

North Yorkshire Council

Community Development Services

Scarborough and Whitby Area Constituency Planning Committee

11 APRIL 2024

APPLICATION REFERENCE ZF23/00866/RG4

FULL APPLICATION FOR THE ERECTION OF ZIP LINES BETWEEN 2 NO TOWER STRUCTURES INCLUDING RECEPTION AND LANDING AREAS WITH ASSOCIATED GROUNDWORKS AND ACCESS ROAD, AT FORMER MARVELS LEISURE PARK TO LAND SOUTH OF SCALBY MILLS MINATURE RAILWAY STATION, SCARBOROUGH, NORTH YORKSHIRE, ON BEHALF OF UKBC LIMITED

Report of the Corporate Director – Community Development Services

1.0 Purpose of the Report

- 1.1 To determine planning application reference ZF23/00866/RG4 for the above development at, and between, the Former Mr Marvels Leisure Park and land south of the Scalby Mills Miniature Railway Station.
- 1.2 The Corporate Director of Community Development Services considers the application raises significant planning issues of public interest. Therefore, in accordance with the North Yorkshire Council Area Constituency Planning Committees Scheme of Delegation, the application falls to be determined by the Scarborough and Whitby Constituency Area Planning Committee.

2.0 EXECUTIVE SUMMARY

RECOMMENDATION: That planning permission be REFUSED for the reasons set out below.

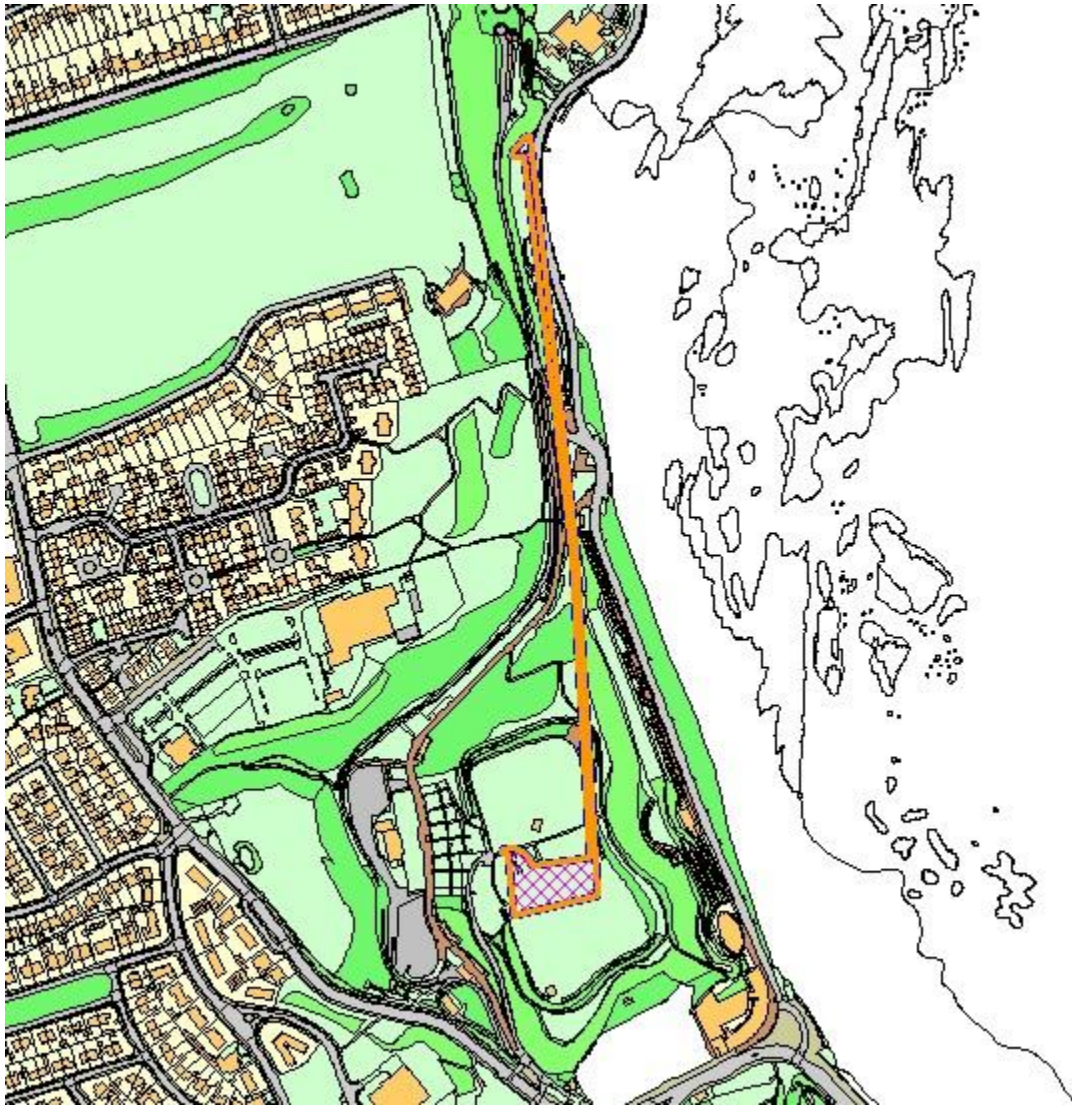
- 2.1. The proposal was considered at the 8 February 2024 meeting. Consideration of the application was DEFERRED, to allow the applicant the opportunity to improve the design including the cladding of the two towers. Subsequently, your officers have given informal advice on several possible measures to reduce the impact of the proposal, such as the potential for re-siting, reduced height, or reduced length. However, for technical and commercial reasons (set out in the applicant's supporting information), these have been ruled out as unfeasible.
- 2.2. The applicant has proposed to omit most of the cladding to the launch tower, retaining only what is required for security at ground level, leaving most of the lattice tower exposed in an off-white paint finish (RAL9003). The landing tower cladding has also been amended (from blue) to a green 'contour' graphic design. Furthermore, permission is now sought for a 5-year temporary period. As suggested during the earlier debate might be helpful to fully appreciate the visual effect of the proposal, the applicant has also supplied a CGI video of how riders on the attraction might appear. Caveated that this is indicative only, together with additional supporting information, this is available to view on the Council's public access website.

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- 2.3. Full planning permission is sought for a zip line attraction between two steel-framed lattice towers. The launch tower would measure 35.5m in height and be sited on land at the location of the former Marvels Leisure Park from where the proposal would be accessed, together with ancillary reception zone structures. The landing tower would measure 19.1m in height and be sited on land between the Cleveland Way and Scalby Mills Station at the end of North Bay, together with ancillary landing zone structures.
- 2.4. The main issues are the effect of the revised proposal on the setting of heritage assets and the character and appearance of the area, and whether the public benefits of the scheme and material considerations would outweigh any identified harm.
- 2.5. In principle as the proposal is for a leisure development which would contribute towards Scarborough's tourism offer, it would broadly accord with Local Plan Policy TOU1. Furthermore, the launch tower and reception zone would be located within Local Plan Economic Growth allocation TOU2 (North Bay Leisure Parks), within which proposals for the development of new leisure or tourism facilities will be supported where they accord with the criteria of Policy TOU1.
- 2.6. However, the proposal would conflict with the related policy criteria and other development plan policies which seek to protect Scarborough's heritage and the character and appearance of the area. Whilst the proposal is acceptable in principle and would result in 'less than substantial harm' (in the language of the NPPF) to the setting of the Scarborough Conservation Area, it would result in significant harm to the character and appearance of the area and thereby conflict with the development plan overall. The amendments proposed do not alter this assessment. The removal of the cladding to the launch tower would not significantly reduce the overall visual or heritage impacts of the development. Nor would a change in colour and graphics to the landing tower. Albeit reduced by the temporary nature of the amended proposal, harm would arise even if for a 5-year period.
- 2.7. Officers' advice is that great weight should be given to conservation of heritage assets, and that significant weight should be given to the harm to the character and appearance of the area. Furthermore, it is considered that there are no public benefits or material considerations, including the tourism benefits of the scheme, which outweigh the identified harm and resultant policy conflicts to suggest that a decision should be made other than in accordance with the development plan. Refusal is therefore recommended.
- 2.8. Nevertheless, it was apparent during debate that some Members of the committee found the benefits would be significant, and the harm would be less. The case involves matters of planning judgement, and rests on the exercise of the planning and heritage balance. In making planning judgement and attaching weight to the considerations, it would be perfectly within the gift of the committee to find that the public benefits of the revised scheme would outweigh the harm and resultant policy conflicts.



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3.0 Preliminary Matters

- 3.1. Access to the case file on Public Access can be found here:- [ZF23/00866/RG4 | Erection of zip lines between 2no. tower structures including reception and landing areas with associated groundworks and access road | Former Marvels Leisure Park To Land South Of Scalby Mills Miniature Railway Station Scarborough North Yorkshire.](#)
- 3.2. The planning history of the site can be found here: - [Former Marvels Leisure Park Northstead Manor Gardens Burniston Road Scarborough North Yorkshire](#) & [The Sands Development Site Burniston Road Scarborough North Yorkshire](#)

4.0 Site and Surroundings

- 4.1 The site of the proposal is located adjacent to North Bay, between the Scarborough Conservation Area to the south and the North Yorkshire and Cleveland Heritage Coast to the North. The launch tower would be located in an elevated cliff-top location behind the Open-Air Theatre, on the site of the former Marvels Leisure Park. The landing tower would be sited adjacent to the Cleveland Way, close to the Scalby Mills Miniature Railway Station.

5.0 Description of Proposal

- 5.1 Planning permission is sought for a 5-year period for a zip line attraction with four steel wires, between two steel-framed lattice towers, across a distance of 650m in length. The launch tower would measure 35.5m in height whereas the landing tower would measure 19.1m. The cumulative site area of the launch/landing zones would measure 4238 square metres.
- 5.2 The launch zone would contain reception facilities, including steel containers, marquees, gazebos and up to 5 toilets, a staff welfare unit and wooden clad information and merchandise unit and would have a footprint of approximately 493 square metres. The landing zone would comprise the landing tower, a decked area to de-rig riders, two merchandise and information units, and a staff welfare unit, all of which would be enclosed by security hoardings and a perimeter timber fence. The submitted information indicates that development does not involve any large-scale permanent features, other than a gravel access road to the launch site.
- 5.3 Proposed maximum operating times during the peak season months of June, July and August would be between 10:00 to 19:30 Monday to Friday, 9:00 to 20:00 on Saturdays, and 09:00 to 19:00 on Sundays. During off-peak season months these hours would be reduced, with customer bookings ending at 17:00 (November, December, January, and February) or between 18:00 and 19:00 (March, April, May, September, and October). Pre-booking is to be actively encouraged and it's stated that a maximum limit of 80 participants per hour would be adhered to, but that this number is unlikely across a full day.
- 5.4 The application is supported by the following information:
- Design & Access Statement
 - Event Management Plan
 - Planning and Flood Risk Statement
 - Landscape and Visual Impact Statement
 - Heritage Impact Assessment

- Preliminary Ecological Appraisal
- Amendment in Response to Scarborough Planning Committee Meeting
- Visual Presentation Document (including CGI images)
- CGI Video

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 application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

6.2. The Adopted Development Plan for this site is:

- Scarborough Borough Local Plan 2011 to 2032 (adopted 2017) (the Local Plan)

Emerging Development Plan – Material Consideration

6.3. The North Yorkshire Local Plan is the emerging development plan for the area. However, because it is at an early stage of preparation and has not yet been consulted upon it does not therefore attract any weight.

Guidance - Material Considerations

6.4. Relevant guidance for this application is:

- National Planning Policy Framework December 2023 (The Framework)
- National Planning Practice Guidance (The PPG)

7.0 Consultation Responses

7.1. The following summarised consultation responses have been received:

7.2. Environment Agency: No response.

7.3. Historic England: Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.

7.4. Ministry of Defence: This application relates to a site outside of Ministry of Defence safeguarding areas. I can therefore confirm that the Ministry of Defence has no safeguarding objections to this proposal.

7.5. Natural England: No objection (with the following advice):

- a. Nature Conservation: Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites.

- b. Protected Landscapes: The proposed development is for a site within or close to a defined landscape namely North Yorkshire & Cleveland [Heritage Coast]. Natural England advises that the planning authority uses national and local policies, together with local landscape expertise and information to determine the proposal. Your decision should be guided by paragraph 178 [now 184] of the National Planning Policy Framework [in relation to Heritage Coasts].

7.6. North York Moors National Park Authority: No objections.

7.7. North Yorkshire Police (Designing out Crime): An analysis of crime and disorder between 1 October 2022 to 30 September 2023 for within 100m radii of the launch site and landing areas shows there were a total of 14 crimes and 8 anti-social behaviour incidents recorded by NYP. The result show both sites are located within an area with low crime and disorder levels. The applicant has considered the security of the proposal and has provided relevant information to demonstrate what measures are to be incorporated, which conforms to guidance in the National Planning Policy Framework. Improvements could be made to boundary protection and CCTV coverage should be defined and operate 24 hours a day with suitable compatible lighting, otherwise no further comments.

7.8. NYC Environmental Health: The introduction of zip lines in proximity to residential areas creates potential for amenity impacts, most notably from noise and light emissions. Further to our earlier response, the applicant has submitted information on which the following comments are made:

- a. Noise: The applicant has provided Noise Assessments and an Acoustic Feasibility Study for similar schemes. Whilst there is no standard noise assessment methodology for this type of development, and some uncertainty regarding differing and non-transferable background sound levels at residential receptors, the relatable noise assessments enable a basic understanding of operational noise in order to determine whether or not significant impacts are likely.

I would concur with the reports in so far as zip wire installations do not readily lend themselves to noise mitigation due to their height. Therefore, the zip lines as proposed are either acceptable in noise terms or they're not. Overall, taking into account a review of similar schemes and predicted noise levels at residential receptors, in the context of a busy seaside resort and operating during hours of daylight, I do not envisage significant operational noise impacts provided that:

- i) Operating hours align with those set out within the Design & Access Statement dated May 2023, sections 6.3 (off peak) and 6.3.1 (peak); and
- ii) Deliveries and toilet servicing hours align with those set out within the letter from the applicant dated 08/11/2023 (i.e. between 07:00 and 22:00).

- b. Light: The applicant has provided a letter dated 08/11/2023 seeking to address artificial light concerns raised in our earlier consultation. I am reassured that artificial light on the tower structures will not be used outside of staff departure times, unless in the event of a medical emergency. Therefore, I do not envisage significant operational artificial light impacts provided that:
 - i) Artificial light on the tower structures will not be used outside of agreed operating hours, unless in the event of a medical emergency.
- c. Construction: The proposed development is near existing residential premises and may therefore negatively impact upon residential amenity during construction due to the potential for generation of noise & vibration. Therefore, to protect residential amenity the following condition is recommended:
 - i) No construction work relating to the development, including works of demolition or preparation prior to building operations, shall take place other than between the hours of 08:00 hours and 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays and at no time on Sundays or Bank or National Holidays.

- 7.9. NYC Head of Venues and Attractions: The zip line should not operate on Open Air Theatre show days and the access should be closed from 21:00 on the day before any show.
- 7.10. NYC Principal Conservation Officer: The proposal would cause less than substantial harm to the setting of Scarborough Conservation Area by virtue of the height of the launch tower. The Landscape and Visual Assessment fails to address the impact on short distance views. As such, the proposal would be contrary to Local Plan Policy DEC5 and the policies of the Framework. Nevertheless, if planning permission were granted, conditions should be imposed to require precise details of the material and colour of any enclosure to the tower structures.
- 7.11. NYC Local Highway Authority: There are no Local Highway Authority objections to the proposal.
- 7.12. NYC Public Rights of Way: The route of the zip line crosses Public Right of Way No 30.19/18/3 and appropriate safety measures should be put in place at the intersection to mitigate any risk to the public, for example from debris dropped by users.

Local Representations

- 7.13. At the time of writing 224 public comments have been received, 48 in objection, 173 in support, and 3 neutral. A summary of comments made is provided below. However, comments can be viewed in full at the above weblink.

7.14. Support:

- Limited environmental and visual impact.
- The towers would be a positive addition.
- Limited effect on living conditions of neighbours due to operating times/separation distances involved.
- Beneficial addition to North Bay and character of the area following the closure of facilities, including Alpamare.
- Would raise Scarborough's profile and increase footfall.
- Tourism and linked-spend economic benefits for small businesses, hospitality and accommodation operators, and job creation.
- Needed investment to regenerate a derelict site and North Bay.
- Unique, safe, family, and all year-round visitor attraction.
- Parking would not be an issue.
- Accords with the North Bay Masterplan.

7.15. Objections:

- Contrary to Local Plan Policies DEC1 and DEC4, and the Framework.
- Out of keeping with the quiet tourism character of North Bay, more suitable for the South Bay.
- Harm to natural coastal beauty and historic views of North Bay and the Castle.
- The scale would dominate North Bay's skyline and harm visual amenity.
- Hoarding around the towers and landing site would be an eyesore.
- Development is limited and not year-round and would not regenerate the site.
- Noise and disturbance, and potential for litter and antisocial behaviour.
- Safety concerns due to falling items from riders.
- Harm to wildlife, including migratory birds.
- Inadequate parking provision with the Open-Air Theatre and Alpamare.
- Does not provide for indoor leisure facilities.
- The site is within Flood Zone 2/3 and unsuitable.
- There is already a zip wire at Wykeham Lakes Water Park.
- Abandoned chairlift towers should be removed.
- A lease should not have been agreed until determination.
- Contrary to covenants placed upon the site.
- Contrary to the North Bay Masterplan.

7.16. Neutral:

- Regard should be had to the Planning (Listed Buildings and Conservation Areas) Act 1990.
- The benefits are uncertain.
- Should be closed during Open Air Theatre performances.
- Abandoned chairlift towers should be removed.

8.0 Environment Impact Assessment (EIA)

- 8.1. Having regard to the scale and nature of the proposal, the development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact

Assessment Regulations 2017) (as amended). Therefore, no Environment Statement is required.

9.0 Main Issues

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

- Principle of development
- Effect of the proposal on the setting of heritage assets and the character and appearance of the area
- The public benefits of the scheme
- Other matters

10.0 Assessment

Principle of Development

10.1. There is broad support for tourism development under Local Plan Policy TOU1 and the launch tower/zone would be located within Local Plan economic growth allocation TOU2 (North Bay Leisure Parks), within which new leisure or tourism facilities will be supported. The proposal is for a leisure development and as such the proposal is therefore acceptable in principle, subject to the proposal being found to be in accordance with the other policies of the Local Plan.

Effect of the proposal on the setting of heritage assets and the character and appearance of the area

- 10.2. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid in the exercise of planning functions to the desirability of preserving and enhancing the character and appearance of a Conservation Area. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid in the exercise of planning functions to the desirability of preserving the Listed Building(s) or its setting or any features of special architectural or historic interest which it possesses.
- 10.3. Local Plan Policy DEC5 states that historic rural, urban, and **coastal** environments will be conserved and, where appropriate, enhanced and their potential to contribute towards the economic regeneration, tourism offer and education of the area exploited, particularly those elements which contribute to the areas distinctive character and sense of place [emphasis added]. Local Plan Policy ENV7 seeks to protect landscape character.
- 10.4. The application site is located between Scarborough Conservation Area (SCA) and the defined landscape of the North Yorkshire & Cleveland Heritage Coast, the latter of which Natural England highlights in its consultation response. The open character of the coast and historic setting of the site gives the area its strong sense of place and seaside resort character.
- 10.5. The nearest listed building is the water chute in Northstead Manor Gardens (Grade II). The setting in which the heritage asset is experienced does not include the

application site and the Council's heritage adviser raises no objection in relation to its setting, or the setting any other listed building. However, the site is located within the setting of a Registered Park and Garden and the SCA. Your heritage advisor finds that the 35-metre-tall launch tower would harm views from the edge of the SCA, and views south towards the SCA from the launch site boundary. Further, that this harm is not convincingly justified, as is required by the Framework. Further still, that the Landscape and Visual Impact Assessment fails to address the impact on short distance views when viewed from vantage points at the northern limits of the SCA, or the impact on panoramic views of the SCA from the North Bay Promenade.

- 10.6. Amongst other things, criteria based Local Plan Policy DEC1 states that good design will be expected in order to create attractive and desirable places where people want to live, work, and invest. Criterion a) require that proposals reflect the local environment and respond positively to local context, including in terms of scale, form, height, and materials. Furthermore, that proposals take account of the need to safeguard or enhance important views and vistas.
- 10.7. Site allocation TOU2 in which the launch tower is situated is supportive of new leisure or tourism facilities, where they accord with the criteria contained within Local Plan Policy TOU1. Criteria a) of the policy requires that proposal respect the distinctive tourism character of the area, both in terms of scale and nature of the development, and, wherever possible, help reduce the seasonal nature of the tourism industry in the area. The associated text explains that tourism is fundamental to the local economy. More than 7 million visitors are attracted to the area every year by its seaside resorts, dramatic coastline and landscape, award winning beaches, built heritage and proximity to the North York Moors National Park.
- 10.8. The Scarborough Landscape Study: Volume 1 – Borough wide Landscape Character Assessment (LCA) identifies the launch site as being within the urban area, but immediately adjacent to the broad Character Type G: Coastal Cliffs, of which Character Area G3 Long Nab to North Bay is a constituent and in which the landing site would be located. Amongst the key characteristics identified are that the area has extensive intervisibility with prominent coastal landmarks such as the rock outcrop and associated dramatic cliff top ruins of Scarborough Castle (a Scheduled Monument). Also, that recreational interest and experience are provided for by the Cleveland Way which is adjacent to the landing zone. Under pressure for change, the LCA notes continued pressure for tourism and recreation that may lead to inappropriate development.
- 10.9. It is recognised that the applicant has responded positively and has sought to reduce the impact of the proposal. Nevertheless, in this landscape context the launch tower would not be a positive addition to the skyline. Whilst the cladding to the launch tower has now largely been omitted making it less solid, the exposed lattice structure would be utilitarian in appearance and significant in its scale. Sited in an elevated cliff-top location, it would be far higher than any existing structure. As such, it would be a visually dominant and alien feature which would have a transformational impact on the coastal environment and its distinctive character. The revised green colour scheme and graphics of the landing tower cladding and hoardings would be less

assertive when viewed from the Cleveland Way, and blend better against the green backdrop of the cliff base. Nevertheless, together with the associated paraphernalia the structure would not contribute positively to the open character of the seafront. Together, they would cause significant harm to visual amenity and detract from the established coastal tourism character of the area. As a result, the proposal would be contrary to Local Plan Policies DEC1, DEC5, ENV7, TOU1 and TOU2. Officers advise that in their professional opinion significant weight should be given to the identified harm and resultant development plan conflict.

- 10.10. The supplied CGI video is helpful to appreciate the likely appearance of riders on the proposed attraction. However, the identified harm is not predicated on use of the ride; it primarily arises from the siting and scale of the supporting structures. Furthermore, the video is indicative only and should therefore be treated as such (the scale elevations are what more accurately describe the proposal).
- 10.11. Permission is now sought for a temporary 5-year period. The temporary nature of the proposal would limit the duration of the harm and provide further opportunity for consideration of the effects at a later date. Nevertheless, even on a temporary basis, the proposal would result in less than substantial harm to the significance of the SCA by way of harm to its setting, and thereby conflict with Local Plan Policy DEC5. The harm is considered to be at the lower end of the less than substantial scale. Nevertheless, in accordance with the Framework (paragraph 205) great weight should be given to the asset's conservation. Following paragraph 208, the harm should be weighed against the public benefits of the proposal, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. This is returned to below.

The public benefits of the scheme

- 10.12. Although they are difficult to quantify with any precision, thereby reducing the weight that could be attributed to them, many comments in support of the scheme suggest that the proposal would be likely to attract visitors. Benefits would accrue from their associated linked spend in the local tourism economy, including on small businesses, accommodation, and hospitality providers. Officers would therefore advise that moderate weight should be given to the economic benefits. The proposal describes propose employment for 10 full-time and 40 part time works (25.05 full-time equivalent) which is not insignificant and should therefore also be afforded moderate weight.
- 10.13. Supporters of the scheme comment that the proposal would regenerate a derelict site. However, as some objectors highlight, the proposal would not result in the comprehensive redevelopment of Local Plan site allocation TOU2 North Bay Leisure Parks. Moreover in some regards, due to its layout, the proposal might actually be said to be an obstacle to the comprehensive redevelopment of the site, utilising the access and largely splitting it into two. Furthermore, although it would operate year-round, the proposal would be unlikely to help to reduce the seasonal nature of the tourism industry. Therefore, officers consider that limited weight should be afforded to the regeneration benefits of the scheme.

Other matters

Highways

- 10.14. Some objectors raise concern over the adequacy of parking provision, allied to the in-combination parking demand with existing uses. Whilst the proposal does not provide off-street parking, access would be via existing walking routes which are close to Northstead Upper and Lower Car Parks. The proposal is sustainably located, and there is nothing to suggest that the parking demand generated by the proposal could not be met by existing provision in the locality, or that the effect on the road network would be unacceptable.
- 10.15. Delivery of the launch tower would be in four sections, the landing tower in two, and the submitted design and access statement details access routes and delivery management measures. These are all matters which would be capable of being addressed by a suitably worded planning condition. Furthermore, there is no highway safety or any other objections from the Local Highway Authority. As such, it is not considered that the proposal would unduly conflict with Local Plan Policy DEC1 b). Therefore, according to Framework paragraph 115, planning permission should not be refused on highways grounds.

Living conditions of neighbours

- 10.16. Local Plan Policy DEC 4 requires that development does not give rise to unacceptable harm to the living conditions of neighbours and public objection is made on the grounds of noise and disturbance. However, subject to conditions to restrict operating, construction and delivery hours, and artificial lighting outside of agreed operating hours, there are no objections from the Council's Environmental Health consultee. In view of the separation distances between neighbouring residential property, and subject to such conditions, it is not considered the proposal would result in undue noise and disturbance for local residents or conflict with the above policy.

Biodiversity

- 10.17. The application is supported by a Preliminary Ecological Appraisal prepared by an appropriately qualified ecologist. Subject to a Great Crested Newt low impact licence, there is no evidence to suggest that protected species would be harmed, including migratory birds. The site is not a Site of Special Scientific interest or designated as a 'European' site, and Natural England as the government's chief adviser on such matters raises no biodiversity objections. As such, the proposal would not conflict with development plan policy or the Framework in this regard. The proposal incorporates wildflower planting either side of the launch zone gravel access, which would be likely to support pollinators and thereby meet the requirements of Local Plan Policy ENV5 and the Framework to achieve a net gain in biodiversity.

Public safety

- 10.18. The concerns of objectors in relation to public safety arising from the potential for items to be dropped by zip wire riders is acknowledged; the route of the zip line crosses Public Right of Way No 30.19/18/3. However, as the Council's Public Right of Way consultee comments in not objecting to the scheme, appropriate safety measures could be put in place to mitigate any risk to the public. Furthermore, the proposal sets out loose article safety measures, which would include checks and advice at registration/harnessing. Further still, a scheme of safety measures could be required by condition. In relation to concern over the potential for crime and disorder North Yorkshire Police have not responded to consultation with any concerns that would not be capable of being address by planning conditions (anti-climb security/CCTV measures). As such, the proposal would not conflict with Framework paragraph 135 f) in these regards.

Flood risk

- 10.19. The landing tower is primarily located within Flood Zone 2 with a medium probability of sea flooding, although a small part of the landing zone would appear to be located within Flood Zone 3 with a high probability. As the submitted Flood Risk Assessment sets out, the proposal would not be inappropriate in Flood Zone 2. Furthermore, as a less vulnerable use according to the PPG it could be considered to be water-compatible development within Flood Zone 3. As a result there would not be conflict with Local Plan Policy ENV3.

Setting of the North Yorkshire Moors National Park

- 10.20. In decision making there is a legal duty under Section 11A(2) of the National Parks and Access to the Countryside Act 1949 to have regard to National Park purposes, and some objectors are concerned about the proposals impact. However, at its nearest the proposal would be approximately 1.5 miles from the boundary of the North York Moors National Park and would not unduly harm the setting. Furthermore, in response to consultation the National Park Authority raises no objection. Therefore, the proposal would not conflict with Local Plan Policy ENV6 in this regard.

North Yorkshire & Cleveland Heritage Coast

- 10.21. Framework paragraph 184 requires that within areas defined as Heritage Coast planning decisions should be consistent with the special character of the area and the importance of its conservation. In their comment Natural England refer to the site as being 'within, or close to the North Yorkshire & Cleveland Heritage Coast'. However, according to the MAGIC map which they manage (an authoritative geographical information source about the natural environment across government), the site is located outside of it.

Former chair lift structures

- 10.22. Public comment is made in relation to the former chair lift supporting structures and that they should be removed. However, these existing features are beyond the redline area of the site and therefore beyond the scope of conditions which might seek their removal. In any case, refusal is recommended. They are far smaller in scale than the proposal, and do not therefore provide a basis or justification for approval of the scheme in view of the identified harm.

North Bay Masterplan

- 10.23. A significant number of public comments raise the North Bay Masterplan, both in support and objection. However, it does not form part of the adopted development plan for the area and has no legal status. Therefore, it does not attract any weight.

Lease of the site and covenants

- 10.24. Whilst there is public concern over the lease of the site, this is immaterial to the decision. Although there may be covenants on the land, these would fall to be considered as civil matters, outside of the planning merits of the proposal.

11.0 Planning Balance and Conclusion

- 11.1. The revised proposal is acceptable in principle in accordance with Local Plan Policies TOU1 and TOU2. However, officers have concluded that having regard to the revisions, even on a temporary basis, it would result in significant harm to the character and appearance of the area, and thereby conflict with the associated criteria and Local Plan Policies DEC1 and DEC7. Furthermore, the proposal would result in less than substantial harm to the setting of the Scarborough Conservation Area. Conservation of the heritage asset should be given great weight, and, in accordance with the Framework and Local Plan Policy DEC5, the harm should be weighed against the public benefits of the proposal.
- 11.2. The proposal would not harm the setting the designated North York Moors National Park or harm the defined North Yorkshire & Cleveland Heritage Coast. It would not pose a risk to public safety or unduly harm the living conditions of neighbours or biodiversity. The proposal would not result in undue flood risk or be contrary to flood risk policy or result in any unacceptable highway impacts. These are all neutral factors in the exercise of the heritage and planning balance.
- 11.3. In terms of the public benefits, individually, moderate weight should be given to the economic and employment benefits of the scheme, and limited weight should be given to the regeneration benefits. Overall, and on balance, officers' advice is that that the combination of the public benefits of the scheme would not outweigh the less than substantial harm to the Scarborough Conservation Area. For the reasons set out above, and having regard to all the matters raised, the proposal conflicts with the development plan as a whole. There are no material considerations, including the tourism benefits of the scheme, which outweigh the identified harm and consequent

policy conflicts to suggest that a decision should be made other than in accordance with the development plan. Accordingly, refusal is recommended.

12.0 Recommendation

12.1 That planning permission be REFUSED for the following reason:

The proposal would result in significant harm to the character and appearance of the area and landscape and less than substantial harm to the setting of the Scarborough Conservation Area. As a result, the proposal would conflict with Local Plan Policies DEC1, DEC5, ENV7, TOU1 and TOU2, and the public benefits of the scheme and material considerations would not outweigh the harm and development plan conflict.

Target Determination Date: 19 April 2024

Case Officer: Mr Daniel Child

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