

COMMITTEE REPORT

Date: 30 March 2021 **Ward:** Holgate
Team: West Area **Parish:** Holgate Planning Panel

Reference: 20/01498/FUL
Application at: The Jubilee Balfour Street York YO26 4YU
For: Alterations and conversion of part of first floor and all of the roofspace of the public house building to 3no. self-contained apartments and retention of public house on ground floor and altered function room on first floor (resubmission).
By: Mr Dominic Woodward
Application Type: Full Application
Target Date: 6 April 2021
Recommendation: Approve subject to Section 106 Agreement

1.0 PROPOSAL

1.1 The application property is a vacant public house located in the Leeman Road area of the city. The property is a substantial detached building of traditional construction with accommodation located over three floors as well as a large cellar. It sits in a relatively prominent position on the corner of Jubilee Terrace and Balfour Street. To the east (side) of the building is a grassed curtilage formerly used as a beer garden. To the rear (north) is a hard-surfaced parking/storage area.

1.2 The property is currently laid out with bar/lounge areas on the ground floor and a large function room with bar on part of the first floor. A manager/landlords flat (two/three bedrooms) is located in part of the first floor and in the roof space.

1.3 It is proposed to convert part of the first floor and all of the second floor/roofspace to create three self-contained flats. Two would contain 1 bedroom and one would contain two bedrooms. The ground floor and cellar is proposed to remain in pub use. The existing first floor function room with a vaulted roof would be horizontally sub-divided with a new lower ceiling introduced. The upper part of the function room and roof space would become a self-contained flat. The remaining floor space below would remain as a function room with a new staircase introduced from the lobby of the bar area. The internal height of the function room would be 3 metres. In respect to the external space, the area of grassed beer garden

Application Reference Number: 20/01498/FUL

immediately to the side of the main pub building would remain as a beer garden. The rear part of the beer garden is proposed to become a parking and turning area for the flats. A total of three car parking spaces are indicated for the flats. The car park area will also be used for external storage for the public house and to access the doors above the cellar.

1.4 In respect to external changes to the building the following is proposed:

- The creation of a third dormer on the south elevation. Two of the dormers will be designed to function as small covered balconies.
- Removal of the outbuildings and offshoots within the yard area.
- Insertion of 5 roof lights in the roof.
- Removal of the external staircase and provision of external door in the east elevation and the south elevation.

1.5 It should be noted that the scheme has been revised from when it was first submitted in August 2020. The main change is the retention of part of the function room on the first floor and the provision of a new internal staircase to serve this. Consultation took place in respect to the original proposals and the later revision to the scheme to reduce the number of flats to 3 and retain part of the function room. Since this consultation minor changes have been made to the drawings, including to the bin storage location and function room staircase design. The impact of these changes did not justify re-consultation.

1.6 The application has been brought to committee at the request of Cllr K. Taylor due to concerns regarding the negative impact the proposal will have on the availability of community facilities in the local area.

Recent Planning History

1.7 In December 2017 a certificate of lawfulness for the proposed use of part of the first floor and the second floor as ancillary guest accommodation for the pub (17/02670/CPU) was granted. The drawings indicated that the ceiling of the function room would be lowered to create living accommodation above. No external changes were proposed. A certificate of lawfulness does not assess the merits of a proposal but only considers whether the works could be undertaken without the need to apply for planning permission.

Application Reference Number: 20/01498/FUL

1.8 In May 2018 planning permission was refused (16/00862/FUL) for the conversion of the first and second floor of the public house building to 4 self-contained apartments and the retention of a reduced size public house on part of the ground floor. In the course of assessing the application the proposal had been revised from a scheme to convert all of the building to 6 flats. The refused scheme did not retain any parts of the function room or beer garden in pub use. The application was refused under delegated powers for the following reason:

1.9 “The change of use of a large part of the internal and external areas of the building/site from public house use to four flats is considered to be an unnecessary loss of valued and important social, recreational and cultural facilities. Furthermore the loss of such space would not be a modernisation that is considered necessary or beneficial to sustain the public house use for the local community. The proposal conflicts with guidance in the National Planning Policy Framework with particular regard to promoting healthy communities (Paragraph 70), relevant guidance in the City of York Publication Draft Local Plan 2018 (Policies D3, HW1 and DP3) and policy C3 in the City of York Draft Local Plan 2005.”

1.10 The applicant appealed against the decision. On 30 October 2019 following an Informal Hearing the appeal was dismissed. The reason for the dismissal of the appeal related to the detrimental social impact that the loss of the function room and beer garden would have on the local community.

2.0 POLICY CONTEXT

National Planning Policy Framework

2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise.

2.2 The National Planning Policy Framework (‘NPPF’) is a material consideration in the determination of this planning application. Key policies / sections of the NPPF are as follows –

Section 4 Decision making

Section 5 Delivering a sufficient supply of homes

Section 8 Promoting healthy and safe communities.

Section 11 Making effective use of land

Application Reference Number: 20/01498/FUL

Section 12 Achieving well-designed places

2.3 The Publication Draft City of York Local Plan 2018 (2018 Draft Plan) was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the 2018 Draft Plan took place in December 2019. The plan policies can be afforded weight in accordance with paragraph 48 of the NPPF.

2.4 Key relevant 2018 Draft Plan Policies are as follows –

HW1	Protecting Existing Facilities
HW7	Healthy Places
D1	Placemaking
D3	Cultural Provision
D11	Extensions and Alterations to Buildings
D2	Landscape and Setting
D6	Archaeology
CC2	Sustainable Design and Construction of New Development
ENV4	Flood Risk
ENV5	Sustainable Drainage
T1	Sustainable Access

2.5 The City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005. It does not form part of the statutory development plan and its policies carry very limited weight. Appendix E to the 2005 Draft Local Plan outlines car and cycle parking standards for development and specifies that a maximum of 1 car parking space should be provide for each one or two bedroom dwelling along with one cycle parking space for each.

3.0 CONSULTATIONS

CYC Highway Network Management

No objections. There is adequate space within the parking for cars to park and manoeuvre to leave in a forward gear. The modest number of parking spaces is such that it is not considered there would be an unacceptable conflict with deliveries to the public house.

CYC Emergency Planning Co-ordinator

Does not object from a flood rescue perspective as the building is unlikely to be quickly inundated with water and notes that first floor has a large function room that could be occupied more intensively. If the application is approved a condition should be included that requires a communal first floor window to serve as means of escape.

CYC Public Protection

Do not object providing sound proofing measures are undertaken in accordance with the noise assessment and a sound limiting device is provided in the function room. Conditions should also be included regarding delivery/collection hours, noise transfer, the insulation of external windows and restricting use of the beer garden to 10pm.

4.0 REPRESENTATIONS

Environment Agency

Do not object providing the application complies with the submitted Flood Risk Assessment.

Holgate Planning Panel

No objections

York Campaign for the Protection of Real Ale (CAMRA)

The applicant has been unwilling to work with the community and the scheme is cynical and profit driven. The reduced size of the function room and restraints placed on its use undermines its value. Living accommodation is essential to a community pub. The ground floor is poorly laid out. The proposal will lead to noise complaints. The proposed pub could be unviable and see an application for a change of use to residential accommodation. A commercial kitchen is important when maximising revenue. The vandalised ground floor must be restored by the applicant. The limited proposal for pub use should be opposed in favour of a scheme that retains the whole building.

Neighbour Notification and Publicity

47 Letters have been received from neighbours in respect to the current planning application. The scheme was re-consulted upon following revisions showing the

Application Reference Number: 20/01498/FUL

retention of part of the function room. These changes have not resulted in any support for the proposals.

A number of the first round of objections raised concerns regarding the ground floor room being described as the function room with the first floor space being lost. This issue is no longer relevant in the light of the provision of a function room on the first floor. The comments that have been submitted are listed below:

- The whole building and external areas should remain in pub use.
- The loss of community provision conflicts with advice in the National Planning Policy Framework.
- The York Central development will increase custom for a historic pub.
- The area is a densely populated 'island' and is short of community facilities. The building could provide a range of social, artistic, charity and recreational functions and could be a catalyst for bringing the community together. There is a big local appetite for a community hub.
- Want a large community building rather than a small pub – space is at more of a premium with social distancing.
- The pub could function in a similar way as The Golden Ball in Bishophill.
- The proposal will exacerbate parking problems in the area. Concerns regarding the impact on safety of school children and bus routes. The pub should have parking for staff and visitors. Cycle parking should also be provided for customers.
- To be viable and attractive to investors the pub needs staff accommodation.
- There is no provision for a smoking area.
- The building has been left to degrade. It has been poorly secured and vandalised. The kitchen has been removed along with the attractive Victorian fireplaces.
- It is an asset of community value.
- The petition signed by 1000 people supporting the dismissal of the previous appeal relating to the loss of much of the pub shows the level of community support for the pub and community use. A group of local residents have formed a group with the goal of a community buy-out of the property. The owners should work with the local community to bring it back into use. The owner has refused to sell or lease out the building. There were previous offers made to keep the building entirely as a pub.
- A kitchen is an essential feature in most modern pubs.
- The loss of the pub's yard area will reduce the functionality of the pub.

Application Reference Number: 20/01498/FUL

- Changes such as the addition of roof lights, additional dormer and introduction of Juliette balconies in the dormers will detract from the appearance of the attractive historic building.
- There is no provision for the pool room that was integral to the previous operation.
- The function room shares a wall with a proposed flat and also a flat is located above. This will inevitably generate complaints which will impact on the range of activities that can take place in the function room. Activities in a function room are normally noisy.
- The function room no longer includes a bar.
- The route to bring food from the kitchen/lounge area to the bar is past the toilets.
- The occupants of the flats and function room will share the stairwell.
- There is no cycle parking for visitors.
- The bar area is too small.
- The use of the beer garden will be restricted by the proximity of residential accommodation.
- The building has been vacant too long and is an eyesore.

Jubilee Community Pub Group

The building is an Asset of Community Value. The proposal is not a 'sustainable modernisation for the benefit of the community'. It would be an unnecessary loss to the community. The building in its entirety is valuable and offers flexibility in its use. The new layout diminishes its use. The bar size is reduced, the staircase to the function room is less accessible and attached to the bar and lacks the grandeur of the existing. The reduction in height and size of the function room lessens its value. The use is not fully compatible with the proposed flats. The flats will also impact on use of the beer garden. Many of the proposed works are repairs resulting from the building being uncared for over recent years. The landlord's accommodation is valuable for staff and if not used by staff could serve numerous alternative functions of the community. There is no local support for the proposals. The need to fit out the pub is a clear obstacle to future occupiers. The demolition of outbuildings undermines viability. Allowing a flat to be occupied before the pub is repaired and altered creates perception that it is the pub that is the 'agent of change'. Consider that the Inspector's reference to the loss of space that could be let should not be restricted to the function room and garden. It is the pub as a whole that is significant

Application Reference Number: 20/01498/FUL

to what can be provided for the community. The area is an island that will be further cut off by proposed works at the Railway Museum. The building is needed to help meet the needs of the local community. The building should remain in community use even if it is not used as a pub. A community benefit society has been established and is well supported. They have sought to meet with the owner to discuss purchasing the building but requests have been declined.

Cllr R Baker

Object. The changes will lead to noise complaints from the use of the function room. The lack of manager's accommodation undermines the viability. Need clarity on future use of the beer garden. There is strong local support for the retention of the pub.

Cllr D Heaton

Object. The Jubilee has huge potential as a community venue. The proposal will eventually lead to all of the pub being converted to residential use. The amended function room would be much restricted in use due to the proximity with living accommodation. There is huge local support for its retention as a pub and community venue.

Cllr K. Taylor

Object. There is a commitment from local people to work together to bring the pub back into use. Work is on-going building a business case and raising funds. The proposal conflicts with the NPPF and Local Plan policies that support the retention of established community facilities and services. The proximity to the flats will curtail use of the function room. The use needs living accommodation and staff parking. Not convinced of the applicant's desire to provide a pub use. A change to residential should be a last resort after the Jubilee has been given a chance to succeed.

5.0 APPRAISAL

5.1 The key issues in assessing the application are:

- Impact on streetscene and neighbours living conditions
- Quality of accommodation
- Flood risk
- Highway and Parking Issues

Application Reference Number: 20/01498/FUL

- Sustainability
- Loss of community facilities
- Viability and Implementation

Impact on streetscene and neighbours living conditions

5.2 NPPF paragraph 127 states that planning decisions should ensure that developments:

- a) will function well and add to the overall quality of the area;
- b) are visually attractive as a result of good architecture, layout and landscaping;
- c) are sympathetic to local character and history, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space); and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

5.3 Policy D1 of the 2018 Draft Plan (Placemaking) expects development proposals to improve poor existing urban and natural environments, enhance York's special qualities, better reveal the historic environment and protect the amenity of neighbouring residents. Development proposals that fail to make a positive contribution to the city or cause damage to the character and quality of an area, or the amenity of neighbours will be refused.

5.4 The building is not listed or located in a Conservation Area, however it is a well-proportioned substantial corner building important to the historic form of the inner city residential area. The proposed external changes to the building are relatively modest and are not considered to impact unduly on the appearance of the street. The new dormer reflects the design of the existing two dormers and relates to the existing fenestration. It is not considered that the works to make a balcony area in two of the dormers will be incongruous subject to agreeing details of railings and glazing. The introduction of a door into the Salisbury Terrace elevation would

appear secondary to the existing fenestration and is considered acceptable subject to the materials and detailing. The provision of several roof lights will not have a positive impact on the roofscape, but the degree of harm is not considered to be so significant to justify refusal of the application.

5.5 It is not considered that the physical changes would have a negative impact on existing neighbours' living conditions. The introduction of an external door to better link the pub with the beer garden will potentially increase activity within the beer garden and noise from inside the pub should the access door remain open however the beer garden is an existing facility. Public Protection state that they received noise complaints regarding the use of the beer garden in 2012, 2013 and 2016. It is considered reasonable in the context of the insertion of the side door to condition that the beer garden is not used after 10pm at night. In addition, it should also be conditioned that the new door serving the garden should be self-closing.

Quality of accommodation

5.6 NPPF paragraph 127 states that planning decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for future users.

5.7 The three flats are of an adequate size to meet the occupants' needs. The key consideration is the relationship of the flats with the existing beer garden and the altered function room. In respect to the beer garden it is considered that the relationship would be similar to that which currently exists between the beer garden and the existing flats to the rear and side. To minimise conflict it should be conditioned that habitable windows are double glazed or have secondary glazing. A condition relating to the management plan for the site would help to avoid conflicts between the pub use and flats. The times that deliveries and use of the yard in relation to the pub can take place would need to be conditioned.

5.8 The key consideration in respect to the living conditions within the flats is their relationship with the first floor function room and ground floor bar. One flat would be located on the same floor as the function room. In the second floor/roofspace one flat would be located above the function room and the other one above the proposed first floor flat. The applicant has submitted a noise impact assessment. It concluded that improvements can be made to insulation such that noise from music during live events would not be expected to affect the amenity of residents. The City Council's Public Protection Team have considered the assessment. They are satisfied that the proposals would allow the function room to remain in use for live music and

other similar events. To help reduce the risk of conflict with residents they have requested a condition stating that all electronically amplified music emitted from the premises shall be played or reproduced through loud speakers and a tamper proof noise limitation device. It is not considered that this would impact significantly on the range of uses that the function room could be put to.

5.9 The provision of 3 flats (where 1 exists) in an accessible location is beneficial. However, it is not considered that the modest gains in housing supply would outweigh any significant loss of valued community facilities that can serve the existing local population.

Flood risk

5.10 Policy ENV4 of the 2018 Draft Plan requires development not to increase flood risk on or off site. Policies relating to flood risk are contained in chapter 14 of the NPPF. In respect to decision making the NPPF states that the proposal should meet the requirements of a site specific flood risk assessment.

5.11 The existing pub and living accommodation is in flood zone 3 (high flood risk). The uses of a public house and self-contained residential accommodation are in the same flood risk category (more vulnerable). As the proposal is for a change of use and does not propose caravans, camping etc. the proposal is not subject to the sequential or exception tests. It must though still meet the requirements for site specific flood risk assessments. The Environment Agency has seen the applicant's submitted flood risk assessment and consider that the assessment is in accordance with the requirements of the National Planning Policy Framework. A condition can be included relating to flood risk/resilience matters in respect to physical design, safe escape and flood warning. Details of the additional external hard surfacing can be conditioned to avoid increasing surface water run-off from the site.

Highway and Parking Issues

5.12 Chapter 9 of the NPPF states that in assessing applications it should be ensured that:

- Opportunities to promote, and facilitate access to sustainable transport included where appropriate.
- Give priority first to pedestrian and cycle movements.

Application Reference Number: 20/01498/FUL

- Minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards.
- Be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
- Safe and suitable access for all users.
- Any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 111 requires an assessment of impacts on the network, when development will generate significant amounts of movement.

5.13 Paragraph 109 of the NPPF also states, “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”.

5.14 Three parking spaces are proposed in the parking area. Although the space is relatively tight it is considered adequate to allow vehicles to turn and exit in a forward gear. Bin storage and an individual cycle pod for each flat is proposed.

5.15 The applicant has indicated that the parking area can also be used for deliveries and bin storage in relation to the pub. Lorries delivering food and drink would need to park to the side of the pub on Balfour Street and roll barrels to the cellar hatch. It would be envisaged that the rear yard would only be essential for the delivery of kegs to the cellar and the number of deliveries to the yard each week or month would be relatively low. Although there would occasionally be some inconvenience to vehicles entering or existing the parking spaces the low number of parking spaces (3) is such that overall the impact would be modest. Highway Network Management are satisfied that the proposal will not create Highway Safety concerns.

Sustainability

5.16 Policy CC2 of the 2018 Draft Plan “Sustainable Design and Construction of New Development” requires applications for the change of use of buildings to residential to achieve BREEAM very good standard. The applicant is in agreement with a condition being included relating to this matter. The dwellings would be

located close to the city centre and have suitable storage for cycles and recycling bins.

Loss of community facilities

5.17 Chapter 8 of the NPPF relates to promoting healthy and safe communities. Paragraph 91 (a) states that decisions should promote social interaction, including opportunities for meetings between people who might not otherwise come into contact. Paragraph 92 (c) states that decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs.

5.18 Policy HW1 in the 2018 Draft Plan relates to Protecting Existing Facilities. This policy includes reference to Public Houses. The fourth criterion of the policy states that, in the case of commercial facilities their loss will not be supported unless evidence is provided that demonstrates the facilities are no longer viable. Supporting text at 6.8 states that a loss of local facilities that residents depend upon has the potential to erode community cohesion and exacerbate social isolation. It further states that although a loss of facilities would affect all residents, groups likely to be particularly affected by loss of amenities include the elderly, those with reduced mobility and those on low income, all of whom may struggle to travel to use alternative facilities. The policy is similar in intent as paragraphs 91 and 92 of the NPPF which would have greater weight in decision making.

5.19 It is considered that issues relating to the loss of community facilities is the key consideration in assessing the proposal. This is the reason that the previous application was refused and dismissed at appeal.

5.20 In assessing the current application regard must be had to the Planning Inspector's decision letter dated 9 October 2019 as a material planning consideration.

5.21 There is no doubt that the vast majority of objectors feel that none of the pub should be changed to incorporate 3 self-contained flats. The numerous reasons why this is considered to be so are listed in the representations. The petition signed by around 1000 people (that was submitted at the time of the earlier appeal) indicates the level of local support for the retention of the pub. Furthermore, a number of residents have established a group to actively work towards purchasing or leasing the whole building/site for a community focussed pub/venue.

5.22 The application for 4 flats and retention of the public house on the ground floor was refused in May 2018 under delegated powers. In refusing the application it was emphasised that it was considered that it was the pub as a whole including the external space, living accommodation and function room that made it particularly viable and of value to the local community. This was reiterated in the Local Planning Authority's appeal statement. At the appeal hearing on 9 October 2019 the Inspector considered the issue of whether the retention of the upper floor manager's accommodation was necessary to ensure the successful running of the Public House. At the hearing were local councillors, local residents, a representative of CAMRA, a successful publican and a prospective purchaser of the building. Those people present were given the opportunity to comment on the proposed loss of the Manager's accommodation and other space. It was made clear to the Inspector that it was considered that the Manager's accommodation was essential in respect to making the Pub use financially viable and for convenience and security. It was stated that such accommodation was an integral part of a neighbourhood pub.

5.23 Although the Inspector dismissed the appeal, he did not state that all of the building or curtilage needed to remain in Public House use. His decision letter included the following statements:

- There is nothing sufficiently compelling, some logistical and security issues aside that seem eminently possible to overcome, that would lead me to conclude that a reduced sized public house could not operate viably and thus successfully.
- The appeal scheme would be acceptable in other areas such as the living conditions of existing and future occupiers, design and access as well as the appeal site being accessible by means other than the private car.
- Whilst it might be stretching it to suggest that the loss of the floor space and facilities on offer at the Jubilee would impinge on the ability of the community to meet its day to day needs, this should not devalue what it can offer and how that can be of benefit to incumbent and future residents on a socially inclusive level.
- The appeal scheme would seek to provide a public house when there is a public house existing. The loss in this case however would be what the Jubilee

Application Reference Number: 20/01498/FUL

has to offer that is not readily available locally, mainly in the shape of the additional lettable space it can provide as well as a sizable outdoor space. In this respect it is not just the sale of drinks to passing or regular patrons to consider. The provision of usable floor space for functions, socially connected sports teams or meetings for local groups can act as a focal point for a community otherwise bereft of such provision and a good quality outdoor space would be beneficial to a business in the summer months.

- ...the social impact of the loss of the facilities on offer would, for the reasons I have set out, be detrimental to the local community in the manner I have explained.

5.24 It is considered that the above statements are unambiguous in setting out the Inspector's view that a smaller pub is viable and would be viable without the manager's accommodation. The reason for dismissing the appeal centred on the scheme leading to the loss of the function room and the loss of the beer garden. The Inspector's concerns related to the social impact of the loss of the facilities.

5.25 Clearly objectors and the Local Planning Authority may disagree with the conclusions of the Inspector and continue to feel that all of the pub and its curtilage should be retained in public house use, however it is considered that the Inspector's reasoning should be given significant weight. The decision was recent (October 2019) and at that time the Inspector was well aware of the strong opposition to the proposals and that there were parties interested in purchasing the public house with the intention of retaining it in its entirety. The issue of whether it is possible to disregard the statements made in the Inspector's decision and refuse the application on the grounds of the loss of the Manager's accommodation (and other concerns not opposed by the Planning Inspector) has been considered by the Council's Legal department. It has advised that regard should be had to the importance of consistency in decision making and therefore a practical test for the decision maker is to ask itself whether, if it decides this application in a certain way, is it agreeing or disagreeing with some critical aspect of the decision in the previous appeal. Where there is disagreement, then adequate reasons should be given to explain departure from it. Otherwise, there is a risk of a successful challenge to the decision.

5.26 In the light of the appeal decision it is considered in assessing the current application the key issue is whether the scheme overcomes the previous reason for

refusal and appeal decision concerns specifically relating to the loss of the function room and the loss of the beer garden. These issues are considered below:

Function room

5.27 The function room currently has a vaulted ceiling. Access to the room is via a staircase located at the central lobby of the public house. It has a small relatively makeshift bar in the corner. The only toilets in the Public House are on the ground floor. The application proposes to install a lower ceiling in the function room, allowing a flat to be located in the roof space above. The ceiling would be located above the existing tall windows in the room and would be around 3m above the floor level. Access to the function room would be via a new staircase off the lobby at the rear of the premises. The provision of the staircase and new entrance would mean that the floor area of the function room would be reduced from 12m x 6m to approximately 9.5m x 6m. The overall reduction in floor space would be from 72sqm to 57sqm. The proposed scheme indicates a full height cupboard within the room. This is included in the floor space calculations given it would not need to be provided.

5.28 It is not considered that the access arrangements would significantly impact on the quality of provision. The users of the function room would still need to use the toilets on the ground floor. It is not currently a wholly self-contained venue as people accessing or existing the function room need to travel through the bar area of the pub. The additional height within the function room is part of its character and gives a greater feeling of spaciousness, however, the proposed 3m ceiling height would not be so low as to make the room feel cramped and would be more practical in respect to maintenance and heating. In considering the acceptability of the changes to the ceiling, some regard is also given to the fact that the Pub is not a listed building and as such *internal* alterations can be undertaken without planning permission providing the use remains in the same use, or ancillary to the use (Public House). Significantly, the applicant is willing to accept a condition that the function room remains as a single undivided space capable of hosting functions and retains the internal ceiling height indicated on the approved drawings.

5.29 The current function room is served by a single staircase. Building Regulations would normally restrict the capacity of a first floor room served by a single staircase to 60 people. In respect to assessing the maximum capacity of the existing and proposed altered function room for various events, Approved Document B of the Building Regulations 'Fire Safety: Buildings other than Dwellings' uses a

figure of 1sqm per person for dining areas and 0.5m per person for standing (for example, dancing or watching live music). The relative *theoretical* gross maximum capacity of the function room based purely on floor area (and not taking account of the capacity limitations resulting from the access) would be 72 existing and 57 proposed if used for dining and 144 existing and 114 proposed for dancing. The 'theoretical' figures are the maximum and the standing capacity would be reduced were space also needed for, for example a bar or performers etc. Based on the above, it is considered that the impact of the changes on the current capacity of the function room would be relatively modest for most events. It would be expected that for 'typical' pub related events such as for live music and dancing, the capacity would still remain around 60. The room could also accommodate 60 people for events where people sit in rows such as a public meeting or watching a sporting event on TV.

5.30 In respect to fire safety it should be noted that if a further staircase were provided from the room the capacity could be increased. It is difficult to envisage a practical arrangement where this could be achieved for the proposed layout. In respect to the existing layout the provision of a new external door from the function room leading to an associated Building Regulations compliant external staircase would allow the capacity to be increased beyond 60.

5.31 In respect to noise levels, as set out previously the Council's Public Protection officer is satisfied that noise insulation can be provided that when coupled with a tamper proof noise limitation device would ensure that the normal uses of the function room would be compatible with the living conditions of the occupants of the proposed flats.

5.32 The original drawings with the current application did not include the first floor function room and showed the pool room and adjacent Bothy (with widened associated opening) as a function room. In respect to practicalities this ground floor space can be self-contained and in respect to access has the benefit of being on the ground floor. Although not a replacement for the first floor function room it is a relatively large room and would be a space suitable for meetings, exhibitions and smaller gatherings.

5.33 On balance it is considered that the proposed changes to the existing function room would not have a significant impact on the local community's ability to meet its day-to-day needs. Fire regulations mean that the current capacity would not typically be reduced for the vast majority of pub related events that would take place

in the space such as parties or live music. The changes would also have a fairly limited impact on day-to day community events such as classes, clubs, meetings and children's parties that would normally attract less than 60 people. For larger seated events it would be expected that the local church could be used. It would be for the operator of the pub to decide how they wanted to use the various spaces, however, it is considered that the proposed ground floor and first floor layout is such that the building would still be capable of being used for the vast majority of day to day events and activities as well as drinking and informal socialising.

Beer Garden

5.34 A beer garden would remain with the pub and for the use of the pub. A new external door is proposed from a lobby area of the Pub to the garden. Currently the only way to access the garden is via the service yard or around the building and as such the changes will enhance access to the outdoor space. The area of the garden will be reduced a little as the northern part is proposed for car parking and storage, however, the garden is still capable of meeting the normal needs of the pub. Because of the proximity to existing flats it is not considered to be a beer garden suited to particularly intensive use.

5.35 In the future if needed the garden could be used for community purposes such as a break out area for coffee mornings or toddler groups. The changes are not considered to reduce the ability of the community to meet its day to day needs.

Viability and Implementation

5.36 In his decision letter relating to the dismissal of the previous appeal at the site the Inspector stated that, "The appellant has every intention of investing in the fit out of the public house element in the scheme, being willing to accept conditions imposed on a planning permission." The current proposals for the pub are superior to the previous dismissed scheme in respect to the amount of space available to customers. It is noted that there is not a kitchen, though this could be accommodated by a future operator. The retention of a function room and beer garden would also aid viability. The pub also retains a large cellar area. The applicant has accepted a condition that the remaining pub areas be repaired and fitted out as a shell. The fit out of the shell would need to be completed before the second flat is occupied. The future occupier would need to install a bar area, toilets, install carpets, decorate the walls and provide furnishing etc. It cannot be guaranteed that anyone will occupy the remaining pub space, however, it would be

unusual for the works to be undertaken and the developer not to seek a financial return from its occupation.

5.37 The applicant has also agreed that should planning permission be granted a S106 agreement would be signed ensuring that the yard area shared with the flats will remain accessible to the public house irrespective of the ownership of the yard area. This is important as the yard is used for storage and deliveries and is also the exit point from the ground floor escape door serving the proposed altered function room.

6.0 CONCLUSION

6.1 In assessing the proposal it is considered that significant weight should be given to the content of the Inspector's recent decision letter relating to the dismissal of the previous mixed use scheme at the site. The decision did not indicate that a smaller pub was unviable, the loss of manager's accommodation unacceptable, or that the use was incompatible with the proposed upper floor residential uses. The reason the appeal was dismissed related to the loss of the beer garden and loss of the function room and the impact that this would have on 'social inclusion'.

6.2 The current scheme as revised retains a first floor function room, which though smaller in size would, because of national fire safety restrictions, normally have the same maximum capacity as the existing. There would also be an improved access to a reasonable sized beer garden. In respect to the actual floor area of the building, relatively little space that has historically been accessible to the local population will be lost and conditions can be included to help ensure that this remains the case.

6.3 The future style or ownership of the Pub is unknown, however, it is considered that should the managers seek to operate it in a way that focuses on a 'community model', adequate space (including that for storage) remains available for this approach to be taken. Furthermore, the changes are not considered to undermine the ability to adapt the building for other community uses should a pub use prove unviable.

6.4 Having regard to the reasoning in the Planning Inspector's recent decision letter, it is considered that that the scheme overall would be compliant with the policies of the NPPF relating to community facilities.

7.0 RECOMMENDATION: Approve subject to conditions and to a legal agreement under s106 of the Act to ensure that the Public House retains access to the yard for those purposes essential to sustain its use.

1 TIME2 Development start within three years

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

Proposed Floor Plans 02035-210 Revision C received on 12 March 2021.
Proposed Elevations 02035-201 Revision B received on 12 November 2020.
Proposed Site Plan 02035-110 Revision D received on 19 February 2021.
Ceiling heights shown on Proposed Sections 02035-212 received on 12 November 2020.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 Prior to the occupation of any of the proposed flats, a building survey of the internal and external areas shown on the approved plans indicated to remain in public house use and a report clearly documenting all of the repair, adaption and improvement works that are needed to create well-functioning internal and external areas and a durable shell fit-out ready for re-occupation as a public house shall be submitted to and approved in writing by the Local Planning Authority. The survey and written report shall be undertaken by competent persons.

The repair and improvement works shall include:

- o Public house cleared of rubbish. Debris and soiled carpets removed with floor made good for any new flooring of the operators' choice.
- o All electrical and gas installations on site made first fix ready and suitable level of provision provided for each space. Unfit or dangerous fixtures and fittings removed.
- o Cellar area flooding/broken pipework resolved and then cleared and area made ready for safe and efficient provision of kegs and beer lines.
- o All vandalised fixtures and fittings e.g. built in seating areas removed and area left as blank canvass ready for operator fit out.
- o New stairs, ceiling and associated doors and utilities provided to function

Application Reference Number: 20/01498/FUL

room.

- o All walls skimmed where required.
- o Windows and doors that have been vandalised to be repaired/replaced like for like. Boards used for boarding up removed.
- o Cellar doors made fully functional.
- o Site cleared of rubbish and fly tipping.
- o Out buildings demolished and cleared and all external brickwork and any openings made good.
- o Beer garden area cut back and cleared as necessary.
- o Insertion of a new door leading directly from the pub to the beer garden.
- o New staircase and re-designed function room.
- o Provision of new walls, doors, toilet fittings and washing fittings in accordance with approved plans.

Reason: To preserve a viable Public House on site.

4 Prior to the occupation of more than one of the approved flats the proposed repair, adaption and improvement works listed in the building survey as approved referred to in condition 3 needed to create well-functioning internal and external areas and a durable shell fit-out ready for re-occupation shall be completed and a verification report by competent persons that demonstrates that the works have been completed in a satisfactory manner in accordance with the report shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To preserve a viable Public House on site.

5 Details of the reduction in carbon emissions of the residential sections of the development hereby approved would achieve when compared against Part L of the Building Regulations (the notional building) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the construction of the building and the development shall be carried out in accordance with the approved details.

The details shall demonstrate a reduction in carbon emissions of at least 28% unless it can be demonstrated that this is not viable through the provision of renewable or low carbon technologies or through energy efficiency measures and at least a 19% reduction in dwelling emission rate compared to the Target Emission

Application Reference Number: 20/01498/FUL

Rate (calculated using Standard Assessment Procedure methodology as per Part L1A of the Building Regulations).

Details shall also be submitted that demonstrate that the development shall also achieve a water consumption rate of no more than 110 litres per person per day (calculated as per Part G of the Building Regulations).

Reason: In the interests of sustainable design and in accordance with policies CC1 and CC2 of the Publication Draft Local Plan

6 Details of new and replacement external surfacing shall be submitted to and approved in writing by the Local Planning Authority prior to the implementation of the works. The surfacing shall be provided in accordance with the approved details.

Reason: To avoid any increase in flood risk and ensure the materials are an appropriate quality

7 Elevation details of the new structures to be erected in the parking and service area shown on the approved site plan shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the first flat. The structures shall be provided in accordance with the approved details prior to the occupation of the first flat and thereafter retained as approved.

Reason: To ensure the functional use of the site and provision remains for refuse, recycling and cycle storage.

8 Prior to their provision large scale drawings shall be submitted to and approved in writing by the Local Planning Authority of the following elements of the scheme:

- o New dormer window
- o New roof lights
- o New external doors.
- o New boundary treatments and gates.

The works shall be completed in accordance with the approved details.

Application Reference Number: 20/01498/FUL

9 The parking, storage, access and manoeuvring areas shown on the parking and service areas to serve the flats and public house shall be laid out in accordance with the approved plans prior to the occupation of the first flat and notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) these areas shall remain laid out in accordance with the approved plans and shall be kept free of obstruction and not used for any purpose other than for parking, storage, access and manoeuvring.

Reason: To ensure the functional use of the site and provision remains for refuse, recycling and cycle storage.

10 Delivery vehicles to the public house and waste removal vehicles to the public house shall be confined to the following hours:

Monday to Friday 08:00 to 18:00 hours

Saturday 09:00 to 13:00 hours and not at all on Sundays and Bank

Holidays

Reason: To protect the amenity of occupants of the nearby properties from noise.

11 Prior to the re-occupation of the Public House a management plan shall be submitted to and approved in writing by the Local Planning Authority setting out how and when the yard will be used in association with the pub and how deliveries will be managed in a way that minimises disruption to occupiers of the proposed flats. Thereafter deliveries shall operate in accordance with the management plan as approved.

Reason: To reduce conflict with residential occupiers and ensure the efficient functioning of the shared parking and delivery area.

12 The beer garden shown on the approved plans shall only be used for purposes of the Public House and purposes ancillary to the Public House and shall not be used for any other purpose, including access in association with the occupation of the flats.

Reason: To support the effective operation of the public house.

13 The beer garden shown on the approved plans shall not be used by customers between the hours of 22.00 and 09:00.

Reason: To protect neighbours' living conditions.

14 The new external door to the beer garden shall be self-closing and shall remain as such.

Reason: To protect neighbours' amenity.

15 Notwithstanding the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, no part of the public house shown on the approved plans shall be converted to ancillary living or sleeping accommodation.

Reason: To protect the remaining pub areas for use by the community.

16 Notwithstanding the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification the function room shown on the approved plans shall remain as a single undivided space capable of hosting functions and shall retain the internal ceiling height indicated on the approved drawings.

Reason: To protect the space for community use.

17 All sound attenuation measures detailed in the submitted noise assessment [Nova Acoustics (ref 5314TC dated 26/11/20)] shall be fully implemented prior to the occupation of the first flat and permanently retained thereafter. Prior to the occupation of the first flat a report shall be submitted to and approved in writing by the Local Planning Authority that demonstrates that the predicted noise levels for internal rooms in all of the flats has been achieved.

Reason: To protect the amenity of people living in the new property from noise

Application Reference Number: 20/01498/FUL

associated with the ground floor use and in accordance with the National Planning Policy Framework

18 No development shall take place until a detailed scheme of noise insulation measures for protecting the approved residential accommodation from externally generated noise has been submitted to and approved in writing by the Local Planning Authority. Upon completion of the insulation scheme works no part of the development shall be occupied until a noise report demonstrating compliance with the approved noise insulation scheme has been submitted to and approved in writing by the Local Planning Authority.

INFORMATIVE: The building envelope of all residential accommodation shall be constructed so as to achieve internal noise levels in habitable rooms of no greater than 35 dB LAeq (16 hour) during the day (07:00-23:00 hrs) and 30 dB LAeq (8 hour) and LAFMax level during the night (23:00-07:00 hours) should not exceed 45dB(A) on more than 10 occasions in any night time period in bedrooms and should not regularly exceed 55dB(A). These noise levels shall be observed with all windows open in the habitable rooms or if necessary windows closed and other means of ventilation provided.

Reason: To protect the amenity of people living in the new property from externally generated noise and in accordance with the National Planning Policy Framework.

19 Details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to the local planning authority for approval in writing. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment as approved and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the representative LA90 1 hour during the hours of 07:00 to 23:00 or representative LA90 15 minutes during the hours of 23:00 to 07:00 at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

Application Reference Number: 20/01498/FUL

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

20 All electronically amplified music emitted from the premises shall be played or reproduced through loud speakers and a tamper proof noise limitation device. The device, the levels set and the installation shall be approved in writing by the Local Planning Authority before the use hereby approved commences. Thereafter the approved levels, equipment, installation, position and type of speakers shall be maintained in accordance with the approved details and at no time shall they be modified without the written approval of the Local Planning Authority.

Reason:- To safeguard the amenity of neighbouring properties.

21 The development shall incorporate sufficient capacity within the electricity distribution board for one dedicated radial AC single phase connection to allow the future addition of an Electric Vehicle Recharge Point (minimum 32A) within the garage space (or parking area) if desired. The applicant shall identify the proposed location for a future Electric Vehicle Recharge Point within the development curtilage and ensure that any necessary trunking/ducting is in place to enable cables to be run to the specified location.

Reason

To ensure future electric vehicle charge points can be easily added to the property in line with the NPPF and CYC's Low Emission Strategy.

o Any future Electric Vehicle Charging Points need to be professionally installed. The installation process routinely involves wall mounting a charge point on an exterior wall or garage and connecting it safely to the mains electricity supply. All electrical circuits/installations shall comply with the electrical requirements in force at the time of installation

o In the UK, there is a government-grant scheme available to help reduce the cost of installing a home EV charge point. For more information on the scheme see the OLEV website <https://www.gov.uk/government/collections/government-grants-for-low-emission-vehicles>

Application Reference Number: 20/01498/FUL

o The above requirement does not preclude the installation of Electric Vehicle Charge Point from the outset, if desired.

o Details of passive provision to be included within household pack for first occupant, to include location of proposed Electric Vehicle Recharge Point, trunking/ducting provided and details of distribution board location and capacity

22 In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

23 Prior to the commencement of development details setting out how the following flood risk measures will be addressed shall be submitted to and approved in writing by the Local Planning Authority:

Physical Design Measures

Safe Escape

Flood Warning

The works shall be undertaken and the property operated in accordance with the approved details.

Reason: To minimise the impacts of potential flooding.

Application Reference Number: 20/01498/FUL

8.0 INFORMATIVES:

Notes to Applicant

1. Development Informative

The developer's attention should also be drawn to the following which should be attached to any planning approval as an informative:

1. The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228-1:2009 + A1:2014 and BS 5228-2:2009 + A1:2014, a code of practice for "Noise and Vibration Control on Construction and Open Sites".

2. Best practicable means shall be employed at all times in order to minimise noise, vibration, dust, odour and light emissions. Some basic information on control noise from construction site can be found using the following link.

https://www.york.gov.uk/downloads/download/304/developers_guide_for_controlling_pollution_and_noise_from_construction_sites

3. All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturer's instructions.

4. There shall be no bonfires on the site.

2. Statement of the Council's Positive and Proactive Approach

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve an acceptable outcome:

Revised drawings received showing retention of part of function room and area of beer garden.

Application Reference Number: 20/01498/FUL

Contact details:

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