

Application Number

P/2013/0775

Site Address

The Corbyn Apartments
Torbay Road
Torquay
Devon
TQ2 6RH

Case Officer

Mrs Helen Addison

Ward

Cockington With Chelston

Description

Modification of Section 106 ref: P/1991/0370 to allow four penthouse apartments to be occupied on a permanent residential basis and the remaining 13 apartments to be used for both holiday letting and short term letting.

Executive Summary/Key Outcomes

The application is to modify the existing S106 agreement relating to the 17 holiday apartments on the site. The proposal is for the four penthouse apartments to be used for permanent residential accommodation and occupancy of the remaining 13 apartments to be revised to a mixed holiday and short term letting use.

This proposal would be consistent with Policy TU6 of the Torbay Local Plan 1995-2011 and the Council's guidance in "Revised Guidance on the interpretation of Policies TU6 and TU7 of the Adopted Torbay Local Plan" March 2010 and would therefore constitute an acceptable proposal in this location.

Recommendation

Subject to revised drafting of the proposed modification to the S106 agreement planning permission be granted. The s106 to be signed and completed within 6 months of the date of this committee.

Statutory Determination Period

The eight week target date for determination of the application was 6th September 2013. The decision on the application will exceed this target.

Site Details

The application site relates to a modern four storey block of apartments that are in holiday use, situated on the west side of Torbay Road opposite the Livermead Cliff Hotel. The property is clearly visible in the street scene. It is finished in brick and render and has a mansard roof. There is a parking court in the front curtilage of the site. On the southern side of the building is the recent South Sands development of residential properties and on the northern side is the Corbyn Head Hotel. The railway line runs along the western boundary of the site.

The surrounding area has a mix of uses which are predominantly residential and holiday. In the Torbay Local Plan 1995-2011 the site is shown as being within a PHAA. In the "Revised Guidance on the interpretation of Policies TU6 and TU7 of the Adopted Torbay Local Plan" March 2010 the site is within an Amber area.

Detailed Proposals

The application is to vary the S106 agreement relating to application reference 91/0370PA, which was for the construction of 17 holiday apartments and associated parking. The S106 agreements limits the occupancy of the 17 apartments as it requires that "the units the subject of the said Planning Application 91.0370 shall be permanently retained for holiday purposes only".

This application is to vary the S106 agreement to allow the four penthouse apartments on the top of the building to be occupied permanently and the remaining 13 apartments to be used for both holiday letting and short term (off season) letting.

The applicant is proposing that the S106 agreement be modified as follows:

- a) unrestricted residential use of the four penthouse apartments
- b) the use of the other 13 apartments shall be:
 - i) from 1 June to 31 August in any year for holiday purposes only
 - ii) from both Easter to 31 May in any year and 1 September to 31 October in an year by persons either for holiday purposes or any other residential purpose providing the stay in any one apartment of non-holiday purposes does not exceed 3 months and no more than 50% of the 13 apartments are occupied for non- holiday purposes as any one time
 - iii) from 1 November one year to Easter in the following year by persons regardless of the purpose of their stay providing the stay in any one apartment does not exceed 3 months
- c) the owners/operators shall maintain an up-to-date register of the names and main home addresses of all persons occupying the 13 remaining apartments for holiday purposes, and shall make this information available at all reasonable times to the Council
- d) the period within which an application to modify/discharge may be made is specified in the proposed modified Section 106 as 12 months.

Summary Of Consultation Responses

N/A

Summary Of Representations

None received.

Relevant Planning History

1991/0370 Erection of 17 Holiday Units and associated parking approved 9.3.92
1991/1008 Alterations To Form Caretakers Accommodation To Proposed Holiday Flats Development Reference Number 91.0370.Pa approved 25.9.91

Key Issues/Material Considerations

The main issues are the principle of changing the use of four apartments to permanent residential use and the proposed changes to the restrictions on the occupation of the remaining 13 apartments.

Principle and Planning Policy -

In the Torbay Local Plan 1995-2011 Policy TU6 is relevant to the loss of holiday accommodation within a PHAA. This states that proposals which are to the detriment of the character and function of the PHAA will not be permitted. A number of criteria where the loss of holiday accommodation will be permitted are identified. This includes where the premises lack an appropriate basic range of facilities or have restricted bedspace capacity, both of which would not be applicable in this case.

The remaining criteria relate to the impact on the holiday character of the area and require the proposed use should be compatible with the surrounding tourism related uses.

The Council has produced further guidance in the document "Revised Guidance on the interpretation of Policies TU6 and TU7 of the Adopted Torbay Local Plan" March 2010. In this guidance the site is within an Amber Area. The guidance states that for Holiday Apartments within an Amber Area conditions on occupancy are likely to be removed.

In support of the application the applicant has advised that the Corbyn Apartments is a loss making business if the apartments are only occupied for holiday use. He considers that the business could be profitable if the four penthouse apartments were allowed to be occupied permanently and the remaining 13 apartments were used for both holiday letting and short term letting. In recent years limited unauthorised short term lets of the apartments have been carried out, but even with this the business has not been profitable. He suggests that the proposed use of the four penthouse apartments as permanent dwellings would provide a rental income stream with reduced servicing costs (cleaning, laundry, heat, light, water and rates) whilst enhancing the holiday occupancy levels of the remaining 13 apartments.

A key issue to be considered in this application is whether the loss of these four good quality purpose built holiday apartments from holiday use would affect the holiday character of the area. The applicant has submitted a comprehensive case that the use of all 17 apartments for holiday purposes in this location is not viable. The proposal to use four of the seventeen apartments for permanent residential accommodation would result in the majority of apartments on the site remaining in holiday use. The remaining 13 apartments would continue to contribute to the holiday character of the area.

The Council's "Revised Guidance on the interpretation of Policies TU6 and TU7 of the Adopted Torbay Local Plan" March 2010, states at Para. 3.15 (relating to holiday apartments within an amber area) that "it is recognised that a more flexible approach to their occupancy may allow for a better overall contribution to the economy of Torbay. On this basis, the Council will consider favourably applications to relax occupancy restrictions on holiday apartments to allow residential use".

It is considered that this part of the proposal would not have an adverse affect on the holiday character of the area and as such would be consistent with Policy TU6 in the Torbay Local Plan 1995-2011. There would be only 4 apartments in permanent residential use, they would enable the business to continue to operate and it is not intended to sell them as separate units of accommodation.

The remaining 13 holiday apartments in the building are currently restricted by the S106 agreement in respect of application reference 1991/0370 to holiday purposes only. As part of the proposal it is proposed to revise this as outlined above. This would effectively mean that the apartments need only be used for holiday purposes between 1st June and 31st August.

For the remaining time occupancy would be restricted to a maximum period of three months, although in the period Easter to 31st May and 1 September to 31st October no more than 50% of the 13 apartments could be occupied for non holiday purposes at any one time.

It should be noted that Policy TU8 in the Torbay Local Plan 1995-2011 allows winter letting of holiday accommodation in the period end of October to Easter with a maximum occupancy period of six months. In comparison with this policy the proposal would permit up to 6 apartments to be let for non holiday purposes in the period Easter to 31st May and 1 September to 31st October. This part of the proposal is considered to be acceptable and would not result in an adverse affect on the holiday character of the area as this would not be within the peak holiday letting period.

Given the need to protect the holiday character of the area, there are a number of points that need to be addressed in the drafting of the S106 agreement, which are as follows;

- It would be preferable for a clause to be agreed that the four penthouse apartments be retained in the same ownership as the remaining apartments, because in the scenario that they were sold, the Council would seek the proceeds from the sale price to be invested in the holiday business. It is understood that the applicant is agreeable to this.
- A provision should be included within the S106 agreement to ensure that if more than 14 units on the site (including the 4 proposed in this application) changed to permanent residential use that an

affordable housing contribution is paid to the Council.

- The Council's Solicitor advises that there would be no advantage to either party in limiting the right to request a modification until 12 months has elapsed.
- Given the nature of the proposed clauses it is also proposed that, in addition to the contributions outlined below, a monitoring contribution be levied in order that the clauses proposed (such as maintaining a register of holiday makers) can be monitored.
- Minor drafting issues.

S106/CIL -

The following S106 contributions would be required to offset the impact of the creation of the four new dwellings on local infrastructure;

Waste Management	£200
Sustainable Transport	£5487
Lifelong Learning	£146
Greenspace and Recreation	£3007
South Devon Link Road	£5200
Admin charge	£702
Total	£14,742

The total payable would be reduced to £14,005 for early payment.

Conclusions

In conclusion, the application is to modify the existing S106 agreement to allow the use of four penthouse holiday apartments for permanent residential accommodation. The applicant has advised that this is needed to maintain the viability of the business. The remaining 13 holiday apartments would continue in holiday use although short term letting is requested outside the main holiday period.

The application site is within a PHAA as designated in the Torbay Local Plan 1995-2011. In the "Revised Guidance on the interpretation of Policies TU6 and TU7 of the Adopted Torbay Local Plan" March 2010 it falls within an Amber area. The guidance in this document supports a flexible approach to the occupancy of holiday apartments. As the majority of the apartments would remain in holiday use during the main holiday period from 1st June to 31st August it is considered that the proposal would not have an adverse affect on the holiday character of the area and would be an acceptable form of development.

Relevant Policies

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