



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **MAN/30UH/HML/2019/0006**

**Property** : **57 Coulston Road, Lancaster, LA1  
3AD**

**Applicant** : **Ms Frances Mister**

**Representative** :

**Respondent** : **Lancaster City Council**

**Representative** :

**Type of application** : **Housing Act 2004-Schedule 5  
Paragraph 31(1)**

**Tribunal member(s)** : **Judge J White  
Valuer SD Latham**

**Venue** : **Northern Residential Property  
First-tier Tribunal, 1 floor,  
Piccadilly Exchange, 2 Piccadilly  
Plaza, Manchester, M1 4AH**

**Date of determination** : **17 June 2020**

**Date of Decision** : **29 July 2020**

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**DECISION**

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## **The Decision**

1. The Tribunal has determined that the Licence dated 15 October 2019 is confirmed.

## **The Application**

2. The Applicant submitted an application For an HMO licence for 57 Coulston Rd , Lancaster, LA1 3AD “the Premises” for five years for six persons in six households. The respondent refused to issue the licence for a five-year period. Instead it issued it for six people in six households for an 18-month period, reducing to five persons in five households for the remainder of the five years. The reason given was that the living area is not suitable for the number of occupants specified in the application, particularly as some of the bedrooms are single occupancy size. An 18-month period was given to allow the applicant to reduce occupation.
3. The Applicant submitted an application for determination that it was not within the Local Authorities powers to issue a licence with such conditions. The premises exceed the statutory framework to allow occupancy for six person's and the Respondent could not impose such conditions.
4. Directions were issued on 21 January 2020. The parties complied with the directions and agreed that the matter was suitable for a paper determination. The Tribunal agreed, taking into account the overriding objective and the interests of justice. The matter concerns a distinct straight forward issue and the parties have submitted arguments and evidence.

## **The Law**

5. The relevant legislation is Housing Act 2004 (“the Act”). s64 relates to Grant or refusal of licence

*(1)Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—(a)grant a licence in accordance with subsection (2), or(b)refuse to grant a licence.(2)If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence ...(3)The matters are—(a)that the house is reasonably suitable for occupation by not more than the*

maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;...(4)The maximum number of households or persons referred to in subsection (3)(a) is—(a)the maximum number specified in the application, or(b)some other maximum number decided by the authority.

6. S65 relates to tests as to suitability for multiple occupation

(2)But the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.

7. S67 relates to Licence conditions and states that

(1)A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following—(a)the management, use and occupation of the house concerned and...

(2)Those conditions may, in particular, include (so far as appropriate in the circumstances)—(a)conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it....

8. Schedule 3 imposes Prescribed standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons. S3 relates to shared Kitchens

...(a)there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food;

(b)the kitchen must be equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities—(i)sinks with draining boards;(ii)an adequate supply of cold and constant hot water to each sink supplied;(iii)installations or equipment for the cooking of food;(iv)electrical sockets;(v)worktops for the preparation of food;(vi)cupboards for the storage of food or kitchen and cooking utensils;(vii)refrigerators with an adequate freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers);(viii)appropriate refuse disposal facilities; and(ix)appropriate extractor fans, fire blankets and fire doors .

9. Schedule 4 provides additional conditions for floor area

*1A.—(1) Where the HMO is in England, a licence under Part 2 must include the following conditions. Conditions requiring the licence holder—  
(a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than six.51 square metres;....*

10. The emphasis added is mine.

### **The Applicants case**

11. The Applicant states that the Premises complies with the minimum standards for occupancy of six people as set out in Schedules 3 and 4 of the Housing Act 2004 (“the Act”). The premises when taken as a whole is 19.88 m<sup>2</sup> and above the required standard, the LHA cannot impose conditions over and above the statutory minimum.

### **The Respondents case**

12. The Respondent originally allowed a five-year licence for 3 occupants only. They increased this to five, following submissions from the Applicant. This followed an 18-month period allowed to reduce occupancy levels.
13. They have taken into account the statutory requirements and accept the Premises meet the minimum standards. They have taken into account their own guidance and the guidance issued for student letting. They have taken into consideration the total space in the premises, the size of the bedrooms, communal open lounge/kitchen and dining area and the kitchen facilities.

### **The Findings**

14. On 15 October 2019, the LHA issued a licence for a HMO to Frances Mister in accordance with s64 of Part 2 of Housing Act 2004 (“the Act”). The licence was granted for a maximum occupancy of six households until 15 February 2021 then reduced to five people until the expiry of the licence on 7 February 2024. The Agent is named as Misty Student Living. On 18 January 2018, a draft licence had been issued for a maximum occupancy of 3 people.
15. The Premises is a traditional stone-built terrace. It has six bedrooms. The floor area is largely agreed, though there are slight variations in their measurements. The most significant is the shared kitchen lounge. The difference does not materially affect the decision and it is assumed that the LHA has excluded unusable space so is preferred. The measurements are shown on the table below.

Location	Floor Area m2-Applicant	Floor Area m2-Respondent
Bed 1	13.6	12.6
Bed 2	10.2(excl. chimney breast)	10
Bed 3	9.7	9.7
Bed 4	16.7	16.5
Bed 5	10.3 (excl .chimney breast)	10
Bed 6	7.02	7
Kitchen/lounge	13.75	12.36
Shower 1	2.8	
Shower 2	2.8	

16. On the ground floor are three bedrooms, a small toilet/shower room (2.8m<sup>2</sup>) and a single-storey shared living space of around 4,850 metres by around 2 metres opening up onto a small yard . It has a large skylight and door opening to the yard at the side. It appears to be an added extension. Bedroom three also extends out into the old yard creating an external space that cannot be accessed and providing light into the shower room and bedroom two. On the second floor there are three further bedrooms and another small shower room of the same size. In January 2019, the LHA inspected the Premises and found it to be in good condition. This is supported by photographs of the communal space.

### **Our Determination**

17. In accordance with paragraph 34(2) of Schedule five of the Act this is a complete rehearing of the LHA’s determination taking into account all evidence before us including the decision of the LHA and Lancaster’s own guidance.
18. The requirement that the Premises must be licenced due to its occupancy is not in contention. It is agreed that the Premises meet the prescribed minimum room size. These are prescribed for bedrooms and not living areas. S65(2) of the Act permits the LHA to consider other factors. It states, “*the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.*” It can take into account guidance, including its own guidance into account. However as was held by *Clark v Manchester City Council [2015] UKUT 129 (LC)*, though clearly permissible to give guidance, the guidance is not determinative or a replacement for the statutory framework but rather taken into account as part of other factors (see paragraphs 49 and 50). The purpose of HMO licencing is to drive up standards. The Respondent has referred to a student survey commission by UCAS in

2020 highlighting the importance of wellbeing on the quality and usability of social and amenity space. It refers to HHSRS Operating Guidance that recognises the importance of living space. It refers to its own guidance “Standards for Houses in Multiple Occupation” dated November 2018.

19. Schedule 3 s3(a) states where all or some of the units of accommodation within the HMO do not contain any facilities for the cooking of food *“there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food.”*
20. The Tribunal has determined that the kitchen facilities are not of such size layout and equipped with enough work surface for six people.
21. The Tribunal has the benefit of photographs, a sketch layout of the living area and plans. The size of kitchen and living space is 2.5 metres by 4.85. The kitchen area is at one end leaving 2 metre length for a small living area containing a square settee and coffee table seating a maximum of people at a squeeze and four comfortably with space for an extra chair for five people. There is no dining area. The kitchen workspace is a total of 2m, some of which holds kitchen appliances. Though the LHA states some of the space is awkward to use, the Tribunal found that the kitchen u shape was accessible, though the corner next to the sink could not be used at the same time as the sink. Five people could manage to cook at the same time with some coordination of activities. There is not enough work surface and usable space for six people.
22. In addition to inadequate kitchen facilities for six, the Tribunal has considered suitability in terms of shared living areas. LHA’s can impose other conditions for shared living space. The Tribunal determines that shared living space is an important factor in determining suitability and the Respondents own guidance is one that we can take into account. We can take into account that the usage is for student living. The purpose and policy of licencing requirements is a factor and although Part 1 standards are not a particular factor in this case, they do go some way to explaining the duty. It recognises that the occupants are at the heart the requirements as LJ Buxton said in *London Borough of Brent v Reynolds* [2001] EWCA Civ 1843, at paragraph 29:-

*“the judge's failure to give weight to the policy of Brent and the reasons for its decision seems to have caused him to give no consideration at all to the interests of the tenants of the property. It is clear from the statutory scheme that that is a factor that must be in the forefront of the mind of any court dealing with an HMO case.”*

23. Four of the six bedrooms are single bedroom size and do not provide adequate living accommodation within the bedrooms. They all exceed the minimum prescribed size of 6.51 m<sup>2</sup> per person. The Applicants contention that the overall floor space should be viewed as a whole does not properly interpret *Clark v Manchester City Council [2015]* UKUT 129 (LC). It is clear from that case that usability of space has to be taken into account. Clearly, one person's bedroom size cannot compensate for the lack of living space unless all bedrooms are a large size which is not the case. A factor here is that a terrace house with two or three bedrooms has been adapted into an HMO.
24. The LHA own guidance can be taken into account and provides a minimum size of 4.2m<sup>2</sup> per person of living space with a minimum floor space of 16.8m<sup>2</sup>. Even if the Tribunal was to adopt the Applicants larger area calculation of 13.75m<sup>2</sup>, the living area is considerably smaller than the LHA's at 12.36m<sup>2</sup> and 2.29m<sup>2</sup> per person if six people were to use the space and 2.75m<sup>2</sup> per person if five people were to use the space. The Tribunal can take into account the LHA's own guidance when making its decision. The Tribunal has decided that an additional 8.65 m<sup>2</sup> living space which is required to comply with the guidance is just an indicator of suitability and should not be prescriptive. More importantly, taking into account the layout and usability of the space as set out above, more usable space is required for five people. By freeing up one of the bedrooms as a communal living area, this would provide additional living space that is separate from the open plan area.
25. The Applicant contends that the Respondent is not able to impose conditions and any conditions that can be imposed cannot relate to the number of persons. In accordance with s67 (1)(a) and (2)(a) of the Act then the LHA may impose conditions and these include conditions on "occupation". Occupation conditions can include the number of people occupying the Premises.
26. Schedule 4 1B(2) and (3), does not apply as it related to mandatory conditions though refers to a time condition up to 18 months to comply with those licence condition. The Tribunal determines that the maximum of 18 months should be allowed as the Premises may already be occupied by six students and this provides time for the ending of a tenancy in line with any student occupation.

### **Conclusion**

27. The Application is consequently refused.

### **Cost applications**

28. There were no cost applications and we found no grounds to make an order for costs.

**Judge J White**  
**29 July 2020**

### ***RIGHTS OF APPEAL***

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.