



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

Case reference : **CAM/38UC/HMV/2020/0002**
HMCTS Code : **P:PAPERREMOTE**

Property : **12 Mill Street, Oxford OX2 0AJ**

Applicant : **Mohammed Ishfaq**

Respondent : **Oxford City Council**

Type of application : **Appeal in respect of an HMO
licence conditions**

Tribunal member : **Judge Wayte**

Date : **29 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. A face-to-face hearing was not held as all issues could be determined in a remote hearing on paper in accordance with Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Both parties made written representations which have been taken into account. The order made is described below.

Decision of the tribunal

- (1) The appeal in respect of condition 2 is struck out.
- (2) The licence is varied to extend the applicant's time for compliance with condition 26 to 10 November 2021 and for the licence to expire on that date.

Background

1. On 5 June 2020 the tribunal received an application challenging two licence conditions included in an HMO licence granted on 11 May 2020 by the respondent to the applicant in respect of the property. In particular, condition 2 which required a minimum floor area of 6.51m² in respect of rooms being used as sleeping accommodation for persons over 10 years and condition 26 which required compliance with condition 2 in respect of the first floor rear bedroom (measuring 5.7m²) by 9 months from the date of the licence. The grounds of appeal given in the application form stated that the applicant believed that the room was not too small when used in connection with the dwelling.
2. I gave directions on 23 July 2020 and pointed out that under the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 (“the 2018 Regulations”), the Government had set a minimum room size of 6.51m² for all adult sleeping accommodation in HMOs. In the circumstances, an appeal solely on the grounds that 5.7m² is sufficient (assuming there is no dispute as to the size of the room) has no reasonable prospect of success, unless the accommodation is intended for a child of under 10 years. The 2018 Regulations allowed up to 18 months in respect of any occupant at the time the licence was granted to find alternative accommodation and I flagged up that the parties might be able to agree a variation of that condition to reflect the maximum time limit.
3. Following service of the directions order, the applicant wrote to the tribunal on 4 August 2020 requesting that the appeal be adjourned for at least 4 months in view of the pandemic which made preparation for the appeal difficult. The council responded to that email the same day, confirming that they were willing to permit the use of the undersized bedroom by the current occupant for up to 18 months but that since there were other conditions that had not been appealed, they would prefer that the appeal was resolved as soon as reasonably possible.
4. On 6 August 2020 the tribunal wrote to the occupants of the property in accordance with usual practice, to advise them of the appeal and ask them to confirm whether they would permit an inspection of the property by the parties to confirm the measurements of the room in dispute. The tribunal confirmed that the time for the applicant to provide better details of his case would be extended to 18 September 2020 to allow him to make arrangements to inspect the property. The applicant responded that same day, reiterating his request for an adjournment based on his difficult personal circumstances. He stated that: *“It is part of the appeal that the room needs to be looked at in conjunction with the rest of the property, this is not merely a measuring exercise and the tribunal cannot make a just determination without inspecting the property.”*

5. The tribunal replied on 11 August 2020. It acknowledged the applicant's difficult circumstances but reiterated that the 2018 Regulations were clear: if the room is less than 6.51m² it cannot be used as an adult bedroom (in an HMO). In the circumstances and given the concession by the council to extend the time for the current occupation of the room to the maximum permitted under the Regulations, the procedural Judge was of the opinion that the appeal had no reasonable prospect of success. In the circumstances the Judge was minded to strike out the appeal under Rule 9(2)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") but gave both parties the opportunity to make representations prior to making a final decision.

The Applicant's Case

6. The applicant's representations were made by letter dated 15 September 2020. He stated that he had been unable to ascertain the room dimensions but relied on the sales particulars which stated that the room had a floor area of 6.13m². "*To achieve the desired size of 6.51 m² the room would need to be widened by just 14mm*", in these circumstances "*the difference is so slight and immaterial so as to have no effect*". He maintained he had a right to a hearing and that the current restrictions on obtaining possession of the property rendered it improbable that he would be able to secure possession of the room before the trigger date. He attached a copy of the sales particulars and a statement from the tenant with pictures of the room in issue.
7. The sales particulars included a plan of the property which measured the room in question at 2.62mx2.34m i.e. 6.13m². However, an "Important Notice" stated that the measurements were approximate and no responsibility would be taken for any error, omission or mis-statement. The plans were for representation purposes only.
8. The statement by Almudena Aymat, dated 18 June 2020 confirmed that while her room was small, the common areas of the house were very good. There were clear photographs which illustrated the cramped nature of the accommodation, with a single bed against the radiator, a chest of drawers and a small clothes rack.

The Respondent's Case

9. The respondent replied on 24 September 2020. A statement by Matthew Kidger, Environmental Health Officer, gave details of his inspection of the property on 13 February 2020. He confirmed that he took measurements of the rooms using an electronic laser measure. He measured the room in question twice, obtaining a measurement of 5.7m². On that basis the bedroom was unsuitable for occupation by an adult if the property was being used as an HMO. He felt that the property was suitable for 5 persons from three households, with a couple in each of the larger bedrooms and a single occupant of the third bedroom in excess of the minimum room size.

10. In their response to the applicant's representations, the respondent questioned the reliability of the room dimensions as stated by the applicant but pointed out that even if they were correct, they were still below the minimum legal size of 6.51m². The respondent considered it very unlikely that the removal of skirting boards would achieve the minimum mandatory room size but confirmed that if the applicant was able to make alterations to the room so that it is larger than 6.51m², the condition would no longer be applicable. On the basis that the applicant's principal argument remains that a room measuring less than the legal minimum is suitable, the appeal should be struck out.

The tribunal's decision

11. The 2018 Regulations came into force on 1 October 2018 and apply to any licences granted on or after that date. As the title indicates, they provide for mandatory conditions for HMO licences, including conditions to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres. If the licence holder is in breach of such a condition, the Regulations state that no more than 18 months can be given to rectify that breach. These conditions must be included in an HMO licence and there are no exceptions or de minimis provisions in the Regulations.
12. It follows that if the room in question is less than 6.51m², the applicant's appeal in respect of the use of that room has no reasonable prospect of success. In this regard, I prefer the evidence of the respondent which confirms a measurement of 5.7m² taken by a qualified Environmental Health Officer using a laser measure. The applicant's evidence in respect of room size is poor in comparison, being limited to approximate measurements on sales particulars. In any event, even this evidence points to a room smaller than the mandatory size. In the circumstances I consider that there is no reasonable prospect of the applicant's appeal as to condition 2 succeeding and strike out that part of the case pursuant to Rule 9(3)(c) of the 2013 Rules.
13. As to the appeal against condition 26, the respondent has already agreed to vary the time limit for compliance with condition 2 to the maximum permitted under the 2018 Regulations. That date is 10 November 2021 and it would seem appropriate to extend the HMO licence to that date given the current occupancy of the room. In the circumstances, I vary the licence in those terms. I note the applicant's concerns but the current stay on possession proceedings has now expired. In any event, there is no indication that proceedings will be necessary.
14. I appreciate that the applicant considers the 2018 Regulations are overbearing but they only apply when the property is being occupied as an HMO. He has permission for a total of 5 people from three households without the use of that room as a bedroom and the current

occupant can remain in her room until the expiry of the licence on 10 November 2021.

Name: Judge Wayte

Date: 29 September 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).