

**Application Number**

P/2013/0613

**Site Address**Jesmond Dene  
85 Abbey Road  
Torquay  
Devon  
TQ2 5NN**Case Officer**

Mr Alistair Wagstaff

**Ward**

Tormohun

**Description**

Change of use of guest house (Class C1) to HMO (sui generis) with internal works.

**Executive Summary/Key Outcomes**

The key issues of the proposed scheme are the impact on the Listed Building, the impact on the Conservation Area, provision of a House in Multiple Occupation (HiMO) in this location, the adequate provision of bin and cycle storage and, parking and access. The report concludes that the proposal accords with the relevant planning policies in respect to these key issues and is therefore suitable for planning approval.

**Recommendation**

Conditional Approval.

**Statutory Determination Period**

8 weeks, expires on 16th August.

**Site Details**

Detached Listed Building on the eastern side of Abbey Road, opposite Roebuck House and with the Council's multi-storey car park at its rear. The building is of three storeys over a basement.

The site lies in the centre of the Abbey Road Conservation Area; it is surrounded by a number of key buildings typical of the architecture and visual aesthetic of the fashions of early-period Victorian Torquay (Abbey Road Conservation Area Character Appraisal July 2005, para 4.1.6). It is the only one listed in the group and clearly superior to the others in it. They have all suffered in recent years from deleterious changes to their fabric and settings. It is complemented by the listed group of Roman Catholic Church, presbytery and former School immediately opposite of the 1850/60s.

**Detailed Proposals**

Permission is sought for a change of use from a guest house to a HiMO. The last and current authorised use of the property is as a guest house. The submitted plans show a self contained flat at basement level to be manager's accommodation, and 10 separate residential rooms spread over on the ground, first and second floor above. 3 of the residential rooms have their own internal en-suite facilities, there is a shared kitchen and lounge on the ground floor, a shared kitchen on the second floor and a communal bathroom on each floor. The property currently has, and will retain, 3 parking spaces at the front directly off Abbey Road.

### **Summary Of Consultation Responses**

Conservation – this scheme is an enhancement on the first application. Following site inspection on 25 June it is evident that the new scheme has addressed all the concerns raised in the original comments. All elements of that earlier scheme which had a detrimental effect on the fabric have been removed, and further the proposals now include reversals of some of the mid 20th-century alterations to the original layout.

The kitchen on the second floor will require venting for ovens, hobs etc. but none is shown. Two chimney stacks are attached to adjacent rooms 8 & 9 which may provide a means of venting if joined above ceiling level below the roof itself. However it is done, external venting will be required; this will affect the appearance of the building and will need to be addressed. Tanking to the basement is not ideal, but the historic fabric is generally coarse rather than 'polite', and it is thus acceptable.

English Heritage - not necessary to consult EH on this application.

Highways - Located in central area as such it will be appropriate to provided minimum or 0 parking Highways raise no objections.

Sustainable Transport - require contribution towards cycle route on Abbey Road.

Parks - contribution required towards Castle Gardens, Castle Road.

Environmental Health - Identify that occupied as HMO own will need to apply for a licence.

### **Summary Of Representations**

5 representations have been received. The key issues raised are:

- impact on local area
- overdevelopment
- against the neighbourhood plan
- not in keeping with local area
- impact on local area and anti social behaviour
- inadequate parking
- oversupply of HiMOs in the area
- concern over badger set in locality and Bat colony in area whose nest sites are unknown.

### **Relevant Planning History**

P/2013/0142 Change of use of guest house (Class C1) to HMO (sui generis) with internal works REF - 09/04/2013.

P/2013/0143 Change of use of guest house (Class C1) to HMO (sui generis) with internal works REF - 09/04/2013.

### **Key Issues/Material Considerations**

#### **Background to planning policy considerations in respect of HiMOs**

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.

### **Planning Considerations**

It is important against this background to ensure that the material planning considerations are given due weight and that matters pertaining to other regulators are not given undue consideration. The key planning issues to consider are the change of use to a HiMO, the loss of holiday accommodation, impact on the listed building and conservation area, parking and access, bin and cycle provision.

### **Change of use to HiMO**

Policy H7 sets out 8 criteria to consider in determining applications for a HiMO, 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.*

The property is within easy reach of the Town Centre and a good array of social and community facilities. It is on a prime bus route and within easy walking distance of other bus services. The terms of this criterion are thus met by this proposal.

*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 largely subjective consideration, and would be difficult to judge before it is in place. However, this is one of the criteria that will be assessed, monitored and policed under Environmental Health legislation, and so Officers are confident that this can be achieved. A dedicated managers flat is provided which should ensure stewardship of the property, a further 10 rooms are provided this would be less than the current potential occupation potential of the guest house.

The property on the left/northern side of the site is occupied as business premises (Torbay Support and Recovery Team), whilst the property on the right/southern side is already split into many flats. Given that the existing authorised use of the property is as a guest house, it is likely that there would be an existing level of amenity disruption. To the rear lies the Council's multi-storey car park. On balance it is felt that there is unlikely to be any undue disturbance to these uses caused by the proposed use, such that the LPA could justify refusal.

In any event, 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. Occupancy by itself is beyond the control of the Planning System and the licence that would be required under E.H.O. regulations would have Anti Social Behaviour controls to remedy any future problems that may arise in this regard. Therefore on balance there is no evidence to suggest that the impact of the proposed HiMO upon the neighbouring uses would be so great as to justify refusal under planning legislation.

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.

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

There is a general assumption that people living in a HiMO would not have access to a car, but this cannot be proven. However, the site is within easy walking distance of the town centre and a multiplicity of services essential for everyday living including public transport. The Council's multi-storey car park also lies to the rear. The proposal provides parking for 3 vehicles, although the standards of the adopted policy state that there should be 1.5 spaces per living unit. This means that for the 10 HiMO units and the Managers Flat (11 dwelling units) there should be 16 car parking spaces available. This matter was one element of the previous scheme refusal reason. The Council's Highways department have advised that the unit is located in central area as such it will

be appropriate to provide minimum or 0 parking Highways and as such highways raise no objections.

There have been a large number of applications determined in Torquay, Paignton and Brixham town centres where new residential units have been allowed without a requirement for any parking provision. Equally the impacts of the previous use and its traffic generation need to be considered as a guest house with owner's accommodation and 10 further letting rooms which has successfully operated with the current level of provision. The application also includes provision for cycle parking offering a sustainable travel option.

In this instance it is considered that, given the properties location, the response from highways and the provision of cycle storage, on balance the level of parking provided is adequate.

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

Although the application property is a guest house, it does not lie within one of the Council's identified Principal Holiday Accommodation Areas (P.H.A.A.'s). Therefore this particular criterion is not relevant.

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

The Local Planning Authority appears to have granted consent for a few HiMO uses in Abbey Road and some in Warren Road over many years, but it is not clear how many there are in the immediate vicinity. Given the evidence currently available, the Council cannot conclude that the area has an over-concentration of HiMO uses in the immediate vicinity although it has been identified by representations that the wider area does have a concentration of HiMO. This matter has been discussed with the Environmental Health Department who have confirmed that there is not a large concentration of Licence HiMOs in the immediate or wider area. It is therefore concluded that this criterion has been met.

*6) A suitable standard of accommodation can be provided.*

This criterion would need to be largely satisfied if the HiMO was to be licensed under EHO legislation. It is clear from the plans provided that the units are of a reasonable size, 3 of which have en-suite facilities, bathroom facilities are available on all floors and access to a communal lounge and 2 kitchens is also provided. It is concluded that this is acceptable for this level and type of accommodation being provided.

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

This was part of the previous refusal reason for the last application. The plans submitted identifies a dedicated waste and recycling area to the side of the property, as such this criterion and the previous refusal reason have been overcome.

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

The plans clearly show a large self contained flat within the proposed basement plan it has been confirmed by the agent that this will be a managers flat, and the accompanying planning statement makes clear that this is intended for a manager. Any approval given should be conditioned to ensure that this occurs. In this way, criterion 8 would be met.

In relation to the policy consideration for the provision of a HiMO it is considered that there is not a policy objection to the scheme.

### **Loss of holiday accommodation**

The loss of the holiday accommodation is considered in accordance with policy TU7 (changes to holiday accommodation outside of PHAA's) of the Saved Adopted Torbay Local Plan. The Council has deemed this policy to be in compliance with the NPPF, so long as consideration is given to the 'presumption in favour of sustainable development' as stated in paragraph 14 of the NPPF. The 3 requirements of policy TU7 are that:-

(i) The loss of the holiday accommodation does not undermine the holiday character in the locality, or the range of tourism facilities or accommodation offered by the resort. This is considered to be met because this is not a holiday area.

(ii) The site of the accommodation is of limited significance in terms of its holiday setting, view and relationship to tourism facilities. It is not so clear whether this is met because the property is within good walking distance of Torquay's major beach and the harbour. On balance though it would be difficult to conclude that this part of Abbey Road had significance to the tourist industry which is focused on the seafront, Harbour area and the PHAA's.

(iii) The new use would be compatible with the character and other uses in the area. These are predominantly residential and commercial uses and as such the proposed use would not be out of character with that which prevails in the area.

### **Impact on the Listed Building**

This matter has been considered in detail in the report to application P/2013/0614, which is also being considered at this Committee. The Listed Building application concludes that the previous Listed building and planning application proposed a scheme of works and alterations which were considered to have a negative impact on the Listed building.

This revised scheme has addressed all the concerns raised in relation to the previous application and removed all elements which had a detrimental effect on the fabric. This application also now includes reversals of some of the mid 20th-century alterations to the original layout which were detrimental to the original building.

The scheme of work is seen as an enhancement to the listed building and will help preserve it in to the future. There are a number of features which are not necessarily enhancements, these include the provision of new internal doorways and the tanking of part of the basement floor. These alterations do however facilitate a new use to the building and are not considered significantly detrimental by the conservation officer.

The NPPF also advises that local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. In this regard the works are

required to bring the building into a viable uses. The works are also balance against the larger scheme of works which are enhancements to the building.

### **Impact on the Conservation Area**

The proposed scheme seeks to restore and repair the building including the external façade, as such the proposal is considered to both preserve and enhance the Conservation Area.

### **Cycle and bin storage**

As discussed above, provision for bin and cycle stores have been included with this application. In relation to the cycle store only 3 spaces have been proposed and these are not secure or covered although there would be the potential for this to be done. This matter has been discussed with colleagues in sustainable transport who have advised that provision should be made for a further 2 cycle spaces and that all spaces should be secure. There is clearly potential within the side/rear of the site for a dedicated store to be provided. This matter can be secured by way of condition and as such the previous refusal reason can be overcome.

### **Parking and access**

Consideration of this matter has been given under criteria 3 of policy H7 above. In summary it has been concluded by officers that on balance the proposal provides adequate parking. There is parking for 3 vehicles, for the 10 HiMO units and the Managers Flat (11 dwelling units). In this instance it is considered that, given the properties location, the response from highways and the provision of cycle storage, that the level of parking provided is adequate.

This view is different from that taken in the previous application. It is recommended that Members view the site in order to make a judgement on this matter considering officers viewpoint has changed upon mature reflection given the comments from highways and the provision of cycle parking, some onsite parking and the fact that the site is on an existing bus route.

### **Ecology**

In one of the representations received concern has been expressed in relation to the location of a Badger set on site. The proposal does not include any extension to the current built form and as such this matter is not considered significant in relation to the determination of the application. Badgers are however a protected species and should they be found on site the applicant should ensure their protection. The same representation also raises concerns for Bats however the property is currently in use and bat activity has not been seen on site, there is also very limited potential nesting sites, however they are a protected species and should they be found on site the applicant should again ensure their protection. An informative can appropriately draw this to the applicants attention.

### **S106/CIL -**

#### **FINANCIAL CONTRIBUTION:**

Waste Management	£50
Sustainable Transport	£3,176.67
Lifelong Learning	£36.67
Greenspace and Recreation	£1,936.67

South Devon Link Road                      £1,3000  
(please note the figures above have been reduced down to allow this contribution as per  
Planning Contribution SPD update 4 requirement)

TOTAL FOR DEVELOPMENT              £6,500 + 5% administration fee £325

5% Discount for early payment = £325

Total payable as an up-front payment = £6,175 + 5% administration fee £308.75

The applicants have advised that they will pay via an upfront payment subject to a positive outcome at the Committee Meeting.

### **Conclusions**

The proposed scheme is considered to comply with the policies of the Saved Adopted Local Plan and the NPPF and as such is recommended for Conditional Approval.

### **Condition(s)/Reason(s)**

01. Prior to the first occupation of the property as a HiMO, a plan showing a dedicated cycle store for 5 or more cycles shall be submitted to and approved by the Planning Authority in writing. The cycle store shall then be constructed in accordance with that plan and made available for use prior to occupation of the site and be permanently retained for the use of the property there after.

Reason: To ensure satisfactory provision of secure cycling facilities and in accordance with Policies T1, T3T25, BES, BE1 and H7 of the Saved Adopted Local Plan 1995-2011

02. The lower ground floor flat shall only be used and occupied as Managers Accommodation ancillary to and for the purposes of providing accommodation for the supervision of the House of Multiple Occupation. The Manager's Accommodation must not be sold, let or otherwise disposed of as a separate self contained flat. Reason: To ensure the House of Multiple Occupation is managed and in accordance with policy H7 of the Saved Adopted Torbay Local Plan 1995-2011

03. The car parking layout hereby approved shall be made available for the sole use of parking for the House of Multiple Occupation, hereby approved.

Reason: To ensure provision of dedicated parking and in accordance with Policy T25 of the Saved Adopted Local Plan 1995-2011.

04. The use of the property as a House of Multiple Occupation shall only be occupied in accordance with the plans hereby approved, no further letting rooms shall be provided and the lounge, kitchens, bathrooms shall be used for those purposes only and permanently retained as such.

Reason: To ensure a satisfactory standard of living accommodation is provided

and in accordance with Policy H7 of the Saved Adopted Torbay Local Plan 1995-2011.

05. The schedule of works hereby approved shall be undertaken in full including all repair works, prior to the first occupation of the property.

Reason: To ensure the preservation and restoration of the Listed Building and in accordance with policies BE6 and BE7 of the Saved Adopted Torbay Local Plan 1995-2011.

06. 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.

### **Relevant Policies**

H7 - Houses in multiple occupation (HMOs)  
CFS - Sustainable communities strategy  
T25 - Car parking in new development  
CF6 - Community infrastructure contributions  
W7 - Development and waste recycling facilities  
TU7 - Change of use or redevelopment of new ho  
T26 - Access from development on to the highway  
NPPF - National Planning Policy Framework  
BES - Built environment strategy  
BE5 - Policy in conservation areas  
BE6 - Development affecting listed buildings  
BE7 - New uses for historic buildings