

**Application Number**

P/2014/1062

**Site Address**Gleneagles Hotel  
Asheldon Road  
Torquay  
Devon  
TQ1 2QS**Case Officer**

Matt Diamond

**Ward**

Wellswood

**Description**

Demolition and Redevelopment to form 36 retirement apartments for the elderly including communal facilities, access, car parking and landscaping.

**Executive Summary/Key Outcomes**

The application is for the change of use and redevelopment of the three star Gleneagles Hotel, Asheldon Road, Torquay into a block of 36 retirement apartments for the elderly, with 13 car parking spaces. The existing building on the site would be demolished. The hotel was the inspiration for the BBC Fawlty Towers TV series. The southern part of the site is undesignated in policy terms, but the grounds to the north are covered by woodland which is designated an Urban Landscape Protection Area (ULPA) and wildlife corridor. The site is covered by an area Tree Preservation Order (TPO) and there is a prominent cedar tree to the front of the building. The site is opposite the Lincombes Conservation Area and affects its setting. Officers were recently informed that the hotel had ceased trading.

The proposed apartment block would be split level, three and a half storeys to the front and four and a half storeys to the rear, with ends that step down in height to fit in with the adjacent two storey housing. It would have a similar height and massing as the existing building, although would be approximately one metre higher and would extend further south on the plot to take up the entire width facing Asheldon Road. It also has a similar height and massing to a residential development proposal that was refused in 2004 and dismissed at appeal. The reason the appeal was dismissed was the impact the loss of the hotel would have on the range of tourism accommodation offered by the resort and the significance of its setting and location, with excellent sea views to the rear and proximity to local beaches.

As a result of the Council's tourism strategy of managing an overall reduction in the number of holiday accommodation beds spaces in Torbay, but an improvement in quality, the number of three star hotels in Torbay has increased since the 2004 appeal and this is no longer seen as a valid reason for refusal. In addition, whilst local planning policies and guidance resist the loss of medium

size hotels outside Principal Holiday Accommodation Areas (PHAAs), which have a special character or location, evidence has been provided demonstrating the hotel is no longer commercially viable and alternative tourism uses are also unviable. This includes marketing information from February 2011 to early 2013. The main reason quoted for the hotel's lack of viability is its location in a residential neighbourhood, with little passing trade and distance from the town centre/harbour.

The principle for the loss of the hotel and change of use to residential is therefore considered by officers to be acceptable. However, the design of the proposed replacement building is considered to be unacceptable, as it lacks local character and distinctiveness and harms the setting of the Lincombes Conservation Area accordingly. It fails to take the opportunities available for improving the character and quality of the area in accordance with the National Planning Policy Framework (NPPF). This conclusion is supported by Torbay's independent Design Review Panel. Therefore the application should be refused.

Should Members choose to approve the application, a s106 legal agreement will need to be prepared to secure necessary contributions in accordance with the Council's policies. An Independent Viability Assessment (IVA) has been carried out, as the applicants consider the scheme to be unviable if the full policy compliant level of affordable housing (11 dwellings) and contributions are delivered. However, the final report is awaited by officers. Initial indications are that the scheme can afford to pay a total contribution of £100,000.00, which includes an off-site affordable housing contribution in lieu of any on-site provision. Comments are awaited from Housing Services and a verbal update will be provided by officers at committee. As the contributions will not be policy compliant, an appropriate deferred contributions mechanism will need to be included in the s106 agreement should viability improve when the development is built.

In addition, a number of planning conditions will be required, some of which are referred to in this report, but officers will seek delegated authority to draft the full set of planning conditions.

### **Recommendation**

Refusal; for the reasons set out in this report.

### **Statutory Determination Period**

The application was validated on 03.11.2014. The statutory determination date is 03.02.2015 (13 weeks). An extension of time has been agreed to 12.02.2015.

### **Site Details**

The site comprises the Gleneagles hotel and its grounds accessed from Asheldon Road in the Wellswood neighbourhood of Torquay. The site area is 0.6ha. The hotel is sited to the southwest of the plot, with a car park to the front

and amenity garden space to the rear. The northern part of the site is wooded and slopes down to Stoodley Knowle recreation ground, with a pedestrian footpath leading to Ansteys Cove car park. The footpath is uneven in places and in need of repair.

The hotel is a three storey building with 41 bedrooms. It has a single storey conservatory extension to the rear used as a lounge/dining area. There is a swimming pool and patio behind a white rendered wall to the southeast of the building. There is a highly prominent cedar tree in the middle of the car park to the front of the building. There is also a row of poplar trees along the southern edge of the car park. There are numerous trees within the grounds and around the edge of the site; those identified as high quality include a 14 metre high yew tree next to the south boundary and 20 metre high Holm oak tree next to the north boundary in the adjacent property. The rooms to the rear of the hotel have sea views.

The site is located in a residential neighbourhood. It is a short walking distance from the centre of Wellswood to the south, which includes a number of shops and local facilities, including a primary school. It is a short distance away from Stoodley Knowle recreation ground and the beach at Anstey's Cove. It is also a short distance from the South West coast path.

The site is bounded by two storey residential properties in Ansteys Close to the northwest, woodland (believed to be in the grounds of the Palace Hotel) to the north, Stoodley Knowle recreation ground at the foot of the wooded slope to the east, residential properties to the south and Asheldon Road to the southwest. The residential properties to the south include 'Over Anstey', a split level detached dwelling, which is set at a significantly lower level to the hotel, and two storey dwellings in Colwyn Court. The private access to 'Over Anstey' runs adjacent to the southern boundary. Asheldon Road is a quiet road (although representations have been received saying it is used as a rat-run) with a sylvan character and is lined with lime and horse chestnut trees opposite the hotel. Across the road from the hotel is Asheldon House, a seven storey block of flats.

The western side of Asheldon Road and the properties to the west are located within the Lincombes Conservation Area. The historic character of the conservation area and wider area is defined by Victorian villas set in spacious landscaped grounds. The site is covered by an area Tree Preservation Order dated 7th November 1973. The hotel, car park and amenity garden are undesignated in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan'), however the northern wooded slope is designated an Urban Landscape Protection Area (ULPA) (Policy L5) and Wildlife Corridor (Policy NC4). The northern tip of the site is within the Coastal Protection Zone. The policy context remains unchanged in the emerging Torbay Local Plan - A landscape for success (Proposed Submission Plan, February 2014) ('the emerging Local Plan'), except that Wildlife Corridor designations have been removed from the

Plan. However, these still exist and are referred to in the Torbay Green Infrastructure Delivery Plan (April 2011).

During the course of the application on 20.01.2015, officers were informed that the hotel had ceased trading.

### **Detailed Proposals**

The proposals are to demolish the existing building and develop a block of 36 retirement apartments for the elderly, including communal facilities, access and landscaping. The building would be split level with five floors. It would be three and a half storeys to the front and four and a half storeys to the rear, with the upper level flats provided in the roof space. The northwest and southeast ends of the building step down in height to two and a half storeys at the front, three and a half storey at the rear. In addition, a single storey refuse store and external, covered storage area for mobility scooters would be added to the southeast end of the building.

The proposed block has a similar height and massing to the existing building, although is slightly higher (approx. 1 metre). It would be sited in the same position and have a similar footprint, although would be orientated at a slightly less oblique angle to Asheldon Road than the existing building. However, it would extend further south on the site than the existing building, onto the area currently used as a swimming pool/patio area, and would extend less far into the amenity space to the rear (i.e. not on the area currently occupied by the single storey conservatory extension).

The 36 apartments would comprise 24 no. 1-beds and 12 no. 2-beds. An owner's lounge with a small kitchen would be provided on the ground floor to the front of the building overlooking the car park, as well as an office and reception next to the entrance lobby. According to the Planning Statement, the building would be run by a management company who will employ a lodge manager to provide assistance and security, and oversee maintenance during the day time. There is an emergency alarm system, which can be activated by pendants worn around residents' necks at other times of the day. The Statement says the lease would contain an age restriction of 60 years, but the average age of occupiers is 79 who tend to be single females.

The majority of the apartments would be single aspect. Of the 23 flats overlooking the rear of the property, 7 would have balconies and 3, on the lower level, would have verandas for sitting out on. Of the 13 flats overlooking the front of the property, 4 would have balconies and 3, on the ground floor, would have verandas/small patios. The flats on each floor would be accessed off a long, central corridor running the length of the building. There would be a central, wheelchair accessible, lift and two stairwells. A guest room would be provided on the first floor.

The large massing of the proposed building is broken up by two red brick projecting bays on the front elevation. Further articulation is achieved by stepping down the height of the ends of the building and projecting them forward slightly. The roof line also steps down above the entrance. The rear elevation is less well articulated. The lower ends of the building are inset slightly from the main part of the building, and the balconies are supported by spine wall projections.

The principal elevation materials would be render (grey/green colour tbc) and red brick, with an inset brick course at five course spacing. The roof would be natural slate (grey tbc) on the pitched faces and single ply membrane on the flat parts. Windows would be white UPVC casement style and patio/balcony doors would also be white UPVC. Soffits would be white UPVC, whilst gutters and rainwater goods would be black UPVC. Window heads, cills and copings would be of reconstituted stone; a portico over the entrance would also be made from reconstituted stone. The balcony screens would be frameless glass, tinted blue/green.

The Design and Access Statement describes the style of the proposed building as broadly traditional/domestic, with contemporary style balconies. Whilst recognising the proximity of the site to the Lincombes Conservation Area, the Statement states the design does not seek to produce an authentic reproduction, but endeavours to provide well balanced and ordered elevations with a degree of symmetry often seen in some of the older mansions and villas in Torquay.

A car park would be retained to the front of the building, with 13 spaces. This would be smaller than the existing car park allowing for the creation of a small green space adjacent to the car park to the north. Other pockets of soft landscape would be introduced in front of the building. The existing vehicular access from Asheldon Road would be retained. The existing low red brick wall along the frontage and the prominent cedar tree would also be retained.

The amenity garden space to the rear of the site would be retained. The drawings show a communal seating/patio area (tbc) and the removal of some small trees in this space. The woodland on the northern part of the site would remain undisturbed. The submitted Ecological Assessment recommends managing this to include the removal of non-native species.

### **Summary Of Consultation Responses**

*Natural England:* No objection re statutory nature conservation sites. Refer to standing advice re impacts on protected species. Within an area that could benefit from enhanced green infrastructure provision. The local authority should consider securing measures to enhance biodiversity, e.g. roosting opportunities for bats and bird nest boxes.

*RSPB:* Recommend provision of 36 integral nest sites for swifts and other

species able to use suitable cavities in buildings, sensitive management, including habitat enhancement of the woodland, and submission of a Landscape and Ecological Management Plan (LEMP). Also, no works should take place during the bird breeding season (March to August inclusive). Lighting should be conditioned, with no lighting of the wooded area or its margins.

*South West Water:* No objection, subject to foul flows only being discharged to the public sewer.

*Police Architectural Liaison Officer - West Devon, Torbay & South Hams:* Site must be enclosed by a solid 1.8m high boundary treatment. There should be no open access to the sides or rear of the development. Private areas should be clearly defined. 13 parking spaces seems inadequate. Lighting should be carefully coordinated, so potential areas of risk are covered - bollard lighting is not appropriate. Ground level sight lines should be simple to not hinder surveillance. A number of other recommendations are made, which don't have a bearing on the application - these can be included in an informative if the application is approved.

*Torbay Development Agency:* Questions applicant's comments on the performance of the tourism economy, but states no substantive comments to make.

*English Riviera Tourism Company:* Contests statements made by the applicant that tourism is in decline, saying there has been a growth in visitors and spend to Torquay since 2011. The owners of Gleneagles have repeatedly turned down the opportunity to market the hotel as part of the English Riviera Promotional Partners Programme, preferring to operate independently. The Gleneagles could be a successful, viable 3-4\* boutique style hotel and restaurant with some modernisation, perhaps funded through a mixed development on the site including apartments.

*Torbay Design Review Panel (comments based on pre-application plans):* Conclude that the approach being taken is mistaken and they cannot support the project as currently proposed. Basic investigative work needs to be undertaken before it can proceed properly. There is a great opportunity to create an exemplary development, but only if the proposals are reassessed and redesigned from first principles. The designers should refer to the HAPPI report (CLG/HCA/Dept of Health) and draw inspiration from some of the case studies and conclusions it contains.

*Strategic Transportation/Highways:* Strong concerns over the lack of consideration of access to the site by staff. A Staff Travel Plan is required. A returnable sum of £5,000 is required if the application is approved to enable traffic regulation orders to be introduced should parking become a problem within 3 years of opening. Secure, covered cycle parking should be provided for staff

and visitors.

*Senior Heritage & Design Officer:* Recommends refusal. The proposals will have an adverse impact on the setting of the Lincombes Conservation Area. The existing building is associated with the BBC Fawley Towers TV series and has some cultural significance, but this is not sufficient to prevent the building's demolition. National and local design policies/guidance have changed since the dismissed appeal in 2004 to demolish the building and redevelop the site for flats, where the Inspector concluded at that time the design was acceptable. This includes publication of the NPPF and Urban Design Guide SPD. The applicants have not taken into consideration the historic form of the site, which has a smaller footprint than the existing and proposed schemes. The character of the area is one of small building footprints in spacious grounds. There is a lack of rigour in the contextual analysis and the design rationale in the Design and Access Statement is flawed. The proposed building is dominant in the street scene, does not take full advantage of the sea views and is out of kilter with its surroundings. The design fails in its supporting role to the Lincombes area. A building with a smaller footprint would fit in with the historic built form and allow views from the street through the site, as recommended by the Torbay Design Review Panel. The proposal fails against paragraphs 63 and 64 of the NPPF, as it does not enhance the area and fails to take the opportunities available to improve the area. The design also fails against Policy DE1 of the emerging Local Plan.

*Urban Design Officer (commenting on visual impact):* A small glimpse of the hotel's east elevation is visible through the trees from Anstey's Playing Field car park and glimpses are obtained through the Anstey's Cove Road hedgerow. The enlarged footprint of the proposed building will expose a greater area of the east elevation to views from the publically accessible valley floor but these will largely be obscured by existing vegetation (even in winter) and offset by the use of recessive colours in contrast to the prominent white render and blue balconies of the hotel. In conclusion, the proposals will have a neutral impact on the ULPAs and wider landscape/townscape.

*Housing Services:* Comments awaited, as the IVA report has not been received. An update will be given at committee.

*Engineering Service Manager:* No details of proposed sustainable drainage system in the application. Trial holes and infiltration tests must be carried out to confirm that the ground conditions are suitable. The surface water system discharging to the sustainable drainage system must be designed in order that no flooding to properties is predicted for the critical 1 in 100 year design storm event plus an allowance for climate change.

*Arboricultural Officer:* There is an opportunity to improve the health of the prominent cedar tree to the front of the hotel by increasing the bed size and

covering it with organic mulch. Detail of the final surface of the car park required to ensure no impacts to the cedar tree. (Further information was provided and the Arboricultural Officer confirmed the remaining details can be conditioned.) Also recommended conditions to secure further details of the trees and important shrubs to be removed behind the building, which should be replaced on a like for like basis, and a management plan for the wooded slope.

*Natural Environment Services/Green Infrastructure Coordinator:* Greenspace and recreation contribution should be sought, which would be spent on enhancements to the public open space at Stoodley Knowle and/or local footpath enhancements. Supports the recommendations in the submitted Ecological Assessment, which should be secured by conditions. A condition should also be added restricting works to outside the bird breeding season, unless under the supervision of a suitably qualified ecologist. Bird and bat boxes should be secured. The woodland area should stay in private ownership with a Woodland Management Plan and a public pedestrian connection through the site is not desirable.

*Building Control:* Smoke venting considerations will need to be included, which may require minor alterations to elevations. Consideration needs to be given to the location and size of refuse storage due to the quantity of the units.

*Community Safety:* Comments awaited.

*Torbay Local Access Forum:* No comments provided.

### **Summary Of Representations**

20 representations have been received, 17 objections and 3 neutral (but raising concerns). One of the letters of objection has been signed by 18 of the flat owners of Asheldon House, opposite the site. Three representations (two objections and one neutral) have been submitted by the occupiers of Over Anstey, the adjacent dwelling to the southeast of the hotel, set at a significantly lower level (see Site Details above). A few representations comment on an alternative proposal consulted on by the applicant, but not submitted to the Local Planning Authority. These comments have not been considered, as they do not relate to the proposed development in the application. This includes a representation from the Torbay Civic Society. The following material considerations (relating to the proposals as submitted) have been raised:

- Travel Plan is insubstantial
- The scale, bulk and boldness of the design and development is excessive and would be overbearing and dominate the existing surroundings.
- The development to the South East encroaches unreasonably onto Over Anstey and Colwyn Court.
- If the development is for older people why make it high rise? The site is deep enough for the development to be low rise and go deeper in to the



- site.
- Over development.
  - Poor parking.
  - Impact of construction on amenities (noise/dust).
  - No jobs/loss of employment.
  - Loss of tourist/cultural asset (Fawlty Towers connection)
  - Pleasure at proposed replacement of unsatisfactory and inappropriate building.
  - Insufficient parking for proposed number of apartments, as well as visitors and deliveries.
  - Additional on-street parking would cause safety issues on Asheldon Road.
  - Loss of light to Over Anstey.
  - Too large.
  - Yet another block of retirement flats.
  - Impact on light and privacy to flats in Asheldon House.
  - Noise and disruption.
  - Impact on traffic and parking on Asheldon Road.
  - Proposed landscaping to front should be used for car parking.
  - More in keeping with surrounding properties than alternative proposal.
  - Loss of hotel.
  - Too large and imposing for site.
  - Little consideration for the environment - loss of trees & damage to wildlife.
  - Too high.
  - Stepped lower ends give symmetry and blend with surrounding residential properties.
  - Outside Tourist Hotel zoning area (Principal Holiday Accommodation Area)
  - Demolition is overdue.
  - Proposed development is angled more towards Over Anstey and footprint is far larger than existing building.
  - Impact on privacy of Over Anstey.
  - Loss of light and sunshine to Over Anstey.
  - Potential for parked cars blocking access to Over Anstey.
  - Blocks of flats not in keeping with Wellswood Village.
  - Style and proportions quite well attuned to buildings in the area.
  - Could dominate skyline from Anstey's Cove car park and adjoining parkland if too high.
  - Asheldon Road used as a 'rat run'.

### **Relevant Planning History**

DE/2014/0278/ZP: Redevelopment to form approx 39 sheltered apartments for the elderly inc communal facilities, access, car parking and landscaping: Split decision 11.12.2014

P/2004/0050/PA: Demolition Of All Existing Buildings And Redevelopment With 25 Apartments With Parking, Ancillary Works And Replacing Footpath and

Pedestrian/Vehicular Access (Revised Scheme): Refused 31.03.2004 (Appeal dismissed 22.11.2004)

P/2003/1345/PA: Demolition Of All Existing Buildings And Replacement With 25 Apartments With Parking, Ancillary Works And Replacing Footpath And Pedestrian/Vehicular Access: Refused 30.09.2003

P/2002/1244/PA: Swimming Pool: Approved 27.09.2002

P/1997/0380/PA: Erection Of Conservatory At Rear: Approved 27.05.1997

P/1988/1432/OA: Erection Of 25 Flats With Associated Parking (In Outline): Refused 06.12.1988

### **Key Issues/Material Considerations**

The key issues are:

1. The Principle of the Development
2. Design and Impact on Setting of Conservation Area
3. Impact on Amenity of Neighbouring Properties
4. Impact on Local Highways
5. Car Parking
6. Impact on Trees
7. Impact on Ecology
8. Surface Water Drainage and Flood Risk

#### **1. The Principle of the Development**

The relevant Local Plan Policies concerning the principle of the development are TUS, TU7, HS, H2 and CF15. The 2004 appeal decision to redevelop the site for residential use is an important material consideration, as are the Council's 'Revised Guidance on the interpretation of Policies TU6 (Principal Holiday Accommodation Areas) and TU7 (Holiday Accommodation elsewhere) of the Adopted Torbay Local Plan' (March 2010) and NPPF (March 2012), published after the appeal decision was made. Policy TO2 of the emerging Local Plan is a material consideration with some weight, due to the stage the emerging Local Plan has reached in its adoption process.

The site is not located within a Principal Holiday Accommodation Area (PHAA) (Adopted Local Plan) or Core Tourism Investment Area (CTIA) (emerging Local Plan), where tourist accommodation and investment are promoted. Local Plan Policy TU7 permits the change of use of hotels to non-holiday accommodation outside PHAAs, where all the following criteria are met:

1. the loss of the holiday accommodation would not undermine the holiday character in the locality, or the range of tourism facilities or accommodation

offered by the resort;

2. the site of the accommodation is of limited significance in terms of its holiday setting, view and relationship to tourism facilities; and

3. the new use would be compatible with the character and other uses in the area.

The Inspector for the 2004 appeal considered that the loss of the hotel would not undermine the holiday character of the locality because the surroundings are mainly residential. This remains the case today, so the proposal accords with the first part of criterion 1. By the same token the Inspector concluded that the proposed residential use would be compatible with the area, so the proposal accords with criterion 3. However, the Inspector dismissed the appeal because he considered that the loss of the hotel would undermine the range of tourism accommodation offered by the resort, failing the second part of criterion 1, and the site has significance in terms of its holiday setting, view and relationship to tourism facilities, thereby failing criterion 2.

Turning to the second part of criterion 1 first, the 2004 appeal decision states that at that time the hotel was one of fifteen 3 star hotels in the Bay, accounting for 5.7% of the bed spaces in that category. The Inspector considered that a loss of that magnitude would not be negligible, especially given the coastal location and proximity to beaches. Evidence provided by the English Riviera Tourism Company shows that the number of three star hotels in Torbay has increased from 15 to 20 between 2004 and 2014, together with the number of bed spaces in that category, currently 2,626. The Gleneagles Hotel has 41 bedrooms and 78 bed spaces. Therefore, notwithstanding the recent closure of the hotel, it currently accounts for 3% of three star bed spaces in Torbay.

The increase in the number of three star hotels and equivalent bed spaces over the last ten years is a result of the Council's tourism strategy of managing the reduction of holiday accommodation bed spaces overall, but improving quality, in order to attract visitors and spend. The increase in three star accommodation is the result of raising standards, i.e. two star accommodation moving to three star. In light of this, it is considered that the loss of the hotel will no longer undermine the range of tourism accommodation offered by the resort and the proposal now accords with the second part of criterion 1.

Turning to criterion 2, clearly the site of the hotel has not changed and it still benefits from excellent sea views to the rear and is near to local beaches. The revised guidance on the interpretation of Policy TU7 published in 2010 emphasises the importance of this as a material consideration, stating this will be highly relevant in determining applications. It goes on to say that residential use is likely to be allowed for medium size hotels outside PHAAs, such as Gleneagles, unless it has a special character/location etc. However, the viability

of accommodation, or alternative tourism/leisure uses, and ability to meet modern standards is a consideration in all cases. The inspector for the 2004 appeal stated there was no evidence (at that time) that the hotel is not a viable business.

The above suggests the loss of the hotel should be resisted, unless sound and robust evidence is provided to demonstrate that the hotel is no longer financially viable as a business, and alternative tourism/leisure uses are also unviable. This reflects Policy TO2 of the emerging Local Plan, which reduces the number of criteria that need to be passed to allow the change of use of holiday accommodation outside CTIAs. One of the criteria (pertinent in this case) is that it must be demonstrated that there is no reasonable prospect of the site being used for tourism or related purposes. The applicants have submitted a Viability Study (Sept 2014) to demonstrate that this is the case.

The Viability Study is considered by officers to provide satisfactory evidence to justify the loss of the hotel. It predicts a total Net Operating Income of c.£260k over the next five years, but this falls short of the capital investment required over the same period of time to carry out maintenance to the building and retain a three star rating, estimated to be c.£328k; this includes replacing the heating and hot water system (although a survey in September 2014 revealed no obvious structural deficiencies). The Study also identifies a number of potential alternative tourism uses, including conversion to a limited service hotel, up market boutique hotel and self catering holiday flats; however, the Study concludes that none of these options are commercially viable. The non-town centre location with limited passing trade/visibility is oft quoted as the major contributing factor to why tourism use of the site is unviable. Finally, the Study includes evidence of the hotel having been marketed for sale for a period of time: It was marketed from February 2011 to early 2013 at £2,000,000, during which time there were six expressions of interest. One offer at £1.75m was accepted, but fell through due to lack of financial support. Since then, the hotel has been marketed discreetly and whilst there have been expressions of interest, according to the Study these were withdrawn when the trading performance of the hotel was revealed. It concludes that even in an improving market the hotel is unlikely to appeal to a major hotel operator due to its location, small scale and out-dated product.

As per above, whilst the proposal fails against the second criterion of Local Plan Policy TU7, it is considered that sufficient evidence has been submitted to demonstrate that the hotel and other tourism use of the site is unviable. Therefore, the loss of the hotel is acceptable, taking into consideration the 2010 revised guidance. It also accords with Policy TO2 of the emerging Local Plan in terms of the change of use. It is considered that there are no policies in the NPPF that change this position.

In terms of the principle of the proposed replacement use as sheltered housing apartments, this is acceptable and generally accord with the requirements of

Local Plan Policies HS, H2 and CF15. Whilst some representations have pointed out the proliferation of retirement flats in the area and arguably this does not lead to a mixed and balanced community, as promoted by the NPPF and above policies, it is considered that there is insufficient evidence and policy justification to refuse the proposal on this basis.

Therefore, the principle of the proposed development in terms of the change of use is considered acceptable.

## 2. Design and Impact on Setting of Conservation Area

The Inspector for the 2004 appeal considered that the massing, siting and design of the appeal scheme would not have resulted in any additional impact on adjoining buildings or the Lincombes Conservation Area, which would have been so significant to justify dismissal of the appeal. This indicates the Inspector concluded that the appeal scheme accorded with Local Plan Policies BES, BE1 and BE5, although it is apparent from the decision letter that the Inspector did not focus on these issues in his decision, as the primary focus was on the principle of the loss of the hotel. As the proposed building has a similar scale and massing to the appeal scheme, this view is a material consideration in the current application.

However, planning legislation requires Local Planning Authorities to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise. Since 2004, the Council has adopted an Urban Design Guide SPD (May 2007) and the NPPF has been published (March 2012). These are both important material considerations, particularly as the policies in the Adopted Local Plan are now almost 15 years old. Policies TO2, HE1 and DE1 of the emerging Local Plan are also material considerations with some weight, due to the stage the emerging Local Plan has reached in its adoption process.

The NPPF highlights a presumption in favour of sustainable development, which means approving development proposals that accord with the development plan without delay, and where the development plan is absent, silent or relevant policies are out of date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or
- specific policies in the NPPF indicate development should be restricted, e.g. policies relating to designated heritage assets.

Whilst Local Plan Policies BES and BE1 are consistent with the NPPF in terms of promoting the enhancement of the built environment and taking into account

local character, distinctiveness and wider context, they are not considered to be fully up-to-date, specifically with regards to paragraphs 58, 61, 62 and 64 in terms of taking into account local character and history; the integration of new development into the natural, built and historic environment; taking into account the recommendations from the design review panel; and refusing development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. These highlight the importance of the historic environment when analysing local character to inform design proposals and taking advantage of the opportunities available to improve local character and the quality of a place. Furthermore, Policy BE5 allows development proposals affecting conservation areas to preserve the character or appearance of the area, as well as enhance it, which suggests that a 'do no worse than existing' approach is acceptable. The emphasis in Section 12 of the NPPF is on enhancement and making a positive contribution to local character and distinctiveness (paragraphs 126, 131 and 137). The Inspector for the 2004 appeal did not state whether he considered the appeal scheme would preserve or enhance the character of the area, but he did refer to 'additional impact' which suggests the former.

The Council's Senior Heritage & Design Officer has objected to the application saying it is a poor design that will have an adverse impact on the setting of the Lincombes Conservation Area. The primary reason for doing so is the failure of the applicants to take into consideration the historic form of the site and character of the area. This is described as buildings with smaller footprints than the existing hotel and proposed building, set within spacious grounds. This allows for public views through the site of the landscape and skyline. This historic development pattern, where buildings integrate with the topography and landscape in a more sensitive way, is a result of the planned development of the Warberry and Lincombe Hills in the estate of Sir Laurence Palk, which took place between about 1820 and 1880. The key development characteristic of the estate is classically designed stucco villas, typically painted white with slated roofs, sited in spacious grounds. This is referred to in the Council's Environmental Guide SPG (Sept 2004). The Senior Heritage & Design Officer has provided an extract from the second county series Ordnance Survey from 1906 showing this historic development pattern, which is also included in the Built Heritage Statement. Despite mentioning this local characteristic several times in the Design & Access Statement contextual appraisal, the applicants have ignored this in their analysis of site constraints and opportunities, choosing instead to make the building even wider and bulkier than the existing hotel. The design rationale for this is the supposed 'diverse context' of the site, as a result of other more recent developments in the area. However, it is noteworthy that the SPG states the following:

"responding to the character of the surrounding area does not mean that new development should necessarily emulate the site's existing adjacent developments. In many cases, existing buildings or features of existing

buildings can detract from their surroundings. Where there are examples of poor design, they will not be regarded as a precedent for further developments of a low design standard." (paragraph 3.3)

This is surpassed by the following core principle on character in the Urban Design SPD:

"Development should promote local character in townscape and landscape by responding to and reinforcing locally distinctive patterns of development, landscape and culture. Development should respond sensitively to the site and its setting, creating a place that is valued and pleasing to the eye." (A.1, p.23)

The following Character principle is also highly relevant:

"Designers should respond to local building forms and patterns of development in the detailed layout and design of development to reinforce a sense of place." (A.5, p.27).

The existing building is considered by officers to be an incongruous addition to the area, approved at a time when design and respect for local character were not high priorities. The main reason for this is its scale and massing, in particular it is considered to be too wide for the plot and is therefore out of kilter with the historic development pattern of smaller footprint buildings set in spacious grounds. Rather than respond to this in a positive way, as endorsed by the NPPF, the applicants have chosen to replace like with like and extend the building even further south on the plot than the existing. Consequently, the proposed building would fill the entire width of the plot, preventing even the limited glimpses of landscape and skyline over the swimming pool as existing. The Torbay Design Review Panel confirmed this was not a satisfactory response to the setting. It would present a bulky built form to the street, out of character with the historic context, which would be made worse by the visibility of cars parked in front of the building. In addition, no attempt has been made to reinstate the historic boundary treatment in the form of grey limestone walls (Environmental Guide SPG, para. 13.8), which may help to screen the car park from the street. The NPPF states the following, which is highly relevant:

"The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute to making places better for people." (Paragraph 56)

The Torbay Design Review Panel suggested alternative forms of development that would respond more positively to local character. This comprised a taller building with a smaller footprint, to provide space around the building, and the introduction of separate garden apartments, perhaps in a building extending

deeper into the site and integrating with the topography and landscape. The applicants sought to test this via public consultation, but have not sought to test this approach with the Council or the Torbay Design Review Panel. As such this appears to have been carried out as an exercise in generating public support for the submitted scheme, as opposed to a meaningful response to the Design Review Panel's recommendations. Notwithstanding concerns by some local residents at the prospect of a taller building on the site, this shows that there are opportunities available through the redevelopment of the site for improving the character and quality of the area and the way it functions (NPPF, para. 64) and these should be explored properly by the applicants. The option of extending deeper into the site does not appear to have been looked at and would reduce the height of the alternative proposal consulted on by the applicants.

In light of the above, it is considered that the proposed development would have an adverse impact on the local character and distinctiveness of the area, and in so doing the setting of the Lincombes Conservation Area contrary to Local Plan Policies BES, BE1 and BE5. It is also contrary to paragraphs 56, 58, 60, 61 and 131 of the NPPF, as well as the relevant principles of the Council's Urban Design Guide SPD. In addition, the proposed development is considered to be a poor design that fails to take the opportunities available for improving the character and quality of the area, taking into account the recommendations of the Torbay Design Review Panel, and is therefore contrary to paragraphs 64 and 137 of the NPPF. For the same reasons as above, the proposed development does not accord with Policies TO2 (restore buildings or land to original historic form), HE1 and DE1 of the emerging Local Plan. These material considerations indicate the application should be refused, despite the Inspector's view that the design of the 2004 appeal scheme was acceptable and not against the Built Environment policies of the Adopted Local Plan.

Turning back to the presumption in favour of sustainable development, it is considered that the negative impacts of approving the scheme on the character and distinctiveness of the area, and setting of the conservation area, would significantly and demonstrably outweigh the benefits of the redevelopment. Whilst the proposed new use as sheltered accommodation is considered to be acceptable on the basis of the hotel and other tourism uses being commercially unviable, it would not result in significant benefits, for example, the creation of a high number of jobs. In addition, the Torbay Design Review Panel pointed out that the internal organisation of the building would require artificial lighting during daylight hours, which is not conducive to good design in terms of carbon saving/reducing greenhouse gas emissions and the health and quality of life of residents. The Council's position on the NPPF requirement to have a five-year supply of deliverable housing sites is that it does so, when measured against the requirement set out in the Examination Inspector's Initial Findings of the emerging Local Plan (15 December 2014, paragraph 19). Therefore, this is not a material factor in the application.



Therefore, the application should be refused.

### 3. Impact on Amenity of Neighbouring Properties

As discussed above, the Inspector for the 2004 appeal considered that the appeal scheme would not have resulted in any additional impact on adjoining dwellings, which would have been so significant to justify dismissal of the appeal, including Over Anstey. The appeal scheme was of a similar height and massing to the proposed development, with windows and balconies overlooking the rear of the property, including Over Anstey. The substantial difference in levels between the appeal scheme and Over Anstey, as well as vegetation and landform, meant that there could be no adverse impact on privacy. This remains the case with the current proposal, which is orientated slightly differently to the appeal scheme and doesn't face towards Over Anstey quite so directly. Therefore, it is considered that the proposed development would not have an impact on the privacy of Over Anstey.

Concerns have also been raised with the potential loss of light and overshadowing of Over Anstey. A Shading Study was produced by the applicants of the existing building and proposed development. This suggests that there might be some overshadowing of Over Anstey in the late afternoon during the summer, including an outdoor seating area, whereas the current occupiers say that they have the benefit of sunshine until approximately 6.30pm in mid-summer. However, this is not considered to be significant enough in terms of causing undue detriment to warrant a reason for refusal.

The only other amenity consideration to take into account is the impact of the windows on the northwest elevation on the privacy of Villa Anstey and other dwellings to the north. This elevation partly faces towards the gardens of these properties, whereas the appeal scheme did not. The kitchen windows of apartments 29 and 30 on the second floor would overlook the gardens of these properties, particularly apartment 30. Therefore, if the application is approved, a condition would need to be added ensuring these windows are obscure glazed. Boundary vegetation screens the lower floors of the proposed development.

A Construction Method Statement will be required by condition should the application be approved to show how nuisance to neighbours will be minimised during the construction phase.

### 4. Impact on Local Highways

A number of representations raise concerns with the impact of the proposals on traffic generation and safety of Asheldon Road. Strategic Transportation officers have also raised concerns with the lack of parking/access for staff and requested a Staff Travel Plan. This has been received and confirms there will only be one member of staff, the lodge manager, who will be responsible for implementing

and promoting the Travel Plan. If this person has a car it is likely that they will be allowed to use one of the on-site parking spaces. The accommodation is provided for the 'active elderly' so visits from nurses and care workers are likely to be sporadic according to the Staff Travel Plan. It also states visitors are likely to be aware of sustainable travel options to get to the site. Strategic Transportation officers have requested a returnable sum of £5,000 to implement traffic regulation orders on Asheldon Road should on-street parking become a problem within three years of opening, although this should be changed to full occupancy. They also require secure, covered cycle parking on-site for staff and visitors. Should the application be approved, these will have to be secured by s106 agreement or condition. Strategic Transportation officers have raised no concerns with the impact of the proposals on the safety and function of local highways, subject to these provisions. Therefore, the proposals accord with Local Plan Policy T26 and emerging Local Plan Policy TA2.

### 5. Car Parking

A number of representations raise concerns with the lack of on-site car parking for the residents of the apartments. 13 spaces are provided for 36 apartments. However, the number of car parking spaces accords with Policies T25 and TA3 of the Local Plan and emerging Local Plan respectively. Policy T25 sets a maximum parking standard of one space per two units for sheltered flats, which equates to a maximum of 18 spaces. The proposed number of parking spaces is below this maximum. Policy TA3 requires one space per five units for sheltered flats, which equates to seven spaces. The proposed number of parking spaces meets this requirement.

Therefore, the proposed level of car parking provision is acceptable.

### 6. Impact on Trees

There will be no impact on important trees either on or near the site. The prominent cedar tree to the front of the building would be retained and its health could be improved. Should the application be approved, the Council's Arboricultural Officer has recommended a number of conditions to ensure the continued health of this tree and protection of other trees, including like-for-like replacement where any are to be removed.

Therefore, subject to appropriately worded conditions, the proposals accord with Local Plan Policy L9 and emerging Local Plan Policy C4.

### 7. Impact on Ecology

The proposals would not affect the area of woodland on the northern part of the site. This area is overgrown at present and unmanaged. In accordance with the consultation responses and local and national policies aimed at enhancing

biodiversity, should the application be approved a condition should be added requiring the submission and implementation of a Landscape and Ecological Management Plan (LEMP), including Woodland Management Plan, to cover this area and the remaining site. Conditions should also restrict works to outside the bird breeding season and require details of external lighting to ensure no harm to wildlife, including bats. The LEMP should provide for Phase 2 bat surveys of mature trees should they be lost from the woodland, in accordance with the submitted Extended Phase 1 Ecological Assessment. Conditions should also secure provision of bird and bat boxes.

Therefore, subject to appropriately worded conditions, the proposals accord with Local Plan Policies NCS and NC5, and emerging Local Plan Policy NC1.

#### 8. Surface Water Drainage and Flood Risk

South West Water will not allow surface water to drain to the public sewer. Therefore, a sustainable drainage system will be required to dispose of surface water from the site. No details of this have been provided in the application. Therefore, a strongly worded condition will be required to approve these details prior to development commencing on-site, should the application be approved.

#### **S106/CIL -**

The policy compliant level of affordable housing for the scheme is 11 dwellings (30%). The policy compliant contributions for the scheme are set out below. These have been calculated in accordance with the Planning Contributions and Affordable Housing SPD and its Update 3, and 'Third Party Contributions towards the South Devon Link Road' report adopted by the Council on 6 December 2012. The South Devon Link Road (SDLR) contribution has been top-sliced from the Sustainable Development contributions in even amounts. This has resulted in the Stronger Communities and Lifelong Learning - Libraries contributions being reduced to zero. No Sustainable Transport contribution is required, due to mitigation applied to the existing use. In addition, the Greenspace and Recreation contribution has been partly mitigated to account for the dwellings being sheltered accommodation.

|   |                   |
|---|-------------------|
| Waste Management (Site Acceptability)               | £ 1,800.00        |
| SDLR  | £21,065.00        |
| Greenspace and Recreation (Sustainable Development) | £10,535.00        |
| <br>  |                   |
| TOTAL =   | £33,400.00        |
| <br>  |                   |
| <u>TOTAL + 5% Administration Charge =</u>           | <u>£35,070.00</u> |

The applicants consider the scheme will be financially unviable if it has to deliver the policy compliant level of affordable housing and contributions. Therefore, an Independent Viability Assessment (IVA) has been carried out, in accordance with

Council policy, by an independent valuer. Whilst the IVA has yet to be issued to the Local Planning Authority, the independent valuer has informed officers that the total contribution the scheme can afford to pay is £100,000.00. This amount includes an off-site affordable housing contribution in lieu of any on-site provision. Taking into account the Council's priorities for contributions and affordable housing, this would mean the required contributions for the scheme would be as follows:

|   |                    |
|---|--------------------|
| Waste Management (Site Acceptability)     | £ 1,800.00         |
| SDLR                                      | £ 21,065.00        |
| Off-site Affordable Housing               | £ 75,465.00        |
| <br>                                      |                    |
| TOTAL =                                   | £ 98,330.00        |
| <br>                                      |                    |
| <u>TOTAL + 5% Administration Charge =</u> | <u>£100,000.00</u> |

The above contributions would have to be secured in a s106 agreement. The agreement will also need to secure £5,000.00, returnable after 3 years of full occupation, to enable traffic regulation orders to be introduced should parking become a problem on local streets. It will also need to include an appropriate deferred contributions mechanism should viability improve when the development is built.

#### Justifications:

The contribution towards waste management is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will pay the cost of providing waste and recycling bins to the proposed dwellings. It also accords with Local Plan Policy W7.

The contribution towards the SDLR is justified in Appendix 1 of the 'Third Party Contributions towards the South Devon Link Road' report adopted by the Council on 6 December 2012 and is based on an assessment of the impact that the development would have on the road.

The contribution towards affordable housing is justified in Section 3.0 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6). It also accords with Local Plan Policy H6.

#### Status:

The IVA report has not yet been issued to officers and therefore comments are awaited from Housing Services on its conclusions. These comments will be obtained before committee and the required contributions will be confirmed to Members at the meeting. The applicants have agreed in writing to pay £100,000.00. The applicants have not paid the independent valuer's fee for

producing the IVA, but will be expected to do so after the IVA is issued. A verbal update will be provided at committee. Should Members approve the application, a further extension of time will have to be agreed with the applicant in order to provide sufficient time for Legal Services to draft the s106 agreement and for it to be signed by all parties.

### **Conclusions**

Officers consider that the change of use on the site from tourism accommodation to residential is acceptable and in accordance with adopted Local Plan Policies TUS and TU7, and emerging Local Plan Policy TO2. There has been an increase in the number of three star hotels and corresponding quality of bed spaces in Torbay over the past ten years since a similar proposal for residential development on the site was dismissed at appeal. The applicants have submitted evidence to show that the hotel and alternative tourism uses on the site are commercially unviable and this is accepted by officers, albeit counter-intuitive to recent trends in the Bay.

However, officers consider that the design of the proposed development is bulky, lacks character and distinctiveness, and fails to take the opportunities available for improving the character and quality of the area following design review, contrary to Local Plan Policies BES and BE1, the relevant policies and principles of the NPPF and Urban Design Guide SPD, and emerging Local Plan Policies TO2 and DE1. It will therefore have an adverse impact on the setting of the Lincombes Conservation Area opposite the site contrary to Local Plan Policy BE5 and emerging Local Plan Policy HE1. There are considered to be no benefits of the scheme that outweigh the negative impacts of the design put forward on the character of the area.

### **Condition(s) / Reason(s)**

01. The proposed development would have an adverse impact on the local character and distinctiveness of the area, and in so doing the setting of the Lincombes Conservation Area, through an increase in building footprint and massing compared to the existing building, contrary to the historic development pattern of the area. Therefore, it does not accord with saved Policies BES, BE1 and BE5 of the Adopted Torbay Local Plan 1995-2011, paragraphs 56, 58, 60, 61 and 131 of the NPPF, or the relevant principles of the Urban Design Guide SPD, which seek to ensure new development responds to the identity of local surroundings. In addition, the proposed development is considered to be a poor design that fails to take the opportunities available for improving the character and quality of the area, taking into account the recommendations of the Torbay Design Review Panel, and is therefore contrary to paragraphs 64 and 137 of the NPPF. For the same reasons as above, the proposed development does not accord with Policies TO2, HE1 and DE1 of the emerging Torbay Local Plan - A landscape for success: The Plan for Torbay - 2012-2032 and

beyond.

02. No s106 agreement has been prepared to secure the necessary contributions in accordance with the Council's Planning Contributions and Affordable Housing SPD, and 'Third Party Contributions towards the South Devon Link Road' report adopted by the Council on 6 December 2012. The Local Planning Authority considers that it would be inappropriate to secure the required contributions by any method other than a legal agreement and therefore the proposal is contrary to Policy CF6 of the Adopted Torbay Local Plan 1995-2011 and paragraph 206 of the NPPF.

### **Relevant Policies**

HS - Housing Strategy  
H2 - New housing on unidentified sites  
H9 - Layout, and design and community aspects  
H11 - Open space requirements for new housing  
TUS - Tourism strategy  
TU7 - Change of use/redevelopment outside PHAA  
CF2 - Crime prevention  
CF6 - Community infrastructure contributions  
CF15 - Accommodation for people in need of care  
LS - Landscape strategy  
L5 - Urban Landscape Protection Area  
L9 - Planting and retention of trees  
L10 - Major development and landscaping  
NCS - Nature conservation strategy  
NC5 - Protected species  
EPS - Environmental protection strategy  
EP5 - Light pollution  
EP6 - Derelict and under-used land  
BES - Built environment strategy  
BE1 - Design of new development  
BE2 - Landscaping and design  
BE5 - Policy in conservation areas  
TS - Land use transportation strategy  
T1 - Development accessibility  
T2 - Transport hierarchy  
T25 - Car parking in new development  
T26 - Access from development onto the highway  
NPPF - National Planning Policy Framework