

<u>No:</u>	BH2019/00478	<u>Ward:</u>	Hollingdean And Stanmer Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	10 Selham Close Brighton BN1 9EH		
<u>Proposal:</u>	Application for removal of condition 4 of application BH2018/01160 (Change of Use from residential dwelling to 6no bedroom small House in Multiple Occupation (C4) incorporating revised fenestration, sound proofing, cycle stands and associated works (Retrospective)) which states no extension, enlargement, alteration or provision within the curtilage of the of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.		
<u>Officer:</u>	Joanne Doyle, tel: 292198	<u>Valid Date:</u>	18.02.2019
<u>Con Area:</u>		<u>Expiry Date:</u>	15.04.2019
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Mr Paul Joyce Lewis & Co Planning 2 Port Hall Road Brighton BN1 5PD		
<u>Applicant:</u>	Mr Oliver Dorman C/o Lewis & Co Planning 2 Port Hall Road Brighton BN1 5PD		

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Proposed Drawing	CO.01	-	2 April 2019
Location and block plan	LBP.01	-	18 February 2019

2. The development as approved under application BH2018/01160, shall be used in accordance with the layout detailed on the floorplans, drawing no. COU.01 received on 13.04.2018, and shall be retained as such thereafter.

The layout of the kitchen/dining/living room shall be retained as communal space at all times and shall not be used as bedrooms.

Reason: To ensure a suitable standard of accommodation for occupiers to comply with policy QD27 of the Brighton & Hove Local Plan.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. SITE LOCATION & APPLICATION DESCRIPTION

- 2.1. The application site relates to a two storey mid-terrace property, located on the west side of Selham Close. The area is residential in nature.
- 2.2. The property is not located in a conservation area, but there is an Article 4 Direction in place restricting the conversion of single dwelling houses to houses of multiple occupation (C4 or sui generis use class).
- 2.3. Planning permission is sought to remove condition 4 attached to BH2018/01160 which restricted permitted development rights to the property.

3. RELEVANT HISTORY

- 3.1. BH2018/01160- Change of Use from residential dwelling to 6no bedroom small House in Multiple Occupation (C4) incorporating revised fenestration, sound proofing, cycle stands and associated works (Retrospective). Approved 20.11.2018.

4. REPRESENTATIONS

None received.

5. CONSULTATIONS

- 5.1. One (1) letter of representation has been received objecting to the proposal for the following reasons:
 - Noise
 - Overdevelopment
- 5.2. **Councillor Hill** objects to the application. A copy of the representation is attached to the report.

6. MATERIAL CONSIDERATIONS

- 6.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 6.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
 - Brighton & Hove Local Plan 2005 (retained policies March 2016);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
 - The East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
- 6.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

7. **POLICIES**

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP9	Sustainable transport
CP21	Student housing and Housing in Multiple Occupation

Brighton & Hove Local Plan (retained policies March 2016):

TR7	Safe Development
TR14	Cycle access and parking
SU10	Noise Nuisance
QD14	Extensions and Alterations
QD27	Protection of amenity
HO5	Provision of private amenity space in residential development

Supplementary Planning Documents:

SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards

8. **CONSIDERATIONS & ASSESSMENT**

- 8.1. The application seeks to remove condition 4 of planning permission ref. BH2018/01160 and the considerations in respect of this application are whether the removal of the condition is appropriate.
- 8.2. Planning permission was granted for a change of use of the property from a family dwelling (Use Class C3) to a small house in multiple occupation (Use Class C4). HMOs can often raise concerns in respect of neighbouring

amenity both individually and cumulatively across an area. For this reason Policy CP21 in conjunction with an Article 4 Direction was adopted requiring planning permission for changes of use from C3 to C4.

- 8.3. An HMO use is generally a more intensive use of a property than a single (family) dwelling use, with occupants often living individual lives with independent coming and goings, each occupant having their own visitors etc.
- 8.4. As such it is of importance to consider each change of use application on its own merits and assess the likely impact of each individual case upon neighbouring amenity.
- 8.5. In the case of no. 10 Selham Close, it was considered that the proposed six bedroom HMO, contained within the existing envelope of the building, would have an acceptable impact upon neighbouring amenity and therefore planning permission was granted. Condition 4 was attached to the permission stating that:
- 8.6. No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.
Reason: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties and to the character of the area and for this reason would wish to control any future development to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.
- 8.7. Government's National Planning Policy Guidance provides specific advice in respect of such conditions and advises that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area.
- 8.8. The applicant has confirmed that they may wish to carry out extensions/alterations, the covering letter states that, 'the Applicant may wish, at a future time, make alterations to the property, to further improve the living conditions of the C4 HMO. Future alterations or extensions may include

enlarged communal spaces or enlarged bedrooms.' This is clear that the Applicant wishes to re-establish permitted developments rights to regain the opportunity to carry out extensions/alterations to alter the layout of the property at some time in the future without the need to apply for formal planning permission.

- 8.9. It is acknowledged that in this case the potential for permitted development extensions and alterations is limited, as any development which involved the formation of additional bedrooms could not be carried out. The formation of additional bedrooms and an increase in occupancy beyond six occupants would take the property out of the C4 Use Class into a sui generis use. As a result, such works and the associated change of use would require planning permission as they would be considered to be part and parcel of a change of use.
- 8.10. A HMO use differs from a single family dwelling (C3) use due the nature of occupation and the levels of comings and goings. This relationship with neighbouring properties has meant that the removal of permitted development rights is considered necessary in some cases to ensure that the development as approved is retained, unless planning permission is granted for further additions / alterations as this would allow assessment through a formal applications.
- 8.11. At the time of the application, it was considered necessary to apply a condition to remove permitted development rights as it was considered that any changes/extensions/outbuildings could alter the property and the HMO layout and could be used to a degree which could cause harm to neighbouring amenity by way for example increased/altered overlooking, and / or increased built form which could have an overbearing and enclosing impact.
- 8.12. Were a planning application to be submitted for extensions / alterations to the property this application would be assessed on its own merits and if the proposal would not cause harm to neighbouring amenity and the appearance of the dwelling, planning permission would be likely to be granted. The condition applied does not restrict such development from occurring but required the submission of a formal application for planning permission. This would enable the Local Planning Authority to consider the potential impacts of the development proposed.
- 8.13. The covering letter accompanying the application references two recent appeal decisions in which the application has been allowed for the removal of permitted development rights. The two appeal properties are all comparable to the application property in regard to the use which was granted (C3-C4) and the relationship with neighbouring properties. The Inspectors in both cases considered that there were no exceptional circumstances that warranted the removal of permitted development rights and considered that in those two cases there were no reasons why a distinction should be drawn between the impact of permitted development extensions to a C3 dwelling and a C4 HMO.

- 8.14. Appeal ref. APP/Q1445/W/18/3197045, 110 Auckland Drive, Brighton, BN2 4JG. A semi-detached property, planning permission granted at appeal for removal of condition 5 of application BH2017/04133- Change of use from three bedroom single dwelling (C3) to six bedroom small house in multiple occupation (C4).
- 8.15. The Inspector stated:
"Given the physical relationship between the appeal property and its neighbours I have seen nothing persuasive in this particular instance to suggest that the property's use for C4 purposes would have any different effect on nearby occupiers than if it was in use as a single household which falls within Class C3."
- 8.16. "The current appeal relates to a small HMO, the approved layout for which shows six bedrooms, and where the creation of additional bedrooms with an associated increase in occupancy would take the use outside the parameters of Class C4. Planning permission for such would thereby be required."
- 8.17. "I find that even when considering the full scope of householder PD rights there are no compelling reasons why, in this particular case, a distinction should be drawn between whether implementing PD rights would be more harmful for a C4 use as opposed to that of a C3 dwelling."
- 8.18. Appeal ref. APP/Q1445/W/18/3212326, 166 Heath Hill Avenue, Brighton, BN2 4LS. A semi-detached property, planning permission granted at appeal for removal of condition 5 of application BH2018/02316- Change of use from dwelling house (C3) to six bedroom small house in multiple occupation (C4).
- 8.19. The Inspector stated:
"I find that even when considering the full scope of householder PD rights there are no compelling reasons why, in this particular case, a distinction should be drawn... (between C3 and C4)
- 8.20. *Accordingly, I find that there are no exceptional circumstances to justify the imposition of Condition no 5.*
- 8.21. *I therefore conclude that Condition no 5 does not serve a particular planning purpose and that removing Classes A-E PD rights is neither reasonable nor necessary in serving the interests of protecting the living conditions of neighbouring occupiers, or in safeguarding the character of the area."*
- 8.22. These two recent appeal decisions are material considerations and are comparable to the application property in regard to the use which was granted (C3-C4) and the relationship with neighbouring properties and therefore the application to remove this condition is recommended for approval. In recommending approval for this application, it is not the case that this would necessarily be appropriate on all cases and is considered acceptable as the use already accommodates up to 6 occupiers and any extension subsequently facilitating an increase would amount to a change of

use and such works in that instance would in any case require planning permission.

- 8.23. In this instance, assessing this application on its merits, the removal of the condition can be supported.

9. EQUALITIES
None identified

