

Our Ref SGB/AB

Ryedale District Council  
Ryedale House  
Old Malton Road  
Malton  
YO17 7HH

3<sup>rd</sup> September 2021

Dear Sir/Madam

**Re: The White Swan Public House, Thornton le Clay, Malton**  
**21/00861/FUL**

We write in support of the application on behalf of the applicant, Mr Richard Harrison and would wish to make the following observations to assist officers and members determine the application.

It is accepted that the key policy consideration is provided by Policy SP11 of the Local Plan. The practical application of the policy in the context of a closure of a public house was extensively debated at the informal hearing into the closure of the Royal Oak at Nunnington. Officers will appreciate that the hearing found against the Council's position, with not only permission being granted at appeal, but the Inspector took the unusual step of making a full award of costs against the Council for their stance.

The officers will be aware that the Council principal expert witness for the Royal Oak hearing was Mr Hughes and it is therefore somewhat surprising that his advice is again being sought in this case, particularly when his report is putting forward the same principles and arguments that he used unsuccessfully to oppose the closure of the Royal Oak.

Looking at the practical application of Policy SP11, there are two key strands against which pub closures have to be considered. The strands are complimentary and not cumulative - that is to say, compliance against either strand ensures policy compliance. It is not necessary to comply with both strands.

The first strand seeks to ascertain whether **there is no longer a need for the facility or suitable and accessible alternatives exist.**

Appendix 1 to this letter sets out a comprehensive list of local pubs that are currently operating. There are 7 pubs within 5 miles, with distances ranging from 1.2 miles to 4.8 miles. Travel times vary between 2 mins and 12 mins (max). Casting the net slightly wider, within a 10-mile radius of the village there are 25 pubs, all within a 20 minute journey by road - many much closer and less travel time.

The Fleurets report commissioned by the applicants makes it clear that of necessity the pubs catchment and trade base is primarily that of the car borne diner, thus the above comparisons are valid and credible. The trade base has not been that of a village resident walking to the pub for a drink. Paragraph 3.16 of the Fleurets report advises:

*The locational characteristics of the White Swan are such that it will not be able to rely solely on a locally resident custom and by necessity will therefore need to attract and appeal to a targeted destination type of custom, the vast majority of whom will be reliant upon car journeys in order to access the property.*

Section 4.2 of the Fleurets report advises in great detail on the range of alternative facilities and sets out in detail the availability of alternative facilities within a reasonable proximity to the village. It concludes that there is a wide range of suitable and accessible alternative facilities.

By contrast the Hughes report seems to consider the availability of alternative facilities only in terms of whether they are potential competition for the White Swan and misses the point that the wide range of alternative facilities satisfy the key strand of Policy SP11. He provides no evidence that the alternative facilities cannot meet the needs of the community and by referring to their existence actually corroborates the Fleurets report in practical terms.

The Inspector dealing with the Nunnington Case considered it reasonable for customers to travel a distance of around 6 miles to use alternative facilities and there are around 9 alternative pubs that fulfill those criteria.

He concluded:

*Whilst I have no doubt in my mind that local residents would very much like to have a public house within the village so that they can easily walk to it, to my mind this does not provide a compelling justification of need which could not be serviced by alternative public houses in surrounding villages. It is coming to that view I acknowledge that none of the venues brought to my attention are as convenient to the residents of Nunnington than the Royal Oak. However, this is not the test I have to consider the proposal against<sup>1</sup>.*

On this basis alone it is clear that the application is policy compliant and should be supported.

Failure to acknowledge this point once more would be to repeat the lessons of the Nunnington Case and potentially lead to a repeat award of costs. It is appreciated that officers and members will wish to avoid that scenario.

Turning to the second strand of the policy, namely **that it is no longer economically viable to provide the facility**, it is clear that there is substantial agreement between Fleurets and Hughes, particularly in terms of the fundamental building blocks of potential turnover and the breakdown between probable food and wet sales. There is agreement on operating costs and potential gross profit.

The fundamental areas of difference between the two assessors lies in whether it is reasonable for an owner of a public house to expect a return on their investment, in terms of the cost of initial ownership and any subsequent investment in the fabric and/or fixtures of the building. Mr Hughes suggests such matters are irrelevant and should be discounted. Fleurets argue that such costs are essential considerations, and no financial institution would lend finance without expecting a reasonable return on any lending. Fleurets also cite relevant case law in terms of legitimate owners' expectations and refer to established industry business models and assessment criteria. Mr Hughes by contrast simply puts forward a largely unsupported hypothesis of an altruistic purchaser who wants no return on their investment other than the ownership of the pub and discounts the cost of any investment required to modernise and provide essential facilities within the pub. His conceptual business model is not apparently supported by any authoritative source.

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<sup>1</sup> Para 12, APP/Y2736/W/19/3223570.

The officer report has to decide what weight to be accorded to the two approaches and in this respect, officers will have to decide which report offers the greatest insight into practical viability. It is suggested that on balance, the Fleurets assessment is rooted in stronger commercial reality and Hughes offers a theoretical insight that cannot be delivered in practice without public grant, subsidy or altruistic lender. Limited weight must be afforded to such a scenario without evidence of its likelihood.

The recent designation of the facility as an Asset of Community Value can only be afforded limited weight in the determination of the application and it most certainly does not supersede the policy tests of Policy SP11.

As the Inspector noted in Nunnington, it is not necessary to consider detailed questions on viability if alternative facilities are available. They manifestly are available, as set out overleaf and more fully in the Fleurets report and accordingly the application is policy compliant and should be supported.

Yours faithfully

**Steve Barker BSc (Hons) MRTPI DMS**  
**Managing Director**  
**Prism Planning**