



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

Case Reference : **MAN/00DA/HML/2020/0002**

Property : **1 Station Terrace, Leeds LS13 3QR**

Applicant : **AG & JG Estates Ltd**

Respondent : **Leeds City Council**

Type of Application : **Housing Act 2004, Schedule 5, Para. 32(1)**

Tribunal Members : **(Judge) Mr Phillip Barber**
(Expert) Ms J Jacobs

Hearing Date : **12 June 2023**

DECISION AND REASONS

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Decision

The Tribunal confirms the Respondent's decision to refuse to grant a licence under Part 2 of the Housing Act 2004 for occupation of the property by 5 or more persons.

Reasons

Introduction.

1. This appeal concerns the property known as 1 Station Terrace, Bramley, Leeds LS13 3QR, a 4-storey back-to-back, end of terrace house, which has been converted by the Appellant for occupation as a HMO for up to 6 persons and as such is licensable under Part 2 of the Housing Act 2004 ("the Act"). The Appellant applied for a licence for 6 persons in July 2019 and following an inspection by the Respondent and various attempts to resolve issues by a degree of negotiation, the Respondent served a Notice of Intent to refuse the licence application on the 15 November 2019. Following further attempts to negotiate a resolution the Respondent served a Refusal Notice on the 12 June 2020. It is against that refusal notice that the Appellant appeals.

2. The basis for the refusal is set out in the refusal notice was as follows:

“...the basement kitchen is awkwardly shaped and, with an overall floor area of just 10.68m², is too small to also serve as a dining space for the proposed 6 people.

Due to the size of the kitchen the communal living room in the basement would also need to serve as a dining space however at 14.65m² it is too small to serve as a dining space as well as a daily living space where 6 people can relax and socialise.

Whilst bedrooms in the property exceed the statutory minimum space standard specified in regulations, they do not compensate for the lack of communal space for the 6 people specified on the licence application.”

3. In a separate email, dated the 24 June 2020, the Respondent indicated that if the property were to be structurally reconfigured by converting bedroom 2 into a living room, together with the removal of a bathroom and stud wall, in order to make it big enough as a living room for 5 persons, then a further application might be made for occupation by 5 persons. The Respondent considered in that email, however, that structural alteration cannot be the subject of license conditions and as such the application must be refused unconditionally.

4. This is an appeal brought under paragraph 31(1)(a), Part 3 of Schedule 6 to the Housing Act 2004. Under paragraph 34, the appeal is to be by way of a re-hearing, but we can take account of matters of which the Respondent was unaware, although recent caselaw seems to suggest that we cannot take account of matters which were not in existence, something which does not seem relevant to this appeal. The Tribunal has the power to “confirm, reverse or vary the decision” and if we decide to reverse the decision, we can do so on such terms as we may direct (paragraph 34 of Schedule 5 to the Housing Act 2004). The reference to the word “terms” in that paragraph encompasses the imposition of licence conditions under section 67 of the Act but, in our view, and for reasons we set out below, it does not encompass granting the licence on terms which include structural alterations.

The Legislative Framework for our Decision.

5. The relevant sections of the Housing Act 2004 (“the Act”) provide as follows:

Grant or refusal of licence

(1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—

- (a) grant a licence in accordance with subsection (2), or
- (b) refuse to grant a licence.

(2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either—

- (a) to the applicant,

...

(3) The matters are—

- (a) that the house *is reasonably suitable for occupation* [emphasis added] by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;

...

(4) The maximum number of households or persons referred to in subsection (3)(a) is—

- (a) the maximum number specified in the application, or
- (b) some other maximum number decided by the authority.

(5) Sections 65 and 66 apply for the purposes of this section.

65 Tests as to suitability for multiple occupation

(1) The local housing authority cannot be satisfied for the purposes of section 64(3)(a) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.

(2) But the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.

...

67 Licence conditions

(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following—

- (a) the management, use and occupation of the house concerned, and
- (b) its condition and contents.

...

6. The parties are in agreement that the issue for the Tribunal to determine relates to the question whether the property is reasonably suitable for occupation by 6 or 5 persons and if not whether it can be made reasonably suitable by licence conditions.
7. That is in the main a question of fact, although what can constitute a licence condition is also a question of law.

The Parties' Cases

8. Ms Vodanovic of Counsel appeared on behalf of the Respondent and very helpfully provided a detailed chronology and skeleton arguments setting out the Respondent's position. The position of the Respondent is that the property is not currently reasonably suitable for occupation by 6 persons and cannot be improved or adapted to make it reasonably suitable for 6 persons, it is simply too small. The Respondent accepts that 5 persons could occupy the property and as such it might be

reasonably suitable for occupation by 5 persons but that would require a degree of structural alteration which cannot be the subject of a licence condition. The kitchen facilities are acceptable for 5 persons and the room next to the kitchen is suitable for use as a dining room for 5 persons. However, the only place where communal living space could be achieved is if the ground floor is reconfigured to make a room sufficiently large enough to accommodate 5 persons. This would include the removal of the stud wall separating bedroom 2 from the corridor, the removal of the ensuite bathroom from this area and placing a door at the bottom of the stairs to the upper floor. This would mean that this room would have a door leading to the upstairs staircase and a door leading down to the basement area where the kitchen and dining room are located.

9. Mr Maddan, of Counsel, appeared on behalf of the Appellant. The position of the Appellant is that their preferred option is that the property could be made reasonably suitable for occupation by 6 persons if different furniture is provided in what is now the living room/dining room in the basement and that could be the subject of a licence condition. Alternatively, the Appellant's case is that the property would be reasonably suitable for occupation by 5 persons by utilising the room next to the kitchen as the living room, keeping bedroom 2 in its current state (with the existing partition wall and bathroom) but using it as the dining room as opposed to a bedroom. This also could be the subject of licence conditions.
10. Following a site visit and a day of taking evidence and hearing legal argument we decided that the approach of the Local Authority is correct. Put simply it is inconceivable that 6 persons could adequately, reasonably and safely live in a property of this size and it cannot be reconfigured so as to make it suitable by the imposition of licence conditions or a reduction in the number of occupants by one person.

Why we think the property is not reasonably suitable for occupation by six persons.

11. In short, we think the property is not reasonably suitable for occupation by six persons because it is too small. Reasonably suitable in this appeal encompasses a number of issues including the size and layout of the property; the size, shape and layout of the rooms; the type of occupants; the purpose for which the occupants will use the rooms and generally the comfort and well-being of those occupiers.
12. We agree with Mr Maddan that the arrangements in this property do not easily fall into a category A or a category B HMO but either way we are satisfied that generally the arrangement is one of cohesive living.

The tenants are not subject to a joint tenancy and neither have they entered into the letting as a cohesive whole, but we think the fact that they have relatively small bedrooms would indicate that they will want to share communal space in a cohesive manner and will to some extent dine at the same time and socialise together. This is normal human behaviour and as the property is intended for “young professionals” they are likely to form a cohesive relationship. We also think that they would want to entertain guests and perhaps family members at the property and will want to socialise outside of the cohesive group in the property.

13. The size of the living room/dining room is approximately 14.65 sq.m. which is not sufficient space to enable dining and socialising in the same room by either 6 or 5 persons and we reject Mr Maddan’s submission, as eloquently put as it was, that the furniture could be adapted to enable the room to function as both dining and socialising space. Whilst we accept that a different shaped table and a significantly smaller sofa might well be squeezed into the room, the space would be so cramped as to make it impracticable for 6 persons to sit together, move freely around and pass and repass from the kitchen and to the stairs.
14. Various submissions were made at the hearing in relation to the status and impact of the Respondent’s guidance on “Crowding and Space” and the relevance of the “Metric Handbook” to the Respondent’s position. We accept the submissions of Ms Vodanovic on this point that the Respondent is entitled to have regard to any published guidance and indeed, Ms Su deals with various matters as to size and layout arising out of such guidance in her witness statement. We do not think, however that the Respondent has slavishly applied such guidance. In any event, even without reference to the sample model layout diagrams including within the bundle, any common-sense approach as to whether the property is reasonably suitable for occupation by reference to the size of this room would result in the same outcome.
15. It was, to some extent, accepted at the hearing that the breakfast bar style arrangement of a long table against the wall was unworkable. Photographs show six plates laid out in a long line but the idea that 6 persons would be able to sit together in line and dine was not reasonable. In this configuration there would only be space for 4 comfortable chairs and so 6 persons would be unable to sit together. None of the other configurations canvassed at the hearing were workable for a room of this size, including a table extending out into the middle of the room as well as 2 3-seater sofas against the walls. For that to work, the occupants and furniture would need to be Lilliputian in dimension.

Why we also think the property is not suitable for occupation by five persons in its current layout.

16. The difficulties with the size and layout of the property as set out above cannot be resolved simply by reducing the number of occupants to five. For the reasons set out above, the current living room/dining room in the basement would not be sufficiently large for 5 persons to dine and socialise as it is not possible to squeeze enough dining and relaxing chairs and a table of suitable size to enable that to happen. In order for 5 persons to dine and socialise in that room, basically the same layout as for 6 persons would be necessary with the exception of possibly a 2-seater sofa as opposed to a 3-seater, but the problem of space and size, access and egress and room to manoeuvre remains the same.
17. As an alternative, it was submitted by Mr Maddan that bedroom 2 on the ground floor could be turned into a dining room and in fact it was accepted by Ms Su at the hearing that this room, in terms of size and layout would be suitable for dining purposes of five persons. However, the position of Ms Su, and one which we think is entirely correct, is that this room is otherwise unsuitable for use as a dining room. Firstly, it is on the floor above the kitchen and whilst this might come within the scope of being acceptable, in order to eat there, the tenants would have to bring food from the kitchen, through the living room next to the kitchen, up a steep narrow flight of stairs and open a heavy fire door outward at the top of those stairs. This, in our view would clearly constitute a significant hazard of burns and falls and a hazard which we should not countenance. It appeared to us that the only reason that it was suggested that room 2 should be the dining room is in order for the Appellant to avoid having to remove the partition wall and bathroom in order to make the room big enough to be a living room. In any event, any logical or reasonable layout of the property ought to have the dining room next to the kitchen.

Can the Licence be granted subject to conditions?

18. In short, the answer to that is no. The Respondent's position is that it cannot and although at the start of the hearing Mr Maddan suggested that we could grant a licence conditional on structural alteration during the course of the hearing he stepped back from that position for perfectly laudable reasons without actually agreeing with the Respondent's position.
19. In our view, and simply put the answer is obvious. The ability to impose licence conditions relate solely to the management use and occupation of the property and its condition and contents and that none of these

can be interpreted to include building works or structural alterations. Management use and occupation refers to by whom and how the property as a HMO is managed (and there are regulations specific to this) and use and occupation go to who and how individuals and families can live in the property. Condition relates to state of repair, decorative finishes and such-like whereas contents relate to amenities and furniture. None of these encompass the removal of a stud partition wall or the removal of a bathroom which are both structural and may well require building consent.

Conclusion

20. For the above reasons we do not direct the Respondent to grant a licence for occupation of the property by either 6 or 5 persons. We confirm the decision of the Respondent and dismiss the appeal.

Signed..... Phillip Barber

Tribunal Judge

Date: 06 July 2023