



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

Case reference	:	LON/00AG/HML/2024/0600
Property	:	26 Abingdon Close Camden London NW1 9UR
Applicant	:	W J Marle Limited
Representative	:	Mr William Marle
Respondent	:	The Mayor & Burgesses of the London Borough of Camden
Representatives	:	Ms Victoria Kendall Mr Russell Pugh
Type of application	:	Appeal against a decision by the LHA to grant or refuse to grant a licence under Schedule 5, Paragraph 31(1) and Part 2 of the Act.
Tribunal members	:	Tribunal Judge Mr I B Holdsworth Mr Appollo Fonka FCIEH CEnvH M.Sc
Date and venue of Hearing	:	21 May 2025 10 Alfred Place, London WC1E 7LR
Date of Decision	:	10 June 2025

DECISION

Decisions of the Tribunal

- A. The Tribunal dismisses the appeal.
- B. Any outstanding fire safety works to be commenced within one-month of issuing this Decision Notice, unless an extension of time is negotiated by the Applicant with the Respondents.

1. Introduction

- 1.1 This was an application, made by W J Marle Limited ('**the Applicant**') who is the long leaseholder of 26 Abingdon Close, Camden, London NW1 9UR ('**the Property**'), in respect of a licence issued by The Mayor & Burgesses of the London Borough of Camden ('**the Respondent**') on 2 July 2024 pursuant to Part II of the Housing Act 2004 ('the 2004 Act'). This licence grants permission to operate a house in multiple occupation within an Additional HMO licensing scheme.
- 1.2 The application to appeal the grant of the licence was made on 28 July 2024, within the 28-day time limit required for such applications. The Applicant appealed a condition applied to the licence, pursuant to paragraph 31 (i) of Schedule 5 to the 2004 Act.
- 1.3 The licence was granted by the Respondent for a period of one-year, subject to an accompanying schedule of works being completed by the Applicant within three-months of the date of issue. The schedule of works includes five fire safety measures (Items 2.1-2.5) which were required by the Authority to improve fire safety at the Property.
- 1.4 The Applicant challenged the need to carry out item 2.3 of the schedule of works, which states:

'The current layout of the Property poses a significant fire safety risk, as there is no protected escape route. You are required to carry out the following works to create a protected route from the bedrooms to the exit:

'a) Provide a suitable stud partition and door to the living room, ensuring a safe means of escape from the bedroom to the exit. Whilst the partition and door do need to have to full 30-minute separation, the door should be of sound traditional construction and offer adequate protection. On completion, the door to be close fitting with the frame and any locks must allow internal egress without the use of a key.'

- 1.5 Amended Directions were issued on 3 February 2024, which provided for the filing of bundles and the matter to be listed for a Hearing.
- 1.6 The Tribunal inspected the Property on 21 May 2025 and the Hearing was held later the same day.

2. Inspection

- 2.1 At the inspection on the morning of 21st May, Mr Marle was in attendance. Representing the Private Sector Housing Team of London Borough of Camden on behalf of the Respondent, were Ms Victoria Kendall and Mr Ricki Frances.

- 2.2 At the time of inspection, the Property was let, and some four tenants were in occupation.
- 2.3 The inspection revealed the Property to be a ground floor flat, in a former local authority-built block of similar styled flats, surrounded by shared amenity grounds.
- 2.4 The Property has four bedrooms, bathroom with WC, separate shower room, kitchen with adjacent living room.
- 2.5 The Tribunal's inspection confirmed that there is no separation between the kitchen and living areas. Part of the living area is used as a passageway to bedrooms 3 and 4.
- 2.6 The Tribunal also viewed the height of the window openings from floor to windowsills, together with the size of the opening casements to bedrooms three and four. It noted that, although the size of the opening casements mostly exceeded 1m², the distance between the floor and sill was typically greater than 1100mm.
- 2.7 There is a heat and smoke detector affixed to the ceiling of a hallway adjacent the entrance to the kitchen. It was not evident to the Tribunal that smoke detectors had been installed to all rooms and if so whether the detectors are interlinked.
- 2.8 The locks fitted to the four-bedroom doors offered tenants some security from the remainder of the flat. There appeared to be thumb locks on the door furniture. The Tribunal were unable to ascertain whether the internal doors to the kitchen and bedrooms are of solid traditional construction.

3. Hearing

- 3.1 The Hearing was held following the Tribunal's inspection of the Property.
- 3.2 The Applicant, Mr Marle was in attendance and represented himself.
- 3.3 Ms Kendal, an Environmental Health Officer and Mr Russell Pugh, a Principal Environmental Health Officer attended on behalf of the Respondent, with Mr Francis being present as an observer.
- 3.4 The Tribunal had been provided with a bundle by the Applicant totalling 162 -pages and a separate Respondent's bundle comprising 680-pages.
- 3.5 The Hearing took the form of a re-hearing of the Applicant's application, as required by paragraph 34 (i) of Schedule V of the 2004 Act. In doing so, Tribunal applied the mandatory requirements of the 2004 Act and the Council's standards. Tribunal heard the submissions of both parties.

3.6 Council's standards

- 3.6.1 The Respondent set-out the detailed provisions which owners of HMOs within the Council's area were required to satisfy.
- 3.6.2 HMOs and thus the Property, must comply with the Local Authorities Coordinators of Regulatory Services ('**LACORS**') and the Fire Safety Order 2004 (as enforced by London Fire Brigade).
- 3.6.3 At s.91 LACORS provides details of fire separation and compartmentation requirements, stating:

'In addition to providing a protected escape route, it is necessary to restrict the spread of fire and smoke from one unit of accommodation to another; this is termed 'compartmentation'. Fire resisting construction enclosing each unit of accommodation creates a compartment that will contain fire and smoke within it for a period of time, leaving adjacent units free from the effects of fire during that time.'

's.19.2 outlines the recommended standards of fire separation in the types of premises of normal risk covered by this guidance is generally 30-minutes. However, in lower risk premises, (for example average single household occupancy, or shared houses of no more than two storeys), this requirement can be relaxed. Where the fire risk assessment identifies specific higher risk, then a higher standard of fire resistance may be required.'

- 3.6.4 LACORS's guidance also draws attention to different standards that may be required for varying categories of houses, stating:

'There is a distinction between mandatory HMOs and what the guidance terms 'shared houses'.'

- 3.6.5 At s.35 LACORS states:

'There is no legal definition of a 'shared house' and so this term can sometimes cause confusion. Whilst shared houses fall within the legal definition of HMO and will be licensable, where licencing criteria are met, it is recognised that they can often present a lower fire risk than traditional bedsit-type HMOs.'

- 3.6.6 LACORS goes on to say, at s.35.3:

'The exact arrangements will vary from house-to-house and this may result in grey areas in determining whether a house is a true 'shared house', which therefore presents a lower fire safety risk, due to the mode of occupation. Each

case will need to be considered on its own merits.'

'Even if a property is occupied as a shared house, the fire risks may still increase if the property is of a non-standard layout, or if the occupants present a higher risk due to factors, such as, limited mobility or drug/alcohol dependency.'

4. **The Law**

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

4.2 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.

An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.”

4.3 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.”

5. **Issues**

5.1 The Tribunal noted that the only issue for determination is whether to uphold condition 2.3 of the licence, namely, that the Applicant provide a suitable stud partition and door to the living room, ensuring a safe means of escape from the bedroom to the exit. The parties had not put forward alternative fire safety works that would result in the provision of a safe means of escape from the bedrooms which would satisfactorily comply with LACORS's guidelines.

6. Applicant's submission

- 6.1 The Applicant told Tribunal he had, upon receipt of the licence for the Property, commissioned an independent fire safety report ('**the Report**') from Fire Safe London Limited in June 2024. The Applicant advised the Tribunal the consultancy's assessors held a level three Certificate in Fire Risk Assessment and the assessor who conducted the review of the Property was an Associate of the Institute of Fire Safety Managers.
- 6.2 The Applicant directed Tribunal to the conclusions of the Report, which stated that no compartmentation of the kitchen was necessary to satisfy LACORS's guidance. The assessor in the Report had referred to the distinction between mandatory HMOs and what LACORS termed 'shared houses', citing that the definition of a 'shared house' described the configuration of the tenancy at the Property as a shared house.
- 6.3 The Applicant said the Property was let under a single tenancy agreement to a pre-existing group of students/friends/work colleagues, who each had their own bedroom and shared the communal areas of the Property. He said it satisfied the requirements of the licence which specifies it be determined on the basis of "*occupation by group of sharers living cohesively*"
- 6.4 The Applicant specifically referred the Tribunal to the guidance headed '*Escape routes*' on p.41 of LACORS's guidance notes, which states:
- 'There was no requirement for a full 30-minute protected escape route, but it should be of sound traditional construction and should not pass through risk routes.'*
- 6.5 The Applicant reiterated that the fire risk assessor had advised the living room was not a significant fire risk. The Applicant went on to explain that smoking was not permitted under the terms of the tenancy agreement and the kitchen was the only potential source of fire, as the Report stated. This was why the current kitchen door was FD30 rated and fitted with an automatic closer.
- 6.6 The Applicant said enclosure of the living room would make the flat layout claustrophobic, reduce the letting space, resulting in the size of the resultant living area to fall below the Council's minimum room size standards.
- 6.7 The Applicant therefore relied upon the findings of the Report and was unable to understand why it was insufficient for the Council.

7. Respondent's submission

- 7.1 Ms Kendall spoke on behalf of the Respondent and explained that the Report prepared by Fire Safe London Limited, had failed to identify the principal requirement of compartmentation espoused by LACORS's guidance. Ms Kendall pointed out the Report had recommended more extensive early fire detection equipment and fire rated doors should be fitted, but had failed to confirm the need for compartmentation and a protected escape route.
- 7.2 In summing up by the Respondent, the national guidance was again emphasised, along with the observation that a hallway between the kitchen and sitting areas had been in the original design of the Property and should not pose any difficulty to install. They also said no justification was given by the fire safety assessor for divergence from LACORS's guidelines.

8. Tribunal's consideration

- 8.1 The Tribunal considered the Council's standards and, in particular, LACORS's guidance, together with the evidence provided to it and the submissions of the parties.
- 8.2 The Tribunal began by considering whether the Respondent had satisfied the requirements of the 2004 Act, before approving the licence and, in so doing, had imposed the fire safety condition. In issuing the licence to the Applicant, allowing the required consultation period and considering his representations, it had complied with those requirements.
- 8.3 The Tribunal then considered whether the imposition of the condition, requiring provision of a safe escape route from bedrooms three and four, was appropriate for the regulation of the management, use and occupation of a HMO, in accordance with s.67 (i) of the 2004 Act.
- 8.4 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 any discretion.
- 8.5 The Tribunal scrutinised the Report of the independent fire consultant prepared on behalf of the Applicant and had noted the assessor's conclusion that no further compartmentation of the property was necessary. Also, that he had relied upon the lesser standards required for a 'shared house', rather than those for a house let as an HMO. The Tribunal did note the Report contained recommendations for further fire safety works to be carried out at the Property which included improvements to fire detection and the constraint of any fire to the existing compartments of the Property, through provision of fire doors to each bedroom.
- 8.6 The Tribunal is unable to reconcile the recommended fire safety works in the Report, with the failure to require the living room as a separate compartment. The living room is opposite the kitchen, which is

acknowledged as a high-risk source of a fire. The living room contained combustible furniture and furnishings and is bound to be in regular use being a communal room. Despite the assurances given by the Applicant about tenants being prohibited from smoking within the property, a communal living space remains a high-risk fire source. Our reading of LACORS guidance concurs with that of the Respondents and we conclude that these high-risk fire areas should be separated by a safe escape route out of the property.

- 8.7 The inspection revealed that any occupiers of bedrooms three and four currently access the flat's main entrance door, as a means of escape, by passing through the open-plan arrangement of living room and hallway areas. In the absence of a protected means of escape, the spread of fire and smoke would impede swift exit from bedrooms three and four. .
- 8.8 The application of less rigorous fire safety standards to reflect the dwelling as a “shared house” is not accepted. Firstly, the LACORS guidance for fire safety for a ‘shared’ house is for a shared house of a standard layout where the rooms are separate from the hallway. There is no obligation on the Applicant to let the property as a shared house. The maintenance of the dwelling as a shared house throughout a letting term is difficult to assure. It is the property which is to be licenced as suitable for use as an HMO and the HMO licence cannot be constrained to “shared house” use. There is no statutory definition of ‘shared house’. Finally, it is at the discretion of the Local Authority how the LACORS guidance is applied following its own risk assessment of the specific property.
- 8.9 The other reasons submitted to the Tribunal as grounds for Appeal were not sustained. The Applicant claimed the required works would result in a reduction in lettable space and minor impact on the amenity of the Property. The Tribunal concluded these likely outcomes did not outweigh the safety risks associated with a lack of safe escape route out of the property. They are also concerned about the resulting size of the communal living should the partition be erected. The Respondent acknowledged that this may be a potential outcome but rightly prioritised fire safety over the room size and indicated its willingness to work with the Applicant in that respect.
- 8.10 It was for these reasons Tribunal preferred the evidence of the Respondent and accepted LACORS's guidance for mandatory HMOs should apply to the Property.

8.11 Decision

8.11.1 The Tribunal conclude that the Respondent was not wrong to include the condition 2.3 in the HMO licence issued by the Respondent dated 2 July 2024.

8.11.2 The Tribunal directs that the outstanding fire safety works be commenced within one-month of issuing this Decision Notice, unless an extension of time is negotiated by the Applicant with the Respondents. This timescale is applied to reduce the ongoing risks to the tenants.

Name: Ian B Holdsworth
Judge

Date: 10 June 2025

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 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.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie, 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.

