



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

Case reference : **LON/00BE/HML/2024/0035**

Property : **241C Lower Road, London, SE16 2LW**

Applicant : **Conscious Homes Property Management Ltd**

Representative : **Desmond Taylor, Landlords Defence Limited**

Respondent : **London Borough of Southwark**

Representative : **Victoria Osler, Counsel**

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

Tribunal members : **Judge Bernadette MacQueen
Mr Fonka, FCIEH CEnvH Msc**

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

Date of hearing : **30 January 2025**

Date of decision : **17 February 2025**

DECISION

Decision of the Tribunal

- (1) The decision by the Respondent to refuse to grant a licence is upheld for the reasons set out below.
- (2) In light of this, the appeal by the Applicant against the refusal by the Respondent under paragraph 31(1) of Schedule 5 of the Housing Act 2004 is refused.

The Application

1. The Applicant appealed against the decision of the Respondent to refuse to grant a licence for use of 241C Lower Road, London, SE16 2LW (the Property) as a house in multiple occupation (HMO).
2. The Applicant is the freeholder of the Property and the Respondent is the local authority responsible for the area in which the Property is situated.

Background

3. The building in which the Property was situated was part of a four-story building. The rest of the building comprised a commercial premises on the ground floor, a one-bedroom apartment and a studio apartment; however, this application related only to the second and third floors of the building for which the Applicant had applied for an HMO licence. This was accommodation for three people living in three households under the Respondent's additional licensing designation.
4. The Property was a four-room flat across two floors which consisted of three bedrooms, each with en-suite facilities, and a kitchen/diner. Two bedrooms were located on the lower floor with the third bedroom and kitchen/diner located on the upper floor.
5. The Applicant purchased the building in August 2016 and, at the time, the building was divided into three flats with a shop on the ground floor. In 2018 the Applicant successfully applied for planning permission for a mansard roof extension to create a two-bedroom self-contained flat on the second and third floors. The internal plan was for an open plan kitchen/living area and bathroom on the second floor and for two bedrooms (one en-suite) on the third floor. The approved plans for this were within the Respondent's bundle at page 138.
6. The Property layout had changed and now consisted of two bedrooms both with en-suite on the second floor and a third bedroom with en-suite on the third floor along with a shared kitchen/diner also on the third floor. That was the layout at the time of the Application.

7. The measurements of the rooms were not agreed by the parties and could be summarised as follows:

Room	Location	Applicant's measurements (metres squared)	Respondent's measurements (metres squared)	Difference between parties
Room 1	Third floor (rear)	7.03	7.26	+0.23
Room 2	Second floor (front)	8.28	7.24	-1.04
Room 3	Second floor (rear)	9.19	9.20	+0.01
Kitchen	Third floor (front)	11.73	11.77	+0.04

8. On 1 March 2022, the Applicant had applied for an HMO licence for the Property for three people living as three separate households. This was the same day that the Respondent had introduced an additional licensing scheme for the area in which the Property was situated. The Respondent had considered the application but had not inspected the Property. On 8 August 2022, the Respondent had notified the Applicant that it intended to refuse the application and had given a 21 day period for representations to be made.
9. On 29 August 2022, the Appellant had submitted representations to the Respondent. The Applicant had sent a final refusal letter to the Applicant on 5 September 2022.
10. In May 2023, the Respondent had decided to re-consider the application and to undertake a physical inspection of the Property.
11. On 13 July 2023, Vanda Machniak, Principal Enforcement Officer, had completed an inspection and prepared a report. A panel made up of council officers had considered the application alongside Vanda

Machniak's report and representations from the Applicant. The panel had determined to uphold the refusal of the HMO licence.

12. By email dated 20 March 2024, the Respondent had issued a response to the representations made by the Applicant and on 27 March 2024 had issued a final refusal notice.
13. The Applicant had appealed to this Tribunal on 23 April 2024.

The Inspection

14. Prior to the Tribunal hearing, the Tribunal had completed an inspection of the Property accompanied by Desmond Taylor on behalf of the Applicant and Vanda Machniak on behalf of the Respondent.
15. The Tribunal had noted that the Property had been completed to a high standard and was clean, tidy and well decorated throughout.
16. Each of the three rooms had an adjoining en-suite comprised of a shower, toilet and washbasin. Bedroom 1 (third floor rear) had a large single/small double bed, wardrobe, chest of drawers and a fold down wall hung desk, however there was no chair or space for a chair to sit at the desk. This room was in the mansard roof extension and so the rear wall had a sloping ceiling. The slope of the wall meant that the furniture could not be arranged differently.
17. Bedroom 2 (second floor front) also had a large single/small double bed, wardrobe and chest of drawers. There was limited open floor space but there was room to move between the bed and furniture to access the entrance to the room and the en-suite.
18. Bedroom 3 (second floor rear) had a large single/small double bed, a combined wardrobe and storage unit, a set of open shelves.
19. The kitchen/diner was well equipped and included a fridge/freezer, sink, washing machine, oven/hob and storage space. Additionally, there was a small two-seater sofa and table with three chairs in the room.

The Hearing

20. Following the inspection, a hearing took place with the Applicant represented by Desmond Taylor and the Respondent represented by Victoria Osler. The Tribunal heard oral evidence from Edson Santos, director of the Applicant, and Xenia Baldiviezo and Vanda Machniak on behalf of the Respondent.

21. Each party and the Tribunal had the following documents before them: the Applicant's bundle (121 pages) and the Respondent's bundle (246 pages); additionally, Exhibit XB10 had inadvertently been missed from the Respondent's main bundle and so this was provided separately. Both parties had also provided skeleton arguments to the Tribunal.

The Applicable Law

22. This appeal was by way of a re-hearing but may be determined having regard to matters of which the local housing authority (the Respondent) was unaware (Paragraph 34(2) of Schedule 5 Housing Act 2004). The Tribunal can confirm, reverse or vary the decision of the local housing authority and may direct the authority to grant a licence on such terms as the Tribunal may direct (paragraph 34(3) and (4) of Schedule 5 Housing Act 2004).
23. Section 64(1) Housing Act 2004 provides that where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either (a) grant a licence or (b) refuse to grant a licence.
24. Section 64(3) sets out the matters that the authority must be satisfied of before they can grant a licence. The relevant matter for the purposes of this appeal is section 64(3)(a):

“(3) The matters are–

- (a) that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;”

25. Section 64(4) provides:

- (4) The maximum number of households or persons referred to in subsection (3)(a) is–
- (a) the maximum number specified in the application, or
- (b) some other maximum number decided by the authority.

26. Section 65(1) provides:

- (1) The local housing authority cannot be satisfied for the purposes of section 64(3)(a) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.
- (2) But the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of

households or persons even if it does meet prescribed standards for occupation by that number of households or persons.

(3) In this section “*prescribed standards*” means standards prescribed by regulations made by the appropriate national authority.

27. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018/616 inserted paragraph 1A into schedule 4 of the Housing Act 2004. Paragraph 1A provides minimum room sizes as follows:

- (1) Where the HMO is in England, a licence under Part 2 must include the following conditions.
- (2) Conditions requiring the licence holder –
 - (a) To ensure 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

The Respondent’s HMO Room Size Standards

28. In June 2015, the Respondent had adopted local room size standards which exceed the current national minimum requirements. The relevant standards are as follows:

- a. Single room in HMO with no separate living space: 10 metres squared.
- b. Single room in HMO with no separate living room: 8 Metres squared.

Respondent’s Additional Licensing Scheme

29. On 1 March 2022, the London Borough of Southwark Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022 came into force. The details of the scheme were at pages 27 to 30 of the Respondent’s bundle. The Respondent designated the entire area of its district as subject to additional licensing and applied to all HMOs as defined by section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households subject to exceptions which are set out in the scheme.

30. It was not disputed that the Respondent’s Additional Licensing Scheme was applicable to the Property.

The Applicant’s Position

31. Edson Santos, Director of Conscious Homes Property Management Ltd, on behalf of the Applicant, had provided a written statement (pages 90 to 94 of the Applicant’s bundle) and also gave oral evidence at the hearing.

32. It was the Applicant's position that an HMO licence should be granted for the Property for three people living as three separate households. The Applicant told the Tribunal that all three rooms exceeded the statutory minimum size standard of 6.51 metres squared and, in addition to this, the rooms were further enhanced with en-suite facilities. The Applicant's position was therefore that the licence should be granted and that it was not for the Respondent to apply their locally adopted standards to refuse the licence.
33. Further, it was the Applicant's position that, in any event, all rooms at the Property exceeded or met (at least by a miniscule margin) the 7.25 square metre standard outlined in the London Plan (2021). On the Applicant's calculations, the smallest room was 7.03 square metres. The Applicant's position was that the whole Property should be looked at rather than just referenced to fixed minimal floor area.
34. Within the Applicant's skeleton argument and at the hearing the representative for the Applicant submitted that the local authority guidance, while informative, did not constitute definitive enforceable standards. Further, it was submitted that the Respondent's guidance was aspirational and lacked legal standing.
35. Edson Santos told the Tribunal that the Property had been meticulously designed and the quality of the accommodation was high. He stated that in refurbishing the Property, the company had ensured that every aspect of modern standards and regulations were met. Professionals had been engaged to design and market the Property. Further, the decision to include en-suite facilities for each room was made so occupants did not have to share a bathroom. Edson Santos told the Tribunal that it was the Applicant's experience that tenants preferred to have en-suite accommodation rather than a shared bathroom.
36. Edson Santos further stated that no enforcement action had taken place at the Property. In particular, the Applicant stated that the Respondent had not identified any breach of HHSRS standards, or any fire risks, and had not issued a prohibition order, improvement notice or any other sanction. Further the Applicant told the Tribunal that there had been no complaints from occupants.
37. The Applicant stated that an initial HMO licence had been made in November 2018 but that it was not until August 2020 that a response had been received from the Respondent, but despite the Applicant chasing this application, it had not been determined. On 18 February 2022, the Respondent had notified the Applicant that a fresh licence application would need to be made under the new additional licensing scheme. It was the Applicant's position that the delay had affected the Applicant's ability to operate the Property as an HMO and had affected

the applicant's business plan and tenant arrangements. Further, the Applicant stated that it had provided safe, good quality accommodation and in the seven years it has operated the Property, it had never had an issue with any tenant.

38. Affan Samad Khan, a tenant at the Property since 6 January 2023, had also provided a witness statement dated 26 July 2024 (pages 95 to 96 of the Applicant's bundle) in which Affan Khan had confirmed that the Property was a great advantage and that losing the Property would have an adverse effect.
39. It was therefore the Applicant's position that the Property was suitable as an HMO for three people occupying the Property as three households and that a licence should be granted.

The Respondent's Position

40. Xenia Baldiviezo, team leader in the Private Sector Housing Enforcement Team had provided a witness statement (page 5 to 11 of the Respondent's bundle) and also gave oral evidence to the Tribunal. She told the Tribunal that the room sizes in the Respondent's HMO standards ensured that tenants had the minimum space for the furniture required to live, sleep, eat, study, work from home, socialise and store belongings.
41. Xenia Baldiviezo further stated that the HMO standards had been developed in consultation with national, regional and local stakeholders and took into account the particular circumstances of the Respondent's area, including higher living costs and denser living conditions, planning and building regulations, the Royal Institute of British Architects "the Case for Space" (2011) paper, and the National Affordable Homes Agency 2008 Housing Quality Indicators Form. It was the Respondent's position that the room sizes in the Respondent's HMO standards reflected the higher living costs and denser living conditions in urban areas such as Southwark.
42. Xenia Baldiviezo told the Tribunal that the Council's HMO room size standards aligned with the London Plan (2021) which stated that single bedrooms should have a minimum size of 7.5 metres squared. Xenia Baldiviezo acknowledged in her evidence that the Respondent accepted that this space standard referred to self-contained accommodation; however, she stated that self-contained accommodation had secure and private access to all areas of the accommodation whereas occupiers of HMOs only had secure and private use of their own bedroom.
43. Vanda Machniak, Principal Enforcement Officer, had provided a written statement (pages 12 to 15 of the Respondent's bundle) and also gave oral evidence to the Tribunal. Vanda Machniak told the Tribunal that she had inspected the Property on 13 July 2023 and had taken

measurements of the room sizes using a laser measure and metal tape measure. In her witness statement, particularly at pages 13 and 14, she had given a description of each room, and had determined that the Property was a bedsit accommodation rather than a shared house.

44. Given the irregular shapes of the rooms, Vanda Machniak in exhibit VM1 (page 133 of the Respondent's bundle) had set out the calculations used to confirm the size of each room. Different ways of calculating the room area had been used and then compared and averaged to determine the most likely floor area.
45. In terms of the space available in each room, Vanda Machniak told the Tribunal that in bedroom 1 (third floor rear), there was limited open floor area but there was room to move between the bed and furniture and to access the entrance and bathroom doors conveniently. The slope on the rear wall and the access point to the en-suite bathroom meant that the furniture could not be arranged any differently or any items added. Bedroom 2 (second floor front) also had limited open floor area but had room to move around conveniently. The access point to the en-suite bathroom meant that the furniture could not be arranged any differently or any other items added. Turning to Bedroom 3 (second floor rear), the access point to the en-suite meant that there was limited wall area.
46. Vanda Machniak told the Tribunal that the kitchen/diner had ample room for food preparation and also had an eating area. However, the small two seater sofa was behind the dining table and would therefore be unlikely to be used as a relaxation or social space. Further, it was Vanda Machniak's evidence that her measurement of the room at 11.73 metres squared fell short of the 16 metres squared for a combined kitchen/living room space expected for a shared house.
47. It was therefore Vanda Machniak's assessment that the doorways to the en-suite bathrooms reduced the available wall space and affected how furniture was arranged within the room. Further, there was little storage space in any of the bedrooms and no space in the kitchen/diner to compensate for this.
48. Vanda Machniak confirmed that on 20 March 2024 she had issued a response to the representations made by the Applicant. The response had stated that the Property had been inspected and a whole house assessment for its suitability as an HMO carried out. The response had stated that the bedrooms had limited floor area and storage space and this was exacerbated by the irregular quadrilateral shape. The shared kitchen/diner was suitable for that use but had insufficient space to provide appropriate socialising space or additional storage facilities to mitigate the limitations of the bedrooms. The Respondent had concluded that, taken as a totality, the Property was unsuitable for use as an HMO.

Tribunal Decision

49. The Tribunal finds that the Property is not suitable for occupation by three people as three separate households. The Tribunal makes this finding based on a consideration of the room sizes and layout of the accommodation as a whole for the reasons that follow.
50. Turning firstly to the sizes of the rooms, the Tribunal accepts the evidence of Vanda Machniak as to the room sizes and accepts the detailed calculations made by Vanda Machniak as shown at pages 133-137 of the Respondent's bundle. The calculations have used different methods to confirm the measurements that the Respondent has given for each room. These calculations are clearly set out and are shown on the plans at pages 136 and 137.
51. Further, the Tribunal accepts the evidence of the Respondent that the difference between the Applicant's and Respondent's calculations in relation to bedroom 1 (third floor rear), namely a difference of 0.23 metres squared, can be attributed to the rear wall having a sloping ceiling. The Tribunal therefore accepts the Respondent's measurements, which take no account of any part of the floor area where the ceiling height is less than 1.5 metres. The Tribunal therefore accepts the Respondent's measurements and determines the room sizes as measured by the Respondent as follows:

Room	Location	Respondent's measurements (metres squared)
Room 1	Third floor (rear)	7.26
Room 2	Second floor (front)	7.24
Room 3	Second floor (rear)	9.20
Kitchen	Third floor (front)	11.77

52. It is not disputed between the parties that all of the rooms used for sleeping at the Property exceed the 6.51 square metre mandatory national minimum sleeping room size. However, the Respondent has adopted its own standards and these are to be taken into account, along with the national standards and any other matter arising from a holistic assessment of the Property as suitable accommodation for three households and occupied by three people.

53. The Respondent's HMO standards are not definitive, nor are the national space standards which are only a minimum size. A holistic assessment of the property must be taken. A room that falls below the size specification set out within local authority guidance would not exclude the possibility of that room being capable of being sleeping accommodation if, taking the property as a whole, the property is suitable for the number of occupants and households sought.
54. Applying this approach, the Tribunal had the benefit of inspecting the Property. The Tribunal saw that the accommodation was completed to a high standard and accepts what the Applicant told the Tribunal in relation to the care taken to achieve these high standards. However, the Tribunal finds that the bedrooms have limited floor area and storage space and this is indeed exacerbated by the irregular quadrilateral shape. The room size, particularly of the smaller two rooms, means that there is no space for a desk/chair and it is not possible to circulate around the room easily. Further, the room size, particularly of the smaller two rooms, means that it is not conducive to hosting a friend or studying in the bedroom.
55. More particularly, from the Tribunal's inspection, the Tribunal found that the shape and layout of the rooms means that bedroom 1 (third floor rear) has limited open floor area. Whilst there is a small fold down wall hung desk, this is very small and there is no room for a chair to be able to sit at the desk. The slope on the rear wall and the access point to the en-suite bathroom means that the furniture cannot be arranged any differently and therefore the useable space is limited. This in turn means that the furniture cannot be arranged to create space or manoeuvrability around the room and there is no space for socialising.
56. With regards to bedroom 2 (second floor front) the Tribunal found that this also has limited open floor space and again the access point to the en-suite means that the furniture cannot be arranged any differently or any other items added. Finally, the Tribunal found in relation to bedroom 3 (second floor rear), that the access point to the en-suite means that there is limited floor area. All this culminates in the layout and usability of the rooms being inhibited. There is not enough space in the rooms to be able to work comfortably, have a guest in the room and store belongings, and there is insufficient circulation space.
57. The Tribunal accepts the evidence of the Respondent that occupiers of HMOs where living space is absent need their bedroom space to be able to accommodate a guest as that is the only space in the dwelling that would provide a quiet and private space. The room also needs to be able to accommodate belongings and enable the occupier to have a comfortable place to be away from the shared space. The Tribunal finds that this is not possible at the Property.

58. The Tribunal considered the Property as a whole as well as assessing the layout and usability of the individual rooms used for sleeping. The Tribunal finds that the kitchen/diner does not provide appropriate space to mitigate the space available in the bedrooms. The Tribunal saw from its own inspection of the Property that the kitchen/diner is not large enough to provide socialising space or additional storage space for the exclusive use of the occupiers sufficient to mitigate the lack of space in the bedrooms. In particular, there is insufficient space in the kitchen/diner for the table and sofa to be used together. Whilst the kitchen/diner provides an adequate space for preparing food, its size means that it does not mitigate the limited space in the bedrooms. Further, the slope of the ceiling/wall, because of the roof extension, results in the reduction of useable space.

59. Finally, the Tribunal accepts the evidence of the Respondent and finds that the layout of the Property means that there are no conditions that can be imposed so as to enable a licence to be granted.

60. The Tribunal therefore finds that the Property is not suitable accommodation for 3 people in 3 households. Consequently, the Tribunal upholds the decision of the Respondent to refuse to grant a licence. In light of this, the appeal by the Applicant against the refusal by the Respondent under paragraph 31(1) of Schedule 5 of the Housing Act 2004 is refused.

Name: Judge Bernadette MacQueen **Date:** 17 February 2025

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).