



Appeal Decision

Site visit made on 11 November 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th November 2025

Appeal Ref: APP/Q1445/W/25/3370854

30 Upper North Street, Brighton, East Sussex BN1 3FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ali Bilal and Niraj Shah (Upper North Street Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref is BH2025/00484.
 - The development proposed is the change of use from residential flat (C3) and shop (E) to 6no bedroom small house in multiple occupation (C4) including new doors, rear lightwell and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the appeal form the appellant has indicated that the description of development has changed from that which was originally applied for. I have therefore used the description that the appellant has set out on the appeal form which clarifies the size of the proposed house in multiple occupation (HMO).
3. When I visited the site I noted that the existing situation differed from what is shown on the submitted drawings, for example: the former shopfront has been removed and there is now a single door and a single window on the ground floor front (northern) elevation; the ground floor front room was furnished as a lounge and the adjoining room was fitted as a kitchen; and the basement, which is indicated as being a storage area on the drawings, was being used as sleeping accommodation. However, I have assessed the appeal scheme on the basis of the submitted drawings and associated documents.

Main Issues

4. The main issues are whether the appeal scheme would support mixed and balanced communities and provide acceptable living conditions for the occupiers of the proposed development with regard to communal space.

Reasons

Mixed and Balanced Communities

5. The appellant has provided copies of publicly-available HMO Licence Registers which do not include properties close to the appeal site. The copy of the Additional HMO Licence Register is not dated but the most recent entry is dated as 20 June

2025. Whilst this may have been the most recently-available version at the time that the appeal was prepared, in its submissions the Council has referred to later records, dated 2 September 2025, which show that both dwellings at 28 Upper North Street are registered as HMOs.

6. The Council has also said that both flats at 29 Upper North Street have been in use as HMOs since at least 2009. Although it has not provided details of any licences, it has explained why all HMOs do not appear on its publicly-available licencing records. The absence of public records in relation to no. 29 would explain why the appellant has drawn the conclusion that it is not an HMO but I have no reason to doubt the Council's explanation, not least as it is the relevant authority for the licencing of HMO applications and therefore would have full access to relevant information.
7. With reference to the planning histories of nos. 28 and 29, the appellant has noted that there is no evidence to suggest that these properties are currently, or have been used as, HMOs. However, there are circumstances where a change of use would not appear in a site's planning history, for example if permitted development rights had been exercised. Furthermore, the absence of a certificate of lawfulness does not necessarily mean that a use is not lawful. Accordingly, the absence of specific references to HMO use in planning history records cannot be determinative in this case.
8. Finally, the appellant has noted that even if there are HMO licences associated with these properties, this does not mean that they are currently used as such. However, even if that were the case the current use of a property is not necessarily indicative of its use in planning terms.
9. Overall, I find that, based on the balance of probabilities and having consideration to the facts and circumstances of the case and the submissions of all parties, the appeal scheme would create a continuous frontage of three houses in multiple occupation. Therefore, the appeal scheme would directly conflict with criterion c) of policy DM7 of the Brighton and Hove City Plan Part 2 (2022) (CPP2) which seeks to avoid a continuous frontage of three or more HMOs and therefore it would fail to support a mixed and balanced community.

Living Conditions

10. The communal space would be split between three areas: a dining area in the basement, a kitchen at ground floor and a communal room in the closet wing, down a short flight of steps from the ground floor. The appellant's drawings indicate that the communal room would be 6.7m². As well as having a doorway / opening to the main ground floor area, the 'communal' room would have a door to the outside, giving access to the cycle store and shed. In addition, there would be a door to a shower room and toilet. The positions of these doors means that there would be limited space remaining for furniture and, more generally, the need to maintain access would limit the usability of this space.
11. Although the Council has accepted in relation to a previous scheme that this could be a habitable room, that scheme was an application for prior approval for a one-bedroom flat. In the case of a 6-room HMO that would be occupied by 6 individuals, it is likely that there would be a greater use of this space for circulation between the various parts of the house and the outdoor area, potentially including by occupiers with bicycles, which would negatively affect the quality and usability

of the space for relaxation or socialising. This room would also have a limited outlook as a result of there being a single side-facing window.

12. Furthermore, whilst the use of the basement as a dining area may not be objectionable in principle, once furnished it would provide a relatively constrained space with a low ceiling, limited natural light and limited outlook given that the sole window would be to a lightwell.
13. The Council and the appellant have noted that the proposed communal areas would measure approximately 27.6m² in total. This would be equivalent to 4.6m² per person (based on 6 occupants) which would exceed the minimum 4m² per person which is sought by CPP2 Policy DM7. However, the supporting text to the policy also notes that other factors such as the usability and configuration of the space will also be taken into account and it is on that basis that I find that the proposed communal space would result in a substandard quality of accommodation that would be detrimental to the living conditions of the future occupiers of the proposed HMO.
14. Although bedroom 1 would be substantially-sized for a single occupant and may provide space for that resident to interact socially within their own space, I do not find that this would directly contribute to the usable communal space for the proposed HMO as a whole or that it would compensate for the overall inadequacy of the proposed communal space.
15. I conclude, therefore, that the proposed layout, and specifically the poor quality of the communal space within the property, would provide a substandard level of accommodation that would be detrimental to the amenities of future occupiers. Accordingly, the appeal scheme would conflict with CPP2 Policies DM1, DM7 and DM20 which together seek high-quality living accommodation that has an acceptable amount of daylight and sunlight and an acceptable outlook.

Other Matters

16. The appeal site is within a conservation area (CA) and I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The appeal scheme would involve minor changes to the external appearance of the rear and side elevations of the appeal site along with a change of use. Together, I find that these changes would have a neutral effect on the CA and, therefore, would preserve its character and appearance.
17. The Council has stated that it does not have a five-year housing land supply and that additional weight should be given to new housing. However, it has also noted that the upper floors of the appeal site are already in use as a dwelling, and although the development of the proposed HMO would make use of the ground floor area, the development would not increase the city's housing stock because an application for prior approval (BH2025/00158) has recently been allowed for the conversion of the ground floor to a residential flat and, separately, planning permission (BH2025/01116) has been granted for the use of the building as a single dwellinghouse.
18. Whilst the Council's Statement of Case has referred to the appeal site currently being used as short-term holiday accommodation, any unauthorised use or

enforcement considerations are not matters for me to take into account in assessing the merits of the appeal scheme.

19. The appellant has also referred to the Council's conduct during the determination of the appeal application but this is not a matter which can have a bearing on my decision which must be based on the merits of the appeal scheme.

Planning Balance and Conclusion

20. In circumstances where a local planning authority does not have a five-year supply of deliverable housing sites, the National Planning Policy Framework (the Framework) indicates that planning permission should be granted for applications involving the provision of housing unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
21. Taking account of the approved 1-bed residential unit in the ground floor of the appeal site, and given that the rest of the appeal site is already in residential use as a 2-bed flat, the appeal scheme would at most make a limited additional contribution to the supply of housing in the city. In light of the Council's housing land supply position this is a matter to which I attach a moderate amount of positive weight.
22. However, the supply of housing should not be at the expense of providing acceptable living conditions or the maintenance of mixed and balanced communities. Taking account of those negative effects, I consider that the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits of the appeal scheme when assessed against the policies in the Framework taken as a whole. The proposed development would not therefore benefit from the presumption in favour of sustainable development found at paragraph 11 of the Framework.
23. I find that the appeal scheme conflicts with the policies of the development plan when taken as a whole and that there are no other considerations material to the proposed development that would indicate that the appeal decision should be taken otherwise than in accordance with the development plan. Therefore, for the reasons given above the appeal should be dismissed.

P Burley

INSPECTOR