

Application Number

P/2017/0661

Site Address30 Torwood Street
Torquay
TQ1 1EB**Case Officer**

Mrs Saffron Loasby

Ward

Wellswood

Description

Change of use from taxi rank (sui generis) to takeaway food shop (A5) with if possible a small(4 or 5) Chairs (A3).

Executive Summary

The proposed development is for a change of use from taxi rank (sui generis use) to a takeaway food shop (A5). The original application included an A3 restaurant use, however this has since been removed.

The scheme is considered to be acceptable subject to changes to the shop front to ensure the redevelopment of the property is in keeping with the wider Torquay Harbour Conservation Area and is appropriately conditioned to ensure the ongoing mitigation of noise and odour.

Hours of operation should also be conditioned but should be considered against the opening hours of similar uses in the facility in order to meet the relevant tests as detailed in paragraph 206 of the NPPF.

Recommendation

Approval subject to acceptable revisions to the shop front in line with Conservation requirements and conditions regarding opening hours and noise and odour mitigation.

Reason for Referral to Development Management Committee

Chairman recommendation

Statutory Determination Period

14th September 2017.

Site Details

The site is a narrow, but long, business premises situated outside of the designated Shopping Frontages close to Torquay Harbour. The site lies within the Torquay Harbour Conservation Area, the town centre within the Core Tourism Investment Area for Torquay and the Community Investment Area. At present the property is used as a taxi rank. There are parking restrictions located along this stretch of Torwood Street which is part of the Major Road Network in Torbay.

The application site sits close to development site CDST33 the Former Royal Garage site located to the west which has planning permission for 131 bedroom hotel, 1 retail unit and 3 restaurants and office/gym use. This was granted consent in October 2015. Development site TNPH45 'Terrace Car Park' is located to the north. This has been identified in the Local Plan as a possible Neighbourhood Plan housing site. No specific planning permission has been granted for this site.

The site is within the night time economy area, which is popular at night due to the presence of night clubs and bars in this part of the town centre.

Date of Officer Site Visit: 3rd August 2017

Detailed Proposals

Change of use from taxi rank (sui generis) to takeaway food shop (A5). The original submission proposed an A3 use also, however the applicant has removed this element of the proposal. It is proposed that 2 full time equivalent members of staff will be employed at the premises.

Summary Of Consultation Responses

Conservation and Design - The present shop window is rather nasty, not to put too fine a point on it. Can we get a wider, simpler, wooden thin-mullioned style as on Jingles, and the former Christian Science Centre next door. A pity because these early 19C two-storey buildings have much less frontage to show that their later 3-storey neighbours so the shopfronts are disproportionately more important. (No. 24 was given permission due for demolition 8 years ago).

At the very least, with the removal of the ATM, the front should be drawn back to the original line and the bulge of the supporting structure removed.

Building Control - No comments received

Community Safety - Takeaway premises can be a considerable concern for local residents with noise arising from patrons, delivery vehicles and odour from

cooking being some of the issues that they can cause. I also note that it is not unusual for problems with littering to arise with takeaway premises.

The proposed development is within the night time economy area, which has contracted in recent years, with the closest night club being the premises locally known as the Foundry. This contraction has seen an improvement in the area, particularly late at night as the current food businesses in the area are restaurant type premises resulting in a reduction in the amount of noise generated in the area, particularly that generated by revellers leaving the night clubs etc, who tend to move down to the harbour-side to take taxis home etc. The area is still busy at night. The really late night traffic is not encouraged to the area.

I am concerned that the proposed takeaway use will draw people to the area in search of food, particularly late at night i.e. past midnight and particularly when the nightclubs close. I would therefore recommend that the hours of operation be limited to ensure the premises is shut by 01:00 am and that the following condition be placed on the consent in relation to any kitchen extraction equipment being installed.

A Risk Assessment as identified in the document "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems" shall be submitted and approved by the local planning authority prior to commencement of works. The applicant shall identify the intended cooking processes and style of cuisine, the location of the nearest sensitive accommodation and the proposed location of the exhaust.

Calculations shall be provided that identify that the requisite air flow is achieved for a safe environment in the kitchen area, together with the required level of treatment specified in the above document taking into account the type of cooking and location of the flue.

An assessment of noise generated by all plant and equipment operating on the site and an assessment shall be made of the noise at the nearest sensitive receptor. The system shall be designed so that noise at the nearest receptor does not exceed more than 10dB below background noise levels when measured and rated with BS4142: 2014 Methods for rating and assessing industrial and commercial sound.

Summary Of Representations

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement
Three representations have been received 1 objection, 1 support and 1 neutral.

Issues raised:

- o Seating proposed is not practical
- o Commercial extraction will impact on neighbour amenity

- o Saturation of fast food outlets and impact on area
- o Impact on neighbour amenity
- o Waste problems
- o Intensification of people in constrained area
- o Parking concerns
- o Slow redevelopment in the area
- o Failure of the Council to advertise properly

SRM Procedure:

Outcome: Chairman of Development Management Committee referred application to DM committee for resolution given concerns regarding the saturation of takeaway uses in Torquay town centre.

Relevant Planning History

P/2006/1414 - Removal of Condition 1 (Ref app P/2005/1006/PA) To allow use to continue after 30 September 2006 - PER
 P/2005/1006 - Change of use to taxi booking office - CONDITIONAL PER TEMP 1 YEAR
 91/1564/PA - New shop front - CONDITIONAL PER
 79/3401/PA - Formation of second floor flat - CONDITIONAL PER
 78/3587/PA - Hairdressers - CONDITIONAL PER
 77/2394/PA - Use as a fish and chip shop - REF

The following applications although not relating to the application is considered relevant;

Mixed use development of hotel, 1 No A1 unit, 3 No A3 units, 3 No B1 office use units and 1 No B1 office use or D1 gym use unit at former Royal Garage site, involving the demolition of property Nos 4-24 Torwood Street, Torquay, former Royal Garage Site, 4-24 Torwood Street. A minor material amendment was subsequently granted under P/2015/1108.

Key Issues/Material Considerations

The key issues to consider in relation to this proposal are principle of development, impact of the design on the Torbay Harbour Conservation Area, neighbour amenity, highway safety and noise and odour mitigation.

Principle of Development

The site is located inside the Strategic Delivery Areas of the adopted Torbay Local Plan. Adopted Policy SS3 'Presumption in Favour of Sustainable Development' of the Local Plan advises that planning applications that accord with the policies in the Local Plan (and where relevant, with policies in Neighbourhood Plans) will be approved unless material considerations indicate otherwise. This policy follows the advice within the

National Planning Policy Framework (NPPF), specifically paragraph 14 that sets out a presumption in favour of sustainable development. For decision taking, unless material planning considerations dictate otherwise, this means approving proposals that accord with the development plan without delay.

With regard to planning policy the Torbay Local Plan and accompanying Supplementary Planning Document (SPD) Heathy Torbay hold the most relevant and up to date policies.

The site is in a sustainable location within the town centre. Planning Policy SS11 'Sustainable Communities' aims to support developments, in principle, that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay, and particularly within Community Investment Areas.

The existing use of the building as a taxi rank is sui generis therefore specific planning permission is needed to change the use of the building. Historically, as detailed above, the property has seen a number of uses, primarily an A1 use because this area used to be designated as secondary shopping frontage. Under the adopted Local Plan 2012-2030 it is not designated as either primary or secondary shopping frontage, although located in a Town Centre location. A temporary change of use to a Taxi rank was granted planning permission in 2005. It was later granted permanent consent in 2006.

Based on the information above, the use of the premises cannot be considered as retail and therefore Policy TC4 'Change of Retail Use' of the Torbay Local Plan 2012-2030 is not applicable.

With regard to Policy TC5 'Evening and night time Economy' the Council aims to support, in principle, development that helps to create a vibrant, diverse, evening and night time economy within town centres, seafront and harbour areas of the Bay. To be acceptable, a development must provide the following:

- o add vibrancy and a complementary offer to that currently available in the centre of the area, attracting all ages,
- o it will support the creation of a balanced range of evening and night time uses through provision of new activities and venues
- o it will not add to the cumulative impact of licenced premises; and those providing late night entertainment and services, in an unacceptable manner; and
- o It will not damage the vitality and viability of the centre, impact on amenity or cause disturbance to nearby and neighbouring uses (including residential properties).
- o Uses or developments that have an impact upon town centre monitoring, maintenance or policing will be required to make contributions towards the cost of any such monitoring, maintenance or policing arising from the development.

The proposed scheme proposes a takeaway use that will be amongst other eating and drinking establishments in the town centre. Whilst concern has been raised about the saturation of this type of use in this area it is not considered to be an unacceptable proposal when assessed against the criteria within Policy TC5. With regard to

monitoring, maintenance or policing to address cumulative impact on these services consideration must be given to what is being proposed and be proportionate to the scale of the development.

Torquay has a Purple Flag accreditation which is a recognised status for towns and city centres that meet or surpass the standards of excellence in managing the evening and night time economy (ENTE). As a significant accolade it requires ongoing management to ensure it is retained, for example to keep public toilets open and clean, clear up litter and provide policing and pastoral support. Where new developments put demands on these services they will be expected to make appropriate contributions and to partake in strategies and initiatives to mitigate the cumulative impact of venues.

Planning policy SC1 'Healthy Bay' aims to support development that contributes to improving the health and well-being of the community reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal.

The Supplementary Planning Document (SPD) 'Healthy Torbay' aims to build upon and provide more detailed advice on the policies in the Local Plan. It focuses on matters of health and wellbeing being addressed through the development planning process. There have been a number of studies carried out and detailed within this document, interestingly in paragraph 4.3.1 it states:

'Evidence from Public Health England indicates that Torbay has approximately 160 'fast food' outlets. This figure means that there are approximately 120.3 outlets per 100,000 population in Torbay, a figure which shows Torbay having the highest concentration of fast food outlets of any local authority in the South West region and in the highest 7% of local authorities in the whole of England (23rd out of a total of 324).'

Torbay Council has undertaken its own mapping and analysis of hot food takeaways within Torbay. Hot food takeaways have a specific classification under the Use Classes Order. That is to say they are classed as A5 uses ('Hot Food Takeaways') which can sell hot food for consumption off the premises. There are well over 100 premises which fall into the A5 category in Torbay. In addition, Torbay has a significant number of A3 Restaurants which have elements of hot food takeaway as part of their offer. When these A3 establishments are added to the A5 premises the number of places which hot food takeaway meals can be purchased in Torbay rises to well over 200.

The SPD states that applications for new A5 hot food takeaways will be approved within existing town, district and local neighbourhood shopping centres (as identified in the Local Plan) where they do not harm the health and wellbeing of the community through impacting upon the delivery of healthy lifestyles. Outside of these centres, A5 uses should also be managed in accordance with Policy TC3 of the Local Plan with respect to retail development.

It is expected that new A5 facilities will not lead to an over-concentration of A5 uses within any one individual centre. In particular, A5 uses should not overly dominate the retail offer within district, local and neighbourhood shopping centres so that they encompass more than 10% of the overall retail frontage within those centres. In accordance with Policy SC1 of the Torbay Local Plan, evidence should be submitted alongside a planning application for an A5 use (e.g. a proportionate Health Impact Assessment) outlining the measures taken to ensure that providing an A5 use will not lead to any worsening in the overall rate of hot food takeaway concentration and/or the opportunities to promote health lifestyles. This is required for developments over 30 dwellings and smaller scale developments where there are reasons to indicate that a proposal may give rise to a significant impact on health. A Health Impact Assessment (HIA) for this application has not been submitted and is not normally required for a change of use such as that proposed. However the applicant will complete a screening for the proposed use and the results will be presented verbally.

The proposal does promote a new takeaway use in the town centre, however based on the location, being outside of the primary and secondary shopping areas and the due to the scale of the proposal the change of use is not considered to be disproportionately out of character and context with a town centre use. A map showing the locations of both A3 and A5 uses is included in the presentation. This clearly shows that the addition of the use proposed will not lead to an over concentration of takeaways in this location. It is not contrary to the policies of the Torbay Local Plan 2012-2030 and the re-use of the building is of a public benefit.

Whilst the principle of the development is considered to be acceptable based on the above information, development is also directly linked to a number of other material considerations. These include impact on the character of the area, impact on the neighbouring occupiers and highway safety. The assessment of these matters are considered in more detail below.

Impact of the design on the Conservation Area

The Council's Conservation Officer would like to see the front window reverted to a more original format, more akin to the other more traditional shopfronts in this street. The removal of the large unsightly signage and projecting element housing the cash point will improve the visual impact of this unit on the street scene. This can be carried out quite simply through amendments and revisions, of which the applicant is willing to address. Subject to these amendments in accordance with the advice of the Conservation Officer the impact of the shop front on the Conservation Area will be significantly improved and meet the requirements of policy SS10 of the Torbay Local Plan 2012-2030.

Impact on Neighbour Amenity

Concern has been raised by local residents and other business owners in the immediate vicinity that the impact of an additional takeaway use will have an adverse impact on the local residents. The closest residential property is located above the commercial unit.

Other residential dwellings are located at first floor above neighbouring shops and to the rear.

With regard to odour this can be addressed by including an appropriately worded condition to ensure that adequate ventilation and odour mitigation is installed prior to commencement of the use.

With regard to noise it is not unreasonable to restrict opening hours. This would have to be carefully considered against neighbouring opening hours to ensure the condition meets the relevant tests. The Council's Environmental Health Officer has advised that the hours of operation should be limited to ensure that the premises are shut by 1.00am.

In light of the above potential adverse impact on neighbour amenity can be mitigated by condition and meet the requirements of Policy DE3 of the Torbay Local Plan 2012-2030.

Highway Safety

There are no allocated parking spaces for the existing use. Parking is based on a first come/first served basis and tickets are available from a machine located a few metres to the west of the application site. Parking restrictions are in place on the surrounding roads and due to being located on a major road network, traffic along this stretch of road is busy.

It would be difficult to insist that the new use has specific parking provision given that the existing use does not have any and the use was vehicle orientated. In addition the site is in a town centre location.

No objections have been raised by the Council's highway officers and due to the town centre location is considered to be sited in a sustainable location, easily accessible by foot, bicycle or public transport. The proposal is considered to meet the requirements of policy TR1 and TR2 of the Torbay Local Plan 2012-2030.

Community Safety - Noise and Odour

Comments from the Community Safety officer advise that the noise and odour resulting from the development can appropriately be mitigated by condition. It is therefore considered to meet the requirements of policy DE3 of the Torbay Local Plan 2012-2030.

Human Rights and Equalities Issues -

Human Rights Act: The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights.

In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

S106/CIL and Affordable Housing -

Provision for further waste facilities or services monitoring may need to be provided. This will be confirmed verbally to Committee.

CIL:

The CIL liability for this development is Nil as the CIL rate for this type of development is Nil and therefore no CIL is payable.

EIA:

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

Proactive Working

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

Conclusions

The proposed change of use is considered acceptable in this town centre location subject to conditions relating to hours of opening and provision of an extract ventilation system. Use of the property as a hot food takeaway would not lead to an overconcentration of A5 uses in the area and this use would not encompass more than 10% of the overall retail frontage in this section of Torwood Street. Given that there are already hot food takeaways in the town centre this change of use would not demonstrably have a negative impact on healthy lifestyles or efforts to reduce health inequalities.

The proposals are considered to accord with the provisions of the Torbay Local Plan 2012-2030 and all other material considerations.

Conditions

1. Opening hours
2. Noise and odour mitigation