Brighton Marina to River Adur Flood and Coastal Erosion Risk Management

Certificate of Lawful Proposed Development: Area 2b Supporting Statement

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Abbreviations

ADC	Adur District Council
BHCC	Brighton and Hove City Council
CLPUD	Certificate of Lawful Proposed Use or Development
FCERM	Flood and Coastal Erosion Risk Management
GPDO	General Permitted Development Order
JBA	Jeremy Benn Associates
LPA	Local Planning Authority
MMO	Marine Management Organisation
NGR	National Grid Reference
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
TCPA	Town and Country Planning Act

1 Introduction

This supporting statement forms part of a Certificate of Lawful Proposed Use or Development (CLPUD) application, hereby 'this application', prepared by JBA Consulting on behalf of Brighton and Hove City Council (BHCC). The purpose of this application is to demonstrate that the proposed works by BHCC on behalf of Shoreham Port constitute Permitted Development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

The site spans an approximate length of 280m along Basin Road South. The proposed works form part of the Brighton Marina to River Adur Flood and Coastal Erosion Risk Management (FCERM) scheme which comprises coastal defences and interventions between the Port of Shoreham in the west to Brighton Marina in the east. Due to the length and duration of the overall FCERM scheme and nature of the work, it has been split into several different areas. This application covers areas 2b and 2d.

The works subject to this application involve the installation of a new sheet pile flood wall, a new setback flood wall along Basin Road South, a new footpath and cycleway above the sheet pile flood wall and re-surfacing the parking area. The works are explained in more detail in section 4 of this report. The application site is located within two local authority areas - BHCC and Adur District Council (ADC). Therefore, a CLPUD application has been submitted to both Local Planning Authorities (LPAs).

2 Planning Legislation

The statutory framework covering "lawfulness" for lawful development certificates for a proposed use or development is set out in section 192 of the Town and Country Planning Act 1990 (as amended) (TCPA).

Details of what must be included in a CLPUD are found in section 192(3) of the TCPA:

a. specify the land to which it relates;
b. describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
c. give the reasons for determining the use, operations or other matter to be lawful;
d. specify the date of the application for the certificate.

In determining this application, it is fundamental to note that the issue is not whether the Local Planning Authority (LPA) would grant planning permission for the development but rather, it is for the LPA to decide whether the proposed development constitutes a lawful development of the land for the purposes of section 192 of the TCPA. Consequently, this type of application must not be considered on its essential planning merits.

Furthermore, within the Planning Practice Guidance (PPG), it is advised that the burden of proof in applications under this section rests with the applicant. The relevant test is the "balance of probability", and LPAs are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, then there is no good reason to refuse this application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. As a result, when preparing this application, regard has been given to the applicable statutory framework and has considered the advice set out in the PPG accordingly in so far as it relates in this case.

Ultimately, if the LPA are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it will grant a lawful development certificate under section 192 of the TCPA. Once a certificate has been granted under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (section 192(4)). Examples include:

- a direction under article 4 of the GPDO taking away the particular permitted development right relevant to the certificate; or
- a statutory amendment to permitted development rights.

3 Site Description

The site spans approximately 280 metres along the southern side of Basin Road South. It comprises of an existing concrete wall varying in height and condition. To the north of the wall on Basin Road South is a series of parking bays at 90 degrees to the road and a parallel pull in bay for lorries. To the south of the wall is the shingle beach and an existing sheet pile wall running east to west along it.

The site spans two LPA areas. The western section is located within the ADC area and the eastern section is located within the BHCC area.



Figure 1-1: Site location highlighted in blue and LPA boundary in red

4 Proposed works

The works subject to this application span a length of approximately 280m in length and involve the installation of a new sheet pile flood wall, a new setback flood wall along Basin Road South, a new footpath and cycleway above the sheet pile flood wall and re-surfacing of the parking area.

The new sheet pile wall with capping beam would encase the current existing corroded sheet piles and the new setback wall would replace the existing concrete wall along Basin Road South. The remaining part of this existing wall would be encased by a new timber kingpost wall, approximately 150m in length.

The setback wall along Basin Road South would measure between 1.3m and 1.6m in height. The sheet pile wall would vary between 6.6m and 7.4m AOD.

Galvanised steel handrailing would be installed above the sheet pile wall, measuring 1.12m from its base to tip.

The footpath and cycleway would be an integral part of the flood walls, as it would be located in the area between them and would sit on the backfilled material behind the sheet pile wall which forms part of the overall structure. The footpath and cycleway would be formed from self-binding gravel.

5 Planning History

5.1 EIA Screening

An EIA screening opinion request, under The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, in relation to the wider FCERM scheme was submitted to both ADC and BHCC on 11 March 2022. Screening opinions, confirming that the wider FCERM scheme did not constitute EIA development, were issued by BHCC on 24 March 2022 and by ADC on 16 June 2022. This covers the proposals in this application.

The Marine Management Organisation (MMO) confirmed in 2022 that the wider FCERM scheme is not EIA development under the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended).

5.2 Planning Applications

Planning applications have been submitted where necessary for the wider FCERM scheme. These include:

- Application BH2023/00627 for the construction of a rock armour revetment to the south of Basin Road South and west of Western Esplanade was granted planning permission by BHCC on 11 September 2023. A subsequent application to vary this planning permission under Section 73 of the TCPA has been submitted to BHCC (ref. BH2024/01605) and is under consideration.
- Application AWDM/0321/23 for the construction of a new rock revetment, new footpath along with a new beach access ramp and steps along the central Shoreham Frontage facing Basin Road South was granted planning permission by ADC on 15 June 2023. The works permitted under this application, particularly the access ramp, adjoin the site subject to this CLPUD application.
- Retrospective application BH2024/00989 for the construction of a seawall was submitted to BHCC on 19 April 2024 and is under consideration.
- Application BH2024/02513 for the installation of replacement groynes, beach recharge, flood wall and compound area was submitted to BHCC on 11 October 2024 and is under consideration.

6 The Applicant's Case

6.1 Permitted Development in relation to the works

Class A of Part 18 of Schedule 2 to the GPDO confers Permitted Development rights in relation to miscellaneous development, including development authorised by a local or private Act of Parliament (see extract at Appendix B). In this case, the proposed works would be carried out by BHCC on behalf of Shoreham Port who have responsibility for the maintenance of the wall, and which is within their ownership. Figure 2-1 below shows the extent of the operational limit of Shoreham Port.



Figure 2-1 Shoreham Port operational limit

The Shoreham Harbour Acts constitute private Acts of Parliament.

Section 6 (Subsidiary works) of Part II the 1949 Shoreham Harbour Act sets out that the Trustees may provide and maintain within the limits of deviation shown on the deposited plans …. walls … protection works ….and other works, buildings, machinery and appliances as may be necessary or convenient for, or in connection with or subsidiary to the harbour works or any of them. A relevant extract is provided at Appendix A.

Section 55 subsection 9A of Part VII of the same act as above, authorises any action taken or remedial measures undertaken by the Trustees or by the Authority or by the Board for

the purpose of preventing any injurious affection of the coast in the area or district of the Board or of remedying any such injurious affection which has taken place shall for the purpose of any Act passed in the present Session of Parliament for the purpose of amending the law relating to the protection of the coast of Great Britain against erosion and encroachment by the sea be deemed to be the work or maintenance and repair. A relevant extract is provided at Appendix A.

For the purposes of the act, the Trustees are defined as the Port Authority (Shoreham Port), the Authority is the British Electricity Authority and the Board is the South Eastern Gas Board Area (see definitions provided at Appendix A). The area of the works proposed in this application lies within the limits of Shoreham Port and within the former boundary of the gasworks. A plan of the gasworks is also provided at Appendix C.

The erection of a wall or other means of enclosure is not defined as a building within Part 18 of Schedule 2 to the GPDO (see extract within Appendix B) so is not subject to condition A.1 of Part 18.

Given the above, the 1949 Shoreham Harbour Act, authorises the maintenance and repair of works to defend against erosion and encroachment by the sea. Given that the act constitutes a private Act of Parliament, the new sheet pile flood wall, new setback flood wall incorporating a new footpath and cycleway above the sheet pile flood wall would be permitted development under Class A of Part 18 of Schedule 2 to the GPDO.

Part 39 of the Shoreham Harbour Act 1926 enables Shoreham Port (The Trustees) to undertake works including roads and all other such works ….and conveniences ancillary to the harbour undertaking as may be necessary or convenient for and in connection with the traffic of the harbour. Part 40 allows the alteration, diversion or shut up of roads or ways and the repair and improvement, renewal and maintenance of all or any of the works constructed by or belonging to them.

The Shoreham Port Authority Harbour Revision Order 2021 extends the port limits to include the port premises and therefore updates the 1926 act. "Port premises" is now defined as land adjacent to the wet port area and includes roads and all other works and conveniences, land and premises. The definition of "port operations" includes the movement of goods and vehicles (including parking). The operational limit is shown on Figure 2-1 above.

Given the above, the maintenance and repair of the parking area is authorised through the Shoreham Harbour Act 1926 and the Shoreham Port Authority Harbour Revision Order 2021 and would be permitted development under Class A of Part 18 of Schedule 2 to the GPDO.

7 Conclusion

This application sets out that the proposed works, namely the installation of a new sheet pile flood wall, a new setback flood wall along Basin Road South, a new footpath and cycleway above the sheet pile flood wall and re-surfaced parking area, would constitute Permitted Development under Class A of Part 18 of Schedule 2 to the GPDO (development authorised by a local or private Act of Parliament) as it is authorised under the Shoreham Harbour Acts.

As a result, it is considered that this application has demonstrated that, on the balance of probability, the proposed works can be lawfully implemented.

A Relevant extracts from 1949 Shoreham Harbour Act



CHAPTER lix

An Act to authorise the Shoreham Harbour Trustees to construct harbour works and to acquire lands to alter the constitution of the Trustees and for other purposes. [16th December 1949.]

A.1 Extract of definitions

"The Trustees" means the Shoreham Harbour Trustees for the time being constituted.

"The authority" means the British Electricity Authority;

A.2 Extract for authorisation for Shoreham Port to undertake subsidiary works

PART II —*cont.*

Work No. 7.—A wharf in the urban district of Southwick commencing at a point 30 yards east and 56 yards south of the eastern extremity of the south wall of the Prince George Lock and terminating at a point 328 yards east and 21 yards north of that extremity;

Work No. 8.—A wharf in the urban district of Southwick commencing at the termination of the wharf (Work No. 7) hereinbefore referred to and terminating at a point 153 yards west and 38 yards north of the north-west corner of Southwick "A" power station.

Subsidiary works.

6. Subject to the provisions of this Act the Trustees may make provide and maintain within the limits of deviation shown on the deposited plans all such signalling equipment bridges approaches roads gates sheds buildings yards quays wharves walls embankments protection works pipes wires mains cables conduits sewers drains culverts sluices jetties groynes shipping places landing places stairs stages gridirons gantries cranes dolphins moorings buoys beacons lights and other works buildings machinery and appliances as may be necessary or convenient for or in connection with or subsidiary to the harbour works or any of them:

A.3 Extract for authorisation for Shoreham Port to undertake measures for preventing injurious affection of the coast

PART VII —*cont.*

For protection of South Eastern Gas Board.

55. The provisions of section 49 (For protection of certain local authorities) of this Act shall unless otherwise agreed between the Trustees the authority and the South Eastern Gas Board (in this section referred to as "the board") mutatis mutandis extend and apply for the protection of the board as if—

(*a*) the board were one of the protected authorities;

(*b*) in relation to the board the expression "the coast in their area or district" or any like expression meant the portion of the foreshore adjacent to the Portslade gas-works of the board which portion is coloured red on the plan signed in duplicate by Raymond Prince on behalf of the board and by Alfred Graham Stephenson on behalf of the Trustees; and

(*c*) the following subsection were inserted after subsection (9):—

"(9A) Any action taken or remedial measures undertaken by the Trustees or by the authority or by the board for the purpose of preventing any injurious affection of the coast in the area or district of the board or of remedying any such injurious affection which has taken place shall for the purpose of any Act passed in the present session of Parliament for the purpose of amending the law relating to the protection of the coast of Great Britain against erosion and encroachment by the sea be deemed to be work of maintenance and repair."

B Relevant extracts from the General Permitted Development Order

PART 18

Miscellaneous development

Class A – development under local or private Acts or Order

Permitted development

A. *Development authorised by—*

(a) *a local or private Act of Parliament,*

(b) *an order approved by both Houses of Parliament, or*

(c) *an order under section 14 or 16 of the Harbours Act 1964 (orders for securing harbour efficiency etc, and orders conferring powers for improvement, construction etc of harbours)*M1,

Marginal Citations

M1 1964 c. 40. Relevant amendments are Schedules 6 and 12 to the Transport Act 1981 (c. 56), **section 46** of the Criminal Justice Act 1982 (c. 48), **Schedule 3** to the Transport and Works Act 1992 (c. 42), **Schedule 2** to the Planning Act 2008 (c. 29), **Schedule 21** to the Marine and Coastal Access Act 2009 (c. 23) and S.I. 2006/1177 and 2009/1941.

which designates specifically the nature of the development authorised and the land upon which it may be carried out.

Conditions

A.1 Development is not permitted by Class A if it consists of or includes—

(a) the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam; or

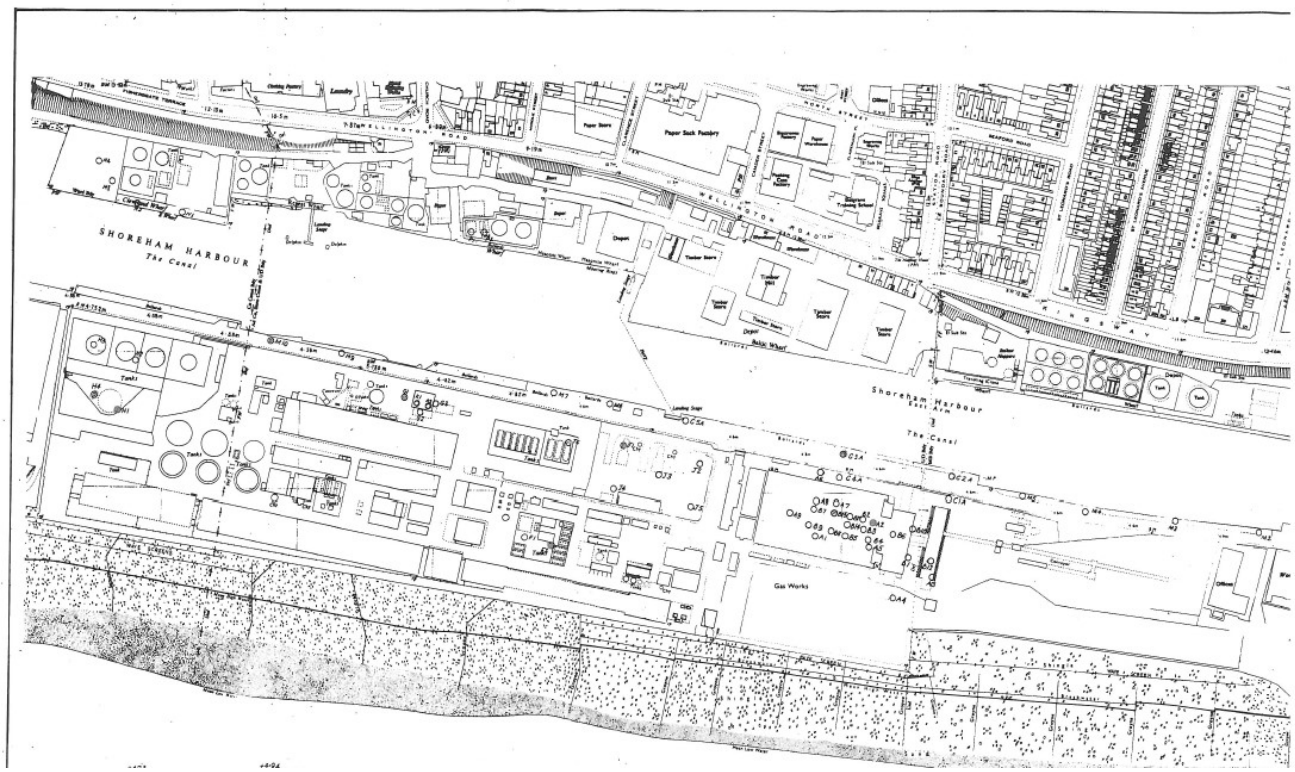
(b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic,

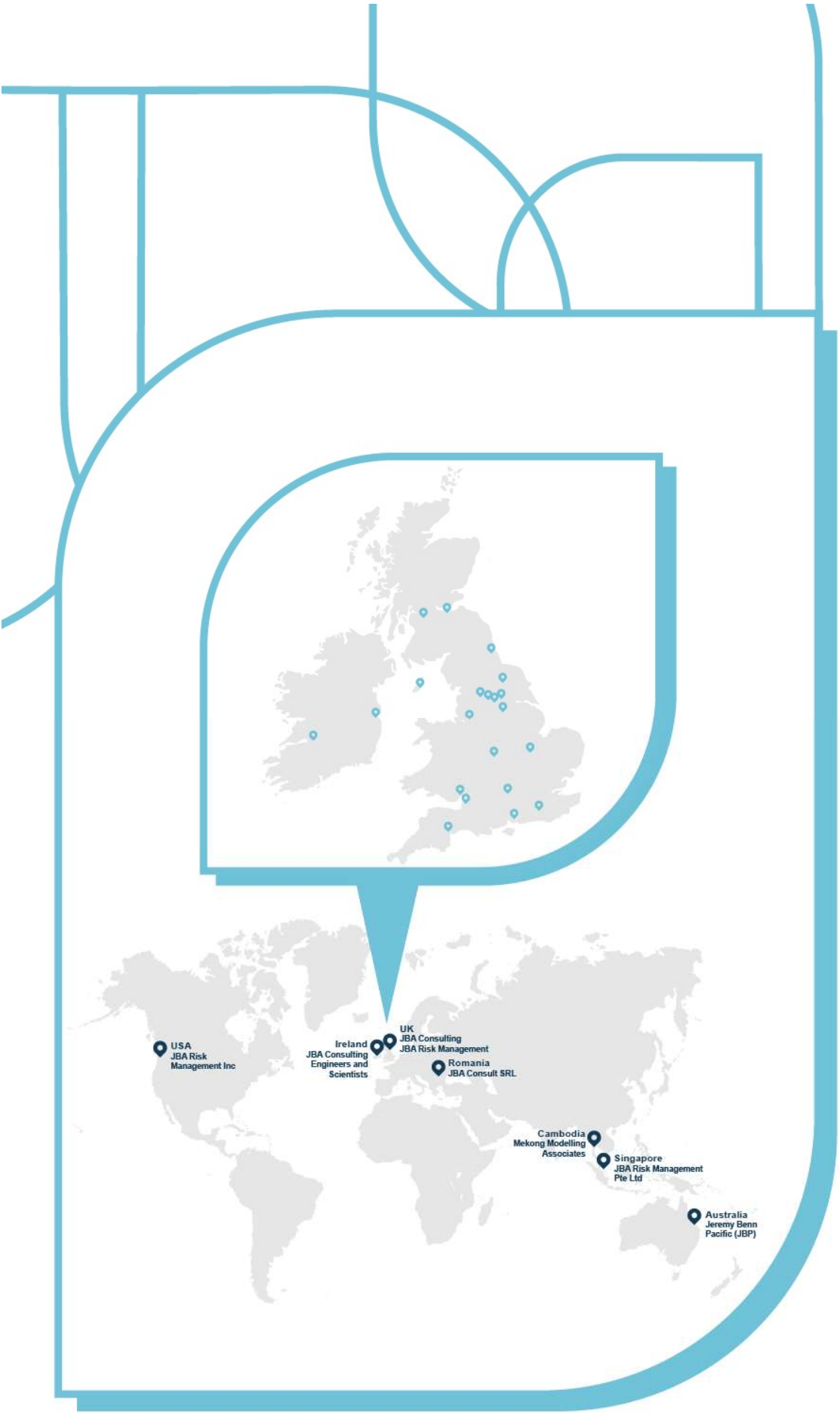
"building"—

(a) includes any structure or erection and, except in Class F of Part 2, [F3Classes P and PA of Part 3,] Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 [F4, Class T of Part 19 and Class ZA of Part 20], of Schedule 2, includes any part of a building; and

(b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure;

C Gasworks boundary





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