



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

Case References : **CHI/00HN/HML/2019/0012-4**

Properties : **2 Truscott Avenue, Bournemouth
BH9 1DA,

58 Avon Road,
Bournemouth, BH8 8SE

142 Hankinson Road,
Bournemouth, BH9 1HX**

Applicant : **Mr Julian East**

Respondent : **Bournemouth Christchurch
and Poole Council**

Type of Application : **HMO Licence conditions**

Tribunal Members : **Judge D Dovar**

Date of Decision : **19th September 2019**

DECISION

© CROWN COPYRIGHT

1. These are three related applications by Mr East being appeals against two conditions imposed in HMO Licences granted to him by the Respondent Council in respect of the Properties. The conditions relate to the provision of an annual gas safety certificate and refuse collection.
2. The Tribunal gave directions on 12th July 2019 requiring the parties to set out their cases and notifying of its intention to deal with the matter without a hearing unless either party requested one. They have both provided their representations in writing and neither has requested a hearing.
3. The conditions under appeal are:

“1. A gas safety certificate obtained in respect of the house within the last 12 months must be provided annually to the Council if gas is supplied to the house”;

and

“16. Comply with the local area refuse collection scheme and ensure the provision of the correct bins at all times”

4. The Respondent says, through Mr Conway, their Private Sector Housing Enforcement Officer, in a statement dated 8th August 2019, that these provisions reflect mandatory requirements set out in schedule 4 of the Housing Act 2004 and therefore must remain.
5. Schedule 4 of the Housing Act 2004 provides as follows:

“Conditions to be included in licences under Part 2 or 3

1 (1) A licence under Part 2 or 3 must include the following conditions.

(2) Conditions requiring the licence holder, if gas is supplied to the house, to produce to the local housing authority annually for their inspection a gas safety certificate obtained in respect of the house within the last 12 months. ...

*1C. Additional conditions to be included in licences under Part 2:
household waste*

Where the HMO is in England, a licence under Part 2 must include conditions requiring the licence holder to comply with any scheme which is provided by the local housing authority to the licence holder and which relates to the storage and disposal of household waste at the HMO pending collection.

6. Mr East contends otherwise. He asserts that there are no such mandatory requirements. Instead he points to the Licensing and Management of Housing in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2007, in which regulation 7 stipulates,

(1) The manager must supply to the local housing authority within 7 days of receiving a request in writing from that authority the latest gas appliance test certificate he has received in relation to the testing of any gas appliance at the HMO by a recognised engineer.

7. He relies on that regulation as imposing a lesser obligation than that included in the licence.
8. Further in relation to waste management, he relies on the same regulations, at regulation 3, which provides

“(1) Regulations 4 to 10 shall apply subject to the following limitations—

(a) the manager's duty shall only apply in relation to such parts of the HMO over which it would be reasonable to expect the licence holder, in all the circumstances, to exercise control; and

(b) the manager's duty to maintain or keep in repair is to be construed as requiring a standard of maintenance or repair that is reasonable in all the circumstances, taking account of the age, character and prospective life of the house and the locality in which it is situated.

(2) Nothing in regulations 4 to 10 shall—

(a) require or authorise anything to be done in connection with the water supply or drainage or the supply of gas or electricity otherwise than in accordance with any enactment; or

(b) oblige the manager to take, in connection with those matters, any action which is the responsibility of a local authority or any other person, other than such action as

may be necessary to bring the matter promptly to the attention of the authority or person concerned.

9. As well as regulation 10

“10. Duty to provide waste disposal facilities

The manager must—

(a) ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and

(b) make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.”

10. Accordingly, he says that both conditions under appeal are not only overly onerous but are not mandatory requirements.
11. The Applicant has not properly addressed the mandatory requirements of Schedule 4 as set out above which are clear in their terms. It is not in doubt that the 2004 provisions for HMO's apply to each of the properties and that he is required to hold a licence in respect of them. In that regard, the licence is a licence required by Part 2 of the Act. That is clear from the title of the licences that have been granted which state on their face that they are made under Part 2.

12. In respect of gas certification, there is a material distinction between the annual gas safety certificate, of which the Respondent has mirrored the wording of paragraph 1 (2) of Schedule 4 and that of certification in relation to individual appliances under regulation 3 of the 2007 Regulations. The latter, by its nature refers to concerns that may arise in respect of new installations or existing ones that have become faulty during the course of a year. In respect of those, the local authority has the ability to require certification on an ad hoc basis on request. This in no way undermines the additional, separate and mandatory requirement in respect of annual certification. Accordingly, the appeal against that condition fails.
13. A similar situation pertains in respect of waste management. The 2007 Regulations do not cut down on any mandatory requirements set out in the 2004 Act, instead they must be read alongside them. However, in this instance, the Respondent, unlike with gas certifications, has not precisely mirrored the wording of Schedule 4. Instead, it has added the wording 'at all times' to the condition. Either this is implicit in the statutory language or it creates a greater burden. To that end, the Tribunal considers that condition 16 of each of the three licences should be amended to remove that gloss and by this determination so directs. Other than that, the condition stands as per the licence.
14. Finally, in terms of the application fee paid by the Applicant, although a variation has been made to one condition, it is not on any basis that he has contended for and the Tribunal declines to award reimbursement.

Judge D Dovar

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

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.

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.