



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

**Case reference** : LON/00AY/HML/2024/0008

**Property** : 68A Railton Road, London SE24 0LF

**Applicant** : City Accommodations re Limited

**Representative** : Mr Chan, In House Legal Adviser

**Respondent** : London Borough of Lambeth

**Representative** : Mr Lane of Counsel  
**Interested Parties** : None

**Type of application** : Application under Schedule 3 to Part 5  
of the Act against the decision of the  
Local Authority to GRANT an HMO  
Licence

**Tribunal** : Tribunal Judge Mohabir  
Mr S Mason FRICS

**Date of Decision** : 2 May 2025

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**DECISION**

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### ***Background***

1. This is an appeal by the Applicant made under paragraph 31 in Part 3 to Schedule 5 of the Housing Act 2004 (as amended) (“the Act”) in relation to an HMO licence granted to it by the Respondent dated 9 November 2023 in respect of 68A Railton Road, London, SE24 0LF (“the Property”).
2. The appeal is brought by the Applicant who is the managing agent of the property with management or control and is, therefore, a “relevant person” within the meaning of paragraph 36 in Part 3 to Schedule 5 of the Act. The freeholder of the property to whom the licence was granted is a Mr Fitz-Hugh Raslyn Stephenson.
3. The property is set out over the ground and lower ground floors. The property has planning approval for a 3-bedroom flat. Floor plans received with the HMO licence application show the layout of the Property as a 5-bedroom flat. Apparently, Mr Stephenson confirmed to the Respondent that it was a 4-bedroom property. Nevertheless, it is or was let as a 5-bedroom property that allowed up to 6 persons to occupy it.
4. It is common ground that the Property is an HMO that requires licensing pursuant to Part 2 of the 2004 Act. It must, therefore, be licensed (section 61(1) of the Act).
5. Ms Sandra Aniemeka, who is employed by the Respondent in its Property Standards and Enforcement Services Team inspected the property on 27 September 2023. She met one of the occupying tenants who told me she had just moved into the Property and occupied the ground floor front bedroom. She also informed me that the room was not there when she initially viewed the Property but when she moved in, she saw that a fifth bedroom (Room B) had been created, a partition wall and door having been installed to create this room.
6. The Respondent concluded that the property was only suitable for occupation by 4 persons because the fifth bedroom (Room B) that had been created was undersized. The final HMO licence granted on 9 November 2023 was on this basis and included two conditions, one of which was a requirement for the Applicant to provide and fix in an external wall to the lower ground floor rear Room D and the lower ground floor back addition Room E with a suitable window with an aggregate area of glass not less 1/10<sup>th</sup> of the floor area of the room. In addition, an area equivalent to 1/20<sup>th</sup> of the floor area must be made openable to the external air.
7. This appeal was initially brought on 2 grounds.
8. Firstly, against the requirement to install windows to Rooms D and E. However, this was abandoned by the Applicant at the hearing.

9. Secondly, against the Respondent's decision to limit the occupancy in the property to four persons instead of five.

### ***Hearing***

10. The hearing took place on 26 March 2025. The Applicant was represented by Mr Chan who is an in-house Legal Adviser. The Respondent was represented by Mr Lane of Counsel.
11. The Applicant relied on the evidence set out in the undated witness statement of Mr Spitaleri who is a Director. The Respondent relied on the witness statement of Ms Aniemeka dated 21 October 2024. Those statements were put to the respective witnesses who confirmed the veracity of what is stated in them together with the exhibits.
12. It was agreed with the parties that the evidence would be dealt with by way of submissions.

### ***The Law***

13. Schedule 4, para. 1A of the Act provides:

“(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...”.
14. A local housing authority may only grant a licence if they are satisfied that, amongst other matters, 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 s.67”: section 64(1), (2), (3)(a) of the Act.
15. Section 64(3) of the Act identifies those matters which may allow a local housing authority to grant a licence, and this includes, at subparagraph (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...”.
16. Section 65(1) of the 2004 Act confirms that:

“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.”

17. “Reasonably suitable” is essentially to be judged by the prescribed standards to be found at Schedule 3 of Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373 which include minimum requirements (in the context of both shared and exclusive use) in relation to the provision of space heating, washing and toilet facilities, kitchens and fire precautionary facilities.
18. However, even if the said prescribed standards are met section 65(2) of the 2004 Act states:

“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.”

### ***Applicant’s Submissions***

19. Mr Chan argued that the issue was whether the Respondent was correct to discount the entirety of the area in Room B, including the area referred to as the walk in wardrobe, when calculating the area of 6.29 square metres for the room.
20. He submitted that the Respondent’s decision was flawed for two reasons. Firstly, it was an unprincipled reduction of the floor area. Secondly, it did not account for the actual amenity provided by the floor area.
21. He argued that the statutory test in paragraph 1A in Schedule 3 to the Act only requires any part of the floor area which is below 1.5 metres in height not to be taken into account.
22. He submitted that the Respondent had incorrectly applied a blanket discount of the entire sloping ceiling area when making its calculation of the room area. An apportionment of the sloping ceiling area was required above 1.5 metres, which resulted in a floor area of 7.17 square metres. Although Mr Cham referred to other properties with similar sized rooms where the Respondent had not imposed such a condition on the level of occupancy, he did not provide any actual evidence of this. In any event, the Tribunal is satisfied that each case is fact specific.
23. Mr Chan further submitted that a full discount of the walk in wardrobe area did not reflect the actual additional amenity it provided to the occupant in Room B.
24. For all of these reasons, he submitted that the limitation in the occupancy in the property to four persons should be removed from the HMO licence.

### ***Respondent's Submissions***

25. It is not necessary to set these out here, because the Tribunal largely agreed with them for the reasons set out below.

### ***Decision***

26. The remaining ground of appeal is dismissed for the following reasons:
- (a) The fifth bedroom was a recent creation, the property being originally 4-bedroom.
  - (b) The property is set out over the ground and lower ground floors, has planning approval for a 3-bedroom flat and floor plans submitted with the HMO Licence application showed the layout as a 5-bedroom flat. Indeed, Mr Stephenson had advised the Respondent that it was a 4-bedroom property.
  - (c) Following an inspection the property was deemed suitable for four persons living as a shared household, the disputed room measuring a sleeping room floor area of 6.29 square metres. This is below the statutory minimum requirement of 6.51 square metres and the Respondent's own usual minimum standards for a single room in bedsit accommodation of 9 square metres.
  - (d) There is no communal lounge/reception area in the property and though the kitchen/dining area is large it is just that and has no windows. The Tribunal considered these to be limited amenities, especially if the property was occupied by five persons.
  - (e) The Applicant refers to the size of the disputed room being 7 sqm once the area over which there is a built-in wardrobe is considered. However, the space where this is has a sloping ceiling, is located under the staircase and is only large enough to accommodate, by way of example, a couple of suitcases. The Tribunal considered the Respondent's apportionment of the height of the ceiling to be wholly technical and artificial.
  - (f) The Tribunal was satisfied that the commercial reality for the creation of the fifth bedroom by the Applicant was to increase the rental yield of the property and that was the actual basis for seeking to appeal the limitation on the occupancy of the property to four persons.
27. Accordingly, for the reasons given above, the terms of the HMO licence are confirmed, and the appeal is dismissed.

**Name:** Tribunal Judge Mohabir

**Date:** 2 May 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).