



Appeal Decision

Site visit made on 20 September 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/L2250/W/20/3263547

Flat 4, 10 Trinity Crescent, Folkestone CT20 2ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Seyed Tarjormani against the decision of Shepway District Council.
 - The application Ref Y19/0967/FH, dated 18 August 2019, was approved on 20 August 2020 and planning permission was granted subject to conditions.
 - The development permitted is variation of condition 2 of application 83/1121/SH to allow permanent occupiers of a ground floor flat for the manager following the amalgamation of two existing ground floor studio flats (resubmission of Y18/1418/FH).
 - The conditions in dispute are Nos 1, 2 and 3 which state that: -
 - 1) Units 8&9 as outlined on the submitted floor plans located on the ground floor shall only be occupied by a person(s) employed in managing/operating the holiday let flats within no. 10 Trinity Crescent and their dependents or in accordance with the restrictions outline in condition (2) below. The occupation of the unit(s) by the manager/operator shall cease following a temporary three year period from the date of this decision after which the occupation of these units shall revert to being in accordance with condition (2) below.
 - The reason given for the condition is: To test the long term viability of the proposal and enable increased marketing of the holiday let apartments, in accordance with saved Policy TM2 of the Shepway Local Plan and emerging Policy E4 of the PPLP.
 - 2) No person or persons shall occupy any of the flats located on the first or second floor of no. 10 Trinity Crescent for longer than a period of two months within any period of six months. The flats located on the ground floor shall also be only occupied in accordance with this condition following the end of the temporary three year period referred to in condition (1) above.
 - The reason given for the condition is: In the interest of ensuring the accommodation remains available for holiday let use, in accordance with saved Policy TM2 of the Shepway Local Plan and emerging Policy E4 of the PPLP.
 - 3) Prior to the first occupation of units 8&9 on the submitted floor plans as managers/operators flat, the remaining flats located on the first and second floors of no. 10 Trinity Crescent shall be actively marketed for rent as holiday accommodation through a range of means to include, as a minimum, a website promoting the booking of the accommodation to include an online booking system (or a link to another website with an online booking system), email address, telephone contact and a range of photographs showing the accommodation on offer and the use of an independent holiday accommodation website(s), unless alternative marketing arrangements are previously agreed in writing by the Local Planning Authority. Evidence of the marketing undertaken shall be provide to the Local Planning Authority within one month of the managers/operators flat being occupied.
 - The reason given for the conditions is: In the interests of ensuring the accommodation remains available for holiday let use, in accordance with saved Policy TM2 of the Shepway Local Plan and emerging Policy E4 of the PPLP.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice, reference Y19/0967/FH, refers to units 8 & 9 at the ground floor within conditions 1 and 3. The address provided on the planning application form refers to Flat 4. It is clear from the information that supports the application, including that of drawing no. AL(0)10, that the proposal relates to the amalgamation of two holiday let apartments at ground floor which are referred to on that plan as 4 & 5. It appears to me that the Council's reference to units 8 & 9 may have come from a layout relating to a previous planning application or may be an error. For the avoidance of doubt, I have dealt with this appeal as a proposal to amalgamate the two units at ground floor and shall not refer to those units by number.
3. Since the determination of the planning application the Folkestone & Hythe Places and Polices Local Plan 2020 (the Local Plan) has been formally adopted by the Council. As such Policy TM2 of the Shepway District Local Plan 2013 has been superseded and Policy E4 of the 2020 Local Plan now holds full weight.
4. Although the planning application was made as a Section 73 application, the planning appeal form indicates 'the reason for appeal is that the local planning authority has granted planning permission for a development subject to conditions to which you object'. I have dealt with the appeal on the basis that it relates to an appeal against conditions imposed upon a planning permission.

Background and Main Issue

5. In 1983 planning permission was granted for the conversion of a hotel into 15 self-contained and 2 non-self-contained self-catering studio holiday apartments at what was known as Meyrick Court Hotel, Trinity Crescent (planning reference SH/83/1120). That planning permission was subject to two planning conditions, 1) to implement the development within five years, and 2) placed a restriction that "*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*".
6. Since then many of the holiday units have changed use to residential dwelling units, however, the ground, first and second floor of 10 Trinity Crescent have remained self-contained, holiday apartments.
7. The planning application, the subject of this appeal, sought to remove condition 2 of planning reference SH/83/1120 in order that the two ground floor holiday units can be combined into a Use Class C3 flat for a live in manager. That application was granted; however the appellant disputes the conditions imposed. The main issue is whether the conditions are necessary and reasonable having regard to the Council's development plan policy to retain holiday let accommodation within the District.

Reasons

8. It is advised that the individual floors are registered as separate titles with the Land Registry. However, this does not necessarily indicate that each floor functions separately for the purposes of planning legislation. At present the accommodation over the three floors are holiday apartments. There is free

- movement between these floors and the application details indicate that they are operated collectively by the appellant. This does not lead me to consider each floor would represent individual planning units in this case.
9. The appellant contends that the conditions are 'ultra vires' as the conditions should not have been applied to other parts of the building (the accommodation on first and second floors) that are outside the application site (the ground floor).
 10. The evidence supporting the proposal indicates that the managers accommodation at ground floor is proposed to support the on-going holiday apartments enterprise operated by the appellant on the first and second floors. Indeed, the Design and Access Statement that supports the planning application sets out that to operate the units in a more cost-effective way the applicant, now the appellant, would live on site to run the business himself acting as receptionist, night porter, chamber person and cleaner.
 11. The description of proposed development provided on the planning application form does not limit the proposal to the ground floor and refers to the accommodation to be 'for the live in manager of the remaining Meyrick Court apartments'. In addition, the plan that support the application, drawing no. AL(0)10, provides details of the ground, first and second floors. This plan show the managers accommodation would not be limited to Unit 4, as per the site address provided on the planning application form. The location plan also identifies the application building in red. I, therefore, see no substantive reason why the planning permission should be limited to the ground floor only. I consider the proposal to remove or vary condition 2 of planning permission reference SH/83/1120 can reasonably be read as seeking to alter the ground floor to create a managers flat to be operated in conjunction with the existing holiday accommodation activity on the first and second floors.
 12. Policy E4 of the Local Plan will accept the loss of self-catering units where they are unsuitable to meet visitor demands or where the premises relates poorly to the area's main tourist activities or routes are incompatible with continued tourism use of the premises. Policy E4 also sets out a requirement to demonstrate that the business has been marketed at a reasonable rate and for a period of 12 months.
 13. The Council's committee minutes indicate that Members of its Planning Committee resolved to grant planning permission for the manager to occupy the ground floor flat following the amalgamation of two existing ground floor studios temporarily for a three year period; to properly advertise the remaining holiday lets and provide evidence to the Chief Planning Officer to that effect; and, to impose a condition requiring the remaining holiday lets in the building to be used for holiday accommodation.
 14. In terms of condition 1 it is contested that officers went over and beyond the wishes of members by adding 'the manager/operator shall cease ... after which the occupation shall revert to being in accordance with condition 2'. In respect of what the 'Members actually asked for' Conditions 1 and 2 set out who may occupy the identified units and for what purpose, with condition 1 reflecting the temporary timeframe resolved by Members. I consider this reflects the Committee Member's resolution.

15. Policy E4 resists the loss of visitor staying accommodation but allows for the long-term viability of the proposal to be assessed by demonstrating that the business has been marketed at a reasonable rate and for a period of 12 months.
16. The Committee Minutes indicate that Members considered the current climate and concluded that it was not appropriate to take a hard line in terms of policy. It appears to me that Members have provided an opportunity for the appellant to try to turn the business around. The conditions imposed would allow the appellant to undertake a marketing exercise for a period of 12 months over the temporary period of three years with a live in manager in situ. I consider the wording of the conditions are set out in such a way that would safeguard the aims of Policy E4 of the Local Plan whilst offering the opportunity for the appellant to test the viability of the enterprise with a manager in situ.
17. Further to this, the appellant argues that a lesser financial imposition should be placed upon the appellant to allow him to genuinely test the market within a rapidly changing market. However, I have no details as to what a lesser imposition the appellant would be seeking. It is asked that ultimately the appellant would like to be in a position to offer the last remaining units on the open market by removal of the occupancy condition entirely. However, this would conflict with Policy E4 and I see no justification for imposing such a requirement through a condition without clear evidence that the holiday enterprise is unviable.
18. It is also contended that the conditions have not been used properly and would not pass the six tests. I consider the conditions to be reasonable in allowing the applicant three years to run the business giving the appellant the opportunity to meet those marking requires set out by Policy E4 of the Local Plan. The conditions are both necessary and relevant in that they safeguard the tourism use, as required by Policy E4. The conditions are relevant to the development as they cover the use of the ground floor in association with the management of the existing holiday accommodation on the first and second floors. The conditions are both enforceable and precise as they clearly define the planning purposes of the amalgamated unit on the ground floor, who may occupy it, how long this may take place and what should happen once the temporary period ceases.
19. It is said that there is confusion as to which parts of the property the conditions have been applied. However, as I read the conditions, condition 1 is to be applied the ground floor, condition 2 to the first or second floors and condition 3 relates to the managers flat at ground floor as well as the first and second floors.
20. An occupancy restriction of three years is claimed to be an unreasonable constraint upon the appellant. It is advised that it is the appellant's intention to relocate from his current home. It is also advised that the appellant would live in the converted managers accommodation in the likely knowledge that the business will continue to decline and at the end of the three years he would be required to move out having sacrificed his permanent home. However, if the appellant sees no future in the holiday accommodation business, it begs the question as to the point of the proposal or why he might choose to leave his current place of residence given such circumstances.

21. I note a comment that there have been 11 months of marketing. I have seen sight of a letter from Reeds Rains Folkestone Branch. It notes that some newly converted apartments have sold close by and it is advised that the current configuration within no 10 and the lack of demand for this type of investment and suggests conversion to self-contained apartments. Motis Estates also confirm that they began marketing the property on 18 March 2020 but it does not say for what purpose or provide any other details. Furthermore, I have also seen sight of email correspondence between the agent and the Council. Whilst some websites have been referred to I have no details of what those website promoted. Given the limited information this information provides, these matters offer little weight in support of the proposal.
22. It is suggested that Members implied at the Committee Meeting that after three years the appellant could come back and discuss the situation again after a trial period and the appellant advocates this approach. However, to my mind any future proposal should be made through the appropriate planning processes.
23. For these reasons, I conclude that the conditions imposed are necessary and reasonable having regard to the Council's development plan policy to retain holiday let accommodation within the District. There is no overriding evidence before me that would justify the setting aside of Policy E4 of the Local Plan or to remove or vary those conditions imposed.

Conclusion

24. Having regarded the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR