



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

**Case Reference** : **MAN/32UD/HML/2018/0008**

**Property** : **14 Avondale Street, Lincoln, LN2 5BL**

**Applicant** : **Spericle Limited**

**Respondent** : **Lincoln City Council**

**Type of Application** : **House in Multiple Occupation, appeal relating to a licensing decision, schedule 5, paragraph 31, Housing Act 2004.**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA.  
Mr P. E. Mountain, FRICS.**

**Date of Determination** : **02 May 2019**

**Date of Decision** : **13 May 2019**

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**DECISION**

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## **Application and Background**

1. The Applicant Spericle Limited is the leaseholder of 14 Avondale Street, Lincoln, LN2 5BL, "the property". The leaseholder is represented by Mr Sath Vaddaram, who, on 16 April 2018, applied for a licence to use "the property" as a House in Multiple Occupation, permitting eight persons in six families to occupy "the property".
2. The Respondent, Lincoln City Council, is the relevant licensing authority. On 6 June 2018, Miss Claire Nuttley a Housing Standards and Enforcement Officer employed by Lincoln City Council inspected "the property". On 14 September 2018 Miss Nuttley, on behalf of the Respondent, issued a property licence as requested. Three conditions pursuant to section 64 (3)(a) of the Housing Act 2004 "the Act" are attached to the licence. The third condition is, "The licence holder shall supply and install an additional cooker comprising an oven, a grill and a four ring hob, complying with gas safety regulations if applicable. To be completed within three months of the commencement date of the licence."
3. Mr Vaddaram and Miss Nuttley then corresponded as to how this condition should be complied with. The representatives of the parties were unable to agree on this issue and the Applicant put the issue before this Tribunal to decide whether or not his proposed course of action satisfies the condition.
4. Both parties agreed that the case should proceed without an oral hearing and submitted their written cases for consideration by the Tribunal.

## **The inspection**

5. The Tribunal inspected "the property" at 10am on 2 May 2019. The Applicant being represent by Mr Vaddaram, accompanied by Mr Peter Robertson, a construction manager for Buildrow and maintenance manager for the Applicant. The Respondent was represented by Miss Claire Nuttley, accompanied by Mr Mark Sherwood, who is also a Housing Standards and Enforcement Officer employed by the Respondent.
6. "The property" is a mid-terraced house with four single bedrooms, two bedrooms that might be used as double bedrooms, three bathrooms, a lounge and a kitchen. The case papers provide an adequate description of "the property" generally. It was agreed by all present that the Tribunal need only inspect the kitchen of "the property" in detail.
7. The Tribunal gained access to the kitchen from the lounge, the kitchen being situated between the lounge and the ground floor bathroom,

containing the only ground floor toilet. The rear exterior door is at the far end of the kitchen next to the bathroom. As such it is evident that occupiers would need to pass through the kitchen to access the rear door and the bathroom.

8. The wall to wall internal measurements of the kitchen are that it is 5.92 meters in length by 1.97 meters wide. The narrowest point in the access way down the centre of the kitchen is in passing the existing cooker at 83 centimetres wide.
9. When observing the kitchen from the lounge entrance there is a work top to the left that is 4.23 meters in length. The area above this work top is occupied by a window situated in roughly the centre of the area that accommodates the work top, the window aperture being 1.775 meters wide. There is a sink and drainer underneath the window. On either side of the window are wall cupboards, the one nearest the lounge being 1.2 meters long, the furthest from the lounge being 1 meter long. Both wall units are raised 50 centimetres above the work top. Where the work top ends some clothes drying machine has been installed and after that there is access to the exterior door.
10. The opposite side of the kitchen has three small areas of wall that project out into the kitchen. The presently installed cooker stands between the first two of these projections. There is then a breakfast bar situated between the second and third projections. The breakfast bar is 1.69 meters long with two 60 centimetre long wall cupboards above, situated one to either end of the breakfast bar. These are raised 50 centimetres above the breakfast bar. The breakfast bar is just under 30 centimetres wide. After the third projection there is a water boiler and a central heating radiator before reaching the wall to the bathroom.
11. During the inspection and in the presence of Miss Nuttley, Mr Vaddaram stated that irrespective of the Tribunal decision he intended to replace the existing kitchen at some point in the future, considering extending the kitchen into the lounge area. There was a difference of opinion between Miss Nuttley and Mr Vaddaram as to whether this had been mentioned previously. In any event the Tribunal inspected the kitchen as it presently stands and will take its observations as to the kitchen as it stands into account in deciding the issue in the case. Where a measurement has involved a distance of 4 millimetres or less, there has been a rounding up of the measurement.

## **The Law**

### **The Housing Act 2004**

#### **Section 64, 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;

(aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who—

- (i) owns an estate or interest in the house or part of it, and
- (ii) is a lessor or licensor of the house or part;

(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.

### **Section 65, 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.

### **PART 3, APPEALS AGAINST LICENCE DECISIONS**

#### *Right to appeal against refusal or grant of licence*

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 (1)(b) may, in particular, relate to any of the terms of the licence.

### **Written Submissions**

12. Only brief descriptions are provided of the respective cases of each party. Those cases are set out in detail in bundles of over 250 pages in length. The Tribunal will refer to detailed points during its determination of the question as to whether or not the proposed mini ovens satisfy condition three (see paragraph 2, above).

### **The Applicant**

13. In brief the Applicant first suggested that he could comply with condition three (see paragraph 2, above) by installing one Andrew James mini oven with grill and double hob. By the time that the application was made to the Tribunal this had changed to the provision of two of these mini ovens.
14. The specifications of these cookers are found within the case bundles (Applicants bundle, pages 75 to 79) (Respondents bundle, pages 146 to 156 and page 178).
15. These ovens are described by the manufacturer (Applicant's bundle, page 77, third paragraph) as "table top electric ovens". Further described as, "The work top cooker is great for homes, offices, caravans, camping and student accommodation" (Applicant's bundle, page 77, first paragraph).
16. The oven has a 33 litre capacity, one food tray, one grill rack and two hob rings on the hot plate area. There is a warning not to place aluminium foil on the crumb tray as this may cause overheating (Respondent's bundle, page 149) and a specific safety instruction that "When operating the oven leave a 12 cm space on all sides of the oven to allow for adequate air circulation" (Respondent's bundle, page 148).
17. These cookers are clearly portable. External dimensions are 53 centimetres long by 32 centimetres high by 32 centimetres wide (Respondent's bundle, page 178).

18. In the Applicant's comments dated 19 March 2019 the Applicant suggests that these ovens could be installed in another room other than the kitchen ( paragraph 24) and that they can be fixed to the wall, [ but without providing any detail as to how this could be done] ( paragraph 36). Further, that the ovens can be fitted between worktops at the same height as the worktops, with the hob rings no more than 920 millimetres above the floor [ but without providing any detail as to how this could be done] ( paragraph 38).
19. The Applicant makes it clear that in his view the Tribunal should give no evidential weight at all to the Respondent's Adopted H. M. O. Standards, (Respondent's bundle, a ten page document, tab 26). He submits, in effect, that these are self serving and have no legal basis upon which they should be followed.

### **The Respondent**

20. In brief the Respondent submits that these cookers are not capable of satisfying condition three (see paragraph 2, above). They are portable ovens and only a fixed oven will satisfy condition three.

### **The Deliberations**

21. There is no challenge to the validity of this licence, or even to the validity of condition three to the licence (see paragraph 2, above). As such the only issue for the Tribunal to decide is whether or not the provision of two mini ovens (as described above) satisfy condition three.
22. Firstly, the Tribunal considers its observations during the inspection of the kitchen. The Tribunal notes that the Applicant suggests that the mini ovens can be placed as described in paragraph 18 above. Having taken careful measurements of the space available in the kitchen as it is currently designed this is simply not possible.
23. The Tribunal considers the external dimensions of the mini ovens, 53 centimetres long by 32 centimetres high by 32 centimetres wide. Further, that the manufacturer gives a specific safety instruction that "When operating the oven leave a 12 cm space on all sides of the oven to allow for adequate air circulation". Further, for the use of the hob rings it must be possible to put a pan on the hob ring and there be space to stir the contents and look into the pan. Having considered the spaces available in the kitchen there are only two areas in which they could possibly be operated and that is on the very edges of the work top to either side of the kitchen sink, but not under the window as Lincoln City Councils Adopted Standards indicate that such mini ovens should not be placed under a window. They would have to be placed with their fronts on the edge of the work to be clear of the wall cupboards above. The Tribunal determines that

this would be unsafe for the occupiers of "the property". The additional risk that this would create towards the occupiers of burning and scalding in this narrow kitchen are such that the Tribunal concludes that there is no safe place for the mini ovens to be sited in the kitchen as it now stands.

24. The Tribunal notes that in the Applicant's comments dated 19 March 2019 the Applicant suggests that these ovens could be installed in another room other than the kitchen. The only other room in "the property" that is not a bedroom or a bathroom is the lounge. That is a small room of only 13.3 square meters, having two internal doors, providing access to the kitchen and is the only space in which eight occupiers could relax and eat their meals, other than in their own bedrooms. It would be unreasonable to further seek to reduce that space by installing two mini ovens in that space. In any event, as that room is currently set out there would be no safe place to place two mini ovens. Kitchen appliances should remain in the kitchen, otherwise the additional risks involved in the presence of a hot oven and or hob are extended to an otherwise less risky environment.
25. The Tribunal does not give any relevance to technical bulletin 022. The Applicant seeks to provide electric mini ovens and the bulletin relates to gas ovens (Respondent's bundle, a five page document, tab 28).
26. The Tribunal notes the content of page 258, extracted from the B. R. E. Housing Design Handbook, that cookers should not be placed under a window or wall cupboard, for fear of causing curtains or the cupboards to catch fire. The Tribunal considers this to be guidance only, but agrees that the guidance is both sensible and reasonable. (Respondent's bundle, tab 27).
27. The Tribunal considered the content of Lincoln City Council's Adopted Standards for HMO's within the City of Lincoln, revised August 2018. (Respondent's bundle, a ten page document, tab 26).
28. The Applicant objects to this document on the basis that it is self serving, made by the Respondent and then relied upon by the Respondent in support of its case before this Tribunal.
29. The Tribunal refers to section 65 of "the Act". Subsection 1 of that section requires that a landlord must comply with the prescribed standards made by statutory instrument pursuant to "the Act". In Addition sub section 2 of section 65 of "the Act" provides that the authority (which in this case is the Respondent) can decide that the house is not reasonably suitable for occupation by persons under the ambit of a house in multiple occupation even if the statutory instruments are complied with. As such it must be possible for each authority to adopt its own standards that go further than those in the statutory instruments. The Respondent has followed this procedure and adopted standards for its own use.



30. The Tribunal has reviewed these standards and considers them to be reasonable. The Tribunal therefore decides that it will apply these standards to this case.
31. The Tribunal notes that at the time that the Applicant made its application for this H. M. O. licence this format of adopted standards was not current as they were revised in August 2018. However, the licence was not granted until 14 September 2018, by which time these adopted standards were in use.
32. The Tribunal notes that the adopted standards for the licence issued requires that there be two cookers in the kitchen and that (a) They must be fixed and preferably located between worktops. There should be a minimum width of 250 mm of worktop either side of the cooker. (b) The cooking rings must be no more 920 mm above floor level. (c) Mini cookers sited on worktops are not suitable in shared kitchens. The Tribunal considers this to be compelling evidence that the proposed mini ovens are therefore not suitable for this kitchen.
33. The Tribunal then considers a list of nine points in which the Respondent sets out reasons why the mini ovens are not reasonable or practicable for use in an H. M. O.. These points are answered by the Applicant in turn (Respondent's bundle, tab 28, page 116 and 117). These are too lengthy to reproduce here, but the Tribunal makes the following determinations.
34. Point 1. The Tribunal agrees with the Applicant that at no stage do the specifications for the mini oven say that they are not suitable for use in an H. M. O.. However the adopted standards make it clear that portable mini ovens are not suitable for use in a shared kitchen in a H. M. O.. With regard to pints 2, 3, 4, 7, 8, and 9 the Tribunal reiterates that the adopted standards make it clear that portable mini ovens are not suitable for use in a shared kitchen in a H. M. O.
35. In points 5 and 6 the Applicant seeks to suggest that fixed cookers are also portable, in effect, posing the same risks as a portable mini oven. The Tribunal decides that this is an unrealistic view of the nature of a fixed oven and in any event the adopted standards make it clear that portable mini ovens are not suitable for use in a shared kitchen in a H. M. O.
36. The Tribunal does not consider reviews of the mini ovens, said to be made by customers, to be reliable and determines that it will give no evidential weight to them (Respondent's bundle, tab 23).
37. For all the reasons considered above the Tribunal decides that provision of the two portable mini ovens as described above, or indeed provision of any

- portable mini ovens will not satisfy condition three as set out in paragraph 2 above.
38. The Applicant has referred to other matters in its statement of case (page E, paragraph XXII) and these have been further referred to by the Respondent. These matters are outside the jurisdiction of the Tribunal.
  39. The Applicant seeks an award of costs in its favour. The Applicant has not succeeded in its application and the Tribunal finds it to be just and reasonable to decline to make such an order.
  40. The representatives of the parties agreed at the inspection that if the case were to be decided in this manner the parties could very quickly remedy matters themselves without further input from the Tribunal. However, for the sake of completeness, the Tribunal notes that condition two and condition three in the licence (Respondent's bundle, page 131, tab 22), both impose a time limit that has now expired. A new time limit should be inserted that gives three months to comply from the date that this Decision is sent to the parties.

### **The Decision**

41. The provision of any portable mini oven or portable mini ovens in the kitchen of "the property" will not be sufficient to comply with condition three of this licence as is set out in paragraph 2 above. Time limits imposed in condition two and condition three in the licence (Respondent's bundle, page 131, tab 22), both impose a time limit that has now expired. A new time limit should be inserted that gives three months to comply from the date that this Decision is sent to the parties.
42. Any party wishing to appeal against this Decision has 28 days from the date that the Decision is sent to him to deliver an application for permission to appeal to the Tribunal. Such an application should state the grounds upon which the appeal is sought and provide particulars of that ground or grounds.

**Signed: Judge C. P. Tonge**

**Decision sent on: 13 May 2019**