

Item Number: 12
Application No: 21/01499/FUL
Parish: Welburn (Malton) Parish Council
Appn. Type: Full Application
Applicant: Mr and Mrs Stewart Holt
Proposal: Siting on the service road and village green of outdoor seating for Dogh Cafe and sale of hot food for consumption off the premises (retrospective application)
Location: Dogh Main Street Welburn Malton YO60 7DX
Registration Date: 25 November 2021
8/13 Wk Expiry Date: 20 January 2022
Overall Expiry Date: 14 March 2022
Case Officer: Alan Goforth **Ext:** 43332

CONSULTATIONS:

Initial consultation

Building Conservation Officer	Objection to the siting of tables/seats/picnic benches on land to the north of the property on the grassed area due to harm to Conservation Area and setting of Listed Buildings. No objection to outdoor seating immediately to the front of the café & no objection to the sale of hot food for consumption off the premises
Environmental Health Ellie Hook AONB Manager	No response received Strong objection to the outdoor seating on the village green adjacent to the access. No objection to outdoor seating immediately to the front of the café & no objection to the sale of hot food for consumption off the premises
Highways North Yorkshire Welburn (Malton) Parish Council	No response received Comments both for and against the outdoor seating. No objection to the sale of hot food for consumption off the premises

Reconsultation (deletion of the pair of picnic benches sited opposite Cherry Tree House)

Building Conservation Officer	Objection in principle remains due to the remaining presence of 1 love seat and 1 picnic table on the area of open green space within the Conservation Area.
Environmental Health Ellie Hook AONB Manager	No objection- recommend conditions in relation to litter management; extraction equipment; and prohibit deep fried food as part of hot food takeaway Strong objection to the outdoor seating on the village green adjacent to the access remains.
Highways North Yorkshire Welburn (Malton) Parish Council	Refusal of the outdoor seating on the village green adjacent to the access. No objection to outdoor seating immediately to the front of the café & no objection to the sale of hot food for consumption off the premises <i>[Any further comments will be reported at the meeting of Planning Committee]</i>

Representations (125):

Objections (29): John Ryan, Julie Ryan, David Lewis, Jane Manging, Ian Leadbeater, Judith & Tim Scott, Margaret C Lewis, A C P Manging, Rob Stansfield, Helen Stansfield, Mr & Mrs Brown, Nick Symington, Sian Symington, Paul Nicoll, David Ashurst, Alistair Duncan, P Dodsworth, Mark Knapp, David Birstow, Elaine and Edward Gathercole, Felicity Leadbeater, Anna Hazell, Kate Durham, Sophie Wigby-Ashurst, James Wigby, Natalie Gibson, James Gibson, Matthew Kenyon, Edmund Collins.

Support (96): Paula Deverell, Stephen Linsley, Jerry Fargher, Colin Payne, Ian Hunt, Julie Anderson, Richard Pollard, Lynne Fargher, Sarah Fletcher, Amy-Jane Beer, Sheila Marsh, Russell Smalley, Carla Martindale, Roisin Sherrington, Sam Dexter, Natasha Hopkins, Georgie Wainwright, Lindsey Coulson, Melanie Satterthwaite, Jenna Smith, Erin Foxton, Julia Jackson, Sarah Marsden, Jasmine Crooks, Michael Crooks, Niki Smith, Julian Boddy, Rachael Dunbar, Simon Aldrich, Becky Capstick, Raymond Watson, Renee Marshall, R Halpin, Helen Mahoney, Jennie Young, Andrew Coulson, Anthony Grinsdale, Rachael Wherry, Thomas Farmer, Jonathan Hurst, Wendy Coulson, Helen Stephenson, Duncan Scrase, Dawn Hamling, Elizabeth Fowler, Richard Marsden, Peter Wanklyn, Paul Spencer, Mildred Till, Simeon Baker, Julia Spearman, Kim Burn, Mrs Claire Spencer, Philip Spence, Lee Schofield, Ley Allan, Jennifer Kent, Jonathan Burton, Jennifer Smith, Kathleen Coulson, Edward Coulson, Donald Low, Michael Leighton, Gillian Hart, Christopher Ray, Mike Sutton, William Pickering, John Whitworth, Leah Barker, Judy Holmes, Peter Hill, Lily Spencer, Julie Hopkins, Colin Morgan, Sue Jefferson, Alastair Gunn, John Grimshaw, Richard Byfield, Mathew Harrison, Ann Young, Wendy Coe, Vanessa Jones, Ben Platt, Dawn Panas, Ryan Cuthbert, Michelle Ingram, Hayley Cuthbert, Janis Broadhurst, Beverley Kershaw, JC Robson, Dinah Keal, Gillian Astle, Mike Moffoot, Nigel Haines, Jon Bull-Diamond, Jeff Mowbray.

BACKGROUND:

The application is to be determined by Planning Committee as representations received in response to the consultation exercise have raised objections based on material planning considerations.

SITE:

The application relates to a two-storey building located centrally within the village of Welburn. The building stands to the south of Main Street, and occupies an elevated position in relation to the public highway which runs through the village. The building, along with surrounding properties to the east and west, is set back from the public highway behind an area of open, grassed village green and private access ways.

The ground floor of the building is currently operated under the name 'Dogh' and is an established mixed use unit which provides a shop and café. The remaining part of the building to the rear and at first floor level is used as flats and a holiday let.

The site lies within the development limit of Welburn and is within the village Conservation Area. It is also within the Howardian Hills Area of Outstanding Natural Beauty (AONB).

In addition to being registered Village Green (protected from encroachment and development by the Inclosure Act 1857 and the Commons Act 1876) the grassed areas to the front of the building which flank the access are within a Visually Important Undeveloped Area (VIUA) as identified within the Ryedale Plan- Local Plan Strategy (2013).

The two storey building has a gable front elevation in brick with tile hanging on the first floor and a clay pantile roof. The front elevation at ground floor level comprises two large display windows which flank a central doorway.

At present there are two wooden picnic benches abutting the front, north facing elevation of the building flanking the main entrance door. Further to the north, on the grassed area forming part of the village green, is additional outdoor seating associated with 'Dogh' which flank the access road. The seating comprises two picnic benches on the raised grassed area on the eastern side of the access and a 'love seat' and a further picnic bench on the raised grassed area on the western side of the access. All of the seating is of timber construction with the two picnic benches on the eastern side and the 'love seat' having a white painted finish.

Properties either side of the application site are occupied for residential purposes (Cherry Tree House & White House). The dwelling immediately to the east (Cherry Tree House) is under the applicant's ownership and shares a rear, private driveway with the application site. St Annes Cottage is further to the east beyond Cherry Tree House. The Crown and Cushion Public House stands opposite the site to the north of Main Street and Pear Tree House is opposite to the north east.

There are several listed buildings in the vicinity of the site the nearest being the Grade II listed Cherry Tree House which is immediately adjacent to the east of the site and also Grade II listed Pear Tree House which stands opposite to the north-east of the site.

HISTORY:

21/01590/73A - Variation of Condition 03 of approval 09/00241/FUL dated 11.06.2009 to set opening hours of the cafe including any hot food takeaway and the retail use as 08.00 to 18.00 Monday to Saturday and 08.00 to 17.00 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) (retrospective application) UNDER CONSIDERATION.

09/00613/COND- Discharge of Condition Nos. 04 and 05 of approval 09/00241/FUL dated 11.06.2009. APPROVED 13.07.2009. The conditions/approved details relate to the materials and finishes for the external staircase and windows and doors.

09/00241/FUL- Alterations to internal layout to increase retail area with cafe area adjacent, change of use of part of ground floor residential area to commercial kitchen, and sub-division of ground and first floor residential accommodation to form 1 no. one bedroom ground floor flat and 1 no. two bedroom first floor flat with access by erection of external staircase. APPROVED 11.06.2009.

08/00163/FUL- Change of use of shop to shop and cafe, including outside cafe seating area to front of building (retrospective application). APPROVED 24.11.2008. On 16 April 2009 details were approved in relation to conditions 4 (storage and disposal of refuse) and 6 (extent of outdoor seating).

PROPOSAL:

Planning permission is sought for the siting on the service road and village green of outdoor seating for Dogh Cafe and sale of hot food for consumption off the premises (retrospective application).

The application initially sought retrospective permission for the outdoor seating on the grassed part of the village green on both sides of the access road (opposite Dogh and opposite Cherry Tree House). Following consideration of the responses received during the consultation period the applicant opted to amend the application to delete the pair of picnic benches sited opposite Cherry Tree House.

As a result the application seeks retrospective permission for the outdoor seating comprising the 1no. picnic bench and 1no. love seat opposite the cafe in addition to the 2no. picnic benches directly outside the café which flank the entrance door.

In addition to reducing the number of benches on the grassed part of the village green the applicant also states that the colour of the benches/seats can be changed to one considered more appropriate as required by the Local Planning Authority and parasols can also be removed.

The 3no. rectangular picnic benches are of timber construction and each measure approximately 1.8 metres in length by 1.5 metres in width. Each bench has space for 4-6 people to be seated. The 'love seat' has an approximate length of 2 metres and depth of 800mm and provides seating for 2 people.

The outdoor seating for which retrospective permission is being sought would provide seating for between 14- 20 people. The applicant states that the outdoor seating is essential for ensuring the viability of the business.

POLICIES:

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 planning authorities are required to determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise. The Development Plan for the determination of this particular application comprises the following:

- The Ryedale Plan- Local Plan Strategy (2013)

The Ryedale Plan - Local Plan Strategy (2013)

Local Plan Strategy - Policy SP12 Heritage

Local Plan Strategy - Policy SP13 Landscapes

Local Plan Strategy - Policy SP16 Design

Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development

Local Plan Strategy - Policy SP20 Generic Development Management Issues

Material Considerations

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (PPG)

REPRESENTATIONS:

The LPA has received a total of 125 representations from local residents and members of the public in response to the publicity/neighbour notification exercise. A total of 29 raise objections to the application and 96 support the proposal. The representations making objection include a detailed statement from residents. The representations made in support include one from Ryedale District Councillor Dinah Keal.

Full copies of all the representations received by the LPA can be accessed via the Council's Online Planning Register.

Summary of the representations making objections

The reasons given in objection can be summarised as follows:-

- Siting of tables on service road and village green is a road safety issue given proximity to vehicles using service road and also proximity of users to main road
- Potential damage/erosion to village green from increased use and footfall
- Loss of visual amenity/visual impact of the tables and the appearance of a picnic site in the centre of the village
- White painted bench picnic tables with parasols do not preserve the character and appearance of the Conservation Area
- The verge is a Visually Important Undeveloped Area and picnic benches detract from the village scene
- The green's protected status must continue to be preserved for its visually aesthetic value to the Welburn community, not exploited for the commercial interests of one business
- Loss of privacy
- Conflict between users of outdoor seating area and users of private access road
- Inconsiderate parking causing access issue
- Sale of hot food to takeaway would generate congestion and safety issues in the village

It should be noted that a number of objections make clear support for the continued operation and success of the café/shop business. Furthermore a number of objections make it clear there was no objection to the extended hours; takeaway food or the use of outdoor tables on a temporary basis in response to the coronavirus pandemic.

The objections that raise concerns in relation to land ownership and rights of access are not material to the consideration of the application as they are matters beyond planning control.

In addition to responses from local residents and members of the public a response has been received from the Open Spaces Society which states the following:

“The Open Spaces Society was founded in 1865 and works to protect common land, town and village greens (TVG), open spaces, and public rights of way.

The society is concerned that tables have been placed on the TVG by a café/delicatessen for the exclusive use of customers. The tables are infringing rights of local people to use the TVG. In addition there appears to be parking on the green in this conservation area.

You may be aware that the green is protected under section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 and that breaches can be prosecuted in the magistrates court. It is an offence under these acts to damage or encroach upon a TVG. The terms of section 12 are wide and cover any act which injures the green or interrupts its use as a place for exercise and recreation. Section 29 also covers permanent encroachment and enclosure”.

In response to the re-consultation exercise on the reduced number of picnic benches the LPA received a further 10 representations raising objections all of which were from individuals who had previously objected to the application. The responses did not raise any concerns over and above those summarised above.

Summary of the representations in support

The reasons given in support can be summarised as follows:-

- Valuable resource for the village and visitors
- The outdoor areas are always kept tidy
- Seating outside adds to the feeling of friendliness of the village
- The outdoor seating gives the local population a place to meet, and encourages visitors to the area
- The tables do not look out of place or out of character for the village
- The tables don not cause any obstruction to the highway or path
- Losing the outdoor seating would significantly reduce the capacity and appeal of the cafe and rob the village of a facility valued by locals from the village and surrounding area as well as visitors
- The business creates jobs for locals
- The takeaway and outdoor seating option is a much appreciated by cyclists and walkers

In response to the re-consultation exercise on the reduced number of picnic benches the LPA received 1 further representation in support from an individual who had not previously made representations in support of the application. The reason for support is included in the summary above.

APPRAISAL:

Principle of the development

The proposal is clearly divisible into distinct elements. There are essentially three parts to the proposal for which retrospective permission is being sought. Firstly, the siting of outdoor seating on the service road (immediately to the front of the building); secondly, the siting of outdoor seating on the village green and; thirdly, the sale of hot food for consumption off the premises.

Paragraph 84 of the NPPF (2021) sets out national policy supporting a prosperous rural economy. It states “*Planning policies and decisions should enable (inter alia): d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship*”.

It is considered that the proposal accords with national policy, in terms of supporting the rural economy and the provision of local services. As such it is considered that in principle the outdoor seating and hot food takeaway is acceptable subject to a detailed assessment of the impacts taking account of the national and local designations applicable to the application site.

The site is within the Conservation Area. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 imposes a duty on Local Planning Authorities to ensure that special attention is paid to the desirability of preserving or enhancing the character and appearance of the Conservation Area. Furthermore, the Planning (Listed Building and conservation Areas) Act 1990 requires that special regard is given to the preservation of listed buildings and their settings.

In addition the site is within the Howardian Hills AONB. The Countryside and Rights of Way Act 2000 places a statutory duty on authorities to have regard to the purpose of conserving and enhancing the natural beauty of the AONB when exercising or performing any functions affecting land in the AONB.

Each part of the application will be assessed in turn.

Siting of outdoor seating on the service road

The outdoor seating immediately in front of the building for which retrospective permission is being sought comprises 2no. picnic benches of timber construction which flank the entrance door. The picnic benches are rectangular and each measure approximately 1.8 metres in length by 1.5 metres in width. Each bench has space for 4-6 people to be seated.

It is relevant to note that permission has previously been granted for outdoor seating to serve the premises. The seating was permitted on the right hand side (when facing the front of the building) of the entrance door. The approved plans show that the extent of the area permitted for outdoor seating measures 2.2 metres out from the front elevation by 3.7 metres across the front. The plans show this area containing two circular tables and a total of six chairs for use in connection with the café.

The 2no. picnic benches are positioned on the service road and there is a degree of local concern in relation to safety of users of the benches and vehicles. The size and position of the benches is shown on the plans which accompany the application and as currently set out on site narrow the service road to a width of approximately 4.5 metres at the point it passes the front of the café/shop. The highways officer acknowledges the planning history in relation to the earlier approval of outdoor seating to the front of the café and has not raised an objection subject to the benches being positioned tight to the building in order to minimise the obstruction on use of the service road. It is considered that this can be achieved through the inclusion of a condition which restricts the number and size (including projection off the front elevation) of the picnic benches abutting the front elevation to that shown on the plan. In light of this it is considered that the 2no. picnic benches would not have a detrimental impact on vehicle movements or the safety of pedestrians or cyclists in compliance with Policy SP20.

In terms of appearance and visual impact the 2no. picnic benches immediately in front of the building are of uniform design, size and finish and their siting is well related to the existing building. As a result the benches are clearly both physically and functionally associated with the existing café/takeaway use and are not considered to be intrusive or incongruous features within the streetscene and comply with Policy SP16 and SP20.

Neither the Building Conservation Officer nor the AONB Manager have raised any objection or concern in relation to the 2no. picnic benches immediately in front of the building. It is considered that the use of the land immediately to the front of the building for outdoor seating in the form of 2no. timber picnic benches would not result in harm to the character and appearance of the identified heritage assets or their setting in compliance with the NPPF and Policy SP12. Furthermore the use of the land immediately in front of the building for outdoor seating would not be at the detriment of the natural beauty of the AONB in compliance with the NPPF and Policy SP13.

The EHO has not raised any concerns that the use of the benches during the hours permitted would give rise to any unacceptable noise or disturbance to neighbours. It is considered that the siting and orientation of the 2no. picnic benches immediately in front of the building would not give rise to any adverse impact on levels of amenity enjoyed by neighbours in terms of overlooking or loss of privacy in compliance with Policy SP20.

In light of the above it is considered that siting of outdoor seating on the service road as shown on the proposed plans is acceptable.

Siting of outdoor seating on the village green

The application initially proposed the siting of outdoor seating on the village green comprising 2no. picnic benches on the raised grassed area on the eastern side of the access and 1no. 'love seat' and a further picnic bench on the raised grassed area on the western side of the access. The application was amended to delete the pair of benches on the eastern side of the access and now proposes 1no. picnic bench and 1no. love seat on the part of the site within the registered village green.

The site is within the Conservation Area and within the setting of a number of listed buildings albeit the amended details, which removed the two picnic benches to the front of Cherry Tree House, has reduced the impact on the setting of the Grade II listed buildings.

The Building Conservation Officer (BCO) retains an objection to the application (as amended) due to the harm to the Conservation Area.

The detailed response of the BCO explains that *“the grass verge makes a strongly positive contribution to the Conservation Area in providing open natural green space giving relief to the built up areas. It also provides a setting for many of the listed buildings in that it provides an open natural foreground*

giving clear and open views of many of the houses and cottages. Due to the topography and layout of the village, the green space and listed buildings have strong inter-visibility”.

The BCO describes how the use of the grassed area for the siting of the picnic bench/seat “*does not preserve the open green character of the natural grass verge*” and “*causes visual clutter*”. Furthermore, “*The visual prominence of the elevated area immediately adjacent to the public highway and access road increases the harmful effect of the café furniture*”. In light of this the proposed siting of outdoor seating on the village green will not preserve or enhance the Welburn Conservation Area by virtue of its cluttering impact in a publically visible area of open green space.

The harm is deemed to be ‘less than substantial’ and the NPPF requires that “*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*”. There are no identified heritage benefits of the proposal and the BCO is of the view that the optimum viable use of the grassed area is open, publically accessible green space providing an uncluttered foreground to the setting of the listed buildings and as an integral open natural space within the Conservation Area. The National Planning Policy Framework directs that great weight is given to the conservation of heritage assets. It is considered that the proposal conflicts with the NPPF and Policy SP12 of the Ryedale Plan- Local Plan Strategy (2013).

The site is also within the Howardian Hills AONB. National planning policy (NPPF) states that “*Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty*”. The AONB Manager has lodged a strong objection to outdoor seating to serve the café being sited on the village green.

It is considered that the outdoor seating in this prominent road side position erodes the open character of this part of the settlement. It does not protect the special qualities or scenic beauty of this key Howardian Hills AONB village and is considered to be contrary to requirements of the NPPF and Policy SP13.

In addition to the siting of outdoor seating on the registered Village Green (protected by non-planning legislation) the land is also identified as a Visually Important Undeveloped Area (VIUA) within the Ryedale Plan- Local Plan Strategy (2013).

The VIUA is an undeveloped area within the settlement which contributes to its form, character and setting. Policy SP16 states that “*To reinforce local distinctiveness, the location, siting, form, layout, scale and detailed design of new development should respect the context provided by its surroundings including (inter alia): The character and appearance of open space and green spaces including existing Visually Important Undeveloped Areas (VIUAs)... Development proposals on land designated as a VIUA will only be permitted where the benefits of the development proposed significantly outweigh the loss or damage to the character of the settlement*”.

Policy SP16 also states that “*development proposals will be expected to create high quality durable places that are accessible, well integrated with their surroundings and which (inter alia): Reinforce local distinctiveness; and provide a well-connected public realm which is accessible and usable by all, safe and easily navigated*”. In a similar vein Policy SP20 requires that “*New development will 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*”.

It is important to clarify that the application proposes the use of the land to provide outdoor seating for Dogh Café (“*essential for ensuring the viability of the business*”) and this is underlined by the fact that the tables are numbered and clearly for customers of Dogh. The proposal does not represent the provision of public seating within land registered as a village green. It should be noted that there is existing street furniture in the locality which provides seating for the general public. There are 3no. road side benches (park bench style) for public use within 120 metres of Dogh.

The use of the village green (VIUA) for the siting of outdoor seating for the café represents encroachment onto undeveloped, green space and results in visual clutter in an otherwise open and unspoilt grass verge. The outdoor seating in this area is physically separate from the café building and prominent in this road side position. The seating appears as an incongruous overflow of the café business onto part of the public realm characterised by, and protected because of, its green, undeveloped appearance. The use of the village green (VIUA) for the siting of outdoor seating to serve Dogh does not reinforce local distinctiveness or provide for public realm which is accessible and usable by all. It is considered to be an inappropriate land use and the benefits of the additional seating to serve the café business and its customers does not outweigh the harm to visual amenity and character of the settlement and the proposal is considered to be contrary to the requirements of Policies SP16 and SP20.

With regard to the highways impact the highway officer recommends that the siting of outdoor seating on the village green is refused. The highway officer states *“I have concerns that their siting lies prominent to the existing access with the public-maintained highway and the activities allied to use of this seating for the purpose of recreation and consumption of food, drinks etc., will likely cause conflict both to visitors to the cafe and residents' accessing their dwellings; proliferate pedestrian activity at and around the access area and likely cause distraction to users of the access by virtue of such activity and also potentially obstructing visibility along Main Street in a westerly direction and, given the slope down to the carriageway edge, create a potential for pedestrians, food items and other paraphernalia to be brought out unexpectedly onto the carriageway of the highway and thereby overall create conditions likely to be prejudicial to highway safety”*.

It is accepted that the existing café/shop/takeaway is popular with local residents and visitors to the area and a flow of pedestrians, cyclists and vehicular traffic associated with the business is to be expected. However, the siting of outdoor seating on the village green which is an elevated and sloping grass verge adjacent to the public highway and access would focus pedestrian activity within a hazardous area and give rise to unsafe road conditions contrary to Policy SP20.

With regard to residential amenity the EHO has not raised any concerns that the use of the bench/seat on the village green would give rise to any unacceptable noise or disturbance to neighbours. It is considered that the bench/seat on the village green to front of the café/shop and opposite the public house would not give rise to any adverse impact on levels of amenity enjoyed by neighbours in terms of loss of outlook, overlooking or loss of privacy in compliance with Policy SP20.

In light of the above it is considered that siting of outdoor seating on the village green as shown on the proposed plans is unacceptable and conflicts with Policies SP12, SP13, SP16 and SP20. It is recommended that a condition is imposed on any approval given to require that within 14 days of the decision the use of the grassed part of the village green for outdoor seating associated with the café/shop/takeaway shall be discontinued and the 3no. picnic benches and 'love seat' removed and the land restored to its previous condition.

Sale of hot food for consumption off the premises

The application details explain that presently hot food sold for consumption off the premises mainly comprises hot sandwiches; paninis; pizzas; and pies and hot beverages are also sold for takeaway. The supporting information states that the sale of hot food for consumption off the premises comprises a relatively small proportion of the turnover of the business and is ancillary to the primary use a retail shop and café.

The extant permissions for the café/shop include informative advice to the operator that no permission exists for hot food takeaway and a further planning application is required for the sale of hot food for consumption off the premises.

It is relevant to note that planning rules have been relaxed to allow pubs/restaurants/café's to operate as hot food takeaways during the coronavirus pandemic. The temporary permitted development right (Class DA within Part 4 of the Second Schedule of the GPDO 2015 (as amended)) came into effect on 23 March 2020 and is due to expire on 23 March 2022 after which businesses making use of this right

must revert back to their previous lawful use (unless a specific planning permission has been granted). The aforementioned informative attached to the planning permission did not prohibit the use of the temporary permitted development right provided by Class DA. This retrospective application now seeks permission for the continuation of the sale of hot food for consumption off the premises on a permanent basis.

There is a degree of local concern in relation to the hot food takeaway primarily in relation to amenity and highways impacts. It is noted that none of the consultees have raised an objection to the sale of hot food for consumption off the premises.

The applicant states that a significant proportion of customers live in Welburn and can walk to the premises. That proportion of traffic which is associated with takeaway hot sandwiches etc. is already on the main road and is passing through the village. The highways officer acknowledges that the sale of hot food for consumption off the premises will likely give rise to an element of additional vehicular activity allied to short stay parking on the highway and the service road. The highways officer states “*given that similar activity seems to be associated with the approved cafe use it would not, on considered balance, give rise to a specific highway concern*”.

In the interests of protecting amenity the EHO has recommended additional controls in the form of conditions relating to litter management; extraction equipment; and a restriction on deep fried food forming part of the hot food takeaway. In addition a condition shall be imposed to ensure the hot food takeaway remains ancillary to the primary use of the building as a retail shop and café.

It is considered that the sale of hot food for consumption off the premises would not give rise to material harm to local amenity; highway safety conditions; or any local or national designations applicable to the site. It is considered that the proposal would help to maintain the viability of the café/shop and contribute to the vitality of the village and complies with Policies SP12, SP13, SP16, SP19 and SP20 and there are no reasons to withhold the grant of planning permission for the additional use as a hot food takeaway.

Conclusion

Planning policy recognises the economic and social role played by village facilities such as the café/shop in Welburn and the NPPF (2021) encourages LPA’s to plan positively for the provision and use of community facilities such as local shops and meeting places.

It is accepted that the development of accessible local services and community facilities, such as local shops and meeting places help maintain the viability of the business whilst contributing to the vitality of the village. In the planning balance it is for the decision maker to weigh the benefits against the harm.

In view of the above assessment it is considered that the siting of outdoor seating on the service road and the sale of hot food for consumption off the premises are acceptable and meet the relevant policy criteria outlined within Policies SP12, SP13, SP16, SP19 and SP20 of the Ryedale Local Plan – Local Plan Strategy (2013).

Accordingly, it is recommended that the application is part approved, part refused so that retrospective planning permission is granted for ‘the siting on the service road of outdoor seating for Dogh Cafe and sale of hot food for consumption off the premises’.

The proposed siting on the part of the village green nearest the public highway of outdoor seating for Dogh Café gives rise to unacceptable harm to the character and appearance of the streetscene, the village Conservation Area; the special qualities of the AONB and the undeveloped appearance of land locally designated as a VIUA. In addition the seating on the grassed area adjacent to the public highway would create conditions likely to be prejudicial to highway safety. It is considered that this aspect of the application is in conflict with Policies SP12 (Heritage), SP13 (Landscapes), SP16 (Design) and SP20 (Generic Development Management Issues) of the Ryedale Local Plan – Local Plan Strategy (2013). On balance the identified harm significantly outweighs the benefits and it is considered to be in the public interest to refuse the part of the proposal relating to the siting on the village green nearest the

public highway of outdoor seating associated with Dogh café.

It is considered that in this case the acceptable and unacceptable parts of the proposal are clearly distinguishable and in light of the above assessment a condition shall be imposed to limit the grant of planning permission to only part of the development proposed. The use of such a condition is considered appropriate in these circumstances and is in line with Planning Practice Guidance on split decisions. It is considered that the use of a condition modifying the development (to exclude the unacceptable element) is appropriate on the basis that it would not make the approved development substantially different from that proposed by the applicant.

Positive and Proactive Decision Making

Paragraph 38 of the NPPF, in relation to decision-making, states that “*Local planning authorities should approach decisions on proposed development in a positive and creative way*”. It also explains that LPA’s should “*work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible*”.

The Case Officer has acted positively and proactively by: identifying matters of concern; highlighting consultation responses raising objection to the proposal; and advising the applicant of the conflict the proposal has with the adopted Development Plan.

During the course of processing the application the Case Officer requested that the applicant give consideration to amending the application to remove all the outdoor seating on the village green from the proposal prior to the application being reported to Planning Committee for determination.

However, the applicant opted to amend the proposal to only remove two of the benches on the grassed part of the village green. The amended plans were the subject of a reconsultation exercise which gave rise to consultees reiterating previously stated objections to the seating on the grassed part of the village green. Despite confirmation that that element of the proposal would not receive Officer support the applicant has not opted to make any further amendments to the proposal so the application is brought before Planning Committee in its current form for determination.

RECOMMENDATION: Part Approval/ Part Refusal

Retrospective planning permission is granted for the siting on the service road of outdoor seating for Dogh Cafe and sale of hot food for consumption off the premises subject to the following conditions:-

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan ref. (EX)01 Rev D, dated 09.02.2022

Site Plan ref. (PL)02 Rev B, dated 09.02.2022

Proposed Floor/Site Layout Plan ref. (PL)04 Rev A, dated 09.02.2022 (insofar as it relates to the siting on the service road of 2no. picnic benches only)

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 A maximum of 2no. standard picnic benches of timber construction shall be positioned to the front of the building flanking the main entrance door as shown on the approved drawing reference Proposed Floor/Site Layout Plan ref. (PL)04 Rev A, dated 09.02.2022. Each picnic bench shall have a maximum projection of 1.8 metres from the front elevation of the building and maximum width of 1.5 metres. No other outdoor seating shall be provided within the application site.

Reason: In the interests of road safety, visual amenity and to protect the character and appearance of the streetscene, Conservation Area, AONB and the VIUA in accordance with Policies SP12, SP13, SP16 and SP20.

- 3 Within 14 days of the date of this permission the use of the grassed part of the village green for outdoor seating associated with the café/shop/takeaway shall be discontinued and the 3no. picnic benches and 'love seat' shall be removed and the land restored to its previous condition.

Reason: In the interest of highway safety, visual amenity and to protect the character and appearance of the streetscene, Conservation Area, AONB and the VIUA in accordance with Policies SP12, SP13, SP16 and SP20.

- 4 Within 1 month of the date of this permission a Litter Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Litter Management Plan should provide for the clearance of the outdoor space to 50 metres either way of all litter originating from the business and ensure that a litter bin is available onsite and emptied when full. The Litter Management Plan should also include scope for review when deemed necessary by the operator or the Local Planning Authority.

Thereafter, the development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity in compliance with Policy SP20.

- 5 Prior to the installation of any new/additional mechanical extraction or ventilation equipment or external plant details and the location shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity in compliance with Policy SP20.

- 6 The hot food takeaway hereby approved shall be limited to the hours permitted for the cafe/shop and shall remain ancillary to the primary use as a café/shop. Unless otherwise approved in writing by the Local Planning Authority, the hot food takeaway shall not include food which has been deep fried unless adequate extraction has been provided to the satisfaction of the Local Planning Authority in consultation with the Environmental Health Officer.

Reason: In the interests of residential amenity in compliance with Policy SP20.

Reason for partial refusal

Retrospective planning permission is refused for the siting on the part of the village green nearest the public highway of outdoor seating for Dogh Café for the following reasons:-

1. The siting of outdoor seating in the form of a picnic bench and 'love seat' on the village green will not preserve or enhance the Welburn Conservation Area by virtue of its cluttering impact in a publically visible area of open green space. The siting of the picnic bench and 'love seat' on the village green causes less than substantial harm to the Welburn Conservation Area which is not outweighed by any heritage benefits. Furthermore the proposal does not represent the optimum viable use of this part of the designated heritage asset. The application has been

considered with regard to Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and is considered to neither enhance nor preserve the character of the designated Conservation Area. The proposal is therefore considered to be contrary to the requirements of Policy SP12 (Heritage) of the Ryedale Plan - Local Plan Strategy and contrary to Section 16 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework.

2. The siting of outdoor seating in the form of a picnic bench and 'love seat' on the village green will not conserve and enhance the special qualities and scenic beauty of beauty of this key Howardian Hills AONB village by virtue of its prominent road side position which erodes the open character of this part of the settlement. The development is therefore contrary to the requirements of Policies SP13 (Landscapes), SP16 (Design) and SP20 (Generic Development Management Issues) of the Ryedale Local Plan - Local Plan Strategy and Section 15 (Conserving and enhancing the natural environment) of the National Planning Policy Framework.
3. The siting of outdoor seating in the form of a picnic bench and 'love seat' on the village green fails to reinforce local distinctiveness or respect the character and context of the immediate locality and is detrimental to the open, undeveloped character of this part of the settlement which is identified as a Visually Important Undeveloped Area (VIUA). The benefits of the proposal do not significantly outweigh the damage to the character of the settlement. The development is therefore contrary to the requirements of Policies SP16 (Design) and SP20 (Generic Development Management Issues) of the Ryedale Local Plan - Local Plan Strategy and Section 12 (Achieving Well-Designed Places) of the National Planning Policy Framework.
4. The siting of outdoor seating in the form of a picnic bench and 'love seat' on the village green adjacent to the existing access with the public-maintained highway and the activities allied to use of this seating will likely cause conflict both to visitors to the cafe and residents' accessing their dwellings; proliferate pedestrian activity at and around the access area and likely cause distraction to users of the access by virtue of such activity and also potentially obstructing visibility along Main Street in a westerly direction and, given the slope down to the carriageway edge, create a potential for pedestrians, food items and other paraphernalia to be brought out unexpectedly onto the carriageway of the highway and thereby overall create conditions likely to be prejudicial to highway safety. The proposal is therefore considered to be contrary to the requirements of Policy SP20 (Generic Development Management Issues) of the Ryedale Plan - Local Plan Strategy.