



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

**Case Reference** : **CHI/00ML/HMC/2022/0002  
Remote CVP. VIDEO**

**Property** : **4 Bodiam Close Brighton East  
Sussex BN 2 4LP**

**Appellant** : **Abraham Gabriel**

**Representative** : **Nagy Gabriel**

**Respondent** : **Brighton & Hove Council**

**Representative** : **Ms Harlow**

**Type of Application** : **Appeal against condition on HMO  
licence**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Mr B Bourne MRICS  
Mr M Jenkinson**

**Date of video hearing** : **25 August 2022**

**Date of Decision** : **31 August 2022**

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## DECISION

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- 1 The Tribunal refuses the Respondent's application to strike out the Applicant's application.**
- 2 The Tribunal confirms the HMO licence granted by the Respondent to the Appellant. All provisions of the licence notice are unaltered and remain in effect.**

## REASONS

- 1 The Appellant is the owner of the property situated and known as 4 Bodiam Close Brighton East Sussex BN2 4LP (the property). He did not attend the hearing but was represented by Mr N Gabriel who said he was at the material time the manager of the property. The Appellant filed an application with the Tribunal on 11 April 2022 appealing against the conditions of an HMO licence granted by the Respondent in respect of the property. Directions were issued on 13 June and 03 August 2022.
- 2 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered that the matter was capable of determination without a physical inspection of the property. The Tribunal had the benefit of an exterior view of the property from Google maps and was assisted by photographs and diagrams of the premises contained in the hearing bundle.
- 3 The hearing took place by way of a CVP video hearing (to which neither party had objected) on 25 August 2022 at which the Appellant was represented by Mr N Gabriel. The Appellant, Mr A Gabriel was not present at the hearing. The Respondent was represented by Ms K Harlow. Mrs Dean also gave evidence for the Respondent. Both Ms Harlow and Mrs Dean are employed by the Respondent.
- 4 An electronic hearing bundle containing documents from both parties had been supplied to and read by the Tribunal prior to the hearing; pages from that bundle are referred to below.
- 5 The Respondent experienced some difficulty in joining the hearing and a brief adjournment took place just after its commencement to allow the Respondent to find a method of accessing the hearing. The hearing resumed with attendance by the Respondent partly by video and partly by telephone.
- 6 Prior to the hearing the Appellant had been issued with a strike out warning by the Tribunal for his failure to comply timeously with the Tribunal's Directions. Despite this he continued to disregard the time limits set by the Tribunal and the Respondent complained that they had only been able to access the hearing bundle on 22 August 2022. Subsequently they filed an application asking the Tribunal to

strike out the Appellant's claim. This was dated 19 August 2022 but was not seen by the Tribunal until 23 August 2022 who decided that this matter would be considered at the hearing as a preliminary issue prior to the appeal itself. The Tribunal told the parties that it would hear the parties' arguments relating to the strike out and would then proceed immediately to hear the substantive application. Following the hearing the Tribunal would first consider the strikeout pleas and would make their decision on that issue before considering (if necessary) the substantive application. Both decisions would be incorporated into single written document to be issued to the parties in due course. This method of proceeding was adopted in order to avoid any further connectivity issues which might have arisen after an adjournment. Neither party objected to this approach.

- 7 In relation to the strike out Mr N Gabriel for the Appellant said that his late delivery of the documents had been caused by a combination of his absence from home and his inexperience with technology. His explanation was complicated, muddled and unconvincing. The Respondent complained that they had not had time fully to consider the Appellant's reply which he had added to the bundle. The Tribunal does not condone the Appellant's failure to comply with Tribunal's Directions which were designed to provide both parties with a fair and achievable timetable culminating in the hearing itself. However, since all but a very small number of the documents in the circa 200 page hearing bundle had originated from the Respondent, who should therefore be entirely familiar with their contents, the Tribunal does not consider that the Respondent had been unduly prejudiced by the late delivery of the bundle. Since both parties had prepared for and were represented at the hearing the Tribunal considered that, on balance, the most appropriate course of action would be to refuse the Respondent's application for strike out and to proceed to hear the evidence on the substantive application.
- 8 The appeal hearing before the Tribunal is a re-hearing of the Respondent's decision to grant an HMO licence with conditions. For that reason the Tribunal commenced the appeal proceedings by hearing evidence from Mr N Gabriel for the Appellant.
- 9 Mr N Gabriel told the Tribunal that the previous HMO licence for the property had allowed the house to be shared by 6 tenants comprising up to 6 different households. His current complaint was that the new licence was limited to 6 tenants from no more than 5 households. He said that students were 'singles' and did not want to share a room. He also objected to the requirement in the new licence that one room, formerly used as a bedroom, was in future to be used as a communal living room. This was combined with requirements to effect a number of small upgrading works some relating to fire protection. He felt that the Respondent was imposing unnecessary conditions which small business owners would find uneconomical to comply with.
- 10 He said that the ground floor hallway (currently housing two large fridges (page 37)) had previously been furnished with a dining table

and chairs but that the student/tenants had removed it. Reinstating the table (although he stated that students did not sit at tables to eat and preferred to eat in their own rooms) would provide a dining area as requested by the Respondent. He denied that this would block the fire exit through the adjacent front door since all three ground floor rooms had direct access to the garden and the first floor occupants could come straight down the staircase to the outer door.

- 11 He said that the Respondent had revised their regulations since the issue of his former licence and did not see why he should be required to comply with the new stricter regulations when his property had previously been found to be compliant.
- 12 The Respondent agreed that they had revised their regulations in line with current practice and that their fire precautions had been approved by the local fire authority. They said that two of the bedrooms in the property only marginally exceeded the Respondent's minimum room size which made it desirable for the tenants to have another living room for their use. Further, a dedicated dining space was required and the hallway area proposed by the Appellant was inadequate on a number of grounds including size (the space is approximately 30% smaller than the minimum room size of 10sqm) and fire safety. Use of this area would necessitate the relocation of the fridges. The galley kitchen was itself inappropriate for dining and again does not comply with minimum room standards (page 45).
- 13 The Respondent pointed out that they had been required to revise their HMO standards, including fire protection and minimum room size in order to comply with UK government regulations and that any property requiring a licence would need to conform to the new standards. The terms of any previous licence were no longer relevant or valid.
- 14 Although the Appellant has not specified which restriction(s) he objects to it is implicit in his application that he wishes the Tribunal to adjudicate to remove all conditions in his licence which vary from those in the previous licence, the effect of which would be to re-instate his right to let the property to 6 tenants each from a different household without providing a separate living room or dining area.
- 15 The Tribunal is satisfied that the conditions imposed by the Respondent in granting the current licence have been reasonably imposed on the grounds of safety and in order to comply with current legislation over which they have no discretionary power.
- 16 The Tribunal therefore declines to vary the licence as requested and confirms it as granted by the Respondent. It takes effect in full and unaltered. The Appellant's application fails.
- 17 The Appellant asked the Tribunal to reimburse his application and hearing fees. That request is declined. The Appellant has failed to comply with the Tribunal's Directions resulting in additional work being undertaken both by the Tribunal staff and the Respondent and further, has pursued a claim which had no prospect of success.

## **18 The Law:**

### **Housing Act 2004 Schedule 5 para 31 (1) and para 34(1)**

31(1) The Applicant or any relevant person may appeal to the appropriate Tribunal against a decision by the local housing authority on an application for a licence --

- a) To refuse to grant the licence , or
- b) To grant the licence.

(2) An appeal under sub-paragraph 1b may in particular relate to any of the terms of the licence .

34(1) This paragraph applies to appeals to the appropriate Tribunal under paragraph 31 or 32.

(2) An appeal –

- a) is to be by way of rehearing but
- b) may be determined having regard to matters of which the authority were unaware.

(3) The Tribunal may confirm, reverse or vary the decision of the local housing authority.

(4) On an appeal under paragraph 31 the Tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the Tribunal may direct.

Judge F J Silverman as Chairman

31 August 2022.

Note:

Appeals

1. 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. Under present Covid 19 restrictions applications must be made by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk).

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