

DELEGATED DECISION REPORT

APPLICATION NUMBER

203138

Horse and Jockey, 9 & 10 New Street, Ross on Wye, Herefordshire, HR9 7DA

CASE OFFICER: Mrs G Webster

DATE OF SITE VISIT: October 2020

**Relevant Development
Plan Policies:**

**Herefordshire Local Plan – Core Strategy
Policies:**

SS1 – Presumption in favour of sustainable development
SS2 – Delivering new homes
SS4 – Movement and transportation
SS6 – Environmental quality and local distinctiveness
RW1 – Development in Ross-on-Wye
H3 – Ensuring an appropriate range and mix of housing
SC1 – Social and community facilities
MT1 – Traffic management, highway safety and promoting active travel
LD1 – Landscape and townscape
LD2 – Biodiversity and geodiversity
LD4 – Historic environment and heritage assets
SD1 – Sustainable design and energy efficiency
SD3 – Sustainable water management and water resources
SD4 – Waste water treatment and river water quality

Ross-on-Wye Neighbourhood Development Plan – awaiting referendum

NPPF

Relevant Site History:

SE2001/2210/L – Replacement of windows - approved

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Town Council	X		X		
Transportation	X		X		
Historic Buildings Officer	X		X		

Ecologist	X		X		
Historic England	X		X		
CAMRA	X				X
Environmental Health (Housing)	X		X		
Natural England	X		X		
Welsh Water	X		X		
Press/ Site Notice	X		X – 6 54 signatures in petition		X- 6
Local Member	X				

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The Horse and Jockey is a Grade II listed building converted from numbers 9 and 10 New Street sometime at the start of the 19th century. The three-story building is set mid-terrace on the north side of New Street, Ross-on-Wye, very close to the town centre.

The public house has been closed for over two years.

The site is within the Ross-on-Wye Conservation Area and Wye Valley AONB.

The proposal is to convert the building from a public house into two, four bedroom dwellings. The existing extensions to the rear of the property will be removed and a single storey 3.6 metre extension will be erected along the back of both properties to house the kitchen area.

Further details of the proposed alterations and repairs can be found within the Design and Access Statement.



Representations:

Ross Town Council – No objections

Historic Buildings Officer - Approval of the proposed scheme would result in a change of use and loss of fabric which would impact on the significance of the listed buildings, and on the character and appearance of the conservation area.

The degree of harm identified for these aspects would be considered *less than substantial harm*.

Paragraph 193 of the National Planning Policy Framework advises *great weight* be attributed to the conservation of heritage assets regardless of the level of harm.

Should the harm identified be outweighed by other considerations in the planning balance (Para.196, NPPF), recommended conditions have been provided.

Heritage Background:

The Horse & Jockey Public House (9 & 10 New Street) is a Grade II listed building with late 18th or early 19th century origins, and a number of extensions and adaptations which supported its evolving function.

It is situated within the Ross-on-Wye Conservation Area, and sits amongst and adjacent to several other Grade II listed buildings.

There is no conclusive evidence of its original construction date but documentary records suggest there has been a public house on the site since 1821; although it is not clear whether this facility occupied one or both of the buildings.

Although the internal layout has been altered significantly there are a number of features which indicate it may have originally been two dwellings.

- There is a pre-Victorian staircase in No.9 which is of a size consistent with a two-room layout, and extends from 1st floor to attic level; its ground floor to 1st floor section has been lost, and the former opening hidden within a later cupboard space on the 1st floor. This staircase would not have been of sufficient proportions to service a single property.
- The buildings share a chimney stack which forms part of a central dividing wall.
- The cellars are divided along the central wall line, and there is evidence of separate stair access from No.10, which would not be located in this position were the building a single unit accessed from an entrance door at No.9.
- The proportional treatment of the front façade is sufficiently wide to indicate a two property arrangement; a later blocked entrance evident on the right-hand side of the building may have been a revision of the original doorway entrance following the insertion of the two-storey bay. This arrangement was a common one for properties of the *Fourth Rate* type during this period, and would have broadly mirrored that of several others in the street.

Whilst the buildings have a long history as a public house numerous phases of adaption, historic and modern, have resulted in the loss of virtually all characteristic features or fabric. The sole remaining evidential features are a cellar rollway, and a *Best in the West* wall plaque.

The upper floors retain much of their domestic layout, particularly at 2nd floor and attic levels, and some historic fabric and features.

Historic mapping illustrates a number of structures extending northwards from the rear of the buildings and across the entire width of the plot. It is not clear what function these structures performed, although documentary evidence suggests the western-most structure was a former skittle alley; this is highlighted on the 1887 OS map, which by 1903 had been adapted with a glazed roof.

Remnants of these structures are relatively fragmentary, with some sections of brick and stone walling evident; but the two-storey range to the north of the main buildings is the most substantial survival, particularly at 1st floor and roof levels, and makes a modest contribution to overall significance.

Impact on Significance:

The primary significance of the buildings lies in their historic and aesthetic values which are illustrative in nature, linked to their domestic functionality, and expressed in their architectural form and material construction.

As assessed, there is little aesthetic significance associated with their commercial functionality; but there is a high degree of communal value which contributes to significance.

Complete conversion to residential occupation will sever this long association resulting in *less than substantial harm* to that aspect; however, the scheme is sensitive to the remaining fabric and layout of both buildings and conversion would not harm their significance in this respect.

Removal of the 19th century, two-storey, structure would be regrettable as it evidences the evolution of the site and it contributes positively to the character and appearance of this sector of the conservation area. As a result, its loss would cause *less than substantial harm* to the significance of the buildings, and the character and appearance of the conservation area.

Although contemporary in design, the proposed additions at ground floor level broadly reference the extended form of former structures in this location, and their materiality will be sympathetic to the appearance of the host buildings; this aspect would result in no harm being caused to the character and appearance of the conservation area.

Ecology - The site is within the catchment of the River Wye SAC and a Habitat Regulations Assessment process is triggered by this application and the required appropriate assessment completed by the LPA must be subject to a formal 'no objection' response from Natural England prior to grant of any planning consent.

The following notes are made in respect of the HRA process.

River Wye SAC

- The applicant has indicated that any existing surface water to mains sewer connections are likely to be retained and that any additional surface water will be managed through a relevant

Sustainable Drainage System – this can be achieved but final technical details are secured for approval under a separate specialist condition.

- All foul water is proposed to be managed through connection to the local mains sewer network.
- At this location the mains sewer system is processed by DCWW's Lower Cleeve waste water treatment works (wwtw).
- The Lower Cleeve wwtw discharges final outfall in to the 'English' – Middle section of the River Wye SAC
- DCWW have confirmed in their comments that the Lower Cleve wwtw has sufficient capacity to manage the additional foul water flows from this development
- At the this time LPA Ecology have not been notified by Natural England that the English section of River Wye is failing its conservation status
- Any additional phosphate pathways over and above previous use as a Public House can currently be accommodated within the phosphate headroom accepted as part of the council's Core Strategy (2015)
- The agreed foul water and surface water management schemes can be secured by condition on any planning consent granted.

Other ecology comments:

From information supplied including the bat survey by Tofts Ecology and images available there are no immediate ecology related concerns with this proposal. There are no ecological records of important or Protected Species immediately on or adjacent to the site. The applicant and their contractors have their own legal duty of care towards wildlife protection under UK Legislation that applies throughout any demolition and construction process. Any breach of this legal Duty of Care would be a criminal offence. In this instance this LPA has no reasonable cause to require further information as part of the planning application or include a specific ecology protection condition. However a relevant information note is requested.

As identified in supporting information and as identified in the NPPF, council's core strategy polices and ethos of the soon to be enacted Environment Bill all development should clearly demonstrate how it will deliver a secured, net gain in local biodiversity potential. A detailed plan showing locations and detailing the specification of all biodiversity net gain features including but not limited to enhancing Bat roosting, Bird nesting (including Swifts known to be present in the town), Insect populations and Hedgehogs should be secured through condition.

Highways - In considering this application the existing use of the buildings are also considered. Whilst most of the trips to the use as a public house would be likely made by pedestrians the conversion is likely to result in a reduction in travel when compared to the current permitted use of the building. As a result there are no highways objections to the principle of the development.

With regards to the vehicle parking it is acknowledged that the provision of parking is not achievable on the site. However the LHA has considered the proximity of nearby parking locations and, importantly, the accessibility of the location to the amenities of Ross on Wye. It is considered that it is appropriate to include off-site parking as a component of the options for future residents, however to support this the provision of secure cycle parking is required. This will open up active travel options to residents and to ensure that this is delivered condition CB2 is recommended in the event that permission is granted.

There are no highways objections to the proposal, subject to the recommended condition being applied.

Given the constrained nature of the site applicants are reminded that attaining planning consent does not constitute permission to work in the highway. Any applicant wishing to carry out works in the highway should see the various guidance on Herefordshire Council's website.

Historic England - On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

EHO (Housing) - The following remarks are made on behalf of EH Housing in respect of the above application:

1. The proposed plans should include for a fire escape windows from all bedrooms, if the only internal escape route in the event of fire is through a risk room i.e. kitchen, utility, living or dining room. If there is more than a 4.5 meter drop from bedroom windows (e.g. from the third floor), then an alternative layout should be provided so that persons can exit the property from the bedroom without the need to go through a risk room.
2. In addition, an appropriate automatic fire detection system complying with BS5839:2013 should be fitted to cover the whole development. There needs to be sufficient Fire Separation between any adjoining properties and between floors.
3. If the property is in a Radon affected area, suitable mitigation measures should be put in place.
4. There should be sufficient, secure ventilation to the outside air from all living/dining and bedrooms as well as internal bathrooms. Extraction systems in kitchens and bathrooms must be suitable and sufficient to prevent build-up of black mould.
5. All bedrooms should meet the minimum room sizes laid out in the DCLG Technical housing standards.
6. The heating system must be suitable, sufficient and EFFICIENT (cost effective for the occupant) to run. The applicant must provide a fixed form of affordable and controllable space heating to all rooms including bedrooms, bathrooms and kitchen/living rooms that is capable of achieving a room temperature of 21°C within one hour of being turned on when the air temperature outside is -1°C. Central heating is the preferred option however, an electric heater or a balanced flue gas heater or open flue gas fire with oxygen depletion cut off device are also acceptable. Electrical appliances must have a dedicated socket. Heating should be available at all times and be under the control of the occupier.
7. If the premises is ever to be used as an HMO, it must comply with the Council's amenity standards.

Welsh Water - We have reviewed the information submitted as part of this application and note the intention is to reuse an existing connection to the public sewer for the disposal of foul water, however the information submitted does not clarify the proposed method to dispose surface water. It is unclear as to how the additional surface water will be captured and disposed or whether there is potential to utilise sustainable drainage systems. In the absence of a surface water strategy in which an assessment is undertaken to explore the potential to dispose of surface water by sustainable means, we cannot support the application in full. Therefore, if you are minded to grant planning permission we request that the Conditions and Advisory Notes are included within any subsequent consent.

CAMRA –

CAMRA objects to the proposed conversion of the Horse & Jockey, New Street, Ross-on-Wye from a public house into two residential dwellings.
The FOUR grounds for this objection are:

- 1.) Loss of a valued community facility
- 2.) Inadequate marketing of the premises as a public house
- 3.) Failure to demonstrate non-viability of the pub business
- 4.) Heritage impact of the proposal

These grounds will be justified in the order they are set out above.

However, CAMRA first needs to express its concerns regarding the lack of information provided by the applicant. Amongst the documents deposited (and published) with this application there is no marketing report; no mention of any independent valuation made of the pub premises, and no financial viability report. These key documents are all absent.

No evidence has been provided by the applicant to support the assertion made in the Design & Access statement that the pub is financially unviable and that there is no demand for it. In fact, the change of use (and the allied potential loss of a community facility) only warrants a single paragraph in the same document.

Moreover, there is absolutely no mention of any effort made to market the pub as a going concern, or of any offers received and declined, or reductions in price. The absence of this vital information represents a significant omission and it is hoped Herefordshire Council will urgently request this information from the applicant (and make it available for public scrutiny) before arriving at a considered and final decision.

1. LOSS OF A VALUED COMMUNITY FACILITY

1.1 The pub's permanent loss will mean a net loss of social amenity to the residents of Ross and to visitors. Specifically, those locals who relied on the pub will be most effected. The Horse & Jockey offers a very traditional pub atmosphere, unlike some of the other pubs in Ross. Moreover, it was considered to be of sufficient value that it is listed as an Asset of Community Value (ACV).

1.2 Its loss will mean a long-standing business enterprise will be permanently extinguished, with the associated reduction in economic activity and vitality in the town. It will also result in a direct loss of employment opportunity. Indirectly, it will further affect the trading volumes for local suppliers and service providers who relied on the pub for business.

1.3 The resultant loss of amenity will be to the detriment of the town's overall tourism offer. Ross, with its delightful setting and proximity to the Wye Valley AONB, should be developing and enhancing local facilities such as pubs, cafes and restaurants for tourism - especially when they are provided at no cost to the public purse (as is the case with the Horse & Jockey).

2. INADEQUATE MARKETING OF THE PREMISES AS A PUBLIC HOUSE

2.1 As neither a marketing report or independent valuation have been provided with this application (as would normally be expected in such an application proposing a change of use and loss of a community facility) it falls to CAMRA to look elsewhere for evidence to determine the extent and nature of any marketing exercise undertaken to sell the premises as a going concern.

2.2 Helpful in this case is that CAMRA is aware of the efforts of a successful and well-regarded local businessman, Mr Nicholas Nelson, who lives on the same street as the Horse & Jockey, and who used to regularly frequent it. When it was marketed for sale, he was keen to acquire the pub, with the aim being to refurbish and reopen it as a going concern. He devised a detailed business plan, and he promptly engaged the services of a surveyor - Jonathan Preece - to undertake a full survey of the pub premises. The objective was to determine its condition and the likely scope of costs that would be involved in refurbishing it.

2.3 Jonathan Preece subsequently produced a 30-page report dated the 24th October 2018. It is understood that commissioning this report cost Mr Nelson a four-figure sum, thus clearly demonstrating his intent.

2.4 The contents of the report tell a sorry story of how the pub was neglected by its previous pub company owner(s) to the point where it became seriously dilapidated, unsafe, and ultimately uninhabitable. It is hoped Herefordshire Council will take up the offer of Mr Nelson - made in his email letter of objection - to avail themselves of the contents of this report. It paints a picture of a most unsatisfactory state of affairs.

2.5 Following a site inspection, the Jonathan Preece report makes a number of observations regarding the pub's physical condition, 2.6 The final assessment made in the Jonathan Preece condition report is damning and an indictment of the chronic and systematic lack of investment made by the pub's previous owner(s).

2.7 The report concludes in Section 35, quote: "The subject property is in need of complete and comprehensive refurbishment." Further adding, quote: "...we have very crudely estimated the cost of the works could be anywhere between £300,000 and £400,000."

2.8 Telling, is that the report finally concludes by stating, quote: "This property represents a significant refurbishment project and the extent of the work will deter most purchasers."

2.9 The last owner of the Horse & Jockey was a pub-owning company (hereafter referred to as a pubco). Sadly, it is not uncommon for pubcos to neglect their pubs. Saddled by high levels of corporate debt, they rely on charging extortionate wholesale prices for products and extracting high rents from their leasehold operators. This often results in a high turnover of licensees and a poorly run pub. Allied to this, is a track record of chronic under-investment in the fabric of much of many of their pubs. The Jonathan Preece condition report actually makes reference to this general lack of investment by the industry in Section 25 of the condition report.

2.10 In the case of the Horse & Jockey, the situation got so bad that the last leaseholder quit as he deemed the building to be uninhabitable - which it undoubtedly is, if one goes by the findings of the Jonathan Preece report.

2.11 It is quite evident that the Horse & Jockey has been allowed to deteriorate to a state of severe dilapidation. This renders it unable to trade, and this will have very significantly reduced its freehold value as a pub.

2.12 It is against this background that Mr Nelson was still prepared to make a bid to buy the Horse & Jockey, an offer which he considered to be generous, considering the extremely poor state of the property. This bid was promptly dismissed and CAMRA understands he was advised by the selling agent at the time that only bids in excess of £200,000 would be considered.

2.13 In the absence of any other pricing or marketing information being provided for the Horse & Jockey, it becomes important to determine how realistic the £200K (minimum) asking price was for the pub. It is also necessary to consider the additional cost of any restorative works required on top of this figure (estimated at between £300,000 and £400,000 in the Jonathan Preece report), which means the business premises were de facto valued by the owners at £500,000 and upwards.

2.14 Unfortunately, it is not unknown for less scrupulous pub-owners to inflate the asking price of a pub in the expectation that it will deter buyers who are interested in taking it on as a business. This then paves the way for a change of use and possibly a potentially lucrative property development.

2.15 With no marketing report or any formal valuation being provided with this application, it is therefore necessary to look elsewhere for evidence. One method is to compare the Horse & Jockey's asking price with the actual sale prices of other pubs in Herefordshire that have recently been sold. Such a comparative pricing exercise, using actual sales price data, is a useful benchmark for understanding where the market is for licensed premises locally, and how the Horse & Jockey (in both its dilapidated and potentially restored condition) compares in terms of asking price.

2.16 There were three pubs sold freehold in Herefordshire around the time the Horse & Jockey was believed to have been marketed for sale in 2018/19. The characteristics, facilities and actual sale price of each of these inns is considered in the price comparison exercise, thus:

2.16.1 The Boot Inn, Orleton, Herefordshire, SYS 4HN. This fine traditional village inn was sold in the summer of 2019 for £280,000 freehold [HM Land Registry document HE13778 refers]. The Boot Inn is an impressive Grade II-listed, half-timbered building that boasts a strong trading record, and has established a county-wide reputation for its food (with a full catering kitchen and discreet restaurant in situ), plus it has associated outbuildings, set amongst fine landscaped gardens, along with a car park.

2.16.2 Another recent pub sold is the Sun Inn at Winforton, Hereford HR3 6EA. This sold for £257,000 freehold [HM Land Registry document HE18132 refers]. The Sun Inn is another village pub renowned for its dining offer, and it too has a full catering kitchen alongside a well-appointed restaurant. It also benefits from having a garden, car park and campsite nearby.

2.16.3 The Stockton Cross Inn at Kimbolton, near Leominster, HR6 OHD, is an impressive and well-appointed black-and-white half-timbered roadside pub, also with a strong dining pedigree with all facilities to match, based on a fully functioning catering kitchen. It too has a car park, outbuildings and a landscaped garden. This pub was sold in 2018 for £222,000 freehold [HM Land Registry document HE24385 refers]

2.17 Photos of these pubs can be viewed by going to: www.whatpub.com and searching for each pub by village name. These photos will demonstrate emphatically that all three of these village pubs are more extensive; better-appointed, and have far superior facilities and amenities than the Horse & Jockey. All of them changed hands in a fit state to trade, although it should be acknowledged that £120,000 was invested in improving the Boot Inn at Orleton on transfer of ownership.

2.18 In comparison, the Horse & Jockey is considerable smaller; it has no car park, no catering kitchen, no restaurant or landscaped garden. It is in a class below all of these comparative pubs, yet the £200,000 minimum asking price claimed ranges from being only £22,000 less than the full price paid for the freehold of the Stockton Cross Inn and only £80,000 short the price paid for the impressive Grade II-listed Boot Inn at Orleton. This gives very serious cause for concern as to the pricing of the Horse & Jockey. How was its £200K asking price justified?

2.19 Significantly, unlike the Horse & Jockey, all of these pubs changed hands in a physical state where they could trade legally, safely and profitably (if so required) from the day of transfer of ownership. They were (and remain) in a good state of repair.

2.20 Therefore, to enable a more meaningful and like-for-like comparison to be made between the Horse & Jockey and these pubs, one also needs to factor in the likely minimum cost (£300K) of

bringing the Horse 8t Jockey up to an acceptable standard where it can trade once more as a pub. It is then that the asking price looks to be an even starker mismatch. To acquire and refurbish the Horse & Jockey comes to £500K (based on £200K asking price + min refurb £300K). This figure equates to more than double the purchase price of the Stockton Cross Inn, and just shy of double the cost of the purchase price of the Sun Inn. And this is for a considerably smaller pub with fewer facilities and amenities. The numbers for the Horse 8i Jockey, put simply, just do not seem to be credible.

2.21 This sales price evidence demonstrates clearly that the asking price for the Horse & Jockey was grossly out of kilter with the prevailing market conditions for licensed premises in Herefordshire at the time (and remains so today).

2.22 It is very difficult not to conclude that the £200,000 asking price for the Horse 8t Jockey was totally unrealistic. The asking price completely failed to reflect the extremely poor state of the property and therefore was not representative of its Existing Use Value (EUV). CAMRA is not aware of there being any efforts to reduce the asking price, nor do we believe that any subsequent approaches on behalf of the owner were made to the prospective buyer, Mr Nelson. For these reasons, CAMRA believes this property was only ever marketed for sale as a development opportunity. It was not priced for sale as a pub.

2.23 It needs to be acknowledged, that although CAMRA has a number of industry members and experts amongst its ranks, it is not professionally qualified to value pubs.

2.24 However, such comparative pricing methodology has been employed to good effect with previous planning applications appertaining to pubs, particularly where no information was provided on marketing and pricing for the existing use by the applicant (as is the case here).

2.25 Relevant here is a dismissed appeal decision from February 2020 (PINs ref: APP/W/1850/W/19/3239091) concerning an earlier decision by Herefordshire Council to refuse change of use to residential at the Newtown Inn at Lower Eggleton, Ledbury, HRS 2UD. As is the case with the Horse & Jockey, there was no formal valuation provided by the appellant in this case too. Therefore, CAMRA used a comparative pricing exercise and arrived at the conclusion that the price asked for the pub was inflated and therefore unreasonable. The planning inspector, in her decision report, acknowledged the relevance of CAMRA's price comparison exercise, when in paragraph 26 she states, quote: "...although not definitive, this evidence casts significant doubt as to whether the asking price... is reasonable." The over-valuation of the Newtown Inn was one of the grounds for dismissing the appeal. Like the Horse & Jockey, the pub was also not in a state to trade, owing to its interior and facilities having been stripped out.

2.26 There is another appeal decision that is also highly pertinent here, especially as the circumstances again share a number of striking similarities with this case. In dismissing an appeal by the owner of the Queens Head pub in Selborne, Hampshire, GU34 3JH (PINs ref: APP/Y9507/W/19/3239374) against an earlier refusal of planning permission by the LPA to convert the premises to residential and to build houses on the pub's land, the planning inspector concluded the pub had not been offered for sale at a price commensurate with its physical condition.

2.27 Specifically, Paragraph 15 of the inspector's decision document states, quote: "All fittings and fixtures, as well as a number of internal walls were stripped out... therefore, significant expenditure would be required to re-instate the premises to full working order... the valuation of the premises should reflect its present state and the significant costs that would be required to reinstate features

that have been stripped out. Despite the deteriorated state of the premises, two offers to purchase the freehold were received, which the appellant declined as they were not reflective of market value. However, having regard to the price paid for the appeal premises in working condition... the selling price sought by the appellant did not appear to be reflective of the current condition of the building."

2.28 Paragraph 18 further states, quote: "It cannot be concluded that the use of the appeal premises as a public house is no longer viable, simply because the appellant has been unable to sell the site, for a price which does not appear to reflect the condition of the building." Accordingly the inspector concludes that the marketing exercise could not be, quote: "considered as robust." This appeal decision is forwarded (as a pdf attached to an e-mail) with this document.

2.29 CAMRA argues this is exactly the situation that presents with this application. The previous owner of the Horse & Jockey grossly over-valued the premises, which in turn will have deterred potential buyers looking to take it on as a going concern. However, there is an old maxim that says that a property is worth what someone is willing to pay for it. That might well be the case for a desirable country home, but prospective pub operators are going to need a commercial mortgage to finance at least a part of their purchase. To get such a loan, a commercial bank will require a guarantee that their equity is secure, and so will seek an independent valuation of the pub. It is quite difficult to see how a bank would arrive at a different conclusion to CAMRA in the case of the Horse & Jockey, thus making borrowing the necessary funds virtually impossible. This means that the owners will have been looking at 100% cash buyers, a rare breed indeed in the licensed trade.

2.30 Relevant here is Policy SCI of Herefordshire Council's Core Strategy (hereafter referred to as the CS). Paragraphs 2.31 to 2.35 below explain why CAMRA believes this planning application fails the test in Policy SCI on the single ground of the inadequate marketing of the pub.

2.31 CAMRA notes Policy SCI of the CS seeks to retain existing social and community facilities, including public houses (irrespective as to whether they are in town or country). Policy SCI is set in a narrative style and identifies circumstances when the loss of a community facility can be justified.

2.32 A recent appeal decision has proven to be helpful in confirming and clarifying the application of CS Policy SCI. In dismissing an appeal on the 20th June 2020, made by the owner of the Wheatsheaf Inn, Whitbourne, Herefordshire, WR6 5RF (PINs ref: APP/W/1850/W/19/324267) against an earlier decision by Herefordshire Council to refuse planning permission for conversion of the pub into a residential dwelling, the appeal inspector justified the dismissal based on criteria in CS Policy SCI, allied with the provisions contained in NPPF Paragraph 92.

2.33 There are three criteria for allowing the loss of a community facility in CS Policy SCI. These are set out in paragraph form in the policy text, but were individually numbered in the inspector's appeal decision report for ease of clarity, namely: 1.) if an alternative facility is available or can be provided; 2.) the facility is no longer required, viable or fit for purpose; 3.) it has been marketed for a community use without success.

2.34 The inspector notes the wording of the policy includes the word "or" in the text after criterion (1), which means a proposal does not need to comply with criterion (2) if criterion (1) is met, and vice versa. However, the inclusion of the word "and" in the text after criterion (2) means - irrespective as to whether criteria (1) and (2) are met - that criterion 3 needs to be satisfied for a proposal to comply with CS Policy SCI.

2.35 This appeal decision confirms that CS Policy SCI requires the applicant in this instance to

demonstrate they have satisfied criteria 3 by demonstrating that a genuine effort was made to market the Horse & Jockey for sale as a community facility. With the absence of any marketing information from the applicant, and the evidence provided in this report by CAMRA clearly showing the inadequate marketing of the pub, it becomes evident that this has not been done. This appeal decision therefore reaffirms the basis for this application failing the test as set out by criteria (3) in CS Policy SCI.

2.36 This application seeks to use the seriously dilapidated condition of the Horse & Jockey as a route to sidestep the relevant national and local planning policies that are there to protect valued community facilities. It would appear the previous pubco owner(s) sought to have their cake and to eat it: not content to deliberately allow the premises to deteriorate to a point where the Horse & Jockey is now dangerous and uninhabitable (such that the last licensee felt compelled to quit), they then sought to extract the full value of the premises via a "sales exercise" as if it was still in good order as an operational pub. One might use a crude analogy here, whereby a car-owner who runs his car into the ground to the point where it is unroadworthy, then seeks to sell it at ex-showroom price.

2.37 CAMRA believes to allow this application would set a dangerous precedent, whereby pubowners and developers could look to circumvent planning policies that protect community facilities, simply by allowing a building to rot to the point of dereliction. Furthermore, in light of the fact there was at least one serious offer to buy the premises as a going concern, approval of this application would result in the unnecessary loss of a community facility and business enterprise, with the further loss of economic activity, employment opportunity, and tourism offer for the town of Ross.

2.38 CAMRA asserts the evidence presented herein demonstrates that the Horse & Jockey was priced for sale only as a development opportunity. Therefore, for the reasons stated in 2.33 and

2.34, it fails to meet the requirements of Herefordshire Council Core Strategy Policy SCI, along with NPPF 92, by dint of the fact it was not marketed for sale at a price commensurate with its condition and existing use. Such is further supported by a number of recent planning appeal decisions.

3. FAILURE TO DEMONSTRATE FINANCIAL NON-VIABILITY

3.1 The Horse & Jockey has been a pub serving the town of Ross for at least 200 years. CAMRA is not aware of the pub having previously ceased trading over this considerable duration for any extended period of time. This record of successful trading is not indicative of an structurally nonviable pub business.

3.2 The applicant's Design & Access statement claims the pub is financially unviable. However, there is no evidence provided in support of this assertion. Where is the financial viability report? Where are the historic trading figures?

3.3 Unsupported reasons given in the applicant's Design & Access statement as to why the Horse & Jockey is no longer viable are, quote: "in this instance the layout and condition of the structure has made it financially unviable..."

3.4 It is unclear as to how the internal layout of the pub made the business financially unviable. In the absence of any evidence to support this statement, CAMRA feels unable to comment other than to point out the Horse & Jockey has traded successfully for many years with its current internal layout.

3.5 However, CAMRA does agree that the condition of the pub has adversely effected its viability, for the sole reason that the building became so dilapidated that it became uninhabitable and ceased to

be able to trade. The last licensee didn't leave the Horse & Jockey because his business was failing, but due to the extremely poor state of the building.

3.6 Claim is also made in the applicant's Design & Access statement that Ross is, quote: "...generally well provided for when it comes to drinking establishments." A list is then provided of another eleven alternative venues in the town.

3.7 Of these eleven establishments, two are not pubs but hotel bars, whilst of the remaining nine pubs, two of them are long term closed as at the 14th November 2020 (with their future uncertain). This means (excluding the Horse & Jockey) Ross currently has only seven pubs trading for a population 10,700 [2011 Census data].

3.7 It's is useful to see how this situation compares to other towns in Herefordshire. It is informative to make comparisons to Ledbury, Leominster and Kington. The first two towns have broadly similar populations to Ross. But with nine pubs each (plus two hotels), they can both boast more pubs, either with or without the Horse & Jockey included on that list. Kington, with a population only a third of Ross at 3,240 [2011 Census data], manages to sustain seven pubs - the same as Ross. Compared to Ross, these towns tend to be less fashionable, with Ross having greater potential to attract tourism footfall. Therefore, this suggests Ross is already underrepresented in terms of the number of pubs it has.

3.8 However, this isn't about quantity. Not all pubs are the same, and one of the structural problems that the pub's of Ross have is that only one of them is currently independently-run, that being the diminutive Tap House on the town's Millpond Street. All the others are owned by pubcos or national chains.

3.9 This report has already explored to an extent the trading disadvantage that a leaseholder of a pubco-owned pub can have compared to an independent pub: high wholesale prices, limited product range, and persistent under-investment being par for the course. Ironically, it is this model of ownership that has brought the Horse & Jockey to its knees.

3.10 The ideal situation that now presents itself is for the Horse & Jockey to move into independent ownership. However, for this to happen, it first needs to be marketed for sale at a price commensurate with its condition. It is this business freedom that forms the mainstay of the business plan of the rejected bidder, Mr Nicholas Nelson. With the Horse & Jockey finally being free from the shackles of pubco ownership, he foresees being able to buy locally-brewed beers and other products at considerably lower wholesale prices. This would enable him to offer products other pubco-owned pubs in the town can't - and at more competitive retail prices. This business model is already working very successfully at the recently opened Tap House.

3.11 The fact that there is a businessman interested in buying the Horse & Jockey, demonstrates that it can be financially viable as a pub.

3.12 Finally, it needs to be acknowledged that in recent years there have been reputational issues with the Horse & Jockey. The applicant's Design & Access statement makes the point that there have been public nuisance issues, and this matter is also reflected in the content of a number of the letters from those who have written to comment on this application.

3.13 Notwithstanding that such incidents are a matter for the Council's Licensing Department, sadly

this is no different to a number of the other pubs in Ross. It's a fact of life that even well-run pubs can be a problematic neighbour from time to time.

3.14 However, what was proposed in Mr Nelson's business plan was to move the pub to a place where its customer offer would not appeal to those who seek to create mischief (such as by selling local real ales etc). Moreover, Mr Nelson, as a near-neighbour himself of the Horse & Jockey, and with a long-standing personal and professional reputation to protect, is unlikely to engage in an enterprise that is seen to be a problem for the town. Ultimately, if the pub were to be badly run, then sanction by the licensing department would inevitably follow. Such actions would be highly detrimental to the pub's trading volumes and its profitability. CAMRA believes this alone gives those who judge the pub on its recent past reason to be reassured.

4. HERITAGE IMPACT OF THE PROPOSAL

4.1 CAMRA respectfully wishes to highlight the requirements placed on the LPA by Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990. This requires the LPA to have special regard for the desirability of preserving a listed building or its setting, or any features of special architectural or historic interest. It CAMRA's view that this is pertinent in this case.

4.2 The Horse & Jockey has been a public house for c.200 years (and possibly longer), and therefore has ever only be listed as such by English Heritage. As a pub it has a high communal value as a place for social, public and commercial life in the town of Ross. This in itself is a part of the special historic interest of the Horse & Jockey as a listed building.

4.3 NPPF Paragraph 196 provides a helpful test here for a case where a proposal will lead to less than substantial harm to the significance of a heritage asset (which is assumed to be the case in this instance). This harm, however, needs to be weighed against the public benefits of the proposal, including securing its optimum viable use.

4.4 This report has set out clear evidence that demonstrates that there is a reasonable likelihood that the use of the listed building could be secured as a public house. Therefore, CAMRA argues that the optimum use can be secured.

4.5 This proposal will also be at odds with Herefordshire SC Policy LD4, in so much that the proposal will not advance the understanding of heritage assets, partly due to the anticipated loss of public access. Indeed, the proposed change of use would deny public access to the listed building.

FOR THE REASONS SET OUT ABOVE CAMRA RECOMMENDS THAT THIS APPLICATION SHOULD BE DECLINED.

Further comments were submitted by CAMRA in rebuttal to the comments submitted by the Agent in response to CAMRA's original comments. These additional comments were continuing with the main points raised above.

West Mercia Police - From a Local policing perspective we dealt with numerous incidents in particular from 2016 - early 2018 (when I am assuming the pub closed). Many calls to police were in relation to noise nuisance and disorder. Calls from residents that live in the street and these calls are often made after midnight and licensing rules were obviously being broken. However, with the pub being in the middle of a residential street we have felt it an unsuitable location and historically we have had issues with other landlords just because it is so close to dwellings. In comparison to the other pubs in Ross on Wye this one certainly did create the most work for officers.

If the pub were to reopen I have no doubt that we would face the same issues regardless of who manages it.

Natural England - Based on the plans submitted. Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

6 letters of objection were received, raising the following main points:

- Loss of an asset of community value
- An offer was made to maintain it as a pub which was refused
- The existing pub company charged too much for rent that no profit was possible
- No maintenance / upkeep on premises
- Loss of 'local' community pub
- Pub could provide social facilities I town centre location
- Other pubs have been lost in recent years
- Tourism is important in the town so need these facilities

6 letters of support were received, raising the following main points:

- Good proposed design
- Respectful to historic fabric
- Pleased to see the skittle alley removed from the rear as it didn't add value to property
- Reduces fear of crime to the local residents if property was houses not a pub
- Reduces noise and disturbance
- A gain in green space
- Previously two Georgian houses
- Sensitive restoration in keeping with the rest of the street
- Gets rid of the bad and poorly designed conversion to a pub
- Been complaints raised in regards to noise when it was a pub
- Building isn't viable as a pub
- Currently building is an eyesore and doesn't add anything to the streetscene
- Increasing in housing for families locally
- Residents have had to sell their homes due to nuisance of pub goers and anti-social behaviour
- Not large enough for a pub to do food, just a drinking establishment
- Lots of other pubs close to visit in Ross
- Good use of a previously developed site rather than building on more greenfield

A petition of 54 signatures was submitted in support of the application.

Local Member updated via email

Pre-application discussion:

P191342 – Simon Withers Generally supportive subject to demonstrating non-viability / marketing

Constraints:

Grade II listed Building

Grade II* listed building opposite
Wye Valley AONB
Conservation Area

Appraisal:

Policy context and Principle of Development

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). It is also noted that the site falls within the Ross-on-Wye Neighbourhood Area, where the Plan is at currently awaiting referendum. At this time the policies in the dNDP can be afforded weight as set out in paragraph 48 of the National Planning Policy Framework 2019, which itself is a significant material consideration

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9th November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain entirely consistent with the NPPF and as such can be afforded significant weight.

Policy SS1 of the CS sets the tone for approach to housing development in the county, emphasising the need to act proactively and in favour of sustainable development where proposals accord with policy and material considerations. Despite the relatively recent adoption of the CS, the Council is currently unable to demonstrate a 5-year housing land supply, currently 4.22 years as of January 2021. The reason for this is the latest Housing Delivery Test results mean Herefordshire Council have had three good years of housing delivery and no longer (until next results) need to apply a heavily weighted 20% buffer to the target. Instead, the 5% buffer is applied. Notwithstanding this, as set out in paragraph 11 of the NPPF, which engages a presumption in favour of sustainable development, in such circumstances the relevant policies in the Development Plan for the supply of housing should not be considered to be up to date.

Paragraph 11 of the NPPF states that there is a presumption in favour of sustainable development and for decision takers, this means approving development proposals that accord with the development plan without delay (11c). Where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (11di) or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole (11dii).

The approach to housing distribution within the county is set out in the CS at Policy SS2. Policy RW1 of the CS states that Ross-on-Wye will accommodate a minimum of 900 new homes throughout the plan period, (2011-2031) of which a minimum of 200 dwellings will be provided in a single strategic urban extension to the south-east of the town. The remaining dwellings will be provided through existing commitments, smaller scale non-strategic sites within the existing built up area and changes of use as would appear the case here.

This goes back to the weight to be afforded to policies relevant for the supply of housing with an absent 5 year supply. With this in mind, the spatial strategy is sound and consistent with the NPPF. It is therefore considered that Policies RW1 and RA1 of the Core Strategy would continue to attract significant weight, as confirmed by previous appeal decisions in the locality, and in any case, it is a matter for the decision-maker to ascertain the degree of weight to be attributed to these policies, taking into account the specific context of the case.

Policy SC1 states that 'Existing facilities will be retained unless...it can be shown that the facility is no longer required, viable or is no longer fit for purpose....it has been vacant and marketed for community use without success.'

As part of the application it has been stated that the public house was marketed from early 2018 until late 2019. The public house was marketed through advertising a 'For Sale' board on the property at first floor, through a number of specialist leisure industry agents including an online search facility 'Find me a pub', in addition there was an email campaign around potentially interested parties. The property was also advertised within the local papers, in 2018 and again in October 2019.

From this marketing exercise it has been established that there was one offer brought forward, this was below the asking price and therefore rejected. It is acknowledged that the person proposing the offer had undertaken independent surveys on the property that identified that significant works would be required to be undertaken. Whilst this is indicative of a genuine interest to acquire the public house, the survey work and cost was undertaken at the proposers risk and ultimately could not guarantee an acceptance of the offer. The property is considered to be valued in line with similar commercial properties and no further discussions took place between the proposer and the seller in order to reach a satisfactory deal.

This was the only offer that came forward after a period of 18 months.

In addition, the agent has provided a number of reasons why the public house is not considered viable, these reasons are as below:

- Frequent change of ownership and management after several decades
- Lack of footfall past the property
- Lack of facilities due to limited floorspace
- Inability to serve food due to lack of floorspace
- Lack of facilities for families with children, i.e no play area
- Unable to offer entertainment, such as live music to encourage more customers due to the noise implications as a residential street
- Due to narrow bar area and restricted floorspace limits the number of customers due to health and safety restrictions which limit the possible income

In addition to the commentary in relation to the marketing of the public house, it is noted that there are a number of other public houses, offering varied hospitality from small drinking only establishments to

larger family pubs offering food, located within Ross-on-Wye town centre, some as close as 130 metres from the site. Therefore, it is considered that there is a supply and range of alternative facilities within the town such that the loss of this public house is not considered to be detrimental to the local community.

In conclusion on this matter of principle, the property has been marketed but has not received any interest for a period in excess of 12 months. In addition the particular characteristics of the public house are such that there a number of reasons demonstrating why it is no longer considered a viable business and therefore this application is considered to comply with Policy SC1 as the Public House is no longer considered viable or required.

Of interest to note is the fact that the property was at one point registered as an asset of community value. A notice of disposal was registered in October 2018. No group or individual came forward to provide a bid during the respective period. The public house is no longer listed on the Asset of Community Value list with the most up to date list dated as 21 January 2021. This combined with the somewhat muted response to its conversion together with the other benefits associated with the residential conversion are considered to enable support for the alternative use at this location.

Siting, scale and visual and heritage impact

The impact of the development is limited only to the removal of features associated with its use when formally operating a public house and alterations to facilitate its proposed residential use. The submitted plans are of an acceptable nature which will not result in a loss of residential amenity or harm to the streetscene or wider landscape.

The proposed change of use is likely to reduce the overall noise and fear of crime / anti-social behaviour that has been reported and recorded with the current use as a public house. This is noted in a number of responses to the consultation exercise..

The proposal will reinstate the original frontage by re-opening the front door to the right hand side of the property, whilst maintaining the historic characteristics of its most recent use as a public house.

It is considered that the application conforms with Policies SD1 and LD1 of the CS which are consistent with Section 12 of the NPPF.

Consideration is required as to whether the proposed residential use is appropriate in terms of the impact on the listed building and the wider conservation area, namely referring to Policy LD4 of the CS, Section 16 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

As confirmed by the Building Conservation Officer, the amendments and change of use would result in less than substantial harm to the essential character and appearance of the listed building and wider Ross-on-Wye Conservation Area.

The proposed additions at ground floor level to the rear, although contemporary in design, broadly reference the extended form of former structures in this location, and their materiality will be sympathetic to the appearance of the host buildings; this aspect would result in no harm being caused to the character and appearance of the conservation area.

It therefore accords with guidance contained within the National Planning Policy Framework (NPPF) and Herefordshire Council's Core Strategy.

Highways

It is noted that the removal of the public house and replacement with two dwellings is likely to result in less of a requirement for the parking of cars, which is in the main, on street parking. There is also a public car park entrance opposite the site. As confirmed by the Area Engineer, there are no objections to this application, however with regards to the vehicle parking it is acknowledged that the provision of parking is not achievable on the site. However, the LPA has considered the proximity of nearby parking locations and, importantly, the accessibility of the location to the amenities of Ross on Wye, the provision of secure cycle parking is required to be conditioned to facilitate active travel options to residents, satisfying Policy MT1 of the CS, which considers highway safety and which is consistent with Section 9 of the NPPF.

Drainage/HRA

Policy LD2 of the CS requires all development proposals to conserve, restore, and enhance the biodiversity and geodiversity assets in Herefordshire. The policy requires the protection and retention of nature conservation sites and habitats, and important species in accordance with their status. Paragraphs 174 – 177 of the NPPF outline the requirement for planning policies and decision to protect and enhance biodiversity and geodiversity. It states (175 (b)) ,that development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest'. Paragraph 177 clearly states: *"The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site"*. Paragraph 176 clearly confirms that Special Areas of Conservation should be given the same protection as habitats sites.

The application site lies within the Wye catchment, which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) as being of international importance for its aquatic flora and fauna.

All foul water is proposed to be managed through connection to the local mains sewer network and Welsh Water have confirmed that there is sufficient capacity. Existing surface water that goes to mains sewer connections are likely to be retained and that any additional surface water will be managed through a relevant Sustainable Drainage System – this can be achieved with final technical details to be secured for approval under a separate specialist condition.

Therefore the proposal complies with CS Policies SD3 and SD4.

Conclusion

In conclusion, it is accepted on balance that the existing use is no longer viable in this location. The property was appropriately marketed with only one offer made, which was below the asking price. Furthermore there are alternative facilities locally that will continue to provide for the social needs of the

local community. The proposed design and works to convert the property back into two dwelling houses is considered acceptable, which will have a less than substantial harm upon the Grade II listed building, and no adverse impact upon the Conservation Area.

The proposal complies with planning policy and is therefore recommended for approval.

RECOMMENDATION: **PERMIT** ☒ **REFUSE** ☐

CONDITION(S) & REASON(S):

(please note any variations to standard conditions)

1. C01
2. C06 – Proposed front and rear elevations; side west/side east elevations proposed; first floor plan proposed; ground floor plan proposed; second floor plan proposed; third floor plan proposed; long section through the house 9 and house 10
3. CBK
4. CE6
5. All foul water shall discharge through a connection to the local Mains Sewer network (Lower Cleeve WWTW) and surface water shall be managed through existing drainage connections and a suitable Sustainable Drainage Scheme within the development boundary; unless otherwise agreed in writing by the Local Planning Authority

Reason: In order to comply with The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD2, SD3 and SD4

6. Prior to any new construction above damp proof course a fully detailed and specified Biodiversity Enhancement Plan including a relevant location plan including provision of fixed habitat features (enhancing bat roosting, bird nesting (including consideration for Swifts, insect populations, and a hedgehog home) shall be provided to the planning authority for approval. The approved scheme shall be implemented in full and hereafter maintained unless otherwise agreed in writing by the planning authority.

Reason: To ensure Biodiversity Net Gain as well as species and habitats enhancement having regard to the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), Wildlife and Countryside Act 1981, National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies LD1, LD2 and LD3.

7. No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or

indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

8. CB2

Informatives

1. IP1

The Authority would advise the applicant (and their contractors) that they have a legal Duty of Care as regards wildlife protection. The majority of UK wildlife is subject to some level of legal protection through the Wildlife & Countryside Act (1981 as amended), with enhanced protection for special "protected species" such as all Bat species, that are present and widespread across the County. All nesting birds are legally protected from disturbance at any time of the year. Care should be taken to plan work and at all times of the year undertake the necessary precautionary checks and develop relevant working methods prior to work commencing. If in any doubt it is advised that further advice from a local professional ecology consultant is obtained.

Signed: *Gemma Webster* Dated: 30/04/2021

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT ☒

REFUSE ☐

Signed: 

Dated: 4 May 2021