

Application Number

P/2016/0038

Site Address13 Esplanade Road
Paignton
TQ4 6EB**Case Officer**

Carly Perkins

Ward

Roundham With Hyde

Description

Alterations and separation of Nos.12 & 13 (reinstatement of original separate properties) to form 11 bedroom hotel (No.12) and 7 Holiday Apartments (No.13). Single storey extension at rear to form Utility Room for No.12. (Removal of Condition 1 Ref: P/2013/1320 - Holiday Occupancy)

Executive Summary/Key Outcomes

The application site is a mid-terrace property on the western side of Esplanade Road (South). The site is within the Core Tourism Investment Area and Community Investment Area in the Torbay Local Plan 2012-2030. In 2013, an application was approved to allow the subdivision of the hotel at 12-13 Esplanade Road to form an eleven bedroom hotel (number 12) and seven holiday flats (number 13) under reference P/2013/1320. The current proposal (in part retrospective) is for the removal of condition 1 of planning application reference P/2013/1320 to allow for the unrestricted residential occupancy of the seven flats. The intention is for the flats to be occupied as supported living accommodation, the planning statement refers to the use of six flats as supported living accommodation and the seventh to be occupied as an office. Currently two flats are occupied in breach of the condition. The use of the seventh flat as an office would require an additional application and is not facilitated by the removal of condition 1 of P/2013/1320. Although a condition could be imposed to ensure that the flats were only used for applicant's stated purposes, it is considered that the detrimental effect on the CTIA would still be unacceptable in planning terms.

The proposal to remove condition 1 of application reference P/2013/1320 is considered contrary to policies TO1 and TO2 of the Torbay Local Plan 2012-2030 as it would result in the loss of holiday accommodation within a Core Tourism Investment Area, the proposal would not maintain or enhance the area designated for its tourism importance and would introduce a permanent residential use which would not be in keeping with the holiday character of the area and is therefore considered unacceptable. The Local Plan is very new and is supported by an up to date evidence base. Policies TO1 and TO2 were tested, during the Local Plan hearing, and not changed as a result. It would not

be prudent to allow this development, which is contrary to policies TO1 and TO2, as it would set an unfavourable precedent for similar proposals in other parts of Torbay.

In addition the proposal would result in seven small residential flats within a Community Investment Area, an area that has been designated due to the level of deprivation evident in these areas. The provision of these flats would not support a balanced community and would be likely to perpetuate the level of disadvantage within this area through the provision of small flats which would be unlikely to provide a good standard of living for future occupants contrary to policy SS11 and DE3 Whilst the Local Plan (policy SS11 and supporting text) indicates that open market housing, to support investment in Community Investment Areas, might be appropriate, this has to be balanced – in this case - against loss of holiday accommodation in a Tourism Investment Area.

The proposal would not support the aims of policy TO1 and TO2 which aim to maintain and enhance Torbay's tourism offer.

Recommendation

Refusal (reasons at end of report).

Statutory Determination Period

8 weeks, the determination date is the 11th March 2016. This date has been exceeded to allow the application to be considered and determined by the Development Management Committee.

Site Details

The application site is a mid-terrace property on the western side of Esplanade Road (South). The site is within the Core Tourism Investment Area and Community Investment Area in the Torbay Local Plan 2012-2030. The application site (12-13 Esplanade Road) was formerly the Orcades Hotel and has since been subdivided to form a hotel (number 12) and holiday flats (number 13). Whilst the physical works to subdivide the building were carried out they do not appear to have been occupied for either of their intended uses.

Detailed Proposals

In 2013, an application was approved to allow for the subdivision of the hotel at 12-13 Esplanade Road to form an eleven bedroom hotel (number 12) and seven holiday flats (number 13) under reference P/2013/1320. The current proposal is for the removal of condition 1 of planning application reference P/2013/1320 to allow for the unrestricted residential occupancy of the flats however the submitted planning statement also indicates that one of the flats would be occupied as an office for staff rather than as residential accommodation. The use of the building as seven unrestricted residential flats would be achieved via the removal of condition 1 however the use of one of these flats as an office would require submission of a separate application and could not be dealt with

simply by removing this condition.

The submitted planning statement describes the intended use of the site as the use of seven flats to provide supported living accommodation for people with learning disabilities. The LPA has the ability, when considering applications to develop land without compliance with conditions previously attached to impose different conditions. However, it is considered that the detrimental effect on the CTIA would be unacceptable in planning terms both if the flats were used for unrestricted residential purposes or for supported living flats.

Summary Of Consultation Responses

Drainage Engineer: Comments awaited.

Environment Agency: No objections to the proposal providing the development proceeds in accordance with the submitted Flood Risk Assessment. The vulnerability of future residents is noted and it is recommended that a robust flood evacuation plan is implemented. It is advised that the Emergency Planner may be able to assist with this element.

Highway Engineer: No objection to the previous application for holiday apartments (P/2013/1320). No details of parking have been provided on the current application, but P/2013/1320 indicated 12 spaces. Given the nature of the use, at least one of the spaces should be designed for people with disabilities, in accordance with note (e) of Appendix G Car Parking Requirements of the Local Plan.

Senior Strategy and Project Officer: The accompanying information clearly indicates that the proposal is for supported living accommodation for people with learning disabilities, mental health needs and brain injuries. It is advisable to obtain a legal view on whether the proposed use falls within Use Class C3 (which includes housing where an element of care is provided) or C2 residential institution. This may affect the relevant considerations.

The most relevant consideration is the effect on tourism, and compliance with Policies TO1 and TO2 of the Adopted Local Plan 2012-30. Policy TO1 seeks inter alia the retention of holiday accommodation in Core Tourism Investment Areas. Policy TO2 sets out criteria for considering change of use in CTIAs, including whether a premises lacks appropriate facilities or scope for improvement, and where there is no reasonable prospect of the site being used or redeveloped for tourism or related purposes. The planning statement indicates that there are other holiday uses on the market in the area, and that there is an oversupply of holiday accommodation. The new Local Plan has significantly reduced the number of holiday areas in comparison with the former Principal Holiday Accommodation Areas (as defined in the Torbay Local Plan 1995-2011), and most of these other hotels are outside of the CTIA and are more suited in principle for conversion to residential use. The planning statement does

not show that there is no reasonable prospect of the accommodation being used for holiday purposes. The Esplanade is a prime seafront location which would in principle be attractive to tourists, and is close to a range of tourism attractions. The apartments were recently approved as holiday apartments by separating 12 and 13 Esplanade Road, so the Council has sought to be flexible about the type of holiday accommodation on offer. Taking the above into account, it is considered that the application conflicts with Policies TO1 and TO2 of the Local Plan with regard to loss of tourist accommodation.

The application has two lower ground floor apartments, and is accompanied by a flood risk assessment which recommends flood resilience measures. It would be worth ascertaining whether these measures will be adequate if the accommodation is for vulnerable people. It is noted that the Environment Agency have made general comments, however the Council's Drainage Engineer will also provide a advice on flooding issues.

The application is for self contained units and the applicant's statement that Policy H6 "Accommodation for people in need of care" is more relevant than Policy H4 "HMOs" is agreed. The location is within easy reach of community facilities etc, although this does not override concerns on tourism grounds. It is noted that the applicant is a private operator, if the Council were minded to approve the application, then Policy H6 indicates that a S106 Obligation will be sought to meet the likely health and social services costs arising from the proposal. If clients are not from Torbay, then there is likely to be a health/social services impact that will need to be mitigated.

Legal: The application to remove condition 1 will not allow for six supported living flats and one office. If permission is granted, it will permit the seven holiday flats authorised by the existing permission to be used for general residential purposes, including people in need of support. As 'self contained' flats are each self-contained residential dwellings the only further consent that would be required for the applicant to achieve the use they want would be a change of use of one flat from C3 to A2. Class C3 (b) is defined as 'up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning difficulties or mental health problems. The fact that the individual dwellings (flats) are in one building with an office would not result in the building being in a Class C2 use.

Summary Of Representations

5 representations have been received. Issues raised:

- Impact on tourism and incompatibility of use with tourism uses in the area
- Impact on character of the area
- Impact on local amenity including noise, crime, nuisance and anti-social behaviour
- Impact on parking

- Contrary to policy

These representations have been sent electronically to Members for consideration.

Relevant Planning History

P/2015/0029 Change of use from hotel to student residence/hostel
REFUSED 24.04.2015

P/2014/0241 Extension to Owners' Annexe at ground and first floor level
and alteration to fenestration on rear elevation of main
building to form 2No. door-height opening casements with
'Juliet' rail balustrade. APPROVED 30.04.2014

P/2013/1115 Extension and alterations to existing detached owners'
annexe to form 2 owner's annexes APPROVED 16.12.2013

P/2013/1320 Alterations and separation of Nos. 12 & 13 (reinstatement of
original separate properties) to form 11 bedroom hotel
(No.12) and 7 holiday apartments (No.13). Single storey
extension at rear to form utility room for No.12 APPROVED
07.02.2014

P/1987/2027 Two storey extension to form additional owner's bedroom
and store APPROVED 27.01.1988

P/1986/1838 Extension to bar, diner and kitchen APPROVED 16.09.1986

Key Issues/Material Considerations

The main issues are the impact of the proposal on tourism, local amenity and flood risk and the need for accommodation for people in need of care.

Tourism

The application site is located within a Core Tourism Investment Area as noted in policies TO1 and TO2 of the Torbay Local Plan. Policy TO1 of the Torbay Local Plan confirms that the Council wishes to see the quality of tourist accommodation improved within Torbay with a wider range of new and refurbished facilities and services and that such aims should be achieved through (in part) the retention and improvement of high quality tourism and leisure accommodation in sustainable and accessible locations with particular focus on Core Tourism Investment Areas. This policy also states that the Council will resist the provision of small apartments in tourism areas and focus interdepartmental enforcement action on problem uses in tourism areas. The policy seeks to maintain and enhance the most important tourism areas, the Core Tourism Investment Areas. Such areas are intended to ensure the retention and improvement of sufficient high quality accommodation and attractions in order to

provide a critical mass needed by a premier resort. Policy TO2 states that there will be a presumption that the tourism role of premises should be retained and enhanced commensurate with their contribution to the area's tourism offer. The change of use of accommodation or facilities to non-holiday uses will only be permitted where, such accommodation lacks an appropriate range of facilities and scope for improvement and where it can be demonstrated that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes. The sub text to this policy states that policy TO2 aims to protect and enhance the most important and high quality accommodation and facilities.

The 'Turning the Tide' Tourism Strategy 2010-2015 identifies Paignton as a family resort with the Victorian Pier and beach being key features. The same strategy notes Paignton Seafront as a concentrated area of holiday accommodation located closest to the tourist facilities. The application site is located in a sea front location, in a terrace of properties largely in use as holiday accommodation. The site is in close proximity to the town centre and tourism facilities such as the beach, pier and green and is easily accessible by road and rail.

The removal of condition 1 would result in 7 small unrestricted residential units within the Core Tourism Investment Area which would be contrary to policies TO1 and TO2 of the Torbay Local Plan. Policy TO2 explains that the conversion of holiday accommodation to non-holiday uses will only be permitted where it lacks the appropriate range of facilities and where it can be demonstrated that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes.

The building was formerly known as 12-13 Esplanade Road was previously in use as a hotel. In 2013 planning permission was granted to allow the building to be sub-divided to form a hotel (number 12) and a block of holiday flats (number 13). The holiday flats are each self-contained, self-catering flats and supported by owners accommodation to the rear of the site. They are located in a prime tourism area that would in principle be attractive to tourists being accessible and close to tourist facilities. They cannot be described as lacking a range of facilities either within the building or in terms of their proximity to community or tourism facilities and therefore would fail criteria 1 of Policy TO2.

The planning statement submitted with the application indicates that there are other holiday uses on the market in the area, and that there is an oversupply of holiday accommodation. With the replacement of designated Principal Holiday Accommodation Areas (Torbay Local Plan 1995-2011) with Core Tourism Investment Areas (Torbay Local Plan 2012-2030), the new Torbay Local Plan has significantly reduced the number of protected holiday areas. The hotels referred to within the submitted planning statement are largely located outside of the Core Tourism Investment Area and it is hotels outside of these areas that are

recognised as being more suitable in principle for conversion to non-holiday uses. The application submission does not demonstrate that there is no reasonable prospect of the site being used for holiday accommodation and therefore fails criteria 2 of Policy TO2. In line with the above, it is considered that the application conflicts with Policies TO1 and TO2 of the Local Plan with regard to loss of tourist accommodation

Housing for People in Need of Care

The application is for the removal of condition 1 to allow the provision of unrestricted residential permanent accommodation. The intended use class would be C3 (b) with each of the flats being capable of accommodating a single household of not more than six people and receiving care although they could also be used as C3 (a) a single person or people forming a single household or C3 (c) a single household of not more than six people where no care is provided. Whilst the intention of the applicant is to provide six flats for this purpose with one flat being used as an office for staff this would not be facilitated by the removal of condition 1 and a further application would be required in the event that this application was successful. The removal of condition 1 would facilitate any of the uses noted within use class C3 however as the planning statement clearly states the intention is to provide use class C3 (b) flats, policy H6 is considered relevant. Policy H6 states that the Council will support measures to help people live independently in their own homes and to live active lives within the community subject to other policies in the Torbay Local Plan. This policy includes several criteria for consideration, criteria 2 notes that new sheltered housing will be supported where it is within easy reach of community facilities, shops and public transport. The location is within easy reach of community facilities and therefore would fulfil this criteria, however this would not override the concerns raised on tourism grounds. Whilst it is noted that the proposal would meet the criteria of H6 and provide social and economic benefits in terms of job creation (18 full time non-seasonal jobs) and accommodation for people in need of care, such a use could be provided elsewhere whilst achieving these same benefits and meeting the aims of policy H6. There is no requirement for sheltered or supported living accommodation to be provided in seaside locations however quality tourism accommodation is largely dependent on its location close to tourism facilities and a range of transport options, the area has been designated for its tourism character and as such the retention of such facilities in Core Tourism Investment Areas is paramount. On balance it is considered that the harm identified as a result of the loss of the holiday accommodation is not outweighed by the social and economic benefits of providing this type of accommodation which could be provided in accessible locations elsewhere within the Bay.

In the event that the application were to be considered acceptable, policy H6 indicates that a S106 obligation may be sought to meet the likely health and social services costs arising from the proposal however in this instance refusal is recommended and therefore a financial contribution has not be pursued.

Flood Risk

The building sits within Flood Zone 2 and 3 and is at risk from both fluvial and tidal flooding. In flood zone 3 only water-compatible and less vulnerable uses of land are appropriate. As there is no sleeping accommodation at lower ground floor level as a result of the removal of condition 1 in relation to holiday occupancy, the flood risk vulnerability is unchanged at 'more vulnerable'. The Environment Agency has stated that they have no objections subject to the works continuing to proceed in accordance with the flood risk assessment submitted as part of reference P/2013/1320. If approved, the Environment Agency have recommended that a flood evacuation plan is submitted however for the reasons set out above the proposal remains contrary to policy and therefore this has not been requested. Comments from the Drainage Engineer are awaited and will be reported verbally to the Development Management Committee.

Residential and Local Amenity

The impact of a change in occupancy to unrestricted residential use will be limited in the absence of any significant extension and/or intensification of the building itself. Any potential increase in the levels of noise and disturbance would not be significant as both uses will result in a degree of activity and noise in and around the site. The proposal is not considered to result in any serious detriment to neighbouring amenity. The intention to use the site for supported living is noted however simply removing condition 1 would allow the units to be used by any potential occupier for permanent residential use. Were the application considered acceptable in terms of the loss of holiday accommodation and the provision of permanent residential accommodation, the end occupier would not represent a reason to refuse the application in this instance and therefore has not been considered further.

It is noted that the site is located within a Community Investment Area, such areas are designated due to the level of deprivation and related social issues that are experienced in these areas. Policy SS11 of the Torbay Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within the Bay and that they will be assessed against specific criteria. Developments will be required to provide a good standard of accommodation especially in Community Investment Areas by seeking to retain small to medium sized homes (2-4 bedrooms) and resisting change of use of these homes to HMOs and small self-contained flats with the aim to achieve balanced communities. The sub-text to this policy indicates that the Plan will support investment in Community Investment Areas such as the provision of new homes or mixed use schemes where they help to achieve more balanced communities by delivering a mix of employment, family housing, healthcare, childcare, education and local centre facilities. The proposal would not provide family homes, but small flats which are likely to be of single occupancy due to their small scale. The use of these flats for unrestricted permanent residential use, due to their scale would not fulfil the criteria set out in policy SS11 and may perpetuate the level of deprivation within this Community

Investment Area which would be at odds with the aims of policies SS11, TO1 and TO2 of the Torbay Local Plan as noted above.

In addition to the above policy DE3 of the New Local Plan and the DCLG's space standards suggest that a single bed space single storey dwelling should have a minimum internal floor space of 37sqm with an additional 1sqm of built in storage to ensure a good standard of accommodation. In this case some of the flats have a floor area of 26sqm which would fall below these standards and therefore be likely to result in a poor standard of living for future occupants.

S106/CIL -

In line with the Council' Planning Contributions and Affordable Housing: Priorities and Delivery Adopted Supplementary Planning Document, policy SS7 and H6 of the Torbay Local Plan, a financial contribution is likely to be required to mitigate the impact of the development on surrounding infrastructure. However in this instance the proposal is recommended for refusal and therefore a financial contribution has not been sought however may be included as a reason for refusal for matters of protocol.

Conclusions

In conclusion, the proposal to remove condition 1 of application reference P/2013/1320 is considered contrary to policies TO1 and TO2 of the Torbay Local Plan 2012-2030 as it would result in the loss of holiday accommodation within a Core Tourism Investment Area, the proposal would not maintain or enhance the an area designated for its tourism importance and would introduce a permanent residential use which would not be in keeping with the holiday character of the area. Whilst the social benefits in terms of the type of accommodation being provided and the economic benefits in terms of job creation are noted, such benefits would not be outweighed by the harm that would be caused to the tourism industry.

In addition the proposal would result in seven small residential flats within a Community Investment Area, an area that has been designated due to the level of deprivation experienced in these areas. The provision of these flats would not support a balanced community and would be likely to perpetuate the level of deprivation within this area through the provision of small flats which would be unlikely to provide a good standard of living for future occupants contrary to policy SS11 and DE3 of the Torbay Local Plan 2012-2030 and would not support the aims of policy TO1 and TO2 which aim to maintain and enhance Torbay's tourism offer.

Condition(s)/Reason(s)

01. The proposal would result in seven small residential flats within a Community Investment Area, an area that has been designated due to the level of deprivation evident in these areas. The provision of these flats would not support a balanced community and would be likely to perpetuate the level of

deprivation within this area through the provision of small flats which, due to their scale, would be unlikely to provide a good standard of living for future occupants contrary to policy SS11 and DE3 of the Torbay Local Plan 2012-2030.

02. The proposal would result in the loss of holiday accommodation within the Core Tourism Investment Area, the proposal would not maintain or enhance the area designated for its tourism importance and would introduce a permanent residential use which would not be in keeping with the holiday character of the area contrary to policy TO1 and TO2 of the Torbay Local Plan 2012-2030.

Relevant Policies

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