



Appeal Decision

Site visit made on 14 January 2026

by **C Walker BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 January 2026

Appeal Ref: APP/Q1445/W/25/3375219

47 Upper Bevendean Avenue, Brighton, Brighton & Hove BN2 4FG

- 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 Mr Chris Michot of Rivers Birtwell against the decision of Brighton & Hove City Council.
 - The application Ref is BH2025/00800.
 - The development proposed is described as 'change of use from small HMO to large HMO (sui generis) including erection of single storey rear extension and roof extension including rear dormer.'
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from small HMO to large HMO (sui generis) including erection of single storey rear extension and roof extension including rear dormer at 47 Upper Bevendean Avenue, Brighton, Brighton & Hove BN2 4FG in accordance with the terms of the application, Ref BH2025/00800, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development is taken from the application form which adequately reflects the proposal.
3. An amended plan accompanies this appeal. This proposes to increase the depth of the rear extension by 100mm. Whilst this is not a substantial amendment, I am concerned that interested parties may not be aware of this change and thus could be prejudiced. Taking a precautionary approach, I therefore have not accepted it.

Main Issues

4. The main issues are:
 - the effect of the proposal on the mix and balance of housing in the area; and
 - whether the proposal would provide adequate living conditions for future occupiers with regard to communal space.

Reasons

Mix and balance

5. The appeal property is a semi-detached two storey dwelling within a predominantly residential area. While there is no formal Certificate of Lawfulness, the evidence indicates that the property is already in established use as a House in Multiple Occupation (HMO), a matter that the Council accept.

6. Due to concerns regarding the over-concentration of HMOs in the city, an Article 4 Direction has been made, meaning that planning permission is now required for changes of use to small HMO uses across the city. This together with Policy CP21 of the Brighton and Hove City Plan Part One (CPPO) seeks to manage the provision of student accommodation and HMOs. The policy objective is to support mixed and balanced communities by ensuring that a range of housing needs can be met across the city, in areas that are most suitable in terms of accessibility and their impact on the amenity of the surrounding area. To do that, Policy CP21(ii) sets out that where a change of use to an HMO is proposed, they will not be permitted where more than 10% of dwellings within a 50-metre radius are already in such use.
7. The Council say its mapping exercise, undertaken in July 2025, shows that excluding the appeal site, over 26% of properties within a 50-metre radius of the appeal property are in use as HMOs. However, none of the properties considered within the 50m radius have been identified to enable transparent verification of any planning permissions or licencing applications held on public record. Indeed, this figure is disputed by the appellant, whose evidence indicates that the proportion of HMOs within the 50m radius is significantly lower, at just 8.33%.
8. The appellant asserts that there are 24 dwellings within the 50m radius, with another having been granted permission. They point to the HMO licencing register identifying just 3 licenced HMO uses, including the appeal site, albeit one of these is claimed to now be in use as a C3 dwellinghouse, and other former HMO uses are said to no longer be active. Whilst there could be unlicenced premises within the radius, I find the appellant's evidence more convincing, indicating that the number of HMOs in the area is likely to be less than that claimed by the Council, and far closer to the 10% policy threshold.
9. It is the appellant's case that the proposal would not increase the number of HMO's in the area or affect the mix of house types. However, there is no dispute that the proposal constitutes a material change of use. Indeed, it is explicit within the description of development. Consequently, I do not see that a change of use from established small HMO to a sui generis HMO (more than six people sharing) should avoid that control, particularly as the policy expressly refers to this scenario as a use which will not be permitted.
10. The existing plans show the number of bedrooms is 6. The statutory declaration submitted with the appeal indicates the appeal property has been continuously let to no more than 5 unrelated occupants since 2002. Consequently, with the appeal proposal having 8 bedrooms, in real terms there could be an increased level of intensity by up to 3 persons, or 2 persons over the existing number of bedrooms. Either way, such an increase in the scale of the use would be material, through intensification.
11. However, given the established HMO use at the appeal site, there would be no loss of a family home here. Moreover, it has not been clearly evidenced that the consequence of the proposed intensification would be to unacceptably increase an imbalance within the community. This is materially different to the appeal decisions cited in support of the Council's case, where in all cases, there was an undisputed demonstrable conflict with the 10% policy target which has not been evidenced in this case. As such these appeal decisions do not alter my findings on this appeal.

12. On the evidence before me, I am not persuaded that the area is saturated by existing HMOs. Consequently, I conclude that the effect of the proposal on the mix and balance of housing in the area would be acceptable in accordance with CCPO Policy CP21, the objectives of which I have outlined above.
13. Whilst Policy DM20 of the City Plan Part Two (CPPT) has been cited in the relevant reason for refusal, as this relates to the protection of amenity in terms of privacy, outlook and light, I do not find it to be determinative to this main issue. It follows that I find no conflict with it.

Living conditions

14. CPPT Policy DM7 is permissive of changes of use to HMOs, subject to compliance with five criteria; (a) to (e). There is no dispute between the parties that criteria (a) to (c) are met. However, Policy DM7(d) requires that internal and private outdoor space standards provided, comply with Policy DM1 Housing Quality, Choice and Mix which then defers to the Nationally Described Space Standards (NDSS) and (e) expects communal living space, cooking and bathroom facilities to be appropriate in size for the expected number of occupants.
15. The proposed plan show that all eight bedrooms meet the single bedroom NDSS of 7.5 square metres (sqm) of gross internal floorspace (GIA), with one bedroom exceeding it. There is no NDSS specifically for HMO's communal space. However, the supporting text to Policy DM7 is clear that the minimum size of usable communal living space, defined as lounge, kitchen and dining areas, should be 16sqm, equating to 4sqm per person, assuming a small four-person size HMO. It goes on to say that other factors such as the usability and configuration of the space will also be taken into account. For larger HMOs, proportionately more communal lounge space should be provided. The size of the bedrooms and the extent of their ability to function as social areas should be taken into account in determining whether communal space provision is sufficient.
16. As an HMO with 8 residents, it is undisputed that the proposed quantum of communal space should be 32sqm of GIA. Although annotated as 32sqm, the Council say it measures 31.3sqm and the appellants concede, on review, that it provides for 31.85sqm. Irrespective of the precise amount, it would be a negligible shortfall.
17. The proposal would retain the existing kitchen, with additional worksurface provided, which would open up to a new lounge and dining area within the rear extension. This open plan layout would allow for increased social cohesion, which is a fundamental aim of Policy DM7. Whilst the layout necessitates walking through the kitchen to access the dining space, lounge and garden, aside from lounge access, this is no different to the existing situation which caters for up to 6 residents. I have no reason to suppose this current arrangement is inadequate. Moreover, the kitchen is not so narrow that it would hinder this movement.
18. Rather, I find that the proposal offers a fit for purpose layout that is appropriate in size to the expected number of occupants. For these reasons, I am satisfied that the proposal provides adequate living conditions for future occupiers with regards to communal space, in compliance with Policies DM1 and DM7 of the CPP2. As I have found no unacceptable living standards for proposed residents and occupiers, I also find no conflict with CPPT Policy DM20.

Conditions

19. I have considered the Council's suggested conditions against the necessary tests, made changes to some, included an additional condition and not imposed all those suggested for the reasons set out below.
20. In addition to the standard time condition (No.1), I have imposed a condition requiring that the development is carried out in accordance with the approved plans (No. 2) for the avoidance of doubt and in the interests of certainty.
21. To avoid the possibility of part-implementation and to ensure that the communal areas are provided in a timely manner and retained as such, a condition (No. 3) is required and imposed.
22. In the interests of encouraging sustainable modes of transport, a condition (No. 4) to require the installation of the cycle parking facilities is necessary.
23. For the avoidance of doubt, and to ensure that the level of communal space remains adequate, a condition (No. 5) to restrict the number of occupiers to 8 is reasonable and I have therefore imposed it.
24. Whilst the Council suggest a condition requiring the provision of at least one bee stick into the development, I have not been provided with either Policy DM37 or SPD11 referenced within its reasoned justification. As such I am not satisfied that this is necessary or proportionate, and I have not imposed it.

Conclusion

25. For the reasons given above, the scheme would accord with the development plan as a whole and the National Planning Policy Framework. Thus, having regard to all other matters raised, I conclude that the appeal should be allowed.

C Walker

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved drawing numbers 01 and 02.
3. The ground floor bedrooms shall not be first occupied until the rear extension has been provided on site and is made available for use as living and dining space as shown on approved plan number 02. Thereafter, the communal spaces shall be retained in accordance with the approved plan and shall not be used as bedrooms.

Cont'd

4. The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.
5. The development hereby permitted shall be occupied by a maximum of eight persons.

End of Condition Schedule