



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

Case Reference : **MAN/32UD/HML/2022/0004**

Property : **173 CARHOLME ROAD, LINCOLN, LN1 1RU**

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

- The HMO licence dated 2 December 2022 issued in respect of 173 Carholme Road, Lincoln is confirmed save that 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	0
Number of exclusive kitchens	6
Total number of fixed sinks (excluding Manager's room)	6
Total number of cookers (excluding Manager's room)	6
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 (excluding Manager's room)	6
Number of exclusive toilets (in shower rooms) (excluding Manager's room)	6
Total number of wash hand basins (excluding Manager's room)	6
Maximum number of units of accommodation	6
Maximum number of households occupying house	6
Maximum number of persons occupying house	7

2b)

Room identification	Size (m²)	Manner in which room can be occupied
Unit 1 Ground floor front	14.7	Single person with ensuite shower room and kitchen
Unit 2 Ground floor middle rear	14.53	Single person with ensuite shower room and kitchen
Unit 3 Ground floor rear	15.36	Single person with ensuite shower room and kitchen
Unit 4 First floor front	18.46	Single person or couple with ensuite shower room and kitchen
Unit 5 First floor middle	14.3	Single person with ensuite shower room and kitchen
Unit 6	10.75	Single person with ensuite shower room

First floor rear		
Kitchen First floor rear	4.23	Kitchen for food storage, preparation and cooking by the occupier of unit 6
Manager's room Ground floor middle front	11.21	Room for the manager's use only (* see note)

*Note: In the event that the Manager's room is currently let as living accommodation, the current tenancy may continue until the contractual expiry date but the room may not be let as separate living accommodation thereafter.

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. On 29 July 2022 the Respondent issued an HMO licence to the Applicant in respect of 173 Carholme Road subject to measurements and conditions which have been discussed and largely agreed between the parties. The following issues have not been agreed: (1) whether Room 7 is suitable for use as self contained living accommodation *either* incorporating bedroom, kitchen area and en-suite shower and toilet *or* incorporating a tea-station with or without microwave and the use of a shared kitchen, and (2) whether the first floor kitchen currently used by the occupant of Room 6 is suitable for shared use by the occupants of two separate single rooms in the house.
3. The Respondent takes the view that at around 11.21m² Room 7 is too small for use as a self-contained unit of accommodation, and has permitted its use only as a communal lounge and kitchen. No enforcement action has been taken to date to safeguard the consecutive occupants from any perceived hazard arising from his occupation of the room.

4. The Applicant points out that the room has been – and is being - used successfully as a self-contained unit, and invites the Tribunal to vary the licence so as to enable it to continue this use. If this is not agreed by the Tribunal the Applicant proposes that the kitchen in Room 7 should be removed and replaced by a tea station and microwave, with the occupant also having the use of a kitchen situated on the first floor outside Room 6. Again, if this is not agreed by the Tribunal, the Applicant's third proposal is that room 7 is reserved for the exclusive use of the building's manager.

5. In response to the Respondent's proposal for Room 7, the Applicant says that there is no appetite among its tenants for shared indoor living space and that the suggested communal lounge and kitchen would not, in practice, be used.

The law

6. There are no statutory minimum standards for studio accommodation of the type provided by the Applicant at 173 Carholme Road. The relevant law is set out in Part 2 and the Schedules to 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. In her witness statement Ms Cann, Housing Standards and Enforcement Officer for the Respondent, says that “...it is not common sense to permit occupation of a dwelling so small as to create at least one probable Category 1 hazard only to then have a duty to serve a statutory notice, likely a prohibition order, in relation to that hazard at a later date.” Nevertheless, 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. Regarding this, Ms Cann says: "The adopted standards deliberately give a minimum standard for a kitchen shared by no more than five persons, as it is not adequate or practical to provide a fifth of the space and amenity requirement for one person and two-fifths of this requirement for two persons. A kitchen of 7m² is not an aspirational standard, this is the size of a typical galley kitchen found in an older terraced house."
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 obliged 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, 7 self contained units of accommodation. Outside to the rear there are two small private yards for the sole use of the occupiers of the ground floor rear rooms, and a larger enclosed area for use by all the residents with picnic table and covered bike shelter. This area also contains a storage shed, which was not being used when the Tribunal inspected.
15. In its current layout, there are no shared facilities in the property other than laundry facilities, ironing boards, vacuum cleaner etc situated in cupboards off the corridors. Room 6 on the first floor at the rear of the property has no internal kitchen but has the use of an adjacent kitchen which at 4.2m² is considerably smaller than the Respondent’s Adopted Standard for a kitchen shared by up to 5 people (7m²).
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 7 has a single window giving on to a full height brick wall approximately 1 metre distant. As a result minimal natural light enters the room. The lack of any external view creates a cramped and enclosed feeling. To allow for the kitchen facility in the room, the work-space (also used for eating) is limited to a shelf-like table.

The application

18. The Applicant contests the Respondent’s designation of Room 7 on the ground floor middle front of the property as “Communal area not to be used as sleeping accommodation, may include kitchen for additional food storage, preparation and cooking.” In its application dated 10 August 2022 the Applicant seeks instead a designation in the following terms: “Single person with ensuite shower room and kitchen”. The Applicant states that there is no requirement for the room to be used

as a communal lounge/kitchen area “and it is not offered as such” and says “There is no requirement for a communal living room at this property nor it is intended that one be provided.”

19. As a secondary proposal, if the Tribunal finds it appropriate, the Applicant suggests an amendment to read “Single person with ensuite shower room and tea-station (with microwave)” with the occupant using the first floor kitchen jointly with the occupant of Room 6.
20. As a third proposal, in the event that the Tribunal does not accept that Room 7 is suitable for letting on either of the previous terms, the Applicant requests “that this room not be allocated as a habitable room of any kind and shall be for the landlord’s use only” and that the description in the licence be amended to read “Manager’s Room....for the manager’s use only.”
21. Finally, whatever the determination of the Tribunal in relation to Room 7, the Applicant requests a determination as to whether the first floor kitchen used by the occupant of Room 6 is suitable for use by two people occupying different rooms in the house.

The Respondent’s objection

22. The Respondent considers that, taking all the facilities and amenities of the building into account as well as its size, Room 7 is not acceptable as fully self-contained accommodation. The Applicant’s first proposal is therefore rejected. The second proposal is also rejected, on the ground that the kitchen on the first floor is not suitable in terms of size or layout for use by two persons.

The parties’ bundles

23. On 5 October 2023 the Tribunal inspected 16 Richmond Road, Lincoln as well as this property 173 Carholme 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 agreement had been reached between the parties, and included a further witness statement by the former tenant of Room 7, 173 Carholme Road.

24. The Respondent produced a bundle of some 450 pages containing the witness statement of Ms Cann relating to the subject property, and her supporting documents, as well as a separate statement dealing with the issues at 16 Richmond Road.

The Applicant's evidence

25. 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.
26. 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. 173 Carholme 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.
27. 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, former and prospective tenants have been noted but not relied upon. However the Tribunal accepts that many tenants of the Applicant's studios do not like sharing accommodation and may have particular difficulty in sharing a kitchen where they wish to comply with strict food preparation rules. The Tribunal notes the general view that communal facilities in properties such as 173 Carholme Road are not welcome and are unlikely to be used.

28. 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

29. The lack of natural light and external view combined with the small floor area of Room 7 (11.4m² or thereabouts) renders it unsuitable for use as self-contained living accommodation. Regarding the lack of natural light, the Tribunal notes that the lower half of the window has obscured glazing for privacy, and that the Applicant intends to instal roller blinds to maximise daylight levels. Such blinds will have the disadvantage of preventing the tenant from shutting out light altogether when required and will reduce his ability to control the level of privacy, especially when the window is open. Security may also be affected by the loss of the slatted blinds, as the windows open from the bottom.
30. The Applicant refers to the common situation where basement flats – perhaps especially in London – enjoy no view and little natural light. The Tribunal is not willing to apply London standards in Lincoln. Further, the basement flats referred to, if they meet local housing authority standards, are likely to have a larger floor area than Room 7 in the subject property.
31. There is insufficient working and eating space in Room 7. 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. In Room 7 the shelf-like table for this purpose has had to be lowered from its optimum height, to enable it to be used with the bucket-style easy chair. If, as at present, a double or small double bed is installed below the window, it is difficult to gain access for making the bed and there is little room for pulling the bed out of position. The television cannot be seen from the head of the bed. When it is in position in front of the work space/table, the chair impedes access to and from the bed. The storage shelving over the bed head (which is the only shelving available) can only be accessed by standing on the bed. An image provided by the Applicant showing how the room would look after removal of the full kitchen resolves some of these difficulties, but as

explained below requiring the tenant to use a shared first floor kitchen is not acceptable to the Tribunal.

32. Removing the kitchen from Room 7 and replacing it with a tea station with or without microwave would require the occupant to use the first floor kitchen in common with the occupant of Room 6. The Tribunal notes and accepts Ms Cann's comments at paragraphs 42 and 43 of her witness statement, and finds that the kitchen is unsuitable in terms of size and facilities for use by two people at the same time. While in practice tenants may often stagger their use of kitchen facilities, there will inevitably be times when use by both tenants overlaps, even if it may be "passive" use in terms of leaving items around until they are washed up and put away. The Tribunal particularly notes that the oven door cannot be opened while someone is standing at the sink, and that the work surface in the corner of the room is virtually unusable save for storage, as it can be reached only by leaning over the sink or the hob. The Applicant's evidence that it would be prepared to reconfigure the kitchen to answer at least some of Ms Cann's objections is noted, but this had not been done at the time of the Tribunal's inspection and the Tribunal is unable to assess how any such hypothetical changes would impact users of the kitchen in practice. The room, by any standards, is very small for two people undertaking kitchen tasks together.
33. Further, the kitchen is not considered suitable for use by the occupant of Room 7 because the occupant would have to carry food up and down the staircase. The arrangements in other HMOs with different configurations are not relevant to this finding. In 173 Carholme Road the staircase is a single straight carpeted flight leading to a stone-tiled floor. Mr Tacagni points out that the tenant might well wish to have one hand on the handrail when descending the stairs. This would render the carrying of hot food even more problematic. The Tribunal considers that this arrangement would not only carry health and safety risks but would be inconvenient and stressful for the occupant of Room 7. The prescribed standard set out in the 2006 Regulations, ie that the kitchen must be "*suitably located in relation to the living accommodation*" would not be satisfied.

34. The Tribunal notes Mr Tacagni's view that for the preparation of many meals a tea-station and microwave in the room may well be sufficient. However it is a given that a tenant must have appropriate access to the facilities afforded by a full kitchen, and for the reasons given above, appropriate access is not available in this property.
35. The Applicant's expert evidence indicates that there is a slightly higher than average risk that the lack of space in Room 7 might cause a health and safety hazard, and that the risk is slightly greater if Room 7 is configured with a tea-station so that the occupant has to use the first floor kitchen. Dr Haroon refers to the seating area supplied in the rear garden of the property, but this is of course an impractical resource for some months of each year. He also rates "unsatisfactory" the food storage facilities, power sockets, worktop space, and the size of and space for cooking facilities. Having carefully considered the expert reports, the Tribunal finds that they do not materially undermine the Tribunal's view that Room 7 is unsuitable for use as living accommodation.
36. The third option requested by the Applicant – ie to identify Room 7 as a manager's room – is therefore the option acceptable to the Tribunal. As this room is not required for communal use and will no longer be let accommodation the Tribunal has not specified whether any change to the room's existing kitchen and shower room arrangements should be made. This will be a matter for the Applicant to decide.

Tribunal Judge A Davies

24 November 2023