

**RYEDALE DISTRICT COUNCIL  
PLANNING COMMITTEE**

**SCHEDULE OF ITEMS TO BE DETERMINED BY THE COMMITTEE**

**PLANS WILL BE AVAILABLE FOR INSPECTION 30 MINUTES BEFORE THE MEETING**

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**Item Number:** 6  
**Application No:** 18/00235/73A  
**Parish:** Nunnington Parish Council  
**Appn. Type:** Non Compliance with Conditions  
**Applicant:** Mrs Jill Greetham  
**Proposal:** Change of use of former pub to form a 5 bedroom private residential dwelling (retrospective).  
**Location:** Royal Oak Church Street Nunnington North Yorkshire YO62 5US

**Registration Date:** 13 April 2018                      **8/13 Week Expiry Date:** 8 June 2018  
**Case Officer:** Rachael Balmer                      **Ext:** 357

**CONSULTATIONS:**

**Parish Council**    Objection  
**Parish Council**    Observations

**Neighbour responses:** Mr Peter Thompson, Mr Martyn Stephenson, Mr Martyn Thompson, Mrs Monika Porter, Ms Jane Thompson, Mr Martin Wilkinson, Dr John Elphinstone, Mr Robert Rand, Mrs Sue Elphinstone, Ms Sue Shilling, Mr Malcolm Evans, Ms Joanne Finkel, Mrs Anne Minister, Mr Jeremy Deedes, Mrs Ishbel Bartlett, Miss Amanda Easton, Mrs Linda Norbury, Mr James Clive, Mrs Linda Thompson, Dr And Mrs John And Sue Elphinstone, Mrs Stephanie Cornelis, Mr Aaron Turner, Mr Michael Hault, Mr Mark Booth, Mr James Manson, Mrs Natasha Ramirez, Mr Ben Fitzherbert, Mr Jason Medlycott, Mrs Margaret Matthews, Mrs Susan Usher, Mr Simon Lutman, Mr Henry Clive, Mr Daniel Parry, Mr Paul Jackson, Miss Pauline Cooke, Mr Roger Hammon, Mrs Lisa Brown, Mr Robert Jupp, Mr Edward Clive, Mrs Judith Thompson, Mrs Susan Wilkinson, Mr Richard Levien, Mrs Phil Hammon, Mrs Sophie Robinson, Mr Richard Murray Wells, Mr John Ferguson-Smith, Mr Stuart Roberts, Mr Mark Calver, Mr Paul Newman, Mr Stephen Jack, Miss Rebecca May, Mr Samuel Aviss, Mrs Nicky Jack, Mr Chris Cooke, Mr Jake Bell, Miss Emma Baxter, Mr Tom Drabble, Miss Alison Cooke, Mr Alexander Greetham, Ms Jo Mchale, Dr Nathan Stroud, Mr Neil Simmons, Mr Mark O'Bryen, Mr Matthew Allan, Ms Frances Bentley, Mrs Helen Barraclough, Mrs Anna Drabble, Mrs Maria Greetham, Miss Samantha Waine, Mr Ben Knollys, Ms Helen Cooke, Mr Chris Holland, Mr Andrew Van Blerk, Mr Wesley Allen, Miss Amy Leavy, Mrs Elise Evans,

**Overall Expiry Date:** 20 August 2018

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**PLANNING COMMITTEE**

25 September 2018

## **1.0 SITE:**

- 1.1 The Royal Oak in Nunnington has been operating as a public house for much of the twentieth century. It is a Grade II Listed property which has been formed from two 18thC cottages. It is situated in the village, between residences and has an area of hardstanding to the rear which serves as the car park for up to 10 vehicles (confirmed by NYCC Highways). There is an outbuilding to the rear of the property. There is also a beer garden to the rear. The property frontage is both narrow and elevated from the road and would be accessed by steps up to the door. The pub operated on a single operator basis, i.e. it is not owned by a brewery. Most recently, the property was operating as a pub but was closed on Mondays, and served food at lunch time and evening. Private living accommodation was on the first floor, with a separate kitchen for private use on the ground floor, which is adjacent to the commercial kitchen.
- 1.2 The local community, via the Parish Council, has applied to nominate the property as an Asset of Community Value (ACV). This process is on-going and Members will be updated at the meeting regarding the stage in the process that this has reached, and the weight that can be applied to this matter as a material consideration in the determination of this application.
- 1.3 Members will be aware that a site visit was conducted on the 12 September 2018.

## **2.0 PROPOSAL:**

- 2.1 The public house ceased trading as of 1 January 2018, and a full planning application was subsequently made for the change of use of the pub to a dwelling house. The application was registered as a full application. Since then the following events have occurred which has resulted in a change in the application type to a s.73A application, where the development is retrospective.
  - Occupancy of the former public areas as domestic accommodation;
  - Removal of the commercial kitchen equipment; and
  - The applicant also surrendered the license and this was acknowledged by the licensing officer on the 12 June 2018.
- 2.2 Members will already be aware, but it is important to note in the report, that the consideration of the application does not change because the development is retrospective. It is the consideration of the planning merits of the change of use which are relevant in the context of the policies of the adopted Development Plan.
- 2.2 There are no internal or external alterations proposed to the fabric of the building by the change of use that would require Listed Building Consent.
- 2.3 The application was not submitted with information for the Local Planning Authority to consider, against the Local Plan Strategy, whether the public house remained economically viable, and whether it had been marketed appropriately without sale if it was economically viable. The applicant duly provided a range of documentation to make her case that both of these aspects could be demonstrated. These documents include further information regarding the sale marketing of the business, the work undertaken on the property, and the details of the marketing/promotion of the public house as an eating establishment as well as a pub. Financial Accounts were also made available.
- 2.4 Officers considered that this information would need to be independently appraised by an individual who had considerable in-depth knowledge of the public house sector, to assess whether or not the Royal Oak represented a realistically economically viable prospect for a

new owner. Fleurets were chosen because they are a nationally-based firm in the leisure property sector, and had no prior connection to the business nor the applicant. CAMRA (Campaign for Real Ale) give recognition to the company for providing viability appraisals. The report is available to read on the public access website for viewing planning applications, and its findings will be discussed in the body of the report. It is also attached as an annexe.

### **3.0 HISTORY:**

- 3.1 December 2017 - Planning permission and Listed Building Consent granted for conversion of the of rear stable block to a 4 person holiday cottage. This followed a withdrawn application for 3 holiday units made in early 2017.
- 3.2 No further relevant planning history.

### **4.0 POLICY:**

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms that the determination of any planning application must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises:

The Ryedale Local Plan Strategy (2013)

The Proposals Map (2002) carried forward by the Local Plan Strategy

The 'saved' policies of the Ryedale Local Plan (2002)

The Yorkshire and Humber Plan (Regional Spatial Strategy)- York Green Belt Policies (YH9 and Y1)

(The latter two components are not considered as part of the determination of this proposal)

The Ryedale Plan - Local Plan Strategy (5 September 2013)

Policy SP1 General Location of Development and Settlement Hierarchy

Policy SP2 Policy SP2 Delivery and Distribution of New Housing

Policy SP11 Community Facilities and Services

Policy SP12 Heritage

Policy SP20 Generic Development Management Issues

Policy SP21 Occupancy Restrictions

Material Considerations:

National Planning Policy Framework (NPPF) (2018)

National Planning Practice Guidance

Planning (Listed Buildings and Conservation Areas) Act 1990

1990 c. 9 Part I Chapter VI Special considerations affecting planning functions

s.66 General duty as respects listed buildings in exercise of planning functions.

s.72 General duty as respects conservation areas in exercise of planning functions.

### **5.0 CONSULTATIONS:**

- 5.1 This application was consulted on twice, with a second re-consultation taking place after the independently economic viability assessment was produced. This also allowed consultees to

see, in full, the material provided by the applicant in support of their application which came in over a period of weeks towards the end of the first consultation period.

- 5.2 A brief summary of the position of statutory and non statutory consultees is included on the front sheet of the report and issues raised are addressed in the relevant appraisal sections of the report. All consultation responses are available for Members to view on the public access webpage, and referred to in the report accordingly.
- 5.2 In terms of neighbour responses, there has been a large number of responses received concerning the application. This is a reflection of the naturally strong feeling within the local community about the loss of the pub. A number of the generic representations (all those supporting) are made by individuals who do not live in Nunnington, so it is not clear what connection they have to the public house. There have also been objections to the loss of the public house from residences in other parts of the country - again it is not always known what the connection is, although some state it is because they visit Nunnington on a regular basis. The Nunnington Village Hall Committee and Parish Council have objected to the proposal. Members will be aware that it is the consideration of the adopted Development Plan and the discussion of material planning considerations, irrespective of their geographical origin or their number/volume, which are material to the decision making process.
- 5.3 Nunnington Parish Council made the following statements in their (initial) representations against the application:
- The pub had been viable during the previous ownership, about 8000 people visit Nunnington Hall, so plenty of footfall;
  - Asking price was very high compared to the original purchase price- the commercial kitchens have been taken out so this must be taken into account in the present value
  - Marketing over the last two years would not have included the 2017 permission for the outbuilding conversion
  - The Royal Oak and outbuildings are Grade II listed
  - The Ryedale Plan Local Plan Strategy Policy SP11 should be considered
  - The village is holding Pop up Pubs run by volunteers, which are proving to be very popular, but these can only be run once month due to licensing requirements
- 5.4 Those 43\* respondents who have supported/accepted the change of use have made the following summarised comments:
- The public house market in villages is very challenging- many closing every week;
  - There is not enough trade- same reason why post office and shop shut;
  - The owners have tried to make it work and should now be able to live in the property they own as a family;
  - No one else is willing to take it on as a going concern
  - With supermarket beer and wine and dine in for two offers- people are eating out less and less
  - The building could become vacant and be eventually sold to developers who may not have any intention of maintaining the character of the property.
  - Operating a rural pub is becoming ever more difficult to make a profit
  - 18 pubs closing each week
  - Important that the building isn't restricted in use to ensure doesn't cause detriment to the character of the village and the rural scene, by becoming vacant- and uneconomic renovate
  - There is a shortage of private dwellings - will be a better use of the space
  - The local support is not enough to commercially support and sustain a business
  - It is not financially viable and fair to force people being open at loss
  - The majority of visitors go to Nunnington Hall or the Studios- they have cafes
  - I attended events and few locals were there

- The pub is not well located within the village and immediately evident to visitors
- A village the size of Nunnington cannot realistically operate as a 'local'
- The pub relies on drive-to business and this makes it in competition with a range of rural public houses- competition is intense.
- As long as the owners adhere to the plans agreed, could be developed into a beautiful family home within the community.
- Working in the drinks industry I see many customers every year with going bankrupt or face the misery of building debt trying to keep once thriving pubs going.
- Once you have invested your life savings and see them disappear, and work 16 hours a day, as Jill did common sense says any ailing business must close, and pubs are no different

5.5 Those 29\* respondents (including the Village Hall Committee) who have objected to the change of use have made the following summaries comments:

- The public house represented the only place for residents to socialise and drink on an evening- it is a community asset
- It is the only pub in the village- a community hub
- The food offer became restricted - turning customers away (one representor was declined)
- Place has been deliberately run-down
- The public house was the only place opening after 5
- Price of Public house was too high to achieve a sale
- Other small villages have viable, thriving pubs
- Replace lost fittings and sell at a reasonable price
- Where will those residents go who are elderly and unable to drive/use public transport
- The village has already lost a number of amenities
- In the past the pub was lucrative with the right management and staff
- Need for clarity over the documentation provided by the applicant - and a re-consultation
- The food branding wasn't catching the imagination of this part of Ryedale;
- They owners identified themselves as novices- and stated that with the right team could double its potential
- The owners are inexperienced, with experienced owners serving good traditional pub food
- The pub could be closed, whilst the applicant makes a re-advertisement, as the pub is owned outright.
- Not in accordance with Policy SP11 or SP13
- The applicants are custodians of a local community asset
- We are a high volume tourist area where there is demand for food and drink establishment that understand the market
- The pub was so quickly placed back on the market- at an inflated price. It should be marketed at a realistic price
- The pub offers a supportive network for the local community- supports social welfare and mental health of the patrons
- Communal celebration
- Refreshment destination for walkers, cyclists, riders and tourists.
- The public house is needed on an evening for residents who do not conform to the 9-5 lifestyle.
- They declined to open on a Monday for the darts team
- The pub furniture was very quickly removed.
- Contrary to the Howardian Hills Management Plan which recognises the decline of

villages as coherent and inclusive communities - supports development of a sustainable visitor economy

- The Pop-up Pub events have been very successful with three held by the Village Hall, we would like to hold more, but temporary licenses are limited, and there is other uses for the hall and the need for volunteers. They have had 40-50 people from the village and outlying area .They demonstrate the need for the maintenance of the social aspects provided by the Royal Oak until its closure, as an interim measure.
- Fryton Catering and Nunnington hall are not open all year round, and close on the evenings. Nunnington Hall catering is only for those visiting the hall.
- The supporting documentation provided does not support the change of use (deeds are not relevant within the context of the planning system).
- The building is Listed and will remain so irrespective of the outcome of this application
- Would expect to see price paid, sales particulars as evidence as to why the property did not sell - the information to date shows that the property has not been marketed for long enough, nor at a suitable price
- Surrounding pubs- which were on the decline- are doing well, and rather than being competition show what can be achieved with entrepreneurial effort and cash.
- The pub is the last remaining amenity within walking distance of home- having lost our other facilities- there are pubs nearby but not within walking distance
- The lack of the pub will effect holiday cottage bookings as people will be unable to get an evening meal-Nunnington relies heavily on tourism for generation of the local economy
- The pub used to be busy- opening 6 days a week for lunch and evening meals- you needed to book in advance c.7 years ago
- If the pub is lost, it is highly unlikely that Nunnington would ever have a pub again, thereby denying the community of this important social facility and loss of heritage
- Change of use to a dwelling is not within the wider interests of the area/vicinity
- What makes Nunnington special is the strong sense of community spirit, and the pub has a role to play in that, since it closed it has been sorely missed
- Deprivation of the local community of a well-loved asset- at the heart of the community
- A the rate Pubs are closing down, surely it is imperative to keep as many of them open, especially if they are still operating and servicing the village community.
- Why if someone wants to move in to the area, surely there are plenty of other properties that they could purchase and renovate instead.
- It gave the older residents a place to go for their Christmas meal
- The fact that there was a pub within walking distance serving good food was one of my considerations when I moved here 26 years ago
- If the pub changes to a dwelling, it will be nigh on impossible for it to be returned to a pub
- Nunnington is a working village not a housing estate
- It a village with few amenities and job opportunities it is terrible shame to see this happening to another village
- The village hall is no substitute is requires specific opening you cannot just walk I, meet friends and buy a drink
- Without it the village will lose its vibrancy and sense of community it will become moribund
- The lack of a pub may lead to increased instances of drink driving if people have to travel to nearby villages
- It was a viable business until the current owners took it over
- The village is losing its sense of community
- I hope whoever makes the decision about the pub lives in a small village and understands the effect losing it is having on the villagers.

\* This excludes any duplicate representations

- 5.6 Since the re-consultation, there has been one response made as a neutral, as they remain supportive of the retention of a public house, and is a resident from the village. As a visitor to the pub on a regular basis does not agree with comments concerning the comments that the applicant has deliberately run the public house down, but that they tried to make the best of it, and cites examples of their activities. They acknowledge the lack of economic vitality, citing:
- Changing consumer markets and behaviours
  - Increasing regulatory and compliance costs
  - Rising running and staff costs
  - Location
  - The absence of secondary supporting incomes (accommodation etc)
  - Local competitors that have been able to support their core pub businesses with additional income streams and / or captive markets
  - A disinterested and unsupportive Nunnington estate
  - Lack of local demand from a small and partly unsupportive village ('use it or lose it')

- 5.7 There have been five responses made in objection to the application. These include the Parish Council:

The report produced by Fleurets notes the property **"has not been marketed at a realistic guide price"** (point 4.5.10), the Royal Oak was marketed at £650,000, ultimately reduced to £600,000, while its market value is calculated as £325,000. Nunnington Parish Council believes The Royal Oak should be publicly marketed, at a realistic market value for a reasonable period of time, before being considered for change of use.

Other commenters have raised the following matters:

- The economic viability appraisal has made a good job of disentangling the facts and leaves the authority in a dilemma.
- The report concludes that it is not economically viable to run the public house, but also:
  - The property was marketed at an inflated price;
  - The assessment levies some criticism of the applicant
  - That the applicants were rather swift in their putting the property back on the market;
  - That the public house could be run more effectively;
  - The surrendering of the license was not that of a prudent owner.
  - Normally the LPA would require the business to be marketed for at least two years- and this this should be undertaken.
- Do not consider it is morally right to allow the business to fold just because of the way it has been run since it was acquired.
- The approval of this application would be a significant loss to the community
- Remarket the Royal Oak at the more realistic price mentioned in the report, having also taken into account the cost of reinstating the license and the assets stripped from the kitchen by the current owner earlier this year.
- Do not agree that Nunnington Hall and Fryton cafe have likely impacted on trade. They are not comparable. Aside from the fact both have much shorter opening hours, the cafe at Nunnington Hall has been open for many years, in periods when trade at the Royal Oak was booming. Before Fryton cafe there was another tea room, which also had no impact on the Royal Oak's profitability.
- The report also states that the property is not located in an ideal position in the village- the Royal Oak has always been a central point for villagers and others to meet.

- The lapsing of the license has made it more unattractive as a buyer- and should be factored into the costs
- The report makes reference to the impact of the credit crunch on this public house. The Royal Oak has been in business for many years, apart from a short time in the 1960s when it was residential. A public house is marked at its location on the OS map of 1912. There have been economic downturns before the current recession (during the 1920s, after both World Wars, in the mid-1990s) and throughout these periods the Royal Oak has survived.
- Facilities for identified for the local community- following information
  - Fryton cafe - is seasonal, does not serve a wide selection of food and is open Tues - Sun 10am - 4pm. It cannot be compared to a licensed premise, accessible to people who work and serving evening meals
  - Nunnington Village Hall - is suitable for village events such as jumble sales, keep fit classes, pre-school nursery etc. but cannot be compared with the atmosphere or ambience of the public house
  - Nunnington Hall - a National Trust property, with cafe. It also is seasonal and closes in the evenings. The cafe serves light lunches only
  - Worsley Arms, Hovingham - an hotel, not a public house
  - The Star, Harome - a Michelin starred, award winning restaurant with prices to reflect this. Whilst excellent for special occasions, this is not a viable alternative for an inexpensive drink after work
  - The Pheasant Hotel, Harome - an hotel, not a public house
  - Royal Oak, Gillamoor - we have heard rumours that this property may be closing as a pub
- The pub has now been closed to customers for 8 months, and in that time the heart of the village has been lost. We no longer see fellow villagers with any regularity. One cannot expect an entire community to meet at one of the nearby pubs. We all miss being able to walk to our local pub, to chat and keep the community spirit alive.
- Closure of our local pub is another example of the decline facing rural communities. In living memory Nunnington has lost the last of its village shops and a Post Office. There are no regular public transport links to the village.
- If the change in use is granted for the Royal Oak the current owner will very likely sell quickly and move on, leaving the local community without any hope of re-opening its most important amenity.
- Agreeing this planning proposal would demonstrate very short term thinking by Ryedale DC. Once lost, village amenities are gone forever. We need to support our rural communities, not be looking for quick win solutions which benefit the few.
- I would like to comment on the recent Viability Report which states The Royal Oak Inn is not viable as a lot of money would have to be spent replacing the kitchen equipment, furniture in the bar and a licence application would be needed. - There has been a deliberate attempt to de-value the property.
- The report states the village is purely residential whereas the village has several businesses running and two working farms.
- The property was being marketed at £525,000, following a reduction from the original price of £600,000. The report states that a realistic figure would be more in the region of £325,000 which would explain why no sale was forthcoming. It would be reasonable to expect the property to be marketed at the proper market value for a time.
- I would ask that the Council do not grant planning permission until the property has been marketed as a public house.

## **6.0 APPRAISAL:**

- 6.1 As evidenced by the comments made on the application, public houses have a long-standing role with communities as a place of congregation, for events, or for general meeting with



neighbours, friends and family. They are, despite being a commercial enterprise, a community facility, and some public houses perform a range of functions to support their viability. It is clear that the loss of the pub has been felt keenly by members of the village, but Members are aware of the need to consider objectively whether or not in planning terms the change of use is capable of being considered acceptable. It is however, a part of the planning system where financial considerations in terms of economic viability do have to be balanced with the expectations of the community, and this is through assessing the proposal against the Development Plan. There has to be a reasonable prospect of the public house in question being ran at a reasonable return. The main considerations to be taken into account are:

- i) Principle of the change of use
- ii) Further considerations

### **i) Principle of the Change of Use**

- 6.2 There are two stages to the policy position on the principle of the use, the first concerns the change of use from a pub to a dwelling house, and whether the circumstances are met to permit the change of use, according to SP11 'Community Facilities and Services', and secondly, if such a use is permitted, then what is the policy position on the formation of a new dwelling in an 'Other Village' according to SP1 and specifically SP2 'Delivery and Distribution of New Housing'.

### **Application of Policy SP11**

- 6.3 Policy SP11, 'Community Facilities' seeks to protect community facilities, where it is reasonable to do so:

Existing local retail, community, cultural and leisure and recreational services and facilities that contribute to the vitality of the towns and villages and the well-being of local communities will be protected from loss/redevelopment unless it can be demonstrated that:

- There is no longer a need for the facility or suitable and accessible alternatives exist; **or**
- That it is no longer economically viable to provide the facility; **or**
- Proposals involving replacement facilities provide an equivalent or greater benefit to the community and can be delivered with minimum disruption to services.

For the determination of this application, the third consideration is not relevant, as there are no replacement facilities. It is also clear that the tests are exclusive, in that only one needs to be satisfied.

### **Whether there is no longer a need for the facility or suitable and accessible alternatives exist**

- 6.4 For some members of the village, and visitors, the presence of the pub in the village has clearly been a valued place for meeting and socialising. It is also seen as an attraction in house purchases. The viability report has also considered the challenging economic climate in which public houses, particularly those in a rural area, now operate, and this is very different to how village pubs in the past were run. It is clear from the activities of all village pubs that they can no longer be sustained as a commercial activity through the 'wet-sales' (beverages) alone and that other income streams are needed, commonly food, but also accommodation, and event catering if they have the capability. In Nunnington itself, there are for visitors, and those residents who do not work that standard 9-5 day, the ability to visit the Fryton Café. Nunnington Hall also services those who visit the hall, and as such is likely to not meet the needs of the local residents as it closes at 5pm. It is also possible that as a result of the closure of the Pub, Fryton Café may, if there is sufficient interest, stay open later on certain days

(licensing permitted) to meet that demand or open for a longer season. Whilst this is only speculation, if there is sufficient interest, the Café can consider it. The viability report has also referred to a number of establishments which compete for the trade of the Royal Oak, and the report acknowledges, that these enterprises have different attractants, serving both the expectations of tourist and residents, if not necessarily on foot.

- 6.5 Comments have been made around the success of the Pop-up-Pubs and evidenced these as a demonstration of need. These events were, by report, well attended, which is an indication that as community, the village can find alternatives to bring the village together. They are, however, specific events: planned into the diary, and provide an ability for a concerted gathering of people, as opposed to the intermittent activities of residents, who may drop into the pub as and when they wish to. They therefore provide a positive, but different experience, and are not comparable to the activity experienced by public houses.
- 6.6 The independent economic viability assessment concluded that Nunnington as a catchment is 'relatively small', and based on the evaluation of public house offer, and other establishments for food and drink in the surrounding area, there is a range of places which will meet most needs of residents and visitors. This is of course, accepting that those small number of individuals who wish to 'walk for a pint', are instead going to require designated drivers and plan their activities accordingly. This is a very locally-defined need, and a need that is unable to generate significant interest and income. Matters concerning drink- driving (as raised in one representation) are not relevant as this is a personal behaviour, which can result in criminal prosecution, and has over the years become socially unacceptable. People now generally do expect that where a car is involved, there will be a designated driver. Drink driving is not a material planning consideration. In conclusion, for most needs, there are suitable and accessible alternatives.

#### Whether that it is no longer economically viable to provide the facility

##### i)The economic viability

- 6.7 The public interest of retaining a community facility should also be balanced with whether the facility can be run in an economically sustainable manner, as it is not reasonable to expect a private enterprise to be a community facility which runs at a loss. The independent viability report has explained that the level of 'lifestyle choice' public houses has, since the credit crunch, severely waned, as they run on the basis that they do not make a profit (and often have been at a loss). There have also been other wider changes to the way in which people use public houses, and these have all had an effect on village pubs.
- 6.8 The independent viability report, applying a realistic credible maximum likely trade potential (therefore opening it for longer than the applicants had done), concludes that the Royal Oak is not economically viable for continued use as a public house. This is because it is not capable of generating a satisfactory profit performance to make it viable/sustainable for the reintroduction of the public house use. The non-viability of this course of action particularly arises as a result of the capital investment required to acquire the premises (and this is at £325,000 with the inventory included). The key factors identified in the report which contribute to lack of economic viability are:
- After allowance for finance costs the business is loss making
  - The return on the investment required does not reflect the risk
  - The property would not be of interest to corporate pub companies, either leased or managed operators;
  - Nationally beer volumes are in decline
  - The limited car parking facilities required to operate as a destination food house
  - Better located competition will limit the opportunity to grow the turnover and profit.

- 6.9 The report also concludes that the property's location and characteristics make it heavily reliant on destination type custom attracted for food. Given the existing competition situated within the locality, the sustainability of trading will present significant challenges and uncertainties and "cannot be demonstrated to provide an operator with a satisfactory return on i) the required capital investment; ii) the risks investing in the proposition; and iii) the required entrepreneurial endeavour necessary to the and operate a rural located public house with a low nearby resident community". Criticism levelled at the report's judgement of describing the less than satisfactorily location of the pub relates to its lack of visibility and parking for destination driven food demand, and is not made in relation that of local residents seeking a drink. As such, based on the independent viability assessment, undertaken by Fleurets at the request of the Council, the Royal Oak is not an economically viable enterprise to run. This evaluation is also irrespective of the way it has been operated by the applicant, and matters concerning the purchasing of fixtures, fittings and the licensing position. These are matters which commentators on the application have referenced as reasons for the economic viability having been harmed, and being capable of being addressed, but the viability assessment looks at the operating capability, as well as costs of set up, and this is what makes the property no longer an economically viable enterprise to run.
- ii) The marketing of the public house
- 6.10 A number of comments received have noted, and the independent economic viability assessment confirmed that the Royal Oak, having been bought in 2014, was rather quickly back on the market in 2015. The precise reasons for this haste can only be explained by the applicant. The asking price was also queried by a number of respondents. The independent economic viability report has concluded that the property had not been marketed at a realistic guide price, based on the lawful use as public house, and not a residential property. It values the property as a Public House at £325,000; which is much less than any of the asking prices previously sought- which is likely to be attributed some residential 'hope' value, and see the property as a lifestyle pub- whereby the pub is run on the basis it is not profitable. It concludes "The purchase at the guide prices of both Christies and Davey and Co would make the purchase uneconomic and severe risk of business failure as the business would be unlikely to generated sufficient profit to cover finance charges let alone give the owners a sufficient return on their endeavours operating the business".
- 6.11 However, the fact that the property has been marketed at a much higher guide price than what could have been realistically expected to achieve, does not overcome the overriding issue that, even if it had been so, the Royal Oak's operation as a public house is not economically viable. The re-consultation comments have 'homed in' on this price variance as something which is material to the economic viability test, and indicated that the property should be marketed for two years at the price indicated in the viability assessment. In undertaking such an exercise this does not overcome the actual policy test of Policy SP11 concerning the economic viability of the provision of the facility, which even at the lower/realistic price value has been determined as not economically viable. To undertake such an exercise in this instance would not bring any material benefit to the consideration of the economic viability of the enterprise.
- 6.12 As referred to earlier, in applying the tests of SP11, each test is not required to be met simultaneously, it is clear that it is no longer economically viability to continue to operate the Royal Oak. In terms of the need, the independent economic valuation has identified there is a range of enterprises which will meet most needs, except those residents who would prefer to continue to have a short walk to a public house.

## **Application of Polices SP1 and SP2**

- 6.13 Policy SP1- General Location of Development and Settlement Hierarchy- identifies other villages as being areas of housing restraint, and development is restricted to that which is necessary to support a sustainable, vibrant and healthy rural economy and communities. Accordingly, Policy SP2 sets out the limited scenarios where new residential development will be permitted. This includes the conversion of previously developed land and buildings, subject to the Local Needs Occupancy Condition which is set out in Policy SP21, and is applied in perpetuity:

### Local Needs Occupancy

To meet local housing need in the non-service villages the occupancy of new market housing will be subject to a local needs occupancy condition where this accords with Policy SP2, and will be limited to people who:

- Have permanently resided in the parish, or an adjoining parish (including those outside the District), for at least three years and are now in need of new accommodation, which cannot be met from the existing housing stock, or
  - Do not live in the parish but have a long standing connection to the local community, including a previous period of residence of over three years but have moved away in the past three years, or service men and women returning to the Parish after leaving military service; or
  - Are taking up full-time permanent employment in an already established business which has been located within the parish, or adjoining parish, for at least the previous three years; or
  - Have an essential need arising from age or infirmity to move to be near relatives who have been permanently resident within the District for at least the previous three years.
- 6.14 The property has private accommodation, but that has been occupied on the basis that it provides ancillary accommodation to operation of the pub. This is because the occupier must go through the public areas to access the private kitchen, and as such it is not self-contained. It is clear that the applicant can indeed meet the Local Needs Occupancy (LNO) condition, as she has lived at the property for over three years and as dependants, her daughter and granddaughter have been living there too. They are aware of the LNO condition's application, and refer to it in their planning statement. As such, if Members are minded to approve this application, the applicant can meet the terms of the local need occupancy condition, meaning that she and her family can continue to live at the property. Whether the applicant decides to move, and subsequently markets the property (with the LNO condition in place- and at price which reflects that condition) will be a personal decision and a sale transaction. It is not a material planning consideration: the matter before Members is the change of use from public house to a dwelling.

### **ii) Further considerations**

- 6.15 The property is a Grade II Listed Building, and within the Conservation Area of Nunnington, and so Policy SP12 - Heritage- is of relevance given the statutory obligations placed on Local Planning Authorities as a result of the 1990 Act (as referenced in the earlier Policy Section. Since the proposed change of use has no effects on the fabric of the building, this change of use is not contrary to SP12. It is not considered that the change of use to a domestic dwelling will result in any harm to the character and appearance of the Conservation Area. Though it is possible that subsequent internal alterations, which might not require planning permission, may require Listed Building Consent. The necessary consent should be sought accordingly. Furthermore, the building was originally two domestic dwellings, and so the fact that the pub has operated from there, and a domestic use has occurred before, it is not considered that the

historic significance is affected. Comments have been made regarding the potential for the building to fall into disrepair. This is a prediction and not fact, although it can happen. Given the applicant's substantial investment into the Grade II Listed property, which she lives in, and owns, and the Local Planning Authority has statutory powers concerning the state of Listed Buildings, very little weight can be given to this argument.

- 6.16 Policy SP13 - Landscapes - has been referenced in representations, because it supports proposals which "are considered appropriate for the economic, social and environmental well-being of the area..." in this regard the spirit and purpose of the policy is concerned with assessing the impact of new development proposals from a point of view of protecting and enhancing the natural beauty and special qualities of the AONB, in a landscape- perspective, and requiring a justification for being so located. That sentence is part of a series of matters for consideration in respect of that overall consideration. Being aware of the strong local feeling, this proposal is nevertheless for a localised change of use within the village itself, and as such it is not considered that SP13 is a relevant policy in the determination of this application.
- 6.17 Representations have sought to evidence the Howardian Hills Management Plan in support of the Public House's retention. The role of the Howardian Hills AONB Management Plan is to help understand the special qualities and natural beauty of the AONB, and provide support and recognition with a range of issues facing the economy and communities of the Howardian Hills AONB, which indirectly threaten those special quantities and natural beauty. It is not a component of the Development Plan, but can be a material consideration as there are references to it within the Development Plan. In this instance the Development Plan has a clear policy framework for the consideration of community facilities, and that has primacy in the decision making process.
- 6.18 Policy SP20- Generic Development Management Issues- considers the impact of development on the character of the area, and the design implications of development. New development is expected to respect the character and context of the immediate locality and the wider landscape/townscape character in terms of physical features and the type and variety of existing uses. This would be the case with the change of use from a public house to a dwelling, the use would be a de-intensification of the use, as such is in accordance with SP20 in all respects.
- 6.19 The surrendering of the license has not been taken into account in so far as the licence was in operation, and surrendered by the applicant. Had there been any issues of significance it would have resulted in the declining/ceasing of the license prior to the surrendering of the licence by the applicant.
- 6.20 The Development proposed would, if granted, result in the formation of a new dwelling in planning terms. However, the liability for the CIL charge would be zero- rated, due to the fact that the public house had been in continuous operation (accepting closed days) for six months in the last three years.

### **Conclusion**

- 6.21 The closure of the Royal Oak in Nunnington has understandably resulted in strong feelings within the local community. It is clear that its loss will be keenly felt by those who did frequent the pub on a regular basis. Officers, have sought to ensure that in evaluating the planning considerations of this change of use, that a thorough and impartial assessment was undertaken to determine whether the pub could remain as a realistically economically viable enterprise (irrespective of the surrendering of the licence). From the findings of the viability assessment, the continued operation of the Royal Oak is not economically viable. In terms of meeting need, there are reasonable alternatives that are capable of meeting a range (if not all)

needs of residents and visitors. In accordance with the policies of the Development Plan, the change of use from Public House to dwelling is compliant with Policy SP11. Under the application of Policies SP1 and SP2, the property is capable of being a residential dwelling with the Local Needs Occupancy Condition applied. It is therefore recommended that the application is approved, with the conditions suggested below.

**RECOMMENDATION:                      Approval subject to the following conditions**

- 1        The dwelling hereby approved is subject to a local needs occupancy condition where this accords with, and will be limited to people (and their dependants) who:
  - Have permanently resided in the parish, or an adjoining parish (including those outside the District), for at least three years and are now in need of new accommodation, which cannot be met from the existing housing stock, or
  - Do not live in the parish but have a long standing connection to the local community, including a previous period of residence of over three years but have moved away in the past three years, or service men and women returning to the Parish after leaving military service; or
  - Are taking up full-time permanent employment in an already established business which has been located within the parish, or adjoining parish, for at least the previous three years; or
  - Have an essential need arising from age or infirmity to move to be near relatives who have been permanently resident within the District for at least the previous three years.

Reason: To accord with the Policies SP1, SP2 and SP21 of the Ryedale Plan- Local Plan Strategy.

- 2        The development hereby approved is undertaken in accordance with the plans submitted in conjunction with this application.

Reason: For the avoidance of doubt.