



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

**Case reference** : **LON/00AG/HML/2022/0001**

**Property** : **28 Monica Shaw Court, 31 Purchase Street, London NW1 1EY**

**Applicant** : **Karim Miah**

**Representative** : **Archie Maddan, Counsel**

**Respondent** : **London Borough of Camden**

**Representative** : **Ms Wade**

**Type of application** : **Appeal in respect of an HMO licence under section 64 and Part 3 of Schedule 5 to the Housing Act 2004**

**Tribunal member(s)** : **Judge D Brandler  
Ms R Kershaw BSc**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **11<sup>th</sup> July 2022**

**Date of decision** : **18<sup>th</sup> July 2022**

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**DECISION**

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**Decision of the tribunal**

- (1) **The decision made by the London Borough of Camden on 20/12/2021 to grant an HMO Licence for a maximum of 3 persons from 3 separate households in respect of 28 Monica Shaw Court, 31 Purchase Street, London NW1 1EY is confirmed.**

## **Reasons for the tribunal's decision**

### **Introduction**

1. This is an application under paragraph 31(1)(b) of Schedule 5 to the Housing Act 2004 (“the Act”) against the decision made by the London Borough of Camden (“Camden”) to grant an HMO licence in relation to the property known as 28 Monica Shaw Court, 31 Purchase Street, London NW1 1EY (“the property”). The appeal is against the decision of Camden not to allow the smallest bedroom (“bedroom 3”) in the property to be occupied.
2. Camden introduced a borough wide HMO additional licensing scheme on 08/12/2015. That scheme was renewed on 08/12/2020.
3. The property is an ex Local Authority duplex flat on the 4<sup>th</sup> and 5<sup>th</sup> floors of a purpose-built block. It was originally a 3-bedroom property. The applicant purchased the property in 2020 and sub-divided the largest bedroom into two so as to increase the property to include 4 bedrooms.
4. The applicant applied for an HMO licence for 4 persons from 4 separate households which was accepted as validly made on 19/02/2021.
5. Mr Miah through NEI Properties Ltd granted an assured shorthold tenancy to 4 named tenants. The agreement was dated 23/07/2021 for a term of 12 months at a rent of £3,683.33 per month on the proviso that six months’ rent be paid in advance.
6. The respondent carried out an inspection in September 2021.
7. On 11/10/2021 the proposed HMO licence was issued with the licence holder named as NEI Properties Ltd at the registered address in Birmingham and Mr Karim Miah, at his Somerset address, named as the person having responsibility for management. Some works were listed in the schedule of work in relation to fire safety, electrical sockets, mechanical ventilation. The appeal does not relate to those issues. Three of the four bedrooms just met Camden’s minimum bedroom size for one person (7.1 sqm) but bedroom 3 was undersized and was given a zero permitted occupation.
8. Representation was received from Mr Miah on 01/11/2021 stating that he thought bedroom 3 was just over 7.1 sqm and Camden replied on 03/11/2021 explaining that the Council considered the useable space when looking at room size. The reply stated that the narrow passageway to the room could not be included when assessing the floor area of bedroom as it was not useable space, it could not be used for anything other than accessing the room. The reply drew Mr Miah’s attention to page 3 of the HMO standards which states “*floor area that cannot be used because of its shape or location must not be included when calculating room sizes*”. The reply also stated “*I would also advise that*

*you check with LBC leaseholder services as to whether permission for this sub-division had been gained as in my experience, such an arrangement is unlikely to have been approved”.*

9. Leaseholder services confirmed in an email dated 19/02/2022 that the flat was sold through the right to buy scheme in 2004 and the original lease plan shows that the upper floor left bedroom (bedroom 2), was subsequently sub divided into 2 rooms: bedroom 2 and bedroom 3. Leaseholder services confirm that no request was ever received to obtain permission to carry out alterations to the flat, and this alteration is therefore unauthorised.
10. On 20/12/2021 the respondent issued the HMO licence for 3 persons from 3 separate households.
11. The appeal to the Tribunal was received on 05/01/2022. Directions were issued on 03/02/2022 and amended directions were issued on 04/03/2022.

## **The Property**

1. The Tribunal inspected the property on the morning of 11/07/2022 at which Mr Miah, Mr Madden and those representing Camden, Ms Wade and Ms Pruden, were present.
2. The entrance door to the property is located at the end of a balcony walkway on the 4<sup>th</sup> floor from which various flats are accessed.
3. The property consists of, on the entrance level, a living/dining/kitchen area (21 sqm) containing a dining table and chairs and two 2-seater sofas, with a full range of kitchen cupboards and white goods; a shower room with WC and hand wash basin (2.9 sqm), bedroom 1 (7.4 sqm) and a communal storage cupboard which contained a vacuum cleaner.
4. A staircase leads to a small landing on the upper floor. From there the following rooms are accessed: a shared narrow storage space, a WC with handbasin (1.8 sqm), a lockable storage cupboard labelled for the use of bedroom 3, bedroom 2 (7.1 sqm) (this room has sole access to a small balcony), bedroom 4 (7.1 sqm). None of these measurements are in dispute. Bedroom 1 has a small double bed; the rest of the bedrooms contain a single bed each.
5. Bedroom 3 has been created by subdividing what appears to have been the master bedroom in the property (now known as bedroom 2). The access to bedroom 3 is via a door opening onto a narrow passageway which leads to the main bedroom area. The passageway from the bedroom door to the bedroom area measures 0.8862 m wide and 1.832m long. The bedroom area itself measured 3.009 x 1.991 m, an area of 5.991 sqm as stated by the respondent. The applicant in his submissions gives

the area of the bedroom to be 5.88 sqm plus the area of the passageway which in total he says is 7.1 sqm.

6. Only bedroom 4 appeared to contain a few personal items. The rest of the property was absent of any personal items.
7. Bedroom 3 contained a basic bedside table with no cupboard or drawer. A very narrow cupboard of not more than 18 inches wide and deep at a height of approximately 6 feet. A basic desk without drawers, and a single bed.

### **The hearing**

8. This was a face-to-face hearing that took place at Alfred Place, after an inspection was carried out at the property.
9. At the hearing on the afternoon of 11/07/2022, Mr Miah was represented by Mr Madden. Ms Wade, an Environmental Health Officer (“EHO”), represented Camden. She was accompanied by Ms Pruden, the Operations Manager for Camden’s borough-wide Additional HMO licensing scheme.

### **The Applicant’s case and evidence**

10. The applicant submits that the imposition of the condition preventing the use of bedroom 3 at the property is not appropriate for regulating the management, use and occupation of the HMO.
11. The imposition based on the respondent’s assessment of the usable floor space in bedroom 3 wrongly disregards part of the space of the room. Specifically, the respondent has disregarded the area of the passageway from the room door to the main area of the room. This area, it is submitted, should be included in the area of the room, which would then provide that bedroom no. 3 is 7.1 sqm, not 5.9 sqm.
12. It is submitted that the disregard of the passageway area by the respondent is not in accordance with the 2018 Regulations which specify at paragraph 1A(9) inserted into Schedule 4 Housing Act 2004 that: *“Any part of the floor area of a room in relation to which the height of the ceiling is less than 1.5 metres is not to be taken into account in determining the floor area of that room for the purposes of this paragraph”*. That it is said is the only legitimate basis to disregard floor area when considering the statutory minimum bedroom size, and such restriction does not apply to bedroom 3 because there is no floor area where the ceiling is below 1.5m.
13. The applicant submits that the correct approach to this case should be considered in light of the principles set out in *Clark v Manchester City Council* [2105] UKUT 129 (LC), and that when considering the property

as a whole, bedroom 3 is adequately sized, has access to natural light and has been used by tenants without any issues. There is communal space outside of bedroom 3 for the occupier to store possessions, study, cook, eat and socialise. The property as a whole is well furnished and maintained. It is not in dispute that the tenants occupied the property by way of cohesive living arrangements. In addition to the existing facilities, in the last few months a further lockable storage space has been created specifically for the occupier of bedroom 3 which is located outside of the room, on the upper floor landing.

14. In oral evidence, Mr Miah told the Tribunal that he considered that the passageway was usable floor space, and specifically could be used for putting a hook on the wall and hanging up a coat, leaving shoes on the floor, was a space to stand and make a phone call, as well as a space for doing sit up exercises. He acknowledged that a tenant would have to seek his permission to put a hook, or anything else, on the wall in accordance with the terms of the tenancy agreement.
15. It was pointed out to Mr Miah that it would not be safe for the passageway to be restricted by hanging coats on the wall and leaving shoes on the floor, as in an emergency that could restrict safe exit.
16. Later, in submissions, Mr Madden suggested that the existence of the corridor would give a feeling of space when, for example, sitting at the desk.
17. Mr Miah confirmed in oral evidence that after he purchased the property, he carried out alterations to the bedrooms so as to increase the number of bedrooms to four, although in written evidence he had previously suggested that when he had purchased the property it already had 4 bedrooms. He explained to the Tribunal that he had made exact calculations so as to sub divide the master bedroom, and create a 4-bedroom property where each of the bedrooms had a floor space of 7.1 sqm and does not accept that bedroom 3 is not 7.1 sqm.
18. Mr Miah referred to correspondence in 2019 with Camden in relation to another property that he had considered purchasing. In that case he sought advice as to whether a licence would be granted where the smallest bedroom was 3.24 m by 2.13 m (6.9 sqm), whether he could reconfigure the kitchen into a 4<sup>th</sup> bedroom, leaving communal living/kitchen space, and creating a separate storage cupboard for the smallest room. The response was that in principle, the smallest room was minimally less than the 7.1 sqm required, but they could not confirm until an inspection was carried out. Mr Miah confirmed he had not purchased that property and no conclusive decision was available on that property.
19. Mr Miah told the Tribunal that he had not sought permission from the freeholder for the alteration in the property because he understood this not to be a conversion. He explained that it was only a stud wall that had been installed to create the sub division. Mr Miah is an experienced

property owner / manager with 45 properties, 12 of which are HMOs. He explained that he hadn't had much experience of leasehold properties and this is why he was unaware.

### **The Respondent's case and evidence**

20. Camden maintain that having taken into account all of the elements of the property, that it is appropriate for 3 persons from 3 separate households only.
21. They have considered all of the communal living/kitchen/dining space of 21 sqm, which exceeds by 3 sqm their standard, as well as the 2 communal storage areas, one on each floor, and the newly created storage space created in the last few months specifically for bedroom 3.
22. While the communal living space exceeds their standard, they say this is not sufficient overall to justify the restricted room size of bedroom 3. Although this is an arrangement of cohesive living, students do not always know each other before moving in to the property, often they meet online, and they may not get on or like each other to allow socialising at the same time in the communal space. There must, the respondent says, be sufficient private space for an occupier in their bedroom. The fact that bedroom 3 has been created by subdividing the master bedroom has created a tight living space and each of the other three bedrooms only just reach 7.1 sqm.
23. Whilst accepting that with the passageway the floor space is in accordance with the 2018 Regulations, the respondent is entitled to have its own guidelines.
24. In her assessment of the property, Ms Wade said that they have utilised Camden's local standards for cohesive living, that is 7.1 sqm of useable floor space for a bedroom and not the 9 sqm that is considered appropriate in larger HMO's where there is no communal living space, and where tenants are unlikely to know each other or feel comfortable interacting.
25. The bedroom measurements were listed on the HMO licence as follows:
  - Bedroom 1 on the lower floor 7.4 sqm
  - Bedroom 2 on the upper floor 7.1 sqm
  - Bedroom 3 on the upper floor 5.9 sqm
  - Bedroom 4 on the upper floor 7.1 sqm
26. Ms Wade in her witness statement refers to the Council's HMO room size standards and that s.67(1) of the Housing Act 2004 permits the Council to have discretion to establish their own standards based on their own priorities, needs and local conditions. Camden's HMO standards are intended to be a fair and reasoned assessment of space. Bedrooms must provide sufficient space to accommodate the appropriate furniture for

the average occupants to live within the room and allow adequate circulation for themselves and a guest.

27. In developing their minimum bedroom and kitchen standards as set out in the document '*Preparation and Justification of our Minimum Houses in Multiple Occupation (HMO) Standards under the Housing Act 2004*' they had reference to the London Housing Design Guide 2010 (which states that the minimum area of a single bedroom should be 8 sqm and the Housing Health and Rating System ("HHSRS") under part 1 of the Housing Act 2004.
28. Camden's room sizes were amended in 2016 to reflect cohesive living and the availability of other living space for daytime use. If a living room of over 10 sqm is available in a cohesive let it is envisaged that there will be less time spent in the bedroom and therefore less dependency on space.
29. In essence, Camden say that they have developed their standards following reviews, extensive research and is in the mid-range of the standards of other local authorities in central London. They give consideration to each property taking into account the nature of the occupying group and the layout and structure of each property.
30. Ms Wade further states that the bedroom is the only private area that a tenant has access to in the property and personal space and privacy needs are particularly important where individuals are sharing all other areas of the property. Camden maintain that the narrow passageway from the bedroom door to the usable area of bedroom 3 cannot be included in the calculation of the floor area when assessing if it is suitable for occupation by a single person under the HMO standards.
31. She found the kitchen and bathroom spaces satisfactory. In cross examination she acknowledged that the communal living/kitchen space could accommodate 4 people.
32. In terms of the bedrooms, Ms Wade says that all the bedrooms are small. Bedroom 2 measured 2.023 x 3.376 m (6.830 sqm). However, she found an irregularly shaped corner to the room which added approximately 0.211 sqm making a floor area of just under 7.1 sqm
33. Bedroom 3 however has been partitioned off from bedroom 2 in such a way such that the room itself is only 5.991 sqm. She says the passageway area cannot be included in the measurement of the room because it is not useable floor space.
34. Ms Wade said that she had considered the whole of the property and found that 3 bedrooms barely meet the size requirements. She says that with 4 people in this flat, it is a tight environment with a shared area that is not huge. That shared area is used for cooking, dining, socialising, and that her experience of students moving into a property such as this is that they don't always know or like each other, socialising in the same area is not always possible, and that they should have a bedroom space that has

sufficient size such that they can have a private space to accommodate their belongings and use the space to study.

35. She noted the addition cupboard space created by Mr Miah in the last few months outside bedroom 3. This is located on the landing and is clearly marked as storage for bedroom 3 and has a lock. Ms Wade says that she does not consider that a cupboard outside the boundary of the bedroom is appropriate. For example, it is not appropriate for a tenant to have to leave their room space to go into the communal area to find their underwear and clothes for the day. She says there must be consideration for need for privacy and personal space. This requirement has been acknowledged as being even more important since the pandemic, which demonstrated how physical and mental health and wellbeing may be affected without adequate space.
36. Further she noted that none of the bedrooms had a full set of bedroom furniture, but in particular in bedroom 3 lacked adequate storage. The furniture that was in there was small. The wardrobe was very narrow, but of full height, the bedside table was just that, it lacked drawers or storage space, there was no chest of drawers, and the room had a small desk. The room had a single bed. She was concerned that there was very little space in the room to accommodate a tenant's belongings, for example, the tenant may have their own TV, books, etc and there was no storage or place for such items.
37. Ms Wade confirmed that they look at each case on its own merits. They did consider the shared areas in this property and that the smaller living area was compensated by the larger kitchen area, but that none of those issues were sufficient compensation to justify a useable area of a room well below council room size.
38. She noted that having inspected the property today after the tenants had left, that of course the rooms look bigger with no personal belongings at all.
39. In cross examination it was put to Ms Wade that the bed could have under bed storage, which, the suggestion seemed to be, would be an alternative to a chest of drawers for underwear. Ms Wade did not agree. She was pressed on what items would present an issue if they were stored under the bed and a wardrobe outside of the room. She was also pressed on where in Camden's policy was there mention of what items of furniture were required to be in a room.
40. In response Ms Wade stated that when they brought in the additional HMO standards in relation to cohesive living, they looked at what reasonable size furniture would be required to ensure there was space to move around the room. They came up with the minimum size for a bedroom of 7.1 sqm, a reasonable size wardrobe, chest of drawers, desk and chair and bedside table. She acknowledged in cross examination that none of that detail is in their policy, but explained that if they had put



every detail into the policy it would have included every possible detail, it would extended to some 50 pages.

41. She was pressed again on what items would pose a problem if under bed storage and a wardrobe was available. In response she said that would not replace a chest of drawers, and she went on to say that it had been noted in the other rooms that wardrobes were obstructed by furniture in the room. For example, in a few rooms there was something in the way of a door or drawers and all the rooms struggled to accommodate all of the furniture. Most tenants would have to move furniture to get access to wardrobe. Her position was that she would not want to store items of underwear under a bed.
42. In cross examination she was asked whether she had contacted any of the tenants to see if they were satisfied with the room sizes and whether they had any complaints. Ms Wade confirmed that they do not contact tenants to ask if they are satisfied with room size. In her experience, even where conditions are very poor, which is not the case in this instance, tenants do not complain because they often need to remain in a certain location and retain their tenancy. To her knowledge they had not received any complaints about this property.
43. Ms Pruden in her evidence acknowledges Camden's recognition that the floor dimensions of bedroom 3 meet the standard in the 2018 regulations. However, she reiterates the position that Local Authorities are entitled and encouraged to adopt their own HMO space standards so that even where the prescribed standards are met, a Local Authority can still decide that a house is not reasonably suitable for occupation by a particular number of households or persons.
44. Ms Pruden was satisfied that the Camden had followed the principles set out in *Clark v Manchester*, and that they took a "whole house" approach in deciding the whole property's suitability for the number of households and persons. Although she acknowledged that bedroom 3 exceeds the minimum prescribed size of 6.51 sqm, it has substantially less usable floor space than the Camden's standard for HMO bedrooms in a cohesive living arrangement.

## **The law**

45. Section 61(2) of the Housing Act 2004 ('the Act') provides for a licence to be prescriptive of the numbers of people occupying a property. Sections 63 to 67 of the Act provide for the application, grant or refusal of a licence and the prescribed matters to be considered in the exercise of those powers.
46. By virtue of section 65(2) of the Act, the licensing authority may nonetheless limit the numbers occupying a property even if the prescribed matters are satisfied.

47. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 amended Schedule 4 of the Act to prescribe with effect from 01/10/2018 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 6.51 square metres*”
48. It is appropriate for authorities to give guidance as to the factors to be taken into account which includes room size that can be set higher than the statutory minimum but it cannot “*adopt mandatory standards non-compliance with which would result in a determination that a house was not suitable*” [Clark v Manchester City Council [2105] UKUT 129 (LC) at 45]
49. Paragraph 31(1)(2) of Schedule 5 of the Act provides for a licence holder to appeal to the Tribunal against any terms of the licence.
50. The hearing of the appeal is a re-hearing not a review of the Authorities’ decision and the Tribunal has the power to confirm, reverse or vary the decision of the Authority

**The issues:**

51. Whether the imposition of the conditions imposed by Camden in the HMO licence for the property are appropriate for regulating the management, use and occupation of the HMO
52. Mr Miah asks that the condition be varied so as to allow 4 occupiers in the HMO. The sole issue is the space and arrangement of Bedroom 3 in the context of the property as a whole.

**Reasons for decision**

53. Given the Respondent’s concession that bedroom 3, by virtue of the passageway, satisfied the minimum size standard prescribed by law, the Tribunal proceeds on that basis.
54. The Tribunal, having inspected the property, was able to have a good understanding of the spaces available for communal living in this cohesive living situation. The Tribunal saw the property in an empty state, the tenants having departed with their belongings
55. The Tribunal found the property as a whole fairly tight in space. Even in its original state prior to subdividing bedroom 2, it would not have been a spacious property, but it would have had the benefit of one larger bedroom. There is little space to move freely around. During the inspection only Mr Miah accompanied the Tribunal into the various rooms, and at times we had to take turns to inspect various areas.
56. Whilst it is acknowledged that the communal living/kitchen area is 21 sqm, it is set out in such a way that the seating area with two 2 seater

sofas is at one end of the room, with kitchen and dining table at the other. Even with this communal space, which may allow alternatives for the occupiers, the whole of the property did not provide enough space to justify the restricted usable floor space of bedroom 3.

57. In terms of the additional lockable cupboard created specifically for bedroom 3 to be accessed from the communal space on the upper floor, the Tribunal did not find that this was a viable alternative to having adequate space within the confines of the room itself for storage. It is not acceptable that an occupier should have to store his/her personal belongings outside of his/her room, even if the cupboard is locked. The alternative suggestion by Mr Miah in terms of under bed storage being a solution, was also discounted. It is not reasonable that someone would have to reach into a storage under the bed to access their underwear or clothes for the day.
58. Specifically in terms of bedroom 3, it is acknowledged that whilst sitting at the desk, the area of the passageway would allow the occupier to have the feeling of not being so confined. However, in terms of use of the passageway it is not practical to consider that this can be classed as usable space. Nothing can be attached to the walls because to do so would restrict the access and exit even further and potentially cause problems with exit in an emergency. Similarly, any shoes or items left on the floor would be a hazard.
59. Whilst the total floor space of bedroom 3 including the passage way is within the legal limits of the 2018 regulations, taking the property as a whole and the restrictions placed on the occupier of bedroom 3 in how s/he can utilise the room, the Tribunal found that the property is insufficient to permit 4 persons from 4 separate households.

**Name:** Judge D Brandler **Date:** 18<sup>th</sup> July 2022

### **ANNEX - 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.