

Application Number

P/2017/0714

Site Address21 Victoria Parade
Torquay
TQ1 2BB**Case Officer**

Mrs Saffron Loasby

Ward

Tormohun

Description

Revised plan received, re-advertisement; Demolition of existing roof. Extension at second floor level to form additional bar / restaurant / storage area, with pitched roof over, to include increase in height of the building.

Executive Summary

The proposed development is to extend the existing A3 use upwards. The scheme involves removing the existing pitched roof and replacing it with an additional floor and a new pitched roof, thus increasing the floor area and height of the property. The building would be a similar height to the adjoining property to the north.

The original application proposed the removal of the pitch roof and replacement with a flat roof, but has now been revised to the formation of a new second floor, with a pitched roof over. The scheme is considered to be an acceptable addition to the property and is in keeping with the wider Torquay Harbour Conservation Area. The use of the additional floor would be for A3 (restaurant and café) as per the rest of the property. This is an appropriate use for this town centre location which would support the vibrancy and vitality of the area, and would make a positive contribution to encouraging tourism in this location adjacent to the harbour. Concern has been expressed by nearby residents about noise and smell nuisance. These can be addressed by means of conditions in order to prevent any undue nuisance. The proposed development is therefore considered to be acceptable in this location subject to a number of conditions.

Recommendation

Approval subject to receipt of a revised plan showing removal of the first floor illuminated sign and conditions regarding materials, privacy, noise and odour mitigation. Final drafting of conditions to be delegated to the Executive Head for Assets and Business Services. Any contributions required to assist in mitigating the proposed development on the Town Centre may also be applicable.

Reason for Referral to Development Management Committee

Chairman recommendation.

Statutory Determination Period

Original date - 6th October 2017, following submission of revised plan the applicant

has agreed extension of time to 11th January 2018.

Site Details

The site is a narrow, but deep plan, business premises situated within the Torquay Town Centre, the Torquay Harbour Conservation area, a Core Tourism Investment Area, a Community Investment Area, a secondary shopping frontage, a Coastal Change Management Area, as identified in the Torbay Local Plan 2012-30 and in flood zone 1. At present the property is being refurbished and has an A3 use class. An A3 use includes restaurants, cafes and snack bars. There are parking restrictions located along this stretch of Victoria Parade.

The application site benefits from views over the harbour and is nestled between other commercial properties on either side. Some residential use is located at first floor (and above) of the neighbouring properties. As the property is located in a town centre and close to the harbour and seafront it 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: Various site visits made. Most recent site visit 17th November 2017

Detailed Proposals

Demolition of the existing pitched roof and extension at second floor to increase the height and floor area of the existing commercial property (A3 Restaurants and Cafes) to form an additional bar/restaurant/storage area with a pitched roof over.

The application was submitted with an Ecological assessment, a structural report of the roof and a Statement of Historic Significance

Summary Of Consultation Responses

Conservation and Design - The latest drawing D073-17-102 rev D (dated 3 November 2017) does show that our earlier advice has been followed: fenestration aligned with No. 20; and roof ridge and eaves height respected. The illuminated sign box on the first floor (over the tripartite door arrangement) is still on the drawings; we agreed it should go.

Community Safety - The proposed addition of another floor to the building will represent a significant intensification of use of the business. Furthermore, the proposed additional floor moves the potentially noisy activity closer to the residential accommodation flanking the development on either side. This may cause detriment to the neighbouring residential accommodation. The proposed intensification of use, will mean that residents may be disturbed by both odours from cooking and noise from the second floor restaurant use and from the kitchen and kitchen extraction. I am also concerned that the increased size of the development could lead to the balcony being used more frequently. The balcony is directly adjacent to a balcony associated with residential accommodation and

there are opening windows for the residential accommodation very close. This does offer potential for residents to be disturbed by patrons using the balcony. I recommend that an acoustic barrier be placed between the balcony on the left of the development (above Rock Fish) and the proposed development to minimise noise propagation. Such a barrier may simply be a sheet of glass to a suitable height. It need not be particularly substantial.

In order to mitigate these issues I would recommend that the following conditions be placed on the consent;

A scheme of sound insulation between the proposed development and existing residential development. Details of which should include the main build and the balcony. Submission of details of extract ventilation system.

Environmental Health Manager (Commercial) - Future Planning - Given that the use is within the town centre I do not foresee there will be a strategic highways objection. It would be useful to understand servicing etc. arrangements and whether additional on-street seating is proposed. However I would anticipate that the transport implications of a bar are similar as for a restaurant.

The most relevant Policy is TC5 "Evening and Night Time Economy" of the Local Plan. The advice of the Policy should be sought particularly in relation to TC5.3.

If the proposal is capable of being made acceptable, the Council would seek a S106 contribution towards CCTV as per Policy TC5 and the adopted DPD.
Building Control - No comments received

Summary Of Representations

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement

7 letters of objection received following initial consultation, 2 objections received following final amendments.

1 letter of support has been received.

Objections raised:

- o Noise
- o Not in keeping
- o Loss of privacy
- o Impact on character
- o Impact on local area
- o Overdevelopment
- o Traffic and access
- o Unsocial behaviour

Letter of support refers to improvement of the existing building and the positive impact it will have on Torquay Town Centre.

Relevant Planning History

P/2006/1998 - Various Non-Illuminated Signage (Revised Scheme) - Approved 22.01.2007

P/2006/1112 - Various Non-Illuminated Signage (Revised Scheme) - Refused 08.09.2006

P/2003/0947 - Replacement Shopfront - Approved - 17.05.2003

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 existing use of the building is a restaurant (A3). The use could change to either A2 or A1 without specific planning permission. It could also change to a B1 use for a temporary period prior to notification with the Local Authority. Planning permission would be needed to change the use of the building to A4 (drinking establishment).

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 is reiterated within the TNP as Policy S1.

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.

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 additional floor space to an existing premises that will be amongst other eating and drinking establishments in the town centre. Whilst concern has been raised about noise and disturbance 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.

The Council's Planning Contributions and Affordable Housing SPD adopted February 2017 advises that night time economy (referred to in Policy TC5) uses are alcohol-related uses, amusement arcades, betting shops, gambling shops and other developments that could create conditions of community conflict. The application site comprises an A3 restaurant use and is not a use that the Council would seek a financial contribution for. The refurbishment and extension will add to the vibrancy and vitality of the existing Town Centre.

The proposed development also meets the requirements of Policies TC1 'Town Centres' and TO1 'Tourism, Events and Culture' where development that supports the ongoing improvement of Torbay's Town Centres and tourism facilities are acceptable. The proposed development will contribute positively to supporting the town centre and will also contribute to tourism as it will provide additional floorspace in a tourist area adjacent to the harbour. It represents an investment in new facilities that will make a positive contribution to the local economy.

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 Torbay Neighbourhood Plan Policies are also considered. The assessment of these matters are

considered in more detail below.

Impact of the development on the Torquay Harbour Conservation Area

Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires LPAs in reaching determinations on applications to have 'special regard' to the desirability of preserving the character of conservation areas. Paragraph 132 of the NPPF explains that great weight should be given to the conservation of 'heritage assets' such as Conservation Areas.

Adopted Local Plan, policy SS10 reflects the requirements of s.72 of the 1990 Act in terms of an expectation that development will 'sustain and enhance' the historic environment but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment and lists factors that will be taken into account in reaching a decision such as the need to encourage appropriate adaptations and new uses and whether the impact is necessary to deliver demonstrable public benefits

Paragraph 134 gives the LPA discretion to allow a degree of harm to the heritage asset providing this can be balanced against public benefit. Development which causes less than substantial harm must demonstrate clear evidence of public benefit. This is not however a simple balancing exercise but an assessment of whether there is justification for overriding the presumption in favour of preservation.

The existing building, whilst located in a Conservation Area, is not recognised as an important building and it sits opposite an area of open space with largely unrestricted access. The current building is not particularly attractive and visually adds very little to the wider street scene.

The design of the proposal has been changed significantly over the course of the application process. These changes are a direct result of input from the Council's officers and now comprise a development that compliments the existing property and has the potential to improve the existing business opportunities within the Conservation Area.

The changes involved reducing the size of the openings at second floor and respecting the historic form, having smaller windows the higher they sit in the building. The openings also follow the design of the neighbouring fenestration that visually improves the design of the extension and its impact in wider views across the Harbour. The replacement pitched roof sits well with the neighbouring properties and will look similar to that of the original. The design changes propose a vast improvement on some of the other second floor extensions that have been previously allowed. As a result there is no harm to the Conservation Area and officers support the proposed extension.

The proposed extension and refurbishment of this building brings the currently

vacant property back into use. This will benefit not only the visual impact of the building on the wider street scene and Conservation Area but will also create new facilities that will make a positive contribution to the local economy.

The Senior Historic Environment Officer has requested that the existing (albeit unused) advertisement box above the first floor door on the front elevation should be removed. This should be secured through the submission of a revised plan. It is recommended that all future signage is located at ground floor similar to the neighbouring properties within the street scene.

Subject to the removal of the first floor advertisement box the new revised plans are considered to meet the requirements of policies SS10 and DE1 of the Torbay Local Plan 2012-2030.

Impact on Neighbour Amenity

Concern has been raised by local residents in the immediate vicinity that the impact of an additional floor will have an adverse effect on the neighbouring local residents by way of undue noise and disturbance. The closest residential properties are located above the commercial units at first and second floor on both sides of the application building. The concern appears to stem from the original building being separated into two and the dividing wall being inadequate to deal with the existing noise distribution. The potential to exacerbate this and the use of the existing first floor balcony has raised concerns by both residents and the Councils officers. As a direct result of this concern officers suggest the inclusion of an appropriately worded condition that will assist in ensuring that noise is appropriately mitigated at the proposed new floor level. It is also deemed necessary due to the existing neighbour arrangements that the use of the existing balcony is limited to certain hours and a screen is erected to assist in noise mitigation and privacy.

In addition, whilst there is an existing restaurant use the additional floor area will intensify the use of the property and there is question as to whether the existing kitchen extraction equipment is adequate. This is raised as a concern by the Environmental Health officer. With regard to noise and odour this can be addressed by including an appropriately worded conditions to ensure that adequate ventilation and odour mitigation is installed prior to the use of the new floor.

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

Highway Safety

There are no allocated parking spaces for the building and parking at the front of the property is restricted by double yellow lines. However there are a number of Town Centre car parks in close proximity as well as taxi ranks, bus stops and

places to park a bike. The site is also close to the Torquay ferry service. It would be unreasonable to insist that the additional floor space requires parking provision given that the existing use does not have any and 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 policies TA1 and TA3 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 conditions. It is therefore considered to meet the requirements of policy DE3 of the Torbay Local Plan 2012-2030.

Torquay Neighbourhood Plan

The draft Torquay Neighbourhood Plan has recently completed its consultation stage but has not yet been the subject of an independent examination. There are no policies in the draft Torbay Neighbourhood Plan which directly affect this proposal.

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 -

CIL: The Council's viability evidence indicates that town centre retail would not be viable with CIL. The CIL liability for this 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.

Ecology:

Whilst no evidence of bats or nesting birds was found at the time of the survey precaution during building works is detailed in the submitted report. An informative ensuring good practice during construction should be added to the decision notice if approved.

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 development is considered acceptable in this town centre location subject to receipt of a revised plan showing removal of the first floor advertisement box and conditions relating to materials, hours of use of the balcony, details of sound insulation for the new build, privacy and noise screen on the existing balcony, and provision of an extract ventilation system. Final drafting of the conditions being delegated to the Executive Head for Assets and Business Services (to include those listed within the report).

Subject to the comments from the Community Safety Team a contribution may also be required for the monitoring, maintenance or policing arising from the development and its impact on the Town Centre.

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

Conditions

1. Materials (to ensure good design and protect the Conservation Area DE1/SS10)
2. Restriction on balcony hours of use (to protect neighbour amenity DE3)
3. Noise and odour mitigation (to protect neighbour amenity DE3)
4. Details of sound insulation (to protect neighbour amenity DE3)
5. Privacy/noise screen on the balcony (to protect neighbour amenity DE3)