



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

Case reference : **LON/00AG/HML/2023/0027**

Property : **Flat 21, Beauvale, Ferdinand Street,
London, NW1 8EY**

Applicant : **Ben Katzler**

Representative : **In Person**

Respondent : **London Borough of Camden**

Representative : **Russell Pugh, Chartered Environmental
Health Practitioner**

Type of application : **Application relating to Licensing of
Houses in Multiple Occupation (HMO) –
Appeal against conditions attached to an
HMO Licence**

Tribunal members : **Judge Bernadette MacQueen
Mr Fonka, FCIEH CEnvH M.Sc.**

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

Date of hearing : **25 July 2024**

Date of decision : **6 August 2024**

DECISION

Decision of the Tribunal

- (1) The Tribunal dismisses the appeal against the grant of a House in Multiple Occupation licence and the conditions attached to the licence relating to Flat 21, Beauvale, Ferdinand Street, London, NW1 8EY issued on 14 August 2023 and declines to vary the conditions that were imposed.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.

The Application

1. The Applicant appealed against a decision of the London Borough of Camden on 14 August 2023 to grant a House in Multiple Occupation licence for Flat 21, Beauvale, Ferdinand Street, London, NW1 8EY (the Property) and to impose a condition limiting the occupancy to a maximum of 3 people forming a maximum of 2 households.
2. The licence was granted for a period of one year expiring on 14 August 2024. As the fourth floor front right bedroom was deemed to be below the minimum floor area of 6.51m², a zero permitted occupancy was applied to that room. The Applicant as the licence holder had to ensure that the room was vacated no later than 18 months from the first licence issue date.
3. The Applicant appealed to the Tribunal, and on 25 July 2024 the Tribunal heard in person from Ben Katzler, the Applicant, and from Russell Pugh, Environmental Health Officer working for the Private Sector Housing Team at the London Borough of Camden. The Tribunal also heard from Florence Cussans, a tenant at the Property.
4. Both the Applicant and the Respondent provided the Tribunal with a bundle of documents. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. The Tribunal considered this case on the basis of the papers provided by the parties and the oral evidence and submissions given at the hearing.

The Issues to be Decided

5. The Applicant objected to the licence granted by the Respondent firstly because he said that the Respondent should not have classed the Property as an HMO, and secondly because he did not agree that the fourth floor front right bedroom should have a zero permitted occupancy.

The Applicable Law

6. Sections 56 to 60 of the Housing Act 2004 (the 2004 Act) introduced provisions enabling local housing authorities to designate areas within their boroughs as areas where certain houses in multiple occupation are subject to an additional licensing scheme. Following consultation, the London Borough of Camden introduced an additional licensing scheme which covered the whole of the Borough on 8 December 2015 for five years. The scheme was renewed on 8 December 2020 for a further five years. This additional licensing scheme applied to all houses in multiple occupation which is any building or part of a building occupied by 3 or more persons forming 2 or more households.
7. Section 67 (1)(a) and 2(a) of the 2004 Act provides that a licence may include conditions for regulating the management, use and occupation of an HMO, which can include the use or occupation of particular parts of the HMO.
8. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 had the effect of amending Schedule 4 of the 2004 Act to ensure that when a property is licenced under Part 2 of the Act, mandatory conditions regarding room size are included. The relevant condition for the purposes of this appeal was that the floor area of any room in the HMO used as sleeping accommodation by one person over the age of 10 years was not less than 6.51m².
9. Additionally, Local Housing Authorities have discretion to establish their own standards. The London Borough of Camden's standards (December 2020) required the size for a single sleeping room not containing a kitchen or wash hand basin but at a property with a lounge to be 7.1m².
10. Under Paragraph 31(1) part 3 of schedule 5 of the 2004 Act, the Applicant has the right to appeal to the Tribunal against the Respondent's refusal to grant the licence or against the Respondent's decision to grant the licence. An appeal against a grant of the licence may relate to the terms of the licence.
11. Paragraph 34(1) provides that the appeal is by way of a re-hearing and may be determined by the Tribunal having regard to matters of which the Respondent was unaware. The Tribunal may confirm, quash or vary the condition to the HMO licence. The function of the Tribunal on appeal is not restricted to a review of the Respondent's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.

The Facts

12. The Property which was the subject of this application was a single storey flat within a purpose built block. It was made up of 4 rooms, 3 of which were used as bedrooms and one as a shared lounge. There was a balcony which was accessed through the shared lounge. The Property also had a shared kitchen, shared bathroom (containing a bath and wash hand basin), and a shared WC with a wash hand basin. Pages 57 and 116 of the Respondent's bundle showed a floor plan of the Property.
13. It was not disputed that there were three people living at the Property each having a bedroom but sharing the kitchen, bathroom, WC and lounge.
14. On 18 May 2023, Russell Pugh carried out an inspection of the Property. As part of that inspection, Russell Pugh completed measurements of the rooms. He determined that the front right room was under the required size to be used as a bedroom as he determined the size to be 6.18m², and so below the mandatory minimum size of 6.51m².
15. The Respondent prepared a draft HMO licence and on 1 June 2023 this was sent to the Applicant and other interested parties so any representations could be made. As well as including a schedule of works for gas safety, fire safety, heating and ventilation, the draft licence limited the occupancy of the Property to 3 persons forming a maximum of 2 households. The reason for this was because the size of the front right bedroom was below the mandatory minimum size to be used as a bedroom.
16. The Applicant made representations to the Respondent, which included the Applicant's own measurements for the front right room. The Respondent stated that the size of this room was 6.53m². In light of this, Russell Pugh, the Applicant and the Applicant's managing agent attended the Property so the measurements could be taken again. The Respondent provided the room size measurement for the front right room taken on this date as 6.396m². It was the Respondent's position that the measurements were still below the mandatory size, whereas the Applicant's position was that the measurements were above the mandatory size but below the Respondent's own minimum standards.
17. On 23 July 2024 the Applicant sent an email to the Respondent with proposals for alterations to increase the size of the front right room. The Respondent considered these proposals but formed the view that whilst the proposed works would increase the floor space, it wouldn't

meet the expectation of 7.1m² (London Borough of Camden's own standard).

18. The HMO licence was issued on 14 August 2023 with a limit of 3 persons and 2 households with the front right room given a zero permitted occupancy.

The Applicant's Submissions

19. The Applicant provided the Tribunal with a witness statement, a further statement and supporting documents. This was supplemented by oral submissions on the day of the hearing. The Applicant's position was two-fold:

- i. The Property should not be classed as an HMO.
- ii. The front right room was above minimum size and could be occupied as a bedroom.

Each of these arguments will be considered in turn.

The Property should not have been classed as an HMO

20. The Applicant told the Tribunal that he bought the Property as a three bedroom flat and was therefore not expecting the Respondent to say that the front right room should not be used as a bedroom. It was always the Applicant's intention to rent the Property to people who had decided to live together as one household under a joint tenancy agreement.

The Front Right Room was above minimum size and could be occupied as a bedroom.

21. The Applicant in his statement confirmed that when Russell Pugh, the Applicant and his managing agent attended the Property to take measurements, all of the available floor space was taken into account and in doing this the front right bedroom was measured as 6.34m². However, at the hearing, the Applicant told that Tribunal that he did not agree with the measurements that were taken and held that the measurements he and his managing agent had taken were correct. The Applicant said that the room size was 6.53m², which was above the legal minimum. It was the Applicant's position that the measurement of 6.34m² was reached because it excluded 0.19m² of space which was unusable because it was an area behind the door.
22. Additionally, the Applicant in his statement confirmed that he was told that if he was able to increase the floor space above the minimum of 6.51m² the Respondent had discretion. The Applicant therefore drew

up plans to bring the doorway out into the hallway of the Property by a minimum of 30cm and to reposition the door to the right in order to create space to the left inside the room which would allow for storage space. This space would be 1.4m long and 20cm wide so that this area could be used as built-in shelving or as a cupboard with a sliding door. It was the Applicant's position that this would increase the total floorspace to 6.62m² and therefore this room could be used as a bedroom.

23. The Applicant told the Tribunal that whilst he had the option of turning the lounge into a bedroom he did not want to do this as it would take away an important shared space for tenants and would also limit the access to the balcony at the Property given this could only be accessed from the lounge.
24. The Tribunal also heard from Florence Cussans who had provided a written statement, which was included in the documents submitted to the Tribunal, dated 31 May 2024. Florence Cussans confirmed that she lived at the Property with two friends who she had known for a decade, but they did not live as one household.
25. She also told the Tribunal how much she and her friends enjoyed renting the Property and that the size of the front right room was, in her opinion, acceptable for use as a bedroom. Furthermore, the person who used that room had additional space as they had access to a cupboard in the corridor. The different sizes of room meant that different rents could be charged, and this flexibility was helpful to the tenants. Finally, Florence Cussans confirmed that if the living room was turned into a bedroom this would deprive the tenants of a communal living space with access to the balcony.

The Respondent's Submissions

26. The Respondent provided the Tribunal with a witness statement, supporting documents and also gave oral submissions to the Tribunal.

The Property as an HMO

27. Russell Pugh confirmed that when he inspected the Property it was occupied by three individuals from more than two households and this therefore was required to be licensed under the Respondent's additional licensing scheme.

Size of the Front Right Room

28. As to the measurements of the room, Russell Pugh told the Tribunal that he had attended the Property and used a laser measure tool to determine the size of the front right room as 6.18m². At page 57 of the

Respondent's bundle was a plan and Russell Pugh confirmed that the handwritten measurements written onto the plan were a record of the measurements he had taken. He confirmed that the space measuring from one wall to the other was 5.961m² and that the size increased when he added on space for the door entrance, which gave a total maximum size of the room as 6.18m², meaning that the room was below the legal minimum size of 6.51m².

29. When Russell Pugh received had representations from the Applicant which stated that the measurements of the room were actually 6.53m², he told the Tribunal that he had returned with the Applicant and the Applicant's agent to remeasure the room. When completing the measurements, Russell Pugh told the Tribunal that he had involved both the Applicant and the Applicant's agent in the measuring and used a tape measure as well as the laser measure tool. It was Russell Pugh's evidence that the measurements taken on this day were agreed by all parties.
30. At page 116 of the Respondent's bundle was a plan recording the results of the remeasurements. The Tribunal was taken to a handwritten box on the plan marked "new sizes" which recorded the size of the main room as 2.64 x 2.29 (total 6.0456), plus the entrance of 0.95 x 0.32 (total 0.304) which gave a total size of the room as 6.3496m² (namely 6.0456 +0.304). This meant that the room was below the minimum size and a zero occupancy was given for the room.
31. It was the Respondents position that the measurement of 6.53m² which the Applicant had arrived at was achieved by taking the width of the room and then multiplying it by the length of the room all the way into the door entrance. Russell Pugh told that Tribunal that it was his view that this artificially created a larger room as it did not take into account the door entrance which was recessed from the rest of the wall of the room.
32. Following these measurements being taken, the Applicant had submitted proposals to alter the room to increase its size. Russell Pugh told the Tribunal that these proposals were considered and that whilst the proposed works would increase the floor space, it wouldn't meet the Respondent's standard of 7.1m² of useable floor space. It was Russell Pugh's evidence that the alteration was designed to meet/exceed the legal minimum measurement of 6.51m². In light of this, the Respondent issued the licence on 14 August 2023 with the maximum permitted number for the Property being 3 persons and 2 households, with the fourth floor front right bedroom having a zero permitted occupancy.
33. Finally, Russell Pugh told the Tribunal that whilst the room may have been designed as a bedroom, this would not have been designed for let as a house in multiple occupation, but rather as a family home.

Reasons for the Tribunal's Decision

34. The Tribunal found that the Property should be classed as an HMO under the additional licensing scheme of the Respondent. The Applicant did not dispute that the Property was rented by three tenants, however the Tribunal accepted the evidence of Russell Pugh that when he visited the Property, the tenants were not living as one household. Florence Cussans' evidence to the Tribunal also confirmed that the tenants were friends. The Tribunal reminded itself of the definition of "persons not forming a single household" within section 258 of the 2004 Act and regulations 3 and 4 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373 and found that the tenants were not members of the same family or had an employee/employer relationship or a carers relationship as defined within the regulations. The Tribunal therefore did not accept the position of the Applicant that the Property should not be classed as an HMO.
35. Turning to size of the front right room, the Tribunal accepted the evidence of Russell Pugh that the room was measured on 29 June 2023 using a tape measure and laser measure and the size of the room was found to be 6.3496m². This was 6.0456m² plus 0.304m² for the entrance area of the room. This Tribunal accepted that this was the maximum room size for that room. This was therefore below the mandatory minimum size of 6.51m².
36. The Tribunal accepted that the Applicant had sent proposed alterations to the Respondent; however, these alterations were only plans and had not actually been made to the room. The Tribunal was dealing with the room as it was. In any event the Tribunal noted that for such alterations to be made, the approval of the freeholder would be needed and further the Tribunal accepted the evidence of the Respondent that the proposed alterations would not meet Camden's expectations of 7.1m². Whilst it was accepted that the Respondent had discretion to allow occupation of a room that was below its own standards but above the minimum standard, the Tribunal accepted the evidence of the Respondent that the alterations would be unlikely to sufficiently increase the size of the room to make it suitable for occupation.
37. The Tribunal therefore found that the front right room was below the legal minimum size and it would not be reasonable to grant a licence based on the alterations proposed by the Applicant.
38. The Tribunal therefore dismissed the appeal against the Licence issued on 14 August 2023 and declined to vary any of the conditions that were imposed.

Name: Judge Bernadette MacQueen **Date:** 6 August 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).