

North Yorkshire Council
Community Development Services
Scarborough and Whitby Area Planning Committee

8 MAY 2025

ZF25/00143/FL - Installation of a new sheet piled wall approximately 1.5m seaward side of the existing sheet piled wall together with the construction of a new reinforced concrete capping beam with replacement mooring bollards. at Eskside Wharf , Church Street, Whitby, North Yorkshire, YO22 4AE on behalf of Mr Nick Franks

Report of the Head of Development Management – Community Development Services

1.0 Purpose of the report

- 1.1 Application reference ZF25/00143/FL seeks full planning permission for a sheet piled wall proposed to be constructed in order to reinforce the existing sheet piled wall at Eskside Wharf, Church Street, Whitby. The scheme also includes a concrete capping beam connecting the original and new wall that includes replacement mooring bollards.
- 1.2 The application is submitted on behalf of North Yorkshire Council by applicant CR Reynolds Civil Engineers in relation to the proposed Council-led development outlined above. In accordance with the North Yorkshire Council Area Constituency Planning Committees Scheme of Delegation, the application shall be determined by the Scarborough and Whitby Planning Committee.

2.0 SUMMARY

RECOMMENDATION: That the planning committee be minded to approve the application subject to the conditions contained within this report and also agree to allow your Officers delegated authority to secure Biodiversity Net Gain for this scheme.

- 2.1 This application seeks planning permission for the installation of a new sheet piled wall along the wharf frontage. The wall would extend into the River Esk to be constructed parallel to the existing sheet piled wall and connected by a new reinforced concrete capping beam, which would also act as a flood defence. The scheme also includes replacement of the mooring bollards to the capping beam.
- 2.2 The Local Plan policies set a presumption in favour of the principle of the development. However, this is balanced against the impact of the development upon the characteristics of this part of the designated Whitby Conservation Area, impact upon surrounding amenities and flood risk.

3.0 Preliminary Matters

- 3.1 A valid application was received by North Yorkshire Council on 10th March 2025. The scheme was publicised within the Whitby Gazette and by 2 No. Site Notices positioned along Church Street at either end of the site. The consultation period expired 10th April 2025. An extension of time has been sought to allow for the scheme to be considered by Members and to secure Biodiversity Net Gain.
- 3.2 Access to the case file on Public Access can be found here

4.0 Site and Surroundings

- 4.1 Eskside Wharf is owned by North Yorkshire Council in Whitby Harbour. The wharf is located on the east side of the River Esk and is opposite to Endeavour Wharf, which lies on the west side of the river.
- 4.2 Eskside Wharf has historically played a part in Whitby's role as a working port and was originally designed for the loading and off-loading of cargo from sea going vessels by crane. The area is currently leased to Parkol Marine Engineering Limited who use the site for a combination of light engineering and ship building and also retain the right under licence to moor a dry dock against the Wharf edge.
- 4.3 The wharf itself is a manmade structure supported on its frontage by approximately 140 linear metres of steel sheet piles built circa 1960 using Larssen 3B sections.
- 4.4 The site is located along the western section of Church Street towards the far southern end, adjacent Abraham's Quay - a small residential development centred around a courtyard. To the east of the site lies a collection of infill and original stone buildings on the site of the original gas works that now form Parkol Marine Engineering Offices.
- 4.5 Eskside Wharf lies within the designated Whitby Conservation Area and falls within Flood Zone 3.

5.0 Description of Proposal

- 5.1 The development includes the construction of a new sheet piled wall with concrete flood wall defence. This replaces the existing sheet piled wall which will remain in situ, as the new sheet piled wall runs around the outer perimeter at a depth of 1.5 metres from the existing wall.
- 5.2 The concrete capping beam (flood defence) is proposed to be cast to the head of the new sheet piled wall linking both walls together and raising the level of the wharf by approximately 300mm to act as a flood defence. Within the new capping beam, new capstans will be installed to replace the existing mooring points.

6.0 Planning Policy and Guidance

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each planning application in accordance with

the planning policies that comprise the Development Plan unless material considerations indicate otherwise.

Adopted Development Plan

- 6.2 The Adopted Plan for this site is:
-Scarborough Borough Local Plan 2011 to 2032 adopted 2017

Emerging Development Plan - Material Consideration

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

Guidance - Material Considerations

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

7.0 Consultation Responses

- 7.1 The following consultation responses have been received and have been summarised below.
- 7.2 Natural England - No comments to make.
- 7.3 The Environment Agency - No comments received.
- 7.4 Whitby Town Council - No objection
- 7.5 NYC Environmental Services (Commercial Regulation) - Recommend a condition to control associated noise, vibration and dust during construction works.
- 7.6 NYC Highway Authority - Detailed plans showing the wall connection at the north-eastern end of the site and proposed material used to adjoin to the flood defence wall requested by condition to ensure no impact upon the public highway.
- 7.7 NYC Harbour Master - No comments received.
- 7.8 NYC Ecology - No objection subject to the deemed condition (approved Biodiversity Gain Plan)/obligation being in place prior to development.

Local Representations

- 7.9 There have been no public representations received in response to the proposed development.

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 main issues are:

- Principle of Development
- Design and Appearance
- Heritage
- Amenity
- Flood Risk
- Biodiversity Net Gain

10.0 Assessment

Principle of Development

- 10.1 The proposed development of the new sheet piled wall and flood defence is borne out of necessity following a period of investigation into the structural integrity and condition of Eskside Wharf. The submission is supported by reports and plans following investigations from 2011 onwards by Alan Wood and Partners (Structural and Civil Engineers) and conclude that the deterioration of Eskside Wharf has now reached a critical point where replacement rather than continual monitoring of the wall is required.
- 10.2 Local Plan Policy INF 5 (Delivery of Infrastructure) supports the delivery of infrastructure measures, in this case, the scheme proposes a flood defence wall to the perimeter of Eskside Wharf to form a continuation of the flood defences to have already been installed along Church Street. Your Officers consider the flood defence essential infrastructure with a dual purpose - (i) safeguarding the wharf and this part of Church Street from the implications of flooding and reduce risk and also, (ii) securing both the existing and proposed wall in order to stabilise the wharf.
- 10.3 As highlighted by the Local Plan, supporting the industrial and business sector is a fundamental part of long-term economic resilience - Parkol Marine Engineering relies on the site for shipbuilding and engineering works and failure to take remedial action would jeopardise commercial activity. Local Plan Policy EG 5 (Safeguarding Employment Sites and Premises) seeks to ensure that there is an adequate supply of employment sites and premises, all sites operating within the 'B' Use Class - such as Parkol Marine Engineering - will be safeguarded. As inferred within paragraph 7.37 of the Local Plan, it is important that the Local Plan does not prevent or discourage sustainable economic growth, particularly when businesses are established within a particular location and have invested into a site and make an important contribution to the economy of the town.
- 10.4 Your Officers consider the principle of development acceptable. The scheme will not only provide the necessary infrastructure to secure the future of Eskside Wharf but will also ensure the wharf can continue to be used for industry in the town in accordance with Local Plan Policies INF 5 and EG 5.

Design and Appearance

- 10.5 The sheet piled wall will be identical to the existing wharf wall - albeit extending 1.5 metres further into the River Esk. The scheme has been designed with a concrete capping beam so as to connect the existing and proposed walls and anchor them to the wharf and also to provide a flood defence for the wharf and section of Church Street behind.
- 10.6 The wall is utilitarian in appearance and purposely designed to engineers specification as part of the remediation of Eskside Wharf. Similarly, the concrete capping beam would provide necessary flood defences extending 300mm above the wall and would form a continuation of the existing flood defences along the western section of Church Street. The Highway Authority raise no objection, however request details to ensure at the point where the wall connects to the existing flood defence that there is no surface water run - off onto the highway. Notwithstanding, the supporting Flood Risk Assessment (FRA) indicates that the capping detail is designed with a slight fall towards the River Esk for this reason your Officers do not consider it reasonable to request further detail when the design already accounts for surface water run-off as per the recommendation within the FRA.
- 10.7 The proposed scheme is conducive to the appearance of Eskside Wharf and its industrial character. Your Officers therefore, consider that the development would accord with the principles of good design as outlined within Local Plan Policy DEC 1.

Heritage

- 10.8 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a general duty on LPAs to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area in its decision making.
- 10.9 Local Plan Policy DEC 5 (The Historic and Built Environment) seeks to conserve historic rural, urban and coastal environments and their potential to contribute towards economic regeneration (amongst other things). In accordance with criterion (b) - proposals affecting a Conservation Area should preserve or enhance its character or appearance especially those elements identified in any Conservation Area Appraisal.
- 10.10 Paragraph 115 of the NPPF advises that 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 including, where appropriate, securing its optimum viable use.
- 10.11 The site lies within the designated Whitby Conservation Area, specifically Character Area 3 - Church Street south from Grape Lane, which is noted for its diverse character as evidenced by the presence of a mixture of traditional and modern infill development of varied architectural styles juxtaposed by the industrial nature of Eskside Wharf used for ship-building and engineering.

10.12 The wharf is a man-made structure created as a working port initially and contributes to the town's heritage and history as a ship-builder, which continues on the site at present. Whilst the works proposed would alter the appearance and character of the Conservation Area, it is not considered to be to a degree that would result in a negative impact. Your Officers consider this to be at the lower end of 'less than substantial' in terms of harm, owing to the existing industrial character and appearance of the site and since the wall mirrors the existing wall and flood defences in this location. Further, in accordance with paragraph 115 of the NPPF, the works would ensure that the wharf, which is a key component within this part of the Conservation Area is preserved for the future in accordance with Local Plan Policy DEC 5 and Section 16 of the NPPF.

Amenity

10.13 The proposed development is in relation to the existing wall to the wharf frontage, which as evidenced within the application has reached a critical point where intervening works are required to safeguard the future of the wharf. The wharf is located along Church Street, the main thoroughfare on the eastern side of Whitby surrounded by numerous residential dwellings and commercial premises. Much of Church Street already benefits from recently installed flood defences, however the alleviation measures end at the point where Eskside Wharf begins. As well as the remedial works to the wharf itself, the development seeks to continue the flood defence around the perimeter of the site in order to protect the on site industry and section of Church Street in this location.

10.14 There is potential for the construction stage of the scheme to have an impact on amenity by means of noise, disturbance and light pollution. However, the site is already in use for industrial purposes and therefore, your Officers consider the works to not be dissimilar to the working practices to already take place in this location and experienced by nearby residences and businesses. Further, a detailed plan has been submitted indicating that the northern section of the wharf will accommodate a secure site compound to manage the scheme during its construction. Colleagues in Environmental Health have raised other construction related matters such as working hours and health and safety, however these are governed by primary legislation separate from planning.

10.15 The proposed development is considered to be acceptable in terms of its impact on amenity, in accordance with Local Plan Policy DEC4.

Flood Risk

10.16 The northwest portion of the site is located in Flood Zone 3b (high probability of flooding). The primary risk to the site is fluvial and tidal flooding from the River Esk during an extreme flood event.

10.17 Local Plan Policy ENV 3 (Environmental Risk) seeks to ensure that proposals mitigate against the implications of environmental risk and climate change. This will be achieved by (amongst other things); (a) avoiding development in high risk areas by following a sequential approach in giving priority to lowest risk areas. This aligns with national planning policy with respect to flood risk and 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 by meeting the Exception Test.

- 10.18 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.
- 10.19 Sequentially, the proposed development is intrinsically linked to Eskside Wharf and the necessary remedial works to rectify the structural defects and its further deterioration. There is no option other than to install the wall in this location and therefore your Officers consider the sequential test to have therefore been 'passed'.
- 10.20 Further, 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 your Officers consider the proposal to be acceptable in principle.
- 10.21 The site is supported by a site-specific flood risk assessment, which advises that the proposed concrete capping beam flood defence - set to a level of +4.57m AOD (ordnance datum) would be designed to match the wall crest level of the existing flood defence wall along Church Street and is capable of being increased if required in the future.
- 10.22 Your Officers have consulted with the Environment Agency and expect their recommendation prior to the Committee Meeting and shall inform Members accordingly. Notwithstanding, your Officers consider the submission to satisfy the requirements of Local Plan Policy ENV 3 and consider that the development will be safe for its lifetime without increasing flood risk elsewhere.

Biodiversity Net Gain

- 10.23 In England, Biodiversity Net Gain (BNG) is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Developers must deliver a BNG of 10%. This means a development will result in more or better quality natural habitat than there was before development.
- 10.24 The development proposes to replace the existing sheet piled outer wall to Eskside Wharf with associated infrastructure, therefore the Statutory Biodiversity Metric and BNG Statement (EXO Environmental, February 2025) has been submitted in support of this application. According to the metric, the development will result in the loss of 0.15 units of intertidal artificial hard surfaces (which is vertical habitat), which will be offset using either credits from Natural England, or habitat bank units through a local habitat bank as stated in the BNG Statement (EXO Statement).

- 10.25 Should the application be approved, a S106 agreement securing off-site BNG in connection with the development is required. Your Officers are seeking legal advice in relation to this aspect of the scheme. Under usual circumstances, a S106 Agreement would be used to secure this, however as the Council are the applicant and owner we can't enter into an agreement with ourselves so we are exploring alternative methods to secure off-site BNG with Legal Services and no permission would be issued until that has been achieved. Notwithstanding, the Government's standard biodiversity net gain (BNG) condition will automatically apply to the planning permission, requiring submission and approval of a biodiversity gain plan. The Authority can only sign off the discharge of the mandatory deemed condition once the applicant has demonstrated the purchase of the necessary units via a local habitat bank, or Natural England's national credit scheme and once this has been registered with Natural England.
- 10.25 The proposed development has submitted sufficient details to demonstrate that the loss of habitat would be off-set and minimum 10% BNG would be achieved through the purchase of off-site units and is in compliance with Local Plan Policy ENV5: The Natural Environment and national legislation in regard to BNG. The proposed development is therefore considered by your Officers to be acceptable in terms of ecology/biodiversity.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1 The development seeks to undertake urgent remedial works to Eskside Wharf, a key feature of Whitby. The works will secure the future of the wharf and in doing so ensure that its commercial use can continue in accordance with Local Plan Policies INF 5 and EG 5.
- 11.2 The proposed development also seeks to reduce the causes and impacts of Flood Risk and is in line with Local Plan Policy ENV 3.
- 11.3 The proposed wall is purposely designed to engineers specifications to stabilise Eskside Wharf using materials and detailing compatible to the nature of the site and surrounding area. There are no other concerns raised by officers to the development in terms of amenity, highways safety or the impact on the historic environment.
- 11.4 Your Officers consider the scheme is in accordance with the development plan policies as a whole and represents sustainable development as required by the National Planning Policy Framework. The scheme is therefore recommended for approval subject to conditions and completion of an allied S106 to secure offsite Biodiversity Net Gain.

12.0 RECOMMENDATION

- 12.1 That Permission be granted subject to conditions

- 1 The development hereby permitted shall be carried out in strict accordance with the following plans:

Site Location Plan received 29th January 2025;
Layout - Key Plan (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4400-P3) received 29th January 2025;
Layout Sheet 1 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4401-P6) received 29th January 2025;
Layout Sheet 2 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4402-P5) received 29th January 2025;
Layout Sheet 3 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4403-P6) received 29th January 2025;
Sections Sheet 1 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4404-P5) received 29th January 2025;
Sections Sheet 2 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4405-P5) received 29th January 2025;
Proposed Elevation Sheet 1 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4602-P2) received 29th January 2025;
Proposed Elevation Sheet 2 (Dwg No. ESKS-AWP-ZZ-ZZ-D-C-4603-P2) received 29th January 2025;
Flood Risk Assessment (Ref. CMH/NB/MW/50008 ESKS RPT001) received 29th January 2025;
EXO Environmental Biodiversity Statement received 29th January 2025.

Reason: For the avoidance of doubt.

Notes

- Biodiversity Net Gain**

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition)" that development may not begin unless:

 - (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
 - (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be North Yorkshire Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed below are considered to apply.

[the following is suggested text for inclusion in the decision notice where the local planning authority considers that the permission falls within paragraph 19 of Schedule 7A to the Town and Country Planning Act 1990.

The permission which has been granted has the effect of requiring or permitting the development to proceed in phases. The modifications in respect of the biodiversity gain condition which are set out in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply.

In summary: Biodiversity gain plans are required to be submitted to, and approved by, the planning authority before development may be begun (the overall plan), and before each phase of development may be begun (phase plans).]

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
 - (i) the original planning permission to which the section 73 planning permission relates* was granted before 12 February 2024; or
 - (ii) the application for the original planning permission* to which the section 73 planning permission relates was made before 12 February 2024.
4. The permission which has been granted is for development which is exempt being:

4.1 Development which is not 'major development' (within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:

- i) the application for planning permission was made before 2 April 2024;
- ii) planning permission is granted which has effect before 2 April 2024; or
- iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).

4.2 Development below the de minimis threshold, meaning development which:

- i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A "householder application" means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.

4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).

- 4.5 Self and Custom Build Development, meaning development which:
- i) consists of no more than 9 dwellings;
 - ii) is carried out on a site which has an area no larger than 0.5 hectares; and
 - iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).

4.6 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

* "original planning permission means the permission to which the section 73 planning permission relates" means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans. The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission ("the earlier Biodiversity Gain Plan") there are circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.

Target Determination Date: 1 May 2025

Case Officer: Mrs Amy Harrap
amy.harrap@northyorks.gov.uk