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## Appeal Decision

Site visit made on 8 December 2017

by **R J Marshall LLB DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 March 2018

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**Appeal Ref: APP/Q1445/W/17/3184207**  
**2, Plymouth Avenue, Brighton, BN2 4JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Oliver Dorman (Rivers Birtwell) against Brighton & Hove City Council.
  - The application, Ref BH2017/02138, is dated 23 June 2017.
  - The development proposed is change of use of an existing C4 small house in multiple occupation to a Sui-Generis large house in multiple occupation.
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### Decision

1. The appeal is dismissed.

### Background

2. The Council has resolved that had it been in time to determine the application permission would have been refused on the following grounds: a) harm to neighbour's living conditions through increased noise and disturbance through an increased occupancy of the building and increased proportion of HMO occupants in the area; b) inadequate internal space to provide acceptable living conditions; and c) to create the additional accommodation an unattractive roof extension has been constructed to the detriment of the character and appearance of the area. For reasons given below only item b above need to detain me in this case.

### Main issue

3. Thus the main issue in this appeal is whether the development for which permission is sought would provide satisfactory living conditions for its future residents with regard to the provision of internal living space.

### Reasons

#### *Main issue*

4. The appeal property is a detached bungalow in an estate of 1950s style housing. In February 2016 permission was granted, retrospectively, for the change of use of this property to a C4 small house in multiple occupation (HMO). Later in June 2016 an application for a certificate of lawfulness for a proposed loft conversion incorporating hipped and gable extensions to sides, rear dormer and front roof lights and alterations to fenestration was submitted.

The plans with this application showed the provision of 6 bedrooms. The certificate was approved in August 2016.

5. The roof extension has been built. A loft conversion completion certificate under Building Regulations was issued in October 2016 for the works. The plans with the certificate show the provision of 9 bedrooms. When I inspected the site 9 bedrooms had been provided, of which 8 appeared to be occupied.
6. The roof extension does not form part of the proposal before me. There is a dispute between the parties as to whether it should. The Council says that it should on the basis that works which form part of a development which includes a material change of use requiring planning permission cannot be classed as permitted development. The appellant contests this saying the following completion of the works the dwelling was re-occupied as an improved C4 HMO for 6 persons. He says subsequent changes to the internal layout to facilitate 9 bedrooms are a separate act of development that does not negate the lawfulness of the extension.
7. I find the above statement of the appellant difficult to reconcile with the Building Regulations completion certificate which indicates that when the works were completed they were for the provision of 9 bedrooms. This being so I consider that the Council's stance has some merit. The implication of adopting this view would be that the extension to the roof is unlawful and in the circumstances I cannot rule out that being the case. In which case a separate permission will be required for it, and that may well not be granted by the Council given its objection to its character and appearance.
8. In the absence of the roof extension there would be a substantial reduction in floorspace. It seems to me unlikely that a property of this reduced size would be able to house a large HMO whilst providing satisfactory internal living space for future occupants, and there is no evidence to the contrary.
9. Accordingly I must conclude that it is not been shown that the development for which permission is sought would provide satisfactory living conditions for its future residents with regard to the provision of internal living space. In the circumstances it would be contrary to Policy CP19 of the Brighton and Hove City Plan and Policy QD27 of the Brighton and Hove Local Plan which seek to secure quality in the residential development and protect the amenity of future residents.

### ***Other matters***

10. I acknowledge the other matters at dispute between the parties as outlined in my background paragraph. However, so fundamental is my concern on the main issue above, and notwithstanding the support of some for the provision of this HMO, I consider that this alone merits dismissing the appeal.

### **Conclusion**

11. For the reasons given above the appeal is dismissed.

*R J Marshall*

INSPECTOR