



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

Case Reference : **BIR/00CQ/HML/2022/0001**

Property : **26 Cable Yard, Electric Wharf, Coventry,
West Midlands, CV1 4HA**

Applicant : **Roger Braithwaite**

Respondent : **Coventry City Council
(refs WK/221007458 & LN/222000797)**

Type of Application : **Appeal against the Conditions to a Licence
For a House in Multiple Occupation
Under Schedule 5 Housing Act 2004**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr R Chumley-Roberts
MCIEH. JP**

Date of Hearing : **19 December 2022**

Date of Decision : **24 January 2023**

DECISION

1.The Tribunal revokes condition 2 Schedule 2B Further Discretionary Conditions attached to the subject Licence.

2.The HMO licence granted to the Applicant by the Respondent on 10 May will run for a period of five years from 22 April 2022 to 21 April 2027

Introduction and Background

1. This is an appeal against conditions imposed upon a licence for a House in Multiple Occupation. The decision to grant the relevant licence was made on 10 May 2022. It was issued for a period of 2 years with effect from 22 April 2021 to 21 April 2023. The licence imposed Discretionary Conditions relating to clearance of items from the escape route which is not relevant to this matter and installation of a new fire door which is relevant to the matter. The Applicant opposed the need for a new fire door and issued this application on 6 June 2022 within 28 days of the date of the decision to grant a licence.
2. Directions were issued on 15 June 2022 requiring the Respondent to prepare a Statement of Case setting out matters of fact and law relied upon relating to the licence conditions. The Applicant was directed to prepare his Statement of Case by 20 July 2022. The Applicant requested an oral hearing and the Tribunal directed there be an inspection before the hearing which took place on 19 December 2022.
3. The issue for the Tribunal was whether it was reasonable to impose conditions upon the grant of a HMO licence. After the hearing the Applicant issued an application for an order that the Respondent was unreasonable in the conduct of these proceedings entitling him to an order for costs pursuant to R13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. On receipt of the application the Tribunal issued further directions for preparation, filing and service of respective statements of case in connection with the costs application. This Decision sets out its reasons for the

substantive issue. The Tribunal's determination of the costs application will be issued as a supplementary decision.

The Property

4. The Tribunal inspected 26 Cable Yard on 19 December 2022 in the presence of the Applicant, Roger Braithwaite and representatives of the Respondent, Mr Chantler the Principal Environmental Health Officer and Ms Harrison, an Environmental Health officer.
5. The Property is a three storey, three-bedroom terraced property constructed in 2009. The Applicant acquired it in 2013. He has used it, since acquisition, as property suitable for letting to students. Cable Yard appears to be a terrace of recently constructed properties forming part of a larger scheme of redevelopment of former industrial buildings. Much of the development involved repurposing of old buildings but Cable Yard is a recently constructed terrace on a part of the site once used for cable storage.
6. There is one bedroom on the ground floor, two bedrooms and a bathroom on the first floor, a kitchen and living room on the second floor with a mezzanine above with access by a steep staircase from the kitchen area.
7. Inspection started in a mezzanine floor in the roof of the building overlooking, on one side, the kitchen and on the other, the living area. The mezzanine floor is used as a study area. Smoke alarm and air vents were installed. Staircase down to a fully fitted kitchen with table and chairs supplied. Exit from the kitchen was by a short staircase of three steps down to the small landing at the top of the staircase from the floor below. Off this small landing was another three step stairway up to the living area which gave access to a balcony overlooking a small garden bounded by the canal. Half height walls form the interior walls of both kitchen and living area, which separate both from the mezzanine and provide an open airy well-lit space.

8. The staircase from the kitchen and living room is down to the first floor with two bedrooms and bathroom. The bedrooms are fitted with what appeared to be 30 minute fire resistant doors. Windows to both bedrooms are a means of escape to the ground in the event of fire. The ground floor comprised a bedroom, fitted with a 30 minute fire resistant door to the entrance hall and a glazed door to a patio or low balcony which overlooks the canal. The distance from the bedroom door to the entrance door of the Property from Cable Yard was estimated at 3 metres. The staircase down from the first floor ended in the entrance hall immediately by the door to the ground floor bedroom, so this was within 3.0 metres of the final escape door (to Cable Yard). The entire staircase down from the kitchen and living area appeared to be constructed so as to provide at least 30 minutes fire resistance, along the “protected route”.
9. The Property was unoccupied at the time of inspection. All fittings to both bathroom and kitchen were in good condition.

The Subject Licence

10. The history of the subject licence started on 22 July 2020 when the Applicant applied for a 5 year licence and paid the stage one fee of £450.00. The Applicant asserts that he made a telephone call to the Respondent explaining he had encountered problems with the on-line application and that consequently he had not downloaded all items needed. He asked the Respondent’s officer to inform him whether or not the application could be read. The Respondent acknowledged there was a problem with on-line applications. On 3 March 2021 a Property Licensing Assistant emailed the Applicant stating he had not applied properly and he was at risk of prosecution. He complained about the Respondent’s service. His complaint was partially upheld due to the delay since July 2020.
11. The Applicant then sent further documents required in support of the application.

12. On 1 April 2021, the Respondent asked the Applicant to self-certify the fire alarm system, which he supplied on 5 April 2021.
13. Meanwhile, on 14 March 2021 the Respondent issued a Notice of Intent to grant an HMO licence for a period of 2 years to remain in force from 22 April 2021 to 21 April 2023. It authorised no more than 3 people from 3 households for occupation. Schedules 1 & 2A of the licence set out Statutory and Standard Discretionary Conditions which are not controversial.
14. Schedule 2B to the proposed licence provided Further Discretionary Conditions specific to this Property.
 - a. Condition 2 stipulated that the licensee must *“Provide a newly manufactured fire door to the bottom of the stairs leading to the kitchen so as to provide 30-minute fire-resisting construction and to satisfy the requirements of the current British Standards. The door and frame must be installed to satisfy the requirements of the current British Standards”* which were set out in 9 sub-paragraphs. The installation was to be done within three months of the date of the licence.

The Condition was imposed pursuant to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2015 (The 2015 Regulations)
 - b. Condition 3 required payment of the Stage 2 fee of £255.00 within 14 days of the date of the licence in accordance with s67(1)(a) of the 2004 Act.
15. Upon receiving the Notice of Intent to issue a licence with these relevant conditions the Applicant objected by letter dated the 18 March 2021. By that letter he objected to the limitation of the period of the licence to two years commencing on 22 April 2021. He also objected to the condition relating to the fire door as he did not believe the door was required by law or that it could be safely provided in compliance with building regulations.
16. The next step occurred on 24 February 2022 when Ms Calliope Harrison for the Respondent inspected the Property. At the inspection, Ms Harrison referred to the need for a fire door at the bottom of the stairs below the

kitchen. The Applicant gave her another copy of his fire risk assessment and explained a fire door would be potentially dangerous, if installed.

17. On 13 March 2022 the Applicant received a letter from the Respondent refusing the application for a five-year licence. A two year licence was offered because of the apparent failure to submit a complete application in July 2020.

18. On 10 May 2022 the Respondent issued a licence for use of the Property as a house in multiple occupation for a period of two years from 22 April 2021. A further exchange followed in which the Respondent rejected the Applicant's representations about the term and conditions of the licence.

The Hearing

19. On 3 June 2022, the Applicant issued these proceedings. Each party complied with Directions relating to service of respective Statements of Case in which the Respondent persisted with its contention that a fire door was necessary.

20. However, on or about 16 December 2022, shortly before the hearing, the Respondent withdrew the condition of installing a fire door. Instead, Mr Chantler for the Respondent, contended the configuration of the kitchen involving open access to the stairway leading across the central staircase to the living area and the use of half height walls to both kitchen and living area created a hazard, namely that in the event of fire from the kitchen there was insufficient means to prevent escape of smoke. Accordingly, the hearing went ahead to determine what conditions if any, should be imposed on the licence.

The Applicants submissions

21. The Applicant is an environmental health officer. He is familiar with many aspects of Building Regulations and he has worked as an expert witness. His Statement of Case included as an appendix his full fire risk assessment, photographs of the interior of the property and copies of notices left at the Property with advice and guidance relating to fire safety.

22. He asserted that the Property as it is, does not need any alteration. It is occupied by no more than three people typically being students who are a shared household having a substantially similar timetable for their use of the Property. Other properties in Cable Yard are occupied by families comprising more than three people or are used as occasional residences under Air BnB type contracts. Their usage does not require structural alteration of the type proposed for their continued use and occupation.
23. Further he asserted the safety standards in the house exceed what is required by HomeStamp Guidance which Coventry City Council subscribes to. Also, the Fire Safety Order does not apply to the Property having regard to its size and occupation rate save for the common parts. His Fire Safety Assessment compared the construction of the Property with the fire safety standards imposed by either LACORS or HomeStamp and contended that the Property met or exceeded all the conditions.
24. He confines his letting arrangement to three students. He uses a letting agent to locate tenants. The agent is familiar with his requirements. Only students have occupied the Property since he owned it.
25. He had consulted an independent expert, Mr Steve Davies a Fellow of the Chartered Association of Building Engineers who had reported that a fire door in the place proposed would constitute a breach of building regulations in that it would constitute an obstruction to a means of escape. He used the independent expert to give this advice because his experience in the profession and as an expert witness has taught him when he should not express an opinion.
26. As far as the suggestion of structural alterations to the kitchen area to enclose it, he contended any fire or smoke in the kitchen would not spread to the lower floors in less than 30 seconds.
27. The Applicant exhibited to his Statement of Case the documents he provides to tenants relating to fire precautions and safety measures in his Advice to

Tenants notices. He asserted he meets all new tenants when keys are handed over to explain the features of the Property and also to explain fire safety. He always stressed that in the event of fire, they should escape at once and not delay to recover personal items or attempt to extinguish it.

28. The Applicant summarised his reasons for opposing the Respondent's revised fire safety conditions. The Property is a shared house occupied by three people who sleep behind fire doors which lead to a protected stairway. The position of the kitchen on the second floor is not an elevated risk. In the event of fire, all occupiers can exit the building safely. The mezzanine space will take some time to fill with smoke. There is a clear means of escape from all rooms.

29. The Applicant's Fire Risk Assessment was a substantial document comprising six pages of analysis of relevant regulation and their application to this Property. It concluded with a Summary which contended:

- *Adequate early warning of fire is available in the form of an interlinked hard wired fire alarm system which is regularly maintained*
- *Half hour fire doors with closer are provided to stop fire spreading from rooms*
- *Safe means of escape has been provided via the protected and lit stairway, escape windows and additional exit door at ground level*
- *Basic fire fighting facilities are provided and maintained*
- *There are no occupiers at special risk*
- *There are no high-risk materials stored on the premises*
- *Furniture and mattresses comply with relevant fire prevention requirements*
- *Tenants have been provided with written information and advice*

30. In answer to a question from Mr Chantler, the Applicant denied his fire safety risk assessment should state how to stop the spread of fire because that is a building structure matter. His assessment gives directions on how to escape.

31. In answer to questions from the Tribunal, the Applicant explained that he ensures there are only three residents by making as many as six visits to the

Property during the tenancy. Students pay their rent individually when they receive their loans, but all other payments are on a shared basis. It is not possible to separate the kitchen with the wall extensions and doors proposed as they will block the exits. He does not have a management agreement with his agent. He always lets the Property through FutureLets a letting service of Coventry University. He asserts they will not let any property which is considered a fire risk to the occupiers and does not comply with local authority requirements.

The Respondent

32. Mr Chantler, for the Respondent, agreed that fire doors are not necessary but asserted the designation of windows as a secondary means of escape resulted in a lack of clarity over the primary escape route. He submitted that compartmentalisation of the kitchen would achieve a clear escape route. He further submitted that the guidance offered by both LACoRS and HomeStamp direct towards compartmentalisation of a kitchen.

33. Students do not necessarily fully share a house. Their behaviour is not controlled, he suggested their course timetables could result in use of the kitchen at different times. Students can be careless in their behaviour.

34. The Respondent asserts that good compartmentalisation will provide the most secure means of escape in the event of fire.

The Statutory and Regulatory Framework

35. Part 2 of the Housing Act 2004 (the 2004 Act) provides for HMOs to be licensed by local housing authorities where they are HMOs to which this Part applies (s55(1)). Every local housing authority have duties set out in s55(5) and at s55(5)(b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.

36. S61(3) provides that ss63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.
37. Section 67 empowers the local housing authority to include such conditions as it consider appropriate for regulating the following:
- a. The management use and occupation of the house concerned, and
 - b. Its condition and contents.
38. Schedule 3 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 prescribes standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons. Paragraph 5 requires “*Appropriate fire precaution facilities and equipment must be provided of such type, number and location as considered necessary*”.
39. Section 71 of the 20004 Act provides *Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.*
40. Part 3 Schedule 5 provides at paragraph 31(1):
- The applicant or any relevant person may appeal to the appropriate 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*
- Paragraph 34(2) provides that 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.

(4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.

41. The Regulatory Reform (Fire Safety) Order 2005 made pursuant to s1 Regulatory Reform Act 2001 and substantially effective from 1 October 2006 made provisions regulating the safety of premises from the risk of fire. Article 5 prescribed duties of the responsible person as:

(1)not relevant

(2) Where the premises are not a workplace, the responsible person must ensure that any duty imposed by articles 8 to 22 or by regulations made under article 24 is complied with in respect of those premises, so far as the requirements relate to matters within his control.

(3) Any duty imposed by articles 8 to 22 or by regulations made under article 24 on the responsible person in respect of premises shall also be imposed on every person, other than the responsible person referred to in paragraphs (1) and (2), who has, to any extent, control of those premises so far as the requirements relate to matters within his control.

(4) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of any premises, including anything in or on premises; or

(b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends.

(5) Articles 8 to 22 and any regulations made under article 24 only require the taking or observance of general fire precautions in respect of relevant persons.

42. Article 6 provides (so far as relevant):

(1) This Order does not apply in relation to —

(a) domestic premises, except to the extent mentioned in paragraph (1A) or article 31(10);

(b) to (g) not applicable.....

(1A) Where a building contains two or more sets of domestic premises, the things to which this order applies include—

(a) the building's structure and external walls and any common parts;

(b) all doors between the domestic premises and common parts (so far as not falling within sub-paragraph (a)).

Article 8 requires the responsible person to take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe,

Article 9 imposes an obligation on the owner of premises to make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions he needs to take to comply with the requirements and prohibitions imposed on him by or under this Order.

Discussion and Decision

43. This is an appeal by way of rehearing of the imposition of a condition attached to an HMO licence requiring the installation of a fire door. At the hearing the respondent confirmed it no longer required that alteration to the Property but instead contended that the kitchen situated on the second floor of the Property be compartmentalised.
44. There is no dispute that the Property is in an area of selective licensing or that an HMO licence is needed for the Applicant's use.
45. At inspection the Tribunal observed that the kitchen is open on one side with a half-height wall presenting a view over the staircase to the living room with large windows, a door and a balcony. Access to the kitchen area is gained by a staircase which serves both the kitchen area and the living room. In order to facilitate the access there are short stair cases off the central staircase leading to the kitchen and living area respectively. Compartmentalisation of the kitchen would require the construction of a full height wall and the fitting of a

door at the top of the short stairs. Compartmentalisation would substantially limit natural light into the kitchen.

46. The late change of approach by the Respondent was unsatisfactory and appeared to be something of a rear guard action to justify its continued opposition to the Applicant's appeal.
47. The Tribunal found the Property to be pleasant and well maintained with a small garden space overlooking a canal at the front. It noted reasonable quality 30 minute fire protection doors with smoke strip protection in the doorways of the bedrooms. There are clear escape routes from each bedroom by windows if the stairway is inaccessible on the first floor. On the ground floor escape is by door way to the front of the Property from the bedroom or by the rear door to the street approximately ten paces from the bedroom door.
48. The Applicant's Fire Risk Assessment was a thorough and comprehensive document which described the appropriate steps taken to protect the occupiers in the event of fire which the Tribunal was able to corroborate.
49. Mr Davies, instructed by the Applicant, expressed the opinion that a door fixed in the position required by the Respondent would constitute an obstruction to an escape route. The Tribunal accepts that opinion and considers the compartmentalisation of the kitchen including a door would obstruct the escape route particularly as the door would open onto a short staircase down.
50. Moreover, with or without a new kitchen door new full height walls would cause significant loss of light as well as a loss of overall amenity now present with the open aspect of the second floor.
51. The Tribunal noted the kitchen is on the second floor and that any smoke from fire would first occupy the kitchen then mezzanine floor. Hard wired smoke alarms are fitted to the upper floors which if triggered would alert occupiers of rooms below. The Procedure in Case of Fire notice exhibited to the Applicant's Statement of Case directed that in the event of fire occupiers

should “*leave your room and make sure the door closes properly behind you*”. Among other directions relating to assembly and notification to the fire brigade the notice states “*Only attempt to tackle a fire if it is small and you are absolutely sure it will not put you or anyone else at risk*”.

52. Both parties referred to the guide lines for fire safety published by LACoRS and HomeStamp a partnership consortium with an interest in private sector housing comprising local authorities, the private rented sector and West Midlands Police and Fire Services. As far as the Applicant was concerned, he complied with their guidelines and the regulations contained in the Fire Safety Order. The Respondent contended the guidelines tended towards compartmentalisation of the kitchen.
53. The Tribunal had the benefit of an inspection, the submissions of both sides and their respective comprehensive Statements of Case. Having considered the submissions and applying its own specialist knowledge the Tribunal is satisfied the Property as it is, meets the general fire precautions reasonably required in the circumstances of the case to ensure that the premises are safe, (Article 8 Fire Safety Order) and there are appropriate fire precaution facilities and equipment provided of such type, number and location as necessary to satisfy paragraph 5 of the HMO Licensing and Management Regulations 2006. The Tribunal therefore revokes condition 2 Schedule 2B Further Discretionary Conditions attached to the subject Licence.
54. The Tribunal understands the Applicant has put the Property up for sale. Therefore, it does not intend to make any further variation to the conditions or term of the licence. However, in the event the Applicant removes the Property from the market with a view to further letting it, he should enter a management agreement with his agent stipulating the maximum number of tenants who may occupy the Property and what steps are required to ensure no more than the maximum number are ever resident in the Property.
55. Moreover, it appears to the Tribunal that the Respondent’s reason for restricting the licence to two years is without foundation, particularly having

regard to the length of time taken to process the licence application. Therefore the Tribunal determines the HMO licence granted to the Applicant by the Respondent on 10 May 2022 will run for a period of five years from 22 April 2022 to 21 April 2027.

Appeal

56. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.