



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

Case reference : **LON/00BE/HMV/2025/0006**

Property : **Flat 12, Westonbirt Court, Ebley Close,
London SE15 6BH**

Applicant : **Acquire Estate Agents Limited**

Representative :

Respondent : **London Borough of Southwark**

Representative : **Ms Shalom of Counsel**

Type of application : **An application under section 27A
Landlord and Tenant Act 1985**

Tribunal : **Judge Shepherd
Stephen Mason FRICS**

Date of Decision : **22nd January 2026**

DECISION

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1. In this case we are dealing with an appeal against a refusal to vary a licence. The premises concerned is Flat 12 Westonbirt Court, Ebley Close, London SE15 6BH (“the Premises”). The Appellant is Acquire Estate Agents (“The Appellant”) and the Respondents are LB Southwark (“The Respondents”).

2. On 1st March 2022 the Respondents introduced an additional licensing scheme to their borough. In response the Appellant made a license application for the premises. On the 15th June 2024 a draft licence was issued by the Respondents. A 21-day representation period was provided. No representations were received. On the 22nd July 2024 the final licence was granted with no amendments from the draft. This property was licensed for a maximum of 4 people living as 3 households.
3. The Appellant was not happy with this and applied for a variation. They thought the license should be for 4 people living as four households. This is how they had been using the premises. The bedroom sizes at the premises were 17 m² (second floor left); 12.5 m² (Third floor front); 7.37 m² (third floor back left) and 10.21 m² (third floor back right). What is significant in this case is that the third floor back left room (“the small room”) was below the Respondents’ minimum requirement for a bedroom. Effectively the license condition allowing occupation by 4 people in three households excluded the use of the small room.
4. On 17th March 2025 a draft refusal notice was issued and sent to all interested parties, the reason for the refusal was that the variation request form was blank. On 19th March 2025, a representation to the draft refusal was received from the Appellant. On 7th April 2025, the processing officer responded to the representation requesting more information from the Appellant.
5. In their representations the Appellant explained that they manage both Flat 12 and 22 Westonbirt and the layouts are the same/similar, yet the permitted occupancy is different. In addition, they alleged that the application of the Respondent’s HMO standards was inconsistent
6. On 11th April 2025 the Appellant applied to the Tribunal before the decision had been finalised. On 13th April the Respondents’ processing officer emailed the Applicant explaining why there is a difference between the permitted numbers of both properties and that both decisions were made in accordance with the Respondents’ standards
7. On 14th April 2025, the Applicant notified the Respondents of their intention to submit a number of applications to the tribunal on behalf of their clients and requested that they finalise a Notice within 7 days of the email.
8. On 28 April 2025, the final notice was served.

Relevant law

9. The power to grant or refuse a licence is to be found in s.64 of the Housing Act 2004 which states the following:

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.

10. The power to vary a licence is found in s.69 of the 2004 Act

(1) The local housing authority may vary a licence—

(a) if they do so with the agreement of the licence holder, or

(b) if they consider that there has been a change of circumstances since the time when the licence was granted.

For this purpose, “change of circumstances” includes any discovery of new information.

(2) Subsection (3) applies where the authority—

(a) are considering whether to vary a licence under subsection (1)(b); and

(b) are considering—

(i) what number of households or persons is appropriate as the maximum number authorised to occupy the HMO to which the licence relates, or

(ii) the standards applicable to occupation by a particular number of households or persons.

(3) The authority must apply the same standards in relation to the circumstances existing at the time when they are considering whether to vary the licence as were applicable at the time when it was granted.

This is subject to subsection (4).

(4) If the standards—

(a) prescribed under section 65, and

(b) applicable at the time when the licence was granted, have subsequently been revised or superseded by provisions of regulations under that section, the authority may apply the new standards.

(5) A variation made with the agreement of the licence holder takes effect at the time when it is made.

(6) Otherwise, a variation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under paragraph 35

of Schedule 5 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).

(7) The power to vary a licence under this section is exercisable by the authority either—

(a) on an application made by the licence holder or a relevant person, or

(b) on the authority's own initiative.

(8) In subsection (7) “relevant person” means any person (other than the licence holder)—

(a) who has an estate or interest in the HMO concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or

(b) who is a person managing or having control of the house (and does not fall within paragraph (a)), or

(c) on whom any restriction or obligation is imposed by the licence in accordance with section 67(5).

11. Schedule 4 of the 2004 act sets out conditions that are mandatory in the grant of licence. In particular para 1A sets out the conditions that must be included in relation to floor area:

(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;

(b) to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;

(c) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;

(d) to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.

(3) Conditions requiring the licence holder to ensure that—

(a) where any room in the HMO is used as sleeping accommodation by persons aged over 10 years only, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence;

(b) where any room in the HMO is used as sleeping accommodation by persons aged under 10 years only, it is not used as such by more than the maximum number of persons aged under 10 years specified in the licence;

(c) where any room in the HMO is used as sleeping accommodation by persons aged over 10 years and persons aged under 10 years, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence and the maximum number of persons aged under 10 years so specified.

...

12. The Ministry of Housing Communities and Local government has produced guidance entitled *Houses in Multiple Occupation and residential property licensing reform Guidance for Local Housing Authorities* dated December 2018.
13. The guidance sets out at paragraph 3.4 the minimum room sleeping size in line with the statutory provisions but also states:
14. The mandatory room size conditions will however be the statutory minimum and are not intended to be the optimal room size. Local authorities continue to have discretion to require higher standards within licence conditions but must not set lower standards.
15. The Respondents operate their own standards. This is accepted practice by local authorities. It is also common to see that the standards imposed are more stringent than the statutory minimum. The Respondents operate more stringent standards. They also differentiate between Houses In Multiple Occupation which provide separate shared living space and those that simply provide a room.
16. According to the Respondents' standards a single room in an HMO with no separate living room should measure 10m². A double room in an HMO with no separate living room should measure 14m². A single room in an HMO with a separate living room should measure 8m². A double room in an HMO with a separate living room should measure 12m².

17. The Respondents case is that they are entitled to operate higher minimum room size standards than those required by statute. They are only forbidden from setting lower minimum standards than the statutory requirements. This is undoubtedly correct.
18. The Respondents maintain that the small bedroom did not meet the Respondents' standards even if the property was treated as one with a separate living room. The difference between the premises and Flat 22 was that the former does not have a separate living room whereas the latter does. The kitchen/ diner in the latter was much larger than the one in the premises and this combined with the "small room" dimensions meant that they were fully entitled to decide that only three households and four occupiers should be permitted at the premises.

The hearing

19. Aaron Lu a Director of the Appellant company spoke on their behalf. The Respondents were represented by Ms Shalom of Counsel.
20. Mr Lu said the Respondents' standards were not fit for purpose. He accepted that a general challenge to the policy would have to be brought by Judicial Review but sought to argue that the use of the policy in the Appellant's case was random and unfair. He said the Respondents used comparisons with RIBA and the Housing Corporation which were not designed for HMOs. He said that there had been no flexibility applied in the present case which was contrary to the Respondents' statement that they don't apply their standards rigidly.
21. Mr Lu sought to raise an entirely new point which had not been canvassed previously. This related to the provision of cupboard space to the small room. The Respondents had not had a fair opportunity to consider this point and we disallowed its inclusion.
22. Ms Shalom maintained that the Respondents had acted properly and applied their standards correctly. She said that the kitchen and living room in the premises was too small for four people. The Respondents were correct to designate the premises as not having a living room. She said there was no basis for the Tribunal to interfere with this refusal of variation.

Determination

23. Following careful consideration of the written and oral argument we do not consider that it would be appropriate to accede to the Appellant's appeal. The

Respondents are entitled to have their own standards which can be more stringent than the statutory rules. Indeed, we consider that the room standards set by the Respondents are prudent. On a practical basis it is advisable to impose standards which ensure the safety of residents. The premises has a small kitchen/diner and there is limited shared living space. The occupier of the small room therefore has very limited space available.

24. Whilst we accept that our decision will mean that the small room can't be used this is a necessary consequence. The Appellant would be best advised to consider some sort of reconfiguration enabling all of the rooms at the premises to comply with the Respondents' standards.

Summary

25. The appeal is dismissed.

Judge Shepherd

22nd January 2026

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 (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.