

<u>No:</u>	BH2013/00647	<u>Ward:</u>	REGENCY
<u>App Type:</u>	Full Planning		
<u>Address:</u>	Brighton Beach Market Lower Esplanade Kings Road Brighton		
<u>Proposal:</u>	Temporary change of use from lower seafront promenade to open air market (during constructing of i360 development).		
<u>Officer:</u>	Christopher Wright Tel 292097	<u>Valid Date:</u>	29/07/2013
<u>Con Area:</u>	Regency Square	<u>Expiry Date:</u>	23 September 2013
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	N/A		
<u>Applicant:</u>	West Pier Traders Association, Peter Fijalkowski 74 Ashdown Road Worthing BN11 1DE		

1 RECOMMENDATION

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

2 SITE LOCATION & DESCRIPTION

- 2.1 The application site comprises an area of hard surfaced land on the lower esplanade situated behind the area of beach used by Brighton Sailing Club and situated approximately 88m east of the land end of the former West Pier. The area of land is part of a larger hard surfaced area on the lower esplanade, and measures 25m in length and 17m in width. The application site is positioned along the retaining wall to the ramp connecting the lower esplanade with the upper esplanade along King's Road.
- 2.2 The current use of the land is as part of the lower esplanade across which pedestrians can pass, and there are no structures on the site.
- 2.3 The application site is situated in the Regency Square Conservation Area and is not listed.
- 2.4 The site is located within the Central Seafront area designated under policy SA1 of the emerging City Plan Part One.
- 2.5 The application site lies outside of the area of lower esplanade to the east side of the West Pier which has been formally agreed as the construction compound area during future construction of the i360 observation tower as required by the Section 106 Agreement (reference Construction Environmental Management Plan (CEMP)) under application ref. BH2006/02369.

- 2.6 In addition, the application site would not overlap with the area designated for the temporary storage of Brighton Sailing Club boats during the construction of the i360.

3 RELEVANT HISTORY

BH2010/03320 – Application for variation of condition 1 of application BH2005/05727, (Confirmed use of area around pier on lower esplanade for street market. Amendments to previous conditions relating to days and hours of trading and number of stalls), to read: “The street market hereby approved shall only take place on that part of the beach shown on the approved drawings on Saturdays, Sundays and Bank Holidays (except for Christmas Day) between 1 March and 31 December and on weekdays (Mondays to Fridays inclusive) between 1 May and 30 September. The use shall cease on 31 December 2013 or at the start of i360 construction (whichever is sooner), after which the land shall be restored and shall return to its former use.” Approved 1 February 2011.

BH2008/03967 – Variation of condition to allow the market to continue until 31 December 2010 (or until implementation of the i360, whichever is the sooner). Approved 27 February 2009.

BH2006/02369 – Partial demolition of the existing pier structure and construction of an observation spire (approximately 183 metres in height above ordnance datum) and heritage centre (use class D2) with ancillary retail uses at lower promenade level and all works incidental to the development of the site including relocation of two lamp standards and works of alteration to arches 62-73 King’s Road. Approved subject to S106 Agreement 25 October 2006.

BH2005/05727 – Confirmed use of the area around the pier on the lower esplanade for a street market on Saturdays, Sundays and Bank Holidays (excluding Christmas Day) between 1 March and 31 December and on weekdays (Mondays to Fridays inclusive) between 1st May and 30th September, until 31 December 2008 upon which date the land should be restored and shall return to its former use. Approved 2 December 2005.

BH2004/01552/FP - Renewal of planning permission BH2001/02531/FP for a street market at West Pier, to allow operation to continue until 31st December 2005. Approved 7 July 2004.

BH2001/02531/FP – Renewal of planning permission BH2000/02026/FP (for a street market at West Pier) for two years (2001 to 2003 inclusive) and to allow markets on Saturdays, Sundays and Bank Holidays (except Christmas Day) between 1st March and 31st December and on weekdays (Monday to Friday inclusive) between 1st July and 31st August. Approved 17 January 2002.

BH2001/01905/FP – Variation of Condition 1 of planning permission BH2000/02026/FP (for a street market at West Pier) to allow operation to continue until 31st December 2001 and to allow markets on Bank Holidays except for Christmas Day. Approved 5 November 2001.

BH2000/02026/FP – Use of beach as a street market on Saturdays and Sundays between 1 April and 30 September in any year. Approved 3 April 2001.

4 THE APPLICATION

- 4.1 Planning permission is sought for the temporary relocation of the street market which currently operates in front of the land end of the former West Pier on the lower esplanade, to the area of lower esplanade some 88m to the east as described above. The site on which the market currently operates has a temporary consent which is due to expire on 31 December 2013.
- 4.2 Twenty-three market stall pitches are proposed within the site, all except three smaller pitches measuring 3m x 3m.
- 4.3 No permanent structures or storage structures are proposed.
- 4.4 The site would leave a clear width of 7.2m to the south side of the lower esplanade to allow for pedestrian traffic and for the movement of boats from the back of the beach used by Brighton Sailing Club.
- 4.5 The applicant has not specified the length of the temporary period of the relocation of the street market but does state the market would wish to remain in the new location until construction of the i360 has been completed.
- 4.6 The temporary consent for the existing market in front of the former West Pier has a duration of 3 years, or until the construction of the i360 commences, whichever is the sooner.
- 4.7 At the present time there is no clear indication of the time when the i360 will be completed.
- 4.8 The applicant has not put forward a longer term strategy as to where the market would wish to be situated following completion of the i360 development.

5 PUBLICITY & CONSULTATIONS

5.1 External

Neighbours: Six (6) letters of representation have been received from **36 Gleton Avenue; and 106-107 (Ice Café), 125 (x2), 143-144 and 199 King's Road Arches**, objecting to the application for the following reasons:-

- Untidy appearance of market.
- Poor image of Brighton for visitors.
- Loss of only remaining open area during i360 construction.
- Better used for recreation/public art/family entertainment rather than selling.
- Increased congestion from delivery traffic.
- Insufficient storage facilities.
- Market traders do not pay rates or invest in the seafront.
- Unfair to permanent seafront traders who pay rates.
- Better locations near Peace Statue near Hove Lawns, or west of Bandstand.
- Original idea for market was to fund West Pier Trust.
- Insufficient refuse storage.

- No space left to locate café commercial waste facility.
- Increased risk of flooding.
- Increase noise adjacent to café.
- Overcrowding.
- Existing market usually has only 10 market stalls, not 23 as proposed.

Sussex Police: No objection.

Conservation Advisory Group: No comment.

5.2 **Internal:**

Sustainable Transport: No objection.

The market will be made up of existing traders from the West Pier Market who will be displaced once work begins on the i360, and of new traders. Therefore the forecast level of trip generation is not forecast to increase from existing levels. This is because the development is primarily a like for like replacement.

The applicant is not proposing any on-site car parking. Given the central and sustainable location of the site this level of car parking is deemed acceptable and in line with SPGBH4.

The applicant is not proposing any cycle parking spaces. Given the temporary use of the site and its nature the Highway Authority would not look for any cycle parking stands to be secured as part of this application.

Proposed loading/unloading is essentially as existing. However, to ensure loading and unloading is undertaken in line with the proposed arrangements the Highway Authority would recommend that the need to produce a Delivery & Servicing Management Plan is secured via condition. The securing of such a plan is to ensure that the delivery and servicing movements from the development do not have a negative impact upon the highway network. The Delivery & Servicing Management Plan must include details of:

- The nature of vehicles being used;
- Where deliveries will take place from;
- Measures to ensure deliveries do not take place at times of the day when it is not permitted;
- Provide stall holders with appropriate access routes and details of legal loading/unloading locations; and
- Measures to consolidate or reduce the number of delivery vehicle trips.

It appears that some of the proposed stalls are to be located on the adopted highway. Therefore these stalls must be licensed under the Highways Act 1980. The applicant should contact the Seafront Office to arrange this post planning consent and an appropriate informative is recommended.

Seafront Development & Seafront Estates: No objection.

The landlord consent that will be provided will only apply for as long as the adjacent area known as the 'old paddling pool' site is used as the construction compound for the i360 development.

Major Projects & Regeneration: No objection.

6 MATERIAL CONSIDERATIONS

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that “If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”
- 6.2 The development plan is:
- Brighton & Hove Local Plan 2005 (saved policies post 2007);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (Adopted February 2013);
 - East Sussex and Brighton & Hove Minerals Local Plan (November 1999); Saved policies 3,4,32 and 36 – all outside of Brighton & Hove;
 - East Sussex and Brighton & Hove Waste Local Plan (February 2006); Saved Policies WLP 7 and WLP8 only – site allocations at Sackville Coalyard and Hangleton Bottom and Hollingdean Depot.
- 6.3 The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration which applies with immediate effect.
- 6.4 Due weight should be given to relevant policies in the development plan according to their degree of consistency with the NPPF.
- 6.5 The Brighton & Hove City Plan Part One (submission document) is an emerging development plan. The NPPF advises that weight may be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies in the NPPF.
- 6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

7 RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF) March 2012

Brighton & Hove Local Plan 2005:

TR1	Development and the demand for travel
TR7	Safe development
TR14	Cycle access and parking
TR19	Parking standards
SR11	Markets and car boot sales
HE1	Listed buildings
HE3	Development affecting the setting of a Listed Building
HE5	West Pier
HE6	Development within or affecting the setting of a conservation area

QD27 Protection of Amenity

Supplementary Planning Guidance:
SPGBH4 Parking Standards

Brighton & Hove City Plan Part One (submission document)
SS1 – Presumption in Favour of Sustainable Development
SA1 – The Seafront

8 CONSIDERATIONS & ASSESSMENT

8.1 Matters of competition and payment of business rates are not material considerations. The main considerations in the determination of this application relate to the principle of the development; the impact on the historic seafront; impact on amenity; and impact on transport.

Principle:

8.2 Policy SR11 of the Local Plan: “Markets and car boot sales”, states that planning permission for new off-street or on-street markets, covered or open, will be granted where:

- a. the proposal would not have an adverse effect on residential amenity or the immediate environment in terms of noise, nuisance or visual appearance; and
- b. the proposal should not result in traffic congestion or danger, and should be readily accessible by public transport.

In addition:

- c. the proposal should not adversely affect the viability of existing shops in the vicinity and should not result in an over concentration of markets in one particular area;
- d. adequate car parking for stallholders should be provided;
- e. adequate provision must be made for servicing and storage of stalls, as well as refused storage. Provision of new litter bins may also be required;
- f. all permanent barrows or stalls should be of a satisfactory appearance and well maintained, with the area being left clean and tidy after operation.

8.3 Proposals for markets and car boot sales should be supported by a management plan indicating how they will operate including details of times, allocation of pitches and marshalling. A ‘limited period only’ permission may be given if the environmental consequences are either uncertain, especially in residential areas, or could be harmful in the longer term, in order to allow for monitoring of potential harm or nuisance.

8.4 The market has been operating successfully from the West Pier site for over ten years. In principle the use of a small area of the lower esplanade as a market is acceptable. Sufficient space for pedestrian traffic flow and for manoeuvring of boats belonging to the adjoining sailing club would be retained on the lower esplanade.

- 8.5 In respect of part c. of policy SR11, the approval of the current application would overlap the remaining time left on the consent for the market in its current location, which is due to expire on 31 December 2013. This short overlap time is considered acceptable, but in the longer term, the co-existence of areas of the lower esplanade with planning approval for street markets would not be acceptable in principle and would be contrary to policy SR11. This issue will be re-visited if or when the applicant seeks to renew the temporary planning consent for the market in its current location in front of the West Pier.
- 8.6 Policy SA1 of the emerging City Plan Part One, states Brighton & Hove seafront is considered by English Heritage to be one of the finest urban seafront townscapes in Britain. The space along the seafront, the sea, the beach and the buildings behind the main road all offer important opportunities for further improvement and enhancement. 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.
- 8.7 The key priority for the whole of the seafront is to enhance and improve the public realm and create a seafront for all.
- 8.8 Part B of policy SA1 sets out the specific priorities for each seafront area, the application site falling in the Central Seafront (Medina Terrace to Palace Pier) area.

The priorities for the Central Seafront are to:

- Secure ongoing improvements to and maintenance of the upper and lower promenade, including Hove lawns, which respect the more tranquil areas west of the Peace Statue;
 - Develop a future vision and landscaping option for the lower promenade area either side of the West Pier site to complement the i360 observation tower proposal and maximise nature conservation opportunities;
 - Secure improvements to traffic flow, air quality and pedestrian and cycle routes and crossing opportunities related to the Brighton Centre redevelopment; and
 - The council will work with the West Pier Trust and English Heritage to ensure any future proposal for the West Pier is of high quality, complements the seafront regeneration and values its biodiversity interest.
- 8.9 The proposal to relocate the market raises potential conflicts with the second priority for the Centre Seafront area in respect of the future vision and landscaping option to complement the i360 observation tower and maximise nature conservation opportunities.
- 8.10 At the present time it is not known when the construction compound for the i360 observation tower will be created and it is not known when, or if, the i360 observation tower will be completed.

- 8.11 The rental of land on the lower esplanade is controlled by the council's Seafront Office, which will be leasing the application site to the market in the event planning approval is granted. In addition, the application site is some 88m from the West Pier and outside of the designated i360 construction compound. As such it is considered that the relocation of the market to a temporary location for the duration of i360 construction would not compromise the longer term priorities for the Central Seafront area. However, a temporary permission is recommended so that monitoring of the impact of the market can take place and also to ensure that the longer term strategies for the seafront area are not prejudiced.
- 8.12 It is recommended that consent is granted temporarily for a period of 2 years. During this time the applicant will be expected to devise a long-term strategy for the beach market and identify alternative locations which will reduce the potential to prejudice the achievement of policy SA1 priorities.

Impact on Historic Seafront:

- 8.13 Policy HE6 of the Local Plan states that, 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, including the layout of the streets, development patterns, building lines and building forms;
 - 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 area;
 - 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; and
 - f. the retention and where appropriate the reinstatement of original features such as chimneys, chimney pots, gates, railings and shopfronts and small scale architectural details such as mouldings which individually or cumulatively contribute to the character or appearance of the area.

Proposals that are likely to have an adverse impact on the character or appearance of a conservation area will not be permitted.

- 8.14 In the proposed location the beach market would be less visible in long views along the lower esplanade than it is in its current location in front of the West Pier.
- 8.15 The proposed uniformity in the design and appearance of the proposed market stalls is supported and whilst the permanent siting of market stalls may be considered harmful to the character and appearance of the historic seafront, in this instance no permanent fixtures are proposed and the market stalls would

be erected and cleared away each day, meaning outside market trading hours the land would be restored to its present condition.

- 8.16 The area of lower esplanade to the east side of the West Pier is a large and open hard-surfaced area. The proposed market would occupy a small proportion of the far corner of the lower esplanade area from the West Pier, and the temporary nature of the proposal together with the absence of permanent structures or fixtures means the historic layout and sense of openness of the lower esplanade would not be compromised by the proposal.
- 8.17 The temporary relocation of the market to the area proposed is not considered likely to have a significant or lasting impact on the requirements to preserve or enhance the conservation area and on this basis no permanent, long-term conflict with policy HE6 is foreseen.

Impact on amenity:

- 8.18 Policy QD27 of the Local Plan states 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.
- 8.19 The proposed temporary location of the market is at beach level on the lower esplanade and the application site is separated from the nearest residential properties by the upper esplanade and also the busy King's Road (A259). As such it is not considered that the market would cause undue disturbance and loss of amenity for neighbouring residents.
- 8.20 The matters raised by the letters of objection received are acknowledged. However, it is not considered that the proposed market use would generate such excessive noise and disturbance from its selling activities such as to cause unacceptable harm to the amenity of the adjoining uses. Furthermore, the market has been operating in its current location for some years with no significant adverse impact on residential amenity.

Impact on transport:

- 8.21 In order to meet the requirements of policies TR1 and TR19 of the Local Plan, the proposed development should provide for the transport demand generated in accordance with the maximum parking standards and minimum cycle parking standards set out in SPGBH4: Parking Standards.
- 8.22 It is not proposed to provide on-site car parking. Given the central and sustainable location of the site, no objection has been received from Sustainable Transport in this regard.
- 8.23 Furthermore, as the proposal is a like-for-like transfer of the existing market to a temporary location, there would not be a material increase in existing levels of trip generation and as such Sustainable Transport does not require a Section 106 contribution.

- 8.24 In order to meet the requirements of policy TR14 of the Local Plan, and the minimum cycle parking standards set out in SPGBH4, the development should provide 1no. cycle parking space which is secure, convenient to use and ideally covered.
- 8.25 Given the temporary use of the site for the street market Sustainable Transport raises no objection to the absence of cycle parking spaces in this instance and your Officers concur with this.

9 CONCLUSION

- 9.1 In principle the use of the land for the temporary relocation of the existing West Pier Beach Market is considered acceptable. If this application is approved it will result in a consent that overlaps with the final months of the temporary consent granted for the same market in its current location by the West Pier, which expires on 31 December 2013 (ref. BH2010/03320). This short period of overlap is considered acceptable and is not considered sufficient to justify refusal of the application based on policy SR11 part c. (over concentration of markets in one particular area).
- 9.2 In the location proposed the market is not considered likely to have a significant adverse impact on residential amenity or give rise to excessive noise and disturbance from its retail activities.
- 9.3 The application site is in a sustainable location in terms of transport. Subject to a condition requiring a Delivery and Servicing Management Plan the proposal is not considered likely to have a significant detrimental impact on the highway.
- 9.4 For the reasons above approval is recommended for a temporary period of 2 years. This will enable the local planning authority to monitor the impact of the development and review the consent as appropriate in respect of achieving policy SA1 priorities and the fruition of the i360 observation tower development and associated landscaping.
- 9.5 It is not considered that the temporary consent should refer to the completion of the i360 observation tower because the application site is outside of the area proposed to be used as the i360 construction compound and as the market would be able to operate during construction, the completion of the i360 observation tower would in itself have no impact on the continued operation of the beach market.

10 EQUALITIES

The lower esplanade is flat and hard surfaced and there is a ramp between the application site and the upper esplanade alongside King's Road.

11 CONDITIONS / INFORMATIVES

Regulatory Conditions:

- 1) The street market shall only take place on that part of lower esplanade indicated and in accordance with the stall layout shown on approved drawing no. 007RR (REVISED) received on 29 July 2013, on Saturdays, Sundays and Bank Holidays (except for Christmas Day) between 1st March and 31st December and on weekdays (Mondays to Fridays inclusive) between 1st May and 30th September. The use shall cease on 30th September 2015 whereby the land shall be restored and shall return to its former use as deemed appropriate. **Reason:** To enable to Local Planning Authority to continue to monitor the impact of the market use, to safeguard the amenities of the area and the character and appearance of this part of the Regency Square Conservation Area and in order not to prejudice the long-term strategy for enhancement to the central seafront area, in accordance with policies SR11 and HE6 of the Brighton & Hove Local Plan 2005 and policy SA1 of the City Plan Part One Submission Version.

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

Plan Type	Reference	Version	Date Received
General Plan/Location Map			8 May 2013
Proposal for Market Layout	007RR (REVISED)		29 Jul 2013

- 3) No stall shall be set up on trading days before 08.00 hours and all stalls shall be removed by 20.00 hours. Trading shall only take place between the hours of 09.00 hours and 19.00 hours. **Reason:** To safeguard the amenities of the area and the character and appearance of this part of the Regency Square Conservation Area and in accordance with policies SR11 and HE6 of the Brighton & Hove Local Plan 2005.

- 4) There shall be no parking of vehicles associated with the market on the Lower Esplanade at any time. In particular, there shall be no loading or unloading of goods associated with the market from vehicles parked on the Lower Esplanade at any one time. **Reason:** To safeguard the amenities of the area and the character and appearance of this part of the Regency Square Conservation Area and in accordance with policies SR11 and HE6 of the Brighton & Hove Local Plan 2005.

- 5) No amplified music shall be played on the site. **Reason:** To safeguard the amenities of the area and the character and appearance of this part of the Regency Square Conservation Area and in accordance with policies SR11 and HE6 of the Brighton & Hove Local Plan 2005.

Pre-Commencement Conditions:

- 6) The use hereby approved shall not commence until there has been submitted to and approved in writing by the Local Planning Authority a Delivery & Servicing Management Plan, which includes details of the types

of vehicles; how deliveries will take place; and the frequency of deliveries. The plan shall also include measures to minimise the impact deliveries have on the transport network. All deliveries and servicing shall be carried out in accordance with the approval plan thereafter. **Reason:** In order to ensure that the vehicles that deliver to and service the development are of a suitable size and to ensure the safe operation of the highway network, and thus the protection of the amenity of nearby residents in accordance with policies TR7 and QD27 of the Brighton & Hove Local Plan 2005.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One (submission document) the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. This decision to grant Planning Permission has been taken:
 - (i) having regard to the policies and proposals in the National Planning Policy Framework and the Development Plan, including Supplementary Planning Guidance and Supplementary Planning Documents:
(Please see section 7 of the report for the full list); and
 - (ii) for the following reasons:-
In principle the use of the land for the temporary relocation of the existing West Pier Beach Market is considered acceptable. In the location proposed the market is not considered likely to have a significant adverse impact on residential amenity or give rise to excessive noise and disturbance from its retail activities. The application site is in a sustainable location in terms of transport. Subject to a condition requiring a Delivery and Servicing Management Plan the proposal is not considered likely to have a significant detrimental impact on the highway.
3. The applicant is advised that this planning permission does not override the need to obtain a licence for the stalls on the highway under the Highways Act 1980. The applicant must contact the Council's Seafront Office for further information and to arrange this licence. Email: seafrontoffice2@brighton-hove.gov.uk for further information.