FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**1. LON/00AE/HMV/2026/0003** **2. LON/00AY/HMV/2026/0001**
Properties	:	**1. 393 Coldharbour Lane, London, SW9 8LQ** **2. 68A Railton Road, London, SE24 0LF**
Applicant	:	**City Accommodation RE Limited**
Representative	:	**Thomas Kidney (Counsel)**
Respondent	:	**London Borough of Lambeth**
Representative	:	**1. Carol Bennett (HMO Team Leader)** **2. Sandra Aniemeka (Environmental Health Officer)**
Type of Application	:	**Appeal in respect of HMO Licences: Sections 71 and Schedule 5 to the Housing Act 2004.**
Tribunal Members	:	**Judge Robert Latham** **Michael Pearce MRICS**
Date and venue of Hearing	:	**5 October 2026** **at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**9 November 2026**

DECISION

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(1) 393 Coldharbour Lane: The Tribunal dismisses the appeal against the terms of the HMO licence. The Tribunal is satisfied that Room 4 is not suitable for sleeping accommodation. Further, both the size and the layout of the kitchen are inadequate.

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(2) 68 Railton Road: The Tribunal dismisses the appeal to vary the HMO licence which was made on 9 November 2023.

(3) The Tribunal makes no order for the refund of the tribunal fees paid by the Applicant.

The Applications

1. 393 Coldharbour Lane: On 29 September 2025, the Applicant issued this appeal against the conditions imposed by the Respondent in an HMO Licence, dated 2 September 2025. He appeals against the following conditions: (i) the prohibition of the use of "Bedroom 4" on the basis that it is of insufficient size; and (ii) a requirement to provide an adequate kitchen. The licence was only granted for a period of 18-months because of the absence of an adequate kitchen. It was a condition of the licence that the Applicant should ensure in the next six months that the kitchen should be increased in size to 8.5sqm which was the minimum floor area for a property with four occupants.

2. 68A Railton Road: On 29 September 2025, the Applicant issued this appeal against the Respondent's refusal to permit the use of "Bedroom B" by one person. The Applicant had proposed a revised layout that would have increased the size of the room to 7.39 sqm The Respondent refused this as the Respondent's minimum HMO room size is 9 sqm.

3. On 19 February 2026, the Tribunal gave Directions which were amended on 20 May 2026 pursuant to which the parties have filed the following:

   393 Coldharbour Lane

   (i) The Applicant has filed a Bundle (178 pages), references to which shall be prefixed by "A1.__".

   (ii) The Respondent has filed a Bundle (57 pages), references to which shall be prefixed by "R1.__".

   68A Railton Road

   (i) The Applicant has filed a Bundle (59 pages), references to which shall be prefixed by "A2.__".

   (ii) The Respondent has filed a Bundle (159 pages), references to which shall be prefixed by "R2.__".

The Hearing

4. The Applicant was represented by Mr Thomas Kidney (Counsel). He provided a Skeleton Argument, and we are grateful for the assistance that he provided. He was accompanied by Miss Madzhar, the Applicant's General Manager. The Applicant had provided witness statements from Mr Carmelo Spitaleri, the Respondent's director with day-to-day management responsibility. He describes how the Applicant's business model is to offer guaranteed rent to landlords by formally taking properties as a tenant and then using the rooms as accommodation for occupiers. We were told that he was unable to attend as he was in Italy. Mr Kidney urged the Tribunal to inspect the two properties before reaching our decision. We acceded to his request and inspected the properties on the afternoon of the hearing.

5. Ms Carol Bennett, the Respondent's HMO Team Leader presented the Respondent's case in respect of 393 Coldharbour Lane. The Environmental Health Officer ("EHO") who had inspected the property and served the HMO licence no longer worked for the Respondent. Ms Bennett had prepared a witness statement on the basis of the information that she had gleaned from the Respondent's records. She had not herself inspect the property. She gave evidence and was cross-examined.

6. Ms Sandra Aniemeka, an EHO, presented the Respondent's case in respect of 68 Railton Road. She gave evidence and was cross-examined. She had inspected the property on 20 and 28 May 2026.

The Inspection

393 Coldharbour Lane

7. 393 Coldharbour Lane is a two storey maisonette above a shop in a terrace of Victorian properties. We suspect that this would originally have had two or three bedrooms with two living rooms on the first floor. However, the layout has been altered to create five bedrooms with no living area. There are two bedrooms on the first floor and three on the second floor. A flight of steps leads down from the first floor to a kitchen and bathroom in a rear extension. The bathroom is at the end of the kitchen and has a shower, a toilet and a very small wash hand basin. The communal carpets were extremely dirty, and the property was not well maintained.

8. On 2 September 2025, the Respondent had issued an HMO Licence permitting a maximum number of four persons living in up to four households. We focussed on two rooms:

(i) Bedroom 4 which is on the second floor front left . The size of this room is 8.61 sqm. Under the Respondent's space standard (A1.150), the minimum size for a bed-sit bedroom is 9 sqm. The Respondent has a smaller space standard of 6.51 sqm in a shared flat where there is an adequate shared living area.

(ii) The Kitchen which is in the rear extension. The Respondent considered this to be unsuitable because of its layout. This is only 7.1 sqm. Under the Respondent's space standard, a kitchen serving 4 people should be at least 8.5 sqm. A kitchen of this size would only be suitable for three people.

9. Bedroom 4 has an odd layout. The door leads into a narrow entrance area. We agree that this should not be treated as living space. The Applicant provided a number of photos (at A1.143-149). At the hearing, the Tribunal had noted that the minimal furniture seemed to have been moved around to suggest that the room was larger. Our inspection confirmed our suspicion that the photos had been taken with a wide angle lens. The room was occupied by a gentleman who stated that he had been in occupation for six months. The room was extremely cramped and cluttered. The bed was positioned against the window. There were curtains which dropped to the floor. The bed needed to make room for the curtains, further reducing the effective living space. There was a fridge. The only electric sockets were behind a small wardrobe which were difficult to access. There was an extension lead in the centre of the room to which a number of electrical appliances were attached. The room seemed to be a fire trap.

10. On 24 April 2025, the Respondent's licensing officer had taken a number of photos of the kitchen (at R1.12-16). The licencing officer had concluded that the kitchen was unsuitable due to insufficient space for safe and practical food preparation. We endorse this assessment. The kitchen is long and narrow. The fact that the only bathroom in the property is at the end of the kitchen is far from satisfactory. Were the door of either the fridge or cooker to be opened, there would be insufficient room for anyone to walk down the kitchen. There would be a crush were anyone to seek to access the toilet whilst another occupant was cooking. The toilet would be used not only by the occupants, but also their visitors.

<u>68A Railton Road</u>

11. 68A Railton Road is a maisonette on the ground and lower ground floor of a substantial four storey property at the end of a Victorian terrace. The property is larger and was constructed later. It seems that access to the upper two floors is gained from the rear of the property. It is likely that there were originally shop premises on the ground and lower ground floors. At some stage this was split into two maisonettes, namely Nos. 68 and 68A There are now three bedrooms on the ground floor and two on the lower

ground floor. In the lower ground floor, there is also a kitchen of 18 sqm. There are two sofas in the kitchen.

12. There are two issues which we are required to consider. First, whether Room B which is on the ground floor rear, is suitable for sleeping accommodation. Secondly, whether it could be made suitable by moving the partition wall. This would have had the effect of reducing the size of Room A on the ground floor front left.

13. At the hearing, the Tribunal were referred to a series of floor plans at A2.16-19. These were not to scale but were intended to indicate the current layout (at A2.16) and the proposed layout (at A2.19). The Respondent had assessed that Room B was not suitable for sleeping accommodation as it was only 6.29 sqm. Ms Aniemeka had conceded that the room size would be 6.995 sqm, if the space within an alcove was included. This was substantially below the Respondent's minimum size for a bed-sit of 9 sqm. The modification proposed by the Respondent would have increased the size of Room B to 7.39 sqm but reduced the size of Room A from 9.9 sqm to 8.8 sqm.

14. The immediate problem that we faced was that the plans provided did not reflect the layout of the ground floor of the maisonette. None of the plans showed the corridor leading from the front of the maisonette to the rear, or the staircase down to the lower ground floor. The plans suggested that there were two windows to the front of Room A. There is only one. The second window serves the ground floor front room in No.68. The staircase on A2.19 is rather the staircase in No.68. The floor plan at A2.16, suggests that Room A has a straight wall along the corridor. It does not. The hallway eats into a large section of this room. The hallway from the front door leads to the stairs down to the lower ground floor; a section to the left then leads to Room B and the bedroom on the ground floor back addition. The sketch plan (at R2.15) which the Applicant had provided to the Respondent in November 2023 provided a more accurate picture of the current layout.

15. The Tribunal inspected Rooms A and B. It had been a condition of the November 2023 HMO licence that Room B should not be used as living accommodation. The Respondent had concluded that Room B was not suitable for a bedsit. When we entered Room B, we met Ms Pacifica Bonfin who had been occupying the room since November 2024. The room was extremely cramped. There was a large television at the end of the bed. The Tribunal does not consider that the floor area in the alcove should be treated as living space. It can only be used for storage. We would affirm Ms Aniemeka's assessed size of the living accommodation of 6.29 sqm.

The Law

16. Part 2 of the Housing Act 2004 introduced a new scheme for the licensing of HMOs by local housing authorities ("LHAs"). With immaterial exceptions, every HMO to which Part 2 applies is required by section 61(1) to be licensed. A licence authorises occupation of the HMO by not more than the maximum number of households or persons specified in it (section 61(2)).

17. Before it may grant a licence, a LHA must be satisfied of the four matters referred to section 64(3). The first of those matters is:

> "(a) That the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in sub-section (4) or that it can be made so suitable by the imposition of conditions under section 67."

18. Sub-section 4 provides (emphasis added):

> (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) <u>some other maximum number decided by the authority</u>.

The other matters of which the authority must be satisfied concern the suitability of the proposed licence holder and the intended management arrangements.

19. Section 65 makes provision for 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) <u>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</u>.
>
> (3) <u>In this section "prescribed standards" means standards prescribed by regulations made by the appropriate national authority</u>.
>
> (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."

This list is inclusive and it is therefore clear that standards may be prescribed dealing with other aspects of the suitability of a house for multiple occupation.

20. Section 67 provides for licence conditions:

"(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following–

(a) the management, use and occupation of the house concerned, and

(b) its condition and contents.

(2) Those conditions may, in particular, include (so far as appropriate in the circumstances)–

(a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;

(b) .....

(3) A licence must include the conditions required by Schedule 4"

21. Paragraph 1A of Schedule 4, added by "Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018", requires the licence holder to ensure that (a) 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 sqm; (b) 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 sqm.

22. Compliance with the prescribed standards is an essential precondition of suitability. By section 65(1), a LHA cannot be satisfied that a house is reasonably suitable for occupation by a particular number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number.

23. Section 69 makes provision for the variation of licences:

> "(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."

24. Part 1 of the Act is concerned with housing standards and introduced a new housing, health and safety rating system for assessing the condition of residential premises, which evaluates the potential risk to health and safety from any deficiencies identified in dwellings using objective criteria. These criteria enable the identification of specific hazards by reference to their seriousness. More serious hazards are classed as category 1, with lesser hazards as category 2. LHAs are under a duty to take action when they become aware of the existence of a category 1 hazard, and have power to take action in relation to category 2 hazards. Such action may include the service of an improvement notice requiring work to be done, or a prohibition notice preventing the use of premises as housing.

25. The HMO licensing regime in Part 2 of the 2004 Act takes account of the housing standards in Part 1 in a number of places. In particular, section 55(5) imposes a general duty on every LHA to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions which ought to be exercised by them in relation to premises in respect of which an application has been made for an HMO licence. Section 67(4)(a) stipulates that, in general, an authority should seek to identify, remove or reduce category 1 or 2 hazards in a house for which it has been asked to grant an HMO licence by exercising its powers under Part 1 and not by imposing licence conditions.

26. Schedule 5 of the 2004 Act makes provision for the Procedure to be followed relating to the grant, refusal or variation of a licence, and for appeals. Part 2 makes provision for the Procedure relating to the variation of a licence. Paragraph 16 provides:

> "(1) This paragraph applies where the local housing authority decide to vary a licence.

(2) The local housing authority must serve on the licence holder and each relevant person–

(a) a copy of the authority's decision to vary the licence, and

(b) a notice setting out–

(i) the reasons for the decision and the date on which it was made,
(ii) the right of appeal against the decision under Part 3 of this Schedule, and
(iii) the period within which an appeal may be made (see paragraph 33(2)).

(3) The documents required to be served under sub-paragraph (2) must be served within the period of seven days beginning with the day on which the decision is made."

27. Part 3 of the Schedule provides for Appeals against Licence Decisions. Provision for appeals is made by paragraphs 31 (Right to appeal against refusal or grant of licences) and 32 (Right to appeal against decision or refusal to vary or revoke licence). Paragraph 33 specifies the time limit for any appeal:

(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).

28. Paragraph 34 provides for the powers of this tribunal on any appeal:

"(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."

29. The Applicant relies on *Clark v Manchester City Council* [2015] UKUT 129 (LC). Mr Kidney relies upon the following passages from the judgment of Martin Rodger KC, the Deputy President (emphasis added):

"49. It is clearly permissible for a local housing authority to give guidance on what factors it will take into account in determining whether a house is reasonably suitable for use as an HMO by a certain number of occupiers. The size of the accommodation is obviously a relevant factor in any such assessment. I see no reason why guidance should not identify a specific room size which will ordinarily be regarded as too small to provide adequate sleeping accommodation. Such guidance should not exclude the possibility that a room which falls short of the recommended size will nonetheless be capable of being taken into account as sleeping accommodation if other circumstances mean that, viewed as a whole, the house is reasonably suitable for the stated number. Guidance on how space with restricted head height, such as beneath a sloping ceiling, ought to be treated is also appropriate, but again subject to the possibility of exceptions.

50. There is some risk of confusion over the significance of the prescribed standards referred to in section 65 of the 2004 Act, compliance with which is necessary in all cases, and the "minimum standards" referred to in the LACORS guidance and in the Council's own guidance document. The guidance adopted by the Council is not a substitute for consideration of whether a specific house is reasonably suitable for a particular number of occupiers.

51. Where the Council's own "standard" is set by reference to the minimum space standards prescribed by section 326 of the 1985 Act, and explained on that basis (as in the decision letter in this case), there is a risk that it will be seen as a statutory minimum with the same force as the prescribed standards under section 65 of the 2004 Act. There is

nothing objectionable in the use of the 6.5sqm derived from the 1985 Act as guidance but for the purpose of HMO licensing it has no statutory force in its own right. The introductory note to the Council's guidance document offers the possibility of a flexible approach only where "the solution is within the legislative framework". The Council's decision letter suggests to me that the minimum space standard is regarded by its officers as part of the "legislative framework" from which they are not free to depart in any circumstances. Such an approach is based on a misunderstanding.

52. As for the weight which the F-tT should give to the Council's guidance, once again by the conclusion of the argument there was little between the parties. Mr Whatley had backed away from the submission in his written argument that "if the authority has lawfully implemented standards for the grant of licences the F-tT must re-hear the decision subject to those standards". He submitted that the Council's guidance was relevant material to which the F-tT should have regard and from which it should be slow to depart. Mr Madden did not take exception to that way of putting it, at least where the guidance was set at so modest a level as in this case (other authorities may aspire to more exacting minimum room sizes, as the LVT's decision in *Townson v Portsmouth City Council (*CHI/OOMR/HML/2007/0001 shows).

53. In every case the views of the local housing authority will be relevant and merit respect, but once the tribunal has carried out its own inspection and considered all of the characteristics of the Property, including the size and layout of individual rooms and any compensating amenities, it will be in a position to make its own assessment of the suitability of the house for the proposed number of occupiers."

The Respondent's Standards

30. The Respondent's Policy on HMO Standards is published online and is reproduced at A1.150-153. The introduction states:

> "HMOs can offer good quality, affordable accommodation to people who cannot afford to buy their own homes and are not eligible for council housing. Most of the standards for HMOs are set by the government and are minimum requirements. Other standards are given as a guide to what we believe is reasonable for the health and safety of the people living there."

31. Different standards are applied depending upon whether the HMO is bedsit-type accommodation; shared houses/flats or hostel/B&B type accommodation. The standards also differ depending upon whether the cooking and/or kitchen facilities are in a separate room; and whether an

adequate shared living area is provided. The Tribunal is required to have regard to two standards:

(i) Bedroom Size: Where adequate shared living space is provided, the minimum size is 6.51 sqm for one person and 10.22 sqm for two persons. These are the minimum room sizes added by the 2018 Regulations. Where there is no adequate shared living space, the minimum sizes are 9 sqm for one person and 14 sqm for two persons. In her evidence, Ms Bennett explained why a higher room standard is applied where the occupant has no access to a shared living room. The occupier is required to use their room for the majority of their daily activities, including sleeping, studying, eating, entertaining and relaxing. Room size has a direct and significant impact on the wellbeing of the occupant.

(ii) Kitchen Size: Shared by up to 3 people: 5.5 sqm; 4 people: 8.5 sqm; 5 people: 9.5 sqm; 6 people: 10.5 sqm. Ms Bennett explained the greater increase which is required for four occupiers. Once occupancy reaches this level, the nature of kitchen use changes: the likelihood of simultaneous use rises; circulation space becomes more constrained; additional storage is needed; and both safety and hygiene risks increase. The threshold for four occupiers represents a risk based step change, rather than a linear progression. After this point, once the kitchen is large enough to safely accommodate multiple users, further increases can be applied proportionally on a per occupier basis.

32. In assessing room size, the policy provides for the situation where there is an entrance lobby/corridor within a bedroom. Where the room door opens into a lobby/corridor that is less than 1.2 metres wide, the entire lobby/corridor should be discounted. The policy also provides that ceiling heights below 1.5m will be discounted when calculating the floor area of any room.

393 Coldharbour Lane

33. The maisonette at 393 Coldharbour Lane has five bedrooms, a bathroom and a kitchen. There is a floor plan at R1.11. There are two rooms which are relevant to this appeal:

(i) Bedroom 4 which is on the second floor front left. The Respondent assess the size of this room to be 8.61 sqm. Under the Respondent's space standard (A1.150), the minimum size for a bed-sit bedroom is 9 sqm. There are photos of this room at R1.17-20.

(ii) The Kitchen which is in the rear extension. The Respondent considers the kitchen to be inadequate and has only granted the licence

for 18 months so that the Applicant can provide alternative kitchen facilities. The Respondent is concerned about both the size and the layout of the kitchen. It is only 7.1 sqm. Under the Respondent's space standard, a kitchen serving 4 people should be at least 8.5 sqm. A kitchen of this size would only be suitable for three people. There are photos of the kitchen at R1.12-15).

34. On 29 January 2020 (at A1.21-29), the Respondent first granted the Applicant an HMO licence for this property. The maximum number permitted to occupy the property were five persons in up to five households. On 5 January 2023 (at A1.30-41), the Applicant granted a further HMO licence, with the same permitted numbers.

35. On 24 April 2025, a Licencing Officer inspected the property. On 11 June 2025 (at R1.22-38), the Respondent sent the Applicant a draft licence. The Respondent was only minded to grant a licence for 18 months as the kitchen was considered to be inadequate for the number of persons occupying the flat. Further, the maximum number permitted to occupy the property was reduced to four persons in up to four households. Bedroom 4 was assessed to be 8.61 sqm and was therefore two small to be occupied as sleeping accommodation. The kitchen was only 7.1 sqm which was too small for the number of persons occupying the flat.

36. On 30 June 2025 (at R1.39), the Applicant made representations. Bedroom 4 exceeded the National Minimum Standard. It only fell short of the Respondent's standard by 4% (0.39 sqm). The room was capable of accommodating a bed, wardrobe, a chest of drawers and a desk. The kitchen was also adequate. There was no explanation for the sudden change of policy. Further, a number of properties had been licenced with kitchens of this size. It was suggested that the flat should be assessed on its own merits, and not in accordance with a rigid application of the Respondent's policy. Reference was made to then Upper Tribunal decision in *Clark v Manchester CC*.

37. On 13 August 2025 (at A1.77) the Respondent responded to these representations. The Respondent noted that all rooms were currently occupied on an individual basis with no shared living space. The national minimum standards were therefore not applicable. Further, the kitchen's size was inadequate, and the layout prevents occupants from moving freely which constitutes a significant fire hazard. The final notice would be issued once the representation period had expired.

38. On 2 September 2025 (at A1.42-58), the Respondent issued the HMO licence. The licence was only granted for 18 months as the kitchen was considered to be "inadequate". It was a condition of the licence that the Applicant within the next 12 months should expand the kitchen to its minimum standard of 8.55 sqm. The permitted number was four people in

up to four households. Valenita Grieco, the relevant Licencing Officer, explained the reasons for her decision (at A1.78). The Respondent noted that the flat did not provide any shared living space. Each room must accommodate not only sleeping, but also eating, studying and relaxing. This operational context necessitates a higher standard of suitability than the national minimum of 6.51 sqm which presumes access to communal areas. The Respondent has adopted a minimum size of 9 sqm for bedsit-type accommodation. This standard is not applied rigidly but reflects the practical requirements for safe and dignified living rooms that serve multiple functions. The shared kitchen provided insufficient space for safe and practical food preparation which restricted circulation between appliances. The Respondent was aware that other properties in the borough had been licenced with rooms of similar dimensions. However, each property is assessed on its own merits including layout amenities and operational use where communal space is available, or where rooms layouts differ materially, the suitability threshold may vary.

39. On 19 September 2025, the Applicant issued its appeal. The Applicant suggests that the size of the room is somewhat more than 8.61 sqm as the Respondent has excluded an entrance section immediately inside the door. The Applicant raises five grounds:

(i) The Respondent has misapplied the 2018 Mandatory Conditions Regulations by treating their local guidance as though it were a rigid rule. This approach is wrong in principle. A blanket prohibition on use of a room which exceeds the national legal minimum, and which is only marginally below a local benchmark, is disproportionate and irrational unless supported by clear evidence that the room is unsuitable. Further, the Respondent's approach to measurement is flawed. The exclusion of part of the room on the basis that it was "too narrow" is unsupported by any identified rule or methodology.

(ii) The Respondent's policy in respect of kitchens is irrational. It requires at least 5.5 sqm for up to three persons but then increase abruptly to 8.5 sqm for four 4 persons, followed thereafter by an additional 1 sqm for each further occupier. No clear rationale is given for that progression. In the absence of any stated justification, the progression appears arbitrary. The kitchen contains the essential facilities required for ordinary occupation, including a full-size fridge/freezer, cooker, sink, worktop and multiple cupboards. No persuasive explanation has been given as to why such a kitchen, in a property of this kind, should now be treated as insufficient. The same or similar flat types within the borough have historically been licensed for the same number of occupiers with kitchens of the same size.

(iii) The Respondent has failed to give adequate reasons and failed to consider obvious alternatives. In relation to the kitchen, the Respondent has failed to identify what health, safety or amenity

problems arise from its present configuration. Rather than prohibit the use of Bedroom 4 for sleeping accommodation, the Respondent should have considered minor layout optimisation; use of in-room storage solutions; additional storage provision elsewhere in the flat; conditions regulating use or furniture layout; or conditional approval subject to practical adjustments.

(iv) The Applicant had a legitimate expectation that the licence would be granted on similar terms to the previous HMO licences. There has been no material change of circumstances.

(v) The prohibited use of Bedroom 4 and the kitchen are disproportionate and impractical. Again, it is suggested that alternative conditions should have been imposed such as minimum storage requirements; specification of appliances or cupboard volume; layout adjustments; or other management conditions short of prohibition.

40. The Respondent makes the following submissions in response:

(i) Section 65(3) of the 2004 Act gives LHAs both the power and the discretion to tailor licencing requirements to local needs. The Respondent has benchmarked its minimum room sizes against those of neighbouring authorities. The property is operating as a bedsit-style HMO. There is no separate living room. The occupants share the bathroom and kitchen. The occupant only has sole use of their room. They need to store all their personal belongings, toiletries and day-to-day items in this single room. The size of the room has a direct impact on the occupant's comfort, wellbeing and ability to live safely and hygienically. Their methodology for measuring rooms is set out in their published policy. This ensures transparency and consistency.

(ii) The policy in respect of the assessment of kitchens is rational. Following the introduction of the additional licencing scheme, the Respondent encountered a significant number of two-bedroom flats, typically with a separate living room, being used to accommodate 3 separate households. These properties were assessed as presenting a lower overall risk and their amenity standard reflected this by allowing kitchens serving up to three occupiers to be a minimum of 5.5 sqm. The increase in required kitchen size for four occupiers is intentional and evidence based. Once occupancy reaches this level, the nature of kitchen use changes: the likelihood of simultaneous use rises; circulation space becomes more constrained; additional storage is needed; and both safety and hygiene risks increase. The threshold for four occupiers represents a risk based step change, rather than a linear progression. After this point, once the kitchen is large enough to safely accommodate multiple users, further increases can be applied proportionally on a per occupier basis.

(iii) The Respondent rejects any suggestion that they applied their policy rigidly and failed to consider alternatives. The Respondent invited representations on their draft licence. Rather than suggest alternatives, the Applicant criticised the policy. The Respondent made a holistic assessment of Bedroom 4. The occupier is required to use this space for the majority of their daily activities, including sleeping, studying, eating, entertaining and relaxing. Thus, room size has a direct and significant impact on their wellbeing. The kitchen was assessed as being unsuitable due to insufficient space for safe and practical food preparation, Restricted circulation between appliances further increased the risk.

(iv) The Respondent rejects the suggestion that the Applicant had a legitimate expectation that the licence would be granted on similar terms to the previous HMO licences. Every application must be determined on the basis of the evidence available at the time of the decision and in accordance with current standards. The two previous applications had been based on desktop assessments. They had been granted for periods shorter than the normal five years. This was also during the period of Covid-19 when inspections were not being carried out. Following the renewal submitted on 27 January 2025, an inspection was carried out on 24 April. During this visit, officers took accurate measurements and carried out a full assessment of the amenities, layout and overall compliance. This informed the decision under appeal.

(v) For the reasons stated above, the Respondent disputes that their decision was either disproportionate or impractical.

The Tribunal's Decision

41. The Tribunal rejects the appeal and confirms the decision made by the Respondent. The Tribunal has carried out its own inspection and considered all of the characteristics of the flat. We have had particular regard to both the size and the layout of Bedroom 4 and the kitchen. We have also had regard to the policy adopted by the Respondent. We are satisfied that Bedroom 4 is too small to be used for living accommodation. Further, the kitchen is not suitable.

42. We are satisfied that the Respondent has adopted a rational policy. There is a substantial difference between an occupant who occupies a single room and one who has shared use of a living room. Many LHAs have adopted a higher room standard where the occupant has no access to a shared living room. The occupier is required to use their room for the majority of their daily activities, including sleeping, studying, eating, entertaining and relaxing. We agree that room size has a direct and significant impact on the wellbeing of the occupant.

43. We are also satisfied that the Respondent's policy with regard to kitchens is rational. The increase in required kitchen size for four occupiers is intentional and evidence based. We recognise why the Respondent considers that there is a quantum jump between a kitchen shared by three and one shared by four people.

44. We first consider Bedroom 4. We endorse the Respondent's assessed room size of 8.61 sqm. We agree that the small corridor area onto which the bedroom door opens should be ignored. It is not effective living space. When we inspected the room, we found that it was extremely cramped and cluttered. There was a fridge. The only electric sockets were behind a small wardrobe. There was an extension lead in the centre of the room to which a number of electrical appliances were attached. The room seemed to be a fire trap.

45. The licencing officer had concluded that the kitchen was unsuitable due to insufficient space for safe and practical food preparation. We endorse this assessment. On our inspection, we found that the kitchen is long and narrow. The fact that the only bathroom in the property is at the end of the kitchen is far from satisfactory. Were the door of either fridge or cooker to be open, there would be insufficient room for anyone to walk down the kitchen. There would be a crush were anyone to seek to access the toilet whilst another occupant was cooking. The toilet would be used not only by the occupants, but also their visitors.

46. We do not accept that the Applicant had a legitimate expectation that the licence would be granted on similar terms to the previous HMO licences. The Respondent had now inspected the property. It was required to assess the property according to its policy.

47. The fact that the policy might not have been followed in other properties does not impress us. The fact that a licence had been granted in conflict with the published policy, does not justify another flawed decision to be made. The purpose of a published policy is to ensure consistency and fairness. It should be applied in all cases.

48. The Respondent's decision will require a major reconfiguration of the kitchen facilities in another room. It is not for the Respondent to prescribe how this could best be achieved. This is for the Applicant, in liaison with the landlord.

68A Railton Road

49. 68A Railton Road is a maisonette on the ground and lower ground floor of a substantial four storey property at the end of a Victorian terrace. There are three bedrooms on the ground floor and two on the lower ground floor.

In the lower ground floor, there is also a kitchen of 18 sqm. The issues for this Tribunal are (i) whether Room B (ground floor rear) is suitable for sleeping accommodation (ii) whether Room B could be made suitable for living accommodation if the partition wall between Room B and Room A (ground floor front is moved.

50. In 2023, the Applicant applied for a licence for this property. The Applicant provided a sketch plan of the property (at R2.15-16). It stated that Room B was 8.28 sqm and Room A 9.58 sqm.

51. On 3 October 2023, the Respondent inspected the property (see R2.65-79). There are photos of Room B (at R2.73) and Room A (R2.70). The rooms were assessed as being 6.29 sqm and 9.9 sqm. On 18 October 2023 (R2.37-57), the Respondent sent the Applicant a draft licence. On 9 November 2023 (R2.17-36), the Respondent issued the HMO licence. The licence was valid for the period 9 November 2023 to 8 November 2028. The permitted number was four persons living in no more than four households. Room B was not to be used for sleeping accommodation.

52. Mr Spitaleri states that the Applicant appealed against this decision. The appeal was unsuccessful. However, the parties agreed to discuss the possibility of enlarging Room B. On 26 June 2025 (at R2.59), the Applicant applied to vary the licence. The Applicant stated:

> "Under the existing licence, one of the rooms has been restricted from use due to its size. However, we propose a revised layout that will increase the room's size to 7.39 sqm. The reconfigured space will accommodate essential furnishings, including a bed, two wardrobes, a chest of drawers, and an optional desk. The revised layout ensures adequate circulation space, allowing the occupant to move around the room comfortably. The new room size exceeds the National Minimum Standards. While it falls slightly below the local council's stated benchmark, it is important to note that per leading binding authority *Clark v Manchester City Council* the minimum sizes recommended by local authorities (in this case 9 sqm) are not prescriptive."

53. The Applicant provided proposed plans (at A2.16-19). A wall coloured in red was to be removed whilst a wall coloured in green would be added. It was agreed that the current size of Room B, without the sloping area, was 6.29 sqm. As we noted on our inspection, these sketch plans bear no resemblance to the actual layout of the ground floor rooms which are more accurately sketched at R2.15.

54. On 27 June 2025 (at R2.62), the Respondent was minded to refuse this application on the ground that 7.39 sqm did not meet the Respondent's minimum room size of 9 sqm. However, through some administrative

oversight, this decision was not sent to the Applicant. The Applicant chased a response to their application.

55. On 18 August 2025 (at A2.13-14), the Respondent notified the Applicant of their decision:

> "Thank you for your e-mail, and we are very sorry for the delay in providing you with a response. We are sorry you did not receive the response to your variation, which was assessed on June 27, 2025. As a result, please kindly see our response below:
>
> Thank you for your proposal. While we acknowledge the revised layout and the effort to improve the room's usability, we must advise that the proposed room size of 7.39 sqm does not meet Lambeth council's minimum HMO room size standard of 9 sqm for single occupancy. This standard is applied consistently across all licenced HMOs in borough to ensure adequate living conditions for occupants. We appreciate for a reference to *Clark v Manchester City Council* and understand the argument regarding flexibility in applying local standards. However, Lambeth's 9 sqm benchmark remains the operative standard for assessing room suitability under current licencing policy. Any variation from this standard would require compelling justification and would be considered only in exceptional circumstances."

This email did not set out the Applicant's right of appeal as required by the 2024 Act (see [26] above).

56. On 29 September 2025 (A2.43-58), the Applicant issued their appeal. Five grounds of appeal are specified. The Tribunal is invited to allow the appeal, quash the refusal, and direct that the licence be varied to approve the proposed room as suitable for single occupancy at 7.39 m², consistent with statutory requirements, case law, and the principles of fair and proportionate decision-making.

57. Strictly, this appeal was outside the 28 day time limit (see [27] above). The Tribunal has no hesitation in extending time for the appeal given the failure of the Respondent to specify the rights of appeal in their decision. The Respondent took no point on this.

58. On 20 and 28 May, Ms Aniemeka inspected the property. She took a number of photos (at R2.95-96). On 1 June 2026 (at R2.155-159), she made a witness statement. She observed the following: restricted circulation space around furniture; reduced manoeuvring space within the room; use of under stairs carpeted cupboard space within the room for a fridge, microwave and storage; trailing electrical leads within the room; and limited usable floor area when furnished. A cupboard had been cleared and Ms Aniemeka agreed

to include this space in assessing the room size. This increased the room size from 6.29 to 6.995 sqm. The variation proposed suggested a reconfigured layout of 7.39 sqm.

59. Ms Aniemeka concluded that neither the existing layout of the room nor the proposed layout would create a usable room. This was not based solely on room size, but also on a professional judgement of suitability having regard to the specific circumstances of the property. She considered usable floor space; room proportions; circulation space; furniture placement, practicality of occupation; access and movement within the room; and overall amenity within the property.

60. The licence granted in 2023 had prohibited the use of this room for sleeping accommodation. However, on 2 November 2024, the Applicant had let the room to Ms Pacifica Bonfin at a rent of £790 pm. The tenancy agreement is at R2.101-104. On 8 May 2026, the Respondent had obtained a witness statement from Ms Bonfin (at R2.93-97). Ms Bonfin describes how Room B is very small with not much space to move around. When she moved in, there was a bed with mattress, a wardrobe with no doors, two shelves, and three drawers. The room is her only place of residence. She sleeps, eats, watches TV and has all her belongings in the room. When she saw the room, she did not like it because it was so small. However, she had no option but to accept it as she was moving from Ipswich to London and urgently needed accommodation. She was unaware that the room was not permitted for sleeping.

61. The Applicant raises six points in support of the appeal:

(i) The Respondent has misapplied the 2018 Mandatory Conditions Regulations by treating their local guidance as though it were a rigid rule. The proposed room size is 7.3 sqm which is 1 sqm more than the statutory minimum of 6.51 sqm.

(ii) The Respondent has impermissibly elevated its policy into a rule. The manner in which it has been applied has been disproportionate. The Respondent should have had regard to the following: the proposed room exceeds the statutory minimum; the application was supported by an improved layout plan demonstrating practical usability; and the room forms part of a flat with generous overall amenities, including a spacious kitchen and adequate bathroom provision.

(iii) Inconsistency: Materially similar cases have been treated differently depending on the officer involved. Any licensing regime must be administered by reference to consistent, rational and transparent criteria.

(iv) Adequacy of the proposed living conditions: The proposed plan (at A2.18) demonstrates that the room is reasonably usable in practice. It provides space for: a double bed; a desk; a double wardrobe; and circulation space sufficient for comfortable movement.

(v) The suggestion that the Respondent will only depart from their guidelines in "compelling circumstances" or requiring "compelling justification" is an unlawful fetter of discretion.

(vi) The Respondent's failure to notify the Applicant of its appeal rights: Mr Kidney argues that the decision "must be reversed" because of this failure.

The applicant invites the Tribunal to vary the Licence so that Room B can be occupied by one person in accordance with the approved alteration and floor plan at A17. This would mean that 63A Railton Road can be occupied by five persons moving forward. Alternatively, the Tribunal is invited to approve the variation subject to appropriate, reasonable, and proportionate conditions.

62. The Respondent makes the following submissions in response:

(i) The relevant issue is whether Room B meets the Respondent's minimum room size where there is no adequate shared living space of 9 sqm. Room B fails to meet this standard whether the assessed size is 6.29 sqm or 6.99m sqm (after clearance of the cupboard space).

(ii) The Respondent did not apply their rule rigidly. The Respondent has considered the room dimensions and proportions; usable floor area; circulation space; furniture layout; light and ventilation; practicality of the proposed layout; and overall suitability.

(iii) The Respondent denies that it has applied its policy inconsistently. Licencing decisions are fact specific and depend upon the individual property characteristics.

(iv) The Respondent does not accept that the proposed plan demonstrates that the room is usable.

(v) The Respondent does not accept that the references to "compelling circumstances" or requiring "compelling justification" amount to an unlawful fetter of discretion.

(vi) The Applicant has suffered no prejudice from its failure to notify the Applicant of its appeal rights. It has exercised its rights of appeal.

The Tribunal's Decision

63. The Tribunal rejects the appeal and confirms the decision to refuse to vary the licence. The Tribunal has carried out its own inspection and considered all of the characteristics of the flat. We have had particular regard to both the size and the layout of Bedroom B. We have had regard to the policy adopted by the Respondent. We are satisfied that Bedroom B is currently too small to be used for living accommodation. Further, we are not satisfied that the alterations proposed by the Applicant would render it suitable.

64. The Tribunal accepts that the Respondent failed to notify the Respondent of its right of appeal. However, this is no grounds for "reversing" the Respondent's decision. The Applicant has exercised its right of appeal. It has suffered no prejudice. This Tribunal is determining the application to vary the licence on its merits.

65. The Applicant is challenging the Respondent's policy of imposing a higher room standard for bedsits where there is no separate shared living space. As we have noted above, there is a substantial difference between an occupant who occupies a single room and one who has shared use of a living room. The policy is rational.

66. A LHA needs to have a policy to ensure that their licencing decisions are consistent and fair. A LHA should apply their policy unless there are exceptional circumstances. We do not consider that this is so rigid as to constitute an unlawful fetter of discretion. As the Applicant has noted, any licensing regime must be administered in a consistent, rational and transparent manner.

67. The Tribunal has inspected Room B. We did not consider that the floor area in the alcove should be considered as living space. We would therefore confirm the assessed size of 6.29 sqm. This is substantially below the Respondent's minimum size of 9 sqm. We also had regard to the usable floor space; room proportions; circulation space; furniture placement, practicality of occupation; access and movement within the room; and overall amenity within the property. We noted the large kitchen, but which has no natural lighting. We have no doubt, but that this room is not fit for use as sleeping accommodation.

68. We also have regard to the proposed plan to enlarge this room. However, the sketch plans provided at A2.17 and 18 are wholly inadequate. They are not to scale. They do not reflect the layout of the ground floor (see [14] above). Increasing the size of Room B would reduce the size of Room A. Taking the plans at there most favourable to the Applicant, Room A would be 8.8 sqm and Room B 7.39 sqm. Both would fall below the Respondent's minimum room size, Room B by a significant amount. Whilst it is open to an

applicant to discuss what alterations might be required to render a room suitable for sleeping accommodation, the alterations proposed by the Applicant are far too imprecise to incorporate as a condition to any licence. In any event, both rooms would be too small.

69. It is open to a landlord to design rooms that only just meet the minimum room size. However, the landlord would do so at their peril. The fact that the rooms meet the minimum size would not be sufficient. The LHA would need to inspect the rooms after the work had been executed to satisfy themselves nonetheless that the rooms do meet their minimum standards for being used as sleeping accommodation having regard to all relevant factors. Such factors are not restricted solely to size. They extend to the occupant's health, safety and wellbeing.

Conclusions

70. In these two appeals, the Applicant has sought to challenge the Respondent's policy of requiring any room in an HMO which has no shared living space to be larger than the national minimum standard of 6.51 sqm. The Respondent has explained the justification for this policy. The occupier is required to use their room for the majority of their daily activities, including sleeping, studying, eating, entertaining and relaxing. Room size has a direct and significant impact on the wellbeing of the occupant. Not only do we find this policy to be rational. It is one that we would expect any LHA to adopt to ensure the health and wellbeing of occupants. However, this would normally be a minimum requirement. The LHA would still need to satisfy themselves, having regard to all relevant circumstances, that the room is fit to be used for sleeping accommodation.

71. Both these maisonettes were originally designed to be occupied by a single household. They have been converted to create HMOs which can accommodate the maximum number of occupants to be let under rent to rent agreements. In each case, the conversions have sought to accommodate an excessive number of people. As Judge Martin Rodger KC noted in *Clarke v Manchester City Council*, the space provisions in Part 2 of the 2004 Act should not be seen in isolation. Part 1 of the Act is concerned with housing standards and introduced a new housing, health and safety rating system for assessing the condition of residential premises, which evaluates the potential risk to health and safety from any deficiencies identified in dwellings using objective criteria.

72. The Tribunal has dismissed both appeals. We therefore make no order for the refund of the tribunal fees paid by the Applicant.

Judge Robert Latham
9 November 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.