

**Application Number**

V/2013/0004

**Site Address**

The Corbyn Apartments  
Torbay Road  
Torquay  
Devon  
TQ2 6RH

**Case Officer**

Mrs Helen Addison

**Ward**

Cockington With Chelston

**Description**

Proposed modifications to Section 106 (P/1991/0370)

**Executive Summary/Key Outcomes**

This application was approved at the meeting of the Development Management Committee on 13th January 2014 subject to completion of the S106 agreement within six months. The agreement has not yet been completed and the decision has not been issued. The applicant has requested a revision to the application.

The application, as approved in January, was to allow eight of the seventeen apartments in the building to be used for residential purposes and to be sold separately. The remaining nine apartments would continue to be restricted to holiday use and would be retained in single ownership. The eight apartments to be used for permanent residential use would be located in the southern half of the building.

The applicant has requested the approved scheme be revised to change which apartments would be used for residential use, and which would continue in holiday use. The applicant would prefer to change a ground floor apartment that is designed for disabled use and previously approved for residential use with an apartment in the northern half of the building. The ground floor apartment would now be used for holiday purposes and the apartment in the northern half of the building would be used for residential purposes.

It is considered that this revision would be acceptable as it would not have an impact on the viability of the retained holiday business as the number of apartments in holiday use would not change. There are positive aspects to this revision as it would result in an additional apartment at ground floor level being in holiday use and it would retain an apartment adapted for disabled use in holiday use. This would be beneficial to the tourist industry as ground floor apartments are popular due to their ease of access and there are a limited stock of holiday apartments suitable for disabled use.

The time period for completion of the Section 106 agreement will need to be

extended for a further three month period.

### **Recommendation**

That the terms of the S106 agreement be revised in respect of the division of the apartments between residential and holiday use.

The time period for signing and completion of the S106 agreement be extended for an additional 3 months from the date of this committee.

### **Statutory Determination Period**

The eight week target date for determination of the application was 14th January. The delay in issuing the decision has been caused by negotiations with the applicant about the terms of the S106 agreement and the applicant's request to revise the proposed development.

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## **PREVIOUS REPORT TO COMMITTEE 13.1.14**

The report to the Development Management Committee from 13.1.14 is below and contains further detail about the proposal.

### **Executive Summary/Key Outcomes**

This application is a revision of application reference P/2013/0775, which was approved by the Development Management Committee on 14th October 2013, and subsequently withdrawn by the applicant because he wished to make a change to the proposal.

The application is to allow all eight apartments previously proposed for residential use to be sold and to clarify that the short term letting of the remaining nine holiday apartments be permitted between the end of October and 30th April. In comparison with the previous proposal under application reference P/2013/0775 it is now proposed that an additional two residential apartments be sold (previously it was requested that 6 could be sold and this has now been increased to 8).

The revision to the S106 agreement would include the following which were previously considered under application reference P/2013/0775;

- Where an apartment is sold a proportion (as yet to be agreed) of the difference between the value of the apartment for full residential use and the value with a holiday use restriction to be reinvested into the Corbyn Apartments business (i.e. funds to be retained in a bank account and drawn down in respect of agreed works only, e.g. maintenance of the apartments)

- If more than 14 units on the site (including the 8 proposed in this application) are changed to permanent residential use then an affordable housing contribution would be paid to the Council;
- S106 infrastructure contributions would be paid for the eight apartments that are changing to permanent residential use; and
- A monitoring contribution is to be paid in order that the clauses proposed (such as maintaining a register of holiday makers) can be monitored.

As a result of this proposal the following would be included in the S106 agreement;

- The sale of up to eight of the residential apartments, with the remaining 9 apartments retained in holiday use during the summer and in one ownership.
- Eight apartments in the southern half of the building to be used for residential purposes and the nine apartments in the northern half of the building to be used for holiday purposes, with short term letting in the winter months between end of October and 30th April.

The sale of two additional flats previously considered acceptable for residential use would not have an adverse affect on the holiday character of the area and 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.

It would provide sufficient flexibility for the serviced apartment block to continue to operate effectively as a business and would have a limited impact on the character of the Principle Holiday Accommodation Area.

### **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 application site is a high class and well maintained holiday operation that contributes positively to the holiday character of the locality.

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**

This application is to make changes to the modification of the S106 agreement that was considered under application reference P/2013/0775 and was agreed at the Development Management Committee on 14th October 2013. Following the Committee meeting the applicant decided to revise his proposal and withdrew application P/2013/0775.

Planning permission was granted for 17 holiday apartments and associated parking on the site under application reference 91/0370PA. The S106 agreement 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".

Under application reference P/2013/0775 it was agreed by the Development Management Committee that eight apartments could be used for residential purposes and nine would be retained for holiday purposes, and those 9 also to be let on a short term basis in the winter period between the end of October and Easter. In addition up to six of the residential apartments could be sold with the remaining 11 apartments retained in one ownership. As part of this approval it was agreed;

- that if an apartment was sold then a proportion (as yet to be agreed) of the difference in the value of an apartment as a full residential use compared to a holiday use either to be reinvested in The Corbyn / put into a fund for maintenance of The Corbyn.

- If more than 14 units on the site (including the 8 proposed in this application) are changed to permanent residential use then an affordable housing contribution would be paid to the Council;

- S106 infrastructure contributions would be paid for the eight apartments that are changing to permanent residential use; and

- A monitoring contribution is to be paid in order that the clauses proposed (such as maintaining a register of holiday makers) can be monitored.

The current application is to make a further revision to the above changes to the S106 agreement to allow eight apartments to be sold with the nine holiday apartments being retained in one ownership.

The applicant has also requested confirmation that the definition of the winter

period when the nine remaining holiday apartments may be used for short term letting be revised from the end of October to 30th April. The applicant requested this revision prior to the consideration of application reference P/2013/0775 at the committee meeting but after the committee report was written. This decision has not been recorded in the minutes and is referred to here for clarity.

### **Summary Of Consultation Responses**

N/A

### **Summary Of Representations**

None received.

### **Relevant Planning History**

P/2013/0775	Modification of S106 ref; P/1991/0370 to allow eight apartments to be occupied on a permanent residential basis and the remaining 9 apartments to be used for holiday letting except during the winter months when they could be used for short term letting. Withdrawn 25.11.13
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 principle of changing the use of eight apartments to permanent residential use and the changing the restrictions on the occupation of the remaining nine apartments has been accepted by the Development Management Committee under application reference P/2013/0775. The issue to consider in this case is whether allowing the sale of two additional flats in permanent residential use would have an impact on the holiday character of the area.

### **Principle and Planning Policy -**

In support of the application the agent has advised that the applicant is seeking this amendment "not because there is a current intention to sell any of the apartments but because the modified S106 will be binding for at least five years and in an uncertain market ... there is a need for as greater flexibility as possible whilst providing the Council assurance that the nine holiday apartments will be run as a business".

The principle of allowing residential use of eight of the apartments on the site has already been accepted. It is unlikely that a change in ownership of two additional apartments would have a significant impact on the character of the PHAA, as there would be no change in the way in which the apartments would be occupied.

The proposed revision to the S106 agreement would require the remaining 9 apartments in holiday use to be within the same ownership. This is seen as a positive aspect of the proposal, as it means the majority of apartments would be operated and run as one business, which would continue to offer fully serviced suite accommodation.

The Council's guidance document "Revised Guidance on the interpretation of Policies TU6 and TU7 of the Adopted Torbay Local Plan" March 2010 identifies this site as being within an Amber Area. The guidance states that for Holiday Apartments within an Amber Area conditions on occupancy are likely to be removed. It continues 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".

In support of the application the applicant has advised that the Corbyn Apartments is not a viable business providing only holiday lettings. The previously agreed modifications to the S106 agreement would provide other income streams whilst meeting the demand for holiday lettings. However the applicant perceives that the restriction that only 6 of the 8 residential apartments is unnecessary as retention of two residential apartments with the 9 holiday apartments would have no benefit to the holiday business. It is noted that there is currently no restrictions on the sale of any of the apartments on the site and the proposal would ensure that the 9 holiday apartments remained within the same ownership which would make a positive contribution to the holiday character of the PHAA.

It is considered that the proposal would be within the spirit of the guidance on the interpretation of Policies TU6 and TU7 in that it would allow a flexible approach to the operation of the business and retain the 9 holiday apartments in the same ownership.

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. As such the proposal for winter letting is consistent with policy.

#### **S106/CIL -**

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

Waste Management	£ 400
Sustainable Transport	£6,903
Lifelong Learning	£ 158
Greenspace and Recreation	£4,013
South Devon Link Road	£6,545

Admin charge	£ 901
<u>Total</u>	<u>£18,920</u>

The total payable would be reduced to £17,975 for early payment.

### **Conclusions**

In conclusion, the application is to modify the existing S106 agreement to allow the use of eight apartments for permanent residential accommodation with the remaining nine being retained for holiday purposes. This principle has previously been accepted by the Development Management Committee under application reference P/2013/0775. The revision to be considered is allowing all eight of the residential apartments to be sold by the applicant rather than 6 as was previously agreed. The remaining 9 holiday apartments would remain within the same ownership. A case in support of this application has been submitted that this revision is needed to maintain the viability of the business by introducing flexibility in the way in which the apartments are occupied.

The applicant has requested that the period for short term letting of the 9 holiday apartments is agreed as being between the end of October and 30th April.

It is considered that the proposal would be consistent with the objectives of Policy TU6 and the Guidance on the interpretation of Policies TU6 and TU7 and would therefore constitute an acceptable form of development.

### **Relevant Policies**

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