

Application No: 21/1493/FH

Location of Site: Folkestone Harbour, Harbour Approach Road, Folkestone, CT20 1QH

Development: Retrospective temporary planning permission for a period of 4 years for the stationing of a shepherd's hut to provide food and drinks (sui generis use).

Applicant: Folkestone Harbour Seafront Development Company.

Agent: Mr G. Fitch, Blueprint Projects, Unit 12 Riverside Business Centre, West Hythe, CT21 4NB.

Officer Contact: Ross McCardle

SUMMARY

This application seeks retrospective temporary planning permission (for a period of four years) for the stationing of a traditional shepherd's hut on the viaduct to the side of Rocksalt for the sale of food and drink. The development would not give rise to any unacceptable amenity impacts, visual harm, highway safety concerns, flooding concerns or harm to the character and appearance of the conservation area. The application is therefore recommended for approval.

RECOMMENDATION:

That planning permission be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. INTRODUCTION

1.1. The application has been called in to committee by Councillor Peter Gane with regards to concerns about flooding.

2. SITE AND SURROUNDINGS

2.1. The application site comprises land at the northern tip of the converted railway viaduct across Folkestone Harbour, adjacent to Rocksalt and to the north of the pedestrian lift. It is laid to hard-standing and largely bare. The site is immediately adjacent to the stairs which provide access from the viaduct to Rocksalt (approved under Y19/0497/FH, as below).

2.2. The site is within the Leas and Bayle conservation area, and flood zone 3 (although significantly elevated from ground level).

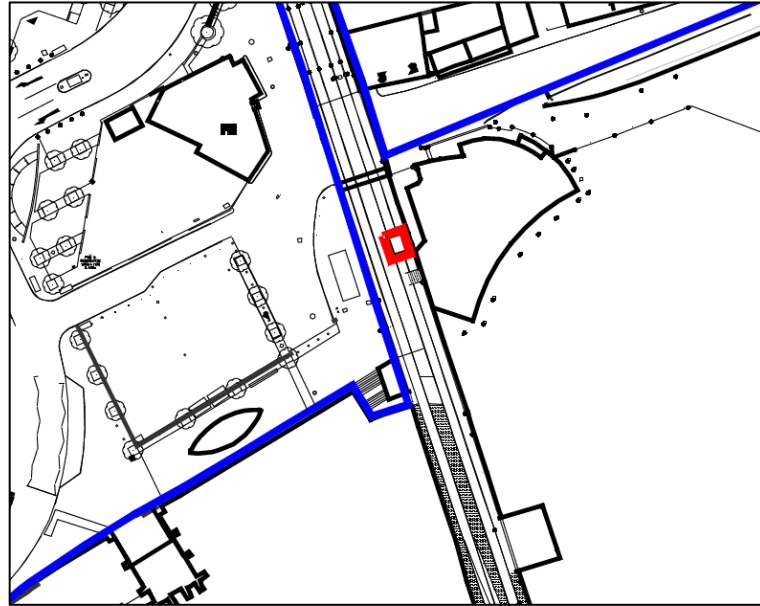


Fig.1: Site location

2.3. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

- 3.1 Retrospective planning permission is sought for the stationing of a traditional shepherds hut for a temporary period of four years for the sale of food and drinks as part of the wider harbour regeneration works.
- 3.2 The hut has been installed on site already. It measures approximately 2.8m wide x 2m deep x 2.6m tall and is of a traditional design using timber construction, metal wheels, and a curved roof. There are windows on three sides and a doorway in the southern elevation. Internally it features a food preparation area.
- 3.3 Temporary permission is sought for four years to enable the use of the structure to be reconsidered as the harbour regeneration works (being carried out by the same applicant) progress.
- 3.4 Proposed hours of use are 10.00 to 22.00 throughout the week and on bank holidays.

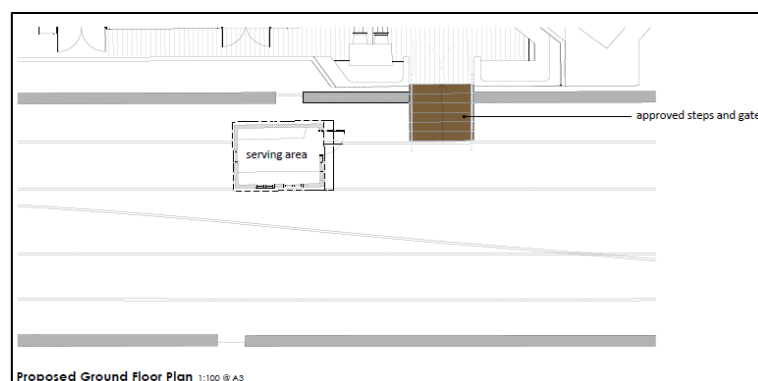


Fig.2: Proposed layout



Fig.3: Shepherd's hut as constructed



Fig.4: Shepherds hut as constructed



Fig.5: View from the fountains

4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

Y12/0897/SH	Outline planning permission for redevelopment of the harbour and seafront to provide a mixed-use development comprising up to 1000 dwellings and up to 10,000sqm of commercial floorspace.	Approved
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Y17/1099/SH	S.73 removal of condition 41 and variations to conditions 4, 6, 7, 15, 16, 18, 21, 23, 25, 37, and 42 of outline planning permission Y12/0897/SH.	Approved
Y19/0497/FH and Y19/0498/FH	Planning permission and listed building consent for the erection of stepped access and gate from Rocksalt to the viaduct.	Approved

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: no objection.

Local Residents Comments

5.2 33 neighbours directly consulted, a site notice posted, and an advert posted in the local newspaper. No comments have been received in response.

Ward Member

5.3 Councillor Peter Gane has expressed concern in regards flood risk.

5.4 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Local Plan 2013.

6.2 The Folkestone & Hythe District Core Strategy Review Submission Draft was submitted to the Secretary of State on 10 March 2020. Inspectors were appointed to examine the plan on 19th March 2020 and public hearings were held from 15th to 18th December 2020, from 5th to 12th January 2021 and from 29th June to 1st July 2021. The Inspectors' final report was received 23rd February 2022; it finds the plan to be 'sound' and to "provide an appropriate basis for the planning of the District." In accordance with National Planning Policy Framework (2021) paragraph 48, the policies in the Core Strategy Review should therefore be afforded significant weight, having regard to the Inspectors' report.

6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1 (Quality places through design)

HB2 (Cohesive design)

E3 (Tourism)

T2 (Parking standards)

HE1 (Heritage assets)

Core Strategy Local Plan (2013)
 DSD (Delivering sustainable development)
 SS1 (District spatial strategy)
 SS3 (Sustainable settlements)
 SS6 (Folkestone seafront strategy)

In support of policy SS6, paragraph 4.143 of the Core Strategy states:

The site is suitable for mixed-use development, focused around distinct character areas and comprising of beach and high-quality residential uses, allied with significant active or commercial uses to provide a destination with clear vibrancy. It is important that recreational and open space uses, and leisure (potentially including food/drink) premises utilise the site's waterside location.

Figure 4.5 of the Core Strategy sets out the priority areas for development as part of the regeneration:

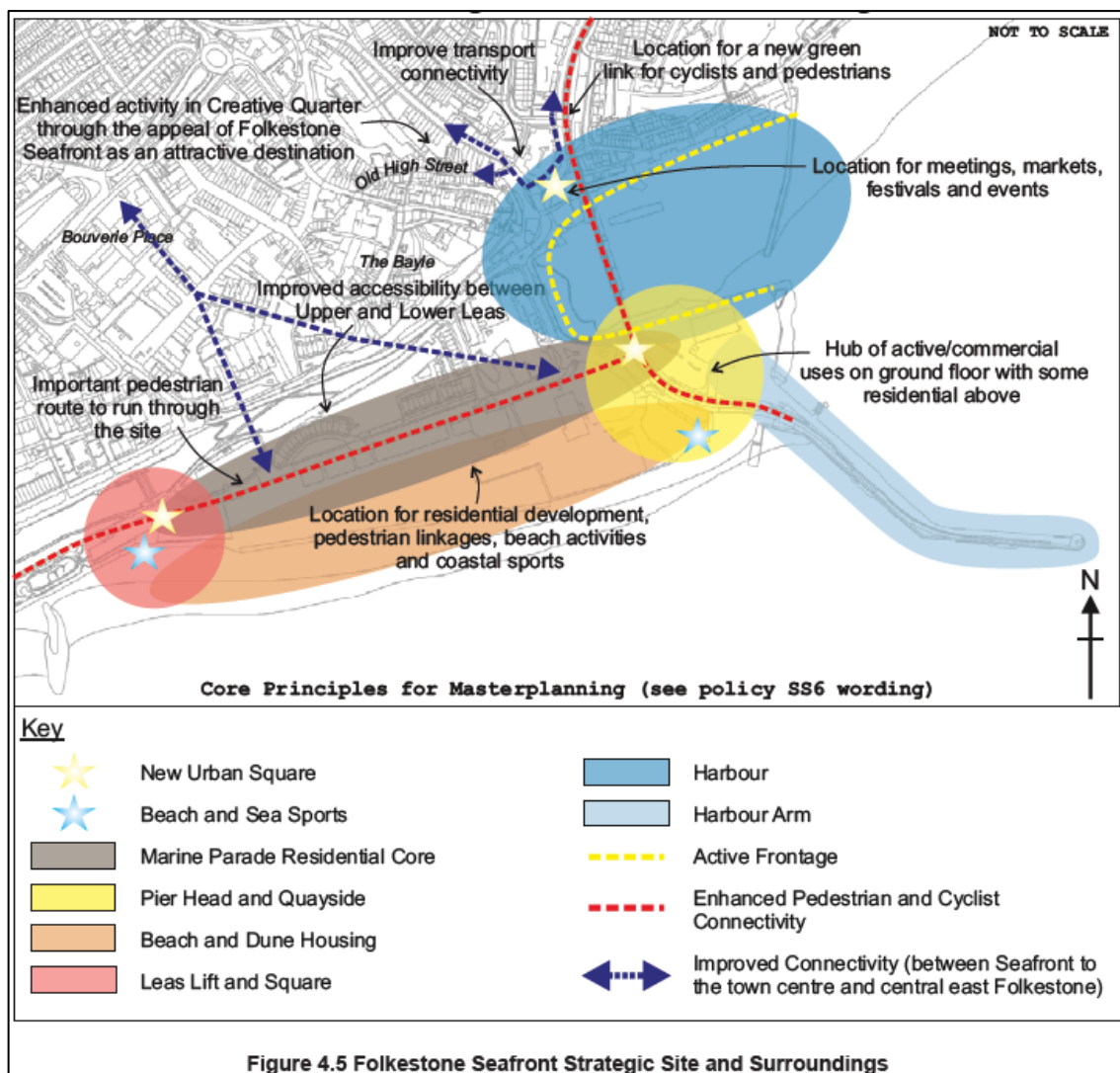


Fig.3: Core Strategy Seafront Masterplan

Policy SS6 then sets out that “Folkestone Seafront is allocated for mixed-use development, providing up to 1,000 homes, in the region of 10,000 sqm of floorspace

comprising small shops and retail services” and advises that permission will be granted where:

- a. Proposals clearly support the delivery of planned incremental redevelopment for a distinctive, unique and high-quality seafront environment, with a mix of uses providing vitality for the whole site and Folkestone.*
- b. The proposals directly contribute to the regeneration of Folkestone by reconnecting the town centre to the Seafront, and enhancing the attractiveness of Folkestone and its appeal as a cultural and visitor destination, complementary to the Creative Quarter and existing traditional maritime activities.*
- g. The layout is planned to achieve sufficient ground floor active/commercial uses in and around the Harbour and at the Pier Head Quarter to ensure a sense of vitality can be maintained, fully utilising the setting, and also featuring a central avenue and a range of open and enjoyable coastal environments.*

Core Strategy Review Submission draft (2019)

SS1 (District spatial strategy)
SS3 Sustainable settlements
SS10 (Folkestone seafront strategy)

Emerging policy SS10 is very similar to the adopted policy SS6, reiterating its aims and the masterplan map and policy wording remain the same as set out above.

6.4 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2021

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following paragraphs of the NPPF are relevant to this application:-

- 11 – Presumption in favour of sustainable development.
- 47 – Applications for planning permission be determined in accordance with the development plan.
- 111 – Permission should only be refused on highways grounds if there is an unacceptable impact on highway safety, or the cumulative impacts on the road network would be severe.
- 154 – Ensure development is not put at risk from flooding, and does not increase flood risk off-site.
- 194 to 202 – The need to protect heritage assets.

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Principle of development and sustainability

- b) Flood risk
- c) Design/layout/visual amenity and impact on conservation area
- d) Residential amenity
- e) Highway safety and amenity
- f) Other matters

a) Principle of development and sustainability

- 7.2 Members should note that the application being made retrospectively is not a material planning consideration; the scheme must be considered solely on its planning merits.
- 7.3 The application site lies within a highly sustainable town centre location where economic development is generally encouraged, and where existing local land uses include retail and food/drink premises (amongst others). Policies SS6 and SS10 of the adopted and emerging Core Strategies (respectively) identify this area for commercial development including food and drink uses, and the proposed unit would add to the mix of such uses within the harbour area. It is therefore considered that the principle of the proposed development is acceptable.

b) Flood risk

- 7.4 I note the application has been called in due to flood risk concerns. While the site technically lies within Flood Zone 3 as shown on the relevant mapping, Members will note that the application site is on the viaduct and therefore raised significantly (by approximately 4m) above ground level (see fig.5 above) and the site is therefore located a significant level above the considered flood risk. Nevertheless, on considering the Environment Agency standing advice, the proposed hut is considered to be “less vulnerable” development as per the Environment Agency’s flood risk vulnerability classification (<https://www.gov.uk/guidance/flood-risk-and-coastal-change#Table-2-Flood-Risk-Vulnerability-Classification>), and the Agency’s standing advice advises that the development is therefore acceptable in principle. There is no requirement to consult the Environment Agency directly and the National Planning Practice Guidance advises that planning authorities refer to the standing advice, as above. There is also no requirement to carry out the Sequential or Exceptions tests for minor, less vulnerable developments.

c) Design/layout/visual amenity and impact on conservation area

- 7.5 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that proposals in conservation areas pay special attention of preserving or enhancing the character or appearance of that area. The NPPF paragraph 197 sets out what should be considered when determining applications that affect heritage assets and the importance of enhancing their significance. In this case the heritage asset is the conservation area. Policy HB1 of the PPLP states that proposals should not have a detrimental impact on the street scene, either by themselves or cumulatively and should make a positive contribution to their location and surroundings.

- 7.6 The traditional shepherd's hut unit is relatively small scale, and considered to be of an attractive design in and of itself. It sits comfortably within the context of the street scene and contributes positively to the character and appearance of the conservation area. In some respects a wheeled hut is an appropriate structure to place on the former viaduct, where train carriages would historically have been a common sight.
- 7.7 The position of the hut is such that it would not obstruct any pedestrian movements across the swing bridge, and it is not overly prominent in views from surrounding vantage points. As such, the impact of the proposal on the character and appearance of the conservation area as the Shepard's hut is considered to be acceptable and to meet the criteria of the national and local policies set out above.

d) Residential amenity

- 7.8 The closest dwelling (3 Fish Market) is approximately 22m to the north, which is sufficient distance to prevent any unacceptable overlooking or loss of amenity for the occupants. The application site is within a generally vibrant urban location and the proposed hours of use (10.00 to 22.00) would be appropriate considering the hours for neighbouring commercial premises (Rocksalt is permitted to operate until 23.30 on Sunday and until 00.30 Monday-Saturday, for example). The proposed development would therefore not give rise to any unacceptable amenity impacts over and above those associated with the current circumstances of the area, which is a highly popular town centre location which experiences lots of visitors, vehicle movements, and associated noise and disturbance.

e) Highway safety and amenity

- 7.9 The development would not cause any harm to highway safety or amenity, including pedestrian movements (as above). Sufficient public car parking can be found in the area to meet any requirements the proposal may have and as such there are not considered to be any concerns on these grounds either. The proposal is of such a small scale and in a town centre location and as such does not give rise to a requirement for additional car parking provision.

f) Other matters

- 7.10 A temporary permission is considered appropriate in this instance as it would allow officers / the Council / the applicant to reconsider the scheme as regeneration of the harbour progresses.

Environmental Impact Assessment

- 7.11 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.12 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or

other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.

Human Rights

7.13 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

7.14 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.15 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 This application seeks retrospective temporary planning permission for the stationing of a mobile shepherd's hut to be used for the sale of food and drink. The hut is of an attractive design that would contribute positively to the character and appearance of the area, and the proposed use is unlikely to give rise to any unacceptable amenity impacts. Despite being located within a flood risk zone, the site is not at risk of flooding due to its elevated location and meets the standing advice on such matters.

8.2 The application is therefore recommended for approval.

9. BACKGROUND DOCUMENTS

- 9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

Conditions:

1. The shepherd's hut hereby permitted shall be removed from the site on or before four years from the date of this permission and the site returned to its former condition to the satisfaction of the Local Planning Authority.

Reason: So that the position may be reviewed at the end of the period stated.

2. The shepherd's hut hereby permitted shall be used for the sale of food and drink, and for no other purposes unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the amenities of the area and in recognition of the terms of the application.

3. The use of the premises hereby permitted shall not take place except between the hours of 10.00 to 22.00 on any day.

Reason: In the interests of residential amenity.

Informatives:

4. This application was assessed on the basis of drawings (19.36) 82 rev P1, 85 rev P0, and 86 rev P0.

Appendix 1 – Site Location Plan