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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **20/01 /2025**

IN THE COUNTY COURT FOR NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

DECLAN BOYLE

Appellant

and

BELFAST CITY COUNCIL

Respondent

Lara Smyth (instructed by Tughans Solicitors) for the Appellant
Andrew Brownlie (instructed by the Legal Services Department, Belfast City Council) for the Respondent

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GILPIN HHJ

Introduction

[1] Houses in multiple occupation ("HMOs") are defined as living accommodation occupied by three or more people who are members of more than two households who pay rent or other consideration, section 1 Houses in Multiple Occupation Act (NI) 2016 ("the 2016 Act").

[2] HMOs are subject to statutory control first seen in this jurisdiction in the Housing Act (NI) 1963. Statutory intervention in this area seeks, inter alia, to ensure HMO's are not overcrowded and that adequate conditions within them exist.

[3] By reason of the Housing (NI) Order 2003 the Northern Ireland Housing Executive ("NIHE") was given responsibility for the provision of a registration scheme for HMOs.

[4] On 1 April 2019 on the coming into force of the 2016 Act, district councils became responsible for regulation of HMOs in their districts in place of the NIHE.

[5] Under the 2016 Act every house in multiple occupation must be licenced. HMO's registered with NIHE under the 2003 Order were, by reason of section 7 of the 2016 Act coming into force, treated as having been issued with a licence. The

general duration of a licence is for a period of five years by reason of section 19(2) of the 2016 Act.

[6] The 2016 Act provides for both first registrations and renewals of existing licenced HMOs. The instant case concerns an application for renewal of an existing licence.

[7] In relation to the renewal of HMO licences the statutory power vested in councils to do so is contained section 20 of the 2016 Act. It provides:

Renewal of licence

> "20(1) Where the holder of an HMO licence makes an application in accordance with this section for it to be renewed, the council may renew the licence.
>
> (2) An application to renew a licence must be made before the licence ceases to have effect.
>
> (3) The provisions of this Part apply to applications to renew a licence (and decisions on such applications) as they apply to applications for a licence (and decisions on such applications).
>
> (4) …"

[8] In dealing with an application to licence an HMO, whether this be a renewal application or an application for a new licence the Council may only grant this if it is satisfied in relation to each of the six requirements set out in section 8(2) of the 2016 Act namely:

> "1. The HMO would not constitute a breach of planning control section 8(2)(a)
>
> 2. Both the owner and the managing agent are fit and proper persons section 8(2)(b)
>
> 3. That the management arrangements are satisfactory section 8(2)(c)
>
> 4. That the grant of an HMO licence will not result in overprovision in its locality section 8(2)(d)
>
> 5. That the property is fit for human habitation section 8(2)(e)

6. That the property:

(a) is suitable for occupation as an HMO by the number of persons sought to be specified on the licence section 8(2)(e)(i) or

(b) can be made suitable section 8(2)(e)(ii)."

[9] The instant case concerns the sixth requirement provided for in section 8(2)(e), namely the suitability of the property by the number of persons sought to be specified on the licence. Section 8(2)(e) states:

"(e) the living accommodation is ….

(i) is suitable for occupation as an HMO (see section 13) by the number of persons to be specified in the licence as mentioned in section 7(3)(c), or

(ii) can be made so suitable by including conditions in the licence under section 14."

[10] In relation to the suitability of the property there are a number of matters the Council must have regard to when considering suitability. These matters are set out in section 13 of the 2016 Act which provides:

"**Suitability of living accommodation for multiple occupation**

13—(1) In determining for the purposes of section 8(2)(e) whether living accommodation is, or can be made, suitable for occupation as an HMO by the specified maximum number of persons, the council must have regard to—

(a) the matters set out in subsection (2),

(b) the minimum standards set under subsection (3) for the accommodation's condition, facilities or equipment for that number of persons, and

(c) the extent (if any) to which the accommodation falls short of the provisions of building regulations.

(2) The matters referred to in subsection (1)(a) are—

(a) the accommodation's location,

(b) the type and **number of persons likely to occupy it**,

(c) the safety and security of persons likely to occupy it, and

(d) the possibility of undue public nuisance.

(3) The Department may by regulations set minimum standards which must be met in relation to the matters set out in subsection (5) in order for accommodation to be regarded as suitable for occupation by prescribed numbers of persons.

(4) In having regard to those minimum standards, the council—

(a) cannot be satisfied that the accommodation is suitable if the council considers that the accommodation fails to meet the standards, but

(b) may decide that the accommodation is not suitable for occupation by that number even if the accommodation does meet the standards.

(5) The matters referred to in subsection (3) are—

(a) natural and artificial lighting,

(b) ventilation,

(c) installations for the supply of water, gas and electricity and for sanitation, space heating and heating water,

(d) personal washing facilities,

(e) facilities for the storage, preparation and provision of food,

(f) any requirements about the display of signs relating to fire exits or other matters,

(g) interior and exterior decoration,

(h) safety equipment (including fire safety equipment), and

(i) disposal of refuse.

(6) The standards that may be set under subsection (3) include standards as to the number, type and condition of facilities or equipment which should be available in prescribed circumstances.

(7) In subsections (3) and (6), "prescribed" means prescribed in the regulations.

(8) In relation to any application for an HMO licence, the "specified maximum number of persons" means—

(a) the number of persons specified in the application as the proposed maximum for the accommodation, or

(b) if the council decides to specify a lower number in the licence, that lower number."

[emphasis added]

Background to the instant case

[11] The appellant is the joint owner of 11 Jerusalem Street Belfast ("the property"). The property consists of five bedrooms over three storeys.

[12] The appellant has owned the property since in or around 2002 with the property operating as an HMO from that time.

[13] The property was renovated with the assistance of grant aid provided by the NIHE in 2006. The works done at this time included the installation of washing compartments comprising a shower, toilet and wash hand basin located within the confines of two of the bedrooms one on the ground floor and one on the first floor ("the impugned bedrooms"). These washing compartments were constructed by means of stud walls with doors. It would appear that at a later date the appellant removed the doors.

[14] The grant aid provided did not cover the costs of construction of the washing compartments as these would have been classed as 'enhanced works' under the grant scheme. Rather, the appellant met the cost of the provision of the washing compartments directly.

[15] The property was first registered with NIHE as an HMO in 2007 with registration being renewed in 2012 and 2017. The 2017 renewal resulted in the property being registered until 8 June 2022.

[16] When the NIHE was responsible for registration of the property it applied a published 'Space Standard' to the found in a document entitled "Standards." This Space Standard is in identical terms to the Space Standard to be found in both the 2016 Act and in associated guidance published in April 2019 by the Department for Communities namely the "Guide to Licencing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government" ("the 2019 Guidance").

[17] The records in respect of the property, which include the records from the time the NIHE was responsible for regulating HMOs, held by Belfast City Council ("the Council"), being the relevant council responsible for regulation of the property, record that statutory inspections from 2010 on, noted the presence of the washing compartments within the impugned bedrooms.

[18] The property has been inspected on several occasions by the NIHE. No issues of concern in respect of the suitability of the property in general or the impugned bedrooms in particular were raised during the period when the NIHE was responsible for regulation of the property.

[19] The property has been, and continues to be, let as a five bedroom property to five tenants.

[20] As the property had previously been registered with the NIHE on the coming into force of the 2016 Act it was treated as having been issued with a licence. The expiry date of this initial deemed licence was 8 June 2022 being the date the previous period of registration would have expired in any event.

[21] Therefore, on 6 May 2022, the appellant applied to the Council to renew the licence for the property in the same terms that it had previously enjoyed ie as a five-bedroom property for five tenants.

[22] The Council having received the said application and requisite fee inspected the property on 25 May 2022, the inspecting council official being a Mr McKnight.

[23] During his inspection Mr McKnight took measurements of the five bedrooms in the property. He recorded that the impugned bedrooms, being the front ground floor bedroom and the first floor rear return bedroom, had floor areas less than 6.5m^2.

[24] In relation to the impugned bedrooms there were no doors on the washing compartments at the time of inspection but Mr McKnight noted evidence they had previously been in place. Mr McKnight noted this was in contrast to what he termed

the "attic bedroom" where a door to the washing compartment there remained. The floor area of the attic bedroom is not an issue in this case.

[25] In determining that the impugned bedrooms had floor areas less than 6.5m² Mr McKnight excluded the floor area of the washing compartments and measured only the areas of the beds, furniture and activity spaces. He stated that he measured the rooms in accordance with the HMO (Space Standard) Regulations (NI) 2019 ("the 2019 Regulations").

[26] It is common case that if the floor area of the washing compartments had not been so excluded, the floor areas would have exceeded 6.5m².

[27] Following the inspection by Mr McKnight, on 22 July 2022 the Council issued a Notice of Proposed Decision, pursuant to paragraph 9 of Schedule 2 of the 2016 Act.

[28] The said Notice of Proposed Decision stated that the council proposed that a new HMO licence would be granted but in different terms from those which had been applied for or had been in existence to date.

[29] Schedule 1 of the Notice of Proposed Decision set out the main terms of the proposed licence and the terms which differed from those applied for. Schedule 1 reads as follows:

> "Schedule 1:
>
> The main terms of the proposed licence and any terms which differ from those applied for:
>
> 1. The owner and managing agent (if any) must comply with the standard HMO licensing conditions as set out in the document entitled "Standard Conditions for Houses in Multiple Occupation" (available at www.belfastcity.gov.uk/nihmo) or any subsequent amended versions of same. Any amendment of the said document shall be notified to the owner and managing agent at the address provided in the application form.
>
> 2. The licensee shall submit to the Council for approval, a plan for works to be undertaken ("the Plan"), to ensure the floor area of each room in the HMO which is to be available as sleeping accommodation is a minimum size of 6.5 m².

3. The floor area of the room is to be determined pursuant to The Houses in Multiple Occupation (Space Standard) Regulations (Northern Ireland) 2019.

4. The Plan shall be implemented and carried out by the Licensee in accordance with terms set out therein (unless otherwise agreed in writing by the Council) and shall be completed by no later than 30 April 2023."

[30] Schedule 2 set out the reasons for the proposed decision including any proposed differences. It stated:

"Schedule 2:

The reasons for the proposed decision (including any proposed differences)

1. The Council is satisfied that:

(a) The owner of the living accommodation and any managing agent of it, are fit and proper persons

(b) The proposed management arrangements for the living accommodation are satisfactory and

(c) The living accommodation is fit for human habitation and

(i) Is suitable for occupation as an HMO by the number of persons to be specified in the licence or

(ii) Can be made so suitable by including conditions in the licence

2. With reference to Table 1 "Rooms which are a bedroom (only) of section 43 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 the minimum floor area of a single bedroom is 6.5m2

3. With reference to Annex A "Technical specification for physical standards" of the Department of Communities document titled "Guide to the licensing of Houses in Multiple Occupation in Northern Ireland:

> Guidance for Local Government" the minimum floor area of a single bedroom is 6.5m2
>
> 4. The front and first floor return rooms of the HMO accommodation currently have a floor area of less than 6.5 m².."

[31] In short, the effect of what the Council was giving notice of was that the licence sought by the appellant, namely that five people could occupy the HMO, would issue but that the washing compartments in the two rooms were to be removed by the appellant by 30 April 2023.

[32] On receipt of the Notice of Proposed Decision representations were made to the Council on behalf of the appellant. The appellant's representations were to the effect that the impugned bedrooms had floor areas in excess of 6.5m². In advancing this argument the appellant included the floor areas of the washing compartments in his calculations, the Council having excluded them.

[33] Despite the representations made by the appellant, on 10 August 2022 the Council granted a licence with conditions which effectively maintained its stance in relation to the impugned bedrooms it still considered to have a floor area less than 6.5m².

[34] Part One of the licence issued on 10 August 2022 was the Licencing Certificate. It provided that the licence would run from 10 August 2022 and expire on 10 August 2027. It stipulated the "maximum occupancy" of the HMO to be five persons.

[35] Part Two of the licence was entitled "Conditions of Licence." There were then four conditions set out namely:

> "1. The owner and managing agent (if any) must comply with the standard HMO licencing conditions as set out in the document entitled "Standard Licence Conditions for Houses in Multiple Occupation" or any subsequent amended versions of same. Any amendment to the said document shall be notified to the owner and managing agent at the address provided in the application form.
>
> 2. The licensee shall submit to the Council for approval, a plan for works to be undertaken ("the Plan") to ensure the floor area of each room in the HMO which is to be available as sleeping accommodation is a minimum size of 6.5m².

3. The floor area of each room is to be determined pursuant to The Houses in Multiple Occupation (Space Standard) Regulations (Northern Ireland) 2019.

4. The Plan shall be implemented and carried out by the Licensee in accordance with terms set out therein (unless otherwise agreed in writing by the Council) and shall be completed by no later than 30 April 2023."

[36] Accompanying the said Licence was a document entitled, "Statement of reasons for granting the licence in terms different from those applied for." It stated:

"1. With reference to Table 1 "Rooms which are bedroom (only) of Section 43 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 the minimum floor area of a single bedroom is 6.5m².

2. With reference to Annex A "Technical specification for physical standards" of the Department for Communities document titled "Guide to the licencing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government the minimum floor area of a single bedroom is 6.5m².

3. The front ground floor and first floor rear return rooms of the HMO accommodation currently have a floor area of less than 6.5m²."

[37] In essence the five-year licence granted on 10 August 2022 contained a condition that the appellant must submit a plan to the Council to ensure the floor areas of the impugned bedrooms, taking no account of the washing compartments, are a minimum size of 6.5m². Furthermore, the licence conditions required that the plan be implemented no later than 30 April 2023 unless otherwise agreed.

[38] In due course the appellant obtained a quotation for the removal of the washing compartments. It indicated the cost of such would be in excess of £17,000.00. The Council obtained their own estimate which suggest the costs would be a little over £9000.00.

[39] However, on 25 August 2022 the appellant served a Notice of Appeal against the decision of the Council and the next day filed his Notice of Appeal with this court.

[40] The parties thereafter filed and served affidavits which set out their evidential positions and in addition counsel provided the court with a "Schedule of Agreed Facts." Counsel for both parties also provided the court with various written submissions supplemented by helpful, focused oral submissions.

[41] In this appeal the appellant invites the court to exercise its powers under section 69(3) of the Act and direct the Council to grant the appellant a new licence in the terms he had originally sought namely for five people without having to remove the washing compartments.

The appellant's submissions

[42] On behalf of the appellant Ms Smyth submits that the Council have gone about their task erroneously by seeking to impose a "space standard" in relation to the impugned bedrooms in its consideration of the application for renewal of the HMO licence.

[43] Ms Smyth argues that the provisions of the 2016 Act in relation to the issuing of licences, including renewals, are contained exclusively within Part 2 of the 2016 Act being section 7 to section 29 and thus reliance by the Council on the 'space standard' which is set out later in the 2016 Act at section 43, is flawed.

[44] Rather, Ms Smyth submits that in regard to the issuing of licences the only matters the Council can take into account when considering the sixth of the section 8 requirements, the suitability of the premises under section 8(2)(e), are the range of matters set out in s13 which make no mention, either explicitly or by reference to departmental regulations, to a 'space standard.' That said Ms Smyth does accept that section 13(2)(b) requires the Council in its consideration as to whether to grant a licence to have regard to the "number of persons likely to occupy" the property.

[45] Furthermore, Ms Smyth submits that by reason of section 85(2) of the 2016 Act the Council:

> "must have regard to any guidance under this section."

[46] In this regard Ms Smyth notes that guidance was published in April 2019 by the Department for Communities in the form of the "Guide to Licencing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government" ("the 2019 Guidance").

[47] Ms Smyth drew the court's attention to certain dealings the Landlords Association of Northern Ireland ("LANI") had with the Department prior to the Guidance being issued.

[48] She noted a letter dated 1 February 2019 from the Department to LANI which stated:

> "Room size standards – This has been discussed with Councils and the guidance has been amended to clearly delineate between existing HMO stock and the new HMO applications. The guidance directs Councils to use discretion when applying the standards and to take account of the fact that existing HMO registrations operated well and were fit for purpose under the previous regime."

[49] In relation to the Guidance itself Ms Smyth drew the court's attention to a number of parts of it which are relevant to the granting of a licence including:

- Para 5.4.2 which states that certain standards, which would include 'space standard':

> "should be applied flexibly, with the Council taking into account whatever material it considers relevant in assessing the suitability of the accommodation in accordance with Section 13 of the 2016 Act." and

- Para 5.4.4 which provides that:

> "… in some cases, such as where an HMO has been operating with a licence for some time, it may be considered suitable for a new licence even if it does not meet certain standards which the Council would normally wish to apply to new accommodation or accommodation which has not previously been licensed."

[50] Ms Smyth also argues that an HMO licence falls within the definition of a "possession" thus engaging Article 1 of the First Protocol of the European Convention on Human Rights ("A1P1"). Thus, she argues that the Council's imposition of conditions on the licence dated 10 August 2022 that require significant works to be undertaken constitute a disproportionate interference with the appellant's A1P1 right. Ms Smyth noted that in *G02BSA Ltd's Application* [2024] NIKB 74 Humphreys J held that an HMO licence comes within the definition of "possession" for the purposes of A1P1. She submitted that this court should consider whether there has been any unlawful interference by the Council of the appellant's enjoyment of his possession.

[51] Finally, Ms Smyth submits it is of importance that no explanation has been offered by the Council as to why the layout of the impugned bedrooms renders them unsuitable and thus falling foul of section 8(2)(e) of the Act in circumstances where suitability is the matter of concern.

The respondent's submissions

[52] Mr Brownlie, on behalf of the Council, submits there are two issues in this appeal:

- whether the washing compartments should be included in the calculation of the size of the impugned bedrooms and

- whether the Council is entitled to consider the "space standard" when determining an application for a HMO licence

[53] In relation to the washing compartments Mr Brownlie submits the reality is these constitute separate rooms, en-suites, adjoining but separate from the impugned bedrooms. In this regard he notes even the appellant on his website advertising the property termed these areas "en-suites."

[54] In relation to its consideration under Part 2 of the 2016 Act as to whether to grant an HMO licence Mr Brownlie concedes that the Council is not compelled to consider the 'space standard,' either that found in section 43 of the Act, nor the 2019 Guidance.

[55] Nevertheless, Mr Brownlie argues that the Council must have regard to the space standard as set out in section 43 when it is giving consideration to an application for an HMO licence.

[56] In this regard Mr Brownlie notes that at para 5.1.1 of the 2019 Guidance it states that when a Council is considering, inter alia, the suitability of a property:

> "It should have regard to the factors set out in section 41-61 of the 2016 Act."

ie it should have regard to the 'space standard' set out in section 43.

[57] In addition, Mr Brownlie also submits that the 'space standard' is legitimately a matter the Council may take into consideration in an application for an HMO licence in that he argues that even if the Council is satisfied that all of the matters set out in section 8(2) are met the decision as to whether to grant a licence still lies within the discretion of the Council in that section 8(2) uses the discretionary language of "may grant" rather than the prescriptive language of "shall grant." Mr Brownlie submits that when the Council comes to consider whether to exercise its discretion, "it is clear from the provisions of the 2016 Act that overcrowding and therefore space standard is an issue that a council should take into consideration…" In this regard he notes that section 8(2)(e) requires the Council to consider whether the property is suitable for the number of people sought to be specified in the licence. He suggests it would be perverse for a Council to grant a licence under Part 2 of the 2016 Act by ignoring the 'space standard' which could then result in

overcrowding something the Council can then prosecute the owner for under Part 4 of the same Act.

[58] Mr Brownlie submits the Council has acted in a proportionate manner in regard to the appellant and followed the 2019 Guidance including para 5.4.5 and instead of an outright refusal to grant the licence on the basis of there not being five bedrooms of sufficient size in the property granted the licence on condition that the impugned bedrooms would be enlarged within the time specified. Para 5.4.5 of the 2019 Guidance states in relation to HMO previously registered with the NIHE:

> "In such cases, Councils may still decide to grant the licence but may consider imposing licence conditions which would enable the accommodation to be upgraded during the period of the licence."

The conduct of the appeal

[59] This appeal comes before the court pursuant to section 67 of the 2016 Act. The powers of the court on an appeal pursuant to section 67 are set out in section 69. It provides:

> "69—(1) An appeal under section 67—
>
> (a) is to be by way of a re-hearing, but
>
> (b) may be determined having regard to matters of which the council were unaware.
>
> (2) The court may confirm, reverse or vary the decision of the council.
>
> (3) If the appeal is against a decision to refuse an application, the court may direct the council to grant the application in such terms as the court may direct."

[60] In *Waltham Forest London Borough Council v Hussain & others* [2023] EWCA Civ 733 ("Waltham") the Court of Appeal in England & Wales considered the statutory jurisdiction of the First-tier Tribunal (Property Chamber) when determining an appeal from a local housing authority concerning licences for houses of multiple occupancy. The legislative provisions which concerning the appeal in *Waltham* namely, paragraph 34 of Schedule 5 of the Housing Act 2004, mirror those in the instant case namely, section 69 of the 2016 Act.

[61] The central issue in *Waltham* was whether on an appeal pursuant to paragraph 34, the date on which the issue in dispute is to be considered is the date of the appeal hearing or the date the original decision maker decided the matter.

[62] The Court of Appeal noted that a statutory appeal by way of re-hearing covers situations ranging from those:

> "where the appellate body treated the matter as if it was arising for consideration for the first time … to something much closer to a review of the decision under appeal." [para 51]

[63] The Court of Appeal noted that:

> "whereabouts within the spectrum the appeal would fall … depends on the context and in particular on the intention of Parliament to be discerned from the relevant statutory provisions." [para 52]

[64] In respect of appeals under para 34 of the Housing Act, the court was of the view the deployment of the word "but" which introduces the proviso that the appellate body could "have regard to matters" which the original decision maker was unaware had the effect of enabling the appellate body to do something which it would not otherwise have been permitted to do.

[65] This led the Court of Appeal to conclude that the task of the appellate body in relation to this type of statutory appeal "is to determine whether the decision under appeal was wrong at the time when it was taken" rather than the date of the appeal.

[66] In relation a decision being "wrong" the Court of Appeal held that this means the original decision maker should "have decided the application differently" having accorded the original decision maker due deference as the body tasked with the primary responsibility for deciding licencing issues. The Court of Appeal held that "wrong" does not mean "wrong in law." [para 64]

[67] The appellate body is therefore required to "make up its own mind" in deciding whether the application before the original decision maker was correctly determined. The Court of Appeal held that in doing so the appellate body's consideration "plainly would encompass a relevant matter which existed at the time of the" original decision.

[68] While the issue does not arise in the instance case for the sake of completeness, I note that in *Waltham* the court held that in relation to matters which did not exist at the time the case was before original decision maker the court noted that,

> "generally speaking, an event which occurs after a decision is taken will not be relevant to the assessment of

whether that decision was right or wrong at that time."
[para 67]

[69] The exception to this, the court held, are situations where matters arise after the original decision maker had made its decision, but which shed light on the issue that was before the original decision maker. [para 69]

[70] In short compass I am of the view that the task of this court in the instant case is to determine whether the Council should have decided the matter differently taking into account matters which existed at the time the decision was made.

Consideration

The Space Standard and its applicability to the grant of an HMO licence

[71] Section 8(2)(e) of the 2016 Act permits a Council to grant an HMO licence if, inter alia, the living accommodation is 'suitable' for occupation as an HMO by the number of persons to be specified in the licence or can be made suitable.

[72] In determining suitability the Council "must have regard to" a number of matters set out in section 13.

[73] Section 13(2)(b) provides that one of the matters to which the Council "must have regard" in determining an application for a licence is the "number of persons likely to occupy" the HMO.

[74] O'Neil in "The Law of Houses in Multiple Occupation in NI, 2024" comments at para 4.74 that this provision exists "to avoid overcrowding." Support for this statement can be found in Part 5 of 2019 Guidance which deals with "Standards and Licencing Conditions." Para 5.1.1 states that amongst the matters the Council "should have regard to" when considering the licensing of an HMO are:

"… the factors set out in sections 41-61 of the 2016 Act."

[75] Sections 41-49, as noted above, address the issue of "overcrowding." Specifically, section 43 deals with the issue of what is entitled "The Space Standard."

[76] Furthermore, para 5.10.1 of the 2019 Guidance, again dealing with the licencing of HMO's states that:

"the living accommodation should not be overcrowded."

[77] The Council is mandated by section 85(2) of the 2016 Act to have regard to the 2019 Guidance.

[78] For these reasons I am therefore of the view that in determining an application for an HMO licence including a renewal application the Council "must have regard" to the 'space standard', as set out in section 43 (3) of the 2016 Act replicated in Annex A of the 2019 Guidance.

[79] In relation what having to "have regard to" in section 13 of the 2016 Act means in its consideration of the Space Standard it seems to me this is to be read as requiring the Council to reflect on the Space Standard as part of its overall consideration of the application as to whether to grant an HMO licence. However, the Council has a discretion as to how, if at all, it considers, taking a holistic approach, the Space Standard should be taken into account in the particular application it is considering.

[80] When the Council comes to reflect on the Space Standard in its consideration of a particular application it must keep in mind the reason lying behind the provision of the Space Standard. This reason is expressed succinctly in the Explanatory Memorandum to the 2019 Regulations which states:

> "the reason for the inclusion of a space standard in legislation is to ensure that only spaces that are suitable to sleep and live in are included in any calculation of living space." [emphasis added]

Was the Council wrong in granting the HMO licence with conditions?

[81] The statement of reasons provided by the Council for granting the licence in the terms it was, make it clear beyond peradventure that it was the fact the impugned bedrooms had floor areas of less than 6.5m², as the Council had measured them.

[82] For the reasons set out above the Space Standard, which in the case of the impugned bedrooms is 6.5m², was a matter the Council was right to reflect on in its consideration as to whether to grant the HMO in the terms it had been applied for.

[83] In its reflections on the applicability of the Space Standard in the instant case the Council should have had in its mind that the standard exists to ensure the suitability of the HMO.

[84] The Council was required in its considerations to adopt a flexible approach in its application of the Space Standard. In this regard, I note para 5.4.2 of the 2019 Guidance that standards:

> "Should be applied flexibly, with the Council taking into account whatever material it considers relevant in assessing the suitability of the accommodation in accordance with Section 13 of the 2016 Act."

[85] When measuring the impugned bedrooms the Council officer Mr McKnight, was correct to follow what was set out in 2019 Regulations. However, all these Regulations do is to prescribe three areas within a room are to be excluded when calculating its floor area namely:

- where a sloping roof or ceiling reduces the height to less than 1.525 metres;
- formed by a projecting chimney breast or hot press;
- immediately behind the door where the area is no wider than the door itself

[86] The 2019 Regulations provide no instruction as to how a floor area is to be calculated beyond this. In the context of the instant case the Regulations did not require the washing compartments to be excluded from the calculation of the floor areas of the impugned bedrooms. However, Mr McKnight choose to do so thus reducing the floor area of what remained to less than 6.5m².

[87] While the Space Standard is to be applied flexibly, in the instant case it seems to me the Council applied it slavishly. In this regard I note the statement of reasons issued by the Council when it granted the conditional licence focused exclusively on the floor area measurement of 6.5m². It is telling that the statement of reasons makes no mention of the issue of the 'suitability' of the rooms in question.

[88] The 2019 Guidance makes it clear even where "certain standards" are not met a property may still be considered suitable. Para 5.4.4 provides that:

> "… in some cases, such as where an HMO has been operating with a licence for some time, it may be considered suitable for a new licence even if it does not meet certain standards which the Council would normally wish to apply to new accommodation or accommodation which has not previously been licensed."

[89] I am of the view the Council was wrong in the particular circumstances of this case, as set out below, to have granted an HMO licence with conditions. This property was suitable for the licence that the appellant had sought, namely one without conditions.

[90] The construction of the washing compartments were simply internal reconfigurations of existing bedrooms. They did not create any additional rooms. Prior to construction when one entered the bedroom from the hall or landing one entered a room to which one tenant had exclusive access. This remains the situation after construction. Furthermore, at the date of the Council's inspection, whatever may have been the situation previously the washing compartments did not have

doors on them being the usual manner in which one room is delineated from another.

[91] The property in the instant case had been regularly inspected for many years after the construction of the washing compartments and found to be suitable. In this regard as I have noted that the Space Standard the NIHE was operating to, in its document entitled "Standards," is the same as the Space Standard to be found in both the 2016 Act and the 2019 Guidance.

[92] I also note the construction of the washing compartments still left room for the other furniture required in a bedroom. The 2019 Guidance provides that every bedroom in an HMO should be capable of accommodating at least a bed, a wardrobe and a chest of drawers together with "adequate activity space." Annex A sets out technical specifications for the space and layout of, inter alia, bedrooms. I note within the papers before the court there is a "Cost Verification Report" dated 23 May 2023 prepared by Naylor Devlin, Chartered Quantity Surveyors instructed by the Council, which notes that at present with the washing compartments in situ the ground floor bedroom has within it a bed, bedside cabinet and a wardrobe while the first floor bedroom has within it a bed, dresser, bedside cabinet and a wardrobe.

[93] In addition, the provision of the washing compartments will have added to the overall amenity of the HMO. The construction of the washing compartments did not allow any more tenants than before to live in the HMO. Rather, the same number of tenants lived in a property with additional amenities to all of their benefit.

Conclusion

[94] Thus, for the reasons set out above, while the Council was correct to have regard to the Space Standard when considering the appellant's application for renewal of his HMO, it was wrong in its application of it in the instant case.