



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

Case Reference : **MAN/00BN/HML/2019/0001**

Property : **41, Furness Road, Fallowfield,
Manchester M14 6LX**

Applicants : **John Young**

Respondent : **Manchester City Council**

Type of Application : **Housing Act 2004, Schedule 5 Paragraph 31**

Tribunal Member : **Mr J R Rimmer
Mr Faulkner**

Date of Determination : **7th June 2019**

Date of Decision : **22nd July 2019**

DETERMINATION

© CROWN COPYRIGHT 2019

Order : The Applicant's appeal is allowed. The licence is varied in accordance with paragraph 36, herein.

A. Application and background

1. The Tribunal has received an application under paragraph 31 of Schedule 5 to the Housing Act 2004 ("the Act") against a decision of Manchester City Council (the local housing authority) to impose one particular condition upon the granting of a licence to operate a house in multiple occupation ("HMO")
2. The Applicant is the owner of the property at 41, Furness Road, Fallowfield, Manchester which is operated as an HMO. Under previous ownership it was licensed for occupation by 6 persons/6 households.
3. The Applicant purchased the property in May 2018 and in order for it continue to operate as an HMO a new licence was required in the Applicant's name as the existing licence was not transferable.
4. The Respondent, being the local housing authority for the area in which the property is situated, advised that it proposed to grant a new licence to the Applicant, subject to the its determination that the premises are reasonably suitable for occupation by not more than 5 occupants and/or 5 households, one fewer than had previously been the case.
5. To ensure that this reduction is achieved the authority imposed 2 specific conditions:
 - (1) The licence holder is required to reduce the occupancy level of the licensed premises to 5 occupiers within 18 months in order to meet Manchester City Council's HMO standards relating to space
 - (2) The licence holder must prohibit the use of the ground floor front room as a bedroom within 18 months from the date on which the licence is granted... the room should then be made available as a dining/living space for the occupiers remaining in the premises.
6. The rationale behind the reduction in the number of persons/households permitted to occupy the property was that although the six rooms proposed as bedrooms all satisfied the mandatory requirements relating to room size, they failed to satisfy the additional requirements as to size within the local housing authority's guidance and there was therefore a need for an increase in the size of shared dining and kitchen accommodation to provide sufficient living accommodation.
7. The Applicant made representations to the authority against the reduction in number, but after giving those representations due consideration the authority nevertheless granted a licence, dated 17th December 2018, with the number of persons/households remaining at 5.

8 He therefore exercises his right to appeal against the imposition of that condition to the Tribunal and within the course of that appeal he has proposed alterations to the premises to extend the communal dining and kitchen facilities within the property, at the expense of reducing the size of one of the two downstairs bedrooms. This does not meet with the approval of the Respondent in view of the effect it has on the size of that bedroom.

B Inspection

9 On the afternoon of Thursday 30th May 2019 the Tribunal inspected the property at 41, Furness Road and found it to be a large Victorian/ Edwardian house, constructed of brick, under a tile roof, set back from the pavement and having a small rear yard giving access to a rear alleyway. There is a hallway on the ground floor giving access to two bedrooms, internal shower room with wc and a communal kitchen/dining room. A staircase leads to the first floor on which there are three bedrooms and a further shower room/wc. Access may then be gained from the landing to a one-roomed attic conversion via a further staircase and which has its own wash-hand basin. The property is situated in an area popular with students and which is convenient both for academic institutions and the city centre. There area is well provided with local amenities.

C The Law

10 It is appropriate at this stage to set out the various statutory and regulatory provisions that the Tribunal needed to take into account in coming to its decision.

11 As many of the issues between the parties are agreed it is not necessary to consider much of the legislation in any great detail, but only that which relates to the matter in dispute between the parties relating to the condition under consideration.

12 Section 254 Housing Act 2004 (“the Act”) provided the definition of an HMO. It is not disputed that this property is an HMO.

13 Sections 55 to 78 Housing Act 2004 provide the regime for the licensing of HMOs. Section 67 refers to conditions attached to the licence:

- (1) A licence may include such conditions as the local housing authority consider appropriate for regulating 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...
 - (a) Conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by the persons occupying it
 - (3) A licence must include the conditions required by Schedule 4. These are now the conditions as expanded by the 2018 The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) regulations.
- 14 The condition most pertinent to this current case is the requirement, now inserted by the latest Regulations, for rooms used for sleeping by any adult occupier to be at least 6.51 square metres in area.
- 15 Schedule 5, Paragraph 31 of the Act then provides that-
- (1) The licence holder or any relevant person may appeal to (the tribunal) against a decision of the local housing authority-
 - (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.

D Submissions and evidence

- 16 The Applicant clearly shows how aggrieved he is with the Respondent, it having previously granted a licence for occupation by 6 persons/6 households and now changing this to 5. He suggests the property is in good condition and has been occupied by 6 persons since 2016. Indeed, it is likely to remain so unless and until the second condition takes effect in June 2020.
- 17 He suggests that there has been no change to the basic room dimensions since the granting of the earlier licence and whilst all 6 rooms exceed the minimum required area, three of them are larger in area than the requirement for a bed sitting room, for which an area of 10.22 square metres is the required minimum.
- 18 The Applicant proposes that he will extend the dining room into part of the space currently occupied as a bedroom which adjoins it by taking down a load-bearing wall and inserting a joist and then a new bedroom wall. He also suggests that this room should be the new dining area, if necessary, rather than the other, front bedroom, thus preventing the living areas being separated by an intervening bedroom.

- 19 The Respondent provided an outline of the inspection of the premises on two occasions to ascertain the measurements of the rooms and the determination that in view of the areas involved in the bedrooms it was necessary to provide living accommodation elsewhere in order to comply with the standards for the housing policy of the Respondent relating to HMOs. It was therefore appropriate to reduce the number of occupiers to 5. It did not consider the proposal put forward by the Applicant to be an appropriate solution.
- 20 The Respondent also assisted the Tribunal with the provision of a copy of the extensive policy and guidelines of the council in relation to housing standards for HNOs, together with a copy of a tribunal decision from London, Brandenburg Management Limited v The Royal Borough of Kensington & Chelsea (LON/00AW/HML/2014/0005) (“Brandenburg”) which it considered to assist its case.

E Determination

- 21 The Tribunal has taken all the matters raised by the parties in their respective submissions in order to come to its conclusions in this matter and considers what follows to be the most pertinent aspects of the case relevant to the conditions that are the subject matter of its determination.
- 22 The Respondent has a very clear and transparent policy for seeking to improve housing standards for HMOs within the city. The Tribunal is entirely satisfied that the policy is needed in a city such as Manchester with large numbers of students, and no doubt others of many differing age groups, seeking relatively small units of accommodation.
- 23 The Tribunal is satisfied that the need for further application after a 5 year period, or upon a transfer of ownership of the premises, envisages the prospect of a complete review of the premises and licence, and the possibility of change.
- 24 Furthermore, it is not unreasonable for the local housing authority to keep its standards, and their application under review, at any appropriate time in order to improve the housing stock within the city to the best of its powers.
- 25 For his part the applicant has clearly purchased what was, and remains for the time being, a property that is considered appropriate for 6 persons/6 households. He will be financially prejudiced if he must finally take one bedroom out of use. Clearly this can happen, but the Tribunal is not sure of the extent to which “Brandenburg” assists the Respondent’s case in that regard.
- 26 That case concerned a council that had previously granted a licence of premises without measurement of the rooms, but on a reapplication had then taken measurements and found that one room fell below minimum standards set by that authority for size. That situation does not appear to arise here. There is no question of any room falling below the statutory minimum standards for size and

it does not appear to be any suggestion that the previous licence for 41, Furness Road was granted without available measurements.

- 27 It is the city Council's HMO standards that move on from the minimum room size requirements to provide that there needs to be additional communal living space because rooms fall short of being 10.22 square metres in area.
- 28 The Applicant points out that of the six current bedrooms, three do not reach the additional standard, but 3 have areas in excess of the 10.22 square metres requirement. Although the Tribunal has not been supplied with measurements for rooms on the upper floors of the premises (other than for the rear first floor bedroom which were provided at the inspection) it does not appear that the Respondent disagree with the measurements supplied by the Applicant in his letter of 16th November 2018.
- 29 The Applicant appears to ask, and the Tribunal should seek to determine, whether there is any flexibility in the policy and guidance provided by the Council.
- 30 Pages 11 and 12 of the Manchester City Council Houses in Multiple occupation Guidance and Amenity Standards provide the space standards to be expected where the dining and kitchen facilities need to be larger in area because the room sizes, although exceeding the statutory minimum, do not reach 10 square metres in area.
- 31 Clearly under the policy if all 6 rooms exceeded 10 square metres the size of any combined kitchen/dining area would be satisfactory. Equally if all rooms failed to reach the 10.22 square metre threshold the communal room would need to be 19.16 square metres to comply with the guidance, whereas it is in fact 15.73 square metres.
- 32 Is there any flexibility allowed, or envisaged, where 3 rooms are of sufficiently larger size and 3 not? The Tribunal believes the document should be read as providing that rooms must achieve the minimum size standard (it is not clear if these standards were set in their current form before or after the new regulations of 2018, but reference to a minimum of 6.5 square metres suggests it is recent). Thereafter there is clear reference to kitchen size being for guidance only.
- 33 There is then only reference to extra living space being required where bedrooms fall below the enhanced 10.22 square metre standard. There is no qualification as to whether this requirement applies where all, any, or some, rooms fail to reach this enhanced standard.
- 34 In the absence of any greater clarity the Tribunal determines that some flexibility is allowed and indeed envisaged. The reference to kitchen size at the foot of page 11 is clearly for guidance only. If the rooms that reach the enhanced standard are taken out of consideration of the need for any a larger communal area then the room is large enough.

- 35 Given this flexibility, should it be exercised in the Applicants favour in this instance? It is not because the previous licence was for 6 occupants/households that the Tribunal determines that it should, but because the flexibility that the Tribunal sees will still lead to reasonable amenity being provided within the premises for all who occupy each of the rooms and particularly those who of necessity will occupy smaller, rather than larger, rooms. This will still fall within a reasonable interpretation of the Respondent's standards
- 36 For the above reasons the Tribunal therefore varies the licence dated 17th December 2018 by deleting the Specific Property Conditions within the licence and by amending the licence to record that the Tribunal is satisfied the licensed premises are suitable for occupation by not more than 6 occupants and/or 6 households.

J R Rimmer
Tribunal Judge
7th June 2019