FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/32UD/HML/2020/0003**
Property	**:**	**144 West Parade, Lincoln, LN1 1LF**
Applicant	**:**	**Bond Housing Group (Lincoln) Ltd**
Representative		**Landlords Defence Limited**
Respondent	**:**	**City of Lincoln Council**
Representative		**Ms Catherine Ferguson** **Counsel-Mr Justin Crossley**
Type of Application	**:**	**Housing Act 2004- Schedule 5 Paragraph 31(1)**
Tribunal Members	**:**	**Tribunal Judge J. E. Oliver** **Tribunal Member P. Mountain**
Date of Determination	**:**	**2nd March 2022**
Date of Decision	**:**	**28th March 2022**

DECISION

Decision

1. The licence dated 22nd June 2020 issued in respect of 144 West Parade, Lincoln is confirmed, save as varied below:

Schedule 2

2(b)

(a) Room 1-Ground Floor-Single person-to be occupied for sleeping and living accommodation, food storage, preparation, and cooking facilities.
(b) Room 2-Ground Floor-Single person-to be occupied for sleeping and living accommodation, food storage, preparation and cooking facilities.
(c) Room 3 – Ground Floor-Couple-to be occupied for sleeping and living accommodation, food storage, preparation and cooking facilities.
(d) Room 4-First Floor Front-Single Person-to be occupied for sleeping and living accommodation.
(e) Room 5 -First Floor Middle-Single Person-to be occupied for sleeping and living accommodation, food storage, preparation and cooking facilities.
(f) Room 6 – First Floor Back-Single Person-to be occupied for sleeping and living accommodation.
(g) Communal Lounge-First Floor-Communal area- only to be used for storage.
(h) Communal Kitchen-Ground Floor-Communal kitchen for food storage, preparation and cooking.
(i) Communal Kitchen-First Floor-Communal kitchen for food storage, preparation and cooking.
(j) Kitchen- First Floor Rear-Kitchen for food storage, preparation and cooking for exclusive sole use of Room 6.

Schedule 5

The condition imposed for Room 2 is deleted.

Background

2. This is an application by Bond Housing Group (Lincoln) Ltd ("the Applicant") against the conditions imposed on the HMO licence ('the Licence") issued for 144 West Parade Lincoln ("the Property") by the City of Lincoln Council ("the Respondent" on 22nd June 2022, pursuant to paragraph 32(1), Schedule 5 of the Housing Act 2004 ("the 2004 Act").
3. The Property is a two storey Victorian mid-terraced property refurbished by the Mr Hunter, a director and shareholder of the Applicant in 2015-2016. The Property was thereafter transferred to the Applicant.

4. The Property comprises 6 studio style rooms. On the ground floor there are 3 rooms, each having en-suite and cooking facilities and numbered Bedrooms 1, 2 & 3. There is a combined kitchen and communal laundry for use by all the tenants living in the Property and also a shower room and toilet that can be used by the tenants in an emergency. On the first floor, there are 3 more bedrooms, numbered 4,5 & 6. Bedroom 4 has no cooking facilities, but has the use of the communal kitchen. Bedrooms 5 & 6 have en-suite and cooking facilities. Bedroom 6 has a separate kitchen with a laundry on the First floor and has the exclusive use of it. There is also a storage room on this floor, but to which the tenants have no access. There is a garden to the rear of the Property with additional storage for the tenants.
5. The Applicant applied for an HMO licence in October 2018, following a change in the regulations. The final licence was issued on 2nd June 2020 setting out the requirements of occupation as follows:

   (a) Room 1-Ground Floor-Single person-to be occupied for sleeping and living accommodation, food storage, preparation, and cooking facilities.
   (b) Room 2-Ground Floor-Single person-to be occupied for sleeping and living accommodation.
   (c) Room 3 – Ground Floor-Couple-to be occupied for sleeping and living accommodation, food storage, preparation and cooking facilities.
   (d) Room 4-First Floor Front-Single Person-to be occupied for sleeping and living accommodation.
   (e) Room 5 -First Floor Middle-Single Person-to be occupied for sleeping accommodation, food storage, preparation and cooking facilities.
   (f) Room 6 – First Floor Back-Single Person-to be occupied for sleeping and living accommodation.
   (g) Communal Lounge-First Floor-Communal area for exclusive use by Rooms 2 and 5. Not to be used as sleeping accommodation.
   (h) Communal Kitchen-Ground Floor-Communal kitchen for food storage, preparation and cooking.
   (i) Communal Kitchen-First Floor-Communal kitchen for food storage, preparation and cooking.

   Kitchen- First Floor Rear-Kitchen for food storage, preparation and cooking for exclusive sole use of Room 6.
6. The conditions set out in accordance with sections 64(3)(a) and 67 of the 2004 stated:

   "*The room size of Room 2 is 11.24m².To provide cooking facilities within this room requires a room size of 14 m². Therefore the licence holder shall remove the cooking facilities provided within Room 2. Room 2 is to be used as en-suite only. The works should be completed within 18 months of the commencement date of the licence.*"

7. The Applicant objected to the licence conditions in respect of both Rooms 2 and 5, stating the rooms were of a sufficient size to provide both sleeping and living accommodation, together with food storage, preparation and cooking. A further objection was stated to be the requirement for the communal lounge of the first floor was to be for the sole use of Rooms 2 and 5, stating this was unnecessary given that both Rooms 2 and 5 were as suitable as the other rooms in the Property and this further accommodation was unnecessary.

8. Directions for the application were issued on 9th October 2020, providing for the matter to be listed for an inspection and hearing. Due to the COVID-19 pandemic, no inspection could be undertaken until 24th January 2022. The parties agreed the application could be dealt with by way of a paper determination that took place on 2nd March 2022.

Inspection

9. The Tribunal attended the Property on 24th January 2022, together with Mr Turtle on behalf of the Applicant and Mrs Nuttley, Housing Standards Officer and Mr Savage, Housing Standards Manager for the Respondent. None of the tenants were present.
10. The Tribunal found the Property to have been refurbished to a high standard. The common areas were clean, tidy and free of any obstructions or rubbish.
11. At the rear of the Property has a garden with storage sheds for the tenants and a covered bike storage area that also serves as a covered smoking area. This was well maintained.
12. The Tribunal noted the facilities in each of the rooms included a fridge freezer, 2 ring hob, a microwave housed in a cupboard above a built-in oven, sink and draining board. The en-suite comprised a shower, toilet and washbasin. Each room had a double bed, wardrobe, desk, chair/stool and storage. The storage in Rooms 2 and 5 comprised open shelving above the bed, a hanging space and a set of drawers.
13. The Tribunal noted that in Room 2 there had been a change to the layout of the kitchen since the Respondent's original assessment. A portable 2 ring oven had been replaced by a built-in oven and a fixed 2 ring hob.
14. Mr Turtle confirmed that the first floor Communal Lounge was no longer used as such. It had been originally intended as a further studio. It was locked and used solely for storage.

The Law

15. Section 64 of the 2004 Act provides for the grant or refusal of a licence and must be satisfied, under section 64(3)(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"

16. Section 65 provides:

    "(1) the local authority cannot be satisfied for the purposes of section 64(3) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.
    (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 the number of households or persons.

(3) In this section "prescribed standards" means standards prescribed by regulations made by the appropriate national authority.
(4) The standards that may be so prescribed include-
(a) standards as to the number, type and quality of-
(i) bathrooms, toilets, washbasins and showers,
(ii) areas for food storage, preparation and cooking, and
(iii) laundry facilities,
which should be available in particular circumstances
(b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.

17. Section 67 of the 2004 Act provides:

(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
(b) its condition and contents.

(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 the persons occupying it;
(3) A licence must include the conditions required by Schedule 4.
(4) As regards the relationship between the authority's power to impose conditions under this section and functions exercisable by them or the purpose of Part 1("Part 1 functions")-
(a) The authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;
(b) This does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection (2)(c) above, even if the same result could be achieved by the exercise of Part 1 functions;
(c) The fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way Part 1 functions can be subsequently exercised by the authority.

18. Schedule 4 of the 2004 Act contains the mandatory conditions that must be included within any HMO licence. Paragraph 1 A(2) provides that a room in a HMO used for sleeping by a person over 10 years must be not less than 6.51 m^2.

The Respondent's Adopted standards

19. The 2004 Act requires a local authority to draft and implement adopted standards ("the Adopted Standards") when dealing with HMOs within its area. The Respondent's standards became effective on 1st October 2018 and amended on 3rd February 2020.
20. Appendix 12 of the Standards provides the minimum size for rooms as follows:

Sizes for letting rooms Note: Any area of the room with a ceiling height of less than 1.5 m cannot be counted towards the minimum size of the room	**1 person room**	**2 person room**
Where adequate an adequate kitchen, communal living and dining space are provided elsewhere in the HMO as set out below	6.51m² for sleeping only (National mandatory minimum sleeping room size for a person over 10 years of age)	10.22m² for sleeping only (National mandatory minimum sleeping room size for a person over 10 years of age)
Where there is a shared kitchen but no lounge or dining facilities other than the in the letting room	10m²	15m²
Where cooking facilities are provided within the letting room	14m²	18m²
Kitchens	A minimum of 7m² if used by 1 to 5 persons with an additional 2m² per person if any more are sharing the kitchen	
Dining space	2 m² for each person sharing	

Regard will be had to layout of rooms including doorways and location of appliances and other factors contained in the published advice concerning overcrowding standards and the Housing Health and Safety Rating System. Space taken by en-suite shower rooms is not included in the room size assessment.

Issues

21. The parties were unable to agree the size of Room 2 The Applicant submitted the size for Room 2 was 11.54m², whilst the Respondent contended it was 11.24m². In their written submissions to the Tribunal, the Respondent confirmed it was prepared to accept the Applicant's measurements for Room 2 at 11.54m². Room 5 was agreed at 12.73m². It was agreed by both parties both Room 2 and 5 are below the measurements required by the Respondent's Standards.
22. The issue for determination by the Tribunal is whether the HMO licence for Room 2 and 5 should be limited, as asked by the Respondent, or whether, the Property is suitable for occupation by 7 people in six households and that Rooms 2 and 5 can be occupied for sleeping and living accommodation.

Submissions

23. Both parties provided written submissions to the Tribunal.
24. In her statement, Mrs Nuttley, on behalf of the Respondent, confirmed there are no statutory minimum standards for the studio type of accommodation at the Property and consequently the Respondent has made provision for this in the Adopted Standards. Those standards provide a minimum size of 14m², but this is subject to:

    "*Regard will be had to the layout of rooms including doorways and location of appliances and other factors contained in the published advice concerning overcrowding standards and the Housing Health and Safety rating system. Space taken up by en-suite shower rooms is not included in the room assessment size.*"

25. Mrs Nuttley provided a history of the discussions between the parties prior to the issue of the licence. In respect of Room 2, the Applicant did not accept it was suitable for food storage, preparation and cooking facilities and those should be provided elsewhere. In respect of Room 5, the Applicant considered that since this was below the minimum size of 14m², the use for "living" should be excluded. The room could still be used for sleeping accommodation, food storage, preparation and cooking facilities. There were discussions regarding the use of the communal lounge for the occupants of Rooms 2 and 5, but those ultimately failed and the licence was issued in its present form on 22nd June 2020. Mrs Nuttley submitted that whilst the negotiations had failed, this demonstrated the Applicant was prepared to be flexible in its approach.
26. Mrs Nuttley explained the reasons for the Respondent adopting the minimum area for accommodation of 14m², referring to examples that illustrated the effects of living in overcrowded accommodation. This included worked examples of Crowding Space HHSRS of a studio flat measuring 13 m² that created a Category 1 hazard and studio accommodation that showed the necessary furniture could not be accommodated within an area measuring 13m²

27. Mrs Nuttley attached to her statement drawings prepared by her and relying upon the Unit Size and Layout sections of the Housing Quality Indicator system. It was confirmed this had been withdrawn but exampled how the required furniture would fit into Room 2. It was said:

"*The furniture that it is reasonable to expect in such a dwelling makes it cramped and cluttered, significantly compromising the health, safety and well-being of the occupier. There is a lack of space for day-to-day activities, including entertaining, that any occupant could reasonably expect to undertake, with an increased risk of accidents. I have also drawn up the specified activity zones for one-person accommodation within these units. These activities zones are not clear, they overlap and are not achievable within this space.*"

28. Reference was made to other local authorities and the standards adopted by them, to include the majority of those within the East Midlands. They had adopted the DASH (Decent and Safe Homes) Guide to Amenities and Space. This provided that the minimum requirement for bedrooms, with cooking facilities, provided in the room for 1 person is 14m^2.
29. The Respondent also considered the Department for Communities and Local Government Technical Housing Standards-Nationally Described Space Standard ("NDSS"). It was acknowledged that this is primarily intended for new build properties, but nevertheless this provides that a single bedroom should have a floor area of at least 7.5m^2 and at least 2.15m wide. Mrs Nuttley confirmed Rooms 2 and 5 both have double beds, although both have single occupants.
30. The Respondent referred to the decision of the First Tier Tribunal, ***Illkey Taxis Limited v Leeds City Council MAN/00DA/HPO/0004-10.*** This was an application dealing with the issue of Prohibition Orders for 3 self-contained units within a converted property and presented a Category 1 hazard for Crowding and Spacing. The NDSS was referred to as follows:

33. We agree with the Respondent that this is a much more useful consideration for determining the degree of likelihood in relation to these flats. Firstly, it is much more up to date having been developed over a number of years….: secondly, whilst it prescribes the minimum standards for new dwellings only and states it "has no other statutory meaning or use" we can see no reason why it cannot be used as a tool for helping an "inspector" making an assessment under the HHSRS; and thirdly, there is no prohibition under the HHSRS in having regard to other sources of information, just that the technical guide has to be one of them. "

31. Mrs Nuttley relied upon the case to demonstrate "*the rationale for the Local Housing Authority to adopt standards that are higher than the minimum prescribed standards in order to protect the health and wellbeing of tenants in studio style apartments*".

32. The Respondent commissioned an expert report from Julia Park BSC, BArch, RIBA, an architect. Her report confirmed it had been prepared without an inspection of the Property but had relied upon the information provided to her by the Respondent. She stated the description of the Property lead her to conclude the Property was self-contained studio accommodation and from that:

"some, or perhaps all, of the studios may therefore pose a hazard for Crowding and Space under the HHSRS"

She further said:

"New, independently verified worked examples for Crowding and Spacing, produced by Leeds City Council, bear this out. They demonstrate that a studio of 16.6m² (including a shower of 3.6m²) contains a Category 1 hazard in respect of Crowding and Space, and a studio of 28.8m² contains a Category 2 hazard.
The NDSS played an important role in these formal, independent assessments, which, in effect, concluded that the difference between the floor areas of the two homes assessed and the NDSS minimum of 37m² for a single person was too great to be acceptable. Both studios are likely to be deemed unfit for human habitation under the Homes (Fitness for Human Habitation) Act 2018…."
The new examples suggest that all the rooms labelled at 144 West Parade and are being used and marketed as studios, may pose hazards in respect of Crowding and Space. Bedroom 2 (which I understand is 11.24m²) and Bedroom 5 (which I understand is 12.73m²) are so undersized that they may pose Category 1 hazards. As they all contain a kitchen zone, other hazards may also be present, including an unacceptable risk of fire, for example….."

"….although the NDSS in intended to apply to self-contained accommodation it can also be used to assess the space provided for specific activities…. A single person should expect a bedroom (or sleeping area) of at least 7.5m², built in storage of at least 1m² and a shower room of at least 3m² including partition walls. Those three functions alone add up to 11.5m², a nominal allowance of 1.5m² for opening the door and entering the home brings the minimum floor area to 13m².
Bedroom 2 and Bedroom 5 are therefore already below the minimum area required by the NDSS without any cooking facilities or sitting space…."

33. The Respondent also referred the Tribunal to ***Justin Morgan v Leicester City Council BIR/00FN/HSV/2018/001.*** Here, evidence was presented by an independent Environmental Health Officer and an independent chartered surveyor. It was argued the local authority had been too rigid in the application of its guidance and was inconsistent when making decisions. This was rejected by the Tribunal. It further accepted the authority's reliance upon the DASH was reasonable but that it had to look beyond that, describing them as "*aspirational standards*".
34. The Respondent submitted that it had been correct to adopt the standards it had. Further, it was not aspirational to have a minimal floor size of 14m², this being necessary to protect tenants.

35. The Applicant advised he had begun letting the Property in 2016, at which time it did not require an HMO licence. It was inspected by the Council in 2017. At that time, the Property was described by the Council as "*very well maintained and high tec"* and no hazards were present. It was following the change in Regulations and the subsequent application for a licence the current licensing issues.
36. The Applicant submitted both Rooms 2 and 5 are reasonably suited to be occupied by a single person as studio style rooms with both cooking and en-suite facilities, without the need to use either the first floor room at the Property or any communal living room.
37. It was said the Adopted Standards do not have to be applied rigidly and are for guidance and properties should be considered on their own merits. In particular, the Adopted Standards do not provide guidance where exclusive and shared cooking facilities exist.
38. The Applicant submitted that whilst the Respondent argued its standards are to prevent Category 1 hazards of crowding and spacing, they have presented:

    "a connection between any failure to exactly meet the room sizes set out in their adopted standards and a failing under HHSRS, which should involve a risk based approach extending beyond just the size of the room; and none has been undertaken by the Respondent.
    The Respondent seeks to apply the Nationally Described Space Standards (NDSS) or alternatively apply NDSS sizes to the Property and/or to specific lettings within the Property, but the NDSS does not itself apply to HMOs or HMO rooms, and voluntary application of the NDSS is also specifically excluded in the Respondent's own published HMO Supplementary Planning Document"

39. The Applicant obtained three expert reports from Dr C. M. Haroon Bsc (Hons), MSc, PhD, CIHM, MCIEH, AIFireE, an Environmental Health Officer, Mr R. Tacagni MCIEH CEnvH, a Chartered Environmental Health Practitioner and Mr P. J. Turtle M.Sc, a DASH Certified HHSRS practitioner.
40. In his report, Dr Haroon confirmed he had inspected the Property on 12th September 2020. He observed the size of Room 2 to be 11.6m² after excluding the en-suite, but also referenced the storage space above the bed-head (1.4m x 1.1m) that was useable space and should not be ignored. He made the same observation in Room 5 which measured 12.m² after excluding the en-suite and again gave the same storage space above the bed-head. He submitted:

    "*Lincoln Council has stipulated an HMO licence condition requiring the cooking facilities to be removed form Studio Flats 2 & 5. It is worth noting here that they have given 18 months for this licence condition to be complied with. From the length of time given for this licence condition, it is clear Lincoln City Council do not see the existing arrangements and the layout within Studio Flats 2 & 5 posing an imminent risk to the safety and well-being of the occupants. From my own inspection of Studio Flats 2 & 5 no hazards were identified under HHSRS or breaches of the HMO Management Regulations."*

41. In his report Mr Tacagni confirmed he had inspected the Property on 27th July 2020. He confirmed that subsequent to his visit the Applicant had altered the cooking facilities in both Rooms 2 & 5 and he had been provided with photographs to confirm this. He stated that whilst the floor area was one factor to consider when assessing whether a room is reasonably suited for occupation, there are also other factors to be taken into account. This includes the layout and design of the space. When considering the additional outside storage provided for the occupants was also relevant. He regarded the kitchen facilities to be:

    "*compact and well designed having regard to the available space.*"

    He concluded:

    "*Overall, I did not find that either room felt cramped for a single person. I concluded that a lot of thought had gone into the design of the space and the quality of the fittings. In my experience, the quality and style of the accommodation is well above average for HMOs in the private rented sector. The provision of both shared and exclusive kitchen facilities and separate shared laundry facilities make it difficult to prescriptively apply either the council's HMO standards of the IEHO guidance to this property. Neither document references a scenario where tenants have flexibility to prepare food in the comfort of their room or in a separate shared kitchen.*
    In my opinion, Rooms 2 and 5 are both reasonably suitable to be occupied by a single person having regard to the size, layout and facilities within both rooms, when combined with the shared kitchen, laundry and storage facilities."

42. In his report Mr Turtle stated he had been instructed by the Applicant to provide a report into the allegations of psychological harm to occupants and unsafe conditions at the Property. He referred to **Justin Morgan v Leicester City Council** where the First Tier Tribunal found that rooms measuring 11.08m², 9.68m², and 9.44m² having sleeping, living and cooking accommodation were adequate for licensing despite the local authority having as aspirational adopted standard of 14m². He confirmed he had interviewed more than 30 tenants of the Respondent within Lincoln and found:

    "*…not only is there no negative psychological effects upon the occupants but indeed the opposite appears to be true with many stating that moving into these private studios and away from having to share cooking facilities has had a very positive impact upon their mental health.*"

43. Mr Turtle referred to the condition in the licence, requiring the removal of the cooking facilities from Room 2, as "*this is not a safe amount of space for cooking and sleeping activities combined*" as follows:

    "No one would expect anyone to combine the activities of cooking and sleeping at the same time and this notion as written is considered at least nonsense and legally and practically; and absurd in the extreme. There only needs to be safe amount of space to conduct one activity at a time in isolation. Common sense and reason must prevail here."

He further stated that, to arrive at this conclusion, he considered the Hazards against Infection and Protection against Accidents as per HHSRS. Having done so, he concluded :

"I have found nothing under any of the above HHSRS hazards … that caused me to think that these studios are not safe."

44. The Applicant referred to the surveys taken of tenants of it within the Lincoln area. It also provided statements for both current and previous tenants of Rooms 2 and 5, all of whom described positive experiences and of preferring the cooking facilities being within the rooms.
45. It was submitted that, in respect of Room 2, the Respondent's requirement for the removal of the cooking facilities was flawed. The drawing included in Mrs Nuttley's statement, showing the required furniture, was challenged upon the basis there is no definition or requirement for this in a residential letting. It does not consider that a room can be reasonably suitable for occupation if it is carefully designed. In Room 2 there are different floor surfaces to differentiate the spaces within the room, both for living and cooking. Mrs Nuttley refers to the lack of space for entertaining, but this is not a requirement when considering the test of reasonable suitability.
46. In respect of Room 5, the requirement for the removal of "living" from the licence and the requirement for the occupant to also have the use of the first floor room is unrealistic. It was said:

"*The very fact the Respondent considers that Room 5 is sufficient for sleeping, food preparation and cooking facilities necessarily implies that it is a suitable unit of living accommodation".*

47. The Applicant submitted the condition in the licence, requiring the first floor communal lounge to be for the exclusive use for the occupants of Rooms 2 and 5, should be removed. It argued that both Rooms 2 and 5 are reasonably suitable in their own right and, accordingly, this should be substituted with a condition that if the room is to be used for anything other than storage, then the Applicant will need to seek a variation to the terms of the licence.

Determination

48. The Tribunal noted that the areas for both Rooms 2 and 5 are now agreed between the parties, previously having been an issue between them. Therefore, for the purposes of this decision the area for Room 2 is 11.54m^2 and for Room 5 is 12.73m^2. It is accepted by the Tribunal and by the parties that neither accommodation fulfils the requirements set out in Respondent's standards.
49. The Tribunal further noted there are no statutory guidelines regarding for the studio style accommodation being considered here. Mrs Nuttley explained at length the reasoning behind the Adopted Standards and how those have been implemented to give the Respondent's decision regarding the licence conditions for the Property.

50. The Tribunal was referred to and considered **Clark v Manchester City Council [2015] UKUT 0129(LC).** Here, the issue was whether a local authority was entitled to adopt minimum space standards for an HMO. Martin Rodger QC, Deputy President said:

"It is clearly permissible for a local authority to give guidance on what factors it will take into account in determining whether a house is reasonably suitable for use as an HMO by a certain number of occupiers. The size of the accommodation is obviously a relevant factor in any such assessment. I see no reason why guidance should not identify a specific room size which will ordinarily regarded as too small to provide adequate sleeping accommodation. Such guidance should not exclude the possibility that a room which falls short of the recommended size will nonetheless be capable of being taken into account as sleeping accommodation if other circumstances mean that, viewed as a whole, the house is reasonably suitable for the stated number."

"In every case the views of the local housing authority will be relevant and merit respect, but once the tribunal has carried out its own inspection and considered all of the characteristics of the Property, including the size and layout of individual rooms and any compensating amenities, it will be in a position to make its own assessment of the suitability of the house for the proposed number of occupiers."

51. The Tribunal finds that whilst the Respondent's Adopted Standards are reasonable, it does not consider it appropriate for them to be the only criteria to which there is reference. Whilst the floor area is of relevance, the Tribunal should also consider the layout of the rooms and other accommodation that may also be used with other tenants.
52. The Tribunal further considered the decisions in both **Illkey Taxis** and **Morgan**, as referred to by the parties, but, since they are both decisions of the First tier Tribunal, they are not binding upon this Tribunal.
53. The Tribunal was advised by the Applicant's experts for the that Rooms 2 and 5 are suitable for occupation by a single person, taking into account their layout and that, having interviewed several former occupants of those rooms, there was no evidence of psychological harm. The Respondent's expert, Julia Park found the rooms to be unsuitable.
54. The Tribunal, having considered this evidence, preferred that of the Applicant. In doing so, it noted that Julia Park had not visited the Property, but had been provided with ground and first floor plans and photographs of Room 2. She did not appear to have been provided with any photographs of Room 5. Her evidence was heavily weighted on the floor area of the rooms. In this, her evidence was based upon worked examples using the NDSS minimum of 37m^2. However, the NDSS do not apply to HMOs and are only recommended for new dwelling houses. There was no indication within the report as to whether the layout of the room, the quality of the equipment provided and the availability of communal areas had been considered.

55. The Tribunal preferred the Respondent's expert evidence where consideration had been given, not only to the floor areas, but to the overall accommodation. The Tribunal did not attach great weight to the surveys carried out by Mr Turtle in relation to the evidence of psychological harm. In this it agreed with the comments made in **Morgan:**

    "*The fact that it appears, as asserted on behalf of the applicant, that no tenants have complained about the accommodation is not a reason to grant a licence. The test is not whether a particular person finds the accommodation to be suitable. It is not a subjective test, but an objective one. In any event, a particular tenant may say their accommodation is suitable for any number of reasons. They could have come from a lower standard of accommodation, for example, so be comparison the current accommodation may seem suitable to them.*"

56. At the inspection the Tribunal found the Property to provide accommodation to a high standard. Whilst Rooms 2 and 5 are the smallest of the rooms in the Property and are below the minimum area required by the Adopted Standards, they nevertheless provide a suitable living space by a single occupant. The rooms both have cooking areas, with storage cupboards and are delineated from the living area by different flooring. The living areas contains a double bed, desk stool/chair, storage and hanging space and are carpeted. Both rooms have natural light from one window in each studio. Each flat has an en-suite, whilst small, is adequate. The Tribunal also noted the additional outside storage space available to the tenants that mitigated any lack of storage space within the Property.
57. In considering the conditions imposed upon the licence, the Tribunal struggled to understand why, in respect of Room 2, it had allowed the Applicant 18 months in which to remove the cooking facilities. If they gave rise to hazard(s) of concern, it was unclear why those should be allowed to continue for 18 months.
58. The Tribunal also found some difficulty in understanding the condition attached to Room 5, insofar as "living" had been removed. The Tribunal considered this to be a somewhat unrealistic condition. It agreed with the Applicant who submitted that simply sleeping and cooking formed part of "living". The Respondent's expectation the tenant of Room 5 would use the communal lounge on the first floor for anything other than sleeping and cooking, rather than remain in Room 5, appeared to be a condition that would be extremely difficult to enforce.
59. The Tribunal accepted the Respondent's argument that the tenants of both Rooms 2 & 5 would find it difficult to entertain guests, but the Tribunal agreed this was not a requirement under any guidance associated with 2004 Act.
60. The Tribunal accepted neither Rooms 2 or 5 met the Adopted Standards. However, those standards are not mandatory and whilst the rooms are below 14m^2 the Tribunal finds they are both suitable for occupation by a single person.

61. The licence issued by the Respondent on 22nd June 2020 is confirmed, save as varied below:

Schedule 2

2(b)

(k) Room 1-Ground Floor-Single person-to be occupied for sleeping and living accommodation, food storage, preparation, and cooking facilities.
(l) Room 2-Ground Floor-Single person-to be occupied for sleeping and living accommodation, food storage, preparation and cooking facilities.
(m) Room 3 – Ground Floor-Couple-to be occupied for sleeping and living accommodation, food storage, preparation and cooking facilities.
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(q) Communal Lounge-First Floor-Communal area- only to be used for storage.
(r) Communal Kitchen-Ground Floor-Communal kitchen for food storage, preparation and cooking.
(s) Communal Kitchen-First Floor-Communal kitchen for food storage, preparation and cooking.
(t) Kitchen- First Floor Rear-Kitchen for food storage, preparation and cooking for exclusive sole use of Room 6.

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The condition imposed for Room 2 is deleted.

Tribunal Judge J Oliver
28 March 2022