



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

Case Reference : **MAN/00DA/HML/2018/0001**

Property : **2 Linden Road, Beeston, Leeds, LS11 6HA**

Applicant : **Mr Dean Arey**

Respondent : **Leeds City Council**

Type of Application : **Housing Act 2004 – Schedule 5
Paragraph 31(1)**

Tribunal Members : **K M Southby (Judge)
A Ramshaw (Valuer Member)**

Date of Determination : **22 August 2018**

Date of Decision : **27 September 2018**

DECISION and REASONS

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DECISION

The Tribunal confirms the Council’s decision to refuse to grant a licence for a House in Multiple Occupation (HMO) in respect of the Property under Part 2 of the Housing Act 2004. The appeal is accordingly dismissed.

BACKGROUND

1. This is an appeal by Mr Dean Arey against a decision of Leeds City Council (“the Council”) to refuse to grant a licence for an HMO under Part 2 of the Housing Act 2004 (“the 2004 Act”) in respect of 2 Linden Road, Beeston, Leeds LS116HA (“the Property”). The Applicant applied for reissue of a licence for the Property on 20 December 2017. Notice of Intention to Refuse was sent by the Council on 8 February 2018 and following consideration of representations the Council served a Notice of Decision to Refuse on 6 March 2018.
2. An inspection was held at the Property on 22 August 2018 and with the agreement of the parties the matter was dealt with by way of a paper determination. Mr Arey and representatives of the Council were present at the inspection. The Tribunal also had the benefit of the statements of case and documentary evidence lodged by both parties prior to the hearing.

BACKGROUND

3. The Property comprises a pre-1920 brick-built mid-terrace 4 storey house, with a small yard to the rear of the property. Whilst the property would originally have been built as a family home, the basement has been converted into a self-contained flat, and the remaining four bedroomed home has been converted into a five-bedroom HMO over three storeys.

LAW

4. Section 64(2) of the Housing Act 2004 (the Act) provides that on an application for a licence in respect of an HMO *‘if the authority are satisfied as to the matters in subsection 3, they may grant a licence.’*
5. The relevant matter set on in subsection 3 of s64 of the Act for these purposes is:
 - 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’*

Subsection (4) provides:

'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 number decided by the authority.'*

6. Section 65 Housing Act 2004 provides further guidance as to the test for 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 householders or persons if they consider that it fails to meet prescribed standards for occupation by that number of householders 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.'*

7. The "prescribed standards" for deciding the suitability of an HMO for the purposes of s65 of the Act are given in Schedule 3 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (the Regulations). The relevant part of Schedule 3 is as follows:

- 3. 'Where all or some of the units of 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 the facilities –*
 - i) sinks with draining boards;*
 - ii) an adequate supply of cold and constant hot water to each sink supplied;*
 - iii) installations or equipment for the cooking of food;*
 - iv) electrical sockets;*

- v) *worktops for the preparation of food;*
- vi) *cupboards for the storage of food or kitchen and cooking utensils;*
- vii) *refrigerators with an adequate freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers);*
- viii) *appropriate refuse disposal facilities; and*
- ix) *appropriate extractor fans, fire blankets and fire doors...*

GROUND OF APPEAL

8. The basis of the refusal was that the communal living space at the rear of the Property on the ground floor was too small to safely accommodate the activities of a combined kitchen, living and dining room for the five people proposed in the HMO application. Further grounds of refusal were that there is insufficient worktop space and electrical sockets in the kitchen space as well as insufficient space for dining and relaxing, with no further space to accommodate these functions.
9. Mr Arey appeals against the Council's refusal to grant an HMO licence on the grounds that he considers the Council's reasons for refusal to grant an HMO licence is misguided on the basis that it has been granted on two previous occasions with the same configuration. He proposes to carry out works to address some of the Council's concerns and states that the arrangement of the facilities in the Property is suitable for and meets the needs of those who live in it.

INSPECTION

10. The Tribunal had the benefit of inspecting the Property and observed that the ground floor comprises a bedroom to the front, and a communal kitchen and dining room to the rear. To the first floor there are two bedrooms and a bathroom and on the second floor are a further two bedrooms and a shared toilet.
11. The Tribunal observed that the combined kitchen and dining room is the only communal space in the Property which is currently occupied by 5 unrelated individuals. The Tribunal were shown the additional worktops and electrical sockets which Mr Arey has installed which have increased the provision of worktop space and socket provision significantly from the date of the Council's original inspection. The Tribunal also noted that the sofas which had been in the communal space had been removed and a dining table was in the room instead. The Tribunal noted that the layout of

the room was such that the doors of the storage cupboards opened across the head of anyone sat at the dining table, or were the dining table to be moved to prevent this from happening, it would be so close to the cooker as to render it impossible to use the cooking facilities.

12. The Tribunal also inspected the bedrooms of the Property and observed the bedrooms on all three floors. The Tribunal observed that the upper two bedrooms were only large enough to serve as bedrooms and required amenity space elsewhere in the Property.

DISCUSSION

13. It was accepted by the Council that the addition of worktops and electrical sockets by the Applicant meant that the only outstanding issue for the Tribunal to consider was whether the communal living space at the rear of the Property on the ground floor was too small to safely accommodate the activities of a combined kitchen, living and dining room for the five people proposed in the HMO application.
14. In the view of the Tribunal the kitchen would be of such layout and size and equipped with such facilities as to adequately enable those sharing the facilities to store, prepare and cook food without the presence of the dining table in it. However, this would mean that there was nowhere in the Property for occupants to eat their food, and no amenity space for dining or relaxation.
15. The Tribunal therefore considered whether or not there was alternative dining and relaxing space within the Property as suggested by Mr Arey, which if available to the occupants might render the need for larger communal space unnecessary.
16. The Tribunal observed upon inspection that the two smaller bedrooms to the first and second floor were furnished only for sleeping, together with a small desk and chair. It was accepted by the parties that the size of the smallest bedroom on the top floor is 8.18m². This is larger than the statutory minimum of 6.51m². Mr Arey suggests in his representations that the smaller bedrooms are large enough to contain sofas for relaxation but that the occupants do not choose to have them, but that he could put them in if required.
17. The Tribunal notes that all of the bedrooms in the Property are above the minimum size. The Tribunal also draws very limited conclusions about the current state of the furniture in the bedrooms, noting as Mr Arey observed, that the choice and configuration of furniture is to a significant part down to the choice of the current tenant. The Tribunal is more concerned about the possibility of furniture for relaxation being included

- in the smaller bedrooms, and also the actual size and usability of the existing communal space.
18. The Tribunal's view having inspected the rooms is that the size of the two smallest rooms precludes meaningful space for relaxation, and that including additional furniture such as a sofa as proposed by Mr Arey would make the rooms uncomfortably full and difficult to use.
 19. Accordingly, in the view of the Tribunal is in the absence of adequate space in the bedrooms for comfortable relaxation, meaningful space needs to be available elsewhere in the Property. The Tribunal therefore considered the size and layout of the existing communal space.
 20. The Tribunal were persuaded by the witness statement of Andrea Smith, Principal Housing Officer at the Council, that a kitchen should be approximately 7m² for up to six people, but that this figure does not take into account living and dining space. Ms Smith suggests that in the absence of specific guidance for the size of a room serving all three functions of living, dining and kitchen, the closest comparison for size would be a living room with separate galley kitchen, giving recommendations of 16m² for the living room and 7m² for the galley kitchen. The size of the existing communal space at 13.3m² is significantly smaller than the recommended size for a living room alone, and the layout and configuration are awkward.
 21. The Tribunal concluded that even with the alterations which Mr Arey has made there is insufficient room in the communal room for a dining table and six chairs and that this furniture restricts access to cupboards and worktops and makes the kitchen more difficult to use. In addition, the residents of the smaller bedrooms have no general relaxation and amenity space other than the kitchen table, which as observed above is cramped and difficult to use when others are preparing food.
 22. The Tribunal has considered Mr Arey's representations that the Council has previously granted an HMO licence for the Property in this configuration. We consider that the previous decisions of the Council are not relevant to our decision taken on the facts as presented to us in this application. The question for the Tribunal is not whether or not the Council were right in the past, but whether or not they were right to refuse the application in the current circumstances. We consider that the Property is not currently suitable for occupation by 5 people in separate households and we are not persuaded that past decisions override this, and nor are we persuaded that Mr Arey's ability to let the Property in its current configuration is indicative that it is therefore suitable for occupation in that manner. One of the purposes of the licensing regime is to ensure appropriate standards regardless of whether those living in less than acceptable standards are willing to accept those conditions.

CONCLUSION

23. Accordingly, we find that the Property is unsuitable for occupation by 5 households as per the licence application as we conclude that the communal living space at the rear of the Property on the ground floor is too small to safely accommodate the activities of a combined kitchen, living and dining room for the five people proposed in the HMO application. The appeal is therefore dismissed and the refusal of the HMO licence by the Council is upheld.

Judge K Southby
Tribunal Judge
27 September 2018