

<u>No:</u>	BH2021/01030	<u>Ward:</u>	Queen's Park Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	138 Edward Street Brighton BN2 0JL		
<u>Proposal:</u>	(Part Retrospective) Change of use from retail at ground floor (E) and residential 3no bedroom maisonette (C3) to 4no bedroom house in multiple occupation (C4).		
<u>Officer:</u>	Joanne Doyle, tel: 292198	<u>Valid Date:</u>	22.03.2021
<u>Con Area:</u>		<u>Expiry Date:</u>	17.05.2021
<u>Listed Building Grade:</u>		<u>EOT:</u>	
Agent:	BPM 33 Stoneleigh Avenue Brighton BN1 8NP		
Applicant:	Dino Morra 138 Edward Street Brighton BN2 0JL		

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
Location and block plan	01	-	22 March 2021
Proposed Drawing	01	-	22 March 2021

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 floorplans, drawing no 01, and shall be retained as such thereafter. The layout 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 and 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

- 2.1. The application site relates to a three storey property which has retail use (use class E) at ground floor, and residential uses (use class C3) at upper floors). It is located on the southern side of Edward Street, outside of a designated retail centre, and not within a conservation area. However, there is an Article Four Direction in place restricting the conversion of single dwellinghouses to houses in multiple occupation (HMOs - use class C4, or sui generis (outside of a use class)).

3. RELEVANT HISTORY

- 3.1. BH2019/01249- Change of use from retail (A1) and residential 3no bedroom maisonette (C3) to 5no bedroom house in multiple occupation (C4). Refused on 24 February 2020. The reason for the refusal was as follows:
"1. The communal space at basement level would provide for a gloomy and oppressive standard of accommodation to the detriment of the well-being of future occupants by reason of limited natural light and outlook, limited area and poor space for adequate circulation. The proposed development would be detrimental to the residential amenity of the future occupiers of the property, contrary to policy QD27 of the Brighton & Hove Local Plan."
- 3.2. This application was the subject of an appeal to the Planning Inspectorate (ref. W4001539). The appeal was dismissed on 8 February 2021, due to concerns over insufficient natural light and restricted outlook within the basement communal space.

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought for the change of use of the building from its existing retail (use class E) use at ground floor with residential over (three-bedroom maisonette (use class C3), to a four-bedroom house in multiple occupation (HMO - Use Class C4). The application is part-retrospective as the property has been tenanted and licenced as a five-bed HMO since September 2019.
- 4.2. This application is a resubmission of the previously-refused application BH2019/01249. As noted above, this was refused and dismissed on appeal due to concerns over the quality of the communal accommodation at basement level.
- 4.3. This current application has sought to address these reasons for refusal by reducing the occupation from a five-bedroom HMO to a four- bedroom HMO, and providing communal space at ground floor level as well as at basement

level. It is also proposed to excavate a small area to the rear of the kitchen at basement level.

5. CONSULTATIONS

- 5.1. **Policy:** Comment from previous application BH2019/01249 23.10.2019
Local Plan policy SR8 has been met.
- 5.2. **Transport:** Verbal
No objection subject to recommended conditions.

6. REPRESENTATIONS

- 6.1. **Ward Councillor Childs** has objected to the proposal and requested that the application be heard at Planning Committee.

7. MATERIAL CONSIDERATIONS

- 7.1. 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
- 7.2. 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 (JAAP) 2019.
- 7.3. 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.

8. RELEVANT POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP8	Sustainable Buildings
CP9	Sustainable Transport
CP12	Urban design
CP14	Housing density
CP19	Housing mix

CP20	Affordable Housing
CP21	Student Accommodation and Houses in Multiple Occupation

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

TR1	Development and the demand for travel
TR7	Safe development
TR14	Cycle access and parking
SU10	Noise nuisance
QD14	Extensions ad alterations
QD27	Protection of Amenity
HO5	Provision of private amenity space in residential development
HO8	Retaining housing
HO14	Houses in multiple occupation (HMO)
SR8	Individual shops

Brighton & Hove City Plan Part Two (CPP2) (emerging)

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. The weight given to the key CPP2 policies considered in determining this application is set out below where applicable.

DM1	Housing Quality, Choice and Mix
DM7	Houses in Multiple Occupation (HMOs)
DM13	Important Local Parades, Neighbourhood Parades and Individual Shop Units
DM20	Protection of Amenity
DM33	Safe, Sustainable and Active Travel
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents:

SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relates to the principle of the change of use, the impact upon neighbouring amenity, the standard of accommodation which the use would provide, and transport issues.

Principle of development:

- 9.2. 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 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."*

- 9.3. A mapping exercise has taken place which indicates that there are 81 neighbouring properties within a 50m radius, of which two properties are in HMO use. The percentage of neighbouring properties in HMO use within the radius area is therefore 2.4%. Less than 10% of properties within 50m are in HMO use so the proposed change to small HMO use complies with policy CP21.
- 9.4. In terms of the loss of the retail (use class E) element, the site currently comprises a 'lock-up shop' and maisonette. The application site is located outside a designated retail centre. The immediate streetscene appears to be formed of buildings that were originally part of a retail parade on Edward Street. The ground floor uses of the premises surrounding the application site, however, appear have already lost their original commercial function, with the exception of 141 Edward Street which is functioning as a dog grooming parlour. Therefore it is no longer considered to function as a retail parade, and is subject to Local Plan policy SR8 (individual shops).
- 9.5. This policy seeks to resist the loss of individual shops unless, in summary:
- (a) the shop is within easy walking distance of a comparable shop within a designated centre or parade;
 - (b) it has been demonstrated that a retail use is no longer economically viable in the unit; and
 - (c) the development would not be significantly detrimental to neighbouring amenity.
- 9.6. With regard to test a) the site is located within an easy walking distance (under 200m) of the St James's Street District Centre which contains a range of retail units. The Regional Centre is also nearby (under 700m walking distance).
- 9.7. With regard to test b), evidence was submitted as part of the previous application in 2019 and as part of this application to demonstrate that the site is unviable. The application is supported by letters from two separate commercial agents, confirming that the premises was marketed from October 2016 to 2019, including an advertisement in the window of the premises, and on live portals on an 'offers invited' basis. No viewings took place and no offers were received to rent the property in this period. In addition the retail unit would need investment before it could legally be rented out.
- 9.8. The agent has confirmed that the unit has been vacant for a number of years starting in May 2014, and images on Google Streetview appear to confirm this statement. As a consequence, and given the fact that the surrounding premises have already lost their original commercial function, there has been no additional footfall to the area within that period. Therefore, tests a) and b) are considered to be met. The unit has not been marketed since 2019 as the property has been tenanted and licenced as a 5-bed HMO since September 2019.

- 9.9. Test c) relating to neighbouring amenity has been considered in the impact upon neighbouring amenity section below.

Standard of Accommodation:

- 9.10. The 'Nationally Described Space Standards' (NDSS) 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, Policy DM1 of Draft City Plan Part 2 proposes to adopt them and can now be given significant weight.
- 9.11. The NDSS identifies a minimum floor space that should be achieved for a single bedroom as measuring at least 7.5m², and a double bedroom should measure at least 11.5m². The minimum floor space requires a head height of above 1.5m. Rooms are also assessed for their ability to provide suitable room to circulate within them by future occupants.
- 9.12. The changes to the internal layout comprise the following: communal kitchen/dining/living at basement level, communal living room at ground floor level, 2no. bedrooms and bathroom at first floor level, and 2no. bedrooms and bathroom at second floor level.
- 9.13. The bedrooms all meet the government's minimum nationally described space standard, with good levels of natural light and outlook provided.
- 9.14. The communal areas at basement level (a 24.5sqm living room/diner/kitchen) and ground floor level (an 11.3sqm living room) are considered to be overly sufficient for a 4 person property in principle terms of the area provided.
- 9.15. The scheme proposes the excavation of a small area to the rear of the kitchen at basement level which has allowed for a reconfiguration of the internal layout when compared to the previous refusal. This communal area would be served by a large window opening facing out onto a lightwell 0.85 metres in depth. There would be minimal light from above serving this lightwell and therefore minimal light would serve the room and the room would have limited outlook, facing onto a wall 0.8 metres away. The indicative layout does, however, show that there would be sufficient circulation for dining and use of the kitchen.
- 9.16. Whilst the communal space at basement level would contain minimal light/outlook, given the provision of communal space at ground floor level this room would not be the sole room for occupants to relax in. The living room at ground floor would be sufficient as the main room for the occupants to use and for this reason the minimal light/outlook at basement level is considered acceptable.
- 9.17. Whilst large in size, if the communal rooms were converted to bedrooms in the future, this would restrict the level of shared space available to occupants. Therefore, a condition is recommended restricting the use of the communal

areas to ensure that alterations to the layout are not made at a later date that reduces the amount of communal space provided for the occupiers.

- 9.18. The accommodation proposed is considered acceptable, in accordance with policy QD27 of the Brighton and Hove Local Plan and emerging policy DM1 of CPP2 (of which can be given significant weight).

Impact on neighbour amenity:

- 9.19. 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.
- 9.20. The proposed change of use from a C3 dwellinghouse to a five-bedroom C4 HMO may result in a more intensive use of the property than if a family were to occupy it. However, it is not considered that the proposal would cause noise/disturbance to neighbouring properties beyond the existing C3 use, and particularly the previous retail/C3 use, sufficient to warrant refusal of the application.
- 9.21. As already noted, Policy CP21 of the Brighton and Hove City Plan Part One supports the change of use of dwellings (Use Class C3) to a small HMO use (C4), provided that there is not an excessive proportion of neighbouring dwellings in HMO use (over 10% within a 50 metre radius). The application accords with policy CP21 in this regard and any increased impact likely to be caused in this case would not be of a magnitude which would cause demonstrable harm to neighbouring amenity.

Sustainable Transport:

- 9.22. The proposed development would not result in a significant increase in trip generation and any impact on the highway would be minimal.
- 9.23. The site is located within Controlled Parking Zone (C) where uptake of parking permits is high. The number of vehicles able to be parked in the area is therefore already limited through the CPZ.
- 9.24. No cycle parking is proposed; however given the constraints of the site it is not considered reasonable to secure this by condition.

10. EQUALITIES

None identified.

