



Appeal Decision

Hearing held on 11 January 2023

Site visit made on 12 January 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Appeal Ref: APP/E2734/W/22/3306214

The Henry Jenkins Inn, Main Street, Kirkby Malzeard 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 David Fielder against the decision of Harrogate Borough Council.
 - The application Ref 21/04657/FUL, dated 22 October 2021, was refused by notice dated 31 May 2022.
 - The development proposed is the conversion of former Henry Jenkins public house with flat above to dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Harrogate Borough Council against Mr David Fielder. This application is the subject of a separate decision.

Preliminary Matters

3. After the hearing closed, the appellant submitted an email from the landlady of The Crown Inn at Grewelthorpe. It was explained why this document was not able to be tabled at the hearing and I agreed to accept the information. The information was also circulated to the parties at the hearing by the appellant and I gave a short period for responses.
4. An email was received from Mrs Aksut acting in a private capacity. I have not opened the various weblinks which were included in this submission and I have restricted myself to the comments from Mrs Aksut that respond to the issues raised by the information from the landlady at The Crown Inn. I gave the appellant a further period to respond to Mrs Aksut's submission and have taken this response, dated 26 January 2023, into account. I am therefore satisfied that the process for the consideration and comment on the information submitted after the hearing has been fair.

Main Issue

5. The main issue is whether or not there is a reasonable prospect of the public house use continuing on a viable basis and, if not, whether or not there is a reasonable prospect of securing a viable satisfactory alternative community use.

Reasons

6. The Henry Jenkins Inn is located on Main Street within the centre of Kirby Malzeard. It lies in a run of two storey properties and the public house building includes the eastern section which was incorporated into the public house in the 1970s. There is an open area to the rear which was previously used as a car park and which is accessed along the eastern side of the building.
7. The public house was closed at the time when the building was purchased from the receiver by the appellant in 2012. It appears, on the balance of information before me, that the public house business had struggled for some years before that time and there were a number of landlords. The appellant advertised the premises from 2012 and sought to install a tenant to run the public house, which is a model he has used with other premises he owns. This was unsuccessful and subsequently the property has been marketed for sale to the present day.
8. Many of the internal fittings and fixtures were removed from the building in about 2016 and the premises are presently boarded up and are in a fairly poor state of repair.
9. The eastern section of the building and part of the rear car park was sold to another party in 2018. Planning permission was granted at appeal¹ in December 2020 for this eastern section of the public house to be converted into a dwelling. This permission is extant but has not yet been commenced. Internally the original public house is still linked to the eastern section. The present appeal concerns only the western, original, part of the public house. I will refer to this part of the building as the original Henry Jenkins Inn in subsequent parts of this decision. This is the building which is owned by the appellant and subject of the appeal proposal. The appeal building includes a two storey front section and rear single storey projections, together with part of the rear car park which extends to Back Lane.
10. The appeal scheme seeks to convert the original Henry Jenkins Inn building to a single dwelling. No external changes to the building, other than the necessary renovations, are proposed. Onto Back Lane, the boundary wall would be realigned and two car parking spaces would be provided.
11. If permission was to be granted to change the use of the building to a dwelling, the public house use of the building in planning terms would be lost. Policy HP8 of the Harrogate District Local Plan 2014-2035 (the Local Plan) sets out the policy approach for the consideration of the protection and enhancement of community facilities, such as public houses. It is agreed by the main parties that the proposal would not result in a conflict with criteria A and B of Policy HP8 and I agree. The key issue in this case is whether or not the scheme would meet with the requirements of criterion C. This specifies, in summary, that the loss of land or premises currently or last in community use (including public houses) will be permitted only where it can be clearly demonstrated that there is no reasonable prospect of the existing use continuing on a viable basis with all options for continuance having been fully explored, and thereafter there is no reasonable prospect of securing a viable satisfactory alternative community use.

¹ APP/E2734/W/19/3240780 dated 18 December 2020

12. To assist with the judgement as to whether criterion C has been met, the supporting text to Policy HP8 sets out a number of requirements for the marketing of the premises.
13. The marketing approach of the appellant, including with adverts via social media, approaches through his contacts, a for sale board attached to the premises and with some newspaper adverts, has not always been conventional in the way that a typical property agent may market a premises. However, the appellant owns and manages a portfolio of properties, including public houses, and appears to have good contacts including at a local, regional and national level. There is evidence that his marketing approach has been successful with the letting and sale of public houses elsewhere in the region, including at times with properties where specialised property agents had not been able to secure a let or sale.
14. The property has been available for over 10 years and it seems to me given the marketing, including the publicity resulting from articles in the press, that it should be well known both locally and regionally that the building is for sale. The papers that I was presented with at the hearing and other examples which are argued to be from persons interested in the building are generally before the previous appeal and were not pursued beyond an initial inquiry.
15. While there has been criticisms of the appellant's unconventional approach to marketing (and I raise concerns with the valuation approach later), other than from the Henry Jenkins Community Pub Ltd, the marketing has shown that there is no other substantive interest from those in purchasing the building and using it as a public house. I consider that the marketing, when taking into account the extent, type and period of marketing as a whole, has been sufficient to highlight the availability of the building such as to provide the opportunity for any individual or group to come forward to demonstrate an interest in reopening the building as a public house. I conclude that, notwithstanding that not all the requirements of how the building should be marketed as listed in the supporting text to criterion C have been met, in terms of highlighting the availability of the public house building for sale, in practise, the approach has been sufficient.
16. The Council consider that there should have been further marketing to demonstrate that there is no alternative community use that individuals or groups would wish to undertake in the building. However, again I consider that the building is well known locally as being for sale. I understand that the Parish Council has in the past investigated whether there were community users who would wish to use the building but no viable users were identified.
17. Kirby Malzeard is fairly well served by community buildings, some of which are said to be under used, and has a wide variety of community groups which utilise the buildings that are presently available. Even if the wider HG4 postcode was considered applicable, there appears, after the fairly long period of time which the building has been on the market, no registered and substantive interest from any commercial or non-commercial organisation for an alternative community use of the building. I consider, when taken in the round, that the marketing and general knowledge regarding the building, is such that its availability is sufficiently well known that the general approach to marketing that would have allowed interest to come forward for other community uses has been sufficient.

18. The only sustained and substantive interest that has come forward to reuse the building is from the Henry Jenkins Community Pub Ltd (HJCP). At the hearing, the representatives of the HJCP explained its intentions to use the building as a community pub. Until recently, the HJCP had indicated it required the whole of the Henry Jenkins Inn, and that is still its desire although the eastern section is not available. With their proposals for the larger building there was quite a wide range of potential supporting uses which were indicated may be options in addition to the pub use. The HJCP now indicate, in the present circumstances, that it could accommodate a community pub within the original Henry Jenkins Inn, probably with some form of rear extension(s). This use would effectively, from what I heard, fall within the existing public house use of the building.
19. The appellant is experienced in the property market and especially the pub trade. He does not consider that it would be possible for two public houses to succeed in the village and that if the community pub was to open, this would jeopardise the Queens Head that presently serves the village. The landlord of the Queens Head has written to raise concerns including in this respect. The problems with the viability of rural public houses are well documented and I understand the points that are being made². Furthermore, the village also has a fully licenced premises at the Mechanics Institute across the road and this building effectively operates as a village hall and community centre. There is also the Highside Sports Pavilion that is available.
20. On the other hand, the HJCP set out their intentions for the building, with the community pub aspect providing a pub and eating establishment that would aim to be different to the present offer available and it is argued would complement the existing village premises such that it would add to the local community facilities. The HJCP is now constituted as a Community Benefit Society and the group was formed in 2016 with the intention to purchase and run the Henry Jenkins Inn as a community pub.
21. I note the Council's Economy and Transport Officer, at the planning application stage, did not object to the application from an economic growth perspective. However, the Parish Council, through its representatives at the hearing and in its written submissions to the appeal, explained that it has been working with the North Yorkshire's Local Enterprise Partnership and see the community pub at the Henry Jenkins Inn as a crucial part of a healthy rural economy and which would tie in with the growth in hospitality (air B&B, camping and holiday cottages) in the area.
22. The Parish Council is now supportive of the HJCP intentions to buy the public house and believe that the campaign by the HJCP is based on a genuine desire to improve facilities for the community. I appreciate that the Parish Council, at the application stage, were neutral in its response and the appellant questions whether the Parish Council has debated this again at one of its subsequent meetings and made a formal resolution to support its response at the appeal stage.
23. Nevertheless, while I have noted these comments, it does appear that the views of the Parish Council have changed since that earlier response and this is reflected in the letter to the Borough Council following its meeting on 4 January 2023. This letter, which seeks Asset of Community Value (ACV) status for the

² I have taken into account all the submissions and appendices from the appellant that highlight the difficulties that pubs, and rural pubs in particular, are having and are likely to have in the future.

building³, amongst other comments, explains that the Parish Council consider that the Henry Jenkins Community Pub is a core component of plans for a community that is economically healthy and that prioritises the welfare of residents. This position was supported by the representatives of the Parish Council at the hearing.

24. The appellant makes substantive comments regarding the ability of the HJCP to afford and run a pub on a viable basis. He makes, amongst a series of points that I have taken into account, that the HJCP does not have the money in the bank to purchase the building. The original section of the Henry Jenkins Inn is, and has been for some time, available for purchase and the appellant argues that the HJCP have not been in a position to purchase the buildings as no monies are readily available. However, the HJCP explain that it is a willing buyer and has a "share-holding membership" of about 176 members who have pledged approximately £229,500.
25. These pledges have not been called upon and therefore it is not clear in practice how much the HJCP could raise in this respect. I understand the appellant's view that this money could have been sought and therefore this would have provided certainty and would have demonstrated the financial ability of the HJCP. Without such certainty being demonstrated the appellant does not believe the HJCP is in a position to or can afford the building. However it is explained that the HJCP do not wish to call on these monies from those that have pledged until a purchase price is agreed and this agreement has not been possible.
26. Taking all these matters into account, I consider that the HJCP has maintained a clear commitment over about 6 years to purchase the building and have established a legal entity to pursue that intention. The HJCP has explained that they have kept those who have pledged informed of the latest situation and campaigned locally. This is more than simply a group of local residents who have an aspiration to reopen the pub and, in my view, the HJCP has demonstrated a formalised and committed approach with pledges, albeit not called in, to give reasonable confidence that it should be able to deliver on its intentions. In these circumstances, on the balance of information before me, I am satisfied there is a reasonable prospect that a substantial part of the money from the pledges would be realised.
27. The HJCP also believes that it would be eligible for grant funding to match the money it would raise from pledges and therefore would be able to purchase and then renovate the building. It appears there are a range of grant funding and loan options that could potentially be suitable now or in the future, such as the Community Ownership Fund, Levelling up Fund and monies that the Parish Council could seek via a loan from the Treasury from what was previously the Public Works Loan Board. Much would be dependent on drawing down the pledges because there is usually a requirement that the grants will only match fund. Again there is uncertainty in this process, but the HJCP has investigated these matters, a very recent expression of interest has been made to the Community Ownership Fund, the HJCP are members of the Plunkett Foundation where they have been seeking advice, and I consider that there would be a reasonable prospect that substantial grant funding and/or loans could be available to help support the delivery of the scheme.

³ The building has been subject to ACV status in the past and the appellant makes the point that the latest request to the Council is no different from a previous rejected application.

28. Even if the scheme could be physically delivered in terms of the building it would be necessary for the public house, even as a community pub, to be run on a viable basis. The previous Inspector in December 2020 considered that a community pub in the original Henry Jenkins Inn would be likely to be viable. Circumstances have moved on since then, and the HJCP has updated its Business Plan to reflect the proposed use of the original Henry Jenkins Inn. However, while some details were explained at the hearing the Business Plan was not available to parties as part of the hearing submissions and this reduces the weight that I can attribute to it. The appellant, based on the information available, raised concerns with the financial approach, such as the proposal for the pub and flat to be subject of separate rents as this would financially disadvantage the tenant, that the pub would not be capable of taking the projected income each day that the HJCP anticipate and that wage levels would likely to be higher, for instance, for a chef. The appellant, with his experience in the pub trade, does not consider that a viable business plan can be established for the original Henry Jenkins Inn.
29. Contrary to these views, the HJCP explain that their latest iteration of the Business Plan has been written by an accountant, that they have taken advice on the business approach and finances from other community pubs and that the business model is different from a traditional pub. They highlight that local people would be shareholders in the business and therefore more inclined to use and support the public house, that the business would have less debt at the start because of how it would be funded, start-up costs could be less with some local volunteer labour and that their information is that community pubs have bucked the recent trends in the pub trade and have every chance of being successful.
30. It is difficult to be precise on the viability of a future business enterprise because much depends on matters such as the cost of purchase, the finances available at the start, and energy and staff costs. The HJCP explained that there are now in excess of 156 community pubs and that only one has been registered as a failure and that pub was then sold to a willing buyer. Taking everything into account, I consider given the nature of a community pub and the financial approach and funding that the HJCP advocate, that it is not possible to discount that there could be a reasonable prospect that the original Henry Jenkins Inn could be run as a community pub on a viable basis.
31. The appellant has explained that he is a willing seller and the building has been on the market for many years. The HJCP have made offers to purchase the complete building and more recently the original Henry Jenkins Inn. These offers have been rejected including because the offer price is too low to reflect the value of the building and, even if a price was to be agreed, the appellant makes the case that the HJCP does not have the funds readily available to complete the purchase. In particular, the value that the HJCP place on the building is criticised by the appellant, including because it was said that it was valued with a caveat that it was a pub closed in default and to be sold within 90 days as if it was held by a receiver. However, that is not the situation with the present building.
32. On the other hand, the HJCP consider that the value that the appellant places on the building is too high and this does not reflect its use and condition. The appellant's asking price for the property appears to reflect the understandable wish not to make a loss on the property and therefore the valuation seems to

have some regard to elements of costs that have occurred in association with ownership such as insuring the property, inspections and professional fees. I have taken into account all the information before me on this matter, including the evidence I heard at the hearing and also that contained within the documents submitted at the hearing⁴.

33. The supporting text to assist with the assessment of criterion C of Policy HP8 of the Local Plan, in paragraph 8.104, explains that in relation to the marketing of current or former public houses, the asking price should be pre-agreed in writing with the local planning authority following an independent valuation (funded by the developer) by a RICS certified valuer with expertise in the licensed leisure sector who is not engaged to market the property. This has not been undertaken and an independent valuation does not form part of the marketing, planning application or appeal submissions. I appreciate that this was not an issue for the previous Inspector in 2020 for the reasons explained in that decision. However, the Local Plan has been in place for some time and I see no substantive reason why this marketing requirement should not now have been undertaken. This is especially the case as the disagreement on the value of the building appears to have been a significant factor that has prevented a way forward as the appellant and HJCP are some way apart on this issue.
34. It is a matter for the appellant as to how much is sought for the building, and whether he wishes to sell the property to any particular party and at what price. However, in deciding whether the conversion of the building to a dwelling is acceptable in terms of Policy HP8 of the Local Plan it is necessary to apply the requirements of the policy and the supporting text assists in making that judgement. The value of the building, and subsequently any purchase price, is a key element in helping to determine whether a public house use of the building could be viable and thereby whether there is a reasonable prospect of that use taking place in the building.
35. I appreciate what the appellant says about the level of property prices within Kirby Malzeard and thereby the value of the appeal premises. However, I am not persuaded by the evidence, in particular because of the absence of an independent valuation, that it has been adequately demonstrated that the building has been marketed at a value, and is available at a price, which reflects the requirements of the supporting text to Policy HP8 of the Local Plan. In these circumstances, all options for acquiring the building that would lead to the continuance of the use have not been able to be fully explored, as required by Policy HP8 of the Local Plan.
36. The submission of purchase price details of some other public houses for sale does not alter my view on this matter as I am not satisfied that they are directly comparable. For instance, the example of the public house in York seems to be in a different type of location and it appears the internal condition is in a better state than the original Henry Jenkins Inn. I attach these examples limited weight.
37. I have also taken into account the two previous appeal decisions concerning the Henry Jenkins Inn and the comments and conclusions of those Inspectors. In some respects the situation has not substantially moved on from those appeals. Nevertheless it is incumbent on me to determine the appeal based on

⁴ Email from David Fielder dated 9 January 2023 with attached letter to Mr Robinson.

the information before me and planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁵.

38. Drawing all these matters together, the original Henry Jenkins Inn is widely known to be available. I am satisfied that all those who may wish to show an interest have had the opportunity to come forward to make their presence known either to use the building as a public house or another community use. In that sense the marketing has been adequate. One potential user has come forward and the HJCP has shown a sustained interest in pursuing a community pub in the extended and now original Henry Jenkins Inn.
39. There are some local residents who believe that the time is now right to convert the building to a dwelling. Others consider that the reopening of the public house would provide a valuable facility which would add to the ability of the community to meet its day-to-day needs and that it was, and could be in the future, a valued local facility. I note that the appellant makes the point that there are less letters of representation in support of maintaining the public house use of the building than those who have pledged to buy shares. However, I place only limited weight on this observation as there are still a fair number of representations in support of the intention for the public house to be reopened and there will be individual reasons why a person will or will not make a public representation to a planning proposal. I have also had regard to the screenshots from local websites which the appellant has included and demonstrate the range of opinions locally on the future issue of the appeal premises. The Parish Council now supports the reopening of the building as a public house and argue it would fit with its view for the wider community and economic aspirations for the area.
40. Overall, while there are some concerns with the details for the community pub project which I have highlighted above, I consider that the plans of the HJCP to open a community pub have a reasonable prospect of succeeding and being viable. There can be no certainty on this matter at this stage and I understand the objections and criticisms from the appellant who has wide experience on these matters. Nevertheless, in particular, in the absence of an independent valuation to assist with an offer and potential purchase, and with the information, analysis and comments I have examined above, I do not consider that the policy requirements in criterion C of Policy HP8 of the Local Plan have been met. Specifically, it has not been clearly demonstrated that there is no reasonable prospect of the existing public house use continuing on a viable basis and all options for continuing that use have not been fully explored.
41. Consequently, I am not satisfied that the National Planning Policy Framework (the Framework) intentions to guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs, have been met. While the pub has not been open for some time, there is evidence that it was valued in the past and would be valued by the community were it to reopen and could, in the way that the HJCP envisage, help to meet the day-to-day needs of this local community, as well as visitors to the area.

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

42. Kirby Malzeard is located within the Nidderdale Area of Outstanding Natural Beauty (AONB). Not allowing an option for the public house use to continue, where it appears that there is a reasonable prospect it could, would therefore not support the economic, social and environmental well-being of this part of the AONB as required by Policy GS6 of the Local Plan.
43. In the light of the above analysis, I conclude that, as there is a reasonable prospect of the building being put to a public house use on a viable basis, the proposed conversion to a dwelling would conflict with Policies HP8 and GS6 of the Local Plan and the Framework which seek, amongst other matters, the protection and enhancement of community facilities.

Other Matters

44. I have taken into account the objections and support for the application from local residents and others, and that many raise issues with whether it is appropriate or not for the building to be converted to a dwelling. I have considered this within the main issue above.
45. I have also taken into account the comments regarding other public houses in the area and region, such as those from the landlady at The Crown Inn, Grewelthorpe, and the effect that reopening of the original Henry Jenkins Inn could have on the trade of other premises, especially the Queens Head public house in Kirby Malzeard and those in other villages. These concerns are contrasted by those views of the HJCP and representatives of the Parish Council who see the reopening of the original Henry Jenkins Inn would add to the overall offer and would complement and support the other businesses locally. I have considered these matters above and I do not consider that the evidence is clear one way or the other such that this is an issue that is determinative to the outcome of my considerations when applying the requirements of Policy HP8 of the Local Plan.
46. Some local residents have raised a concern with the appearance of the building and that conversion to a dwelling would address that matter. The boarded up appearance does not make a positive contribution to the street scene, but I attribute the visual benefits of approval limited weight when balanced against the conflict with the Local Plan policies that I have identified.
47. There is empty residential accommodation on the first floor which I assume would have been used at times in the past in association with the public house. Consequently, if permission was granted for the proposed dwelling, there would not be an additional unit of accommodation on the site. While the larger living accommodation with the use of the site as a single dwelling may provide higher quality living conditions for future occupiers, given that there would not be an increase in units, this is a minor consideration in favour of approval.

Conclusion

48. As I have commented previously, it is a matter for the appellant to decide whether and/or who to sell his property to and, if so, for what price. However, in terms of deciding whether to grant planning permission for the dwelling from the public house use, it is necessary to make the decision in accordance with the development plan, unless material considerations indicate otherwise. In this case, I have found that the proposal would not accord with the Policies HP8 and GS6 of the Local Plan, and thereby would not accord with the development

plan when considered as a whole, and there are no considerations of such weight that lead me to decide that a decision should be made otherwise than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mrs Jennifer Hubbard	Town Planning Consultant
Mr David Fielder	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr Mike Parkes	Harrogate Borough Council
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INTERESTED PARTIES

Mr Dave Robinson	Henry Jenkins Community Pub Ltd
Mr Richard Sadler	Henry Jenkins Community Pub Ltd
Cllr Mrs Jane Aksut	Kirby Malzeard, Laverton and Dallowgill Parish Council
Cllr Richard Hughes	Kirby Malzeard, Laverton and Dallowgill Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of two emails (2016 and 2017) and a letter (2016) showing interest from parties in the Henry Jenkins Inn.
2. Letter from the Parish Council, following its meeting on 4 January 2023, to Harrogate Borough Council seeking the western part of the Henry Jenkins Inn to be listed as an Asset of Community Value.
3. Email from David Fielder dated 9 January 2023 with attached letter to Mr Robinson.
4. The Bay Horse Inn, Burythorpe – sales details, letters from the owner and purchaser explaining the role that Mr Fielder played in securing a sale.

DOCUMENTS SUBMITTED AFTER THE HEARING

5. Letter from Mrs Hubbard dated 12 January 2023 enclosing copy of email from Deborah Heartfield of The Crown Inn, Grewelthorpe.
6. Email from Jane Aksut dated 16 January 2023.
7. Letter from Mrs Hubbard dated 26 January 2023.