

Planning Committee

Application Address	East Undercliff Drive to the right of East Cliff Lift, Bournemouth, BH2 5AA
Proposal	Use of land as a seasonal outdoor event space for serving food and beverages with ancillary structures (Use Class E)
Application Number	7-2023-15059-AA
Applicant	El Murrino Ltd
Agent	Mr A R Tajvar
Ward	East Cliff & Springbourne Cllr Sara Armstrong Cllr Anne Filer Cllr Anne-Marie Moriarty
Report Status	Public
Meeting Date	14 March 2024
Recommendation	REFUSE
Reason for Referral to Planning Committee	The Head of Planning Services considers that the proposal should be considered by the Planning Committee given the previous applications made in respect of a similar proposals at the Sandpiper Café on the West Cliff Promenade (7-2023- 15059-X) at the September 2023 planning committee and the Prom Diner (7-2023-15059-V) at the 16 November planning committee and because of the significance of the project and recent interest in proposals on the Beach on land controlled by Seafront Services
Case Officer	Steve Davies

Description of Development

1 Planning consent is sought for Use of land as a seasonal outdoor event space with ancillary structures (Use Class E)

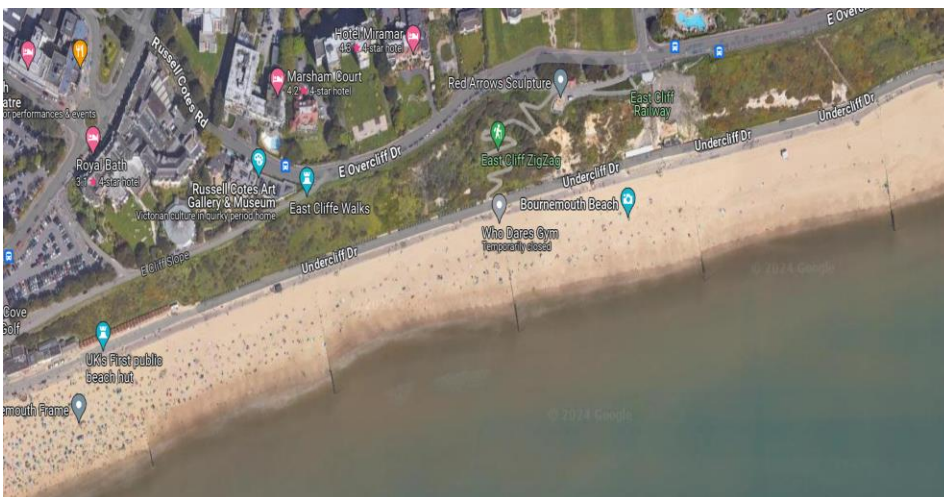
2 Although the applicant has described the use as an events space the main event is a catering operation. The photo montage below shows that the proposal is for an enclosed space with 5 portable buildings for toilets, storage and serveries. There are also pergolas, sunbeds and parasols. The enclosure has an area 40m wide x 32.1m depth. In strict planning terms the operational development under consideration is a change of use of the land. The ancillary structures are unlikely to need planning permission separately as they are portable, movable

temporary structures. However, as part of the planning process the Council is at liberty to consider conditions and impose requirements on the portable structures.



Description of Site and Surroundings

- 3 Seafront and beach location. The application site lies to the east of the East Cliff zig-zag path. See the location shown below where the promenade curves slightly to the right hand side of the image.



Relevant Planning Applications and Appeals:

- 4 Nothing specific to this part of the beach although there are various applications for popup decks elsewhere along the seafront.
- 5 This application is one of two near each other both of which are being considered at the same Planning Committee. The other application – ref 7-2023-15748-J- is for “Temporary change of use from an open beach space to a fitness space with gym equipment, decking, an enclosure fence and storage containers, with ancillary sale of food and drink for consumption on the premises.”. Although that application is for a gym rather than a restaurant facility both are located on the beach for the summer season. Each application needs to be considered separately on their individual merits.
- 6 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) for beach decking for restaurant use.
- 7 Also a smaller 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. An application for the Prom Diner closer to Boscombe Pier was approved at the 16 November 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.

- 13 For the purposes of section 40 Natural Environment and Rural Communities Act 2006, in assessing this application, consideration has been given as to any appropriate action to further the “general biodiversity objective”.

Consultations

- 14 Council Tourism Team – the councils consultee has made the following comment - *Seasonal build outs along the Undercliff Drive between Bournemouth and Boscombe Piers will animate this stretch with pop-up hospitality facilities while the section from Toft Steps to Boscombe provides focus for developing a range of water and beach-based sport and wellbeing activities. Tourism would not object to this application. It will also encourage footfall to spread Eastwards and Westwards towards the pier.*
- 15 Flood and Coastal Erosion Risk Management – the councils consultee has made the following comment - *By nature of location, the proposals are at risk of tidal flooding and located within Flood Zone 3, however, we note the proposals are temporary are not considered to displace risk. It is recommended that any such business prepares an emergency flood plan to ensure the facility is only used when it is safe to do so. We have no further comments on issues within the remit of the LLFA as consultee.*
- 16 Biodiversity Officer – comments received on similar proposals relating to lighting. This could be dealt with by condition in the event of a recommendation to approve.
- 17 Environmental Health – 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 – as it is located on the beach and there a no significant traffic issues no consultation is required..
- 19 Environment Agency – The EA initially objected as a Flood Risk Assessment (FRA) had not been submitted. The applicant has now provided a FRA and this is in line with other assessments submitted for similar pop up facilities on the beach.

Representations

- 20 Site notices were posted in the vicinity of the application site with an expiry date for consultation of 19/12/23.
- 21 No representations have been received from the general public. However, a local Councillor is objecting on the following grounds and wishes the application to be considered by the Planning Committee should the application be recommended for approval.

“The proposal results in the loss of 1271 sq metres of public open space without justification. The commercial exploitation of the natural environment causes harm to the visual amenity by restricting the view to the beach and the sea from the promenade and along the beach, and is contrary to the need for development to retain or enhance the features that contribute to the heritage, character and local distinctiveness of the beach front.”

Key Issues

- 22 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.

Planning Policies

23 Bournemouth Local Plan Core Strategy (2012)

CS1: NPPF and Sustainable Development
 CS4: Surface Water Flooding
 CS6: Delivering Sustainable Communities
 CS7: Bournemouth Town Centre
 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 Town Centre Area Action Plan (2013)

Policy D4: Design Quality
 Policy U7: Cafes and restaurants
 Policy U8: TC central area for tourism uses
 Policy U9: Evening and night time uses

25 Bournemouth District Wide Local Plan (2002)

Policy 3.28: Flooding

26 Supplementary Planning Documents:

Public Realm Strategy: Guiding Principles – SPD

27 Other:

The Seafront Strategy is a corporate policy. It does not form part of the Statutory Development Plan but is a key Council objective. It supports the visitor experience stretching between the West Cliff and Boscombe Pier by developing a coherent and consistent linear promenade space to create an ultimate vibrant beachfront and also supports investment in utilities, public toilets and infrastructure to support the development of new pop-up leisure, cafes, restaurants, bars, cultural attractions and eventing space between Bournemouth and Boscombe Piers.

The Seafront Visitor Survey (2023) supports the public views around investment in food & drink offers.

28 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

- 29 Many of the core strategy policies seek to ensure sustainable communities through good quality development, supporting tourism and protecting spaces for recreation, walking and general enjoyment. The application site lies within the Town Centre and policy CS7 indicates that this is the most appropriate location for *...retail, cultural, leisure and business uses...* Development proposals should maintain and enhance the function of the town centre and it is considered that the current proposal meets this criteria. Another matter of principle relates to the protection of public open space. The proposal is not considered to result in the permanent loss of open space, and this is discussed in more detail below.
- 30 The Area Action Plan has policies to protect the town centre and the tourism function. The site lies with the town centre boundary and the proposal will support tourism as set out in policies U8 and U9. Food and beverage outlets have always been located on the beach front together with the shopping areas in the town centre offering a different and complementary offering.

- 31 There has been several approvals for beach decking and small ancillary structures on various parts of the beach including the West Beach Café immediately to the west of the Pier. The Planning Committee recently refused an application for Beach Decking at the Sandpiper Café some 400 m west of the Pier. A subsequent application for the Prom Diner close to Boscombe Pier was subsequently approved and a larger proposal for Aruba at Bournemouth Pier was refused.
- 32 On the basis of the above, and notwithstanding the issue of specific location and details and open space as discussed below, the proposal is considered generally acceptable in principle and in accordance with policy CS7 of the Core Strategy. Also, in principle the proposal would accord with the Seafront Strategy

Impact on character and appearance of the area

- 33 Whilst the Council has been supportive of beach decking areas elsewhere on the beach which provides a Mediterranean type tourist facility, it is considered that this particular location is unsuitable for the scale of operation proposed. The main reason is that this location is in a quieter part of the beach and is not surrounded by other tourist facilities on the beach. Near the Piers and Chines for example there are other concessions and features on the promenade and beach. The cliff lift did provide an access to the beach but visitors now only rely on the zig zag so it is unlikely to be as busy as it was. This site is also not directly at the bottom of the zigzag and lift. However, even if the cliff lift were to be reinstated this part of the beach would still be relatively quiet when compared with the hotspots around the Piers and the proposed intensive operation would be in conflict with the character of this part of the beach. The applicant could use their permitted development rights for a 28 day period and as a one off during the height of the summer this would be accepted. However, the proposal for a period from April until September represents a lengthy time period. During April, May parts of June and parts of September outside the school holidays when the weather isn't so reliable the facility would probably be underutilised. During these times the facility could be closed on occasions and this would appear even more of an anomaly in the natural beachscape.
- 34 As mentioned above there is a separate application for a gym with ancillary structures nearby. The cumulative impact of that proposal and others generally on the beach is a factor that needs to be taken into account as each individually and together will have an impact. The other proposal is recommended for approval as the impact is not so serious. A distinction can be drawn between the two proposals and it is reasonable to either refuse one and not the other or approve both provided an assessment on their impact overall has been properly considered.
- 35 The layout has been designed with toilets and a service zone close to the promenade and the appearance of these areas is particularly unfortunate. Whilst there could be some redesign and shuffling of structures this would not resolve the principle concern of the overall number of structures and the utilitarian appearance of the structures. Also the proposal here is not just for a few tables, chairs and parasols but a full restaurant/bar operation with a large number of structures including metal and plastic portable buildings which are inappropriate on the sand. Also the degree of enclosure prevents any views through the complex reinforcing its dominant appearance within an open space. It is also set much deeper on the sand towards the water thus creating a much greater intrusion compared with the gym and other recent approvals.

- 35 On the basis of the above, it is considered that the proposals are contrary to planning policies CS41 and D4 in respect of design and visual amenity.

Loss of Open space

- 36 The loss of open space was raised as an issue in respect of the previous refusal reason for the Beach Shack/Sandpiper. 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. However, this is not a permanent loss as during the winter when the parasols, structures and shelters are removed the area reverts to beach. So it is not a permanent loss of open space but during part of the year it is not fully available.
- 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. 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 will 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. However 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 in so far as loss of open space. Whilst the proposal has an impact on the open space it is considered that the temporary loss in the summer period of the space is not significant and would not result in the proposal being contrary to this policy. As set out above taking into account the other proposal nearby the cumulative impact is a factor. However, if the other application were also to be approved I do not consider that the open space policy would be compromised.

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 are an acceptable distance away that they would not be directly affected by noise and disturbance in this location, and the development would not be visually intrusive or overbearing to them. There is no knowledge of any complaints over the previous years when it has been in operation.
- 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 were to be granted, to introduce a 11.00pm closure. 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. The NPPF in

paragraph 174 states – “*Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 59*”. There is some conjecture about whether the structures themselves are buildings although as they are clearly temporary and are easily moveable it is not considered that they need to follow the sequential test. However, a Flood Risk Assessment is required. It is also 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 draft flood risk assessment and measures have been highlighted to deal with any emergency evacuation. However, as with the other proposals that have been approved it is likely that an appropriate scheme could be finalised 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 although they have not responded they would as part of the licence agreement have to meet the standard requirements as per the agreement at West Beach where there is concern with any attachments and potential damage to the sea wall.
- 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 policy CS4 of the Bournemouth Core Strategy document.

Biodiversity

- 46 As set out above the Biodiversity Officer does not object to these facilities but a condition about lighting could be 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 is not acceptable in terms of design and impact.

Planning Balance / Conclusion

- 48 Many of the core strategy policies and specifically CS6, CS7, CS31 seek to ensure sustainable communities through good quality development, supporting tourism and protecting spaces for recreation, walking and general enjoyment. It is located on open space and the proposed use currently also contributes to the seafront tourism offer. However, its appearance and scale is considered to downgrade the open character of the beach and should not be supported. Whilst it is concluded that the proposal does not result in the permanent loss of open space it nevertheless has a detrimental impact on the quality of the space. Notwithstanding the clear tourism benefits it is considered that the proposal for this scale of operation in this important location for sea views is not acceptable.
- 49 Therefore, having considered the appropriate development plan policy and other material considerations, including the NPPF, it is considered that the development would be not in accordance with the Development Plan, would materially harm the character or appearance of the area. The Development Plan Policies considered in reaching this decision are set out above.

Recommendation

50 REFUSE

It is considered that the proposed decking, enclosures 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).

INFORMATIVE NOTE: For the avoidance of doubt the decision on the application hereby determined was made having regard to the following plans:
A/478/02, 03, 04, 05, 06, 07, 10, BP

INFORMATIVE NOTE: In accordance with paragraph 38 of the revised NPPF the Council, as Local Planning Authority, takes a positive and proactive approach to development proposals focused on solutions. The Council works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible suggesting solutions.

In this instance: The applicant/ agent did not take the opportunity to enter into pre-application discussions about the details of the scheme.

The applicant was advised that the proposal did not accord with the development plan and that there were no material planning considerations to outweigh these problems.

Background Documents:

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.