

North Yorkshire Council

Community Development Services

Thirsk and Malton Constituency Area Planning Committee

21 MARCH 2024

ZE23/06955/73- APPLICATION FOR THE VARIATION OF CONDITION 02 OF PLANNING APPROVAL 23/00077/73 DATED 18.04.2023 TO REMOVE THE RESTRICTION ON THE NUMBER OF EVENING EVENTS PER MONTH AND TO ALLOW AN INCREASE IN THE TOTAL NUMBER OF EVENING EVENTS FROM 10 TO 50 OCCASIONS PER CALENDAR YEAR ON LAND AT DOGH, MAIN STREET, WELBURN, MALTON ON BEHALF OF MRS GEORGIA DOWKES-WHITE (DOGH LIMITED)

Report of the Assistant Director Planning – Community Development Services

1.0 Purpose of the Report

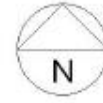
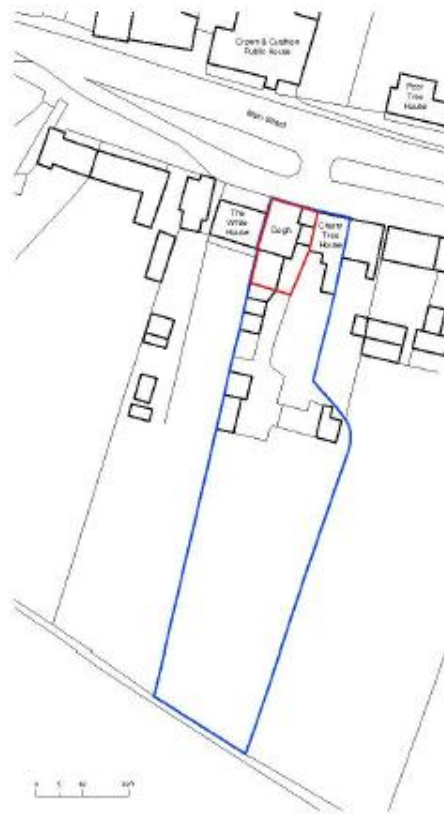
- 1.1 To determine a planning application for the variation of Condition 02 of planning approval 23/00077/73 dated 18.04.2023 to remove the restriction on the number of evening events per month and to allow an increase in the total number of evening events from 10 to 50 occasions per calendar year on land at Dogh, Main Street, Welburn, Malton.
- 1.2 The application is reported to the Area Planning Committee for determination because it is considered that significant planning issues have been raised.

2.0 EXECUTIVE SUMMARY

RECOMMENDATION: That planning permission be GRANTED subject to the conditions listed in Section 12 of this report.

- 2.1. The proposed development comprises the variation of Condition 02 of planning approval 23/00077/73 dated 18.04.2023 to remove the restriction on the number of evening events per month and to allow an increase in the total number of evening events from 10 to 50 occasions per calendar year.
- 2.2. The application relates to a two-storey building located centrally within the village of Welburn. The building stands to the south of Main Street and occupies an elevated position in relation to the public highway which runs through the village. The ground floor of the building is currently operated under the name 'Dogh' and is an established mixed use unit which provides a shop, café and hot food takeaway.
- 2.3. The site lies within the development limit of Welburn and is within the village Conservation Area. It is also within the Howardian Hills National Landscape (AONB). In addition to falling within land designated as village green the grassed areas to the front of the building which flank the access are within a Visually Important Undeveloped Area (VIUA).
- 2.4. The main issues through the course of the application have been the impact on local and residential amenity, the impact on the National Landscape (AONB) and the impact on highways safety. It is considered that these matters have been adequately addressed.

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Rev	Description	By	Date
C	Red line amended for new application	RJ	06.12.21
B	Site blue line boundary added	RJ	31.10.21
A	Site red line boundary added	RJ	30.10.21



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Project DOGH

Address WELBURN

Client S & S HOLT

Drawing Title

SITE LOCATION PLAN

Job No.	Draw No.	Revisions	Scale @ size
128	(EX)01	C	1:1250 @ A4

Date Drawn	Status	Drawn by
Oct 21	EXISTING	RJ

3.0 Preliminary Matters

- 3.1. Access to the case file on Public Access can be found here:-
<https://planningregister.ryedale.gov.uk/caonline-applications/>
- 3.2. The application initially proposed the variation of Condition 02 of planning approval 21/01590/73A dated 18.03.2022 as amended by approval 23/00077/73 dated 18.04.2023 to allow an extension of opening hours to 08:00-22:30 daily all year round (no opening on Christmas Day or Boxing Day).
- 3.3. However, during the course of processing the application, it came to light that the application did not reflect the applicant's requirements and the application and description of the proposed development was amended to that stated above in paragraph 1.1.
- 3.4. The following relevant planning history has been identified for the application site:

23/00077/73-Variation of Condition 02 of planning approval 21/01590/73A dated 18.03.2022 to allow an extension of opening hours to 08:00-22:30 once per month, on no more than 10 occasions per year for the purpose of bistro evenings, supper clubs and small events. APPROVED 18.04.2023

21/01590/73A-Variation of Condition 03 of approval 09/00241/FUL dated 11.06.2009 to set opening hours of the cafe including any hot food takeaway and the retail use as 08.00 to 18.00 Monday to Saturday and 08.00 to 17.00 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) (retrospective application). APPROVED 18.03.2022

21/01499/FUL- Siting on the service road and village green of outdoor seating for Dogh Cafe and sale of hot food for consumption off the premises (retrospective application). 18.03.2022. PART APPROVED/PART REFUSED. The decision granted planning permission for the siting on the service road of outdoor seating (2no. standard picnic benches of timber construction positioned to the front of the building) for Dogh Cafe and sale of hot food for consumption off the premises.

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

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

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

4.0 Site and Surroundings

- 4.1. The application relates to a two-storey building located centrally within the village of Welburn. The building stands to the south of Main Street and occupies an elevated position in relation to the public highway which runs through the village. The building,

along with surrounding properties to the east and west, is set back from the public highway behind an area of open, grassed village green and private access ways.

- 4.2. The ground floor of the building is currently operated under the name 'Dogh' and is an established mixed use unit which provides a shop, café and hot food takeaway. The remaining part of the building to the rear and at first floor level is used as flats and a holiday let.
- 4.3. The site lies within the development limit of Welburn and is within the village Conservation Area. It is also within the Howardian Hills National Landscape (AONB). In addition to falling within land designated as village green the grassed areas to the front of the building which flank the access are within a Visually Important Undeveloped Area (VIUA).
- 4.4. The two storey building has a gable front elevation in brick with tile hanging on the first floor and a clay pantile roof. The front elevation at ground floor level comprises two large windows which flank a central doorway. There are two wooden picnic benches abutting the front, north facing elevation of the building flanking the main entrance door.
- 4.5. Properties either side of the application site are occupied for residential purposes (Cherry Tree House & White House). The dwelling immediately to the east (Cherry Tree House) is under the applicant's ownership and shares a rear, private driveway with the application site. St Annes Cottage is further to the east beyond Cherry Tree House. The Crown and Cushion Public House stands opposite the site to the north of Main Street and Pear Tree House is opposite to the north east.
- 4.6. There are several listed buildings in the vicinity of the site the nearest being the Grade II listed Cherry Tree House which is immediately adjacent to the east of the site and also Grade II listed Pear Tree House which stands opposite to the north-east of the site.

5.0 Description of Proposal

- 5.1. Variation of Condition 02 of planning approval 23/00077/73 dated 18.04.2023 to remove the restriction on the number of evening events per month and to allow an increase in the total number of evening events from 10 to 50 occasions per calendar year.
- 5.2. Condition 02 currently states:

'The café (including any hot food takeaway) and retail use hereby permitted shall not be open to customers outside the following times - 08:00 - 18:00 hours Monday- Saturday and 08:00 - 17:00 hours on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) with the exception of one occasion per month on no more than 10 occasions per calendar year where it is permitted for opening hours to be extended until 22:30 hours for the café and retail use (no hot food takeaway) of the premises for evening events. The owners/operators shall maintain an up-to-date register of evening event bookings that will be maintained at all times and shall be made available for inspection to an officer of the Local Planning Authority on request. The register shall include, but not be limited to, details of the date of the event, nature of the event and the number of attendees.'

Reason: To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy SP20'.

- 5.3. The application requests that the wording of Condition 02 is varied to read as follows
commrep/4

(emphasis added):

*‘The café (including any hot food takeaway) and retail use hereby permitted shall not be open to customers outside the following times - 08:00 - 18:00 hours Monday- Saturday and 08:00 - 17:00 hours on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) with the exception of on no more than **50 occasions per calendar year** where it is permitted for opening hours to be extended until 22:30 hours for the café and retail use (no hot food takeaway) of the premises for evening events. The owners/operators shall maintain an up-to-date register of evening event bookings that will be maintained at all times and shall be made available for inspection to an officer of the Local Planning Authority on request. The register shall include, but not be limited to, details of the date of the event, nature of the event and the number of attendees.*

Reason: To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy SP20’.

- 5.4. The applicant has confirmed that following receipt of planning permission ref. 23/00077/73 on 18 April 2023 seven evening events were held in 2023 each on the third Friday of the month between June and December.
- 5.5. The applicant states that they “are confident that these events will not cause any undue disruption to members of the village, as we have been made aware of no complaints made following our previous 7 successful events”. The applicant has also explained that the bistro evening events have generated a lot of interest from customers and there is a demand for an increased number of evening dining events, including private dining.
- 5.6. The applicant seeks permission to increase the number of evening events permitted across the calendar year so to offer more private ticketed bistro style events as well as to allow customers to book the cafe for private dining.
- 5.7. The applicant has also provided an ‘Evening Event Management Plan’ (EEMP) as a supporting document accompanying the application. The EEMP (v.2.0) reiterates that, with the exception of Condition 02, all other conditions attached to the extant permission ref. 23/00077/73 will continue to be complied with. The EEMP also confirms agreement to the following:
 - *No more than 3 evening events per calendar week (Defined as Monday – Sunday).*
 - *No more than two consecutive evening events per calendar week.*
 - *No more than 6 consecutive Sunday events during the school holiday periods.*
 - *No additional external illumination to be provided for the evening events without prior approval from the Council.*
 - *We will continue to make customers aware that all disturbances must be kept to a minimum when arriving and leaving the premises, and that loud noises will not be tolerated.*
- 5.8. As per the extant permission evening events would involve opening to no later than 22:30 hours and all events would be contained within the building. There would be no music at the premises after 21:00 hours and no hot food takeaway during evening events. All events would be arranged via a pre-booked ticketing system (max. 25 persons) and the applicant would continue to keep a log of event bookings.

6.0 Planning Policy and Guidance

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in

accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

6.2. The Adopted Development Plan for this site is:

Ryedale Plan- Local Plan Strategy (2013)
 Policy SP11 Community Facilities and Services
 Policy SP13 Landscapes
 Policy SP16 Design
 Policy SP19 Presumption in Favour of Sustainable Development
 Policy SP20 Generic Development Management Issues

Emerging Development Plan – Material Consideration

6.3. The North Yorkshire Local Plan is the emerging development plan for this site though no weight can be applied in respect of this document at the current time as it is at an early stage of preparation.

Guidance - Material Considerations

6.4. Relevant guidance for this application is:

- National Planning Policy Framework 2023
- National Planning Practice Guidance
- Howardian Hills AONB Management Plan 2019-2024

7.0 Consultation Responses

7.1. The following consultation responses have been received and have been summarised below. Full comments are available to view on the Council's website.

Initial consultation (prior to revised description of proposal)

- 7.2. **Welburn (Malton) Parish Council** No response received.
- 7.3. **Highways North Yorkshire** No response received.
- 7.4. **Environmental Health** No response received.
- 7.5. **Ellie Hook AONB Manager** No response received.

Re-consultation (revised application form, supporting statement and updated description of proposed development)

- 7.6. **Welburn (Malton) Parish Council** No response received.
- 7.7. **Highways North Yorkshire** No response received.
- 7.8. **Environmental Health** the increase in events if not mitigated, could lead to adverse impacts, however I feel that the proposal can be made acceptable by conditions. I would suggest that conditions be set to prevent more than 3 events per week with no more than two consecutive nights, that events on Sunday evenings are restricted to no more than 6 in school holiday periods, and that there is a monthly limit so that the 50 events are evenly spread, eg 6 per month. In order to minimise lighting impacts you may want to condition that no additional external illumination is

provided, without prior written approval. The LPA may wish to impose a condition requiring that windows and doors are kept shut to minimise noise breakout, and that the windows are covered (blinds/curtains) for night time events to reduce light spill at the front façade.

- 7.9. **Ellie Hook AONB Manager** Objects- Whilst we are fully supportive of the rural business within the village and recognise the growth of the business and service it provides to both residents and visitors, we have significant concerns about the potential for the applicant to host up to 50 occasions per calendar year and with no restrictions on number of events per month. This will inevitably impact further on the tranquillity of the village, residential amenity of existing and neighbouring occupiers, rural village character, noise levels and quality of evening dark skies. Furthermore, we have concerns regarding the impact of the proposal on the village green verges and typical rural village road network from parking associated with the proposal. The proposed times are not aligned with other eateries in the area, including those in much larger settlements, where the majority cease to operate during late evening and with clients having left the premises by approx. 21:00. The proposal to remove the restriction on number of events per month may result in significant cumulative disturbance across consecutive evenings. It is considered that the proposal subject to this s73 application will not enhance the village character, the village of Welburn and will detrimentally impact the special qualities of the designation including the tranquil character and green spaces within the village. I would suggest that it would seem more reasonable to ensure that disturbance is set at a more reasonable level, perhaps a maximum of two evening events per month, with no take away service and no evening events allowed on Sunday evenings, Christmas Day or Boxing Day. If this application, or a revised version with fewer evening events, is granted, there are strict conditions on noise and light pollution.

Further re-consultation (supporting statement- Evening Event Management Plan)

- 7.10. **Highways North Yorkshire** No objection- I note the proposed event types, exclusions and additional controls as set out in the Supporting Statement (v.2.0). It is also noted the existing conditions that the applicant is to comply with relating to the existing planning consent as mentioned on the first Supporting Statement dated 26/02/2024.

In general terms the comments I made in my consultation response dated 6 April 2023 (in relation to planning application 23/00077/73) apply in respect of this requested variation of condition.

From a highway authority perspective the issue relates to the impact the increased number of operational evenings would potentially have on the existing local highway network, given that the premises offers no on-site parking provision, particularly for visitors attending the evening function.

It is considered that, overall, such impact would be material to the immediate vicinity to a certain degree. This needs to be assessed against the general situation that exists through the village whereby some on-street parking does take place, generally at all times of the day and evening. On balance it is not thought that the additional opening evenings as quoted would change the on-street parking demand to a level that would be significantly detrimental to the operational capacity and safety of the highway.

However, it is also considered that the proposal now represents a maximum in respect of evening openings, and with reference to the amended planning application

forms submitted, any additional number that could potentially be applied for would not be supported by the highway authority.

No highway authority objections are therefore raised on the basis of the two submitted supporting statements, and appropriate planning conditions to secure the evening event management plan are recommended.

7.11. **Environmental Health** my main concerns regarding this application centre around the potential for noise and disturbance to neighbouring amenity. However, since evening events have been operating last summer, and the applicant has agreed measures to control spacing out of events, limiting operational hours and limiting disturbance from music, light, patrons etc, I feel that the effects are or can be mitigated to minimise disturbance. Accordingly, subject to the conditions regarding the evening event management plan, the review of such plan, and the condition for lighting, I have no objections to the granting of the above proposal. There are no concerns re odours, the type of food served and the requirement to disallow takeaways prevents this from being a significant disturbance.

7.12. **Ellie Hook AONB Manager** No response received.

Local Representations

7.13. In response to the initial proposal that sought an extension of opening hours to 08:00-22:30 daily all year round (no opening on Christmas Day or Boxing Day) the LPA received a total of 23 representations from local residents and members of the public of which 17 raised objections to the application and 6 supported the proposal. Full copies of all the representations received by the LPA can be accessed via the Council's Online Planning Register.

7.14. Following receipt of a revised application form, supporting statement and amended description of the proposal which requests opening until 10:30pm on no more than 50 occasions per year the LPA completed a further consultation exercise with local residents.

7.15. In response the LPA received a total of 24 representations from local residents and members of the public all of whom raise objections to the application. Full copies of all the representations received by the LPA can be accessed via the Council's Online Planning Register.

7.16. **Objections**

The reasons given in objection are as follows:

- There is no need for Dogh to duplicate this service for more evenings than currently allowed.
- No car park for the café
- Increase in traffic and congestion
- Increase in inconsiderate parking blocking the service road extending into the evening
- Pedestrian safety on dark nights
- Loss of amenity for residents- Noise disturbance and nuisance
- Noise from slamming car doors, loud speaking etc into the late evening
- Threatens the peace and privacy of residents
- Dogh continues to destroy the ambience, the tranquillity, and amenities of this once aesthetically pleasing village landscape on a daily basis
- Increase in litter
- Cooking odours will continue into the late evening

- Disruptive customer behaviour
- Detrimental effect on the character and tranquillity of this important Howardian Hills village
- Potential for several consecutive late night dining events terminating at 22.30 hours
- An excessive number of late night events will be allocated to Bank holidays, school holidays, during warmer weather and the lighter evenings
- Division of the 50 evening events limiting the of number of events per week, or months, will not reduce the impact on neighbours and the village, as the number still remains at 50
- The business has outgrown the premises it should move to a more suitable location where expansion does not impinge on the whole neighbourhood
- The wrong business to develop in the wrong location
- The character of the Conservation Area and this historic village is being ruined by all the traffic and trade generated by Dogh

There are objections which raise matters which are not material planning considerations or are not relevant to the determination of the application as follows:-

- Speculation that there might be future applications to increase the number of days Dogh can operate with extended opening hours
- Speculation that the applicant will not comply with the terms of any permission granted.
- That deliveries can commence from 4am.
- Objections to existing day time operations and impacts
- A request for the existing late openings be rescinded

7.17. **Support**

The reasons given in support are as follows:

- Dogh is a great local business which attracts locals as well as people from surrounding areas. Additional events at the bistro would be an asset to the area and would also bring the community together in a lovely setting with delicious food.
- The cafe is an asset to the village and is respectful of its neighbours especially when holding events outside of its normal hours.
- The proposal would allow the continued growth of a small business who produce a fantastic offering for the local area. Recent times have proven difficult for some businesses and would provide the flexibility to open further hours that will aid both local residents and also locals from neighbouring areas.
- The café is run and supported by mature, responsible local people
- There are residents who enjoy having Dogh in the village and it provides an opportunity for socialising with local people and patrons of the café.

8.0 **Environment Impact Assessment (EIA)**

- 8.1. The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environment Statement is therefore required.

9.0 **Main Issues**

- 9.1. The key considerations in the assessment of this application are:

- Principle of the development;
- Impact on amenity;
- Impact on the Howardian Hills National Landscape (AONB); and
- Highways safety.

10.0 ASSESSMENT

Principle of the Development

- 10.1. Paragraph 88 of the NPPF (2023) sets out national policy supporting a prosperous rural economy. It states *“Planning policies and decisions should enable (inter alia): d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship”*. Policy SP11 of the Local Plan Strategy seeks to protect and support services and facilities that contribute towards the vitality of local communities.
- 10.2. The applicant is a small business and local employer. The applicant seeks permission to increase the number of evening events permitted across the calendar year so to offer more private ticketed bistro style events as well as to allow customers to book the cafe for private dining. The proposal follows on from several events held in 2023 which the applicant has explained were successful, popular and without complaint. The applicant states *“our main goal for the business is to ensure that we are able to bring in sufficient revenue to maintain these employees and pay a sufficient and fair wage. Our business plan also seeks to reinvest any profits into the business to improve our equipment, make more sustainable choices, and maintain our high quality of ingredients. At heart, we are a chef and a food lover, and want to create a space where good quality food is celebrated. We feel that the venture into evening events supports this and allows us to expand the business in an appropriate manner.”*
- 10.3. The evening events are primarily food and drink based events which are currently permitted to take place between the hours of 18:00-22:30 Monday- Saturday and 17:00-22:30 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) on a set number of occasions per month/year. The evening events diversify the offering at the premises and do not depart from the lawful use of the building as a shop, café and hot food takeaway.
- 10.4. The reasoning for the increased number of evening events is understood and accords with national and local policy, in terms of supporting the rural economy, employment and the provision of local services. As such it is considered that the proposal is acceptable in principle in line with the principles of Policy SP11 and the NPPF subject to consideration of the impact upon local and residential amenity, the National Landscape (AONB) and highway safety.

Impact on amenity

- 10.5. The main consideration in the assessment of this variation of condition application is whether the increase in the number of evening events from 10 occasions to 50 per calendar year and the removal of the one event monthly limit would result in harm to the amenity of occupants of nearby residential properties. The proposal, if approved, would allow for an increase in the number of bistro evenings, supper clubs and small private dining events across the year.
- 10.6. The application site is in close proximity to residential receptors although it is relevant to note that it stands opposite a pub/restaurant which has later opening hours and on a much more frequent basis.

- 10.7. A number of local residents have raised concern in relation to potential harm to residential amenity arising from the increased number of evening events. The reason for Condition 2 is: *'To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy SP20'*.
- 10.8. Policy SP20 (Generic Development Management Issues) of the Ryedale Plan- Local Plan Strategy (2013) states: *"New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or to be an overbearing presence"*.
- 10.9. At present the extended hours of opening (until 22:30 hours) on 10 occasions a year allows the applicant to host food and drink based events such as bistro evenings and supper clubs. The applicant has highlighted that the events held in 2023 were popular and that there is also demand for small private dining events hence this application to increase to 50 events per year with no monthly restriction.
- 10.10. The applicant does not seek to vary any of the other extant controls set by permission ref. 23/00077/73. In summary evening events would continue to be limited to opening til no later than 22:30 hours and all events would be contained within the building. There would be no music at the premises after 21:00 hours and no hot food takeaway during evening events. All events would be arranged via a pre-booked ticketing system (max. 25 persons) and the applicant would continue to keep a log of event bookings. The relevant conditions would be carried forward should permission be granted.
- 10.11. The applicant has reiterated that they take steps to encourage customers to be mindful of neighbours and encourage customers to minimise noise when departing the premises. The LPA has received evidence to show that appropriate signage has been installed on the inside of all external doors to remind customers to leave quietly and respect neighbours. The applicant supporting statements explains *"We take the current concerns of the village very seriously, and as such do ensure that all attendees of events at Dogh are made aware that disturbances must be kept to a minimum when entering and exiting the building, we also keep our meal service between 7pm and 9pm, to ensure all guests have left before the 10.30pm curfew that we currently have"*.
- 10.12. The applicant highlights that, to date, seven evening events have been held without any complaints. This has been verified by the Council's Senior Enforcement Officer and Senior Environmental Health Officer who have confirmed that there were no complaints about noise disturbance, anti-social behaviour or similar, relating to the extended opening hours of Dogh, Welburn between April and December 2023.
- 10.13. It is acknowledged that there is genuine concern that the proposed increase in the total number and frequency of evening events could be detrimental to residential amenity. It is considered that the nature and scale of the evening events combined with the applicant's management of such events and the requirements of the planning conditions have been effective at minimising potential disturbance to date.
- 10.14. The Council's Environmental Health Officer (EHO) has raised no objections to the increase in the number of events from 10 to 50 per year or the removal of the monthly limit. However, the EHO acknowledges the potential impact of noise and disturbance on neighbouring amenity and has recommended that the evening events are suitably spaced to reduce the intensity of impact.

- 10.15. The EHO's suggestions, as set out in their consultation response, have been considered by the applicant and incorporated into an 'Evening Event Management Plan' (EEMP). The EEMP commits the applicant to no more than 3 evening events per week with no more than two consecutive nights per week and no more than 6 consecutive Sunday events during the school holiday periods.
- 10.16. The EHO states that *"since evening events have been operating last summer, and the applicant has agreed measures to control spacing out of events, limiting operational hours and limiting disturbance from music, light, patrons etc, I feel that the effects are or can be mitigated to minimise disturbance"*. The EHO has no objections to the conditions requiring compliance with the EEMP along with a mechanism to review the EEMP if required. In order to minimise lighting impacts a condition will be imposed to restrict any additional external illumination at the site without prior written approval.
- 10.17. There have been concerns from local residents raised in relation to cooking odours from the premises. The EHO, however, does not share those concerns noting that the type of food served and exclusion of hot food takeaway from evening events prevents this from being a significant disturbance.
- 10.18. The applicant has demonstrated that evening food and drink based events can take place without complaint. The proposed increase in the number of such events across the calendar year is equivalent to approximately one evening event per week although without suitable scheduling controls adverse impacts on local residents could be intensified at popular times of the year.
- 10.19. It is considered that the increase in evening events can be accommodated and evenly distributed to minimise any possible nuisance and disturbance. On the basis that the total number and the frequency of events will be controlled as per the applicant's proposal it is not anticipated that the additional evening events would introduce any unacceptable levels of noise, nuisance or disturbance during unsociable hours.
- 10.20. It is considered that the proposal would not have an unacceptable adverse impact upon the amenities of neighbouring properties and would not conflict with the existing ambience of the immediate locality and the surrounding area and Policy SP20 is not infringed.

Impact on the Howardian Hills National Landscape (AONB)

- 10.21. The application site is within the Howardian Hills National Landscape (Area of Outstanding Natural Beauty). National planning policy (paragraph 182 of the NPPF) states that *"Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty"*. Policy SP13 of the RPLPS requires that the proposed development does not detract from the natural beauty and special qualities of landscapes. Tranquillity is one of the special qualities of the Howardian Hills National Landscape.
- 10.22. The AONB Manager, in her response, has highlighted that *"the role of the Howardian Hills AONB Partnership is to make sure that any proposals within the National Landscape seek to 'further the purposes of the designation' a duty delivered by us on behalf of our relevant local authorities. The Levelling Up and Regeneration Act has strengthened the duty on relevant authorities when considering planning applications within the National Landscape"*.

- 10.23. The AONB Manager has lodged an objection to the increased number of evening events citing adverse impacts on the tranquillity of the village, green spaces within the village and the quality of evening dark skies.
- 10.24. The AONB Manager, however, does acknowledge that the Howardian Hills AONB Partnership are fully supportive of the rural business within the village and recognise the growth of the business and service it provides to both residents and visitors. It is noted that the AONB Management Plan 2019-2024 states that *“The loss of services and facilities within villages should be resisted where appropriate, with potential new, innovative and rejuvenated businesses being supported”*. It is considered that this is an example of an innovative and rejuvenated small business and the hosting of evening events has the potential to positively contribute towards the vibrancy of the village.
- 10.25. The AONB Manager has suggested the adverse impacts could be reduced if the events are appropriately spaced. The EEMP does seek to address the AONB Manager’s concern that the removal of the restriction on number of events per month may result in significant cumulative disturbance across consecutive evenings.
- 10.26. The evening events are small scale, low key and would be wholly contained within the building. Furthermore, it is not considered that the additional evening events would directly result in vehicles being parked on the village green verges.
- 10.27. The site is within the centre of the village close to a number of residential properties and adjacent to the main road which links to the A64. The site is also opposite the pub and near to the village hall in an area where activity and general comings and goings on an evening would not be considered unusual. The tranquil character of the National Landscape (AONB) is an important quality but the application site is not within an area that could be reasonably described as having high levels of tranquillity. In this regard it is not deemed to be an incompatible proposal or that which would unduly depart from the existing ambience of the area.
- 10.28. With regard to the potential for light pollution the effect of illumination from within the building would be minimal and a condition is to be imposed in relation to external lighting at the site and that would address the concerns of the AONB Manager.
- 10.29. As stated above there are no objections from the EHO and, subject to the recommended conditions, it is considered that the proposed additional evening events would not result in any unacceptable nuisance, disturbance or pollution to neighbours subject to the controls set by the EEMP to manage the frequency and spacing of events.
- 10.30. It is reasonable to conclude that despite the annual increase in the number of evening events the nature of the events would remain occasional and not an often occurrence and, overall, would have a negligible impact on the tranquillity of the area. It is considered that the proposal would not be inappropriate within this village setting and can be accepted in this designated landscape without conflicting with national or local planning policy in relation to protecting the wider amenity and nocturnal ambience of the Howardian Hills National Landscape (AONB).

Highways safety

- 10.31. Policy SP20 of the RPLPS (2013) advises that *“Access to and movement within the site by vehicles, cycles and pedestrians would not have a detrimental impact on road safety, traffic movement or the safety of pedestrians and cyclists. Information will be required in terms of the positioning and treatment of accesses and circulation routes, including how these relate to surrounding footpaths and roads”*.

- 10.32. Paragraph 115 of the NPPF states that *“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”*.
- 10.33. The Local Planning Authority has received objections from local residents that this proposal will result in increased traffic, congestion and parking pressures.
- 10.34. The existing premises do not benefit from any on-site staff/visitor car parking provision and largely rely upon on-street parking on Main Street. The proposal would mean there is an increase in the number of occasions through the year when customers would travel to and from the premises on an evening. It is anticipated that for most of the evening events the majority of customers would travel to the premises by private vehicle.
- 10.35. The applicant has previously confirmed that there is no overlap between the usual day time custom (shop, café, takeaway) and the evening events are dine-in food and drink based only (no takeaway) which are pre-arranged and ticketed. The evening events are managed in terms of visitor numbers (max. 25 persons), booking arrangements and no outside seating is used.
- 10.36. The Local Highway Authority (LHA) notes the event types, exclusions and additional controls as set out in the Supporting Statement and also that the existing conditions would continue to be complied with.
- 10.37. The LHA states that the impact of the proposal on the existing local highway network would be material to the immediate vicinity to a certain degree. This needs to be assessed against the general situation that exists through the village whereby some on-street parking does take place, generally at all times of the day and evening. The LHA is of the view that, on balance, the additional opening evenings would not change the on-street parking demand to a level that would be significantly detrimental to the operational capacity and safety of the highway.
- 10.38. The LHA is also of the view that the current proposal represents a maximum in respect of evening openings and any future application for additional evening openings is unlikely to be supported by the LHA.
- 10.39. The LHA conclude that no objections are raised on the basis of the two submitted supporting statements, and appropriate planning conditions to secure the evening event management plan (EEMP) are recommended.
- 10.40. The nature of the evening events remains small scale and the visitor numbers involved and level of activity is not expected to give rise to a material detrimental impact on the operation of the public highway through the village on an evening. The increase in the total number of events is mitigated by the EEMP which controls the frequency of events.
- 10.41. It is considered that the increase in the number of occasional evening events would not give rise to any unacceptable intensification of use or conditions, either individually or cumulatively, that would be detrimental to road safety or capacity in compliance with Policy SP20 and the NPPF.

Conditions

- 10.42. Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission,

which remains intact and un-amended. For the purpose of clarity the conditions imposed on the earlier approval continue to have an effect and are relevant and as a result are carried forward. As explained above it is considered necessary and in the interests of amenity to impose additional conditions to secure compliance with an 'Evening Event Management Plan' and to prohibit external lighting at the site without prior written approval.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1 Planning policy recognises the economic and social role played by village facilities such as the café/shop/takeaway in Welburn. The premises are well established in the village and generate employment. The owners/operators highlight that the recent diversification into hosting evening food and drink based events has been popular and there is a sufficient level of interest to explore an increased number of events across the calendar year.
- 11.2 The Howardian Hills AONB Partnership are fully supportive of the rural business within the village and recognise the growth of the business and service it provides to both residents and visitors. It is considered that the business is a type supported by the AONB Management Plan 2019-2024 and proposal would contribute towards the vibrancy and vitality of the village.
- 11.3 The LPA is aware of the local concern and acknowledges that it is important to strike a balance between the sustainable growth of an established village business whilst considering the impact of that growth on local residents and the ambience of the area.
- 11.4 In the planning balance, weight is afforded to the benefits of the additional hours of trading and the increase in custom which contributes towards the sustainability of this village facility. The total number of evening events and the frequency would be controlled and taking account of the character, duration and intensity of the events it is considered that there would not be unacceptable impacts on the ambience of the village or living conditions of neighbours.
- 11.5 There have been no objections raised by the Environmental Health Officer and it is considered that the concerns of the AONB Manager can be mitigated to an acceptable degree by the EEMP and the condition in relation external lighting. There are no objections from the Local Highway Authority in terms of highway safety and capacity although the LHA response notes that this is likely to be the maximum in respect of evening openings that the LHA could find acceptable.
- 11.6 Overall, it is considered that there is an absence of any materially adverse impacts on residential amenity, highway safety or the special qualities of the Howardian Hills National Landscape. As a result, taking account of the economic benefits of the occasional and controlled number of evening events and the absence of material harm to amenity, the conclusion of the balancing exercise is favourable to the proposal.

12.0 RECOMMENDATION

- 12.1 That planning permission be **GRANTED** subject to the conditions listed below.

Recommended conditions:

- 1 Notwithstanding the provision of any Town & Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on Drawing No. 2009-02 BR3 for parking spaces, turning areas and access shall be kept available

for their intended purpose at all times.

Reason: In accordance with Policy SP20 and to ensure these areas are kept available for their intended use in the interests of highway safety and the general amenity of the development.

- 2 The café (including any hot food takeaway) and retail use hereby permitted shall not be open to customers outside the following times - 08:00 - 18:00 hours Monday-Saturday and 08:00 - 17:00 hours on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) with the exception of on no more than 50 occasions per calendar year where it is permitted for opening hours to be extended until 22:30 hours for the café and retail use (no hot food takeaway) of the premises for evening events. The owners/operators shall maintain an up-to-date register of evening event bookings that will be maintained at all times and shall be made available for inspection to an officer of the Local Planning Authority on request. The register shall include, but not be limited to, details of the date of the event, nature of the event and the number of attendees.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy SP20.

- 3 The evening events hereby permitted shall only be operated with a pre-book ticketing system (no walk-ins) that ensures that there is a maximum of 25 persons at any event.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected in compliance with Policy SP20.

- 4 During the evening events hereby permitted there shall be no live music or vocals at the premises after 21:00 hours.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected in compliance with Policy SP20.

- 5 The evening events hereby permitted shall only be held within the area outlined in red on the existing floor plan drawing ('licensed area') which accompanies application ref. 23/00077/73. There shall be no use of the external seating (2no. benches positioned at the front of the building) during the evening events hereby permitted.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected in compliance with Policy SP20.

- 6 The two residential units hereby permitted shall be, and shall remain, under the ownership of the owner of the retail unit and tearooms and shall not be sold off separately.

Reason: The proximity of the mixed uses, access from the public highway and shared amenity space are such that the separation of the residential from the commercial (or vice versa) requires further consideration to be given in accordance with Policy SP20.

- 7 The development hereby permitted shall be carried out in accordance with Drawing No. 2009-02-BR3 received by the Local Planning Authority on 18 May 2009.

Reason: For the avoidance of doubt and to ensure that the preparation area and tearoom do not encroach on the retail area, and to ensure the satisfactory development of the site in accordance with the approved plans, and in order to comply with the requirements of Policy SP20.

- 8 No part of the site outside any building shall be used for the storage or display of any goods or materials without the prior approval in writing of the Local Planning Authority. Any goods or materials currently displayed outside the existing building shall be removed within 28 days from the date of this planning permission, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the appearance of the area is not prejudiced by the external storage of materials and to protect residential amenities, and in order to comply with the requirements of Policy SP20.

- 9 The ground floor toilet identified on Drawing No. 2009-02-BR3 shall only be used by customers and staff of the café and shop and for no other purpose.

Reason: To protect the amenities of adjoining properties in accordance with Policy SP20.

- 10 There shall be no deliveries to the café/shop/takeaway premises prior to 04:00 hours each day.

Reason: To ensure that the amenities of nearby residents are not unreasonably affected and to satisfy the requirements of Policy SP20.

- 11 The development hereby approved shall be operated in full accordance with the Evening Event Management Plan (v.2.0) dated 26.02.2024, unless a variation is first agreed in writing by the Local Planning Authority under the terms of Condition 12 below.

Reason: In the interests of protecting the existing amenities of neighbouring occupiers and to satisfy the requirements of Policies SP16 and SP20.

- 12 The approved Evening Event Management Plan shall be reviewed in the event that the Local Authority receive a justified neighbour complaint that the terms of the EEMP have been breached.

Reason: In the interests of protecting the existing amenities of neighbouring occupiers and to satisfy the requirements of Policies SP16 and SP20.

- 13 No additional external lighting is permitted within the application the site, including lighting for site security purposes without prior written approval by the Local Planning Authority.

Reason: In the interests of the reduction of light pollution in compliance with Policy SP20.

INFORMATIVE

'Evening events' are the primarily food and drink based events which are permitted to take place between the hours of 18:00-22:30 Monday- Saturday and 17:00-22:30 on Sundays and Bank/Public Holidays (no opening on Christmas Day or Boxing Day) as per the requirements of Condition 2. Such events comprise bistro evenings, private hire for dining events and seasonal events (no hot food takeaway).

Target Determination Date: 16.02.2024

Case Officer: Alan Goforth, alan.goforth@northyorks.gov.uk