



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

Case Reference : CHI/9UJ/HMV/2019/0005

Property : 62, Rodwell Road, Weymouth,
Dorset DT4 8QU

Applicant : Mr Cyril Robert Moseley

Representative :

Respondent : Weymouth and Portland Borough Council

Representative :

Type of Application : Appeal against condition attached to grant of
HMO licence

**Tribunal
Member(s)** : Judge D. Agnew
Mr MJF Donaldson FRICS MCI Arb MAE

Date of Decision : 14th August 2019

DETERMINATION

Background

1. On 14th March 2019 the Respondent granted a licence to the Applicant and his son Mr S Moseley under section 64 of the Housing Act 2004 (“the Act”). Such a licence is required for the operation and management of a House in Multiple Occupation (“HMO”) at 62 Rodwell Road, Weymouth DT4 8QU (“the Property”).
2. Certain conditions were attached to the grant of the licence. The Applicant appeals against one of those conditions, the other conditions having been accepted and attended to by the Applicant.
3. The contested condition is as follows:

“Supply and fit a Grade A LD2 fire alarm and detection system in accordance with BS 5839 part 1. Installation and commissioning certificate to be forwarded to the Council on completion of the works.”
4. The appeal to the Tribunal is made under paragraph 31(1) of Part 3 of Schedule 5 to the Housing Act 2004 and is dated 28th March 2019. Directions were issued on 24th April 2019 providing for statements of case to be served. Further directions were issued on 14th May 2019 giving the Respondent permission to adduce the expert evidence of a representative of Dorset and Wiltshire Fire and Rescue Service.
5. The Directions were duly complied with and the case came before the Tribunal for hearing on 11th July 2019.

Inspection

6. The Tribunal inspected the Property immediately prior to the hearing in the presence of the Applicant and his son, Mr S Moseley, and two representatives of the Respondent, Mr Andrew Fricker (Senior Environmental Health Officer) and Mr Matt McGivney (Graduate Environmental Health Officer). The property comprises a three storey end of terrace house situated on a busy main road close to the town centre of Weymouth. It was originally constructed in or about the early part of the 20th century but has been completely renovated in the last couple of years. The accommodation now comprises, on the ground floor, an entrance hall, a bedroom, a kitchen with shower room off, and a lounge/dining room. On the first floor there are two bedrooms (one with en-suite facilities) and a bathroom and on the top floor there are two bedrooms, one with an en-suite bathroom. The rear garden is neatly paved with garden furniture seating. An archway leads through to the garden of the adjoining property which is also in the Applicant’s ownership and similarly furnished.
7. The Property has been renovated to a high standard with good quality work surfaces and appliances in the kitchen, all of which were electric, and similarly well finished bathrooms with good quality fittings. The

kitchen was not large enough to enable seating for meals but there was a good sized glass dining table in the lounge/dining room which would accommodate 4 people easily. There was good quality carpeting and floor coverings throughout the building.

8. The Tribunal took note of the alarm system which is operated by three switches in the entrance hallway. One is for the fire alarm test, another is to silence the system and the third isolates an active alarm. There were smoke detectors in all bedrooms and the hallway and a heat detector and fire blanket in the kitchen.
9. The whole property was in a clean, neat and tidy condition and was evidently respectfully looked after by the tenants.

The hearing

10. Mr Cyril Moseley told the Tribunal that whilst the renovation work was being carried out he requested a visit from a Council Environmental Health Officer as he wanted to ensure that they were interpreting the LACORS Guide¹ with regard to fire protection and the system they had chosen and installed correctly. Mr Cyril Moseley was well aware of the LACORS Guide and the need for fire protection measures as he has 40 years' experience of fire safety having served in three separate fire services and as one of HM Inspectors of fire services. Environmental health officer, Mr Adrian Newman, visited the property in February 2017 when the refurbishing works were not yet completed. However, Mr Moseley senior stated that the fire alarm system was in place at that time. Mr Newman was asked if there were any areas that he or his son had "missed" and the answer was: "no". He found the premises "a model of what we, as practitioners for housing standards, aim for in a property". If Mr Newman had any concerns about the fire alarm system this could have been changed at this stage before all the flooring had been installed. It is now a far bigger and more expensive task which would involve moving the tenants out and taking up the flooring.
11. Mr Cyril Moseley explained that the system they have installed is classed as a Grade D LD1 system, although with the test facility in the hallway he has been advised by his electrician that the system is more akin to a Grade C than a Grade D system. The Fire Officer who inspected the property and advised that a Grade A system should be required had done so on the basis that she had seen no fire risk assessment at that stage. She did not say why the system they had fitted was inadequate for the particular property concerned. Grade A is intended for the highest risk HMO situations whereas 62 Rodwell Road was at the low end of the risk spectrum. The LACORS Guide gives examples of, basically, two

¹ LACORS is the Guidance on housing fire safety provisions issued by The Chief fire officers' Association and the Chartered institute of Environmental Health

types of HMO: a “shared house” HMO and a “bedsit HMO”. There are no legal definitions of the terms “shared” and “bedsit”. A clarification letter issued shortly after the Guide was published expressed concern that some councils were using the case studies as prescriptive standards that must be enforced, rather than examples of what might provide adequate fire precautions based on certain assumptions that are set out. The situation used by the Fire Officer to justify a Grade A:LD2 system was based on one of the case studies in the LACORS Guide. However, Mr Moseley maintains that the actual circumstances at his property are “far removed” from that example.

12. A “shared house HMO” is described typically as one occupied by a group of students, friends or work colleagues on a single tenancy, who exhibit no unusually high risk factors and live together much as a family. On the other hand a “bedsit HMO” is described as one that has been divided into bedsit rooms occupied by unconnected individuals who live completely separate lives with no knowledge of who is around the house. Typically, these will each have individual cooking facilities in their rooms, a lack of storage space and an inadequate number of electric sockets leading to overloading and trailing leads. A “bedsit HMO” may also encompass high occupancy numbers, an unusual or highly complex building layout and occupants with a drug or alcohol dependency. Mr Moseley pointed out that his property had none of these features.
13. According to the case studies in the Guide, if 62 Rodwell Road was occupied by students, friends or work colleagues it would attract a Grade D:LD3 system. Mr Moseley said that the system he has installed is better than this. It provides a system of mains powered smoke (and in the kitchen, heat) detectors in all circulation spaces forming the escape route and in all rooms and areas in which a fire may start. He considers that his system is superior to that recommended by the Fire Officer for his particular building and the nature of the occupancy.
14. Mr Moseley said that they carefully vet prospective tenants to ensure they are likely to mix well with the other tenants. In that respect their tenants have much the same ethos as tenants in a “shared house”. They tend to eat together and use the garden communally. It is not the sort of accommodation that is attractive to students: in Mr Moseley’s experience groups of students can pose a higher risk. There are no cooking facilities in the bedrooms, the storage space is adequate and there are plenty of electric sockets, so no need for trailing wires. If a proper risk assessment had been carried out it would not have resulted in a Grade A system being required.
15. The evidence on behalf of the Respondent was given by Mr Fricker and Mr McGivney. There was also a witness statement from the Fire Officer, Emma Turner, but Ms Turner was unable to attend the hearing to give evidence due to hospital treatment. The Respondent’s representatives present were asked whether they sought an adjournment. They said they did not seek an adjournment. The Tribunal indicated that in those

circumstances the weight to be given to Ms Turner's evidence would be less than if she were present to be cross-examined on her evidence. Mr Fricker and Mr McGivney understood and accepted the situation.

16. The Council made its decision to impose the condition in question having regard to guidance including the LACORS Housing-Fire Safety Guide and following discussions with the Fire Authority. Although the Guide does not prescribe standards and does allow alternative solutions to be proposed it nevertheless states that any alternative arrangement will need to achieve at least an equivalent level of fire safety. It is the Council's opinion that the existing fire detection system combined with stated management arrangements do not provide an equivalent level of fire safety.
17. The Council consider that the Property "closely meets the definition of a bedsit type HMO" as described in the LACORS Guide and this provides that a Grade A LD2 system is required.
18. The Respondent's representatives also expressed concern over Mr Steven Moseley's management of the fire safety system. There appeared to be poor record keeping of checks being carried out to the alarm system.
19. Emma Turner's witness statement is dated 21st May 2019. She has been employed as Fire Safety inspector for Dorset and Wiltshire Fire and Rescue Service for 13 years. It is her role to carry out fire safety visits and enforce the Regulatory Reform (Fire Safety) Order 2005. She visited 62 Rodwell road on 30th January 2019. She identified a number of fire hazards, which were subsequently rectified. She asked for a copy of the fire risk assessment. She wanted to understand what she regarded as a "deviation" from the standard expected by the LACORS Guide. She received a fire risk assessment the same evening. She then advised Mr McGivney that she recommended "due to the size and occupancy of the premises" that a Grade A LD2 fire alarm system be provided.
20. The Tribunal asked the Respondent's representatives if it were to decide that the existing system was adequate for the premises what other safeguards they would wish the Tribunal to substitute for the condition in question. Their response has been incorporated in the Tribunal's decision at paragraph 31 below.
21. In answer to a question from the Tribunal the Council's evidence that the main difference between a Grade A system and a Grade C or D system was that a Grade A system has a control panel which shows up if there is a fault to the system. Thus, a tenant can see at a glance if there is a problem. With the system currently in place, checks have to be carried out by the landlord on a regular basis to ensure that the system is working properly.

The Tribunal's decision

22. It goes without saying that fire precautions and alarm systems are of fundamental and paramount importance and local councils and fire authorities depart from the LACORS Guidance at their peril. This Guide is not statutory or prescriptive provided that alternative arrangements that are equally effective are implemented. The recommendations are based on the principles of fire risk assessment. At paragraph 22.4 of the Guide it states that the standards recommended in part 6 table 1 are to be regarded as “base guidelines”. They are appropriate for premises of “normal risk”. Where the risk is lower or higher than normal “then a lower or higher provision of detection and warning may be appropriate.”
23. Table C4 of the Guide recommends that for a “shared house” of 3 or 4 stories with shared cooking facilities a Grade D LD3 system is recommended plus additional detection to kitchen, lounge and any cellar. For a “bedsit HMO” of 3 or 4 storeys with individual cooking facilities within bedsits a mixed system of Grade A LD2 coverage is recommended for the common areas and interlinked heat detectors in bedsits together with a Grade D smoke alarm in each bedsit (non-interlinked).
24. The Tribunal finds that 62 Rodwell Road does not fit exactly into the category described in the LACORS Guide as either a “shared house” or a “bedsit HMO”. Indeed, this was recognised by Mr Fricker in an email to Mr Cyril Moseley dated 12th February 2019 where he said: “I agree with you that the property does not fully satisfy the LACORS definition of a shared house nor in fact does it fully fit the definition of bedsit”.
25. This is because it is not a shared house in that each tenant has their own tenancy agreement and, when they take up occupation, at least, they are not all part of a group of students or friends or work colleagues. It is curious that LACORS seems to suggest that a group of students pose a lower risk to fire safety than those who rent rooms individually. Students may not know each other before sharing a house and, even if they start out as friends, may well fall out with one another. Also, anecdotally at least, a group of students is likely to be less responsible than, say, a number of individual young professionals.
26. The Respondent considers that this Property is more akin to a “bedsit HMO”. But the example given by LACORS shows that in such premises it is likely that cooking will be carried out in the bedrooms, that there is a shortage of storage space and electric sockets. None of that applies to 62 Rodwell Road. Cooking in bedrooms must surely be one of the most serious risk factors.
27. On the basis that this Property does not neatly fit into any of the categories illustrated in the LACORS Guide there needed to be a more nuanced risk assessment. The Tribunal is not convinced that this was done. Ms Turner’s reason for continuing to recommend a Grade A system was simply “due to the size and occupancy of the property”. That is a very vague and superficial justification.

28. This is not a case of a landlord being cavalier about fire safety. Mr Cyril Moseley has an impressive record of service in fire safety and rescue. He did not strike the Tribunal as being someone who thinks he knows best. He had given serious and deep consideration to the LACORS Guide when choosing the type of system that is appropriate for this property. The Tribunal finds that the current system is appropriate and that the condition to install a Grade A system is too high a specification in the circumstances of this particular case. It does mean, however, that there needs to be regular and rigorous checks that the system is operating properly and that those checks are properly recorded. It seems that the burden of doing this is likely to fall upon Mr Steve Moseley. If so, he must take his responsibilities seriously in that regard.
29. The Tribunal has considered the Respondent's suggestion for safeguards to be inserted into the conditions if the requirement for a Grade A system were to be removed and it approves those amendments. They were also agreed to by the Applicant and Mr Steve Moseley. Those conditions are set out below.

Conclusion

30. The Tribunal allows the Applicant's appeal. The condition requiring the licence holders to "Supply and fit a Grade A LD2 fire alarm and detection system in accordance with BS 5839 part 1. Installation and commissioning certificate to be forwarded to the Council on completion of the works" shall be deleted.
31. In its place the condition shall read:-
- "1a A fire alarm and detection system of at least Grade D LD1 shall be maintained at the property
 - 1b A test of the existing fire detection system by a qualified fire safety engineer or qualified electrician shall be carried out.
 - 1c A certificate confirming the Grade and coverage of the existing fire detection system and that it is in full working order in accordance with manufacturer's instructions and appropriate British Standard shall be supplied to the Local Authority within 28 days.
 - 1d Records of all fire detection tests at the property are to be provided quarterly to the local Authority.

Dated the 14th day of August 2019

Judge D. Agnew (Chairman)

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.
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

APPENDIX OF RELEVANT LEGISLATION

1. By Paragraph 31 of Part 3 of Schedule 5 to the Housing Act 2004:-
 - (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 paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

2. By paragraph 34(2) the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the authority were unaware.
3. By Paragraph 34(3) the tribunal may confirm, reverse or vary the decision of the local housing authority.