



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

**Case Reference** : **MAN/00CB/HML/2024/0003**

**Property** : **40 New Ferry Road, New Ferry, Merseyside,  
CH62 1BJ**

**Applicant** : **LF Properties Liverpool Limited**

**Representative** : **Mr D. Taylor (Lay Representative,  
Landlord's Defence Limited)**

**Respondent** : **Wirral Council**

**Representative** : **In-house solicitors**

**Type of Application** : **Housing Act 2004 – Schedule 5 Paragraph  
31(1)**

**Tribunal Members** : **Judge L. F. McLean  
Mr I. James MRICS**

**Date of Hearing** : **12<sup>th</sup> November 2025**

**Date of Determination** : **6<sup>th</sup> January 2026**

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**DECISION**

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## **Decisions of the Tribunal**

1. Pursuant to Paragraph 34(3) of Part 3 of Schedule 5 to the Housing Act 2004, the Tribunal:-
  - a. **Varies** the decision of the Respondent local authority dated 19<sup>th</sup> June 2024, but only inasmuch as the parties have already reached any prior written agreement as to the variation of the terms upon which the HMO licence for the Property is to be granted; and
  - b. In all other respects **confirms** the decision of the Respondent local authority dated 19<sup>th</sup> June 2024 as to the terms upon which the HMO licence for the Property is to be granted.

## **Reasons**

### **Background**

1. The Applicant appeals against the terms of a decision to grant a Licence under Part 2 of the Housing Act 2004 in respect of 40 New Ferry Road, New Ferry, Merseyside, CH62 1BJ (“the Property”), which is a House in Multiple Occupation (“HMO”). The proposed terms were notified in a decision dated 19<sup>th</sup> June 2024. The full facts of this matter are set out in the respective statements of case of the parties, of which the most salient issues are addressed below.
2. The Applicant is the owner and landlord of the Property. The Property is subject to a lease or management agreement with Serco Limited, which was the party which originally applied for the Licence. Serco Limited subsequently clarified that it did not wish to be joined as a party to proceedings, but it evidently worked closely with the Applicant and retained a watching brief.
3. The Respondent is the local housing authority for the district in which the Property is situated, and which issued the decision regarding the licence.

### **Case Management and Issues for Determination**

4. Preliminary directions were given by the Tribunal on 15<sup>th</sup> July 2025 for the parties to prepare and serve sequential statements of case, which the parties have done and to which the Tribunal has had regard.
5. The Housing Act 2004 provides, so far as is relevant:

#### ***63 Applications for licences***

*(1) An application for a licence must be made to the local housing authority.*

*(2) The application must be made in accordance with such requirements as the authority may specify.*

*(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.*

*(4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).*

*(5) The appropriate national authority may by regulations make provision about the making of applications under this section.*

*(6) Such regulations may, in particular—*

*(a) specify the manner and form in which applications are to be made;*

*(b) require the applicant to give copies of the application, or information about it, to particular persons;*

*(c) specify the information which is to be supplied in connection with applications;*

*(d) specify the maximum fees which are to be charged (whether by specifying amounts or methods for calculating amounts);*

*(e) specify cases in which no fees are to be charged or fees are to be refunded.*

*(7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account—*

*(a) all costs incurred by the authority in carrying out their functions under this Part, and*

*(b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs (so far as they are not recoverable under or by virtue of any provision of that Chapter).*

#### **64 Grant or refusal of licence**

*(1) 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 in accordance with subsection (2), or*

*(b) refuse to grant a licence.*

*(2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either—*

*(a) to the applicant, or*

*(b) to some other person, if both he and the applicant agree.*

*(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;*

- (aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who—
  - (i) owns an estate or interest in the house or part of it, and
  - (ii) is a lessor or licensor of the house or part;
- (b) that the proposed licence holder—
  - (i) is a fit and proper person to be the licence holder, and
  - (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;
- (c) that the proposed manager of the house is either—
  - (i) the person having control of the house, or
  - (ii) a person who is an agent or employee of the person having control of the house;
- (d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and
- (e) that the proposed management arrangements for the house are otherwise satisfactory.

(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.

(5) Sections 65 and 66 apply for the purposes of this section.

### **65 Tests as to suitability for multiple occupation**

(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.

(4) The standards that may be so prescribed include—

- (a) standards as to the number, type and quality of—
  - (i) bathrooms, toilets, washbasins and showers,
  - (ii) areas for food storage, preparation and cooking, and
  - (iii) laundry facilities,
 which should be available in particular circumstances; and
- (b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.

[...]

**SCHEDULE 5**  
**Licences under Parts 2 and 3: procedure and appeals**  
**Part 3**  
**Appeals against licence decisions**

**Right to appeal against refusal or grant of licence**

31(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) to refuse to grant the licence, or*
- (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.*

**Right to appeal against decision or refusal to vary or revoke licence**

32(1) *The licence holder or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority—*

- (a) to vary or revoke a licence, or*
- (b) to refuse to vary or revoke a licence.*

(2) *But this does not apply to the licence holder in a case where the decision to vary or revoke the licence was made with his agreement.*

**No rights of appeal where banning order involved**

32A(1) *The right of appeal under paragraph 31(1)(a) does not apply where a licence is refused because of section 66(3A) or 89(3A) (person with banning order not a fit and proper person).*

(2) *The right of appeal under paragraph 32(1)(a) does not apply in relation to the revocation of a licence required by section 70A or 93A (duty to revoke licence in banning order cases).*

**Time limits for appeals**

33(1) *Any appeal under paragraph 31 against a decision to grant, or (as the case may be) to refuse to grant, a licence must be made within the period of 28 days beginning with the date specified in the notice under paragraph 7 or 8 as the date on which the decision was made.*

(2) *Any appeal under paragraph 32 against a decision to vary or revoke, or (as the case may be) to refuse to vary or revoke, a licence must be made within the period of 28 days beginning with the date specified in the notice under paragraph 16, 21, 24 or 28 as the date on which the decision was made.*

(3) *The appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is*

*satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).*

***Powers of tribunal hearing appeal***

*34(1) This paragraph applies to appeals to the appropriate tribunal under paragraph 31 or 32.*

*(2) An appeal—*

*(a) is to be by way of a re-hearing, but*

*(b) may be determined having regard to matters of which the authority were unaware.*

*(3) The tribunal may confirm, reverse or vary the decision of the local housing authority.*

*(4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.*

6. Under the legislative framework, the Tribunal is required to make its own decision on whether a decision to grant or refuse a Licence should have been made (including whether to include Licence conditions, or – if so – then what conditions should apply). The Tribunal should start with the local authority’s policy and afford it respect (*Hussain (Nasim) v Waltham Forest LBC* [2023] EWCA Civ 733). The burden is on the Applicant to persuade the Tribunal to depart from the policy where appropriate. The Tribunal can set aside or vary a decision which was inconsistent with the decision maker’s own policy, but it must do so without departing from the policy. The appeal is to be by way of re-hearing of the original decision, although the Tribunal can take account of matters of which the local authority was unaware at the material time. The Court of Appeal also clarified in *Hussain (Nasim) v Waltham Forest LBC* that the Tribunal is, nonetheless, not permitted to take account of matters or facts which have only arisen or occurred after the decision was made.
7. By the time of the final hearing, the parties had managed to reach some compromises and narrow the issues in dispute to just two continuing areas of disagreement upon which the Tribunal’s determination was sought. These were:-
  - (a) The Respondent’s condition that no more than 5 persons in 5 households may be allowed to occupy the Property (on the grounds that the room currently designated as “Room 3” is too small for occupation by a single adult living as a separate household;
  - (b) The Respondent’s condition that the Property must be altered so that it contains a separate water closet (toilet) without a bath/shower, in addition to the existing combined bath/shower and water closet bathroom.

## **The Inspection**

8. The members of the Tribunal were able to inspect the Property on the morning of the hearing. The inspection was attended by the Applicant's Representative, the Respondent's representatives and Mr Gandolfo of Serco Limited. The members of the Tribunal explained that they were in attendance simply to view the premises, and that the Tribunal would not be taking evidence or submissions. This was pertinent because the Applicant's Representative appeared to assume that the members of the Tribunal would take detailed measurements of each room, which the Tribunal said it would not do.
9. The Property is a two-storey brick-built residential house which has been adapted for use as a HMO. The current interior layout includes a lounge, kitchen/dining room, two bathrooms, and six rooms intended for occupation as bedrooms.

## **The Hearing**

10. The hearing took place during the afternoon of 12<sup>th</sup> November 2025 at The Liverpool Civil and Family Court and Employment Tribunal, 35 Vernon Street, Liverpool L2 2BX. The Tribunal heard from Mr D. Taylor for the Applicant and Mr A. Bayatti (Solicitor) for the Respondent. Also in attendance were the Applicant's director, Mr S. Latham, various witnesses for the Respondent, and Mr Gandolfo as an observer for Serco Limited.

## **The Applicant's Case**

11. The Applicant did not propose to call any witnesses, but to make oral submissions to supplement its written statement of case.
12. The Applicant's case on the remaining points of dispute was summarised thus:-

### *Number of bedrooms / occupants*

- There was no statutory basis under the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018 to stipulate any particular minimum dimensions or shape, provided that the room is reasonable and suitable for occupation as designed. The Applicant considers that the rooms actually in use in the Property are functional. The Tribunal should consider whether Section 67 conditions could be imposed (e.g. the use of shelves) to mitigate any concerns.
- The Respondent's requirement that a bedroom should have a minimum usable floor space of 2.15 sq.m. evidently arises from NDSS standards, but these apply only to new building developments and are not strictly applicable to the 2018

Regulations. The Applicant considers that 2.15 sq.m. is an aspirational figure, but not a minimum legal requirement. There has been a change of use from C3 to C4 but this is not a new building development. The Applicant would say that many other houses have historically been built to the same layout as the Property and don't meet the 2.15 sq.m. threshold.

- The guidance is based on square rooms. The Applicant's Representative invited the Tribunal to note that there had been adequate circulation space during the earlier inspection, and it had been possible to have 3 or 4 people in each room at one time. Occupiers have not requested it.
- There is suitable communal space for 6 adult occupants.
- The Property is being managed by Serco, which is a government-approved public service provider. The Applicant's Representative asserted that the Government had made it clear that it must end the use of hotel accommodation in favour of premises such as the Property. The 2.15 sq.m. standard would also prohibit many rooms across the region from being used in this way.
- Section 67 should not be used for the creation of different local standards.

#### *Configuration of bathrooms and toilet facilities*

- The Respondent's policy itself makes no sense – a water closet with wash basin and a bath or shower is deemed sufficient for 4 persons from different households. Mathematically, two bathrooms in the same configuration should be enough for 8 persons from different households. The Respondent accepted this arrangement for up to 5 persons, but its policy is that when 6 to 10 persons from different households are in occupation, then it is necessary for at least one of the water closets to be separate from any bath or shower facilities.

#### *Proposed alternative Licence Conditions*

- To reduce furniture clutter, the Applicant had changed the separate chests of drawers and wardrobes in Room 3 to a combined unit to offer more usable space. It was suggested that if the Respondent remained unhappy about an occupant's ability to put their mobile phone and other personal belongings on an easily accessible surface, then the Applicant could install floating / folding shelves, or some small floating wall cupboards. There is currently space for a simple table, such as a pop-up table attached to a wall. However, the Applicant's view was still that the room is suitable in its current configuration, with all other aspects being desirable rather than necessary.



### The Respondent's Case

13. The Respondent set out its case in reply. They referred to the statutory framework under Section 64 of the Housing Act 2004. It was asserted that the granting of a licence requires consideration of minimum room width, size, layout, adequacy of shared facilities, and overall suitability. The Respondent is permitted to have its own policy, and this was said to be allowed to take into account standards regarding room size and washing and toilet facilities. The Respondent also contended that it is not strictly bound by its policy other than to give officers guidance and to provide consistency when dealing with applications. The Respondent contended that its officers' evidence showed that there had not been a focus solely on the minimum 2.15 metre room width, but that they go on to explain in clear terms why the rooms are unsuitable, having regard to wider considerations. It was also asserted that the Respondent had not fettered its discretion – the discretion had been considered and the Respondent had simply decided not to exercise discretion in the Applicant's favour because the Property was not suitable accommodation for 6 people when considering the rooms and washing and toilet facilities.
14. It was noted that there was a disagreement between the parties as to the exact dimensions of the rooms in question, but the Respondent's case was that the suitability had not been decided solely on the issue of floor space. The Respondent called Susannah Davies to confirm her evidence and offer additional clarification on the decision making process.

### Testimony of Susannah Davies

15. Susannah Davies gave oral evidence to supplement her two written witness statements of 4<sup>th</sup> September 2025. In summary, the key additional matters to which she referred were:-
  - The Applicant had engaged in negotiations and there had been developments which improved the functionality of the kitchen-diner and the lounge, but the bedrooms had not changed and it was difficult to see where more storage could be accommodated.
  - She felt that the bed in Room 3 was already undersized and that if floating shelves were placed around it then these would have to be quite high up the wall and so of limited usefulness.
  - The shape of Room 3 meant that there was only a narrow access into and along it and it was impractical to accommodate any more furniture.
  - There was an increased importance of the Respondent's 2.15-metre width standard in premises where the occupants were not

of the same household and were not a group of friends or students sharing voluntarily.

- The renovation / refurbishment had not been subject to building control as it was designed for fewer than 7 occupiers.
  - Room 4 had more scope for storage solutions but was dark and gloomy due to the poor view and the window being located in an alcove.
  - In relation to washing and toilet facilities, the Respondent's assessment is that 6 people living together needed to have a WC separate from any bath or shower to allow for busy periods e.g. first thing in the morning.
  - Ms Davies considered that the 2.15-metre width standard was not an absolute minimum, in that they would consider allowing a room to be used for occupation if it was suitable in all other respects.
16. Ms Davies was cross-examined by Mr Taylor. She said that the room measurements for Rooms 3 and 4 had initially been mixed up, and should have been the other way around. Aside from that, she maintained her position that Room 3 had not been approved for occupation because it did not meet the Respondent's standards and guidance, and she did not agree with the Applicant's proposals to mitigate that. She did not consider it the Respondent's role to make counter-proposals or think of alternative solutions. She accepted that the 2.15-metre width requirement had been taken from the Nationally Described Space Standard ("NDSS") under the national planning regime, and she also accepted that this was not a legal requirement under the Housing Act 2004, but she continued to assert that it was a reasonable basis upon which to formulate the Respondent's own guidance by analogy.
17. After the recess for lunch, the Respondent's solicitor confirmed that for the purposes of the proceedings that day, they were prepared to agree that the floor space area of Room 3 was 6.54 square metres and Room 4 was 6.57 square metres.
18. Ms Davies was questioned about the guidance applicable to bathroom and toilet facilities. It was put to her that the Respondent's guidance was wrong as it was based on old regulations which had been repealed in 2007, but she asserted that the guidance was still based on relevant considerations.

## **The Tribunal's Considerations**

### Overall approach

19. As previously noted, the Tribunal is required to make its own decision on whether a decision to grant or refuse a Licence should have been made (including whether to include Licence conditions, or – if so – then what conditions should apply).
20. In doing so, the Tribunal should start with the local authority's policy and afford it respect (*Hussain (Nasim) v Waltham Forest LBC* [2023] EWCA Civ 733). The burden is on the Applicant to persuade the Tribunal to depart from the policy where appropriate. The Tribunal can set aside or vary a decision which was inconsistent with the decision maker's own policy, but it must do so without departing from the policy. As is noted in the witness statement of Llinos Cavell dated 9<sup>th</sup> July 2025, the official guidance issued by the Ministry of Housing, Communities and Local Government states that local authorities are permitted to require higher than the minimum legal standards, but are not permitted to set lower standards.
21. The appeal is to be by way of re-hearing of the original decision, although the Tribunal can take account of matters of which the local authority was unaware at the material time. The Court of Appeal also clarified in *Hussain (Nasim) v Waltham Forest LBC* that the Tribunal is, nonetheless, not permitted to take account of matters or facts which have only arisen or occurred after the decision was made.
22. Accordingly, the Tribunal concluded that it could not take into account issues around the changing social and policy environment regarding the use of dispersed accommodation for housing applicants for asylum and the widespread closure of hotels previously used for that purpose. The Applicant contended that there is a wider public interest in that regard, but the current immigration policy situation is not something which the Tribunal can consider. In any case, the Tribunal members were of the view that it was an issue which would have been of very little relevance to the legal framework under Section 64 of the Housing Act 2004, if any.

#### Number of bedrooms / occupants

23. The Tribunal considered the Respondent's policy regarding guideline minimum room dimensions, and concluded that the policy was within the scope of reasonable decision-making that the Respondent was afforded. It was legitimate for the Respondent to adopt guideline minimum room standards which went beyond bare minimum legal requirements under other legislation (e.g. overcrowding standards under the Housing Act 1985). The only extent to which it had done so was that there was a minimum room width of 2.15 metres. The plain reason for this would be to avoid absurd outcomes, for example a room which was 1 metre wide and 6.51 metres long. The concept is borrowed from NDSS – the Respondent clearly accepts that the NDSS requirements are not incorporated into the Housing Act 2004 regime, but is equally clear that this criterion provides a reasonable and objective comparable starting point for its own discretionary standards. There

was no overriding basis upon which the Tribunal should depart from the Respondent's policy in this area.

24. The Tribunal also considered that the application of the Respondent's policy in the present circumstances was correct. The Applicant had not persuaded the Tribunal that Room 3 was suitable for approval under the Respondent's policy, even taking into account the residual discretion afforded when looking at the overall scheme and purpose of the policy. The Tribunal concluded that Rooms 3 and 4 should be combined into a single larger room in order to meet the legitimate requirements of the Respondent's policy, as per the original decision.

#### Configuration of bathrooms and toilet facilities

25. The Tribunal considered the Respondent's policy regarding guideline minimum washing and toilet facilities, and concluded that the policy was within the scope of reasonable decision-making that the Respondent was afforded. The legal requirements, under what was previously the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, were amended in 2007 to remove the specific rules depending on the number of occupiers and allow more flexibility to local authorities if they desired it. These flexibilities remain in the currently applicable Regulations. Although there are, accordingly, no specific legally binding details in that regard, it was nonetheless legitimate for the Respondent to adopt guideline minimum standards which were still loosely based on the pre-2007 position.
26. The Applicant contended that the Respondent's policy was nonsensical in any event – that it was a simple mathematical equation that doubling the provision for 4 occupiers would be sufficient for 8 occupiers. However, the Tribunal was persuaded that the Respondent's explanation for requiring a *separate* WC in a larger household was justified. The policy ultimately sought to anticipate and prevent a situation where two bathrooms were in use simultaneously for a bath or shower, such that nobody else in the house could go use the WC for an extended period. This was more likely to occur during peak demand, i.e. early mornings. However, the behavioural dynamics of one large group of occupiers would be more complex than two separate small groups – especially where the occupiers were essentially strangers who had come together by circumstance rather than by choice, and where there could be a regular turnover of occupiers – and so the stipulation for at least one separate WC in such circumstances was a rational one. There was no overriding basis upon which the Tribunal should depart from the Respondent's policy in this area.
27. The Tribunal also considered that the application of the Respondent's policy in the present circumstances was correct. The Applicant had not persuaded the Tribunal that the bathroom and toilet facilities at the Property, as presently configured, were suitable for 6 occupiers, even taking into account the residual discretion afforded when looking at the

overall scheme and purpose of the policy. The Tribunal concluded that at least 1 separate WC should be provided in order to meet the legitimate requirements of the Respondent's policy, as per the original decision.

#### Proposed alternative Licence Conditions

28. The Applicant showed an admirable willingness to try flexible or novel solutions to the size and storage constraints of Room 3. There may well be other situations where such proposals could have made the difference to enable Room 3 to be used as a bedroom under the Respondent's policy, but the Tribunal was not persuaded that was so in the present case. The Tribunal did not have any alternative suggestions to offer in the circumstances.

#### Conclusion

29. The Tribunal notes that the parties have reached agreement on various matters which were previously disputed. The Tribunal is willing to give effect to any express variations to the Respondent's decision which have been reached by agreement.
30. Having considered the facts and the Respondent's policy, the Tribunal reached the same conclusions on the disputed matters as the Respondent had done.
31. The Tribunal, accordingly, confirms the decision of the Respondent except to the extent that the parties have already reached written agreement as to variation of the same.

**Names:**  
**Judge L. F. McLean**  
**Mr I. James MRICS**

**Date:**  
**7<sup>th</sup> January 2026**

### **Rights of appeal**

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).