



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

Case Reference : **LON/OOAG/HMV/2019/0003**

Property : **Flat 19, Cavendish Mansions,
Clerkenwell Road, London EC1R
5DQ**

Appellants : **Mrs Meena Shaikh
Mr Altaf Shaikh**

**Representative
Also in Attendance** : **In person**

Respondents : **The London Borough of Camden**

**Representative
Also in Attendance** : **Mr Sarkis Counsel instructed by
The London Borough of Camden
Richard Umelo
J Alison Pruden Service Manager**

Type of Application : **Appeal under schedule 5, part 3,
Paragraph 32(1)(b) of the Housing
Act 2004**

Date of Hearing : **9 October 2019**

Date of Decision : **07 November 2019**

DECISION

Decision

- I. The appeal by the Appellants under Schedule 5, Part 3 of Paragraph 32(1) (b) of the Housing Act 2004 is dismissed.**
- II. The Tribunal accepted the evidence of Mr Umelo and is satisfied that there are no grounds to interfere with the decision that was made.**
- III. The Tribunal has also decided that the decision made was reasonable even taking into account the measurement provided by the Appellants.**

Introduction

1. This is an appeal made by application received on 17 May 2019; the appeal was made prior to the final decision being issued by the local authority. However, the Tribunal in Directions dated 12 July 2019, directed that the appeal should be treated as an appeal under Part 3 of Schedule 5, para. 31(1) of Housing Act 2004, namely an appeal in respect of the decision by Camden to grant a HMO license, including as to the terms of the license. The Applicant in an email to the tribunal dated 21 June 2019 indicated that she objects to the council's decision concerning the maximum number of persons allowed to occupy the property.
2. In paragraph 7 of the Directions dated 12 July 2019 the Tribunal identified the following issues to be determined :-The issues that the tribunal will need to consider when deciding whether to confirm, vary or reverse the decision of the council include:
 - Has the council gone through the necessary steps prior to the granting of the HMO licence and to the imposing conditions?
 - Is the imposition of conditions appropriate for regulating the management, use and occupation of the HMO, or its condition and content (s.67 (1))?
 - Are such conditions appropriate for requiring facilities and equipment to be made available in the HMO for the purpose of meeting standards prescribed under section 65 of the Act (s.67(2)(c))?
 - Should such conditions be varied, for example?

- (a) as to the terms of any suspension;
- (b) as to their extent or specified works;
- (c) is the timescale reasonable?

The Hearing

Background

3. The appeal was set down for hearing on 9 October 2019. The London Borough of Camden (“Camden”) was represented by Mr Sarkis, Counsel, his witness was Mr Richard Umelo Environmental health Officer, Also in attendance on behalf of the borough was Ms Alison Pruden, Operations Manager. The Applicants, Mr and Mrs Shaikh, were litigants in person, who jointly presented their case.
4. The Tribunal informed the parties, that an appeal was essentially a rehearing. This meant that the Tribunal would consider the factors that Camden had taken into account in reaching its decision, it would however consider the facts as they existed at the date of the hearing (9 October 2019)
5. The Tribunal accordingly asked Mr Sarkis to set out how Camden had come to reach its decision. Mr Sarkis stated that the background was set out in the witness statement of Mr Umelo signed on 30 August 2019.
6. Mr Sarkis informed the Tribunal that sections 56-60 of Part 2 of the Housing Act 2004 introduced provisions for local housing authorities to make designation of areas subject to additional licensing schemes. Following consultation Camden, designated an additional licensing scheme which covered the whole Borough. The scheme was launched on 8 December 2015.
7. The Scheme required, all HMO as defined by Section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households to be licensed. On 9 May 2018 a licence application was made by Mrs Meena Shaikh for flat 19 Cavendish Mansions (“the Premises”).

The evidence of Mr Richard Umelo Environmental Health Officer

8. On 5 March 2019 Mr Umelo EHO inspected the premises on behalf of Camden. In his statement and oral evidence he set out that he was a qualified Environmental Health Officer with an MSc degree in

Environmental Health. He was employed by Camden under the Private Sector Housing Team. He has been employed in this capacity since 2015.

9. Mr Umelo described the premises as a single storey flat comprising three bedrooms situated in a mansion block. The flat comprised a bedroom rear left, Room 3, a further bedroom rear right, room 2, a kitchen centre right, a bathroom centre right and the lounge at the front of the premises which was occupied as a bedroom, room 1. There was no shared living space.
10. Mr Umelo took measurements using a laser measure and recorded the floor area of each room as follows: Room 3, 10.075, Room 2, 6.877 kitchen 3.427, room 1, 9.95 and the bathroom was 3.102.
11. He stated that he was confident of the measurements as he calibrated the laser measure by measuring an office at work. He also measured from wall to wall. Mr Umelo also produced a plan of the premises. He noted in his evidence that the hallway had a sofa and table and washing machine in it.
12. Mr Umelo stated that the rear right bedroom did not meet Camden's HMO standard of 9m for a bedroom with no shared living room area. Mr Umelo referred to Camden's Minimum HMO Standards which were effective from May 2016. This document stated that a minimum standard for a sleeping room should be 9m² for a single sleeping room. The standard for a shared kitchen for 3-4 persons was 4.8m². He stated that the kitchen at the premises was 3.43 which was a significantly reduced area in compared to the Standards. In his opinion there was a lack of space for circulation.
13. Mr Umelo stated that an email had been sent to the Appellants setting out his conclusion based on the inspection. He stated that the property was limited by the kitchen provision and that as a result of the size of the kitchen and the fact that none of the single bedrooms were above the minimum single room standard of 9m² and the larger room was less than the recommended minimum for a double room, which was 10.2, this meant that the house would not be suitable for occupancy by three people.
14. Mr Umelo issued a License which gave a Zero occupation. Mrs Shaikh in an email dated 8 March 2019 stated that she intended to let to a couple, who would use the double room and 1 person in a single room. She would then establish a communal living room with a dining table.
15. As a result of representations made by the Appellant the License was amended to state:- "*... 1 household or 2 occupant forming two households...*"
16. Mrs Shaikh at the hearing challenged Mr Umelo's representations. She noted that the Cavendish Mansions contained many social housing

occupants who were living in similar sized premises with more than 3 people.

17. In reply Mr Umelo stated that the social housing was occupied by families and that HMO use gave rise to additional problems and hazards. In particular the kitchen lacked adequate preparation areas for cooking. Multiple users would also result in increased moisture generation which would impact on condensational damp risk and maintenance of hygiene. Further the small proportions of the kitchen meant that only one person could cook at a time. Camden also raised concerns about increased fire and safety risks in such a cramped kitchen.
18. He referred to the lack of communal space, and the fact that the hallway had an additional fridge was evidence that the occupants did not have sufficient space to store their food; Cabling running out of the kitchen to the appliance had prevented the fire door closing. The accommodation also lacked communal space.

The Appeal

19. The Appellants had put in a complaint and had also appealed against the decision. The complaint concerned the manner in which the decision was communicated by Camden. Although the Tribunal heard about the complaint, as it does not affect the decision in any material way, we have not found it necessary to set out the details of the complaint.
20. In her written submission, and in her oral evidence. Mrs Shaikh's set out that in her view Mr Umelo had incorrectly measured the rooms as the purchase plans stated the reception room was 10.42m²; the Kitchen was 4.16m². Room 2 was 6.97m² and the master bedroom was 10.44m². Accordingly they challenged Camden's measurements.
21. She further stated that the rules concerning the standards of room size were inconsistently applied, as the local authority had premises in Cavendish Mansions where more than 3 people were sharing similar sized property. She also noted that the kitchens in the social housing properties may well be used by more than one person at a time.
22. The kitchen did not present a hazard, and in any event, she asserted that they could get the tenants to sign an agreement limiting use to one at a time.
23. Mr Altaf Shaikh, in his evidence, stated that the property below the flat was occupied by 2 Adults 1 teenager and 2 Children, and the one above had 4 Adults.
24. The Tribunal was informed by the Appellants that they were experienced landlords and that the property was in good condition.

They had brought the property as a Buy to Let. They had cleared the furniture from the hallway.

25. In respect of their intentions they wished to rent the property to a couple in the double room and a single person they had some tenants in mind. The tenants would effectively live as one household. As such they would not use the one of the bedrooms. This would produce communal space. The normal rent that they would let the property at for 3 people was £585.00 per week. Under the current HMO conditions it would not be commercially viable to let the flat to two people.
26. Both parties made brief closing submissions, however the case advanced by each party was as set out in their oral evidence. Mr Sarkis submitted on behalf of Camden that although the Landlord had submitted that letting of the premises to 2 separate households would make it less viable was not something that should be taken into account. Mr and Mrs Shaikh stated that they had applied for planning permission however it was clear that this did not change the footprint of the premises.

Statutory framework

27. The Tribunal in reaching its decision applied the legislation set out below;

The power of a local housing authority to grant a licence in respect of an HMO is contained within s.64 of the Housing Act 2004. By s.64 (4) the authority may decide the maximum number of households or persons by which the house is reasonably suitable for occupation. By s.67 of the Housing Act 2004:

“(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following:

- (a) The management, use and occupation of the house concerned, and
- (b) Its condition and contents.”

. By s.72 of the Housing Act 2004:

“(2) A person commits an offence if –

- (a) he is a licence holder or and
- (b) he fails to comply with any condition of the licence.”

By paragraph 31 of Part 3 to schedule 5 to the Housing Act 2004:

“(1) The applicant or any relevant person may appeal to a residential property 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.”

By paragraph 34:

“(2) An appeal –

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may confirm, reverse or vary the decision of the local housing authority.”

20. Schedule 3 to The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 sets out the prescribed standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons.

21. Paragraph 3 of Schedule 3 of those regulations relates to kitchens and states:

“Where all or some of the units accommodation within the HMO do not contain any facilities for the cooking of food –

(a) there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food;

(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 facilities ... [a list is given].”

The Decision of the Tribunal

28. In reaching the decision, the Tribunal noted that it was dealing with this matter by way of re-hearing. Given this, it applied the legislation and in doing so, it asked itself whether Camden had gone through the necessary steps in making its decision. That is, had it correctly applied its policy and the legislation? Was the imposition of conditions appropriate for regulating the management, use and occupation of the HMO, or its condition and content (s.67(1))?applied

29. As this matter was by way of re-hearing, the Tribunal could also take into account any matters that were not known to the local authority, at the date the decision was made. It could also take into account any changes which had occurred since the decision was made, and use this information in making its decision.
30. Firstly the Tribunal considered whether there was any change of circumstances or any material facts that existed which had not been taken into account by the Local authority when the decision was made.
31. The Tribunal noted that the Appellants had raised two possible issues, the fact that the measurements were inaccurate, and the fact that it was their intention to let the premises to a couple and a single person. These issues are considered below.
32. The Standards applied by Camden was as set out in the Camden HMO Standards (effective May 2016) The Tribunal noted that the Standards contacted the following recommendation -: "Rooms must provide sufficient space for normal household activities to be carried out safely and to allow for amenities and belongings/personal effects to be stored safely. The room must have space to accommodate the appropriate furniture and fittings for the average occupant(s) to live within the room and to allow adequate circulation for themselves and guest."
33. In their document Minimum Houses in Multiple Occupation (HMO) Standards under the Housing Act 2004 ("The Standards"). It was stated -: "Where a cohesive group of tenants benefit from a shared lounge of minimum 10m² for use as a place for recreation and socialising; there is a reasonable expectation that there will be less time and furniture/ storage space dependency in the bedrooms." The guidance then proposes that the Single room standard with a lounge and a cohesive group of occupants should be 7.1m² whilst a Double room standard with lounge provided, and cohesive group of occupants should be 10.2m². Where there was no shared living room the minimum standard for a single room was 9m², and for a double room 11m².
34. In respect of the kitchen the guidance stated: - "The kitchen must be adequate in size, and in any case must not be less than 5.5m² and be arranged to allow safe access and use."
35. The Tribunal noted that the standard single room sizes applied by Camden were 9m², whereas Westminster was 6.51m² and Barnet was 10m². Also City of London and Brent allowed smaller floor areas. However Camden allowed the smallest floor area for the kitchen at 4.8m².
36. The Tribunal in reaching its decision noted that the all of the rooms were smaller than the standard size used by Camden in its guidance. It noted that Camden had original refused the licence, it had however taken into account the representations of the Appellants, and decided

that one separate household, or two persons living in separate households could occupy the premises.

37. In the Tribunal view this was a proportionate response as Camden took both the guidance, and the representations of the Appellant's into account, and departed from its policy appropriately.
38. The Tribunal noted that Mr Umelo whilst carrying out his inspection had noted that the size of the flat had led to the hallway being used to store household furniture including a fridge/freezer. This was not ideal and represented compromised fire safety; however this illustrated one of the problems caused by using a flat of this size as a HMO given the size of the kitchen and the lack of additional space.
39. The Tribunal noted that furnishing had been moved from the hallway, this did not increase the floor space, or the storage. Tenants would still find that the premises lacked storage space which in the long term would be unsatisfactory. The Standards recognised the challenges posed by living in a HMO and established the minimum floor space to take into the difficulties that different households living in one house were likely to encounter if smaller floor measurements were allowed.
40. The Tribunal noted the Appellants' proposal to let to a couple and a single person, as in their view this would mean that only two separate households were in the premises. However, the grant of a licence was not meant to be prescriptive in this way, and a grant of a licence for 3 Occupants should only be made if the premises are suitable for 3 persons, Camden had decided that the double room was not large enough for two persons.
41. The Tribunal has decided that the standards applied by Camden were correct, and that even if the measurements used are that of the Appellant taking into account the sizes of the bedrooms and the kitchen, the accommodation does not comply with the minimum standards applied by Camden.
42. The Tribunal has heard the representations of the Appellant and has determined that there is nothing in the representations which undermine the decision made by Camden in the licence granted on 3 May 2019. Further the imposition of conditions are appropriate for regulating the management, use and occupation of the HMO
43. The Appeal against the conditions in the licence dated 3 May 2019 is therefore dismissed.

Name: Judge Daley

Date:07/11/19

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

