



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

Case Reference : **BIR/00FN/HML/2018/0010**

Property : **20 Vicarage Avenue, Derby, DE23 6TP**

Applicant : **Sunoo Bi**

Applicant's Representative : **Shafaqat Sadiq**

Respondent : **Derby City Council**

Type of Application : **Application relating to licensing of a house in multiple occupation**

Tribunal Members : **Tribunal Judge P. J. Ellis
Tribunal Member R. Chumley-Roberts
MCIEH, JP**

Date of Hearing : **18 February 2019**

Date of Decision : **22 February 2019**

Decision

The Tribunal determines that the following conditions attached to the HMO licence granted to the Applicant on 2 October 2018 are reasonable and will not be varied or revoked:

a. Provide an additional cooking appliance with 4 ring hob and oven (not adjacent to cooking appliance already present). This shall be completed within 12 months of the licence being issued.

b. Enclose the shower room to the ground floor rear of the property to be incorporated within the house by means of properly constructing an extension to enclose the area between the kitchen and the shower room. This shall be completed within two years of the licence being issued.

Introduction

1. This is an application by Mrs Sunoo Bi of 47 Overdale Road, Derby DE23 6AU relating to conditions of a licence of a house in multiple occupation. The Applicant was represented by her son Shafaqat Sadiq who resides in the subject property.
2. The Respondent is the Derby City Council represented by Ms Patricia Hodgkinson an Environmental Health Officer and Ms Florence Harper a solicitor both employed by the Respondent.
3. On 14 August 2018 the Respondent served on the Applicant and Mr Sadiq a notice that the Respondent as local housing authority proposed to grant a HMO licence for residential premises known as 20 Vicarage Avenue, Derby DE23 6TP (“the Property”). On 2 October 2018 the Respondent granted the HMO licence subject to conditions.
4. The conditions attached to the proposed licence which are the subject of this application specify works required to meet standards prescribed under s65 Housing Act 2004 (“the Act”). The works specified are:

- a. Provide an additional cooking appliance with 4 ring hob and oven (not adjacent to cooking appliance already present). This shall be completed within 12 months of the licence being issued.*
 - b. Enclose the shower room to the ground floor rear of the property to be incorporated within the house by means of properly constructing an extension to enclose the area between the kitchen and the shower room. This shall be completed within two years of the licence being issued.*
5. There was another condition wrongly appealed namely an item relating to smoke detection the subject of an Improvement Notice. It did not form any part of these proceedings nor did two other conditions (listed as 2 and 4) in the schedule of works relating to the supply of a fire blanket and a dishwasher or additional sink.
6. On 21 October 2018 the Applicant by Mr Sadiq issued this application appealing against the two conditions set out in paragraph 4 on behalf of the Applicant, his mother.
7. The ground of the Applicant's appeal is that a further 4 ring hob is not required as the existing 6 ring hob and oven is more than adequate for cooking use of the occupants and there are no issues over utilisation. In relation to the extension enclosing the separate shower room the Applicant's ground of appeal is that the three storey property currently has two internal bathrooms and although one has a lack of standing space in the bath occupants have never taken issue with the lack of useable height over it.
8. Directions for determination of the application were given on 5 November 2018 providing for submission of statements of case and for a paper determination after inspection of the Property by the Tribunal. The Respondent submitted its statement of case in accordance with the directions. Mr Sadiq notified the Tribunal, by email on 18 January 2019 that the Applicant relied upon the submission made in support of the application.

The Property

9. The Tribunal inspected the Property on 18 February 2019 in the presence of Mr. Sadiq for the Applicant and Ms Hodgkinson and Ms Harper for the Respondent.
10. 20 Vicarage Avenue is a semi-detached three storey building of brick and tile construction built in the late 19th Century. From street level it has the appearance of two storeys. On inspection it is apparent the third storey is in the roof space. The Property is in reasonable overall condition. Entrance is by a side door into a small hallway off which are three bedrooms. The Tribunal did not inspect the bedrooms. The hallway leads to the rear kitchen which is reasonably spacious with fitted cupboards and white goods and adequate work services. There is a fitted 6 ring gas hob. The kitchen serves as the only common room in the building.
11. A door from the kitchen leads to a garden area mostly lawn. At the rear of the Property and attached to it is a small single storey out house used as the boiler room. There is a further building in close proximity to the boiler room used as a wet room with shower, w/c and hand basin. All are in working order but it was apparent that the room is not in regular use as there were various items of building material stored there.
12. Stairs lead to the first floor which has four bedrooms and a reasonable sized bathroom equipped with bath, w/c, hand basin and shower cubicle. There are stairs to the upper floor where there are two more bedrooms a storage room and another bathroom with bath with shower attachment, w/c and hand basin. As the upper floor occupies attic space the ceiling is not at full height over the bath. It is impossible to stand in the bath either for a shower or for convenient use.
13. The Property has gas central heating. The front and rear doors are double glazed as are most of the windows. At the time of inspection there were eight residents.

The Parties Submissions

14. The Applicant by her application form relied upon the adequacy of the existing arrangements for both cooking and bathroom facilities. It was stated that the gas rings are sufficient for the occupiers needs but that if further cooking facilities are required they could be met by the installation of a microwave. At the time of inspection no microwave had been installed.
15. As far as the bathroom was concerned the Applicant again relied upon the alleged adequacy of the existing arrangements but admitted that if necessary the store room could be converted to a shower room.
16. The Respondent presented evidence that Ms Hodgkinson had inspected the Property on 18 July 2018 as part of the HMO licence process. She carried out an inspection using the Health & Safety Rating System (HSRS) under the 2004 Act followed by a desktop assessment of the hazards on the Civica APP computer system and produced the assessment for the Tribunal to examine. Further guidance in her assessment was derived from the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 (“the Regulations”) and the Derby City Council Amenity guidance for houses in multiple occupation.
17. The Respondent relied upon Schedule 3 of the Regulations which provides
 - a. *at 2(7) all bathrooms and toilets in an HMO must be suitably located in or in relation to the living accommodation in the HMO*
 - b. *at 3(b) the kitchen must be equipped with the following equipment which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities(iii) installations or equipment for the cooking of food.*
18. Ms Hodgkinson concluded that the 6 ring gas cooker was not adequate for the number of occupiers of the Property. Also the ground floor shower room was not suitably located in the living accommodation and the second floor

bathroom with low headroom was not fully accessible especially as it is not possible to stand in the bath.

19. Accordingly the Respondent issued the conditions the subject of this application.

The Statutory Framework

20. S67(1) of the Act empowers a local housing authority to impose conditions which it considers appropriate for regulating the management use and occupation of the house and its condition and contents. By subsection (2) the Act provides that the conditions may in particular include at paragraph (c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;

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

20. Paragraph 32 Schedule 5 of the Act provides that the licensee may appeal to the 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.

By paragraph 34 any Appeal to the Tribunal is to be by way of rehearing and the tribunal may confirm, reverse or vary the decision of the local housing authority.

Decision

21. The Tribunal observed the kitchen on the ground floor. It is spacious and well equipped. There is ample space for an additional four ring hob for cooking. The Property is suitable for up to nine residents. The kitchen is the only common room. The existing six ring hob is not adequate for all residents

preparing meals at the same or similar times. The Applicant avers that the present residents do not require any more provision for food preparation but that is irrelevant as the standards set by the Respondent are an objective assessment of the equipment required for all residents.

22. The Tribunal determines that the condition attached to the HMO licence requiring installation of a four ring hob is reasonable and will not be varied or revoked.
23. The Tribunal observed that the outside shower room was of satisfactory size and was equipped with appropriate fittings in working order. It was accessed by a short walk outside from the rear kitchen door. Residents are required to go outside in all weathers to gain access to the shower room. It appeared to the Tribunal the present residents are not using it having noted some building material stored in the room.
24. The relevant condition requires that the shower room is incorporated into the building. The condition must be satisfied within two years. If incorporated the shower room will provide a suitable facility for the ground floor residents. It is not currently a satisfactory facility for the residents. The Tribunal is satisfied that incorporating the shower room in accordance with the second condition is reasonable.
25. The bathroom on the upper floor is small and of limited height over the bath. The Applicant indicated it would be possible to put either a shower cubicle in the store room on the upper floor or alternatively place a w/c in that room enabling rearrangement of the bathroom to make use of that room with full height over a repositioned bath. The Tribunal will not impose any new condition to give effect to that arrangement although the parties will continue to discuss possible reconfiguration of the upper floor bathroom facility.

Appeal

26. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Tribunal Judge PJ Ellis

Chair