



PANNETT PARK | WHITBY | YO21 1RE
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Dear Councillor,

28 January 2021

You are summoned to attend an ordinary meeting of the **TOWN COUNCIL OF WHITBY** to be conducted on-line, via Zoom and livestreamed on the Town Council's Facebook page - <https://www.facebook.com/WhitbyTC/> on **Tuesday 2 February at 6:00pm**, the agenda for which is set out below.

Michael King
Town Clerk

To: Councillors Barnett, Brown, Coughlan, Dalrymple, Derrick, Harston, Jackson, Jennison, Lapsley, Nock, Smith, Sumner, Wild, Wilson and Winspear

NOTICE OF MEETING – Public notice of the meeting is given in accordance with schedule 12, paragraph 10(2) of the Local Government Act 1972.

AGENDA

1. APOLOGIES FOR ABSENCE

To receive and resolve upon apologies for inability to attend.

2. DECLARATION OF INTERESTS

To declare any interests which members have in the following agenda items.

3. PUBLIC PARTICIPATION

Standing Orders will be suspended for up to 15 minutes to allow for questions or statements about business items on the agenda, submitted by members of the public¹ (limited to 3 mins per person).

4. EXTERNAL REPORTS

To receive reports on behalf of external bodies if present

- a. North Yorkshire Police
- b. County & Borough Councillors

5. MINUTES

- a. To approve as an accurate record minutes of the following meetings:
 - i. Council 12 January 2021
- b. To receive the minutes of the following meetings:
 - i. Finance, Policy & General Purposes 19 January 2021
 - ii. Town Development & Improvement 25 January 2021
 - iii. Planning 26 January 2021

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6. COMMITTEE RECOMMENDATIONS

- a. FP&GP Committee 19 January
F162/21 APPROVAL OF EXPENDITURE

RECOMMENDED that the schedule of payments up to 18 January 2021 in the sum of **£19,550.66** (in respect WTC) and of **£158.23** (in respect PAG) as attached hereto is approved and submitted to Full Council. (Page 9)

- b. Any other matters arising from the minutes noted above.

7. NOTICES OF MOTION SUBMITTED BY MEMBERS

- a. Submitted by Councillor Rob Barnett

That Whitby Town Council offers support to keep St Hilda's School open. Our demographic demands we maintain the maximum number of school places.

8. MAYOR'S REPORT

Civic engagements since 12 January 2021 and other activities undertaken to note.

9. CLERK'S REPORT

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- a. Decision Notice in respect to a request to register St Ninian's Church, Baxtergate as an Asset of Community Value. (attached)
- b. The Clerk will also provide a verbal update on other issues and correspondence arising since the last meeting.

10. FLOODING AWARENESS - STANDING ITEM

Tides above 5.5 metres – to be reported at the meeting.

11. EXCLUSION OF PRESS AND PUBLIC (IN RESPECT OF ITEM 12, BELOW)

To consider a motion – That, under the provisions of the Public Bodies (Admission to Meetings) Act 1960 §1(2), the press and public be excluded from the meeting during consideration of the matter referred to at item 12 below, due to the confidential nature of the business to be transacted.

12. HONORARY CITIZEN

To consider nominations for the award of the title of Honorary Citizen under the terms of the council's policy. Copies of the nominations received will be circulated separately in confidence.

Join Zoom Meeting

<https://us02web.zoom.us/j/83373418143?pwd=NIJFanZUYVVVibWY1YU9EK0EzSElUT09>

Meeting ID: **833 7341 8143** Passcode: **139782**

One tap mobile

02034815237,,83373418143#,,,,,0#,,139782# 02034815240,,83373418143#,,,,,0#,,139782#

Dial by your location (UK numbers)

0203 481 5237 0203 481 5240 0203 901 7895

1. Anyone who wishes to register to participate under Item 3, please contact the Town Clerk (town.clerk@whitbytowncouncil.gov.uk)

WHITBY TOWN COUNCIL

Minutes of the Ordinary meeting of the **Town Council of Whitby**, held on **Tuesday 12 January 2021** conducted on-line, via Zoom and livestreamed on the Town Council's Facebook page at 6:00pm.

Present Councillor Mrs L Wild (Mayor) and Councillors R Barnett, Mrs H J Brown, R Dalrymple, J Harston, G Jackson, T Jennison, Cllr S Lapsley, J Nock, S Smith, Mrs H Sumner, Mrs N L Wilson, and C Winspear.

Also M King, Clerk, and Mrs A Cowey, Deputy Clerk, with Joe Redfern (Lobster Hatchery); Heather King and Matt Parsons (Anglo American).

NOTICE OF MEETING – Public Notice of the Meeting was given in accordance with Schedule 12, paragraph 10 (2) of the Local Government Act 1972.

APOLOGIES

Apologies for inability to attend the meeting were received from Councillors Mrs H Coughlan and L Derrick.

148/21 DECLARATION(S) OF INTEREST & REQUEST FOR DISPENSATION

There were no declarations of interest or requests for dispensation.

STANDING ORDERS SUSPENDED

149/21 PUBLIC PARTICIPATION SESSION

No public participation.

STANDING ORDERS REINSTATED

150/21 EXTERNAL REPORT

a. NORTH YORKSHIRE POLICE

A Police report was circulated to all members prior to the meeting which included reported incidents during December and comparison crime figures for December 2019 and December 2020.

Councillor Nock requested that contact telephone numbers for Highways, the Dog warden and the total number of convictions be included in future Police reports.

RESOLVED unanimously that the North Yorkshire Police report is received.

b. WHITBY LOBSTER HATCHERY – Joe Redfern

Mr Redfern reported on the progress of the Lobster Hatchery project to date, identifying the need for conservation and sustainability due to the increase in lobster fishing over recent years. The project's crowd funding has obtained more than its initial £20,000 target, this money will be used to unlock other streams of funding available. A concept design for the building was shown incorporating an increased roof design enabling the building space to house the hatchery/business centre/office space. The project is waiting for the outcome of its LEP application, unfortunately some funding avenues have been delayed due to the present situation and the lottery grant does not open until February.

Councillors asked question about:-

- Funding – to approaching SBC and Anglo American;
- Sending the Crowd Funding page over to the Town Council to identify how easy it is to donate;
- The Aesthetics of the proposed building – including Town Councillors and the Civic Society in meetings regarding its design.

MOVED by Councillor Mrs H Brown, seconded by Councillor G Jackson

RESOLVED unanimously that the above report is received.

c. ANGLO AMERICAN – Matt Parsons

Mr Parsons informed members that there has been good progress across the whole project. The sinking of the main shaft should begin soon, and the tunnel has reached almost 12km (Wilton to approximately Lockwood Beck). There are 1,200 people working on the project to date either on the construction site or from home due to the present conditions. The recruitment of apprentices for this project will co-incide with the national apprenticeship week in February and 10 apprentices will be recruited to start in September 2021.

Councillors asked questions regarding:

The demographic and split of the number of employees and where they are from: Mr Parson explained that local is classed as living within an hour commute - when last investigated, over 100 people working on the project were from that local area.

MOVED by Councillor J Nock, seconded by Councillor J Harston

RESOLVED unanimously that the above report is received.

d. COUNTY & BOROUGH COUNCILLORS

No County or Borough Council Reports

151/21 MINUTES

MOVED by Cllr J Nock, seconded by Cllr R Dalrymple and

RESOLVED unanimously that the Minutes of the ordinary meeting of the Full Council held on 1 December are confirmed as an accurate record of the meeting and signed by the Town Mayor.

MOVED by Cllr T Jennison, seconded by Cllr J Nock and

RESOLVED unanimously that the following Committee minutes are taken *en bloc* and are received:

Planning	8 December 2020
Finance, Policy and General Purposes	15 December 2020
Planning	15 December 2020

**152/21 COMMITTEE RECOMMENDATIONS
FINANCE
F142/20 APPROVAL OF PAYMENTS**

MOVED by Councillor J Harston, seconded by Councillor G Jackson and

RESOLVED unanimously that the schedule of payments up to 14 December 2020 in the sum of £ 44,415.45 (WTC) and 423.74 (PAG) as recommended by the Finance Policy and General Purposes Committee for payment are approved.

F143/20 DRAFT BUDGET 2021/22

See minute number 154/21 (below)

153/21 BUDGET SETTING 2021-22

MOVED by Councillor J Nock, Seconded by Councillor Gareth Jackson and

RESOLVED unanimously the budget is approved and set with a gross expenditure of £334,985.00 with a precept demand of £223,435.00 (annual increase of 1.56%) equating to a band D Council Tax demand of £4.53 (annual increase of £1.34).

**154/21 MAYOR'S REPORT
CIVIC ENGAGEMENTS**

The Town Mayor reported on

- the Christmas Card Competition
- meetings with Anglo American and The Cinder Track Steering Group.
- Chris Burrows being promoted to Harbour Master – he is a great advocate for Whitby and willing to work with the Town Council.

Councillor Wild informed members of her concerns regarding permission being granted by Scarborough Borough Council for 'The House of Mouse' fairground attraction to be opened on Dockend during the lock down. The attraction was closed down next day following contact with the relevant Officers.

MOVED by Cllr Mrs H Sumner, seconded by Cllr S Smith and

RESOLVED unanimously that the Town Mayors report is received;
a) that a letter of congratulations is sent to Capt. Burrows and
b) The Town Council is notified by Scarborough Borough Council of all events taking place on Dockend throughout the year.

155/21 CLERK'S REPORT

The Town Clerk informed members that:

TOWN DEAL

the Town Deal Board Meeting has been postponed as there has been no decision from Government on the bid.

ST NINIANS CHURCH

This church has been put on the market and the Civic Society has submitted an

application for the property to become an Asset of Community Value in order to give the building limited protection against commercial disposal.

MOVED by Councillor B Dalrymple, seconded by Councillor G Jackson and

RESOLVED unanimously that the Clerk's report is received, and St Ninians Church is put on the next agenda for the Town Improvement and Development Committee.

156/21 FLOODING AWARENESS –STANDING ITEM

Tides above 5.5 metres – 13-16 January 2021 30 January 2021 – 2 February 2021.

MOVED by Cllr T Jennison, seconded by Councillor G Jackson, and

RESOLVED unanimously that this information is received.

draft

WHITBY TOWN COUNCIL

Minutes of the meeting of the **Finance, Policy and General Purposes** Committee held via Zoom on Tuesday 19 January 2021 at 6:00pm.

Present: Councillors G Jackson (Chair), Mrs H Coughlan (Item 158), B Dalrymple, J Harston, Mrs L Wild, Mrs N Wilson and C Winspear.

Also: M King, Town Clerk.
(NB four accounts 'trolled' the meeting and were removed. Due to a technical error Cllr Mrs Wilson was unable to regain entry).

NOTICE OF MEETING – Public Notice of the Meeting was given in accordance with Schedule 12, paragraph 10 (2) of the Local Government Act 1972

157/21 APOLOGIES FOR ABSENCE

None.

158/21 DECLARATION OF INTERESTS & REQUESTS FOR DISPENSATION

None.

159/21 PUBLIC PARTICIPATION

No members of the public were present.

GENERAL PURPOSES & POLICY

160/21 MINUTES

Proposed by Councillor B Dalrymple, seconded by Councillor C Winspear and unanimously

RESOLVED that the Minutes of the Finance Policy & General Purposes Committee meeting, held 15 December 2020, be taken as read and confirmed as a correct record and signed by the Chairman.

161/21 ACTION OUTSTANDING FROM PREVIOUS MEETING

The Clerk provided a verbal on the progress of resolutions from the previous meeting, which had been referred to Council and confirmed.

FINANCE

162/21 APPROVAL OF EXPENDITURE

To approve payments and receipts on behalf of the Council to 18 January. Members noted the presence of a duplicate payment. The error was corrected prior to approval.

Proposed by Councillor J Harston, seconded by Councillor Mrs H Coughlan and unanimously

RESOLVED that the schedule of payments up to 18 January 2021 in the sum of **£19,550.66** (in respect WTC) and of **£158.23** (in respect PAG) as attached hereto is approved and submitted to Full Council.

163/21 INCOME AND EXPENDITURE AGAINST BUDGET TO 31 DECEMBER 2020

Submitted: a report setting out the unreconciled income and expenditure against the budget for the nine months ending 31 December 2020.

Members noted the position of expenditure and its potential effect on reserves.

Proposed by Councillor G Jackson, seconded by Councillor Mrs L Wild and unanimously

RESOLVED that a report reviewing the council's reserves and medium-term reserve strategy be brought to the February meeting

Proposed by Councillor J Harston, seconded by Councillor C Winspear and unanimously

RESOLVED that the report be received.

draft

WHITBY TOWN COUNCIL
FINANCE POLICY & GENERAL PURPOSES COMMITTEE – 18 JANUARY 2021
APPROVAL OF EXPENDITURE

Tn no	Cheque	Gross	Heading	Invoice	Details
1236	DD	£182.70	5000/2/5	01/12/20	Document Solutions - Service Charges –
December4					
1222	DD	£441.34	5000/4/2	06/12/20	Total Gas and Power - Electricity Charges
1220	DD	£243.92	5000/4/1	07/12/20	ENGIE Gas Limited - Gas Charges - November
1232		£46.97	5000/4/6	08/12/20	Rentokil Initial UK Ltd - Sanitary Bins January 21
1224	DD	£111.50		12/12/20	Pitney Bowes - November Invoice0
	1	£100.00	5000/2/4		Meter Reset
	2	£5.50	5000/2/4		Transaction Fee
	3	£6.00	5000/2/4		Paper Invoice Fee
1219		£100.00	5000/3/1	16/12/20	Yorkshire Regiment & Association - Mayoral
Donation					
1223	DD	£102.24	16/12/20		Barclaycard - Statement to 16 December
	1	£14.39		5000/2/9	Zoom Subscription.
	2	£87.85		5000/5/4	Christmas Card Competition
1228	DD	£6.50	5000/2/13	17/12/20	Barclays Bank - Commission
1221	DD	£18.00	5000/2/5	21/12/20	EE Limited - Mobile Phone Contract
1225	DD	£23.40	5000/4/6	29/12/20	Cathedral Hygiene - Hygiene Contracts
1226	DD	£1,802.00	29/12/20		Scarborough Borough Council - NDR Toilets
	1	£499.00		5000/4/5	NDR Toilet 1
	2	£86.00		5000/4/5	NDR Toilet 2
	3	£127.00		5000/4/5	NDR Toilet 3
	4	£55.00		5000/4/5	NDR Toilet 4
	5	£511.00		5000/4/5	NDR Toilet 5
	6	£524.00		5000/4/5	NDR Toilet 6
1234		£481.50	5000/4/7	31/12/20	Lewis Hart Security Services - December Patrols
1227	DD	£212.08	5000/2/2	01/01/21	Grenke Leasing - Photocopier /leasing
1235	DD	£78.00	5000/2/9	01/01/21	SAGE UK Ltd - Payroll Software
		£15,700.51			Confidential Transactions (Salaries & Oncosts)
Total		£19,550.66			Whitby Town Council

Tn no	Cheque	Gross	Heading	Invoice	Details
31		£26.20	5007	31/10/20	Normans Business Solutions - Stationery
32	DD	£129.55	5002	20/11/20	Global Payments - Card Processing Charges
33		£2.48	5015	07/12/20	H Berry Curator - Postage (Reimbursement)
Total		£158.23			Pannett Art Gallery

WHITBY TOWN COUNCIL

Minutes of the meeting of the **TOWN DEVELOPMENT & IMPROVEMENT** Committee held on **Monday 25 January 2021** conducted on-line, via Zoom at 6:00pm.

Present Councillors J Harston (Chair from 168¹), B Dalrymple, G Jackson (Chair 165-167), T Jennison, Mrs L Wild and C Winspear.

Also M King, Clerk & Cllr G Goodberry (SBC)

NOTICE OF MEETING – Public Notice of the Meeting was given in accordance with Schedule 12, paragraph 10 (2) of the Local Government Act 1972.

164/21 APOLOGIES FOR ABSENCE

It was noted post hoc that apologies for inability to attend the meeting were received from Cllr Ms Sumner due to technical difficulties in logging on.

165/21 DECLARATION OF INTEREST AND REQUESTS FOR DISPENSATION

No declarations of interests or requests for dispensations were received.

STANDING ORDERS SUSPENDED

166/21 PUBLIC PARTICIPATION SESSION

A member of the public raised a question in relation to the borough council's plans for the future use of Larpool playing field. It was established that the field was being maintained as open space and no longer as a football pitch, that the condition of the remaining football goal on the site was disrepair and that Scarborough Borough Council is actively considering the site as a potential extension to the existing cemetery.

STANDING ORDERS REINSTATED

167/21 MINUTES

MOVED by Cllr G Jackson, seconded by Cllr C Winspear and unanimously

RESOLVED that the Minutes of the Town Development and Improvement Committee held on 23 November 2020 are confirmed as an accurate record of the meeting and signed by the Chairman.

168/21 CLERK'S UPDATE ON MATTERS RAISED PREVIOUSLY

The Clerk reported verbally that correspondence was outstanding in relation to: Christmas Lighting, Bannial Flatt, Battery Parade and the Welcome to Whitby sign. Any progress to be reported to a future meeting.

169/21 SPA WELL

Members considered an email received from the Civic Society regarding an issue of short-term maintenance on the Spa Well. Members considered the extent to which work might be covered by the council's insurance if undertaken on a volunteer basis.

¹ Microphone not operational from start of the meeting.

MOVED by Cllr B Dalrymple, seconded by Cllr G Jackson and

RESOLVED unanimously that subject to insurance cover being in place, the Clerk liaise with the Civic Society to identify appropriate remedial work to clear the gutters of the Spa Well, using volunteers if suitable.

170/21

MATTERS OF REPAIR AND MAINTENANCE REQUIRED IN TOWN

This item gives members an opportunity to highlight areas of concern which may be advanced or brought to the attention of the appropriate department at either the borough or county council.

1. **Black Railings** - on the right-hand side of the path from the undercroft of the Spa leading down to the beach have rusted through in a couple of places.

MOVED by Cllr Mrs L Wild, seconded by Cllr G Jackson and

RESOLVED *unanimously that the Clerk contact Scarborough Borough Council to enquire about the condition and maintenance of the railings running down the cliff from the undercroft of the Pavilion.*

2. **Larpool Playing Field** – in respect of the issue raised in the public question time, members were concerned that there appeared to have been little engagement with the community about the review of play provision including Larpool Playing Field and that any assessment of its use during the pandemic was likely to give a false impression of normal activity levels.

MOVED by Cllr C Winspear, seconded by Cllr Mrs L Wild and

RESOLVED unanimously a) That the Clerk write to Scarborough Borough Council seeking the reinstatement of the football goals at Larpool Playing Field, pending any review of future play provision; and
b) That the Clerk write to Scarborough Borough Council seeking more information on the (seven) sites under consideration for a cemetery extension in Whitby including the process being followed by the borough council to review its provision.

WHITBY TOWN COUNCIL

Minutes of the meeting of the **PLANNING** Committee conducted via zoom, on **Tuesday 26 January 2021** at 6:00pm.

Present Councillor Mrs N Wilson (Chair) with Councillors R Dalrymple, J Harston, G Jackson, J Nock, and C Winspear.

Also Mrs A Cowey Deputy Clerk

NOTICE OF MEETING – Public Notice of the Meeting has been given in accordance with Schedule 12, paragraph 10 (2) of the Local Government Act 1972.

171/21 APOLOGIES

There were no apologies for inability to attend.

172/21 DECLARATION(S) OF INTEREST

Councillor J Harston declared a pecuniary interest in planning application 20/01843/FL Victoria House, 7 Victoria Square, YO21 1EA.

(Councillor Harston Left the meeting for this application and did not take part in the discussion or voting)

Councillor R Dalrymple declared a non-pecuniary interest in planning application 20/02690/HS 7 Waterloo Place, Flowergate, YO21 3BN.

173/21 MINUTES

MOVED by Councillor C Winspear, seconded by Councillor J Harston and

RESOLVED unanimously that the minutes of the Planning Committee held on 8 and 15 December 2020 having been circulated be taken as read and signed as a correct record.

STANDING ORDERS SUSPENDED

174/21 PUBLIC PARTICIPATION

No public participation

STANDING ORDERS REINSTATED

175/21 PLANNING APPLICATIONS

RESOLVED that the Planning Applications, as detailed at Annex A, were considered and the Planning Committees recommendations duly recorded and submitted to the Planning Authority.

176/21 LISTED BUILDINGS

Nothing to report.

Planning Applications Considered on 26 January 2021

1	Plan Number 20/129	District Reference 20/02536/FL	Road/Street Fairfield Way	Date of meeting 27.01.21
	Applicant Iceland Foods Ltd (Mr Ken Jones)	House Name Unit B Whitby Retail Park	Road Fairfield Way	Locality
	Town WHITBY	County North Yorkshire	Post Code YO224PU	Application date 16/12/20

Installation of air conditioning/refrigeration plant and cowl. Erection of associated plant cage and bin store. Iceland Foods Ltd (Mr Ken Jones), Unit B Whitby Retail Park, Fairfield Way, WHITBY, North Yorkshire, YO224PU

Comment

Support the application

2	Plan Number 20/130	District Reference 20/02750/AA	Road/Street Baxtergate	Date of meeting 27.01.21
	Applicant Virgin Money	House Name	Road 74 Baxtergate	Locality
	Town WHITBY	County North Yorkshire	Post Code YO211BL	Application date 18/12/20

Installation of 1no fascia sign, 1 no projecting sign, acrylic letterbox and nightsafe surrounds, printed and frosted window manifestation, Virgin Money, 74 Baxtergate, WHITBY, North Yorkshire, YO211BL

Comment

Object - inappropriate for a conservation area and goes against SBC policy for shop fronts in a conservation area.

3	Plan Number 20/131	District Reference 20/02028/HS	Road/Street St Hildas Terrace	Date of meeting 27.01.21
	Applicant A Sanderson, M Milner, S Kirk and S Maher	House Name	Road 18 and 19 St Hildas Terrace	Locality
	Town WHITBY	County North Yorkshire	Post Code YO213AE	Application date 22/12/20

Alterations to boundary wall and partial regrading of garden, A Sanderson, M Milner, S Kirk and S Maher, 18 and 19 St Hildas Terrace, WHITBY, North Yorkshire, YO213AE

Comment

Support the application subject to the line coping matching the height and line of No. 19.

4	Plan Number 20/132	District Reference 20/02783/FL	Road/Street Bridge Street	Date of meeting 27.01.21
	Applicant Mr Mark Johnson	House Name Dolphin Hotel	Road Bridge Street	Locality
	Town WHITBY	County North Yorkshire	Post Code	Application date 24/12/20

Erection of 2 no parasols to front external seating area, Mr Mark Johnson, Dolphin Hotel, Bridge Street, WHITBY, North Yorkshire

Comment

Support the application

9 *Plan Number* *District Reference* *Road/Street* *Date of meeting*
 21/005 20/02836/FL Stakesby Road 26.01.21

Applicant *House Name* *Road* *Locality*
 Mr A Bang Spar, Stakesby Garage Stakesby Road

Town *County* *Post Code* *Application date*
 WHITBY North Yorkshire YO211JE 08/01/21

Erection of a single storey rear extension to create ancillary storage and preparation area, Mr A Bang, Spar, Stakesby Garage, Stakesby Road, WHITBY, North Yorkshire, YO211JE

Comment
Support the application

10 *Plan Number* *District Reference* *Road/Street* *Date of meeting*
 21/006 20/02407/FL Green Lane 26.01.21

Applicant *House Name* *Road* *Locality*
 Mike Walker Folly Gardens Green Lane

Town *County* *Post Code* *Application date*
 WHITBY North Yorkshire YO224EN 11/01/21

Erection of agricultural storage building, Mike Walker, Folly Gardens, Green Lane, WHITBY, North Yorkshire, YO224EN

Comment
Support the application

11 *Plan Number* *District Reference* *Road/Street* *Date of meeting*
 21/007 20/02818/LB Market Place 26.01.21

Applicant *House Name* *Road* *Locality*
 Mr Paul Clemitshaw Abbey Warf Market Hall Market Place

Town *County* *Post Code* *Application date*
 WHITBY North Yorkshire YO224DD 18/01/21

Installation of 2no.flag poles to front and installation of platform lift to entrance stairs, Mr Paul Clemitshaw, Abbey Warf Market Hall, Market Place, WHITBY, North Yorkshire, YO224DD

Comment
Object - Flag poles are not in keeping in this conservation area

12 *Plan Number* *District Reference* *Road/Street* *Date of meeting*
 21/008 20/01843/FL Victoria Square 26.01.21

Applicant *House Name* *Road* *Locality*
 Mr A Brown - ABG Financial Services Ltd Victoria House 7 Victoria Square

Town *County* *Post Code* *Application date*
 WHITBY North Yorkshire YO211EA 19/01/21

Erection of single storey rear extension to offices, Mr A Brown - ABG Financial Services Ltd, Victoria House, 7 Victoria Square, WHITBY, North Yorkshire, YO211EA

Comment
Support the application

Scarborough Borough Council**Community nomination in respect of:**

St Ninians Church
Baxtergate,
Whitby
North Yorkshire
YO21 1BL ('the Property')

(a) Notice under section 90 (6) of the Localism Act 2011

1. The Nomination

On 20 November 2020 Scarborough Borough Council received a nomination under section 89 of the Localism Act 2011 ('the Act') to list the Property as an asset of community value. The nomination was made by Whitby Civic Society c/o 5 Borough Place, Whitby YO22 4BJ. A copy of the nomination is attached at Appendix 1.

2. The Law and Statutory Guidance

Under section 87 of the Act the Council must maintain a list land of community value in its area. A building or other land is of community value if in the Council's opinion an actual current use of the building or other land that is not ancillary use, furthers the social wellbeing or social interests of the local community and it is realistic to think that there can continue to be non-ancillary use of the building or other land, which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

Under section 89 the Council can only include land in its list of assets of community value in response to a community nomination or where permitted by regulations. A community nomination in England can only be made by either a parish council in respect of land within its area or by a person that is a voluntary or community body with a local connection, as defined by The Assets of Community Value (England) Regulations 2012 (the Regulations). Where a valid community nomination is made the Council must consider it and must accept the nomination if the land is within its area and is of community value.

3. Decision and Reasons

Decision:

On 14th January 2021 the Council decided to reject the nomination of the Property by Whitby Civic Society.

Reasons:

The Council must determine firstly that the nomination is valid and has been made in accordance with the provisions of Part 5 Chapter 3 of the Act and the Regulations. The Council must then determine on the facts and evidence presented to them by the nominating body whether the asset (the Property) meets the definition set out in Section 88 of the Act as set out below:-

88 Land of community value

(1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority—

*(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, **and***

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

*(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, **and***

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

3.1 In considering the nomination the Council is satisfied that the nomination is a valid community nomination:-

- (b) The Property lies within the administrative area of Scarborough Borough Council

- (c) Whitby Civic Society is eligible under section 89(2) b) (i) to make a community nomination in respect of the Property
- (d) The community nomination made by Whitby Civic Society includes the matters required under regulation 6 of the Assets of Community Value (England) Regulations 2012
- (e) The Property does not fall within a description of land which may not be listed as specified in Schedule 1 of the Assets of Community Value (England) Regulations 2012 (the Regulations)

3.2 Application of the test in S88 (1) of the Act set out above;

The facts as presented to the Council by the nominating body:-

- (a) The Property is described as St Ninian's Church being a place of worship originally opened in 1778.
- (b) The nomination describes the historic value of the fabric of the building as a Grade II* Listed Building situated within the Whitby Conservation Area.
- (c) The Whitby Civic Society have in the past advertised guided visits annually during the national Heritage Open Days programme, and although numbers varied, these guided visits were normally attended by between 40 and 90 people.
- (d) The church was also open to visitors and outside of service times the public were encouraged to enter and look around.

Based on these facts the Council has determined that the primary or non-ancillary purpose of the Property is a Church and the activities described in paragraphs (c) and (d) above are ancillary to the primary purpose. The Council must then determine if this use meets the definition of 'social interest'

Section 88(6) of the Act defines 'social interests'

'(6)In this section—

"social interests" includes (in particular) each of the following— (a) cultural interests;

(b) recreational interests;

(c) sporting interests;'

The Council has noted that the use of a building as a place of religion such as a church does not easily fall within this statutory definition. The Council has therefore taken into account the First Tier Tribunal (General Regulatory Chamber) Decision CR/2014/0013 dated 12 February 2015 – The General Conference of the New Church decision, relating to an Appeal against the listing of an Asset of Community Value which specifically dealt with this point. In his decision the Tribunal Judge stated;

'I nevertheless consider that the expression "social wellbeing and social interests of the community" in section 88 does not encompass religious observances in a church, mosque or synagogue etc, and that such a building will not in practice fall within section 88 unless there is some other non-ancillary use being made of it which furthers the social wellbeing/social interests of the local community.'

The Council have applied this judgement to the facts set out above and have determined that limb one of the definition set out in the Act (section 88(1)(a)) has not been satisfied.

Turning to limb 2 section 88(1)(b) the nomination states;

'The intention is to build on and widen this historic value by establishing a centre for mixed community use in the town centre while preserving the heritage value of the building. Specifically, we aim to work with the newly-established Whitby Historic Buildings Trust, registered as a community interest organisation for the purpose of protecting heritage assets and facilitating their contemporary use. The Society and the Trust will (a) raise funds to purchase the building and (b) develop a viable business plan for a sustainable portfolio of activities which involve locals and engage visitors. This approach seeks to exploit the strengths of the building in terms of its town centre location, the affection in which it is held, and the heritage features which have led to its listed status.'

The Council consider that these proposals may present a realistic proposition, however in order for the test to be met and the Property to be listed as an Asset of Community Value both limbs of S88 (1) must be satisfied.

On the facts as presented the Council do not consider that S88 (2) is triggered.

The Council acknowledge the comments made by the nominating body regarding the fabric of the building and its status as a Listed Building. However it is considered that these matters fall outside of the scope of the Assets of Community Value legislation which is concerned with the use to which the building is put, rather than the physical appearance of the building (for which other building and planning legislation applies).

4. Next Steps

The Property will be included in the Council's List of Land Nominated by Unsuccessful Community Nominations

5. Additional Help

Further information about assets of community value is available from the website <http://mycommunityrights.org.uk/community-right-to-bid/>

Please note that this decision does not preclude further nominations being made in respect of this property. Each nomination is determined on it's merits and in accordance with the Act and the Regulations.

Signed:



Acting Legal Services Manager

Dated : 14th January 2021