



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

Case Reference : **LON/00BE/HMR/2018/0002**

Property : **62 Denman Road, London SE15
5NR**

Applicant : **Mr. Robert Little**

Representative : **N/A**

Respondent : **The London Borough of Southwark**

Representative : **Mr. W Beglan of counsel**

Types of Application : **HMO Licence**

Tribunal Members : **Judge Tagliavini
Ms S Coughlin
Mr. C S Piarroux**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
10 August 2018**

Date of Decision : **26 September 2018**

DECISION

The First-tier tribunal's (FTT) decision:

- A. The tribunal refuses the appeal and confirms the Respondent's decision to restrict the grant of a HMO licence for the subject property at 62 Denman Road, London SE15 5NR to the occupation of the basement flat (2 persons), the raised ground floor front flat (two persons) and the top floor flat (two persons) only.**

The application

1. This is an application received by the FTT on 14 June 2018 made by Mr. Robert Little seeking to appeal against the Respondent's decision in its licence dated 3 July 2018 (as amended) to prohibit the use of the rear studio flat ('the studio flat') on the raised ground floor of the subject property situate at 62 Denman Road, London SE15 5NR ('the property') and restricting the grant of a HMO licence to the basement flat, the raised ground front flat and the top floor flat only.

The background

2. The subject property is a terraced house on three floors; semi-basement, raised ground floor and first floor. The house has been converted into a basement flat, a raised ground floor front flat, a raised ground floor rear flat and a top flat. The Respondent has accepted that a maximum of two occupants is permitted in each of the flats except the raised ground floor rear flat ('the studio flat'), which was considered to be unsuitable for occupation at all due the smallness of its size in respect of the living/bedroom area and the kitchen.
3. The studio flat comprises a living/bedroom area measuring 7.5 sq. metres with an adjoining kitchen with exclusive use of a bathroom/w.c. on the first floor. In his application Mr. Little stated that the studio flat has good quality fittings and furniture and was refurbished two years ago with the furniture chosen to make the best use of its size, including a sofa bed that is intended to be unfolded and folded as required. The studio flat had been constructed in about 1982/83 when planning permission was granted for a rear extension with one basement flat and three studio flats in total. Mr. Little also stated that although the subject studio flat was intended for occupation by two people it has only ever been let to one tenant.

The inspection

4. In accordance with the FTT's direction an internal inspection was carried out of the studio flat with an external inspection of the subject property immediately before the oral hearing of this appeal. The FTT members were accompanied on this inspection by Mr. Little and representatives of the Respondent.

The hearing

5. At the hearing of the appeal Mr. Little appeared in person and the Respondent was represented by Mr. Beglan of counsel. The FTT was provided with a bundle of documents that included the documents relied upon by both parties. The FTT heard this appeal by way of a re-hearing and the Respondent was required to present its case and reasoning for its decision to exclude the use of the studio flat for occupation in the grant of its HMO licence.

The Respondent's case

6. The FTT heard the oral evidence of Ms Xenia Baldiviezo who spoke to the witness statement dated 31/07/2018. This set out the history of her dealings with Mr. Little and referred the FTT to the Respondent's Standards for House in Multiple Occupation. These having been reviewed at regular intervals, and most recently in July 2015 when they were formally adopted by the Environmental Services Committee and stated:

Rooms where there are kitchen facilities in a separate room, whether this is shared or a kitchen for exclusive use. The following minimum room sizes shall apply:

Single room – 10 sq. metres

Double room – 14 sq. metres

Kitchen 5.5 sq. metres, plus 1 sq. metre for each additional person sharing use of the kitchen.”

7. It was accepted by the Respondent that the property was well managed and no hazards identified that are required to be dealt with under Part 1 Housing Act 2004. However, as the studio flat had a separate kitchen for the exclusive use of the occupier a room size of at least 10 sq. metres was required for the living/bedroom area in order to meet the Respondent's minimum standards. Having carried out measurements of the studio flat these revealed its size fell below this standard being only 7.5 sq. metres in size. Further, the kitchen at 4.99 sq. metres fell below the 5.5 sq. metres required despite there being a table at which, the occupier could sit. In adopting these standards, the Respondent had recourse to the approaches of other London Local Authorities, which in some instances set bigger minimum standards for room sizes.
8. The Respondent also informed the FTT enquiries of the Planning Department revealed that from 1988 there was only consent given in respect of two flats at the subject property. The guidance given in the LACORS Crowding and Space Guidance showing the smallest size of a room that can be slept in by one person is 6.5 sq. metres derives from the Space Standard in Part 10 Housing Act 1985. Moreover, it refers to a single dwelling and is not applicable to an HMO. Over the last 25 years as demand on housing has grown and the use of smaller spaces

has changed from a temporary let to a more permanent base, so has the need for there to be sufficient room to live, eat and sleep in a comfortable space. Further, if standards were not applied consistently or not applied at all because of the risk of homelessness, they were unlikely to be ever utilised.

9. Therefore, the Respondent asserted that the prohibition on the use of the studio flat for occupation, not just by the current occupier but also with regard to future possible occupiers, was necessary and justified.

The Applicant's case

10. Mr. Little told the FTT that in the early 1980's he had applied to convert the subject property into four flats and had been letting four flats since the extension was completed. He stated that when the studio flat was completed it met all the size requirements which have now changed. Mr. little told the FTT that many people are happy with smaller properties and had written into the lease that the furniture could not be changed. The current occupier who lived there since November 2016 and paid a rent of £680 p.c.m. was quite happy with the studio flat and had no wish to leave. Mr. Little had himself measured the studio flat and agreed that the room sizes fell below the minimum standards although submitted the kitchen had not fallen short by very much.

The FTT's decision and reasons

11. On inspection of the studio flat the FTT found it to be in reasonable decorative order where thought to the kitchen layout was evident in the good use of the compact size. The tribunal found the living/bedroom area to be small with a large in-built corner cupboard taking up a significant part of the space. The tribunal also noted that once the sofa bed was set up in the sleeping position, it obstructed access to and from the studio flat to the extent that the door could not be opened fully, and the opening space left was significantly restricted.
12. As Mr. Little did not seek to challenge the respondent's measurements of the studio flat the FTT accepted that these accurately represent the size of the two adjoining rooms in the studio flat. The tribunal accepts that the Respondent has given thought to the required minimum space standards and has reviewed them regularly as well as having considered the space standards imposed by other London Local Authorities.
13. The FTT also accepts that Mr. Little has since at least the late 1980's utilised the subject property as four flats and not just the two flats subject to the grant of planning permission. Notwithstanding, the Respondent does not in this appeal, seek to rely on any alleged breach but relies solely on the small size of the studio flat as the reason for not granting permission for any occupation in the proposed HMO licence.

14. The FTT is not persuaded by Mr. Little's arguments that some occupiers, including the current tenant prefer smaller spaces to larger ones and if a licence is not granted to include this part, the current occupier will be made homeless. The FTT prefers the arguments of the Respondent that consistency in applying and enforcing minimum standards is important for the welfare of occupiers. The FTT does not find that the space standards set by the Respondent are unreasonable.
15. The FTT considers that the kitchen, although it does not meet the Respondent's space standard does in fact provide an adequate working space for a single person. The Tribunal does however consider that the current size and layout of the living room/bedroom is not adequate since the circulation space around the sofa bed in the sleeping position is too restricted and we are particularly concerned about the difficulty in opening the entrance door when the sofa bed is down.
16. Therefore, the FTT refuses this appeal and finds that the grant of the proposed licence which excludes the use of the raised ground floor rear flat for occupation is both reasonable and appropriate.

Signed: Judge Tagliavini

Date: 26 September 2018