



Appeal Decision

Hearing Held on 31 January 2018

Site visit made on 31 January 2018

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2018

Appeal Ref: APP/E2734/W/17/3184236

The Henry Jenkins Inn, Main Street, Kirkby Malzeard, Ripon, 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 Fielder Homes against the decision of Harrogate Borough Council.
 - The application Ref 6.24.58.E.FUL, dated 30 March 2016, was refused by notice dated 1 March 2017.
 - The development proposed is described as 'Erection of four number dwellings and garages following demolition of pub and outbuildings.'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development states that the scheme includes garages which were not shown on the proposed plans confirmed at the hearing. Following discussions between the appellant and the Council prior to the determination of the planning application they were omitted. This was owing to the Council expressing concerns over the effect they would have on the character and appearance of the area. The description I have set out above is taken from the planning application form but for clarity, the garages no longer form part of the proposed development.

Main Issue

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

Reasons

4. The Henry Jenkins Inn (HJ) is a linear frontage building, forming a terrace with attached dwellings that face Main Street, abutting the back edge of the footway. It is made of a variety of materials which include stone. Some of the exterior is painted. The roofs are gabled, finished in a mix of concrete tile and slate. There are a number of extensions to the rear in two as well as single storey which stretch into an open car park. There is a wall demarcating the rear boundary of the site with Back Lane. Access to the car park is via a

narrow gap between the main frontage building and the closest unattached dwelling. The proposed development would see the HJ, its extensions and outbuildings demolished and a terrace of four two storey dwellings erected on the frontage. Linear gardens would extend to the rear where there would also be off street parking in the form of a communal court. A new vehicular access would be formed from Back Lane.

5. Chapter 14 of the Local Plan¹ sets out the Council's policy position in respect of community facilities. Policy CFX specifically seeks to encourage the retention of a wide variety of locally based community facilities in order to ensure people have good access to a range of services and thereby maintain viable and sustainable communities, particularly in rural areas. CFX explicitly identifies public houses as a community facility.
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. The Council has produced additional guidance to accompany CFX. It goes into further detail as to what the expectation would be in order to meet the specific criteria. I shall not repeat them here albeit I do address them below.
7. The appellant took ownership of the HJ from receivers in 2012. Taking into account added taxes and charges; this was for in the region of £180,000. Anecdotal evidence from both the appellant and local residents suggests that for at least four years prior the business had suffered from a succession of short term, evidently poor quality, tenants. It had become clear during this time that funds needed to be invested in the business for it to move forward. Whilst evidence before me suggests that the appellant is also a housing developer, they maintain that, at the time they purchased the HJ the intention was always to re-open it as a public house. Given the appellant's track record in this respect I have no reason to dispute this despite local residents' views to the contrary. Indeed, there is some evidence to suggest the appellant actively sought to secure a new tenant through the use of various incentives. For a number of reasons, this did not come to fruition.
8. The appellant did then actively market the premises in the search for a new tenant. The appellant would privately rent out the building, giving any tenant largely free reign to run the business as they wished. This is a model that they have followed with other business in their portfolio. This is not an unusual situation. This marketing evidently took place in the four years between 2012 and 2016. CFX does require evidence of marketing to in effect demonstrate that reasonable steps have been taken to secure a sale or rent for the existing use.
9. There were some areas where I consider the appellant's marketing strategy was deficient when compared to what CFX and its accompanying guidance

¹ Harrogate District Local Plan – Selective Alteration, May 2004

requires. Such as the fact that the appellant did not have the building professionally valued. They had in mind what they considered a reasonable price taking into account what they outlaid, a price which however did not appear on any formal online advertising which does to my mind have the potential to put off some interest. Certainly if I were looking to purchase something, I would be interested to know the price at the outset. This is notwithstanding how some agents chose to advertise. In any event, some of the sales particulars that were presented to me at the hearing showed clearly where offers should be pitched. The strategy was less than conventional, relying heavily on social media and word of mouth. I would consider this to be an appropriate method, but more of a supplementary one than what was arguably the main method in this case.

10. I accept the appellant's reasoning for not using certain agents given how they levy their charges in perpetuity. There is certainly something about that process which seems unfair. That aside, I was not given a sufficiently convincing case as to why the HJ could not have been taken on by a commercial estate agent who's fee structure would have been more reasonable and only charged if they sold/rented it.
11. My criticism of the marketing strategy is not to impugn the ability, knowledge or track record of the appellant since they clearly have an extensive portfolio of successful businesses. I also accept that their strategy did yield some offers that were discussed and there were explained reasons for refusing them. I do feel however that this was more to do with the appellant actively approaching prospective tenants rather than the other way around. I acknowledge that detailed accounts were not available to show performance given the circumstances of the appellant coming into ownership of the HJ and indeed given the problems it has suffered from up to that point it seemed clear that the HJ was going in the wrong direction.
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 Framework² insofar as the appeal scheme would not adequately guard against the loss of valued facilities and services.

² The National Planning Policy Framework 2012

Other Matters

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.
20. Moving on, it seems eminently possible that if a single flat could exist above a public house historically then there seems no logical reason why it could not exist above another community use on the ground floor which appears on the face of what I was informed to not be part of any impending sale. I accept there would be a potential problem of then the HJCC having to negotiate with two parties but I do not see this as insurmountable.
21. In any event, it is unclear as to whether the flat may be tied to the HJ in some way such as whether it is part of the same planning unit or indeed whether it has to be occupied by the tenant of the HJ if it were to be a public house. I accept that some of these restrictions may be outside of planning controls but nonetheless this adds doubt to my mind as to whether the sale of the first floor and the car park would necessarily affect anything fundamental. In essence, the separation of the two elements may not be as clear cut as the appellant considers.
22. As part of discussion at the hearing, the matter of the Mechanics Institute was raised. This is another community owned building located immediately opposite the HJ. There was some concern expressed that a community use for the HJ could have implications for that. However, I heard that the Mechanics Institute is used primarily as a venue albeit some sales take place on the premises of the ilk that may be at the HJ should anything come forward. The Mechanics Institute appears to be run well through the support of the community and performs admirably. Contrary to some opinion, this gives me some further faith that similar support would be offered for the HJ and that, notwithstanding there may be some competing sales, there seems to be no clear reason why the two could not operate harmoniously, offering complimentary services.
23. I note that the appeal site is in the Nedderdale Area of Outstanding Natural Beauty (AONB). I am mindful of paragraph 115 of the Framework as well as the statutory duty set out by the relevant legislation³. In this respect, it is common ground between the parties that the appeal scheme would not have an adverse effect. The proposals would replace a two storey frontage building with another, which would be subdivided into four separate buildings but essentially on the existing footprint of the HJ. Subject to appropriate materials and external finishes, the appeal scheme would assimilate with the buildings

³ Section 11A(2) of the National Parks and Access to the Countryside Act 1949, section 17A of the Norfolk and Suffolk Broads Act 1988 and section 85 of the Countryside and Rights of Way Act 2000.

making up the built up parts of the village adequately and in so doing not lead to any harm to the AONB.

Conclusion

24. Be this as it may, and for the reasons I have set out above, 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.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Fielder	Appellant
Mr Robert Beal	Plan B Planning and Design

FOR THE LOCAL PLANNING AUTHORITY:

Miss Jan Belton	Harrogate Borough Council
Mr Stuart Mills	Harrogate Borough Council

INTERESTED PARTIES:

Mr Richard Sadler	Henry Jenkins Community Coop
Mr Kevin Ison	Local Resident
Mr David Robinson	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

FOR THE APPELLANT:

- Letter from the Playing Fields Association regarding community facilities in the village
- Letter from James A Baker Chartered Surveyors detailing result of marketing campaign for The Crown Inn, Main Street, Gewelthorpe
- Email and attached letter, including reply to, from representatives of HJCC regarding an offer for the HJ
- Copies of advertisements from x2 selling agents Guy Simmonds and Sidney Phillips showing public houses for sale or rent
- Email from Richard Sadler to David Fielder regarding results of a committee meeting
- Newspaper extract regarding the JH, the HJCC and a bid to purchase
- Email communication between Richard Sadler, David Fielder and a third party regarding offers for the HJ
- Sales particulars from Blacks regarding The Grantley Bar and Restaurant in Ripon
- Details of advertising for the HJ
- Extract from appeal decision reference APP/E2734/W/16/3147943

FOR THE HJCC:

- Interim survey results regarding interest in purchasing and using the HJ
- Colour brochure advertising the HJCC and plans for its community re use
- Email from MJD Hughes to David Fielder regarding an offer to purchase the HJ
- Bank statement extract showing funds in an account under the name of the HJCC