

Planning Committee

Application Address	Prom Diner, Undercliff Drive, Bournemouth BH5 1BN
Proposal	Provision of a seasonal beach (pop up) offering that will provide seating and areas for the public to use as part of the Prom Diner existing offering. The proposal includes the installation of removable structures such as decking, a container and timber structures – Regulation 3
Application Number	7-2023-15059-V
Applicant	BCP
Agent	Mr Paul Richardson
Ward and Ward Member(s)	Boscombe West:- Cllr Canavan Cllr Martin
Report Status	Public
Meeting Date	16 November 2023
Summary of Recommendation	GRANT in accordance with the details set out below
Reason for Referral to Planning Committee	The Head of Planning Services considers that the proposal should be considered by the Planning Committee given the recommendation to approve and the decision made in respect of a similar proposal at the Sandpiper Café on the West Cliff Promenade (7-2023-15059-X) at the September 2023 planning committee
Case Officer	Steve Davies
Is the proposal EIA Development?	No

Description of Proposal

- As submitted, the planning application sought planning permission for the “Provision of a seasonal beach (pop up) offering that will provide seating and areas for the public to use as part of the Prom Diner existing offering. The proposal includes the installation of removable structures such as decking, a container and timber structures – Regulation 3”. This is to facilitate provision of an extended outdoor seating area to serve the Prom Diner.
- Essentially, as submitted, planning permission was sought for an area measuring 30m wide x 15m deep on the beach with an “L” shape deck with the remaining area as sand. This area would have facilitated provision of the following:

2 shipping containers	Positioned along the west site boundary on the decking
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	projecting tangentially from the promenade and facing eastwards to provide a servery and storage.
Timber pergola/cabana structures	Positioned along the southern boundary on the sand and towards the centre of the site to provide covered outdoor seating
Ramp	Positioned alongside the promenade to provide disabled access to the decking
Tables, chairs and parasols	Moveable and not development
Timber post and rope fence to enclose site	Although low boundary screening is normally permitted development the fencing is an integral part of the decking proposal and the change of use of the land requires planning permission..

- 3 Since submission of the planning application, work had commenced on site. On this basis, the works in respect of the decking and containers were retrospective at the time. However, everything has now been removed as the summer season has finished.
- 4 Notwithstanding, an amended plan now forms part of the application with the timber decking retained but with the following changes:

Only 1 container	but this will now be clad in a vinyl wrap positioned adjacent to the promenade
Timber pergola/cabana structures	Cabanas removed but entrance feature comprising timber frame and entrance signage introduced
Ramp	Retained
Tables, chairs and parasols	Retained
Timber post and rope fence to enclose site	Retained

Description of Site and Surroundings

- 5 Seafront and beach location. The application site is in front of an existing long-standing café some 170m west of Boscombe Pier.

Relevant Planning Applications and Appeals:

- 6 Long established Beach Café/Kiosk which did not require formal planning permission at the time.
- 7 App no 7-2021-4982-Z - Approval in 2021 to "Erect a timber deck on the beach attached to the promenade opposite Urban Reef" on the beach near to the Overstrand.

Similar proposals have also been approved at the West Beach Café (app no 7-2022-19168-Q) and at Durley Chine (app no 7-2023-5155-F).

Also similar proposal at the Sandpiper Café on the West Cliff Promenade (7-2023-15059-X) submitted by the Council seafront services was refused at the September 2023 planning committee

Constraints

- 8 The following constraints have been identified.
- Flood zone 3;
 - The beach has an open space allocation and falls within the remit of policy CS31.

Public Sector Equalities Duty

- 9 In accordance with section 149 Equality Act 2010, in considering this proposal due regard has been had to the need to —
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Other relevant duties

- 10 In accordance with section 40 Natural Environment and Rural Communities Act 2006, in considering this application, regard has been had, so far as is consistent with the proper exercise of this function, to the purpose of conserving biodiversity.
- 11 For the purposes of this application, in accordance with section 17 Crime and Disorder Act 1998, due regard has been had to, including the need to do all that can reasonably be done to prevent, (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area; and (c) re-offending in its area. In this case the site will be subject to normally licencing conditions which would help to control and anti-social behaviour.
- 12 For the purposes of this report regard has been had to the Human Rights Act 1998, the Human Rights Convention and relevant related issues of proportionality.

Consultations

- 13 Environment Agency – no objection on the basis that a Flood Warning and Evacuation Plan will be in place and operated by and in accordance with the Council's Seafront Operations Management.
- 14 Council Tourism Team – the application is promoted by the Tourism Team and therefore they have not commented as consultee.
- 15 BCP Coastal Engineers (Flood and Coastal Erosion Risk Management) – Response received advising that there is no statutory consultation requirement on minor developments such as this. However, they will on occasion provide advice on flood risk and drainage matters. Providing the proposals do not alter how surface water currently drains, there are no issues relevant to the remit of the Local Lead Flood Authority in relation to flooding and they have no further comment to provide.

With regard to coastal erosion

“With regards to the seawall, I would reiterate our standing guidance that the seawall itself cannot be expected to have any residual life given that it is over a century old. It is in varied condition along its length, but many sections are life expired and hence the use of beach

replenishment to provide the primary flood defence. We do not have any up to date condition surveys of much of the seawall given that it is buried under the sand. Any additional loads or stresses placed on the seawall are likely to lead to damage, particularly during storm events when any fixings to it are likely to place stresses and loads on it that it will not have been designed for. This would particularly be the case if large tides and waves mobilise the beach below during a large storm.

I therefore strongly object to any structures being attached to the seawall; they should be fully self-supporting and braced appropriately to prevent movement and withstand loading from the sea. Any entrance/ walkways to adjoining structures (seawall/ promenade, existing decking) should equally not be affixed either and should be designed to allow for the structure to move independently to the adjacent structures (seawall/ promenade and existing decking).

I would also note that as per the standing guidance, it is the owners responsibility to clear any damage that may arise to their structures as part of storms, and that if they do fix any part to the seawall that they are liable for repairs in the event of any damage (during operation or through storm damage from this fixing)."

- 16 Biodiversity Officer – previous comments regarding lighting and effect on bats dealt with by condition set out below.
- 17 Environmental Health – the site does not appear to have previously or during this summer raised any environmental health issues. As the proposal is on the promenade and not close to residential properties there are no significant noise nuisance issues that would require assessment by the Environmental Health Officer.
- 18 Highway Officer – The LHA raises no objections. Delivery times are restricted along the promenade in order to protect pedestrian safety during peak times. The introduction of a further offering that will require deliveries and servicing along the seafront is not considered to adversely affect pedestrian safety.

Representations

- 19 Site notices were posted in the vicinity of the application site with an expiry date for consultation of 19/7/23.
- 20 No representations have been received from the general public.

Key Issues

- 21 The main considerations involved with this application are:
 - Impact on character and appearance of the area;
 - Loss of open space;
 - Impact on amenity;
 - Impact on the coastal engineering and flood risk;
 - Noise;
 - Biodiversity.
- 22 These points will be discussed as well as other material considerations below.

Planning Policies

23 **Bournemouth Local Plan Core Strategy (2012)**

CS1: NPPF and Sustainable Development
CS4: Surface Water Flooding
CS6: Delivering Sustainable Communities
CS18: Increasing Opportunities for Cycling and Walking
CS29: Protecting Tourism and Cultural Facilities
CS30: Green Infrastructure
CS31: Recreation, Play and Sports
CS38: Minimising Pollution
CS41: Quality Design

24 **Bournemouth District Wide Local Plan (2002)**

Policy 3.28: Flooding

25 **Supplementary Planning Documents:**

Public Realm Strategy: Guiding Principles - SPD

26 **The National Planning Policy Framework (2023)**

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and is a material consideration in planning decisions.

Including the following relevant paragraphs:

Section 2 – Achieving Sustainable Development;

Paragraph 11 –

“Plans and decisions should apply a presumption in favour of sustainable development.

For **decision-taking** this means:

- (c) approving development proposals that accord with an up-to-date development plan without delay; or
- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework taken as a whole.”

Section 6 – Building a strong, competitive economy;

Section 7 – Ensuring the vitality of town centres;

Section 8 – Promoting healthy and safe communities;

Section 12 – Achieving well-designed spaces;
Section 14 – Meeting the challenge of climate change, flooding and coastal change;
Section 15 – Conserving and enhancing the natural environment.

Planning Assessment

Key Issues

Principle of development

- 27 The general principles of the core strategy seek to ensure sustainable communities through good quality development, support for tourism and protecting spaces for recreation, walking and general enjoyment. In particular Policy CS31 states that planning permission will be refused for development that results in the loss of public and private open space. This is a key policy for the protection of public open space. However, in my view the proposal is not considered to result in the permanent loss of open space, and this is discussed in more detail below. Another key issue is the economy and the tourism function. The proposal will support tourism as set out in policy CS29. Food and beverage outlets have always been located on the beach front together with the shopping areas in the retail centres offering a different and complementary offering.
- 28 On the basis of the above, and notwithstanding the issue of open space as discussed below, the proposal is considered acceptable in principle and in accordance with policy CS6 of the Core Strategy by maintaining a balance in development opportunities whilst protecting key facilities.

Impact on character and appearance of the area

- 29 The proposed decking and ancillary items for the Prom Diner food and beverage operation is located on the beach to the west of and about 170m from Boscombe Pier. It is beyond the Pier and the other side of the Overstrand which are both in the heart of the really busy part of the beach. Tourists tend to cluster around the Piers and the parts of the beach in between have a slightly different character.
- 30 The Urban Reef restaurant and other parts of the beach have had decking areas in place for many years and have been able to offer outdoor dining (see para 7 above). It is considered that generally the approved decked areas, and that proposed in this application, contribute to the tourist function of the seafront area particularly during the summer period. Therefore the proposed decking areas would enhance and complement the character and appearance of this area.
- 31 However, for the more recent applications the deck areas have included additional structures such as kiosks, bar areas and canopies and the applicant is also proposing similar structures on the decking in this case. Similar proposals have recently been approved at the West Beach Café (app no 7-2022-19168-Q) and at Durley Chine (app no 7-2023-5155-F), but those areas are very close to the pier and pier precinct and chines which are busy tourist hotspots in the summer with a much busier character.
- 32 One of the main concerns with the provision of these structures is that as these are on the sand part of beach, they will be visually intrusive as they project out beyond the promenade and interrupt coastline views. As submitted, the original proposal was for 2 containers set perpendicular to the promenade projecting towards the sea. The huts were orientated

eastwards with the backs of the huts readily visible. These were considered to be visually overly intrusive as they projected out onto the more open part of the beach.

- 33 Following concerns raised with the applicant the proposal has been amended and is now for only a single kiosk structure close to the promenade. The proposal is still to retain a metal container structure but it will be wrapped in vinyl to reflect the branding of the prom diner. It is considered that the design should be subject to agreement, which could form the basis of an appropriately worded planning condition if planning permission is granted (see recommended condition below). In the summer when the area is busy with lots of tourists and there is other paraphernalia on the beach, the structures are considered to be acceptable. On other much quieter areas away from the piers and chines and zig zags this might not be acceptable. However, this area falls between the busy and quiet parts of the beach and as there is already a café here it is considered to be reasonable to accept some limited structures on the beach. Nevertheless, during the winter when the outdoor dining area is less attractive and less used the structures would be more intrusive. On this basis, a planning condition is recommended, if planning permission is granted, to remove any structures on the decking from September until the following April.
- 34 It is also considered appropriate to ensure that the decking is only in situ for a temporary period. The decking area is principally made of timber and supported on a frame hidden by timber casing. Although the appearance of the decking is considered acceptable at the moment, it could become untidy and unsightly overtime especially if the replenished sand recedes. This is a particularly prominent and important location, and a temporary planning permission would help to retain a degree of control over the proposed development, should the appearance of the decking deteriorate in this location where severe weathering can occur.
- 35 On the basis of the above, subject to the planning conditions as outlined, the proposal is considered to accord with planning policy CS41 in respect of design and visual amenity.

Loss of Open space

- 36 The loss of open space was a key issue in respect of the recent refusal on the West Beach Promenade. This is because when the decking is in place during the summer and the premises are trading the area is only available to the patrons of the café. However, it is considered that it is important to reiterate that this is not a permanent loss as during the winter when the parasols, containers etc are removed the decking is available to anyone. Alternatively if it is removed for operational reason the beach is regained. So it is not a permanent loss of open space but during part of the year it is not fully available when the café is busy and customers are using the deck.
- 37 Given the amount of beach area available and as there are already other concessions on the beach it is considered that it would be difficult to sustain an objection to the proposal in the current circumstances especially when balanced against the tourism benefits. Policy CS31 deals with this matter and suggests that open space shouldn't be lost "*except where the benefits arising from development outweigh the loss of the space*". As set out above, the space would not be permanently lost. Further, beach users would benefit from having the opportunity to have an alfresco dining experience on the beach whilst not restricting other beach users unduly. The size of the deck is relatively small in the context of the remaining public beach areas the open space area utilised represents a very tiny percentage of open space.

- 38 On the basis of the above, the proposal is considered to be in general accordance with policy CS31.

Impact on amenity

- 39 The proposal is likely to increase activity to the area with more people coming and going from the site and creating a potentially livelier party atmosphere. However, there are no immediate residential properties, and the use would operate when the seafront area is often busy during normal daytime and evening hours. The nearest residential properties in Undercliff Drive are about 140m away and are screened to some extent by the cliff slope and therefore it is considered that they are an acceptable distance away that they would not be directly affected by noise and disturbance in this location. Also, the development would not be visually intrusive or overbearing to them. There is no knowledge of any complaints over the previous years when the café has been in operation or during this summer.
- 40 Notwithstanding the above, it is considered that in this quieter part of the beach there should be some control over a late night use and therefore it is considered appropriate to attach a condition, if planning permission is granted, to introduce a 11.00pm closure to the decking area in respect of its use by the Prom Cafe. On this basis, it is considered that the proposal wouldn't cause harm to amenity and would accord with policies CS38 and CS41 of the Bournemouth Core Strategy.

Impact on the coastal engineering and flood risk

- 41 The application site is located in flood zone 3. The proposal, to facilitate an outdoor seating area, could be classed as a 'Water Compatible' use (NPPF Annex 3) (outdoor sports and recreation) and on this basis would not require the submission of a Flood Risk Sequential Test to determine alternative sites but a Flood Risk Assessment is required. It is noted that buildings for restaurants and cafes are classified as a less vulnerable use are also appropriate development in flood zone 3a.
- 42 The applicant has submitted a flood risk assessment and measures have been highlighted to deal with any emergency evacuation. This is in line with the advice recommended by the Environment Agency and the Councils Coastal Team.
- 43 The Council's Drainage engineers have been consulted and as per the agreement at West Beach there is concern with any attachments and potential damage to the sea wall. The agent has confirmed "*that NO elements of the proposed design will be fixed to the existing sea wall or any surrounding structures, all items are self supporting*".
- 44 It is also noted that the Council are overall landlord and would have the ability under the lease/licence as landowner to redress any structural/safety concerns if they were to arise.
- 45 On the basis of the above, the proposal would be compliant with general flooding criteria set out by the Environment Agency and policy CS4 of the Bournemouth Core Strategy document.

Biodiversity

- 46 As set out above the Biodiversity Officer does not object but a condition about lighting is included to ensure that foraging bats are not disturbed by any bright lighting.

Summary

- 47 As set out above it is considered that the proposal now amended is acceptable in terms of design and impact. The transport officer or biodiversity officer does not object. The Council has approved several other decks on the beach to support the tourism function. Importantly and as set out above the loss of open space is not permanent.

Planning Balance / Conclusion

- 48 Many of the core strategy policies and specifically CS6 and CS31 seek to ensure sustainable communities through good quality development, supporting tourism and protecting spaces for recreation, walking and general enjoyment. Whilst it is located on open space it also contributes to the seafront tourism offer and its appearance at present does not downgrade the seafront provided the structures are removed during the winter period.

- 49 It is important to highlight the recent decision to refuse the application (ref 7-2023-15059-X) for the Sandpiper Café on the West Cliff which was for a similar proposal. The Planning Committee refused the application contrary to the officer recommendation for the following reason.

It is considered that the proposed decking and structures would result in the loss of usable open space and result in a visually intrusive and cluttered form of development that would have an adverse impact on the openness of the beach sand area. The proposal would therefore be contrary to policies CS29, CS31 and CS41 of the Bournemouth Local Plan- Core Strategy (2012).

- 50 The current officer recommendation for the Prom Diner is consistent with the previous recommendation. The issues discussed and raised during the previous Planning Committee have been considered and reflected on again. It is still considered that given the previous approvals for beach decking elsewhere on the seafront at West Beach, Durley Chine Branksome Chine and Boscombe Overstrand and that the loss of open space is not permanent a recommendation for approval is still appropriate. Whilst the overall impact of beach decking and ancillary structures is subjective and cumulative it is considered that the limited impact during the summer period only would not conflict with the aims of the Core Strategy.
- 51 Therefore, having considered the appropriate development plan policy and other material considerations, including the NPPF, it is considered that subject to compliance with the conditions attached to this permission, the development would be in accordance with the Development Plan, would not materially harm the character or appearance of the area or the amenities of neighbouring and proposed occupiers and would be acceptable in terms of traffic safety and convenience. The Development Plan Policies considered in reaching this decision are set out above.

Recommendation

- 52 **GRANT** with the following conditions;

1. Development to be carried out in accordance with plans as listed

The development hereby permitted shall be carried out in accordance with the following approved plans:

Block and Location Plan, Site Plan and Elevations shown on; drg. no. 221.4.GA.01a, 02a and 03a

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

2. Temporary permission expiring

On or before the 19 April 2025 the decking (including supporting structures), containers and fencing and any other temporary structures hereby permitted as shown by drawing numbers 221.4.GA.01a, 02a and 03a hereby permitted shall be removed in their entirety and the land restored to its condition before the development hereby permitted took place (as part of the open beach).

Reason: The temporary nature of the materials used in the construction of the structures make it unsuitable for permanent permission and in accordance with policies CS31 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) and policy D4 of the Bournemouth Town Centre Area Action Plan (March 2013).

3. Floodlights

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modification) no floodlighting shall be installed on any part of the application site as shown on approved plans 221.4.GA.01a, 02a and 03a received on 12 October 2023 and thereon edged in red.

Reason: In the interests of visual amenity and given the site location on the beach all to accord with policies CS31 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) and policy D4 of the Bournemouth Town Centre Area Action Plan (March 2013).

4. Removal of structures outside of summer season

Apart from the decking area as shown by drawing numbers 221.4.GA.01a, 02a and 03a, all other structures excluding tables and chairs shall be removed from site (and not stored on the roof of the main café building or promenade) between the period of 15 September until the following 1 May annually.

Reason: The temporary nature of the materials used in the construction of the structures make it unsuitable for permanent permission and in accordance with policies CS31 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) and policy D4 of the Bournemouth Town Centre Area Action Plan (March 2013).

5. Flood risk management and emergency evacuation plan

The flood risk management plan dated 4 May 2023 submitted with the application shall be adopted in full and prior to the use commencing a Flood Emergency Evacuation Plan shall be prepared in consultation with the Environment Agency and the Council Flood Management Team and this shall be followed at all times.

Reason: To ensure the safety of customers and staff and in accordance with saved Policy 3.28 of the Bournemouth District Wide Local Plan (2002).

6. Hours of Use

The decking and structures hereby permitted shall only be used as an ancillary area for the Prom Diner Café and not for separate events and shall not be used outside the following times: 07.00 hours and 23.00 hours.

Reason: To safeguard the amenities of occupiers of adjoining and nearby properties and in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

7. Waste condition

Prior to the use recommencing, a waste management plan including a plan for litter management shall be submitted to and approved in writing by the Local Planning Authority. The refuse management plan shall be carried out in accordance with the approved details, unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development includes a management plan for the collection of refuse in the interests of visual and residential amenities, and to accord with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

8. Prior agreement on design of container cladding.

Details of the design and samples of the proposed vinyl wrapping to be used on the external surfaces of the proposed container shall be submitted to and approved in writing by the Local Planning Authority prior to the reinstallation of any works on site. Development shall be carried out in accordance with the approved details. (note also the informative below regarding advertisements)

Reason: To ensure a satisfactory visual relationship between the existing and the new development in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

Informative Note:

The applicant is advised that as per the standing guidance, it is the owners responsibility to clear any damage that may arise to their structures as part of storms, and that if they do fix any part to the seawall (See Condition 6: Fixings to Seawall above) that they are liable for repairs in the event of any damage (during installation, operation, removal or through storm damage from this fixing).

Informative Note: This permission does not convey consent in respect of any advertising on the premises, for which a separate application under the Town and Country Planning (Control of Advertisements)(England) Regulations, 2007 (or any subsequent Order or Regulations revoking or re-enacting these Regulations with or without modification) may be necessary.

Statement required by National Planning Policy Framework

In accordance with paragraph 38 of the revised NPPF the Council takes a positive and proactive approach to development proposals focused on solutions. The Council work with applicants/agents in a positive and proactive manner by:

- offering a pre-application advice service,

- as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions,

In this instance:

the applicant was not provided with pre-application advice, but the application was dealt with following discussions with the applicant and subsequent amendments.

Background Documents: 7-2023-15059-V

Documents uploaded to that part of the Council's website that is publicly accessible and specifically relates to the application the subject of this report including all related consultation responses, representations and documents submitted by the applicant in respect of the application.

Notes. This excludes all documents which are considered to contain exempt information for the purposes of Schedule 12A Local Government Act 1972. Reference to published works is not included.