

From: Naomi Waddington
Sent: 25 May 2018 15:09
To: 'Jennifer Hubbard'
Subject: RE: Planning application 18/01087/FUL The Henry Jenkins Kirkby Malzeard

Categories: Egress Switch: Unrestricted

Dear Ms Hubbard

Thank you for your email of 21 May 2018

The proposal relates to part of the pub, so Policy CFX on the Retention of Community Facilities applies to this proposal. This policy only permits the loss of community facilities such as pubs if certain criteria are met, amongst them being that a replacement facility is provided or that there is no reasonable prospect of the existing use continuing on a viable basis with all options for continuance having been fully explored, as a priority and, thereafter, securing a satisfactory viable alternative community use. Full details of marketing information and trading accounts are required to show if the use is not viable.

A recent application to demolish the pub and erect four houses was dismissed at appeal on the grounds that the requirements of Policy CFX had not been met and the proposal would lead to the unjustified loss of a community facility. The current application does not provide any supporting information in relation to Policy CFX nor include details of a retained pub use. Circumstances have not changed since the recent appeal decision was issued.

Paragraph 1.2 of the Guidance Notes to Policy CFX states "Community facilities are not defined by a specific planning 'Use Class'. Most community facilities are run as business operations, but may be publicly or privately owned and available for free or at a charge. They make a significant contribution to quality of life: localised facilities can form a focus for community living and are particularly important to older and less mobile people. However, some facilities may also serve a wider geographical area. A spread of community facilities across urban and rural areas is vital to meet the day-to-day needs of residents in the District". Clearly community facilities can therefore comprise commercially run operations

Paragraph 3.1 of the Guidance Notes to Policy CFX states the policy will be applied to all planning applications which propose the loss of buildings or premises that are currently, or were last in, community use regardless of their condition and appearance. Criterion A is not applicable unless it can be demonstrated the existing or an alternative community use of land or premises would cause unacceptable planning problems. This has not been demonstrated in the current submission. In dismissing the recent appeal the Inspector commented at paragraph 6 "CFX does not rule out the change of use or indeed discontinuance of such facilities. However, it requires certain criteria to be met to ensure that there is continued provision depending on the specifics of the situation at play. It was clear from the evidence and discussion at the hearing that criterion A or B were not directly relevant to the appeal scheme since the Council agreed the existing use did not create unacceptable planning problems and the scheme was not seeking to provide a replacement facility".

Given the above the Local Planning Authority is unable to offer support for the proposal, and a recommendation to refuse is likely to be made. You will appreciate this is officer opinion only and is given without prejudice to the formal decision of the Council on the submitted application

Yours sincerely

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From: Jennifer Hubbard [<mailto:planning@jenniferhubbard.co.uk>]
Sent: 21 May 2018 17:09
To: Naomi Waddington
Subject: Planning application 18/01087/FUL The Henry Jenkins Kirkby Malzeard

Dear Ms Waddington,

When we spoke last week we agreed to speak again after you had discussed with the Chair of the Planning Committee whether a decision on the above application is to be delegated. I also undertook to look further into the recent history of the Henry Jenkins and review the guidance notes to Policy CFX, which I have now done. I have not yet been able to speak to the agent for the owner of the retained Henry Jenkins who I understand prepared the recent appeal documentation and attended the Hearing and I cannot pretend my comments below are the result of an exhaustive investigation: nevertheless, I would welcome your comments on where I have got to so far.

1. At paragraph 4.4.3 of the web version of Policy CFX guidance note it is suggested that where a community asset occupies a large site or building, the asset may be retained in part only of the premises if that part contains all the elements necessary to enable the asset to function. In my letter of 9th March 2018 accompanying the application I note specifically that that part of the Henry Jenkins which my Client has not purchased contains all the necessary facilities to operate as a Public House: also that when the current application site was added to the Henry Jenkins in the 1970s, this was to provide a restaurant not to extend the public drinking areas. I appreciate that the approach set out at paragraph 4.4.3 is described as part of a sequential marketing exercise. As I read the recent appeal decision, the Inspector is not saying that the marketing carried out by the previous owner of my Client's site was fundamentally defective but it was – and I paraphrase – not as comprehensive as it might have been. It is not clear to me whether the paragraph 4.4.3 guidance formed part of any marketing exercise submitted to the Council or discussed at the appeal Hearing but it seems to me to be material to my Client's application.

I have also looked at a number of websites/pages of the Save Henry Jenkins group and in particular the uses to which the premises might be put in the event that the group were to purchase the entirety of the site. The uses include a coffee shop, microbrewery, baker, bunkhouse/bed and breakfast, IT and other commercial space(s) and a 24 hour gym – all apparently to be let out to local concerns.

I do not know whether the group has carried out a detailed Viability Appraisal in support of its aspirations for the Henry Jenkins but suggesting that the premises could be used for a wide range of commercial rather than community uses simply confirms that the entirety of the site is not needed to retain a public house.

2. The area to the rear of the current application site is adequate for about 4 parking spaces, plus turning. This parking provision fails to meet NYCC's minimum parking standards by some considerable margin whether for a public house or any other community use referred to in Policy CFX, the accompanying Local Plan explanatory text or guidance notes. I am struggling to understand why, in these circumstances, Criterion A of the policy does not come into play which would permit the proposed change of use to a single dwelling. I note also that the Parish Council whilst not expressly supporting or opposing the current application nevertheless expresses considerable concern about parking generally in the vicinity of the Henry Jenkins.

I have advised my Client of the contents of your e-mail of 9th May 2018: also that I needed to do some further investigation based on your e-mail and our subsequent discussion – hence the above.

Your comments and the outcome of the discussion with the Committee Chair would be much appreciated.

Kind regards.

Jennifer Hubbard
Sent on behalf of Jennifer Hubbard

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