FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00JA/HML/2019/0005**
Property	**:**	**13-15 Manor House Street, Peterborough PE1 2TL**
Applicant	**:**	**ALP Developments (Cambs) Ltd**
Respondent	**:**	**Peterborough City Council**
Type of application	**:**	**Appeal in respect of an HMO licence – Section 64 and Part 3 of Schedule 5 to the Housing Act 2004**
Tribunal member(s)	**:**	**Tribunal Judge Wayte** **Chris Gowman MCIEH**
Date and venue of hearing	**:**	**14 January 2020 at Peterborough Magistrates Court**
Date of decision	**:**	**12 March 2020**

DECISION

Decision of the tribunal

(1) The Respondent is directed to grant a selective licence in respect of the property for 5 years on the basis of the application and fee already submitted by the applicant.

(2) The licence is to be subject to a condition that the applicant lets the property in compliance with section 79(2) of the Housing Act 2004.

The application

1. This is an unusual application in that it seeks to establish that the property is an HMO and therefore falls under the provisions for mandatory licensing in the Housing Act 2004.

2. The application was received by the tribunal on 9 October 2019. The applicant had converted a former school, a two-storey building, into 12 "bedsits" with a large communal living room and shared laundry. Permission had been obtained from the council for the conversion into an HMO and, following completion of the works, an application had been made for the requisite licence. That application was refused by the council on the grounds that the property did not meet the definition of an HMO in section 254 of the Housing Act 2004 as the "bedsits" all had private cooking and washing facilities. The property fell within a selective licensing area in Peterborough and therefore the council claimed that 12 individual selective licences were required at a price of £600 per room (£7,200), as opposed to the £750 already paid by the applicant for an HMO licence. There was no dispute in terms of the applicant's suitability for a licence or the suitability of the property for occupation by 12 persons.

3. Directions were given on 25 October 2019. The issues were identified as: (i) does the property fall within the definition of an HMO; (ii) in particular, does the provision of the communal living room and laundry room bring the property within the definition of an HMO; and (iii) should the tribunal direct the authority to grant a licence to the applicant and if so on what terms? Both parties filed statements and documents in support of their case and an inspection and hearing was arranged for 14 January 2020.

4. Following the hearing, both parties were given the opportunity to file submissions about the selective licensing scheme and, in particular, the basis on which the council claimed multiple fees would be required. The council provided their submissions on 23 January 2020 and the applicant responded by letter dated 12 February 2020. Those submissions have been taken into account by the tribunal in reaching its decision.

The Law (an overview)

5. Part 2 of the Housing Act 2004 introduced a new scheme for the licensing of HMOs by local housing authorities. A licence authorises occupation of the HMO by not more than the maximum number of households or persons specified in it (section 61). That number is determined by reference to prescribed standards which usually refer to the number, type and quality of kitchens, bathrooms and laundry facilities (section 65). There is also provision for the licence to include such conditions as the local housing authority consider appropriate for

regulating the management, use and occupation of the house concerned (section 67).

6. Where an application in respect of an HMO is made to the local authority it must either grant or refuse the licence (section 64). The duration is for a maximum of 5 years (section 68).

7. Part 3 of the 2004 Act deals with selective licensing. In particular, local housing authorities may designate areas or their district as a whole as subject to selective licensing, having considered certain conditions set out in sections 80 and 81. If so designated, section 85 contains a requirement for every Part 3 house to be licenced under Part 3 unless it is an HMO to which Part 2 applies, subject to a temporary exemption notice or a management order. Section 87 covers applications including fees. Section 88 the grant or refusal of a licence and section 90 the licence conditions.

8. Any appeal against licence decisions is covered by the provisions in Schedule 5, Part 3. In particular, paragraph 34 states that the appeal is to be by way of a re-hearing, may be determined having regard to matters of which the authority was unaware and the tribunal may confirm, reverse or vary the authority's decision. On an appeal against the refusal or grant of a licence, the tribunal may also direct the authority to grant a licence on such terms as the tribunal may direct.

The inspection

9. The tribunal met the parties at the property at 10am on 14 January 2020. The property was originally a school, with an original building dating back to 1893 and more modern extensions. The property had been converted into 12 rooms, each with a kitchenette and ensuite washing facilities. After entering through the front door where we saw individual post boxes for each room, we were shown the interior of room 1, at the rear of the property on the ground floor. The bed sitting room was of a good size, with a bed, seating and television area and a compact fitted kitchen including a standard sink and oven, two ring hob, fridge freezer, work surface and cupboards for storage. The ensuite facilities included a shower, sink and toilet.

10. Further along the corridor we also saw the communal washing and drying room, with 2 coin-operated washing machines and 2 driers, and a large communal living room laid out with tables, chairs, a sofa and television. Although each room had private facilities, heating, power and water was communal. At the rear of the property private parking was provided for each room, together with additional spaces for visitors and leisure space.

11. The conversion, completed in September 2019 was of a high quality, finished to the same standard as number 11 next door, which had also

been developed by the applicant and was already licensed by the council. The condition both internally and externally was excellent, with no apparent works required.

The hearing

12. At the hearing, the applicant was represented by its directors John Lepore and Zahoor Ahmed. The respondent was represented by its solicitor Mark Willingham and Housing Enforcement Officer Jonathan Hodgson.

Does the property fall within the definition of an HMO?

13. Mr Ahmed had provided a bundle for the hearing which included his application to the tribunal, a copy of an email from Jonathan Hodgson dated 26 September 2019 stating that the property was not an HMO and further particulars of his application. He explained that that there had been various discussions between the applicant and various parts of the council during the development of the property. The original plans had not included kitchens in any of the rooms but this was varied following discussions between the applicant and Mr Bezant of the council who has suggested individual kitchens would be better for the occupants and the landlord. Mr Ahmed had then worked with the council to ensure that the facilities met their requirements, for example in respect of the dimensions of the kitchens.

14. Mr Ahmed explained that the applicant was trying to provide a modern shared house for single young professionals let at a competitive all-inclusive rent. The development was very popular, all rooms were let and there was a waiting list. He had planning permission for two other properties in the area but was concerned that the council's insistence on treating the rooms as 12 self-contained flats would be unaffordable in terms of the licensing fees. He maintained that the property was a single house: there was one postal address, a single lighting, heating and water system and shared living space. He was also concerned that his mortgage depended upon the property being classified as an HMO, although no evidence was produced from the mortgage company to that effect.

15. The additional written particulars relied on the Valuation Tribunal decision in *Tully v Jorgenson* which appeared to expand the definition of "living accommodation" beyond kitchens and bathrooms to include recreation and leisure facilities. Mr Ahmed's submission was that the communal living room meant that the property met the standard test of an HMO in the Housing Act 2004. Alternatively, he was prepared to remove the oven and hob in each of the rooms and replace them with microwaves as a condition of being granted an HMO licence, as he was aware of other similar developments within the Peterborough area which had been granted HMO licences on those terms.

16. The council had provided a bundle containing a witness statement by Mr Hodgson, a copy of the HMO licence application, a copy of his inspection notes dated 24 September 2019 and various emails between the parties. The HMO licence application clearly stated that the 12 units were self-contained and there were no non-self-contained units in the property. Despite this, the inspection appeared to have proceeded on the basis of a shared kitchen (front page of the HHSRS Inspection Form). Following the inspection Mr Hodgson sent an email to Mr Ahmed dated 26 September 2019 confirming that the property did not meet the definition of an HMO in the Housing Act 2004 due to the fact that the rooms all had their own washing and cooking facilities. That email concluded: "*During my inspection, I found the flats to be in excellent condition. They have been well constructed and well furnished. The amenities provided within them are to a very high standard, which has brought the accommodation up above the definition of a HMO.*"

17. The directions required the parties to communicate with each other in advance of the hearing to see whether they could reach an agreement. A meeting took place on 26 November 2019 as confirmed in an email from Mr Hodgson sent the following day. That email confirms that no agreement was reached as to whether the property was an HMO in its current form but the council agreed to consider any plans the applicant put forward to remove some of the individual cooking facilities and replace them with shared facilities in the living room in order to convert the property into an HMO as defined by the Housing Act 2004. At the hearing Mr Hodgson conceded this would result in worse facilities for the occupants of the property.

The tribunal's decision

18. The tribunal agrees with the council that in its present form, the property does not meet the conditions set out in the Housing Act 2004 for a mandatory HMO licence under Part 2. In particular, under section 254, to qualify as a house in multiple occupation for the purposes of the 2004 Act, the building must meet either the standard test, the self-contained flat test or the converted building test. The applicant accepted that neither the self-contained flat test or the converted building test applied in this case. Under section 254(2):

> *A building or a part of a building meets the standard test if-*
> *(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
> *(b) the living accommodation is occupied by persons who do not form a single household;*
> *(c) the living accommodation is occupied by persons as their only or main residence or they are to be treated as so occupying it;*
> *(d) their occupation of the living accommodation constitutes the only use of that accommodation;*

(e) rents are payable or other consideration is to be provided in respect of at least one of those person's occupation of the living accommodation; and
(f) two or more of the household who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

This definition describes a classic HMO where there are a number of "bedsits" or units of "living accommodation" rented by separate individuals who share one or more basic amenity, described in the Act as a toilet, personal washing facilities or cooking facilities. Historically, such properties were often in poor condition and that is the reason why the Housing Act 2004 introduced regulation of HMOs and, in particular, mandatory licensing under Part 2.

19. The property at the heart of this dispute is in a different class: excellent accommodation has been provided for 12 individuals each with their own self-contained facilities. The additional shared living room is not occupied as a residence by the occupants of the individual rooms but as an additional shared amenity. Their only or main residence is their room and no basic amenities as defined in the 2004 Act are shared. In the circumstances the property does not meet the standard test as set out in the 2004 Act. The council tax case cited by the applicant is of no relevance to this statutory definition. It would of course be open to the applicant to remove the kitchen facilities or part of them from the rooms and alter the living room to provide shared kitchen facilities but the tribunal fails to understand why the council would want to encourage that course of action (having initially encouraged the applicant to provide private facilities) or how it would fit with their policy on licensing which aims to improve the quality of private sector housing within Peterborough. Mr Hodgson agreed in the hearing that the accommodation provided by the applicant was a very welcome additional to private sector housing in Peterborough.

Selective licensing

20. This leads to the second part of the dispute: if the property does not meet the requirements for mandatory HMO licensing, is the council correct that the only other course of action is for the applicant to apply for a selective licence for each room at a cost of £7,200 as opposed to the £750 already paid by the applicant? The council's bundle did not address this part of the dispute and therefore they were ordered to provide submissions by 24 January 2020.

21. Those submissions stated that the council considered that each of the rooms was a "Part 3 house" for the purposes of the council's selective licensing scheme. They pointed to a decision of the Thames Magistrates Court in The London Borough of *Waltham Forest v Tuitt* in November 2016 where it was decided that each of 3 flats in a converted mid-terrace house was a "house" for the purposes of sections

85 and 99 of the 2004 Act, meaning that 3 licences were required. The decision was said to be based on a risk of the alternative argument that the property was one house to the policy objective of Part 3, which is to create sustainable communities by improving the condition and management of accommodation in the private rented sector; although there was no explanation as to why. The council also submitted that if the building was to be considered a part 3 house in its entirety, the manager could avoid the need to license any of the dwellings simply by letting one room to a registered provider of social housing for onward subletting. This would be an exempt tenancy under the Act and mean that the building would no longer meet the requirement under section 79(2) of the 2004 Act for the whole property to be occupied under two or more tenancies, none of which is an exempt tenancy or licence.

22. In response, the applicant stated that the council had not provided sufficient evidence or documents to support their assertion that separate selective licenses were required. *London Borough of Walthamstow v Tuitt* was not binding on the tribunal and no details of the property in that case were provided: the applicant stated that they suspected the flats were self-contained in respect of utilities with no shared accommodation at all. The applicant also pointed out that there was no improvement required to enhance the condition or management of the property in dispute and demanding £7,200 for the licence would potentially have the opposite effect, by reducing the income available for maintenance.

The tribunal's decision

23. The tribunal agrees with the applicant that the respondent's submissions were limited, in particular there was no reference to any council policy or statement to support their claim that separate fees were required. The tribunal has considered the *Tuitt* decision, which is not binding and again agrees with the applicant that there is insufficient information about the property in that case to confirm whether it is truly comparable to the property in dispute.

24. Section 99 sets out the meaning of "house" in terms of the selective licensing regime as follows:

"*In this Part - "dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling; "house" means a building or part of a building consisting of one or more dwellings; and reference to a house include (where the context permits) any year, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it).*"

The property in dispute is clearly a building consisting of one or more dwellings. It was developed as an HMO and then given superior facilities following negotiations with the council that took it out of the current definition of an HMO in the 2004 Act, as there are no shared basic amenities. However, it still operates as a building with communal

utilities and shared leisure space. In the circumstances the tribunal considers that it is a house as defined in section 99 and therefore only requires one licence. There seems to the tribunal to be no point in requiring the applicant to apply for a selective licence, as an HMO application is likely to be at least as detailed if not more, given the additional requirements of HMO licensing. In terms of the relevant fee, it seems to the tribunal that the property is a house in multiple occupation, albeit not one falling within the definition in the Housing Act 2004. In the circumstances an HMO fee would appear appropriate and has already been paid by the applicant.

25. As stated above, the tribunal's powers on an appeal against a decision of a local housing authority to refuse a licence are wide. The tribunal may confirm, reverse or vary the decision; it may also direct the authority to grant a licence to the applicant on such terms as it directs.

26. In the circumstances, the tribunal directs the council to grant a selective licence to the applicant for 5 years on the basis of the application made in September 2019 and at a fee of £750. In order to ensure that the property continues to require a selective licence, the grant is subject to the condition that the applicant lets the building in accordance with section 79(2) of the 2004 Act, namely to private individuals as opposed to a registered provider of social housing. The tribunal understands this to be the business model of the applicant in any event.

Name: Judge Ruth Wayte **Date:** 12 March 2020

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).