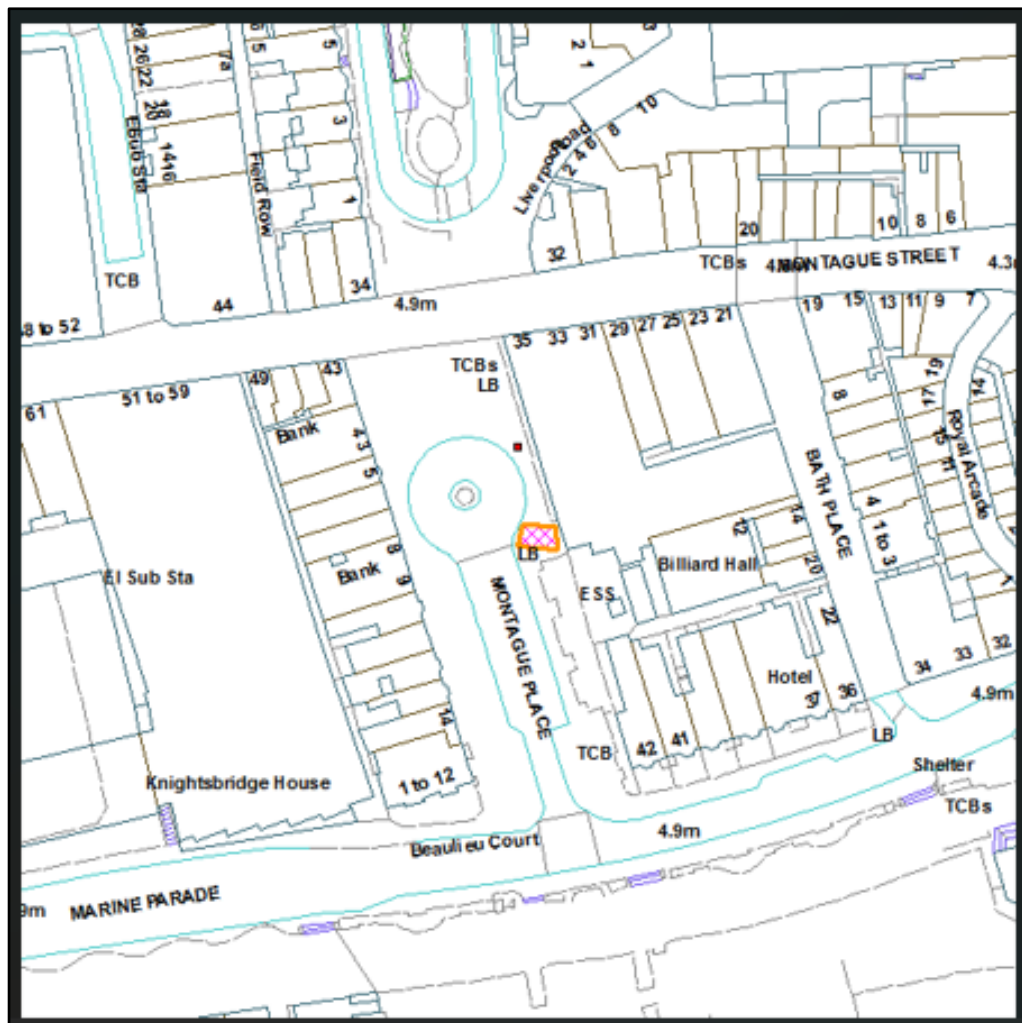


Application Number:	AWDM/0146/26	Recommendation - APPROVE
Site:	Land West Of 35 Montague Street, Montague Place, Worthing	
Proposal:	Single storey concession kiosk	
Applicant:	Worthing Borough Council	Ward: Central
Agent:	N/A	
Case Officer:	Louise Prew	



Not to Scale

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Site and Surroundings

The site is located to the eastern side of Montague Place. Montague Place is currently undergoing redevelopment to provide a new landscape green space to be called Montague Gardens.

The site is within South St Conservation Area. Listed buildings are located to the western side of Montague Gardens including 10 Montague Place (Grade II) and 11-14 Montague Place (Grade II).

Proposal

The proposal is for a small kiosk to be located on the eastern side of the gardens.

The kiosk would provide space for a concession holder to operate and provide them with storage. It would be single storey in nature and be 4.5m wide by 2m deep. It would be constructed with horizontal timber slat cladding with black-painted external wall finish behind the timber. The reference image below shows a similar kiosk. It is noted the signage is not included and any signage would require future advertisement consent



REFERENCE IMAGE

The kiosk would provide space for a concession. The concession operator will be subject to an expressions of interest process but is anticipated to sell food / ice creams or similar provisions.

Relevant Planning History

None relevant

Consultations

Worthing Society: I have now had the opportunity to discuss the proposal for a kiosk with our Heritage Team. On balance, we consider this would result in a 'watering down' of the original idea to reinstate an open garden to reflect the historic character

of Montague Gardens (formerly Montague Place). In our view, buildings should not be encouraged here as they will detract from the newly reinstated central garden feature. The Conservation Area Appraisal Document states that Montague Place (now Montague Gardens) 'is of major townscape significance'. We also take this opportunity to refer you to the following planning guidance:

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 confers a statutory duty to LPAs, when exercising planning functions, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area'.

In our opinion, the introduction of a kiosk would not be consistent with this regulation and could set an unfortunate precedent. Furthermore, there is no need for an ice cream and refreshments kiosk when there are cafes in the Listed Buildings opposite – we expect these businesses will object to loss of trade. In addition, the proposed kiosk design is very poor and utilitarian and something much better would be needed if it were to be allowed.

In summary and for the reasons stated, the Society strongly objects to this application

WSP (As drainage consultant):

Following a review of the submitted information, we have no objection on surface water grounds. Due to the size, site, location and type of development, we would recommend the approval of the application with the following informatives attached: Informative 1: We have identified the site is within a surface water and coastal flood risk area, therefore appropriate flood resistance and resilience measures should be considered within the development. Informative 2: We have identified the site is within a surface water and coastal flood risk area, therefore the applicant should consider creating a Flood Risk Emergency Plan in case of the event of a flood. The Flood Risk Emergency Plan should be created in line with 'Flood risk emergency plans for new development' as produced by ADEPT and the EA, and demonstrate access and egress routes for users of the site in times of flood.

West Sussex County Council (as LHA):

The Local Highway Authority requires clarification from the applicant as to whether the proposed kiosk is to be a permanent or temporary structure.

The Kiosk is shown positioned within the publicly maintained highway boundary, within a pedestrianised area in Montague Street. Therefore, if it is to be a permanent structure the applicant would be required to formally stop-up and potentially purchase the land. In order for the land to be incorporated into the site, the highway rights would need to be formally removed by way of a Stopping Up Order. This would be subject to a separate process administered by the Department for Transport's National Casework Team. The Highway Authority along with other statutory undertakers and interested parties would be consultees in this process. There is also no guarantee that this process would be successful. The comments made here would not constitute the Highway Authority's formal position regarding any future Stopping Up.

If this is a temporary structure a license could be issued however would be subject to separate enquiry. It is possible that a license could be issued under S115 of the Highways Act, this would also likely incur a separate consultation with various

stakeholders from multiple organisations regarding its acceptability. A S115 license would also be a temporary license needing routine renewal. Further to this, if the kiosk is to be a temporary instalment, it may also require a street vendor licence. To be enacted, all licenses would require approval.

Please can clarification be sought on the nature of the proposed kiosk. Would the structure be temporary- for example for an organised event?

Officer's response: WSCC has been advised that it will be a temporary kiosk. We are awaiting comments following this clarification. Comments will be reported at committee.

Southern Water:

Thank you for your correspondence, please see our comments below regarding the above application.

1. Is this kiosk a temporary or permanent structure?
2. The application says they are disposing of surface water (roof run off) via a "nearby water course" and a soakaway. Which "nearby water course" are they referring to, or do they mean our surface water sewer network. Has a soakaway actually been installed which they'll connect to or is one being installed?
3. How and where will they be disposing of the wastewater container? How often will they need to empty it? I presume this will be washing up water (grey water)? Do we know what size the container is in litres?? If they will be cleaning the floor with a mop/bucket, where will the dirty mop bucket water be disposed of?

Existing Gravity Sewer - tree, buildings, assets within stand-off distance

The 160 mm diameter gravity sewer requires a clearance of 3 metres on either side of the gravity sewer to protect it from construction works and to allow for future maintenance access. No development or tree planting should be carried out within 3 metres of the external edge of the public gravity sewer without consent from Southern Water. All existing infrastructure should be protected during the course of construction works. Please refer to: <https://www.southernwater.co.uk/media/st5orjvm/stand-off-distances.pdf>

Condition

In order to protect public sewers, Southern Water requests that if consent is granted, the following condition is attached to the planning permission; The developer must agree with Southern Water, prior to commencement of the development, the measures to be taken to protect the public sewers

Proposed soakaways

The Council's Building Control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development. No new soakaways should be located within 5 metres of a public or adoptable gravity sewer, rising main or water main.

No Soakaways should be connected to the public surface water sewer.

Surface water discharge proposed to existing watercourse

The Council's technical staff and the relevant authority for land drainage consent should comment on the adequacy of the proposals to discharge surface water to the local watercourse.

Hierarchy of Building Regulations H3 for disposal of surface water - not yet provided documentation proving compliance

If the applicant has not already provided documentation demonstrating compliance with the surface water hierarchy reflected in part H3 of the Building Regulations, as shown below, we will require this to be provided where surface water is being considered for discharge to our network. Whilst reuse does not strictly form part of this hierarchy, Southern Water would encourage the consideration of reuse for new developments.

- Reuse
- Infiltration
- Watercourse
- Storm Sewer
- Combined Sewer

Guidance on Building Regulations is here:

<https://www.gov.uk/government/publications/drainageand-waste-disposal-approved-document-h>

We would like to engage with you on the design for disposal of surface water for this development at the earliest opportunity and we recommend that civil engineers and landscape architects work together and with Southern Water. In many cases this may negate or reduce the need for network reinforcement and allow earlier completion of the development.

Where a surface water connection to the foul or combined sewer is being considered, this should be agreed by the Lead Local Flood Authority, in consultation with Southern Water.

Condition

We request that should this application receive planning approval, the following condition is attached to the consent: Construction of the development shall not commence until details of the proposed means of surface water run off disposal in accordance with Part H3 of Building Regulations hierarchy as well as acceptable discharge points, rates and volumes have been agreed by the Lead Local Flood Authority, in consultation with Southern Water.

Fats Oils and Grease (FOG): Grease Traps

The applicant should be advised that a wastewater grease trap should be provided on the kitchen waste pipe or drain installed and maintained by the owner or operator of the premises. It should be noted that under the Water Industry Act 1991 it is an offence

to "throw, empty, turn or permit to be thrown or emptied or to pass into any drain or sewer connecting with a public sewer... any matter likely to injure the sewer or drain or to interfere with the free flow of its contents."

Officer's response: The conditions will be included as recommended. The grease trap won't be necessary as there will be no primary cooking and no waste pipe.

Environmental Health: The application site lies immediately below and opposite residential premises. There is therefore the potential for noise and odours to adversely affect residential amenity as follows.

- The application refers to "a 2m x 2.75 unit with electrics" - is this mains electricity or will power be provided by a generator? If the latter then noise and fumes are likely to affect residential amenity.

- If the kiosk is used for primary cooking of foods, then odours are likely to affect residential amenity unless suitable and sufficient odour control is provided and maintained.

Until these are clarified I am unable to provide final comments.

Furthermore, the application refers to "The concession owner will be asked to dispose of the waste water in a container." It is not clear where the concession owner will dispose of foul water and this must be managed to avoid surface water pollution, which ultimately ends up in the sea.

Following comments from the applicant that the unit will be mains powered and not include any primary cooking, Environmental Health stated no further comments. On wastewater disposal a condition is recommended that a plan be submitted and approved.

Representations

Two objections were received:

8 Liverpool Tce

I object to the above application and request refusal unless the application is substantially amended to provide full details and safeguards. My grounds are as follows.

1. Material change from approved scheme / breach of original consulted use

- The Montague Gardens proposals and consultation established a pedestrian focused green link connecting the town to the sea; no concessions or commercial kiosks were included or consulted on. The kiosk represents a material change to the approved/consulted scheme and to the character and intended use of the public realm. The council must treat this as a significant amendment requiring full reassessment and public consultation.

2. Inadequate and vague application information

- The application fails to provide essential information needed for proper planning assessment: no tenant/operator details; no specification of types of food/drink; no confirmation whether alcohol will be sold; and no stated opening hours or delivery/servicing arrangements. This prevents the council from assessing impacts on amenity, noise, litter, odour, antisocial behaviour, and licensing. The application should be refused or withdrawn until a full operational statement is submitted.

3. Harm to Conservation Area character and visual amenity

- Montague Gardens lies within a Conservation Area. Introducing a commercial kiosk (plus likely signage, lighting, and associated clutter such as bins and seating) risks harming the special character and appearance of the Conservation Area and the integrity of the green/pedestrian corridor. No heritage/visual impact assessment or design justification has been provided to show that the kiosk would preserve or enhance the Conservation Area, as required by local and national conservation policies.

4. Residential amenity, tranquillity and antisocial behaviour

- The kiosk is directly below new flats above H&M, approximately 40 yards from flats around Montague Gardens and 60 yards from residential properties in Liverpool and Alexander Terraces. A food/drink concession, particularly without controls on hours or alcohol sales, is likely to increase noise, congregation of customers, smoking, late activity and other disturbances that will materially harm the amenity of nearby residents and the intended tranquil character of the green link.

5. Litter, waste management and public realm degradation

- No waste management or litter-control measures are stated. A food/drink kiosk commonly generates additional litter, overflowing bins and vermin risks which would be particularly damaging to a planted pedestrian corridor intended as a high-quality public amenity.

6. Public safety, pedestrian flow and servicing

- The application contains no servicing/delivery plan. Even in a pedestrianised area, deliveries, waste collections or informal drop-offs could conflict with pedestrian and cycle flows, create hazards, and degrade the intended safe, pedestrian environment.

7. Licensing uncertainty and scope creep

- The omission of any statement about alcohol sales is material. Granting planning permission without clarity on whether alcohol will be sold risks a later licensing application permitting late-night activity incompatible with the character and amenity of the area. Planning permission should not be granted until operators, uses and hours are specified, or permission should be conditioned to prohibit alcohol and tightly restrict hours.

8. Precedent and change to management of the green space- Allowing a commercial kiosk within Montague Gardens would set a precedent for further commercialisation, undermining the original objectives of creating a primarily green, pedestrian public realm linking town and sea. This would be contrary to the established design intent and community expectations from the original development consultations.

Requested action / conditions

- Refuse the application as submitted, OR
- Require the applicant to withdraw and re-submit with comprehensive supporting information including: an operations statement naming the operator, full details of goods to be sold (including whether alcohol will be offered), specific opening hours, servicing/delivery arrangements, noise/odour control measures, and a refuse/litter-management plan; plus a heritage/visual impact statement demonstrating no harm to the Conservation Area; and a management plan

7 Liverpool Terrace:

I would refer to the comments of John Isitt and the Worthing society and would agree with their views. In addition the LPA is ignoring its own requirements (which are also national policies) for any developments in or near a conservation area which states: "Design Considerations: Proposals must protect or enhance the character of the area, often requiring detailed design statements." There is nothing in this application to show the proposal enhances the character of a conservation area and if it had been submitted by any third would have been rejected out of hand as completely inappropriate. In economic terms it is also detrimental to all the surrounding businesses and cafes so conflicts with the LPA's own policies to enhance the town centre

Relevant Planning Policies and Guidance

National Planning Policy Framework (2024)

Planning Practice Guidance

Worthing Local Plan 2020-2036 (2023): SP1, SP2, SP3, SS1, SS3, DM5, DM6, DM13, DM16, DM20, DM21, DM22, DM24

South Street Conservation Area Appraisal

Relevant Legislation

The Committee should consider the planning application in accordance with:

Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

Section 70 of the Town and Country Planning Act 1990 (as amended) provides that the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations

Section 73A and also Section 72 Planning (Listed Building & Conservation Areas) Act 1990 which require the Local Planning Authority (LPA) to pay special attention to the desirability of preserving or enhancing the appearance of the Conservation Area.

Planning Assessment

Principle of development

The site is located within Worthing town centre within the South St character area. While the road is currently being redeveloped into landscaped gardens the site is not a protected open space.

The Local Plan encourages the town centre use and development is directed to Worthing town centre (Policies SS3 and DM13). South St Character area is described as “aspirational high end retailing, food and beverage, and commercial leisure quarter anchored by a leisure / entertainment ‘destination’. Strong links between ‘Commercial Heart’ and Seafront, and located within the Primary Shopping Area”.

The kiosk will be small providing 5.5 sqm of floor space and additional storage. It will provide food and beverage use in accordance with the character area policy.

Objections relating to trade competition are not material planning considerations and cannot be considered as part of the application.

The kiosk will help to animate this side of the gardens and would be similar in character to other concessions located along the seafront and through the borough. It is acceptable in principle.

Design and Conservation

Paragraph 207 of the National Planning Policy Framework (the NPPF) states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. This is reflected in Local Plan policy DM24 which states that where development affecting any designated or undesignated heritage asset is permitted, it must be of a high quality, respecting its context and demonstrating a strong sense of place.

The kiosk is utilitarian in design but is small in scale and would be subservient in mass and scale to the surrounding buildings. It is located on the eastern side of the under construction gardens adjacent to the modern building at 33-35 Montague St where it would not compete with the historic elements of the conservation area or listed buildings.

The proposed wooden materials do not reflect the materials of the conservation area. However, it has been designed to blend in with the timber seating and green landscaping of the gardens and is considered to be acceptable.

The kiosk is temporary in nature, in that it is a preconstructed unit which could be easily removed in the future. It is considered to preserve the appearance of the conservation area in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would not cause harm to the setting of the adjacent listed buildings in accordance with the statutory tests and relevant national and local policy.

Residential amenity

The scale and siting of the kiosk would not cause any loss of light or increased sense of enclosure. The main impacts would likely be as a result of possible noise and disturbance. The hours of operation are stated as 8am to 8pm Mondays to Sundays.

The unit will be put out for an expression of interest to find the concession holder. This information is not necessary in advance of the application being determined. Licensing processes will still apply in the event that this is required and can be managed accordingly.

A condition will be included to ensure no primary cooking is proposed in order to protect neighbouring residents from cooking odours.

An operational management plan can be secured by condition.

Other matters

Southern Water and the council's environmental health officer have questioned the statement that "The concession owner will be asked to dispose of the waste water in a container". It is not clear where foul water will be disposed of. This must be managed to avoid surface water pollution, which ultimately ends up in the sea. Environmental health has recommended a condition for a plan to be approved detailing how the wastewater will be disposed of which will be included.

The site is in flood zone 3. Retail use is a "less vulnerable" use in accordance with Annex 3 of the NPPF. To assess the risks of flooding the applicant needs to complete the EA's standing advice form as their flood risk assessment. The applicant has been advised to complete this and the detail will be reported in the addendum.

Servicing and deliveries have been raised by objectors. The applicant has advised that loading bays are being constructed on Marine Parade and that the concession will be serviced in a similar way to other local businesses. Due to the small scale of the concession and associated storage it is unlikely the unit would have significant servicing requirements.

Matters raised regarding consultation on the process for the redevelopment fall outside the scope of this application. The kiosk is to be determined on its own merits.

Recommendation

GRANT subject to Conditions:-

1. Approved plans.
2. Standard time limit.
3. Materials as specified
4. Hours of opening 8am to 8pm only
5. Management and operational plan
6. No primary cooking
7. Agree details to protect public sewer in consultation with Southern Water

8. Proposed means of surface water disposal

Informatives

1. NPPF approved following revisions
2. Stopping up order
3. Drainage informative 1
4. Drainage informative 2
5. The 160 mm diameter gravity sewer requires a clearance of 3 metres on either side of the gravity sewer to protect it from construction works and to allow for future maintenance access. No development or tree planting should be carried out within 3 metres of the external edge of the public gravity sewer without consent from Southern Water.