



Ref: MWPS/2405

26 September 2024

Planning Services  
North Yorkshire Council (Scarborough Area)  
By email only

Dear Planning Services,

## **Works to the West Pier and the buildings on it - West Pier, Scarborough Application Ref. ZF24/00333/RG3**

I write on behalf of my client Sunrise SH302 Ltd with a further letter of objection to the above application proposals. As previously advised my client is the owner of a licenced fishing vessel registered to Scarborough Harbour

My client's main concern remains that of the impact the application proposals will have on West Pier and its future operation as a key part of the Scarborough Harbour's infrastructure. He has asked me to raise a number of further concerns with you, which are important in relation to the relevant policies of the Local Plan to the current application proposals. These are covered under the following subheadings:

- Appropriation of Land
- Structural Condition of West Pier
- Health and Safety Issues arising from F&B and Leisure Uses on West Pier
- Bat Survey
- High-end seafood restaurant or Papa's/Wendy's Burgers
- Loss of Industrial Site and Premises
- Traffic Generation from Fast Food Restaurant, and
- Retail Sequential Test.

### **Appropriation of Land**

My client has challenged the appropriation of the area of West Pier that accommodates Building 1, where the restaurant use is proposed, and the Council has confirmed that the process undertaken was unlawful. The matter will therefore need to be reconsidered.

Notwithstanding the above, my client would query why the appropriation was limited only to the footprint of Building 1 and did not include the other buildings and areas of the pier where the other non-fishery uses are proposed. The piecemeal approach to appropriation calls into question the



applicant's intentions in terms of the delivery of the overall scheme, including those elements that are for the benefit of the fishing industry.

In their letter of objection to the West Pier application dated 23 May 2024, my client's lawyers, Foot Anstey, argued that the Council lacks the power to redevelop the West Pier for a scheme that comprises significant levels of leisure and tourism uses and raised concerns over the structural condition of the pier and the potential delays that could be caused to the delivery of the new bait sheds. In this respect they proposed that the LPA should not grant planning permission unless it secured the construction of the bait sheds prior to the occupation of the rest of the development to ensure the fishing industry element of the proposal is delivered.

## **Structural Condition of West Pier**

Despite the concerns raised by Foot Anstey and me on our client's behalf in May 2024 in relation to the structural condition of the pier, the application documents have not been updated to provide this information to enable public scrutiny of the issue. From a recent check of documents online (11 September 2024), I can confirm the following:

### **Documents Uploaded to Web on 24 April 2024**

#### **Structural Demolition Report for West Pier – Mason Clark Associates – 1 December 2022**

##### Appendix D – Archive Boreholes

Contains historic borehole survey details from 1987 relating to the proposed sheet piling of the inner side of West Pier.

#### **Structural RIBA Stage 3 Report for West Pier – Mason Clark Associates – 27 April 2023**

##### Appendix A – Preliminary Ground Investigation Information

This appendix includes information on boreholes and trial pits but the information provided is incomplete with tables etc appearing blank or with only partial information.

#### **Flood Risk Assessment (R9) – Mason Clark Associates – 23 April 2024**

##### Appendix C – Intrusive Ground Investigations Records

This appendix includes information on boreholes (dated March 2023) but the information is incomplete as the tables etc appear blank or with only partial information.

### **Document Uploaded to Web on 13 August 2024**

#### **Flood Risk Assessment (R10) – Mason Clark – 15 July 2024**

## Appendix C – Intrusive Ground Investigations Records

This appendix includes information on boreholes (dated March 2023) but the information is incomplete as the tables etc appear blank or with only partial information.

The complete borehole survey information from March 2023 should be uploaded to the web and the application readvertised to allow the public and consultees time to review this information and comments on the application before a determination is made.

## Health and Safety Issues arising from F&B and Leisure Uses on West Pier

In my letter dated 13 September I raised my client's concern that F&B operations serving alcohol on a pier should be considered to be dangerous. In that letter I made mention to the incident that led to a man's death after a fall from West Pier due to alcohol consumption.

My client submitted an FOI request for information on this incident, for which a response is still awaited. The FOI request asked the following:

"It was reported on the BBC and other media that a man fell from West Pier into the Sea on the afternoon of Saturday 6 July 2019 ("the Accident").

In relation to the Accident please provide:

1. A copy of any investigation report(s)
2. The date the Accident was reported to the Health and Safety Executive ("HSE")
3. The date of any inspection by the HSE
4. A copy of any correspondence from the HSE and any replies sent by the Council (North Yorkshire Council or Scarborough Borough Council)
5. The date the Accident was reported to the Council's insurers.
6. A copy of the 2019 Health and Safety Risk Assessment in place BEFORE the Accident.
7. The date(s) of any update(s) to the Health and Safety Risk Assessment following the Accident.
8. A copy of the current Health and Safety Risk Assessment."

The FOI request can be found at the link below:

[Accident on West Pier Scarborough Harbour July 2019 - a Freedom of Information request to North Yorkshire Council - WhatDoTheyKnow](#)

The introduction of alcohol consumption on the pier as a result of the proposed F&B Uses will increase the chance of similar accidents happening, and with greater frequency. In the absence of a response in relation to the FOI request, my client would reiterate that this issue should be considered as an '**agent of change**' matter. If more alcohol is consumed by people on the pier there is an increased risk of injury from interactions between people and working plant, machinery and heavy commercial vehicles on the pier, which is an industrial working area. The industrial operations on the



pier cannot be constrained or curtailed by people under the influence of alcohol. A risk assessment needs to be carried out for the introduction of uses serving alcohol on the pier and consulted on with the relevant consultees and the public before a determination is made on the application.

My letter of 30 July on behalf of Sunrise SH302 Ltd pointed out that the applicant's proposals should be considered as an '**agent of change**' due to the potential for the new F&B and leisure operations to raise objection to the established industrial working practices on the pier due to the noise, odours and activities associated with that industrial activity. My letter of 13 September added that the issue of alcohol consumption on West Pier and the associated risks should also be included in the 'agent of change' considerations, along with the industrial activities associated with the cleaning of vessel's hulls on West Pier, including the associated contaminated vapour, that is required to allow inspections of vessels for seaworthiness.

Notwithstanding the above, the applicant has not provided additional supporting information in relation to any '**agent of change**' matters for the public and consultees to comment on.

Placing the leisure and tourism uses at the landward end of the pier and effectively 'boxing in' the fisheries uses at the seaward end, with vehicular access required between the public highway and the fishing industry's reduced area of working means that the '**agent of change**' issues need very careful consideration. My client and others have already made clear that the non-maritime associated uses will conflict with the lawful industrial operations on the pier and stymie the harbour's ability to host the offshore wind sector.

## **Bat Survey**

My client has asked me to review the Bat Survey carried out on the applicant's behalf in January 2022 and January 2023. The report on the surveys is dated May 2023 and confirms that the report is valid until May 2024. It advises that after this time additional surveys need to be undertaken to confirm the status of the buildings, as a bat roost, has not changed.

My client is aware that the buildings on the pier contain many gaps and sheltered openings that would be suitable for bats to enter and roost – the Bat Survey identifies Buildings 2 and 5 as having roosting opportunities. My client considers that the survey information carried out since the expiry of the submitted report should be made public. If this further survey work has not been carried out then the out-of-date survey cannot be relied on for the purposes of determining this application and further surveys are required.

If the LPA is minded to grant planning permission for the proposals – subject to consideration of amended application documents to address the issues outlined in this letter and previous letters submitted on behalf of my client - that permission will need to be conditioned so that no works of demolition are carried out until a further bat survey has been carried out.

## High-end seafood restaurant or Papa's/Wendy's Burgers

My client and I have had sight of confidential documents that confirm the proposed tenant of the restaurant in Building 1 on West Pier is Wendy's. Whilst my client thoroughly enjoys a Wendy's burger, the proposed restaurant tenant is not a high-end seafood restaurant operator – indeed there is no seafood on its menu. Wendy's restaurants are being rolled out in locations previously occupied by Papa's fish and chip restaurants with new fast-food burger restaurants in Whitby and other locations already operating.

An online newspaper review comments in relation to the Whitby Wendy's that:

*"The ordering process involved navigating through four double-sided screens (eight in total) displaying the menu and various offers. I had a personal assistant to explain the deals, so I simply informed him that I wanted the baconator burger with extra cheese and fries but without mayo or ketchup on the patty.*

*The order was placed within seconds and it took roughly five minutes for it to be ready for collection. Drinks are not filled at the till, instead, I was handed an empty cup to fill at a separate counter with options including Coca-Cola, Sprite, Fanta and Diet Coke."*

Within the various application documents the case for the development is very much predicated on the mix of uses supporting the existing fishing industry operating from the harbour through the development of a circular economy. The application documents make clear that the high-end seafood restaurant is the anchor to the project. Indeed, this formed part of the applicant's Project Brief. The Design and Access Statement states at section 1.3 Project Brief:

*"• Building 1: Renovation of heritage building to create a new anchor restaurant."*

The Economic and Social Benefits statement states:

*"The proposed anchor tenant, a high-end seafood restaurant, would also support both the local supply chain of fresh seafood and tourism opportunities."*

*"The anchor tenant, which is a seafood restaurant, will create an estimated 80 full-time equivalent (FTE) jobs."*

The application proposals' Full Business Case, which it is assumed was the basis for the award of Towns Bid funding for the project included a high-end seafood restaurant – the ESB document advises as follows:

*"Based on the evidence presented in the Scarborough Harbour West Pier Redevelopment Full Business Case, the multiplier effect is expected to lead to an additional induced 80 FTE jobs in the local economy through increased footfall from the high-end seafood restaurant at the pier."*

The Planning Statement includes the following in relation to the restaurant:

*“The delivery of a high-end sea food restaurant, new kiosks, artist studios and a flexible event space anchored by a reimagined public realm aims to realign the tourist model to attract footfall, future investment and foster economic resilience and a high quality sense of place.”*

*“Complemented by a range of leisure, offices and a reimagined public realm the scheme will also support growth in activity to ensure visitors and locals can work, explore, dwell, be entertained and dine in a high-quality environment.”*

*“The provision of the reimagined attractive public realm anchored by a high-end sea food restaurant.”*

The Planning Statement conclusion states:

*“The regeneration of the West Pier has a transformative capacity to deliver wider sustainability benefits for the town. In particular, it will generate the following benefits:*

*Regenerate 2,812m<sup>2</sup> of floorspace renovating and repurposing existing buildings to support an array of economic uses to deliver a reimagined tourism model including a high-end sea food restaurant and event space.*

*Enhance the connection between the fishing industry and leisure and tourism sector by promotion of the Harbour’s circular economy allowing seafood to be caught, processed and sold on the Pier through improved processing facilities and an expanded commercial offer.*

*“Reverse the spiral of decline of the West Pier by increasing footfall through the delivery of a high-end sea food restaurant, expanded retail and leisure offers and the provision of a flexible event space.”*

The Heritage Impact Assessment advises that:

*“- A high quality restaurant on the West Pier will showcase seafood and provide greater opportunities for the local caught to be used locally, driving a circular economy and the opportunity to show case the locally caught seafood.”*

*“The main economic driver on the West Pier is an Anchor Tenancy directed at a high end seafood restaurant, which, it is projected, will have a significant impact on the local economy.”*

None of the above applies to a Wendy’s fast food restaurant serving burgers and fries occupying Building 1. Wendy’s restaurants do not serve seafood - the operator promotes its use of ‘fresh 100% British Beef’ in the UK. Wendy’s restaurants are very much based on the fast-food model with drive-thru and home delivery options through courier services such as Deliveroo.

Within the Yorkshire and Humber region former Papa's restaurants are being replaced with Wendy's burger restaurants. Wendy's is part of a high volume national/international chain which is as far removed from the circular economy arguments set out in the application documents. It is understood that the redevelopment of Papa's existing sites is a small part of the proposed roll out of 400 Wendy's across the UK.

At Appendix A of this letter a number of links to online information and articles on Wendy's can be found, including the full UK menu, which includes no seafood items.

The hours of operation of a Wendy's is typically 8.00am to 10.00am each day, which is different to the operation of a high-end seafood restaurant which would typically trade from lunchtime onwards each day. In the section on transport issues later in this letter the additional traffic generation, particularly at breakfast time and through to mid-morning needs to be considered in relation to the capacity of local junctions and the potential delays that will result to the fishing industry and its suppliers operating at the far end of the pier.

Fast food operations will rely on disposable packaging and cups rather than serving food on plates and drinks in glass that will return to the kitchen for cleaning. Consideration needs to be given to the potential for disposable packaging from takeaway food ending up in the harbour and littering the seafront in general. In a recent harbour users survey concerns were raised about the quality of the water in the harbour so adding grease proof wrappings and waxy paper cups to this will create further problems for harbour users, as well as detracting from the visual amenity of the area.

The whole case for the restaurant set out in the application documents - and potentially documents relied on to secure Towns Bid funding - need to be revisited. The supporting case for the application proposals places a high-end seafood restaurant at its heart, describing it as the project's anchor. This supporting case can no longer be relied on – the relevant supporting application documents need to be amended accordingly to allow the LPA to determine whether the operation of a non-seafood restaurant on West Pier would be acceptable.

## **Loss of Industrial Site and Premises**

My previous letters of objection on behalf of my client have set out in detail how the proposals for non-maritime uses conflict with Policies EG1 and EG5 of the Local Plan, which promote Scarborough Harbour as a site for employment opportunities in the industrial and business sectors and safeguards to loss of employment sites and premises unless there is no reasonable prospect of the site being retained in employment loss.

On further review of the Planning Statement which supports the application it is noted that it states that in pre-application advice Officers of the LPA advised that:

*“...In light of the departure from local policy it was agreed that there is a requirement to prepare a robust socio-economic assessment which illustrates the wider benefits of the project.”*



The Planning Statement advises that it is for the applicant to explain the wider benefits as part of the planning balance exercise. The Planning Statement isn't clear on the matter, but it is assumed that the departure relates to Policies EG1 and EG5 of the Local Plan.

In terms of the principle of development, my further review of the Planning Statement finds that the most relevant policies EG1 and EG5 are not mentioned in the policy summary and assessment, but despite this the document concludes that the principle of introducing the proposed uses onto West Pier is supported by the relevant policies in the Local Plan.

The Planning Statement does not quote Policy EG1 directly, and only refers to part of the supporting text to the policy. The Planning Statement does however include the following quote:

*"The proposed amendment outlined within the draft version of the Scarborough Local Plan (2023) adds that development of the industrial and business sector is a fundamental part of long-term economic resilience, providing a more diverse economic base and helping to reduce the reliance on the tourism industry."*

Again, Policy EG5 is not quoted within the Planning Statement, but mention is made of the development plan's acknowledgement that there are several sites located within the Scarborough Urban Area that are well placed for smaller economic activities and that fringe sites should be safeguarded.

As previously stated in earlier letters of objection the case for the development as a departure from local policy has not been made by the applicant. The loss of the seafood restaurant from the application scheme further reduces the arguments made in support of the proposals.

## **Traffic Generation from Fast Food Restaurant**

The Transport Statement does not take into consideration the introduction of a fast-food restaurant on West Pier. The statement advises:

*"Encouraging a greater degree of pedestrian movement on the Pier and reducing the vehicle dominated nature of the Pier encourages active travel to, from and around the Pier. The principle of reducing the vehicle-dominated nature of the Pier and increasing the use of sustainable modes of transport is supported by policies at all levels.*

*The site is expected to have a minimal impact on the public highway network and from a transport perspective meets the tests of the NPPF."*

Based on the application's proposal for a high-end seafood restaurant, the Design and Access Statement includes a specific area for:

*'small van loading for the restaurant, kiosks and retail.'*





The proposed operation of a fast-food restaurant on West Pier brings with it the need to revisit the Transport Statement. The vehicular activity associated with a fast-food restaurant is entirely different to that of a high-end seafood restaurant which would be expected to mainly attract sit-in diners. Rather than supporting a greater degree of pedestrian movement a fast-food operation is likely to have the opposite effect with movements of larger delivery vehicles and higher traffic generation in terms of customers and couriers.

The junction serving West Pier is not considered to be able to cope with the higher volume of traffic movements that would be associated with a fast-food restaurant and the scheme's design does not factor in parking, waiting and manoeuvring arrangements that are needed for the mainly car-borne customers that will visit. As mentioned earlier, the hours of operation of a Wendy's is typically 8.00am to 10.00am each day, which is different to the operation of a high-end seafood restaurant which would typically trade from lunchtime onwards each day and note attract the level of vehicle movements that a fast-food restaurant does. The additional traffic generation, particularly at breakfast time and through to mid-morning needs to be considered in relation to the capacity of local junctions and the potential delays that will result to the fishing industry and its suppliers operating at the far end of the pier. That said, traffic movements through the entire day, evening and into the night need to be looked at as the fishing fleet operates with the tides and not 9.00am to 5.00pm.

### **Retail Sequential Test**

There is also the issue of the town centre uses. The Planning Statement advises:

*“Both parties acknowledge that the site sits outside of the town centre and the proposed development involves new retail and town centre uses so there is a potential conflict with policy and the sequential test therefore needs to be undertaken.”*

The Planning Statement states that the Project team would prepare a sequential test for the proposed development falling within the definition of 'town centre uses'. The Retail Study states:

*“Building 1 shall, following restoration of the external fabric, be adapted, and converted into a restaurant.*

*The use of the building would have an element of food to be bought and consumed off the premises with the volume of custom contingent on the season. However, there is no provision for physical demarcation for queueing as volumes of customers are seasonally dependent any physical barriers would add to street clutter.”*

The Sequential Test includes the following:

*“The sequential test did not identify any available locations that would be suitable for accommodating the proposed main town centre uses on a disaggregated basis, noting that the proposal would not be delivered as a disaggregated scheme.”*

The Sequential Test also advises that:

*“5.2.15 For robustness, alternative locations for the retail and restaurant uses will be considered on a disaggregated basis, however, it is noted that any alternative locations will not provide the same regeneration benefits to West Pier and would, therefore, not serve the same role and function in other locations. As such, alternative sites are unlikely to be suitable.*

*7.7.2. It should also be noted that the scheme cannot realistically be disaggregated as this would not be deliverable. The regeneration proposal is locationally specific to West Pier and, as such, would not serve this role and function in a town centre location. Furthermore, it is emphasised that, with the exception of the restaurant use, all the uses included within the sequential test already exist at West Pier, with modest extensions proposed. It would not be practical or reasonable to disaggregate the extended floorspace from the existing floorspace within a town centre location.*

*8.1.5. The sequential test did not identify any available locations that would be suitable for accommodating the proposed main town centre uses on a disaggregated basis, noting that the proposal would not be delivered as a disaggregated scheme. Therefore, the sequential test is passed.”*

Whilst my client has not previously criticised the retail supporting documents of the application, it is clear from a review of these that the arguments for the delivery of the town centre uses are predicated on the fact that the scheme cannot be disaggregated, i.e. a high-end seafood restaurant would not have the associated benefits for West Pier and the local fishing industry if it were to be positioned in the town centre. In essence it argues that a town centre location would remove any direct connection between the adjacent fishing industry and the restaurant, reducing the potential for a circular economy to develop. This argument does not work for a fast-food burger restaurant.

A Wendy’s restaurant, serving a fast food, non-seafood menu, does not need to be placed on the pier. It will not contribute to the circular economy of the pier or bring new higher spending customers to the area, or create new skilled higher paid jobs, or change the seasonal nature of the tourism economy of the town, as the application supporting documents suggest would be the case with a high-end seafood restaurant.

A further point that my client wishes me to raise is the fact that during the consultation period in advance of the application’s submission and during the planning process five premises with existing F&B and restaurant permissions – either already in operation or with extant consents ready to be implemented - have been marketed and changed hands along the seafront of South Bay. Details of the marketing and conveyancing of these are publicly available online. Whilst from a retail planning perspective these premises are not within the town centre, they are positioned close to the application site in locations that are at lower risk of flooding than the proposed restaurant in Building 1 on West Pier.



## Conclusion

The operation of a non-seafood restaurant on the West Pier undermines a major plank of the supporting case for the application proposals – and potentially the Government funding for it - which is based on the delivery of a high-end seafood restaurant.

Whilst my client and others have argued that the case for the seafood restaurant in economic terms - both in relation to the number and nature of jobs it would create and the benefit to the fishing industry – is unrealistic and overstated, the factors weighing in favour of the proposal in the planning balance are further eroded with the loss of the ‘anchor’ of the project and its replacement by a fast-food burger operation.

On my client’s behalf, as set out in earlier letters, I would reiterate the need for revised plans and documents to be the subject of further consultation with consultees and the public so that all relevant views on the proposals for West Pier can be set out in a committee report for Members to consider in advance of making a decision.

Yours faithfully,

Marcus Whitmore

Marcus Whitmore MA MRTPI  
Chartered Town Planner

## **Appendix A – Links to online articles about Wendy’s**

Wendy’s menu:

<https://www.wendys.com/en-gb/menu/our-menu>

Articles on Wendy’s:

<https://yorkmix.com/wendys-is-coming-to-whitby-heres-when-it-will-open/>

<https://www.hulldailymail.co.uk/whats-on/food-drink/wendys-open-another-hull-area-9146516>

<https://www.thestar.co.uk/lifestyle/food-and-drink/wendys-sheffield-all-you-need-to-know-as-brand-new-burger-restaurant-opens-near-meadowhall-4742525>

<https://www.just-eat.co.uk/takeaway/brands/wendys>

<https://www.yorkpress.co.uk/news/24571300.wendys-eyes-former-t-m-lewin-store-st-sampsons-square/>

<https://www.thecaterer.com/news/wendys-uk-restaurant-openings-400-sites-expansion>

<https://www.manchestereveningnews.co.uk/whats-on/food-drink-news/i-queued-meal-uks-newest-29669250>

<https://www.bbc.com/news/business-57047642>