

COMMITTEE REPORT

APPLICATION DETAILS

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| APPLICATION NO: | DM/14/02423/FPA |
| FULL APPLICATION DESCRIPTION: | Retention of 2 no. 6 bedroom small HMO's (C4 use class) with associated works (part retrospective) |
| NAME OF APPLICANT: | Mr Simon Williams |
| ADDRESS: | Land To The West Of 4 South Terrace Framwellgate Moor DH1 5EN |
| ELECTORAL DIVISION: | Framwellgate and Newton Hall |
| CASE OFFICER: | Tim Burnham, Planning Officer, 03000 263963 tim.burnham@durham.gov.uk |

DESCRIPTION OF THE SITE AND PROPOSALS

SITE

1. The application site consists of two properties that have been constructed on the southern side of South Terrace, Framwellgate Moor, Durham. One property, identified as 6 South Terrace, appears complete while 5 South Terrace is still being fitted out internally. To the north sits residential properties on Victoria Court and associated garden areas. To the west sits an undeveloped plot of land and garden areas. To the south sits a rear track/path, beyond this sits terraced properties on Tindale Avenue with associated gardens. Site levels are relatively flat. The site is accessed from a roadway adjacent to Browns Hairdressers on Front Street. The access road has been tarmaced from the Methodist church, past 1-4 South Terrace and past the application site to the unmade turning head at the western end of South Terrace.

PROPOSAL

2. The applicant proposes to retain two residential properties that have been commenced under planning approval 10/00845/FPA and to an extent have been built in line with these plans in terms of general footprint and design. This application seeks to rationalise both external and internal changes to the original approval and the proposed use of both properties. The property furthest to the east is known as 5 South Terrace and the westernmost property is known as 6 South Terrace.

3. To the north facing elevation of 5 South Terrace this application differs from that in 2010 in that an enlarged central window has been provided along with a bay window and 2no. dormer windows. To the south facing elevation patio doors and a window have been introduced to serve a lounge area, while a bedroom window has been introduced at ground floor level. A dormer window has been introduced to the east facing side elevation of 6 South Terrace along with three windows and a door. To the west facing elevation of this dwelling two dormer windows have been provided.

4. Internal changes have also been made to the properties. The associated external changes including dormer windows have allowed the applicant to provide 6 bedrooms per property as opposed to the three bedrooms per property originally proposed. It is now clear to Officers that the properties have been and will be brought into use as C4 small houses in multiple occupation (3-6 occupants) and the application seeks approval for these properties to be within the C4 use class.

5. The application has been referred to the planning committee at the request of Cllr Wilkes. His concerns are detailed in the Consultee Responses section later in the report.

PLANNING HISTORY

6. Planning permission was refused for 2 dwellings with duplex apartment in 2009. Planning permission for a similar scheme to that put forward in 2009 was again refused in 2010. Planning approval was granted for 2no. 3 bed dwellings in 2010, the associated discharge of conditions application is pending consideration. A variation of conditions application relating to dormer windows and an additional window is pending consideration. A variation of conditions application was returned to the applicant in 2014 as it was not possible to deal with the proposed C4 use under this type of application which only seeks to deal with minor material amendments to previously approved schemes. Full, partially retrospective planning permission has instead been sought hence this application under consideration by members. Determination of the above outstanding applications will depend on the outcome of this application.

PLANNING POLICY

NATIONAL POLICY

7. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.

8. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'

The following elements are considered relevant to this proposal;

9. *NPPF Part 6 - Delivering a wide choice of high quality homes.* To boost significantly the supply of housing, applications should be considered in the context of the presumption in favour of sustainable development.

10. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.

LOCAL PLAN POLICY:

11. **Policy H2 (New Housing in Durham City)** requires that new housing is in keeping with the traditional character and setting of the City, preferably on previously developed sites.

12. **Policy H13 (Residential Areas – Impact upon Character and Amenity)** states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

13. **Policy T1 (Traffic – General)** states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property

14. **Policy T10 (Parking – General Provision)** states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.

15. **Policies Q1 and Q2 (General Principles Designing for People and Accessibility)** states that the layout and design of all new development should take into account the requirements of all users.

16. **Policy Q3 (External Parking Areas)** requires all external parking areas to be adequately landscaped, surfaced, demarcated, lit and signed. Large surface car parks should be subdivided into small units. Large exposed area of surface, street and rooftop parking are not considered appropriate.

17. **Policy Q8 (Layout and Design – Residential Development)** sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.

18. **Policy U8a (Disposal of Foul and Surface Water)** requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.

EMERGING PLANNING POLICY

19. The emerging County Durham Plan was submitted in April 2014 and has been examined in public. In accordance with paragraph 216 of the NPPF, decision takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. Further, the Planning Practice Guidance explains that in limited circumstances permission can be justifiably refused on prematurity grounds: when considering substantial developments that may prejudice the plan-making process and when the plan is at an advanced stage of preparation (i.e. it has been submitted). To this end, the following policies contained in the Submission Draft are considered relevant to the determination of the application; Policies 15 and 32 are relevant.

20. Policy 15 – Development on un-allocated sites All development on sites that are not allocated in the County Durham Plan or in a Neighbourhood Plan will be permitted provided the development:

- a. Is appropriate in scale, design and location to the character and function of the settlement;
- b. Does not result in the loss of a settlement's last community building or facility (of the type which is the subject of the proposal) unless it can be demonstrated that it is no longer viable or has not been purchased by the community following the procedures set out in the Community Right to Bid;
- c. Is compatible with and does not prejudice any intended use of adjacent sites and land uses; and would not involve development in the countryside that does not meet the criteria defined in Policy 35 (Development in the Countryside).

21. Policy 32 - Houses in Multiple Occupation and Student Accommodation

In order to support mixed and balanced communities and maintain an appropriate housing mix, applications for new build Houses in Multiple Occupation and changes of use from:

- a Class C3 (dwelling house) to a Class C4 (House in Multiple Occupation), where planning permission is required; or
- a Class C3 (dwelling house) to a House in Multiple Occupation in a sui generis use (more than six people sharing).

will not be permitted if the application site is located in, or within 50m of, a postcode area where more than 10% of the total number of properties is already in use as a licensed HMO or student accommodation exempt from council tax charges

In all cases proposals will only be permitted where:

- a. There is sufficient car parking to avoid exceeding the capacity of the street (taking into account any existing parking restrictions);
- b. They provide acceptable arrangements for bin storage and other shared facilities; and
- c. The design of the building or any extension would be appropriate in terms of the property itself and the character of the area

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

CONSULTEE RESPONSES:

22. Cllr Wilkes has raised concern relating to the access road and highways issues, the internal layout of the properties, use of properties as HMO's, the development being built without the correct planning approval in place, their scale and mass which is not considered in keeping with the character of the area, a history of problems being associated with this location and as there is no report in relation to flood risk.

23. Highways Development Management has raised no objections.

INTERNAL CONSULTEE RESPONSES:

24. Northumbrian Water has raised no objections.

25. Drainage and Coastal protection have requested that a drainage scheme be submitted.

PUBLIC RESPONSES:

26. Letters of objection have been received from 4 addresses while a further letter of concern has been received. It has been questioned whether the application 10/00845 has been implemented in time. It is suggested that the application is contrary to Policies Q8, H9, H10 and Q9 of the Local Plan and Policy 32 of the Emerging Local Plan. It is suggested that there would be inadequate separation distances to properties on Tindale Avenue and Victoria Court with resultant loss of privacy to properties and garden areas. Surrounding occupiers are concerned about existing and future noise and disturbance from the occupiers of the properties. It is suggested that the setting would become dominated by student accommodation and that the area would be de stabilised in this respect. It is suggested that there is not enough parking provision and the development will cause highways problems in the area. One letter of comment suggests that obscure glazing to the upper windows on the southern elevation and the provision of robust boundary treatment could help to reduce impact on Tindale Avenue to the south.

APPLICANTS STATEMENT:

27. The applicant has applied for planning permission to construct 2no. 6 bedroom dwelling houses for use as student lets (C4 use class). The site has a long and protracted planning history, but with the benefit of planning approval 4/10/00845 for 2no. three bedroom dwelling houses (C3 use class), the construction of the dwellings has been carried out under this approval. This application deals with the use class change as well as the inclusion of dormer windows to the roof line.

28. The previous application also included road and road drainage improvements to South Terrace, this work has been complete with the previous application and has proven to be a major improvement on the state of the former unfinished road surface.

29. The new dwellings have been constructed in facing brickwork and render wall finish with feature artstone heads and cills to openings. Traditional sliding sash timber window components have been installed to the main elevations with casement timber windows used on the rear elevations. The roof has been finished in natural roofing slate and the dormer windows constructed with traditional lead sheet linings providing a quality looking development.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file

PLANNING CONSIDERATIONS AND ASSESSMENT

30. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the development of the site, the layout and design, the impact upon the residential area, highways and other issues.

The Principle of the development of the site

31. In terms of the principle of the development, the main issue for consideration under this application is whether or not the principle of 2 no. 6 bed HMOs is acceptable in this location.

32. The principle of physical development at the site has been established through planning approval 10/00845/FPA therefore the principle of some level of development has been established. This is a sustainable location in a built up area where new residential development would be supported in principle. The associated decision notice for this application was issued on 1st February 2011. This would mean that development on this scheme would need to have commenced by the end of January 2014 to comply with the commencement condition. Whilst a letter of objection suggests that the development had not commenced on the site prior to 1st April 2014, Officers have photographic evidence dated 15th April 2014 which shows the properties substantially built. Further, building regulations Officers inspected foundations at the end of January, and the digging of foundations constitutes a material commencement of development.

33. Since the properties have been commenced, un-authorised deviations have been made from the originally approved scheme. The principle change has been in the proposed use of the properties. It has become clear that the properties are intended for use as C4 small HMOs. 5 South Terrace which is not yet complete has been fitted with 6 bedrooms, 4 of which are en-suite. 6 South Terrace which Officers understand is complete and is tenanted has also been fitted with 6 bedrooms, all of which are en-suite.

34. On 6 April 2010, an amendment to the Use Classes Order introduced a definition of small-scale houses in multiple occupation into the planning system. It effectively split the old Class C3 (dwellinghouses) into 2 separate classes – Class C3 (dwellinghouses) and Class C4 (houses in multiple occupation).

35. The original application was received on 15th November 2010 after the introduction of the new C4 use class. The application however was made for '2 dwellings' with the associated floor plans showing three bedrooms per property at first floor level with one en suite bedroom per property with no accommodation within the roof space. Essentially, it appears that the properties on the original plans had a typical 'family' layout and were intended for the C3 dwellinghouse use.

36. Whether or not the impact from two small HMO's would be acceptable is discussed in the section below dealing with impact on residential area from paragraphs 44-51. Notwithstanding this, the principle of the development is considered acceptable.

The layout and design of the development

37. Policy Q8 requires that new residential development should be appropriate in scale, form, density and materials to the character of its surroundings. It requires that adequate amenity space and privacy should be afforded to each dwelling and outlines appropriate separation distances between properties. These separation distances are guidelines only, provided within the supporting text and are not within the main policy wording.

38. The separation distance between the main north facing elevation of 5 South Terrace and properties on Victoria Court is approximately 19.5metres. While this is shorter than the recommended 21mtrs outlined within Policy Q8 of the local plan the separation distance that exists is not considered so harmful as to have a significant impact upon residential occupiers in Victoria Court. Officers are aware of the differences in land levels between the

two sites with Victoria Court being at a slightly higher level. This has been taken into account in assessing the proposals.

39. Separation distances of between 13.2 and 13.8 metres exist from the rear south facing elevations of the property to the north facing elevations of properties on Tindale Avenue. The required separation distance of Policy Q8 of blank two storey elevation to habitable room window is 13mtrs, and this separation distance is met in relation to the blank south side elevation of 6 South Terrace. Habitable room windows have been introduced at ground floor level into the south facing elevation of 5 South Terrace. These windows would serve a lounge area and a bedroom. Whilst separation distances would not be met here, Officers consider that the erection of a 1.8mtr close boarded fence along the rear boundary of the property could resolve any issues of privacy between 5 South Terrace and windows on Tindale Avenue. The introduction and retention of this fence would allow very little or no overlooking from the rear windows of 5 South Terrace towards properties on Tindale Avenue.

40. Officers note that windows on the South Elevation of both new properties at upper floor level that serve bathrooms and a stairwell have been fitted with clear glazing. Although not classed as habitable rooms, Officers consider that in the interests of inter privacy with Tindale Avenue, these windows should be fitted with obscure glazing which should be retained for the lifetime of the development. A condition is included requiring these windows to be fitted with obscure glazing.

41. The two dwellings have been designed to match the scale, form and density of nearby properties and are considered acceptable in this respect. The design of the dwellings would not look out of character with the surroundings. The quality of materials used is high, the timber windows and brickwork used exceeding the specification that would generally be used in this location.

42. Officers acknowledge that outdoor amenity space at the site would be limited, provided only in the form of small yard areas to the rear and side of the dwellings. Nevertheless, the space provided would not be significantly out of character to that provided at many residential properties in the area.

43. On balance, officers consider that the application is appropriate in terms of Policy Q8. The proposed development does not raise significant issues surrounding its relationships to other nearby properties that would warrant refusal of the development, while the dwellings would be suitable in scale, form, density and materials to their surrounds.

The impact upon the residential area

44. Policy H13 states that planning permission will not be granted for new development or changes of use which would have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

45. The public register of HMO's 2014 states that 3 South Terrace is licensed as a 7 bed HMO, while 4 South Terrace is licensed as a 6 bed HMO. Officers acknowledge there could be other HMOs within the terrace which would not be of such a type to require HMO licensing. Properties situated off the turning head at the western end of the Street appear to be normal residential occupation. The street could therefore be considered to be of mixed tenure.

46. The Council is currently considering a longer term strategy in relation to houses in multiple occupation within Durham City and the matter is still under review. Policy 32 has been included within the Emerging County Durham Plan that has been submitted for public inquiry. This policy seeks to restrict changes from C3 to C4 use and C3 to Sui Generis

HMO use where there is already a high concentration of student properties. Given the level of student accommodation within South Terrace, it is possible that the increased provision of student accommodation in this area may exceed the thresholds identified within this Policy. However, given the policy has been subject to significant comment and has been re-written through the enquiry process, Officers are only able to give this Policy extremely limited weight at this time.

47. Concern over the habitation of the property by students is noted. It is acknowledged that students may have different lifestyles to many other residents on the street. Officers acknowledge that for example a 6 bed HMO could create some additional comings and goings in comparison to a three bed family dwelling.

48. There is a variety of type and range of housing within South Terrace and Officers consider that provision of these two HMO's would not result in a development that would be to the detriment of the range and variety of local housing stock. There are no set thresholds in relation to the acceptability of one type of housing or another, and it is for Officers to make a considered judgement, taking into account all relevant material considerations on the matter.

49. The properties proposed would offer acceptable accommodation as small HMO's. A limited amount of curtilage space would be provided and unlike the terrace of properties at no.s 1-4, curtilage space would be provided to the front and side of the dwellings where it would be possible to store bins within the boundaries of the properties.

50. In light of the above considerations and in accordance with Policy H13, officers do not consider that the provision of two 6 bedroom HMOs in this location would create a situation where the character or appearance of the area or the amenities of residents within them would be significantly compromised.

51. Officers do not feel that the provision of the two small HMOs in this location would contravene the National Planning Policy Framework which aims to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.

Highways

52. Highways Development management have raised no objections to the scheme and have accepted the provision of three off street parking spaces at the site. This acceptance is based on the assumed level of car ownership of 15% amongst the student population, who are the likely tenants of such properties. The access road at the site has been upgraded satisfactorily.

Other issues

53. The drainage and coastal protection section have requested details of drainage at the site, these details would be conditioned. Further amended plans have been received which have not been subject to neighbour consultation. These changes to the plans have arisen as within the ground floor of 5 South Terrace the kitchen and bedroom have been swapped from front to back and a smaller window than previously proposed has been inserted into the ground floor bedroom to the rear of the dwelling. These changes are not considered materially significant in the wider context of the scheme and Officers did not wish to delay the committee's determination of the application further. Policy H9 of the City of Durham Local Plan is not considered relevant in the consideration of this application as it relates to the conversion of existing dwellings for HMO uses. Officers acknowledge the substantially retrospective nature of this application; any unauthorised development has been carried out at the developer's risk. Nevertheless, a retrospective application is one of the first options in seeking to address a

planning breach, and the development should then be assessed on its merits. The removal of permitted development rights at the site is considered essential in order to protect privacy and amenity in the immediate vicinity, and a condition is proposed to control this.

CONCLUSION

54. Officers consider the application acceptable in terms of the principle of the development, the layout and design of the development, the impact upon the residential area and highways impacts. The principle of Class C3 residential development has been accepted at the site, and although Officers acknowledge that a small HMO may result in some additional comings and goings and other impacts these are not considered to have such a significant adverse effect on the character or appearance of the residential area, or the amenities of residents within it, to justify refusal of planning permission. The development is considered acceptable in scale, form, density and materials to the area. The access road has now been surfaced and Highways Officers have raised no objections in relation to access or parking provision.

55. Officers consider the application to meet the requirements of the National Planning Policy Framework parts 6 and 7 and Policies H2, H13, T1, T10, Q1, Q2, Q3, Q8 and U8A of the City of Durham Local Plan 2004.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions;

1. The development hereby approved shall be carried out and maintained in strict accordance with the following approved plans.

Drawing 201 REV G received 12th August 2014

Drawing 206 Revision D received 29th September 2014

Drawing 204 Revision G received 25th November 2014

Drawing 205 Revision F received 25th November 2014

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies H2, H13, T1, T10, Q1, Q2, Q3, Q8 and U8A of the City of Durham Local Plan 2004 and parts 6 and 7 of the NPPF.

2. Notwithstanding details submitted within the application, within 3 months of the date of this approval or prior to the first occupation of 5 South Terrace, whichever is the sooner, a 1.8mtr high timber fence of close boarded construction shall be erected along the rear boundaries of 5 and 6 South Terrace adjacent to properties on Tindale Avenue. This fence shall be retained for the lifetime of the development.

Reason: In the interests of ensuring adequate levels of privacy and amenity for the occupiers in Tindale Avenue in accordance with Policy Q8 of the City of Durham Local Plan.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), within 3 months of the date of this approval or prior to the first occupation of 5 South Terrace, whichever is the sooner, the upper windows to the rear south facing elevation of both 5 and 6 South Terrace

shall be provided with obscure glazing to level 3 of the Pilkington scale or privacy equivalent and such obscure glazing shall be retained for the lifetime of the development.

Reason: In the interests of ensuring adequate levels of privacy and amenity for the occupiers in Tindale Avenue in accordance with Policy Q8 of the City of Durham Local Plan.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no development falling within Classes A, B and C of Part 1 of Schedule 2 of the said Order shall be carried out on the site without an application for planning permission having been first made to and approved in writing by the Local Planning Authority.

Reason: In the interests of the ensuring adequate levels of privacy and amenity for the occupiers of properties in Tindale Avenue in accordance with Policy Q8 of the City of Durham Local Plan 2004.

5. No development shall commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

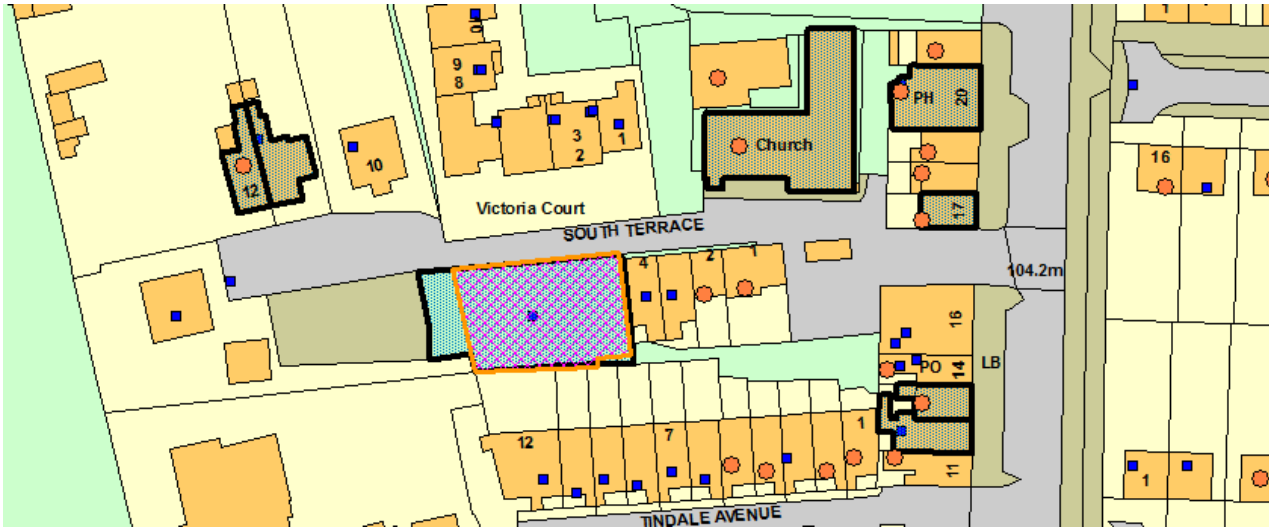
Reason: To prevent the increased risk of flooding from any source in accordance with the National Planning Policy Framework and Policy U8A of the City of Durham Local Plan 2004.

STATEMENT OF PROACTIVE ENGAGEMENT

56. In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process. The application has been presented to committee at the earliest possible opportunity and in compliance with the requirement in the National Planning Policy Framework to promote the delivery of sustainable development.

BACKGROUND PAPERS

Submitted Application Forms, Plans and supporting documents
National Planning Policy Framework
City of Durham Local Plan 2004
County Durham Emerging Local Plan
Response from Councillor Wilkes
Response from Objectors and Comments
Consultee responses



Planning Services

Retention of 2 no.6 bedroom small HMO's
(C4 use class) with associated works
(part retrospective)

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Date 09th December
2014