

CASE OFFICER: Naomi Waddington

**HARROGATE BOROUGH COUNCIL
DELEGATED DECISION BY CHIEF PLANNER**

APPLICATION NO: 6.24.58.F.FUL
LOCATION: The Henry Jenkins Inn Main Street Kirkby Malzeard Ripon North
 Yorkshire HG4 3RY
PROPOSAL: Conversion of part of a public house and flat to create 1 no. dwelling.
APPLICANT: Mr J G Claybourn

DATE CONSULTATIONS EXPIRED:	21.05.2018	DECISION LEVEL:	DELHOP
OVERALL EXPIRY DATE:	21.05.2018	CTTEE REQUEST:	
TARGET DECISION DATE:	13.06.2018	BY WHOM:	
REVISED DECISION DATE:		WARD:	MSHKM3
		PARISH:	024
		AREA TEAM:	DISTR

REPRESENTATIONS:

Parish Council – do not object or support the application but make comments summarised as follows:-

- Pleased the application retains the original building
- smaller houses would create homes for younger people. Two houses could be created.
- submitted plans inadequate
- lack of front entrance door
- 80% of residents responding so far prefer the regeneration of the HJ as a Community Hub - remaining section not large enough for a public house to be viable
- after sale of this and any further parts of the HJ it is not clear the HJCC can acquire the property as a whole to carry out their proposals or any compulsory purchase can be made
- doubts about the likelihood of the regeneration now being a realistic prospect
- section of the property to which this application applies was not part of HJ until 1971 having originally been a Joiner's workshop.
- any access from Back Lane to the remaining sections of the property would be undesirable
- commercial re-development of the building could create significant traffic and parking issues in an already busy part of the village.
- property has been vacant for 7 years, its boarded up appearance is undesirable

HBC Economic Development - No objection

HBC Environmental Health – Recommend conditions regarding land contamination, noise mitigation and air quality

HBC Estates - 'The property has not been assessed under policy CFX by a specialist Licenced

Valuer as Estates are not qualified to assess Licenced Premises.'

Natural England – comments made

NYCC Highways – No response received

3 letters of support summarised as follows:-

- Been for sale for 7 years
- Interested parties have had adequate time to make offers
- No offers made by HJCC
- HJCC have said they have no interest in the remaining part of the pub
- On what grounds do objectors feel the whole community wants a community use?
- Successful community pubs are where there is a lack of commercial services
- KM has a range of commercial services
- HJCC interest is based on providing a range of commercial services which will jeopardise existing services
- HJCC proposed uses would not comply with CFX
- CFX should not apply to this application as criterion A is met due to creation of unacceptable parking and traffic
- There are parking problems on Main Street
- The original HJ had no car park, the extension and parking was acquired around 1971
- Thought the Council would welcome proposal which reduce parking demand
- Proposal has community benefits, enhancement of site, reducing parking pressure
- Proposal retains character of building
- Improvement to the visual appearance of Main Street
- Proposal will encourage the remainder of the site to be utilized
- Preferable to create two smaller homes than one
- Villagers did not support the pub
- The premises were available to anyone to buy, no one chose to
- The HJ as we know it has gone and we need to move on
- HBC needs to agree to keeping the façade of the historic building and allowing some housing.

63 individual letters of objection, a letter of objection from Henry Jenkins Community Co-op (HJCC), along with 1 letter making comments but neither objecting to or supporting the application, summarised as follows:-

- There is a fully funded offer to the owner to buy the whole property as a community facility and funds to refurbish
- Owner refuses to accept the market value offer made by the community
- proposal ignores opinion of independent planning inspector who reported the HJ was viable as a community asset
- Splitting the property reduces the viability of a creating a community pub and village facility
- blatant attempt to take advantage of loophole in planning law and circumvent intent of

previous decision to protect as a community asset

- proposal attempts to negate the ACV listing and ignore policy CFX
- In breach of policy CFX as the conversion of the premises would remove the possibility of community use
- Proposal renders the remaining building virtually useless
- The pub needs all the building including kitchen, car park and accommodation to be a successful venture
- Site should remain a community asset to the village.
- Proposal destroys concept of a village amenity
- Site could be an amazing community facility.
- Submission claims the building is not part of the historic HJ, but the former joiners shop merged with the pub in 1965
- Submission claims historic events are relevant to the application, they are relevant to NPPF and CFX
- Site is not unused brownfield but a A4 public house use
- vibrant community asset had been allowed to deteriorate
- Degeneration of pub is a cynical ploy to obtain planning permission for houses.
- the village needs a proper village pub with all the extras it would provide if it was a Community hub.
- Applicant intended to make money from the building and made no effort to run it as a Public House.
- The space should be used to enhance the village
- size of a pub is not a factor in its closure, business model is
- strong village support for regeneration of the Henry Jenkins to provide employment, B&B facilities and coffee, benefitting rural community
- derelict, neglected and unsightly'eyesore
- Conflict between house and pub
- three public premises have co-existed for many years
- support local business activity
- expected Increase of village housing will require additional community facilities
- vibrant community asset had been allowed to deteriorate
- overseas visitors doing the TOUR crave the quintessential English village pub icon
- The Henry Jenkins Co-operative have worked tirelessly in organising viable options/community buyout
- HJCC have excellent ideas for the premises ,boosting economy
- there are other local thriving community pubs
- interim survey results demonstrate undeniable public support for a community buyout.
- The building has deliberately been allowed to fall into disrepair in an attempt to game the planning system
- Parish council response undervalues HJCC results as Parish Council suggested housing
- historic pub with a proud history. Historical links and community assets lost cannot be replaced
- buildings should retain its original function and appearance
- need the support of the council to use compulsory purchase to ensure that the building is returned to the community
- need for B&B accommodation in the village
- previous applicant hopes by transferring ownership of part of the pub he can get it reclassified as residential
- A regenerated Henry Jenkins could encourage people to go out more helping combat

social isolation

- no serious attempt to market the Henry Jenkins as a pub, or exploration of options to keep as a community facility
- disposal of Asset of Community Value not a "relevant disposal" under terms of legislation

CONSULTATIONS RECEIVED FROM:

Estates Manager
Parish Council
Natural England Sites Within AONB
Economic Development Officer
EHO Contaminated Land

RELEVANT POLICIES:

NPPF National Planning Policy Framework
PG Planning Practice Guidance
LPC01 Harrogate District Local Plan (2001, as altered 2004) Policy C1, Conservation of Nidderdale A.O.N.B
LPCFX Harrogate District Local Plan (2001, as altered 2004) Policy CFX, Community Facilities Protection
CSEQ1 Core Strategy Policy EQ1: Reducing risks to the environment
CSEQ2 Core Strategy Policy EQ2: The natural and built environment and green belt
CSSG4 Core Strategy Policy SG4 Settlement Growth: Design and Impact
OPGVDK Other Planning Guidance: Kirkby Malzeard Village Design Statement

OFFICER REPORT

The Henry Jenkins pub is constructed of stone which has been painted under a pitched tile roof. There are a number of extensions and outbuildings to the rear. The main building faces onto Main Street and lies directly at the back of the footway. A vehicular access to the side leads to a car parking area to the rear which is enclosed by a stone wall along the boundary with Back Lane. Terraced houses lie to either side of the pub on Main Street.

Planning permission is sought for the conversion of part of the public house to create one dwelling. The whole of the Henry Jenkins was designated as an Asset of Community Value in July 2017. The proposal relates to the eastern section of the pub and the access and car park to the rear. The site is within Nidderdale Area of Outstanding Natural Beauty (AONB).

MAIN ISSUES

1. LAND USE PRINCIPLE
2. LOSS OF COMMUNITY FACILITY
3. HIGHWAYS, ACCESS AND PARKING
4. RESIDENTIAL AMENITY

RELEVANT SITE HISTORY

16/01478/FUL Demolition of public house and outbuildings and erection of 4 dwellings (Site Area 0.09ha). REFUSED 01.03.2017 for the following reason:-

The proposal would result in the loss of a community facility (public house) thereby reducing the variety of locally based community facilities to the detriment of meeting the present and future social needs and aspirations of this rural community. Furthermore insufficient evidence has been submitted to demonstrate that there is no reasonable prospect of the existing use continuing on a viable basis or a satisfactory viable alternative community use being secured. The proposal is therefore contrary to Local Plan policy CFX and paragraphs 69 and 70 of the NPPF

and it is considered that this harm would significantly and demonstrably outweigh the benefits of the modest contribution the application would make to housing supply.

The application was dismissed on appeal on 22 February 2018

ASSESSMENT OF MAIN ISSUES

1. LAND USE PRINCIPLE

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions. There is a presumption in favour of sustainable development and the NPPF advises that there are three dimensions to sustainable development: economic, social and environmental.

Paragraph 49 states that 'relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.'

The Council's Strategic Housing Market Assessment (SHMA), published September 2015, provides information on objectively assessed housing need. An updated housing supply position at April concluded that there is a 4.5 years supply of housing land, including a 20% buffer.

As the Council cannot demonstrate a 5 year supply of deliverable housing sites the guidance in paragraph 14 of the NPPF requires that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.

Paragraph 55 of the NPPF suggests that housing should be located where it will enhance or maintain the vitality of rural communities.

The site is situated within the village of Kirkby Malzeard which is considered as a sustainable

location for housing development. The principle of residential development of the site is therefore considered acceptable subject to there being no adverse impacts that would significantly and demonstrably outweigh the benefits of providing one new dwelling.

2. LOSS OF COMMUNITY FACILITY

A key principle of sustainable development is to meet the present and future social needs and aspirations of local communities by providing opportunities for and access to community facilities.

Paragraph 69 of the NPPF suggests that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Planning policies and decisions should aim to achieve places which promote, among other things, opportunities for meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity.

Paragraph 70 states that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:-

- plan positively for the provision and use of shared space, community facilities (such as shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
- guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the communities ability to meet its day-to-day needs;
- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community
- ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

Local Plan policy CFX states that proposals involving the loss of land or premises in community use, including community halls, schools, colleges, nurseries, places of worship, health services, care homes, libraries and public houses will not be permitted except where it can be shown that:

- A) continued community use would cause unacceptable planning problems; or
- B) a satisfactory replacement facility is provided, in a suitably convenient location for the catchment served, prior to the commencement of development; or
- C) there is no reasonable prospect of:
 - i) the existing use continuing on a viable basis with all options for continuance having been fully explored, as a priority and, thereafter,
 - ii) securing a satisfactory viable alternative community use.

The guidance document Policy CFX: Guidelines for Development Control, published in January 2004, sets out how the policy will be applied. Paragraph 3.1 states that 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. Planning permission which would result in the loss of a building or premises in community use will only be granted if at least one of the three policy criteria is met.

The application does not indicate that continued community use of the building would cause unacceptable planning problems and therefore criterion A is not met.

With regard to criteria B the guidance document advises that a replacement facility could be provided either off site or on site as part of a mixed use development. The replacement facility must be a new facility. The existence of a similar community facility located elsewhere (e.g. another public house in the settlement) will not be considered as a satisfactory replacement.

The application does not propose a replacement community facility either on site or off site and therefore criterion B is not met.

Criterion C relates to viability and requires that all options which would enable the existing community use to be retained should be fully explored. The guidance document sets out, in paragraphs 5.1 and 5.2, the marketing evidence required to support a planning application:

- copy of the sales particulars;
- details of the original price paid and the new guide price;
- schedule of the advertising carried out, with copies of the advertisements and details of where and when the advertisements were placed along with an estimate of the expenditure incurred from advertising;
- the confirmed number of sales particulars distributed, along with a breakdown of where the enquiries resulted from;
- details of the number of viewings;
- resulting offers and why they were dismissed;
- details of the period when a For Sale/To Let board was displayed;
- timetable of events from the initial appointment of agents to current date.

In the case of licensed premises, the following information will also be required:

- the last three years trading accounts;
- where a dining facility is provided, details of the market aimed at and the number of covers available;
- who the licence is currently held with and when it is due for renewal;
- the opening times for the premises.

No information has been submitted with the application to demonstrate there is no reasonable prospect of the existing use continuing on a viable basis, that any options for continuance have been explored, or that any attempt has been made to secure an satisfactory viable alternative community use.

The guidelines to policy CFX state "In the case of large sites or buildings, it may be possible to retain the existing community use on a viable basis by 'down-sizing' to occupy only part of the premises. However, this will only be acceptable if the smaller facility is fully able to meet the needs of the community. In all cases, the views of the local community should be sought."

The Local Planning Authority would have to be satisfied that the remaining pub facility would fully address the community needs having taken account of the local views and that the pub facility would be available prior to the loss of the existing facility.

The current application relates to the conversion of part of the public house to create one dwelling only. The application does not address the remaining section of the former pub, and does not show how the remaining pub facility would meet community needs. There is no

evidence that the remainder of the building could meet the needs of the community or be available to meet those needs.

As submitted there proposal therefore fails to comply with the requirements of policy CFX.

Policy CFX has recently been examined in connection with the planning appeal following refusal of an application to demolish the whole of the pub and erect 4 houses at The Henry Jenkins earlier this year . The Inspector commented:-

“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. Criterion C is therefore most relevant since it was advanced by the appellant that the existing use could not continue 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”

“12. Whilst I can take from the evidence therefore that there seemed an increasing likelihood that the HJ would not continue as a public house I cannot ignore the fact that at least some explanation for that rests with how it has been handled since the appellant’s ownership. In essence, this was an insufficient marketing campaign subsequently compounded by the effective stripping of the entire interior of the building. The appellant has stated that this was to present a blank canvas to show what prospective purchasers or renters could do but I struggle to reconcile this argument. Certainly my experience of the building from my site visit presented something of an unfinished interior strip which also seems to have removed internal walls and doors without sufficient justification. This has resulted in showing a very oppressive, dark and sorry state that, in my view, would be more likely to put off potential interest than necessarily garner it.

13. With this in mind, I remain to be convinced that the potential re use of the HJ as a going concern has been sufficiently investigated to either prove there is no demand or that it can continue as a viable business. There may be a possibility that it would not survive as a public house in the longer term when one considers the known struggles that rural public houses face but based on what I have seen and heard, I am not satisfied that the HJ was given sufficient chance to adequately prove that beyond the doubt in my mind.

14. Moving then to the second part of criterion C which addresses securing a satisfactory viable alternative community use. Whilst not an explicit requirement of CFX in terms of obligations to any owner or party wanting to market a premises, there is an inference here that CFX leans towards securing an alternative use over other options going forwards.

15. The appellant’s marketing strategy focussed on letting the HJ as a public house which was not incorrect but having regard to this element of the policy it seems somewhat short sighted to

have not explored further the possibility of an alternative community use. The appellant did explain why they felt that a community use would struggle given a number of factors (some of which I shall come onto later) but namely the provision for car parking. I would have to at least consider however that I personally do not see the car park as overly small and in any event the mainstay of a lot of trade for any public house or community use would arguably come from those within walking distance. This adds to my concerns over the handling of the HJ in seeking an alternative use.

16. The Henry Jenkins Community Coop (HJCC) are a recently formed group with the objective of raising funds to buy back the HJ and turn it into a use, or small number of uses, that would be of benefit to the community. They have raised a committed £180,000 and made a formal offer to the appellant which has been declined. Whilst I could debate the reasons as to why, there seems little merit since this is a private commercial decision into which a number of variables have to be factored. I appreciate this.

17. What the work of the HJCC shows however, in the shape of the level of interest, the money that has been committed and the initial national funding secured is that there is not only a clear demand and strong willingness to re-use the HJ for community purposes but also the proverbial money being put where the mouth is. Whichever way one would like to look at it, £180,000 is not a small amount of money when it is committed from local people. The strength of local feeling is also reflected in the recent recognition of the HJ as an Asset of Community Value (ACV). The HJCC have set out options for the re use, sought expressions of interest, raised substantial funds and begun to explore the viability of various uses. All of these factors cannot be ignored. In effect, there seems to be a very real possibility on the strength of what I have seen that there are options to re-use the HJ in a sustainable way and to give this limited weight in the consideration of this appeal would not only be unreasonable but would be contrary to what CFX is trying to achieve for rural communities. There is, I consider, a distinct difference between what the HJCC have achieved up to now and simply a large body of local people objecting.

18. With this in mind, and taking into account my earlier findings, the proposals to demolish the HJ and erect four dwellings would be contrary to what Policy CFX of the Local Plan seeks to achieve. I have set out the aims of this policy above. Specifically in that it would result in the loss of a facility of clear and demonstrable value to the community. In essence, and on the basis of the arguments I have seen and heard, the loss would be unjustified. There would also be conflict with paragraph 70 of the Framework insofar as the appeal scheme would not adequately guard against the loss of valued facilities and services.”

The Inspector concluded at paragraph 24 “ It is my conclusion that the proposed development would lead to the unjustified loss of a community facility. Such that it would lead to clear conflict with the development plan and the Framework. Whilst having regard to all other matters raised, including those that expressed support for the appeal scheme, it is for this reason that the appeal is dismissed.”

With the exception of this part of the building now being in separate ownership, circumstances are not considered to have changed since the appeal decision. No supporting information has been submitted to demonstrate compliance with policy CFX, and the proposal would result in the unjustified loss of a community facility

3. HIGHWAYS, ACCESS AND PARKING

Core Strategy Policy SG4 requires the travel impact of any scheme to avoid adding significantly to any pre-existing problems of access, road safety and traffic flow.

The submission shows The existing vehicular access and car park serving the public house is to be utilised by the proposed dwelling, leaving no car park for the remaining section of the currently vacant Henry Jenkins pub

No response has been received to the consultation with Highway Authority, however is dismissing the earlier appeal the Inspector commented at Paragraph 19:-

“The appellant has advanced that there is an offer currently on the table for the first floor of the building and the car park from a third party. The first floor is laid out as a single flat. It was explained that the sale is yet to go through. The appellant has suggested that should this appeal be dismissed then the sale will proceed. Whilst something of a theoretical debate since this is yet to happen and as such it seems far from done and dusted, I accept that this would deplete the car parking provision on site. I stand by my earlier comments however in that if a community use would function in the HJ, its scale and catchment would arguably mean that the mainstay of its trade or attendance would be within walking distance. Consequently, it does not strike me that parking around the building would be a problem to the extent that the safe use of the highway would be adversely affected”.

Therefore the proposal is considered acceptable in highway terms

4. RESIDENTIAL AMENITY

The NPPF sets out twelve core planning principles, including one to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Core Strategy Policy SG4 requires development to maintain and where possible enhance visual, residential and general amenity, whilst Saved Local Plan Policy HD20 requires development proposals to maintain the privacy and amenity of neighbouring residents and occupiers of adjacent buildings.

The neighbouring property to the east, Two Steps, has clear glazed windows to the side elevation facing the access drive and part of the car parking area to the pub. The submission indicates no external alterations are proposed to the building. The proposed use of the access and existing car park to serve a dwelling is not considered to result in harm to existing levels of amenity afforded to the neighbour.

Occupants of the proposed dwelling will be aware of the neighbours existing clear glazed windows, however as the windows primarily face the blank side elevation of the pub they are not considered to be sufficiently harmful to warrant a recommendation to refuse on these grounds.

Environmental Health recommend conditions regarding land contamination and a noise mitigation scheme. This is to protect occupants of the proposed dwelling from land contamination and to ensure 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

CONCLUSION:

The proposal would result in the loss of a community facility. No evidence has been submitted to demonstrate that the existing or alternative community use would cause unacceptable planning problems, that a satisfactory replacement facility is provided, or that there is no reasonable prospect of the use continuing on a viable basis or of a satisfactory alternative community use being secured. The proposal is therefore contrary to Local Plan policy CFX. In addition the proposal is in conflict with paragraph 70 of the Framework as the scheme would not adequately guard against the loss of valued facilities and services.

RECOMMENDATION

That the application be REFUSED. Reason(s) for refusal:-

- 1 The proposal would result in the loss of a community facility (public house) thereby reducing the variety of locally based community facilities to the detriment of meeting the present and future social needs and aspirations of this rural community. No evidence has been submitted to demonstrate that the existing or alternative community use would cause unacceptable planning problems, that a satisfactory replacement facility is provided, or that there is no reasonable prospect of the use continuing on a viable basis or of a satisfactory alternative community use being secured. The proposal is therefore contrary to the provisions of Local Plan policy CFX. In addition the proposal is in conflict with paragraph 70 of the National Planning Policy Framework as the scheme would not adequately guard against the loss of valued facilities and services

CASE OFFICER: Naomi Waddington
