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## Appeal Decision

Hearing Held on 10 and 11 November 2020

Site visit made on 6 November 2020

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18<sup>th</sup> December 2020

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**Appeal Ref: APP/E2734/W/19/3240780**

**Henry Jenkins Inn, Main Street, Kirby Malzeard, North Yorkshire HG4 3RY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Justin Goodworth Claybourn against the decision of Harrogate Borough Council.
  - The application Ref 18/03230/FUL, dated 6 August 2018, was refused by notice dated 9 May 2019.
  - The development proposed is the conversion of part of public house and flat to create 1no. dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for the conversion of part of public house and flat to create 1no. dwelling at Henry Jenkins Inn, Main Street, Kirby Malzeard, North Yorkshire HG4 3RY in accordance with the terms of the application, Ref 18/03230/FUL, dated 6 August 2018, subject to the conditions in the attached schedule.

### Application for costs

2. At the hearing an application for costs was made by Mr J G Claybourn against Harrogate Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. In March 2020, after the determination of the original planning application, the Council adopted the Harrogate District Local Plan 2014-2035 (the LP). However, the LP was the subject of a legal challenge<sup>1</sup> relating to policies for a new settlement. This was in part successful. The judgment handed down on 25 November 2020 did not quash the Plan, but the Plan was remitted to the Council for them to reconsider. This took place on 9 December 2020 when the Council resolved to adopt the Plan a second time. Consequently, I give full weight to the relevant policies of the new Local Plan in my decision. The parties had the opportunity to comment on the new policies in the course of the appeal.
4. The description of development as stated on the original planning application form referred to a change of use of part of the public house. The Council

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<sup>1</sup> Flaxby Park Limited v Harrogate Borough Council [2020] EWHC 3204 (Admin)

changed this to describe the scheme as a conversion. As I consider this description better reflects the appeal proposal, I have used it above.

### **Main Issue**

5. The main issue in this case is whether or not the proposed development would result in the loss of a community facility having regard to national and local planning policy.

### **Reasons**

6. The Henry Jenkins Inn is located on Main Street in the centre of Kirkby Malzeard. The village is located within the Nidderdale Area of Outstanding Natural Beauty (AONB). It has a number of community facilities including a small shop, a butcher, hairdressers, tearoom, repair garage, doctor's surgery and primary school. It also has another public house, the Queens Head, and I am advised that the Mechanics Institute, across the road from the appeal site, is also licensed to sell alcohol.
7. The Henry Jenkins Inn closed approximately 9 years ago, and the building has lain vacant ever since. It is now in a very poor state of repair and all internal fixtures and fittings have been removed. The appeal relates to the two-storey eastern annex of the public house, previously used as a restaurant/dining area with residential flat above. This part of the building was formerly a joiner's workshop and store, becoming part of the public house use in the mid 1970's. The appeal site also includes most of the rear car park and the vehicular access from Main Street.
8. The appeal case is complicated by the fact that it would not result in the total loss of the community facility but a reduction in its size. Therefore, it is necessary for me to consider the consequence of the loss of the appeal site to the remaining public house and whether it would significantly increase the chance of the remaining facility being lost.
9. The National Planning Policy Framework (the Framework) in paragraph 92, requires that planning policies and decisions to plan positively for the provision and use of community facilities, including public houses, and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its every day needs. It is notable that there are other licenced premises and other buildings in the village providing opportunities for social interaction, meeting the needs of the community. Nevertheless, should the Henry Jenkins Inn re open, either in whole or part, it would provide further choice in the village.
10. Policy HP8 of the LP is generally consistent with the Framework and seeks to protect and enhance community facilities, such as public houses. It permits their redevelopment where 3 possible criteria (A, B or C) can be clearly demonstrated. These are where a continued community use would cause unacceptable planning problems, or where a satisfactory replacement facility would be provided or where there would be no reasonable prospect of the existing use continuing on a viable basis with all options for continuance having been fully explored, and thereafter there being no reasonable prospect of securing a satisfactory viable alternative community use.

11. With regard to criterion A, whether continued community use would result in planning problems, I noted on my site visit that there are many terraced properties in the village which generates on street car parking along Main Street. I have also been advised of the concerns of the Parish Council about this issue. In terms of the appeal site, the retention of much of the rear car park would provide more than adequate car parking should a community use continue. Should a community use continue for the retained part of the building, there would effectively be no useable car park. However, I do not consider this to necessarily be a planning problem as the users of the public house or any community facility would be residents of the village living within walking distance. In summary I do not consider that continued community use would cause unacceptable planning problems.
12. Turning to criterion B of the policy, a replacement facility is not being provided in this case. I accept the comments of local residents that the retained part of the public house cannot be seen as a replacement. In any event, criterion B of the policy does not apply in this case.
13. Criterion C is most relevant to this appeal. In order to demonstrate that there is a reasonable prospect of the existing use continuing on a viable basis, both saved and emerging policies, require evidence that the premises have been marketed at existing use value.
14. At this point it is worth considering the marketing history of the building as a whole. The vacant pub was originally bought by the current owner from the receiver in 2012. There then following a period of marketing and attempts to find a tenant. I shall discuss the nature of the marketing exercise in due course. Nevertheless, these efforts were unsuccessful.
15. Following the dismissal of an earlier appeal for the demolition of the pub and the erection of 4 dwellings<sup>2</sup>, the eastern annex was sold to the appellant in 2018. Covenants were imposed restricting the use of the building to a dwelling and that there should be no external alterations. The landowner retained a ransom strip at the entrance to the car park preventing rear access. I am advised that the parties made an agreement that should planning permission be granted for a dwelling, the covenant would be lifted in return for the payment of an additional sum. Whilst this agreement has not been formalised, I have no reason to doubt that this arrangement would not be honoured.
16. The approach to marketing the annex and the building as a whole, has not been conventional. The appellant has employed the owner of the retained public house to act as his agent in selling both the annex and also the remaining public house. No professional agent specialising in such premises has been employed. The approach has involved an advert in the local paper, the use of internet sites such as Gumtree and Facebook as well as the owner of the remaining pub using his contacts in the industry and approaching other tenants. A sign board was also erected on the premises and still remains.
17. The appellant has provided evidence that a professional valuer and estate agent would not take on the marketing of the appeal site or the retained pub

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<sup>2</sup> Appeal ref: APP/E2734/W/17/3184236

due to the restrictive covenants in place. The view being that their imposition would deter any future buyers considering a commercial use.

18. I have been provided with a breakdown of enquiries received from March 2017 to January 2019. The majority of these enquiries predate the sale of the annex in 2018 so were before the time that the covenants were imposed. This tends to support the view that the covenants deterred potential buyers. One viewing took place. Whilst a number of enquirers looked to reopen the pub or open a restaurant, some were interested in redevelopment.
19. I understand that one of the reasons the approaches did not result in offers related to the potential competition from the existing pub in the village. This would have been compounded by the lack of turnover figures to show the profitability of the premises, though this was unavoidable given the length of time the Henry Jenkins has been closed. A further concern was the amount of money needed to be invested to bring the near derelict building back into use.
20. Policy HP8 provides guidance on the marketing exercise required. A number of the requirements have been met by the appellant, including details of sale particulars, copies of adverts, a breakdown of enquiries and details of the sale board. However, a professional agent was not used and no guide price was indicated.
21. Policy HP8 also requires the asking price to be pre agreed in writing with the local planning authority following independent valuation, establishing the existing use value, enabling the asking price to be based on the valuation of the site as a trading pub without a tie. I accept that this was not a requirement of the previous Saved Local Plan Policy CFX. It would therefore be unreasonable to expect the appellant to comply with this requirement.
22. Given the above, I conclude that the marketing exercise undertaken failed to comply with the requirements of Policy HP8. That being said, I am advised that there are 6 pubs within 3.5 miles of the Henry Jenkins, two of which are up for sale with professional agents, one having been on the market for around 4 years<sup>3</sup>. This suggests to me that even if a professional agent had been employed, the outcome may have been the same.
23. Local residents have argued that the owner of the former pub had no intention of selling the property either in whole or in part. They have provided three letters from persons who had enquired about the premises in 2016 to find the asking price too high or be told the pub had been sold. However, these enquiries related to the time before the appellant bought the annex and thus are not relevant to my consideration of this appeal. Nevertheless, bearing in mind the track record of the owner of the retained pub in buying closed premises, refurbishing them, securing tenants and reopening them, I am not persuaded that there was no intention to sell at that time.
24. I take account of the fact that the Henry Jenkins Inn has been on the market now for around 8 years, well in excess of the 12 months required by Policy HP8. Even with a marketing exercise based on local marketing, word of mouth and the internet, it must have been reasonably well known locally and

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<sup>3</sup> Mr Fielder's Statement of Case dated November 2019 page 10

regionally that the public house was up for sale. Whilst I accept that the marketing exercise did not comply with Local Plan policy, having regard to the well documented difficulties of rural pubs and the evidence before me in this case, I conclude that there is no reasonable prospect of the public house reopening.

25. I must therefore give consideration to the second part of Policy HP8, which requires consideration of whether there is a realistic prospect of securing a viable alternative community use.
26. I understand that the marketing undertaken by the appellant focussed on the use as a public house and did not specifically mention other alternative community uses. Nonetheless this did not necessarily exclude them should interest be shown. The appellant's view is that the premises, either in whole or in part, would not be viable for such uses. I note that the Parish Council in 2019, concerned about the continued vacancy of the building, investigated possible alternative community uses to a public house. However, the Council found them to be unviable for a range of reasons.
27. The Henry Jenkins Community Pub Limited, (HJCP), a Community Benefit Society, is a local group of residents seeking to buy the Henry Jenkins Inn and set up a community pub. I heard in detail at the hearing about their membership, just over 190 people, their fundraising efforts including share pledges totalling £236,000, and their thoughts on the options for reuse. The Group have sought professional advice from the Plunkett Foundation and have developed a business plan. They have also explored grant funding and loan opportunities.
28. The appellant has explained why in his view, the business plan is flawed. I too have some concerns about it, in particular the understanding of actual running costs, for example wages, and the lack of certainty about grant and loan funding. Nevertheless, the Plan will inevitably have to be reviewed when better information is available about refurbishment costs and financing arrangements. With ongoing community support, both financially and in terms of skills and time, the proposal has a reasonable prospect of remaining viable. However, the submitted Business Plan relates to the whole pub, not just the appeal site. The weight I can give to it in this appeal, must be tempered accordingly.
29. I am aware that a previous business plan of the HJCP related to the original pub only, as it was thought that following the sale of the annex to the appellant it would not be available. This indicates to me that a community pub in the original public house alone, which would no doubt involve lower acquisition costs, would be likely to be viable. I am also advised that the group sought planning advice from the Council on their proposals for the remaining pub, which did not suggest that they would be considered unfavourably.
30. It is also a material consideration that the pub and annex were designated as an Asset of Community Value in June 2017, however the designation was removed from the annex on its sale to the appellant. An application to re list the annex failed in August 2019, though I have no doubt that given an opportunity, the HJCP may apply to have this reinstated.

31. I accept that the loss of the annex would be a disappointment to the HJCP and may mean that their proposals would need to be modified. However, given the above, I am not persuaded that the loss of the annex, would make the remaining pub unviable for an alternative community use.
32. The scheme would therefore not result in the unnecessary loss of a community facility reducing the community's ability to meet its day to day needs. It would comply with Policy HP8 of the Harrogate District Local Plan 2014-2035.

### **Other matters**

33. The appeal site is located within the Nidderdale AONB. Paragraph 172 of the Framework gives great weight to conserving and enhancing the landscape and scenic beauty of such areas. As the appeal concerns the conversion of an existing building within a village, I am satisfied that it would not have an adverse effect on this protected area.
34. The appellant in further submissions has suggested that due to the length of time that the appeal site has been closed, the use may have been abandoned. There is no definition in planning law of abandonment, so that consideration of whether the use of a building has been abandoned is a matter of fact and degree. I accept that the public house has been closed for nearly 10 years and was in intermittent use for 4 or 5 years before that. Furthermore, there has been no intervening use of the appeal site though there has been a change of ownership. There is no evidence before me to suggest that the annex is not part of the same planning unit as the public house. The fact that the building has continued to be marketed for a public house, indicates to me that the use of the annex and the pub as a whole has not been abandoned.

### **Conditions**

35. The Council submitted a number of suggested conditions which were discussed at the hearing. I have assessed these in light of the requirements of the national Planning Practice Guidance and the Framework and have amended the wording where I consider it is necessary. I impose the standard timeframe condition in order to comply with the legislation.
36. A condition requiring the provision of an electric charging point is necessary in order to reduce carbon emissions. A condition requiring the submission of a noise mitigation scheme is also necessary to safeguard the living conditions of future occupiers due to the potential for noise from the adjoining public house use.
37. In the interests of safeguarding the living conditions of nearby residents, a condition controlling the hours of construction is also required. The Council's suggested condition included more restrictive delivery times. I have no indication that deliveries would cause highway safety issues at peak times. Furthermore, I was given assurances from the appellant and the owner of the adjoining pub that deliveries could take place in the rear car park. I have therefore imposed the same hours for both construction activity and deliveries.
38. The Council suggested a lengthy condition regarding potential land contamination. Bearing in mind that the appeal scheme forms a conversion of an existing property that has in part been used as a dwelling, and in the

absence of any evidence of on-site contamination, I do not consider that this condition is necessary.

39. At the hearing an additional condition concerning the materials for replacement windows, doors and external finishes was discussed. I consider that this is necessary in the interests of safeguarding the character and appearance of the building and the surrounding area.

**Conclusion**

40. I have found that the appeal proposal would comply with Policy HP8 of the Harrogate District Local Plan 2014-2035. It would also comply with paragraph 92 of the Framework as it would not result in the loss of a valued facility reducing the community's ability to meet its day to day needs. The material considerations in this case, do not indicate that the decision should be made other than in accordance with the development plan.
41. Accordingly, the appeal is allowed.

*Helen Hockenfull*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The dwelling house hereby approved shall have an electric vehicle charging point installed prior to its occupation. The charging point shall be Mode 3 with a type 2 outlet socket and the cable and circuitry ratings for the charging points shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32 Amps.
- 3) Prior to the commencement of the development, a noise mitigation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall detail measures that will be implemented to ensure that any potential noise breakout associated with the adjacent public house use will not cause detriment to amenity or a nuisance to the occupants of the residential use hereby permitted. The approved mitigation scheme shall be fully implemented and verified by a suitably competent person prior to the occupation of the dwelling and thereafter maintained for the life of the development.
- 4) Construction activity and deliveries shall only take place between the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 Saturdays and not at all on Sundays and Bank Holidays.
- 5) Prior to the commencement of the development, details of the design, materials and colour of any replacement windows and doors and the materials and colour of external finishes to the converted building hereby permitted, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.



## APPEARANCES

### FOR THE APPELLANT:

Mrs Jennifer Hubbard	Town Planning Consultant
Mr Justin Claybourn	Appellant
Mr David Fielder	Owner of the Henry Jenkins Inn

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Gerard Walsh	Principal Planning Officer
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### INTERESTED PARTIES:

Mr David Robinson	Chair - Henry Jenkins Community Pub Ltd (HJCP)
Mr Richard Sadler	Resident
Mr Mark Owen	Resident
Ms Pippa Manson	Resident
Mrs Sarah Haslem	Resident

## DOCUMENTS SUBMITTED AT THE HEARING

1. Email from Mr Robinson confirming qualifications of Mr M Hughes who valued the Henry Jenkins on behalf of the HJCP Ltd.
2. Copy email from Greg Mulholland to Mr Robinson regarding two pubs owned by investment companies.
3. Email from Mr Robinson regarding a proposed development of 33 dwellings to the south west of the village.
4. Statement from Kevin Ison, resident, regarding marketing.
5. Letter from Greg Mulholland, Director, Campaign for Pubs, opposing the appeal scheme and supporting HJCP Ltd.
6. Copies of three letters from potential purchasers.

**DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Copy Local Plan Policy CC4-Sustainable Design
2. Email from the appellant agreeing to the imposition of Pre-Commencement conditions.