

<b><u>No:</u></b>	<b>BH2016/01719</b>	<b><u>Ward:</u></b>	<b>Queen's Park Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>BATHING PAVILION EAST, Madeira Drive, Brighton (Daltons Bastion Madeira Drive Brighton)</b>		
<b><u>Proposal:</u></b>	<b>Erection of a 22.5m high tower with zip wire to a landing area along Madeira Drive opposite the entrance to Atlingworth Street with ancillary storage and changing facilities (D2 use) and erection of a café (A3). Retention of existing base plinth.</b>		
<b><u>Officer:</u></b>	Maria Seale, tel: 292175	<b><u>Valid Date:</u></b>	07.06.2016
<b><u>Con Area:</u></b>	EAST CLIFF	<b><u>E.O.T:</u></b>	11.11.16
<b><u>Listed Building Grade:</u></b>	Railings Grade II, Palace Pier Grade II*, Aquarium Terraces Grade II, Some properties in Marine Parade & Marine Place Grade II		
<b><u>Agent:</u></b>	Stiles Harold Williams 69 Park Lane Croydon CR0 1BY		
<b><u>Applicant:</u></b>	The Brighton Zip c/o Stiles Harold Williams 69 Park Lane Croydon CR0 1BY		

## 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:

### 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.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location Plan	934/01	C	26 September 2016
Other	PROPOSED BLOCK CONTEXT 934/10	C	26 September 2016
Site Layout Plan	934/11	C	26 September 2016
Sections Proposed	934/12	B	26 September 2016
Elevations Proposed	SOUTH 934/13	B	26 September 2016
Elevations Proposed	NORTH 934/14	B	26 September 2016
Other	LANDING STAGE 934/15	A	26 September 2016
Elevations Proposed	934/16	B	26 September

			2016
Elevations Proposed	934/17	B	26 September 2016
Floor Plans Proposed	934/18	E	26 September 2016
Other	LANDING STAGE 934/19	B	26 September 2016
Other	COMPARATIVE SECTIONS 934/20	A	26 September 2016

2 The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.  
**Reason:** To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3 No development including any demolition 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 scheme of how the contractors will liaise with local residents to ensure that residents are 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)
- (iv) A scheme of how the contractors will minimise complaints from neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site
- (v) Details of hours of construction including all associated vehicular movements
- (vi) Details of the construction compound
- (vii) A plan showing construction traffic routes

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 & Hove Local Plan, policy CP8 of the Brighton and Hove City Plan Part One.

4 No development shall commence until a scheme for the provision of a Drainage Strategy for foul and surface water sewage disposal has been submitted to and approved in writing by the Local Planning Authority. The drainage works shall be completed in accordance with the details and timetable agreed.  
**Reason:** As this matter is fundamental to prevent the increased risk of flooding and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal and to comply with policy SU3 of the Brighton & Hove Local Plan.

- 5 The A3 café/restaurant building hereby approved shall not be first brought into use until the tower, zip wires, landing stage and associated ancillary structures have first been constructed and completed.  
**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 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 erection of a café building in this location is justified on the basis it is required to support the viability of the leisure/sports attraction, to comply with policies HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.
- 6 No development shall commence until full details of existing and proposed ground levels (referenced as Ordnance Datum) within the site and on land and buildings adjoining the site by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.  
**Reason:** As this matter is fundamental to safeguard the character and appearance of the area, to comply with policy HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.
- 7 No part of the development hereby approved shall not be first brought into use until an Operational Management Plan has been submitted to and approved in writing by the Local Planning Authority. The zip wire facility shall be carried out in accordance with the approved Operational Management Plan in perpetuity.  
**Reason:** To avoid undue noise, disturbance or nuisance and prevent loss of amenity to adjacent occupiers and users of the area, to comply with policies SU9, SU10 and QD27 of the Brighton and Hove Local Plan.
- 8 No part of the development hereby approved shall be first brought into use until a Visual Enhancement Scheme for the site including the underneath of the projecting canopy (forming part of the base plinth of the former wheel) and stanchions and commercial units located below it has been submitted to and approved in writing by the Local Planning Authority. The Scheme shall include screening of the underside of the canopy and stanchions and painting of commercial units and enhancement to their shutters, and details of how the upper promenade has been made good. The approved Scheme shall be implemented before the development is first brought into use.  
**Reason:** In the interest of visual amenity to comply with policies HE6 of the Brighton and Hove Local Plan and CP12, CP15 and SA1 of the Brighton and Hove City Plan Part One.
- 9 No part of the development hereby approved shall be first brought into use until a scheme detailing how the original listed seafront railings which were removed for the wheel development are to be restored and/or replaced within development and the base plinth altered and made good, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the railing design and materials and how they adjoin and attach to

existing seafront railings. The previous listed railings shall be re-used unless evidence is submitted to prove that they are beyond all reasonable repair or pose a safety risk and details of any replication shall be submitted to and approved in writing by the Local Planning Authority before any restoration/replication works commence. The approved scheme shall be implemented before the development is first brought into use. Reason: In the interest of visual amenity to comply with policies HE3 and HE6 of the Brighton and Hove Local Plan and CP12, CP15 and SA1 of the Brighton and Hove City Plan Part One.

- 10 The café/restaurant building hereby approved shall be used as an A3 use only and for no other purpose. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of use from the A3 use shall occur without planning permission obtained from the Local Planning Authority.

**Reason:** The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of safeguarding the amenities of the area as the site is uniquely located in a prominent seafront location, to aid tourism and the regeneration of the area, to comply with policy SA1, CP4 and CP5 of the Brighton and Hove City Plan Part One.

- 11 The development hereby approved shall not be open to customers except between the hours of 10.00 hours and 23.00 hours daily. No other activity within the site including setting up/down shall take place between the hours of 00.00 and 09.00.

**Reason:** To safeguard the amenities of the 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.

- 12 No cables, wires, aerials, pipework (except rainwater downpipes shown on the approved plans) meter boxes, ventilation grilles or flues shall be fixed to or penetrate any external elevation, other than those shown on the approved drawings, without the prior consent in writing of the Local Planning Authority.

**Reason:** To ensure the satisfactory preservation of this listed building and to comply with policy HE6 of the Brighton & Hove Local Plan and CP15 of the Brighton and Hove City Plan Part One.

- 13 No development above ground floor slab level of the lower promenade hereby permitted shall take place 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) Samples of all brick, stone, concrete, render, and roofing material (including details of the colour of render/paintwork to be used)
- b) Samples of all cladding to be used, including details of their treatment to protect against weathering
- c) Samples of all hard surfacing materials
- d) Samples of the proposed window, door and balustrade/railing treatments

e) Samples of all other materials to be used externally  
Development shall be carried out in accordance with the approved details.  
**Reason:** To ensure a satisfactory appearance to the development and HE6 of the Brighton & Hove Local Plan and CP12 and CP15 of the Brighton & Hove City Plan Part One.

14 (i) Unless otherwise agreed in writing by the Local Planning Authority, within 6 months of commencement of the development hereby permitted a BREEAM Building Research Establishment issued Design Stage Certificate confirming that the development is on target to achieve a minimum BREEAM New Construction rating of 'Very Good' has been submitted to, and approved in writing by, the Local Planning Authority.

(ii) The development hereby approved shall not be first occupied until a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the development built has achieved a minimum BREEAM New Construction rating of 'Very Good' has been submitted to, and approved in writing by, the Local Planning Authority.

**Reason:** To ensure that the development is sustainable and makes efficient use of energy, water and materials and to comply with policy CP8 of the City Plan Part One.

15 Prior to first occupation of the A3 use hereby permitted a scheme for the fitting of odour control equipment to the building shall be 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 occupation of the development and shall thereafter be retained as such.

**Reason:** To safeguard the amenities of the occupiers of adjoining properties and the general locality and to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.

16 Prior to first occupation of the A3 use hereby permitted a scheme for the sound insulation of the odour control equipment referred to in the condition set out above shall have 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 general locality to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.

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

**Reason:** To safeguard the amenities of the occupiers of adjoining properties and the general locality and to comply with policies QD27, SU9 and SU10 of the Brighton & Hove Local Plan.

- 18 The development hereby permitted shall not be first brought into use until details of external lighting have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed in accordance with the approved details before first occupation 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 adjoining properties and the *character and appearance of the general locality and to comply with policies QD25, QD27 and HE6* of the Brighton & Hove Local Plan.
- 19 The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.  
**Reason:** To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to comply with policy QD27 of the Brighton & Hove Local Plan
- 20 Baby changing facilities within the disabled public toilet serving the A3 business hereby approved shall be provided before the A3 use is first brought into use.  
**Reason:** To ensure the toilets are accessible to all members of the public, to comply with policies SA1, CP5 and CP17 of the Brighton and Hove City Plan Part One.
- 21 Within three months of the date of first occupation, a Travel Plan for the development shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include:  
a) A travel survey of employees and visitors;  
b) Details of publicity and ticketing initiatives including advanced booking;  
c) Details of a monitoring framework based on an annual survey, to enable the Travel Plan to be reviewed and updated as appropriate.  
The Travel Plan shall thereafter be fully implemented in accordance with the approved details.  
**Reason:** To ensure the promotion of safe, active and sustainable forms of travel and comply with policies TR4 of the Brighton and Hove Local Plan and CP9 of the City Plan Part One.
- 22 Within 6 months of commencement of development details of crime prevention measures shall be submitted to the Local Planning Authority and approved in writing to demonstrate that the scheme would meet Secure By Design standard. Within 3 months of first occupation a Secure By Design certificate shall be submitted for written approval.  
**Reason:** In the interests of crime prevention in this busy central location, to comply with policies CP12 and CP13 of the Brighton & Hove City Plan Part One.
- 23 Within 6 months of commencement of development a scheme to enhance the nature conservation interest of the site shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall incorporate provision

of bird and bat nesting boxes where appropriate and shall be implemented in full prior to the first occupation of the development hereby approved.

**Reason:** To increase the biodiversity of the site and ensure appropriate integration of new nature conservation and enhancement features in accordance with Policy CP10 of the City Plan Part One and Supplementary Planning Document SPD11 Nature Conservation and Development.

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 to contact the council's Highways department to obtain a highways licence for the development.
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)' for Zone E 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: ehl.safety@brighton-hove.gov.uk, website: www.brighton-hove.gov.uk/licensing).

## **2 SITE LOCATION & APPLICATION DESCRIPTION**

- 2.1 The site comprises the location of the former Brighton Wheel and forms part of the Madeira Drive seafront promenade and the beach, and is located opposite The Terraces and Aquarium. The site is approximately 110 metres east of Palace Pier and currently projects out from the main seaward line of the promenade by approximately 5 metres and includes the base plinth of the former wheel. Underneath the projecting plinth there is an arcade containing an ice cream parlour and shop and concrete pathway.
- 2.2 The zip wire would extend a distance of about 300 metres eastwards parallel to Madeira Drive over the beach to the south of the Volks Railway, and the landing area would be on the beach approximately opposite the southern ends of Lower Rock Gardens and Atlingworth Street.
- 2.3 The site is located within the East Cliff Conservation Area and is close to several listed buildings, including the Grade II\* Palace Pier, and Grade II Terraces and Aquarium.
- 2.3 Planning permission is sought to erect a new permanent leisure attraction comprising a 22.5m high tower (26m high from beach level) of a bespoke spiral design with two zip wires running a length of about 300 metres parallel to Madeira Drive along the beach. A 'drop zone' landing area is proposed on the beach comprising a raised stage within a structure which has a similar appearance to an upturned boat, located approximately opposite the southern ends of Lower Rock Gardens and Atlingworth Street.
- 2.4 Single storey, flat roofed rendered ancillary accommodation is proposed comprising a ticket office, shop and lockers plus a waste store. A two storey building for use as a restaurant/café (A3 use) is proposed of contemporary design with a rendered elevations and a flat roof. The first floor would be predominantly an open terrace surrounded by a glass balustrade. The only structure at first floor level would be the stairs and integral extract riser. The public floor area of both floors excluding services etc is about 232 sqm. The applicant states the cafe is integral to the business model to ensure the viability of the project.
- 2.5 The existing former wheel base plinth is proposed to be largely retained and altered in appearance with the upper half of the render removed and replaced with railings to match the existing historic railings along the remainder of the seafront. Parts of the former wheel base next to Madeira Drive will be removed. The new café, ancillary buildings and zip wire tower would be located on the previous plinth in a raised position.
- 2.6 The applicant is proposing opening hours of between 10am-11pm daily throughout the year. The applicant anticipates that about 32,000 people per year (660-6,500 per month) would use the zip wire attraction. They state at an absolute maximum of 24 riders per hour (using both wires), with an average of about 9 per hour. They are seeking permission to open all year round for flexibility, which is likely to equate to about 85% of the year for the zip wire due to the weather.

- 2.7 It is anticipated that staffing levels for the zip wire are likely to be an average annually of 13.5 (low of 7 FTE/month, peak of 27 FTE/month). The café is proposed to have 140 covers (80 inside and 60 outside) with annual staff levels annually of 21 (low of 6.5 FTE/month, peak of 47 FTE/month).
- 2.8 The proposal has been amended since first submitted, the main changes being:
- Removal of raised platform at base of tower and extension of tower legs and stair access (overall height of tower the unaltered)
  - Reduction height of the plinth by 250mm
  - The stepped entrance to the café has been reduced, with 5 lower steps in lieu of the 6 steeper steps shown previously, increasing the width of the re-entrant before entering the café.
  - The face of the plinth has been shown as painted in an off-white, the same as the main cafeteria facades, removing the contrasting grey colour shown previously.

### 3 RELEVANT HISTORY

**BH2016/05181** Retention of temporary leisure use with ancillary catering for 6 months. (in the process of being validated and registered)

**BH2016/01615** Application for variation of condition 3(b) of application BH2011/00764 to allow retention of the plinth following the removal of the rest of the wheel structure. Under consideration - will be withdrawn if permission agreed for zip wire development.

**BH2015/00513** Application for variation of condition 3 of application BH2011/00764 to extend the temporary period for a further five years until 19 May 2021. Refused 24/6/15.

**BH2011/00764** (Erection of a 45 metre high observation wheel including extension of promenade over beach, new beach deck, ancillary plant, queuing areas, ticket booths and merchandise kiosk (for a temporary period of 5 years, except beach deck which is permanent). Approved on a temporary basis 19/5/11.

The council has issued a Screening Opinion which confirms that the development is not likely to give rise to significant environmental effects and that therefore a formal Environmental Impact Assessment is not required.

Landlord's consent from the council has been given, with the applicant offered terms for a 25 year Lease of the site.

### 4 REPRESENTATIONS

- 4.1 **Nine (9)** letters of representation has been received from **302 Lower Esplanade Madeira Drive (catering kiosks and crazy golf), 36 Marine Parade x2 occupiers, 19 Madeira Place, 8 Dinapore House, 12 Princes Street, Flat 1 50 Marine Parade, 4 Atlingworth Street, Flat 3 17 Marine Parade, objecting** on the following grounds:

- health and safety - risk of objects falling on to people below and compromise customers at adjacent snack bar business
- Significantly intrudes on sea views from Marine parade and surrounding area
- Not in keeping with conservation area, historic buildings and seafront
- Distraction to passing motorists
- supporting buildings should be on lower promenade not upper
- No reason why regeneration of area needs intrusive structures
- Wire will result in visual blocking of seafront view and not in interests of the area
- Would be better if went over the sea and finish/start on pier
- Generation of excessive noise from people shouting for joy/fear etc. 11pm finish to too late (8pm suggested)
- Increase traffic pressure and inadequate parking provision
- Will not regenerate this area of seafront as was proven with wheel
- Loss of privacy
- Excessive disturbance
- Failure to adhere to best value requirements when lease was granted
- Area should be reinstated to its former public use, Bastion was well used as an open space
- Tower is ungainly in appearance
- Drawings are not clear or complete/accurate
- Trespass/impact on neighbouring amenities
- Café is not ancillary
- Breach of policy SA1 - retention of plinth does not complement heritage or enhance character and appearance of conservation area

4.2 **Seventy (70)** letters of representation supporting the proposal have been received from **3 Lower Rock Gardens, 81 Applesham Avenue, 65 Valley Drive, 171 Elm Grove, 69 Valley Drive, 3 Atlantic Heights, Flat 3 Evelyn Court, 23 meeting House Lane, 127 Westbourne Street, Flat 1b, 26 Albert Road, 31 Embassy Court, 18 The Street, 2 Riverdale Church Lane, 19 Edward Avenue, 9 Derek Avenue, 23 Furze Hill House, 8 Lower Market Street, Ambassador Hotel 22-23 New Steine, 1 Broad Street, 12 Queen Alexandra Avenue, 212 Dyke Road, 24 Ossory Street, 9 Oxford Mews, Flat 3 27 Bedford Place, 18 Cliffe High Street, 56 Hangleton Road, 60 Tivoli Crescent, Flat 2 45 Wilbury Road, 45 Roedean Crescent, 45 Lansdowne Street, Alison Tighe (no address given), 49 Fitzjohns Road, The Rookery 73 Dean Court, 11 Welsmere Road, 24 High Street, 22 Devonshire Place, David Roberts St James Street (no number given), 19 Edward Avenue, 43-44 Marine Parade, Five 5 New Steine, 7 The Roods, Christina Bamin (no address given), 17 Upper Rock Gardens, 1 Onslow Road, 68 Gordon Road, The New Steine Hotel Bar and Bistro and Gullivers Hotel 10 11 & 12a New Steine, 109 Crescent Drive South, 17 Court Ord Road, 54 Embassy Court, Michele Bacchoo (no address given), 6a Neville Road, Seaviews 2a Mill Hill, 5 Derek Avenue, 73 Dean Court Road, 10 Waldegrave Road, Catherine Sawyer Buttsfield Lane (no number given), 41 Walnut Tree Road, 6 New Steine, Fanny Lee Kings Road (no number given), 9 Seaview Avenue, The Claremont 13 Second Avenue, 19 Grinstead Avenue, Flat 3 63 Marine Drive, 20 Withdean Road, 58 Dean Court Road, 2 Dawn Crescent, 11**

**Badger Close, 13 Price Albert Street, 54 Fort Road, 7 Bodiham House Davigdor Road, on the following grounds:**

- Proposal will regenerate the east part of the seafront, which is empty and much needed
- Will provide an attraction for both tourists and residents and boost tourism and economy generally
- Disappointment with removal of iconic wheel as city needs such strong attractions to keep vibrant and attract people east of the pier and near landing area
- Without it area will diminish
- Will support neighbouring businesses
- City should promote innovative ideas and businesses
- Will bring an exciting fun and new attraction to city enjoyed by all
- Fun is what Brighton is about
- Proposal would be amazing for children and encourage families to do together and would support sports facilities in area
- Location is well suited for proposal next to Pier and in seafront environment and compliments other attractions and what exists at Yellowwave, Peter Pan and Hove Lagoon
- The city needs attractions that actively, physically involve the participants, is a sporty alternative to i360
- Will help compete with forward thinking and leisure orientated towns like Bournemouth
- Makes use of existing infrastructure (base of wheel) which is environmentally friendly
- Is less intrusive than former wheel
- Design is attractive

One (1) letter has been received from 15 Marine Parade commenting that whilst they have no objection to the zip wire proposal they raise concerns about the unattractive and tacky temporary leisure structures currently on site.

## **5 CONSULTATIONS**

### **5.1 External**

Conservation Advisory Group (CAG): Approve. Attention is drawn to the poor done to improve this. Insufficient detail has been provided of the appearance and design of the permanent buildings proposed. This is yet another proposal for a building south side of Madeira Drive. There will be growing pressure for further developments and a policy statement should be produced identifying where such buildings are acceptable and which areas should be kept clear of development.

### **5.2 Historic England: (comments on original scheme pre-amendments)**

#### No objection raised in principle.

The application site lies within the East Cliff Conservation area and in the vicinity of a number of listed buildings, notably Palace Pier, Aquarium, Madeira Terraces and properties in Marine Parade and Marine Place. East Cliff Conservation Area lies between Palace Pier and Brighton Marina and is characterised by its outstanding Regency terraces set up on top of the cliff

overlooking the Victorian lower esplanade below and the wide shingle beach and sea beyond. The immediate context of the application site has a distinctive seafront character arising from its beach side position and the collection of tourist and leisure facilities and activities that coalesce here.

- 5.3 Historic England previously provided advice on the temporary consent application for the Brighton Observation Wheel at this site. At that time it was acknowledged that this vibrant seafront location which includes the Palace Pier, Sea Life centre, cafes and shops is in principle a suitable location for this type of visitor attraction provided that it was well related to the adjoining heritage and tourist facilities and was of a high quality design. In addition, the proposed Zip Tower is a much smaller structure than Brighton Wheel; approximately half the height of the wheel and far more slender. It will therefore be much less dominant than the wheel in views of the seafront and in views along the promenade towards Palace Pier.
- 5.4 HE therefore do not object to the principle of the Zip Tower in this location. However proper consideration needs to be given to any impacts of the proposal on the setting of the listed buildings, in particular in relation to the impact of this tall development on the outlook of sea facing buildings on Marine Parade and on the open seafront character of this part of the conservation area. With this in mind the scale and amount of ancillary structures associated with the Zip Wire Tower needs to be considered as to whether they are appropriate for this location and necessary to support its development and operation. Any harm should be minimised and balanced against public benefits associated with the proposal including that associated with enlivenment of this area and helping to regenerate Brighton's seafront. As advised in relation to other proposals along this part of the seafront, the regeneration of this area should be considered in a strategic and holistic way. This is because of the cumulative harm that could be caused to the conservation area by uncoordinated, piecemeal development in different locations and of various scales and height along this part of the seafront.
- 5.5 The retention of the base plinth needs to be clearly and convincingly justified as this currently has a large and unattractive fascia and casts a shadow over the commercial units and beach underneath. If its retention is justified it is advised that all efforts are made to improve its appearance including screening of the underside of the canopy and restoration of the historic seaside railings to give it a more attractive and lightweight appearance.
- 5.6 **Sussex Police:** Comment. Pleased that the Design and Access Statement submitted in support of the application gave mention to some crime prevention measures to be incorporated into the design and layout.
- 5.7 The area is within the parameter of the late night economy of the City centre and as such it experiences large amounts of footfall, noise, litter and acts of anti-social behaviour. The proposed timings for the facility will be 10:00 hours until 23:00 hours 7 days a week. This will apply to the zip wire facility and the café areas within the application. There are concerns that should the facility have the opportunity to serve alcoholic drinks the proposed opening hours

would increase footfall into this area from persons, often who are intoxicated, to remain on the streets into the early hours of the morning. This would directly impact on the provision of policing resources, particularly on Friday and Saturday nights, when demand on policing is often at a peak. Ask that any consent for this or future application for the premises is conditional that alcohol is not available on site.

**5.8 Internal:**

**Coast Protection Engineer:** Comment that there is no impact from a coast defence point of view.

**5.9 Ecology:** Support. The proposed development is unlikely to have any significant impacts on biodiversity. The site is close to the Volk's Railway Local Wildlife Site (LWS aka Site of Nature Conservation Importance), designated for its vegetated shingle habitat. The proposed site of the tower is on hardstanding (site of Brighton Wheel) and is of minimal ecological value. The exact location of the proposed landing area is unclear, but it appears to be seawards of the LWS with a reasonable buffer between. As such, it is considered unlikely that there will be any impacts on the LWS. Care must be taken to ensure that there is no encroachment into the LWS, both during construction and operation. It is considered unlikely that the site supports any protected species. If protected species are encountered, works should stop and advice should be sought on how to proceed from a suitably qualified and experienced ecologist.

**5.10 Environmental Health:** No objection subject to conditions relating to hours operation, noise and odour control.

5.11 This application looks to introduce a new zip wire attraction to the sea front, including a 'drop-zone', a café, and storage ancillary to the café. For reference it is proposed for the zip wire attraction, and its ancillary uses operate from 10:00 hours to 23:00 hours, 7 days week.

5.12 The extraction plant located at the café will create a point noise source, and the zip wire itself will create a line noise source, with a point source for braking. As such an acoustic report by Acoustic Associates Sussex Ltd (ref: J2028), dated 25th May 2016 was submitted as part of the application in order to identify the potential noise levels from these sources.

5.13 Environmental Health raised questions over whether the closest receptors had been considered in the report, which was considered to be the café that would be directly below the proposed wire. As such, Acoustic Associates Sussex Ltd has now re-submitted the report with addendum to address these concerns.

5.14 It is understood that even during a busy hour, the average noise from the zip wire will be approximately 15dB lower than the existing LAeq noise level.

5.15 While individual zip events will be audible at the closest business receptors, the report shows that such events will be less frequent, and significantly quieter than existing noise from passing traffic on Madeira Drive.

- 5.16 Given the current climate of the area, and the fact there already multiple LAmx events within a given hour that would exceed that of the proposed zip wire, the application should be approved as it will not significantly change the existing noise environment.
- 5.17 The applicant should be aware however that such permission does not prevent local residents or businesses making complaints to Environmental Health in regards to noise, which we would be duty bound to investigate for statutory nuisance under Section 80 of the Environmental Protection Act 1990.
- 5.18 The risk of shoes falling off and money falling from pockets to commercial enterprises below, would be an operational health and safety matter and would be dealt with by the operators of the ride. This would be covered by existing health and safety legislation.
- 5.19 **Heritage:** Comment (comments on original scheme pre-amendments & additional information):  
This is a prominent site on Brighton seafront. It is within the East Cliff Conservation Area and the settings of listed buildings including the Aquarium and Terraces, Palace Pier, and properties in Marine Parade and Madeira Place. It forms part of the broad pedestrian promenade running the length of Madeira Drive and overlooks the open beach below and sea beyond. A significant part of the site is formed by a temporary structure which projects beyond the historic line of upper promenade and interrupts the otherwise unbroken length of cast iron seafront railings which are so recognisable as part of Brighton's seafront.
- 5.20 The temporary approval of the plinth in 2011 and the requirement to remove it along with the wheel acknowledges the negative impact the extended plinth would continue to have on the beach/ lower prom and Madeira Drive if it were to remain. Convincing justification is required to allow an understanding of why the plinth is necessary for the positioning of the proposed tower, and an explanation of why the proposal could not be built on the original promenade. The depth of the existing slab has a negative impact on the appearance of the lower prom and the projecting plinth creates a dark gloomy area. In addition it is considered that the underside of the projecting plinth has an unacceptable finish that harms the environment further. It is also considered that the bulk of the slab has a harmful impact when viewed from the East and West, and the resulting difference in levels of the prom itself is uncharacteristic of this stretch of seafront and creates a visual barrier to the otherwise broad, open paved area. Permanent approval for the retention of the projecting plinth is therefore resisted.
- 5.21 Setting the issues of the base of the structure aside, the proposal for the zip wire and associated development is considered appropriate in terms of use, and generally in the design of the structures. The reservations from the Heritage Team relate to the additional plinth on which the tower structure is placed - involving further bulk, changes in surface level and more glass balustrading, all of which it is considered should be avoided. There is some confusion from the cross sections, which do not show the historic cast iron balustrades reinstated

and clarification is required to avoid uncharacteristic gaps in the otherwise unbroken (apart from at steps and ramps) stretch of historic railings.

- 5.22 It is considered that there would be public benefit from the provision of the new facility and that the use would accord with the Council's policies for this part of the seafront, however the permanent retention of the projecting platform for a facility that would conceivably have a relatively short life span could result in unjustified harm to the conservation area, contrary to the requirement of the Planning (Listed Building and Conservation Areas) Act 1990 to 'preserve or enhance the character of the conservation area' and the NPPF to 'sustain or enhance the significance of the heritage asset' . Neither would it accord with the Council's aim of enhancing and improving the public realm.
- 5.23 Therefore unless the zip and cafe facility can be located on the restored promenade, or alternatively the retention of the projecting plinth securely linked to the provision of this public benefit, it is not possible to support this proposal on heritage grounds. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in exercising its powers under the planning Acts in respect of buildings or other land within a conservation area, the local authority shall pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. 'Preserving' means doing no harm. There is therefore a statutory presumption, and a strong one, against granting permission for any development which would cause harm to a conservation area. 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 or enhancement of the conservation area.
- 5.24 (Comments made on amended scheme and further supporting information)  
The removal of the plinth on which the tower was to be mounted is welcomed along with the reduction in visual clutter associated with the levels, and although the reduction in height of the rest of the ground surface is not great, it is an improvement. It is considered that due to the positioning of the café building across most of the width of the Bastion, the different levels would be largely obscured and concern over this aspect of the scheme is reduced accordingly.
- 5.25 The apparent bulk of the existing deck will be visually reduced by the removal of the solid balustrade and addition of traditional railings, however the details of the railings will need to be conditioned to ensure accurate reproduction of the historic iron pattern.
- 5.26 The proposed cladding and render finish to the stanchions will improve the current environment at beach level. It is also important that the underside of the projecting structure receives the same treatment and this needs to be secured by condition.
- 5.27 Whilst the Zip attraction may have a relatively short life the café facility will occupy the bulk of the site therefore it is accepted that the retention of the enlarged esplanade and projecting base for the former wheel is tied to a public

amenity which is appropriate to the character of this part of the seafront. With the improvements that have been negotiated through the course of this application it is considered that the public benefits justify the retention of the projecting base area and the objection to this is therefore withdrawn.

**5.28 Planning Policy: Comment**

The proposal provides a new leisure/sport attraction for the Seafront and particularly Madeira Drive which will complement the existing businesses and add to the overall visitor offer in the city and help boost the economy. The attraction will enhance the family leisure offer for Madeira Drive and contribute towards the regeneration of this area of the seafront. Subject to the comments of the Head of Sport & Leisure and the Head of Tourism it is considered that the proposal would accord with part one of Policy CP5 Visitor Accommodation.

5.29 Whilst Daltons Bastion is not an identified development site in the City Plan Part One the use of the site for a proposed zip wire/drop zone attraction would in principle comply with policy SA1 The Seafront which encourages family and sports based activities in this particular location.

5.30 The proposal would also accord with Policy CP17 Sports Provision which encourages new sports development which meets identified needs, meet quality standards, and optimise their accessibility and affordability to all users including local community and visitors. However it is unclear if the Brighton Zip attraction is fully accessible to the disabled and this should be clarified by the applicant.

5.31 The provision of adrenaline/ less conventional sport attraction would comply with the recommendations of the Open Space, Sport and Recreation Study (2008/9) a background evidence document supporting CP17.

5.32 Whilst the site is an edge of centre location, it is accessible and well connected to the town centre and the proposed sporting/leisure use would accord with overarching strategy for sport and leisure activities in this area of the seafront. This is an established tourist location where retail uses exist to support the seafront as a tourist destination and help regenerate the seafront. It is therefore not considered necessary in this instance to require a sequential site assessment. The proposed 192 sq. m A3 seated restaurant is proposed to support and complement the zip wire attraction. The applicant has indicated that the tower and cafe operating in conjunction with each other will make the project financially viable due to the tower's high operating costs and limited margins with those costs although this is not detailed in the documents accompanying the application. Subject to this clarification, it is considered that the proposed use would not raise policy objections. The proposal for the A3 unit to be operated as a seated restaurant would comply with the retained local Plan policy SR12. It is suggested that the seated element should be conditioned to ensure compliance with this policy.

5.33 The retained 2005 Local Plan policy SR18a) states there should be no development on the beach. Whilst the exact size of the landing stage area should be clarified, it is not considered to be an excessive structure on the beach and the wires and landing stage would not impede the use of the beach

as open space. Proposals for the seafront should promote high quality architecture, urban design and public realm which complements the natural heritage of the seafront and preserves and enhances the character of conservation areas and historic features.

5.34 **Seafront Team:** Support.

This development for the Dalton's Bastion site already has Landlord's consent from the council and the applicant has been offered terms for a 25 year Lease of the site under delegated powers. The operator of the Zip currently has a Lease for the premises below Dalton's Bastion in which an ice cream parlour and a beach goods shop are located.

5.35 It is felt the Zip will provide a much needed leisure attraction to the western end of Madeira Drive and will complement the existing commercial uses in the vicinity. The trajectory of the Zip wire has been planned to ensure that it does not impact on beach users, adjacent businesses and the Volk's Railway. The landing stage which will be located on the beach approx. 300m east of Dalton's Bastion has been sympathetically designed to fit with the beach location and will be made from appropriate materials suited to the marine environment.

5.36 The preference is that the Zip element be built in advance of the café to ensure that the leisure attraction is the dominant feature. This will be reflected in the terms set out in the Agreement for Lease. The contemporary style of the café is supported and the design which mixes good outdoor and indoor space to ensure the operator can trade successfully all year round. There is currently a lack of indoor catering offers in this part of the seafront and the council actively encourages tenants to open all year round. The reinstatement of the seafront railings is welcomed which are proposed for the south, east and west elevations.

5.37 **Sports Development:** Support in principle. The draft seafront strategy the area designates a 'leisure use' and the city has nothing of a similar nature.

5.38 **Sustainable Transport:** No objection subject to conditions/S106 relating to updating of pedestrian signage and submission of a travel plan.

5.39 **Pedestrian Access:**

Pedestrian access will be similar to that during the operation of the Brighton Wheel. Whilst the Highway Authority would not wish to restrict the grant of planning consent, the future development would be subject to a license being granted. It is noted that the applicant forecasts that the majority of trips to the development will be on foot (see Trip Generation comments below). It is considered therefore that pedestrian wayfinding signs within the vicinity of the site and on routes to it will need updating to reflect the proposed development. This is directly relevant to the development and will be in the applicant's interests in assisting visitors arriving on foot. A contribution of £10,000 is therefore requested to allow existing wayfinding signs to be updated. This would facilitate access on foot and is in accordance with Brighton & Hove City Plan Part One policies CP7, CP9 and SA1.

5.40 **Car Parking:**

There is suitable parking provision along Madeira Drive for those who choose to drive to the site, though the Highway Authority would expect the operator to promote sustainable alternatives to users through the implementation of a Travel Plan, further details of which are provided in the trip generation section below. There are a number of disabled bays immediately adjacent to the site whilst disabled users are able to use pay and display bays. Therefore, no objections are raised in this respect.

5.41 Cycle Parking:

The applicant notes that cycle parking was installed for the Brighton Wheel in close proximity to the site. Whilst well used, there are a number of cycle stands in this area and it is considered that the provision associated with the Brighton Wheel is appropriate for the proposed development. Therefore, on this occasion it is not considered reasonable to seek additional contributions for cycle parking.

5.42 Servicing:

The proposed café would be serviced in the same way as neighbouring premises and therefore the Highway Authority raises no objections in this respect.

5.43 Trip Generation:

The Planning Statement includes estimates of future visitor numbers. By its own admission, the development is unique and as such the forecasts are not based on existing similar sites and are uncertain. Nevertheless, the applicant has suggested an average of 9 visitors per hour with a maximum capacity of 24 users per hour. Based on the latter and 13 hours of opening per day, it would theoretically be possible that the zip attracts 312 visitors per day in addition to staff. In practice however, it is noted that this is extremely unlikely with maximum capacity only likely to be reached at certain hours of the day during peak periods. The associated café would also be expected to generate additional trips, though these are more likely to be connected to the proposed zip wire and neighbouring seafront attractions.

5.44 By comparison, the Brighton Wheel was forecast to generate an average of 2,384 week day visits and 3,775 weekend day visits per day. Although the Planning Statement for the zip application states that original forecasts were not met, it was on this basis that the application was assessed. It is therefore reasonable to conclude that the impact from a trip generation point of view will not be more significant than the Brighton Wheel. It is noted that the applicant markets the attraction as enhancing the city's offer and, by implication some of these trips may be 'new'. However, as is suggested in the Planning Statement, the Highway Authority would also agree that it is reasonable to expect that many of these trips will be linked to other seafront and city centre attractions.

5.45 The applicant has indicated that they would be willing to prepare and implement a Travel Plan. It is therefore recommended that this be secured by condition in order to encourage sustainable modes of travel to the site and assist in mitigating the impact of those trips that do occur in accordance with Brighton & Hove City Plan Part One policy CP9 and Brighton & Hove Local Plan policy TR4.

5.46 S106:

It is noted that developer contributions to sustainable transport measures were secured as part of the application in install the Brighton Wheel. Given that anticipated visitor numbers are not expected to be greater than those originally forecast for the wheel, it is not considered that there would be additional impact

on surrounding highway and transportation networks in terms of increased trips. Therefore, a contribution to mitigate the likely trips in accordance with the council's standard contributions formula would not be requested on this occasion. It is however considered that it would be necessary to update wayfinding signs on routes serving the site as per the pedestrian access comments detailed above.

- 5.47 VisitBrighton:** Support the proposal. The application is welcomed and will positively enhance the City's leisure facilities, both for residents and tourists. The proposed Brighton Zip will add a new and novel attraction to the seafront which will encourage visitor spend will help attract and support tourism outside of the main season. The facility may encourage visitors to extend their stay or indeed act as a stimulus for instigating a trip to the City. It is essential that the City's leisure facilities constantly evolve in order for our tourism offer to remain competitive.

## **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

The development plan is:

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

- 6.2 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  
DA1 Brighton Centre and Churchill Square Area  
SA1 Seafront  
SA2 Central Brighton

Brighton & Hove Local Plan (retained polices March 2016)

TR4 Travel plans  
TR7 Safe Development  
TR14 Cycle access and parking  
TR15 Cycle network  
TR18 Parking for people with a mobility related disability  
SU3 Water resources and their quality  
SU5 Surface water and foul sewage disposal infrastructure  
SU6 Coastal defences  
SU9 Pollution and nuisance control  
SU10 Noise Nuisance  
SU11 Polluted land and buildings  
QD5 Design - street frontages  
QD15 Landscape design  
QD18 Species protection  
QD25 External lighting  
QD27 Protection of amenity  
SR4 Regional shopping centre  
SR12 Large Use Class A3 (food & Drink) venues and Use Class A4 (pubs)  
SR18 Seafront recreation  
HE3 Development affecting the setting of a listed building  
HE6 Development within or affecting the setting of conservation areas

Supplementary Planning Guidance:

Guidance on Developer Contributions (2016)

Supplementary Planning Documents:

SPD09 Architectural Features  
SPD11 Nature Conservation & Development  
SPD14 Parking Standards

## **8 CONSIDERATIONS & ASSESSMENT**

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

- Impact to the visual amenities of the locality including the special character and appearance of the East Cliff Conservation Area, the setting of nearby listed buildings and the setting of the wider seafront
- Principle of introducing a leisure/sports use and A3 restaurant/cafe in this location
- Impact on tourism and the economy

- Impact on the main city centre shopping area
- Impact on amenity of existing occupiers of nearby properties and users of the seafront
- Crime prevention
- Transport demand and sustainable transport accessibility
- Sustainability and biodiversity

**8.2 Planning Policy Context:**

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

8.3 The policy sets out priorities for the whole seafront which include enhancement of public realm, provision of adequate facilities for residents and visitors, 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 is 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:

- 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;
- 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;
- 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 CP17 is relevant as it relates to sports provision. Its key aim is to facilitate the council's aspiration to increase participation in sports and physical activity. The policy seeks to ensure sports services and facilities and spaces are safeguarded, expanded, enhanced and promoted. One priority is to encourage new sports facilities which meet identified needs. All new provision will be expected to meet quality standards, optimise their accessibility and affordability to all users and proposals should seek to improve the variety of provision in the city, especially from sectors of the community currently under represented.

8.6 The Open Space Sport and Recreation Study (2008/9) is a background document to the City Plan Part One and is therefore a material consideration. The supporting text to CP17 states that this study has identified that the city's outdoor space provision is low compared to other local authorities and recognises that the compact and dense nature of the city means new provision

will be challenging. The Study suggests the council should explore the provision of additional adrenaline or less conventional sports facilities such as climbing/bouldering and skating.

8.7 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:

- Be of a high environmental standard in terms of design, management and access;
- Complement and build on the city's distinct tourism offer;
- Contribute to a sense of place;
- Reduce seasonality;
- Promote diversity;
- Widen local access;
- Support the regeneration of the city and benefit the city's economy; and be accessible by public transport.

8.8 City Plan policy CP4 is relevant as a town centre 'A' use (which includes A3 café/restaurant uses) is proposed. It states that Brighton & Hove's hierarchy of shopping centres will be maintained and enhanced by encouraging a range of facilities and uses, consistent with the scale and function of the centre, to meet people's day-to-day needs, whilst preserving the predominance of A1 use classes. It states that applications for all new edge and out of centre retail development will be required to address the tests set out in the NPPF. Applications will be required to complete an impact assessment at a locally set threshold of 1,000 sqm (net) floorspace or more.

8.9 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 provide that:

- There will be no development onto the beach;
- The importance of the seafront and beach as an open space is not undermined;
- Any development does not have a detrimental impact on strategic views along the coastline;
- 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;
- The development does not have a harmful impact on the amenity of local residents and the seafront due to noise, disturbance and light pollution;
- The development will not result in the significant generation of car borne journeys, nor additional pressure for car parking;

- The development will not have an adverse impact on the setting of important seafront buildings;
  - The development does not have an adverse impact on nature conservation interests; and
  - Any development enables the beach and seafront to be accessible to all.
- 8.10 Policy SR12 of the Brighton and Hove Local Plan is relevant as the proposal involves a 'large' A3 use of more than 150 sqm floor area (approx. 232 sqm) and it is located quite close to other A3/A4/nightclub establishments along seafront, Aquarium Terraces and the Pier. This policy seeks to reduce noise, disturbance and crime that may be associated by congregation of such uses.
- 8.11 With regard to design, heritage and amenity, policies CP12, CP13 and CP15 of the City Plan Part One and policies HE3, HE6, QD5 and QD27 of the Brighton & Hove Local Plan are relevant.
- 8.12 City Plan policy CP12 expects all new development to be built to a high quality standard and seek to ensure places that are created are safe, and incorporate design features which deter crime and the fear of crime. CP15 states that the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated assets. Local Plan policies HE3 and HE6 seek to conserve or enhance the setting of Conservation Areas and Listed Buildings. Local Plan policy QD5 states that all new development should present an interesting and attractive frontage at street level for pedestrians.
- 8.13 The Council has statutory duties under the Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to development affecting listed buildings and conservation areas:
- 8.14 S66 (1) "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses";
- 8.15 S72(1) "In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2) [N.B. these include the Town and Country Planning Act 1990], special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".
- 8.16 The National Planning Policy Framework (NPPF) states that in determining planning applications, local planning authorities should take account of: the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation assets can make to sustainable communities including their economic vitality and the desirability of new development making a positive contribution to local character and distinctiveness (para 131).

- 8.17 Para 132 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.
- 8.18 Paras 133 & 134 of the NPPF state that where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 8.19 Para 136 of the NPPF states that local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.
- 8.20 Para 137 of the NPPF states that local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.
- 8.21 Local Plan policies QD27, SU9 and SU10 are relevant to this development and they seek to protect the general amenity of the locality and that of neighbouring occupiers/users from undue noise, odour and general disturbance. Policy QD27 states that planning permission for any development will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
- 8.22 With regard to transport, City Plan policies CP9 (Sustainable Transport) and Local Plan Policies TR4 (Travel Plans), TR7 (Safe Development), TR14 (Cycle access and parking), TR15 (Cycle network), TR18 (Parking for people with a mobility related disability) are relevant. These seek to ensure development is safe, meets the demand for travel it creates and maximises use of sustainable modes. TR15 states that development that affects proposed or existing cycle routes should protect and enhance their alignment, and identifies the seafront National Cycle Route 2 as a key route. SPG4 sets out maximum parking standards for development and minimum standards for disabled parking.
- 8.23 With regard to sustainability, City Plan Policy CP8 is relevant. It requires all development to incorporate sustainable design features and minor commercial developments (of less than 1000sqm floor area) are required to achieve a minimum standard of BREEAM 'very good'. City Plan Policy CP10 relating to

biodiversity is relevant and this states all schemes should conserve existing biodiversity and provide net gains wherever possible. City Plan policy CP11 seeks to manage and reduce flood risk.

**8.24 Principle of development and uses proposed:**

The introduction of new leisure/sports and café/restaurant uses is supported in principle.

8.25 The zip wire element is considered to broadly comply with policies SA1, CP17 and CP5 of the City Plan. Whilst Daltons Bastion is not an identified development site in the City Plan Part One, the use of the site for a proposed zip wire/drop zone attraction would in principle comply with policy SA1 which encourages family and sports based activities in this particular location. The proposal would increase the variety of sports offer in the city, which is welcomed and encouraged in line with policy. The proposal will encourage physical activity and meet an identified demand for adrenaline sports. The proposal would complement the existing businesses and add to the overall visitor offer in the city and help boost the economy. The attraction will enhance the family leisure offer for Madeira Drive and contribute towards the regeneration of this area of the seafront, which whilst relatively busy and attractive, is not fulfilling its potential. The proposal would complement other existing attractions and tourist offers such as the nearby crazy golf, Volk Railway and Pier and the proposed sporting/leisure use would accord with overarching strategy for sport and leisure activities in this area of the seafront.

8.26 The proposal is supported by the Seafront Team and VisitBrighton.

The zip wire element would not be fully accessible to people with a mobility related disability, which is disappointing, however it is recognised that not all sports facilities, and especially adrenaline ones, are suitable for this. The ground floor of the café will be fully accessible.

8.27 The proposal is considered in principle to broadly comply with retained 2005 Local Plan policy. Part a) of policy SR18 states there should be no development on the beach however the proposed landing area is not considered to be an excessive structure on the beach and the wires and landing stage would not impede the use of the beach as open space.

8.28 The applicant states the proposed A3 café/restaurant use is needed for the viability of the zip wire and it would complement and support the attraction, however no business case has been submitted to evidence this. The benefits of the A3 element are however recognised and such uses are considered appropriate at the seafront. This part of the seafront is a well-established tourist area with a number of existing restaurant uses operating. The café would help enable a sustainable business model for the zip wire and makes effective use of the site, which is encouraged, and the scheme has the added benefit of producing income for the council. The proposed uses would generate footfall, add vibrancy to the area, be used all year round beyond the peak summer months and would support the seafront as a tourist destination, and is therefore

welcomed in accordance with policy SA1. Whilst the site is an edge of centre location, it is accessible and well connected to the town centre. It is therefore not considered necessary in this instance to require a retail sequential site assessment as per policy CP4. A phasing condition is recommended to ensure the zip wire facility is delivered first and not just the café is isolation, to secure this important sports/leisure attraction.

- 8.29 Given there are permitted rights to change from A3 use to A2 and A1, and to other uses on a temporary basis, a condition is recommended to control/assess any future changes of use in the interests of ensuring this unique and prominent site contributes towards the vibrancy and tourism offer appropriate to its seafront location.
- 8.30 The A3 café/restaurant is welcomed in principle for the reason given above, however, given the proximity to other existing restaurants and drinking establishments, the police have raised concerns about the potential for anti-social behaviour. The concerns regarding the cumulative impact zone for drinking establishments is noted and shared, as are the aims of Local Plan policy SR12, however, it is considered that there are insufficient planning grounds to restrict sale of alcohol. A3 uses by their very nature involve people sat at tables and have quite a different impact to an A4 bar/pub. Any bar area as part of the restaurant would be ancillary only and below the 150sqm identified in policy SR12 (otherwise could not be described as 'ancillary'). Restrictions on opening hours would lessen any potential impact. The council's Environmental Health team raise no objection to the proposal or the proposed opening hours (10am-11pm daily). In any event, the consumption of alcohol is a matter controlled by the Licencing Authority outside of the planning regime. To ensure all appropriate crime prevention measures are taken at this busy central site, a condition requiring Secure By Design certification is recommended.
- 8.31 The site is a vibrant seafront location which includes the Palace Pier, Sea Life centre, cafes and shops and is in principle considered a suitable location for this type of visitor attraction, provided it is of the highest quality design (see section on design for further comment below).
- 8.32 Amenity  
The site is located directly on the seafront and there are no immediate residential neighbours, the nearest being to the north on Marine Parade. The site is located close to other commercial establishments. The site is located in a busy central area used by residents and tourists and therefore experiences relatively high levels of background noise. Additional information has been submitted in the form of a noise report and the Environmental Health Team concur with its findings. It concludes these would be no adverse impact in terms of noise in this particular location. A condition is recommended to ensure predicted noise levels are not exceeded.
- 8.33 Any potential for noise or odour from the extract plant proposed can be satisfactorily controlled by condition.

- 8.34 Some concerns have been raised with regard to health and safety of the proposal and in particular the potential for users of the zip wire dropping items on to people below. An adjacent business (fish and chips outlet/crazy golf) raises concerns about this and potential adverse impact upon their business. Health and safety matters are however not strictly planning matters and are dealt with by separate legislation. This is confirmed by the Council's Environmental Health team. They are management matters for the operator to address outside of the planning process. The applicant has submitted further supporting information relating in this regard which indicates it will be run by an established experienced company and that the safety of such attractions is very much down to procedures followed and how its managed etc. Lockers are provided to hold valuables. The protection of general amenity is, however, a material planning consideration and it is important the proposal does not prejudice people's general enjoyment of the beach and seafront, or adversely affect tourism. On this basis therefore, submission of an operation/management plan is recommended by condition.
- 8.35 A Construction Environmental Management Plan (CEMP) to be secured by condition is considered necessary to avoid undue noise and disruption during the construction given its location in a busy seafront and close to businesses (and residents further afield).
- 8.36 On the basis of the above, it is considered the proposal would not cause any adverse impacts in terms of amenity on nearby occupiers or users of the seafront generally, provided appropriate conditions are imposed. The proposal would therefore accord with policies SU9, SU10 and QD27.
- 8.37 **Design and the impact to the character and appearance of the locality and heritage assets:**
- 8.38 The site is sensitively located in a prominent position within the East Cliff Conservation Area and within the setting of several listed buildings, including the Grade II\* Palace Pier. The design and appearance of the proposal therefore needs to be of the highest quality and sympathetic to its surroundings.
- 8.39 The location, design and height of the proposed zip wire tower (and associated wires and landing stage) are considered acceptable. The site is a vibrant seafront location and is in principle a suitable location for this type of visitor attraction. The character of this coastal part of the East Cliff Conservation area is of wide open views with some modest tourist attractions and businesses and it is considered the proposal would not unduly compromise this intrinsic character or harm the setting of nearby listed buildings. The tower is of much smaller scale than the previous wheel (which was considered acceptable on a temporary basis only for heritage protection reasons) being less than half as high and is therefore less dominant, and therefore has less impact to the historic seafront setting and wider views. The introduction of a relatively modest largely single storey cafe building with an open terrace above (and only staircase and plant at second floor level) is considered acceptable in principle and the ancillary buildings are modest in scale and of matching design. Whilst limited information has been supplied with the application to demonstrate the need for

the café to make the zip wire viable, on balance, given that its visual impact would be limited and it clearly will support this particularly welcomed sports/leisure attraction and boost year round tourism and help regenerate the seafront, it is considered acceptable.

- 8.40 Historic England and CAG warn that the regeneration of this area should be considered in a strategic and holistic way because of the cumulative harm that could be caused to the conservation area by uncoordinated, piecemeal development in different locations and of various scales and height along this part of the seafront. This view is concurred with and this proposal will not set a precedent. It is anticipated that strategic plans for this area of the seafront this will be looked at as part of the City Plan Part Two and link with the Council's emerging Seafront Investment Plan and Madeira Drive Regeneration Framework.
- 8.41 The proposed tower is of an attractive and elegant bespoke design. No objections to the design of the tower structure itself have been received from Historic England or the council's Heritage Team. The amended scheme removes the bulky plinth at the bottom of staircase of the tower which was originally considered harmful and this is a significant visual improvement and reduces visual clutter. The café is of simple sympathetic design which echoes modernist/art deco coastal design and is considered appropriate. The removal of the lower band of darker render has improved its appearance and removes the emphasis of level change. The ancillary buildings are quite small and will be permanent buildings rendered to match the cafe.
- 8.42 Both Historic England and the Heritage Team have raised concerns regarding the proposed retention of the base plinth for the former temporary wheel. Given this has a large and unattractive fascia and casts a shadow over the commercial units and beach underneath, amendments have been sought to improve its appearance. Concerns have also been expressed regarding the change in levels between the plinth and the lower level of the main upper promenade (change of 700mm) which is not characteristic of the historic seafront.
- 8.43 Due to the positioning of the café building across most of the width of the Bastion, it is considered the different levels would be largely obscured. The overall height of the plinth has also been reduced slightly (by 250mm) which is a small improvement. Further height reductions are not possible without removing the plinth completely. The plinth has in effect been reduced in scale from the north due to the removal of one of the ramps up to the wheel, leaving more open promenade. This means the site is now located south of the main row of seafront railings, lessening its impact. The upper rendered parts of the plinth surround would be removed and replaced by restored historic railings, which would give the plinth a more attractive and lightweight appearance and it would tie in better with the rest of the seafront. Any new railings required would be conditioned to match the historic iron pattern. The applicant has committed to improve its appearance further by screening of the underside of the canopy and rendering the steel mesh stanchions. These and further visual enhancements will be secured by condition including painting of units and shutters underneath the canopy. The base plinth is a substantial structure despite being 'temporary'

and the proposal would make effective use of it, which is welcomed. The Heritage Team confirm that amendments to the scheme have reduced their concerns accordingly. It is considered that any remaining harm caused by the plinth would be less than substantial and is outweighed by the public benefits of the proposal, in accordance with the requirements of the NPPF.

8.44 In view of the above therefore, the proposals are considered to comply with both Local and City Plan policies and the NPPF as they represent good quality architecture and preserve and enhances the character of the East Cliff Conservation Area and setting of listed buildings and historic features.

8.45 **Sustainable Transport:**

Given the comments received from the Highway Authority it is considered that the demand for travel created by the development can be adequately met and no objections are raised in this regard.

8.46 The new uses would not have a more significant impact than the former wheel and most trips would be on foot and linked to visits to other attractions. The site is centrally located to take advantage of sustainable transport and public car parking, including disabled. New cycle parking was secured for the former wheel and can satisfactorily serve this development. Servicing can occur from Madeira Drive as per other seafront businesses. As this is a permanent new attraction and most visits will be on foot, it is considered necessary to secure S106 funding towards upgrade of the existing city wayfinding signs. A Travel Plan can be secured by condition to ensure staff and visitors are encouraged to use sustainable modes of travel to the site. The plinth area would be reduced giving a larger public promenade area, which is welcomed.

8.47 The proposal is therefore considered to accord with sustainable transport policy and meets key priorities of seafront policy.

8.48 **Sustainability, biodiversity & flood risk:**

As a 'minor' scheme of less than 1000sqm floor area, the development is required to meet a BREEAM 'very good' sustainability standard in order to comply with policy CP8 (this will change to 'excellent' standard post-2016). The applicant has stated that the proposal will be able to achieve 'very good', which is welcomed. This can be satisfactorily conditioned to ensure the scheme is sustainable.

8.49 Adequate space is shown within the scheme for refuse and recycling and its provision will be conditioned.

8.50 The site has no current biodiversity interest however enhancements are required in line with policy CP10, as confirmed by the County Ecologist. The scheme does not address this, therefore a condition requiring details of enhancement, for example through the provision of discrete bird or bat boxes, is recommended to satisfactorily address this policy.

8.51 The development is not considered to be at undue risk from flooding. The council's Coastal Engineer has confirmed the scheme would have no impact

with regard to coast protection or coastal processes. A drainage strategy will be secured by condition to ensure this is carried out satisfactorily.

## **9 EQUALITIES**

9.1 There would be ramp access to the ground floor part of the café. Disabled toilets and baby changing facilities would be provided, the latter secured by condition. People with a mobility related disability would not be able to use the zip wire itself.

### **9.2 Section 106 Head of Terms**

A financial contribution of £10,000 to update pedestrian wayfinding signs within the vicinity of the site and on routes to it.