

<u>No:</u>	BH2024/02461	<u>Ward:</u>	Brunswick & Adelaide Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	42 Waterloo Street Hove BN3 1AY		
<u>Proposal:</u>	Conversion of restaurant and staff flat above to create 6no person small house in multiple occupation (C4).		
<u>Officer:</u>	Mark Thomas, tel: 292336	<u>Valid Date:</u>	08.10.2024
<u>Con Area:</u>	Brunswick Town	<u>Expiry Date:</u>	03.12.2024
<u>Listed Building Grade:</u>		<u>EOT:</u>	14.01.2025
<u>Agent:</u>	Lewis And Co Planning SE Ltd 2 Port Hall Road Brighton BN1 5PD		
<u>Applicant:</u>	Mr Rob Hogley C/O Lewis And Co Planning SE Ltd 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
Location Plan	23-P14-01		8 October 2024
Block Plan	23-P14-02		8 October 2024
Proposed Drawing	23-P14-60	C	8 October 2024

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 small HMO (C4) use hereby approved shall be for 6 person occupancy only and shall be implemented in accordance with the proposed layout detailed on the proposed floorplans and shall be retained as such thereafter. The kitchen, living room and dining room areas shall be retained as communal space at all times and shall not be used as a bedroom(s).

Reason: To ensure a suitable standard of accommodation for occupiers and to comply with Policy DM1 and DM7 of the Brighton & Hove City Plan Part Two.

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.

Biodiversity Net Gain

Based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply. These can be found in the legislation.

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that, unless an exception or a transitional arrangement applies, the planning permission granted for the development of land in England is deemed to have been granted subject to the condition ("the biodiversity gain condition") that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan in respect of this permission would be Brighton & Hove City Council.

2. SITE LOCATION

- 2.1. The application property is a three-storey over basement terraced house situated on the eastern side of Waterloo Street, at its junction with Cross Street which extends along the southern boundary of the site. The property is in the Brunswick Town Conservation Area.
- 2.2. The property contains a restaurant with a staff flat above.

3. APPLICATION DESCRIPTION

- 3.1. The application is seeking planning permission for the change of use of the property from a restaurant (planning use class E) with ancillary residential accommodation to a six person House in Multiple Occupation (HMO)(planning use class C4). No external alterations are proposed.

4. RELEVANT HISTORY

- 4.1. **BH2024/01729** Conversion of restaurant and staff flat above to create 8no. person large house in multiple occupation (Sui Generis). Refused 06 September 2024 for the following reason:
"The proposed development, by reason of a lack of light, outlook and size of the basement level communal space, together with limited ceiling height to this floor, would offer gloomy and oppressive living conditions for future occupiers, which would disincentivise the use of the communal areas. The proposed bedrooms

are not considered large enough to offer a genuine alternative for occupiers to meet their socialising needs. For the reasons outlined, the proposed development would be contrary to policies DM1 and DM7 of the Brighton and Hove City Plan Part Two."

- 4.2. **BH1998/01644/FP** Installation of new shopfront together with installation of new bay windows at first and second floors on west elevation. Approved 23/12/1998
- 4.3. **BH1998/00086/FP** Change of use from retail (Class A1) to restaurant (Class A3). Approved 02/04/1998

5. REPRESENTATIONS

- 5.1. Seven (7) letters of representation have been received objecting to the proposed development for the following reasons:
- Parking stress
 - Pressure on refuse/recycling bins
 - Noise impact: sound proofing/mitigation should be included
 - Substandard living conditions
 - Too many HMOs already.
- 5.2. **Councillor Sykes** Objects to the proposed development for the following reasons:
- Welcomes modifications since previous application.
 - Concerns about noise and fire risk.
 - Risk of communal spaces being converted to bedrooms after completion.
- 5.3. A copy of their representation is attached to this report.

6. CONSULTATIONS

- 6.1. **Sustainable Transport:** Comment
The existing building does not have any car parking provision, and this is to remain the case as part of this proposal. Due to the site's central location with excellent access to public transport and the nature of the accommodation (HMO), it is considered that the absence of car parking is acceptable.
- 6.2. The Parking Standards SPD 14 sets the minimum of 0.15 cycle parking space per bedroom, which equates to 1 cycle parking space for this development. The applicant does not submit any information regarding cycle parking provision. However, consider the constrained nature of the site and proximity to the public bike share facilities the absence of cycle parking is considered to be acceptable.

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, revised October 2024);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
 - Shoreham Harbour JAAP (adopted October 2019).

8. RELEVANT POLICIES & GUIDANCE

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
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
DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM33	Safe, sustainable and active travel
DM36	Parking and servicing

Supplementary Planning Documents:

SPD12	Design Guide for Extensions and Alterations
SPD14	Parking Standards
SPD17	Urban Design

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to whether the principle of a HMO can be supported in this location having regard to HMO policies; the proposed standard of accommodation for the HMO; impacts on neighbouring amenity; and transport matters.

Principle of the Development:

- 9.2. The application seeks consent for the change of use from a restaurant (planning use class E) with staff flat to a four-bedroom, six person, small HMO (C4). The submission drawings indicate that two of the bedrooms would be suitable for dual occupancy.
- 9.3. The application site is an individual former commercial unit which is not situated within a designated retail centre, although it is close to the Brunswick Town Local Shopping Centre identified under policy CP4 of the CPP1 and DM12 of CPP2 which accommodates a range of retail uses. The site is not within an Important Local Parade as identified in policy DM13. There is no specific policy protection for an individual retail unit in this location, and the loss of this premises is considered acceptable in principle.
- 9.4. 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 (HMO) 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."*
- 9.5. A mapping exercise has been undertaken (November 2024) which indicates that there are 206 dwellings within a 50m radius of the application property, 11 of which have been identified as being in HMO use. The percentage of neighbouring dwellings in HMO use within the radius area is thus 5.34%.
- 9.6. Based on the existing percentage of neighbouring properties in HMO use, which is less than 10%, the change of use to a four-bedroom small HMO (C4) would be in accordance with the aims and criteria of policy CP21.
- 9.7. 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."*

9.8. Criterion a) has been assessed and the percentage of dwellings in the wider neighbourhood area has been calculated at 2.7% so it has been met. In relation to criterion b), the area has been assessed and it is confirmed that the proposal would not 'sandwich' a non-HMO between two existing HMOs; nor would it lead to a continuous frontage of three or more HMOs so would accord with criterion (c). Full considerations regarding amenity space and communal living (criteria (d) and (e)) are set out below.

9.9. On this basis, in principle there is no objection to the change of use of the property to a HMO, subject to further considerations as set out below.

Standard of Accommodation:

9.10. The proposed standard of accommodation is being considered against Policy DM1 of CPP2 which incorporates the minimum space standards within the Nationally Described Space Standard (NDSS) into the development plan. The requirement to meet these standards is further emphasised within d) and e) of Policy DM7 of CPP2.

9.11. In terms of the bedrooms, the two bedrooms indicated as being dual-occupancy exceed 11.5m² and the single rooms exceed 7.5m² in accordance with NDSS recommendations. The bedrooms are considered to be of adequate size and proportions to accommodate the necessary furniture and circulation space. All bedrooms would be served by existing windows which would provide adequate natural light and outlook as well as natural ventilation.

9.12. The proposed layout includes use of part of the ground floor (18.3m²) as well as the entire basement (comprising a kitchen of 8.1m² and living space of 20.3m²) as communal living space for occupiers. The overall provision of communal space is 46.7m² in these areas. The provision would significantly exceed the recommended 4m² per occupier recommendation for communal space within the supporting text of DM7. Three bedrooms would also benefit from a kitchenette.

9.13. It is noted that the previous planning application for an eight person HMO was refused by reason of poor natural light/outlook of basement level communal areas. The current application differs in that it would have a reduced occupancy of six people, and the addition of 18.3m² of communal living space on the ground floor which would be well served for natural light and outlook. Overall, it is considered that the proposal as amended would offer acceptable living conditions due to a lesser reliance on the basement level, and fewer people being resident.

9.14. The property would retain a small garden space. The provision is not untypical of the locality, and would supplement the internal communal space in the summer months.

9.15. On this basis, the use of the building as a HMO is considered acceptable in principle.

Impact on Amenity:

- 9.16. Policy DM20 of 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.
- 9.17. The proposed change of use from a restaurant and flat to HMO may create more comings and goings from the property and in a different pattern to the existing use. However, it is not considered that the difference in comings and goings would amount to such demonstrable harm to neighbouring properties to warrant refusal of the application, particularly given the previous restaurant use and associated operation during evening hours. Any unforeseen noise/disturbance experienced by neighbouring occupiers could be investigated under environmental health legislation.
- 9.18. It is noted that the previous application for an eight-bedroom HMO on the site (ref. BH2024/01729) was considered acceptable in terms of its impact on residential amenity having been refused only for the poor standard of accommodation.
- 9.19. Refuse/recycling is accommodated via on-street communal bins, which is satisfactory to serve the development.
- 9.20. The development is considered to be in accordance with policy DM20 of the City Plan Part Two.

Sustainable Transport:

- 9.21. The proposed change of use would not result in an increase in vehicle trips of a magnitude which would warrant objection. It is also noted that there are amenities within walking distance and also good bus links to most of the city.
- 9.22. The applicant does not propose any cycle parking space for this proposal. Parking Standards SPD14 requires a minimum of 1 space per two-bedspaces is required. Due to the site constraints and given the previous use of the site as a restaurant/living accommodation without any cycle parking on site it is not considered reasonable to object on the basis of insufficient cycle parking. While there is potentially space in the rear garden to store cycles, there is no convenient route to get them to/from the garden from the street.
- 9.23. No car parking is being proposed. The site is located within a controlled parking zone which would protect against overspill parking into the surrounding roads.
- 9.24. Accordingly, the proposal would be acceptable on highway and transport grounds.

Biodiversity Net-Gain:

- 9.25. This scheme was considered exempt from the need to secure mandatory biodiversity net gain under Schedule 7A of the TCPA because it does not impact a priority habitat or habitat of more than 25sqm or 5m of linear habitat.

Conclusion:

- 9.26. As set out above, in principle the creation of a HMO in this location is supportable due to concentrations within the 50m radius being below the limit set by policy CP21 (CPP1) and the concentration in the wider locality being below the maximum amount set within policy DM7 (CPP2). The standard of accommodation which would be offered would be acceptable as would the impact on occupiers of neighbouring properties.

10. EQUALITIES

- 10.1. Section 149(1) of the Equality Act 2010 provides:
- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.