



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

<b>Case Reference</b>	: CHI/43UM/HML/2022/0001
<b>Property</b>	: Flat 33 Trinity Place, 111 Chertsey Road, Woking, Surrey, GU21 5FY
<b>Applicant</b>	: Black Fan Properties
<b>Representative</b>	: -
<b>Respondent</b>	: Woking Borough Council
<b>Representative</b>	: -
<b>Type of Application</b>	: Application relating to Selective Licencing under the Housing Act 2004
<b>Tribunal Members</b>	: D Banfield FRICS, Regional Surveyor (Chair) M J F Donaldson FRICS MCI Arb MAE (Valuer Member) M R Jenkinson (Lay member)
<b>Date of Hearing</b>	: 28 April 2022
<b>Date of Decision</b>	: 13 May 2022

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**DECISION**

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The Tribunal determines that paragraph 19 of the licence dated 10 December 2021 shall be amended to state that the maximum number of occupants must not exceed 2.

## **Background**

1. This is an appeal against the inclusion of a condition included in a Selective Licence granted by the Local Housing Authority.
2. The Tribunal received the appeal on 28 December 2021 and the licence is dated 10 December 2021.
3. The property is a 3-storey former office building now converted into 56 flats with the addition of a 4<sup>th</sup> storey. The application relates to Flat 33 which is a one-bedroom flat on the 3<sup>rd</sup> floor.
4. The Respondent has issued a Selective Licence recording the size of the bedroom as 8.8 sq.m. and the Living area as 14.1 sq.m. and granting temporary permission for a maximum occupancy of one household, two persons. The licence states that after the first tenancy ends, it will revert to a permission of one household, one person. The Applicant wishes to appeal against this condition and wishes the permission for one household, two persons to last for the duration of the Licence.
5. The Tribunal made directions on 1 March 2022 setting out a timetable for the parties' submission of their respective cases leading to a hearing on 28 April 2022.
6. The Applicant prepared the hearing bundle comprising some 181 pages reference to page numbers therein being identified by [\*]

## **The Hearing**

7. The hearing took place as arranged with the Tribunal comprising Messrs Banfield and Donaldson located in Court 3 at Havant Justice Centre with Mr Jenkinson joining through a CVP video platform.
8. Mr Adam Tamburini, a Director of the Applicant company and Mrs Anne Woodward for the Respondent, Woking Borough Council, joined the hearing through CVP.

## **Respondent's case**

9. The Tribunal asked for confirmation of the second paragraph 30 of the Respondent's statement of case [30] in which it is stated that the Housing Act requirements [55] are used when the Council assesses properties rather than the higher Technical Housing Standards.[83]
10. Mrs Woodward confirmed that the area in which the property was situated had been designated for Selective Licensing under Section 80 of the Housing Act 1984 (HA2004) and cited as Woking Borough Council Designation for Selective Licensing in Canalside Ward 2017. The designation came into force on 1 April 2018 and will cease to have effect on 31 March 2023.

11. The property is a one bedroom flat with a total area of 33 sq.m. including a bedroom of 8.79 sq.m. The block in which it is situated was formerly used as offices and was developed in 2019 following the grant of Prior Approval dated December 2018 under Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 1995 as amended. An amendment on 6 April 2021 restricted such development to flats in excess of 37 sq.m., a control not available to the Council before then.
12. An application was made for a licence for 1 Household, 2 Persons and a draft licence issued for 1 Household, 1 Person due to the size of the bedroom the occupation of which is as directed by the Housing Act 1985.
13. Following representations received from the Applicant, the Respondent sent an email explaining the reasons for restricting the occupation level<sup>[46]</sup> which explained that “a room available as sleeping accommodation will relate to any room that does not contain other amenities such as a kitchen” and as such the flat was not considered to have 2 rooms. The bedroom alone can accommodate 1.5 people equating to an adult plus child between 1 and 10. For 2 adults to be accommodated the room must be over 10.22 sq.m. It was suggested however that a condition could be agreed allowing the existing tenancy to continue until it ends naturally.
14. At para 17 [28] the Respondent referred to considering The Housing Act 1985 Part X, The Housing Act 2004 Part 3 and The Technical Housing Standards- Nationally Described Space Standards.
15. The Statement of Case continues;
  - “Section 325 of the HA1985 relates to ‘room standard’ and states that the room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two people of opposite sex who are not living together as a married couple or civil partners have to share the same room. A room is permitted to be used as bedrooms and available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room. Therefore, bedrooms, living rooms, dining rooms and studies can be counted as rooms that can be slept in, but not kitchens or bathrooms.,
  - Section 326 of the HA1985 relates to ‘space standard’ and this standard too, is concerned with numbers of persons and rooms available as sleeping accommodation A room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom. This calculates the number of people for a dwelling in 1 of 2 ways. First of all, by a simple count of the qualifying rooms. Secondly, by their

measurement, setting a maximum number per room according to its size.

- The Applicant states the living room should also be taken into consideration thereby allowing him to have 1 Household and 3 Persons in occupancy at this property. However, the living room is open plan with the kitchen area and it is clear that a person sleeping in the living room at the Property would not be afforded the privacy expected in a bedroom as people occupying the bedroom would need to access the living room in order to use the kitchen facilities.
  - It is the Respondent's case that the Property only has one room available for sleeping accommodation."
16. Table I in section 326 of the HA1985 states if there is only one room available, the permitted number is two persons; two rooms, three persons; three rooms, five persons; four rooms, seven-and-a-half persons etc. If the number sleeping in the dwelling exceeds these figures, the dwelling is overcrowded, and it is unnecessary to look to Table II. If it does not, then each of the rooms must be measured, and the number permitted in each according to its size aggregated. Thus, two people can sleep in a room of 110 square feet or more; one-and-a-half in a room of 90 square feet but less than 110 square feet etc. A room is "*of a type normally used in the locality either as a bedroom or as a living room*" is defined at subsection.(2)(b).
  17. In the case of *Elrify v Westminster CC [2007]* it was held that when an authority is ascertaining whether accommodation is statutorily overcrowded, they must have regard to both Table I and Table II.
  18. Mrs Woodward said that unless the property was a "Studio" then a room with kitchen fittings was not classified as a room in accordance with S.326 (2)(b) and as such it was the size of the bedroom that determined the number of persons permitted.
  19. Table I indicates the maximum number of persons is 2 and according to Table II the size of the room (8.79m<sup>2</sup> or 94.6ft<sup>2</sup>) the maximum number of persons permitted to sleep in a room of this size is 1½.
  20. The Technical Housing Standards required a room for two bed spaces to be 11.5 sq.m. and a total floor area of 50sq.m.
  21. In answer to a question from Mr Tamburini, Mrs Woodward said that if the kitchen was separate, the living room could then be counted as long as there was independent access. The issue was the lack of privacy for anyone sleeping in the living room when access to the kitchen was required.
  22. In answer to a question from the Tribunal, Mrs Woodward said that a studio of the same size would receive a licence for 2 persons.

## **Applicant's case**

23. Mr Tamburini supports the concept of Selective Licensing and acknowledges that the Local Authority are frustrated by their inability to control the size of units developed under the Prior Approval process. He points out that the Technical Housing Standards only apply to newly built properties , not conversions such as the subject.
24. He has not suggested that the flat is suitable for two families, just a couple such as currently in occupation. He noted that by locking the bedroom door and classing the flat as a studio would enable a licence for 2 persons to be issued, a situation which he considered “ridiculous”
25. He challenged the refusal to count the living room as a room due to the presence of kitchen fittings in answer to which Mrs Woodward said that if the kitchen fittings were removed the flat would be unlettable therefore the most important use of the room was as a kitchen.
26. In closing he said that this was a purpose built luxury one bedroom flat suitable for a couple.

## **Discussion and decision**

27. The Tribunal is grateful to the parties for the cordial and cooperative manner in which they have pursued this dispute both before and after the application to the Tribunal.
28. There is no challenge to the Respondent's power to impose conditions in granting a Selective Licence the dispute being focussed on the interpretation of Sections 325 and 326 of the Housing Act 1985 an extract from which is as follows.

### **325The room standard.**

(1)The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as a married couple or civil partners must sleep in the same room.

(2)For this purpose—

(a)children under the age of ten shall be left out of account, and

(b)a room is available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room.

### **326The space standard.**

(1)The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the rooms of the dwelling available as sleeping accommodation.

(2)For this purpose—

(a)no account shall be taken of a child under the age of one and a child aged one or over but under ten shall be reckoned as one-half of a unit, and

(b)a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom.

(3)The permitted number of persons in relation to a dwelling is whichever is the less of—

(a)the number specified in Table I in relation to the number of rooms in the dwelling available as sleeping accommodation, and

(b)the aggregate for all such rooms in the dwelling of the numbers specified in column 2 of Table II in relation to each room of the floor area specified in column 1

No account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet.

*Table I*

<b>Number of rooms</b>	<b>Number of persons</b>
1	2
2	3
3	5
4	7½
5 or more	2 for each room

*Table II*

<b>Floor area of room</b>	<b>Number of persons</b>
110 sq. ft. or more	2
90 sq. ft. or more but less than 110 sq. ft.	1½
70 sq. ft. or more but less than 90 sq. ft.	1
50 sq. ft. or more but less than 70 sq. ft.	½

29. It is unchallenged that the overall area of the flat (with Imperial equivalents) is 33 sq.m (355 sq. ft), the bedroom 8.8 sq.m. (95 sq. ft.)and the living area 14.1 sq.m.(152 sq. ft)
30. Applying Table I whether one or two rooms are counted 2 persons can be accommodated.
31. Moving on to Table II the issue of whether the living area is to be counted as a room becomes important. If it is not to be counted the bedroom area of 95 sq. ft only permits 1½ persons to occupy. Applying the same Table to the living area however, being over 110 sq.ft, permits a maximum of 2 persons.
32. The issue therefore is whether the living area with its kitchen fittings is “of a type normally used in the locality either as a living room or as a bedroom.”
33. S.325(b) includes both bedrooms and living rooms. Whilst the Tribunal accepts that the presence of kitchen fittings may more readily render a room unsuitable to be used as a bedroom it finds it difficult to accept that a “living room” ceases to be such solely because there are kitchen fittings. By classifying the living area as a “room” Table II permits 2 persons to occupy.
34. The Tribunal therefore determines that the living area should be counted a “room” for the purposes of applying the space standards imposed by Table II of section 326.
35. The Tribunal acknowledges that by applying this standard it might be argued that both the bedroom and living area could be occupied as bed spaces for in excess of 2 persons. Given the layout of the flat however, with access to the bedroom only available by passing through the living area the Tribunal considers it reasonable to restrict occupation to a household of up to 2 adults. Whether that 2 person household wishes to use both rooms as sleeping accommodation is a matter for their personal preference.
36. The Tribunal therefore determines that paragraph 19 of the licence dated 10 December 2021 shall be amended to state that the maximum number of occupants must not exceed 2.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.

3. If the person wishing to appeal does not comply with the 28 day time limit, the 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.
4. 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.