

<b><u>No:</u></b>	<b>BH2018/01973</b>	<b><u>Ward:</u></b>	<b>East Brighton/Queens Park Wards</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>Former Peter Pan Playground Site Madeira Drive Brighton BN2 1PS</b>		
<b><u>Proposal:</u></b>	<b>Erection of outdoor swimming pool (25m x 12.5m) and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-3 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) including second floor place markers and lifeguard observation unit, with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat. Temporary (meanwhile use) for 5 years.</b>		
<b><u>Officer:</u></b>	<b>Maria Seale, tel: 292175</b>	<b><u>Valid Date:</u></b>	<b>02.07.2018</b>
<b><u>Con Area:</u></b>	<b>East Cliff</b>	<b><u>Expiry Date:</u></b>	<b>01.10.2018</b>
<b><u>Listed Buildings Grade:</u></b>	<b>II (setting of)</b>	<b><u>EOT:</u></b>	<b>10/01/19</b>
<b><u>Agent:</u></b>	<b>Absolute Town Planning Ltd Gemini House 136-140 Old Shoreham Road Brighton &amp; Hove BN3 7BD</b>		
<b><u>Applicant:</u></b>	<b>SeaLanes Brighton Ltd C/o Agent</b>		

## 1. RECOMMENDATION

- 1.2 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:

### **S106 Heads of Terms:**

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

- Provision of details of an off-site coastal vegetated shingle mound (minimum 1,500sqm in area) between the Yellowwave facility and Banjo Groyne (or another location to be agreed) and implementation of it. Details to include methodology, size, design, location, materials to be used, planting/seeding, specification including volume, number and type of plants, period of implementation
- Provision of details of a boardwalk and one interpretation board and implementation of them associated with the vegetated shingle mound
- Provision of details of a minimum of area of 266.5sqm of on-site vegetated shingle habitat adjacent to the Volks Railway and implementation of it before development is first brought into use

- Provision of details of a maintenance/management strategy for all the ecological mitigation measures to include provision of an annual monitoring report over a 10 year period
- A financial contribution total of £2,074 towards annual review of the monitoring reports by the County Ecologist (over a 10 year period)

**Sustainable Transport:**

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

**Economic Development:**

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

**Conditions:**

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

**Reason:** For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
<i>[Will be inserted on the Late List].</i>			

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

**Reason:** To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. The outdoor pool and all structures hereby permitted shall be removed within 5 years from the date of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line first being brought into use or by 1<sup>st</sup> April 2025, whichever is the sooner, and shingle shall be replaced on the beach where the pool and flattened to match the surrounding beach.

**Reason:** The structures hereby approved are not considered suitable as a permanent form of development as their scale, height, siting, site coverage/density, design, colours and materials cause harm to the special historic character and appearance of the East Cliff Conservation Area and the setting of adjacent listed Madeira Terraces, Shelter Hall and Lift, to comply with policies SR18, HE3 and HE6 of the Brighton and Hove Local Plan and policies CP12, CP15 and SA1 of the Brighton and Hove City Plan Part One. Temporary permission has been granted exceptionally as at this particular time it is considered the public benefits of instigating regeneration of the area would outweigh the harm caused. Permanent permission is not considered appropriate because this area of the seafront is identified in the long term for comprehensive coordinated regeneration with permanent development which is sympathetic to its special setting, and to ensure the development does not prejudice the emerging plans for restoration and viability of the Madeira Terraces.

4. Within 12 months of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line hereby permitted first being brought into use the outdoor pool and associated ancillary facilities and retractable beach mat shall be implemented and completed ready for first use or alternatively the pool shall be implemented and ready for use by 1<sup>st</sup> April 2020.
- Reason:** To ensure the sports/leisure attraction element of the scheme is delivered to accord with policy SA1 of the Brighton and Hove City Plan Part One which primarily seeks to secure family and leisure based activities in this location, and in the interests of preserving the visual amenities of the area as the A1/A3/A4/A5/D2/B1uses hereby permitted have only been justified as enabling development to support the viability of the leisure/sports attraction, to comply with policies SR18, HE3 and HE6 of the Brighton and Hove Local Plan and CP12, CP15 and CP17 of the Brighton and Hove City Plan Part One.
5. No development of each respective phase shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
- (i) The phases of the Proposed Development including the forecasted completion date(s).
  - (ii) A commitment to apply to the Council for prior consent under the Control of Pollution Act 1974 and not to Commence Development until such consent has been obtained
  - (iii) A commitment to adopt and implement the Considerate Contractor Scheme (or equivalent at the time of submission)
  - (iv) A commitment to ensure that all road hauliers and demolition/construction vehicle operators are accredited to Bronze standard (or greater) of the Freight Operator Recognition Scheme
  - (v) A scheme of how the contractors will liaise with local residents, businesses, elected members and public transport operators to ensure that they are all kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme)
  - (vi) A scheme of how the contractors will minimise, record and respond to complaints from neighbours regarding issues such as noise, dust management, vibration, site traffic, idling vehicles, parking by staff and contractors and deliveries to and from the site
  - (vii) Details of hours of construction and deliveries to site, including all associated vehicular movements
  - (viii) Details of the construction compound, including the proposed location, design and construction of vehicular accesses to this from the highway, associated measures to manage local traffic movements around this, including those by pedestrians and cyclists, and any associated on-street restrictions and other measures necessary to minimise congestion on the highway and permit safe access by site vehicles.
  - (ix) A plan showing construction traffic routes.
  - (x) Details of measures to facilitate sustainable travel to site by staff and contractors.
  - (xi) A scheme to minimise congestion, delays and disturbances to traffic and public transport services in the vicinity of the site owing to staff and contractor car parking and site traffic. This will include the identification of

areas for staff and contractor parking. The scheme can be informed by parking stress surveys of the streets and public car parks in the vicinity of the site. These shall be carried out in accordance with the Lambeth methodology and shall be conducted at intervals over a 16 hour period on two neutral weekdays and one Saturday. Survey areas, dates and times shall be agreed in advance with the Council.

- (xii) A scheme to minimise the impact, within Brighton & Hove, of demolition and construction traffic on Air Quality Management Areas and areas that currently experience, or are at risk, noise exceeding World Health Organisation lower limits.

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

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

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

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

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

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

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

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

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

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

8. The outdoor pool hereby permitted shall not be first brought into use until details of the retractable beach mat from the pool to the sea across the beach has been submitted to and approved in writing by the LPA. The agreed mat shall be installed ready for use before the pool is first brought into use.  
**Reason:** To ensure the scheme delivers accessibility benefits to the seafront, to comply with policy SR18 of the Brighton and Hove Local Plan and SA1 of the Brighton and Hove City Plan Part One.
9. The development hereby approved (excluding outdoor pool and associated ancillary facilities) shall not be open to customers except between the hours of 07.00 hours and 23.00 hours daily. The outdoor pool shall not be open except between the hours of 06.00 hours and 22.00 hours daily.  
**Reason:** To safeguard the amenities of nearby residents and occupiers and the amenity of the general locality and in the interests of crime prevention to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan and CP12 and CP13 of the Brighton and Hove City Plan Part One.
10. No odour control/extraction/ventilation equipment shall be installed within the development until details have first been submitted to and approved in writing by the Local Planning Authority. This shall include details of sound insulation of the equipment. The unit(s) to which the equipment is to be fitted shall not be first brought into use until all the measures agreed have been implemented and they shall thereafter be retained as such.  
**Reason:** To safeguard the amenities of the occupiers of nearby properties and the amenity of the general seafront locality and the visual amenity of the area to comply with policies QD27, SU9, SU10 and HE3 and HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.
11. No plant and machinery shall first be brought into use until details of their appearance and location and a scheme for the suitable treatment of all plant and machinery against the transmission of sound and/or vibration has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details prior to the first occupation of the development and shall thereafter be retained as such.  
**Reason:** To safeguard the amenities of the occupiers of adjoining properties and the visual amenities of the locality to comply with policies HE3, HE6, SU10 and QD27 of the Brighton & Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.
12. No sound reproduction or amplification equipment (including public address systems, tannoy, loudspeakers, etc.) which is audible outside the site boundary shall be installed or operated on the site.

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

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

- Location, design and visual appearance
- Hours of operation
- Luminance levels
- Evidence that the lighting has been selected and designed to minimise light spillage and pollution and avoid dazzle or distraction to drivers on nearby highways
- Evidence that landscaping/screening measures have been incorporated to screen illuminated areas in environmentally sensitive areas as applicable
- Evidence that lighting designs have reference to both horizontal and vertical illuminance to account for the varied sensitive receptors around the site.
- Independent evidence from a Competent Person to demonstrate the lighting installation complies with the recommendations of the Institution of Lighting Professionals (ILP) Guidance Notes for the Reduction of Obtrusive Light (2011), or similar guidance recognised by the council

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

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

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

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

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

**Reason:** To ensure the travel demand created is satisfactorily met and to prevent undue traffic generation and promote sustainable modes of transport, to

comply with policies TR4 of the Brighton and Hove Local Plan and CP9 of the Brighton and Hove City Plan Part One.

15. Notwithstanding the layout of the scheme as shown on the drawings hereby permitted, no development shall be first occupied until a Delivery & Service Management Plan, which includes details of the types of vehicles, a drawing of how deliveries will take place, and the timing and frequency of deliveries for each respective phase shall be submitted to and approved in writing by the Local Planning Authority. The layout shall be amended as approved before the development is first brought into use and all deliveries shall thereafter be carried out in accordance with the approved plan.  
**Reason:** In order to ensure that the safe operation of the development and highway safety, in accordance with policy TR7 of the Brighton & Hove Local Plan.
16. Each respective phase of the development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.  
**Reason:** To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards.
17. Each respective phase of the development hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and provided in full in accordance with the approved details prior to first occupation of each phase of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.  
**Reason:** To ensure the provision of satisfactory facilities for the storage of refuse and to comply with policy QD27 of the Brighton & Hove Local Plan, policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan.
18. No part of each respective phase of the development hereby permitted shall be first occupied until a Crime Prevention Scheme has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before first occupation of each respective phase.  
**Reason:** In the interests of crime prevention in this relatively isolated seafront location, to comply with policies CP12 and CP13 of the Brighton & Hove City Plan Part One.
19. Each respective phase of the development hereby permitted shall not be commenced until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The

approved drainage system shall be implemented in accordance with the approved detailed design in each phase.

**Reason:** To ensure that the principles of sustainable drainage are incorporated into this proposal and to comply with policy SU3 of the Brighton & Hove Local Plan.

20. No development of each respective phase shall take place until a Drainage Strategy detailing the proposed means of foul and surface water disposal and an implementation timetable, has been submitted to and approved in writing by, the Local Planning Authority in consultation with the sewerage undertaker (Southern Water). The development of each phase shall be carried out in accordance with the approved scheme and timetable.

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

21. (a) No development of each respective phase shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.
- (b) A written record of any archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the Local Planning Authority.

**Reason:** To ensure that the archaeological and historical interest of the site is safeguarded and recorded to comply policies HE12 of the Brighton and Hove Local Plan and CP15 of the Brighton and Hove City Plan Part One.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant is advised that a licence from the council (as landowner) will be required in order to carry out work on the beach outside the site for ecological mitigation as per the associated S106 Obligations secured as part of this permission.
3. The applicant is advised that having a planning application in place is no defence against a statutory noise nuisance being caused or allowed to occur. Should the Council's Environmental Health department receive a complaint, they are required to investigate under the provisions of the Environmental Protection Act 1990 to determine whether or not a statutory nuisance is occurring.
4. Any grant of planning permission does not confer automatic grant of any licenses under the Licensing Act 2003 or the Regulation (EC) No. 852/2004 on the Hygiene of Foodstuffs, Article 6(2). The applicant is advised that the site is located in a cumulative impact area and an applicant would have to have extra regard to presumption of a refusal for additional licences within the area.
5. The applicant is advised that the details of external lighting required by the condition above should comply with the recommendations of the Institution of

Lighting Engineers (ILE) 'Guidance Notes for the Reduction of Light Pollution (2011)' or similar guidance recognised by the council. A certificate of compliance signed by a competent person (such as a member of the Institution of Lighting Engineers) should be submitted with the details. Please contact the council's Pollution Team for further details. Their address is Environmental Health & Licensing, Bartholomew House, Bartholomew Square, Brighton, BN1 1JP (telephone 01273 294490 email: ehlpollution@brighton-hove.gov.uk website: www.brighton-hove.gov.uk).

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

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

- 2.1 The site is owned by the council and is part of the former Peter Pan amusement site between Madeira Drive and the Volks Railway, just west of the Yellowwave volleyball facility. The site comprises an area of hardstanding north of the Volks Railway and also part of the beach to the south of the railway. It has had several temporary uses.
- 2.2 The site lies in the East Cliff Conservation Area and within the setting of the Grade II Listed Madeira Terraces, Lift and Shelter Hall (Concorde 2). The site is also partly located within the Volks Railway Site of Nature Conservation Interest (SNCI).
- 2.3 The application proposes the following for a temporary time period of 5 years (from date of first use):
  - An outdoor, heated swimming pool (12m x 12.5m) with retractable cover, associated plant and changing facilities directly on the beach
  - The applicant envisages about 7 users per hour in the pool, with most visiting for 30-60 minutes at a time
  - 1386sqm new floorspace is proposed
  - Commercial 'enabling' development is proposed comprising shops/cafes/restaurants/bars/takeaway (A1/A3/A4/A5 uses), leisure/yoga studios/swimming-related uses (D2 uses) and office (B1 use) in modular 'container' type structures of between 1 and 3 storeys high with first floor terrace. These will be delivered in advance of the pool, so the scheme is effectively two phases.
  - A wrapping material is proposed of various colours and patterns
  - Second floor 'place markers'
  - Associated bin and cycle storage and plant
  - Creation of area of 'event space' (D2 use) in grey pebble over shingle
  - Landscaping and ecological mitigation

- External lighting is proposed, although no details have been submitted at this stage. The applicant suggests it will be low level and not floodlights.
- Retractable beach mat to sea edge
- Lifeguard look out unit
- A phased approach is proposed with the commercial units being provided up to 12 months before delivery of the pool to enable income to help deliver the pool

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

### 3. RELEVANT HISTORY

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

**BH2018/02281** Erection of temporary buildings including first floor terrace to provide swimming training facility, sauna and changing facilities (D2 use), marketing suite/office (B1 use) and associated storage, plant and fencing, and use of land for general leisure/therapy use and pop-up events (D2/D1 uses) for temporary period of 12 months (Part retrospective). Currently under consideration.

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

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

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

Adjacent sites:

(Yellowwave):

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

Gracies Place café adj to Peter Pan Playground

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

Adventure Golf Course:

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

Pre-Application discussions:

An earlier scheme was presented to members on 5/6/18. The main feedback given was:

- Appropriate regeneration of this part of the seafront would be welcomed.
- The provision of the swimming pool and boardwalk access to the beach would positively contribute to the provision of leisure and sporting facilities in the City. However, as there is a general policy presumption against development on the shingle beach, this would have to be fully justified in your submission. Further details should be provided to show how the scheme will link to the overall development and regeneration proposals for this part of the Seafront.
- The planning application should clearly set out the reasoning behind the submission of an initial 5 year temporary phase and the later permanent phase of the development.
- The mix of uses within the enabling development would appear to be appropriate in this location.
- Whilst members noted that further gaps between the buildings had been introduced and the height of the development had been reduced from the initial pre-application presentation in 2016, the height of the buildings needs to be justified so that it will be possible to fully assess the proposals, in particular the impact on views of the sea and beach from Madeira Drive.
- The bulk, scale and design (including colour) of the development, and its impact on the nearby heritage assets (East Cliff Conservation Area and Grade II listed Madeira Terraces and Shelter Hall), should be fully assessed, justified and, where necessary, mitigated. In particular, the submission of a viability assessment for the enabling development will be essential.
- The impact of the proposals on the Volk's Railway Site of Nature Conservation Interest (SNCI) should be fully assessed and, where necessary, mitigated in an ecological assessment.
- Members would normally recommend the scheme is the subject of a DesignPLACE review but noted this was not possible due to timing.
- Councillors noted the lack of parking provision on site. Given the lack of direct access all year round by public transport and the apparent lack of servicing facilities, this should be fully assessed and, where necessary, mitigated as part of the planning submission.

Officers and consultees (including Historic England) raised similar issues and in particular wished to see further amendments with regards to height, form, siting, colour and overall density of the enabling development. The developer has sought to respond to some of the issues raised, and has sought to justify other areas where the advice given has not been followed. This is discussed in the Considerations section of this report.

#### **4. REPRESENTATIONS**

4.1 Six (6) letters have been received objecting to the proposed development for the following reasons:

- Overdevelopment
- Commercial properties out of proportion to size of facility
- Poor design/modular buildings out of character
- Temporary scheme no excuse for poor design

- Inappropriate height
- Adverse impact to setting of Conservation Area and listed buildings
- Whilst a pool and some modest buildings would be supported, 39 modular units, stacked up to 3 storeys in garish colours are not in keeping. Architectural integrity needed as is an insult to the city and heritage
- Poor quality, needs to be classier, will damage city's image
- Pool too small to be useful public facility or attraction
- Restriction of views
- Adverse impact to residential amenity
- Will create additional traffic and noise
- Development should fund the Madeira Lift all year and an additional disabled parking space

4.2 Thirty-two (32) letters have been received supporting the proposed development for the following reasons:

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

4.3 **Brighton Marina Neighbourhood Forum:** Support the proposal. Will help regenerate the area after cumulative effects of unoccupied buildings along Madeira Drive. Facilities will benefit Marina residents.

4.4 **Kingscliffe Society:** Objection. Whilst sympathetic to concept of a sea-related pool concerns regarding: lack of environmental impact assessment in interests of safety, infrastructure and ecology; lack of information as to how could benefit

the disabled or young people; lifeguard at higher level will impact safety response; limited sea views through from Madeira Drive; overall volume of development excessive for modest site in setting of heritage assets; and colours don't complement sensitive setting.

- 4.5 Regency Society: Objection.** Removing the dereliction of the former Peter Pan Playground site and providing the proposed pool are both worthwhile objectives, however, it seems implausible that development on the proposed scale could produce a return on investment within five years and cover the operating deficit of the pool and still be able to pay for reinstatement at the end of the term. If the company goes into liquidation, the Council would be landed with the cost of reinstatement. Proposal is gross overdevelopment. Loss of seaward view over significant part of Madeira Drive. Would create extra traffic and demand for parking. No recognition that Terraces are listed or assessment of impact. No way of assessing supposed public benefits against undoubtable harm to listed building. Harm is not just to Terraces appearance, but also their viability – would be fatal to hopes of saving the Terraces and grant funding. Commercial uses should be in the Terraces themselves. Is completely incongruous. Adverse effect on listed buildings and East Cliff Conservation Area.
- 4.6 Saltdean Lido CIC: Support proposal.** Vision of creating a national open water centre of excellence focusing on swim training, lifeguard training and swim safety will help encourage more residents and tourists into sporting and leisure activities. This additional provision of swimming facilities is much needed in Brighton & Hove. The proposed plans will continue the growth in swimming in our city.
- 4.7 The Brighton Society: Objection** on grounds the scale and appearance out of character with sites important location on Madeira Drive and East Cliff Conservation Area and listed Madeira Terraces. Contradicts East Cliff Conservation Area Character Statement. Design is poor quality, a permanent better quality scheme is needed. So why should this proposal even be considered in such a sensitive and historic area of the city? Building may not weather well. Is tacky. Scheme has no visual relationship in either appearance, form, scale, materials or colour to heritage buildings. Would prejudice the views of the beach and sea from Madeira Drive, Madeira Terraces and Marine Parade. Could set unwelcome precedent for permanent scheme.

## **5. CONSULTATIONS**

### **External:**

#### **5.1 Conservation Advisory Group: Objection:**

The Group recommends refusal.

The five year permission sought by the applicant is clearly at variance with the East Cliff CA Character Statement para 7.4.3 which is reproduced in part below.

*"...The council will seek to use its powers to achieve a better quality children's play area, with buildings and structures clustered together in a visually co-ordinated manner, and high quality hard and soft landscaping appropriate to the seafront location. Replacement buildings of a high standard of design will be*

*encouraged, which respect the appearance of the conservation area not only in views along Madeira Drive and from the beach, but also from Marine Parade above. No expansion of the boundary of the playground will be acceptable. Single storey buildings only will be appropriate, with careful attention paid to the design and material of the roofs, and no amusement or ride should exceed the pavement height of Marine Parade, including when in use".*

**5.2 Historic England: Comment/Concerns:**

Pre-application advice on an earlier scheme has been previously given. Whilst supporting the principle of a new high-quality, leisure-based activity on this site as part of a coherent strategy to continue the regeneration of Brighton's seafront we raised several concerns relating to the potential impact upon the sensitive historic environment in this location. In particular the issues of balancing the current openness and important relationship between the heritage assets and the sea front, which is a major contributor to their historic and architectural interest as well as a distinctive element of the conservation area and the scale and visual impact of new development was highlighted.

- 5.3 It is therefore disappointing to see in the submitted Sea Lanes Heritage Statement produced by QED a poor understanding of the importance of this site in heritage terms. It is stated that this site does not contain a listed building or "form part of the immediate setting of a listed building" and consequently no analysis of significance or potential impact of the development upon significance is provided. In light of the fact that the Madeira Terraces listed at Grade II are located immediately opposite the site and have a direct visual, functional and cultural associations with it and the sea beyond, this is not a credible conclusion.
- 5.4 The proposal is described as a "meanwhile" temporary use based on the grant of a five-year lease by Brighton and Hove City Council subject to Planning. However, the investment required to provide the development is evidently considerable and it has the appearance of a more permanent scheme. The benefits set out in the HD & A Statement, also appear to be more permanent, examples being "seeing the city transformed into a national centre for excellence or open water swimming" which would presumably require more than five years to achieve. Similarly, the benefits to schools and colleges imply a longer lifetime for the development if they are to be meaningful.
- 5.5 In light of the fact that application is for a five-year period, the terms "meanwhile use" and "temporary" are therefore to be treated with caution, especially as the application is silent on the long-term proposals for the site that a "meanwhile use" suggests will follow. Without any clarity on how and when the Madeira Terraces will be restored and re-used there is an obvious concern that this development could prejudice their future. Should the "temporary use" prove as successful as the applicants hope, the temptation to renew the lease and extend the permission will become even more difficult to resist.
- 5.6 The proposals do respond to the cultural history of this site and its immediate context and this use could indeed complement the other activities on the

seafront but the form of the proposal and its visual impact will cause harm to the contribution made by the seafront setting to both the significance of the terraces and the historic boarding houses and residential development above. A justification for some harm, on the basis that use of this site supports the Council in generating funds towards the longer term sustainable regeneration of the seafront, including finding a use for the listed buildings, is only convincing if both the extent of harm has been minimised and the funding clearly secured towards the long-term regeneration.

5.7 Minimising harm in compliance with Section 16 paragraphs 189 and 190 of the National Planning Policy Framework require an understanding of the significance of the site to be used in the development of and assessment of impact of a proposal. This includes looking carefully at scale and height and in particular, whether the brightly and random pattern finishes are a sensitive response to the character of the conservation area. The harm caused by this proposal could also be further minimised by securing an effective means of removal after the initial five-year period has expired.

5.8 Recommendation:

Historic England has concerns regarding the application on heritage grounds. In determining this application, you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. As paragraph 190 of the NPPF sets out, harm should be avoided or minimised. Following measures to minimise harm, which in this case includes ensuring that the initial five-year period cannot be extended, any justification has to convincingly outweigh it as set out in paragraphs 193 and 194 of the NPPF. In this case ensuring that the funds generated by the development are clearly and demonstrably going to be put towards the future regeneration of the seafront including securing a long-term permanent use for the listed terraces is a key element of that justification.

5.9 **Marine Management Organisation:** The MMO is responsible for the management of England marine area below the mean high water mark. [This site is above that]

5.10 **Southern Water: Comment:**

No development will be permitted to be constructed over or within 6m either side of the existing combined critical sewer that crosses the (Peter Pan) site. From our initial assessment of the existing apparatus it appears that there is limited opportunity to divert existing drainage apparatus, and therefore Southern Water objects to the proposed development.

Verbal Update: The sewer is sufficient distance below ground so as not to be affected by this temporary scheme involving modular container buildings. An

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

Southern Water requires a formal application for a connection to the public foul sewer and public water main to be made by the applicant or developer.

The applicant should be advised that a wastewater grease trap should be provided on the kitchen waste pipe or drain installed and maintained by the owner or operator of the premises.

Initial investigations indicate that there are no dedicated public surface water sewers in the area to serve this development. Alternative means of draining surface water from this development are required.

The application contains a proposal for a swimming pool for commercial/public use. If the pool produces filter backwash water this would need to be discharged to the public foul sewer. The rate and times of discharge of this water to the sewer, and of the contents of the pool, if these need to be drained to the sewer, would have to be agreed with SW.

The applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.

We request that should this application receive planning approval, a requiring details of the proposed means of foul and surface water sewerage disposal is recommended.

**5.11 Sport England: Support** as proposal is considered to provide facilities to meet demand:

Swim England have been consulted and they would like to emphasise its support of the project, it states that it has been in communication with the project team from an early stage and therefore is on hand to provide advice and consultancy throughout the project. Swim England believes it will have a positive impact on the swimming community of Brighton and also provide strong links between pool and open water swimming. Within the wider region of Brighton & Hove there is a slight deficit of water space, that combined with a fairly active swimming community would result in a large demand for this facility and the additional water space it provides.

At this stage the designs are adequate, however fine details will need to be considered and Swim England's advice should be sought as the process proceeds due to the close nature of the pool to the sea at the potential impact this will have on tank finishes and fixtures and fittings around the pool.

Sport England, therefore, considers this proposal addresses an identified need for this facility type and has the potential to be of benefit to the development of

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

**5.12 Sussex Police: Comment:**

The level of crime and anti-social behaviour in Brighton and Hove district is above average when compared with the rest of Sussex, and it will be important to consider all appropriate crime prevention measures when viewing the proposals.

The location is fairly isolated from view towards the eastern end of Madeira Drive making it vulnerable to unauthorised access, especially from the beach side and to the pool. It is pleasing that some security measures have been incorporated within the design and access statement. A combination of security measures will help ensure there is no unauthorised access, especially when the facility is closed.

The modular units provide the security for the north side of the development and so must be sound and fit for purpose as prefabricated portable style cabins and temporary buildings have historically been easy to break into given their temporary use.

The four access points must also have controlled access. The remaining south, east and west sides of the proposed development must also be secured. Fencing/gates should be appropriately designed and at least 2m high. Container units at the east and western end of the swimming pool must, as far as possible be clear of points which may allow access to the pool by climbing onto the flat rooves of the containers. It is also recommended the access to the lifeguard observation tower has perimeter security and controlled access.

It is noted that a General Site Manager will be in place during opening times. Further details of the management plan in relation to operating hours, security control for the various modular units and the gated entrances proposed is needed. It is noted that 'out of hours' security will be supplemented with a local security and facilities management 'on call' company. Cycle racks and the bin store will need to be adequately secured.

The toilet doors and changing facility doors must have adequate access control. Secure lockers should be provided for clothing and personnel possessions for persons using the swimming pool facilities.

The application states CCTV will be included to cover most of the site. this needs to be adequate and a 24/7 monitored system is recommended. Dusk to dawn energy efficient lighting around the perimeter of the application would provide lighting for casual observation by passers-by.

The area is close to the edge of the parameter of the late night economy of the city which can experience large amounts of footfall, noise, litter and acts of antisocial behaviour at the start and end of the day or when events are taking place along Madeira Drive. The location can be popular during summer months and during the day but less so at night time. The application wishes to include

an (A5) Takeaway facility. Depending on operating hours this application would provide legitimate reasons to frequent the area, which could in turn lead may act as a honey pot and create problems around the application area, especially if open late at night. It is unclear which units will be operated as a restaurant or bar. There would be concerns of the cumulative impact of these and it is asked that any consent for any units within the application or future application site is conditional that alcohol is ancillary to food prepared on the premises and served at table by waiters / waitresses.

**Internal:**

**5.13 County Archaeologist: Approve subject to conditions.**

The proposed development is of archaeological interest due to the proposed impact to the remains of the late Victorian Volks Railway, the earliest public electric railway in Britain. The proposed development area contains the course of a section of track (not the current course) that ran from a station at Banjo Groyne to the east through to a station by the Palace Pier. The route eastward from the Banjo Groyne to Rottingdean was constructed 60metres from the shore on sets of legs 23feet high. The proposed construction in the northern section of the site has a potential to destroy or disturb remains of the 19th century railway.

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

**5.14 Coastal Engineer: Comment:**

The Shoreline Management Plan 2006 for this section of coast (policy unit 4d12) has a policy of 'Hold the Line' for the next 100 years. Hold the Line is defined as 'maintain or upgrade the level of protection provided by defences'(Defra 2001). A strategic study of the coastline carried out in 2014 and approved by committee and the Environment Agency does not identify the need for any coast defence works in the area of the application for the next 100 years, only continued maintenance of existing defences.

According to the results of the south east regional coastal monitoring programme (which carries out regular surveys of beach levels) this section of coast is an accreting coastline. Therefore it is not expected that the development will be affected by coastal erosion only an increasing beach width. From time to time beach management activities take place towards the Marina (extraction and movement of shingle back to Shoreham Port's beaches) this is not expected to have a negative impact on the development.

The application proposes laying temporary matting system across the shingle to the sea to enable disabled access. The proposed matting ('mobi mat') is shown going over a sand beach. Shingle beaches develop steeper slopes than sand;

the developer should satisfy himself that this type of matting will still perform as expected in a situation such as this.

There is no record of sea flooding in the area of the development and no conditions are recommended.

**5.15 County Ecologist: Comment**

Original comments:

Recommend refusal as the application is likely to have significant adverse impacts on biodiversity. The proposed development would lead to the loss of 1121m<sup>2</sup> of coastal vegetated shingle, which is approximately 14% of the City's resource of this globally restricted habitat, and is a significant loss to one of only three sites for this habitat in Brighton & Hove. The proposed mitigation and compensation measures are not considered adequate to offset this loss. As such, the current proposal cannot be supported from an ecological perspective.

Revised comments on updated Ecology Report:

The proposed development will lead to the loss of 1121m<sup>2</sup> of vegetated shingle and 420m<sup>2</sup> of scrub, grassland and tall ruderal habitats. The vegetated shingle that would be lost includes a conservation mound that was created to mitigate for the Yellowwave development. Whilst the vegetated shingle habitat on the mound is not an outstanding example of the habitat, it includes a good proportion of native shingle species and remains a notable habitat, the extent of which is significant.

The applicant commissioned a further ecology report which proposed to compensate for the loss of vegetated shingle habitat through the creation and management of 1500m<sup>2</sup> of vegetated shingle offsite (to the east of the Yellowwave development), which would be acceptable. It is noted that the previously proposed biodiverse green roof and the 1.5m wide linear strip to the west of the site will no longer be provided due to the financial implications of the compensatory habitat. The provision and protection of small areas of vegetated shingle within the site adjacent to the Volks Railway LWS totalling 266.5m<sup>2</sup> will enhance the site for biodiversity.

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

Cost for annual review of monitoring report approximately as follows (£54ph):

Year 1:

- Site visit x 3 = 9 hours
- Review of monitoring reports + advice re subsequent management/remedial measures = 3-4 hours

Years 2-3:

- Review of monitoring reports + advice re subsequent management/remedial measures = 3-4 hours per year  
Years 4-10:
- Review of monitoring reports = 2 hours per year  
(total approx. £2,074 incl VAT)

#### **5.16 Economic Development: Support**

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

Should this application be approved, due to the size of the development, it would be subject to certain obligations which would be included in a S106 agreement. There will be a requirement for the developer or their contractor to submit an Employment & Training Strategy linked to the development. The strategy should demonstrate how the developer or main contractor and / or their subcontractors will source local labour and provide training opportunities during the life of the project. How they will work with the Council's Local Employment Scheme Coordinator and organisations operating in the city to encourage employment of local construction workers during the construction phases of the Proposed Development, with a target that at least 20% of the temporary and permanent job opportunities created are available to local residents interested in working in construction or gaining training, facilitated on site. In addition to the strategy, there will be a requirement for Developer Contributions for the sum of £12,110 to be made prior to commencement towards the Local Employment Scheme, as per the Developer Contributions Technical Guidance.

#### **5.17 Environmental Health: Comment**

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

#### **5.18 Heritage: Objection**

Statement of Significance:

This site is in the East Cliff Conservation Area and adjacent to the grade II listed Madeira Terraces, Lift and associated buildings, with the route of the historic Volks Electric Railway partly running around it and partly through it.

It is currently cleared land with basic barriers/boundary treatment against the public highway and Volks railway route, beyond which the land is open beach. The ground surfaces and boundary treatment are not positive features that sustain or enhance the conservation area, however the openness of the site is characteristic of the Western half of Madeira Drive, affording uninterrupted views of the sea and Palace Pier to the south, contrasting with the imposing scale of Madeira Terraces to the north.

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

#### Relevant Design and Conservation Policies and Documents

Planning (LBCA) Act 1990:

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

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance...' of the conservation area.

National Planning Policy Framework:

Section 192 states that 'In determining applications, local planning authorities should take account of: a) the desirability of sustaining and enhancing the significance of heritage assets.' And Section 193 states 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.'

Brighton & Hove Local Plan Policies: HE3, HE6, CP15, SR18, SA1.

#### East Cliff Conservation Area Study and Enhancement Plan 2002 :

Appearance:

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

Character:

The seafront shelters, Madeira Terrace and Covered Walkway, the Shelter Hall and Lift and below that the wide, straight southern pavement of Madeira Drive

all evoke traditional seafront promenading. The continuous line of wide, uncluttered beaches contribute significantly to this character.

At 7.4.3 it states Peter Pan's playground currently detracts from the appearance of the conservation area due to its random collection of ramshackle buildings and other structures and the poor quality of its immediate environment. The council will seek to use its powers to achieve a better quality children's play area, with buildings and structures clustered together in a visually co-ordinated manner, and high quality hard and soft landscaping appropriate to the seafront location. Replacement buildings of a high standard of design will be encouraged, which respect the appearance of the conservation area not only in views along Madeira Drive and from the beach, but also from Marine Parade above. No expansion of the boundary of the playground will be acceptable. Single storey buildings only will be appropriate, with careful attention paid to the design and material of the roofs, and no amusement or ride should exceed the pavement height of Marine Parade, including when in use.

#### The Proposal and Potential Impacts

This application follows a process of formal and informal pre-application submissions over the last two years, which has seen the scheme change in various ways. The current application is for a temporary use of the site with a 25m swimming pool, internal endless pool, plant and changing rooms (all single storey) on the south side of the Volks railway line, and part 2 storey mixed use development with first floor walkway in the space between the railway line and Madeira Drive. The structures are to be adapted containers, clad in vibrant graphic PVC skins.

Previous discussions and advice have included encouragement for a more holistic and co-ordinated approach to be taken, to include the upgrading of the public realm and the relationship of the development with potential new uses for the Madeira Terrace arches and their restoration. The move to a temporary use makes such an aim more ambitious, and it is disappointing that the scope for this is lost, at least for the time being.

#### Policy context

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

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

#### Use

The Yellowwave Beach Sports venue now bounds the site to the East, and due to the previously developed nature of the site along with the cluster of activities in the vicinity, the open water swimming facility is considered a suitable use for the site in principle. It is noted that the application requests approval for a temporary period of 5 years, and the Heritage Statement includes the removal of the pool

after 5 years and the return of the site to its former condition, however the Design and Access Statement proposes temporary commercial leisure and food uses but a permanent pool. [Note is has been clarified that all proposed development is only for 5 years]

Current Council aspirations for the regeneration of Madeira Drive support the creation of an active waypoint between the Palace Pier and Marina, however Heritage considerations require an acceptable balance to be made between the advantages to be gained in respect of the future restoration of the listed Terraces and improvements to the public realm, and the negative impact that ancillary uses and developments could have on the heritage assets that make this space special.

#### Site Area and Layout, Scale and Materials

Previous advice from the planning service has been that the siting of built structures north of the railway is generally considered acceptable, however the policy of confinement of developments to the area bounded by the railway line has already been eroded by Yellowave. This application also includes development south of the railway route and it is considered that a minimal amount of structures south of the railway would be acceptable if, like Yellowave, they were at beach level and of materials that tone with the shingle.

It was further recommended that north of the railway the buildings should be predominantly single storey and arranged in small groups to allow good views through to the beach and sea beyond, and use natural materials such as timber and gabions to reflect the beachfront setting.

As proposed the units around the pool are limited to single storey, however the use of the vibrant colours proposed would do nothing to minimise their impact, and the effect of their encroachment beyond the current extent of built structures in this location would be exacerbated, therefore the proposed materials are considered particularly inappropriate on this part of the site. It is also considered that the proposed bright blue pool lining contrasts with the anticipated open-water swimming character of the pool; having more of the appearance of a chlorinated lido. It is considered that a more natural colour lining should be investigated.

North of the railway the development has been arranged in a dense formal pattern with only allowances for brief, oblique views through to the sea. There are still approximately 1/3 of the units with a second storey. These first floor units are scattered along the development giving an overall impression of a 2 storey development. Again, the use of vibrant colours and bold patterns makes no reference to the surrounding natural environment and the use of the coloured skins on the roofs of the units will have a particularly intrusive impact when viewed from the higher vantage points on the terraces and Marine Parade. These should be revised to specify a natural finish that blends with the pebble beach setting.

There also appears to be some 3rd storey 'place markers' that appear to be internally lit cubes. These features further impinge on the strict height limit

previously imposed for structures along Madeira Drive in order to moderate the impact of new structures on the setting of the listed Madeira Terraces, Shelter Hall and Lift, and as proposed these way markers are considered particularly intrusive, over dominant and unnecessary.

The robustness of the proposed PVC coating is also of concern. This harsh, exposed location will be testing for any material, and it is considered that the natural materials consistently recommended for this site would continue to respect the setting when weathered, whereas damaged or degraded modern finishes would further harm the appearance.

Concern is raised over the proposed use of timber posts and Heras fencing; boundary treatment should be carefully considered and there is little detail provided to be assured that this will have a suitable appearance. Also, security gates are proposed across wide parts of the frontage and little detail has been provided regarding their appearance. It is noted that security gates do not appear to be proposed across the staircases.

Minimal detail is available regarding services, and assurance is required that there will not be roof-mounted (or other visible) plant. Mention is made of wall mounted extracts in relation to odour control and details of their appearance and locations are required.

#### Summary of conflicts with policies and guidance

The Heritage Team has considered this application against national and local policies and guidance, and it is considered that the scale, density and use of materials proposed for this development is in conflict with these.

Specifically, for the reasons given above the development would have an adverse impact on the setting of the Madeira Terraces (HE3) and would neither preserve or enhance the openness of the setting (HE6, CP15 & East Cliff Conservation Area Study) or reflect the character of the conservation area through the use of materials and finishes (HE6 & East Cliff Conservation Area Study).

The development would result in the loss of open space and involves development on the beach (CP16 & CP18), and would not respond to the design or visual character of the stretch of seafront to which it would relate and would have an adverse impact on the setting of important seafront buildings.

It would not continue the visually coordinated manner in which new buildings have so far been developed in the vicinity, particularly their scale and materials including the roofscape (East Cliff Conservation Area Study).

The scheme has potential to create added footfall which in the long term will be important to the success of the regeneration of this area, however the lack of tangible improvements consistent with the identified character of its setting means there are not considerations that would outweigh the harm, and the scheme cannot therefore be considered to comply with the requirements of the Planning (LBCA) Act or the NPPF and for this reason the Heritage Team is not able to support this application without significant amendments.

## 5.19 **Planning Policy: Comment**

### Initial Comments:

In principle the proposed use - the outdoor pool - accords with City Plan Part 1 Policy

SA1 The Seafront and emerging aspirations for the regeneration of Madeira Drive

(Madeira Drive Regeneration Framework) and the emerging City Plan Part 2.

The main policy considerations relate to:

Firstly the acceptability and suitability of the proposed encroachment on the beach to accommodate the swimming pool rather than Peter Pan hard standing site; the need to balance any adverse impact upon the Volks Railway SNCI/Local Wildlife Site against the provision of a new leisure use and the regeneration of a key seafront site. Further clarification/ justification is sought on why as an exceptional case a beach location is required. The county ecologist should be consulted on this application to ensure the requirements of Policy NC4 and CP10 have been fully addressed by the applicant.

Secondly the scale of the proposed commercial uses and whether these have been demonstrated to be enabling development. Further clarity is sought on the proposed uses (see comments below). Whilst a mix of small independent businesses would be considered acceptable to help support the leisure use and help create a vibrant seafront these would need to be ancillary/ supportive uses. The commercial elements should be kept ancillary to the main leisure use and to an absolute minimum as delivery of leisure related is the key aim for this site.

Thirdly the proposal creates c. 1,386 sq m of main town centre uses. Given the site's edge of centre location, a sequential site assessment is required in accordance with the NPPF paragraph 86 and to accord with Policy CP4 Retail Provision of the adopted City Plan Part 1.

No artistic component sum will be sought for this temporary planning application.

## 5.20 **Further Comments:**

It is noted that the further points submitted on behalf of the applicant with regards to justification of the swimming pool element being located on the beach to address SR18a) Seafront Recreation:

- Policy and Resources Committee landlord consent for the proposal;
- Beach incursions have occurred elsewhere on the beach – seating areas for cafes (Shoosh and Ohso Beach Bar); temporary beach events such as the Big Screen and Spiegel Tent) and Yellowwave Beach Sports Venue (where an exception to the policy was demonstrated);

The support for the Sea Lane scheme in various council Seafront Strategies;

- The draft CPP2 site allocation - however it should be noted that the draft CPP2 site allocation and draft policy map does not include the shingle beach as suggested by the further information provided – it incorporates the Volks railway section to the south of the site only.

- 5.21 The applicant has not clarified in the further information whether in drawing up the proposals whether they had considered siting the temporary swimming pool element on the hardstanding and whether this had been discounted due to site constraints and/or the need also to accommodate the enabling development which would have helped the consideration of the application.
- 5.22 Encroachment on the shingle beach is contrary to Policy SR18 a) and Paragraph 3.123 of the supporting text to Policy SA1 The Seafront indicates a presumption against proposals involving an increase in hard surfacing of the seafront at or in the vicinity of the sites of city-wide nature conservation importance. Paragraph 4.176 of the supporting text to CP16 Open Space indicates the importance to protect the intrinsic geological and aesthetic interest of this expanse of shingle stones which forms such a major open space between the land and the sea. The issue remains whether the proposed use, size and design of the pool would harm the beach in in this location.
- 5.23 It is acknowledged that the applicant at this stage is only seeking temporary permission for a 25m swimming pool and therefore subject to appropriately addressing CP10 Biodiversity a temporary permission for a 25 m pool could be considered as an exception to the policy if weight is given to the fact that the proposal will provide an outdoor leisure activity which accords with seafront strategies for this area of the seafront and the proposed uses would positively support the regeneration of this section of the seafront.
- 5.24 The applicant has indicated that they wish in the longer term to create a permanent larger swimming pool and provided in the submitted information an outline footprint. However the case for a permanent, larger facility would need to be fully justified with any future planning application.
- 5.25 It is acknowledged that the applicant it seeking a temporary permission for enabling commercial uses for five years however it is not considered that would constitute a 'meanwhile use'. It is therefore welcomed that the applicant has provided a Sequential Test site assessment for the proposed town centre uses that are proposed on an edge of centre site in order to accord with the requirements of paragraph 86 of the NPPF and Policy CP4 Retail Provision. It is also acknowledged that commercial uses proposed are enabling development for the swimming pool and this would limit the opportunities to disaggregate the commercial elements from the leisure uses. The applicant has looked at available sites within the St James Street District Centre and the assessment has confirmed that there are no sequentially preferable sites which are suitable, available of viable and therefore the requirements of the NPPF and CP4 have been met.
- 5.26 Flexibility with regard to amount and location of floorspace is proposed. There should however be no A4 (bar) unit larger than 150 sqm – as that is the floorspace threshold set out in the retained SR12 in the BHLF for a single unit. With regard to A uses, presumably with the configurations and different sizes of the containers this would ensure there could not be amalgamation to create one or two very large units. For B1 (office) start up units the Employment Land Study 2012 seemed to indicate that they tend to be around the 90 – 280 sq m

size – so a limit of 280sq m would be reasonable in this location. This would seemed to fit with the proposed upper floor commercial units of c. 238 sq m but the planning statement did seem to indicate ‘commercial’ units on the ground floor.

**5.27 Seafront Development: Support:**

The development of the former Peter Pan amusement site is a key part of the regeneration of Madeira Drive. The site has been vacant for close to 20 years and has proven difficult in attracting serious investment. The closure of Madeira Terrace which runs opposite the site has added to the gradual demise of this area.

The Sea Lanes temporary development will not only create a destination in its own right but will complement and support the existing businesses in the area who welcome this new addition to Brighton’s eastern seafront. The density of uses on the site is critical in driving footfall to the area from the already busy central seafront zone west

of Brighton Palace Pier. The active frontage created by the retail and leisure units on Madeira Drive provides the required interest and vibrancy to ensure that the scheme is viable.

The size and nature of the pre-fabricated units allows flexibility within the site to create a mix of uses and tenancies which can adapt and respond to demand over the 5 year period. The building design reflects the temporary nature of the application.

We fully support this application and are confident that Sea Lanes represents a critical next step in the wider regeneration of Madeira Drive.

**5.28 Sports Facilities: Support:**

The BHCC Sports Facilities Team support the proposal as it improves the provision of swimming facilities in the city and the opportunity for engagement in sport and physical activity for local clubs and residents.

The proposal will provide considerable benefits in terms of improving and providing increased sporting opportunities and facilities in Brighton and Hove. The proposal helps to meet a number of the council’s key objectives, outcomes and recommendations from the following policy/strategy documents including Corporate Plan (2015-2019), City Plan Part One, Sports Facilities Plan 2012-22, Sports and Physical Activity Strategy 2013-18.

Limited information has been submitted in respect of the pool and operation. The application states that the pool is heated pool and 25m by 12.5m with a retractable pool cover but any more detailed information is limited.

The ancillary facilities – such as changing and toilet provision are not entirely clear. Further information is needed to be assured that there are an acceptable number of spaces for the expected usage and that the plans are informed by the Sport England and Swim England Design Guidance.

The temperature of the water, planned opening hours and potential programme usage are also key to understanding how the local community will be able to access the facility. More information in terms of accessibility for those with physical impairments would also be important to ensure the facility is as inclusive as possible.

Overall the proposal has the potential to provide an improvement to the city's swimming facility provision to help meet the required demand, although more detailed information would be able to provide better assurance.

**5.29 Sustainable Drainage:** Approve subject to condition.

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

**5.30 Sustainable Transport:** No objection subject to conditions and S106

The Highway Authority would not wish to object to the principle of temporary redevelopment of the site; however, had requested further details on the proposed Delivery and Servicing arrangements prior to determination.

In particular, this concerned the potential conflict with the Madeira Drive cycle lane. Clarification was subsequently provided that this would be undertaken from the existing access to the east of the site serving the Volk's Railway. The Highway Authority subsequently issued supplementary comments in which further details and clarification were requested. The above clarification has not been provided at the time writing and the Highway Authority would request that these details be provided prior to determination. If they are not provided prior to determination, it is recommended that a pre-commencement of construction condition relating to deliveries and servicing be added to any consent. In order to address the concerns raised, a variation to the submitted plans may be necessary.

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

In the event that that the application is approved, owing to the size of the development and the likely increase in trips to the site, the Highway Authority would request a sustainable transport S106 contribution of £35,000. This is heavily discounted from the contribution that would be requested using the council's standard calculation outlined in the Technical Guidance for Developer Contributions in order to reflect the site's temporary use. It is recognised that the Local Planning Authority will need to consider the overall viability of the development in determining the level of contribution requested by the Highway Authority. However, it should be noted that, where a discount has been applied, trips associated with a temporary use will not be taken into account as 'existing'

trips when determining the level of contribution required by a future permanent application.

Conditions relating to cycle parking, deliveries/servicing and CEMP should be applied.

**5.31 Tourism (VisitBrighton): Support:**

We would welcome the application which we believe has much merit and will positively enhance the City's leisure offering, both for residents and tourists. The proposed development offers a genuinely novel experience and will encourage tourists to explore the seafront East of the Pier. It is vital that we are able to offer visitors a wide variety of 'experiences', giving them new reasons to visit and potentially convert day trips to staying visits. The redevelopment of the area would undoubtedly offer an innovative visitor experience.

**6. MATERIAL CONSIDERATIONS**

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

6.2 The development plan is:

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

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

**7. POLICIES**

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

- SS1 Presumption in Favour of Sustainable Development
- CP2 Sustainable economic development
- CP4 Retail provision
- CP5 Culture and tourism
- CP7 Infrastructure and developer contributions
- CP8 Sustainable buildings
- CP9 Sustainable transport
- CP10 Biodiversity

CP11 Flood risk  
CP12 Urban design  
CP13 Public streets and spaces  
CP15 Heritage  
CP16 Open space  
CP17 Sports provision  
CP18 Healthy city  
SA1 The Seafront

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

TR4 Travel plans  
TR7 Safe Development  
TR14 Cycle access and parking  
TR18 Parking for people with a mobility related disability  
SU9 Pollution and nuisance control  
SU10 Noise Nuisance  
QD5 Design - street frontages  
QD15 Landscape design  
QD18 Species protection  
QD27 Protection of amenity  
EM4 New business and industrial uses on unidentified sites  
SR4 Regional shopping centre  
SR5 Town and district shopping centres  
SR6 Local centres  
SR18 Seafront Recreation  
HE3 Development affecting the setting of a listed building  
HE6 Development within or affecting the setting of conservation areas  
NC4 Sites of Nature Conservation Importance (SNCI's)

Supplementary Planning Documents:

SPD03 Construction & Demolition Waste  
SPD11 Nature Conservation & Development

Supplementary Planning Guidance:

SPD14 Parking Standards

East Cliff Conservation Area Study and Enhancement Plan (2002)

Background Documents:

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

## **8. CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to:
- The principle of developing the open shingle beach
  - The impact to ecology and biodiversity
  - The principle of locating the proposed uses in this location

- The impact to local retail centres
- The impact to the setting of the special character and appearance of the East Cliff Conservation Area and nearby listed buildings
- The impact to tourism and the economy
- The contribution the development will make to sports provision in the city
- The demand for travel created by the development
- The impact to amenity

## **8.2 Planning Policy:**

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

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.

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.

8.3 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.
- 8.4 City Plan Policy CP16 seeks to safeguard, improve, expand and promote access to Brighton & Hove's open spaces (public and private) and the diverse range of experiences offered by these spaces. Planning permission resulting in the loss of open space, including the beach, will only be granted provided certain exceptional criteria are met.
- 8.5 City Plan Policy CP17 states the council's aspiration to increase participation in sports and physical activity, and seeks to safeguard, expand, enhance and promote access to Brighton & Hove's sports services, facilities and spaces. Supporting text to CP17 states the city's outdoor sports space provision is low compared to other local authorities. The Open Space, Sport and Recreation Study (which forms part of evidence base of the City Plan) indicates a further potential need for additional pool space, and the Sport Facilities Plan 2012-2022 builds on this and identifies a need to expand and improve public facilities especially swimming pools, sports halls, health and fitness suites and artificial grass pitches.
- 8.6 City Plan Policy CP18 seeks to promote healthier lifestyles.
- 8.7 Local Plan Policy SR18 of the Brighton and Hove Local Plan is relevant as it relates to seafront recreation. This states that new recreation facilities which are related to seafront/coastal activities will be permitted on the seafront provided that:
- 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.
- 8.8 Local Plan Policy NC4 states permission will not be granted for a proposal within, or in the setting of, an existing or proposed Site of Nature Conservation Importance (SNCI) where it is likely to have an adverse impact, on the nature conservation features of the site. Exceptions will only be made where:
- a. the proposal can be subject to conditions that will prevent damaging

impacts on the nature conservation features and their setting and includes provision for the protection, enhancement and management of nature conservation features; or

- b. the proposal is: essential to meet social, environmental and / or economic needs; of more than local importance within the City; cannot be located anywhere else; and the following requirements have been met:
  - i. the location, design and construction of the development is such that damage to nature conservation features is minimised and opportunities are taken for nature conservation gain;
  - ii. compensating and equivalent nature conservation features are provided;
  - iii. remaining features are protected and enhanced and provision made for their management; and
  - iv. improvements to public appreciation of and access to the site are provided.

8.9 Local Plan and City Plan policies relating to A1/A3/A4/B1 uses, Heritage, Ecology, Transport and Amenity are also relevant in the consideration of the proposal, and are discussed in this Considerations Section.

8.10 Emerging Policy in City Plan Part Two (due to be adopted 2020):

Although policies in CPP2 carry very limited weight at this stage (as the plan is currently out to Regulation 18 Consultation), emerging policy is a material consideration and is a useful indicator of the direction of travel for seafront policy.

8.11 Policy SSA6 specifically identifies the former Peter Pan site as appropriate in principle for leisure uses and ancillary supporting retail uses. Proposals will be expected to:

- a. Contribute towards the priorities for the Seafront as set out in City Plan Part One Policy SA1, including supporting the role of the seafront as an all year recreation attraction for residents and tourists;
- b. Achieve a high quality of design and sustainability which preserves and where possible enhances the setting the Conservation Area, adjacent Listed Buildings/ structures, the character of the seafront and strategic views;
- c. Provide for sustainable means of transport to and from the site and demonstrate good linkages for pedestrians and cyclists;
- d. Complement the regeneration of Madeira Terraces and Drive (SSA5) and contribute to a coordinated approach to enhance the public realm;
- e. Improve accessibility and connectivity between the site and the beach and sea; and
- f. Conserve and enhance biodiversity in the area.

8.12 Policy DM15 states proposals for new shop, food and drink and drinking establishments (A1 – A5) and D1 galleries and museums (D2 Use Class) on the lower promenade Madeira Drive and within the seafront arches, will be permitted provided certain criteria are met.

- 8.13 Policy DM16 states that the council will encourage temporary uses which help animate and activate vacant buildings or sites before regeneration/ construction commences. Provision of ancillary small-scale retail outlets will be permitted on identified seafront development sites or to support existing or proposed leisure/ tourism schemes.
- 8.14 Policy DM39 echoes existing policy in stating there is a general presumption against development extending onto the shingle beach and that the importance of the seafront and beach as an open space should be safeguarded.
- 8.15 The CPP2 also seeks to increase the area of the allocated SNCI (due to be renamed Local Wildlife Site) in this location as it is one of only three remaining sites of coastal vegetated shingle in Brighton and Hove.

It is anticipated CPP2 will provide a step towards a coordinated strategy for future development along this part of the seafront to guide development proposals and prevent harmful ad hoc schemes, in the interests of preserving the special character and appearance of the area. Policy SSA5 allocates the Madeira Terraces for a vibrant and balanced mix of uses. Restoration of the declining Terraces is a key goal for the council and restoration and use of a number of arches at the eastern end of the Madeira Terraces is proposed to commence next year. Should a Heritage Lottery Funding bid (Dec 18) be successful it is anticipated work will commence on a masterplan and public realm strategy to identify key enhancement priorities and guide future development proposals in the locality.

**8.16 Principle of proposed uses in this location:**

The former Peter Pan Amusements site has been vacant for nearly 20 years and this area of the seafront is in decline and requires regeneration, therefore potential investment here is certainly welcomed in principle. Introduction of new uses which help draw people to the area and give the area a boost are welcomed.

Given the existing and emerging policy context outlined above, the proposed leisure use (ie pool) is welcomed in principle given that it would deliver a sports based activity in a location where this is encouraged, and there is an identified shortage of swimming pools in the city. The proposal would contribute towards the council aspiration to promote healthier lifestyles. The council's Sports Facilities team support the proposal, as do Sport England. The proposal for swimming in this location links back to Brighton's history as a bathing resort and is considered an appropriate seafront use. The proposed pool use would add to the overall visitor offer of the seafront and help boost tourism and the economy, as sought by policy. The proposal could operate all year round, which reduces the seasonality. The positive benefits of a pool here is therefore given significant weight.

Given its location directly on the beach however, the pool's location would conflict with policies SR18, SA1 and CP16 (and emerging policy DM39) which seek to safeguard the importance of the seafront and beach as an open space.

The applicant has stated that the area north of the railway (which was the site marketed by the council) is not sufficient to accommodate their proposal (and potential future plans for a 50m pool) and they cite examples of other sites where this exception has been made. It is accepted that the location of the pool does conflict with policy however it is considered that an exceptional case can be made in this particular case, and the benefits of the scheme outweigh the harm caused. Exceptions have been made in a similar circumstance where a significant public benefit is delivered, such as in the case of Yellowwave adjacent. In this particular location the beaches are wide and a substantial amount of open beach will remain surround the site. The site is close to existing development south of Madeira Drive (Yellowwave, Peter Pan playground, Adventure Golf and Volks Railway sheds) so forms part of a distinct cluster, which is considered appropriate. The proposed structures south of the railway are kept to the minimum required for pool operation and help retain a degree of openness. In addition, weight is given to the fact the proposal is for a temporary period only, therefore the site would return to open shingle eventually. On balance therefore, the positive benefits of locating a (temporary) swimming pool here are considered to outweigh the policy conflict in this instance.

In order to provide and operate the pool, a significant amount of commercial 'enabling development' is required to ensure it is viable. The requirement for this is understood but it is a concern that such a substantial amount of floorspace is required, given the priority for this area of the seafront is for family/sports based activities, and given the impact such development has on the character and appearance of the locality. Emerging policy is clear that any such uses here should be ancillary only. It is however recognised that certain sport facilities, and swimming pools in particular, require significant resources. The applicant has submitted a Viability Assessment which outlines how marginal the viability of the scheme is and why the amount of enabling development is required. The Assessment has been independently considered by the council's surveyors, who concur with the overall conclusion. On this basis the enabling development is considered acceptable in principle as an exceptional case. The area is clearly in need of a boost and the proposal should add much needed vibrancy and vitality to this declining area. The proposal will introduce something a bit different for the seafront and the city and is welcomed. Weight is also given to the fact this is a temporary scheme only. A condition is recommended to ensure the enabling uses are closely related to delivery of the pool, and this will ensure the pool is delivered within 12 months of the commercial uses first being brought into use (or by April 2020). The council's Seafront and Tourism Teams are supportive of the scheme.

There is no objection in principle to type of uses proposed in principle, as these would draw people to the area and add vibrancy, and generally accord with existing and emerging policy. Such uses could help attract visitors and boost the wider economy. The proposal will create jobs and is supported by the council's Regeneration Team. Flexible mixed uses across the site is encouraged in principle. There is some concern however regarding the proposed B1 office use as this is not an 'active' use as such and is not strictly appropriate in a beachfront location, however, the overall amount of B1 floorspace can be restricted by condition so that it does not become the dominant use and to allow

for a vibrant mix of uses. The applicant hopes to attract leisure based office users which is welcomed and encouraged (but occupiers cannot be controlled through the planning process). A Sequential Test has been submitted, and it is satisfactorily demonstrated that the proposal would not undermine the vitality or viability of local retail centres, as required by Policy CP4.

#### **8.17 Ecology, Biodiversity and Beach Processes:**

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

Coastal vegetated shingle is a globally restricted habitat and this site is one of only three sites for this habitat in Brighton & Hove therefore any development here requires very careful consideration. The proposed development will lead to the loss of c. 14% of the City's vegetated shingle resource, 6% of the revised Volks Railway Local Wildlife Site and loss of a conservation mound, therefore significant weight is given to the need to secure appropriate mitigation and enhancement. Even though the proposal is for a temporary use, the ecological impact will be permanent.

In this particular case it is considered an exception can be made given the wider benefits of providing a pool here and given that the application includes appropriate ecological mitigation and enhancement, and also enhances public appreciation of it (via boardwalk and interpretation board) as per policy NC4. These measures (and future maintenance and monitoring) can be secured via S106. On the basis of the applicant's revised ecological scheme which outlines a scheme to replace the vegetated shingle mound off-site and enhances the habitat on site, the County Ecologist raises no objection.

The council's Coastal Engineer confirms that the proposal would not compromise any beach processes and they do not expect the development will be affected by coastal erosion, only an increasing beach width. They do request further details of the retractable beach matting to ensure it is fit for purpose (which can be secured by condition). No coastal defence works are identified as necessary in this area. Both the council's Coastal Engineer and the Sustainable Drainage officer raise no concerns with regard to potential flooding.

#### **8.18 Design, Appearance and Impact to Heritage:**

The council has a statutory duty to have special regard to the desirability of preserving listed buildings and their settings (in this case the Madeira Terraces, Shelter Hall and Lift and Banjo Groyne), and also to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas (in this case East Cliff CA). National and local planning policies reinforce this importance.

The NPPF states that great weight should be given to conservation of heritage assets and that this presumption can be outweighed by material considerations deemed powerful enough to do so. The NPPF states that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. Where the identified harm is limited or less than substantial, the local planning authority must nevertheless give considerable importance and weight to the preservation of the listed building and its setting.

The character and appearance of this part of the East Cliff Conservation Area is described in the formally adopted East Cliff Conservation Area Study and Enhancement Plan 2002, and this document provides guidance for future development here and is a material consideration.

Paragraph 3.3.4 of the Study states *the southern side of Marine Parade remains a broad promenade overlooking the Madeira Terrace, Madeira Drive and the wide shingle beaches with the only significant built development being the Aquarium Terraces at the far western end. It is generally uncluttered by modern street furniture etc. but the grade II listed 1890s lamp columns on the pavement edge and the late 19th century seafront shelters and early 20th century wooden benches add to its traditional seaside appearance. The expanse of open beaches is an integral element of the setting of the buildings and the [former] seafront amusements at Peter Pan's Playground partly detract from it. This clutter of structures is also a discordant element when viewed from above but the Volks Railway line at least provides a logical, and historic, southern boundary.*

Paragraph 3.3.6 states: *The seafront shelters, Madeira Terrace and Covered Walkway, the Shelter Hall and Lift and below that the wide, straight southern pavement of Madeira Drive all evoke traditional seafront promenading. The continuous line of wide, uncluttered beaches contribute significantly to this character.*

And paragraph 3.3.7 states: *...part of the seafront relates more to the brasher seafront pleasures of the Palace Pier, and includes the Aquarium Terraces and Colonnade and the beaches immediately east of the Pier. Any further intensification of this commercial brashness would, however, be detrimental to the special character of the seafront. It should be noted too that the seafront as a whole has a different character in summer to that of the winter. The influx of summer visitors gives this sub-area a lively character, which contrasts with a more sedate atmosphere during the winter months.*

In this context, the principal heritage considerations are the effect of the development on the character of the conservation area (specifically at this point the openness of the beach and promenade contrasted with the scale and enclosure of the sea wall) and the setting of the listed Terraces. The East Cliff Study identifies the character of this part of the seafront as wide, uncluttered beaches which were harmed by the run-down playground that existed at that

time. Since then, this site has been vacated but is still considered to have a negative impact on the immediate setting.

The comments made by Historic England, the council's Heritage Team (and local heritage societies) have been made in the context of current policy and guidance. They clearly have concerns regarding the scheme (although the degree of harm is not expressed), and consider it to adversely affect the setting of both listed buildings and the East Cliff CA. This is primarily due to the proposed design, site coverage/density, height, colours and materials of the scheme, which are not deemed to pay regard to their special setting.

The applicant argues that the site contained significant development in the past of varying heights and bright colours and that they are trying to achieve something modern and different here, in direct contrast to the historic and seafront setting, in the spirit of other 'daring' development that characterises Brighton. The appearance of the scheme clearly divides opinion as can be seen in the representations made.

Limited weight is given to the previous development on the site, particularly given that this was identified as being harmful to its setting, but there would be no objection to a modest single storey scheme here. As has been stated previously, the site forms part of a cluster of development south of Madeira Drive thus development would not be inappropriate in principle. The proposal, comprising of a significant number of temporary modular building up to 3 storeys high with bright colours would appear somewhat incongruous and are considered not particularly sympathetic to their special setting (as set out in the East Cliff Study). It is considered they do not comprise the high quality of development expected in such a sensitive location.

Since pre-application stage, the applicant has sought to reduce the overall scale and density, and the amount at second/third floor level and introduce some gaps through the site, which is positive. Given the scale of development needed to make the pool viable however such changes have had relatively minimal impact. It is positive that the majority of units are at single storey level, and those at second floor level are just below the level of the middle promenade. Third floor 'placemarkers' are proposed to announce the location and whilst there is concern regarding their height their numbers are kept to a minimum, which is positive. Gaps through at ground level are positive but are at an oblique angle and therefore have minimal impact. It is positive that structures south of the railway have been kept to the minimum needed for the pool to operate, which help retain a degree of openness. Officers have secured amendments to ensure the structures and pool are located as far north as possible, to lessen their impact.

Officers have sought to amend the materials and colours to be more appropriate to the seafront and heritage setting, however, the applicant states these are an important part of the brand and what is being offered here. They state the proposal will bring something a bit different and exciting to the city and that bright fun colours are part of Brighton's heritage.

Given the concerns regarding the appearance of the development and impact to heritage assets, the merits of the proposal are considered to be finely balanced. It is considered that given the substantial decline of this area of the seafront and its current state of flux, the development could have a positive impact, despite its shortcomings. The area is clearly in need of a boost and will need to change and adapt to present circumstances. The site currently is vacant and detracts from the area. Given the marginal viability of the scheme it is not possible at this stage for the scheme to contribute financially towards heritage enhancement. In the short term however, the positive effects and enlivening of the area could benefit the longer term aspirations for the area, including the campaign for restoration of the Madeira Terraces and enhancement of public realm.

It is considered that, in this exceptional case, significant weight should be given to the wider regenerative benefits of the scheme and the benefits of providing the sporting facility in particular, and to the fact it is temporary only (and thus harm would be minimised and ultimately reversible). It is considered that there is clear and convincing justification for the scheme, as required by para 194 of the NPPF. It is considered that the degree of harm caused would be less than substantial and that the positive public benefits of the scheme would outweigh the harm caused, as required by para 196 of the NPPF.

The proposal and its 'temporary' nature and appearance would not be considered acceptable as a permanent form of development given that it would prove counterproductive to the long-term aspirations for the area. The seafront has been, and always will be, the 'shop window' of Brighton & Hove therefore development has to be of the highest quality to be successful. It is disappointing that previous advice to take a more holistic and co-ordinated approach, to include the upgrading of the public realm and the relationship of the development with potential new uses for the Madeira Terrace arches and their restoration has not been taken, however, it is recognised these projects are at different stages of development. This is only a temporary scheme and there remains the opportunity for this as plans emerge for the Terraces (a 5 year consent should not prejudice this). Detailed follow on work from Madeira Drive Regeneration Framework is to commence shortly and the regeneration of this particular eastern part of the Madeira Terraces is at a very early stage. It is considered particularly important that only temporary consent is granted given the uncertainty over plans for the Terraces and Madeira Drive in general. In the medium to long-term, a significant development on the Peter Pan site could prejudice the special setting and future viability of the Terraces and thus would need very careful consideration. Concerns in this regard have been expressed by Historic England. In the future, retention of sea views will be important, as will retention of the prominence of the listed structures and the height of the middle promenade. Quality of design and materials will also be important. The council will encourage the developer to get involved in emerging plans for the future.

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

### **8.19 Impact to Amenity:**

Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Other policies seek to ensure development do not result in unacceptable noise or other pollution.

As this is a seafront location, nearby residential properties are some distance away at the upper promenade level on Marine Parade. There are already several leisure uses in this location which generate activity. Therefore there is no objection in principle to the proposal from an amenity point of view. No details of lighting have been provided but a condition can ensure brightness is not excessive and ensure they are visually sympathetic. The Environmental Health Team raise no objection in principle, subject to the imposition of conditions restricting opening hours and to secure an appropriate lighting scheme. A condition can control potential noise from plant, PA's and tannoys etc.

The Environmental Health team expressed some concern regarding a 6am start and suggest this is tested on a trial basis only, however, given the location and nature of the pool use, on balance it is considered a 6am start would be acceptable for the duration of the proposal and is indeed comparable to gyms in the wider area. This earlier start also makes the development more accessible. A 7am start would be appropriate for the commercial uses. A 10pm closing time for the pool would be appropriate given this ties in with the hours of Yellowwave adjacent, and also other seafront attractions. There is no objection to an 11pm closing time for the commercial uses. See comments under 'crime prevention' below relating to size of A4 bar uses deemed appropriate here to prevent undue noise, crime and anti-social behaviour.

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

### **8.20 Sustainable Transport:**

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

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

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

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

#### **8.21 Other Considerations:**

##### Crime Prevention:

The NPPF and City Plan Policies CP12 and CP13 seek to ensure developments consider crime prevention.

In this relatively isolated seafront location crime prevention will be particularly important, and Sussex Police have identified measures that should be incorporated. Therefore submission of a Crime Prevention Strategy is recommended by condition. This could include Secure By Design certification. A balance will need to be struck to ensure that security measures such as fencing, CCTV etc do not comprise the visual amenity of the area.

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

#### **8.22 Sustainability:**

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

### 8.23 Viability

Policy CP7 seeks to ensure developments meet the demands they create for infrastructure. The council's Developer Contribution Technical Guidance is a material consideration and sets out formula for calculating financial contributions based on the impact of particular development types.

The applicant has submitted a Business Case which demonstrates that the viability of the scheme is marginal. This has been independently considered by the council's surveyors, who concur with the overall conclusion. The NPPF states weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case.

The applicants have not allowed for any S106 contributions (except for ecology) to mitigate the impact the development would have or to comply with planning policy. This would normally mean the development is unacceptable in planning terms as the impacts it creates should be appropriately mitigated, notwithstanding viability. In this exceptional case however, given its temporary nature and the wider regeneration and public benefits of achieving development here, it is considered that significantly reduced S106 contributions may be sought, rather than recommend refusal of the application.

On balance, contributions towards the council's Local Employment Scheme are not sought (£12,110 requested), given the wider economic aims that would be achieved by the development, which is a similar aim of the Scheme. A S106 obligation to encourage use of local labour and training will however still be pursued. A contribution of £3,500 for sustainable transport enhancement has been agreed, which would allow for some enhancement of sustainable transport in Madeira Drive (signage/cycling/pedestrian enhancement). This is considered a reasonable balance which should enable the scheme to proceed in this area in need of significant regeneration. In addition this is preferable to an alternative of additional commercial units (to make the scheme more viable) which would be unacceptable on other grounds. It is considered that this reduced contribution, in these very exceptional circumstances, would meet the relevant tests in that it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development.

### 8.24 Conclusion:

The proposed development is considered to bring significant benefits to an area which is in decline. It will help regenerate the area and boost tourism and the wider economy. There is an identified shortage of pool space in the city and the scheme will promote swimming and healthier life styles. The principle of locating the proposed 'enabling' commercial and sporting uses here on this part of seafront is considered acceptable. There is a general presumption against development directly on the beach, outside of the previously developed site, however there are other such examples like Yellowwave adjacent and on balance the wider benefits of the scheme are considered to outweigh the harm and loss of open space. The scheme would be built in an area of rare vegetated shingle habitat but would include satisfactory ecological mitigation and enhancement.

There are concerns regarding the overall scale/density and appearance of the scheme however the amount of development proposed is necessary to make the pool viable, and provision of this sporting facility is given significant weight. The scheme would cause harm to the special setting of listed buildings and the East Cliff Conservation Area, but this harm is exceptionally considered to be outweighed by the public benefits of the scheme and the fact any impacts will be only temporary. The developer is trying to do something different and exciting here and, on balance, approval is recommended.

## **9. EQUALITIES**

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

