

<b><u>No:</u></b>	<b>BH2023/01414</b>	<b><u>Ward:</u></b>	<b>Regency Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>41 Upper North Street Brighton BN1 3FH</b>		
<b><u>Proposal:</u></b>	<b>Change of use from existing single dwelling house (C3) to 5no bedroom small house in multiple occupation (C4) including alterations to existing first floor rear terrace and addition of bike store (Part-retrospective). (amended plans received)</b>		
<b><u>Officer:</u></b>	Michael Tucker, tel: 292359	<b><u>Valid Date:</u></b>	15.05.2023
<b><u>Con Area:</u></b>	Montpelier and Clifton Hill	<b><u>Expiry Date:</u></b>	10.07.2023
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	
<b><u>Agent:</u></b>	JNF Architecture Limited Stamford Lodge Cumberland Road Brighton BN1 6ZE		
<b><u>Applicant:</u></b>	Mrs Kahir 3 King George VI Drive Hove BN3 6XF		

## 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.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location Plan			15 May 2023
Proposed Drawing	2312-JNF-XX-ZZ-DR-A-240	P4	1 August 2023
Proposed Drawing	2312-JNF-XX-ZZ-DR-A-241	P2	15 May 2023

2. The HMO (C4) hereby approved shall only be occupied by a maximum of five (5) persons.

**Reason:** To ensure a satisfactory standard of accommodation for future occupiers and to comply with policies DM7 and DM20 of the Brighton and Hove City Plan Part Two.

3. The HMO use hereby approved shall only be carried out in strict accordance with the proposed layout detailed on the proposed floor plan ref. 2312-JNF-XX-ZZ- DR-A-240 revision P4 received on 1st August 2023 and shall be retained as such thereafter. The layout of the kitchen and dining space 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 Policies DM7 and DM20 of the City Plan Part Two.

4. The cycle parking facilities shown on the approved plans shall 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 DM33 of Brighton & Hove City Plan Part Two, 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. The applicant should be aware that whilst the requisite planning permission may be granted, this does not preclude the Council from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.
3. The applicant is advised that the granting of planning permission does not remove the need to obtain an HMO licence, and they should ensure all necessary licences are obtained from the Private Sector Housing Team.

## 2. SITE LOCATION

- 2.1. The application relates to a three-storey terraced building on the southern side of Upper North Street. The site is located within the Montpelier and Clifton Hill Conservation Area and is adjacent to the Grade II listed 42 Upper North Street to the west.
- 2.2. The site is subject to the city-wide Article 4 Direction that has removed the right to change the use class of any (C3) residential unit to a (C4) small house in multiple occupation.
- 2.3. The surrounding area is residential in character, with long terraces of two and three storeys buildings, some subdivided into flats, with occasional commercial uses at ground floor.

## 3. RELEVANT HISTORY

- 3.1. **BH2022/03484** - Change of use from existing single dwelling house to 6no bedroom small house in multiple occupation (C4). (Retrospective) Refused  
The reason for refusal was:  
*"The proposed HMO, by reason of its limited gross internal area and undersized communal space and bedrooms, would provide a cramped, uncomfortable and oppressive standard of accommodation for residents. This would be contrary to policies DM1, DM7 and DM20 of the Brighton & Hove City Plan Part Two. "*

## 4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought for the change of use of the building from a dwellinghouse (C3) to a small (five-bedroom) House in Multiple Occupation (C4). The application is part-retrospective as a change of use to a small HMO has already occurred, however the application includes further revisions to the proposed internal layout.
- 4.2. The internal layout has been amended since the initial submission to relocate the communal areas to the ground floor.
- 4.3. It should be noted that the current application proposes a reduced number of occupants (five) than the previously refused application BH2022/03484 (six).

## 5. REPRESENTATIONS

- 5.1. Upon receipt of the application, the proposals were advertised in May 2023. **Seven (7)** letters of objection were received, raising the following points:
  - Harm to Conservation Area
  - Poor design
  - Poor outdoor space for residents
  - Inadequate cycle store
  - Fire safety concerns
  - Overdevelopment
  - Loss of property value
  - Noise and disturbance
  - No. 39 Upper North Street already a 'party house'
- 5.2. Following receipt of amended plans, the application was readvertised in August 2023. **Four (4)** letters of objection were received, with no new points raised other than those identified above.

## 6. CONSULTATIONS

- 6.1. **Housing:** No comment received
- 6.2. **Planning Policy:** No comment
- 6.3. **Private Sector Housing:**  
Should the application be approved then the applicant will need to apply for a HMO Licence. This can be done on-line via the council's website.
- 6.4. **Sustainable Transport:** Verbal comments  
No objection, subject to the cycle parking condition to be attached.

- The applicant indicates 3 cycle parking spaces at the back decking/courtyard of this proposal. This is in accordance with the minimum required by SPD14. However, there are no details regarding the cycle parking store. We would therefore request further details via condition.
- The applicant is proposing no car parking on site and overspill may occur on the public highway due to this development. This site is located in a Controlled Parking Zone (CPZ Z). On assessment of CPZ Z there appears to be capacity for additional car parking on-street. We would therefore wish not object to that.
- The proposed change of use from a dwelling house to a small HMO are likely to increase the number of trips to the location however, these are unlikely to be significant enough to object.

## 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 City Plan Part Two (adopted October 2022);
- 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).

## 8. POLICIES

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove City Plan Part One

SS1 Presumption in Favour of Sustainable Development

CP1 Housing delivery

CP8 Sustainable buildings

CP9 Sustainable transport

CP12 Urban design

CP15 Heritage

CP21 Student housing and Housing in Multiple Occupation

#### Brighton & Hove City Plan Part Two

DM1 Housing Quality, Choice and Mix

DM7 Houses in Multiple Occupation (HMOs)

DM18 High quality design and places

DM20 Protection of Amenity

DM26 Conservation Areas

Supplementary Planning Documents:  
SPD11 Nature Conservation & Development  
SPD12 Design Guide for Extensions and Alterations  
SPD14 Parking Standards

## 9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the principle of the development, the impact upon neighbouring amenity, the standard of accommodation provided and transport matters.

### **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 planning use 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, 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 been undertaken which indicates that there are 56 residential properties and flats within a 50m radius of the application property, 4 of which have been identified as being in HMO use. The percentage of neighbouring properties in HMO use within the radius area is 7.1%. The existing percentage of neighbouring properties in HMO use is less than 10%, and the change of use of the property to a Sui Generis HMO would therefore not conflict with the requirements of policy CP21.
- 9.4. Policy DM7 of CPP2 includes additional criteria to those set out in Policy CP21, and states the following:  
*"Applications for new build HMOs, and applications for the change of use to a C4 use, a mixed C3/C4 use or to a sui generis HMO use, will be permitted where the proposal complies with City Plan Part One Policy CP21 and all of the following criteria are met:*
- a) *fewer than 20% of dwellings in the wider neighbourhood area are already in use as HMOs;*
  - b) *the proposal does not result in a non-HMO dwelling being sandwiched between two existing HMOs in a continuous frontage;*
  - c) *the proposal does not lead to a continuous frontage of three or more HMOs;*
  - d) *the internal and private outdoor space standards provided comply with Policy DM1 Housing Quality, Choice and Mix;*

e) *communal living space and cooking and bathroom facilities are provided appropriate in size to the expected number of occupants."*

9.5. Criterion a) has been assessed and the percentage of dwellings in the wider neighbourhood area has been calculated at 3.4% and therefore criterion a) has been met. Criterion b) the area has been assessed and it is confirmed that the proposal would not 'sandwich' a non-HMO between two existing HMOs; and would not lead to a continuous frontage of three or more HMOs so accords with criterion (c). Considerations regarding amenity space and communal living (criteria d) and e)) are set out below.

9.6. On this basis, the scheme is considered to accord with Policy CP21 and with criteria a), b) and c) of Policy DM7.

**Design and Appearance:**

9.7. In considering whether to grant planning permission for development which affects a listed building or its setting, the Council has a statutory duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Moreover, when considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

9.8. Case law has held that the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses, and the desirability of preserving or enhancing the character or appearance of a conservation should be given "considerable importance and weight".

9.9. The proposed external alterations are minor in nature, comprising the reduction in depth of the terrace area at rear first floor, and the addition of wall-mounted cycle stands at the rear south-east corner of the site. These alterations are considered acceptable in terms of design and appearance and would not harm the character and appearance of the Conservation Area or the setting of the nearby listed buildings.

**Impact on Amenity:**

9.10. Policy DM20 of the City Plan Part Two 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.

9.11. The use of the building as a small HMO (five occupants) is considered unlikely to result in a significant increase in noise disturbance compared to the lawful C3 dwellinghouse use. In any instance, potential noise and disturbance can be described as "functions of the way particular residents behave rather than being inherently dependant on the status of the property as a dwellinghouse or HMO", as noted by an Inspector in a previous appeal decision (APP/Q1445/W/20/3254632 relating to application BH2019/01490 at 64 Islingword Road). The number of occupants proposed is not significantly different to what would be expected for a family dwellinghouse under the existing

lawful use of the building, and it is therefore considered it would be unreasonable to refuse this development on the assumption that future residents would behave in a problematic manner.

- 9.12. It is noted that an HMO would require licensing by the Council's Private Sector Housing team and thus be required to comply with management standards as well as other requirements. Additionally, the granting of this planning permission would not prohibit the Environmental Health team acting against 'statutory nuisance' under the Environmental Protection Act 1990 if this was required in the future.
- 9.13. Accordingly, the proposed use of the property as a HMO for up to 5 persons is considered not to be detrimental to neighbouring amenity or the amenity of the area. Therefore, the proposal is considered in accordance with Policy DM20 of the City Plan Part Two.

**Standard of Accommodation:**

- 9.14. Policy DM1 of the City Plan Part 2 adopts the Nationally Described Space Standards (NDSS). The proposals are also considered against DM7 which sets the expected standards of accommodation for HMOs.
- 9.15. The available floorspace is considered in conjunction with a qualitative assessment of the usability of the total space in terms of layout and circulation, and the provision of natural light and outlook to determine if a good standard of accommodation would be enjoyed by future residents.
- 9.16. The proposed HMO would be a five-bedroom, five-person dwelling across three storeys with a GIA of 110sqm. The NDSS gives no direct comparator, with the closest example being a five-bedroom, six-person, three-storey dwelling which requires a minimum of 116sqm GIA to comply. Notwithstanding, given the low margin of difference, and that the NDSS minimum is for a dwelling with 20% greater occupancy than what is proposed, it is considered that the minor shortfall in this regard is unlikely to result in significant harm to the standard of accommodation provided by the proposed HMO.
- 9.17. As amended, the bedrooms of the proposed HMO would have areas of 11.2sqm, 15.2sqm, 8.2sqm, 13.3sqm and 8.9sqm. Each of the bedrooms would be of regular proportions allowing space for furniture and circulation and would have access to natural light and outlook. The amendments to the internal layout would avoid having bedrooms to the rear of the ground floor where occupants would be overlooked from the outdoor amenity area. W/C facilities would be located on the first floor, with two of the bedrooms having ensembles.
- 9.18. No section drawings have been provided to demonstrate the available headroom within the building. Notwithstanding, the building is established as a residential dwelling and it is considered that the headroom requirements of an HMO would not be dissimilar to those of a dwellinghouse within Use Class C3.
- 9.19. Policy DM7 advises that the minimum size of usable communal living space should be 4sqm per person as well as factors such as usability and configuration

of the space being taken into account. Communal spaces play a crucial role in accommodation of this type as inadequate communal areas increase the time occupants must spend in individual bedrooms. The communal areas proposed would comprise an 8.6sqm kitchen and an 11.4sqm dining/living room, for a total of 20sqm of communal space.

- 9.20. On the basis of five-person occupancy, this is in accordance with Policy DM7 which seeks to secure a minimum of 4sqm of communal space per occupant. Occupancy levels can be secured by a recommended condition.
- 9.21. Whilst the rear communal room is shown as a dining room only, the furniture layout is indicative and this room appears to also provide sufficient space for general relaxation/socialisation. The continued retention of the communal space can be secured by a recommended condition.
- 9.22. Some outdoor amenity space would be available to residents in the form of the rear courtyard. Whilst not of a particularly generous size, this would provide some benefit to residents and is considered not to be an objectionable element of the scheme.
- 9.23. Overall, it is considered that the HMO, as amended, would provide an acceptable standard of accommodation for the number of occupants proposed, in accordance with policies DM1 and DM7 of the City Plan Part Two.

**Sustainable Transport:**

- 9.24. The proposed change of use is likely to result in some increase in trips to and from the site, however this is unlikely to be to an extent that would have a significant impact on the highway network.
- 9.25. SPD14 minimum standards would require a minimum of three cycle parking spaces for the development. The amended proposed plans show three cycle parking spaces in the rear amenity area in a covered, wall-mounted arrangement. Whilst this type of stand is not ideal from an accessibility/ease of use perspective, and nor is the location the most convenient due to having to manoeuvre bikes through the internal hallway, it is recognised that the site is constrained for space. Alternative locations may not be available, and a stand type with a larger footprint would further compromise the already limited outdoor amenity space. The proposed cycle parking would be covered and secure, and the site is well located for sustainable transport modes with bus stops nearby. For these reasons the proposed cycle parking arrangement is considered not to be objectionable.
- 9.26. No on-site car parking is proposed, in accordance with SPD14 maximum standards. The site is located within a Controlled Parking Zone (CPZ) with the issuance of on-street parking permits at the discretion of the Local Highways Authority.

**Other Considerations:**

- 9.27. Public representations have raised that no. 39 Upper North Street is used as a 'party house'. With respect to the 'sandwiching' requirement of Policy DM7(b)



this is only in relation to HMO uses. Short term holiday lets do not constitute HMOs.

- 9.28. With regard to matters of fire safety, this falls within the remit of the Building Regulations.

**10. EQUALITIES**  
None identified.

**11. CLIMATE CHANGE/BIODIVERSITY**

- 11.1. Covered, secure cycle parking for occupiers is proposed.

