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Leisure Property Specialists

Our Ref: PJS/mkm

9th September 2021

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Dear Sir/Madam,

White Swan, Low Street, Thornton-le-Clay, North Yorkshire, YO60 7TG
21/00861/FUL

I have been instructed by Mr Richard Harrison, owner of the White Swan to provide a supplemental letter in relation to the above application and specifically to provide comment on the report dated 6th August 2021 undertaken by Mr Hughes of MJD Hughes assessing the viability of the White Swan public house.

I note that my conclusion on viability, expressed within my report on viability dated 22nd April 2021 and that within Mr Hughes differ. My opinion being that the White Swan does not provide a suitable viability proposition, with Mr Hughes concluding that it does. His report states that the property does not fulfil the requirements of the Local Plan Strategy Document Policy SP11.

You will of course be familiar with the requirements to take a facility out of community use under Policy SP11. I noted this within my report and both Mr Hughes and I highlight the two main policy points applicable to the White Swan, namely; suitable alternatives existing/no further need for the property and/or the property no longer being economically viable.

In relation to the availability of alternatives I highlight that there are significant levels of alternative and competing establishments within a 5 miles radius, providing both strong levels of competition and a variety of suitable alternative establishments. Mr Hughes' report accepts this (paragraph 8.5), albeit with some commentary which is considered subjective or irrelevant. I would therefore consider the availability of alternatives to be established and acknowledged by both experts.

In relation to the viability of the White Swan Mr Hughes puts forward various suppositions and conclusions which I am in disagreement with. However I would highlight that Mr Hughes has adopted my levels of Fair Maintainable Turnover, gross profit percentages, expenditure and Fair Maintainable Operating Profit. As such I would consider much of the comments made within Mr Hughes' report somewhat surprising and self-evidently ultimately irrelevant.

There are two points which form the crux of the disagreement between both my report and Mr Hughes'. These relate to the deductions made from the profitability of the business which I have made and which Mr Hughes rejects. I note these in further detail.

Firstly, I have sought to make an allowance for a reasonable level of remuneration for an owner operator. I have cited the case of Brooker v Unique Pub Properties Limited (2001) and have adjusted the amount noted within the case for actual inflation. At 8.7 within his report Mr Hughes rejects this point on the grounds of the ruling being for a tenanted pub rather than an owner operated on. His report states that an owner operator will *"receive a return through the business and by owning the asset*".

I find it egregious that Mr Hughes simultaneously accepts a hypothetical owner will accept a profit through the business, as per a tenant, yet makes no allowance for such a profit. The logic applied within Mr Hughes report would appear to suggest a purchaser would ignore any requirement for a basic level of income by way of profit and instead rely upon the potential appreciation of the property value. Mr Hughes will be aware that the profitability of a public house has a direct bearing on its value. I would further note that the comment regarding the living accommodation would be as applicable to a tenant as to an owner occupier and is therefore misleading.

Secondly, I have made a deduction for the costs of financing of the acquisition of the property which are all rejected by Mr Hughes within his calculations.

I have sought to account for the costs of placing the property is a suitable state for trade and have made an allowance of £50,000 for this. Mr Hughes considers that *"the value of the fixtures, fittings and refurbishment"* are part of the property value. Within his report however he highlights the property is empty and would require refurbishment, and additionally cites the most recent sales particulars, which show a property without inventory.

Again Mr Hughes appears willing to ignore the practical reality which would face a hypothetical purchaser at the date of my report. I would suggest ignoring the cost implications relating to the condition of the property is wholly unrepresentative of how the market would perceive the proposition and is therefore misleading.

Mr Hughes has also disregarded all of the other costs of acquisition a hypothetical purchaser would encounter, on the grounds that a purchaser would be aware of them and would form part of *"each individual's assessment*". I do not consider this to be a sound argument or a train of thought any hypothetical purchaser would employ. Knowledge of the costs would not enable a hypothetical to not pay them.

The rejecting of the finance costs is a significant omission. It is both logical, reasonable and in line with the market to assume that a hypothetical purchaser would seek to finance, to some degree, from a third party and indeed to see a return on their own investment if self-funded.

I am perplexed that no account for funding has been made within Mr Hughes' report. It is instead stated within paragraph 8.14 of the report that such costs *"should form part of any due diligence, and would not apply to any purchaser who undertook a full due diligence assessment, used their own funds to purchase, and bought the property at market value."*

This statement is deeply flawed. Again Mr Hughes asserts that as costs should form part of a due diligence process they would simply not be taken into account. As noted above, I would consider it wholly logical that a hypothetical purchaser would seek a return on investment whether self-funded or funding by way of lending; this indeed is the rationale of ownership of a public house and something Mr Hughes asserts in his challenge to the use of the Brooker v Unique Pub Properties Limited (2001) case.

Within my report I have assessed the property against both the purchase price and at £250,000. Mr Hughes accepts the latter is the value of the property in its current condition, yet still ignores all costs associated with purchase, finance and re-establishing a pub business. If £250,000 is the current value in its current condition (as agreed by Mr Hughes) an operator could not re-open without incurring further expenditure; costs which Mr Hughes completely ignores. Mr Hughes' position is detached from reality.

In conclusion, I would suggest that little weight can be attributed to Mr Hughes' viability report dated 6th August 2021. I consider there to be significant and irreconcilable assertions between the reality of purchasing the White Swan and the conclusions reached by Mr Hughes.

Principally I would highlight that the assessment of viability is made against the White Swan public house and not a business operated at the White Swan public house. This difference is key as the acquisition costs, which will include the purchase, funding, repair and refitting of the property cannot be ignored by a hypothetical purchaser as Mr Hughes has proposed. I would conclude that if all of these costs were not to be accounted for in reality then viability of any public house would be almost limitless.

Finally, I note that a similar report was produced by Mr Hughes in relation to the Royal Oak at Nunnington and would suggest a similar approach may have been applied, which resulted in an approval of planning permission on appeal where it was held that proving alternate premises were available was sufficient to satisfy planning policy.

I trust this letter allows a clear contemplation of the arguments put forward within both reports and that the practicalities of acquisition and operation are fully considered.

Yours faithfully,

Peter Scholes BSc (Hons) MSc MRICS
Fleurets Chartered Surveyors