

DCL/20/09

Application No: Y19/0967/FH

Location of Site: Flat 4, 10 Trinity Crescent, Folkestone, Kent, CT20 2ET

Development: Variation of condition 2 of application 83/1121/SH to allow permanent occupation of a ground floor flat for the manager following the amalgamation of two existing ground floor studio flats (resubmission of Y18/1418/FH).

Applicant: Mr. Seyed Tarjormani

Agent: Mr. Roger Joyce

Officer Contact: Robert Allan

SUMMARY

The proposal seeks to vary a planning condition to allow unrestricted occupation of a flat following the amalgamation of two flats that are currently restricted to use as holiday lets.

Whilst some supporting evidence has been supplied, this is somewhat lacking in detail and fails to meet the standard required to meet the exemption criteria as set out within emerging policy E4 of the Places and Policies Local Plan, or saved policy TM2 of the Shepway District Local Plan Review. As such, the loss of visitor accommodation has not been justified and would impact upon the local economy, contrary to emerging and saved policies which seek to protect tourism-related accommodation.

RECOMMENDATION:

That planning permission be refused for the reason set out at the end of the report.

1. INTRODUCTION

1.1. The application is reported to Committee at the request of Councillor David Monk.

2. SITE AND SURROUNDINGS

2.1. The application site is located within the defined settlement boundary of Folkestone and also within the Folkestone Leas & Bayle Conservation Area. The application property, 10 Trinity Crescent, is located at the junction of Trinity Crescent and Sandgate Road and is an imposing 5 storey building of Victorian era, which has been sub-divided into flats.

2.2. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

DCL/20/09

- 3.1 This application seeks a variation of condition 2 of application 83/1121/SH to allow for the permanent occupation of a ground floor flat following the amalgamation of two existing ground floor studio flats to form the aforementioned flat. This proposal is identical to the previously refused scheme Y18/1418/FH. As before, the proposal does not include any external works to the building. Internally, a single new door opening would be created to link the two existing studio flats and create the single new ground floor flat. The stated intention of the proposal is to create a resident owner/manager's flat to facilitate management of the remaining holiday let flats above.
- 3.2 The application includes an updated Design and Access Statement, with the only additional information supplied over and above the previously-refused scheme being a letter from a property agent, Reed Rains, and a further statement from the business owner's accountant.

4. RELEVANT PLANNING HISTORY

- 4.1 Numbers 8 and 10 Trinity Crescent together have been operating as a holiday-let business under the name 'Meyrick Court'. Conversion of no.8 to self-contained apartments has been ongoing for some time following the grant of planning permission under reference Y14/1301/SH (Conversion from existing holiday flats to create five self-contained flats together with internal alterations, reinstatement of front door and reinstatement of internal staircase to facilitate conversion.)
- 4.2 No.10 has been the subject of a certificate of lawful development (ref: Y15/0442/SH) for the use of a flat as unrestricted C3 use (residential) following a continuous period in excess of 10 years (therefore immune from enforcement) in breach of condition 2 of planning permission 83/1121/SH (time limit on occupation period). No.10 has also been the subject of planning permission Y15/1069/SH allowing full residential use of the basement flats.
- 4.3 Condition 2 of planning permission 83/1121/SH ('Conversion of hotel into 14 self-contained and 2 non self-contained self-catering studio holiday apartments', Approved with conditions 5th December 1983) reads: "No person or persons shall occupy any of the flats available for letting longer than a period of two months within any period of six months."
- 4.4 Application Y18/1418/FH for the variation of condition 2 of application 83/1121/SH to allow permanent occupation of a ground floor flat following the amalgamation of two existing ground floor studio flats, was refused on 17.04.2019 for the following reason:

The application includes insufficient evidence to justify the proposed loss of visitor accommodation in an area that is popular for tourist activity, and has failed to meet the exemption criteria of emerging policy E4 of the Places & Policies Local Plan and saved policy TM2 of the Shepway District Local Plan Review. As a result, the proposed loss of visitor accommodation has not been justified, would impact upon the local economy and is considered to be contrary to emerging and saved policies which seek to protect tourism-related accommodation and the principle of the proposal is unacceptable.

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: No objection.

Local Residents Comments

5.2 One representation received, being a typed letter counter-signed by six members of the public with the key issues summarised below:

- No. 10 is not purpose built for its current use resulting in noise and disturbance to adjoining properties;
- The nature of the users (holiday makers) means that they are likely to make noise, ignore requests to contain noise etc;
- Permanent occupiers would strengthen local community;
- Movements late at night / early mornings cause disturbance.

5.3 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the saved policies of the Shepway District Local Plan Review (2006) and the Shepway Core Strategy Local Plan (2013)

6.2 The new Places and Policies Local Plan Submission Draft (February 2018) has been subject to public examination, and as such its policies should now be afforded significant weight, according to the criteria in NPPF paragraph 48.

6.3 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019, as such its policies should be afforded weight where there are not significant unresolved objections.

6.4 The relevant development plan policies are as follows:-

Shepway District Local Plan Review (2013)

SD1 – Sustainable Development

HO1 – New Residential Development

BE1 – Layout, design, materials of new development
BE4 – Conservation Areas
TM2 – Visitor Accommodation
T5 – Cycling

Shepway Local Plan Core Strategy (2013)

DSD – Delivering Sustainable Development
SS1 – District Spatial Strategy
CSD3 – Rural and Tourism Development
CSD6 – Central Folkestone Strategy

Places and Policies Local Plan Submission Draft (2019)

HB1 – Quality Places through Design
HB3 – Internal and External Space Standards
E4 – Hotels and Guest Houses
T2 – Parking Standards
T5 – Cycle Parking

Core Strategy Review Submission draft (2019)

SS1 – District Spatial Strategy
CSD3 – Rural and Tourism Development
CSD6 – Central Folkestone Strategy

6.5 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2019

6.6 Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF.

Paragraph 8 – Three overriding objectives, economic, social and environmental

Paragraph 11 – Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

Paragraph 48 – Giving weight to emerging plans.

Paragraphs 59 to 66 – Delivering a sufficient supply of homes

National Planning Policy Guidance (NPPG)

Design: process and tools

Climate Change

Flood Risk and Coastal Change

Natural Environment

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Principle of development
- b) Residential amenity
- c) Highways
- d) Other Issues
- e) Human Rights

a) Principle of development

7.2 The main consideration in the determination of this application is the principle of the proposed variation of condition to allow for the permanent residential (class C3) use of a newly formed flat. Since the previously-refused scheme was determined, the emerging policy E4 has gained significant weight, as the Places and Policies Local Plan has been through examination in public, with no modifications proposed to this policy. Consequently, there has been no change in the policy position or its wording, however the policies in question have gained weight as explained above.

7.3 Emerging policy E4 states that applications for the change of use or redevelopment of hotels, guest houses or self-catering units which would result in a loss of visitor accommodation will only be permitted where:

1. The standard and type of accommodation that is, or could be provided at reasonable cost, is unsuited to meet visitor demands; or
2. In the case of hotels and guest houses, the premises or site are poorly located in relation to the areas of main tourist activity or tourist routes, and uses in the immediate vicinity are predominantly unrelated to tourism or incompatible with the continued tourist use of the premises; and
3. In addition to the above, it has been demonstrated that the business has been marketed at a reasonable rate and for a period of 12 months.

7.4 Saved policy TM2 of the Shepway District Local Plan Review states that applications for the change of use or redevelopment of hotels/guest houses, self-catering units or caravan and camp sites, which would result in a loss of visitor accommodation will only be permitted where it can be shown that it is no longer practicable to use the premises as holiday accommodation by reason of one of the following criteria:

1. The standard and type of accommodation that is, or could be provided at reasonable cost, is unsuited to meet visitor demands;

DCL/20/09

2. In the case of hotels and guest houses, the premises or site are poorly located in relation to the areas of main tourist activity or tourist routes, and uses in the immediate vicinity are predominantly unrelated to tourism or incompatible with continued tourist use of the premises.

Given the status of the emerging Places and Policies Local Plan, the adopted policy has diminished weight, with the emerging policy adding an additional provision over the previous one in the form of the evidence of marketing at a reasonable rate for a 12 month period. This gives applicants a clear path to demonstrate whether the proposal is acceptable and gives decision-makers clear criteria to work with. Members should focus upon whether the additional information submitted is sufficient to overcome the previous reason for refusal.

- 7.5 The application incorporates headline figures provided by Capital Accountants and statements from the Folkestone Hoteliers Association that were supplied with the previously refused scheme, as well as additional information including an updated Design and Access Statement that reflects the earlier decision, a letter from a property agent, Reed Rains outlining their enquiries relating to the sale of the property, and a further statement from the business owners accountant in an attempt to meet the exemption criteria listed in the policies relating to the loss of tourism-related accommodation.
- 7.6 In assessing the revised application against emerging policy E4 and saved policy TM2, the previous statement from the Folkestone Hoteliers Association indicates that the current accommodation may not be suitable to meet visitor demands given their comments/observations regarding market trends. It is noted that these observations are not specific to the application site and no evidence has been provided that the visitor accommodation that would be lost under this proposal could not provide suitable visitor accommodation at a reasonable cost. Consequently, no new information has been submitted on this point and it is considered that the proposal still fails to meet exemption criteria 1 of emerging policy E4 and saved policy TM2.
- 7.7 Turning to exemption criteria 2 of emerging policy E4 and saved policy TM2, it is considered that the site is not poorly located in relation to the area of main tourist activity given its proximity and connections to The Leas and Folkestone Town Centre and tourist activity is present in the immediate vicinity. Consequently, it is considered that the proposal fails to meet exemption criteria 2 of emerging policy E4 and saved policy TM2.
- 7.8 With regard to exemption criteria 3, no evidence has been provided that the tourism-related business has been marketed at a reasonable rate and for a period of 12 months to demonstrate that it is unviable. The letter from Reeds Rains identifies a perceived drop in investor demand for the type of property the application property is currently arranged as, suggesting that self-contained leasehold apartments would be the preferred choice. Within the design and Access Statement, the agent has stated that the owner "has no wish to market the business, but prefers to operate from within, in the interests of keeping his investment unsullied by third party ownership". Consequently, there is considered to be no evidence of additional marketing having been carried out and no evidence to suggest that the business could not be viable under different management with suitable investment and marketing carried out.

DCL/20/09

- 7.9 The Capital Accountants letter included in the application states that company turnover decreased in 2018, whilst operating profit also fell significantly due to '*an increase in overall administrative expenses*', and company liquidity ratios were not favourable (figures withheld from report for confidentiality purposes). The letter continues with the advice that the business owner should reconsider their ability to remain in business.
- 7.10 Whilst the struggling nature of the business is not in question, none of the information provided shows that staff or external contractors are currently being paid for services, or that the property (and business) has been actively marketed for letting purposes. The loss of a further two units from the existing business is not going to make the existing business more viable – it will shrink the existing business and make it less likely to be able to support the owner. Current practices at the site include letting units for emergency accommodation (within the terms of the condition), which may further impact upon the desirability of the remaining units to potential holidaymakers and also result in the owner not advertising the units for their intended use. It is considered that the aim of local policy is to retain a range of good quality hotel and guest house accommodation in the district, which will appeal to all types of tourist, and resist the loss of visitor accommodation where this would be detrimental to the tourist economy. The application fails to meet exemption criteria 3 of emerging policy E4.
- 7.11 Given the lack of marketing or advertising of services, it is no surprise that the business fails to attract customers. Officers have advised the applicant and agent of this, and have provided advice on how the policy objection could be overcome, however no such evidence has been submitted. In light of the above, the proposal is considered to be contrary to emerging policy E4 of the Places & Policies Local Plan and saved policy TM2 of the Shepway District Local Plan Review. On this basis, the proposed loss of visitor accommodation has not been justified, is considered to be contrary to policy and the principle of the proposal is considered to be unacceptable due to the detrimental impact it would have upon the available stock of visitor accommodation and the tourist economy.

b) Residential amenity

- 7.12 With regard to the space standards set out in emerging PPLP policy HB3, the 1-bedroom flat which would be created under the proposal would exceed the relevant internal space standard of 50 sq m, with a floor area of approximately 72 sq m. It is noted that the flat would not have exclusive access to any outdoor amenity space, with emerging policy HB3 stating that a private usable balcony area with a minimum depth of 1.5m should be provided for flats, however this is considered to be acceptable in this case as the application site is in close proximity to the public open space of The Leas, and has access to a shared rear garden area. On this basis, it is considered that the level of amenity available to future occupiers of the proposed flat would be acceptable and that a variation to the external space standards can be accepted in this case given the character of the area.
- 7.13 Given that the proposal does not include any external alterations, it is considered that there would be no material or discernible net impacts on neighbouring amenity in respect of any overlooking, overbearing presence, overshadowing, or noise and disturbance, in accordance with saved policy SD1.

c) Highways

DCL/20/09

- 7.14 Current arrangements for parking (on-street) would be acceptable given the proposed changes would not give rise to any additional parking requirement relative to the existing use and the site is considered to be a sustainable location, which benefits from good public transport connections, with the proposal considered to be acceptable with regard to emerging policy T2.

d) Other Issues

- 7.15 The current bin storage and collection arrangements would be acceptable to meet the demands of the new 1-bedroom flat following the proposed amalgamation of two studio units.

Environmental Impact Assessment

- 7.16 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.17 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.
- 7.18 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. This application is not liable for the CIL charge as it varies a previous planning permission and would not create any additional floor space.

Human Rights

- 7.18 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

- 7.19 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

DCL/20/09

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.20 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

- 8.1 The proposed variation of condition would result in the loss of visitor accommodation in an area that is popular for tourist activity.
- 8.2 The application fails to provide sufficient evidence to justify this loss or meet the exemption criteria of emerging policy E4 of the Places & Policies Local Plan and saved policy TM2 of the Shepway District Local Plan Review.

9. BACKGROUND DOCUMENTS

- 9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission be refused for the reason set out below.

1. The application includes insufficient evidence to justify the proposed loss of visitor accommodation in an area that is popular for tourist activity, and has failed to meet the exemption criteria of emerging policy E4 of the Places & Policies Local Plan Submission Draft and saved policy TM2 of the Shepway District Local Plan Review. As a result, the proposed loss of visitor accommodation has not been justified, would impact upon the local economy and is considered to be contrary to emerging and saved policies which seek to protect tourism-related accommodation and the principle of the proposal is unacceptable.

