

**P/2010/0931/VC**

**Preston Ward**

**Apartment 1 Belvedere, 37 Marine Drive, Paignton**

**Removal of condition on applications P/2000/1231/OA and P/2002/1352/RM to allow apartment 1 as a permanent dwelling house**

**P/2010/1178/VC**

**Preston Ward**

**Apartment 6 Belvedere, 37 Marine Drive, Paignton**

**Removal of condition 4 relating to holiday use on application P/2000/1321/OA to allow apartment 6 to be used as a permanent dwelling house**

**P/2010/1023/VC**

**Preston Ward**

**Apartment 15 Belvedere, 37 Marine Drive, Paignton**

**Remove of conditions to remove restriction of occupancy and allow residential status on applications P/2000/1231/OA and P/2002/1352/RM**

**P/2010/1236/VC**

**Preston Ward**

**Apartment 18 Belvedere, 37 Marine Drive, Paignton**

**Remove of conditions to remove restriction of occupancy and allow residential status on applications P/2000/1231/OA and P/2002/1352/RM**

**P/2010/0947/VC**

**Preston Ward**

**Apartment 19 Belvedere, 37 Marine Drive, Paignton**

**Removal of conditions to allow residential use**

**P/2010/1056/VC**

**Preston Ward**

**Flat 20, Belvedere, 37 Marine Drive, Paignton**

**Removal of conditions relating to holiday use on applications P/2000/1231/OA and P/2002/1352/RM to allow flat 20 to be use as a permanent dwelling house**

**P/2010/0864/VC**

**Preston Ward**

**Flat 5 Belvedere, 37 Marine Drive, Paignton**

**Remove condition 4 to planning application P/2000/1231 to allow and live in as residential status**

### **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.

There are 7 identical applications within the Belvedere apartment block, which are on this agenda.

### **Relevant Policies**

Saved Adopted Torbay Local Plan, relevant policies

TU6 (PHAA)

CF6 (Community Infrastructure Contributions)

CF7 (Education contributions)

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 June 2010.

### **Proposals**

Permission is sought to vary the original planning condition that restricted occupancy. 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. Reason: To ensure that the flats are used for holiday purposes only." 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**

*Legal Services:* Make the following points:-

It is highly likely that a precedent has been set when consent 2010/0566 was issued.

It is unfortunate that it appears that the owners of these holiday flats have the potential to increase the value of their properties without being obliged to contribute towards the additional costs that a change to permanent residential accommodation will add to public finances. However, the original consent was granted nearly 10 years ago; the economy and planning policies have changed in the intervening period.

Flats 1,5,6,15,18,19 and 20 are all separate planning units and are each the subject of different applications. It is not considered that the fact there is a potential for 20 residential flats to be created without any infrastructure contribution or provision for Affordable Housing is a valid reason for refusing any of the individual applications.

Relevant Saved Adopted Local Plan policy T25 regulates maximum provision of parking, rather than minimum.

### **Representations**

A letter of objection to the applications has been received and is reproduced at Page P.202. Objections are made on the grounds that:-

1. The proposals are contrary to the Adopted Local Plan
2. Mixing residential and holiday uses in the same block of flats would have a detrimental effect on all occupants of the building.
3. That change of use should be considered looking at the block as a whole rather than piecemeal consideration of individual flats.
4. Approval could set a dangerous precedent which could be detrimental to the Tourist Industry.

5. Approval could lead to new blocks of holiday flats being built then converted to residential without payment of Infrastructure Contributions or the provision of Affordable Housing.
6. Insufficient parking as determined by the Inspector in 2002.

### **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. This usually resulted in refusal to grant planning permissions to change of uses from holiday accommodation to permanent residential occupation. 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.

However because of recent changes in holiday trends, the policy has been examined again and re-interpreted 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. Prior to its adoption, this Revised Guidance was the subject of public and stakeholder consultation. Although the Revised Guidance does not form part of the LDF or Local Plan, it is capable of constituting a material consideration which can be weighed against others when determining whether consent may be granted.

The revisions to the policy as adopted in March of last year make clear that the site is a 'green area', where only 50+ bed hotels will be protected as holiday accommodation and residential use would be likely to be allowed on small to medium sized properties. The prevailing context is not of a particularly strong holiday character and the majority of properties along the road are not in holiday use. It is therefore clear that in the case of the Belvedere Holiday apartments complex there is no longer a strong policy objection to the proposed removal of the condition restricting occupancy for holiday purposes only. This would apply to whichever unit made the relevant planning application in this regard.

Paragraph 4:17 of report no. 73/2010 (Revised guidance on Principal Holiday Accommodation Areas in response to the Adopted Torbay Tourism Strategy) makes clear that when dealing with applications for the conversion of holiday accommodation to residential use, developer contributions will be sought on the basis of the Adopted Supplementary Planning Document LDD6 ('Planning Contributions and Affordable housing: Priorities and Delivery'). This was originally adopted in May 2008, but has now been examined again and re-interpreted in the light of the current severe economic problems faced by this country, in order to ensure that it is up to date, clear and gives a degree of flexibility in the current economic climate. The 'Planning contributions and affordable housing SPD update 2: Economic recovery measures was updated in June 2010.

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. Therefore on this basis no Community Infrastructure Contribution is due for this proposal.

Affordable housing should rightly be considered as a requirement of any residential development. Indeed LDD6 makes clear that this should be sought before the various other contributions that could

be sought. The planning contributions and Affordable Housing SPD only requires affordable housing to be provided on developments of 15 or more dwellings. Although the block consists of 20 flats, in so far as they are in separate ownership, each flat is now an individual planning unit and a change to permanent residential accommodation would not trigger the Affordable Housing requirements of the SPD.

This application was first presented to Committee at their meeting on 1st November 2010, when Members deferred the item until such time as the complaint made in respect of the application was resolved. Officers have taken further legal advice on this point and it has been confirmed that it would not be reasonable behavior for the Council to hold up the applications due to an ongoing complaint.

**Sustainability** - The proposal is a sustainable one in as much as it creates 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**

Flats 1,5,6,15,18,19 and 20 are all separate planning units and are each the subject of a different application. In the absence of planning reasons to refuse consent, the fact that there is a potential for 20 residential flats (in this case) to be created without any infrastructure contribution or provision for Affordable Housing is not a valid reason for refusing any of the individual applications.

This proposal meets the tests of policy as re-defined by the new documents recently adopted by the Council. Developer contributions are not required on the basis of the recent decision by Full Council. It is therefore appropriate to recommend approval to the proposal.

### **Recommendation**

Approval