

Application Number

P/2011/1238

Site Address

Apartment 8 Belvedere
37 Marine Drive
Paignton
Devon
TQ3 2NS

Case Officer

Mr John Burton

Ward

Preston

Description

Removal of condition 4 to application P/2000/1231 to allow apartment 8 to be used as residential

Executive Summary/Key Outcomes

The Belvedere is situated within an identified Principle Holiday Accommodation Area and as such saved adopted Local Plan Policy TU6 is a relevant consideration. This would tend to indicate that permission should not be granted. However, the Revised Guidance on PHAA's identifies the site as being within a green area where residential use of holiday accommodation may be permitted. This is a consideration that holds significant weight when determining the application. The Inspector on recent similar appeals at this very property has confirmed the materiality of this revised guidance. There are no changes in circumstances that would indicate that a different decision should be reached from that made by the Inspector. There is thus significant weight in favour of approving this application.

Recommendation

The condition placed upon the original grant of approval under LPA reference P/2000/1231 be varied to allow residential use of apartment 8.

Site Details

Purpose built block of holiday flats on the site of the former Belvedere Hotel, located on the western side of Marine Drive, opposite the Preston seafront and greens.

Detailed Proposals

The applicant has applied for a variation to the condition which restricts use of his flat (no. 8) for holiday purposes only. Condition 4 of permission 2000/1231 states that "The accommodation hereby approved shall be used for the purpose of holiday accommodation only and not as a UK main residence without the express permission of the Local Planning Authority". The removal of this condition would allow permanent residential occupancy of the flat.

It is understood that the apartments within the Belvedere complex are in separate ownership. Some, possibly all, of the flats have been sold off individually, meaning that each unit of occupation (flat) has effectively become a separate planning unit, irrespective of the fact that they were all built pursuant to the same consent. No constraints were imposed by the LPA in 2001 to prevent the flats being sold individually.

Summary Of Consultation Responses

None undertaken.

Summary Of Representations

None received.

Relevant Policies

Saved Adopted Torbay Local Plan, relevant policies

TU6 PHAA
CF6 Community Infrastructure Contributions
CF7 Education contributions
T25 Parking standards

Also relevant are:-

Revised guidance on PHAA's adopted by the Council in March 2010 (Report no. 73/2010), and

LDD6 (Planning contributions and affordable housing) adopted April 2008, and the subsequent update (mitigation and clarification) paper of March 2011.

Relevant Planning History

P/2000/1231/OA Erection Of 20 Holiday Apartments With Associated Facilities (In Outline), approved 25 July 2001. Condition 4 regarding the units being used for holiday purposes only was subsequently challenged on appeal, but the appeal was dismissed, with the Inspector confirming the primacy of policy TU6.

P/2002/1352/RM Reserved matters approved 7 February 2003

P/2010/0566 Removal of Condition 4 of application P/2000/1231/OA to allow flat 7 to be used as a residential flat. Approved 12th July 2010.

P/2011/0214 Change of use from holiday let not being used as main dwelling to residential use at apartment 8. Application refused 26th Sept 2011.

Several identical applications within the Belvedere apartment block seeking the

removal of a condition restricting occupancy to holiday use only were all refused by Members of the Development Management Committee at their meeting in April of this year. Two reasons were given, as follows -

1 - "The proposal to remove condition 4 of planning application P/2000/1231 and allow residential use of the property, is contrary to policy TU6 of the Saved Adopted Torbay Local Plan which seeks to prevent such changes of use within identified Principal Holiday Accommodation Areas (PHAAs) where that change would be to the detriment of the character and function of the PHAA. The Belvedere complex at 37 Marine Drive, Preston, is a purpose built block of holiday flats within the Preston Seafront PHAA as defined by policy TU6.9 and the primacy of this policy in respect of the Belvedere Holiday complex has already been tested and successfully upheld on appeal by Inspector's decision dated 9th May 2002 (reference APP/X1165/A/01/1080318). The paper adopted by the Council in March 2010 provides guidance which interprets and clarifies the policy in the light of recent trends and changes to the holiday industry, however, it does not supersede or nullify the primacy of policy TU6. The Council having regard to the revised guidance on PHAA's, consider that the proposal would fail to meet tests (a) - (d) set out in policy TU6, and there are not any other change in circumstance that would justify a breach of the adopted policy.

2 - The proposal to remove condition 4 of planning application P/2000/1231 and allow residential use of the property, is contrary to policy TU25 of the Saved Adopted Torbay Local Plan which clearly stipulates that residential flats should have 1 off street parking space per unit plus 1 space per 2 units for visitors (1.5 spaces per flat). The Belvedere Holiday Complex at 37 Marine Drive, Preston is a purpose built block of holiday flats which is provided with 1 space per unit only in accordance with the adopted standards for holiday flats. To allow residential use of the flats without any extra provision of off-street parking would therefore be contrary to the adopted policy and be likely to lead to parking on the public highway in an area which only has restricted on-street parking and can get very busy and congested particularly during the summer season. This would be likely to add to congestion and problems with the free flow of traffic, and the accumulative impact of many or all of the flats within the Belvedere Complex adding to this would have an unacceptable impact on the local highway network.

Key Issues/Material Considerations

The property is a medium sized block of holiday flats situated within a Principle Holiday Accommodation Area, as defined by policy TU6.9 of the Saved Adopted Torbay Local Plan. As originally approved by the Council, the purpose of this policy was to resist changes of use away from holiday accommodation where that change would be detrimental to the character and function of the Principal Holiday Accommodation Area. In fact this occurred in relation to the site of the Belvedere apartments when condition 4 of application P/2000/1231/OA was originally challenged on appeal and the inspector, in 2001, dismissed that appeal, confirming the primacy of policy TU6.

Recent changes in holiday trends have led the Council to re-examine and re-interpret the policy in order to ensure that it is up to date, clear and gives a degree of flexibility in the current economic climate. The Council's adopted Tourism Strategy (2009) recommends a reduction in small and marginally located accommodation and the promotion of the best areas as Core Tourism Development Areas. Last year, the Council adopted a revised interpretation of the PHAA policy. Although the Revised Guidance does not form part of the LDF or Local Plan, it is capable of constituting a material consideration although it would not carry as much weight as the Saved Adopted Torbay Local Plan.

There is a potential lack of clarity of the revised Guidance's status, with regard to how much weight it should be accorded when deciding planning applications, given that it is only informal policy delivered outside of the Development Plan, with limited consultation in its preparation. Legal advice has indicated that Policy TU6 of the Saved Torbay Local Plan and TO1 of the Saved Devon Structure Plan remain the relevant development plan policies.

Section 38 of the Planning and Compulsory Purchase Act 2004 indicates that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore the tests in Policy TU6 (a) - (d) should be a starting point when determining applications for proposals affecting PHAAs. This policy states clearly that applications involving the loss of holiday accommodation within an identified P.H.A.A. should be tested against 4 key criteria and that they may be permitted where the following criteria apply:-

- a) the premises lack an appropriate basic range of facilities and do not offer scope or potential for improvement, thereby failing to meet the reasonable requirements of the tourist;
- b) the premises have restricted bedspace capacity, having a limited number of bedrooms (if serviced) or apartments (if self-catering);
- c) the loss of the premises would not be to the detriment of the holiday character of the particular locality, nor set an unacceptable precedent in relation to the concentration and role of nearby premises; and
- d) the proposed new use or development is compatible with the surrounding tourism related uses and does not harm the holiday character and atmosphere of the PHAA.

Of the above 4 considerations, it is considered that c and d applies by virtue of the revised guidance, but a and b do not apply in the case of the Belvedere complex.

Members considered 7 similar applications at their meeting in April 2011, and each one of these was refused permission. Following these considerations, the Council has looked again at its policy in relation to PHAA's. A paper was presented to and agreed by the 'Place Policy Development Group' of the Council and subsequently presented to Full Council on July 13th. The recommendation

was that the revised guidance on the interpretation of policy TU6 (March 2010) be withdrawn pending review as part of the emerging Local Development Framework core strategy and that the Council should rely upon policy TU6 of the Saved Adopted Local Plan for the determination of applications in PHAA's. However, this motion was defeated, confirming that the Revised Guidance was still in force.

Since that time, determination has been made of 3 appeals at the Belvedere Holiday Flats relating to flats 1, 5 and 19 - each of which were refused at the April 2011 meeting. However, the Inspector at appeal, allowed the appeals against the Council's decision to refuse a variation to the restrictive condition. The Inspector's decision is reproduced at page S??. In reaching his decision the Inspector concluded that the Revised Guidance on PHAA's should be given considerable weight in determining the appeals. He also concluded that allowing the appeals "would be very unlikely to have any perceptible impact upon the holiday atmosphere of the wider PHAA or the locality, and that there was nothing to demonstrate that it would harm the character or function of the PHAA".

The Inspector also noted that the decision to grant a variation of condition for flat 7 to allow permanent residential accommodation did set a precedent and in the absence of any change in circumstances there would be a presumption in favour of approval. According to the Inspector the proposal was in accordance with policy TU6. These appeal decisions have over-riding weight when determining the current and future applications for variations to the use restrictive condition on properties at Belvedere.

S106/CIL -

If Members were minded to approve this application consideration should be given to the need for a planning obligation under s106 of the Town and Country Planning Act to offset the costs that would arise from this proposal. It had previously been Council policy not to charge for such contributions where the amount would have been less than £5000. However, this has now been amended by Full Council at its meeting on 24th March 2011, such that smaller developments must now also contribute to any adverse impacts they may generate, with no minimum threshold for contributions. However, Council also resolved that any such contributions should not be applied retrospectively in relation to applications submitted before their determination. The original application in respect of flat 8 was validated before 24th March and so no Community Infrastructure Contribution was due for the proposal when it was originally determined. It is felt that under the circumstances it would not be appropriate to ask for a contribution from any applicant who is re-applying for permission following a previous refusal, so long as the original application was submitted before Committees determination date (24th March 2011). This would apply to this current application.

Conclusions

The Belvedere is situated within an area in which the Revised Guidance on PHAA's states that residential use of holiday accommodation may be permitted. The Inspector has confirmed the materiality of this policy. There are no changes in circumstances that would indicate that a different decision should be reached from that made by the Inspector. There is thus significant weight in favour of approving this application.

Relevant Policies

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