

Application No: 22/13222/FH

Location of Site: The Stade, Folkestone Harbour, Folkestone, CT20 1QH.

Development: Temporary change of use of land for the stationing of an ice cream van for a three year period from 1st March to 30th September each year, between 2023 and 2026.

Applicant: Mr. F Fernando.

Agent: Mr. Andrew Burgess, Andrew Burgess Planning

Officer Contact: Lisette Patching

SUMMARY

This application seeks temporary planning permission for the stationing of an ice cream van during March to September each year, for a period of three years. It is considered that, subject to conditions, the proposed use of the land would result in a neutral impact on the significance of the conservation area; it would not result in unacceptable impacts on residential or visual amenity or highway safety; would not result in increased risk of flooding to the site or neighbouring land and would result in economic and tourism benefits to the area. It is, therefore, recommended that planning permission be granted.

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 is reported to Committee because of an objection from the Town Council and at the request of Councillor Peter Gane.

2. SITE AND SURROUNDINGS

2.1. The application site forms part of a wide paved promenade along the northern edge of Folkestone Harbour. The promenade runs along the edge of the harbour to Sunny Sands beach. It is proposed that the ice cream van would be positioned on the promenade immediately in front of a row of District Council owned parking spaces and adjacent to a timber boarded building. Pedestrian access would be retained between the van and the harbour edge.

2.2. The site is within the Leas and Bayle Conservation Area; within flood zone 2 and adjacent to flood zone 3 (which approximately tracks the mean high water line along the harbour edge). The Council's SFRA identifies the site as being at no risk of flooding in 2115.

2.3. The proposed location is shown at Figure 1 below and a site location plan is attached to this report as **Appendix 1**. The site is also shown in the photograph at Figure 2 below.



Figure 1 – proposed location of ice cream van



Figure 2 – Photo of site

3. PROPOSAL

- 3.1 The application seeks planning permission to station an ice cream van on the site between 1st March and 30th September during 2023 to 2026.
- 3.2 The supporting information states that the ice cream van would be a Heritage Ice Cream Van and has been converted to run on an electrical hook up. It would be powered from an existing electric point.
- 3.3 It is stated that the engine would never be used to operate the vehicle and freezer once in situ. No physical works are proposed.
- 3.4 A picture of the proposed Heritage Ice Cream Van is included below at Figure 3. **[CPO Comment: The specific type of ice cream van could not be controlled by condition if planning permission is granted.]**



Figure 3 – Proposed Heritage Ice Cream Van

- 3.5 The ice cream van would create one full time job during the season. The van would be removed from the site at the end of each day. There is an existing litter bin next to the site and, in addition, the applicant would provide their own litter bin which would also be removed at the end of each day.
- 3.6 With regard to economic benefits, in addition to the full time position that would result, it is stated that the ice cream van would contribute to a vibrant harbourside and increase visitor numbers, to the wider benefit of Folkestone as a whole.

4. RELEVANT PLANNING HISTORY

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

21/1492/FH	Erection of 6 pitches to be used by mobile units along with electric cabinets for power supply.	Refused 11.07.22
22/0554/FH	Installation of 2 container style units & up to 8 timber frame beach hut units to operate as retail	Withdrawn

units & food & drink outlets, install new dedicated power supply, resurfacing of existing hardstanding and upgraded public realm.

22/1308/FH	Change of use of land for the stationing of two mobile food units on six flexible pitch positions up to 7 days a week during daylight hours on a seasonal basis and installation of electrical cabinets for power supply.	Under consideration
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5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: Object on the following grounds:

- the location of the vehicle will cause queues, forcing people into road and cause obstruction to emergency vehicles.

Kent Highways & Transportation: No objection as ice cream van not sited on public highway.

Local Residents Comments

5.2 Publicised by neighbour letter, notice on site and press notice. At the time of writing 27 representations of objection, 32 representations in support, and a 47 signature petition containing objections have been received.

5.3 I have read all of the representations received. The key issues against are summarised below:

- Electrical units installed without planning permission, should not be used. [**CPO Comment:** As set out at 7.17 below, this is not a material planning consideration in this case]
- Will increase congestion on pavement & increases risk of accidents
- Already numerous ice cream outlets along The Stade
- Detrimental impact on existing businesses [**CPO Comment:** Commercial impact is not a material planning consideration]
- Nothing has changed since previous application refused
- Will encourage people to walk in road
- Detrimental to historic conservation area
- Over commercialisation of unique character of The Stade
- Visual intrusion to nearby properties
- Extra clutter
- Noise & air pollution and disturbance
- Increased litter
- Loss of space for fishermen and tourism

5.4 The key issues in support are summarised below:

- Gives the right atmosphere
- Van converted to run on electric motor rather than diesel
- Positive addition to local community & economy
- Area in need of 'pick me up'
- Accessible for those who can't walk far & wheelchair users
- In keeping with area

5.5 The submitted petition raises the following objections:

- Application does not include electrical boxes
- Residents' permit parking area will be reduced
- No public car park on The Stade
- Impact on existing ice cream businesses
- Spoil conservation area
- Existing litter bins inadequate
- Van is run on its diesel engines
- Not conservation led regeneration

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

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

Ward Member

5.7 Councillor Peter Gane has called the application to committee.

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review 2022.

6.2 The relevant development plan policies are as follows:-

Places and Policies Local Plan (2020)

HB1 - Quality Places Through Design

HB2 - Cohesive Design

E3 - Tourism

HE1 - Heritage assets

Core Strategy Review (2022)

SS1 - District Spatial Strategy

SS3 - Place-Shaping and Sustainable Settlements Strategy

SS10 - Spatial Strategy for Folkestone Seafont

In support of policy SS10, paragraph 4.218 of the Plan states that:

The Harbour frontage provides a special waterside environment to attract new commercial investors. This would introduce new forms of activity to the area (complementing recent restaurant developments), extend the appeal of Folkestone, boost the local housing market and regenerate the area.

Figure 4.6 of the Core Strategy Review identifies The Stade as being within the Harbour area covered by the Folkestone Seafront Strategy site. It identifies The Stade as being an Active Frontage. Figure 4.6 is reproduced below as **Figure 4** of this report.

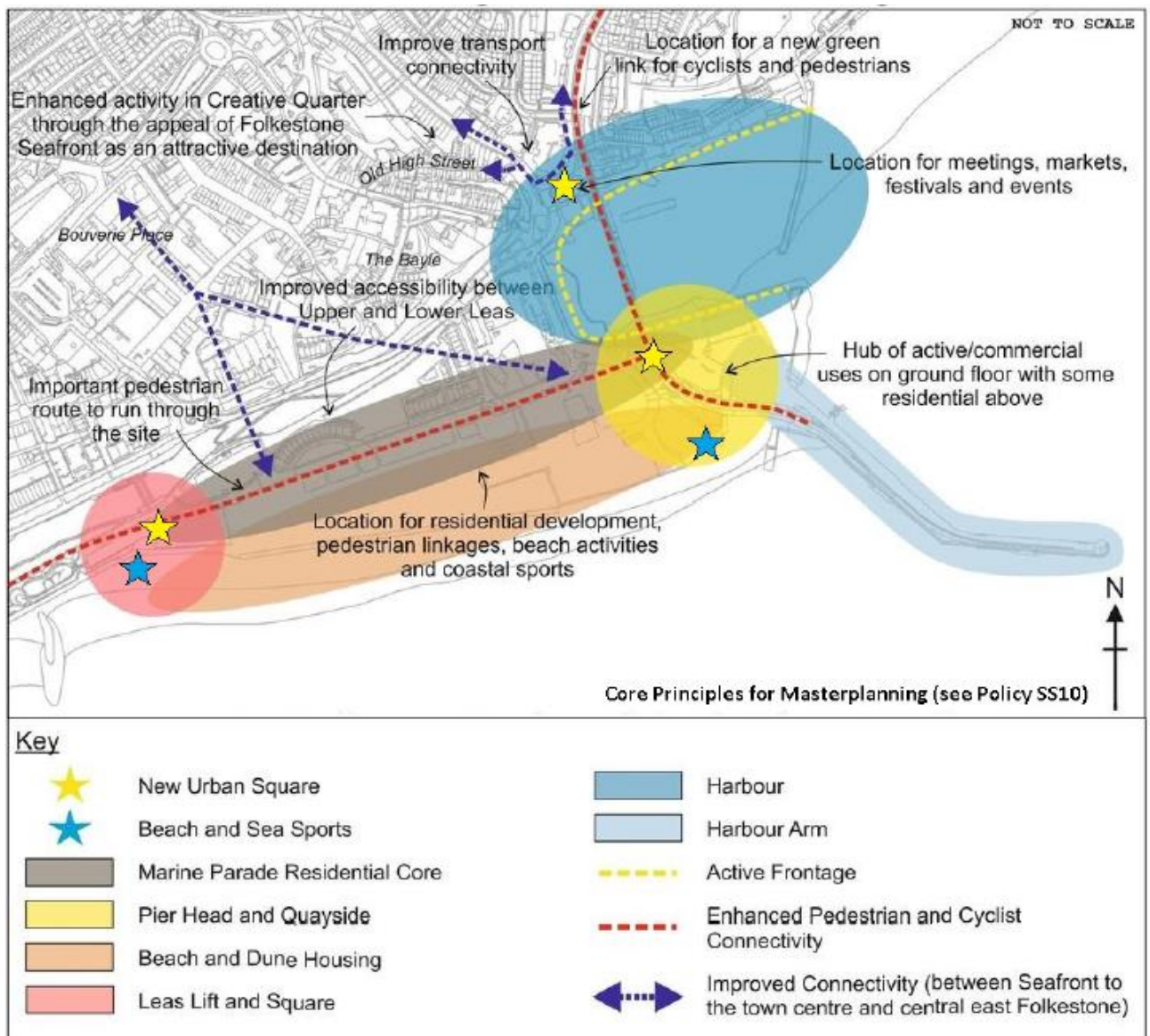


Figure 4: Folkestone Seafront Strategic Site and Surroundings

6.3 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, unless material considerations indicate otherwise.

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.

167 – 168 Ensure development does not increase flood risk off-site and changes of use should not be subject to sequential or exception tests.

194 to 202 – How to assess proposals affecting 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 In this location the proposed use would be tourism related. PPLP policy E3 seeks to direct tourism development to existing sustainable settlements. The application site lies within both within a strategic seafront location and in a highly sustainable urban location with good access both to Folkestone Town Centre and the mixed used seafront development currently under construction. Policy SS10 of the Core Strategy 2022 identifies The Stade as being part of the active frontage of Folkestone Harbour. It is therefore considered that the proposed use would constitute sustainable development that is in accordance with tourism and strategic policies and, as such, the principle of the proposed development is acceptable.

b) Flood risk

7.3 The application site lies within Flood Zone 2 (medium risk) and adjacent to Flood Zone 3 (high risk). However, the Council's SFRA identifies the site as being at no risk of flooding in 2115, when taking into account climate change. The proposal constitutes the change of use of the land and does not involve built development. The NPPF advises that it should not be necessary to undertake the sequential and exception tests when considering changes of use. The proposed mobile food unit is considered to be "less vulnerable" development under 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.

7.4 The proposed mobile unit would not impede the flow of any water in the event of a flood, as it would be free to flow under and around the base of the unit if it was in place at the time of flooding. Therefore, the development would not increase flood risk on neighbouring land. The unit is also intended to be removed from the site each day and

is unlikely to be in position during the winter months when the risk of tidal flooding is highest. The development is therefore considered to be acceptable with regard to flood risk and unlikely to suffer from flooding events or result in additional flood risk to nearby properties.

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

7.5 As the site is within a conservation area, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies. It requires that proposals in conservation areas pay special attention to preserving or enhancing the character or appearance of that area. The NPPF paragraph 197 sets out that account should be taken of

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness

The NPPF also requires that, when considering potential impacts, the level of harm to the significance of the heritage asset should be considered.

7.6 The Stade fronts onto a working harbour and is also a popular tourist location. As a harbour quayside it would traditionally have been a busy, highly active area. **Figure 5** below shows the historic layout of the Stade, which featured a number of structures along the frontage.

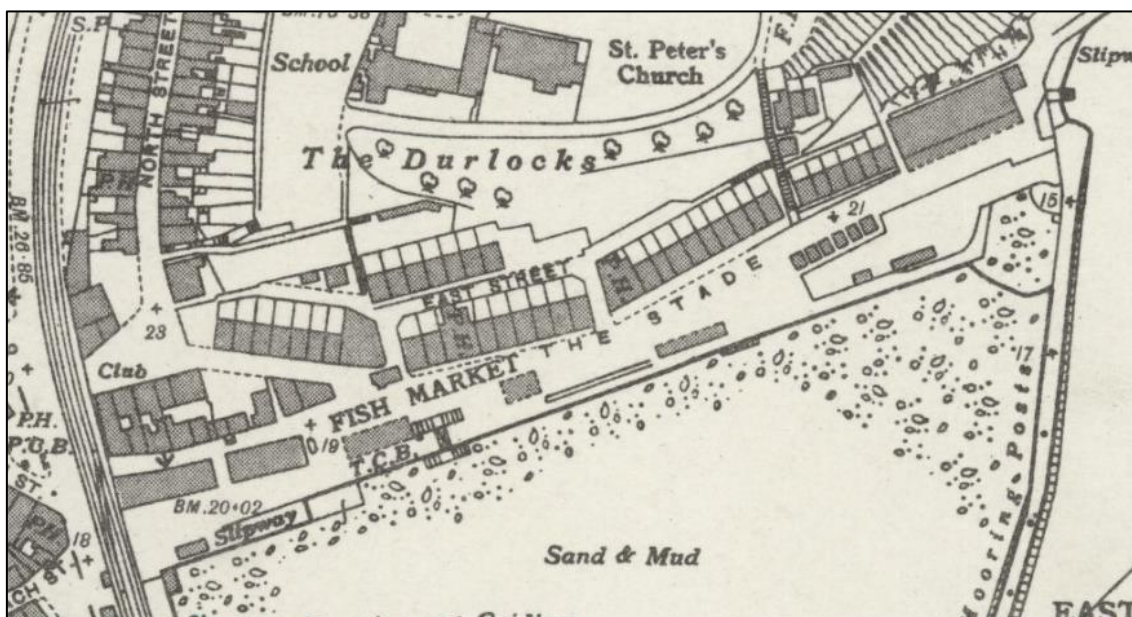


Figure 5 1946 - OS extract showing quayside structures.

7.7 Today, as well as being a residential area it also contains pubs, eating places and at least one gift shop. On the promenade area there is an existing mobile food unit, a permanent timber building and a kiosk selling seaside paraphernalia. Therefore, the character of the streetscene and this part of the conservation area is very much one of commercial and tourist activity. Set against this backdrop the stationing of an ice cream van would not appear out of place. There are parking spaces along the section of road fronting this part of the promenade and the van would be viewed in the context of the neighbouring timber building and parked cars. It is therefore considered that it would preserve the character and appearance of the conservation area. The promenade is

of sufficient width for the van to be parked without it appearing cramped or cluttered. In addition, historically there were structures along the promenade here, as shown in Figure 5 above.

- 7.8 Given the above it is considered that the proposal would have a neutral impact on the special character of the conservation area. As a tourist destination the Stade contributes to the economy of the district and the addition of an ice cream van would add to that, albeit in a minor way. For the reasons set out above it is considered that the proposal would preserve the character and appearance of this part of the conservation area. It is therefore considered that the proposed development meets the tests in the Listed Buildings and Conservation Areas Act and the NPPF and accords with policy HE1.
- 7.9 Conditions are proposed requiring the van to be removed at the end of each day and at the end of each season in the interests of protecting visual amenity when the van is not in use and during the quieter winter months, when one would expect to see fewer tourist/visitor concessions and a generally lower level of activity on the quayside.

d) Residential amenity

- 7.10 Policy HB1 of the PPLP seeks to ensure that proposals do not lead to an adverse impact on the amenity of future occupiers, neighbours, or the surrounding area.
- 7.11 The site lies within a vibrant and busy urban/tourism location where one would expect there to be a certain degree of background noise and disturbance from vehicles, visitors, and use of the harbour and harbour side. There are residential dwellings facing the site but these are separated from it by the road and a well used parking area. Given the scale of the proposal and the separation distances between the proposed site and nearby residential properties, the proposed ice cream van would not have an overbearing or enclosing effect on them.
- 7.12 In terms of noise and disturbance, not only are the residential properties separated from the site by a road and parking area, there is also a pub in very close proximity to the application site. In addition, The Stade and harbour area are busy and commercial areas, particularly in the summer months. As a result the ambient noise levels would be higher than would be experienced in a quiet residential street. Any noise generated by customers to the ice cream van must be assessed in that context. Given the urban and commercial environment and the physical separation of the site from the dwellings the proposed use would not result in a significant increase in noise and disturbance to residents. However, it is accepted that running the van on its engine or a petrol/diesel generator could create unnecessary noise and a condition is recommended requiring the van to be connected to an electrical hook up and not to run on its engine or generators while stationary. Subject to the imposition of such a condition it is considered that there would be no significant harm to residential amenity.

e) Highway safety and amenity

- 7.13 The proposed site for the ice cream van is not within the public highway nor on existing parking spaces. The site is close to a public car park at the bottom of Tontine Street and close to public transport connections. The proposed development is relatively small scale and would not generate significant travel movements in its own right. As such, the proposal would not generate traffic movements in excess of highway capacity, or highway safety. The promenade is of sufficient width to accommodate the

van and allow pedestrians to queue and walk past. In this regard there are no highway safety implications.

f) Other matters

- 7.14 There is a litter bin adjacent to the site and the applicant is also proposing to provide their own bin, which would be removed at the end of each day. This is considered sufficient to accommodate the limited litter from an ice cream van.
- 7.15 Commercial competition nor the price or quality of the product being sold are material planning considerations and cannot be given any weight in reaching a decision.
- 7.16 The issue of whether or not the operator has a street trading licence is not a material planning consideration as licensing legislation is separate to planning legislation. However, for clarification, the Council's Licensing Specialist has advised that the ice cream van does not need Street Trading Consent to trade in this location as it is private land. It has also been clarified that the policy restricting street trading in this area only prohibits trading on the highway.
- 7.17 The fact that the electric cabinet has already been installed without planning permission is not a material planning consideration in this case. The electric cabinets are outside the application site and do not form part of the application. If there is a condition requiring the van to connect to an electric hook up and the electric hook up is not available for any reason, the operator would be in breach of the condition if they continued to operate and formal action could be taken, if necessary.
- 7.18 Given the existing activity that takes place along this promenade, including the existing food units, it is not considered that the ice cream van would increase the likelihood of pedestrians falling into the harbour. In any event this is not a material planning consideration.

Environmental Impact Assessment

- 7.19 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

- 7.20 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

- 7.21 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

7.22 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

7.23 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 It is considered that the proposed use of the land for the stationing of an ice cream van would be in keeping with the commercial and tourism uses of this harbourside location and constitutes sustainable development that is in accordance with national and local planning policy. It is not considered that it would detract from the visual amenity of the area and it would have a neutral impact on the significance of the conservation area. Given the tourism and other activity in the area the use would not result in a significant increase in noise and disturbance to local residents. There are no objections on highway or flooding grounds and it is considered that the proposal would result in economic and tourism benefits to the area. The proposal is considered to be in accordance with the development plan and it is therefore recommended that planning permission be granted.

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 use hereby permitted shall cease on or before 30th September 2026 and the vehicle, together with any associated paraphernalia, such as litter bins, shall be removed from the site at the end of this period.

Reason: In order that the impact of the use on the amenity of the area and the conservation area can be reviewed at the end of the temporary period.

2. The approved use shall take place only from the private land owned by Folkestone Harbour and Seafront Development Company in the position marked on the site plan submitted on 10th January 2023.

Reason: For the avoidance of doubt.

3. The ice cream van shall only operate on the site between 1st March and 30th September each year and the van and any associated paraphernalia, such as litter bins, shall be removed from the site when trading finishes at the end of each day.

Reason: In the interests of the visual amenity of the streetscene and to preserve or enhance the special character of the conservation area.

4. The van engine shall be switched off and the van connected to mains electricity while the site is in use for the sale of ice cream. No diesel or petrol generators shall be stationed or used within the site.

Reason: In the interests of residential amenity and to preserve or enhance the special character of the conservation area.

Appendix 1 – Site Location Plan