

**North Yorkshire Council**  
**Community Development Services**  
**Scarborough and Whitby Constituency Committee**

**13 JULY 2023**

**ZF23/00615/RG3 - CHANGE OF USE OF OLD TOWN HALL BUILDING TO A SUI  
GENERIS USE COMPRISING THE FOLLOWING CLASSES OF USES DEFINED  
BY THE USE CLASS ORDER: 1) CLASS E(a) DISPLAY OR RETAIL SALE OF  
GOODS, OTHER THAN HOT FOOD; 2) CLASS F1 (b) DISPLAY OF WORKS OF  
ARTS; 3) F1(c) MUSEUMS; AND, 4) F2(b) HALLS OR MEETING PLACES FOR  
THE PRINCIPAL USE OF THE LOCAL COMMUNITY. OPERATIONAL  
DEVELOPMENT INCLUDING NEW ACCESS AND IMPROVEMENTS TO PUBLIC  
REALM AND MARKET FACILITIES AT OLD TOWN HALL CHURCH STREET  
WHITBY NORTH YORKSHIRE YO22 4AE ON BEHALF OF (NORTH YORKSHIRE  
COUNCIL) KERRY LEVITT**

**Report of the Assistant Director Planning – Community Development Services**

**1.0 Purpose of the report**

1.1 To determine an application for full planning permission (ref: ZF23/00615/FL) for development at the Old Town Hall and Market Place, Whitby.

1.2 In accordance with the North Yorkshire 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**

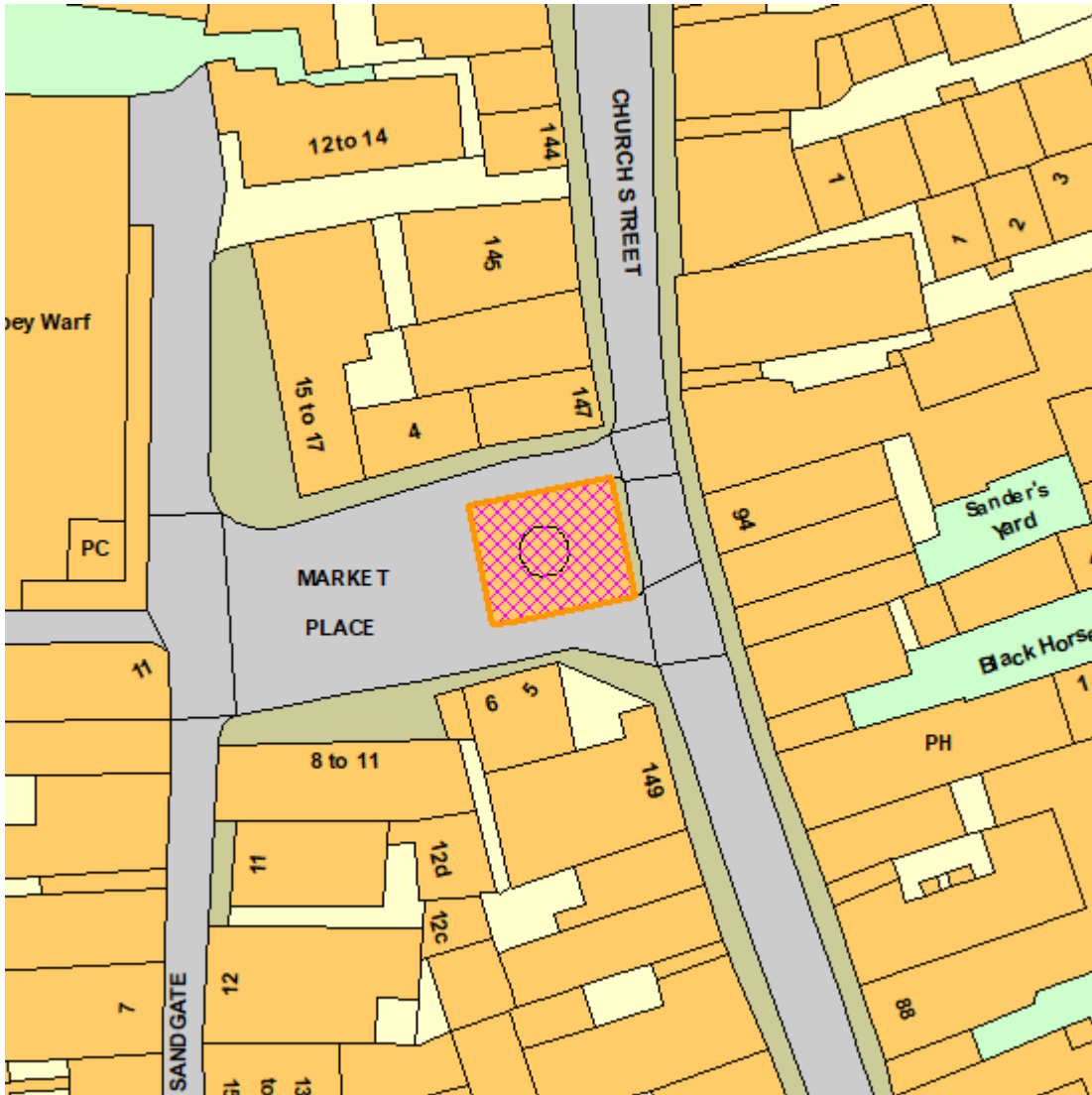
2.1 This application relates to the Grade II\* Listed Old Town Hall Building and its associated Market Place. There are two elements to the proposal: 1) a change of use of the Old Town Hall building; and 2) operational (physical) development centring on the levelling of the Market Place.

2.2 The proposals are considered to be acceptable in principle and there are considered to be significant design and conservation planning benefits. Further, the scheme is considered to be acceptable from amenity and highways perspectives.

2.3 As such, the planning balance is considered to be in favour of the proposal.



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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=RSJNPRNSJ8C00>

3.2 This case involves a change of use to a 'sui generis' use. A 'sui generis' use means a planning use which falls outside of the defined limits of other use classes. Planning permission is typically (although not always) required for a change to or from a sui generis use. Some sui generis uses (including cinemas and casinos) are defined as such in the Use Class Order. Those uses which are not defined are simply those which do not fall within any use class.

3.3 It is open to an applicant for planning permission to seek consent for their own sui generis use comprised of elements of several different uses, as defined by the use class order. There would be no permitted change of use to or from (any element of) this use if it is granted a planning permission.

### **4.0 Site and surroundings**

4.1 This application relates to the Grade II\* Listed Old Town Hall and its associated Market Place, which are located within the East Cliff area of Whitby on Church Street. The Old Town Hall is a late C18 classical building of two storeys stood (as a stand-alone building) in the Market Place, and the Market Place itself is stone-cobbled area immediately to its west sloping downwards towards the river. Notably, the Old Town Hall building features an open arcade at ground floor level which functions as part of the public realm, although it is put to various uses. The building and its history is more fully described at paragraphs 4.1 and 4.2 of the report for the allied Listed Building consent application case ZF23/00618/LB.

4.2 With respect to planning designations and constraints, the building lies within the Whitby Conservation Area, is set amongst other Listed Buildings and falls within the Whitby Town Centre Area, as defined by the Local Plan Policies Map. The building is within the Environment Agency's Flood Zone 1, which is defined as land at the least risk of flooding.

### **5.0 Description of Proposal**

5.1 Planning permission is sought for both a change of use of the Old Town Hall (at both ground and first floor levels) and operational development to the Old Town Hall together with the Market Place.

5.2 A sui generis use of the Old Town Hall is proposed (for both the ground and first floor levels) whereby it could be flexibly used for the following classes of uses defined by the Use Class Order:

- a) Class E(a) Display or retail sale of goods, other than hot food;
- b) Class F1 (b) Display of works of arts;
- c) F1(c) Museums; and,
- d) F2(b) Halls or meeting places for the principal use of the local community.

5.3 Should the Committee choose to grant a planning permission in this case (and should that permission be implemented) then no part of the Old Town Hall could be put to any use outside of this description.

5.4 With respect to operational development, the following is proposed with respect to the Old Town Hall Building:

- a) Existing roof slates and felt removed, slates set aside for re-use. Badly decayed timber replaced with sections to match existing in size, profile and jointing (scarfed) technique. Existing lantern dismantled and condition checked, any decaying structure replaced using like-for-like materials, design and original construction techniques. New louvred vents installed to mitigate rainwater ingress to match existing like-for-like. Slates re-laid onto new battens/ counter battens with new felt / breather membrane.
- b) Existing undercroft paving stones lifted and re-laid level with new stones to match existing used where necessary.
- c) The installation of new services cupboards/ boxing in each corner of the together with soil and vent pipe and water services to new WC and kitchenette space at the first floor (see application ZF23/00616/LB).
- d) The stripping out of the undercroft ceiling and the installation of new internal suspended ceiling with recessed lighting.
- e) The installation of a cleaner's sink within central rotunda.

5.5 The undercroft area does not function as being internal to the building; in practice the undercroft is part of the public realm, albeit put to various uses. It appears to be for this reason that the application has sought a planning permission for b) to e).

5.6 The following operational development is proposed to the Market Place:

- a) The creation of a single levelled platform with Disability Discrimination Act compliant stepped access. The platform would have a stone finish to match the undercroft interior of the Old Town Hall and would be accessible directly from the ground floor of the undercroft, linking the interior and exterior;
- b) The fitting of metal balustrades to the platform in the Market Place to meet current safety regulations;
- c) The installation of floor boxes and recessed anchor points (with stone lids) in the Market Place for electric provision within the space;
- d) Associated landscaping work to meet the current Building Regulations including tactile paving and inset anti-slip stair treads.

## **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 Consideration

- National Planning Policy Framework 2021
- National Planning Practice Guidance
- National Design Guide
- The Whitby Conservation Area Appraisal and Management Plan

### **7.0 Consultation Responses**

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

7.2 Whitby Town Council: No objection.

7.3 Local Highway Authority (LHA): The main concern the LHA has regarding this application is that the proposed works should not hinder the drivers and vehicles that already use this area for access. The area is the only vehicular access for the RNLI, a rowing club and some other businesses. A trial has been carried out utilising refuse vehicles to demonstrate the access will still be available. The LHA is satisfied that vehicles should be able to manoeuvre through this area, however the LHA would not contradict any comments or concerns made by the RNLI or rowing club who will have unusual lengths of vehicles and trailers.

Any development outside the application site area is highway and would require the agreement of the LHA.

The LHA is concerned about disruption during construction. This is the only suitable and legal access available for many vehicles. The works should be programmed to minimise disruption to others.

Conditions should be applied requiring access to be constructed in accordance with the approved drawings and provided prior to first use, surface finishing materials to be approved and a construction phase management plan requiring details of plant storage, working hours and third party access.

#### 7.4 Historic England:

The Old Town Hall in Whitby is a relatively small but very iconic landmark building. It dates from the 18th century and was built as the jewel in the crown of the marketplace, overlooking the market which still takes place today.

We support the proposal to sensitively increase the use of this distinctive building. Opening up the first floor for a range of uses such a venue the local community and events is a positive way of engaging with the story of the building and allowing people to experience its distinctive architectural character.

We consider that the proposal strikes the correct balance between expanding the facilities on offer to cater for the increased use, whilst thoughtfully responding to the special architectural and historic interest of the building. Therefore, in our view, the proposal addresses 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Chapters 12 and 16 of the National Planning Policy Framework (NPPF). We therefore fully support this proposal.

7.5 NYC Environmental Health: No comment received to date.

7.6 NYC Waste Management: No comment received to date.

7.7 Four letters of objection to the proposals have been received. These are from local residents and make the following points:

- The levelled area will harm the Market Square for which there is no overwhelming need;
- The building should be repaired and otherwise left alone;
- The new space will be too small of any meaningful use;
- The development will give the impression of a narrow passageway either side of the raised area;

7.8 One letter in support of the application has been received. This is from a local resident and makes the following points:

- An outside café area seems like a good idea;
- Some additional seating for visitors is a good idea;
- Keeping the building for community use is essential.

#### **8.0 Environmental Impact Assessment**

8.1 The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environmental Statement is therefore required.

#### **9.0 Main Issues**

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

- The principle of the development
- Design and impact on the character and appearance of the Conservation Area together with the settings of Listed Buildings
- The impact on amenity
- Highways

9.2 Importantly, the impact of the changes to fabric of the Listed Building itself (including both the Old Town Hall and the Market Place) are considered under the allied report for Listed Building consent application ZF23/00616/LB.

## 10.0 Assessment

The principle of the development

10.1 As set out in section 5, there are two aspects to the proposal: 1) the change of use to a flexible sui generis use; and, 2) physical development centring on the levelling of the Market Place.

10.2 In terms of the change of use, the component uses are:

- a) Class E(a) Display or retail sale of goods, other than hot food;
- b) Class F1 (b) Display of works of arts;
- c) F1(c) Museums; and,
- d) F2(b) Halls or meeting places for the principal use of the local community.

10.3 These are all 'town centre uses' as defined by the Government's National Planning Policy Framework (the 'framework') and Officers consider the proposed use has a tourism offer.

10.4 The site is located within Whitby's designated Town Centre Area where the development of town centre uses is encouraged by Local Plan policies SD1, TC1 and TC2. Policy TOU1 of the Local Plan encourages appropriate tourism development. Further, the proposal seeks to enhance and strengthen the market offering which aligns with the principal objective of policy HC8 of the Local Plan which seeks to protect community facilities.

10.5 With these points in mind, subject to the favourable consideration of the other planning matters, your Officers consider the scheme to acceptable in principle.

Design and impact on the character and appearance of the Conservation Area together with the settings of Listed Buildings

10.6 Policy DEC1 of the Scarborough Borough Local Plan requires that new development is of a high standard of design. Policy DEC5 of the Local Plan states that development which affects the Conservation Area should preserve or enhance its character. It goes on to require that the settings of Listed Buildings are preserved. These requirements build on the statutory requirements laid out at sections 72(1)

and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act'), where the decision maker's duty to have regard to the desirability of preserving the character and appearance of the Conservation Area and settings of Listed Buildings are laid out.

10.7 The extent of the proposed operational development to the Old Town Hall and Market place is set out at paragraphs 5.4 and 5.6, but in short the proposals amount to extension of the Old Town Hall undercroft onto a levelled plinth projecting westwards into the Market Square with allied work allowing for safe access. Development to repair the Old Town Hall is also proposed.

10.8 Historic England is the expert agency on England's historic buildings and places. The Council is reliant on its advice when considering development proposals impacting heritage assets of the highest importance.

10.9 In its appraisal of the scheme, Historic England notes that the relationship the building has to its historic Conservation Area context, the layout of the surrounding streets and historic buildings (including Listed Buildings), is very important. It goes on to point out that a key aspect of its significance within the Conservation Area is how people have been able to experience the building as its design intended. The open arcades not only define the form of the ground floor space and support the upper floor, they are a key, distinctive feature of the Conservation Area that can be experienced 'in the round', similar to the distinctive central spiral staircase.

10.10 Setting out its support for the application, Historic England states that the levelled and stepped access platform, power and lighting will all help to increase the accessibility of the building, which mated with the proposed uses will allow people to further engage with the building. This in turn will have a positive impact on the significance of the building, the character and appearance of the Conservation Area and the settings of nearby Listed Buildings.

10.11 Taking into account the Historic England advice, your Officers consider the proposals to accord with Policies DEC1 and DEC5 of the Local Plan and the requirements of Sections 72(1) and 66(1) of the Act are considered to have been met.

#### The impact on amenity

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

10.13 In this regard, the proposed uses of the building are consistent with its town centre location and Officers do not consider that the amenity of other town centre users, including that of businesses and residences, will be unacceptably harmed as a result of the proposal; a standard of amenity will remain which is consistent with what can reasonably be expected from a core town centre location which includes retail and night-time uses, amongst others.



## Highways

10.14 Fundamentally, the Local Highway Authority has not objected to the proposal. With that in mind, Officers consider that the development will not harm the safety or convenience of users of the public highway.

10.15 However, Members will note that the Highway Authority has supplied an unusual consultation response in which it is 'raising concerns' about access by third parties to their property via private land (i.e. the Market Place) which is not public highway.

10.16 Importantly, whilst planning decisions can seek to protect public access via the highway they cannot interfere with personal property rights; the Council as Local Planning Authority cannot seek to secure private access by any third party via private land (including the Market Place) through the planning system.

10.17 This means that although securing access for the RNLI and others via its land on the Market Place may be an issue Members and the Council more broadly would want to address, your Officers advise that it is not an issue to which weight should be attributed in the planning decision/ balance by the Planning Committee. In any case, neither the RNLI nor the rowing club have objected to the application.

## Additional considerations

10.18 Members will note that in their representation the Highway Authority has requests that conditions be applied to reduce the impact of construction related activities, particularly from an accessibility perspective.

10.19 Officers frequently advise Members that the Government's latest guidance on the use of planning conditions is absolutely clear that Local Planning Authorities should not apply conditions which duplicate existing legislation, or where there are alternative means of managing certain matters.

10.20 However, this is a particularly sensitive site in that it is at the heart of the town's dense tourist centre. Further, the highway adjacent to the site is a critical access point for uses within the vicinity. Without proper management, the construction process could potentially harm the amenity of a significant number of neighbouring uses.

10.21 With this in mind, in this instance your Officers are recommending that a condition requiring a construction management plan be applied to any permission Members may grant, both for reasons of highway safety and also to protect the amenity of the locality.

## **11.0 Planning Balance and Conclusion**

11.1 As a proposal to develop an existing community use, to enhance the town's tourism offer and as a plan for a 'town centre use' within the designated Town Centre Area, your Officers consider the proposal to be acceptable in principle.

11.2 The other key issues for consideration are design and impact on the character and appearance of the Conservation Area together with the settings of Listed Buildings, the impact on amenity and highways.

11.3 There are considered to be significant design and conservation planning benefits and the scheme is considered to be acceptable from amenity and highways perspectives.

11.4 As such, the planning balance is considered to be in favour of the proposal.

## **12.0 RECOMMENDATION**

12.1 That planning permission be GRANTED subject to the conditions set out below:

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

Site Location Plan Dwg No. 1594-BFF-ZZ-GF-M2-A-0095-P1 received 3rd April 2023;

Site Location and Block Plan Dwg No. 1594-BFF-ZZ-GF-M2-A-0096-P1 received 3rd April 2023;

Proposed Block Plan Dwg No. 1594-BFF-ZZ-GF-M2-A-0400-P1 received 3rd April 2023;

Proposed Ground Floor Plan Dwg No. 1594-BFF-ZZ-GF-M2-A-0402-P1 received 3rd April 2023;

Proposed Ground Floor Plan (Strip Out) Dwg No. 1594-BFF-ZZ-GF-M2-A-0200-P1 received 3rd April 2023;

Proposed Ground Floor Plan (Strip Out) Dwg No. 1594-BFF-ZZ-GF-M2-A-0201-P1 received 3rd April 2023;

Proposed Ground Floor Market Place Dwg No. 1594-BFF-ZZ-GF-M2-A-0401-P1 received 3rd April 2023;

Proposed Ground Floor Market Place Dwg No. 1594-BFF-ZZ-GF-M2-A-0401-P1 received 3rd April 2023;

Proposed Ground Floor Market Place Materials Dwg No. 1594-BFF-ZZ-GF-M2-A-0401B-P1 received 3rd April 2023;

RCP Proposed Ground Floor Plan Dwg No. 1594-BFF-ZZ-GF-M2-A-0450-P1 received 3rd April 2023;

Proposed Roof Plan (Strip Out) Dwg No. 1594-BFF-ZZ-RF-M2-A-0203-P1 received 3rd April 2023;

Proposed Roof Void Plan Dwg No. 1594-BFF-ZZ-RF-M2-A-0404-P1 received 3rd April 2023;  
Proposed Roof Plan Dwg No. 1594-BFF-ZZ-RF-M2-A-0405-P1 received 3rd April 2023;

Repairs West Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0500-P1 received 3rd April 2023;  
Repairs East Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0501-P1 received 3rd April 2023;  
Repairs North Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0502-P1 received 3rd April 2023;  
Repairs South Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0500-P1 received 3rd April 2023;  
Proposed West Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0600-P1 received 3rd April 2023;  
Proposed South Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0601-P1 received 3rd April 2023;  
Proposed North Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0602-P2 received 26th May 2023;  
Proposed East Elevation Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0603-P1 received 21st May 2023;

Proposed Section AA Landscape Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0700-P1 received 3rd April 2023;  
Proposed Section AA Platform Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0701-P1 received 3rd April 2023;  
Proposed Section AA Building Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0702-P1 received 3rd April 2023;  
Proposed Section DD Kitchen, Joinery and WC Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0703-P1 received 3rd April 2023;  
Proposed Section EE Dwg No. 1594-BFF-ZZ-ZZ-M2-A-0704-P1 received 3rd April 2023.

Reason: To avoid doubt.

- 2 Permission is granted for a change of use of the Old Town Hall building and associated newly raised Market Place to a sui generis use comprising the following elements:

- a) Class E(a) Display or retail sale of goods, other than hot food;
- b) Class F1 (b) Display of works of arts;
- c) F1(c) Museums; and,
- d) F2(b) Halls or meeting places for the principal use of the local community.

Reason: To avoid doubt, as this is what planning permission has been sought for. As this range of uses accords with policies SD1, TC1, TC2 and TOU1 of the Scarborough Borough Local Plan.

- 3 Notwithstanding any indication contained on the approved drawings, samples of all top-layer hard surface materials for the raised Market Place shall be

made available for inspection on-site by the Local Planning Authority before any top-layer hard surfacing takes place. All surfaces shall be finished in accordance with the samples prior to the first use of the development.

Reason: To ensure the character and appearance of the Conservation Area and settings of the nearby Listed Buildings are preserved.

- 4 Development shall not continue beyond that which is approved and entirely confined to the undercroft of the Old Town Hall building until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. Construction of the development must be undertaken in accordance with the approved CMP.

The Plan must include the following

1. wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
2. the parking of contractors' site operatives and visitor's vehicles;
3. areas for storage of plant and materials used in constructing the development clear of the highway;
4. measures to manage the delivery of and removal of materials and plant to and from the site, including timing of deliveries, the timing of removals and the timing and location of loading and unloading activities;
5. details of the routes to be used by HGV construction traffic and highway condition surveys on these routes;
6. protection of contractors working adjacent to the highway;
7. details of site working hours;
8. erection and maintenance of hoardings including decorative displays, security fencing and scaffolding on/over the footway & carriageway and facilities for public viewing where appropriate;
9. means of minimising dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
10. measures to control and monitor construction noise;
11. an undertaking that there must be no burning of materials on site at any time during construction;
12. details of external lighting equipment;
13. a detailed method statement and programme for the building works;
- 14.. contact details for the responsible person (site manager/office) who can be contacted by the Local Planning Authority on the matter of compliance with this CMP.

Reason: This site is a key node within the town and is a particular busy mixed-use environment. Without reasonable restriction, there is the potential for construction activities to cause significant harm to amenity, public safety and highway safety. Policies DEC1, DEC4 and ENV3 of the Scarborough Borough Local Plan.

Target Determination Date: 21 July 2023

Case Officer: Mr Daniel Metcalfe  
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