

Application Number

P/2019/0301

Site Address

Old Maids Perch
Shedden Hill Road
Torquay
TQ2 5HD

Case Officer

Miss Emily Elliott

Ward

Tormohun

Executive Summary/Key Outcomes

The application proposes a variation of condition relating to application P/2014/0198 at Old Maids Perch, Shedden Hill Road, Torquay, which is in use as an outdoor seating area relating to a restaurant. The application seeks to vary condition 2, which states that the use permitted shall be discontinued on or before 1st May 2019. The variation sought is to allow the use to continue up until 1st May 2029.

The proposal is considered to be acceptable in terms of the principle of development, visual impact, residential amenity and highways. Consequently, the proposal meets the requirements of the Torbay Local Plan and the Torquay Neighbourhood Plan.

Recommendation

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

Reason for Referral to Planning Committee

As the proposed development is on land owned by Torbay Council and the application has received objections, the Council's constitution requires that the application be referred to the Planning Committee for determination.

Statutory Determination Period

22nd May 2019. Extension of time agreed until 14th June 2019.

Site Details

The application site, Old Maids Perch, comprises a raised terraced area above a covered public shelter which fronts Torbay Road and backs onto Shedden Hill Road. The site has previously benefitted from a five year temporary permission to use the site in relation to the restaurant 'Le Bistrot Pierre' as an al fresco dining area. To the rear of the site is a raised landscaped bank which includes public seating.

The site is located within the designated Belgravia Conservation Area. The site is located within the Harbourside, Waterfront and Belgrave Road Core Tourism Investment Area as defined by Policy TO1 and is within the Torquay Town Centre Community Investment Area as defined by Policy SS11.

Detailed Proposals

The application proposes a variation of condition relating to the planning application P/2014/0198 at Old Maids Perch, Shedden Hill Road, Torquay. The application seeks to vary condition 2 to allow for the continued use of the site as an al fresco dining area until 1st May 2029.

It should be noted that when the variation of condition application was originally submitted, condition 2 was going to be varied to permit the use of the site in perpetuity. However, due to initial policy concerns, particularly regarding the site's designation as a Local Green Space under Policy TE2 of the Torquay Neighbourhood Plan, the applicant has chosen to revise the proposal and seek a further temporary permission of ten years.

The lease between the Council and the restaurant states that the restaurant have to maintain, at their cost, all the planting and keep the area clean, tidy and weed free up to the end of the junction of Shedden Hill. The lease excludes the public right of way and the memorial benches, the shelter and the clock which remain the responsibility of the Council. These benches, the shelter and the footpath must remain accessible to the public at all times

Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

Development Plan

- The Torbay Local Plan 2012-2030 ("The Local Plan")
- The Torquay Neighbourhood Plan

Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

Summary Of Consultation Responses

Torquay Neighbourhood Forum: No objections, subject to the use of a condition limiting the period of the planning permission.

Interim Heritage Advisor: *Verbally confirmed that the development will not harm the special character or appearance of the architectural and historic merit of the Belgravia Conservation Area and therefore the proposal complies with requirements of the Planning (Listed Building & Conservation Area) Act 1990.*

Planning Policy Officer: *Torquay Neighbourhood Plan designates the area as a Local Green Space (LGS), TLGST5. Policy TE2 of the approved Neighbourhood Plan rules out development other than in very special circumstances. It allows within these very special circumstance. "...development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation".*

The area is also within a Core Tourism Investment Area and Policy TO1 of the Local Plan seeks to improve tourist facilities in the area. The redevelopment of the former Palm Court site has been a very successful regeneration of this part of Torquay Waterfront which has provided a range of tourism related uses. The use of "Old Maids Perch" on a temporary basis under permission P/2014/0198 appears to have been part of the successful regeneration of this area.

The Neighbourhood Forum has made a helpful response on the application, where they agree to a further 5 year extension subject to a personal permission with the current operator. The applicant is seeking a ten years lease, which is longer than the 5 year period initially agreed by the Neighbourhood Forum, but nevertheless does not privatise the area in perpetuity.

At present there is public access through the area, with a number of memorial benches that appear to be available for the public to sit on. So long as public access through the area is maintained, and Pierre Bistro continue to maintain the green area as per Boyer Planning's letter of 1st May 2019; then it would appear to me that a 10 year renewal would appropriately balance the open space and tourism/economic development considerations relating to the application. I note that you have spoken to the Chair of Torquay Neighbourhood Forum and agreed a ten year period would be considered acceptable subject to the employment of a planning condition.

The layout Plan 1069-PL-014 appears to indicate the pathway through the site being decked and some of the benches being replaced by planters. In light of the LGS designation, the layout of the area should be kept as it currently is and the benches/access retained; and it would be worth clarifying this in the decision notice.

For completeness, I am aware the government guidance indicates that temporary permission should not be renewed repeatedly. However, I consider that it is

appropriate in this instance because of the very special circumstance of retaining the long term purpose of the LGS whilst supporting economic development. Because of the special circumstances, it is appropriate to make the permission personal to Le Bistro Pierre, to ensure the maintenance and retention of public access and management of the area.

Highways Engineer: *The concrete steps were constructed under a S278. However, Highways would not want to adopt the decking connecting the steps due to the maintenance burden this would place on the Highways budget.*

Summary of Representations

The application was publicised through a site notice, no neighbour notification letters were sent. Thirteen letters of objection and six letters of support have been received.

Concerns raised in objection include:

- Privatisation of public open space.
- Time scale (in perpetuity).
- Designated as a local green space.
- Sets precedent.
- Impact on local area.
- Not in keeping with local area.
- Residential amenity.

Comments raised in support include:

- Provides facilities.
- Makes tourist facilities better.
- Provides/retains jobs.
- It removes an eyesore.
- Impact on local area.

Relevant Planning History

P/2014/0198: Change of use from public open space to restaurant seating area to serve adjacent A3 restaurant use, maintaining existing public rights of way, and in association with external works as shown. Approved 15/04/2014.

Key Issues/Material Considerations

The key issues to consider in relation to this application are:

1. Principle of development
2. Visual amenity
3. Residential amenity
4. Highways

1. Principle of development

The site is a designated Local Green Space under Policy TE2 of the Torquay Neighbourhood Plan. Objectors have raised concerns regarding the privatisation of public open space, the designation of the site as a Local Green Space as defined by the Torquay Neighbourhood Plan, it would set a precedent and the timescale proposed with the initial submission of the application.

Policy TE2 states that development is ruled out other than in very special circumstances. The policy goes on to state that very special circumstances may include development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation. The Torquay Neighbourhood Forum initially commented on the application stating that they would agree to a further five year extension subject to a personal permission with the current operator. The initial submission sought to vary the condition from a temporary permission to a permanent permission. However, due to policy concerns and a departure from the Torquay Neighbourhood Plan, the applicant revised the variation to seek a further temporary permission for a ten year period, which is longer than the five year period initially agreed by the Neighbourhood Forum, but nevertheless would ensure that the space is not used as proposed in perpetuity.

The Council's Planning Policy Officer has stated that as long as public access through the site is maintained, and 'Le Bistrot Pierre' continue to maintain the green area as per the planning agent (Boyer) letter dated 1st May 2019; then the ten year temporary permission would appropriately balance the open space and tourism/economic development considerations relating to the application. It should be noted that the Chair of the Torquay Neighbourhood Forum initially objected to the proposal when the application was initially submitted for a variation to seek in perpetuity use of the site, however the revision of the variation for a further temporary permission is welcomed by subsequent representations made by the Torquay Neighbourhood Plan Forum, subject to the employment of a planning condition to secure a temporary consent. The proposal therefore complies with Policy TE2 of the Torquay Neighbourhood Plan.

Government guidance indicates that temporary permission should not be renewed repeatedly. The Council's Planning Policy Officer considers that it is appropriate in this instance because of the very special circumstance of retaining the long term purpose of the local green space whilst supporting economic development. Due to the policy implications, it is considered appropriate to make the permission personal to 'Le Bistrot Pierre', to ensure the maintenance and retention of public access and management of the area.

The site is also designated within the Harbourside, Waterfront and Belgrave Road Core Tourism Investment Area (CTIA) under Policy TO1 Culture of the Local Plan. Policy TO1 states the importance of retaining and improving the high quality tourism facilities in sustainable and accessible locations with a particular focus on CTIAs to attract new visitors and increase overall spend for Torbay.

Supporters have raised comments regarding that the proposal makes tourist facilities better and provides facilities for the general public. It is considered that the proposal assists supporting the local tourism offer in the area. The redevelopment of the former Palm Court site has been a very successful regeneration of this part of the Torquay Waterfront which provides a range of tourism related uses. The use of "Old Maids Perch" on a temporary basis under permission P/2014/0198 appears to have been part of the successful regeneration of this area. Therefore, the proposal complies with Policy TO1 of the Local Plan.

The site is within a Community Investment Area, Policy SS11 Sustainable Communities of the Local Plan states that within such areas development that regenerates or leads to the improvement of social and economic conditions in Torbay will be supported in principle. The proposal will provide additional seating for 'Le Bistrot Pierre' which has an active and vibrant use and revitalises the site for residents and visitors of Torbay. The proposal complements the facilities offered by the Abbey Sands development and provides an important addition to the tourist economy by permitting al fresco dining.

Policy TC5 of the Local Plan states that development that helps create a vibrant, diverse evening and night time economy along the seafront of Torbay will be supported in principle. Supporters have stated that the proposal provides and retains job, which assists the local economy. The proposal would result in a temporary loss of a section of public open space which would be used informally and periodically - weather dependant, to enable more individuals to use an established restaurant, which would assist Torquay's evening and night time economy.

Therefore, the principle of the use is considered to be an acceptable temporary use when considering the Local Plan and the Torquay Neighbourhood Plan, subject to the aforementioned planning condition being employed.

2. Visual amenity

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for 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'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them. Policy TH8 of the Torquay Neighbourhood Plan requires development to be of good quality design and to respect the local

character in terms of height, scale and bulk and reflect the identity of its surroundings.

The variation of condition seeks a further temporary consent to continue the use of the site as an al fresco dining area for the restaurant 'Le Bistrot Pierre'. Both objectors and supporters have raised that the proposal will have an impact on the local area. Objectors have also stated that the proposal is not in keeping with the local area, whereas supporters have stated that the proposal removes an eyesore as public spaces can attract anti-social behaviour. It is noted that the proposal would continue the existing situation, which has been in situ for around five years. Given the siting, scale, and design of the proposal, as it does not alter from the previously approved plans relating to the previous permission (P/2014/0198), it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality.

The Council's Interim Heritage Advisor has stated that the development will not harm the special character or appearance of the architectural and historic merit of the Belgravia Conservation Area and therefore the proposal complies with requirements of the Planning (Listed Building & Conservation Area) Act 1990.

The proposal is therefore considered to comply Policies DE1 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and the guidance contained in the NPPF.

3. Residential amenity

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Objectors have raised concerns that the proposal would have a negative impact on residential amenity in terms of outlook from public vantage points. Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours in terms of privacy or noise. Planning officers are not aware of any disturbance related complaints from local occupiers and this has been evidenced by Environmental Health's records of the site.

Subject to a planning condition to restrict the hours of use of the site, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

4. Highways

Policy TA2 Development Access of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development.

The proposal involves temporarily using a section of designated Local Green

Space which is sited adjacent to public footways which are a public right of way. The Council's Highways Engineer has stated that the concrete steps were constructed under a Section 278. The Local Highways Authority would not want to adopt the decking connecting the steps due to the maintenance burden this would place on the Local Highways Authority budget. The proposed layout does not differ from the previously approved plans relating to the previous temporary permission. The proposal will maintain the existing public right of way.

The proposal is considered to be in accordance with Policy TA2 of the Local Plan.

Statement on 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.

Local Finance Considerations

S106/CIL -

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA/HRA

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.

Conclusions

The proposal is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

Condition(s)/Reason(s)

Temporary Permission

The use hereby permitted shall be discontinued and the associated structures and equipment removed and the land restored to its former condition (as indicated on the existing survey drawing numbers '1069-PL-013' and '1069-PL-016' (received 5th March 2014)) on or before 1st May 2029 or when 'Le Bistrot Pierre' cease to occupy the land, whichever is the sooner.

Reason: To maintain control over a temporary form of development and in order that the Local Planning Authority can assess the impact of the development and protect the designated Local Green Space, in accordance with Policy TE2 of the Adopted Torquay Neighbourhood Plan 2012-2030.

Hours of Use

The use of the outdoor seating area to be used in conjunction with 'Le Bistrot Pierre' indicated on the approved drawing plan reference '1069-PL-014-2' (received 5th March 2014) shall only take place between the hours of 7am and 11pm, Monday to Sunday..

Reason: In the interests of the amenity of the area, in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

Relevant Policies

DE1 - Design
DE3 - Development Amenity
SS10 - Conservation and Historic Environment
SS11 - Sustainable Communities
TO1 - Tourism, Events and Culture
TA2 - Development Access

TE2 - Local Green Spaces
TH8 - Established Architecture