

ADDENDUM

Application No: Y17/1099/SH

Location of Site: Former Rotunda Amusement Park, Marine Parade, Folkestone

Development: Section 73 application for the removal of condition 41 (Provision of Sea Sports Centre) and variation of conditions 4 (Reserved Matters), 6 (Phasing), 7 (Reserved Matters Details), 15 (Public Realm), 16 (Play Space/ Amenity Facilities), 18 (Public Toilets), 21 (Wind Flow Mitigation), 23 (Heritage Assets), 25 (Bus Stop), 37 (Wave Wall); and 42 (Provision of Beach Sports Centre) of planning permission Y12/0897/SH (Outline planning application with all matters (access, scale, layout, appearance, landscaping) reserved for the redevelopment of the harbour and seafront to provide a comprehensive mixed use development comprising up to 1000 dwellings (C3), up to 10,000 square metres of commercial floorspace including A1, A3, A4, A5, B1, D1 and D2 uses as well as sea sports and beach sports facilities. Improvements to the beaches, pedestrian and cycle routes and accessibility into, within and out of the seafront and harbour, together with associated parking, accompanied by an Environmental Statement) to enable changes to the plot shapes, footprints, maximum height, changes to parameter plans, levels, parking arrangements, changes to how the sea sports and beach sports facilities are provided, and alterations to the Environmental Statement.

Applicant: Folkestone Harbour Limited Partnership

Agent: Mr Edward George
Savills
33 Margaret Street
London
W1G 0JD

Date Received: 06.10.17

Expiry Date: 22.12.17

PEA Date: 01.06.18

Committee Date: 24.04.18

Officer Contact: Lisette Patching

RECOMMENDATION:

a) That that the Head of Planning Services be authorised under delegated authority to grant planning permission subject to:

- Completion of a deed of variation legal agreement with the applicant that secures the social and physical infrastructure and financial contributions, (including contributions towards the existing sea sports centre within the site), detailed within this addendum and the main report and which the Head of Planning Services considers to be acceptable.
- The conditions set out at the end of this addendum and any additional conditions the Head of Planning Services considers to necessary.

b) That in the event that the deed of variation is not finalised by 1st June 2018 and an extension of time has not been entered into by the applicant, the Head of Planning be given delegated authority to refuse planning permission on the following ground:

In the absence of a signed legal agreement there is no mechanism for ensuring the provision of the required the social and physical infrastructure and financial contributions, including contributions towards the existing sea sports centre. As such the development is contrary to policies SS5 and SS6 of the Core Strategy Local Plan which require that the development should provide, contribute to or otherwise address the identified infrastructure needs.

1.0 INTRODUCTION

- 1.1 At the meeting of the Planning and Licensing Committee of 3rd April 2018 it was resolved to defer consideration of application Y17/1099/SH pending the receipt of legal advice regarding the suitability of the consideration of the application under s73 of the Town and Country Planning Act. In particular Members wanted clarification that the application could be legally determined under s73 of the Town and Country Planning Act 1990 (as amended), due to the nature of the alterations proposed. The alterations that they were most concerned about in this respect were the increase in the height parameters of the blocks and the removal of the conditions requiring the provision of the sea sports centre and beach sports centre. Members also queried whether the development under the outline planning permission had commenced.

2.0 REPRESENTATIONS

- 2.1 Since the last report additional letters/emails of objection have been received raising issues that were covered in the main report. They are available in full on the planning file.

3.0 CONSULTATIONS

- 2.1 Since the last report comments have been received from the Council's Heritage Consultant. They were appended to the Supplementary Sheets for the last meeting and are available in full on the planning file.

3.0 THE PROPOSED CHANGES

- 3.1 Planning permission was granted under application reference Y12/0897/SH for the following development, subject to a significant number of conditions and an s106 legal agreement:

Outline planning application with all matters (access, scale, layout, appearance, landscaping) reserved for the redevelopment of the harbour and seafront to provide a comprehensive mixed use development comprising up to 1000 dwellings (C3), up to 10,000 square metres of commercial floorspace including A1, A3, A4, A5, B1, D1 and D2 uses as well as sea sports and beach sports facilities.; improvements to the beaches, pedestrian and cycle routes and accessibility into, within and out of the seafront and harbour, together with associated parking, accompanied by an Environmental Statement.

- 3.2 On 4th September 2017 an application was submitted to the Council under s73 of the Town and Country Planning Act 1990 for the following development:

Section 73 application for removal of conditions 41 (Provision of Sea Sports Centre) and 42 (Provision of Beach Sports Centre) and for the variation of conditions 4 (Reserved Matters), 6 (Phasing), 7 (Reserved Matters Details), 15 (Public Realm), 16 (Play Space/ Amenity Facilities), 18 (Public Toilets), 21 (Wind Flow Mitigation), 23 (Heritage Assets), 25 (Bus Stop) and 37 (Wave Wall) of planning permission Y12/0897/SH (Outline planning application with all matters (access, scale, layout, appearance, landscaping) reserved for the redevelopment of the harbour and seafront to provide a comprehensive mixed use development comprising up to 1000 dwellings (C3), up to 10,000 square metres of commercial floorspace including A1, A3, A4, A5, B1, D1 and D2 uses as well as sea sports and beach sports facilities; improvements to the beaches, pedestrian and cycle routes and accessibility into, within and out of the seafront and harbour, together with associated parking, accompanied by an Environmental Statement) to enable changes to the plot shapes, footprints, maximum height, changes to parameter plans, levels, parking arrangements, and alterations to the Environmental Statement.

- 3.3 The section 73 application, therefore, sought the removal of two conditions and the variation of a number of other conditions. The description of the application made it clear what the removal and variation of conditions sought to achieve.
- 3.4 The application is EIA development and the application was supported by an updated Environmental Statement (ES). The application was subject to full consultation, as required by the planning and EIA regulations.

4.0 CONTEXT

- 4.1 Prior to October 2009, when a developer wanted to make a small, but material, change to the approved plans of a scheme that already had planning permission, it was often necessary to submit a further full planning application, which led to considerable delay, cost and uncertainty for the applicant and additional work for the local planning authority (LPA). *The Killian Pretty Review – Planning Applications: A Faster and More Responsive System 2008* recommended that a more proportionate approach should be explored. Research by consultants, in consultation with the property industry, revealed that one option was to encourage greater use of the existing section 73 procedure in cases where a condition has been attached to the planning permission listing the drawings and particulars that have been approved. This approach, involving a variation of the relevant condition to refer to amended plans, is discussed in the *Greater flexibility for planning permissions* guidance that was issued in 2009 and revised a year later. The 2010 guidance adds that the government agrees with the definition proposed by consultants: “A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved.” This is not, however, a statutory definition.
- 4.2 Pre-application discussions are encouraged so that the appropriateness of using this route can be judged in advance of an application being submitted, and hence avoid possible wasted work on both sides.
- 4.3 As well as enabling minor material amendments to approved plans, the s73 process also enables applicants to apply to remove or vary any other conditions on the original planning permission.
- 4.4 When considering such s73 applications, planning authorities are advised to recognise that by definition the development will have already been found to be acceptable in principle, by virtue of the granting of the original planning permission. They are also advised to focus their attention on national, development plan policies or other material considerations that may have changed significantly since the original grant of permission with regard to the changes sought.
- 4.5 Where an application under s73 is approved, the effect is to create a new grant of planning permission. Consequently, the decision notice must set out all the conditions the planning authority wishes to impose. Also, because an s73 application cannot be used to vary the time limit for implementation, the “commencement date” conditions must be the same as the original permission.
- 4.6 The extent to which the s73 procedure can be used to vary planning permissions has been the subject of much debate and case law. There are several key points that have come out of case law in relation to this:
- The alterations proposed and any conditions subsequently imposed cannot result in a fundamental alteration of the development that was approved under the original permission. *R v Coventry City Council ex p Arrowcroft Group PLC [2001]*.
 - Whether an alteration results in a fundamental alteration is a question of fact and degree and is a decision which falls to the decision maker (LPA) to assess. This assessment will only be questioned by a Court

if it is irrational. *R (Wet Finishing Works Ltd) v Taunton Deane BC* [2018].

- Alterations under s73 are not restricted to 'minor' amendments, whatever that may mean in the context of the wider scheme. *R (Vue Entertainment Ltd) v City of York Council* [2017].
- S73 alterations may increase the quantum of development allowed by the original permission so long as that increase does not constitute a fundamental alteration. *R (Wet Finishing Works Ltd) v Taunton Deane BC* [2018].

4.7 The Planning Practice Guidance provides some guidance on the use of s73, as set out here.

<https://www.gov.uk/guidance/flexible-options-for-planning-permissions>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/574864/Annex_A_summary_comparison_table.pdf

5.0 EXAMPLES OF THE USE OF SECTION 73

5.1 It is usual for local planning authorities to receive applications under s73 to vary approved plans and vary and remove conditions, particularly for larger applications. This is because they often progressed in phases over a number of years and circumstances change often resulting in conditions that are no longer relevant and changes to the detail of the development.

5.2 Ashford Borough Council has recently used the s73 process for comparable changes to those proposed in the current application. 17/0001/AS was for the proposed variation of condition 8 of planning permission 15/01671/AS (outline and hybrid application for residential and mixed used development) to replace a number of approved parameter plans. Among other things, the revised parameter plans sought to allow for increases in heights from a maximum of 58.75m AOD (to finished roof level not including plant) to 62.65m AOD (to roof level plant). The aim of the proposed amendments was to allow flexibility for changes to the detailed position and height of the residential units, while maintaining the principle established by the original permission.

5.3 Folkestone & Hythe District Council has previously approved the reduction in overall height and changes to the bulk and massing of the multi-storey sports park on land adjoining The Cube under an s73 application.

5.4 The following are examples of recent case law involving s73 applications used to vary parts of large developments.

5.5 In *Vue Developments Ltd v York City Council* [2017], the issue involved an s73 application to effectively increase the amount of cinema screens from

12 to 13 in the proposed cinema that was part of a large mixed-use development. The proposed planning unit was extensive, incorporating a large community stadium, leisure centre, retail stores and more. There was no condition restricting the size of the proposed cinema.

The claimant argued that the use of s73 was unlawful as it amounted to a fundamental change to the planning permission. The Court held that to determine this issue, it was necessary to look at the permission as a whole and that in the context of a large, mixed-use scheme, the change was not fundamental. Section 73 did not in those terms limit the extent of the amendment of conditions.

The Court found that bearing in mind the need to consider the uses within the overlap proposal, and that the cinema "*...was but one element of a very large mixed-use scheme...*" the s73 proposal did not amount to a fundamental alteration of the approved proposal.

- 5.6 In *R v Coventry City Council* [2001], permission was granted for a large mixed-use development, although not as large as in the York case. It involved a large arena, one food superstore and one variety superstore with associated small retail services and community units. A condition required the provision of the two superstores. A s73 application sought to provide a larger store selling food and non-foods. A smaller store would include variety stores selling various fashion items. There would be no variety superstore.

Although the variety store was only one element, it was an important element, and it was determined that its removal, sought by the s73 application, would have changed the permission.

6.0 APPRAISAL

Section 73 process

- 6.1 Following the deferral of the application at the Planning and Licensing Committee of 3rd April 2018 officers instructed LSR Solicitors and Planning Consultants (LSR) to provide independent legal advice to the Local Planning Authority regarding the suitability of the application being considered under s73, rather than s70 of the Town and Country Planning Act. The applicant instructed their own Counsel, Christopher Lockhart-Mummery QC of Landmark Chambers. His advice was provided to the Council and LSR for consideration.
- 6.2 Following the committee meeting the applicant has submitted further changes to the application as set out below:
1. The removal of the changes to plot H from the application so that the building parameters are returned to the minimum and maximum height parameters, footprint and horizontal deviations as approved under Y12/0897/SH. This

reduces the minimum/maximum height parameters of Plot H from the proposed 31.0m ASD min/35.5m ASD max to 16.0m ASD min/20.5m ASD max. Amended parameter plans will be submitted to show this.

2. An amendment to the description of development, so as to vary condition 42 (beach sports) rather than remove the condition.
 3. Proposed revised wording for condition 42, to state '*Prior to the submission of any application for reserved matters approvals within phase 5 of the development, details of beach sports facilities to be provided on site shall be submitted to the Council for approval unless agreed in writing by the Local Planning Authority*'.
 4. A commitment to agree to a contribution through the S106 deed of variation to provide enhanced facilities at the existing sea sports centre already provided on The Stade within the application site boundary.
- 6.3 The proposed changes to the application have sought to address concerns raised by Councillors and the public at the committee meeting with regard to the extent of changes proposed and the reduction of community facilities within the development (the sea and beach sports centres) and the increases in height proposed, whilst also following advice received from the Local Planning Authority with regard to the consideration of the application under s73 of the Town and Country Planning Act.
- 6.4 Independent expert legal advice provided to the Local Planning Authority by LSR makes it clear that it would be preferable to consider the original changes proposed under section 70 of the Town and Country Planning Act, rather than section 73. However, the amendments now proposed by the applicant make the consideration of the application under section 73 more acceptable as the proposed changes to the height parameters have been minimised and all the community facilities included in the original application description have been or will be provided as set out below.
- 6.5 Plot H had the greatest changes proposed to the height parameters and these have now reverted back to the parameters approved under the outline permission Y12/0897/SH.
- 6.6 A sea sports centre has already been provided by another organisation elsewhere within the red line site boundary and some of the £3.5 million s106 contribution can be used to provide enhanced provision there through a deed of variation to the s106 agreement. As this will be a financial contribution to a recently provided facility, rather than a further new facility, the provision for the financial contribution has to be through a legal agreement and it cannot be dealt with by condition. Therefore, the application still proposes the removal of condition 41. Beach sports facilities will still be provided but will be across the site rather than in a specific centre. As the description of the original application referred in both cases to facilities rather than centres, the changes to the conditions do not fundamentally change the development as

approved, merely how the requirements of providing these facilities are met. The requirements for the beach sports and sea sports facilities are set out in Core Strategy policy SS6 and it is considered that the application, as amended, meets these policy requirements.

- 6.7 The advice from LSR has confirmed that s73 is not restricted to minor material amendments. The legal test is not whether the proposed changes are minor material amendments but whether or not they fundamentally alter the development that was originally approved. The changes now proposed will not result in a development that is fundamentally different from that previously approved for the reasons set out above.

Commencement of development

- 6.8 During consideration of the application at the previous meeting, councillors queried whether or not the development approved under the previous planning permission had commenced. It is an outline permission for a mixed use development with all matters reserved for future consideration and no reserved matters have been submitted or approved. The description of development also included sea sports and beach sports facilities; improvements to the beaches; pedestrian and cycle routes; and accessibility into, within and out of the seafront and harbour, together with associated parking.
- 6.9 All of the works that have been carried out within the application site so far have been carried out either under separate planning permissions or consents as follows:

Harbour Arm

- The physical works to the Harbour Arm were carried out under the Folkestone Harbour Act 1992 (Part II).
- Listed Building Consent for the installation of replacement windows and internal and external alterations to the Pier Head Lighthouse was approved under reference Y15/1050/SH.
- The change of use of the Pier Head Lighthouse from sui-generis to a flexible use spanning use classes A1(shops) and A4(drinking establishments) was granted under reference Y16/0038/SH.
- The change of use of the West Pier units from sui-generis (uses in a class of their own) to A1(shops), A3(restaurant & cafés) and A4(drinking establishments) was approved under reference Y15/1051/SH.
- The installation of public toilets including the infill of existing recesses was granted planning permission under reference Y17/0253/SH.

Boardwalk

- The installation of a boardwalk from the Lower leas Coastal Park to the Harbour Arm was granted planning permission under reference Y17/0514/SH.

Harbour Viaduct & Swing Bridge

- Planning permission and Listed Building Consent for maintenance and repair works, repainting of the Swing Bridge and installation of new handrails and balustrades were approved under references Y16/0855/SH and Y16/0856/SH respectively.
- The change of use and conversion of the Viaduct & Swing Bridge from railway viaduct to public space was approved under reference Y16/1086/SH and Listed Building Consent for the same was approved under reference Y16/1087/SH
- Planning permission and Listed Building Consent for the demolition of two of the four concrete infill supports to the viaduct arches were granted under references Y16/1222/SH and Y16/1223/SH respectively.
- Planning permission and listed building consent for a new public access stair structure and lift from the fountains to the viaduct bridge were approved under Y17/203/SH and Y17/204/SH.
- Planning permission and listed building consent for a public viewing platform on the east-side of the Harbour Viaduct were approved under Y17/0229/SH and Y17/0230/SH.

Onyx Nightclub/Marine Pavilion

- Planning permission for the demolition of the nightclub building was granted under reference Y15/1066/SH.

Customs House

- Change of use from sui generis to museum/exhibition space (Class D2) was approved under Y17/1103/SH.

Fountains

- Planning permission was granted under Y11/0179/SH

6.10 The works set out above do not constitute commencement of the development approved under outline permission Y12/0897/SH as they were implemented under their own separate standalone consents. The applicant has also advised that the works carried out were not intend to be for the implementation of the outline planning permission. Whether or not development has commenced is a legal matter and as such is normally dealt with via an application for a lawful development certificate. The Council has never been asked for its determination on this in relation to planning permission Y12/0897/SH, although the informal view of officers has always been that development under that planning permission has not commenced. Notwithstanding this, even if the view was taken that development had commenced, a S73 application can still be considered and determined provided that the development had commenced prior to the expiry of the planning permission. In this case the planning permission has not expired. This is allowed for under S73A of the Town and Country Planning Act 1990. If Members take the view that the application should be considered under S73a rather than S73 this is not a material change to the application and would not require an further reconsultation as all the issues and relevant planning considerations are the same.

7.0 CONCLUSION

- 7.1 The further changes made by the applicant, following the committee meeting have reduced the scope of the s73 application and ensure beach sport and sea sport facilities are delivered by the development in accordance with the aims of the original outline planning permission.
- 7.2 This addendum report demonstrates that officers consider that the determination of application Y17/1099/SH under s73 of the TCPA 1990 is legally sound and that the determination of the application under this route has provided sufficient opportunities for representations to be made and considered and opportunity for full consideration of all the relevant planning considerations raised in the objections to the application.

RECOMMENDATION

a) That that the Head of Planning Services be authorised under delegated authority to grant planning permission subject to:

- Completion of a deed of variation legal agreement with the applicant that secures the social and physical infrastructure and financial contributions, including contributions towards the existing sea sports centre within the site, which are detailed within the main report and this addendum and which the Head of Planning Services considers to be acceptable.
- The conditions set out below and any additional conditions the Head of Planning Services considers to be necessary following detailed discussions with the applicant.

b) That in the event that the legal agreement is not finalised by 1st June 2018 and an extension of time has not been entered into by the applicant, the Head of Planning be given delegated authority to refuse planning permission on the following ground:

In the absence of a signed legal agreement there is no mechanism for ensuring the provision of the required the social and physical infrastructure and financial contributions, including contributions towards the existing sea sports centre. As such the development is contrary to policy SS6 of the Core Strategy Local Plan which requires that the development should provide, contribute to or otherwise address the identified infrastructure needs.

Recommended conditions

The conditions which are being varied would read as follows (the remainder would be as on the original approval):

4. The submission of reserved matter applications pursuant to this outline application shall together provide for at least 720 and not more than 1000 dwellings and up to 10,000sqm gross commercial floorspace (A1, A3, A4, A5, 81, D1 and D2 uses) and demonstrate compliance with the following Parameter Plans and the text set out on those Plans to fix the development principles:-

Parameter Plan 1 - Planning Application Boundary Rev: B.

Parameter Plan 2 - Buildings Retained/Demolished Rev: A.
Parameter Plan 3 - Plot key and Setting Out Rev: B.
Parameter Plan 4 - Site Access Rev: B.
Parameter Plan 5 - Public Realm Rev: B.
Parameter Plan 6 - Existing and Proposed Site Levels Rev: B.
Parameter Plan 7 - Minimum/Maximum Development Rev: B.
Parameter Plan 8 - Ground Floor Horizontal Deviation Rev: B.

Together with the mandatory design and specifications set out within the Folkestone Seafront Masterplan Design Guidelines Rev: A 11.01.18 and Folkestone Seafront Landscape Guidelines Rev: 2 - 11.01.2018 and Supplementary Information.
(The exact wording to be amended following the receipt of amended parameter plans removing the proposed changes to height parameters for plot H)

Reason:

To determine the scope of this permission in accordance with the submitted documents, to meet the strategic objectives of the Shepway Core Strategy Local Plan 2013, in order to ensure the delivery of a high quality sustainable new neighbourhood.

6. Unless agreed otherwise with the local planning authority the development shall be carried out in accordance with the approved phasing plan No. E and Folkestone Seafront Landscape Guidelines Rev: 2 - 11.01.2018 and Supplementary Information.

Reason:

In order to ensure the development comes forward in conjunction with appropriate infrastructure and is delivered in accordance with the assumptions considered within the Environmental Statement, in accordance with policies SS5 and SS6 of the Shepway Core Strategy Local Plan 2013 and the NPPF.

7. The reserved matters submitted in accordance with Condition 1 shall include the following details to the extent that they are relevant to the reserved matters application in question:

A. Layout

The layout of routes, buildings and spaces, the block form and organisation of all buildings including the locations and plan form of non-residential buildings, the distribution of market and affordable dwellings within that phase including a schedule of dwelling size (by number of bedrooms), the location of dwellings designed to seek to meet the Council's Lifetime Homes guidance (a minimum of 20%), full details of the approach to vehicle parking including the location and layout of adequate residential parking, visitor parking and parking for people with disabilities for each building type together with details of the design approach for access points into, and the ventilation of, any undercroft/underground parking, full details of the approach to residential cycle parking at a ratio of 1 space per bedroom and the approach to commercial and visitor parking strategy including the location, distribution, types of rack, spacing and any secure or non-secure structures associated with the storage of cycles and the location and form of open areas.

B. Access

The access and circulation of modes of travel within the relevant phase or sub-phase, the design of roads and paths and junction layout including the provision of footpaths and cycleways.

C. Scale and Appearance

Scale, form and appearance of the architecture within each phase in accordance with the mandatory parameter and design guidelines, including frontage design and public/private realm definition and boundary treatments

D. Public Open Spaces Public Realm Design Strategy

The extent, layout and specification of public open spaces, in accordance with the mandatory Folkestone Seafront Landscape Guidelines Rev: 2 - 11.01.2018 and Supplementary Information and including details of street furniture (including lighting, seating, signage, bus stops, bins surface treatments, threshold levels) and play space and delivery of Marine Parade, accompanied by a management plan showing how the relevant areas of public open space are to be laid out, paved, planted, equipped and maintained together with a timetable for their implementation.

E. Landscaping

The landscape design and specification of hard and soft landscape works within each phase in accordance with the mandatory Folkestone Seafront Landscape Guidelines Rev: 2 - 11.01.2018 and Supplementary Information.

F. Playspace

The amount and location of play space including:

- a) A plot specific play space strategy including details of the play equipment proposed
- b) An overarching play space strategy which should have regard to the play space provision within preceding plots and proceeding plots as appropriate.

Reason:

In order to ensure the development delivers development of the quality envisaged in the illustrative masterplan as required by the mandatory design guidelines, in accordance with saved policies TR5, TR11 and TR12 of the Local Plan Review, policy SS6 of the Shepway Core Strategy Local Plan 2013 and the NPPF.

15. The reserved matters submitted in relation to any development to east of harbour approach road/phase 5 as shown on illustrative Plan E shall include the retention of the public realm improvements to the Harbour Viaduct and Harbour Arm already completed and include measures to ensure these are accessible to the public to the reasonable satisfaction of the Local Planning Authority prior to the occupation of any dwellings within plot PH01/Phase 6.

Reason:

In order to ensure the delivery of appropriate open space and public realm to serve the development and deliver the identified public realm improvements to the harbour as required by policy SS6 of the Shepway Core Strategy Local Plan 2013.

16. The reserved matters submission for phase 6/plot G1 shall include play space and communally accessible amenity facilities (eating areas, tables, seating etc) within the communal gardens, inclusive of details of opening hours to residents and the public.

Reason:

In order to ensure the provision of adequate open, amenity and play space in accordance with saved policies LR9 and LR10 of the Local Plan Review and policy SS6 of the Core Strategy Local Plan.

18. Reserved matters application submitted in relation to Plot A shall include details of publically accessible toilets, inclusive of details for their long term management and maintenance.

Reason:

In order to ensure the provision of adequate facilities in accordance with policies SS5 and SS6 of the Shepway Core Strategy Local Plan 2013.

21. The reserved matters submitted in accordance with Condition 1 for phase 6/plot G1 shall include mitigation measures to reduce the impact of wind flow downwash. Such measures shall include Computational Fluid Dynamics (FD) assessment of wind effects once massing has been designed and include evidence to demonstrate how the results of the assessment have informed the detailed design of the proposed development.

Reason:

In order to minimise wind flow downwash in the interests of the amenity of residents in accordance with the development mitigation measures set out within the approved ES addendum dated 24th April 2013.

23. Prior to the commencement of development in phases 5 and 6 details of protection measures for the retained heritage assets as shown on parameter plan 2 shall be submitted to and approved in writing by the Local Planning Authority. Such measures shall be implemented in accordance with the agreed schedule.

Reason:

To protect the identified heritage assets and ensure that heritage is appropriately incorporated in to the development, in accordance with the NPPF, Shepway Core Strategy 2013 policy SS6 and retained local plan policies SD1 and BE5.

25. Prior to the occupation of phase 2 details of and a timetable for the provision of a new bus stop shall be submitted to and approved in writing by the Local Planning Authority.

Reason:

In order to appropriately mitigate the impact of the development on the local highway network and ensure public transport is accessible to the residents of the properties hereby approved, in accordance with policies SD1, TR11 and TR12 of the saved Local Plan, policy SS5 of the Shepway Core Strategy Local Plan 2013 and the NPPF.

37. Development within phase 6 hereby permitted shall not be commenced until such time as a detailed design of the proposed wave wall on the Southern Quay has been submitted to, and approved in writing by, the Local Planning Authority. The wave wall shall be constructed in accordance with the approved design to the reasonable satisfaction of the Local Planning Authority prior to the first occupation of Phase 6 unless an alternative timetable is agreed, in writing, by the Local Planning Authority. The wave wall shall be thereafter maintained in accordance with the approved details or as otherwise agreed, in writing, by the Local Planning Authority.

Reason:

To reduce flood risk to the proposed development and to ensure the long term management and maintenance of flood defence infrastructure in accordance with policy SS5 of the Shepway Core Strategy Local Plan and the NPPF.

42. Prior to the submission of any application for reserved matters approvals within phase 5 of the development details of beach sports facilities to be provided on site shall be submitted to the Council for approval and no work shall commence on phase 5 of the development until the approval beach sports facilities have been provided.

Reason:

In order to ensure the provision of the beach sports facilities as part of the development as required by policy SS6 of the Shepway Core Strategy Local Plan.

Any details pursuant to the conditions which have previously been approved would not need to be resubmitted, unless details have changed as a result of the Section 73 application.

In addition to the changes to the original conditions the following additional conditions are recommended

1. The Harbour Master's House shall not be demolished until the reserved matters applications for phases 5 and 6 of the development as shown on Illustrative Plan E Rev: B have been approved by the Local Planning Authority.

Reason:

To ensure that every opportunity has been explored for the retention of the non-designated historic asset or to ensure that a high quality development would proceed in its place in accordance with paragraphs 135 and 136 of the National Planning policy Framework.

2. Details of the improvements to Station Square shall be submitted to and approved in writing by the Local planning Authority and shall include details of implementation and timings. No above ground development works on phases 5 and 6, as shown on Illustrative Plan E Rev: B, shall commence until such details have been approved.

Reason:

In order to ensure the development delivers development of the quality envisaged in the illustrative masterplan as required by the mandatory design guidelines, in accordance with, saved policies TR5, TR11 and TR12 of the Local Plan Review, policy SS6 of the Shepway Core Strategy Local Plan 2013 and the NPPF.

Y17/1099/SH
Former Rotunda Amusement Park
Marine Parade
Folkestone

