

Application Number

P/2011/0849/PA

Site AddressAremo
68 Windsor Road
Torquay
Devon
TQ1 1SZ**Case Officer**

Mr John Burton

Ward

Ellacombe

Description

Change of use from residential to House in Multiple Occupation

Executive Summary/Key Outcomes

It is recognised that in the right place and within established policy criteria, HiMO's represent an important source of inexpensive housing which is clearly needed in Torbay. Although the property sits adjacent to a guesthouse, the area is generally of a residential character and the site is not within a Principle Holiday Accommodation Area. The use is currently unauthorised in planning terms, however, this property has been converted to a high standard. The property also benefits from a (HiMO) licence under EHO legislation.

Recommendation

Committee Site Visit; Conditional Approval; Subject to the completion of a s106 Planning Obligation to offset costs that will arise from the use, conditional approval, to be completed within 6 months of the date of this committee meeting.

Site Details

Mid terraced property, on Windsor Road, with Bronshill Road and the Housing Association properties immediately to the rear, and lying opposite the junction of Windsor Road with Woodville Road and Belmont Road.

Detailed Proposals

Permission is sought for a change of use from a residential property to a HiMO. The property is already in use as such and a lot of work has been undertaken converting the property to make it comply with Environmental Health and Building Regulations. The property has been assessed under Environmental Health Legislation and licensed for up to 14 occupiers arranged as 6 single rooms, 2 double rooms on the ground floor and an apartment for up to 4 occupiers in the roof space. There is a basement area which is used as a home gym and a storage area. There is no evidence of habitation in the basement and no intention to use it for this purpose.

The proposal for a HiMO under Planning Legislation cannot be considered as a change of use to class C4 as this use class is defined as being small shared dwelling houses occupied by between three and six unrelated individuals. Any housing providing for a greater number than this is defined as being a 'sui generis' use. Currently there are 8 people in residence plus the owner who lives in the top flat.

Summary Of Consultation Responses

E.H.O. (Housing) - considered an application to use the property as a HiMO in March of this year. The licence was tested against statutory criteria and met these. So the licence was granted on 22nd march 2011. The criteria considered were as follows:

The house is reasonably suited for occupation by not more than 14 households or persons

The proposed licence holder is a fit and proper person and is the most appropriate person (out of all those reasonably available) to be the licence holder

The proposed manager of the house is the person having control of the house or management or employee of the person having control of the house

The proposed manager is a fit and proper person

The proposed management arrangements for the house are satisfactory

Summary Of Representations

3 responses received from neighbours in the vicinity. One representation is in support whilst the other two object citing the following difficulties

- lack of parking
- noise
- loss of privacy
- contrary to strategic objective SO13
- would prejudice the economic sustainability of the neighbouring business as a guest house
- anti social behaviour
- a non-resident landlord
- untidy land
- property could house up to 22 people.

The letter in support makes the following positive comments

- no objections to proposal as has operated in a good state for some time already
- residents are respectful

- there are no parking problems
- the owner is hospitable.

These letters are re-produced at Page T.201.

Relevant Planning History

P/1981/3247 - use as a guest house, approved 28th January 1982

P/1989/0743 - Detached garage and conservatory

Also relevant is the planning appeal for a property at no. 64 (next door but one) under LPA ref P/2009/0432 in which the Council refused retrospective planning permission for the conversion of the basement to an additional self-contained flat (making 8 in total at the property). The Inspector considered that the primary issue was the effect of the proposal upon road safety in respect of the lack of off-street parking provision with the proposal. The Inspector reached the following determining conclusions:

There was a deficit in off street parking to standard at the property and one additional unit without additional parking provision would exacerbate an unacceptable situation

The location is too hilly to consider cycling as a suitable and practicable alternative

The nearest bus stop was 320 metres away down a steep hill making it too far to be of practicable use

The town centre is only accessible by a tortuous and hilly route and there is no guarantee that any occupier would choose to use the limited local facilities as an alternative.

Key Issues/Material Considerations

Background to planning policy considerations in respect of Houses in Multiple Occupation (HiMO's) -

Concentrations of Houses in Multiple Occupation (HiMO's), and the geographical concentration of certain groups of people residing in them, can lead to substantial changes in the characteristics and social infrastructure of a neighbourhood. The problems associated with HiMO's and the tensions within local neighbourhoods have been well publicised and can include issues such as noise, low-level anti-social behaviour, parking congestion and other environmental impacts. Some of the issues that may be associated with HiMOs are linked to the nature and characteristics of occupiers, including lifestyle and transience, creating a localised impact. There are also cumulative impacts that can arise when the concentrations of HiMOs are increased within communities.

A suite of measures exist in relation to the regulation and management of HiMOs that involves various bodies, including the Council. Each tool is capable of preventing, solving or mitigating certain impacts that are a result of HiMOs and will be appropriate in different circumstances. These are as follows:

Planning Services control the spatial distributions of different uses to ensure that the provision of dwellings (including HiMOs) meets demand in a spatially appropriate and sustainable way;

The Housing Licensing team provides controls over the state and standard of accommodation that is being offered to tenants;

The Public Protection Service investigates, and where appropriate enforces breaches of legislation in relation to noise, litter and other amenity related matters;

Highways and Transport apply and enforce on street parking restrictions and permits;

The Anti-Social Behaviour Unit apply legislative powers in relation to individuals' and groups' conduct, and;

The Building Control team ensure, where the Building Regulation are applicable, the health and safety of people in and around buildings.

The Police play a role where there is a disturbance of the peace.

In addition, HiMO's must comply with the health and safety requirements of the Housing Health and Safety Rating System (HHSRS). This requires accommodation to be healthy and safe, have adequate natural and artificial lighting and sound insulation. Furthermore, Building Control team ensures, where the Building Regulation are applicable, the health and safety of people in and around buildings.

Informed by the national 'Evidence Gathering - Housing in Multiple Occupation and possible planning responses' report, a separate planning Use Class for C4 'Houses in Multiple Occupation' was created by the Government on 6th April 2010. This brought changes of use to C4 into the control of the planning system. This meant that changes of use from C4 to C3 were permitted development but not vice versa. A class C4 use is defined as Houses in multiple occupation with between 3-6 occupants. In broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities. From 1st October 2010, in addition to permitted changes of use from C4 to C3, the Coalition Government granted permitted development rights for conversions from C3 to C4 thereby removing the automatic control of local planning authorities for that change of use.

However, large houses in multiple occupation such as that proposed with this current application, where there are more than 6 people sharing the use of the property, are unclassified by the Use Classes Order. In planning terms they are described as being 'sui generis' (of their own kind). Changes of use to a sui generis use require the submission of a planning application to the Council.

Principle and Local Planning Policy -

The primary issue in this case is whether or not the proposal would meet the tests of policy. The Core Strategy has not as yet been adopted and so the Saved Adopted Torbay Local Plan should be used as the reference point for policy consideration. The relevant policy in this document is H7. This policy lists 8 criteria that need to be met before any application for the sub-division of a building into bedsits or non self-contained residential units (HiMO's) would be permitted. It is appropriate to test this application against each of these:

1) The property should be located within easy reach of public transport and community facilities.

In this regard it is pertinent to note the comments of the Planning Inspector in relation to the provision of 1 additional residential unit at 66 Windsor Road (see above). It was concluded that no. 66 did not have a good disposition in relation to public transport and community facilities. However that was some 2 years ago (December 2009). Officers, in assessing this application have walked from the current application site to the nearest bus stop and in to the town centre and do not consider the distances involved to be unreasonable. The route 65 bus runs directly past the site with numerous bus stops along Windsor Road.

2) The scale and nature of the use does not adversely affect neighbouring residential amenities (by way of noise and general disturbance).

This is a subjective consideration, and should be best judged by those who actually live adjacent to the use. As the proposal is retrospective, this can be done. Of the neighbours either side, one states that the use is a problem on these grounds and the other states that it is acceptable. So this does not really provide any evidenced one way or the other.

The owners of the neighbouring guesthouse maintain that the proposal, if approved, would prejudice the sustainability of their business (as a guesthouse) because guests would be unlikely to return due to anti-social behaviour and the general appearance of the property at no. 68. It is considered important to distinguish the use from its occupancy. Anti-social behaviour is not an inherent and inevitable consequence of a HiMO, but is attributable solely to the behaviour of occupiers. It is clear that planning control exists to regulate uses, however the type of occupants and/or their general behaviour is outside of planning control. This would be controlled by other legislation and ultimately by the police, but is not a matter for planning consideration.

In the case of a HiMO authorised by Environmental Health legislation, there are as a matter of fact, in built anti-social behaviour safeguards, which would not exist with other uses such as self contained dwelling units, and therefore, arguably, there is more control in the case of a HiMO. However, Members are requested to deal with this application on the basis of the use and the implications that would arise from this and not to determine the application on the basis of future potential occupancy which would be beyond the remit of the planning system. With regards to the state of the rear garden, again this is not specifically attributable to the use of the property as a HiMO, but could arise in any circumstance. If the rear garden becomes so bad then the Local Planning Authority could consider the use of an 'untidy lands notice' under s215 of the Act. It is not currently considered justifiable. Therefore on balance it is not felt that the claims made about the impact of the HiMO upon the neighbouring business are such as to justify refusal under planning legislation.

Logically, it is reasonable to conclude that up to 14 occupiers in a small terraced property has the potential to cause more difficulties than would be the case if the same unit was used as a single residential dwelling. It is also the case that the occupiers/residents will change over time and this would affect the relationship with any neighbouring property. However, it is clear that occupancy by itself is beyond the control of the Planning System. In the case of this property, accommodation has been provided to an excellent standard and the HiMO is currently well run. There has been no evidence of difficulties observed by either the Planning Officer or the Environmental Health Officer at various visits. There have been no complaints received by the L.P.A. until this application was lodged and the approved licence under E.H.O. regulations does have A.S.B. controls to remedy any future problems that may arise in this regard.

3) The car parking requirement for the proposed development does not generate an unacceptable level of traffic and adverse environmental impact.

As with criteria 1 above, this was a primary consideration of the Inspector when he considered the proposal for an additional unit at no. 66. It was concluded that there was insufficient parking to service the number of flats being proposed. In the case of this application for a HiMO, possibly containing up to 14 occupiers there is no off-street parking at all, the property being mid-terrace with only a small rear garden and no rear access to it. There is a general assumption that people living in HiMO's would not have access to a car, but this cannot be guaranteed. Nevertheless there is often plenty of parking available on street, except perhaps when Torquay United are playing at home. As has already been clarified, the site is in walking distance of public transport and required services and close to the Town Centre. It is therefore considered appropriate to approve a HiMO with no off-street parking in this case.

4) The development would not lead to a loss of holiday accommodation within a P.H.A.A.

Although the neighbouring property is a guest house and could be adversely

affected by this proposal, the property is not within an identified P.H.A.A. Therefore this consideration is not relevant. The area is characterised by predominantly residential uses and as such the proposed use would not be out of character with that which prevails in the area.

5) The development would not lead to an over-concentration of similar uses which would harm the character and amenity of the area.

Nos. 15, 68 (application property) and 98 Windsor Road currently hold HiMO licences under EHO legislation. There do not appear to be any more in either Mount Hermon Road, Windemere Road, Belmont Road or Carlton Road. Of course it is possible that unlicensed or unauthorised HiMO's exist, but there are currently no outstanding complaints registered with the planning department in relation to other HiMO's local to the application site. On the balance of probability it is reasonable to assume that the area does not have an over-concentration of HiMO uses. There is therefore no evidence to conclude that authorisation of this property as a HiMO in planning terms would be contrary to policy H7(5).

6) A suitable standard of accommodation can be provided.

This has already been tested in the application for a licence under EHO legislation. The property was deemed to be reasonably suited for occupation by not more than 14 households or persons (as referenced in the licence). Comments provided by the EHO case officer and verified by the Planning case officer are that the property has been converted to an exceptionally high standard. The rear garden is in a poor state of upkeep, but this does not affect the basic residential accommodation. The owner maintains that this is his next project and he will improve its appearance. Nevertheless unless the garden became so bad that it justified the service of an abatement notice, this issue would be largely beyond the control of the Planning System. On this basis it is difficult to conclude other than the accommodation is suitable and meets the terms of policy H7(6).

7) Adequate storage facilities can be provided for recycling and refuse collection.

The Council normally provides 1 wheelie-bin for land fill waste and up to three boxes for household recyclables per residential unit. It would clearly be impracticable to do this for each of the potential 14 occupiers, or even on the basis of the 9 bedsit units. The licence holder currently provides bin storage in an appropriate fashion at the front of the property with a well defined area at the rear for overflow bins if it proves necessary. The terms of policy H7(7) are therefore clearly met.

8) Supervision by a resident owner/manager or an alternative appropriate level of supervision.

One of the representations received states that the Licence Holder does not live at the property. However when both the E.H. Officer and the Planning Officer visited the property on separate occasions, the owner maintained (supported by

visual evidence) that he did reside at the property in the top floor unit. It is therefore difficult to argue that there would be a breach of this part of policy H7.

Closing the gap -

There is clearly a big demand for this kind of accommodation within Torbay, and there is already much similar accommodation within the Ellacombe Ward, although not it would seem within this particular area. Recent housing needs surveys reveal that there is a desperate shortage of shared accommodation and HiMO's in Torbay. This is only likely to get more acute when the Government's new rules on claiming Housing Benefit come into force. This HiMO has been created to an excellent standard, meets the tests imposed by Environmental Health legislation and should be supported.

On the minus side, neighbours have stated that there are difficulties with anti-social behaviour. However, this is controllable through the E. H. licence and through the Police. It should not be an issue for the Planning System to address. Nevertheless, this kind of accommodation would be likely to add to the levels of deprivation currently recorded in Ellacombe and this might become a concern if levels of concentration of HiMO's were increased in this area.

S106/CIL -

There is no reason why an application for a HiMO should not have to meet the tests imposed by National and Local policy in respect of making a financial contribution to offset costs that might arise from the use. Policy CF6 and adopted S.P.D. LDD6 (as amended and updated) are relevant in this regard. LDD6 (as amended) is clear that any Planning Obligation would need to seek costs based upon floor area being provided. A HiMO is technically 1 planning unit, so the level of contribution should be based on the total habitable floorspace within the property x 1. This would take it into the 120 sq. m. + range. In this instance, it is considered appropriate for contributions to be sought for the following criteria:-

Waste Management	£ 50
Sustainable Transport (as lack of parking and potentially few cars dictates high use of public transport)	£3610
Lifelong learning	£ 470
Green space and recreation	£2370
Monitoring (at £200 per unit)	£ 200
<u>TOTAL</u>	<u>£6700.00</u>

A contribution towards stronger communities may be considered appropriate because the nature of the use and potential occupiers could lead to community policing issues. However, this is technically only one planning unit, and even the number of bedsits is only 8. Therefore the proposal would fail to meet the 10+ starting point for such a contribution.

Conclusions

HiMO's represent an important source of inexpensive housing which is clearly much needed in Torbay. Nevertheless, they should only be granted planning permission where it can be demonstrated that they meet the requirements of policy and all other interests of acknowledged importance. The property now benefits from a (HiMO) licence under EHO legislation, although this does only verify that the property meets the standards criteria required under EHO legislation. It makes no comment on planning merit or impact on neighbouring properties. Whilst it would be sensible for Council Departments to be consistent in their appraisals, in this instance the criteria used to judge the respective applications are not the same due to the requirements of National legislation. However, following a number of site visits, the standard of conversion at the property was observed to be very good. In view of all of the issues involved as discussed in this report the application is recommended for approval, but will need to be the subject of a Planning Obligation to meet the costs arising (as defined above).

Condition(s)/Reason(s)

01. The use of the property as a House in Multiple Occupation shall be authorised provided that at all times there is on site supervision of the building and its occupants by a resident owner/manager who will oversee the safe and orderly occupation and running of the property.

Reason: To ensure an appropriate degree of control over the use of the property, to safeguard the private amenities of nearby residents, in accordance with the terms of policy H7 of the saved adopted Torbay Local Plan.

02. Within one month from the date of this decision, details of the position, number and type of all external domestic refuse and recycling bins available for use by the occupants, shall have been submitted to and approved by the Local Planning Authority and provided on site, unless otherwise agreed in writing with the Local planning Authority. The approved scheme for refuse and recycling facilities shall then be kept permanently available for use by the residents and occupiers of the HiMO at all times thereafter.

Reason: To ensure that appropriate refuse and recycling facilities are provided and kept permanently available in accordance with the terms of policies H7(7) and W7 of the saved adopted Torbay Local Plan.

Relevant Policies

- H7 Houses in multiple occupation (HMOs)
- H10 Housing densities
- T25 Car parking in new development

CF6 Community infrastructure contributions