



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

**Case reference** : **LON/00AG/HMV/2021/0003**

**Property** : **137 Constantine Road,  
London NW3 2LR**

**Applicant** : **Josephina Becci**

**Representative** : **London Residential**

**Respondent** : **London Borough of Camden**

**Type of application** : **Appeal against licence variation**

**Tribunal members** : **Judge Nicol  
Mrs L Crane MCIEH**

**Date and Venue of  
Hearing** : **4<sup>th</sup> March 2022;  
By remote video conference**

**Date of decision** : **7<sup>th</sup> March 2022**

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**DECISION**

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**The Tribunal determines that the Applicant’s licence in respect of 137 Constantine Road, London NW3 2LR shall remain in the form varied by the Respondent on 4<sup>th</sup> August 2021, save in the following respects:**

- (a) The words “as far as reasonably practicable” shall be inserted between the words “Standards” and “including” in section 7 of the Schedule of Works to the licence.**
- (b) If the Applicant completes within 3 months the relocation of the boiler from the existing cupboard and the works specified in sections 8 and 11 of the Schedule of Works to the licence using a contractor who is a member of a relevant professional body, e.g. CIOB, then the requirement**

**to engage in addition a RIBA architect or other similarly qualified or competent person is disapplied for that period.**  
**(c) The reference to the “Ground floor front room” in section 18 of the Schedule of Works to the licence is deleted.**

Relevant legislation is set out in the Appendix to this decision.

### **Reasons**

1. The subject property is a 4-storey terraced house with 7 bedrooms, 2 kitchens and 5 bathrooms. The Applicant lets it as a house in multiple occupation (“HMO”).
2. On 25<sup>th</sup> April 2018 the Applicant applied to the Respondent for a licence under the statutory licensing scheme for HMOs. The Respondent inspected on 21<sup>st</sup> February 2019 and issued a licence on 15<sup>th</sup> April 2019.
3. The Respondent undertook a compliance inspection on 14<sup>th</sup> October 2019 and noted a number of deficiencies relative to their HMO Standards. They regarded the most significant being those related to fire precautions and, in particular, the compartmentation of two kitchen cupboards located under the means of escape from the first floor. They consulted the Fire Authority and prepared a set of fire precautions. A list of remedial works was sent to the Respondent. On 3<sup>rd</sup> September 2020 the Applicant’s agents, LRSL Ltd t/a London Residential, reported that the works had been completed.
4. At the Applicant’s request, the licence was varied on 14<sup>th</sup> September 2020 to show London Residential as responsible for the management of the property.
5. In December 2020 London Residential sent photos of the fire precautions works but the Respondent identified some concerns. As far as the Respondent could see from the photos, the ceiling to the cupboards had not been reinstated, the floorboards above the joists had been underlined with plasterboard of unknown properties and there were gaps to the newly added under-layer of plasterboard which would allow the spread of smoke.
6. The Respondent inspected again on 6<sup>th</sup> April 2021. They found that a room on the ground floor previously used as a living room was now being used as an additional bedroom. Also, while some deficiencies had been addressed, they were dissatisfied with some of the works, particularly relating to the fire precautions. As a result, they began the process for varying the licence.
7. During the process of variation, the parties remained in discussion about how to address the Respondent’s concerns. The Applicant commissioned a fire risk assessment which took place on 10<sup>th</sup> May 2021 in the presence of Ms Silvia Suarez, Environmental Health Officer, on behalf of the Respondent. The assessor queried the fire protection to a

weight bearing steel beam in the kitchen and whether works had been signed off by Building Control (they hadn't).

8. The fire risk assessment itself was issued on 11<sup>th</sup> May 2021. It found that the standard of compartmentation was insufficient for a number of reasons, including that kitchen cupboard ceilings were missing and the wall to the boiler cupboard had been perforated. It recommended that the boiler cupboard and wall should be remade.
9. On 27<sup>th</sup> May 2021, the Respondent served a notice of intention to vary the licence. London Residential made representations on 11<sup>th</sup> and 28<sup>th</sup> June 2021 to which the Respondent responded respectively on 21<sup>st</sup> and 28<sup>th</sup> June 2021. On 29<sup>th</sup> June 2021 the Respondent served a second notice of intention to vary the licence. The Applicant relied on London Residential's earlier representations.
10. On 4<sup>th</sup> August 2021 the Respondent served the notice of variation of the licence in the same form as that notified on 29<sup>th</sup> June 2021.
11. On 10<sup>th</sup> August 2021, the Tribunal received the Applicant's appeal against certain parts of the variation:
  - (a) The Applicant objected to the requirement that the second-floor kitchen should provide full facilities as well as the ground floor kitchen.
  - (b) In relation to the works required to the boiler and washing machine cupboard, the Applicant asserted that the wording within the schedule of works did not comply with the wording in the fire risk assessment.
  - (c) The Applicant objected to the work set out in the schedule to the licence requiring her to externally vent the WC extractor fan or remove the fan. Following a later mediation, the Applicant decided not to pursue this point.
  - (d) The Applicant objected to the requirement to provide wash hand basins in the 3 rooms which do not have one. It was argued that the communal provision was sufficient for those which did not have en suite bathroom facilities.
12. In the Applicant's statement of case accompanying her bundle of documents, a further point was added that the wording in the licence in relation to gaps in the floorboards on the means of escape should also match that in the fire risk assessment.
13. The Applicant's appeal was heard by the Tribunal by video conference on 4<sup>th</sup> March 2021 using bundles of documents provided in electronic form by both parties. The attendees were:

For the Applicant:

  - Mr Michael Kennedy, London Residential

For the Respondent:

  - Ms Ruwani Roberts, counsel
  - Ms Suarez, principal witness

- Ms Judith Harris, Principal Environmental Health Officer

### *General objections*

14. Mr Kennedy expressed the Applicant's bemusement that the original licence had only 6 required items of work whereas, following the compliance inspection, the Respondent produced a list of 35 items which have already cost over £25,000 and might produce a final bill closer to £50,000. On top of that, while the parties were addressing that list, the Respondent used the fact that the licence had to be varied to add all outstanding matters into the licence instead of relying on the existing process.
15. The Tribunal has some sympathy with the Applicant. The Tribunal accepts that she has done her best to comply with the Respondent's requirements but, having listened to Ms Suarez's evidence, the Tribunal is not satisfied that the Respondent sufficiently understands or appreciates the Applicant's need for certainty. While Mr Kennedy's submissions repeatedly referred to the need for clarification, Ms Suarez was keen to retain her discretion to respond to later circumstances. It is understandable if some of her answers left the Applicant no closer to knowing exactly what is required of her in the here and now so as to avoid any sanction in the future.
16. Having said that, the Tribunal also accepts that the Respondent's concerns about the matters considered in this decision are well-founded and need to be resolved. The Respondent is entitled to do this through the medium of licence conditions. They have separate licensing and enforcement teams, with slightly differing objectives, which can result in the regular compliance inspection producing more work for the landlord than came out of the original licensing inspection.
17. The parties have made laudable efforts to resolve their differences through dialogue. In the light of what happened during the hearing when Ms Roberts was able to take further instructions moving her client a little closer to the Applicant's position, the Tribunal believes more could have been done in this regard.

### *Second-floor kitchen*

18. As Mr Kennedy explained, the Applicant is aware that the Respondent regularly uses its powers to issue penalty notices or prosecute landlords who fail to comply with the HMO licensing scheme. She is concerned that the Respondent might do the same to her if she is not clear on what she is required to do under her licence. In particular, she is concerned that the provision in the Schedule of Works in the licence in relation to the second-floor kitchen is not clear enough:

#### Second Floor Kitchen

7. Return the second floor kitchen to use and ensure that it complies with all requirements as specified in the Camden HMO Standards including but not limited to:

- worktop
- fridge/freezer
- refuse storage
- sockets
- etc.

Before carrying out works a set of drawings indicating size and positioning of the kitchen amenities must be produced for final approval by the Environmental Health Officer.

19. Mr Kennedy said that, as he read the Respondent's HMO standards, the second-floor kitchen was too small in overall size and to accommodate the amount of worktop required. Ms Suarez explained that, in relation to the floor size, he had looked at the wrong part of the relevant table – although the building had up to 10 residents, only a maximum of 5 were expected to use the second-floor kitchen, on which basis it was just large enough. On taking instructions, Ms Roberts also suggested Mr Kennedy had miscalculated and the amount of required worktop space was considerably less than he had thought.
20. The parties had discussed the Applicant's plans for the second-floor kitchen in and out of mediation. As far as the Respondent is concerned, there is no problem with those plans, save that they need to see the drawings referred to in the licence.
21. In order to allay the Applicant's concerns about the uncertainty as to what the Respondent might conclude as to her compliance, the Respondent suggested adding the words "as far as reasonably practicable" between the words "Standards" and "including" in section 7 quoted above. In the Tribunal's opinion, that is sufficient and the Tribunal upholds the variation of the licence on the basis that those words are added.

#### *Boiler cupboard/fire precautions*

22. The Applicant doesn't object to the works specified in the Schedule to the licence as such. She originally queried why the wording in the licence differed from that in the fire risk assessment but it became a non-issue when the Respondent explained the wording at a recent meeting. However, the Applicant remains non-plussed by the requirement to engage a RIBA architect to oversee the works.
23. In the Tribunal's opinion, the Respondent has reason to be concerned about the standard of the fireproofing works carried out to date and it is more than reasonable for them to insist on someone competent to ensure that such works are up to the relevant standard this time. Section 8 of the Schedule of Works to the licence refers to a "competent person (e.g. a RIBA architect)" and this wording is clearly wide enough

to encompass professionals other than members of the Royal Institute of British Architects.

24. Having said that, the Applicant has now decided to relocate and replace the boiler. With the boiler out of the cupboard, the Respondent accepts that the fireproofing works would be easier to carry out and they would be content just with the requirement to use a builder who is a member of a professional body such as the CIOB (Chartered Institute of Building), also mentioned in Section 8 of the Schedule.
25. The Applicant has suggested that the boiler works would have to be during the summer months so as to minimise the impact of the property being without heating or hot water. However, the Tribunal sees no reason why, since it will be located elsewhere, the new boiler cannot be installed while the old boiler carries on working – the changeover from one to the other should be feasible within a day. This means there is no need to delay such works.
26. Ms Suarez estimated that two months should be sufficient to install the new boiler. In the Tribunal's opinion, 3 months should be sufficient to do the fireproofing works as well. On that basis, if the works in Section 8 are completed within 3 months, then the requirement to engage "competent person (e.g. a RIBA architect)" can be disapplied for that period.

#### *Gaps in flooring*

27. The same reasoning applies to addressing the gaps in the flooring. If the works in Section 11 of the Schedule are completed within the same 3-month period then the requirement to obtain "confirmation from RIBA architect" can be disapplied.

#### *Wash hand basins*

28. Mr Kennedy emphasised the submissions already made in writing that what they understood as the Respondent's reasoning for installing wash hand basins in the rooms which did not have them did not make sense. What he had not taken into account was paragraph 2(1)(b) of Schedule 3 to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (see the Appendix to this decision) which provides that there must be a wash hand basin with appropriate splash back in each unit where reasonably practicable. Essentially, subject only to its being reasonably practicable, the Respondent has no choice but to insist on wash hand basins in the relevant rooms.
29. The first and second floor middle bedrooms each share a wall with a plumbed room and it seems clear that it would be reasonably practicable to install wash hand basins in those two rooms. The ground floor bedroom is not so conveniently located and, during the hearing, the Respondent conceded that it would not be reasonably practicable to install a wash hand basin in that room.

30. On that basis, the words “Ground floor front room” are deleted from section 18 of the Schedule of Works to the varied licence.

### Conclusion

31. While the Tribunal understands the Applicant’s various concerns, the Tribunal is satisfied that the varied licence should remain in the terms proposed by the Respondent save for the modifications referred to above.

**Name:** Judge Nicol

**Date:** 7<sup>th</sup> March 2022

### **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).

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **67 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.



## **69 Variation of licences**

(1) The local housing authority may vary a licence–

- (a) if they do so with the agreement of the licence holder, or
- (b) if they consider that there has been a change of circumstances since the time when the licence was granted.

For this purpose “change of circumstances” includes any discovery of new information.

(2) Subsection (3) applies where the authority–

- (a) are considering whether to vary a licence under subsection (1)(b); and
- (b) are considering–
  - (i) what number of households or persons is appropriate as the maximum number authorised to occupy the HMO to which the licence relates, or
  - (ii) the standards applicable to occupation by a particular number of households or persons.

(3) The authority must apply the same standards in relation to the circumstances existing at the time when they are considering whether to vary the licence as were applicable at the time when it was granted.

This is subject to subsection (4).

(4) If the standards–

- (a) prescribed under section 65, and
  - (b) applicable at the time when the licence was granted,
- have subsequently been revised or superseded by provisions of regulations under that section, the authority may apply the new standards.

(5) A variation made with the agreement of the licence holder takes effect at the time when it is made.

(6) Otherwise, a variation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under paragraph 35 of Schedule 5 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).

(7) The power to vary a licence under this section is exercisable by the authority either–

- (a) on an application made by the licence holder or a relevant person, or
- (b) on the authority's own initiative.

(8) In subsection (7) “relevant person” means any person (other than the licence holder)–

- (a) who has an estate or interest in the HMO concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or
- (b) who is a person managing or having control of the house (and does not fall within paragraph (a)), or
- (c) on whom any restriction or obligation is imposed by the licence in accordance with section 67(5).

## **71 Procedural requirements and appeals against licence decisions**

Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.

**SCHEDULE 5**  
**LICENCES UNDER PARTS 2 AND 3: PROCEDURE AND APPEALS**

**PART 3**  
**APPEALS AGAINST LICENCE DECISIONS**

**32 Right to appeal against decision or refusal to vary or revoke licence**

(1) The licence holder or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority—

- (a) to vary or revoke a licence, or
- (b) to refuse to vary or revoke a licence.

(2) But this does not apply to the licence holder in a case where the decision to vary or revoke the licence was made with his agreement.

**34 Powers of tribunal hearing appeal**

(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 a re-hearing, 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.

**Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006**

**8.— Prescribed standards for deciding the suitability of a house for multiple occupation by a particular maximum number of households or persons**

(1) The standards prescribed for HMOs other than section 257 HMOs for the purpose of section 65 of the Act (tests as to suitability of HMO for multiple occupation) are those set out in Schedule 3.

(2) The standards prescribed for section 257 HMOs for the purpose of section 65 of the Act are—

- (a) that all bathrooms and toilets contained in each flat must be of an adequate size and layout, and all wash-hand basins must be suitably located and be fit for purpose, having regard to the age and character of the HMO, the size and layout of each flat and its existing provision for wash-hand basins, toilets and bathrooms;
- (b) those standards set out in paragraph 4(1) of Schedule 3, in so far as it is reasonably practicable to comply with them; and
- (c) those standards set out in paragraph 5 of Schedule 3.

**SCHEDULE 3**  
**Prescribed standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons**

**Washing facilities**

**2.—**

(1) Where all or some of the units of living accommodation in an HMO do not contain bathing and toilet facilities for the exclusive use of each individual household—

(a) there must be an adequate number of bathrooms, toilets and wash-hand basins suitable for personal washing) for the number of persons sharing those facilities; and

(b) where reasonably practicable there must be a wash hand basin with appropriate splash back in each unit other than a unit in which a sink has been provided as mentioned in paragraph 4(1),

having regard to the age and character of the HMO, the size and layout of each flat and its existing provision for wash-hand basins, toilets and bathrooms.

(3) All baths, showers and wash hand basins in an HMO must be equipped with taps providing an adequate supply of cold and constant hot water.

(4) All bathrooms in an HMO must be suitably and adequately heated and ventilated.

(5) All bathrooms and toilets in an HMO must be of an adequate size and layout.

(6) All baths, toilets and wash hand basins in an HMO must be fit for the purpose.

(7) All bathrooms and toilets in an HMO must be suitably located in or in relation to the living accommodation in the HMO.