



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

Case Reference : **MAN/32 UD/HML/2021/0006 &
MAN/32UD/HMV/2022/0002**

Property : **4 Avenue Terrace, Lincoln LN1 1JB**

**Applicant
Representative** : **Mr Satyajeet Pardivalla
In person**

**Respondent
Representative** : **City of Lincoln Council
Ms Catherine Ferguson**

Type of Application : **Housing Act 2004- Schedule 5,
Paragraph 31(1) and Paragraph 32(1)**

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member P. Mountain**

Date of Determination : **8th March 2023**

Date of Decision : **11th April 2023**

DECISION

Decision

1. The applications are dismissed.
2. The Applicant is to pay the Respondent's costs in the sum of £2223.60
3. No order for costs is made against the Respondent.

Background

1. These are two appeals by Mr Satyajeet Pardivalla ("the Applicant") against the conditions imposed on a licence issued by the City of Lincoln Council ("the Respondent") in respect of 4 Avenue Terrace Lincoln ("the Property").
2. A HMO licence was originally granted for the Property in 2015 for occupation by 6 persons. On 16th February 2022 the licence was varied to reduce the occupancy of the Property from 6 to 5 persons.
3. The first appeal relates to the condition attached to the licence granted on 19th October 2021 in respect to alterations to be made to the lounge due to the existing layout being inadequate for use by 6 persons. It was subsequently confirmed by the Respondent, in an e-mail to the Tribunal on 20th April 2022, that the requirement to extend the lounge was no longer required and this appeal, to a great extent, was redundant.
4. The second appeal relates to a second variation of the licence, on 16th February 2022, that reduces the occupancy of the Property from 6 to 5 persons .The Respondent measured Room 5 , a front bedroom on the 2nd floor, at 5.47m² which is below the size suitable for living accommodation. The licence stated it could be used either as a study or for storage.
5. The Applicant further argued that tacit approval had been given by the Respondent for the original use of the Property due to its delay in dealing with the licensing application.
6. On 10th June 2022 the Tribunal issued directions for the application to be listed for an inspection and a video hearing.
7. On 17th November 2022 the Applicant sent an e-mail to the Tribunal to advise the Property was undergoing refurbishment and alterations had been made to the layout of the top floor. He advised the works work did not prevent the inspection scheduled for 22nd November 2022.

Inspection

8. The Tribunal inspected the Property in the presence of Mr Capino the Managing Agent on behalf of the Applicant and Ms Heather Cann, a Private Housing Officer, on behalf of the Respondent.
9. When arriving at the Property the Tribunal found it to be unoccupied and undergoing extensive alterations. It was confirmed by Mr Capino the alterations, once completed, would change the Property such that it would

provide for accommodation for 5 students, each with their own en-suite. In particular, Rooms 5 and 6 on the top floor had been combined to create a larger room with an en-suite. The ground floor layout was also being changed. Consequently, the Tribunal was unable to inspect the Property as described in the appeal.

10. Ms Cann confirmed that, given the changes to the accommodation, should the Applicant file a floor plan of the new layout of the Property, with a request to vary the licence, this could be processed without the payment of a further fee.

Hearing

11. At the hearing the Applicant attended in person. The Respondent was represented by Ms Catherine Ferguson and Ms Cann attended on behalf of the Respondent.
12. The Applicant confirmed the Property was in the process of being converted for occupation by 5 persons. He had made the decision to proceed with the alterations, rather than await the outcome of the Tribunal's decision because of the length of time the process had taken. He had moved quickly due to the availability of building contractors and their availability was limited.
13. Ms Ferguson submitted the appeals were no longer relevant given the Respondent now accepted the Property was only to be occupied by 5 persons. If the Tribunal had been informed of the alterations, there would have been no reason for the inspection or hearing to take place.
14. The Applicant argued there had been tacit approval for the terms of the original licence given it had taken the Respondent almost 3 years to deal with the application in respect of which the Tribunal was referred to The Provision of Service Regulations 2009. This provides that, in certain circumstances, tacit approval is appropriate where there has been failure to process an application within a set period or a period that has been extended.
15. The Respondent argued, in its written submissions, that tacit approval was not applicable in these circumstances. Its adopted scheme states that "*tacit approval is not deemed where service standards are not met due to the risk to public safety of not properly determining the suitability of the license holder and the condition of the HMO*".
16. The Respondent acknowledged there had been a delay in dealing with the application due to the pandemic, but that did not result in the licence having been granted tacitly.
17. Ms Cann confirmed an application to vary the licence for occupancy by 5 persons could be done either by the production of a floor plan or by a further inspection,
18. The hearing was adjourned and further directions issued for the parties to confirm once an amended licence had been issued to enable the application to be disposed of and for submissions to be made upon the issue of costs.

19. On 31st January 2023, the Applicant confirmed he had received a variation to the licence on 27th January 2023 provided for the occupation of the Property by 5 persons.

Costs

20. Both parties made an application for costs.
21. The Applicant applied for costs upon the basis the Respondent had delayed in dealing with and defending his application. Further, it had failed to engage with him during the licensing process and acknowledge the disputed Room 5 could be resized. He provided a breakdown of time spent, totalling 128 hours plus disbursements and a claim for loss of income of £5000. The claim was in the total sum of £22,340.
22. In response to this application, the Respondent referred the Tribunal to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013:

13-(1) Subject to paragraph (1ZA), the Tribunal may make an order in respect of costs only

 - (a) *under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*
 - (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings in...*
 - (ii) *a residential property case”*
23. Upon the basis there is no reference to wasted costs, the Respondent submitted the Applicant was seeking an order for costs upon the basis it had acted unreasonably in defending or conducting the proceedings. It was said “proceedings” can only be from the date of the application and any costs prior to that date are not recoverable.
24. In respect of the costs of the proceedings, it had not acted unreasonably. The Respondent was entitled to defend the proceedings given its view Room 5 was undersized. In all other respects it had conducted itself correctly, complying with the Tribunal’s directions. The sums claimed were excessive.
25. The Respondent’s claim for costs was in the sum of £2,223.60 comprising of time spent of 20 hours in preparation for and attendance at the hearing. No claim for costs was made in respect of the attendance of Ms Cann at the inspection.
26. It was said that the e-mail sent by the Applicant to the Tribunal, referred to in paragraph 7 above, was the first indication of changes being made to the Property. It was also inaccurate since, at the inspection, alterations had also been made to the ground floor of the Property.

27. The Respondent helpfully referred the Tribunal to the decision in **Willow Court Management (1985) Co Ltd v Alexander 2016 WL 03506202 (2016)** that sets out a three-stage test when deciding the issue of costs:

- (i) Stage 1 – Has the Applicant acted unreasonably in the conduct of proceedings (objective assessment)
- (ii) Stage 2 – Should the Tribunal exercise its discretion to award costs
- (iii) Stage 3 – If so, what should those costs be?

28. In respect of Stage 1, the Respondent accepted the Applicant's conduct should be taken in the context of an unrepresented party. However, the failure of the Applicant to inform the Tribunal of the alterations made to the Property that reduced its capacity to 5 bedrooms was unreasonable. The Applicant had informed the Tribunal that building works were being carried out but, even then, failed to confirm the true position.

29. At Stage 2, the Respondent submitted the Applicant had failed to adhere to the Tribunals' overriding objective by failing to inform it of the substantial alterations made to the Property at Rule 3, namely:

- “(1) *the overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
- “(4) *Parties must-*
 - (a) *Help the Tribunal to further the overriding objective*
 - (b) *C-operate with the Tribunal generally.”*

30. At Stage 3, the Respondent submitted it had undertaken considerable preparation in dealing with technical legal issues in respect of the appeal and significant costs had arisen in considering those and preparing skeleton argument. The costs claimed are limited to the preparation of and attendance at the hearing.

31. In response to the issue of costs, the Applicant stated proceedings had been commenced when he was unable to resolve the differences relating to the Property. He was unfamiliar with the procedures involved with the proceedings and was also suffering from health issues. It was said:

“Where the Council would not engage or acknowledge that its stance appears to have no legal basis and hearing dates were not forthcoming there was no alternative but to commence works relating to providing ensuite facilities to increase the rental attractiveness of the property for the following academic year to minimise loss. The elements to carry out the work (design/finance/contractors/) only fell into place shortly before the hearing and it was decided to pursue this course in preference to insolvency.”

Determination

32. The Tribunal noted, from the course of events, the purpose of the appeals are redundant. Whilst the first appeal had been made in relation to the ground floor living space, the Respondent had confirmed those changes were not required. The second appeal was in respect of the Respondent's decision to vary the licence such as to reduce the occupancy of the Property from 6 to 5 persons due to the size of Room 5. At the time of the hearing the Applicant was in the process of changing the layout of the Property to achieve this. The Applicant confirmed a varied licence had been issued in January 2023 that resolved the issues. The appeal is therefore dismissed.
33. The Tribunal did not consider it necessary to consider the arguments put forward upon the issue of tacit approval, as argued by the Applicant. It was no longer relevant in the determination of the application.
34. The Tribunal thereafter considered the issue of costs.
35. The Tribunal determined to make no order for costs in respect of those claimed by the Applicant.
36. The Applicant had not shown the Respondent has acted unreasonably in the conduct of the proceedings. The Tribunal found the Respondent had acted entirely appropriately in its conduct and in response to the application. Whilst the Applicant had expressed concern regarding the duration of the licensing application, this was not an issue upon the issue of costs. The issue for costs relates to those of the proceedings and not before.
37. The Tribunal determined the claim for costs by the Respondent would be granted. Its claim was limited to those of the inspection and hearing in the sum of £2223.60. The costs claimed were reasonable.
38. The Tribunal noted the Applicant's submissions in response to the costs application and, in particular, that he did not have the benefit of legal advice. In this the Tribunal noted the decision in **Willow Brook** :

Paragraph 28:

“At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather an application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. Discretionary power is then engaged and the decision maker moves to the second stage of the inquiry...”

Paragraph 32:

“On the context of Rule 13(1) we consider that the fact that a party acts without legal advice is relevant at the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the

question is whether a reasonable person in the circumstances in which that party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of the proceedings before it, than is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the case.”

39. The Tribunal considered the Applicant had behaved unreasonably by failing to notify the Tribunal and/or the Respondent of the alterations being made to the Property prior to the inspection and the hearing. Whilst the Applicant had notified the Tribunal that works were being undertaken, he did not specify the extent of those alterations. Any reasonable person would have done so given they negated the purpose of the appeal. If that information had been forthcoming, the inspection and hearing could have been adjourned to allow the Respondent to further consider the terms of the licence once those alterations were completed. In this respect, the Tribunal considers the lack of legal representation does not avoid its determination the Applicant has acted unreasonably.
40. The Tribunal considered the claim limited to the inspection and the hearing was reasonable.

J E Oliver
Tribunal Judge
11th April 2023