FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/HML/2024/0034**
Property	**:**	**49a Endymion Road, London SW2 2BU**
Appellant	**:**	**Adam Biggs**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Lambeth**
Representative	**:**	**Mr Lane of counsel**
Type of application	**:**	**Appeal against the terms of an HMO licence granted by the Respondent**
Tribunal members	**:**	**Judge Prof R Percival** **Ms L Crane MCIEH**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **11 November 2024**
Date of decision	**:**	**22 January 2025**

DECISION

Decision of the tribunal

(1) The Tribunal dismisses the appeal.

The appeal

1. The Appellant appeals under paragraph 31 of schedule 5 to the Housing Act 2004 ("the 2004 Act") against the terms on which an HMO licence was granted to him, specifically a condition that the kitchen be relocated. His application to appeal was dated 28 March 2024.

2. Directions were given on 17 June 2024.

3. The statutory provisions referred to may be consulted at: https://www.legislation.gov.uk/ukpga/2004/34/contents.

The hearing

Introductory

4. The Applicant appeared in person. The Respondent was represented by Mr Lane of counsel. We heard evidence from the Appellant, and from Ms Grieco, and, briefly, Ms Bennett, for the Respondent.

The property

5. The property is a three bedroom flat in a three storey converted house consisting of three flats. It is located on the ground floor. The house is a typical small Edwardian or late Victorian terraced house, with a narrow street frontage and a long lateral extent, such that the width allows for no more than one room and a corridor. The structure also thins beyond the first two rooms.

6. The layout proposed by the Appellant is that the front room should be the reception room, and the room immediately behind it should be a bedroom. Access to both rooms is by doors off the hall immediately inside the front door. There is then an L shaped open space, which contains the kitchen. The cooker is against the left (as one progresses into the flat) hand wall, the sink in the other angle of the L on the right. Immediately behind the kitchen is another bedroom, then the bathroom, both with the corridor, a continuation of the kitchen space, alongside. The third bedroom is behind the bathroom, and extends to the whole width of the building. Access to the garden is by double doors off this bedroom.

7. The Appellant reports that the current arrangement, as set out by the tenants, has the front room as a bedroom, and the rearmost room as the

reception room. It is this arrangement that informed the Fire Risk Assessment relied on by the Appellant (see below).

8. The garden is enclosed with no means of access other than through the flat.

The facts

9. The facts are largely agreed.

10. In 1995, the Appellant obtained planning permission for the conversion of the house containing the property into three self-contained flats. That the ground floor flat have three bedrooms was a condition of the planning permission, motivated, the Appellant states, by the Respondent's desire for the conversion to accommodate a family residence. Work was completed in 2009/2010, when a certificate of compliance with building regulations was issued.

11. The Respondent introduced an additional licensing scheme covering smaller HMOs, effective from December 2021. The Appellant applied for a licence in January 2022, and the property was inspected by Ms Grieco, a technical licencing officer in the Respondent's HMO team, on 26 September 2023. A draft licence, which contained the disputed condition, was issued the following day. There followed a round of representations from the Appellant, and a series of email exchanges between the parties and between the Respondent and the London Fire Brigade ("LFB"). The final licence was issued on 20 March 2024.

12. The Appellant relied on a Fire Risk Assessment Report dated 8 December 2022.

The law

13. Paragraph 31 of schedule 5 to the 2004 Act provides:

> "(1) The applicant or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority on an application for a licence –
>
> (a) …
>
> (b) to grant the licence.
>
> (2) An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence."

14. The appeal relates to a condition in an HMO licence granted to the Appellant under the Respondent's additional licensing scheme. The contested condition is that numbered vii). It requires that the kitchen be relocated in a separate room within the property. The condition requires that the condition is to be completed within 18 months of the date of the licence. The licence itself is for 18 months.

15. In *Hussain and others v Waltham Forest London Borough Council* [2023] EWCA Civ 733, [2024] KB 154, the Court of Appeal (drawing on the Upper Tribunal decision in *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC), [2020] 1 WLR 3187), the Court of Appeal said that the task of the Tribunal in determining an appeal under these provisions was to determine whether the decision made by the local authority was wrong:

> "'Wrong' … means in this context that the appellate tribunal disagrees with the original decision despite having accorded it the deference (or "special weight") appropriate to a decision involving the exercise of judgment by the body tasked by Parliament with the primary responsibility for making licensing decisions."

The parties' contentions and determination

16. The key issues were whether the garden constituted a place of ultimate safety for evacuation purposes, and whether the alternative fire safety provisions proposed by the Appellant were a better substitute for the approach adopted by the Respondent. We set out the parties' contentions and our conclusions in respect of each.

17. The reason for the contested condition was that the escape route from the back bedrooms to the front door was through the kitchen area.

18. As to the escape route issue, the Appellant's overarching argument was that it was acceptable for the escape route from the back two bedrooms to be through the rearmost bedroom into the enclosed garden. He argued that the Building Regulations and the LACORS guidance (Housing – Fire Safety, LACORS 2008), were the appropriate national standards that should determine the approach taken by the Respondent. Both allowed escape into an enclosed outside space.

19. As to the Building Regulations, he produced a diagram from Approved Document B – Fire Safety, approved by the Secretary of State, which sets out the size parameters where escape is into an enclosed space. His case was that the garden at the property (which it was accepted was an enclosed space, having no access to street level) was sufficiently large to satisfy these criteria. His calculations depend on approximations for the height of respectively the main building and the first floor extension, but both appear to be plausible. In any event, the Respondent did not expressly contest these measurements.

20. In the LACORS guidance (Housing – Fire Safety, LACORS 2008), he relied on an extract from section 14.2, which directly concerns the requirements for escape windows (the Appellant's Fire Risk Assessment had proceeded on the basis of escape windows). The extract reads:

> "The window or door should lead to a place of ultimate safety, clear of the building. However, if there is no practical way of

> avoiding escape into a courtyard or back garden from where there is no exit, it should be at least as deep as the building is high.

21. The Fire Risk Assessment does not go into detail, but does state that "the means of escape from the rear bedroom is via the lounge … The back of the enclosed rear garden is about 10m away from the property and as such can be considered to be an ultimate place of safety." It also notes a lack of compartmentation between the front bedrooms and the kitchen area.

22. The Assessment went on to recommend that protected escape routes should be created from each bedroom; and an escape window in the rear bedroom – as noted above, when inspected by the assessor, the sitting room was where the rear bedroom is or would be in the Appellant's scheme. The Assessment also recommended a fire door between the kitchen area and the front two bedrooms.

23. The Respondent relies on an appendix to the Respondent's Designated Report of August 2021: Proposed Additional Licensing Scheme for Houses in Multiple Occupation ("the designated report"). Ms Grieco told us that this was "our Bible" for the officers in the HMO team. The relevant extract is in a section on kitchens, and reads "No kitchen facilities are permitted in hallways and landings and the means of escape from fire".

24. The Respondent consulted the LFB during the period referred to above. Ms Grieco said that the named person she consulted was the person designated for the purpose, who had both expertise in fire safety and an operational role. His or her name was, pointlessly, redacted in the copies of emails provided to us, as was some other material. Much of the correspondence was conducted by Ms Bennet, from the Respondent's side, after an initial email from Ms Grieco.

25. In addition to Ms Grieco's initially shared concerns, the liaison officer was provided with a floorplan and the Fire Risk Assessment. The liaison officer subsequently opined that the rear exit (and what he refers to as the middle exit, which we assume refers to a side door leading out of the right-hand side L of the kitchen into the back area) "must lead to an ultimate place of safety such as street level." When asked about the assessor's statement quoted in paragraph 21 above, the liaison officer emailed that "[t]he fire risk assessor has got that completely wrong. The escape from the garden need to lead out to street level or somewhere else. The resident's mustn't be hanging about in the garden while our operational crew are trying to extinguish a fire."

26. The Tribunal must decide whether the local authority's decision was wrong, and in doing so we must give special weight to the way in which they exercised there discretion. This is a situation in which two views are

possible, but in the end we conclude that the Respondent was not wrong to conclude that the rear escape route was not acceptable.

27. First, the use of an enclosed garden as a place of safety must be at most a second best solution. That can be seen from the way that the LACORS guidance is framed – the possibility of using an enclosed space from which there is no exit as a place of safety is only to be used "if there is no practical way of avoiding" it. Moving the kitchen is a way of avoiding it. This indicates that at least the LACORS guidance, if properly applied, would not justify the garden escape route.

28. Secondly, the Respondent is entitled to specify its own requirements, both in terms of fire safety escape routes, and for kitchens as kitchens. We accept that the reference in the designated report is aimed at both objectives. Even if (which is to be doubted), the requirement in the report amounts to going beyond the LACORS guidance in this specific context, that does not mean that the Respondent is not entitled to insist upon it. Of course, the Respondent must not fetter its own discretion, but the process of consultation with the LFB shows that it did not do that in this case, but, rather, took further expert advice.

29. Thirdly, and relatedly, the Respondent was entitled to take account of, and accept, the expert advice of the LFB as to what was the most advisable fire safety provision in this flat. The liaison officer does not appear to have been influenced by the designation report, which he or she does not mention. Rather, he or she was applying their own expertise to this particular property.

30. The Appellant takes issue with the liaison officer's reliance on an operational matter – the danger of residents "hanging around" while the LFB fights a fire, on the basis that it is fire safety of the residents that is the issue. We do not think this is right. The Respondent is perfectly entitled to take account of the extent to which a particular escape set-up affects the operational efficiency of the LFB when putting out a fire. And in any event, impeding the operational efficiency of the LFB is in itself a fire safety issue.

31. Finally, we note that the way that the matter is put in the designated report is not confined to means of escape. The passage we quote is in a section on what is required of kitchens as kitchens. It is evident from the photographs of the kitchen area exhibited that it is really a kitchen installed in a hallway, with very little space for a person cooking, or other people using the hallway as a hallway while someone cooks. The Respondent is entitled to make provision for a comfortable and workable kitchen in this respect, aside from fire safety. It is true that the Applicant's proposals include additional fire doors each side of the kitchen. But that would just mean that the kitchen was in a hallway further confined by fire doors.

32. The Respondent made, somewhat tentatively, further proposals to enhance fire safety while maintaining the flat as a three bedroom property, specifically the addition of a fire suppressing system to cover the (current) kitchen area, and a hammer in the garden to allow occupants to break down a garden fence to allow egress through a neighbouring property.

33. These are proposals made, as we understand it, at a late stage, and not based on professional expertise. We were not taken to any expert or official document that stated that the installation of a fire supressing system should impact on the LACORS guidance as to means of escape into an enclosed space; nor that means to – assuming sufficiently strong and able occupants – destroy a fence rendered an enclosed space unenclosed for means of escape purposes. The proposal also does not address the point about the Respondent's attitude to the undesirability of a kitchen in a corridor, aside from fire safety (see above).

34. For the sake of completeness, we do not accept that the planning requirement that the flat have three bedrooms advances the Applicant's case. First, as the Mr Lane argued, planning permission and HMO licencing are distinct functions, and the one does not determine the outcome of the other. Secondly, it was the Applicant's evidence was that this requirement was born out of a concern to increase the supply of family homes. By definition, a three occupant HMO is not a family home in the sense no doubt intended by the planning concern referred to by the Applicant. If this flat were let as a family home, it would not require an HMO licence.

35. Our conclusion is that the Respondent was not wrong to include the condition in the HMO licence.

Rights of appeal

36. 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 London regional office.

37. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

38. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

39. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Judge Professor R Percival **Date:** **22 January 2025**