

Planning Committee

Application Address	Pavilion Theatre, Westover Road, Bournemouth, BH1 2BU
Proposal	Use of rear terrace for the seasonal installation of three cladded shipping containers and a fish and chips van for a temporary period and associated seating, picnic tables and festoon lighting - Retrospective application
Application Number	7-2024-1570-BH
Applicant	BH Live
Agent	Footprint Architects Ltd
Ward and Ward Member(s)	Bournemouth Central Councillor Hazel Allen Councillor Jamie Martin
Report Status	Public
Meeting Date	8 July 2024
Summary of Recommendation	Grant in accordance with the details set out below for the reasons as set out in the report.
Reason for Referral to Planning Committee	Referred for consideration by the Director of Planning & Transport as BCP Council is the applicant.
Case Officer	Steve Davies
Is the proposal EIA Development?	No

Description of Proposal

1. Planning permission is sought to use of rear terrace of the Pavilion for the seasonal installation of three cladded shipping containers and a fish and chips van for a temporary period during the summer and associated seating, picnic tables and festoon lighting. The use has already commenced and therefore the application is retrospective and falls within section 73 on the Planning Act. The application is in effect a change of use application. It could be argued that the structures themselves do not require planning permission separately as they are moveable structures. However, their design and position can be considered under the change of use application. In previous years the use has operated without permission but consent is now sought for a 5 year period to regularise the situation. An amended plan has also been submitted to alter the layout for next season to include the site of the upside down house which will be removed.

Description of Site and Surroundings

- 2 The Pavilion site include a public theatre complex and terrace adjacent to the Bourne Stream. It faces the Pleasure Gardens and is close to the beach and seafront.

Relevant Planning History:

- 3 Temporary Consent for the “upside-down house” granted 16/2/22 “AZ” application.
- 4 Temporary consent for a Use of rear terrace for the siting of a catering vehicle for the period April-Sept 2022 Granted 13/4/22 “BA” application.
- 5 Temporary consent for a Use of site for the installation of temporary igloo domes for seating, tent with container seating, food, beverage and WC containers, food truck, associated decking, tables, chairs and ski gondola seating with festoon lighting between 15th November and the 4th January on an annual basis Granted 14/12/22. “BB” application.
- 6 Temporary Consent for the upside-down house for a 3 year period Refused January 23 “BC” application.
- 7 Approval for another year for - Use of land for the temporary siting of an 'Upside Down House' entertainment installation until 15th November 2023.

Constraints

- 8 The following constraints have been identified.
- Grade 2 Listed Building and Lower Gardens are on the list of Historic Gardens. There are duties under s66 of the 1990 listed building act to ensure that appropriate consideration is given.
 - The gardens have an open space allocation and fall within the remit of policy CS31 of the Core Strategy and Policy D7 of the Area Action Plan.

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 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.

- 11 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.
- 12 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

- 13 Highway Officer – no objection.
- 14 Biodiversity – as the buildings/structures are located on an existing area of hardstanding with no loss of greenspace or impact thereon there is no requirement to offset or consult in this instance. The PPG guidance on Biodiversity net gain gives exemption for de minimis proposals. The guidance indicates that it does not need to be considered where the impact is less than 25 square metres (e.g. 5m by 5m) **of onsite habitat** and where less than 25sqm of habitat is affected. As the site is totally covered with hardstanding very little habitat if any is affected. Also in this case as the portable buildings do not involve development the application is a change of use of the land.
- 15 The Gardens Trust - Statutory Consultee.*affects Upper, Central and Lower Pleasure Gardens, and Coy Pond Gardens, an historic designed landscape of national importance which is included by Historic England on the Register of Parks and Gardens of Special Historic Interest at Grade II. We have considered the information provided in support of the application and on the basis of this we confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals.*
- 16 Heritage Officer – an objection is raised for the following reasons – *“it is considered the proposal would be detrimental to the special interest of the Grade II listed Pavilion Theatre, contrary to s. 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposed scheme would cause harm not only to the significance of the listed building, but also of the listed Pleasure Gardens which would be within the ‘less than substantial harm’ category. The harm is not considered minimised, as the proposed structures could be located nearer the Bournemouth Pier or at the beach, for example, where such elements would be more expected, thus avoiding any physical impact on the heritage assets and limiting any visual impact on them.”*
- 17 Transport Officer – no objection

Representations

- 18 Site notices were posted in the vicinity of the application site with an expiry date for consultation of 31/5/24. A revised notice was posted as the redline plan changed to expire on the 5/7/24. Any additional comments will be reported to the Planning Committee.

19 No representations have been received from the general public.

Key Issues

20 The following matters are relevant.

- Impact on character and appearance of the area including the impact on the Pavilion which is a listed building and the Lower Gardens which is on the Register of Historic Gardens.
- Impact on residential amenity/living conditions
- Highway matters.

Planning Policy Context

21 Bournemouth Local Plan Core Strategy (2012)

CS1:	NPPF and Sustainable Development
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
CS39:	Heritage assets
CS41:	Quality Design

22 Bournemouth District Wide Local Plan (2002)

Policy 5.1: Job Creation

23 Supplementary Planning Documents:

Public Realm Strategy: Guiding Principles – SPD

24 Area Action Plan

Policy D4:	Design Quality
Policy D7:	Improved Public Space
Policy U8:	Leisure, Culture and Entertainment

25 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.

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 15 – Conserving and enhancing the natural environment.

Section 16 – Conserving and enhancing the historic environment.

Planning Assessment

Principle of development

- 27 A key objective of the Bournemouth Core Strategy through the policies as set out above seek to ensure sustainable communities through good quality development, supporting tourism and protecting spaces for recreation, walking and general enjoyment. Policies in the District Wide Local Plan support job creation, small businesses.
- 28 On the basis of the above, and notwithstanding the issue of the relationship to the heritage assets as discussed below, the proposal is considered generally acceptable in principle and in accordance with policy 5.1 of the District Wide Local Plan relating to support for the jobs and the economy and policy U8 of the AAP - Leisure, Culture and Entertainment

Impact on character and appearance of the area including the impact on the Pavilion which is a listed building and the Lower Gardens

- 29 This is a key issue. As set out above the Pavilion terrace is within the setting of the listed building and adjacent to the historic Lower Gardens. It is in a very prominent location and viewed by thousands of visitors especially during the summer months as they walk through the gardens to the beach. The two main points to consider are whether the group of structures in close proximity to the Pavilion will adversely affect its setting and whether the long views from the gardens are harmful.
- 30 The pavilion terrace has been used in this manner for several years firstly for a temporary period and in more recent summers more regularly. Planning permission was also granted for the Upside Down House and last winter there was a similar winter themed event with several structures which was approved by the local planning authority and remain extant for next winter although it appears that it won't now go ahead. The upside-down house will also no longer be in situ after this winter as the planning permission expires and they have been advised that it will no longer be renewed. Historically there was also a larger permanent structure that covered a large part of the terrace although this was removed many years ago. When the Pavilion Dance was created the terrace was refurbished and now is an attractive space. Therefore historically and more recently the terrace has traditionally been seen to be utilised as an area for refreshments and catering.
- 31 It is accepted that the proposed portable buildings and seating clutter the space. The heritage officer rightly has concerns and to ensure that the building is fully appreciated perhaps the terrace should remain open to enjoy the setting of the building. In particular the portable building as currently erected adjacent to the building blocks a feature window. However, it is considered that a balance has to be struck as the terrace for this leisure building also has a purpose to be used as well. People using the terrace for its catering are also able to appreciate the Pavilion building and the historic setting. The applicant has tried to provide a range of catering outlets to maximise its potential. There were concerns with how the site has been laid out for this summer and as a result an amended plan has been submitted. With the upside down house removed next year there is more scope to move the structures closer to the flyover which is a less sensitive part of the site.
- 32 There will still be a portable building located adjacent to the gardens which will have an impact on the views from the gardens. However, this will be partially screened by some shrubbery on the bank of the stream. There is also a proposal for a catering vehicle but as this has a more temporary appearance it is considered less intrusive and can be moved easily. Whilst it is intended to remain in the same place because it is a vehicle the perception of its appearance is considered to be different to a building. In considering the impact on the heritage assets it is acknowledged that there is some harm. However, the harm is considered to be less than substantial and in these circumstances the benefits can also be considered.
- 33 The applicant has also indicated that the revenue raised from the catering operation will help to maintain the Pavilion building. Whilst the income will not be ring fenced and the recommendation is not made on the basis of enabling development where a proposal is only being approved because of other benefits it is clear that the listed building needs constant repair and refurbishment and any funding will help this aim.
- 34 On the basis of the above, it is considered that the proposals are on balance acceptable and any conflict with planning policies CS39 and CS41 in respect of design including the design of spaces and visual amenity is not significant and the harm to the setting of the heritage assets is not considered overriding when considering the positive tourism benefits.

Impact on amenity

- 35 The proposal is likely to significantly increase activity in the area however, in this busy area and given the location which is not close to residential property there is unlikely to be any residential amenity concerns. 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. However, given the character of the gardens a late night operation would not be appropriate and it is considered that the use should not be operated beyond 11.00 pm in the evening. 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.

Planning Balance / Conclusion

- 36 As set out above it is considered that the proposal is on balance acceptable in terms of impact. The main issue is the cluttered appearance of the buildings in relation to the heritage assets. Whilst it is acknowledged that the proposals will have an impact on the setting of the Pavilion and Lower Gardens this needs to be weighed against the benefits of utilising the space for tourism benefits. Also the NPPF in paragraph 208 affords the opportunity to consider whether identified harm is outweighed by public benefits.
- 37 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. The provision of commercial uses and structures in this location is low rise and the concerns with the impact on the setting of the listed building and historic gardens can be weighed against the clear tourism benefits of the project which will add to the catering offer giving more choice and capacity in this tourist hot spot. Whilst the proposed structures are clearly utilitarian in appearance the proposal will encourage many more people onto the terrace, which is its main purpose, where they can appreciate and enjoy views of the Pavilion first hand. This is considered to offset the adverse impact on the heritage assets. Some attempt has been made to improve the appearance of the containers by cladding them in vertical timber and whilst they may not be as attractive as a permanent building they are only temporary, low rise and do not overwhelm the listed pavilion or the gardens.
- 39 Given the temporary and portable nature of the proposal and the benefits of fully utilising the terrace during the summer tourist season it is recommended that a 5-year temporary permission is granted. This will give the Council the opportunity to review the appearance and impact in the future.
- 40 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

- 41 **GRANT** permission with the following conditions, which are subject to alteration/addition by the Head of Planning Services provided any alteration/addition does not go to the core of the decision

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: 7401 P001A, 002A, 003A, 004

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

2. Temporary permission expiring

On or before the period of 5 years from the date of this permission the portable buildings and any ancillary structures hereby permitted as shown by the submitted plans and elevations reference 7401 P001A, 002A, 003A, 004 shall be removed in their entirety and the land restored, including to repair any damage caused each season, to its condition before the development hereby permitted took place.

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. Hours of Use

The use hereby permitted shall not be used by customers outside the following times: 06.00 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).

4 Layout and buildings

Prior to the use re-commencing in 2025 and notwithstanding the details shown on the submitted drawings details of the design, cladding materials and layout of all structures and ancillary equipment shall be agreed in writing with the Council. The agreed details shall be implemented and maintained throughout the period of the consent layout, design and cladding materials.

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 Removal of structures outside of the summer season

All structures, equipment and portable buildings including tables and chairs shall be removed from site (and not stored nearby within the curtilage of the Pavilion or Gardens unless otherwise agreed by the Local Planning Authority) between the period of 30 September until the following Easter annually. The land shall be restored, including to repair any damage caused each season, to its condition before the development hereby permitted took place.

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).

6 Waste Plan

Within 1 month of the date of this consent 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 at all times, 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).

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 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:

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.