

<u>No:</u>	BH2020/03070	<u>Ward:</u>	Moulsecoomb And Bevendean Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	95 Heath Hill Avenue Brighton BN2 4FH		
<u>Proposal:</u>	Change of use from small house in multiple occupation (C4) to large house in multiple occupation (Sui Generis) incorporating a single-storey rear extension, creation of parking area to the front and associated works.		
<u>Officer:</u>	Emily Stanbridge, 293311	tel: <u>Valid Date:</u>	27.10.2020
<u>Con Area:</u>		<u>Expiry Date:</u>	22.12.2020
<u>Listed Building Grade:</u>		<u>EOT:</u>	
<u>Agent:</u>	Lewis And Co Planning SE Ltd Lewis And Co Planning 2 Port Hall Road Brighton BN1 5PD		
<u>Applicant:</u>	Mr Steve Granocchia C/O Lewis And 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	02		27 October 2020
Proposed Drawing	03		27 October 2020

2. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. The development hereby approved shall be implemented in accordance with the proposed layout detailed on the proposed floorplan received on 27th October 2020 and shall be retained as such thereafter. The rooms annotated as living room and kitchen/dining shall be retained as communal space and shall not be used as bedrooms at any time. The bedrooms shown shall be retained in the form shown on the plans and not subdivided.

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

4. The unit hereby approved shall only be occupied by a maximum of eight (8) persons.
Reason: To ensure a satisfactory standard of accommodation for future occupiers and to comply with policy QD27 of the Brighton & Hove Local Plan.
5. All the interior and exterior sound proofing measures shown on drawing 02D received on 27th October 2020 shall be installed prior to the occupation of the property as a sui generis HMO.
Reason: To safeguard the amenities of the occupiers of adjoining properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
6. The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling and to comply with policy QD27 of the Brighton & Hove Local Plan, policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan.
7. The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.
Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards.

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. Planning permission is sought to change the use of the property from a six-bedroom small house in multiple occupation (HMO)(Planning Use Class C4) to an eight-bedroom large house in multiple occupation (sui generis).
- 2.2. The site is on the north side of Heath Hill Avenue near to its westerly junction with Auckland Drive. It is one of a pair of semi-detached dwellings, with similar dwellings fronting the road on both sides. The City is now subject to Article 4 direction preventing the change from a C3 single dwelling to an HMO without planning permission.

3. RELEVANT HISTORY

- 3.1. **BH2019/03433**: Change of use from 6no. bedroom small House in Multiple Occupation (C4) to 9no. bedroom large House in Multiple Occupation (Sui Generis). Proposals also incorporate: the erection of a single storey rear extension; acoustic fencing; the installation of a side window; and the creation of 2no. car parking spaces. **Refused** 18.02.2020. **Dismissed at appeal** 03.09.2020.
- 3.2. This application was refused on the following ground:
"The increased occupancy of the building through the change of use from a six bedroom house in multiple occupation (C4) to a nine bedroom house in multiple occupation (Sui Generis) would have a significant direct and cumulative impact on the amenity of immediately neighbouring properties including occupiers of the adjoining property and neighbouring properties, due to increased activity including increased noise disturbance, additional comings and goings from the property and increased refuse and recycling contrary to policies QD27 and SU10 of the Brighton & Hove Local Plan."
- 3.3. **BH2019/01799**: Removal of condition 6 of application BH2018/02532 (Change of use from single dwelling (C3) to six bedroom small house in multiple occupation (C4).) relating to extending, enlarging or altering dwelling house without planning. **Approved** 04.03.2020
- 3.4. **BH2018/02532**: Change of use from single dwelling (C3) to six bedroom small house in multiple occupation (C4). **Approved** February 2019.

4. REPRESENTATIONS

- 4.1. **One (1)** letter of representation has been received objecting to the proposed scheme. The following concerns have been raised in the objection:
- additional traffic
 - impact on property values
 - additional noise
 - loss of privacy
 - demographic imbalance in the area
- 4.2. **Councillor Grimshaw** objects. A copy of the representation from Councillor Grimshaw is attached.
- 4.3. **Councillor Yates** . A copy of the representation from Councillor Yates is attached.

5. CONSULTATIONS

- 5.1. **Ecology** No objection The proposed development is unlikely to have any impacts on biodiversity.
- 5.2. **Natural England** No objection
- 5.3. Private sector housing: No objection
- 5.4. **Sustainable Transport:** Comment 27.11.2019 Level of proposed cycle parking provision acceptable; off-street parking acceptable in principle subject to swept path analysis.

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);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
 - Shoreham Harbour Joint Area Action Plan (adopted October 2019).
- 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 2

Policies in the Proposed Submission City Plan Part 2 do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications but any greater weight to be given to individual policies will need to await the outcome of the Regulation 19 consultation which ended on 30 October 2020.

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP8	Sustainable buildings
CP9	Sustainable transport

CP10	Biodiversity
CP12	Urban design
CP21	Student housing and Housing in Multiple Occupation

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

TR7	Safe Development
TR14	Cycle access and parking
QD14	Extensions and alterations
QD15	Landscape design
QD27	Protection of amenity
SU9	Pollution and nuisance control
SU10	Noise nuisance

Supplementary Planning Documents:

SPD11	Nature conservation and development
SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards

8. CONSIDERATIONS & ASSESSMENT

- 8.1. The main considerations in the determination of this application relate to the principle of the change of use, the impact of the proposed extension upon the character and appearance of the property, the standard of accommodation provided, the impact on neighbouring properties, and transport issues.

Principle of development

- 8.2. The application property is currently in small HMO use (Planning Use Class C4) occupied by six people, following the approval of application BH2018/02532 which sought a change of use from a dwelling (Planning Use Class C3).
- 8.3. As noted above, a previous application to change from the existing six-bed small HMO, to a large, nine-bed sui generis HMO was refused on the basis of the impact on the amenity of surrounding residents. The principle of HMO use, with reference to Policy CP21, was not included as a reason for refusal.
- 8.4. The decision was appealed, with the Inspector upholding the refusal, but also noting conflict with Policy CP21, having carried out his own assessment of the percentage of HMOs in the area. The Inspector determined that there were two lawful HMO properties within 50m of the appeal site (38 Heath Hill Avenue and the appeal site, 95 Heath Hill Avenue), giving a proportion of 11.8%. The appeal was subsequently dismissed, the first reason for this being a conflict with policy CP21, with the decision report noting:
'I note that neither main party included the appeal property in their calculations, but as Policy CP21 is based on controlling the proportion of HMOs within a given area, in my view it is necessary to do so as the appeal dwelling forms part of the properties in that area.'
- 8.5. The Inspector's interpretation of Policy CP21 led him to include the application property within the percentage of HMO's within the radius area. However, this

interpretation of Policy CP21 is not consistent with the established practice within the Council's planning department, or with previous or subsequent appeal decisions (relating to other sites).

- 8.6. The supporting text of Policy CP21 states that:
"Planning permission for the change of use will not be granted where more than 10 per cent of neighbouring properties are already in HMO use". (paragraph 4.237).
- 8.7. Given the reference to 'neighbouring properties' in this text, it is considered appropriate to exclude the application site. It is considered this supports the wording in the policy itself which refers to *"dwellings within a radius of 50 metres of the application site..."*, implying it should include dwellings beyond the site itself.
- 8.8. Policy CP21 of the Brighton and Hove City Plan Part One specifically addresses the issue of changes of use to either class C4, a mixed C3/C4 use or to a sui generis House in Multiple Occupation, including those in an existing C4 use and states that:
"In order to support mixed and balanced communities and to ensure that a range of housing needs continue to be accommodated throughout the city, applications for the change of use to a Class C4 (Houses in Multiple Occupation) use, a mixed C3/C4 use or to a sui generis House in Multiple Occupation use (more than six people sharing) will not be permitted where:
- More than 10 per cent of dwellings within a radius of 50 metres of the application site are already in use as Class C4, mixed C3/C4 or other types of HMO in a sui generis use."
- 8.9. Policy CP21 seeks to address the potential impact of concentrations of HMOs upon their surroundings and to ensure that healthy and inclusive communities are maintained across the city.
- 8.10. An up-to-date mapping exercise has taken place which indicates that there are 17 neighbouring residential properties within a 50m radius of the application property. One (1) neighbouring property (38 Heath Hill Avenue) has been identified as being in HMO use within the 50m radius. The percentage of neighbouring properties in HMO use within the radius area is thus 5.9 %.
- 8.11. Based upon the existing percentage of neighbouring properties in HMO use (excluding the application property), which is less than 10%, the proposal to change from a C4 to a Sui Generis HMO would be in accordance with policy CP21, and the use would ensure that an appropriate proportion of family homes would be retained.
- 8.12. It is noted that representations under the previous application raised concerns with regards to a number of properties within the 50m radius that they consider to be occupied as a C4 Use. Only properties in a lawful HMO use and properties with an extant permission are counted.

- 8.13. The previous application raised concerns from neighbours regarding numbers 40, 44 and 101 Heath Hill Avenue. These addresses have been checked and are discussed below.
- 8.14. With regards to No.40 Heath Hill Avenue, no planning history can be found in relation to this property. This property is the subject of a current enforcement case.
- 8.15. With regards to 44 Heath Hill Avenue, an application for a HMO use was refused and subsequently dismissed on appeal. This property was the subject of an enforcement case. This enforcement case determined that whilst this property is occupied by a number of individuals, due to an element of care being provided to occupiers, the use of this property is determined to be C2 (residential institution) not a HMO.
- 8.16. The council has also looked into No. 101 Heath Hill Avenue and it remains the case that no planning history or enforcement history can be found in relation to the property being occupied as an HMO.
- 8.17. It is noted that No.50 Heath Hill Avenue has an extant permission for student accommodation. The proposed rooms located within this building have not been included in the above calculation as the building is classed as purpose-built accommodation within a Sui Generis Use and is not classed as a HMO.
- 8.18. Whilst a number of addresses have previously been provided by neighbours in relation to a possible HMO use, the information above and the mapping exercise undertaken has only indicated 1 HMO in the 50m radius which results in 5.9% and therefore is in compliance with policy CP21.

Design and Appearance:

Rear extension

- 8.19. The proposal incorporates the erection of a single storey rear extension. The proposed extension would measure approximately 6.5m in depth and would be inset from the eastern side wall of the original property by approximately 2m. This proposed extension is identical to that submitted under the previous scheme which did not form part of the reason for refusal either at application or appeal stages.
- 8.20. The proposed extension would incorporate a mono-pitched roof form with a predominantly flat roofed section. The proposed angle of the roof pitch would match that of the main dwelling. In addition, the exterior walls would match in material to the main property. It is also noted that the extension would not physically attach the existing rear dormer.
- 8.21. Given the presence of the extension to the adjacent property the extension proposed would not unbalance the semi-detached pair.
- 8.22. The previous application, BH2019/03433 raised no objection to the extension proposed. Furthermore, the appeal inspector concluded that '... the proposed

rear extension would not cause any physical harm given that it would not be seen in public views.'

- 8.23. As such the proposed extension is deemed acceptable.

Provision of hardstanding

- 8.24. The application includes provisions for two off-street parking spaces to the front of the property. This would involve the loss of the existing front garden area which is currently laid to lawn.

- 8.25. However, there are a number of examples of properties within the streetscene, including opposite the application site, where similar hardstanding's exist. No objection was raised in relation to this alteration during the previous application as it was considered that this alteration would cause no significant harm to the visual amenities of the street.

- 8.26. The proposals are therefore considered to be in accordance with Policy CP12 of the City Plan Part One.

Standard of accommodation

- 8.27. Policy QD27 of the Brighton and Hove Local Plan aims to secure a good standard of living accommodation for current and future occupiers. Accommodation should therefore provide suitable circulation space within bedrooms once the standard furniture for an adult has been installed (such as a bed, wardrobe and desk), as well as good access to natural light and adequate outlook in each bedroom. The communal facilities should be of a sufficient size to allow unrelated adults to independently cook their meals at the same time, sit around a dining room table together, and have sufficient space and seating to relax in a communal lounge.

- 8.28. The 'Nationally Described Space Standards' were introduced by the Department for Communities and Local Government in 2015 to establish acceptable minimum floor space for new build developments. Although these space standards have not been formally adopted into the Brighton and Hove City Plan and relate to new build developments, they provide a useful guideline on acceptable room sizes that would offer occupants useable floor space once the usual furniture has been installed. The 'Nationally Described Space Standards' establishes the minimum floor space for a single bedroom as measuring at least 7.5m², and a double bedroom should measure at least 11.5m².

- 8.29. The six en-suite bedrooms shown on the existing plans are as per the approved layout approved under application BH2018/02532. No changes are proposed to the existing bedrooms. In order to provide the 2 additional bedrooms proposed, the existing front living room would be subdivided into two bedrooms. Additional communal space is proposed within the proposed rear extension to compensate for the loss of this living space.

- 8.30. The proposed floor plans show indicative furniture layouts, which for each of the bedrooms shows how a bed, storage furniture and desk could be accommodated. The proposed layout would allow for all rooms to have adequate

natural light and circulation space. Furthermore, each of the proposed bedrooms exceeds the national described space standards.

- 8.31. The previous application, BH2019/03433, proposed nine bedrooms, six of which are to be located at ground floor level. The current proposals feature a reduction of 1 bedroom to allow for 8 occupiers. The central bedroom which was located adjacent to the communal living space has been removed. The removal of this bedroom has allowed for the creation of an additional shower room and an enlarged kitchen/dining room.
- 8.32. The proposed communal space in this application comprises of a kitchen/dining area with living area beyond within the proposed extension. This living space would provide a total of 52sqm of communal living space, an additional 6sqm over the previous scheme.
- 8.33. No objections were raised in relation to the previous scheme regarding to the standard of accommodation. The plans submitted demonstrate that the proposed communal area could be laid out, with typical furniture, in such a way that it could adequately function with eight occupants. Whilst it is noted that some space will be lost as route space through the kitchen to the living area the space proposed remains sufficient.

Impact on Amenity:

- 8.34. Policy QD27 of the Brighton & Hove Local Plan states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

Use of the site

- 8.35. As set out above, the previous application, BH2019/03433, which sought a change of use from a 6 bedroom C4 HMO to a 9 bedroom sui generis HMO was refused in March 2020 for the following reason:
"The increased occupancy of the building through the change of use from a six bedroom house in multiple occupation (C4) to a nine bedroom house in multiple occupation (Sui Generis) would have a significant direct and cumulative impact on the amenity of immediately neighbouring properties including occupiers of the adjoining property and neighbouring properties, due to increased activity including increased noise disturbance, additional comings and goings from the property and increased refuse and recycling contrary to policies QD27 and SU10 of the Brighton & Hove Local Plan"
- 8.36. In relation to this previous application, the appeal Inspector noted the following:
*" The number of existing occupants is already towards the upper end of what would normally be expected to be accommodated in most of the neighbouring bungalows. Extending the property to enable up to 9 occupants would further intensify the use of the site...
I am concerned that the increase in the intensity of use of the property would have a detrimental impact on the quiet enjoyment of the neighbouring properties by reason of additional noise and disturbance. The pattern of activity associated with houses in multiple occupation, in this case mainly used by students,*

contrasts with the more family orientated use of the neighbouring properties and would be exacerbated by an increase from 6 to 9 occupants. The increase in activity would be particularly apparent to the neighbouring bungalow at 97 Heath Hill Avenue, which shares a drive with the appeal site and has a number of habitable room windows facing onto the drive."

- 8.37. The current application reduces the number of occupiers sought from nine to eight. This would result in an increased occupation of two individuals over the six that has previously been approved and which currently occupy the property.
- 8.38. It is acknowledged that use of the property as an HMO inevitably results in increased comings and goings from the property and possible associated noise nuisance. In this instance however, it is considered that the net increase of two bedrooms, is unlikely to significantly exacerbate the noise levels that exist at present, and any potential increase in noise is not of a magnitude to warrant refusal of the application. It should be noted that at the time of the previous application, Environmental Health officers confirmed that no noise complaints had been received in relation to the use of the property as an HMO. The development proposed would be subject to compliance with Environmental Health legislation, if future noise issues and disturbance to neighbouring properties were to occur.
- 8.39. The Planning Inspector ruled that the sound proofing measures proposed would be inadequate to protect the amenity of neighbouring residents associated with nine occupiers. The likely increase in noise output associated with an increase of nine bedrooms is likely to be less significant than that associated with the dismissed appeal scheme, so the impact would be acceptable.
- 8.40. It should be noted that the rear extension, which would accommodate the communal space for future occupiers of the eight-bedroom HMO, does not physically adjoin the neighbouring property at No.93. In addition, plans show that acoustic fencing is proposed along the shared boundary fence with No. 93, adjacent to the proposed extension. Whilst it is noted that the appeal Inspector raised concerns with regards to amenity impact to No.97, it should be noted that the communal space proposed is set sufficiently away from the habitable windows of this property and that the rooms from the HMO proposed that face directly onto the shared driveway are bedrooms and likely to produce less noise than the communal areas.
- 8.41. Crucially, the overall percentage of HMO's within a 50m radius is 5.9% which is within the 10% limit specified within policy CP21. As such, the cumulative impact of the proposed HMO on the area is not considered to cause harm to local amenity. In addition, given the location of the property on a through road it is considered that the impact of the proposed change of use would not amount to significant harm of a degree sufficient to warrant the refusal of the application.

The proposed extension

- 8.42. This application proposes a single storey extension to the rear which projects to a similar depth to that of the existing extension at No.93. The previous application, BH2019/03433, raised no objection to this addition. The appeal

inspector also concluded that the extension proposed would not materially affect outlook from neighbouring properties. Therefore, the proposed extension is in accordance with policy QD27 of the Local Plan.

Sustainable Transport:

- 8.43. The application includes provisions for two off-street parking spaces within the front garden. A swept path analysis has been provided, identical to that provided under the previous application. Highways considered this arrangement to be acceptable.
- 8.44. The application proposes cycle storage within the rear garden. This provision shall be secured by condition.

9. EQUALITIES
None identified

