Grade:</u>	II (setting of)	<u>EOT:</u>	
<u>Agent:</u>	Absolute Town Planning Ltd Gemini House 136-140 Old Shoreham Road Brighton & Hove BN3 7BD		
<u>Applicant:</u>	SeaLanes Brighton Ltd C/o Agent		

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 be **MINDED TO GRANT** planning permission subject to a s106 agreement and the following Conditions and Informatives as set out hereunder, **SAVE THAT** should the s106 Planning Obligation not be completed on or before the **24th July 2019** the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 10 of this report.

S106 Heads of Terms:

Ecology: An Obligation to secure submission and agreement of an Ecological Strategy and Plan prior to first installation of the swimming pool which commits the developer to the following (which will require a licence from the council as landowner):

- Provision of details of an off-site coastal vegetated shingle mound (minimum 1,500sqm in area) between the Yellowwave facility and the Banjo Groyne (or another location to be agreed) and implementation of it. Details to include methodology, size, design, location, materials to be used, planting/seeding, specification including volume, number and type of plants, period of implementation

- Provision of details of a boardwalk and one interpretation board and implementation of them associated with the vegetated shingle mound
- Provision of details of a minimum of area of 371sqm of on-site vegetated shingle habitat adjacent to the Volks Railway and implementation of it before development is first brought into use
- The area of green vegetated roofs to be 246 sqm
- Provision of details of a maintenance/management strategy for all the ecological mitigation measures to include provision of an annual monitoring report over a 10 year period
- A financial contribution total of £2,074 towards annual review of the monitoring reports by the County Ecologist (over a 10 year period)

Sustainable Transport:

- A financial contribution of £3,500 towards enhancement of sustainable modes of transport within Madeira Drive to include, but not be limited to, provision of additional cycle stands including the Bike Share scheme, pedestrian enhancements and signage.

Economic Development:

- Submission of an Employment & Training Strategy to demonstrate how the developer or main contractor and / or their subcontractors will encourage 20% local labour and training opportunities during the life of the project.

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	Date Received
SITE PLAN AS EXISTING	0001	02.02.19
BLOCK PLAN AS EXISTING	0002	02.02.19
PROPOSED GROUND FLOOR GA PLAN	0003	02.02.19
PROPOSED 1ST FLOOR GA PLAN	0004	02.02.19
PROPOSED ROOF PLAN	0005	02.02.19
PROPOSED SECTIONS AA-CC	0006	02.02.19
PROPOSED SECTIONS DD-GG	0007	02.02.19
PROPOSED SECTIONS HH-KK	0008	02.02.19
PROPOSED SECTION CC – COMPARISON TO REFUSED SCHEME	0009	02.02.19
PROPOSED GROUND FLOOR GA PLAN UNIT ALLOCATION AND CONFIGURATION	0010	02.02.19
PROPOSED 1ST FLOOR GA PLAN UNIT ALLOCATION AND CONFIGURATION	0011	02.02.19
PROPOSED GROUND FLOOR GA PLAN EXTRACT TO SHOW VIEWS TO BEACH	0012	02.02.19

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 outdoor pool and all structures hereby permitted shall be removed within 5 years from the date of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line first being brought into use or by 1st April 2025, whichever is the sooner, and shingle shall be replaced on the beach where the pool and flattened to match the surrounding beach.
Reason: The structures hereby approved are not considered suitable as a permanent form of development as their scale, height, siting, site coverage/density, design, colours and materials cause harm to the special historic character and appearance of the East Cliff Conservation Area and the setting of adjacent listed Madeira Terraces, Shelter Hall and Lift, to comply with policies SR18, HE3 and HE6 of the Brighton and Hove Local Plan and policies CP12, CP15 and SA1 of the Brighton and Hove City Plan Part One. Temporary permission has been granted exceptionally as at this particular time it is considered the public benefits of instigating regeneration of the area would outweigh the harm caused. Permanent permission is not considered appropriate because this area of the seafront is identified in the long term for comprehensive coordinated regeneration with permanent development which is sympathetic to its special setting, and to ensure the development does not prejudice the emerging plans for restoration and viability of the Madeira Terraces.
4. Within 12 months of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line hereby permitted first being brought into use the outdoor pool and associated ancillary facilities and retractable beach mat shall be implemented and completed ready for first use or alternatively the pool shall be implemented and ready for use by 1st April 2020.
Reason: To ensure the sports/leisure attraction element of the scheme is delivered to accord with policy SA1 of the Brighton and Hove City Plan Part One which primarily seeks to secure family and leisure based activities in this location, and in the interests of preserving the visual amenities of the area as the A1/A3/A4/A5/D2/B1 uses hereby permitted have only been justified as enabling development to support the viability of the leisure/sports attraction, to comply with policies SR18, HE3 and HE6 of the Brighton and Hove Local Plan and CP12, CP15 and CP17 of the Brighton and Hove City Plan Part One.
5. No development of each respective phase shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
 - (i) The phases of the Proposed Development including the forecasted completion date(s).
 - (ii) A commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to Commence Development until such consent has been obtained

- (iii) A commitment to adopt and implement the Considerate Contractor Scheme (or equivalent at the time of submission)
- (iv) A commitment to ensure that all road hauliers and demolition/construction vehicle operators are accredited to Bronze standard (or greater) of the Freight Operator Recognition Scheme
- (v) A scheme of how the contractors will liaise with local residents, businesses, elected members and public transport operators to ensure that they are all kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme)
- (vi) A scheme of how the contractors will minimise, record and respond to complaints from neighbours regarding issues such as noise, dust management, vibration, site traffic, idling vehicles, parking by staff and contractors and deliveries to and from the site
- (vii) Details of hours of construction and deliveries to site, including all associated vehicular movements
- (viii) Details of the construction compound, including the proposed location, design and construction of vehicular accesses to this from the highway, associated measures to manage local traffic movements around this, including those by pedestrians and cyclists, and any associated on-street restrictions and other measures necessary to minimise congestion on the highway and permit safe access by site vehicles.
- (ix) A plan showing construction traffic routes.
- (x) Details of measures to facilitate sustainable travel to site by staff and contractors.
- (xi) A scheme to minimise congestion, delays and disturbances to traffic and public transport services in the vicinity of the site owing to staff and contractor car parking and site traffic. This will include the identification of areas for staff and contractor parking. The scheme can be informed by parking stress surveys of the streets and public car parks in the vicinity of the site. These shall be carried out in accordance with the Lambeth methodology and shall be conducted at intervals over a 16 hour period on two neutral weekdays and one Saturday. Survey areas, dates and times shall be agreed in advance with the Council.
- (xii) A scheme to minimise the impact, within Brighton & Hove, of demolition and construction traffic on Air Quality Management Areas and areas that currently experience, or are at risk, noise exceeding World Health Organisation lower limits.

The construction shall be carried out in accordance with the approved CEMP.

Reason: As this matter is fundamental to the protection of amenity and highway safety throughout development works and to comply with policies QD27, SU9, SU10 and TR7 of the Brighton and Hove Local Plan, policy CP8 of the Brighton and Hove City Plan Part One.

6. No development, including demolition and excavation, shall commence of each respective phase until a Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details approved.

Reason: To maximise the sustainable management of waste and to minimise the need for landfill capacity and to comply with policy WMP3d of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan.

7. The B1 office use floorspace within the development hereby permitted shall not exceed 300sqm in total and no one A4 bar use unit shall exceed a total of 150sqm (unless alcohol is ancillary to food served at the premises or there is service to seated customers taking meals on the premises).

Reason: To ensure no one use dominates in the interests of securing a mix of vibrant and active uses that complement the seafront location and help draw visitors to the area, and in the interests of crime prevention and preventing anti-social behaviour, to comply with policies SR12 and SR18 of the Brighton and Hove Local Plan and SA1, CP5, CP12 and CP13 of the Brighton and Hove City Plan Part One.

8. No development (excluding excavation) shall take place of each respective phase until details (and samples where necessary) of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):

- a) All brick, stone, concrete, render, modular building wrapping and roofing material (including details of the colour of modular building wrapping/render/paintwork to be used and evidence of robustness against weathering)
- b) All cladding to be used, including details of their treatment to protect against weathering
- c) All hard surfacing materials including for landscaping and means of enclosure
- d) All the proposed window, door and balustrade/railing treatments
- e) The colour and type of pool lining to be used
- f) All other materials to be used externally

The development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory appearance to the development and HE3 and HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.

9. The outdoor pool hereby permitted shall not be first brought into use until details of the retractable beach mat from the pool to the sea across the beach has been submitted to and approved in writing by the LPA. The agreed mat shall be installed ready for use before the pool is first brought into use.

Reason: To ensure the scheme delivers accessibility benefits to the seafront, to comply with policy SR18 of the Brighton and Hove Local Plan and SA1 of the Brighton and Hove City Plan Part One.

10. The development hereby approved (excluding outdoor pool and associated ancillary facilities) shall not be open to customers except between the hours of 07.00 hours and 23.00 hours daily. The outdoor pool shall not be open except between the hours of 06.00 hours and 22.00 hours daily.

Reason: To safeguard the amenities of nearby residents and occupiers and the amenity of the general locality and in the interests of crime prevention to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan and CP12 and CP13 of the Brighton and Hove City Plan Part One.

11. No odour control/extraction/ventilation equipment shall be installed within the development until details have first been submitted to and approved in writing by the Local Planning Authority. This shall include details of sound insulation of the equipment. The unit(s) to which the equipment is to be fitted shall not be first brought into use until all the measures agreed have been implemented and they shall thereafter be retained as such.

Reason: To safeguard the amenities of the occupiers of nearby properties and the amenity of the general seafront locality and the visual amenity of the area to comply with policies QD27, SU9, SU10 and HE3 and HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.

12. No plant and machinery shall first be brought into use until details of their appearance and location and a scheme for the suitable treatment of all plant and machinery against the transmission of sound and/or vibration has been submitted to and approved in writing by the Local Planning Authority. 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 safeguard the amenities of the occupiers of adjoining properties and the visual amenities of the locality to comply with policies HE3, HE6, SU10 and QD27 of the Brighton & Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.

13. No sound reproduction or amplification equipment (including public address systems, tannoys, loudspeakers, etc.) which is audible outside the site boundary shall be installed or operated on the site.

Reason: To safeguard the amenities of the occupiers of nearby properties and the general locality to comply with policies SU10 and QD27 of the Brighton and Hove Local Plan.

14. Each respective phase of the development of the development hereby permitted shall not be first brought into use until details of external lighting (and any internal lighting of place marker units) have been submitted to and approved in writing by the Local Planning Authority. These details shall include:

- Location, design and visual appearance
- Hours of operation
- Luminance levels
- Evidence that the lighting has been selected and designed to minimise light spillage and pollution and avoid dazzle or distraction to drivers on nearby highways
- Evidence that landscaping/screening measures have been incorporated to screen illuminated areas in environmentally sensitive areas as applicable

- Evidence that lighting designs have reference to both horizontal and vertical
- illuminance to account for the varied sensitive receptors around the site.
- Independent evidence from a Competent Person to demonstrate the lighting installation complies with the recommendations of the Institution of Lighting Professionals (ILP) Guidance Notes for the Reduction of Obtrusive Light (2011), or similar guidance recognised by the council

The lighting shall be installed in accordance with the approved details before first occupation of each respective phase and thereby retained as such unless a variation is subsequently submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the amenities of the occupiers of nearby properties and the character and appearance of the general locality and to comply with policies QD25, QD27, HE3 and HE6 of the Brighton and Hove Local Plan and Cp15 of the Brighton and Hove City Plan Part One.

15. Within 3 months of the date each respective phase of the development hereby permitted is first brought into use, a Travel Plan shall be submitted to the Local Planning Authority for approval. The Travel Plan shall set out a package of measures and commitments tailored to the needs of the development, which is aimed at promoting safe, active and sustainable travel choices by its users (visitors and staff), and shall include the following measures:

- a) A travel survey of employees and visitors;
- b) Details of publicity and ticketing initiatives including advanced booking. This shall include evidence that sustainable transport information has been provided on the operators website and booking information/tickets, including information regarding public transport links and walking and cycling routes to the site;
- c) Details of a monitoring framework based on an annual survey, to enable the Travel Plan to be reviewed and updated as appropriate;
- d) Nomination of a member of staff as Travel Plan Co-ordinator.

The approved Travel Plan shall thereafter be fully implemented throughout the duration of the use of the development.

Reason: To ensure the travel demand created is satisfactorily met and to prevent undue traffic generation and promote sustainable modes of transport, to comply with policies TR4 of the Brighton and Hove Local Plan and CP9 of the Brighton and Hove City Plan Part One.

16. Notwithstanding the layout of the scheme as shown on the drawings hereby permitted, no development shall be first occupied until a Delivery & Service Management Plan, which includes details of the types of vehicles, a drawing of how deliveries will take place, and the timing and frequency of deliveries for each respective phase shall be submitted to and approved in writing by the Local Planning Authority. The layout shall be amended as approved before the development is first brought into use and 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 highway safety, in accordance with policy TR7 of the Brighton & Hove Local Plan.

17. Each respective phase of the development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development 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 and SPD14: Parking Standards.
18. Each respective phase of the development hereby permitted shall not be occupied 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 and provided in full in accordance with the approved details prior to first occupation of each phase 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, policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan.
19. No part of each respective phase of the development hereby permitted shall be first occupied until a Crime Prevention Scheme has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before first occupation of each respective phase.
Reason: In the interests of crime prevention in this relatively isolated seafront location, to comply with policies CP12 and CP13 of the Brighton & Hove City Plan Part One.
20. Each respective phase of the development hereby permitted shall not be commenced until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design in each phase.
Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to comply with policy SU3 of the Brighton & Hove Local Plan.
21. No development of each respective phase shall take place until a Drainage Strategy detailing the proposed means of foul and surface water disposal and an implementation timetable, has been submitted to and approved in writing by, the Local Planning Authority in consultation with the sewerage undertaker (Southern Water). The development of each phase shall be carried out in accordance with the approved scheme and timetable.

Reason: To ensure adequate foul sewage drainage/treatment is available prior to development commencing and to comply with policy SU5 of the Brighton & Hove Local Plan.

22.

(a). No development of each respective phase shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.

(b) A written record of any archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the Local Planning Authority.

Reason: To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply policies HE12 of the Brighton and Hove Local Plan 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 a licence from the council (as landowner) will be required in order to carry out work on the beach outside the site for ecological mitigation as per the associated S106 Obligations secured as part of this permission.

3. The applicant is advised that having a planning application in place is no defence against a statutory noise nuisance being caused or allowed to occur. Should the Council's Environmental Health department receive a complaint, they are required to investigate under the provisions of the Environmental Protection Act 1990 to determine whether or not a statutory nuisance is occurring.

4. Any grant of planning permission does not confer automatic grant of any licenses under the Licensing Act 2003 or the Regulation (EC) No. 852/2004 on the Hygiene of Foodstuffs, Article 6(2). The applicant is advised that the site is located in a cumulative impact area and an applicant would have to have extra regard to presumption of a refusal for additional licences within the area.

5. The applicant is advised that the details of external lighting required by the condition above should comply with the recommendations of the Institution of Lighting Engineers (ILE) 'Guidance Notes for the Reduction of Light Pollution (2011)' or similar guidance recognised by the council. A certificate of compliance signed by a competent person (such as a member of the Institution of Lighting Engineers) should be submitted with the details. Please contact the council's Pollution Team for further details. Their address is

Environmental Health & Licensing, Bartholomew House, Bartholomew Square, Brighton, BN1 1JP (telephone 01273 294490 email: ehlpollution@brighton-hove.gov.uk website: www.brighton-hove.gov.uk).

6. The applicant is advised that this planning permission does not override the need to obtain a licence under the Licensing Act 2003. Please contact the Council's Licensing team for further information. Their address is Environmental Health & Licensing, Bartholomew House, Bartholomew Square, Brighton BN1 1JP (telephone: 01273 294429, email: eh1.safety@brighton-hove.gov.uk, website: www.brighton-hove.gov.uk/licensing).
7. A formal application for connection to the water supply is required in order to service this development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1. The site is owned by the council and is part of the former Peter Pan amusement site between Madeira Drive and the Volks Railway, just west of the Yellowwave volleyball facility. The site comprises an area of hardstanding north of the Volks Railway and also part of the beach to the south of the railway. It has had several temporary uses.
- 2.2. The site lies in the East Cliff Conservation Area and within the setting of the Grade II Listed Madeira Terraces, Lift and Shelter Hall (Concorde 2). The site is also partly located within the Volks Railway Site of Nature Conservation Interest (SNCI).
- 2.3. The application is a resubmission following the refusal of application Bh2018/01973 and proposes the following for a temporary time period of 5 years (from date of first use):
 - The location of the swimming pool has been moved 4 meters up the beach to sit in line with the curtilage of Yellowwave and reduce the loss of public open space
 - The heated open air 25 m pool will provide facilities for a comfortable maximum of 6 swimmers per lane and therefore with 6 lanes a total of 36 swimmers may use the pool at any one time
 - Floor space has been reduced from 1386sqm to 1372sqm
 - Commercial 'enabling' development is proposed comprising shops/cafes/restaurants/bars/takeaway (A1/A3/A4/A5 uses), leisure/yoga studios/swimming-related uses (D2 uses) and office (B1 use) in modular 'container' type structures of between 1 and 2 storeys high with first floor terrace. These will be delivered in advance of the pool, so the scheme is effectively two phases.
 - The 2nd storey place markers have been entirely removed from the scheme – reducing the overall height of the scheme by 1.27 meters

- The materials have been reviewed with new robust materials to ensure durability with rubber, steel and recycled composite cladding proposed
- The colour pallet has been softened to complement existing seafront assets
- Pitched roofs have been re-introduced to soften the visual appearance of the scheme and reduce the overall massing
- Strategic views through the scheme have been protected with glass balustrades added to the first storey to ensure uninterrupted views of the sea whilst walking along Madeira Drive; the protected views are between 4.5 and 5.4 meters in width
- The existing vegetated shingle mound is to be relocated and expanded in line with the recommendations and to the satisfaction of the County Ecologist
- The loss of the existing substandard 1121 sqm of vegetated shingle to the east of the Yellowwave site would be mitigated by the creation of a new high-quality habitat of not less than 1500 sqm by the Banjo Groyne. The new area of vegetated shingle would be maintained for 10 years
- The updated scheme provides 371 sqm of ecology habitat enhancement in terms of ground cover vegetation
- Green roofs have been introduced to reduce surface water runoff, to provide together with protected pockets of vegetated shingle on site, to provide ecological enhancement. The area of green vegetated roofs is 246 sqm.

2.4. The application information suggests that a future application may be submitted for a permanent scheme, with an extended 50m pool, however, no further information relating to this has been submitted and this does not form part of the current application.

3. RELEVANT HISTORY

Former Peter Pan Amusements Site (history back to 2000 only):

- 3.1. **BH2018/02281** Erection of temporary buildings including first floor terrace to provide swimming training facility, sauna and changing facilities (D2 use), marketing suite/office (B1 use) and associated storage, plant and fencing, and use of land for general leisure/therapy use and pop-up events (D2/D1 uses) for temporary period of 12 months (Part retrospective). Approved 30.01.2019.
- 3.2. **BH2018/01973** Erection of outdoor swimming pool (25m x 12.5m) and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-3 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) including second floor place markers and lifeguard observation unit, with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat. Temporary (meanwhile use) for 5 years. Refused 19 December 2018.

3.3. Reasons for Refusal:

1. The proposal, by reason of design, scale, density, height and colour would be incongruous and visually harmful to the setting of nearby listed buildings including the Madeira Terraces, Shelter Hall and Lift, and the setting of the East Cliff Conservation Area, contrary to policies HE3, HE6 and SR18 of the Brighton and Hove Local Plan and CP15 and SA1 of the Brighton and Hove City Plan Part One and the East Cliff Conservation Area Study and Enhancement Plan 2002.
2. The proposed siting of the swimming pool and associated structures on the beach would result in the loss of public open space, contrary to policy SR18 of the Brighton and Hove Local Plan and SA1 and CP16 of the Brighton and Hove City Plan Part One.
3. The proposal would result in the loss of rare coastal vegetated shingle habitat and would cause harm to the Volks Railway Site of Nature Conservation Importance, and does not contain sufficient mitigation and enhancement, contrary to policy NC4 and SR18 of the Brighton and Hove Local Plan and SA1 and CP10 of the Brighton and Hove City Plan Part One.

3.4. **BH2016/01405** Erection of a single storey temporary structure for use as a theatre (Sui Generis) and food court (A3) from 9th of May until the 6th of September 2016 (retrospective). Approved 24/6/16.

3.5. **BH2011/01424** Erection of steel container for operation of cycle hire business for temporary period until 31 October 2011. (Retrospective). Approved 25/7/11.

3.6. **Prior to 2000:** Numerous applications approved for amusement and fairground ride-related development, prior to amusements ceasing in approximately the year 2000.

Adjacent sites:

(Yellowwave):

3.7. **BH2005/02408** Creation of a sand area for beach sports, erection of a cafe/reception pavilion, erection of a climbing wall and erection of boundary screening. Approved 22/6/06.

Gracies Place café adj to peter Pan Playground:

3.8. **BH2014/03148** Demolition of existing cafe and erection of new single storey cafe with roof terrace (A3) in relocated position. Approved 23/3/15.

Adventure Golf Course:

3.9. **BH2018/00700** Erection of 16 metre high rope climbing course above existing golf course. Approved 23/6/18 (on a temporary basis for 5 years).

4. REPRESENTATIONS

4.1. Six (4) letters have been received objecting to the proposed development for the following reasons:

- Overdevelopment
- Poor design
- Adverse impact to setting of Conservation Area and listed buildings
- Pool too small to be useful public facility or attraction

4.2. Two hundred and seventy one (271) letters have been received supporting the proposed development for the following reasons:

- Great idea
- Will create jobs and help small businesses
- Will enliven a derelict area and help bring other business down there
- Will be huge asset for city and make it more attractive
- Would be a year round attraction
- Will encourage people to be active and more healthy, less strain for the NHS
- City is seriously lacking decent swimming pool facilities, an outdoor one would be ideal given the increase in popularity of outdoor swimming and triathlons
- Will be good for local athletes
- Good stepping stone to sea swimming
- Will be good alternative to leisure based pools in the city, will be an important venue for serious swimming, swim training and coaching, will be centre of excellence
- Will complement Yellowwave
- Good design, is quirky, colours are cheerful, will enhance this dreary area of seafront
- Pool should ideally be 50m but good start and there is potential for this
- Will attract visitors to city
- Is temporary only so allows council to use for something else in future if needed
- Previous pop-up events here have proved very popular
- Strongly support but prefer less garish colours
- Support but containers are uninspiring- could be more artistic
- Should be permanent, not temporary

5. CONSULTATIONS

External:

Historic England: Comment/Concerns:

5.1. We provided pre-application advice about a previous proposal in May 2016 and commented on planning application BH2018/01973 in August 2018. The comments we made then remain largely valid for this application and so this letter should be read in conjunction with our earlier advice. On the basis of

the information now available, we offer the following advice to assist your authority in determining this new application.

Historic England Advice

- 5.2. The proposed site is located within the East Cliff Conservation Area and is adjacent to the grade II listed Madeira Terrace and Madeira Walk, lift tower and related buildings, built between 1890 and 1897 to the designs of the Borough Surveyor, Philip Lockwood.
- 5.3. The East Cliff Conservation Area is on our Heritage at Risk Register and lies between Palace Pier and Brighton Marina and is characterised by its outstanding Regency terraces overlooking the Victorian esplanade below, with wide shingle beach and sea beyond. The residential terraces are set behind Marine Parade, originally a small track that was widened to form a promenade in 1827 supported by a concrete retaining wall below.
- 5.4. At beach level flanking the retaining wall is the grade II listed Madeira Terrace. A two tier, arched cast iron colonnade, constructed to have a covered colonnade below and open promenade above. The terrace is in a very poor condition and is fenced off and closed to the public, contributing to the conservation areas At Risk status.
- 5.5. To the front of the terrace runs Madeira Drive which was designed as a short esplanade and carriageway along the base of the cliff which over time has become a wide road which on occasion is used for motoring events. In front of Madeira Drive and forming the margin to the shingle beach is the Volks Railway of 1883, the earliest public electric railway in Britain.
- 5.6. Together these features have significance as surviving remarkable examples of 19th century engineering and reflect the late Victorian heyday of the seafront, when the coming of the railway opened Brighton up to a much wider public. These features currently sit within a flat open expansive location along the lower seafront esplanade, to the east of Palace Pier. From a variety of different levels either at the top of Marine Parade, at mid-level on Madeira Terrace or walking along the lower esplanade, clear uninterrupted views of the sea and across to Palace Pier are afforded. The open seaside environment forms the setting of the designated heritage assets and contributes to their significance.
- 5.7. This site has been the subject of previous proposals for leisure and mixed-use development on which Historic England has provided advice as seen in our letters of the 5th May 2016 and 10th August 2018. These letters set out the significance of the site and its contribution as part of the setting to the above mentioned designated heritage assets. Whilst supporting the principle of a new high-quality, leisure-based activity on this site as part of a coherent strategy to continue the regeneration of Brighton's seafront we raised several concerns relating to the potential impact upon the sensitive historic environment. In particular we raised the issues of balancing regeneration through development with the current openness and important relationship between the heritage assets and the sea front, which is a major contributor to

their historic and architectural interest as well as a distinctive element of the conservation area. Additionally we highlighted concerns about the scale and visual impact of the new development.

- 5.8. We previously advised that whilst we understood that the proposed use could compliment other activities on the seafront, the likely visual impact and harm could only be justified by the usage of this site in supporting the Council to generate funds towards the longer- term sustainable regeneration of the seafront, including repair and use of the listed Madeira Terrace and related buildings. We advised that this justification would only be convincing if the extent of harm had been minimised as far as possible and the funding clearly secured towards the long-term regeneration, as a form of public benefit.
- 5.9. The current proposals are for a 25m outdoor pool that would be in temporary use for five years. It is our understanding from the application that this is seen as a stepping stone to a permanent 50m open air pool, for which planning permission would be sought three years after the 25m pool opens. If long-term planning permission was not to be granted the site would be closed and dismantled and land returned to the local authority. Due to the costs of providing and operating this facility we note the requirement of additional development to generate sufficient income to meet these costs and this would be in the form of broadly complementary uses to the pool such as flexible events space/leisure/retail/food/drink and office uses.
- 5.10. We acknowledge that this new application has introduced some changes to the previously refused scheme, application BH2018/01973. Most notably the palette of materials has changed, which is now proposed to be black rubber membrane cladding, cedar weather board cladding and white corrugated steel cladding. Additionally we observe that there has been a slight reduction in the maximum height of the scheme, with a reduction in height of 1.27m. This is as a result of the removal of place markers and structures of a three storey height. It is noted that there has been design alteration with the introduction of pitched roofs and a change in the fenestration articulation.
- 5.11. Whilst there has been a reduction in harm from the previously refused application, we note however that the density and plan form of the proposed additional buildings remains mainly unchanged. Equally whilst the maximum height of the buildings has been slightly reduced the development remains heavily two storey. Whilst we welcome the change in palette, the scale and height of the development in our view remains harmful. A less harmful approach would see single storey development that sits below the canopy of Madeira Terrace, maintaining the distinctive openness of this part of the seafront and the uninterrupted views of the sea and Palace Pier from all levels. We acknowledge that this could have implications for the viability of the proposal but as no viability assessment is included with this application this is difficult to ascertain.
- 5.12. With the changes to the scheme advised above the level of harm could be further reduced. At that point, whilst there would still be some harm from change within the setting to the designated heritage assets and for the

conservation area, we think this would be less than substantial harm. If your council are minded to approve the scheme as submitted we think this would result in more harm to the significance of the designated heritage assets but we also think that harm would remain as less than substantial but at the higher end of that scale. NPPF paragraph 196 advises that 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, where appropriate, securing its optimum viable use. The weighing should only be carried out once you are satisfied that harm has been avoided or minimised to the greatest extent possible by design of the development. It is the remaining harm after such a process that should be weighed against the public benefits of the proposal.

Recommendation:

Historic England has concerns regarding the application on heritage grounds.

- 5.13. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 190, 193, 194 and 196 of the NPPF. A key element to the justification of this scheme is the necessity to clearly demonstrate that the development itself and the funds generated by will contribute to the future regeneration of the seafront, including specifically the repair and use of the listed Madeira Terrace.
- 5.14. In determining this application, you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 5.15. Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice.
- 5.16. **Marine Management Organisation:** The MMO is responsible for the management of England marine area below the mean high water mark. [This site is above that]

Southern Water: Comment:

- 5.17. No development will be permitted to be constructed over or within 6m either side of the existing combined critical sewer that crosses the (Peter Pan) site. From our initial assessment of the existing apparatus it appears that there is limited opportunity to divert existing drainage apparatus, and therefore Southern Water objects to the proposed development.
- 5.18. **Verbal update received on previous application BH2018/01973:** The sewer is sufficient distance below ground so as not to be affected by this temporary scheme involving modular container buildings. An engineering solution

should be able to be found should a future scheme with permanent buildings (and foundations) be proposed in the future.

- 5.19. Southern Water requires a formal application for a connection to the public foul sewer and public water main to be made by the applicant or developer.
- 5.20. The applicant should be advised that a wastewater grease trap should be provided on the kitchen waste pipe or drain installed and maintained by the owner or operator of the premises.
- 5.21. Initial investigations indicate that there are no dedicated public surface water sewers in the area to serve this development. Alternative means of draining surface water from this development are required.
- 5.22. The application contains a proposal for a swimming pool for commercial/public use. If the pool produces filter backwash water this would need to be discharged to the public foul sewer. The rate and times of discharge of this water to the sewer, and of the contents of the pool, if these need to be drained to the sewer, would have to be agreed with SW.
- 5.23. The applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.
- 5.24. We request that should this application receive planning approval, a requiring details of the proposed means of foul and surface water sewerage disposal is recommended.
- 5.25. **Sport England:** Support as proposal is considered to provide facilities to meet demand:
- 5.26. Swim England have been consulted and they would like to emphasise its support of the project, it states that it has been in communication with the project team from an early stage and therefore is on hand to provide advice and consultancy throughout the project. Swim England believes it will have a positive impact on the swimming community of Brighton and also provide strong links between pool and open water swimming. Within the wider region of Brighton & Hove there is a slight deficit of water space, that combined with a fairly active swimming community would result in a large demand for this facility and the additional water space it provides.
- 5.27. At this stage the designs are adequate, however fine details will need to be considered and Swim England's advice should be sought as the process proceeds due to the close nature of the pool to the sea at the potential impact this will have on tank finishes and fixtures and fittings around the pool.
- 5.28. Sport England, therefore, considers this proposal addresses an identified need for this facility type and has the potential to be of benefit to the

development of sport. We would wish to see this accorded an appropriate weight in the decision that is reached on this application.

Sussex Police: Comment:

- 5.29. Main concerns with this current application are the effectiveness of the perimeter security and CCTV systems when the premises are closed and how the occupants will manage control of all the various facilities to ensure there is no lapse in security.
- 5.30. Reiterate previous comments, that providing the perimeter fencing is 1.8 metre high and fit for purpose, located on the top of the previously mentioned gabion walls to provide 2 metres in total height, with no external points that would assist climbing, and of a Heras fencing or weldmesh specification, together with 2 m high gates to provide a similar height , it will provide an adequate degree of security.
- 5.31. The application states CCTV will be included to cover most of the site. Pleased to see that CCTV has been included, together with security patrols who will visit the site on an irregular basis.
- 5.32. recommend the CCTV is monitored 24/7 by the security company control room or on a dusk to dawn basis when the premises are shut, as it will provide a quicker response time than a stand-alone digital recorder on the site which following an overnight incident would not be viewed until the following day.
- 5.33. Should a stand-alone digital recorder be installed, it would need to be securely locked away to deter it being damaged or stolen if there was an unauthorised access to the building where it is stored.
- 5.34. Having a CCTV as a 24/7 constant guardian of the site may be a stronger deterrent to unauthorised persons attempting to use the swimming pool, and the potential consequences of an accident occurring when there is no immediate help to assist.
- 5.35. The CCTV system must be commensurate with any lighting conditions and must be regularly maintained to provide clearly defined images and deal with the weather and coastal conditions.
- 5.36. CCTV should be professionally fitted and include a maintenance contract to ensure cameras operate correctly in exposed weather conditions.

Internal:

County Archaeologist: Approve subject to conditions.

- 5.37. The proposed development is of archaeological interest due to the proposed impact to the remains of the late Victorian Volks Railway, the earliest public electric railway in Britain. The proposed development area contains the course of a section of track (not the current course) that ran from a station at Banjo Groyne to the east through to a station by the Palace Pier. The route

eastward from the Banjo Groyne to Rottingdean was constructed 60metres from the shore on sets of legs 23 feet high. The proposed construction in the northern section of the site has a potential to destroy or disturb remains of the 19th century railway.

- 5.38. In the light of the potential for impacts to heritage assets with archaeological interest resulting from the proposed development, the area affected by the proposals should be the subject of a programme of archaeological works (secured by condition). This will enable any archaeological deposits and features that would be disturbed by the proposed works, to be either preserved in situ or, where this cannot be achieved, adequately recorded in advance of their loss. These recommendations are in line with the requirements given in the NPPF.

Coastal Engineer: Comment:

- 5.39. The Shoreline Management Plan 2006 for this section of coast (policy unit 4d12) has a policy of 'Hold the Line' for the next 100 years. Hold the Line is defined as 'maintain or upgrade the level of protection provided by defences'(Defra 2001). A strategic study of the coastline carried out in 2014 and approved by committee and the Environment Agency does not identify the need for any coast defence works in the area of the application for the next 100 years, only continued maintenance of existing defences.
- 5.40. According to the results of the south east regional coastal monitoring programme (which carries out regular surveys of beach levels) this section of coast is an accreting coastline. Therefore it is not expected that the development will be affected by coastal erosion only an increasing beach width. From time to time beach management activities take place towards the Marina (extraction and movement of shingle back to Shoreham Port's beaches) this is not expected to have a negative impact on the development.
- 5.41. The application proposes laying temporary matting system across the shingle to the sea to enable disabled access. The proposed matting ('mobi mat') is shown going over a sand beach. Shingle beaches develop steeper slopes than sand; the developer should satisfy himself that this type of matting will still perform as expected in a situation such as this.
- 5.42. There is no record of sea flooding in the area of the development and no conditions are recommended.

County Ecologist: Comment

- 5.43. The proposed development will lead to the loss of 1121m² of vegetated shingle and 420m² of scrub, grassland and tall ruderal habitats. The vegetated shingle that would be lost includes a conservation mound that was created to mitigate for the Yellowwave development. Whilst the vegetated shingle habitat on the mound is not an outstanding example of the habitat, it includes a good proportion of native shingle species and remains a notable habitat, the extent of which is significant.

5.44. The ecology report propose to compensate for the loss of vegetated shingle habitat through the creation and management of 1500m² of vegetated shingle offsite (to the east of the Yellowwave development), which would be acceptable. Green roofs have been introduced to reduce surface water runoff, to provide together with protected pockets of vegetated shingle on site, ecological enhancement. The area of green vegetated roofs is 246 sqm. The provision and protection of small areas of vegetated shingle within the site adjacent to the Volks Railway LWS totalling 371m² will enhance the site for biodiversity.

5.45. If the Council is minded to approve the application on the basis of this updated ecology report, a detailed plan for the compensatory habitat should be provided, including size, design and location, materials to be used, planting/seeding methodology, details of proposed public access/boardwalk, details of interpretation boards and a monitoring and management scheme. Whilst a 10 year management plan is appropriate to establish the site, management of the habitat should ideally be secured for 25 years.

5.46. Cost for annual review of monitoring report approximately as follows (£55ph):

Year 1:

Site visit x 3 = 9 hours

Review of monitoring reports + advice re subsequent management/remedial measures = 3-4 hours

Years 2-3:

Review of monitoring reports + advice re subsequent management/remedial measures = 3-4 hours per year

Years 4-10:

Review of monitoring reports = 2 hours per year
(total approx. £2,074 incl VAT)

Economic Development: Support

5.47. City Regeneration welcomes the provision of employment floorspace. These proposals will deliver jobs and help meet the needs of the City Skills and Employment Plan (2016). City Regeneration welcomes the creation of around 70 new jobs and opportunities for the local community. The proposals support the regeneration of Madeira Drive (Madeira Drive Regeneration Framework (MDRF)) and the rejuvenation of Brighton seafront in this area. The application also supports Policy SA1 'The Seafront' of City Plan Part One which encourages regeneration of the seafront and that proposals should support year round sport, leisure and the cultural role of the seafront. To the east of the site is the Yellowwave beach volley ball facility and café and these proposals are complementary to the existing facilities and businesses and help attract people towards this area of the seafront and contribute towards its rejuvenation.

5.48. Should this application be approved, due to the size of the development, it would be subject to certain obligations which would be included in a S106

agreement. There will be a requirement for the developer or their contractor to submit an Employment & Training Strategy linked to the development. The strategy should demonstrate how the developer or main contractor and / or their subcontractors will source local labour and provide training opportunities during the life of the project. How they will work with the Council's Local Employment Scheme Coordinator and organisations operating in the city to encourage employment of local construction workers during the construction phases of the Proposed Development, with a target that at least 20% of the temporary and permanent job opportunities created are available to local residents interested in working in construction or gaining training, facilitated on site. In addition to the strategy, there will be a requirement for Developer Contributions for the sum of £12,110 to be made prior to commencement towards the Local Employment Scheme, as per the Developer Contributions Technical Guidance.

Environmental Health: Comment

- 5.49. There are concerns that lighting used in the evenings could cause light nuisance to neighbours. The mixed uses should have restricted opening times to avoid causing noise nuisance. Opening hours of 7am-11pm are suggested although acknowledge a gym opening at 6am nearby does not cause a nuisance, so a temporary early start could be considered to allow this to be monitored. External lighting details should be secured by condition. No PA/tannoy equipment should be permitted.

Heritage: Objection

- 5.50. The Heritage Team considers that the materials currently proposed are a significant improvement on previous schemes and would support this approach; however inadequate changes to scale and density have been made to address the previous objections regarding the proposed height and density of the development. As a result the, Heritage Team considers that the potential benefits to the Eastern Seafront that could result from increased activity brought by this development would not outweigh the harm it would cause to the identified heritage assets and cannot currently support this scheme.

Statement of Significance:

- 5.51. This site is in the East Cliff Conservation Area and adjacent to the grade II listed Madeira Terraces, Lift and associated buildings, with the route of the historic Volks Electric Railway partly running around it.
- 5.52. It is currently cleared land with basic barriers/boundary treatment against the public highway and Volks railway route, beyond which the land is open beach. The ground surfaces and boundary treatment are not positive features that sustain or enhance the conservation area, however the openness of the site is characteristic of the Western half of Madeira Drive, affording uninterrupted views of the sea and Palace Pier to the south, contrasting with the imposing scale of Madeira Terraces to the north.

- 5.53. The uninterrupted sweep of shingle beach along the Eastern seafront has a different character to the beach and esplanade West of the Palace Pier, however a small hub of open leisure uses with low level ancillary structures has developed between the application site and the Banjo Groyne. The low heights and low density of the buildings along with the choice of materials used has minimised their impact on the distinctive openness of this area.

Relevant Design and Conservation Policies and Documents

- 5.54. Planning (LBCA) Act 1990: Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the local authority shall have 'special regard to the desirability of preserving a listed building or its setting...' This presumption can be outweighed by material considerations powerful enough to do so. Where the identified harm is limited or less than substantial, the local planning authority must nevertheless give considerable importance and weight to the preservation of the listed building and its setting.
- 5.55. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance...' of the conservation area.

National Planning Policy Framework:

- 5.56. Section 192 states that 'In determining applications, local planning authorities should take account of: a) the desirability of sustaining and enhancing the significance of heritage assets.' And Section 193 states '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.'

Brighton & Hove Local Plan Policies:

- 5.57. HE3 Development will not be permitted where it would have an adverse impact on the setting of a listed building, through factors such as its siting, height, bulk, scale, materials, layout, design or use.
- 5.58. HE6 Proposals within or affecting the setting of a conservation area should preserve or enhance the character or appearance of the area and should show: a. a consistently high standard of design and detailing reflecting the scale and character or appearance of the area b. the use of building materials and finishes which are sympathetic to the area; c. no harmful impact on the townscape and roofscape of the conservation area²; d. the retention and protection of trees, gardens, spaces between buildings, and other open areas which contribute to the character or appearance of the area; e. where appropriate, the removal of unsightly and inappropriate features or details; Proposals that are likely to have an adverse impact on the character or appearance of a conservation area will not be permitted.

City Plan Part 1:

- 5.59. CP 15 The city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets and their settings and prioritising positive action

for those assets at risk through, neglect, decay, vacancy or other threats. The council will further ensure that the city's built heritage guides local distinctiveness for new development in historic areas and heritage settings.

- 5.60. CP16 Planning permission resulting in the loss of open space, including the beach, will only be granted where:
- d) The site is: physically incapable of meeting the city's wider open space needs; • is not part of the beach or a playing field (current or historical); and, in accordance with the Open Space Study Update 2011 (or subsequent approved revisions), is of a poor quality without potential for improvement (current and potential) and there is an identified surplus (current and future) in all types of open space within the locality (ward and sub area)....
- 5.61. SR18 Seafront recreation New recreation facilities which are related to seafront / coastal activities will be permitted on the seafront provided that: a. there will be no development onto the beach; b. the importance of the seafront and beach as an open space is not undermined; c. any development does not have a detrimental impact on strategic views along the coastline; d. the development makes a considered response in its design to the visual and environmental character of the stretch of seafront to which it relates, supported by a design statement which addresses that character;..... g. the development will not have an adverse impact on the setting of important seafront buildings; h. the development does not have an adverse impact on nature conservation interests; and i. any development enables the beach and seafront to be accessible to all.
- 5.62. SA1 - 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. Priorities for the whole seafront are to: • Enhance and improve the public realm and create a seafront for all; to ensure the seafront has adequate facilities for residents and visitors (including public toilets, waste disposal facilities, seating, signage, lighting and opportunities for shelter and shade) and continue to improve access to the beach and shoreline and ensure the seafront is accessible to everyone; • Promote high quality architecture, urban design and public art which complements the natural heritage of the seafront and preserves and enhances the character and appearance of the Conservation Areas, and the historic squares and lawns that adjoin the seafront
- 5.63. East of Palace Pier to the Marina deliver the regeneration of Madeira Drive as a centre for sports and family based activities supported by a landscaping and public art strategy which also provides for an improved public realm and the conservation and enhancement of the historic and nature conservation features present in this location; • Safeguard the vibrant and important event space at Madeira Drive as this presents a unique location for a mix of cultural, sport and leisure activity to take place; and • Improve beach and seafront access for pedestrians and cycle users, linking with access improvements at the Marina/Black Rock East Cliff Conservation Area Study and Enhancement Plan 2002 :

Appearance

- 5.64. The expanse of open beaches is an integral element of the setting of the buildings and the seafront amusements at Peter Pan's Playground partly detract from it. This clutter of structures is also a discordant element when viewed from above but the Volks Railway line at least provides a logical, and historic, southern boundary.

Character

- 5.65. The seafront shelters, Madeira Terrace and Covered Walkway, the Shelter Hall and Lift and below that the wide, straight southern pavement of Madeira Drive all evoke traditional seafront promenading. The continuous line of wide, uncluttered beaches contribute significantly to this character.
- 5.66. Peter Pan's playground currently detracts from the appearance of the conservation area due to its random collection of ramshackle buildings and other structures and the poor quality of its immediate environment. The council will seek to use its powers to achieve a better quality children's play area, with buildings and structures clustered together in a visually co-ordinated manner, and high quality hard and soft landscaping appropriate to the seafront location. Replacement buildings of a high standard of design will be encouraged, which respect the appearance of the conservation area not only in views along Madeira Drive and from the beach, but also from Marine Parade above. No expansion of the boundary of the playground will be acceptable. Single storey buildings only will be appropriate, with careful attention paid to the design and material of the roofs, and no amusement or ride should exceed the pavement height of Marine Parade, including when in use.

The Proposal and Potential Impacts

- 5.67. This application follows a process of formal and informal pre-application submissions and planning applications over the last two years, which has seen the scheme change in various ways. This application is for a 5 year temporary use of the site with a part 1 part 2 storey structures containing mixed leisure/retail/food/drink/office uses.
- 5.68. Previous discussions and advice have included encouragement for a more holistic and co-ordinated approach to be taken, to include the upgrading of the public realm and the relationship of the development with potential new uses for the Madeira Terrace arches and their restoration. The move to a temporary use makes such an aims more ambitious, and it is disappointing that the scope for this is lost, at least for the time being.

Policy context

- 5.69. The relevant sections of policies are set out above. The principal heritage considerations are the effect of the development on the character of the conservation area (specifically at this point the openness of the beach and promenade contrasted with the scale and enclosure of the sea wall) and the setting of the listed Terraces.

- 5.70. The East Cliff Study identifies the character of this part of the seafront as wide, uncluttered beaches which were harmed by the run-down playground that existed at that time. Since then, this site has been vacated but is still considered to have a negative impact on the immediate setting.
- 5.71. Use The Yellowwave Beach Sports venue now bounds the site to the East, and due to the previously developed nature of the site along with the cluster of activities in the vicinity, the open water swimming facility is considered a suitable use for the site in principle. It is noted that the application requests approval for a temporary period of 5 years after which presumably the site would be cleared.
- 5.72. Current Council aspirations for the regeneration of Madeira Drive support the creation of an active waypoint between the Palace Pier and Marina, however Heritage considerations require an acceptable balance to be made between the advantages to be gained in respect of the future restoration of the listed Terraces and improvements to the public realm, and the negative impact that ancillary uses and developments could have on the heritage assets that make this space special.

Site Area and Layout, Scale and Materials

- 5.73. Previous advice from the planning service has been that the siting of built structures north of the railway in this location is generally considered acceptable. This application also includes development south of the railway route and the policy of confinement of developments to the area bounded by the railway line has already been eroded by Yellowwave, it is therefore considered that a minimal amount of structures south of the railway would be acceptable if, like Yellowwave, they were at beach level and of materials that tone with the shingle.
- 5.74. The density of the development and the amount of 2 storey units is largely unchanged from the refused application BH2018/01973. The Heritage Team remains of the view that the overall density is too great for this site and would have a harmful impact on the character of the conservation area, although the change at the eastern end to improve views through the site is noted. Additionally, in line with advice consistently provided through the previous schemes the Heritage Team considers that any development of this area should be predominantly single storey and the proportion of 2 storey units is unchanged in this application, and they are scattered along the development giving an overall impression of a 2 storey development, therefore the Heritage Teams concerns over the harmful impact this would have on the setting of Madeira Terrace remain. The removal of the higher place marker elements is however noted.
- 5.75. Previous advice has been that the material and finish should make reference to the surrounding natural environment and the representation of the proposed materials submitted indicates finishes that would accord with this aspiration, however it is noted that Eternit Cedral weatherboard cladding comes in a range of pastel colours and the Heritage Team would consider a

natural timber colour to be desirable; confirmation on this is therefore required.

- 5.76. The roofs will have impact when viewed from the higher vantage points on the terraces and Marine Parade and it is considered that a shingle finish which may or may not support beach plant species would be more appropriate than a more conventional green roof on this occasion, and clarification/amendment is requested accordingly.
- 5.77. The appearance of security gates, staircases, cycle storage areas, bin stores, lifeguard unit, boundary fencing is not detailed and requires further information

Planning Policy: Comment

Summary of Comments:

- 5.78. In principle the proposed use - the outdoor pool - accords with City Plan Part 1 Policy SA1 The Seafront and emerging aspirations for the regeneration of Madeira Drive (Madeira Drive Regeneration Framework) and the emerging City Plan Part 2.
- 5.79. This revised schemes seeks to address the reasons for refusal of the earlier scheme (BH2018/01973):
1. *The proposal, by reason of design, scale, density, height and colour would be incongruous and visually harmful to the setting of nearby listed buildings including the Madeira Terraces, Shelter Hall and Lift, and the setting of the East Cliff Conservation Area, contrary to policies HE3, HE6 and SR18 of the Brighton and Hove Local Plan and CP15 and SA1 of the Brighton and Hove City Plan Part One and the East Cliff Conservation Area Study and Enhancement Plan 2002.*
 2. *The proposed siting of the swimming pool and associated structures on the beach would result in the loss of public open space, contrary to policy SR18 of the Brighton and Hove Local Plan and SA1 and CP16 of the Brighton and Hove City Plan Part One.*
 3. *The proposal would result in the loss of rare coastal vegetated shingle habitat and would cause harm to the Volks Railway Site of Nature Conservation Importance, and does not contain sufficient mitigation and enhancement, contrary to policy NC4 and SR18 of the Brighton and Hove Local Plan and SA1 and CP10 of the Brighton and Hove City Plan Part One.*
- 5.80. Encroachment on the shingle beach is contrary to Policy SR18 a) and Paragraph 3.123 of the supporting text to Policy SA1 The Seafront indicates a presumption against proposals involving an increase in hard surfacing of the seafront at or in the vicinity of the sites of city-wide nature conservation importance. Paragraph 4.176 of the supporting text to CP16 Open Space indicates the importance to protect the intrinsic geological and aesthetic interest of this expanse of shingle stones which forms such a major open space between the land and the sea. A key policy consideration is whether

the proposed use, size and design of the pool would harm the beach in in this location.

- 5.81. It is acknowledged that the applicant at this stage is only seeking temporary permission for a 25m swimming pool. Therefore subject to the revised scheme appropriately addressing Policies NC4 of the BHP and CP10 Biodiversity of the CPP1 as well as the third reason for refusal a temporary permission for a 25 m pool could be considered as an exception to CPP1 policies SR18, CP16 and SA1 if weight is given to the fact that the proposal will provide an outdoor leisure activity which accords with seafront strategies for this area of the seafront and the proposed uses would positively support the regeneration of this section of the seafront.
- 5.82. The applicant has indicated that they wish in the longer term to create a permanent larger swimming pool and provided in the submitted information an outline footprint. However the case for a permanent, larger facility would need to be fully justified with any future planning application.
- 5.83. Whilst a mix of small independent businesses would be considered acceptable to help support the leisure use and help create a vibrant seafront these would need to be ancillary/ supportive uses. The commercial elements should be kept ancillary to the main leisure use and to an absolute minimum as delivery of leisure related is the key aim for this site.
- 5.84. A Sequential Test site assessment for the proposed commercial (town centre) uses in an edge of centre location was required in order to accord with the requirements of paragraph 86 of the NPPF and Policy CP4 Retail. The assessment undertaken with the previous application and resubmitted indicates that there are no sequentially preferable sites which are suitable, available or viable and therefore the requirements of the NPPF and CP4 have been met.
- 5.85. It is recognised that the commercial development is required in order to enable the provision and operation of the temporary 25 m and this was justified with the previous application through a Viability Assessment. The use of condition to ensure the enabling development is closely related to the delivery of the pool should be sought.

Main Comment:

Planning Policy:

Proposed Leisure Use

- 5.86. The former Peter Pan Leisure site is currently an enclosed hard standing which is located to the north of the Volks Railway line and has remained vacant for many years.
- 5.87. A strategic objective of the council reflected in the adopted City Plan Part 1 (SO17) is to enhance the seafront as a year round place for sustainable

tourism, leisure, recreation and culture whilst protecting and enhancing the quality of the coastal and marine environment.

- 5.88. The overarching priority for the seafront is set out in Policy SA1 The Seafront is the on-going regeneration and maintenance of the seafront in an integrated and coordinated manner. 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. Part A sets out a number of priorities applicable to the whole seafront and specific priorities for East of Palace Pier to the Marina are set out at Part B. which relate to the regeneration of Madeira Drive as a centre for sports and family based activities supported by a landscaping and public art strategy which also provides for an improved public realm and the conservation and enhancement of the historic and nature conservation features present in this location.
- 5.89. The 2012 draft Seafront Strategy includes as an objective the need to 'identify new sport and recreational facilities for people to be physically active on the Seafront to improve health and well-being' and supports the location of the seafront as a base for sports clubs as well as the need to make best use of the remaining seafront development sites. Whilst The Seafront Strategy is not a supplementary planning document and therefore the weight to be attached to this document is limited.
- 5.90. More recently the council has published a Madeira Drive Regeneration Framework which looks at options for reactivating and revitalising Madeira Drive and Terrace.
- 5.91. Whilst of very limited weight currently, it should be noted that emerging policy SSA6 in the draft City Plan Part Two specifically identifies the former Peter Pan site (the hardstanding site as defined on the draft CPP2 Policies Map) as appropriate in principle for leisure uses and ancillary supporting retail uses.
- 5.92. An initial 5 year temporary permission is sought for a 25 pool on the beach south of the site across the Volks Railway Line with the longer term strategy to deliver a year round heated 50 m open air pool. Through legal framework with the Council the applicant Sea Lanes are required to deliver a further planning application for the 50 m pool within 3 years of opening the 25 m pool. The temporary permission allows the consortium to 'test the market for commercial uses in this yet unproven location'.
- 5.93. The revised Planning Statement indicates an area of extension of the swimming pool on the beach however it is unclear whether additional commercial uses will be sought at the second phase and this should be clarified by the applicant.
- 5.94. The Head of Sport & Leisure should be consulted to advise whether the proposed swimming pool will accord with the council's Sports Facilities Plan. Retained BHLP Policy SR18 Seafront Recreation and adopted City Plan Part 1 Policy CP17.6 Sports Provision in particular apply.

- 5.95. Subject to these comments it is considered that in principle a proposed outdoor swimming pool broadly fits the emerging seafront strategy. The main policy issue is the proposed location on the beach.

Development on the beach

- 5.96. Whilst in principle the proposed leisure use broadly fits the emerging seafront strategy, encroachment onto the shingle beach would be contrary to Policy SR18 a) Seafront Recreation of the adopted Brighton & Hove Local Plan and the proposed use would also result in a change from this section of the beach as open space to formal recreation use and adopted City Plan part 1 Policy CP16 Open Space apply.
- 5.97. Consideration is given as to whether the proposed use, size and design of the pool would harm the beach in qualitative terms in this location given adjoining uses and particularly as the proposal is for a temporary outdoor leisure activity and would support the regeneration of this section of the seafront.
- 5.98. The applicants have previously stated that the area north of the railway (the area marketed by the council) is not sufficient to accommodate their proposals and potential future plans for a 50 m pool. The applicants have indicated in their Planning Statement that they consider the beach location for the pool to be an 'infill' site between the Yellowwave Beach sports venue and seafront huts/ containers associated with fishing and the swimming pool on the beach would not be an unexpected feature on a popular beach; beach incursions have occurred elsewhere on the beach for temporary events and permanently with Yellow Wave.
- 5.99. The proposed development site includes part of the Volks Railway SNCI/LWS. Volks Railway is designated a SNCI Site (due to be renamed as Local Wildlife Site) in the 2005 Brighton & Local Plan and following the 2017 Local Wildlife Sites Review it has been recommended that it should be renamed Local Wildlife Site with an amended boundary to incorporate the additional area of vegetated shingle created through the adjacent Yellowwave Development. Formal designation of the amended boundary will be taken through the adoption of the CPP2 (the emerging draft City Plan Part Two is currently out to Regulation 18 Consultation). The SNCI/amended LWS is designated for supporting coastal vegetated shingle at one of only three remaining sites in Brighton & Hove.
- 5.100. Paragraph 3.123 of the supporting text to Policy SA1 the Seafront indicates a presumption against proposals involving an increase in hard surfacing of the seafront at or in the vicinity of the sites of city-wide nature conservation importance. Paragraph 4.176 of the supporting text to CP16 Open Space indicates the importance to protect the intrinsic geological and aesthetic interest of this expanse of shingle stones which forms such a major open space between the land and the sea. It is noted that the revised scheme alters the location of the swimming pool to 'sit in line with the curtilage of

Yellowwave and reduce the loss of public open space' although the amount of reduction is not specified.

- 5.101. Policy NC4 Sites of Nature Conservation Importance (SNCIs) and Regionally Important Geological Sites (RIGS) and City Plan Part 1 Policy CP10 Biodiversity apply and the potential ecological impacts need careful and thorough consideration. It is noted that the applicant is proposing on and off site mitigation for the loss of vegetated shingle with the revised application which also includes green vegetated roofs. The County Ecologist should be consulted on this application to assess whether satisfactory mitigation, avoidance or compensation measures have been proposed to address the policy requirements.

Commercial Uses

- 5.102. The revised application proposes for the Former Peter Pan site a temporary modular arrangement of 39 providing flexible studio spaces suitable for food and beverage offerings, retail and office space. The revised Planning Statement suggests the scheme is focused on leisure uses such as; yoga studios, physiotherapists, therapists, fitness studios and a sauna. The Design and Access Statement indicates that the largest mass of modular buildings will provide offices and facilities for Swimtrek.
- 5.103. The Revised Design and Access Statement suggest an arrangement of modular units on ground and first floor along with promenade and viewing deck with a reduced height compared with the previous application.
- 5.104. The submitted Application Form indicates a total of 1,827 sq m of commercial uses
- 840 sq m A1 retail
 - 250 sq m A3 restaurant and café
 - 287 sq m D2 Assembly and leisure of which 189 sq m is understood to be the swimming pool area.
 - 300 sq m B1a office
 - 150 sq m A4 drinking establishment
- 5.105. Whilst a mix of small independent businesses would be considered acceptable to help support the leisure use and help create a vibrant seafront these would need to be ancillary/ supportive uses. The commercial elements should be kept ancillary to the main leisure use and to an absolute minimum as delivery of leisure related is the key aim for this site.
- 5.106. The commercial development is required in order to enable the provision and operation of the temporary 25 m and this was justified with the previous application through a Viability Assessment. The use of condition to ensure the enabling development is closely related to the delivery of the pool should be sought.
- 5.107. Although a temporary 5 year permission is sought, given the scale of retail and leisure uses (main town centre uses) proposed for an edge of centre site not on site allocated in adopted plan a sequential site assessment is required

to accord with paragraph 86 of the NPPF (July 2018). It is therefore welcomed that the applicant has provided a Sequential Test site assessment for the proposed town centre uses that are proposed on an edge of centre site in order to accord with the requirements of paragraph 86 of the NPPF and Policy CP4 Retail Provision. It is also acknowledged that commercial uses proposed are enabling development for the swimming pool and this would limit the opportunities to disaggregate the commercial elements from the leisure uses. The applicant has looked at available sites within the St James Street District Centre and the assessment has confirmed that there are no sequentially preferable sites which are suitable, available of viable and therefore the requirements of the NPPF and CP4 have been met

- 5.108. As with the previous application it is recommended the use of conditions to avoid the consolidation of units into larger format retail/ restaurant uses/ office units.
- 5.109. Policy SA1 The Seafront sets out as specific priorities for the East of Palace Pier to Brighton Marina section of the seafront the need for an improved public realm and the conservation and enhancement of the historic and nature conservation features present in this location; and the need to improve beach and seafront access for pedestrians and cycle users, linking with access improvements at the Marina/Black Rock. The site is also located in the East Cliff Conservation Area and adjacent to the grade II listed Madeira Terraces, Lift and associated buildings. Policy CP12 Urban Design and CP15 Heritage apply. The Conservation Team should be consulted on this revised application.
- 5.110. No artistic component sum will be sought for this temporary planning application.

Sustainable Drainage: Approve subject to condition.

- 5.111. No building can commence until the submission of a final drainage design has been submitted for the new development. The drainage design must include the SuDS and a detailed maintenance plan, highlighting how they will be managed.

Sustainable Transport: No objection subject to conditions and S106

- 5.112. The Highway Authority would not wish to object to this temporary proposal but does request the following conditions are included:
- Delivery and Servicing Plan detailing, amongst other matters, how:
 - Delivery times shall be restricted to outside of the peak hours (both leisure and commuting peak hours)
 - The frequency and type of deliveries can be accommodated and include swept path analysis of the likely vehicle movements and manoeuvres
 - Multiple deliveries shall be managed
 - Deliveries associated with the businesses west of the site shall be managed/ restricted and the cycle lane kept clear at all times.
 - Cycle parking - store details, including how all areas of cycle parking shall be signposted

- A Construction Environmental Management Plan (CEMP);

And in addition:

- A Sustainable Transport S106 Agreement of £35,000 is requested, owing to the size of the development and the likely increase in trips to the site. This is deemed reasonable and is heavily discounted from the contribution that would be requested using the council's standard calculation outlined in the Technical Guidance for Developer Contributions. This reflects the site's temporary use. It is recognised that the Local Planning Authority will need to consider the overall viability of the development in determining the level of contribution requested by the Highway Authority. However, it should be noted that, where a discount has been applied, trips associated with a temporary use will not be taken into account as 'existing' trips when determining the level of contribution required by a future permanent application.

- 5.113. For a development of this scale, the Highway Authority would typically expect to see a full Transport Assessment, considering a range of factors including assessment of walking and cycling routes connecting to the site and trip generation. In this case, it is recognised that the development is temporary and likely to be seasonal in nature. However, for any future application for a permanent venue, the Highway Authority would expect to see a full Transport Assessment as required by Brighton & Hove City Plan Part One policy CP9.

Main Comment:

Pedestrian and Cycle Access

- 5.114. Pedestrian access is provided via a number of access points on Madeira Drive which directly serve the proposed commercial units. The swimming pool would be accessed via the existing pedestrian access to the beach and crossing over the Volk's Railway. The Highway Authority has no objections to these proposals.
- 5.115. The site has a direct connection to the seafront cycle route, although this would benefit from improvements to the east of the site. Pedestrian accessibility to the north is constrained by the Madeira Terraces; however, a stepped route remains open as does the Madeira Lift, meaning access to public transport services on Marine Parade is possible.

Vehicle Access

- 5.116. A 4.7m access road is retained to the east of the site to allow continued access to the beach for servicing. The applicant has provided detail of the area where on-site deliveries can take place with a turning area. The Highway Authority is agreeable in principle with this but does request further details of deliveries with necessary swept path analysis in a Delivery and Servicing Plan as requested.

Car Parking

- 5.117. No car parking is proposed on-site and any visitors requiring car parking would be expected to use existing pay & display parking on Madeira Drive.

The Transport Statement states that the applicant intends to encourage sustainable travel to the site as is required by City Plan Part One policies CP9 and SA1, as well as the emerging City Plan Part Two policies SSA5 and SSA6.

- 5.118. The Highway Authority notes that the provision of on-site parking would not support this objective and the proposal is consistent with SPD14 which allows no non-disabled parking for A1, A3 and D2 uses in the city centre. Although the site is located to the east of this area and is less well served by public transport, the Highway Authority remains of the view that it is appropriate for car free development.
- 5.119. The applicant has not completed any assessment of on-street parking capacity; however, in this case it is recognised that parking demand beyond the available capacity would be managed by the surrounding Controlled Parking Zone. Additional car parking would be likely to generate additional vehicle trips and again be contrary to objectives to encourage sustainable travel to the site.

Disabled Parking

- 5.120. The proposed development has the potential to generate additional demand for disabled parking. Blue badge holders would however be able to use the pay & disabled bays on Madeira Drive as is the case with the adjacent uses. The council will consider the conversion of existing bays to dedicated disabled parking as demand requires.

Cycle Parking

- 5.121. SPD14 requires the following minimum cycle parking (based on the quantum of development cited on the revised ground floor plan (Rev C)):
- A1 retail (840 m²): One space plus one space per 150 m² = 7
 - A3 restaurants/ cafes (259 m²): One space plus one space per 150 m² = 3
 - D2 leisure (189 m²): One per 50 m² = 5
 - Staff (70): One space per five staff (long-stay) = 15
 - Total: 30
- 5.122. The applicant is proposing 45 spaces which is welcomed and given the location and desire to encourage access by sustainable modes, it is considered provision above the minimum would be beneficial.
- 5.123. The applicant is proposing a mixture of cycle storage, the majority of which will be provided at locations throughout the site using 'toast-rack' Sheffield stands. Given the temporary nature of the proposal, these are considered appropriate and offer flexibility; however, it is recommended that full details of the specification be secured by condition in addition to how the various locations shall be signposted to visitors and staff.
- 5.124. Additional stores are proposed to provide longer-term cycle parking however the design of the cycle parking including spacing is unclear and it is recommended that further details be secured by condition. In order to provide

secure and convenient storage as required by Brighton & Hove Local Plan policy TR14, the Highway Authority's preference is for the use of Sheffield stands laid out in accordance with Manual for Streets paragraph 8.2.22.

- 5.125. The applicant has also stated that they would welcome an expansion of the Brighton Bike Share scheme. A hub is located a short distance to the east; however, further capacity would be beneficial, particularly with the additional demand in this location. This will be subject to discussion with the scheme operator and potentially some of the requested S106 contribution could be used for this purpose should enhancements to the existing hub be agreed and a suitable location identified.

Deliveries and Servicing

- 5.126. The applicant proposes that all vehicles associated with servicing and delivery will approach and leave the site from Madeira Drive. An area on-site has been provided for loading/unloading with a turning space for vehicles to manoeuvre and leave site in a forward gear.
- 5.127. This will therefore mean that loading can take place off the public highway and reduce the likelihood of people parking in the cycle lane or carrying deliveries across it.
- 5.128. It is requested that these proposed arrangements are detailed within a Delivery and Servicing Management Plan and secured by condition.
- 5.129. In addition to standard information, such as the frequency and type of vehicles entering the site (including swept path analysis), the Highway Authority does have other matters that need addressing. For example, how:
- Delivery times shall be restricted to outside of the peak hours (both leisure and commuting peak hours)
 - Multiple deliveries shall be managed
 - Deliveries associated with the businesses west of the site shall be managed/ restricted and the cycle lane kept clear at all times.
- 5.130. However these matters can be addressed at condition stage.

Trip Generation/ S106 Contribution

- 5.131. No details of trip generation have been provided. The Highway Authority would ordinarily expect a full trip generation exercise to be undertaken for a development of the scale proposed, including temporary uses.
- 5.132. In this case, it is recognised that the proposals combined with the location are relatively unique and it is not considered that there would be exact matches within the TRICS national trip rate database. The fact that the site has been largely vacant during recent times means any development of the site will lead to a sizeable increase in person trip generation.
- 5.133. However, in this case, it is acknowledged that additional vehicle trips will be constrained by the availability of car parking whilst some trips are likely to be

linked to a wider visit to the seafront or city centre. The greatest impact is therefore likely to be in the form of additional person trips on foot or by bicycle to the site itself from the city centre, Brighton Marina and Marine Parade.

- 5.134. Walking and cycling infrastructure would benefit from improvement to provide for the increased number of trips, particularly to the east and north of the site. It is therefore recommended that a sustainable transport S106 contribution of £35,000 be sought for these improvements. This will be allocated to walking and cycling infrastructure improvements on and connecting to the seafront.
- 5.135. The contribution request is in accordance with Brighton & Hove City Plan Part One policies SA1, CP7 and CP9. It is also necessary to provide for users of the development of all abilities and access to sustainable modes; directly related to the development; and proportionate. It is therefore, consistent with the tests contained within the National Planning Policy Framework (NPPF) paragraph 56.
- 5.136. The Highway Authority would be willing to discuss the value of the contribution requested should the applicant be able to provide details of forecast visitor numbers. Employee trips would be calculated based on the number expected to be on-site during a single day.
- 5.137. However, it should be noted that the contribution requested represents a significant reduction on the value that would be required using the process outlined in the council's Developer Contributions Technical Guidance. This is in reflection of the temporary nature of proposals and additional contributions would be sought in the event of a future extension to the period of planning consent or permanent proposals.
- 5.138. However, a contribution of £35,000 is heavily discounted from the contribution that would be requested using the council's standard calculation outlined in the Technical Guidance for Developer Contributions in order to reflect the site's temporary use. It is recognised that the Local Planning Authority will need to consider the overall viability of the development in determining the level of contribution requested by the Highway Authority. However, it should be noted that, where a discount has been applied, trips associated with a temporary use will not be taken into account as 'existing' trips when determining the level of contribution required by a future permanent application.

Construction

- 5.139. Owing to the location adjacent to a busy cycle route, it is recommended that a Construction Environment Management Plan (CEMP) be secured by condition.

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, South Downs and Brighton & Hove Waste and minerals Sites Plan (adopted February 2017).
- 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
CP7	Infrastructure and developer contributions
CP8	Sustainable buildings
CP9	Sustainable transport
CP10	Biodiversity
CP11	Flood risk
CP12	Urban design
CP13	Public streets and spaces
CP15	Heritage
CP16	Open space
CP17	Sports provision
CP18	Healthy city
SA1	The Seafront

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

TR4	Travel plans
TR7	Safe Development
TR14	Cycle access and parking
TR18	Parking for people with a mobility related disability
SU9	Pollution and nuisance control
SU10	Noise Nuisance
QD5	Design - street frontages
QD15	Landscape design
QD18	Species protection

QD27	Protection of amenity
EM4	New business and industrial uses on unidentified sites
SR4	Regional shopping centre
SR5	Town and district shopping centres
SR6	Local centres
SR18	Seafront Recreation
HE3	Development affecting the setting of a listed building
HE6	Development within or affecting the setting of conservation areas
NC4	Sites of Nature Conservation Importance (SNCI's)

Supplementary Planning Documents:

SPD03	Construction & Demolition Waste
SPD11	Nature Conservation & Development

Supplementary Planning Guidance:

SPD14	Parking Standards
-------	-------------------

East Cliff Conservation Area Study and Enhancement Plan (2002)

Background Documents:

Sports Facilities Plan 2012-2022
 Madeira Drive Regeneration Framework
 Draft Seafront Strategy 2012
 Local Wildlife Sites Review 2018

8. CONSIDERATIONS & ASSESSMENT

- 8.1. The main considerations in the determination of this application relate to:
- (i) The principle of developing the open shingle beach
 - (ii) The impact to ecology and biodiversity
 - (iii) The principle of locating the proposed uses in this location
 - (iv) The impact to local retail centres
 - (v) The impact to the setting of the special character and appearance of the East Cliff Conservation Area and nearby listed buildings
 - (vi) The impact to tourism and the economy
 - (vii) The contribution the development will make to sports provision in the city
 - (viii) The demand for travel created by the development
 - (ix) The impact to amenity

Planning Policy:

- 8.2. Policy SA1 'The Seafront' of City Plan Part One is the policy which has most relevance to the proposal. It 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, improvements to beach access and the shoreline and ensuring the seafront is accessible for everyone. Securing high quality architecture which complements the natural heritage of the seafront and historic built environment in identified as a priority.
- 8.4. SA1 identifies specific priorities for the area of the seafront east of Palace Pier to the Marina and states development should:
- (i) Deliver the regeneration of Madeira Drive as a centre for sports and family based activities supported by a landscape and public art strategy which also provides for an improved public realm and conservation and enhancement of the historic and nature conservation features present in this location;
 - (ii) Safeguard the vibrant and important event space at Madeira Drive as this presents a unique location for a mix of cultural, sport and leisure activity to take place;
 - (iii) Improve beach access and seafront access for pedestrian and cycle users, linking with access improvements at the Marina/Black Rock.
- 8.5. City Plan Policy CP5 is relevant as it relates to culture and tourism. Its key priority is to maintain and enhance the cultural offer of the city to benefit residents and visitors. It aims to support the role the arts, creative industries and sustainable tourism sector has in creating a modern and exciting visitor destination with a range of high quality facilities, spaces, events and experiences. New visitor attractions will be expected to:
- (i) Be of a high environmental standard in terms of design, management and access;
 - (ii) Complement and build on the city's distinct tourism offer;
 - (iii) Contribute to a sense of place;
 - (iv) Reduce seasonality;
 - (v) Promote diversity;
 - (vi) Widen local access;
 - (vii) Support the regeneration of the city and benefit the city's economy; and
 - (viii) Be accessible by public transport.
- 8.6. City Plan Policy CP16 seeks to safeguard, improve, expand and promote access to Brighton & Hove's open spaces (public and private) and the diverse range of experiences offered by these spaces. Planning permission resulting in the loss of open space, including the beach, will only be granted provided certain exceptional criteria are met.
- 8.7. City Plan Policy CP17 states the council's aspiration to increase participation in sports and physical activity, and seeks to safeguard, expand, enhance and promote access to Brighton & Hove's sports services, facilities and spaces. Supporting text to CP17 states the city's outdoor sports space provision is low compared to other local authorities. The Open Space, Sport and Recreation Study (which forms part of evidence base of the City Plan) indicates a further potential need for additional pool space, and the Sport Facilities Plan 2012-2022 builds on this and identifies a need to expand and

improve public facilities especially swimming pools, sports halls, health and fitness suites and artificial grass pitches.

- 8.8. City Plan Policy CP18 seeks to promote healthier lifestyles.
- 8.9. Local Plan Policy SR18 of the Brighton and Hove Local Plan is relevant as it relates to seafront recreation. This states that new recreation facilities which are related to seafront/coastal activities will be permitted on the seafront provided that:
- (i) There will be no development onto the beach;
 - (ii) The importance of the seafront and beach as an open space is not undermined;
 - (iii) Any development does not have a detrimental impact on strategic views along the coastline;
 - (iv) The development makes a considered response in its design to the visual and environmental character of the stretch of seafront to which it relates, supported by a design statement which addresses that character;
 - (v) The development does not have a harmful impact on the amenity of local residents and the seafront due to noise, disturbance and light pollution;
 - (vi) The development will not result in the significant generation of car borne journeys, nor additional pressure for car parking;
 - (vii) The development will not have an adverse impact on the setting of important seafront buildings;
 - (viii) The development does not have an adverse impact on nature conservation interests; and
 - (ix) Any development enables the beach and seafront to be accessible to all.
- 8.10. Local Plan Policy NC4 states permission will not be granted for a proposal within, or in the setting of, an existing or proposed Site of Nature Conservation Importance (SNCI) where it is likely to have an adverse impact, on the nature conservation features of the site. Exceptions will only be made where:
- a. the proposal can be subject to conditions that will prevent damaging impacts on the nature conservation features and their setting and includes provision for the protection, enhancement and management of nature conservation features; or
 - b. the proposal is: essential to meet social, environmental and / or economic needs; of more than local importance within the City; cannot be located anywhere else; and the following requirements have been met:
 - i. the location, design and construction of the development is such that damage to nature conservation features is minimised and opportunities are taken for nature conservation gain;
 - ii. compensating and equivalent nature conservation features are provided;
 - iii. remaining features are protected and enhanced and provision made for their management; and

- iv. improvements to public appreciation of and access to the site are provided.
- 8.11. Local Plan and City Plan policies relating to A1/A3/A4/B1 uses, Heritage, Ecology, Transport and Amenity are also relevant in the consideration of the proposal, and are discussed in this Considerations Section.
- Emerging Policy in City Plan Part Two (due to be adopted 2020):
- 8.12. Although policies in CPP2 carry very limited weight at this stage, emerging policy is a material consideration and is a useful indicator of the direction of travel for seafront policy.
- 8.13. Policy SSA6 specifically identifies the former Peter Pan site as appropriate in principle for leisure uses and ancillary supporting retail uses. Proposals will be expected to:
- a. Contribute towards the priorities for the Seafront as set out in City Plan Part One Policy SA1, including supporting the role of the seafront as an all year recreation attraction for residents and tourists;
 - b. Achieve a high quality of design and sustainability which preserves and where possible enhances the setting the Conservation Area, adjacent Listed Buildings/ structures, the character of the seafront and strategic views;
 - c. Provide for sustainable means of transport to and from the site and demonstrate good linkages for pedestrians and cyclists;
 - d. Complement the regeneration of Madeira Terraces and Drive (SSA5) and contribute to a coordinated approach to enhance the public realm;
 - e. Improve accessibility and connectivity between the site and the beach and sea; and
 - f. Conserve and enhance biodiversity in the area.
- 8.14. Policy DM15 states proposals for new shop, food and drink and drinking establishments (A1 – A5) and D1 galleries and museums (D2 Use Class) on the lower promenade Madeira Drive and within the seafront arches, will be permitted provided certain criteria are met.
- 8.15. Policy DM16 states that the council will encourage temporary uses which help animate and activate vacant buildings or sites before regeneration/ construction commences. Provision of ancillary small-scale retail outlets will be permitted on identified seafront development sites or to support existing or proposed leisure/ tourism schemes.
- 8.16. Policy DM39 echoes existing policy in stating there is a general presumption against development extending onto the shingle beach and that the importance of the seafront and beach as an open space should be safeguarded.
- 8.17. The CPP2 also seeks to increase the area of the allocated SNCI (due to be renamed Local Wildlife Site) in this location as it is one of only three remaining sites of coastal vegetated shingle in Brighton and Hove.

- 8.18. It is anticipated CPP2 will provide a step towards a coordinated strategy for future development along this part of the seafront to guide development proposals and prevent harmful ad hoc schemes, in the interests of preserving the special character and appearance of the area. Policy SSA5 allocates the Madeira Terraces for a vibrant and balanced mix of uses. Restoration of the declining Terraces is a key goal for the council and restoration and use of a number of arches at the eastern end of the Madeira Terraces is proposed to commence next year. It is anticipated work will commence on a masterplan and public realm strategy to identify key enhancement priorities and guide future development proposals in the locality.

Principle of proposed uses in this location:

- 8.19. The former Peter Pan Amusements site has been vacant for nearly 20 years and this area of the seafront is in decline and requires regeneration, therefore potential investment here is certainly welcomed in principle. Introduction of new uses which help draw people to the area and give the area a boost are welcomed.
- 8.20. Given the existing and emerging policy context outlined above, the proposed leisure use (i.e. pool) is welcomed in principle given that it would deliver a sports based activity in a location where this is encouraged, and there is an identified shortage of swimming pools in the city. The proposal would contribute towards the council aspiration to promote healthier lifestyles. Sport England support the proposal. The proposal for swimming in this location links back to Brighton's history as a bathing resort and is considered an appropriate seafront use. The proposed pool use would add to the overall visitor offer of the seafront and help boost tourism and the economy, as sought by policy. The proposal could operate all year round, which reduces the seasonality. The positive benefits of a pool here is therefore given significant weight.
- 8.21. Given its location directly on the beach however, the pool's location would conflict with policies SR18, SA1 and CP16 (and emerging policy DM39) which seek to safeguard the importance of the seafront and beach as an open space. The applicant has stated that the area north of the railway (which was the site marketed by the council) is not sufficient to accommodate their proposal (and potential future plans for a 50m pool) and they cite examples of other sites where this exception has been made. It is accepted that the location of the pool does conflict with policy however it is considered that an exceptional case can be made in this particular case, and the benefits of the scheme outweigh the harm caused. Exceptions have been made in a similar circumstance where a significant public benefit is delivered, such as in the case of Yellowwave adjacent. In this particular location the beaches are wide and a substantial amount of open beach will remain surround the site. The site is close to existing development south of Madeira Drive (Yellowwave, Peter Pan playground, Adventure Golf and Volks Railway sheds) so forms part of a distinct cluster, which is considered appropriate. The proposed structures south of the railway are kept to the minimum required for pool operation and help retain a degree of openness. In addition, weight is given

to the fact the proposal is for a temporary period only, therefore the site would return to open shingle eventually. On balance therefore, the positive benefits of locating a (temporary) swimming pool here are considered to outweigh the policy conflict in this instance.

- 8.22. In order to provide and operate the pool, a significant amount of commercial 'enabling development' is required to ensure it is viable. The requirement for this is understood but it is a concern that such a substantial amount of floorspace is required, given the priority for this area of the seafront is for family/sports based activities, and given the impact such development has on the character and appearance of the locality. Emerging policy is clear that any such uses here should be ancillary only. It is however recognised that certain sport facilities, and swimming pools in particular, require significant resources. The applicant has submitted a Viability Assessment which outlines how marginal the viability of the scheme is and why the amount of enabling development is required. On this basis the enabling development is considered acceptable in principle as an exceptional case. The area is clearly in need of a boost and the proposal should add much needed vibrancy and vitality to this declining area. The proposal will introduce something a bit different for the seafront and the city and is welcomed. Weight is also given to the fact this is a temporary scheme only. A condition is recommended to ensure the enabling uses are closely related to delivery of the pool, and this will ensure the pool is delivered within 12 months of the commercial uses first being brought into use (or by April 2020).
- 8.23. There is no objection in principle to the type of uses proposed in principle, as these would draw people to the area and add vibrancy, and generally accord with existing and emerging policy. Such uses could help attract visitors and boost the wider economy. The proposal will create jobs and is supported by the council's Regeneration Team. Flexible mixed uses across the site is encouraged in principle. There is some concern however regarding the proposed B1 office use as this is not an 'active' use as such and is not strictly appropriate in a beachfront location, however, the overall amount of B1 floorspace can be restricted by condition so that it does not become the dominant use and to allow for a vibrant mix of uses. The applicant hopes to attract leisure based office users which is welcomed and encouraged (but occupiers cannot be controlled through the planning process). A Sequential Test has been submitted, and it is satisfactorily demonstrated that the proposal would not undermine the vitality or viability of local retail centres, as required by Policy CP4.

Ecology, Biodiversity and Beach Processes:

- 8.24. National and local planning policies seek to ensure developments do not compromise ecology or biodiversity, and seek enhancement. The site is partly located in a Site of Nature Conservation Importance (adjacent to the railway) and the site of the pool is on a vegetated shingle habitat mound created to mitigate the impact of the adjacent Yellowwave development. Development is generally resisted in such locations unless exceptional criteria can be met, as set at out in policy NC4.

- 8.25. Coastal vegetated shingle is a globally restricted habitat and this site is one of only three sites for this habitat in Brighton & Hove therefore any development here requires very careful consideration. The proposed development will lead to the loss of c. 14% of the City's vegetated shingle resource, 6% of the revised Volks Railway Local Wildlife Site and loss of a conservation mound, therefore significant weight is given to the need to secure appropriate mitigation and enhancement. Even though the proposal is for a temporary use, the ecological impact will be permanent.
- 8.26. In this particular case it is considered an exception can be made given the wider benefits of providing a pool here and given that the application includes appropriate ecological mitigation and enhancement, and also enhances public appreciation of it (via boardwalk and interpretation board) as per policy NC4. These measures (and future maintenance and monitoring) can be secured via S106. On the basis of the applicant's revised ecological scheme which outlines a scheme to replace the vegetated shingle mound off-site and enhances the habitat on site, the County Ecologist raises no objection.
- 8.27. *The previous ecological reason for refusal is that the proposal would result in the loss of rare coastal vegetated shingle habitat and would cause harm to the Volks Railway Site of Nature Conservation Importance, and does not contain sufficient mitigation and enhancement, contrary to policy NC4 and SR18 of the Brighton and Hove Local Plan and SA1 and CP10 of the Brighton and Hove City Plan Part One.*
- 8.28. This revised application is to provide 371 sqm of ecology habitat enhancement in terms of ground cover vegetation as opposed to 266.5sqm in the previous refused scheme. Green roofs have also been introduced to reduce surface water runoff, to provide together with protected pockets of vegetated shingle on site, ecological enhancement. The area of green vegetated roofs in the revised application is 246 sqm. These enhancements are considered significant enough in this instance to overcome the reason for refusal in the previous scheme.
- 8.29. The council's Coastal Engineer confirms that the proposal would not compromise any beach processes and they do not expect the development will be affected by coastal erosion, only an increasing beach width. They do request further details of the retractable beach matting to ensure it is fit for purpose (which can be secured by condition). No coastal defence works are identified as necessary in this area. Both the council's Coastal Engineer and the Sustainable Drainage officer raise no concerns with regard to potential flooding.

Design, Appearance and Impact to Heritage:

- 8.30. The council has a statutory duty to have special regard to the desirability of preserving listed buildings and their settings (in this case the Madeira Terraces, Shelter Hall and Lift and Banjo Groyne), and also to pay special attention to the desirability of preserving or enhancing the character or

appearance of conservation areas (in this case East Cliff CA). National and local planning policies reinforce this importance.

- 8.31. The NPPF states that great weight should be given to conservation of heritage assets and that this presumption can be outweighed by material considerations deemed powerful enough to do so. The NPPF states that where a proposed development 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. Where the identified harm is limited or less than substantial, the local planning authority must nevertheless give considerable importance and weight to the preservation of the listed building and its setting.
- 8.32. The character and appearance of this part of the East Cliff Conservation Area is described in the formally adopted East Cliff Conservation Area Study and Enhancement Plan 2002, and this document provides guidance for future development here and is a material consideration.
- 8.33. Paragraph 3.3.4 of the Study states *the southern side of Marine Parade remains a broad promenade overlooking the Madeira Terrace, Madeira Drive and the wide shingle beaches with the only significant built development being the Aquarium Terraces at the far western end. It is generally uncluttered by modern street furniture etc. but the grade II listed 1890s lamp columns on the pavement edge and the late 19th century seafront shelters and early 20th century wooden benches add to its traditional seaside appearance. The expanse of open beaches is an integral element of the setting of the buildings and the [former] seafront amusements at Peter Pan's Playground partly detract from it. This clutter of structures is also a discordant element when viewed from above but the Volks Railway line at least provides a logical, and historic, southern boundary.*
- 8.34. Paragraph 3.3.6 states: *The seafront shelters, Madeira Terrace and Covered Walkway, the Shelter Hall and Lift and below that the wide, straight southern pavement of Madeira Drive all evoke traditional seafront promenading. The continuous line of wide, uncluttered beaches contribute significantly to this character.*
- 8.35. And paragraph 3.3.7 states: *...part of the seafront relates more to the brasher seafront pleasures of the Palace Pier, and includes the Aquarium Terraces and Colonnade and the beaches immediately east of the Pier. Any further intensification of this commercial brashness would, however, be detrimental to the special character of the seafront. It should be noted too that the seafront as a whole has a different character in summer to that of the winter. The influx of summer visitors gives this sub-area a lively character, which contrasts with a more sedate atmosphere during the winter months.*
- 8.36. In this context, the principal heritage considerations are the effect of the development on the character of the conservation area (specifically at this point the openness of the beach and promenade contrasted with the scale and enclosure of the sea wall) and the setting of the listed Terraces. The

East Cliff Study identifies the character of this part of the seafront as wide, uncluttered beaches which were harmed by the run-down playground that existed at that time. Since then, this site has been vacated but is still considered to have a negative impact on the immediate setting.

- 8.37. The comments made by Historic England and the council's Heritage Team have been made in the context of current policy and guidance. The Heritage Team considers that the materials currently proposed are a significant improvement on previous schemes and would support this approach; however inadequate changes to scale and density have been made to address the previous objections regarding the proposed height and density of the development. As a result the, Heritage Team considers that the potential benefits to the Eastern Seafront that could result from increased activity brought by this development would not outweigh the harm it would cause to the identified heritage assets and cannot currently support this scheme.
- 8.38. Historic England (HE) commented that they acknowledge this new application has introduced some changes to the previously refused scheme, application BH2018/01973. Most notably the palette of materials has changed, which is now proposed to be black rubber membrane cladding, cedar weather board cladding and white corrugated steel cladding. Additionally they observe that there has been a slight reduction in the maximum height of the scheme, with a reduction in height of 1.27m. This is as a result of the removal of place markers and structures of a three storey height. It is noted that there has been design alteration with the introduction of pitched roofs and a change in the fenestration articulation.
- 8.39. Whilst there has been a reduction in harm from the previously refused application, Historic England note however that the density and plan form of the proposed additional buildings remains mainly unchanged. Equally whilst the maximum height of the buildings has been slightly reduced the development remains heavily two storey. Whilst the change in palette is welcome, the scale and height of the development remains harmful. A less harmful approach would see single storey development that sits below the canopy of Madeira Terrace, maintaining the distinctive openness of this part of the seafront and the uninterrupted views of the sea and Palace Pier from all levels.
- 8.40. With the changes to the scheme advised above the level of harm could be further reduced. Whilst there would still be some harm from change within the setting to the designated heritage assets and for the conservation area, Historic England thinks this would be less than substantial harm. They note that if the council are minded to approve the scheme as submitted they think this would result in more harm to the significance of the designated heritage assets but also think that harm would remain as less than substantial but at the higher end of that scale. NPPF paragraph 196 advises that 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, where appropriate, securing its optimum viable use. The weighing should only be carried out

once satisfied that harm has been avoided or minimised to the greatest extent possible by design of the development. It is the remaining harm after such a process that should be weighed against the public benefits of the proposal.

- 8.41. Given the concerns regarding the scale of the development and impact to heritage assets, the merits of the proposal are considered to be finely balanced. It is considered that given the substantial decline of this area of the seafront and its current state of flux, the development could have a positive impact, despite its shortcomings. The area is clearly in need of a boost and will need to change and adapt to present circumstances. The site currently is vacant and detracts from the area. Given the marginal viability of the scheme it is not possible at this stage for the scheme to contribute financially towards heritage enhancement. In the short term however, the positive effects and enlivening of the area could benefit the longer term aspirations for the area, including the campaign for restoration of the Madeira Terraces and enhancement of public realm.
- 8.42. It is considered that, in this exceptional case, significant weight should be given to the wider regenerative benefits of the scheme and the benefits of providing the sporting facility in particular, and to the fact it is temporary only (and thus harm would be minimised and ultimately reversible). It is considered that there is clear and convincing justification for the scheme, as required by para 194 of the NPPF. It is considered that the degree of harm caused would be less than substantial and that the positive public benefits of the scheme would outweigh the harm caused, as required by para 196 of the NPPF. It is therefore that on a fine balance the reasons for objection by reason of design, scale, density, height and colour are considered have been overcome.
- 8.43. The proposal and its 'temporary' nature and appearance would not be considered acceptable as a permanent form of development given that it would prove counterproductive to the long-term aspirations for the area. The seafront has been, and always will be, the 'shop window' of Brighton & Hove therefore development has to be of the highest quality to be successful. It is disappointing that previous advice to take a more holistic and co-ordinated approach, to include the upgrading of the public realm and the relationship of the development with potential new uses for the Madeira Terrace arches and their restoration has not been taken, however, it is recognised these projects are at different stages of development. This is only a temporary scheme and there remains the opportunity for this as plans emerge for the Terraces (a 5 year consent should not prejudice this). Detailed follow on work from the Madeira Drive Regeneration Framework is to commence shortly and the regeneration of this particular eastern part of the Madeira Terraces is at a very early stage. It is considered particularly important that only temporary consent is granted given the uncertainty over plans for the Terraces and Madeira Drive in general. In the medium to long-term, a significant development on the Peter Pan site could prejudice the special setting and future viability of the Terraces and thus would need very careful consideration. Concerns in this regard have been expressed by Historic

England. In the future, retention of sea views will be important, as will retention of the prominence of the listed structures and the height of the middle promenade. Quality of design and materials will also be important. The council will encourage the developer to get involved in emerging plans for the future.

- 8.44. The County Archaeologist confirms that the site does contain archaeological interest relating to remains of the Volks railway, which are likely to be at shallow depth. Therefore the scheme, albeit with shallow foundations, is likely to disturb remains. This impact thus needs mitigating in line with policy and the NPPF and an appropriate condition is recommended.

Impact to Amenity:

- 8.45. Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use 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. Other policies seek to ensure development do not result in unacceptable noise or other pollution.
- 8.46. *The application was refused as the proposed siting of the swimming pool and associated structures on the beach would result in the loss of public open space, contrary to policy SR18 of the Brighton and Hove Local Plan and SA1 and CP16 of the Brighton and Hove City Plan Part One.*
- 8.47. The location of the swimming pool has been moved 4 meters up the beach to sit in line with the curtilage of Yellowwave and reduce the loss of public open space. It is considered that this change in location of the pool reduces the impact on open space and in this instance overcomes the reason for refusal.
- 8.48. As this is a seafront location, nearby residential properties are some distance away at the upper promenade level on Marine Parade. There are already several leisure uses in this location which generate activity. Therefore there is no objection in principle to the proposal from an amenity point of view. No details of lighting have been provided but a condition can ensure brightness is not excessive and ensure they are visually sympathetic. The Environmental Health Team raise no objection in principle, subject to the imposition of conditions restricting opening hours and to secure an appropriate lighting scheme. A condition can control potential noise from plant, PA's and tannoys etc.
- 8.49. The Environmental Health team expressed some concern regarding a 6am start and suggest this is tested on a trial basis only, however, given the location and nature of the pool use, on balance it is considered a 6am start would be acceptable for the duration of the proposal and is indeed comparable to gyms in the wider area. This earlier start also makes the development more accessible. A 7am start would be appropriate for the commercial uses. A 10pm closing time for the pool would be appropriate given this ties in with the hours of Yellowwave adjacent, and also other seafront attractions. There is no objection to an 11pm closing time for the

commercial uses. See comments under 'crime prevention' below relating to size of A4 bar uses deemed appropriate here to prevent undue noise, crime and anti-social behaviour.

- 8.50. A condition can secure a Construction Environmental Management Plan (CEMP) to mitigate construction impacts.

Sustainable Transport:

- 8.51. City Plan Policy CP9 seeks to encourage use of sustainable modes of transport. Local Plan policy TR7 seeks to ensure developments do not compromise highway safety.

- 8.52. There is no objection to a car-free development here. The site is well located to take advantage of pedestrian and cycling routes. Public transport access is possible but is more difficult given this is located above on Marine Parade. There is public car parking, including disabled, on Madeira Drive. Cycle provision on site is welcomed and encourages use of sustainable modes. A Travel Plan can promote further use of sustainable modes and would be appropriate for uses that could attract significant visitors, and can be secured by condition.

- 8.53. The applicant has stated they are unable to meet the financial contribution requested (£35,000) towards enhancement of sustainable transport given the marginal viability of the scheme. The on-site cycle provision will go some way towards this however the scheme is proposing a significant amount of new commercial uses as well as a destination use in the pool, therefore further mitigation is considered necessary. In the context that this proposal is for 5 years only, that the viability is marginal and that the scheme delivers other benefits, it is considered appropriate and reasonable to secure a significantly reduced figure (of £3,500). By way of comparison, the wheel and zip wire both contributed £10,000, and these schemes did not present a viability case. This sum could go towards enhanced signage/cycling/pedestrian facilities in Madeira Drive and could add to the bike share scheme. See also later section on 'viability'.

- 8.54. Some concerns regarding deliveries and servicing have been expressed, and a condition to secure a revised layout to ensure adequate highway visibility and safety is recommended. This will mean one modular unit will need to be relocated. Conditions can also secure a CEMP to mitigate construction impacts and ensure highway safety is not compromised.

Other Considerations:

Crime Prevention:

- 8.55. The NPPF and City Plan Policies CP12 and CP13 seek to ensure developments consider crime prevention.
- 8.56. In this relatively isolated seafront location crime prevention will be particularly important, and Sussex Police have identified measures that should be incorporated. Therefore submission of a Crime Prevention Strategy is recommended by condition. This could include Secure By Design

certification. A balance will need to be struck to ensure that security measures such as fencing, CCTV etc do not comprise the visual amenity of the area.

- 8.57. Given the site is close to a large nightclub/gig venue with bar area at Concorde 2, and there is a bar area at Yellowwave, and Madeira Drive is used for events, a condition is also recommended to restrict the A4 (bar) floorspace to be no greater than 150sqm unless service is to seated customers to persons taking meals on the premises or alcohol is ancillary to food service. This accords with policy SR12, which resists large bars in close proximity to each other in the interests of preventing antisocial behaviour and crime.

Sustainability:

- 8.58. City Plan Policy CP8 expects all new development to incorporate sustainable design features to avoid expansion of the city's ecological footprint. It states 'major' development of more than 1,000sqm (as is proposed) should meet BREEAM 'excellent' standard. In this exceptional case however, which involves modular temporary buildings, it is considered it would not be reasonable or practically possible to secure this standard. The applicant does propose sustainable drainage systems, ecological mitigation and enhancement and promotes sustainable transport in the form of cycle stands, which is welcomed from a wider sustainable perspective.

Viability

- 8.59. Policy CP7 seeks to ensure developments meet the demands they create for infrastructure. The council's Developer Contribution Technical Guidance is a material consideration and sets out formula for calculating financial contributions based on the impact of particular development types.
- 8.60. The applicant has submitted a Business Case which demonstrates that the viability of the scheme is marginal. The NPPF states weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case.
- 8.61. The applicants have not allowed for any S106 contributions (except for ecology) to mitigate the impact the development would have or to comply with planning policy. This would normally mean the development is in unacceptable in planning terms as the impacts it creates should be appropriately mitigated, notwithstanding viability. In this exceptional case however, given its temporary nature and the wider regeneration and public benefits of achieving development here, it is considered that significantly reduced S106 contributions may be sought, rather than recommend refusal of the application.
- 8.62. On balance, contributions towards the council's Local Employment Scheme are not sought (£12,110 requested), given the wider economic aims that would be achieved by the development, which is a similar aim of the Scheme. A S106 obligation to encourage use of local labour and training will however still be pursued. A contribution of £3,500 for sustainable transport

enhancement has been agreed, which would allow for some enhancement of sustainable transport in Madeira Drive (signage/cycling/pedestrian enhancement). This is considered a reasonable balance which should enable the scheme to proceed in this area in need of significant regeneration. In addition this is preferable to an alternative of additional commercial units (to make the scheme more viable) which would be unacceptable on other grounds. It is considered that this reduced contribution, in these very exceptional circumstances, would meet the relevant tests in that it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development.

Conclusion:

- 8.63. The proposed development is considered to bring significant benefits to an area which is in decline. It will help regenerate the area and boost tourism and the wider economy. There is an identified shortage of pool space in the city and the scheme will promote swimming and healthier life styles. The principle of locating the proposed 'enabling' commercial and sporting uses here on this part of seafront is considered acceptable. There is a general presumption against development directly on the beach, outside of the previously developed site, however there are other such examples like Yellowwave adjacent and on balance the wider benefits of the scheme are considered to outweigh the harm and loss of open space. The scheme would be built in an area of rare vegetated shingle habitat but would include satisfactory ecological mitigation and enhancement. There are concerns regarding the overall scale/density of the scheme however the amount of development proposed is necessary to make the pool viable, and provision of this sporting facility is given significant weight. The scheme would cause harm to the special setting of listed buildings and the East Cliff Conservation Area, but this harm is exceptionally considered to be outweighed by the public benefits of the scheme and the fact any impacts will be only temporary. The developer is trying to do something different and exciting here and, on balance, approval is recommended.

9. EQUALITIES

- 9.1. A platform lift is shown on the drawings which would allow access to the first floor. The remainder of the site, including pool and changing rooms, has level access which is welcomed. A retractable beach mat is proposed from the site to the seawater edge, which is welcomed, and accords with policies which seek greater public accessibility on the seafront. Details of the mat will be secured by condition.

10. DEVELOPER CONTRIBUTIONS

- 10.1. The s106 Agreement heads of terms are set out in Section 1.

- 10.2. In the event that the S106 agreement has not been signed by all parties, the application shall be refused for the following reasons:
1. The proposed development fails to provide appropriate mitigation of the ecological impacts of the development contrary to policies NC4 and QD18 of the Brighton & Hove Local Plan and CP10 of the Brighton and Hove City Plan Part One.
 2. The proposed development fails to provide appropriate mitigation of the transport impacts of the development contrary to policies TR7 of the Brighton & Hove Local Plan and CP7 and CP9 of the Brighton and Hove City Plan Part One.
 3. The proposed development fails to provide an Employment and Training Strategy specifying how the developer or their main contractors will provide opportunities for local people to gain employment or training on the construction phase of the proposed development contrary to policy CP7 of the Brighton and Hove City Plan Part 1 and the City Council's Developer Contributions Technical Guidance.

