



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

Case reference : **LON/00BE/HMV/2018/0006**

Property : **9 Langdon Way London SE1 5QN**

Applicant : **Mr R Theodoridis**

Representative : **N/A**

Respondent : **London Borough of Southwark**

Representative : **Mr Ben Du Feu (counsel)**

Type of application : **Appeal in respect of an HMO licence – s.64 & Part 3 of Schedule 5 to the Housing Act 2004**

Tribunal members : **Judge Carr
Mr Cairns**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **20th November 2018**

DECISION

Decision of the Tribunal

The Tribunal confirms the decision of the Respondent.

Reasons for the Tribunal's decision

Introduction

1. On 28th May 2018 the Appellant appealed the grant of an HMO licence for the property. The particular aspect of the licence that concerned the Appellant is that it limits occupation of the property to 4 persons in 3 households. The Appellant seeks an order from the Tribunal varying that condition so that it permits occupation by 4 persons in 4 households.
2. In effect what the Appellant seeks is that the smallest bedroom in the property, Bedroom 3, which measures 5.2 square meters can be occupied. The licence granted by the Respondent prevents occupation of that room, although it permits a couple to occupy the largest room.
3. The appellant appeared at the hearing and represented himself. The respondent was represented by Mr Du Feu of Counsel. Ms South an Environmental Health Officer with the respondent gave evidence on its behalf.

Background

4. The property is a two-storey end of terrace house built by the local authority as a family house in the 1980s. It is now an HMO with 4 rooms let as bedrooms a kitchen/dining room a bathroom with a wc, and a separate wc with a hand basin.

5. The room sizes to the property are as follows:

Bedroom 1 (ground floor) $5.392 \times 3.466 = 18.091 \text{ m}^2$

Bedroom 2 (first floor) $3.472 \times 3.182 = 11.045 \text{ m}^2$

Bedroom 3 (first floor) $2.471 \times 2.110 = 5.214 \text{ m}^2$

Bedroom 4 (first floor) $3.481 \times 2.864 = 9.966 \text{ m}^2$

Kitchen/Dining room (ground floor)

Kitchen area $3.079 \times 2.356 = 7.251 \text{ m}^2$

Dining area $2.871 \times 2.774 = 7.964$

6. On 5th September 2017 the appellant applied to the respondent for an HMO licence. On 8th March 2018 Ms South inspected the property for

the purposes of determining the application. Following the inspection the respondent determined that it was appropriate to licence the property as an HMO permitting occupation of the property by 4 persons in 3 households.

7. The decision that Bedroom 3 was inappropriate to be used as a bedroom took into account Southwark's HMO standards, standards of other authorities and the layout of the whole house.

The law

S64 Grant or refusal of licence

(1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either-

- (a) grant a licence in accordance with subsection (2), or
- (b) refuse to grant a licence.

(2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either-

- (a) to the applicant, or
- (b) to some other person, if both he and the applicant agree.

(3) The matters are-

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

(b) that the proposed licence holder-

- (i) is a fit and proper person to be the licence holder, and
- (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;

(c) that the proposed manager of the house is either-

(i) the person having control of the house, or

(ii) a person who is an agent or employee of the person having control of the house;

(d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and

(e) that the proposed management arrangements for the house are otherwise satisfactory.

(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) some other maximum number decided by the authority.

(5) Sections 65 and 66 apply for the purposes of this section.

S65 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) 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.

(3) In this section "prescribed standards" means standards prescribed by regulations made by the appropriate national authority.

(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.

S66 Tests for fitness etc. and satisfactory management arrangements

(1) In deciding for the purposes of section 64(3)(b) or (d) whether a person ("P") is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).

(2) Evidence is within this subsection if it shows that P has-

(a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);

(b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;

(c) contravened any provision of the law relating to housing or of landlord and tenant law; or

(d) acted otherwise than in accordance with any applicable code of practice approved under section 233.

(3) Evidence is within this subsection if-

(a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and

(b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.

(4) For the purposes of section 64(3)(b) the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it.

(5) In deciding for the purposes of section 64(3)(e) whether the proposed management arrangements for the house are otherwise satisfactory, the local

housing authority must have regard (among other things) to the considerations mentioned in subsection (6).

(6) The considerations are-

(a) whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;

(b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and

(c) whether any proposed management structures and funding arrangements are suitable.

(7) Any reference in section 64(3)(c)(i) or (ii) or subsection (4) above to a person having control of the house, or to being a person of any other description, includes a reference to a person who is proposing to have control of the house, or (as the case may be) to be a person of that description, at the time when the licence would come into force.

S67 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) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;

(c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;

(d) conditions requiring such facilities and equipment to be kept in repair and proper working order;

(e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;

(f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.

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

(4) As regards the relationship between the authority's power to impose conditions under this section and functions exercisable by them under or for the purposes of Part 1 ("Part 1 functions")-

(a) the authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;

(b) this does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection (2)(c) above, even if the same result could be achieved by the exercise of Part 1 functions;

(c) the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can be subsequently exercised by the authority.

(5) A licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person has consented to the imposition of the restrictions or obligations.

(6) A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any tenancy or licence under which any person occupies the house

The grounds of appeal

8. The appellant's case is set out in his letter to Ms South dated 23rd April 2018. In essence he argues that the respondent's proposal to restrict occupancy to 4 people in 3 households as opposed to 4 persons in 4 households removes a very affordable housing option. The appellant considers that the respondent has failed to take into account the benefits of the accommodation as a whole. His tenants 'get a home and a share of a whole house. They get access to spaces not always available

in other properties that effectively extend the size of their individual rooms and enhance their comfort.

9. The appellant points to the three generous communal storage areas, front and back gardens, a larger than average kitchen and accompanying storage and two toilets.
10. The appellant informed the tribunal that Bedroom 3 was the most popular choice because of its substantially reduced cost and, in his opinion, it would be unjust to remove the option from those that need it most.
11. In answer to the Tribunal's questions the appellant said that the rent for Bedroom 3 was £100 per week and that his tenants tended to stay at the property for a minimum of 6 months and often stayed up to two years.
12. The appellant said that he made efforts to socialise with the tenants and create a homely atmosphere. He visited the property monthly. He removes surplus items from the storage areas. He provides storage for bikes in the rear garden area.
13. He also pointed out that it was difficult to let a room to a couple in a shared house because they often wanted privacy, and that anyway the presence of couples spoiled the homely atmosphere of the property as they tended to keep themselves to themselves. He also said that he would get a lower rent from a couple renting the room than he would from two individuals renting two rooms.
14. Overall he was seeking that the respondent exercised its discretion and allowed the variation of the condition that he sought.
15. He considered that room size was the choice of the tenant, and he produced a letter from the current tenant pointing out that he was satisfied with the room, and that affordability was his chief concern.

The respondent's case

16. The respondent provided full supporting documentation for its arguments, including Southwark's HMO standards, permissible room sizes of other London boroughs and a selection of case law.
17. Ms South said that she had considered the matter carefully and taken into account the other facilities in the property. However the room in question is well below the room size required for single occupancy in a shared house, and would be well below the standard required by other London boroughs.

18. Ms South showed the tribunal photographs from her inspection which showed that the storage facilities in the property were overflowing, that Bedroom 3 was cramped and possibly hazardous, and she also informed the tribunal that the tenant was using 2 chest of drawers that he had placed outside of his room creating an obstruction in the means of escape in case of fire..
19. Although she agreed that the extra facilities in the property were welcome, they were not sufficient to justify the use of Bedroom 3.
20. She had not taken the letter from the tenant into account as she did not have sight of it before the terms of the draft licence were confirmed. (She pointed out that letters had been sent to all occupiers and the landlord at an early stage seeking representations on the proposed order - none were received). However she told the tribunal that it would not have made any difference. The room was too small to be used. She said that tenants always justified room size but that it was the respondent's responsibility to ensure that adequate space was provided for residents.

The Tribunal's reasons for rejecting the appeal

21. The appellant appeared to the tribunal to be a caring and considerate landlord who took his responsibilities seriously. He nevertheless considers that the size of the room is more than compensated for by the other facilities.
22. However the Tribunal noted that in addition to the smallness of the bedroom 3 the kitchen /dining area was also small for the number of people using it, that the storage appeared to be limited, and that the rear garden area was also small.
23. The tribunal considers that the Respondent had thought carefully about its decision, and had taken into consideration the full facilities offered by the house, as well as the demand for housing in its area.
24. The tribunal also notes that from 1st October 2018 government standards will set a minimum room size of 6.5m².
25. For these reasons the Tribunal rejects the appeal.

Name: Tribunal Judge Carr

Date: 20th November 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).