

**P/2011/0214/PA**

**Preston Ward**

**Apartment 8 Belvedere, 37 Marine Drive, Paignton**

**Change of use from holiday let not being used as main dwelling to residential use**

### **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 greens.

### **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.

7 identical applications within the Belvedere apartment block seeking the removal of a condition restricting occupancy to holiday use only were all refused by the Development Management Committee 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.

Other similar applications seeking residential use of holiday properties at the following addresses are also on this agenda:-

3 at Sunhill Apartments, Alta Vista Road,

1 at Carlton Manor, Roundham Road,

1 at Vista Apartments, Alta Vista Road,

1 application (10 units) at Goodrington Lodge, Alta Vista Road.

### **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 of this year (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.

### **Proposals**

The applicant has applied for a change of use to his flat (no. 8) from holiday use to permanent residential. In fact the application should more correctly have been submitted as an application seeking to vary the original planning condition that restricted occupancy. However, the considerations and the resolution that will be eventually reached would be the same. 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 relevant flats.

This applies to each of the 20 units within the development. However, it is understood that the units 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.

### **Consultations**

None.

### **Representations**

None received against this particular application.

### **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 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.

It is not considered that any of the above really apply in the case of the Belvedere complex, and it is for this reason primarily that Members resolved to refuse the 7 similar applications at April's meeting.

Following the considerations made in respect of the Belvedere complex, 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 a paper is being prepared for presentation to Full Council on July 13th. The recommendation will be 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. Pending the evolution of revised policy as part of the LDF Core Strategy, it will be recommended to Full Council that it relies upon policy TU6 of the Saved Adopted Local Plan for the determination of applications in PHAA's.

If Members were minded to refuse this application then consideration should be given to the need for adequate car parking facilities at the site. Whilst holiday accommodation requires parking at a ratio of 1 space per unit, residential would require 1.5 spaces per unit. This could not be achieved at this site where no additional space can be provided for additional off-street parking. Members considered this a significant factor in their reasoning when considering the 7 other applications at April's meeting. Nothing has changed in this regard since that decision was made.

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 sought retrospectively in relation to live applications such as this one. This current application was validated before 24th March and so no Community Infrastructure Contribution would be due for this proposal.

**Sustainability** - The proposal is a sustainable one in as much as it proposes residential accommodation on an existing brownfield site.

**Crime and Disorder** - Not an issue in this instance as the units are already in existence and the requirement for crime prevention will not alter.

**Disability Issues** - This will remain the same as existing, and so there are no new issues arising from these current proposals.

## **Conclusions**

When this proposal is tested against the relevant policy of the Saved Adopted Local Plan it fails. The proposal does not meet the tests of TU6 nor of T25 and so the application should be refused on policy and parking grounds. This is consistent with the most recent decisions at this holiday complex.

## **Recommendation**

Refusal.

## **Condition(s):**

01. 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.

02. 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.