

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Commercial Operations - Planning permissions approach
Meeting date	30 May 2024
Status	Public Report
Executive summary	This report details how we have dealt with the legacy approaches in relation to planning requirements for temporary facilities, such as pop-up catering offers, events and sports facilities across the seafront and provides detail of progress made to improve staff awareness and understanding of the requirements to ensure that we confirm with all statutory and local requirements across the Commercial Operations service.
Recommendations	It is RECOMMENDED that the committee: a) Note the previous position and new practices in relation to planning and licensing permissions on the seafront and the progress made across the seafront and wider Commercial Operations service area.
Reason for recommendations	To communicate progress and provide reassurance in relation to planning related activity across the BCP seafront area and other service areas within Commercial Operations.
Portfolio Holder(s):	Cllr Mike Cox, Finance Cllr Millie Earl, Connected Communities
Corporate Director	Graham Farrant, Chief Executive
Report Authors	Amanda Barrie Director of Commercial Operations Wendy Lane Director of Planning and Transport
Wards	All wards
Classification	For Information

1. Background

- 1.1 This report is being presented to the Audit and Governance Committee following a request for an overview of the previous approaches, and an update on the actions and changes that have been implemented. It is hoped that this report will provide reassurance that previous practices have been modified and that the appropriate requirements are being followed.
- 1.2 A significant amount of planning applications related to the Commercial Operations service area are connected to activity across the seafront area and this is where the majority of this report will focus, section 2 of this report provides an overview of the Commercial Operations directorate.
- 1.3 In 2020/21, the Council considered options to activate and enhance key tourism driven sections of the seafront (esp. between Bournemouth West Cliff and Boscombe Pier) with vibrant seasonal hospitality, leisure and events-based offers, encouraging entrepreneurship and inspiring healthier and sustainable living, adding capacity, increasing revenues, creating jobs and offering wider tourism benefits.
- 1.4 During 2021 and 2022, the Council trialled temporary offers in several sites across the seafront, the learnings from which has helped inform the Seafront Strategy review being presented to Cabinet in June.
- 1.5 In 2021, the Council implemented its Covid -19 bounce back plan, Festival Coast Live, to animate the seafront during the summer months. This included provision of large-scale seasonal food & beverage (F&B) outlets. Following a procurement exercise, East Cliff was awarded to El Murrino, and East Beach to Aruba. West Beach restaurant expanded onto the sand and a new beach gym opened as a trial at Canford Cliffs.
- 1.6 In 2022, the Council sought to expand the number of sites and a wide range of factors were considered when selecting locations and types of offer. These included: access and footfall; commercial viability and performance; proximity to other outlets and infrastructure and advice from BCP Council Planning and Procurement Services.
- 1.7 Following procurement exercises three seasonal sites were awarded: El Murrino and Aruba were again successful, and Clarke's Events were awarded a site at West Cliff. The Council operated 'Prom Diner' expanded operations onto the sand at Boscombe. A sauna operation was also trialled at Sandbanks and the beach gym moved to East Cliff. Most sites proved successful in 2022 however, lessons were learnt and these helped shape the approach for the future.
- 1.8 Operations were granted permission to operate in 2022 following engagement with the planning department, whose Head of Planning issued advice, outlining that for that year, although not to be taken as permission, the Local Planning Authority was aware of the proposed temporary activity to be situated on the seafront and agreed in principle, with the expectation that formal planning applications would be forthcoming. Should any planning issues have arisen for a site that did not have its full planning permission in place, the planning enforcement team were then prepared to investigate the matter further and take action as appropriate.

- 1.9 The lessons learnt in 2022 were used to shape delivery in 2023, when a similar range of outlets were delivered. The Head of Planning at the time advised that provided planning applications had been formally submitted and registered, operations could take place for summer 2023 whilst the applications were determined.
- 1.10 The above approaches were applied to operations delivered both by external operators and in house, BCP Council operated facilities.
- 1.11 Following the submission of required planning applications, there have been some which were not approved, an example would be the planning application submitted in relation to The Beach Shack which was a Council operated temporary offer of an extended seating area:
 - 1.11.1 As part of the continued investment into the Seafront and its in-house catering service, in 22/23 the Council worked with specialist industry advisors to enhance the offer at Westcliff. In 2023, planning permission was submitted and approved for enhancements to the kiosk, the exterior was modernised, the site rebranded, and the menu improved.
 - 1.11.2 In line with the advice from Planners a planning application was also submitted for a temporary seating area, prior to its construction. The application was however subsequently not approved by the planning committee in Sept 2023. The committee considered that the proposed decking and structures would: result in the loss of usable open space; be visually intrusive; and have an adverse impact on the openness of the beach area, and the temporary seating area was immediately removed.
- 1.12 Officers from the seafront service were in regular contact with Planning Officers to seek input and advice on approaches to be taken and at no time allowed operations to be delivered without agreement.
- 1.13 Arrangements for events taking place on outdoor Council land have been in place, where events which exceeded 28 days duration required planning approval unless they met the criteria within the General Permitted Development Order (GPDO).

2. Commercial Operations overview

- 2.1 Commercial Operations includes the service areas of Seafront, Leisure and Events, FCERM and Car Parking Operations and Enforcement.
- 2.2 Across these service areas, outside of the seafront service which has been covered in section 1, there are various examples of activity where planning applications are required and include applications from external operators and from teams within BCP Council, with a significant number of these within the Leisure and Events service area.
- 2.3 For planning applications connected to operations delivered by external organisations, agreements such as leases, licences or contracts would also be in place and refer to planning permissions required. Examples of some of the planning related activity within the Leisure and Events service include:
 - 2.3.1 Volunteer facility and welcome centre buildings at Upton Country Park.

- 2.3.2 Roundabout sponsorship signage on a variety of roundabouts across the BCP area.
 - 2.3.3 3G football pitch at Rossmore Lesure Centre.
 - 2.3.4 Floodlighting provision at the Poole Park tennis courts.
 - 2.3.5 Ice rink in Lower gardens.
- 2.4 Through the work the Commercial Operations teams have been undertaking to review previous approaches to planning requirements, and make improvements where required, a change of approach within the events area has been implemented, this includes:
- 2.4.1 Using the Seafront Strategy character area zones of the BCP seafront to identify events zones, where a maximum of 28 days in one year can be used for activity which falls into the criteria where planning permission would be required.
 - 2.4.2 Planning applications to be submitted for the lighting elements of Christmas Tree Wonderland and Poole Christmas Maritime Light Trail.
 - 2.4.3 Temporary markets, provided they meet the criteria of the permitted development rights, no longer require planning permission. This is due to measures brought in during the pandemic by the Department for Levelling Up, Housing and Communities being made permanent in December 2021.
- 2.5 Further work has been undertaken across Commercial Operations in relation to this topic and ongoing work is underway, this is outlined in more detail in sections 4 and 5 of this report.

3. Planning considerations

- 3.1 Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990. 'Development' includes:
 - 3.1.1 building operations (eg structural alterations, construction, rebuilding, most demolition);
 - 3.1.2 material changes of use of land and buildings;
 - 3.1.3 engineering operations (eg groundworks);
- 3.2 The categories of work that do not amount to 'development' are set out in section 55(2) of the Town and Country Planning Act 1990. These include, but are not limited to the following:
 - 3.2.1 interior alterations (except mezzanine floors which increase the floorspace of retail premises by more than 200 square metres)
 - 3.2.2 building operations which do not materially affect the external appearance of a building.
 - 3.2.3 a change in the primary use of land or buildings, where the before and after use falls within the same use class.
- 3.3 Section 57 of the Town and Country Planning Act 1990 directs that all operations or work falling within the statutory definition of 'development' require planning permission. However, development does not in all instances require a planning application to be made as there are different types of planning permission. There are national grants of permission by the GPDO which allows certain building

works and changes of use by the Use Classes Order, which has had significant changes recently, to be carried out without having to make a planning application. These are known as permitted development rights and all the rights are not available in all areas as there are a range of exclusions which apply to certain permitted development rights.

- 3.4 There can be local grants of planning permission through Local or Neighbourhood Development Orders or Community Right to Build Orders, and in addition, in certain circumstances, development can be carried out by a local authority, national park authority or statutory undertaker when it has been authorised by a relevant government department. If not covered by the above, it will be necessary to make a planning application to a local planning authority. It is worth noting that even if a planning application is not needed, other consents may be required under other regimes such as building regulations.
- 3.5 The GPDO was first introduced in 1948 and there have been many updates since then. There are four schedules, 20 parts and 205 sections so it is a complex document which is under frequent review. There are a number of rights afforded by the GPDO that BCP Council regularly uses including part 4 "Temporary buildings and uses" with Class B relating to temporary use of land (28 day rule) which is important for events, and part 12 "Development by local authorities". Class A of part 12 gives the right for the erection or construction and the maintenance, improvement or other alteration by a local authority of:
 - 3.5.1 any small ancillary building, works or equipment on land belonging to or maintained by them required for the purposes of any function exercised by them on that land otherwise than as statutory undertakers;
 - 3.5.2 lamp standards, information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of people waiting to enter public service vehicles, electric vehicle charging points and any associated infrastructure, and similar structures or works required in connection with the operation of any public service administered by them.
- 3.6 These rights have criteria. For example, Class A in part 12 is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity. In respect to the 28-day limit in Class B in Part 4, this applies to the planning unit so it can't be used for one area of land, then in another adjacent field or area of land in the same ownership for a further 28 days. Also it is the land rather than the uses so it can't be used for a set of different uses, each running up to 28 days in any one year and it does not relate to permanent works to facilitate a temporary use(s).
- 3.7 In summary, the planning system is complex and it can be challenging for non-planners to understand when planning permission needs to be sought. This is partly the reason that the planning system, as set nationally, allows the submission of retrospective planning applications.
- 3.8 Government guidance is clear that it does not condone a wilful breach of planning law, however it is clear that enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so, and it recognises that the balance of public interest will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities are advised that they should usually avoid taking formal enforcement action where:

- 3.8.1 there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
 - 3.8.2 development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
 - 3.8.3 in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.
- 3.9 As highlighted earlier, when making decisions, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The scope of what can constitute a material consideration is wide, however, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations. In a similar way, who the applicant is and their personal circumstances, are not normally material planning considerations. This is because planning permission runs with the land and anyone can make a planning application, regardless of who owns the land or buildings concerned, but there is a legal requirement that the owner or owners of the land are notified of that application.
- 3.10 BCP Council is often an applicant or is notified because they own or have an interest in the land but as the owner is not a material consideration, this should have no impact on the determination process. Equally, in respect to planning enforcement, BCP Council would not be required to seek assurances that development is lawful and immune from planning enforcement, more than any other landowner. For example, the Planning Service were contacted recently about the RNLI lifeguard towers and whether Lawful Development Certificates or planning applications were required. In response, the advice that was provided was that this has been taking place at the same locations for over 10 years, it was considered immune from enforcement action, and so it could be considered lawful. Therefore, it was up to the Council if an LDC was sought but there was no requirement to do so.
- 3.11 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Therefore, because planning decisions can be controversial, it is particularly important that the process is open and transparent. In January 2024, the Council's Corporate Strategy was agreed with the commitment that "We are an open, transparent and accountable Council, putting our people at the heart of our services". To reflect this the new administration have requested that Planning Committee consider all applications where the council is an applicant or the landowner. It is possible that there would be exemptions related to this, the detail of which is still to be worked through by the constitution working group but an indicative list of what may be considered as exempt could include, prior approvals, certificates of lawfulness, advert consents, tree applications and non-material amendments.

4. Progress to date

- 4.1 A significant amount of time from officers has been put into understanding previous arrangements and gaining an improved understanding of what needs to be in place where it has not been previously.

- 4.2 In recent months, the support and advice received from the Planning department has helped officers gain a better understanding of the requirements to be able to implement approaches going forward which ensure we are conforming to regulations and not putting the Council at reputational risk.
- 4.3 An overview of action taken to date across Commercial Operations includes:
 - 4.3.1 Requirement for all operations to have planning approval, where required before operations commence communicated to Commercial Operations staff. This applies to internally delivered operations as well as any operation where we are issuing licences or contracts to external operators. This has been reinforced through email, management team meetings and all staff briefing sessions.
 - 4.3.2 Staff advised that for activity where contracts have ended and are due to be retendered or where we, as a service are directly delivering operations, discussions with the planning team must take place as part of the initial scoping process and/or at the time we have details on the likely content of any operation, so we are clear on the requirement for each element.
 - 4.3.3 Staff reminded that planning permission being granted is not the end of the process, many approvals come with planning conditions and all staff must be ensuring these conditions are met, these are often related to conditions to deliver before the operation can commence or annual conditions that require engagement with the planning team. It is essential staff involved in operations are clear on these and as with submitting planning applications, that suitable time is allocated to ensure conditions are met.
 - 4.3.4 To ensure as a service we have oversight of all planning permissions in place and to assist with identifying expiry dates to aid early discussions and subsequent submission of planning applications, service areas have been requested to create and maintain a service area list of planning permissions applied for and/or in place.
 - 4.3.5 Briefing session for staff involved in activity where planning applications are required for operations, delivered by the Director for Planning and Transport.

5. Future actions

- 5.1 Looking ahead in terms of ongoing actions and next steps across Commercial Operations:
 - 5.1.1 Staff to have regular reminders on the planning requirements and expectations.
 - 5.1.2 Induction process, for relevant roles, to include an overview on the planning related requirements.
 - 5.1.3 Schedule refresher session for staff to be delivered by the Planning team.
 - 5.1.4 Review planning lists to ensure they are suitable and adapt content requirements where necessary.
 - 5.1.5 Seafront Strategy review going to Cabinet in June, if approved, consider any implications for future planning application demand.
 - 5.1.6 Consider options for future approach for events across the seafront where planning permission is required.

- 5.2 A notable culture change is visible across Commercial Operations in relation to planning requirements and although there is still work to do and ongoing monitoring is required, the improvements are significant and positive.

6. Options Appraisal

- 6.1 An options appraisal is not applicable for this report.

7. Summary of financial implications

- 7.1 There are no direct financial implications for this report.

8. Summary of legal implications

- 8.1 There are no direct legal implications for this report.

9. Summary of human resources implications

- 9.1 There are no direct human resources implications for this report.

10. Summary of sustainability impact

- 10.1 There are no direct sustainability impact implications from this report.

11. Summary of public health implications

- 11.1 There are no direct public health implications from this report.

12. Summary of equality implications

- 12.1 There are no direct equality implications from this report.

13. Summary of risk assessment

- 13.1 No risk assessment has been completed for this report.

Background papers

None

Appendices

None