

North Yorkshire Council

Community Development Services

Selby and Ainsty Area Constituency Planning Committee

01 MAY 2024

2023/0220/COU - Change of use from public house (sui generis use) to bed and breakfast and mixed-use events venue (sui generis use) (retrospective) at Kings Arms, Marsh Lane, Beal, DN14 0SL

Report of the Assistant Director - Planning – Community Development Services

1.0 Purpose of the Report

- 1.1 To determine a planning application for the retrospective change of use of a public house (sui generis use) to a bed and breakfast and mixed-use events venue (sui generis use) at The Kings Arms, Beal.
- 1.2 The application was originally brought to Planning Committee as the Head of Planning considered that it raised significant planning issues such that it is in the public interest for the application to be considered by committee.
- 1.3 The planning application was deferred at Planning Committee, on 10 January 2024, for the following reason:

To allow officers to draft further conditions to be attached to the planning permission, to deal with Members concerns in relation to potential noise disturbance and use of the building; and to refer back to Committee for further consideration and approval.

2.0 SUMMARY

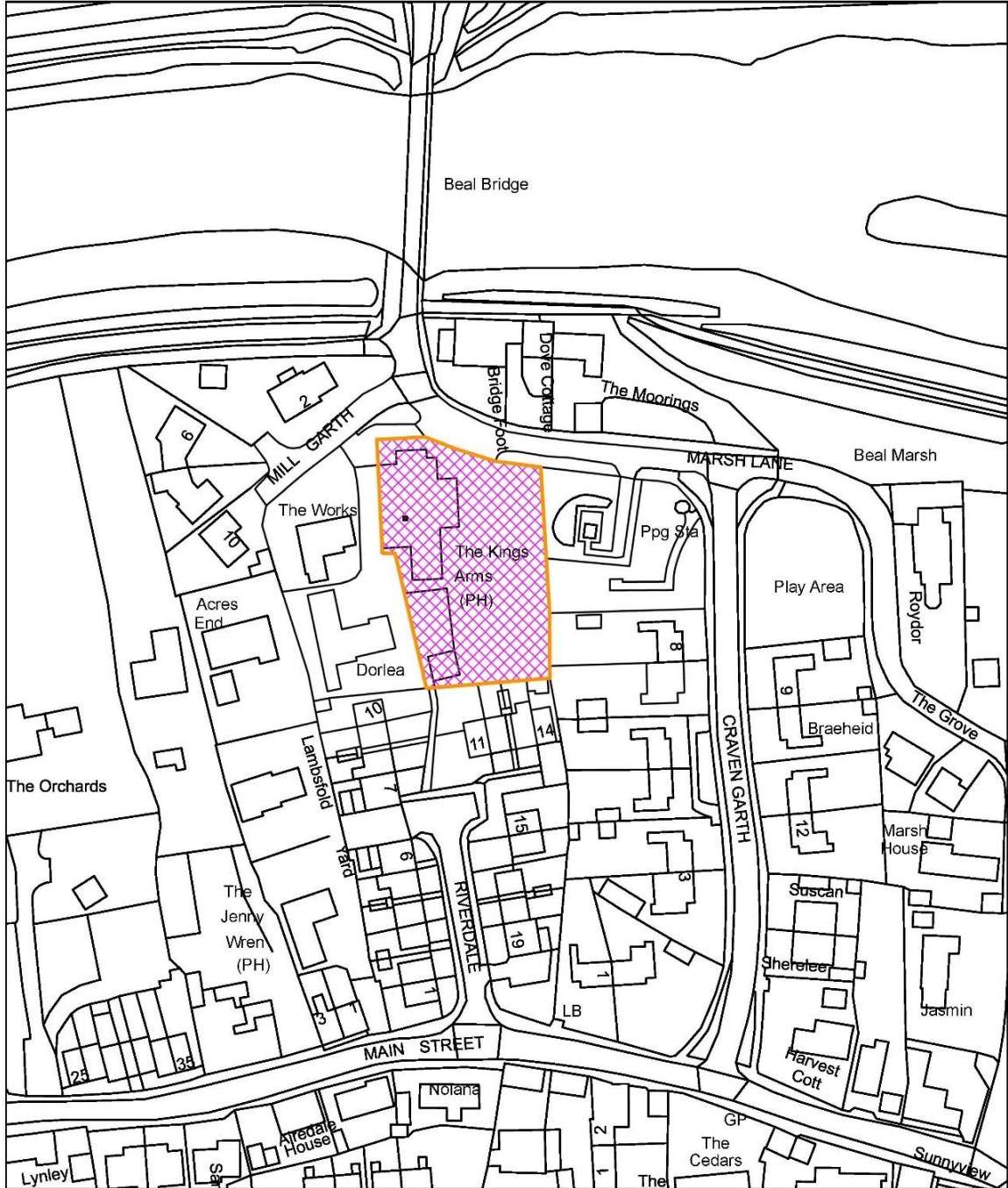
RECOMMENDATION: That planning permission be **GRANTED** subject to conditions listed below.

- 2.1. The application is seeking retrospective permission for the change of use of a public house as a bed & breakfast and mixed-use events space. The development has taken place and the bed and breakfast business is currently operating from the site.
- 2.2. The site is located within the village of Beal and comprises of the former Kings Arms public house building, a detached outbuilding and car park. The application site measures 0.2 hectares in total. A Public Right of Way (PROW) runs north – south through the site.
- 2.3. A petition to the application was received by the Council on 23 May 2023. The petition had a total of 138 signatures with 64 signatories stating that they had submitted a formal objection to the Council. It is noted that 149 local representations have been received of which 51 are in support and 97 are objecting. Most objections relate to the blocking up of the PROW, which has resulted in local residents no longer being able to access the right of way. The extinguishment of the PROW was originally included as part of the application but has since been omitted and will need to be dealt with via a separate

Section 257 application. Section 257 gives the council discretionary power to make a Diversion or Stopping Up Order to enable development to take place in accordance with planning permission.

- 2.4. The application was presented to the Planning Committee on 10 January 2024 recommended that permission be granted. Members of the committee resolved to defer the application to allow planning officers to draft further conditions to be attached to the planning permission to address concerns about noise disturbance and use of the building.
- 2.5. Since the meeting in January, the applicant has submitted further details about the business operating from the premises, specifically in relation to the operation of the site as a Bed and Breakfast and an events space for holding the a Writers' Retreat and private functions. This information is set out in Section 5.0 and can be summarised as follows. The Bed and Breakfast has 6 guestrooms available for members of the public to book. There would be a member of staff on-site 24/7 when the Bed and Breakfast is being occupied. The Writer's Retreats are scheduled throughout the year and vary in length from 3 days to 6 days. The Writers' Retreat includes writing workshops, meals and sleeping accommodation for guests during their stay. The events space is also proposed to be used to hold private functions to help supplement the running and upkeep of the building. The private events comply with the current licence parameters of the premises, which is licensed up to 01:30 on Friday and Saturday nights. The current license, for which the applicant is a Designated Premises Supervisor, does not have any restrictions on the numbers of people able to attend an event, however, the applicant has stated that she intends to limit numbers to between 60 and 120.
- 2.6. This report has been updated to take account of the further information.
- 2.7. The proposed change of use from a public house to the proposed mixed B&B, Writers' Retreat and event space is considered to be similar in nature to the use the proposed use with limited external changes to the building/site. The proposal makes use of an existing building and retains it for community/business uses that will support the local community in terms of economic, social and environmental objectives. A premises license is in place with limitations in place. Subject to compliance with the licensing regime, the proposal would not have a greater impact than that of the former public house or its continued use as a public house.
- 2.8. Taking account of the above and the conditions recommended below, Officers remain of the view that, on balance, the proposal is acceptable in principle and in all other regards. As such, the application complies with policies SP1, SP2 of the Core Strategy and policies EMP6 and S3 of the Local Plan as well as guidance within the NPPF.

Kings Arms, Marsh Lane, Beal
2023/0220/COU



Reproduced from the Ordnance Survey mapping with the permission of Her Majesty's Stationary Office. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings © Crown Copyright and Database Rights 2023 Ordnance Survey 100017946
This copy has been produced specifically for Planning and Building Control purposes only.
No further copies may be made.



1:1,250

Do not measure from plan

3.0 PRELIMINARY MATTERS

3.1. Access to the case file on Public Access can be found here: - [2023/0220/COU | Change of use from public house \(Sui Generis use\) to bed and breakfast and mixed use events venue \(Sui Generis use\) \(retrospective\) | Kings Arms Marsh Lane Beal Goole East Yorkshire DN14 0SL \(selby.gov.uk\)](#)

3.2. There are eight relevant planning applications for this application which are detailed below.

2007/0937/FUL - Single storey rear extension to form dining room and new entrance porch (following demolition of existing conservatory) and alterations to car park layout and entrance – PERMITTED – 26/09/2007. Condition 06 of the Notice of Decision states:

The existing Public Right of Way shall be protected and kept clear of any obstruction until such time as any alternative route has been provided and confirmed under an Order made under the Town and Country Planning Act 1990.

Reason: In Order to protect the Public Right of Way.

2007/0455/FUL - Decking with heaters and lighting – PERMITTED – 29/06/2007.

CO/2001/0615 - Proposed bedroom, garage and conservatory extensions (partially in place of existing garage) – PERMITTED – 31/07/2001.

CO/1995/0942 - Proposed erection of a conservatory to the side elevation. - PERMITTED – 15/11/1995.

CO/1992/0878 - proposed erection of a conservatory at second storey level on existing flat roof, to the rear elevation. – PERMITTED – 16/06/1992.

CO/1991/0958 - Proposed erection of a single storey kitchen extension to the rear elevation and replacing covered yard area and provision of first floor fire escape. - PERMITTED – 11/10/1991.

CO/1989/1231 - Proposed erection of 3no single storey extensions and a two-storey extension to provide additional accommodation of an existing public house at The Kings Arms. - PERMITTED – 29/03/1990.

CO/1988/1224 - Erection of an extension to existing ladies WC at The Kings Arms. – PERMITTED – 11/05/1988.

4.0 SITE AND SURROUNDINGS

4.1. The application site is comprised of the former King Arms public house, detached outbuilding, to the rear of the main building and car park. The application site measures around 0.2 hectares. The public house fronts Marsh Lane and vehicular access to the site is from Marsh Lane. There is a public footpath that runs north to south through the site, from Marsh Lane to Riverdale. The existing site boundaries treatments consist of a 1.5-metre-high wall along the southern and western boundaries, a substantial conifer

tree hedge along the east boundary and a dwarf wall along the frontage with Marsh Lane.

- 4.2. It is noted that an unauthorised fence has been erected along the front of the site, since the submission of this application. The fence is a close board timber fence and appears to be approximately 1.8 metres in height. A fence has also been erected within the car park, to the rear of the main building. The fence requires Full Planning Permission and is being dealt with separately to the change of use application. A separate application as not yet been submitted.
- 4.3. The local area is predominantly residential in nature, with large, detached dwellings to the west and smaller, terraced dwellings to the south of the application site. To the east is a Yorkshire Water pump house and recreational area and more housing beyond this. It is noted that the Jenny Wren Public House is located approximately 150 metres to the south-west of the application site.
- 4.4. The application site is located within the development limits of the settlement of Beal, which is a secondary village as defined in the Core Strategy. The Application site is washed over by Green Belt and is also located within Flood Zone 2.

5.0 DESCRIPTION OF PROPOSAL

- 5.1. This application seeks Full Planning Permission for the continued change of use of the former public house to be used as a bed and breakfast and mixed use (sui generis) space.

Bed and Breakfast

- 5.2. The applicant has stated that there are 6no. guestrooms available to book, which means that there would be a maximum of 12no. guests staying at any one time. There is living accommodation for one member of staff, who lives on-site 24/7 whilst guests are staying.

Writers' Retreat

- 5.3. The applicant has confirmed that the main part of the business is the writers' retreat. These are run throughout the year. The applicant's website confirms that these are residential retreats where attendees have accommodation as well as attending daily workshops.

- 5.4. The website provides dates for the planned events that have or will take place in 2024 and are as follows:

Date	Duration of Retreat	Availability of places
17 January 2024	4 nights	Sold out
21 February 2024	3 nights	Sold out
20 March 2024	5 nights	Sold out
11 April 2024	3 nights	Sold out

15 April 2024	6 nights	1 place remaining
10 May 2024	3 nights	Sold out
20 May 2024	6 nights	Sold out
19 June 2024	5 nights	Sold out
8 July 2024	6 nights	Sold out
12 August 2024	6 nights	1 place remaining
22 August 2024	3 nights	No information
12 September 2024	3 nights	No information
23 September 2024	6 nights	No information
14 October 2024	6 nights	No information
24 October 2024	3 nights	No information
11 November 2024	6 nights	No information
21 November 2024	3 nights	No information
11 December 2024	4 nights	No information

(Residential Group Retreats – 2024 – Writers' Retreat UK (writersretreatuk.co.uk))

Events space

- 5.5. The applicant has stated that the private functions help supplement income with the high costs of running a building of this size.
- 5.6. The private events are proposed to comply with its current licence parameters. The current license allows parties and events, licensed up to 01:30 on Friday and Saturday nights. The licence allows recorded music to be played indoors only. The applicant would be required to apply for a temporary event notice to run a live music event from the premises. The current license does not have any restrictions on the numbers of people. However, the applicant intends to limit numbers to between 60 and 120 attendees at any one event.
- 5.7. The applicant has confirmed that the business opened in mid-March 2023 and has run 3 private parties for guests since opening. There is currently one booking for a wedding reception at the end of July 2024. However, there are currently no other bookings for this year.
- 5.8. It is noted that the applicant's current Premises Licence for the venue permits the sale of alcohol and the provision of regulated entertainment (recorded music) during the following hours:

	Sale Of Alcohol	Regulated Entertainment
Monday	11.00-00.00	19.00-23.00
Tuesday	11.00-00.00	19.00-23.00
Wednesday	11.00-00.00	19.00-23.00
Thursday	11.00-00.00	19.00-23.00
Friday	11.00-01.30	19.00-00.30
Saturday	11.00-01.30	19.00-00.30
Sunday	12.30-23.30	19.00-23.00

All Bank Holidays and Public Holidays including Christmas Eve, Boxing Day, Easter Monday and New Year's Day and on any Sunday or Monday morning forming part of a Bank or public holiday weekend 11:00 to 00:30

- 5.9. The Licence allows the specified opening hours for the venue, which are as follows:

THE OPENING HOURS OF THE PREMISES

Monday	11.00-00.00
Tuesday	11.00-00.00
Wednesday	11.00-00.00
Thursday	11.00-00.00
Friday	11.00-01.30
Saturday	11.00-01.30
Sunday	12.30-23.30

All Bank Holidays and Public Holidays including Christmas Eve, Boxing Day, Easter Monday and New Year's Day and on any Sunday or Monday morning forming part of a Bank or public holiday weekend 11:00 to 00:30

- 5.10. The current Licence does not allow live music or music to played outside of the building.

6.0 PLANNING AND POLICY 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:

- Selby District Local Plan, adopted on 8 February 2005
- Selby District Core Strategy Local Plan, adopted on 22 October 2013
- Minerals and Waste Joint Plan, adopted 2022

Emerging Development Plan – Material Consideration

- 6.3. The Emerging Development Plan for this site is:

- Selby District Council Local Plan publication version 2022 (Reg 19)

On 17 September 2019, Selby District Council agreed to prepare a new Local Plan. Consultation on issues and options took place early in 2020 and further consultation took place on preferred options and additional sites in 2021. The Pre-submission Publication Local Plan (under Regulation 19 of the Town and Country Planning (Local Development) (England) Regulations 2012, as amended), including supporting documents, associated evidence base and background papers, was subject to formal consultation that ended on 28th October 2022. A further round of consultation on a revised Regulation 19 Publication Local Plan was undertaken in March 2024 and has now ended. The responses will be considered and any necessary minor modifications made prior to submission of the plan to the Secretary of State for Examination.

In accordance with paragraph 48 of the NPPF, given the stage of preparation following the consultation process and depending on the extent of unresolved objections to policies and their degree of consistency with the policies in the NPPF, the policies contained within the emerging Local Plan can be given weight as a material consideration in decision making.

- The North Yorkshire Local Plan - 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

6.3. Relevant guidance for this application is:

- National Planning Policy Framework 2023 (NPPF)
- National Planning Practice Guidance
- National Design Guide 2021

7.0 CONSULTATION RESPONSES

7.1. The following consultation responses have been received and have been summarised below.

7.2. **Beal Parish Council:** The Parish Council are concerned that the Change of Use Application includes an application to extinguish the Public Right of Way. There is an old application which stated that the right of way had to be preserved. This is detailed in section 3 of the report.

The Public Right of Way is a completely separate matter to the change of use and as such the PC have advised that they will continue to object to the application until the Public Right of Way is separated from this current application and dealt with as a separate matter.

The PC are also concerned that as this application is retrospective, care is taken to ensure that current regulations such as Building Regulations, Health and Safety and Fire Regulations are up to date.

7.3. **Ward Member(s):** No comments received.

- 7.4. **Environment Agency:** The EA originally objected to the application due to concerns raised with the Flood Risk Assessment following the submission of the revised FRA the EA have withdrawn their objections subject to adherence to the FRA.
- 7.5. **Environmental Health:** No objections raised by the EHO, any potential noise or amenity issues can be addressed through the existing premises licence.
- 7.6. **Internal Drainage Board:** No objections.
- 7.7. **Highways:** No objections.
- 7.8. **Public Right of Way:** The PROW team have advised that the Public Footpath across this site is obstructed, this is unlawful under section 143 of the Highways Act 1980. As part of the proposed works, the applicant will need to apply to divert the legal line of the footpath which is obstructed by the building, onto an alternative alignment and any fence obstructions will need removing, ensuring that the Public Footpath is open and available at all times. The Public have a right to deviate onto other land belonging to the same landowner, in order to get around an obstruction to a Public Footpath. It is therefore in the applicant's best interests to resolve the Public Rights of Way issues. If the Public Right of Way is to be permanently closed a Public Path Order/Diversion order will need to be made under S257 of the Town and Country Act

Local Representations

- 7.9. 149 local representations have been received of which 51 are in support and 97 are objecting. Comments have also been received from local interest groups West Riding Area of the Ramblers who object to the application. It is noted that all the letters of support have been submitted by representors who do not live in the village or local area. It is also noted that the vast majority of objections raise concerns over the loss of the Public Right of Way (PROW). This, however, is not being dealt with as part of this application.
- 7.10. A summary of the comments is provided below, however, please see website for full comments.
- 7.11. Support:
- Supports the creative industry.
 - Positive impact on local economy.
 - Provides local employment.
 - Existing pub is an eyesore.
 - It will provide a unique facility.
 - Provide a safe space for people.
- 7.12. Objections:
- Loss of a pub, which is a valuable community asset.
 - Use as an Airbnb/holiday let.
 - Use as a Women's refuge/ accommodation for vulnerable people.
 - Use to cater for Hen and Stag parties.
 - Loss of Public Right of Way.
 - Potential drainage issues.
 - Potential overlooking issues and impact on residential amenity.

- Potential noise issues.
- Loss of jobs.
- The application has been made retrospectively.
- Not clear on what the use of the business will be.

8.0 ENVIRONMENTAL 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 development
- Design and impact on the character and appearance of the Area
- Impact on residential Amenity
- Impact on highways
- Flood Risk and Drainage
- Other Matters

10.0 ASSESSMENT

Principle of Development

- 10.1. The application site is located within the defined development limits of Beal and washed over with Green Belt and the application is seeking permission for the change of use of a former Public House (sui generis use) to be used a bed & breakfast and mixed-use venue (sui generis). It is noted that the change of use has already taken place and the bed and breakfast, and writer's retreat business is operating from the building.
- 10.2. Saved Policy SP2A (d) of the Core Strategy states "In Green Belt, including villages washed over by the Green Belt, development must conform with Policy SP3 and national Green Belt policies.
- 10.3. Saved Policy SP3B of the Core Strategy states, "In accordance with the NPPF, within the defined Green Belt, planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted".
- 10.4. The decision-making process when considering proposals for development in the Green Belt is in three stages, and is as follows: -
- a) It must be determined whether the development is appropriate or inappropriate development in the Green Belt.
 - b) If the development is appropriate, the application should be determined on its own merits.
 - c) If the development is inappropriate, the presumption against inappropriate development in the Green Belt applies and the development should not be

permitted unless there are very special circumstances which clearly outweigh the presumption against it.

- 10.5. The guidance within the NPPF at paragraph 155 states "Certain other types of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it" including [amongst other things] "the re-use of buildings provided that the buildings are of permanent and substantial construction", "material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)" and "engineering operations".
- 10.6. The application proposes the change of use of an existing building. The building is considered to be of permanent and substantial construction and the reuse of the building would therefore be in accordance with paragraph 155 (d) of the NPPF as it would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
- 10.7. The associated car parking area would be in the same place as an existing car parking area which served the public house. There would be no further impact on openness in this regard.
- 10.8. Therefore, it is considered that proposal constitutes appropriate development in Green Belt as it preserves openness and does not conflict with the purposes of including land within it.
- 10.9. Policy SP1 of the Core Strategy sets out a presumption in favour of sustainable development reflecting the approach of the National Planning Policy Framework (NPPF). Planning applications that accord to the Local Plan will be approved without delay unless material considerations indicate otherwise. The settlement hierarchy for the Selby Area defines Beal as a Secondary Village with defined development limits. The site is located within the development limit of Beal. Policy SP2 of the Core Strategy sets out the spatial development strategy and the principles for directing new development.
- 10.10. Policy EMP6(B) of the Selby Local Plan relates to Employment Development within Development Limits and Established Employment Areas and states that proposals within defined development limits will be permitted for new business development, including the change of use of land or premises subject to the following criteria:
 - 1) The nature and scale of the proposal is appropriate to the locality;
 - 2) The proposals would not prejudice the future comprehensive development of land; and
 - 3) The proposal would not harm acknowledged nature conservation interests or result in the loss of open space of recreation or amenity value, or which is intrinsically important to the character of the area.
- 10.11. Policy S3(B) of the Selby Local Plan relates to the loss of a retailing use or the loss of a public house outside the main settlements of Selby, Tadcaster and Sherburn in Elmet. The policy states that the loss of such businesses will not be permitted unless:

- 1) It can be demonstrated that there is alternative provision for a similar type of use within reasonable walking distance; or
 - 2) It can be shown that the business is no longer viable for retail purposes within its existing use class, and that it has remained unsold or unlet for a substantial period of time, despite genuine and sustained attempts to market it on reasonable terms.
- 10.12. With regard to Policy EMP6(B), The premises would serve a local function and due to its size and intensity of use is considered of a scale appropriate to the locality. The impact on access, parking and residential amenity is discussed below.
- 10.13. In terms of Policy S3(B), limited information has been provided by the applicant in relation to the viability of the business. However, it is noted that there is alternative provision of a public house within the village, The Jenny Wren public house. The Jenny Wren is located approximately 100 metres to the south of the application site or a 4-minute walk from the site.
- 10.14. Therefore, having had regard to this policy context it is considered that the development is acceptable in principle in respect of Policies SP1, SP2 of the Core Strategy and policies EMP6, S3 of the Local Plan. Paragraph 97 of the NPPF states that planning decisions should guard against unnecessary loss of valued facilities and services. Whilst the proposal results in the change use of the former public house it remains to be a facility that supports the community in terms of a cultural building.

Section 149 of The Equality Act 2010

- 10.15. Under Section 149 of The Equality Act 2010 Local Planning Authorities must have due regard to the following when making decisions: (i) eliminating discrimination, harassment and victimisation; (ii) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (iii) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are: age (normally young or older people), disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- 10.16. The proposed development would not result in a negative effect on any persons of or persons with The Equality Act 2010 protected characteristics and could have a positive impact from the operation of the retreat in terms of offering greater variety of activity to individuals falling in one of the relevant protected characteristics.

Design and impact on the character and appearance of the area

- 10.17. Policy ENV1(1) of the Local Plan requires development to take account of the effect upon the character of the area and the amenity of adjoining occupiers. Significant weight should be attached to these policies as they are broadly consistent with the aims of the NPPF to protect residential amenity and the areas character. ENV1(4) requires the standard of layout, design and materials to respect the site and its surroundings.
- 10.18. Policy SP19 - Design Quality of the Core Strategy outlines those proposals "for all new development will be expected to contribute to enhancing community cohesion by

achieving high quality design and have regards to the local character, identity and context of its surroundings including historic townscapes, settlement patterns and the open countryside".

- 10.19. The proposed plans show that there would be no external changes to the building other than a change to the signage. Internally, the proposed plans show that one of the rooms at ground floor, to the rear of the building, would be subdivided to provide an additional bedroom at ground floor level and 2no. offices. The proposed changes to the building are relatively minor and as they are internal would not impact on the character of the locality.
- 10.20. Having regard to the above, it is considered the proposal is in accordance with Policy ENV1 of the Selby District Local Plan, Policy SP19 of the Core Strategy and the advice contained within the NPPF.

Impact on Residential Amenity

- 10.21. Relevant policies in respect of the effect upon the amenity of adjoining occupiers include Policy ENV1 1) and 4) of the Selby District Local Plan. Significant weight should be attached to Local Plan Policy ENV1 as it is broadly consistent with the aims of the NPPF to ensure that a good standard of amenity is achieved.
- 10.22. The key considerations in respect of residential amenity are considered to be the potential of the proposal to result in unsatisfactory levels of noise and disturbance for the occupiers of neighbouring dwellings.
- 10.23. Due to the nature of the proposal, it is considered that the change of use would not result in any additional overlooking or overshadowing.
- 10.24. Taking into account the previous use as a public house, it is not considered that the proposed change of use would result in any significant adverse effects on the occupiers of any neighbouring residential properties in terms of noise and disturbance. The premises would primarily operate as a Bed and Breakfast and Writers' Retreat. It is considered that these uses would be far less intensive than the public house with limited number of guests using the facility on a day-to-day basis.
- 10.25. Following the submission of further information about the operation of the events space, the use of the space for private functions would comply with the premises' current licence, which allows the sale of alcohol and recorded music to be played within the venue during the hours as specified within paragraphs 5.8 and 5.9 of this report.
- 10.26. Further, it is noted that the current license does not have any restrictions on the numbers of customers at any one time and this would be controlled by the size of the venue. The applicant has indicated that they intend to limit numbers at an event to between 60 and 120 people.
- 10.27. The Council's Environmental Health Team were consulted on the proposal and raised no objections and stated that any potential noise complaints should be covered in the existing premises licence.

- 10.28. Having regard to the above, it is considered that the amenities of the adjacent residents would be preserved in accordance with Policy ENV1 of the Selby District Local Plan and national policy contained within the NPPF.
- 10.29. In light of the above, it has been demonstrated that the proposal would not contravene Convention Rights contained in the Human Rights Act 1998 in terms of the right to private and family life or the right to life.

Impact on Highways

- 10.30. The policy context in highway terms is as outlined in policies ENV1, T1 and T2 of the Selby District Local Plan and national policy contained within the NPPF at paragraphs 114-115. 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'. Local policies reflect this in seeking and due consideration of the impact on the existing highway network and highway safety.
- 10.31. The proposals would not alter the existing access/egress arrangements at the site or the existing car parking arrangements at the site. The site does not have any designated off-street parking. The Council's Highways Officers have been consulted on the proposals for which no objections have been raised. Taking into account the previous use, the proposal would not result in any significant impact on the road network due to a change in comings and goings to the site or any highway safety impacts to pedestrians or vehicle users.
- 10.32. Having regard to the above, it is considered that the proposals are acceptable in terms of highway safety in accordance with Policies ENV1, T1 and T2 of the Selby District Local Plan and national policy contained within the NPPF.

Flood Risk and Drainage

- 10.33. The application was supported by a Flood Risk Assessment which identifies that the site is located within Flood Zones 2 and 3a. The FRA details the vulnerability of the use and concludes that the change of use would lead to a more vulnerable use. The FRA provides recommendations of flood mitigation measures to be implemented.
- 10.34. In terms of the sequential approach to the location of development, the Government's aim is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding. Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. The Selby District Council Flood Risk Sequential Test SPD guides Developers on the Selby Area Flood Risk Sequential Test approach. It sets out that changes of use are not required to be sequentially tested. Likewise, no further details are required in terms of drainage as this is not going to be affected by the proposals and the area has not been identified as having critical drainage issues.

- 10.35. The Environment Agency have been consulted on the proposal and raised no objections subject to the inclusion of a condition requiring that the development is carried out in accordance with the updated FRA. The proposal is therefore considered to comply with policy SP15 of the Selby District Core Strategy and Chapter 14 of the NPPF.

Other Matters

- 10.36. The application originally included the extinguishment of the Public Right of Way (PROW), which runs through the application site (footpath 35.7/5/1) and provides access from Marsh Lane to Riverdale.
- 10.37. It is noted that the majority of objections that have been submitted to the LPA relate specifically to the PROW and the unauthorised closure and obstruction of the footpath.
- 10.38. The Council's PROW team advised that the obstruction of the footpath is unlawful under section 143 of the Highways Act 1980. Furthermore, the PROW team confirmed that a separate application would need to be made under section 257 of the Town and Country Planning Act 1990 would need to be made to either extinguish or divert the existing Public Right of Way. Since the application was before the January Committee, the formal order to make the diversion of the footpath across the car park has now been made and published. A period of consultation will be undertaken by the PROW team.
- 10.39. Given this, the proposed extinguishment of the PROW has been removed from the current application and any change to the PROW would need to be made under S.257 as outlined above.
- 10.40. It is also noted that during the application process, a timber fence has been erected in the car park and along the front of the application site. This is unauthorised and a separate application would need to be made for the retention of the fence.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1. It is considered that the development is acceptable in principle in respect of Policies SP1, SP2 and SP3 of the Core Strategy and policies EMP6 and S3 of the Local Plan, and that the proposal accords with the NPPF in terms of Green Belt policy. As such, the proposal constitutes sustainable development.
- 11.2. Further, subject to the imposition of conditions, the proposed development would not have a detrimental effect on the character and appearance of the area or residential amenity of the occupants of neighbouring properties, highways safety, flood risk and drainage. The proposal will ensure that the building is retained for a community/business use and will support the local community in terms of economic, social and environmental objectives. Concerns raised by interested parties have been taken into account. The concerns raised about the Public Right of Way will be dealt with separately outside of this application. The application is therefore considered to be in accordance with Policies ENV1 and T1 of the Selby District Local Plan, Policies SP1, SP15 and SP19 of the Core Strategy, and the relevant sections of the NPPF.

- 11.3. In conclusion, and on balance, it is recommended that the application be granted subject to conditions.
- 11.4. Consideration has been given to imposing conditions to seek to address concerns raised about noise disturbance resulting from the use. However, the fact remains that there is a premises licence in place that permits the sale of alcohol and controls the operation of the premises and playing of recorded music between certain hours and restricts the playing of music externally. The imposition of conditions that seek to duplicate these permitted activities and controls would be unnecessary and a condition that conflicts with them would be unreasonable. Therefore, it is considered that conditions would not be acceptable in this regard and would not meet the national tests of planning conditions as defined in Paragraph 56 of the NPPF.

12.0 **RECOMMENDATION**

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

Recommended conditions:

01. The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:

Drawing No. ADP23/P1 1/01	Location Plan
Drawing No. ADP23/P11/02	Site Layout Plan
Drawing No. ADP23/P1 1/05A	Proposed Floor Plans
Drawing No. ADP23/P1 1/06A	Proposed Elevations

Reason

For the avoidance of doubt.

02. The development shall be carried out in accordance with the submitted flood risk assessment (shown on Public Access as 'Date received 25/05/2023') and the following mitigation measures it details:

- Finished floor levels shall be set no lower than 9.15 metres above Ordnance Datum (mAOD).

The mitigation measure shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measure detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason

To reduce the risk of flooding to the proposed development and future occupants.

Informative

1. The Local Planning Authority worked positively and proactively with the applicant to identify various solutions during the application process to ensure that the proposal comprised sustainable development and would improve the economic, social and

environmental conditions of the area and would accord with the development plan. These were incorporated into the scheme and/or have been secured by planning condition. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the NPPF.

2. The Public Footpath across this site is obstructed, this is unlawful under section 143 of the Highways Act 1980. As part of the proposed works, the applicant will need to apply to divert the legal line of the footpath which is obstructed by the building, onto an alternative alignment and any fence obstructions will need removing, ensuring that the Public Footpath is open and available at all times. The Public have a right to deviate onto other land belonging to the same landowner, in order to get around an obstruction to a Public Footpath. It is therefore in the applicant's best interests to resolve the Public Rights of Way issues. For further advice, please contact Countryside Access Service at CATO@northyorks.gov.uk
 - i) There is a Public Right of Way or a 'claimed' Public Right of Way within or adjoining the application site boundary – please see the attached plan.
 - ii) If the proposed development will physically affect the Public Right of Way permanently in any way an application to the Local Planning Authority for a Public Path Order/Diversion Order will need to be made under S.257 of the Town and Country Planning Act 1990 as soon as possible. Please contact the Local Planning Authority for a Public Path Order application form.
 - iii) If the proposed development will physically affect a Public Right of Way temporarily during the period of development works only, an application to the Highway Authority (North Yorkshire Council) for a Temporary Closure Order is required. Please contact the Council or visit their website for an application form.
 - iv) The existing Public Right(s) of Way on the site must be protected and kept clear of any obstruction until such time as an alternative route has been provided by either a temporary or permanent Order.
 - v) It is an offence to obstruct a Public Right of Way and enforcement action can be taken by the Highway Authority to remove any obstruction.
 - vi) If there is a "claimed" Public Right of Way within or adjoining the application site boundary, the route is the subject of a formal application and should be regarded in the same way as a Public Right of Way until such time as the application is resolved.
 - vii) Where public access is to be retained during the development period, it shall be kept free from obstruction and all persons working on the development site must be made aware that a Public Right of Way exists and must have regard for the safety of Public Rights of Way users at all times.

Applicants should contact the Council's Countryside Access Service at County Hall, Northallerton via CATO@northyorks.gov.uk to obtain up-to-date information regarding the exact route of the way and to discuss any initial proposals for altering the route.

Target Determination Date: 17.1.2024

Case Officer: Jac Cruickshank, jac.cruickshank@northyorkshire.gov.uk

Appendix A – Proposed Layout Plan