



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

Case Reference : **MAN/32UD/HML/2022/0009**

Property : **16 RICHMOND ROAD, LINCOLN, LN1 1LQ**

Applicant : **BOND HOUSING GROUP (LINCOLN) LTD**

Respondent : **CITY OF LINCOLN COUNCIL**

Type of Application : **Appeal against HMO licence conditions: Housing Act 2004, Schedule 5, paragraph 31(1)**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member P Mountain**

Date of Decision : **24 November 2023**

DECISION

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The HMO licence dated 2 December 2022 issued in respect of 16 Richmond Road, Lincoln is confirmed save for the changes specified at (A) and (B) below

(A) The tables at Schedule 2a) and 2b) are varied to read as follows:

2a)

Amenity	Quantity
Number of storeys to HMO	2
Number of rooms providing sleeping accommodation	6
Number of communal living/dining rooms	0
Number of shared kitchens	1
Number of exclusive kitchens (room 4 and room 6)	2
Total number of fixed sinks	7
Total number of cookers	7
Number of shared bathrooms with toilet	0
Number of shared bathrooms without a toilet	0
Number of shared separate toilets	0
Number of exclusive showers/baths	6
Number of exclusive toilets (in shower rooms)	6
Total number of wash hand basins	6
Maximum number of units of accommodation	6
Maximum number of households occupying house	6
Maximum number of persons occupying house including a couple permitted to occupy either room 3 or room 4 but not both rooms at the same time	7

2b)

Room identification	Size (m²)	Manner in which room can be occupied
Room 1 Ground floor front	11.28	Single person, to be used as sleeping/living including food storage, preparation and cooking facilities with en-suite facilities
Room 2 Ground floor middle	11.32	Single person, to be used as sleeping/living including food storage, preparation and cooking facilities with en-suite facilities and (once it becomes available) sole use of one outside shed
Room 3 Ground floor rear	16.07	Single person or a couple, to be used as sleeping/living including food storage, preparation and cooking facilities with en-suite facilities

Room 4 First floor front	13.05 (17.16 including kitchen)	Single person or a couple, to be used as sleeping/living with exclusive use of adjacent separate kitchen
Room 5 First floor middle	14.17	Single person, to be used as sleeping/living including food storage, preparation and cooking facilities with en-suite facilities
Room 6 First floor rear	9.61 (13.25 including kitchen)	Single person or a couple, to be used as sleeping/living with exclusive use of adjacent separate kitchen
Kitchen First floor front	4.11	Kitchen for food storage, preparation and cooking for the exclusive use of unit 4
Kitchen First floor rear	3.64	Kitchen for food storage, preparation and cooking for the exclusive use of unit 6
Communal Kitchen/Laundry Ground floor	4.82	Communal kitchen and laundry

(B) The Property Specific Conditions are amended as follows:

1. Ground floor kitchen/laundry

Delete existing PSC and add “Re-provision the ground floor kitchen as a communal kitchen and laundry (1) with or without a fridge or freezer but (2) containing no fewer than 2 washing machines and 2 tumble dryers. Remove the external door to this room. The work to be completed within 18 months of the date of this licence.”

2. Room 2

Delete PSC limiting the cooking facilities in Room 2 to a microwave oven and tea making station.

REASONS

Background

1. The Applicant is a respected landlord providing high quality studio accommodation in HMOs and works closely with the City of Lincoln Council to deliver safe housing within the terms of the Housing Act 2004 (the Act).
2. In December 2022 the Respondent issued an HMO licence to the Applicant in respect of 16 Richmond Road subject to measurements and conditions which have been discussed and largely agreed between the parties. The following issue has not been agreed: whether Room 2 on the ground floor is suitable for use as self

contained living accommodation incorporating bedroom, kitchen area and en-suite shower and toilet. There have been discussions regarding the communal kitchen and laundry room on the ground floor, which has an external door to the side passage, and from there to the rear yard. The room is narrow, and the Respondent disliked the possible hazards involved in using the space for access to the exterior as well as for cooking and laundry. In response, the Applicant has created a new (narrower) side door and access via an adjacent separate passage, so that the rear yard can be reached without entering the kitchen/laundry. To the extent that this arrangement remains a live issue, the Tribunal has included it in this determination.

The application and objection

3. The Applicant says that Room 2 has been – and is being - used successfully as a self-contained unit including full kitchen, and invites the Tribunal to vary the licence so as to enable it to continue this use with such conditions, if any, as may be required.
4. The Applicant further says that if this is agreed by the Tribunal, then as the communal kitchen is not a required facility (all the let rooms being self-contained) no licence conditions need to be applied to it. However the Applicant requested an indication from the Tribunal as to which of alternative layouts provided in the bundle of documents were preferable.
5. The Respondent takes the view that at 11.04m² or thereabouts Room 2 is too small for use as a self-contained unit of accommodation, and the HMO licence it has issued requires the Applicant to remove the full kitchen which is currently in the room. Instead, the Respondent requires the occupier of Room 2 to use the communal kitchen facilities in the ground floor communal kitchen/laundry, which is no longer the sole means of access (other than via the front door) to the rear yard. A tea-station and microwave oven would remain in Room 2.
6. No enforcement action has been taken to date to safeguard the present occupant of Room 2 from any perceived hazard arising from the inclusion of full kitchen facilities in his room.

The law

6. There are no statutory minimum standards for studio accommodation of the type provided by the Applicant at 16 Richmond Road. The relevant law is set out in the Act as follows:

Paragraph 31(1) in Part 3 of Schedule 5 to the Act deals with appeals against a local housing authority's decision to refuse or to grant an HMO licence. Paragraph 34(2) provides that the appeal is to be by way of a re-hearing (of the application for a licence) and may be determined having regard to matters of which the authority were unaware. Paragraph 34 continues

“(3) The tribunal may confirm, reverse or vary the decision the local authority.

(4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.”

7. Sections 64 and 65 of the Act set out the requirements for suitability of a property for multiple occupation as follows:

“Section 64 (3)(a)that the house is reasonably suitable for occupation by not more than the maximum number of households or persons [specified in the application or decided by the authority] or that it can be made so suitable by the imposition of conditions under section 67;

Section 65 (1) The local housing authority cannot be satisfied for the purpose of section 64 (3)(a) that the house is reasonably suitable.....if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.....

*Section 65 (4) The standards that may be prescribed [by regulation] include (a) standards as to the number, type and quality of –
.....(ii) areas for food storage, preparation and cooking.....*

8. Section 67 of the 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.”*

9. The regulations made under section 65 are the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 (“the 2006 Regulations”). These set out at paragraph 3 the “prescribed standards” to be applied to shared kitchens where units of accommodation within the HMO do not contain facilities for cooking:
“(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....”
10. The present application is made under Part 2 of the Act. Section 55(5)(c) in Part 2 requires the local housing authority “to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises” Subsection (6) goes on to explain that “Part 1 function” means a duty or power to take enforcement action in the event of a Category 1 or Category 2 hazard respectively, and that the local housing authority must comply with section 55(5)(c) within 5 years after the date of the licence application. To date there has been no formal assessment of hazards at the property, and the Tribunal does not have jurisdiction in the present case to consider what Part 1 hazards there may be or what Part 1 enforcement might be applicable.

The Respondent’s Adopted Standards

11. As required by the Act, the Respondent has drafted and implemented standards (“Adopted Standards”) to be applied to HMOs within its area.
12. Appendix 12 of the Adopted Standards sets out the minimum sizes for rooms and provides that:
Where there is a shared kitchen but no shared lounge or dining facilities – the area of a room let for occupation by one person is to be at least 10m².
Where cooking facilities are provided within a room let for occupation by one person - the area of the let room is to be at least 14m².
Where a shared kitchen is to be used by between 1 to 5 people - the area of the kitchen is to be at least 7m².

13. The Adopted Standards also provide that *“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.”* The floor space requirements of the Adopted Standards are taken into account by the Tribunal since they are designed to avoid risks to the health and safety of occupiers. However such requirements are not mandatory and the Tribunal is required to take a broader approach when considering the suitability of a room as living accommodation, as explained by Martin Rodger QC in **Clark v Manchester City Council [2015] UKUT 129 (LC)** where he stated at paragraph 53:
“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.”

Property inspection

14. The Tribunal inspected the property on 5 October 2023 with representatives of the parties and the Applicant’s property manager who had access to the occupants’ rooms in their absence and with their permission. The property is a two storey period property containing, at present, 6 self contained units of accommodation. Outside to the rear there is a garden area with picnic table and covered bike shelter for use by all the residents. This area is adjacent to a similar area to the rear of the Applicant’s adjacent property. The gardens are connected, and share the use of a row of good-sized lockable sheds which are allocated on a first come first served basis. The property manager told the Tribunal that there is no additional charge for use of a shed.
15. In its current layout, there are no rooms in the property containing facilities which are in practice shared by the occupiers, other than the ground floor combined kitchen and laundry. The expert witnesses agreed that there was no sign (at the time of their inspections in 2020) that the kitchen facilities in this room had ever been used. Room 6 on the first floor at the rear of the property has no internal kitchen but has the use of a (currently unlockable) kitchen situated immediately outside her

door, which at 3.64m² is much smaller than the Respondent's Adopted Standard for a kitchen shared by up to 5 people (7m²). There is a similar arrangement whereby the occupier(s) of Room 4 have no internal cooking facilities but enjoy the use of a small kitchen adjacent to their room. The Tribunal understands that in theory any tenant could use these unlocked kitchens, although, having their own internal kitchens, they have no need to do so.

16. The rooms in the property are designed and furnished in such a way as to enable the occupants to make full use of the available space.
17. Room 2 has a single window giving on to the outside passageway leading along the side of the house to the rear yard. As a result the amount of natural light entering the room is limited, and it seems probable that artificial light is required for most activities.

The parties' bundles

18. On 5 October 2023 the Tribunal inspected 173 Carholme Road, Lincoln as well as this property 16 Richmond Road, with a view to making a determination as to HMO licence conditions. Both properties are owned by the Applicant. A Directions Order dated 16 February 2023 provided for each party to prepare a bundle of the documents on which it intended to rely in relation to both properties. The Applicant supplied the Tribunal with a bundle of some 2130 documents, in which representations and evidence relating to 173 Carholme Road and 16 Richmond Terrace were mixed together. A further set of documents provided on 27 September 2023 indicated that some issues had "potentially" been resolved between the parties, and referred to new proposed Property Specific Conditions. However those new proposed conditions were not included in the documents and the Tribunal received no written confirmation from the Respondent as to the matters said to have been agreed.
19. The Respondent produced a bundle of some 450 pages containing the witness statement of Mr Savage, Private Sector Housing Standards and Enforcement Team Leader for the Respondent, and his supporting documents, as well as a separate statement dealing with the issues at 173 Carholme Road.

The Applicant's evidence

20. The Applicant produced three reports said to be expert evidence: they were prepared by Mr Tacagni, Dr Haroon and Mr Turtle respectively. However the report of Mr Turtle is not accepted by the Tribunal. Mr Turtle works for Landlord Licensing and Defence Ltd which is the Applicant's representative in these proceedings. He is not independent and his opinion evidence is not relevant.
21. The Applicant also produced a number of documents relating to the room sizes permitted in various London boroughs. The Tribunal does not consider these relevant to the present case. 16 Richmond Road is some distance from the centre of Lincoln, whereas outdoor communal facilities in London are generally much more extensive and accessible. The underlying considerations when formulating local housing authority policies are inevitably very different.
22. The subjective experiences and opinions of the Applicant's tenants are not to outweigh the Tribunal's objective assessment of the property. These witnesses are not conversant with the factors to be considered when determining HMO licence conditions. The Applicant's witness statements supplied by current and former tenants have been noted but not relied upon.
23. The Tribunal is not persuaded by arguments and decisions relating to the Applicant's property at 144 West Parade. The subject property has been considered on its own merits.

Findings

24. The Tribunal notes the Respondent's preference for a minimum room size of 14m² for a self-contained studio room, but like the Respondent it is willing to be flexible and to take into account all relevant aspects of the room and the property under consideration. After inspecting the property and following careful consideration of the representations of both parties and their supporting documents and witness statements, the Tribunal finds as follows.

25. Despite the limited natural light and relatively small floor area of Room 2, the Tribunal finds that due to the well-planned arrangement of the space it is suitable in its present configuration (and subject as provided at paragraph 26 below) for use as self-contained living accommodation. The range of kitchen units, cooker etc are set along the front wall away from the sleeping area and clothes storage. The centrally placed work station/dining table is small but acceptable. The Tribunal accepts the evidence of the Applicant's expert witnesses that it would be neither convenient nor healthy to require the occupant of Room 2 to use as his own kitchen the communal kitchen which may well be being used at the same time as a communal laundry.
26. However Room 2 is distinctly smaller than the preferred size provided for in the Respondent's Adopted Standards, and storage space in it is limited. To counter this, the Tribunal has provided that one of the secure sheds in the rear yard (which are in effect small rooms) must be made available to the occupant of Room 2. If the present occupant does not already have the use of one of these sheds, a shed must be allocated to him and future occupants of Room 2 when one of them becomes available.
27. It follows that the occupant of Room 2 does not require use of the separate ground floor kitchen. Since all rooms in the house include full kitchen facilities, the better use of this communal kitchen is as a laundry. The room is well below the Respondent's preferred size for a shared kitchen, but as this kitchen is not an HMO requirement – the tenants having their own integral kitchens - the size is not a factor to be considered. The Tribunal understands that the Applicant wishes to retain at least some kitchen facilities in this room and that the Respondent has no objection. The Tribunal does not identify a floorplan for this room since it has determined that the external door is now superfluous and is to be removed. The extra space thus created will allow for a reconfiguration and for no fewer than 2 washing machines and 2 tumble dryers to be provided. As there are fridge freezers in all the let rooms and since no tenant of the property is likely to want to leave his or her own food in the communal kitchen, the Applicant is not required to include a fridge or freezer in the room. Extended laundry facilities would be a better use of the space.

28. Each of the first floor kitchens outside Rooms 4 and 6 are to be allocated for the sole use of the occupier(s) of the adjacent room. For the occupier of Room 6 in particular, it would be embarrassing and inconvenient to have another resident of the house preparing meals at any time of the day or night immediately outside her door.

Tribunal Judge A Davies

24 November 2023