

North Yorkshire Council
Community Development Services
Strategic Planning Committee
13 AUGUST 2024

ZF24/00491/RG3 - Erection of a three-storey building for marine based activities with associated car parking, vehicle and pedestrian access roads, footpaths and limited soft landscaping at Endeavour Wharf, Langborne Road, Whitby, North Yorkshire, YO21 1YN, on behalf of North Yorkshire Council
Report of the Head of Development Management – Community Development Services

1.0 Purpose of the report

1.1 To determine an application for full planning permission (ref: ZF24/00491/RG3) for development on Endeavour Wharf, Whitby.

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

2.0 SUMMARY

RECOMMENDATION: That Planning Permission is GRANTED subject to the conditions set out at the end of this report

2.1 This application seeks planning permission for the erection of a three-storey building on Whitby Harbour's Endeavour Wharf for water compatible marine-based business and education uses.

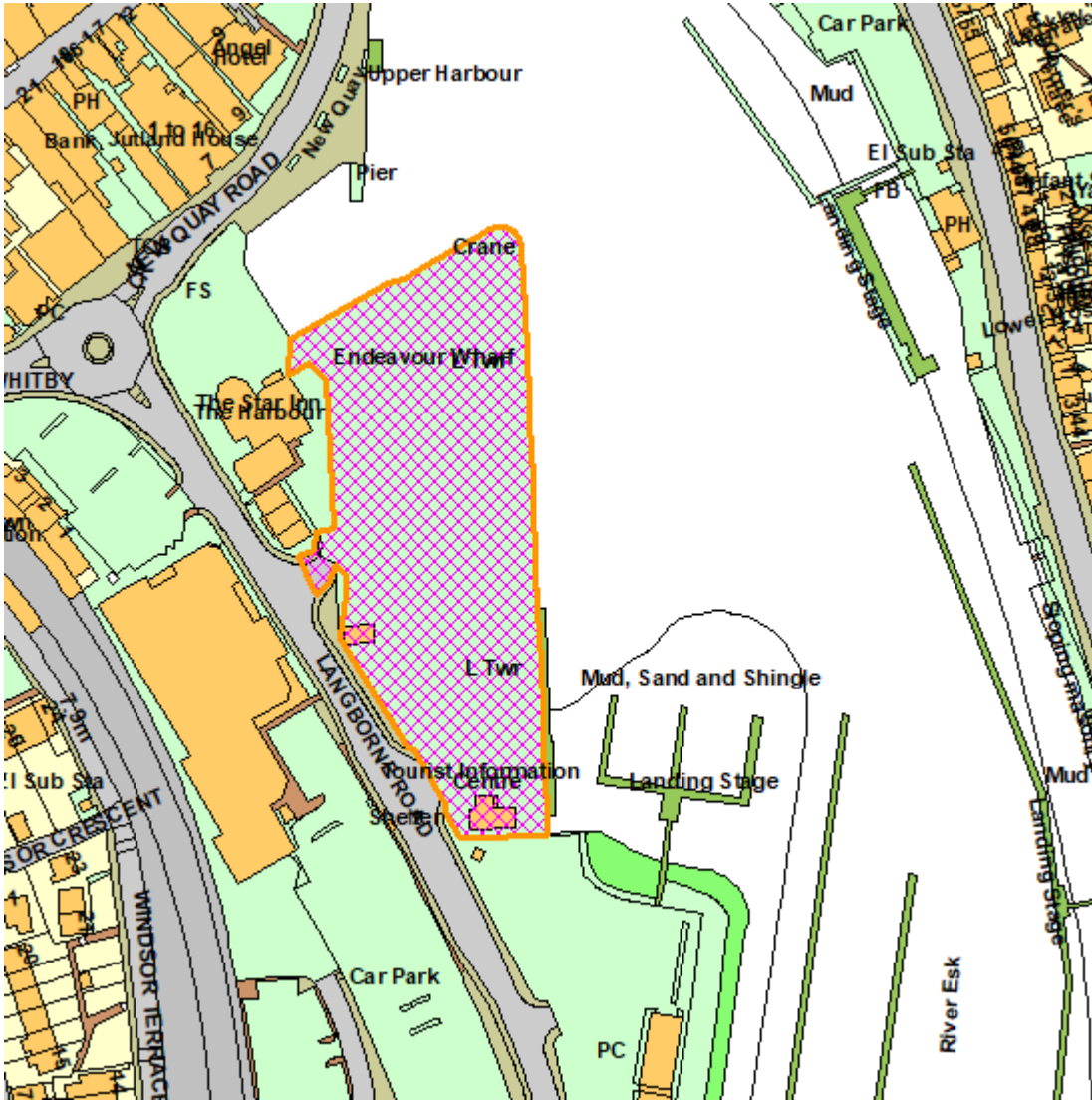
2.2 The Local Plan policies set a presumption in favour of the principle of the development. Balanced against this are some negative impacts, notably the impacts on the Conservation Area and car parking provision in the town.

2.3 Officers consider that the negative impacts are offset in the balance by the policy presumption in favour of the development and the significant social and economic public benefits the development is likely to yield over time.



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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=SB0FMWNS0F600>

3.2 Section 10 of this report deals with the impact of development on 'heritage assets'. When approaching this aspect of the report and when navigating the formal comments of your Conservation Officer, it is important that Members have an appreciation of the language the Government uses in its planning policy related to the historic built environment.

3.3 It is first necessary to explain what is meant by the term 'heritage asset'. National planning policy defines a 'heritage asset' broadly as something that has historical or cultural value. 'Designated heritage assets' are formally recognised 'heritage assets', benefiting from legal protection. They include Listed Buildings, Conservation Areas and Scheduled Monuments.

3.4 Section 16 of the National Planning Policy Framework (NPPF) sets out the Government's planning policies for dealing with applications which impact heritage assets. At paragraph 205 it states that great weight should be given to the conservation of 'designated heritage assets', i.e. there is a general presumption that 'designated heritage assets' will be preserved.

3.5 Where proposals lead to 'harm to the significance' of a 'designated heritage asset' the Framework outlines two approaches:

1) Where there would be 'substantial' harm to significance permission should generally be refused. The 'substantial' harm label is typically reserved for radical interventions, including the wholesale demolition of a Listed Building.

2) Where there would be 'less-than-substantial' harm to significance, this harm should be weighed in the planning balance against the public benefits of the proposal.

3.6 It is generally accepted that 'less-than-substantial' harm exists on a sliding scale from 'low' to 'high'; the higher the 'less-than-substantial' harm the greater the public benefit needed to offset it in the planning balance. This means that the (apparently self-contradictory) label of 'high less-than-substantial harm' is used by conservation experts to define the impact of development which doesn't fall into the 'substantial' category but is on the higher side of 'less-than-substantial'.

4.0 Site and Surroundings

4.1 The site comprises land at Endeavour Wharf, a hard surfaced wharf on the west side of Whitby's River Esk. Mooring vessels and loading/ unloading passengers, equipment, and cargo occur on the north and east sides of the wharf. The River Esk flows south to north past the site, into the North Sea about 600 metres north.

- 4.2 The irregularly shaped site measures roughly 0.9 hectares. The wharf edges next to the river define the north and east boundaries. Langborne Road and adjacent hard-surfaced areas for car parking and public space form the south and west boundaries. A large supermarket building and Whitby Station, a Grade 2 listed building, are located across Langborne Road.
- 4.3 Two small permanent buildings on the site house the Harbour Master and staff. The Harbour Master's Office, a two-story brick and rendered building with a clay pantile roof, sits at the wharf's southern end. It also houses the Tourist Information Centre on the ground floor. A brick storehouse with a metal sheet roof stands about 60 meters northwest of the Harbour Master's Office, near the site's western boundary. Several storage containers, a parking area and an open storage space used by the Harbour Master's team are next to this building.
- 4.4 A range of modern single-story buildings occupied by food and beverage businesses border the application site to the west. The unit formerly occupied by the Star Inn is currently vacant. These buildings are north of the site, with access to Dock End gained from the site's northwest corner.
- 4.5 The Site falls within Whitby's defined Development Limits but outside the 'Town Centre Boundary' and 'Primary Shopping Area' as defined on the Local Plan Policies Map, although part of the site's western edge borders the defined Town Centre. The site lies within Whitby's designated Conservation Area and, due to its harbour location, falls within Flood Zone 3b (Functional Floodplain and land at the highest risk of flooding).

5.0 Description of Proposal

- 5.1 Planning permission is sought for a three storey 'Whitby Maritime Hub' building. The building is to be positioned towards the northern end of Endeavour Wharf, replacing an area currently in use for car parking.
- 5.2 Regarding the building's scale and appearance, it would be three stories in height (approximately 15.7 metres to the maximum ridge height and 11.6 metres to eaves height), with a footprint of approximately 627 square metres. Its architecture would be distinctive with the building comprising visually and physically connected yet distinct elements with varying roof pitches. External faces are proposed to be covered with a range of materials, with red brick and natural stone being the predominant walling materials. Roofing and fenestration materials both in grey hues - with a standing-seam metal roof and powder-coated aluminium fenestration - would contrast with the walling materials. Solar panels are proposed to be sited on south-facing roof slopes (covering over 50% of the main roof) and walls.
- 5.3 Designed to be a flexible space, the building is proposed to be put to uses falling within the definition of 'water compatible' development as described in Annex 3 of the NPPF.

5.4 Although the precise use of the second floor of the building is yet to be defined, the ground and first floor of the building are proposed to be put to the uses set out below.

Ground floor:

- 2 x units of wharf workshop space;
- Lobster hatchery and sea water tanks;
- Wharf-side shower and WC facility;
- Harbour Master flood equipment store and workshop; and
- Fishing industry training space and workshop with drying facility.

First floor:

- Fishing industry training rooms;
- Fishing industry laboratory;
- Harbour Master's office and emergency planning room.

5.5 It is important to note the applicant seeks the flexibility substitute these uses for other 'water compatible' uses in the future if necessary (note the provisions of recommended 'condition 2').

5.6 Access to the building for service vehicles is proposed to be taken from Langbourne Road via a modified existing access adjacent to the Fish Box premises, with the principal vehicular access being via the main car-park entrance adjacent to the Tourist Information building.

5.7 Metal bollards and barrier planters would surround the building, allowing for a 5 to 7 metre safe vehicle-free 'pedestrian circulation and access buffer' in the round, with the principal pedestrian access to the building's interior for its users being via a main west entrance. Cycles storage (for 24 bicycles) is proposed to the south of the building.

5.8 Operational wharf access for users of the building is proposed between the ground floor of the east side of the building and the harbour, to be managed by the Harbour Master in line with existing arrangements whereby areas of parking on the wharf are temporarily suspended to allow access on an ad-hoc basis as it is required, accounting for practicality and operational requirements. Droppable bollards are proposed on the building's east side to facilitate this access.

5.9 The ground floor of the building would have flood resilience measures built into it, with water resistant materials used in the construction. Electrical services and equipment will be set above the design flood level. The building's design will allow water to exit the building as any flooding event subsides. Further information on the building's flood resilient design can be found on Public Access within the applicant's submitted Flood Risk Assessment.

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

- 6.3 The new North Yorkshire Local Plan is at an early stage and no weight can be given to it.

Material Considerations

- National Planning Policy Framework 2023 (NPPF)
- National Planning Practice Guidance (NPPG)
- National Design Guide

7.0 Consultation Responses

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

- 7.2 Whitby Town Council: supports the planning application, reflecting the support of the Whitby Civic Society, Historic England and North Yorkshire Council Conservation Officer, with a suggested condition that, due to the loss of 55 car parking spaces, park and ride provision should be extended and/or alternative parking should be developed elsewhere within the town to mitigate the loss.

- 7.3 Environment Agency:

- Given that the site is within Flood Zone 3b, the development will only meet the requirements of the NPPF if a condition is applied restricting the use of the building to those specified in the application and other 'water compatible uses' (as defined by the NPPF).
- The Local Planning Authority should consider the sequential test for flood risk.
- There must be a Construction Environmental Management Plan in place to protect the River Esk from construction related pollution.
- External lighting may affect the site's suitability for bats and must be avoided.
- Swift bricks must be incorporated into the design.

- 7.4 Lead Local Flood Authority:

- The applicant suggests that surface water will be discharged via the existing pipe network (into the harbour).

- Further information in respect to the design of the surface water drainage system are required, including exceedance designs and calculations which show a 40% allowance for climate change and 10% for urban creep.
- Information on the maintenance of the surface water drainage system is required.
- The LLFAs objection may be overturned with the submission of further information.

7.5 Yorkshire Water:

- A condition should be applied requiring the development to be implemented in accordance with the submitted Flood Risk Assessment.

7.6 Historic England:

- Whitby is an extremely characterful historic coastal settlement. Its urban form tells the story of its long history.
- The proposal site lies within character area 11 'Harbour and associated land' of the Whitby Conservation Area and within the wider setting of Whitby Abbey and other heritage assets.
- The proposed new three storey building in the harbour has the potential to cause minor harm to the character and appearance of Whitby Conservation Area, by virtue of its height and massing.
- Following our involvement in pre-application discussions we consider that the harm has been minimised and mitigated within the scope of the brief by paying special regard and attention to the heritage assets affected, as required by sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- The decision maker should consider whether the public benefits of the scheme outweigh the harm to the significance of the Conservation Area.

7.7 NYC Conservation Officer:

- In this case, a medium level of harm (less-than-substantial) would result by virtue of the introduction of development which would reduce the quality of views from Character Areas 4 and 11 of the Conservation Area. These views add to the character and appearance of the Conservation Area. The scale, massing and design proposed would have an impact on the views from the iconic swing bridge. Any harm to the significance of a designated heritage asset/s, including from development within its setting, requires clear and convincing justification (NPPF 200).
- The proposal is contrary to the Scarborough Local Plan policy DEC5 and the NPPF unless the public benefits, when factored into the overall planning balance, are sufficient to outweigh the level of harm identified.

7.8 Local Highway Authority (LHA):

- The applicant contends the development will result in a net loss of 52 parking spaces in the Endeavour Wharf car park, reducing the public car park capacity from 234 to 182 spaces (a 35% reduction).

- However, of the 234 car parking spaces currently available in the Endeavour Wharf car park it appears 6 are reserved for the harbour office and 20 for permit holders, leaving 208 reserved for public use.
- Accounting for parking demand associated with the new building, parking for the harbour office specifically and a realistic level of long-term permits, car parking spaces available to the public are likely to be reduced from 208 to 134 (a 35% capacity reduction).
- In periods of peak demand, notably at the height of the summer tourist season, car parking demand in Whitby can already exceed supply.
- The applicant's parking survey work took place during the off-season.
- At times of high demand, particularly in the summer season, the level of public car parking reduction associated with the development could impact the highway network if not properly managed.
- As a means of appropriately managing the situation the LHA asks for a developer contribution of £35,000 to be secured (via a Section 106 agreement) to pay for the provision of an 'electronic directional display sign' to direct drivers looking for a car parking space to other car parks where capacity remains.
- 14 spaces in the revised car park should be set over to disabled parking.
- Conditions should be applied requiring detailed access plans, detailed parking plans and a Construction Management Plan.

7.9 NYC Environmental Heath:

- There should be a noise and dust management plan in place for the construction phase;
- Construction should not take place outside of the hours of 07:30 - 18:00 Monday to Friday and 08:30 to 17:00 on a Saturday.

7.10 NYC Ecologist:

- There is no objection from an ecology perspective providing the recommendations for mitigation and enhancement measures provided in the ecological assessments are followed.

7.11 NYC Engineers: Awaited.

7.12 NYC Harbour Master: Awaited.

7.13 At the time of writing 59 public comments have been received, 55 in objection and 4 in support. A summary of comments made is provided below. However, comments can be viewed in full at the above weblink.

7.14 Objection:

- The building is too big and its design is inappropriate for its setting.
- The building will harm the Conservation Area and settings of important Listed Buildings.
- Parking in the town centre will be reduced, which will undermine tourism and the viability of the town centre.
- The loss of parking will cause congestion and will harm road safety.
- There is no proven need for this development and it is a waste of money.

- Funds set over to this development would be better spent elsewhere in the town.
- The harbour is already congested there is no space for the additional mooring demand this development might bring.
- Existing moorings are in need of repair or replacement and the harbour cannot accommodate increased demand without improvement.
- Wildlife will be harmed.
- The applicant does not have the right to carry out this development, accounting for its obligations as Port Authority.
- This land should be set aside for operational harbour use.
- The site is at significant flood risk and the development is likely to be flooded.
- The development will increase flood risk elsewhere.
- There is other land in the town, at lower flood risk and less visually sensitive, which is better suited to this form of development.
- The applicant's submitted sequential test in respect of flood risk fails to take into account other sites, including the car park on the east side of the harbour accessed from Church Street.

7.15 Support:

- I believe the building will support the local economy and businesses.
- The building is not overbearing and in fact improves the vista as it sits in front of the three least attractive buildings in Whitby.
- The need for varied employment, emerging industries and training opportunities is clear.
- The building is designed to deal with flooding.
- It would not be possible to locate this building anywhere other than adjacent to water.

7.16 A Local Division Member, Councillor Neil Swannick, has submitted a letter in support of the application, which is summarised by the following points:

- The Maritime Hub will play an important role in the economic and environmental strategies for Whitby, reducing dependence on tourism.
- Young people will be able to gain skills for their own futures and to guarantee Whitby a workforce able to compete with other small ports.
- Whitby remains proud of its fishing and boatbuilding industries which need to be supported and supplemented with emerging industries such as offshore wind and mariculture, this building will play an important part.
- I see the design as striking.
- The height is necessary.
- The building has the flexibility to deal with climate change driven sea level rise and extreme weather events.

7.17 The Whitby Civic Society has submitted a letter in support of the application, which is summarised by the following points:

- The views of Historic England and the NYC Conservation Officer are noted, including the conclusion that 'less than substantial harm' to designated heritage assets will result.
- Whitby Civic Society welcomes the commitment to utilise low and/or carbon neutral technologies including roof and facade-mounted photovoltaics, air source

heat pumps and hybrid ventilation units. However, given that the conservation area is subject to an article 4(1) direction (solar) which restricts permitted development rights over Solar PV and Solar thermal installation on prominent roofs within key views of Whitby Abbey and other vantage points, we request that a condition is attached to any consent which requires the applicant to use solar facade cladding panels and integrated roofing PV, to blend in with the brick face and roof covering.

- Electric vehicle charging points should be provided.

8.0 Environmental Impact Assessment

8.1 An Environmental Impact Assessment Screening Opinion has been issued confirming that an Environmental Statement is not required.

9.0 Main Issues

9.1 The main issues are:

- A) Principle of the development
- B) Impact on the character and appearance of the area, the Conservation Area and the settings of nearby Listed Buildings
- C) Flood risk
- D) Highways and parking
- E) Ecology

10.0 Assessment

A) Principle of the development

- 10.1 The proposal is for the development of a new educational and business facility specifically for (in the language of the NPPF) 'water compatible' maritime uses within the town's Development Limits. It is stated by the applicant, and it is clear from submitted details, that the purpose of the development is to provide opportunities for people to develop job related skills and acquire training to directly support the town's (and broader locality's) maritime industry, and also to provide wharf-accessible space in which maritime business is able to develop.
- 10.2 Policies HC10 (Health Care and Education Facilities) and EG1 (Supporting Industry and Business) of the Local Plan offer policy support for proposals for the development of education, industry and business facilities, as well as proposals which encourages the development of jobs, skills and employment.
- 10.3 With the provisions of these policies in mind, subject to the favourable consideration of the other planning matters discussed in the sections below, Officers consider the proposal to be supported by the Local Plan in principle.
- 10.4 Noting the discussion in paragraphs 10.14 to 10.21 (flood risk) and accounting for the Environment Agency's (EA) absolute requirement that the building be put to no other use than water compatible marine-based business and education uses, and

holding in mind that the planning system essentially affords the EA an opportunity to 'veto' any future change of use application, Members can be confident that the building will remain available as a space for marine uses to develop in Whitby into the future.

10.5 This notwithstanding, it is important to recognise that the development would lead to the loss of a number of public car parking spaces in the town centre, which is discussed from a highway safety perspective at paragraphs 10.22 to 10.32. It is recognised that this may have an impact on some existing businesses and could have a negative impact on access to the town's tourism offer to some extent. It is for Members to decide what weight they attach to the loss of car parking spaces in the balance, but it is the view of Officers that any harm in this respect would be limited and would therefore be offset in the balance by the presumption in favour of the scheme provided by the above mentioned policies. It is important to hold in mind that policy EG1 provides explicit backing for development which supports and enhances the operational role of Whitby harbour, and this site had historically been set over to operational harbour use.

B) Impact on the character and appearance of the area, the Conservation Area and the settings of nearby Listed Buildings

- 10.6 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be 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 Listed Buildings or their settings.
- 10.7 Local Plan policy DEC5 of the Local Plan echoes these requirements, and in short it requires that new development preserves the character and appearance of Conservation Areas and the settings of Listed Buildings. Where there is harm the policy requires this to be outweighed by public benefit. Policy DEC1 of the Local Plan requires that the design of new development is of a high standard.
- 10.8 Described more fully in section 5, the proposed building would be three storied with pitched roofs to reflect the town's roofscape and accommodate solar panels. It would be constructed from a range of external materials including split-faced stone for the ground floor, brickwork for upper floors, and a metal balcony.
- 10.9 Officers consider the design of the building to be of interest. Its form and massing result in building with a well-proportioned, balanced and functional aesthetic reflective of its proposed operational maritime use.
- 10.10 With respect to the impact of the development on its context, in the formal consultation response the Conservation Officer presents a very detailed appraisal of the impact the development would have on the character of the area and on heritage assets, including Listed Buildings, the Conservation Area and important views.

- 10.11 The Conservation Officer notes that the building will sit at the core of the Whitby Conservation Area surrounded by other important heritage assets, and by reason of the town's topography (it is a natural 'amphitheatre' with Endeavour Wharf sat centrally at its base) the development will be seen prominently in the round, including from above.
- 10.12 Owing to the sensitivity of this setting, combined with the scale of the building, it is the view of the Conservation Officer that there will be a degree of harm to the Whitby Conservation Area and settings of nearby Listed Buildings, most notably to the following aspects:
- 1) Short distance views from Whitby Station and the west side of the swing bridge. These views will be significantly affected due to the building's prominence.
 - 2) Medium distance views from Church Street and the Abbey area. From these medium range vantage points the development will be prominently visible and alter the existing townscape views.
- 10.13 The harm identified is judged by the Conservation Officer to result in 'less-than-substantial harm' to the significance of the Whitby Conservation Area and nearby Listed Buildings by way of their settings. This harm is considered by your Conservation Officer to be at the mid-point of the 'less-than-substantial' scale. In accordance with the NPPF (paragraph 205) great weight should be given to the assets' conservation. Following paragraph 208, and accounting for the provisions of policy DEC5 of the Local Plan, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. This is returned to below at section 11.

C) Flood risk

- 10.14 In general terms, local and national planning policy with respect to flood risk requires that new development is not unacceptably exposed to risk from flooding, that development does not increase the risk of flooding elsewhere and that where there is to be a degree of flood risk the development is safe for its operational lifetime.
- 10.15 This site falls within Flood Zone 3b, which is land identified by the Council's Strategic Flood Risk assessment to have the highest risk of flooding; it is estimated that the site has a one in ten-year flood risk.
- 10.16 Government planning policy and guidance is clear in that only developments which are defined as 'water compatible' (as per Annex 3 of the NPPF along with Table 2, paragraph 079 of the NPPG) should be considered for approval in Flood Zone 3b. Even then, a 'sequential test' should first be applied to determine whether there are other potential sites at a lower risk of flooding which could accommodate the development.
- 10.17 On the point of the sequential test, holding in mind that wharf access is an intrinsic component of the proposal, the applicant has assessed available alternatives and has concluded that there are no other sites at a lower risk of flooding which could

accommodate the development. Sites at a lower flood risk are judged to be unsuitable for the development, principally due to restricted size and/ or lack of wharf access, and those sites which might be practically suitable are not at lower flood risk.

- 10.18 Having considered the applicant's submission and reviewing the available alternatives for themselves, Officers consider the proposal to have 'passed' the sequential test.
- 10.19 The next step is therefore to consider the nature of what's proposed in terms of its NPPF 'flood risk vulnerability classification' and the suitability of the site (given its Flood Zone 3b status) considering paragraph 079 of the NPPG.
- 10.20 In its formal consultation response, the Environment Agency has confirmed that the proposed uses (as set out in Section 7 above) are 'water compatible'. This means that, in accordance with paragraph 079 of the NPPG which allows for 'water compatible' development in Flood Zone 3b, and accounting for the fact the sequential test is judged to have been passed, from a flood risk perspective Officers consider the proposal to be acceptable in principle.
- 10.21 The Environment Agency has requested that restrictions are placed on any permission the Committee may grant to limit the use of the building to 'water compatible' uses in perpetuity and to secure the implementation of flood resilience measures to ensure the building is safe for its lifetime (conditions 2 and 3). Officers consider these to be reasonable requests and are recommending that a suitable condition is applied to any grant of planning permission.

D) Highways and parking

- 10.22 The Local Highway Authority (LHA) 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.
- 10.23 Fundamentally, the LHA has not objected to the proposals and has not identified the scheme as a risk to highway safety.
- 10.24 However, the LHA has raised some concerns principally in respect of the development's impact on parking provision for the town, and the residual impact this may have on the public highway.
- 10.25 These concerns are summarised by the following points:
- The applicant contends the development will result in a net loss of 52 parking spaces in the Endeavour Wharf car park, reducing the public car park capacity from 234 to 182 spaces (a 35% reduction);
 - However, of the 234 car parking spaces currently available in the Endeavour Wharf car park it appears 6 are reserved for the harbour office and 20 for permit holders, leaving 208 reserved for public use;
 - Accounting for parking demand associated with the new building, parking for the harbour office specifically and a realistic level of long-term permits, car parking

spaces available to the public are likely to be reduced from 208 to 134 (a 35% capacity reduction);

- In periods of peak demand, notably at the height of the summer tourist season, car parking demand in Whitby can already exceed supply.

- 10.26 The LHA goes on to contend that in times of high demand, particularly in the summer season, the level of public car parking reduction associated with the development could impact the highway network if not properly managed.
- 10.27 It should be held in mind that in the submitted Transport Assessment the applicant takes a different position and contends that sufficient car parking capacity exists in the town.
- 10.28 However, as set out this stance is disputed by the Highway Authority and Officers would suggest that people with experience of Whitby on the busiest days would likely agree with the notion that parking demand can outstrip supply, especially in the town centre.
- 10.29 Whether the benefits of the scheme outweigh the loss in town centre parking capacity is ultimately a matter for Members in weighing up the planning balance and this is discussed at section 11 of this report, but from the perspective of protecting the safety and convenience of users of the public highway and as a means of appropriately managing the situation the LHA has asked for a developer contribution of £35,000 to be secured (via a Section 106 agreement) to pay for the provision of an 'electronic directional display sign'.
- 10.30 This electronic sign would be erected by the LHA and positioned adjacent to the car park exit and would display messages to direct drivers (who have found the Endeavour Wharf car park to be full) to other car parks in the vicinity with capacity via a route least likely to cause congestion and other problems. The signage messages would be updated by Officers in the LHA control room who would use up-to-date information sourced from parking wardens and others to construct suitable messages in a similar way to existing electronic signs operated in the County.
- 10.31 Officers would advise that this is a reasonable request for necessary equipment as a means of efficiently and safely managing the impact of the development on parking in the town. However, in this instance, as the Council is applicant, LHA and Local Planning Authority, legal officers have advised that the requested funds cannot be secured by Section 106 agreement as the Council cannot enter into a contract with itself. The sign can be secured by planning condition and the applicant has confirmed it is willing to provide the sign, as such the funds would not need to be secured. It is proposed to secure the sign by condition.
- 10.32 To summarise on the issue of highway safety, subject to conditions in respect of access arrangements and other points, the LHA has not objected to the proposal, but it has raised concerns about the impact of reduced parking capacity in the town centre. It has requested an electronic directional signage to manage this issue. With the requested conditions (with a specific condition securing the electronic sign), your Officers would advise that development would not have such a detrimental impact on the highway to justify the refusal of planning permission.

E) Ecology

- 10.33 The application site is mainly set to tarmac so has very limited biodiversity value, as confirmed by the submitted ecology report. A latterly submitted bat survey concludes that the building on the land to be demolished (currently used by the Harbour Master) is not habitat for bats. As such, the development is unlikely to have any material impact on biodiversity, species protected by law or protected habitat.
- 10.34 It should be noted that this application was made before mandatory Biodiversity Net Gain (BNG) came into force, and as such is not required to provide mandatory BNG.

F) Additional considerations

- 10.35 Members will note that the Lead Local Flood Authority (LLFA) currently objects to the application and has requested in its consultation response that further information be supplied in relation to the surface water flood risk before a decision is made on the application.
- 10.36 When considering this point, it is important to note that it is generally held that the LLFA (a statutory consultee) is responsible for matters associated with surface water flood risk, the Environment Agency (EA) - also a statutory consultee - for matters related to sea level and river flooding and Yorkshire Water (not a statutory planning consultee, but a 'statutory undertaker') for matters associated with foul and surface water via public sewers.
- 10.37 Risks from sea level and/ or river flooding are the greatest environmental risks to the proposed development. Importantly the EA has not objected to the scheme, nor has Yorkshire Water. With that in mind, and taking into account the commentary in paragraphs 10.14 to 10.21 above, Officers would advise that sea level and river flooding risks are settled matters.
- 10.38 On the point of surface water risk and the LLFA's response, surface water from the development will be drained into the harbour, as it is currently. The amount of surface water run-off from the site will not increase and thus the surface water flood risk elsewhere will clearly not increase as a result of the development. In short, there is an outfall (the harbour) with the capacity to deal with surface water from the scheme, which is ultimately all the Local Planning Authority needs to establish at the point of determination (i.e. that the site can be drained of its surface water). Precise details of the surface water drainage scheme can be required by condition.
- 10.39 Public comments question the right of the applicant (the Council) to develop the scheme given its obligations as Port Authority. Officers would advise that such issues will need to be resolved between the applicant and the interested parties outside of the consideration of the planning application, and that the application should be determined on its planning merits.
- 10.40 In its consultation response the Town Council suggests that the Whitby Park and Ride scheme be expanded to offset the loss of parking in the town centre.

- 10.41 The principal means of securing funds for offsite works of this type is via Section 106 agreements. Obligations of this nature are subject to strict tests and the relevant legislation requires that any requests for contributions are:
- Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
- 10.42 The Local Highway Authority (the statutory consultee on highway matters) considers that the parking issue can be adequately managed with 'smart signage'. Further, noting that this is a scheme for a relatively modest building with an internal floor area of circa 2000 square metres, and accounting for the likely significant costs associated with the expansion of the park and ride, Officers would advise that such a requirement would likely fail the 'fairly and reasonably related in scale and kind' test.
- 10.43 In the concluding section of its formal consultation response, the EA makes some supplementary remarks in respect of the potential impact of lighting on the suitability of the new building as bat habitat.
- 10.44 Evidence has been supplied to demonstrate that the site is not currently habitat for bats, so the proposal is very unlikely to have a negative impact in this respect. In terms of the new building, this is to be an operational harbour building for year-round use and external lighting will clearly be necessary, particularly harbour side. Whilst it is suggested that a lighting scheme be required by condition, principally to ensure the Conservation Area is not unduly impacted, in Officers' opinion restrictions on lighting in line with the EA's requirements would not be reasonable.
- 10.45 The Highway Authority has requested conditions requiring car and cycle parking details as well as pedestrian access plans. These have been provided as part of the application.
- 10.46 Both Historic England and your Conservation Officer have requested modification to the proposal including:
- More decorative hardstanding around the building.
 - The use of powder coated materials for the balcony detail as opposed to galvanised steel.
 - The use of boundary treatments other than bollards.
 - Replacement of the standing seam metal roof with natural slate tiles.
- 10.47 It is important to hold in mind that this is proposed to be an operational harbour building, and there are workshops with wharf access on the ground floor. Decorative surface finishes are unlikely to withstand the rigours of such use.
- 10.48 On the issue of the balcony material, in a marine environment galvanised steel is generally considered to be the better option over powder coated steel. It has superior corrosion resistance, it has 'self-healing' properties (scratches form a new oxide layer) and is very durable.

- 10.49 In Officers' view replacing the bollards and planters which surround the building with more formal boundary treatments would not be desirable. The proposal is for metal bollards and barrier planters to surround the building, allowing for a 5 to 7 metre safe vehicle-free 'pedestrian circulation and access buffer' in the round for people to freely enjoy. More formal enclosure arrangements would compromise this positive feature.
- 10.50 With respect to the roofing material, whilst the precise choice of material will be critical, Officers consider a metal standing seam roof to be consistent with the modern functional character and operational nature of the building and its inclusion in the design is considered to be appropriate. Roofs of this nature have been used with success elsewhere, including part of the lifeboat station roof in Scarborough. In any case, in excess of 50% of the main roof would be covered with photovoltaic panels.
- 10.51 Officers note the observations of the Civic Society in respect of the use of photovoltaic panels. On the point of the 'Article 4 Direction' in place for parts of Whitby, it is important to hold in mind that this does not preclude the use of photovoltaics on roof slopes but requires that planning permission is first obtained before they are installed (as opposed to them being Permitted Development for which no prior consent is required, as is the norm). In this case, the building has been designed to accommodate photovoltaic panels as they are shown on the drawings, and whilst those on the roof will sit slightly proud of the slope they will be beneath the water tabling (parapet), and therefore will not appear an incongruous feature in close or long range views in Officers' opinion. The wall-mounted units on the southern elevation of building will add to the visual interest of this aspect in Officers' view, noting that without their inclusion as a design feature the fire escape and its enclosure would dominate the south elevation.
- 10.52 Third party comments reference a lack of proposed electric vehicle charging points in the re-ordered public car park. In this case, as there is not a net gain of car parking spaces your Officers would advise that there is no Local Plan requirement for electric vehicle chargers to be provided. Officers recognise that this may be disappointing to Members and the Committee may wish to add an informative to any planning permission it may grant advising that the provision of electric vehicle charging points would be beneficial.

11.0 Planning Balance and Conclusion

- 11.1 The proposal is for the development of a new educational and business facility specifically for (in the language of the NPPF) 'water compatible' maritime uses within the town's Development Limits.
- 11.2 Policies HC10 and EG1 of the Local Plan offer policy support for proposals for the development of education, industry and business facilities, as well as proposals which encourages the development of jobs, skills and employment. Policy EG1 sets out specific support for development of this type which supports and enhances the role of Whitby harbour.

- 11.3 In Officers' view, it would be reasonable for Members to assign significant weight to these 'issues of principle' and public economic benefits in favour of the proposal in weighing-up the planning balance.
- 11.4 Weighing against the proposal in the balance is the impact on public car parking. From a highway safety perspective the Local Highway Authority advises that the loss of spaces can be appropriately mitigated with the installation of a digital sign displaying up-to-date information directing people to car parks in the town where there is capacity.
- 11.5 Notwithstanding the highway safety issue, Officers recognise that the loss of car parking spaces will have a negative impact on businesses and could have a negative impact on the town's tourism offer to some extent. It is for Members to decide what weight they attach to this material consideration in the balance, but in the view of your Officers that any harm in this respect would be limited and as such the weight applied to it should also be limited.
- 11.6 The Conservation Officer also advises that by reason of its visual impact the development would lead to 'medium less-than-substantial harm' to the Whitby Conservation Area, in particular to some important close and mid-range views within the heart of the town. In line with the relevant NPPF policies and the legal test, it would be appropriate for Members to assign significant weight to this consideration against the proposal in the balance.
- 11.7 To conclude, Officers consider that the identified harms are offset in the balance by the presumption in favour of the development set out by the above-mentioned policies and by the significant social and economic public benefits a development which is compliant with these policies is likely to deliver over time.

12.0 RECOMMENDATION

That planning permission be granted, subject to the conditions set out below:

- 1 The development shall be implemented in accordance with the following plans and details:
 - WHIT-ENJ-Z0-ZZ-DR-A-99302 P02, site plan, 05 April 2024
 - WHIT-ENJ-Z0-ZZ-DR-A-99304 P04, proposed site, plan, 05 April 2024
 - WHIT-ENJ-Z1-ZZ-DR-A-99304 P04, general arrangement plans, 17 May 2024;
 - WHIT Z1 ZZ DR 99305 P04, elevations, 27 March 2024

Reason: To avoid doubt.

- 2 The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref: D/I/D/152982/04 Rev 6 dated 19/03/2024), including the specified flood resilience measures, and the building shall only be used for the following:

- Those uses set out in table 3.4.2 of the referenced Flood Risk Assessment; and,
- Other uses which are defined as 'water compatible' by the National Planning Policy Framework December 2023 (or any future revision) and which shall be agreed in writing by the Local Planning Authority at least 90 days prior to that use commencing.

Reason: To ensure the building and uses within it are not unduly sensitive to the risk of flooding in accordance with policy ENV3 of the Local Plan.

- 3 Prior to the continuing of the development beyond foundation level, the applicant shall submit a scheme for the gull proofing of the new development designed to prevent seagulls from roosting/nesting and harbouring on all new external features which could support the roosting/nesting and harbouring of seagulls. The scheme shall include a maintenance and management plan for the gull proofing. The development shall be implemented in accordance with the approved scheme and the gull proofing measures shall be thereafter permanently retained and maintained in accordance with the approved maintenance and management plan.

Reason: To ensure gull proofing measures are properly considered and designed for at the outset to ensure good design and the preservation of the character of the Conservation Area in accordance with policies DEC1 and DEC5 of the Local Plan. To protect amenity in accordance with policy DEC4 of the Local Plan.

- 4 Notwithstanding the submitted details, no floodlighting or other form of external lighting shall be installed except in accordance with details which have previously been submitted to and approved in writing by the Local Planning Authority. Such details shall include location, height, type and direction of light sources and intensity of illumination. Any lighting which is so installed shall not thereafter be altered.

Reason: To ensure external lighting is properly considered and designed for at the outset to ensure good design and the preservation of the character of the Conservation Area in accordance with policies DEC1 and DEC5 of the Local Plan.

- 5 The development shall not commence above slab level until a schedule of all of the proposed new external materials of construction, including details of the proposed hard surfacing materials, has been submitted to and approved in writing by the Local Planning Authority. The submitted schedule shall specify each material and its surface finish, including colour. The development shall be implemented in accordance with the approved schedule.

Reason: To ensure the development is a visually attractive place and to ensure the historic environment is preserved in accordance with policies DEC1 and DEC5 of the Local Plan.

- 6 Prior to their installation, typical details of the following design features including a material specification, details of the mounting method to adjoining fabric and an assembly drawing (for elements with multiple components) at not less than 1:20 scale except where specified shall be submitted to and approved in writing by the Local Planning Authority:

- a) The first floor balcony detail;
- b) The external stair/ fire escape together assembly with its enclosure and attached solar panels at not less than 1:50 scale;
- c) All external doors, including the workshop shutter doors;
- d) The roof-top water tabling detail;
- e) All external windows, including dummy windows;
- f) The standing seam roof detail;
- g) The entrance canopy;
- h) The rainwater goods, including hopper heads;
- i) A cross section of the relationship of the rooftop mounted solar panels with the roof plane;
- j) The bollards, including the detachable bollards, to be used as the means of enclosure of the site;
- k) The proposed bike hoops.

Typical assemblies of the items a), c), d), e), f), h) and i) will be sufficient.

The development shall be implemented in accordance with the approved details.

Reason: To ensure the development is a visually attractive place and to ensure the historic environment is preserved in accordance with policies DEC1 and DEC5 of the Local Plan.

- 7 Development shall not commence 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, but not be limited, to arrangements for the following:

1. details of any temporary construction access to the site including measures for removal following completion of construction works;
2. wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
3. the parking of contractors' site operatives and visitor's vehicles;
4. areas for storage of plant and materials used in constructing the development clear of the highway;
5. 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;
6. details of the routes to be used by HGV construction traffic;
7. protection of carriageway and footway users at all times during demolition and construction;
8. details of site working hours;
9. erection and maintenance of hoardings including decorative displays, security fencing and scaffolding on/over the footway & carriageway and facilities for public viewing where appropriate;
10. 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;

11. measures to control and monitor construction noise;
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.
15. Measures to prevent the displacement of construction debris and polluting discharges in the harbour.

Reason: The development site is at the heart of Whitby's tourist offer and is close of residences. Without reasonable restriction, there is the potential for construction activities to harm the town's tourism offer and to unduly harm residential amenity. To prevent the polluting of the harbour. Policies DEC1, DEC4 and ENV3 of the Scarborough Borough Local Plan.

- 8 The car and cycle parking arrangements together with the pedestrian access arrangements shown on the approved plans, including the pedestrian/ traffic segregation measures (the bollards) shall be implemented in full and available for use prior to the first use of the building and shall thereafter retained.

Reason In the interests of highway safety in accordance with policy DEC1 of the Local Plan.

- 9 Prior to the installation of the surface water drainage system, a design for the system and a plan for its ongoing maintenance shall be submitted to and approved in writing by the Local Planning Authority. The system shall be designed for a 1 in 100 rainfall event, allowing 40% additional capacity for climate change and 10% for urban creep. The drainage system shall be constructed in accordance with the approved details and shall be operational prior to the first use of the development. The drainage system shall be maintained in accordance with the approved maintenance plan.

Reason: To ensure surface water management is properly designed for in accordance with policies ENV3 and DEC1 of the Local Plan.

- 10 The development shall be implemented in accordance with the section 6 of the submitted Ecological Impact Assessment (ref 23083 EclA V1) and prior to first use of the building, at least 4 proprietary swift bricks shall be incorporated into the masonry at eaves level.

Reason At the request of the Council's Ecologist and the Environment Agency. In accordance with policy ENV5 of the Local Plan, to enhance biodiversity.

- 11 Prior to the first use of the building, a scheme for the provision of an electronic directional display sign to be sited adjacent to the access/ egress to the retained public car park shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first use of the building and the sign shall be used solely for the displaying of information relating to the availability of alternative car parking provision in Whitby.

Reason In the interests of highway safety in accordance with policy DEC1 of the Local Plan.

Target Determination Date: 5 June 2024

Case Officer: Mr Daniel Metcalfe
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