



Appeal Decision

Site visit made on 18 July 2024

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2024

Appeal Ref: APP/D0840/W/24/3340004

Former The Cottage Hotel, Boskerris Road, Carbis Bay, Cornwall TR26 2RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Oceanview Carbis Bay Ltd against the decision of Cornwall Council.
 - The application Ref is PA22/10390.
 - The development proposed is Change of use from residential development approved under PA21/01576 to an Aparthotel (Planning use class C1).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from residential development approved under PA21/01576 to an Aparthotel (Planning use class C1) at The Former Cottage Hotel, Boskerris Road, Carbis Bay, Cornwall TR26 2RN in accordance with the terms of the application, Ref PA22/10390, and subject to the conditions set out in the schedule to this decision.

Main Issue

2. The main issue is whether the proposed change of use, with or without appropriate conditions, is acceptable with regards to the development plan.

Reasons

3. The appeal site contains a large, recently constructed building containing 37 principal-residence apartments for people aged 55 years and over. Although almost complete, the building requires further works to make it habitable.
4. The proposed change of use would involve some internal alterations to the building. However, the apartments, originally designed and built for use as individual units, would provide all the facilities and services necessary for independent living. As such, the difference between the proposed aparthotel and self-contained apartments is, as the Council suggests, somewhat blurred.
5. Nevertheless, whilst the apartments would provide living accommodation sufficient for private self-contained use, the building would also provide various facilities associated with that of a hotel, such as a reception/concierge area, luggage storage, communal seating, shared terrace, gym, and lounges with refreshments. Despite the lack of an on-site restaurant or café for example, the proposed use would, as recognised in the Council's appeal statement, therefore provide a form of catered accommodation; and with it, associated employment opportunities, along with guests' use of local services and facilities. That the use of the additional facilities and services would be optional and that guests would not necessarily rely on them does not lead me to a different conclusion.

6. Furthermore, the submitted evidence indicates that aparthotels can be classed, subject to the specifics of each case, as hotels under Class C1 of the Town and Country Planning (Use Classes) Order 1987 (as amended). It seems to me that the main parties broadly agree on this, and I have no reason to find otherwise. Consequently, although each of the apartments could provide self-contained living and some of the above listed facilities may also be found in serviced residential accommodation, there is no reason why a planning condition could not be used to limit use of the premises to a C1 hotel use only. Conditions could also secure provision of the various services and facilities that would ensure the aparthotel provided catered hotel accommodation. In coming to this view and having considered the various suggested conditions that seek to do this, I have had regard to the tests in the National Planning Policy Framework (Framework) and the advice in the Planning Practice Guidance (PPG) regarding planning conditions, including in relation to enforceability.
7. On the basis that the proposed aparthotel would come under the Class C1 hotel use and that this could appropriately be secured by condition and enforced, Policy H2 of the St Ives Area Neighbourhood Development Plan 2015 – 2030 (NDP) is not directly applicable to the acceptability of the proposed use. This is because it specifically relates to new open market housing and is silent on changes of use to, for example, hotels. My attention has not been drawn to any other development plan policies that seek to prevent such changes of use. As such, imposing a condition requiring the apartments to be used as principal residences would neither be appropriate nor, given the proposed C1 use, reasonable. In addition, with NPD Policy LED 8 being a permissive policy, even if the proposed use as an aparthotel could not reasonably be described as accommodation that is sufficiently catered to meet the policy's aims, the policy does not direct that permission should be refused in such circumstances.
8. For the above reasons, I conclude that the proposed change of use, with appropriate conditions, is acceptable with regards to the development plan, and find no conflict with Policy 2 of the Cornwall Local Plan Strategic Policies 2010 – 2030 and NPD Policies LED 8 and H2. Amongst other aspects, these seek to avoid the use of open market housing as second/holiday homes, support the provision of hotels subject to various caveats, and seek to generate and sustain economic activity. The proposal would also be consistent with the provisions in the Framework, including in relation to its overarching objectives.
9. The Council also alleges a conflict with CLP Policy 1 with regards to this matter. However, my attention has not been drawn to any words in it that are relevant to this issue. The policy has therefore not been determinative in my decision.

Other matters

10. I recognise that the locality has a large amount of holiday accommodation, residential accommodation is needed in the area, including for (but not limited to) those aged 55 years and over, and that the approved residential scheme would contribute to the supply of principal-residence housing in an accessible location. Permanent residents would also support – and may be employed by – local services and facilities. However, the site is currently unoccupied and, although details are limited as to the levels of interest shown, the available evidence indicates that the marketing carried out to date did not result in any of the residential apartments being sold. In addition, I have not been presented

with any development plan policies that specifically prohibit or seek to prevent such changes of use.

11. A number of other matters have been raised by various parties and I have taken them all into account. This includes: the proposal seeking to circumvent the NDP and the needs and desires of the community; the proposed use being what was actually sought all along; apartments in the approved scheme being over-designed and marketed at unrealistic prices; the need to provide a well-balanced mix of economic, social and environmental benefits; holiday requirements not changing; the housing crisis in Cornwall, with the need for accommodation for local people and long-term rental options rather than holiday lets; the need for the site to remain in single ownership; impact on wildlife; highway safety and parking provision; the living conditions of adjoining occupiers, including with regards to light and air pollution and noise disturbance from the proposal increasing traffic generation and activity on the site; infrastructure requirements; viability; developers should bear the financial risks of development; loss of contributions towards/lack of affordable housing provision; precedent setting; concerns about access over third-party land to the lower car park and the site in general; the effect on the character and appearance of the surrounding area and the living conditions of neighbours of the approved, now-constructed building; potential users of the proposed aparthotel and future changes of use; and the difficulty in finding staff for the aparthotel and the need for staff parking.
12. However, whilst I take these representations seriously, and I recognise the strength of local feeling and concern, I have not been presented with compelling evidence to demonstrate that the appeal proposal would be contrary to policies in the development plan or result in unacceptable effects in relation to any of the matters raised. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed. Furthermore, the planning conditions attached to this decision prevent potential future changes of use without further permission being sought; and with regards to access to the lower car park, the appellant indicates that they now have the necessary agreements in place with Network Rail.

Conditions

13. I have had regard to the various suggested planning conditions and considered them against the tests in the Framework and the advice in the PPG. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
14. In addition to the standard time limit condition, I have imposed a condition requiring the carrying out of the development in accordance with the approved plans in the interests of certainty and clarity. Conditions 3 to 6 are necessary to ensure that the proposed aparthotel is only used as a hotel and cannot be used as, for example, unfettered open market housing (and which could be used as second/holiday homes), contrary to NDP Policy H2. Conditions 7 and 8 are necessary to ensure that the development provides a level of service and facilities sufficient for catered hotel accommodation.
15. Conditions 9 to 12 are necessary in relation to highway and pedestrian safety. Condition 13 is necessary with regards to the privacy of adjoining occupiers and the area's character and appearance. Condition 14 is necessary in the interests of the living conditions of adjoining occupiers and wildlife.

Conclusion

16. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development accords with the development plan as a whole. The appeal is therefore allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location - Planning (3697 - PBWC - 01 - 00 - DR - A - 1002, P05); Site plan - Planning - Proposed Block Plan (3697 - PBWC - 01 - XX - DR - A - 1102, P12); Ground floor plan - Planning (3697 - PBWC - 01 - 00 - DR - A - 2002, P14); First floor plan - Planning (3697 - PBWC - 01 - 01 - DR - A - 2003, P10); Second floor plan - Planning (3697 - PBWC - 01 - 02 - DR - A - 2004, P12); Third floor plan - Planning (3697 - PBWC - 01 - 03 - DR - A - 2005, P10); Fourth floor plan - Planning (3697-PBWC-01-04-DR-A-2006, P08); and Elevations - Planning (3697-PBWC-01-XX-DR-A-3001, P11).
- 3) The premises shall be used as a hotel under Class C1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose (including any other purpose in Class C of the Schedule to the Order or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 4) No apartment within the aparthotel hereby permitted shall be used as a person's sole/permanent place of residence or as a second/holiday home.
- 5) The aparthotel and all the apartments within it shall remain open for booking throughout the year with the exception of necessary periods of maintenance of the whole or part of the development.
- 6) The operator of the aparthotel shall maintain a record of the names and home addresses of guests along with details of the periods of their stays and the units occupied. Those records shall be maintained for a rolling three-year period and made available to the planning authority for inspection on reasonable notice.
- 7) The aparthotel shall maintain the provision of guest facilities, including the 24-hour operating concierge service, in accordance with the information submitted in the Derrington Collection.com brochure received by the planning authority on 18 July 2023.
- 8) Prior to the first occupation of the use hereby permitted, and notwithstanding the broad details shown on the facilities layout submitted to the planning authority on 5 June 2023, full details of the layout of the guest lounges and the facilities available within them on each floor of the proposed aparthotel shall be submitted to and approved in writing by the planning authority. The approved

details shall be provided prior to occupation and retained thereafter for the continued use of guests.

- 9) Prior to the first occupation of the use hereby permitted, parking and turning areas shall be laid out, constructed and made accessible in accordance with approved drawing no. DR.L.1001.PL 02 as attached to decision notice PA21/01576 and the said areas shall not thereafter be obstructed or used for any other purpose.
- 10) Prior to the first occupation of the use hereby permitted, the public footpath 75 shall be diverted in accordance with details to be submitted under a Public Footpath Order.
- 11) Prior to the first occupation of the use hereby permitted, the footway shall be implemented in accordance with the details shown on approved drawing number DR.L.1005.PL attached to decision notice PA21/01576 and retained thereafter.
- 12) Prior to the first occupation of the use hereby permitted, the approved retaining wall shall be completed in accordance with the approved details discharged under decision notice PA20/00299 and retained thereafter.
- 13) Prior to the first occupation of the use hereby permitted, the site boundary treatment (means of enclosure) shall be completed in accordance with the details approved under decision notice PA23/01591 and shall not thereafter be altered or removed, other than by necessary replacement.
- 14) Prior to the first occupation of the use hereby permitted, the external lighting scheme shall be provided in accordance with the details approved under decision notice PA23/01591, and thereafter maintained in accordance with the approved details.

END OF SCHEDULE