

**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:** 17 September 2018

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**PLANNING COMMITTEE**

23 October 2018

## **INTRODUCTION:**

Members will recall that this application was considered at Planning Committee on 25th September 2018. The matter was deferred by the Head of Planning under the Council's constitution after Members had resolved to refuse the application contrary to Officer advice.

Members will also recall that in arriving at the final Officer recommendation that the Council had sought opinion from Mr D. Sutcliffe, a registered Chartered Surveyor, of Fleurets. Fleurets are a national practice who deal exclusively in the provision of property advice, sales, lettings and valuations of hotels, restaurants, public houses and other types of licensed and leisure property.

Members voted to refuse the application because of their concerns relating to the loss of the public house in the village that they considered to have no other reasonable alternative facility and because Members considered that there was still the possibility of the business being run as a viable proposition. In consultation with the chairman of Planning Committee the Head of Planning has sought to capture the wording of a proposed reason for refusal which covers the reason voted on by Members at the meeting.

With respect to the opinions and reasons for refusal that Members put forward at Planning Committee on 25 September 2018, Officers are duty bound to offer professional advice as the robustness of any reason for refusal.

The draft reason for refusal is set out below:

1. Policy SP11- Community Facilities and Services of the adopted Ryedale Plan Local Plan Strategy 2013 seeks to protect existing local retail, community, leisure and recreational services and facilities that contribute to the vitality of the towns and villages in the district. The Local Planning Authority considers that there is a continuing need for this facility in the locality and that there is no easily accessible alternative to serve the needs of the community of Nunnington. Furthermore the Local Planning Authority remains of the view that the premises has the potential to be run as a viable business and that the applicant has not provided sufficient evidence to demonstrate that the facility could not be run as a viable business

The proposal to change the use of the premises to a five bedroom private residential dwelling is therefore considered to be contrary to the requirements of Policy SP11 of the adopted development plan and that there are on material considerations of sufficient weight to warrant a decision contrary to the requirements of the adopted development plan.

### Matters of concern to Officers

Members will be aware from the earlier committee report of 29th August 2018 that the public house ceased trading as of 1st January 2018. In the intervening period the license has been surrendered as of 12th June 2018, the commercial kitchen equipment is has been removed and the former public areas are used as domestic accommodation.

In these circumstances officers are of the opinion that it is almost inevitable that a formal decision to refuse the application would result in an appeal to the Secretary of State against the decision. In all circumstances of appeal, be it public inquiry, informal hearing or written representations, there is a risk of an award of costs against a decision which is unreasonable and where the appellant has incurred unnecessary expense in presenting their case. To date the applicant has used a local agent Mr J Paul and more recently Freeths LLP a legal firm based in Nottingham to present their case.

The report produced by Fleurets on behalf of the Council is currently the only professional evidence available for the Local Planning authority to consider in relation to this property. The report runs to

some 34 pages in content plus appendices. It is considered to be a thorough appraisal and its concluding paragraphs 5.1 to 5.3 inclusive state:

- 5.1 *On consideration of the of historic information which demonstrates recent trading performance of the Royal Oak and my assessment of the realistic credible maximum likely trade potential, it is my opinion that the property is not economically viable for continued use as a public house. My above trade appraisal and viability assessment, demonstrate that it is not capable of generating a satisfactory profit performance to make it viable/sustainable for the reintroduction of 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.*
- 5.2 *I am of the opinion that the property's characteristics and location would cause it to be heavily reliant upon a destination type custom attracted for food. Given the range of existing competing public houses/pub-restaurant and other community facilities situated in the local district, the sustainability of trading at the Royal Oak 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 of investing in the proposition; and (iii) the required entrepreneurial endeavour necessary for a party to acquire, operate a rural located public house with a low nearby resident community.*
- 5.3 *I therefore conclude, that the Royal Oak is not an opportunity or undertaking that is economically viable for any party who is subject to the norms of profit motivation and market led commercial costs of finance in the current economic and financial circumstances, nor indeed those reasonably expected to apply in the short to medium term time frame. Should a party nevertheless undertake such a risk and investment, they would in my opinion be subject to a high risk of business failure.*

In the context of the proposed draft reason for refusal above this position is difficult for Officers to defend with any reasonable prospect of success. Furthermore as this is contrary to the thrust of the evidence available in the Fleurets report and it relates to a sole reason for refusal there is a serious risk of the Council facing a claim for a full award of costs in the event of any appeal.

At this point it is not known (in the event of an appeal) what form the appeal would take. However if an appeal was to be heard before an Inspector then the Council would need to seek the services of a Planning Consultant in order to present its case. This is because officers of the Council have recommended approval of the application and this remains the professional opinion of officers notwithstanding the recent Members decision at Committee on 25th September 2018.

Members are reminded that in a Planning Appeal situation, all reasons for refusal need to be supported with evidence ideally provided by persons with appropriate qualifications and experience. If the Council cannot provide such evidence it puts itself at risk of having costs awarded against it for unreasonable behaviour. The anecdotal evidence that a good publican could turn the financial fortunes of the pub around will have little or no weight of itself in the decision making process and will need to be substantiated by evidence.

It is also important that Members understand that any reason for refusal will need to be rigorously defended at appeal, which brings its own costs that the Council have to pay, but in addition if the Council are unable to defend any reason for refusal, then there is a risk that the Council will also have to pay the appellants costs.

Officers and the Solicitor to the Council have considered the potential for an award of cost and the range of expense that could be faced in the event of a costs claim. Members can be advised at the meeting of the potential range of costs although this would be required to be discussed in exempt business at the meeting.

Having reviewed the available evidence officers regrettably remain of the opinion that the application should be approved for the reasons set out in the Committee report of 25th September 2018.

**RECOMMENDATION:                      Approval**

- 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.