

North Yorkshire Council
Community Development Services
Scarborough And Whitby Constituency Committee

11 MAY 2023

**23/00404/RG3 - ERECTION OF BAR BUILDINGS, REMOVAL OF DECKING AND
INFILLING OF A SECTION OF LAKE, WIDENING OF FOOTPATH AND
EXTENSION TO CONCRETE BASE TO REAR OF THE STAGE AT OPEN AIR
THEATRE, NORTHSTEAD MANOR GARDENS, SCARBOROUGH, NORTH
YORKSHIRE, YO12 7UZ ON BEHALF OF SCARBOROUGH BOROUGH
COUNCIL (NORTH YORKSHIRE COUNCIL AS CONTINUING AUTHORITY)**

Report of the Assistant Director Planning – Community Development Services

1.0 Purpose of the report

1.1 To determine a planning application 23/00404/RG3 on land at the Open Air Theatre, Scarborough.

1.2 In accordance with the North Yorkshire Council Scheme of Delegation, the application has been brought to the meeting of the Committee as the Council is the applicant.

2.0 EXECUTIVE SUMMARY

RECOMMENDATION: That planning permission be GRANTED subject to the conditions listed below.

2.1 This application seeks planning permission for development at the Scarborough Open Air Theatre comprising: 2 x new bar buildings; the infilling of a pond; the laying of an area of hardstanding to the rear of the stage complex; and, the widening of a footpath within the site.

2.2 In principle, as proposals for the enhancement of an existing tourism based facility, your Officers consider the proposals are supported by policy TOU1 of the Local Plan. Other key issues for consideration include:

- Design and impact on the character of the area;
- Ecology;
- Highways and transport; and
- Amenity.

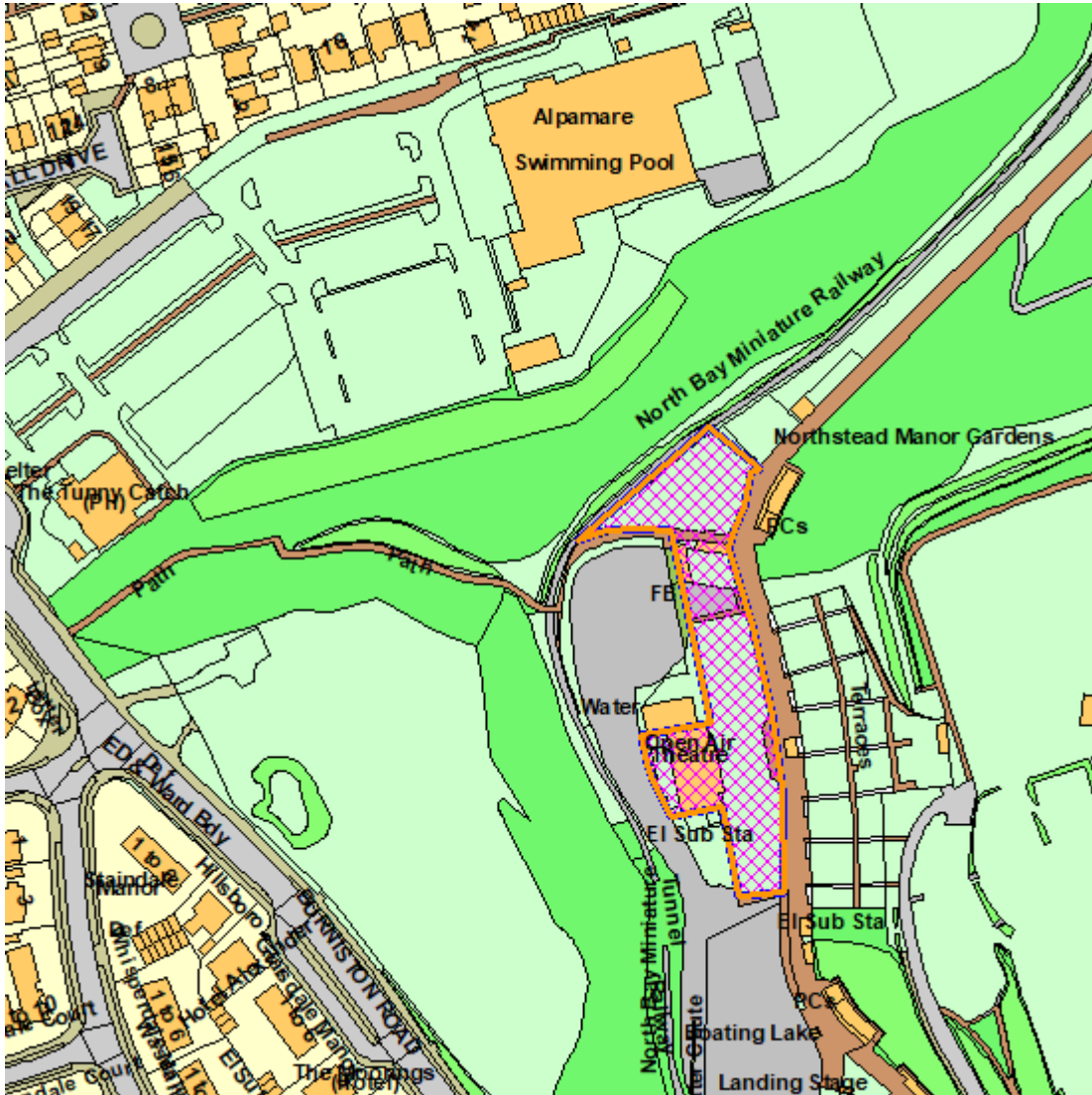
2.3 In these respects there are no planning issues arising which outweigh the supportive stance provided for the proposed development by policy TOU1. As such,

the scheme is considered to be acceptable in the balance and is recommended for approval, subject to conditions.



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3.0 Preliminary Matters

3.1 Access to the case file on Public Access can be found here

<https://planning.scarborough.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RQYBS8NSILV00>

3.2 The enabling consent for the development and use of Open Air Theatre in its current guise was granted in 2008 (reference 08/01584/FL). In 2016 condition 17 of that planning permission was modified (under reference 16/02038/3RG) to allow for up to 30 major events per year. In 2017 planning permission was granted to infill part of the lake (beneath the former decked area) to form a permanent hardstanding for the standing audience (reference 17/02210/RG3).

4.0 Site and Surroundings

4.1 This application relates to the Scarborough Open Air Theatre, which is the 8500 person capacity open air venue sited in Scarborough's North Bay area. It is accessible from both the sea front and the A165. Significant events take place at the theatre on a regular basis during the summer months.

4.2 With respect to planning designations and constraints, the application site lies within the Development Limits of Scarborough but outside of the Town Centre Area and the Primary Shopping Area, as defined by the Scarborough Borough Local Plan.

5.0 Description of Proposal

5.1 This application seeks planning permission for the following:

- i) The siting of a 5m x 15m flat roofed permanent bar building (formed from a timber-clad shipping container) on the southern edge of the audience standing area;
- ii) The siting of a 10m x 15 metre flat roofed permanent bar building (formed from 2 timber-clad shipping containers) with a rooftop 'VIP' viewing area enclosed by railings on the northern edge of the audience standing area;
- iii) The filling in of the waterbody immediately to the north of the existing audience standing area to facilitate the development of ii), with the infilling finished in tarmac;
- iv) The laying of a concrete hardstanding to the rear of stage area.
- v) The widening of the footpath immediately opposite the kiosks to the north of the audience area by approximately 2 metres.

6.0 Planning Policy and Guidance

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise.

Adopted Development Plan

6.2 The Adopted Plan for this site is:

- Scarborough Borough Local Plan 2011 to 2032 adopted 2017

Emerging Development Plan - Material Consideration

6.3 There is no emerging development plan which covers the application site.

Guidance - Material Considerations

- National Planning Policy Framework 2021
- National Planning Practice Guidance
- National Design Guide 2021

7.0 Consultation Responses

7.1 The following consultation responses have been received and have been summarised below.

7.2 Highway Authority: No objection.

7.3 North Yorkshire Police Designing Out Crime Officer: The single width stair to the bar roof viewing terrace is a possible point of conflict. Consideration should be given to adding a double width stair. An application will need to be made to alter the premises license.

7.4 Environmental Health: I have reviewed the proposal in detail and I am satisfied the scheme is unlikely to cause any significant changes to the noise environment of the locality including material effects on local residents. I have no objections.

7.5 Theatres Trust: Scarborough Open Air Theatre has a long history;

- The Open Air Theatre provides diversity to Scarborough's cultural offer and plays an important role in generating additional visitors which boosts other business and the local economy;
- The existing bar and hospitality provision is insufficient given the venue capacity;
- These proposals will enhance the theatre's function and audience experience through improving and expanding bar capacity;
- The applicant's biodiversity mitigations outlined in the submitted Ecological Survey should be followed;
- We have no objections to the concrete hardstanding proposed for behind the stage;

- We are supportive of the grant of planning permission.

7.6 NYC Ecologist: Has not made any comment.

7.7 NYC Engineers: Has not made any comment.

8.0 Environmental Impact Assessment

8.1 An Environmental Statement is not required.

9.0 Main Issues

9.1 The key considerations in the assessment of this application are:

- Principle of development;
- Design and impact on the character of the area;
- Ecology;
- Highways and transport; and
- Amenity

10.0 Assessment

Principle of Development

10.1 In general terms, policy TOU1 of the Local Plan seeks to support proposals for development which enhances existing tourism facilities and respects the distinctive tourism character of an area.

10.2 As proposals for tourist development within the envelope of an existing tourist attraction, subject to the favourable consideration of the other planning matters to be discussed in the following sections, your Officers consider the proposals to be acceptable in principle.

Design and impact on the character and appearance of the area

10.3 Policy DEC1 of the Scarborough Borough Local Plan requires that new development is of a high standard of design.

10.4 Starting with the bar buildings, whilst these will be formed of containers they will be good quality permanent structures clad in white weather proof, non-rotting composite board with the appearance of timber. In the view of your Officers, they will have a generally pleasing appearance and their design would be consistent with the distinctive character of the site as an entertainment venue.

10.5 The infilling of the pond to the north of the spectator standing area will have little impact on the character of the site in your Officers' view. Notwithstanding some previous infilling of the lake, the vast majority of the pond area around the theatre would remain and overall the site will still read as being set amongst water. This feature is considered to be an important part of the site's character.

10.6 In your Officers' view the hardstanding to the rear of the stage and minor widening of the footpath will have no material impact on the character of the area.

Ecology

10.7 Policy ENV5 of the Local Plan seeks to enhance biodiversity by (amongst other measures) ensuring that potential adverse impacts on species and habitats resulting from development are successfully mitigated where appropriate.

10.8 It is well known that the waterbodies in and around the Open Air Theatre are host to Great Crested Newts (GCN) and their habitat. GCN are a European Protected Species protected by law along with their habitat.

10.9 An initial ecological appraisal carried out by the applicant concludes that the pond to be infilled is likely to be GCN habitat. The applicant has committed to undertake a 'population survey' to confirm GCN presence at the end of May (the beginning of the 'survey season'). Whilst this is a necessary step, taking into account the work the applicant has submitted to date, what is known of the site and Natural England's standing advice it is reasonable to progress on the basis that GCN will be found in the pond to be infilled when the May survey is undertaken. As GCN will most likely be impacted by the development a European Protected Species License (an 'EPS license') is likely to be required by the applicant (obtained from Natural England) in order to implement any planning permission the Committee may grant.

10.10 Therefore, in order to discharge its statutory to have regard to the requirements of the Habitats Directive, the Council must apply the same three tests as Natural England apply to EPS license applications when deciding whether to grant planning permission. In essence, these three tests are: 1) that there should be no satisfactory alternative to the plan or the way it is implemented; 2) that the plan must be for reasons of overriding public interest; and, 3) the favourable conservation status of the species affected must be maintained.

10.11 Starting with the first of these tests, it must be held in mind that the venue is of considerable size, that its natural growth as an operation is to be reasonably expected and that given the site is more or less enveloped by water additional space can only practically be created by way of infilling. Further, owing to the need for safe circulation space during peak operation existing land within the site cannot be utilised. In short, Officers consider limited expansion to be reasonable in principle and the only practical way of achieving this is by limited infilling of the existing water body enveloping the site.

10.12 On the second test, the development of the Open Air Theatre has significant cultural, tourism, employment and other economic benefits; its continued success is in the overriding public interest in the view of your Officers and this is contingent on it being able to develop and improve.

10.13 Moving to the final test, the area to be infilled could notionally support only a small population of GCN and limited habitat relative to the theatre site as a whole and certainly in relation to the national GCN population; the development will not undermine the favourable conservation status of GCN.

10.14 Your Officers recommend that conditions are imposed requiring details of a GCN population survey be submitted to the LPA together with a detailed mitigation strategy and translocation (of GCN) plan should that be necessary (recommended condition 2).

Highways and transport

10.15 The Highway Authority is the statutory consultee in the planning process with respect to highways issues and the Local Planning Authority is reliant on its expert advice in this respect. In this case the Highway Authority has not objected to the proposals, so Officers do not consider that there will be an unacceptable impact on the safety and convenience of users of the public highway.

Amenity

10.16 Policy DEC4 of the Local Plan requires that new development affords a good level of amenity to new residents, and it precludes development that would harm the amenity of neighbouring property.

10.17 In this regard, Officers do not consider that the amenity of neighbouring residents will be unacceptably harmed as a result of the proposal; the bar will operate within the Open Air Theatre during events permitted by the enabling planning permission and not separately, so they will not be a primary noise source. Importantly, the Council's Environmental Health Officer has not objected to the scheme.

Additional considerations

10.18 Officers note the observations of the North Yorkshire Police Designing Out Crime Officers with respect to the narrow access stair to the 'roof top VIP bar area' being a potential 'flash point' for conflict owing to its limited width. These observations are reasonable on face and are related to planning. With this in mind, Officers recommend a condition requiring the provision of a wider stair.

11.0 Planning Balance and Conclusion

11.1 In principle, as a proposal for the enhancement of an existing tourism based facility, your Officers consider the proposal is supported by policy TOU1 of the Local Plan. Other key issues for consideration include:

- Design and impact on the character of the area;
- Ecology;
- Highways and transport; and
- Amenity.

11.2 In these respects there are no planning issues arising which outweigh the supportive stance provided by policy TOU1. As such, the scheme is considered to be acceptable in the balance.

12.0 RECOMMENDATION

12.1 That Permission be GRANTED subject to conditions listed below:

- 1 Except where may be modified by the conditions of this consent, the development shall be implemented in accordance with the following plans and drawings:

SK 101 REV B	LOCATION PLAN - 03/03/2023
SK 104 REV C	BLOCK PLAN AS PROPOSED - 03/03/23
SK 105 REV B	PROPOSED SECTIONS - 03/03/23
SK 106 REV B	EXISTING AND PROPOSED ELEVATIONS - 03/03/23
SK 107 REV D	UNIT TYPE 1 PROPOSED PLANS AND ELEVATIONS - 03/03/23
SK 108 REV D	UNIT TYPE 2 PROPOSED PLANS - 03/03/23
SK 109 REV B	UNIT TYPE 2 ELEVATIONS - 03/03/23

Reason: To avoid doubt.

- 2 Prior to any work to infill the area of pond, a GCN report including a population and habitat survey for the pond completed by a suitably qualified expert shall be submitted to and approved in writing by the Local Planning Authority. If GCN are found to inhabit the pond, the report shall include precise details of the translocation methodology and a mitigation strategy (resulting in an overall local enhancement in GCN habitat) together with a phasing and timing plan for the implementation of the translocation methodology and a mitigation strategy. The development, together with translocation of GCN and mitigation, shall be carried out in accordance with the approved GCN report.

Reason: To ensure permanent replacement bus-stop facilities are properly designed for in accordance with policy DEC1 of the Local Plan.

- 3 The approved bar buildings shall be clad in 'Cedral' type composite board, the colour of which shall be white or off-white.

Reason: To ensure the character of the area is preserved in accordance with policy DEC1 of the Local Plan.

- 4 The bar buildings shall be used in conjunction with events at the Scarborough Open Air Theatre only and shall not be used independently.

Reason: Regular use of the bars independent of use of the Open Air Theatre would conflict with Local Plan policies TC1 and TC2 in principle.

- 5 Notwithstanding the submitted details, a revised plan shall be submitted to and approved in writing by the Local Planning Authority showing a double-width stair access to the roof top terrace on top of the bar building referred to

on the approved drawings as 'unit 2'. The development shall be implemented in accordance with the approved details.

Reason: To ensure public safety is accounted for in design. Policy DEC1 of the Local Plan.

Target Determination Date: 18 May 2023

Case Officer: Mr Daniel Metcalfe
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