

<u>No:</u>	BH2020/01018	<u>Ward:</u>	East Brighton Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	Former Peter Pan's Playground Site, Madeira Drive, Brighton BN2 1EN		
<u>Proposal:</u>	Application for variation of conditions 1, 3 and 23 of BH2019/00293 (as amended by BH2019/03686) to allow amendments to approved drawings to include reduced number of modular building units (from 107 to 74), increased overall floorspace (from 1372sqm to 1421sqm), enlarged swimming pool (from 25m x 12m to 50m x 12m) and to allow permanent consent for swimming pool and 10 year temporary consent for modular buildings (from previous 5 year temporary consent for whole scheme).		
<u>Officer:</u>	Wayne Nee, tel: 292132	<u>Valid Date:</u>	07.04.2020
<u>Con Area:</u>		<u>Expiry Date:</u>	02.06.2020
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Lewis And Co Planning SE Ltd	Lewis & Co Planning	2 Port Hall Road Brighton BN1 5PD United Kingdom
<u>Applicant:</u>	Sea Lanes Brighton Ltd	The Suite 1 Cedar Chase	Cross Lane Findon BN14 0US

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

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

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

Plan Type	Reference	Version	Date Received
Proposed Drawing	0018		22 June 2020
Proposed Drawing	0017		22 June 2020
Proposed Drawing	0016		22 June 2020
Proposed Drawing	0015		22 June 2020
Proposed Drawing	0014		22 June 2020
Proposed Drawing	0013		22 June 2020
Proposed Drawing	0006	B	22 June 2020
Proposed Drawing	0007	B	22 June 2020
Proposed Drawing	0008	B	22 June 2020
Proposed Drawing	0009	B	22 June 2020
Proposed Drawing	0011	A	7 April 2020
Proposed Drawing	0012	A	7 April 2020
Proposed Drawing	0005	A	7 April 2020

Proposed Drawing	0010	A	7 April 2020
Proposed Drawing	0003	A	7 April 2020
Proposed Drawing	0004	A	7 April 2020
Location Plan	0001		2 February 2019
Location and block plan	0002		2 February 2019

2. The development hereby permitted shall be commenced before 16 August 2022.
Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.
3. The modular building units hereby permitted shall be removed within 10 years from the date of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line first being brought into use or by 1st April 2032, whichever is the sooner, and shingle shall be replaced on the beach where the pool and flattened to match the surrounding beach.
Reason: The structures hereby approved are not considered suitable as a permanent form of development as their scale, height, siting, site coverage/density, design, colours and materials cause harm to the special historic character and appearance of the East Cliff Conservation Area and the setting of adjacent listed Madeira Terraces, Shelter Hall and Lift, to comply with policies SR18, HE3 and HE6 of the Brighton and Hove Local Plan and policies CP12, CP15 and SA1 of the Brighton and Hove City Plan Part One. Temporary permission has been granted exceptionally as at this particular time it is considered the public benefits of instigating regeneration of the area would outweigh the harm caused. Permanent permission is not considered appropriate because this area of the seafront is identified in the long term for comprehensive coordinated regeneration with permanent development which is sympathetic to its special setting, and to ensure the development does not prejudice the emerging plans for restoration and viability of the Madeira Terraces.
4. Within 12 months of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line hereby permitted first being brought into use the outdoor pool and associated ancillary facilities and retractable beach mat shall be implemented and completed ready for first use or alternatively the pool shall be implemented and ready for use by 1st April 2022.
Reason: To ensure the sports/leisure attraction element of the scheme is delivered to accord with policy SA1 of the Brighton and Hove City Plan Part One which primarily seeks to secure family and leisure based activities in this location, and in the interests of preserving the visual amenities of the area as the A1/A3/A4/A5/D2/B1 uses hereby permitted have only been justified as enabling development to support the viability of the leisure/sports attraction, to comply with policies SR18, HE3 and HE6 of the Brighton and Hove Local Plan and CP12, CP15 and CP17 of the Brighton and Hove City Plan Part One.
5. No development 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. 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.

7. No development (excluding excavation) shall take place until details (and samples where necessary) of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
 - a) 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. 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. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. No development 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.

- (a) No development 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.

20. The approved development shall provide an outdoor swimming pool with dimensions measuring no more than 50m x 12.5m.

Reason: The Local Planning Authority considers that additional site coverage could cause detriment to the special historic character and appearance of the East Cliff Conservation Area and the setting of adjacent listed structures, and for this reason would wish to control any future development to comply with HE3 and HE6 of the Brighton and Hove Local Plan and CP12 and CP15 of the Brighton and Hove City Plan Part One.

21. No development (excluding excavation) shall take place of each respective phase until a maintenance plan of the 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. The maintenance plan shall indicate how and when the external surfaces of the development shall be maintained, upgraded or replaced during the temporary period of development.

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.

Informatics:

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: ehl.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

- 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 and shingle 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 listed Madeira Terraces, Lift and associated buildings which have recently been upgraded to Grade II*, with the route of the historic Volks Electric Railway partly running

around it. The site is also located adjacent to the Volks Railway Site of Nature Conservation Interest (SNCI).

- 2.3. It was formerly cleared land with basic barriers/boundary treatment against the public highway and Volks railway route, beyond which the land is open beach. Recently the site has been in use with temporary structures as an interim exercise awaiting development of a permanent use.

3. RELEVANT HISTORY

- 3.1. **BH2019/03695** Retention of temporary buildings and erection of new temporary buildings to provide yoga and wellness studio, saunas, endless swimming pool and studio and changing rooms (D2 use), pop up beach bar (A4 use) and associated storage, plant and fencing, and use of land for general leisure/therapy use and pop-up events (D2/D1 uses) for a temporary period. (Extension of time period until 31 October 2021) - Approved 16/10/2020
- 3.2. **BH2019/03686** Non-Material Amendment to BH2019/00293 to amend the description to 'Temporary Planning Permission for erection of outdoor swimming pool and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-2 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat' - 05/02/2020
- 3.3. **BH2019/00293** Erection of outdoor swimming pool (25m x 12.5m) and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-2 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat. Temporary (meanwhile use) for 5 years - Approved 16/08/2019
- 3.4. **BH2018/02281** Erection of temporary buildings including first floor terrace to provide swimming training facility, sauna and changing facilities (D2 use), marketing suite/office (B1 use) and associated storage, plant and fencing, and use of land for general leisure/therapy use and pop-up events (D2/D1 uses) for temporary period of 12 months (Part retrospective) - Approved 31/01/2019
- 3.5. **BH2018/01973** (site included part of beach south of Peter Pan) Erection of outdoor swimming pool (25m x 12.5m) and changing/plant rooms (D2 use), flexible events space (D2 use) and 1-3 storey relocatable modular buildings with first floor deck to provide mixed leisure/retail/food/drink/office uses (D2/A1/A3/A4/A5/B1 uses) including second floor place markers and lifeguard observation unit, with associated cycle parking, refuse storage, landscaping, boundary treatment and retractable beach mat. Temporary (meanwhile use) for 5 years. Refused 19/12/18 - on grounds of adverse impact to ecology, siting on beach and harm to heritage setting.

- 3.6. **BH2016/01405** Erection of a single storey temporary structure for use as a theatre (Sui Generis) and food court (A3) from 9th of May until the 6th of September 2016 (retrospective). Approved 24/6/16.
- 3.7. **BH2011/01424** Erection of steel container for operation of cycle hire business for temporary period until 31 October 2011. (Retrospective). Approved 25/7/11.
- 3.8. Prior to 2000: Numerous applications approved for amusement and fairground ride related development, prior to amusements ceasing in approximately the year 2000.

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought for variation of conditions 1, 3 and 23 of BH2019/00293 (as amended by BH2019/03686) to allow amendments to the approved drawings to include a reduced number of modular building units (from 107 to 74), increased overall floorspace (from 1372sqm to 1421sqm), enlarged swimming pool (from 25m x 12m to 50m x 12m) and to allow permanent consent for a swimming pool, and a 10 year temporary consent for modular buildings (from previous 5 year temporary consent for whole scheme).
- 4.2. Application BH2019/03686 approved a non-material amendment to remove the dimensions of the outdoor swimming pool and the removal of the 5 year temporary period from the description. These details are instead secured by condition.
- 4.3. The original application BH2019/00293 granted permission for the erection of an outdoor swimming pool (25m x 12.5m) and associated modular buildings for a temporary (meanwhile use) for 5 years. The Committee Report noted that: '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'.
- 4.4. The application changes can be summarised as follows:
 - Allow permanent consent for swimming pool;
 - Increase in size of pool from 25m, to 50m length;
 - Temporary period of modular units increased from 5 year consent, to 10 years;
 - Increase size of modular units with an increase in overall floorspace from 1372 sqm to 1421 sqm, with the number of units reduced (from 107 to 74);
 - Alterations to fenestration and materials.
- 4.5. During the course of the application, the applicant submitted a Viability Assessment with supporting information in relation to the requirement for a proposed 10 year consent for the modular units. Minor amendments were also made to appearance of the modular units with a reduction in the amount of fenestration, and that glazing bars have been removed. Further comparative plans with the approved application were also submitted.

5. REPRESENTATIONS

Three (3) letters of representation have been received objecting to the proposed development for the following reasons:

5.1. Adversely affects Conservation Area

- No place for insensitive development or residential units spoiling the sea view
- Listed Building
- Question the suitability of the overall effect of such design adjacent historical arches and properties
- Inappropriate Height of Development
- Overdevelopment
- Question the need for so many buildings just for a swimming pool beach should be for public use not being sold/hired out to private companies
- Poor design
- Wood cladding looks shabby after a year by the sea

Three hundred and three (314) letters of representation has been received in support of the proposed development for the following reasons:

5.2. Good Design

- Seafront location would also be ideal for when sea swimming is not possible
- Help to fund much needed public realm improvements between Palace Pier and The Marina
- Great use of a run down area of the seafront
- The design is also contemporary but not out of keeping for the area
- Excellent contribution to health, fitness and leisure
- Extending the permission will presumably improve the viability of a scheme
- Positive, vibrant and fun addition to the city

5.3. Residential Amenity

- The other pools in the city are outdated and dilapidated
- Nearest 50m pool is currently almost 30 miles away in Crawley
- Improve the physical and mental health of the community
- Benefits being enjoyed by swimmers of all abilities and ages
- Creation of jobs for local people
- Increase tourism and the economy in the city.

5.4. Conservation Advisory Group object to the application for the following reasons:

- The Group recommends refusal - 10 votes for refusal. The 2 votes for approval given on condition that a five-year (not ten-year) permission for the modular buildings be allowed.
- The Group noted that since the previous permission was granted the Madeira Terraces now have Grade II* status.
- The design of the scheme has no connection with marine architecture that would be expected along Madeira Drive. It does not compliment the historic arches opposite.
- Views from Madeira Terraces when back in use will be interrupted by the two storey structures

6. CONSULTATIONS

External

6.1. **County Archaeology:** Comment

No recommendations to make in association with this specific application.

6.2. **County Ecologist:** No objection

No increased impacts anticipated. The proposed increased pool size will not impact any additional coastal vegetated shingle over that already identified, as the vegetated shingle in this location is the Yellowwave mound, the loss of which will be compensated through the S106.

6.3. The proposals to revise the modular buildings to the north of the Volks Railway are unlikely to have any significant additional impacts on the coastal vegetated shingle and the Volks Railway Local Wildlife Site, and may provide an opportunity for more than the previously agreed 371m². Given the importance of the habitat, it is recommended that any opportunities to increase the provision and protection of vegetated shingle within the scheme should be taken. It would be helpful if this information could be provided on a plan, as it is currently unclear.

6.4. It is recommended that the proposed variation can be supported from an ecological perspective.

6.5. **Historic England:** Objection

The comments made in relation to previous application remain relevant.

6.6. It should be considered whether the changes in the massing arrangement, particularly at first floor level, will impact on sea views and on the appreciation of the openness of this part of the seafront. Historic England also have concerns regarding the introduction of a large amount of new glazing in the scheme. The previous approved scheme had an utilitarian, marine character whereas this revised scheme, as a result of the additional glazing and its design, now has a more cluttered, portable office development type appearance.

6.7. In addition, the proposals seek to retain the modular buildings for 10 years which is a long time for structures that are of a temporary design to remain in place in this sensitive historic environment as well as potentially impacting on the regeneration proposals for this part of the seafront.

6.8. **Southern Water:** Comment

All comments in our response dated 26/02/2019 remain unchanged and valid.

6.9. **Sport England:** Support

Sport England, having consulted with Swim England previously, gave its full support to the proposal and Sport England consider that a permanent permission for the pool would contribute to its viability.

6.10. Therefore, Sport England would wish to support the proposed amendments.

- 6.11. **Sussex Police:** Comment from previous application BH2019/00293
Main concerns with this current application are the effectiveness of the perimeter security and CCTV systems when the premises are closed and how the occupants will manage control of all the various facilities to ensure there is no lapse in security.
- Internal
- 6.12. **City Regeneration:** Support
City Regeneration supports the proposed variation of conditions in this application.
- 6.13. Should this application be approved, due to the size of the development sqm it would be subject to certain obligations which would be included in a S106 agreement.
- 6.14. There will be a requirement for the developer or their contractor to submit an Employment & Training Strategy linked to the development.
- 6.15. Fuller details in respect of the strategy is included in the Main Comments section of this response.
- 6.16. **Environmental Health:** Comments from previous application BH2019/00293
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.
- 6.17. **Heritage:** Objection
Further comment following amendments/further information submitted
Significant development above ground floor level has consistently been discouraged. The recent revisions include a reduction in the number and size of windows and simplification of the glazing pattern, however there are still considerably more window openings than in the approved scheme. Reassurance over the proposed finish and robustness of the materials in the context of this exposed seafront environment is still sought, particularly in view of the increased length of time proposed for this temporary application. Full details of all materials, including their weathering performance in marine environments supported by a maintenance plan should be provided for consideration or required by condition.
- Original Comment
- 6.18. It is not considered that this scheme resolves the heritage concerns over the impact of the scale and density of the previous scheme on the heritage assets, in particular the setting of the recently upgraded II* Madeira Terrace. In addition, issues over the changes to the materials and design of the modular units are raised. As a result, the Heritage Team considers that the potential benefits to the Eastern Seafrot that could result from increased activity brought by this development would not outweigh the harm it would cause to the identified heritage assets, and cannot currently support this scheme.
- 6.19. **Planning Policy:** Comment

Consideration should be given as to whether the proposed permanent size and location of the 50m pool would harm the beach in qualitative terms in this location given adjoining uses and particularly as the proposed outdoor leisure activity would support the regeneration of this section of the seafront. It is important that the proposed permanent structure south of the railway is kept to the minimum required for pool operation to help retain a degree of openness.

- 6.20. Secondly, there will need to be consideration whether there are any further adverse impact upon the Volks Railway SNCI/Local Wildlife Site that need to be addressed compared with the permitted temporary scheme and the proposed ecological enhancement scheme which was to be secured through S106 agreement.
- 6.21. Thirdly the request for the temporary permission for the commercial units to be extended from 5 to 10 years alongside the larger, permanent pool raises issues in relation to the impact of a more permanent development on the special historic character and appearance of the East Cliff Conservation area and the setting of adjacent listed Madeira Terraces, Shelter Hall and Lift. The views of the Conservation Team should be sought.
- 6.22. 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 in accordance with the adopted City Plan Part 1 policy SA1 The Seafrot and Policy SSA6 of the Proposed Submission City Plan Part 2. It is recognised that the commercial development is required in order to enable the provision and operation of the pool.
- 6.23. In principle, the revised floor area and number of commercial units would be considered acceptable. It was previously accepted that a mix of retail units would help support the leisure use and help create a vibrant seafront but that 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.
- 6.24. **Seafrot Team:** No objection
The Peter Pan site has for decades been used for leisure purposes and the Council is keen to see this continue as such.
- 6.25. Installing a 50m permanent facility will help Sea Lanes to create a stand-out sports destination which will be unique attraction for open water swimmers and athletes from across the country. The investment required for a 50m permanent pool shows the commitment that Sea Lanes bring to developing this site with a sport and leisure focus.
- 6.26. The Team are satisfied with the applicant strategy and business model. Sea Lanes has already proven popular with the local community and is bringing more visitors to this area of the seafront. We strongly believe that Sea Lanes enhances the offer on Madeira Drive and may in fact have a positive impact on Madeira Terrace by driving footfall to the location.

- 6.27. **Sports Facilities Team:** No objection
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.
- 6.28. **Transport:** Objection
The Local Highway Authority (LHA) are unable to recommend approval of this variation of conditions application as the applicant is requesting for the swimming pool to be made permanent and double in length without providing a transport assessment. As the LHA have stated previously in the temporary use application BH2019/03686, "for a development of this scale, the LHA 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. For any future application for a permanent venue, the LHA would expect to see a full Transport Assessment as required by Brighton & Hove City Plan Part One policy CP9"
- 6.29. It is also noted that the increase in length to a professional sized swimming pool will likely increase the site's appeal and number and type of trips to the site.

7. MATERIAL CONSIDERATIONS

- 7.1. 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
- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove Local Plan 2005 (retained policies March 2016);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
 - Shoreham Harbour Joint Area Action Plan (adopted October 2019).
- 7.3. 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.

8. RELEVANT POLICIES & GUIDANCE

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part Two (Draft)

Policies in the Proposed Submission City Plan Part 2 do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the

Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications. The weight given to the key CPP2 policies considered in determining this application is set out below where applicable.

DM18	High Quality Design & Places - Limited weight
DM20	Protection of Amenity – significant weight.
DM37	Green infrastructure and nature conservation - Limited weight
DM39	Development on the Seafront - Significant Weight
DM43	Sustainable Urban Drainage - Significant weight
DM44	Energy Efficiency and Renewables - Limited Weight
SSA6	Former Peter Pan Leisure Site (adjacent Yellow Wave), Madeira Drive - Significant Weight

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
SA6	Sustainable Neighbourhoods

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

TR4	Travel plans
TR7	Safe Development
TR14	Cycle access and parking
TR15	Cycle network
TR18	Parking for people with a mobility related disability
SU3	Water resources and their quality
SU5	Surface water and foul sewage disposal infrastructure
SU9	Pollution and nuisance control
SU10	Noise Nuisance
QD5	Design - street frontages
QD15	Landscape design
QD18	Species protection
QD25	External Lighting
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
SPD14	Parking Standards

Background Documents:

- Sports Facilities Plan 2012-2022
- Madeira Drive Regeneration Framework
- Draft Seafront Strategy 2012
- Local Wildlife Sites Review 2018 (updated 2020)

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the acceptability varying conditions 1, 3 and 23 of BH2019/00293 to allow amendments to include reduced number of modular building units (from 107 to 74), increased overall floorspace (from 1372sqm to 1421sqm), enlarged swimming pool (from 25m x 12m to 50m x 12m) and to allow permanent consent for swimming pool and 10 year temporary consent for modular buildings.
- 9.2. The main considerations in the determination of this application relate to the impact to ecology and biodiversity, developing on the open shingle beach, 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/leisure provision in the city, highway impact, and the impact to amenity.

Planning Policy:

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

- 9.5. City Plan Part 1 (CPP1) 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.
- 9.6. CPP1 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.
- 9.7. Policy SR18 of the Brighton and Hove Local Plan is relevant as it relates to seafront recreation. This states that new recreation facilities which are related to seafront/coastal activities will be permitted on the seafront provided that:
- (i) There will be no development onto the beach;
 - (ii) The importance of the seafront and beach as an open space is not undermined;
 - (iii) Any development does not have a detrimental impact on strategic views along the coastline;
 - (iv) The development makes a considered response in its design to the visual and environmental character of the stretch of seafront to which it relates, supported by a design statement which addresses that character;
 - (v) The development does not have a harmful impact on the amenity of local residents and the seafront due to noise, disturbance and light pollution;
 - (vi) The development will not result in the significant generation of car borne journeys, nor additional pressure for car parking;
 - (vii) The development will not have an adverse impact on the setting of important seafront buildings;
 - (viii) The development does not have an adverse impact on nature conservation interests; and
 - (ix) Any development enables the beach and seafront to be accessible to all.
- 9.8. 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.
- 9.9. Policy DM39 of CPP2 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.
- 9.10. A strategic objective of the council reflected in the adopted City Plan Part 1 (SO17) is to enhance the seafront as a year round place for sustainable tourism, leisure, recreation and culture whilst protecting and enhancing the quality of the coastal and marine environment.

Principle of Development:

- 9.11. The site is a previously vacant concrete hardstanding area on the seafront which was rather unsightly. Therefore the principle of bringing the site back into use is considered positive in principle. Previously, the site did not contribute to the use of the wider open space or public realm of the seafront, and visually detracted from the area. The introduction of new uses which help draw people to the area and give the area a boost are therefore welcomed. Further, the principle of development was established under the previous consents granted on this site. Planning permission was approved in August 2019 for a 25m heated open air pool and commercial 'enabling' development for a temporary 5 year period. This permission has not been implemented. Permission was granted in January 2019 for a temporary use of the site for a 12 month period (BH2018/02281), and was subsequently extended with the further granting of planning permission (under application BH2019/03695)

Permanent Consent and Increase in Size of Pool from 25m to 50m Length:

- 9.12. In principle, the proposal to provide a permanent, larger outdoor pool accords with Policy SA1. It would deliver a sports-based activity in a location where this is encouraged, and there is an identified shortage of swimming pools in the city. The proposal would contribute towards the council aspiration to promote healthier lifestyles. Sport England support the proposal. The proposal for swimming in this location links back to Brighton's history as a bathing resort and is considered an appropriate seafront use. The proposed pool use would add to the overall visitor offer of the seafront and help boost tourism and the economy, as sought by policy. The proposal could operate all year round, which reduces the seasonality. The positive benefits of the proposed pool are therefore given significant weight. However the provision of a permanent, larger needs to be balanced against a number of key policy considerations.
- 9.13. Given its location directly on the beach 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.
- 9.14. Although the location of the pool south of the Volks railway does conflict with these policies, the principle of the development here was established by granting planning permission under BH2019/00293. Consideration was given that the area north of the railway was not sufficient to accommodate the development. Also, exceptions have been made in a similar circumstance where a significant public benefit is

delivered, most notably the permanent development nearby at Yellowwave as well as other established leisure uses south of Madeira Drive (including Peter Pan playground, Adventure Golf and Volks Railway sheds).

- 9.15. In this particular location the beaches are wide and a substantial amount of open beach will remain surround the site. The proposed structures south of the railway are kept to the minimum required for pool operation to help retain a degree of openness. The impact upon the Volks Railway SNCI/Local Wildlife Site, and the impact on transport, is considered in this report below.
- 9.16. The location of the swimming pool would be at the top (north) of the beach to sit in line with the curtilage of Yellowwave and reduce the loss of public open space. It is considered that this location of the pool would reduce the impact on open space and in this instance the loss of public space is considered acceptable.
- 9.17. Sport England have noted that they consider a permanent permission for the pool would contribute to its viability. The Council's Seafront Team and Sports Facilities Team support the application as it improves the provision of swimming and a 50m permanent facility will create a stand-out sports destination which will be unique attraction. Public consultation suggests that in the city there is a strong desire from the more serious swimmers and swimming clubs for a 50m pool in the city. The Sports Facilities Team state that providing a 50m pool for competitive and more accomplished swimmers would support in meeting the request from individuals and clubs and would help to provide pathways for more talented athletes.
- 9.18. On balance, it is considered that the positive benefits of a permanent swimming pool of increased size in this location are considered to outweigh the limited harm caused in this instance by way of development on this part of the beach.

Temporary period of modular units increase from 5 year consent to 10 years:

- 9.19. The application also seeks the temporary consent for the commercial units to be increased from 5 years to 10 years. As approved under permission BH2019/00293, a significant amount of commercial 'enabling development' is required in order to operate the pool and make it financially viable. It is recognised that certain sport facilities, and swimming pools in particular, require significant resources. It was considered in application BH2019/0293 that the proposed commercial units would add vibrancy to the area, help attract visitors and boost the wider economy, as well as creating jobs. The City Regeneration team have in this application welcomed the creation of around 70 new jobs and opportunities for the local community.
- 9.20. The Planning Statement accompanying the planning application indicates the need for a permanent consent for the swimming pool is to enable the development to be funded. As per the previous consent, the applicant has submitted a Viability Assessment which outlines how marginal the viability of the scheme is and why the amount of enabling development is required. On this basis the enabling development is considered acceptable in principle as an exceptional case. The area is clearly in need of upgraded development and the proposal would add much needed vibrancy and vitality to this declining area. The proposal will introduce something a unique facility for the seafront and the city and this is welcomed. Weight

is also given to the fact that, despite the proposed increase to 10 years, the modular buildings would still be a temporary scheme only.

- 9.21. The request for the temporary permission for the commercial units to be extended from 5 to 10 years alongside the larger, permanent pool raises issues in relation to the impact of a more permanent development on the special historic character and appearance of the East Cliff Conservation Area and the setting of adjacent listed Madeira Terraces, Shelter Hall and Lift. The Council Heritage Team and Historic England object to the application (as was the case for the approved application BH2019/00293). The impact of the extended temporary permission for the modular buildings on the special historic character and appearance of the East Cliff Conservation Area and the setting of adjacent heritage assets is therefore an important consideration for the proposed increase in the temporary period of consent.
- 9.22. The viability assessment has been independently reviewed, and it has been confirmed that a 10 year period for use of the temporary modular buildings is essential for the developer to recover their project costs with a reasonable level of profit based on a target rate of 20% profit on cost.
- 9.23. The approved application secured a condition to ensure the enabling uses are closely related to delivery of the pool, and to ensure the pool is delivered within 12 months of the commercial uses first being brought into use. Overall, it is considered that the principle of increasing the temporary period of modular units to 10 years is appropriate, subject to the weight given to the viability of the scheme against the impact on heritage set out below.

Increased size of modular units with an increase in overall floorspace from 1372 sqm to 1421 sqm, with the number of units reduced (from 107 to 74):

- 9.24. Generally, the proposal has a similar form and scale to that of the approved scheme. A comparison of the site coverage of the two schemes indicates that they are broadly comparable at ground floor level. The ancillary facilities such as changing rooms and toilets have been increased in size based on the new pool size. There is 351sqm floorspace at first floor level in comparison to 308sqm in the approved scheme. The total area of modular buildings is proposed to increase to 1421m² (by 49m²). The applicant has clarified that only 8m² of this is for commercial buildings, the remainder being plant, toilets, bin storage and cycle storage.
- 9.25. In the scheme there are now fewer modular buildings (74 instead of 107 units), which the applicant states is achieved by using 3m wide units instead of 2.4m wide units. The revised layout provides wider views through the gaps between the groups of modular buildings, with 6 metres wide gaps now proposed (previously 4.6 to 5.4 metres).
- 9.26. The revised floor area and number of commercial units is considered acceptable in principle and would still help support the leisure use with a mix of commercial units.

Design, Appearance and Impact on Heritage: Context:

- 9.27. Policy HE6 states that proposals that are likely to have an adverse impact on the character or appearance of a conservation area will not be permitted. Policy CP15 states that the council will ensure that the city's built heritage guides local distinctiveness for new development in historic areas and heritage settings.
- 9.28. In considering whether to grant planning permission for development which affects a listed building or its setting, the Council has a statutory duty to have special regard to the desirability of preserving the building or its setting (in this case the Madeira Terraces, Shelter Hall and Lift and Banjo Groyne) or any features of special architectural or historic interest which it possesses. Moreover, when considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area (in this case East Cliff CA).
- 9.29. Case law has held that the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, and the desirability of preserving or enhancing the character or appearance of a conservation should be given "considerable importance and weight".
- 9.30. 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.
- 9.31. 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.
- 9.32. 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.
- 9.33. 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.”

- 9.34. 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.”
- 9.35. 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.

Proposed 10 year temporary permission for Modular Buildings:

- 9.36. The request for the temporary permission for the commercial units to be extended from 5 to 10 years alongside the larger, permanent pool raises issues in relation to the impact of a more permanent development on the special historic character and appearance of the East Cliff Conservation area and the setting of adjacent listed Madeira Terraces, Shelter Hall and Lift.
- 9.37. The comments made by Historic England and the council's Heritage Team have been made in the context of current policy and guidance. In considering the approved application BH2019/00293, the Heritage Team considered that the overall density was too great and that the development should be predominantly single storey and concluded that the potential benefits to the Eastern Seafront that could result from increased activity brought by this development would not outweigh the harm it would cause to the identified heritage assets and could not support that scheme.
- 9.38. As proposed in this application, the Heritage Team remain concerned about the two-storey development. The changes to the unit sizes has resulted in alterations to the fenestration and use of corrugated steel cladding which the Heritage Team have considered unsuccessful. Based on this, the Heritage Team consider that the scheme does not resolve the scale and density issues previously raised, and given the increased timescale proposed, the public benefit would not outweigh the harm it would cause to the identified heritage assets, in particular the setting of the recently upgraded Grade II* Madeira Terrace.
- 9.39. Historic England supported the principle of a leisure-based activity on this site in the previously approved application BH2019/00293., however raised concerns regarding the impact of the proposal on the current openness and relationship with heritage assets and the seafront, including the scale and visual impact. It was stated

that a less harmful approach would see single storey development that sits below the canopy of Madeira Terrace, maintaining the distinctive openness of this part of the seafront and the uninterrupted views of the sea and Palace Pier from all levels. They noted that if the council are minded to approve the scheme as submitted they think this would result in more harm to the significance of the designated heritage assets but also think that harm would remain as less than substantial but at the higher end of that scale.

- 9.40. In response to this application, Historic England raise concerns over the massing arrangement, the large amount of new glazing (which has since been reduced with amended plans), and note that retaining the modular buildings for 10 years is a long time for structures of a temporary design to remain in place in this sensitive historic environment, as well as potentially impacting on the regeneration proposals for this part of the seafront.
- 9.41. NPPF paragraph 196 advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The weighing should only be carried out once satisfied that harm has been avoided or minimised to the greatest extent possible by design of the development. It is the remaining harm after such a process that should be weighed against the public benefits of the proposal.
- 9.42. Given the concerns regarding the scale of the development and impact to heritage assets, the merits of the proposal are considered to be finely balanced. It is considered that given the substantial decline of this area of the seafront and its current state of flux, the development could have a positive impact, for a temporary period, 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. In the short term, 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.
- 9.43. As was considered in the approved application, 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 that the harmful element (the modular buildings) would still be temporary only (and thus harm would be minimised and ultimately reversible). It is considered that there is clear and convincing justification for the scheme, as required by para 194 of the NPPF. It is considered that the degree of harm caused would be less than substantial and that the positive public benefits of the scheme would outweigh the harm caused, as required by para 196 of the NPPF. It is therefore that on a fine balance the reasons for objection by reason of design, scale, density, height and colour are considered have been overcome.
- 9.44. 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 proposed development north of Volks Railway would remain a temporary scheme, and in the long-term, permanent development here would need to carefully consider the

special setting and future viability of the Terraces, and to ensure the retention of sea views, retention of the prominence of the listed structures and the height of the middle promenade. Quality of design and materials in a permanent scheme would also be important.

Alterations to fenestration and materials:

- 9.45. The increased unit size simplifies the site elevations. Some of the weatherboard cladding of the previous scheme has been removed and corrugated steel cladding is now proposed, and the Heritage Team seeks reassurance over the proposed finish and longevity of this material. Details of materials and maintenance during the temporary period are recommended to be conditioned.
- 9.46. Amended plans were submitted to the Council which showed revised details for fenestration that have reconfigured and reduced the number and size of windows/doors within the scheme. This has significantly reduced the amount of glazing on the units, and along with the removal of glazing bars, improves the appearance of the scheme. The materials have also been simplified, with the same materials used at ground and first floor levels on each unit. Subject to condition for details of materials and assurance that that they will be maintained, the alterations are considered acceptable.

Impact on Ecology and Biodiversity:

- 9.47. 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.
- 9.48. The site is adjacent to the Volks Railway Local Wildlife Site (LWS or Site of Nature Conservation Importance), designated for its coastal vegetated shingle habitat. The site of the pool is on a vegetated shingle habitat mound created to mitigate the impact of the adjacent Yellowwave development. 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.

- 9.49. In the approved application BH2019/00293, it was considered that an exception can be made given the wider benefits of providing a pool in this location 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) are secured via the existing S106.
- 9.50. The potential ecological impacts were carefully considered with the approved application BH2019/00293. The conditional permission included provision for off-site mitigation for the loss of vegetated shingle including 246 sqm green vegetated roof and 371 sqm of ecology habitat enhancement to be secured through s106 agreement. The scheme also included proposed green roofs to reduce surface water runoff, to provide together with protected pockets of vegetated shingle on site, ecological enhancement.
- 9.51. The Planning Statement indicates that they have been 'advised that the additional length of the pool will not have any additional ecological impact as all of the vegetated shingle is already being relocated as part of the approved scheme for the 25 metre pool.'
- 9.52. The site area is not changing, and so given the original application already approved the removal of all existing habitat within the site area, there is no change to the amount of habitat that is being relocated. Consequently, the mitigation measures already approved (relocation of habitat, and provision of green roofs) remains for the revised scheme.
- 9.53. The County Ecologist has noted that the proposed increased pool size will not impact any additional coastal vegetated shingle to that already identified and supports the proposed amendments in this application. On the basis of the ecological scheme in the approved application, which outlines a scheme to replace the vegetated shingle mound off-site and enhances the habitat on site, the proposed amendments proposed amendments to the scheme can be supported from an ecological perspective.

Impact on Amenity:

- 9.54. Policy QD27 of the Brighton & Hove Local Plan, along with emerging Policy DM21 of CPP2, state 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.
- 9.55. The area already has a degree of activity number of commercial and leisure uses. Given the location of the proposal on the seafront the nearest residential properties are some distance away so are unlikely to be unduly affected by the development.
- 9.56. As considered under approved application BH2019/00293, the type of uses proposed could give rise to potential general noise and disturbance. Hours of opening, noise from plant, PA's and tannoy etc, and external lighting are controlled by existing conditions which would be carried forward in this permission. An existing

condition also secures a Construction Environmental Management Plan (CEMP) to mitigate construction impacts.

Sustainable Transport:

- 9.57. 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.
- 9.58. It is considered the proposal would not result in undue pressure for travel and would comply with planning policy which seeks to promote sustainable modes. The site is well placed to take advantage of existing car parking, cycle parking and walking networks. Some of the trips to the site are anticipated to be linked trips given its seafront location. It is considered the existing transport infrastructure is appropriate to serve the demand created by this temporary scheme. Public events may give rise to people congregating at one time, however, the site is already located within an event space (in Madeira Drive) and is not of the scale that would give rise to significant numbers of visitors.
- 9.59. 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. The cycle provision within the application on site (an increase from 52 to 62 spaces) is welcomed and encourages use of sustainable modes.
- 9.60. In terms of the proposed increase in size of the pool, the applicant has stated that swimming pool will always be set out with lane dividers, and so doubling the length of the lane would not doubles the amount of swimmers using it at any one time. The potential for additional numbers of swimmers within the larger pool is therefore limited due to the space required between and alongside each swimmer. The applicant has also stated that there is no intention for the swimming pool to host competitive swimming events.
- 9.61. It is therefore considered the overall number of visitors to the swimming pool (as well as the number of visitors to commercial units) are unlikely to significantly increase from that of the approved scheme.
- 9.62. The existing s106 secures a financial contribution towards enhancement of sustainable transport, and takes into account the marginal viability of the scheme. The approved application BH2019/00293 states that this sum could go towards enhanced signage/cycling/pedestrian facilities in Madeira Drive and could add to the bike share scheme.
- 9.63. A existing condition secures a CEMP to mitigate construction impacts and ensure highway safety is not compromised.

Other Matters:

Developer contributions:

- 9.64. No further developer contributions are sought other than those already secured within the existing s106 of approved application BH2019/00293.

Archaeology:

- 9.65. The site is situated within an Archaeological Notification Area, however the County Archaeologist has no objections as it is not believed that any significant archaeological remains are likely to be affected by these proposals. A condition is attached to ensure this is the case.

Crime Prevention:

- 9.66. In the approved application BH2019/00293, Sussex Police 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. A condition was also required 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.

Sustainability:

- 9.67. In the approved application BH2019/00293 it was considered that as the proposal involves modular temporary buildings, it would not be reasonable or practically possible to secure BREEAM 'excellent' 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.

Conclusion:

- 9.68. It is recognised that certain sport facilities, and swimming pools in particular, require significant resources. It is also recognised that the commercial development is required in order to enable the provision and operation of the pool. It was considered in application BH2019/0293 that the proposed commercial units would add vibrancy to the area, help attract visitors and boost the wider economy, as well as creating jobs.
- 9.69. It is considered that in principle the proposed permanent larger outdoor swimming pool broadly fits the emerging seafront strategy and priorities for the seafront and the site specific allocation in the Proposed Submission City Plan Part 2. 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 in accordance with the adopted City Plan Part 1 policy SA1 The Seafront and Policy SSA6 of the Proposed Submission City Plan Part 2.
- 9.70. The potential ecological impacts were carefully considered with the approved application BH2019/00293 and are unchanged here.
- 9.71. The viability assessment confirms that a 10 year period for use of the temporary modular buildings is essential for the developer to recover their project costs. The positive public benefits in terms of increased footfall here and wider regeneration benefits have also been highlighted. On balance, it is considered that the positive benefits of a permanent swimming pool and increased time period for the modular

buildings here are considered to outweigh the policy conflict in this instance and the overall harm caused.

- 9.72. Condition 1 is updated to include new plans
- 9.73. Condition 3 is to be varied with the following wording:
'The outdoor pool and all structures hereby permitted shall be removed within 10 years from the date of the A1/A3/A4/A5/D2/B1 uses north of Volks Railway line first being brought into use or by 1st April 2032, whichever is the sooner, and shingle shall be replaced on the beach where the pool and flattened to match the surrounding beach.'
- 9.74. Condition 23 is to be varied with the following wording:
'The approved development shall provide an outdoor swimming pool with dimensions measuring 50m x 12.5m.'
- 9.75. The other conditions previously applied must be revised and updated where necessary.

10. COMMUNITY INFRASTRUCTURE LEVY

- 10.1. Under the Regulations of the Community Infrastructure Levy (CIL) 2010 (as amended), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning applications on and from the 5 October 2020. This is a minor material amendment to the approved scheme and the buildings are proposed for a temporary period and is therefore not CIL liable.

11. EQUALITIES

- 11.1. The site has largely level access. There is only staircase access to upper floors.
- 11.2. The inclusion of ramp access, accessible changing area and pool hoist are welcome additions to ensure the facility is accessible to all users.

