FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	:	MAN/00BY/LAM/2024/0005
Property	:	Borden Court, 145-163 London Road, Liverpool, L3 8JA
Applicants	:	BC Owners 18 Ltd. & BC Owners 21 Ltd.
Respondent	:	Rockwell (FC101) Ltd.
Type of Application	:	to appoint a manager under s.24 of the Landlord and Tenant Act 1987
Tribunal Members	:	Judge P Forster Judge S Westby Mr I James MRICS

Decision

The Tribunal determines that units 2.5-1 and 3.1-7 do not constitute "flats" within the meaning of s.60(1) of the Landlord and Tenant Act 1987 with the result that Part II of the Act does not apply and the Applicant is not a qualifying tenant for the purposes of s.21. The Tribunal therefore finds that it does not have jurisdiction to consider the application for the appointment of a manager under s.24.

Introduction

1. This is an application to appoint a manger under s.24 of the Landlord and Tenant Act 1987 ("the Act") in respect of Borden Court, 145-163 London Road, Liverpool, L3 8JA ("the Property").

2. The application was made by Scott El Paraiso. He was later substituted as the applicant by two companies, BC Owners 18 Ltd. and BC Owners 21 Ltd. ("the Applicant"). Mr El Paraiso is a director of both companies. Through these companies, Mr El Paraiso owns 64 of the 123 units in the Property.

3. BC Owners 18 Ltd. is the leasehold proprietor of Unit 2.5.1 situated on the second floor of the Property registered at HM Land Registry under title number MS600277. It was acquired on 27 October 2023 for £5,000.

4. BC Owners 21 Ltd. is the leasehold proprietor of Unit 3.1.7 situated on the third floor of the Property registered at HM Land Registry under title number MS600078. It was acquired on 9 October 2023 for £5,000.

5. Rockwell (FC101) Ltd (the Respondent) is the head leasehold proprietor of the Property registered at HM Land Registry under title number MS592973. It was acquired on 7 June 2013 for £406,300.

6. The basis for the main application is that the Respondent, by its managing agent, has allowed the condition of the premises to deteriorate while at the same time charging excessive service charges.

7. The Property occupies a site bounded by London Road to the south, Gilbert Street to the west, Bay Horse Lane to the north and abuts neighbouring buildings to the east. It was constructed in about 1930 and previously used as an office building. It was converted to student accommodation around 2010. There is a basement and ground floor with four upper floors. The basement and ground floor are occupied by a supermarket and the reception and administrative area for the Property is also on the ground floor. The upper floors are occupied for residential use.

8. Unit 2.5-1 and Unit 3.1-7 are collectively referred to here as "the Units".

9. The upper floors of the Property are made up of clusters of shared accommodation. Each cluster contains between 5 and 7 private units/bedrooms all of which are let on individual long leases. The Units are defined as bedsits in the leases.

10. The occupants of the Units have the right to use shared communal facilities, including a bathroom, WC, a kitchen and lounge situated within each cluster.

11. The Applicant installed kitchen and bathroom pods in each of the Units to provide self-contained accommodation. This was done on an unspecified date but the pods were in place when the application was made on 24 September 2024.

12. At the case management conference held on 9 December 2024 the Respondent raised an issue about the Tribunal's jurisdiction, disputing that the Units qualify as self-contained units because they have been altered in breach of lease and/or by way of trespass against the Respondent. This is dealt with as a preliminary issue.

The hearing

13. The Tribunal inspected the Property on 22 September 2025 and the hearing took place immediately afterwards. Having heard the oral evidence, the hearing was adjourned to 6 February 2026 to hear closing submissions from the parties.

14. The Applicant is represented by Ms Fiona Todd, Counsel, and the Respondent by Mr Stephen Evans, Counsel. The Tribunal has an agreed 656-page bundle of documents (items 35 to 37 were excluded) and heard evidence from Mr Shields, a director of the company that manages several of the units in Borden Court, and Mr Lowe, the Applicant's expert, on behalf of the Applicant and heard evidence from Mr Perry, the Respondent's expert, on behalf of the Respondent. After Counsels' oral submissions the Tribunal reserved its decision.

Preliminary issue

15. The preliminary issue for the Tribunal to determine is whether the Applicant's two units are "flats" within the meaning of s.21 and s.60 of the 1987 Act, thereby giving it jurisdiction to determine the application for the appointment of a manager under s.24.

16. The Respondent submits that the Tribunal does not have jurisdiction to determine the application because (1) the Units are not "flats" as required by s.21(1) of the Act and (2) a leaseholder cannot unilaterally or unlawfully alter a non-qualifying unit to create the right to seek the appointment of a manger.

17. If the Respondent is correct about the Units not being flats, the Tribunal does not need go any further and does not need to consider whether the installation of the pods was unlawful.

Are the Units 'flats'?

The Respondents' case

18. It is submitted that the Units are not "flats" within s.60 of the Act. The Respondent relies on Q Studios (Stoke) RTM Co Ltd v Premier Ground Rents No.6 Ltd. [2020] UKUT 197 as authority for the assertion that the issue should be determined by the physical characteristics of the premises, not by how they are let or used.

17. The Respondent argues that the Units lack essential living accommodation:

- when originally constructed, and when later adapted as student cluster accommodation, the Units lacked essential living space such as kitchens and lounge areas;
- essential living space was provided in shared cluster facilities, which occupiers were intended to use;
- under Q Studios, where a unit lacks essential living accommodation and such accommodation is located elsewhere on a shared basis, it is not constructed or adapted as a separate dwelling.

- thus, the Units were created and adapted for use with shared living accommodation, and do not meet the statutory definition of a "flat."

The Applicants' case

19. The Applicant contends that the Units are "flats", that they are self-contained dwellings. It is submitted that the physical features of the pods mean the Units are constructed or adapted for use as dwellings, satisfying the statutory definition of a flat under s.60 of the Act. The communal facilities in the wider building are irrelevant because the occupiers of the Units do not need to use them.

17. The Applicant cites Q Studios and other authorities and accepts that the legal test is objective and based on physical characteristics. The Units, being self-contained, meet the requirements of a "dwelling"; the actual use or intended use under tenancy agreements does not determine the issue.

20. It is submitted that if the Units qualify as flats, the Applicants are 'tenants of flats' and therefore have standing under s.21(1) and s.24(1) of the Act.

The Law

21. S.21 of the Act, so far as material, provides that:

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3) [exempt premises] and section 24ZA [special measures manager], this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(4) An application for an order under section 24 may be made—

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies;

and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

22. S.60 of the Act – general interpretation:

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it;

"flat" means a separate set of premises, whether or not on the same floor, which—

(a) forms part of a building, and

(b) is divided horizontally from some other part of that building, and

(c) is constructed or adapted for use for the purposes of a dwelling".

The Tribunal's reasons for its decision

23. The issue turns on whether each Unit is a "separate set of premises… constructed or adapted for use for the purposes of a dwelling"; that question is governed by the objective, physical separateness test articulated by Fancourt J in Q Studios and most recently affirmed and refined by the Court of Appeal in Cloisters Business Centre Management Co Ltd v Anvari & Wolff [2026] EWCA Civ 17.

24. In Q Studios, Fancourt J held that whether premises constitute a "separate dwelling" is an objective, physical question, determined by examining the physical characteristics of the unit to see whether it contains the essential living accommodation required for residential occupation. A unit fails to be a separate dwelling where essential living accommodation is shared, such as a shared kitchen or lounge, whereas non-essential communal amenities do not defeat separateness. The central inquiry was therefore whether the unit is constructed or adapted to function independently as a dwelling, rather than how it is used or let.

25. At para 86 of Q Studios it is stated, 'For this purpose, as under the Rent Acts, bathroom accommodation is not treated as 'living accommodation' but a lounge area and kitchen are. Only shared living accommodation will suffice to prevent a separate set of premises constructed or adapted for use for residential purposes from being premises constructed or adapted for use for the purposes of a separate dwelling, within the meaning of Part 2'.

26. In Cloisters, the Court of Appeal adopted and reinforced the physical-characteristics approach articulating the point with greater precision. Lewison LJ held that the question whether premises are "separate" is entirely a physical question, not a question of use, and

turns on whether the occupier shares any living accommodation with others. A part of a building that is self-contained, sharing no living accommodation, is a separate dwelling; conversely, if any living accommodation is shared, the premises are not "separate". The Court further confirmed that the question of whether a unit is "intended to be occupied" as a separate dwelling is answered primarily by reference to the terms of the lease, though separateness itself remains a physical inquiry.

27. Q Studios emphasised the presence or absence of essential living accommodation within the unit, while Cloisters sharpens the test by holding that any sharing of living accommodation defeats separateness, and that "separate" is a wholly physical concept, irrespective of how the space is used in practice.

28. Applying the test in Q Studios, the key question for Borden Court is whether Units 2.5-1 and 3.1-7 contain within their own physical boundaries the essential living accommodation required for independent residential occupation, specifically facilities for living, eating and sleeping, and therefore do not rely on shared essential living accommodation in the surrounding cluster.

29. The Applicant's case is that the installation of the pods has created fully self-contained units: each now incorporates its own shower, WC, wash-basin, macerator, kitchen sink, hob, fridge, microwave oven and hot-water supply, all connected to building services and capable of supporting independent residential occupation. The Applicant therefore says that the Units match the kind of self-contained studios that were held to be "flats" in Q Studios.

30. The Respondent relies on both Q Studios and the further clarification in Cloisters, to argue that the Units at Borden Court remain physically dependent on the shared cluster accommodation. The Respondent submits that the Units at Borden Court continue to share living accommodation, because each cluster retains a communal lounge which, they say, was and remains part of the essential day-to-day living space for the Units. They further argue that the Units were originally designed as bedsits within a cluster and were "constructed or adapted" to be occupied alongside shared living accommodation, not as independent dwellings.

31. There are no measured floor areas for the Units. The fixtures within them include a proprietary Crystal bathroom pod and an IKEA kitchenette, both freestanding units. These items can be used as indicators of scale, together with the descriptions of bedspace, wardrobe arrangements and circulation needs.

32. In considering whether the Units may properly be regarded as "self-contained" for the purposes of the 1987 Act, the Tribunal finds it reasonable to expect such Units to include sufficient space to accommodate at least a comfortable chair to sit on and a table at which one can eat and work unencumbered by kitchen and toilet facilities. In a genuinely self-contained unit it is also reasonable to expect sufficient free space to move around without obstruction. The other residential units within the Property were designed and arranged in clusters, each intended to function with shared communal kitchens and bathrooms, thereby facilitating the form of communal student life originally envisaged for

the building. The installation of the freestanding kitchen and bathroom pods within the Units, however, reduced the amenity space available for the ordinary activities of modern daily living, a reduction that is compounded by the irregular shape of the Units themselves, which further restricts the usable area.

33. The Tribunal notes that the Applicant has chosen to adapt only two of the sixty-four units it owns within the Property, leaving the remainder in their original cluster-based configuration, which underscores the broader context in which the present adaptations sit. In light of these factors, the Tribunal considers that, in ordinary usage as well as in statutory context, a "flat" should provide sufficient living space without the need to rely on the shared living accommodation available in the surrounding cluster. The Tribunal finds that the Units lack sufficient essential living space.

34. The Tribunal drew a distinction between essential shared living accommodation, which defeats separateness, and non-essential communal amenities, which do not.

35. The Tribunal considered the relevance of Uratemp Ventures Ltd v Collins [2001] UKHL 43, on which the Applicant relies for the proposition that a "dwelling" need not contain all modern facilities, particularly cooking facilities, to qualify as a home. However, in Uratemp there was a fully usable residential space, where the question was the absence of cooking facilities in an otherwise adequate unit. By contrast, the Tribunal's findings in this case show that the Units are not missing cooking facilities; instead, the available space is reduced by the kitchen and bathroom pods, limiting free space for other core living activities. The issue here is therefore not the absence of facilities, but the loss of essential habitable space.

36. The Applicant cites Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate [2019] EWCA Civ 1848, where the Court of Appeal articulated the two-stage test: (1) whether the premises are a separate set of premises, and (2) whether they are constructed or adapted for use as a dwelling. Aldford House concerned premises where the physical configuration clearly created functional, useable units. In the present case, the Tribunal accepts that the Units form "separate sets of premises" in a structural sense but finds that the adaptations do not transform them into viable dwellings. The installation of the pods did not "change the previous identity of the premises… to something suitable for use as a dwelling" in the sense contemplated by Aldford House; instead, the works have resulted in reduced living space.

37. The Applicants' principal reliance is on Q Studios which concerns purpose-built studios, each of which contained its own living area and kitchenette, with no shared kitchens or bathrooms. In Q Studios, the units were designed from the outset as studios with adequate space for living, sleeping, eating, and circulation, and the presence of communal social facilities (gym, lounge, cinema room) did not detract from the self-contained nature of the units. In the present case, the Units were originally constructed as bedsits within clusters with shared kitchens and bathrooms, intended to support a communal model of student life. The Tribunal finds that the Applicant's introduction of freestanding kitchen and bathroom pods has not created equivalent self-contained units. The pods reduce the usable space available.

38. In JLK Ezekwe v Camden LBC [2017] UKUT 277 (LC), the Upper Tribunal held that accommodation could not constitute a "separate dwelling" where essential facilities were shared with others. The Applicant argues that their Units are distinguishable from JLK because they now contain their own facilities and no longer rely on communal ones. The Tribunal accepts that JLK is not directly analogous but finds that the underlying spatial reasoning in JLK assists in distinguishing this case. In JLK, the lack of exclusive facilities meant the bedsit formed only part of the occupier's living accommodation. In the present case, although facilities have been placed inside the Units, the Tribunal's findings show that the Units' remaining amenity space is too restricted. In effect, the Units remain functionally closer to a single room within a wider cluster arrangement**,** notwithstanding the pods.

Conclusion

39. The Tribunal finds that the Units lack sufficient lounge space such that they lack essential living accommodation within the meaning accorded to this in Q Studios.

40. Tribunal accepts the Respondent's submission that, applying the relevant authorities, the Units are not separate dwellings, because they remain physically embedded within cluster flats in which essential living accommodation continues to exist and remains accessible to the occupants of the Units.

Dated 25 February 2026

Judge P Forster

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.