



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

Case Reference : **CHI/00HA/HML/2019/0016**

Property : **12 Junction Road, Bath, BA2 3NH**

Applicant : **Mr Martin Thomas**

Respondent : **Bath and North East Somerset
Council**

Respondent's Counsel : **Harry Ahuja**

Type of Application : **Application relating to Licensing of
Houses in Multiple Occupation –
Appeal against conditions attached to
an HMO Licence**

Tribunal Members : **Judge Professor David Clarke
Mike Ayres FRICS**

Dated : **28 January 2020**

DETERMINATION AND STATEMENT OF REASONS

DETERMINATION

The Tribunal dismisses the appeal against the conditions attached to the Licence to occupy a House in Multiple Occupation relating to 12 Junction Road, Bath BA2 3NH issued on 5 September 2019 and declines to vary the conditions that were imposed.

STATEMENT OF REASONS

Background

1. This is an application (“the Application”) and appeal made by Mr Martin Thomas (“the Applicant”) who is the freehold owner (with his wife, Marilyn Lorna Thomas) of the property known as 12 Junction Road, Bath (“the Property”). The Property is let, by way of a single lease, to five students. As such the Property is a House in Multiple Occupation (“HMO”) and is therefore subject to mandatory licensing under the provisions of the Housing Act 2004. The licence to operate the Property as a House in Multiple Occupation (“the Licence”) was issued by the Bath and North East Somerset Council (“the Respondent”) on 5 September 2019. The application takes the form of an appeal against just one of the conditions imposed in Schedule 3 of the Licence, the HMO Licensing works schedule, namely relating to a fire door for the kitchen. The Application seeks to delete or vary that condition.

2. The Application was made on 12 September 2019 and, after an unfortunate delay, not the fault of the Applicant, Directions were issued on 1 November 2019 providing as usual for the provision of a case from each party and a bundle of documents. The case was heard on 21 January 2020 after an inspection of the Property by the Tribunal prior to the hearing. The Applicant presented his own case, and he was assisted by Mr Robin Crawford who is Chairman of the Association of Local Landlords (Wessex), which includes Bath in the area covered by the Association. The Respondent was represented by Harry Ahuja of Counsel and he was accompanied by Mr Chris Mordaunt, the Housing Standards and Improvement Manager of the Respondent Council and Mr Peter Piotrporowski who is the Council’s Senior Environmental Health Officer.

Inspection of the Property

3. The Property is an end of terraced house on two stories. From the hallway, there are two downstairs rooms, now used as bedrooms, and a kitchen/dining area at the rear of the property, leading from which there is a small utility room right at the back of the house. Upstairs there are three further bedrooms and a bathroom. All the ‘white goods’ are situated in the utility. The Property benefits from a mains power interlinked smoke alarm system with three alarms (in the hall, landing and the bedroom closest to the kitchen downstairs) and there is a mains interlinked heat sensor in the kitchen area set to activate when temperature reaches 58 degrees C. There are two exits from the Property, namely the front door from the hallway next to the bottom of the stairs and the back door from the kitchen into a rear garden.

4. The door to the kitchen from the hall is a solid pine door which appeared to the Tribunal to be quite old and perhaps not as solid or thick as some modern solid doors. It did close easily enough, though the handle appeared to be bound by some tape.

The issue to be decided

5. The Licence required the Applicant to upgrade or replace the kitchen door and frame so that it has a fire resistance of at least 30 minutes. That door was to be provided with flexible smoke and heat seals. The door must be rendered and maintained as self-closing, self-latching and close fitting onto 12.5mm door stops. The hinges and locks must not melt below 800 degrees C with an additional hinge, if necessary, to support the heavier door.

6. The Applicant objects to the imposition of this condition. With the assistance of the local association of landlords, the Applicant sought, prior to making this appeal, to persuade the Respondent that this condition was not necessary in a property of two stories and which was laid out in the way of this Property. Alternatively, the Applicant suggested an amendment to the approach to where the Respondent considered fire doors to be necessary. The Respondent decided not to accept the Applicant's arguments and maintained that this condition should remain in the Licence.

The legislative background

7. The licensing of houses in multiple occupation is provided for by Part 2 of the Housing Act 2004 ("the Act"). Application for a licence is made to the local housing authority ("LHA"). In the case of this Property, the licensing authority is the Respondent. Such an authority may grant or refuse a licence (section 64 of the Act) and may include such conditions as the LHA consider appropriate (section 67). The procedural requirements are contained in Schedule 5 of the Act and these include provision for appeals. By virtue of paragraph 31 of that Schedule any relevant person may appeal against a decision of an LHA and such an appeal may relate to any of the terms of that licence. Such an appeal is to a First-tier Tribunal and is by way of a re-hearing. The Tribunal has the jurisdiction to confirm, reverse or vary the decision of an LHA.

8. The provisions of the Act provide for regulations to be made and this was done by virtue of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 ("the 2006 Regulations"). Schedule 3 of those regulations prescribe standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons. The Schedule provides that there must be a kitchen (Schedule 3, paragraph 3); and it must be equipped with the equipment listed. One part of that list is Schedule 3, paragraph 3(b)(ix): 'appropriate extractor fans, fire blankets and fire doors'.

9. A house in multiple occupation (HMO) is a property rented out to at least three people who are not from one household and share facilities. Larger HMOs are required to have a licence – these are known as mandatory HMOs. Since 1 October 2018, by virtue of the Licensing of Houses in Multiple Occupation Order 2018 ("the 2018 Order"), a property is a mandatory HMO if it is rented to 5 or more persons where some or all of the tenants share a toilet, bathroom or kitchen and its facilities and at least one such tenant pays rent.

It is accepted by the Applicant that the Property is a mandatory HMO and as such requires a licence. Indeed, the Applicant made an application for such a licence.

10. Smaller HMOs are not subject to mandatory licensing but an LHA may designate areas where licensing of smaller HMOs must be applied for. Until 1 October 2018, the Property would only have to be licensed if it was within an area designated for additional licensing because, although let to five persons, it was not more than two stories. The legislative change on that date brought all properties let to five or more persons within the mandatory licensing scheme.

The Applicant's submissions

11. The Applicant provided to the Tribunal a four-page written appeal, together with supporting documentation. This was supplemented by oral submissions on the day of the hearing. The essence of the Applicant's case was two-fold:

1. There is no legal requirement that every HMO within the mandatory scheme should have a fire door into the kitchen;
2. Without such a legal requirement, the condition imposed to require a fire door cannot be justified in relation to the Property.

Each of these arguments will be considered in turn.

Submission that there is no legal requirement to have a fire door

12. The 2006 Regulations state that the kitchen 'must be equipped with . . . appropriate . . . fire doors'. The Applicant contends that the use of the word 'appropriate' means that a LHA has a discretion and so a requirement to fit a 30 minute fire door with a closer and smoke/heat seals is not a requirement that must be made but is an issue on which an LHA has discretion. This submission is supported by reference to the previous practice of the Respondent and the current practice of other LHAs.

13. Though the 2006 Regulations have been in force since 6 April 2006, and apply to all HMO's, fire doors are not (the Tribunal was told) required in all licensed HMOs. The Applicant pointed out, not challenged by the Respondent, that smaller HMOs in the authority's areas for additional licensing are not routinely required to have fire doors to a kitchen. In 2012, the Respondent agreed with Bristol City Council, South Gloucestershire Council and North Somerset Council, for a joint housing standard for HMOs in the area covered by the four authorities. While this standard stated that fire doors was normally required in the case of shared kitchens, a sound well-constructed and close fitting conventional solid door would be acceptable where the property only had one or two floors and no bed-sit accommodation. The Property would fall into the exceptional category set out in that joint standard.

14. The Applicant further relied upon the LACORS Fire Safety Guidance published with the Approval of the Association of Chief Fire Officers. LACORS is a body which co-ordinates local authority regulators. This is only guidance, but the Applicant relied on the fact that that the guidance states that a sound well-fitting conventional door to a kitchen is acceptable in properties of one or two stories.

15. Finally, the Applicant submitted that not every LHA has adopted a blanket requirement for a kitchen fire door for mandatory HMOs, as indicated by some of the replies from other LHAs as to their current practice in the evidence submitted by the Respondent. If there are differences of approach, it was submitted, then that is a strong indication that the Applicant's contention that a fire door is not legally required is correct. There was also no evidence that the Respondent had sought legal advice on the issue.

Submission that condition requiring a fire door cannot be justified

16. There are a variety of strands to the Applicants argument that it is unjustified to impose the condition requiring a fire door (on the assumption that there is no legal requirement). They can be summarised under the following heads:

1. There is no greater risk of a fire in relation to the Property than in a similarly configured house occupied by four people.
2. The Respondent's approach is inconsistent and unfair.
3. The Respondent rejected a compromise approach that would result in the measures to protect tenants being more in line with the actual fire risks associated with individual HMOs.

17. The Applicant highlighted the various factors that supported the contention that the fire risk associated with the Property did not demand the fire door specified. These are:

- (a) The risks did not change on 1 October 2018. Prior to that date, a licence for the property under the additional licensing scheme would not require a fire door. If there is no change of risk, there should be no change in the conditions imposed.
- (b) The risks are no different in the Property, let as it is to five students, when compared to a property internally arranged in the same way and let to four students, but one of the downstairs rooms being retained as a living room. The fire escape routes would be identical.
- (c) The Property had three mains linked smoke detectors and a heat detector in the kitchen which substantially mitigated any risk, since occupants would have early indication of the need to leave the property in the event of a fire. They provide the early warning which would save lives.
- (d) A 2017 House of Commons briefing paper suggested that there was little extra fire risk of an extra occupant in two storey shared houses.
- (e) The occupants were all young and agile students who would have no difficulty in exiting the Property speedily. They were no elderly or frail people.
- (f) While the fire door imposed by the licence would last longer in the event of a fire, the risk of a worse outcome with the existing door was minimal since the alarms would be triggered.

18. The Applicant said the approach of the Respondent was inconsistent. He claimed that it had unilaterally departed from the joint position adopted previously with other local councils, had not used the LACORS guidance, and its approach was contrary to that of other LHAs. It was also internally inconsistent; not only was it inconsistent with the approach to similarly configured properties with four occupants but also as it imposed a 'one-size-fits-all' standard on properties of two stories with five occupants when its own documentation states that each case should be considered on its own merits.

19. The compromise approach suggested by the Applicant was a proposed amendment to the housing standard adopted that sought to give the Respondent the ability to require a full fire door where the circumstances were appropriate. This amendment would require, in the case of houses of two stories, to undertake a fire risk assessment taking into account the type of occupants, the kitchen location and the presence of escape windows with the assumption that a sound well-constructed close fitting door would be acceptable in the case of low risk properties. This was rejected by the Respondent and the Applicant asked the Tribunal to accept its proposed wording of the suggested standard. (It may be noted that the Respondent has decided that a fire door to the kitchen will not be required in a two-story property if each bedroom has an 'escape window' as defined. The Property does not have escape windows so cannot take advantage of this concession). The Council did have the resources for any extra inspections required since they take a fee.

20. When questioned by Mr Ahuja, the Applicant accepted that a use of the kitchen was different when there was no living room in the Property but pointed out that the cooking facilities were at the furthest point from the door. While it was also accepted that there could be no estimate of how long the current door would protect from a fire, the Applicant claimed that while a fire door would give longer protection, fire doors with closures were often rendered inoperative as occupants left them open. The current situation was therefore probably as safe with the heat detectors and smoke alarms. The Applicant, though pressed on the issue, did not accept that five student occupiers were more of a risk than four if the property was only two stories.

The Respondent's submissions

21. The primary submission of the Respondent was admirably concise in their submitted case. It is that the Respondent's interpretation of the provision in Schedule 3, paragraph 3(b)(ix), set out in paragraph 8 above, is that an 'appropriate fire door' means a door with a fire resisting construction rated to provide at least 30 minutes protection from fire rather than any other type of door which, it was submitted, cannot be described as a fire door. The written submission was supported by filing a copy of a Home Office paper by Bryant and Preston entitled '*Focus on trends in fire and fire related fatalities*' (October 2017) and by a series of pieces of e mail correspondence with other LHAs.

22. This primary submission was supported by evidence on the issues raised by the Applicant given by Chris Mordaunt and Peter Piotrtoporowski and by arguments submitted orally by Mr Ahuja.

23. Mr Ahuja's submissions were centred on arguments in support for the Respondent's primary submission, with Mr Mordaunt giving evidence. It was submitted that the 2018 Order should be seen as formulating a revised standard; it was an upgrade making clear that licensing was mandatory for all houses occupied by five or more persons where the 2006 Regulations made it clear that a fire door on the kitchen was mandatory. The statutory purpose was to enhance protection for residents. There was a national concern about the rate of fire fatalities in HMOs and one had occurred in the Respondent's area. The submission was that the provision relating to fire doors could be relaxed only in the case of a category of low risk properties, such as those with three or four occupants under

the additional licensing regime; or those with proper escape windows. Five person HMOs were no longer, ever, in a low risk category.

24. A fire door was listed in the 2006 Regulations; and the appropriate fire door was, in the opinion of the Respondent authority, one giving a 30-minute margin, with smoke seals and a self-closure mechanism. Such a door assisted in maintaining the protected escape route in any property giving time for residents to wake up and react to smoke alarms. Other fire doors tended to be of a higher specification, such as 60-minute rated doors, used to separate commercial parts of premises from residential areas.

25. Mr Mourdant was asked whether the local authority considered it had a discretion in relation to mandatory HMOs with five residents. He accepted that an LHA could relax the statutory standard. The Respondent had done so in cases where there was a two-storey property with properly constructed escape windows. However, though the LACORS guidelines were helpful, they were only guidance and published over a decade ago and before the 2018 Order. The Respondent valued its partnerships with other West Country councils but were entitled to differ on this issue where their interpretation was that the words in the 2006 Regulations did mean that a fire rated door was required. The word 'appropriate' meant an appropriate fire rated door. The Respondent was seeking either to have the statutory standard or at least a solution that was aligned with that standard. In that sense, there might be an equivalent solution in some situations, but that was not the position in this case.

26. With regard to the suggestion of the Applicant that there could be a fire risk assessment in each case leading to different solutions, it was pointed out that there were 1200 mandatory HMOs in the Respondent's area, 300 of which were added by the 2018 Order. To try and apply a unique approach to each property would make it very difficult to be consistent and require additional inspections for changes in circumstances – and changes would only be known over the five year period that a licence was in operation if there was contact from the landlord or a tenant.

27. In conclusion, it was submitted that the introduction of mandatory licensing in all cases of five or more occupants indicated that the purpose was to strengthen regulation. The Respondent had acted reasonably and properly within the statutory regime and had taken the view that the same minimum standard should apply to HMOs with five occupants or more.

28. When questioned by the Applicant, the Respondent, through Mr Mordaunt, denied the risk was the same as that in a four person HMO. There was more activity, more cooking and more electrical use. The opportunity to escape may be a similar between the properties but overall risk with five occupants was higher. He also maintained that a fire door was justified in all properties without escape windows so the Respondent would not accept the Applicant's compromise proposal.

The Tribunal's decision

29. The Tribunal dismisses the appeal against the conditions attached to the Licence (to occupy a House in Multiple Occupation relating to 12 Junction Road, Bath BA2 3NH)

issued on 5 September 2019 and declines to vary the conditions that were imposed. The reasons are as follows.

30. The Tribunal considers that the provision in Schedule 3, paragraph 3(b)(ix) of the 2006 Regulations do require a local authority to provide for a fire door which is appropriate to the circumstances. The Tribunal accepts the Respondent's submissions on this point. An 'appropriate fire door' means a door with a fire resisting construction rated to provide at least 30 minutes protection from fire rather than any other type of door. The Tribunal cannot accept the Applicant's submission on the meaning of this sub-paragraph. 'Appropriate' does not mean 'a fire door if appropriate' – if that is what had been intended, the Regulation would have been worded in that way or by words such as 'a fire door if necessary'.

31. The Respondent authority, in common with the approach in some other LHAs, does relax that requirement of a fire door in limited circumstances, as set out above. Whether that practice is in accordance with the Regulations is not for this Tribunal to comment upon, let alone decide. It is sufficient that the Tribunal holds that the natural and clear reading of this regulation is that there must be a fire door to a kitchen in a licence granted in respect of a property needing a mandatory licence and occupied by five people in the manner of this Property.

32. The Tribunal accepts the Respondent's submission that the changes made by the 2018 Order did require a reassessment of the position in relation to five or more persons occupying a two-story property. It was reasonable and correct to make the change in policy that was made.

33. The Respondent was entitled to reject the proposed compromise suggested by the Applicant. The Tribunal considers it would have imposed an unreasonable burden upon the Respondent in determining the approach in each case and that it would not have been possible in practice to know when circumstances had changed. The policy adopted ensures fairness and consistency in relation to all mandatory HMOs. It is also the policy best placed to deliver the fire safety that the provisions of the 2006 Regulations seek to provide for occupiers of such properties.

34. The Respondent's position is not unfair to the Applicant. All one- and two-story properties let to five or more persons are being treated equally. The Tribunal is satisfied that the fire door specified in the Licence in this case is still of real value in protecting the residents even where there are good smoke and heat detectors to provide alarms of any fire.

35. For these reasons, the Tribunal rejects the case put forward by the Applicant and the terms of the Licence are upheld.

Right of Appeal

36. 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.

37. 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.

38. 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.

39. 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 that the party who is making the application for permission to appeal

Judge Professor David Clarke
28 January 2020