



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

Case Reference : CHI/43UM/HML/2019/0003

Property : 128 Walton Road, Woking, Surrey GU21
5DU

Applicant : Shazia Ali

Representative :

Respondent : Woking Borough Council

Representative :

Type of Application : Appeal in respect of an HMO Licence

Tribunal Member(s) : Judge D. R. Whitney

Date of Directions : 27th March 2019

DETERMINATION

Background

1. The Applicant seeks to appeal a selective licence issued pursuant to Section 88 of the Housing Act 2004 (“the Act”) and dated 18th December 2018. The Applicant is the owner of 128 Walton Road, Woking (“the Property”).
2. The Applicant seeks to appeal various conditions attached to the licence limiting the number of persons and households who may occupy the Property. In particular the fact that the Respondent council determined that certain bedrooms may not be occupied.
3. Directions were issued on 11th January 2019. The directions proposed that the matter would be determined on paper unless any party objected. No objection has been received.
4. The parties have complied with the directions and supplied a hearing bundle. References in [] are to pages within that bundle.

DETERMINATION

5. **The Tribunal rejects the appeal save that the period of time for compliance with the permitted number of occupants shall be extended until 30th September 2019.**
6. The tribunal has considered all the evidence contained within the bundle and makes its decision on the basis of the same.
7. There is effectively little dispute as to facts of the case. The Applicant acquired the Property on 2nd March 2018 [79]. The Applicant has made no material changes to the Property since she purchased with the current occupants in situ.
8. The Property is in an area designated for selective licensing which began on 1st April 2018. The Designation Order is within the bundle [233-238]. The Property would be subject to mandatory HMO Licensing given changes made which came into force on 1st October 2018.
9. The Property itself is a semi-detached 2 storey house which has been extended. Floor plans are within the bundle [73 and 75]. On the first floor are three rooms known as bedrooms 3, 4 and 5 and a bathroom. The ground floor has three rooms known as bedroom 1, 2 and 6. Bedrooms 2 and 6 are said to be self-contained studio units, each having their own shower room. There is also a galley style kitchen area. Save for the kitchen there is no communal living space within the property. The Council have included a bundle of photographs which are helpful in showing what the Property looks like.

10. The Council acknowledges that the licence refers incorrectly to section 64 of the Act and so will need to be re-issued referring to section 88 of the Act following determination of this appeal. The tribunal determines that such an error is not material to this appeal as no point has been taken by the Applicant who appears to accept that at the date of her application on 12th March 2018 [239-260] her Property would require a selective licence. In any event since October 2018 the Property as currently used and configured would require a mandatory licence.
11. The Applicants case is included within her application to appeal [1-24]. Essentially Ms Ali suggests that when she purchased all rooms were occupied. The Council seeks to limit the number of persons occupying as in the table below:

	Current Number	Council Proposal
Bedroom 1	1 person	1 person
Bedroom 2	1 person	2 persons
Bedroom 3	2 persons	1 person
Bedroom 4	1 person	1 person
Bedroom 5	1 person	0 persons
Bedroom 6	2 persons	0 persons

12. Ms Ali suggests all the current occupants are happy with the arrangements and no change should be made. She does not accept that the Property is overcrowded. Further Ms Ali states [278] that she prefers not having any common areas to ensure nuisance is avoided particularly from visitors to the Property.
13. Ms Ali suggests that bedrooms 1 and 3 are large enough to accommodate 2 persons in each room. In respect of Bedroom 6 she suggests that as this is a self-contained studio unit that does not use the communal kitchen and in a similar way to Bedroom 2 that 2 persons should be allowed to occupy the same. Ms Ali appears to accept that Bedroom 5 should have no persons occupying it so that this could be a communal area.
14. The Council in its statement of case [39-276] sets out clearly its objections. It includes a copy of the Selective Licensing Order and its Private Sector Housing Standards [261-275] which it relied upon in making its determination. In essence these are that the room sizes for each of the bedrooms are such that given the lack of communal space in the Property the number of occupants should be limited. The Council initially relied upon the Applicants measurements but as part of the appeal conducted its own measurement of the rooms. The Council found each of the rooms to be slightly different than the Applicants measurements. A table is produced in the witness statement of Miss Lade [66]. The tribunal prefers the Councils measurements, although

little turns on this, and when setting out room sizes will refer to the Council's measurements.

15. The Council relied upon a table setting out the minimum room sizes [227]. This provides the minimum size for rooms in properties with adequate living space and inadequate living space. In this case it is accepted that the Property has inadequate living space as the galley style kitchen is the only communal space.
16. The Councils guidelines are that a single room with inadequate living space should be at least 10m² and a double room 14m². A kitchen for up to 5 people sharing should be 11.5m².
17. All parties accept that as currently configured the only communal space is the kitchen. The kitchen is said to be 8.24m² with a utility area of 2.38m² giving a total of 10.62m². The kitchen is also narrow, as can be seen in the photographs, making use by a number of persons at the same time difficult.
18. Ms Ali suggests that Bedroom 2 and 6 do not use the kitchen as they have self-contained facilities. The Council states that Bedroom 6 use the kitchen for cooking. Both 2 and 6 may use the utility area for washing their clothes. The Council rely on the fact that Bedroom 6 has very limited facilities for cooking within its room consisting of a sink unit and microwave only. Further Miss Lade on an inspection at the Property had observed one of the occupants of Bedroom 6 cooking in the shared kitchen. It is accepted that Bedroom 2 has its own kitchenette facilities.
19. The Tribunal accepts the Council's evidence that it appears the occupants of all the rooms do make use of the communal kitchen and have access to the same. Given its size and the layout this tribunal accepts the Councils position that the communal area in the Property is inadequate for any more persons than allowed under the licence.
20. Turning to the rooms in dispute Bedroom 3 measures 10.9m². This room only slightly exceeds the Councils requirement for a single room. Having regard to the photographs and the various representations the Tribunal is satisfied given the limited communal facilities and the total number of persons occupying the Property that the Council's decision is appropriate.
21. It would appear that the Applicant concedes that Bedroom 5 is too small for current occupation. The room is only 4.3m² and the Tribunal accepts that this room is too small for occupation.
22. In respect of Bedroom 2 Ms Ali makes the point that currently this room is only occupied by one person. She says the occupant wishes to remain in the room. The Tribunal makes the point that the licence sets out the maximum number of occupants. Ms Ali is entitled to let to a lower number if she chooses. Given this is a self-contained studio, as

described by the Applicant it was correct and proper for the Council, being satisfied as to its size, to determine that this room could be occupied by up to 2 persons (even if it was not currently so occupied) and that in calculating the number of occupants for the whole house it took this into account in determining matters. The tribunal is satisfied that this is a correct and proper decision by the Council.

23. This leaves Bedroom 6. The Council express concerns that the extension in which this room has been created has not been constructed in accordance with planning permission granted. Ms Ali says when she purchased this is how the room was constructed. It appears to be accepted she has made no changes, but the Council reminds her that she should have conducted her own checks prior to purchasing. The room is accessed by an external door. The occupants have no direct access into the house save by walking outside to the kitchen door. It has a very small shower room which only measured 1.26m². As mentioned above the only kitchen facilities were limited to provision of a microwave and a sink unit.
24. The Tribunal is satisfied that it is reasonable for the Council to determine that the room is not currently suitable for occupation. The tribunal determines that it is not a self-contained bedsitting room as the facilities are not sufficient for it to be so classed. The occupants would therefore need to access the main house and it is not appropriate for them to have to do so by using a route which requires them to go outside.
25. Having considered the totality of the evidence the tribunal is satisfied that the proposed licence allowing 2 persons in one household to occupy Bedroom 2 and 3 households of 3 persons to occupy the remaining bedrooms is reasonable.
26. The Tribunal notes that the Applicant has emailed suggested changes to the Council [291] as to the layout. Plainly the Applicant is entitled, notwithstanding this decision, to continue to discuss what changes she may make to the Property and how this may change the conditions imposed by the licence.
27. Finally we note that the original licence provided that the Applicant would have until 18th June 2019 to comply with the occupancy requirements. The Tribunal notes that this was six months from the issue of the licence. The tenants all appear to be statutory periodic tenancies. The Applicant will have to serve appropriate notices and take steps to reduce the occupancy. She has co-operated throughout the process and did lodge an appeal as was her right. The tribunal is satisfied it is appropriate to vary the licence to extend time for her complying with the occupancy conditions and does so by varying the date of compliance to 30th September 2019 being approximately 6 months from the date of this determination.

Judge D. R. Whitney

RIGHTS OF APPEAL

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

