

Application Number

P/2015/0963

Site AddressAbbey Crescent
Torbay Road
Torquay
Devon
TQ2 5FB**Case Officer**

Mrs Ruth Robinson

Ward

Tormohun

Description

Variation of conditions P1, 01, 07 and 09 of P/2013/0470/MPA to allow residential occupation of 13 holiday flats on level 1 and 2 - Cond. P1- amend approved plans to reflect changed occupation for wholly residential use; cond. 01 - delete restriction on use of 13 flats for holiday purposes; cond. 07 - amend Green Travel Plan to reflect wholly residential use; cond. 09 - delete to remove restriction on use of parking on level 2 for holiday flats only.

Executive Summary/Key Outcomes

This application seeks to vary an occupancy condition to allow private residential occupation of 13 self-catering holiday flats in Abbey Sands, a key building in a Core Tourism Investment Area.

This would be contrary to policy TO2 in the recently adopted Local Plan which seeks to maintain and enhance the tourism role of the premises and only allows changes of use in circumstances where there is little prospect of tourism uses becoming established. The flats in question are prime quality and ready for occupation. This is an up to date and more robust policy position than included in the previous Adopted Local Plan.

This should not be set aside without compelling reasons as it will undermine the ability to protect holiday sites elsewhere in the Bay.

The applicants contend that there are viability arguments to support their case and that, if approved; the scheme would deliver new homes and a substantial contribution of £800,000 towards meeting affordable housing needs and £62,550 towards community infrastructure.

The economic justification put forward to support the application, which does not present a rounded view of the viability of the wider site, presents little that is unique to this site and critically, assertions about the value of holiday flats and the state of the buy to let/second homes/ holiday sales market are not backed up by either a specified marketing strategy or any current data relating to sales of comparable sites.

It is therefore recommended that the application to vary the occupancy condition (7) in relation to P/2013/0470 should be refused planning permission as it is contrary to policy TO2 and the loss of this holiday accommodation would not maintain or enhance the tourism role of the defined Core Tourism Investment Area.

Recommendation

It is recommended that the application to vary the occupancy condition (7) in relation to P/2013/0470 should be refused planning permission as it is contrary to policy TO2 of the Adopted Local Plan 2012-2030 and the loss of this holiday accommodation would not maintain or enhance the tourism role of the defined Core Tourism Investment Area.

Statutory Determination Period

This application should have been determined by the 31st December 2015. The delay is due to the submission further information to support the application. This has taken the form of an economic statement to justify the proposed change of use from holiday accommodation to residential occupation.

Site Details

Abbey Sands is a prestigious new residential and commercial development occupying the site of the former Palm Court Hotel.

It includes A3 uses on the ground floor and in part of the first floor, 13 self-catering holiday flats on level 1 and 2 which have been vacant since completion of the building in 2012 and 14 private residential apartments on levels 3 4 and 5. It is a key site in the Belgravia Core Tourism Investment Area which is designed to protect and enhance tourism related uses.

It is prominently located on the seafront, in the Belgravia Conservation Area and in close proximity to the Rock Walk Grade II entry in the Register of Parks and Gardens.

Detailed Proposals

This is a major application to vary conditions P1, 01, 07 and 09 of P/2013/0470 to allow wholly residential use of the 13 holiday flats on levels 1 and 2.

Condition 01 relates to the condition restricting occupation to the flats on levels 1 and 2 to holiday use only.

P1 relates to the approved plans, 07 relates to the Green Travel and 09 to parking restrictions which would have to be amended if the application was approved.

The applicant has included an undertaking to pay Affordable Housing and community infrastructure contributions in line with the calculations included in the

S106 agreement secured pursuant to the approved scheme. This amounts to £800,000 and £62,550 respectively.

Summary Of Consultation Responses

None received.

Summary Of Representations

2 letters objecting to the loss of the holiday flats and the effect this will have on tourism, 1 letter supporting the scheme as it would provide accommodation all year round with benefits to the local economy and 1 letter inquiring whether the S106 contributions could be spent on Abbey Park.

Relevant Planning History

P/2011/1080 was granted on the 9th May 2012 for the redevelopment of the former Palm Court Hotel to provide A3 restaurant uses, 14 self-catering holiday flats and 14 private flats.

P/2013/0470: Amendments to previously approved scheme (P/2011/1080/MPA) included the loss of 1 holiday flat to provide a larger A3 unit over 2 floors. This was approved on the 12.12.13.

Key Issues/Material Considerations

The key issue is whether it is acceptable to vary this condition which restricts occupation of 13 flats on levels 1 and 2 to holiday use only.

Principle and Planning Policy -

The relevant policy is TO2 of the recently adopted Torbay Local Plan. The site is within the Core Tourism Investment Area where there is a presumption that the tourism role will be retained and enhanced.

This specifically states that changes of use to non-holiday uses will only be permitted where the premises lack an appropriate range of facilities and there is no scope for improvement and/or where it is demonstrated that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes.

This policy (TO2) was thoroughly tested during formal examination of the new Local Plan, not least because the owners of Corbyn Apartments sought to amend the boundary of the Core Tourism Investment Area so as to exclude Corbyn Apartments. The Local Plan Inspector did not consider that appropriate and, as such, supported the policy and the definition of the Core Tourism Investment Area in this part of Torquay. The proposal by the owners of Corbyn Apartments highlights the fact that a grant of permission for the current application for Abbey Sands is likely to result in more applications to allow the residential use of high-quality holiday flats in CTIAs.

The holiday accommodation in question is of prime quality and has remained vacant since completion. There has been no attempt to market the units either individually or as a holiday letting business.

The application was submitted in September 2015 when the relevant policy was TU6 of the then Adopted Local Plan. This policy position was slightly more flexible allowing other considerations to be taken into account in determining whether a change of use was acceptable. It also dated from 1997 when the previous Local Plan was adopted which, which does undermine to some degree its materiality.

A more robust stance in terms of protecting key holiday sites has emerged in the newly adopted plan and this reflects advice in recent appraisals of the state and nature of holiday accommodation in the Bay such as 'Turning the Tide' which has supports the need to retain good quality holiday accommodation in order to maintain the areas status as a premier resort.

The accommodation in question is amongst the best self-catering accommodation in the Bay and its loss needs careful scrutiny.

In terms of a background to this application, it needs to be borne in mind that a significant concession has already been made on this site in terms of planning policy. In negotiating the scheme for the redevelopment of the former Palm Court Hotel, 14 private residential flats were included in order to achieve a viable scheme which was in itself an exception to the prevailing policy TU6.

The scheme has been a successful regeneration project and has secured a revitalisation of this former rundown stretch of the sea front. The site has recently gone into liquidation despite the apparent success of the project and the responsibility for the application has passed from the owner of the site to the appointed administrator.

The applicant contends that the application to vary the relevant condition should be approved as the scheme can be shown to have been unviable and it would, if approved deliver new homes and satisfy the requirements of the agreed s106 in terms of the delivery of affordable housing and community infrastructure contributions.

There are three key issues to consider in respect of this application. The viability of the project, whether the scheme delivers its dues in terms of affordable housing and community infrastructure contributions and whether this sufficient to set aside compliance with Policy TO2.

1. Does the viability argument support the change of use?

The key points put forward by the applicant in an economic statement to support

the viability argument are:

1. The scheme was expensive to construct due to a drive for excellence in terms of finish and detail and there were high abnormal site costs.
2. This affected the developer return.
3. The value of the holiday flats in the IVA at just 7% less than open market value was flawed
4. Recent legislative/financial changes have made holiday flats less attractive and reduced profitability.
5. The fact of bankruptcy and administration fully demonstrates that the scheme, with retention of the holiday flats, is not viable.

Firstly, it must be noted that the economic justification submitted to support the application takes costs across the wider scheme but does not reflect on the very high values (in excess of that identified in the IVA) achieved in respect of the private flats and commercial floor space.

The inclusion of private flats was agreed as a means to subsidise the holiday flats so the economic justification is less than rounded if the higher than anticipated return on other elements of the scheme is not reflected in the assessment.

The IVA in relation to the original approval on the site identified that this would be a joint venture scheme between the developer and contractor and that the developer would purchase the holiday flats on completion of the development. The submitted report states that due to the 'current circumstances' this will not be going ahead so there is no immediate buyer for the holiday flats.

The economic statement explains that the acceptable level of developer profit included in the original IVA was eroded by a determination to deliver a scheme of quality and by site 'abnormals' identified at around £1.25m.

These financial problems were exacerbated by the 3% increases in stamp duty, changes in offsetting mortgage interest and by increasing difficulties in obtaining buy to let mortgages. That VAT is payable on holiday flat purchases further affects viability.

The applicants contend that the value of the holiday flats is reduced by about 30% from the estimated open market value whereas the original IVA estimated the difference in value at around 7%.

It is this assumption about the value of the holiday flats that underpins the drive towards having the occupancy condition varied. This assertion is not verified by marketing, an independent assessment or by any data from recent sales of similar types of holiday accommodation in the area.

Policy TO2 does allow viability issues to be taken into account in determining whether a change of use may be acceptable. It is open to applicants to show that continued use or redevelopment is no longer viable but it does emphasise that the extent of marketing is a matter to be taken into account.

The issue from a policy perspective is that this situation has not been market tested. These self-catering flats are of prime quality and all the flats could be sold as a holiday letting business opportunity or to individuals as second homes. Both these options should be tested through an agreed marketing strategy to identify whether there is interest in this site and the value likely to be derived.

The factors described in the economic report are not unique to this site. The drive to secure good quality development on prominent and sensitive sites such as this is not unusual or unique. A scheme of this size is likely to carry quite significant abnormalities and the changes to stamp duty and offsetting of interest on mortgages will apply to all similar sites across the Bay. Against these 'negatives' should be balanced the higher values achieved elsewhere in the scheme in order to present a more realistic picture of profitability.

2. Does the scheme deliver its dues in terms of affordable housing and community infrastructure contributions?

The applicant further supports their case by arguing that the delivery of new homes is a benefit to the Bay and that the scheme would help meet the affordable housing needs by delivering an affordable housing contribution of £800,000 (which it is claimed is equivalent to 30% of the 13 dwellings) and a community infrastructure contribution of £62,550 which would largely be devoted towards greenspace and sustainable transport.

These sums are based on calculations included in the s106 agreed pursuant to the approvals on the site and were designed to ensure that any further changes of use from holiday use to private residential occupation, whether from exercise of the 4 year rule or from specific grant of permission would deliver in terms of meeting affordable housing requirements. The affordable housing contribution is however related to sales value in the agreement so it must be stressed that this is an estimate and may be higher given the values achieved on the apartments on the upper floors.

The argument about the need for affordable housing in the Bay is not disputed and the provision of housing and contributions towards affordable housing and community infrastructure are clearly attractive.

3. Are these factors sufficient to set aside compliance with Policy TO2?

The key test is whether there are any substantive reasons why the clear requirements of Policy TO2 should be set aside. It is a robust and up to date

policy and it has been made more stringent in resisting the loss of tourism related uses than its predecessor policy TU6 specifically to ensure that key tourism areas and uses are protected in a drive to maintain the Bays status as a premier resort.

This is based on evidential data in recent surveys and investigations such as 'Turning the Tide'. To set this aside without clear, unique and specific reasons would open up considerable difficulties in terms of defending similar change of use elsewhere in the Bay.

The economic justification submitted to support the case is a little one sided and does not confirm any unique circumstances in relation to this site sufficient to justify departure from an up to date policy position. The applicants were advised on several occasions that their assertions about value should be market tested rather than assumed as required in the justification to policy TO2.

It is fully recognised that the Abbey Sands is an exemplary development of exceptional quality that has delivered substantial regeneration to this part of the seafront notwithstanding the continued vacancy of the holiday accommodation. It could be argued that the occupation of these flats on a permanent basis can only enhance rather than detract from the overall vitality of the area.

It is also the case that if sold as private homes, the flats could easily be let out for holiday purposes as there is no restriction on such a form of occupancy. However, these factors do not overcome the in principle objection to the loss of good quality holiday accommodation in a key site in a Core Tourism Investment Area.

The delivery of new homes and a substantial contribution to affordable housing and community infrastructure whilst welcome is a secondary consideration. This delivery would be an inevitable consequence of setting the key policy constraint on the site aside. If the argument becomes one of whether the economic benefits exceed the weight that should be given to tourism policies in the Local Plan then this does present problems to the LPA in terms of precedent and consistency in dealing with similar applications across the Bay.

Conclusions

This application seeks to vary an occupancy condition to allow private residential occupation of 13 self-catering holiday flats in a key building in a Core Tourism Investment Area. This would be contrary to policy TO2 in the recently adopted Local Plan which seeks to maintain and enhance the tourism role of the premises and only allows changes of use in circumstances where there is little prospect of tourism uses becoming established. The flats in question are prime quality and ready for occupation.

The applicants contend that there are viability arguments to support their case

and that, if approved, the scheme would deliver new homes and a substantial contribution of £800,000 towards meeting affordable housing needs and £62,550 towards community infrastructure.

The economic justification put forward to support the viability argument presents little that is unique to this site and critically assertions about the value of holiday flats and the state of the buy to let/second homes/ holiday sales market are not backed up by either a specified marketing strategy or any current data relating to sales of comparable sites.

It is therefore recommended that the application to vary the occupancy condition (7) in relation to P/2013/0470 should be refused planning permission as it is contrary to policy TO2 and the loss of this holiday accommodation would not maintain or enhance the tourism role of the defined Core Tourism Investment Area.

Condition(s)/Reason(s)

01. The self catering holiday flats located on the first and second floors and as shown on Plan No's 3281-6101 rev 01 and 3281 6102 rev 02 shall be occupied for holiday purposes only and in accordance with the following criteria:
 1. They shall not be occupied as a person's sole or main residence in the United Kingdom.
 2. The owner or operator of the complex shall maintain an up to date register of the names of all owners/occupiers of individual holiday flats and of their main home addresses and shall make this information available at all reasonable time to the LPA.
 3. The same person or group of persons shall not occupy any holiday flat for more than 12 weeks in any calendar year. Reason: To ensure that the flats remain in holiday use in the interests of maintaining the holiday character of the area and to accord with policy TU6 of the saved Torbay Local Plan 1995-2011.

02. The improvements to the public realm, as detailed in Plan No's RF-P-008-001-07 and RF-P-008-200 rev 05 (as approved in relation to P/2011/1080/MPA) shall be amended prior to implementation by:
 - a) the inclusion of granite paving to the area between the granite paving on the seaward side of the carriageway and the sea wall up to and including the access area to the Puffin crossing. And
 - b) Details of reinstatement of the public realm adjacent to the new entrance to Unit 1 including reinstatement of the public footpath steps. Details of this shall be submitted to and agreed in writing by the LPA prior to any works taking place in connection with the creation and layout of the public realm. Thereafter, the works to the public realm shall be carried out wholly in accordance with the

approved details as so amended and any plans illustrating detail in relation to this matter. It shall be completed in full and in accordance with the approved details prior to occupation of the building for the approved uses.

Reason: To ensure that the building has an appropriate setting and to integrate the site into the wider locality in the interests of visual amenity and an improved pedestrian environment to in accordance with policies BES, BE1 and T2 of the saved Torbay Local Plan 1995-2011.

03. The approved landscape scheme as illustrated in Plan No's RF- P- 008-001-07 and RF-P-008-200-05, (as approved in relation to P/2011/1080/MPA) with the exception of that landscaping identified as plots D to the seaward side of the carriageway, shall be carried out in the first planting and seeding season following the occupation of the building or the completion of the development, whichever is the sooner. This shall be supplemented by a detailed specification for the planting of the troughed areas which are located between the car park areas to the rear of the building and the rear of the boundary wall facing Shedden Hill. Details of the planting regime to be used and a 10 year Management Strategy shall be submitted to and agreed in writing with the LPA prior to planting being carried out. Any shrubs, trees or plants which within a period of ten years from the completion of the development, die are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the visual amenity of the area and to comply with Policy BE2 of the saved Torbay Local Plan 1995-2011.

04. Full details of the colour, type and texture of all external materials to be used in the construction of the building and in the creation of the all the public realm areas shall have been submitted to and approved in writing by the Local Planning Authority prior to their incorporation into the approved scheme. The palette of materials shall be based on those detailed in the approved plans and submitted schedules.

Reason: To ensure a satisfactory form of development and to comply with Policy BES, BE1 and BE5 of the saved Torbay Local Plan 1995-2011.

05. Details at a scale of 1:20 shall be submitted to and approved in writing by the LPA prior to the implementation of these elements of the scheme. These shall include:
1. The relationship of the new building with the retained terrace to the east.
 2. The banding and fenestration relating to the north elevation and how this wraps round to the west elevation particularly the

- relationship to Old Maids Perch
3. Details of proposed windows/doors showing glazing bars, style of opening and position within the reveal
 4. Eaves detail and overhang.
 5. Balconies.
 6. Shop fronts and associated signage.

The building shall not be occupied until it has been completed wholly in accordance with these details and the approved plans relating to the site.

Reason: To ensure that the appearance and architectural detailing of the development is completed to a satisfactory standard and to comply with Policy BES, BE1 and BE5 of the saved Torbay Local Plan 1995-2011.

06. Full details of the hard landscape works to the public realm fronting the building shall be submitted to and agreed in writing by the LPA. This shall include lighting details, street furniture, walls, planters, steps, handrails and works required to create the café seating area including any screens and barriers. These works are to be completed in full prior to occupation of the building unless otherwise agreed in writing with the LPA.

Reason: To ensure that the works to the public face of the building are appropriately detailed and provide an appropriate setting in accordance with policies BES, BE1 BE2 and BE5 of the saved Torbay Local Plan 1995-2011.

07. Prior to the occupation of any part of the proposed building, a staff, resident and visitor Green Travel Plan in relation to the self catering and residential elements of the scheme shall be submitted to and agreed in writing by the Local Planning Authority. This shall be in place for a period of 5 years and shall be accompanied by a timetable for implementation and tied to biennial review periods. The Travel Plan shall be implemented in accordance with these details.

Reason: To ensure that the development is served by more sustainable modes of transport and to comply with Policy TS of the Torbay Local Plan 1995-2011.

08. The development shall not be used/ occupied until the cycle and vehicle parking areas shown on approved /detailed plans have been provided and made available for use. These areas shall be kept permanently available for parking purposes to serve the development.

Reason: To ensure that adequate off-street parking is provided and to comply with Policy T25 of the saved Torbay Local Plan 1995-2011.

09. The car parking spaces allocated to serve the holiday flats as shown in Plan No. 3821-6102 rev 02 shall be for the sole use of visitors to the holiday accommodation and shall not be used to serve the residential flats.

Reason: To ensure that sufficient spaces are available to serve the needs of the holiday use and to meet the objectives of Policy TU6 and T25 of the saved Torbay Local Plan 1995 - 2011.

10. The recommendations of the Interim Ground Investigation Report October 2011 shall be implemented as described in section 4.4 of that report in terms of potential land contamination and the possible need for works to ensure that the retaining wall/cliff face remains stable.

In terms of land contamination, a Phase 2 intrusive site investigation with environmental testing shall be undertaken to identify potential contamination. Should any contamination be found a Phase 2 Report should include a detailed risk assessment to identify potential risks to human health and watercourses. Where risks are identified a detailed remediation strategy should be prepared and agreed with the LPA. A validation statement should be prepared upon completion of any remedial works detailing works undertaken and the results of any validation testing as specified within the remediation strategy.

In terms of land stability, any excavation of the cliff slope will require a detailed site investigation to be carried out in order to determine the most appropriate approach to foundation design. This shall be carried out before any development commences on site.

Measures that are deemed necessary to allow this development to proceed safely in terms of contamination and the long term stability of the rock face and the safety of adjacent occupiers shall be included and thereafter incorporated in the design and construction of the scheme on site.

Reason: To ensure that any instability or contamination issues are resolved in the interests of safety to comply with Policy EP8 of the saved Torbay Local Plan 1995 - 2011.

11. All works shown to be carried out in natural lime stone shall be in accordance with a sample panel erected on site showing the colour of the stone, lie, colour of mortar and method of pointing.

Reason: To ensure that the new stone construction matches the existing stone work in the locality as closely as possible in the interests of preserving the character and appearance of the Conservation Area and to

accord with Policy BE5 of the saved Torbay Local Plan 1995 - 2011.

12. The proposed shop fronts, as agreed pursuant to condition No 5 shall be implemented prior to occupation of any parts of the building for the approved purposes unless otherwise agreed in writing with the LPA.

Reason: To ensure that the building is complete prior to use in the interests of the visual amenity of the area and to accord with policies BES, BE1 and BE5 of the saved Torbay Local Plan 1995-2011.

13. The physical flood mitigation measures as proposed in section 4:3 of the FRA shall be included in the construction of the building and thereafter maintained for the lifetime of the building. An Evacuation Plan shall be prepared and agreed by the LPA in writing prior to the occupation of the ground floor of the building for the uses hereby approved.

Reason: The building is located adjacent to Flood Risk Zone 3 and in view of this the means of escape to the higher ground to the rear of the site in the event of a flood needs to be assimilated into the building layout and design in accordance with the provisions of paragraphs 99 and 103 of the National Planning Policy Framework.

14. The agreed schedule of repairs (subject to clarification in relation to frost penetration of the wall) to the length of stone wall which comprises the northern boundary of the site and is within Rock Walk Gardens, a scheduled entry in the Register of Parks and Gardens works shall be completed prior to occupation of the proposed building.

Reason: To ensure that the entrance to the listed garden, which forms the rear boundary to this site is properly reinstated as a consequence of redevelopment in accordance with policy BE8 of the saved Torbay Local Plan 1995-2011.

15. Details of a lighting strategy in respect of illumination of the building and lighting of the public realm and associated areas shall be submitted to and approved in writing and thereafter implemented prior to occupation of the building.

Reason: To ensure that the architectural quality of the building and its setting is highlighted through an appropriate scheme of lighting.

16. A key feature of the design of the building is the decorative glass panels which act as a divide between the balcony areas of the proposed flats. Details of these, including lighting proposals based on the submitted indicative sketches included in the Design and Access Statement shall be submitted to and approved in writing by the LPA and thereafter

implemented prior to the occupation of any part of the building.

Reason: To ensure that this detail is appropriate and enhances the architectural character of the building in accordance with policy BES and BE1 of the saved Torbay Local Plan 1995-2011.

17. Details of a communal satellite system shall be submitted to and approved in writing prior to occupation of any part of the building. No further dishes shall be installed on the building unless specifically approved by the LPA.

Reason: To prevent a proliferation of dishes on this prominent building in accordance with policies BES and BE1 of the saved Torbay Local Plan 1995-2011.

18. There shall be no access to the roof areas beyond the identified roof terraces as indicated on Plan No.3281-6105 rev 01 except for maintenance purposes. The privacy screen to the penthouse apartment as shown on Plan No. 3281-d100-0 shall be erected prior to the occupation of this apartment and thereafter permanently retained in place.

Reason: To ensure that the residential property to the rear, Corbyn Lodge is not overlooked and to accord with policies H9 in the saved Torbay Local Plan 1995-2011.

19. Full details of all plant, ventilation and extraction equipment required in association with the proposed uses on the site along with any noise attenuation measures that may be required shall be submitted to and approved in writing prior to the commencement of any such use on site.

Reason: To ensure that the visual appearance of the building is not harmed and the amenity of neighbours protected in carrying out the approved uses.

20. The sustainability measures that were confirmed in relation to the use of the whole building in KTA 'Mechanical and Electrical Services' submitted 12.10.11 shall be implemented in construction of this building unless otherwise agreed in writing by the LPA.

Reason: To ensure that the building is constructed and operated in an energy efficient manner in accordance with policy EP1 of the saved Torbay Local Plan 1995-2011.

Relevant Policies

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