



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

Case Reference : **MAN/32UD/HML/2022/0005**

Property : **22 Vine Street, Lincoln LN2 5HZ**

Applicant : **Spericle Ltd**
Representative : **Satharahana Vaddaram**

Respondent : **City of Lincoln Council**
Representative : **Renato Del Loungo (Counsel)**

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

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

Date of Determination : **14th & 15th June 2023**

Date of Decision : **15th June 2023**

DECISION

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Decision

1. The licence dated 10th August 2022 is varied as follows:
 - (a) The conditions contained within Schedule 5 of the licence issued are deleted.
 - (b) The term of the licence is extended to five years; the expiry date is 23.59 hours on 9th August 2027.

Application

2. This is an application by Spericle Limited (“the Applicant”), who is the licence holder for the Property at 22 Vine Street, Lincoln, (“the Property”), in respect of the licence issued by the City of Lincoln Council (“the Respondent”) under Part 2 of the Housing Act 2004 (“the Act”).
3. On the 10th August 2022 the Respondent issued a licence for the Property providing for its occupation by 5 persons. There were several Property specific conditions attached as follows:
 - (1) The fire detection system is to be upgraded to a Grade A LD2+ system, to meet the requirements of BS5839 Part 6.
 - (2) To install a FD30S fire door set between the kitchen and rear lobby, to separate the rear exit door from the kitchen and shall ensure that any door on the side passage is openable from the rear yard without a key.
 - (3) Escape routes-
30- minute protected route is required, including 10 minute fire resisting construction of FD30S doors to all kitchen, living rooms and bedrooms. The standard of installation of the fire doors is crucial, see condition 1A of this schedule. Travel distance to a place of safety must not be excessive, generally no more than 9m.
 - (4) Fire separation
No requirement for additional fire-resisting separation between units, but wall and floors should be of sound, traditional construction.
 - (5) Fire detection and alarm system
 - (6) Mixed system Grade A, LD2 system. This type has a control panel and manual call points that can be used to set off the alarms.
 - Smoke detectors and sounders located throughout the escape route:
 - (7) Where cooking facilities are sited within individual lettings
 - Interlinked heat detectors in each individual lettings:
 - Additional Grade D, non-interlinked smoke alarm with integral battery back-up located in each individual letting.

- (8) Where cooking facilities are sited in shared kitchen, not within individual lettings:
 - Interlinked smoke detectors located in each individual letting;
 - Heat detectors located in each kitchen.
 - Additional interlinked smoke detectors located in any cellar.
- (9) Lighting of escape routes
- (10) Emergency escape lighting required.
- (11) Conventional artificial lighting is required.
- (12) Firefighting equipment.
- (13) Fire blanket to be provided in shared kitchens and every room with cooking facilities.
- (14) Fire safety signs
- (15) Signage along escape route if the escape route is complex.

All the above work to be completed within two months of the commencement date of the licence.

4. The licence was granted for a period of 1 year.
5. The Applicant filed the appeal objecting to -
 - (1) The requirement for the fire door between the kitchen and rear lobby, to separate the rear exit door from the kitchen and shall ensure that any door on the side passage is openable from the rear yard without a key.
 - (2) Clarity upon the type of fire alarm required since the licence made reference to a Grade A LD2+ and a mixed Grade A LD2 system.
 - (3) Under the “Property Specific Condition”, the reference to the work required in individual lettings relating to cooking facilities, interlinked heat detectors and an additional Grade D, non-interlinked smoke alarm are not relevant to the Property.
 - (4) The period of time given for the completion of the works of 2 months was unreasonable.
 - (5) The duration of the licence of 1 year when the usual term for it would be 5 years.
6. Directions were issued on 15th December 2022 providing for the filing of bundles and for the matter to be listed for a hearing.
7. The Tribunal inspected the Property on 14th June 2023 and a hearing was held on 15th June 2023.

Inspection

8. At the inspection the Applicant was represented by Satharahana Vaddaram, a director and Peter Robertson the Construction Manager. The Respondent was represented by Hannah Cann, a Housing Standards and Enforcement Officer and Matthew Savage, a Private Housing Team Leader.
9. Mr Vaddaram confirmed that all the conditions of the HMO had been fulfilled. Hannah Cann carried out an inspection to verify the conditions had been met and found-
 - (1) No fire door had been installed between the kitchen and the rear lobby, but a new window had been installed in Bedroom 2 that could be used as an escape route. It was confirmed this was a satisfactory alternative to satisfy this licence condition.
 - (2) A Grade A LD2 fire alarm had been installed that had the necessary control panel and heat detectors as specified.
 - (3) A turn-key had been fitted to the rear passage door as required to replace the mortice lock. Mr Vaddaram advised that whilst there was a mortice plate there was in fact no lock on the door that could have been opened if required.
 - (4) The specifications regarding the necessary equipment in the kitchen had been complied with.
 - (5) The requirements for lighting on the escape route and fire-fighting equipment were also met.
10. Hannah Cann confirmed the conditions of the HMO had all been complied with.
11. The Tribunal noted the accommodation was of a good standard.

Issues

12. The Tribunal noted the only issue for determination was the duration of the licence, the licence conditions imposed by the Respondent having been satisfied in their entirety.

Hearing

13. At the hearing the Applicant was again represented by Mr Vaddaram, Mr Robertson and Ms Cyktor, an Executive Manager. The Respondent was represented by Ms Renato DeLongo, Counsel, Ms Cann and Mr Savage.
14. Ms Del Louno confirmed the Respondent had granted the licence for a period of 1 year after relying upon Appendix 16 of its licensing scheme, stating that all the criteria applied in respect of the Property as follows:
 - (a) Where the application follows an investigation or request made by the council,
 - (b) Where the property should have been licensed previously,

- (c) Where there is evidence of poor management of a HMO, or
 - (d) Where there has been repeated interventions with the proposed licence holder or manager by the council's enforcement teams.
15. In respect of criteria (a) and (b) it was said in October 2020 Anna Cyktor had contacted the Respondent to advise the Applicant was now managing the Property. She was told there was no HMO licence for it, the previous one having expired in 2019. A warning letter was sent in December 2020, but the licence application was not received until February 2021. There were deficiencies in the paperwork in that the fire risk assessment pre-dated the Applicant's appointment as a manager of the Property and there was no evidence provided to show it had been reviewed. This was taken as evidence of poor management.
 16. It was said that when Ms Cann was dealing with the licensing application she undertook a fit and proper person check and found a pending prosecution hearing for the offence of illegal eviction and civil penalties pending for offences of operating other unlicensed premises.
 17. In relation to the matter of the illegal eviction Mr Vaddaram stated this case had failed. Ms Del Loungo advised the case had not failed but had been withdrawn by the Respondent, since a material witness had been unable to attend the hearing and the Court would not agree to an adjournment. Costs had been awarded from Central Funds. The matter of the civil penalties was the subject of appeals to the Tribunal and, at the date of the hearing, had not been determined.
 18. Ms Cann, when considering the licensing application for the Property, had also found that there had been 21 interventions, within a five-year period, in properties managed by the Applicant. This supported the criteria set out in paragraph (d).
 19. In her statement, Ms Cann justified her decision to only grant the licence for a period of one year due these concerns and she "*lacked confidence in the licence holder to maintain standards during a five-year licence without intervention from the council*".
 20. Mr Vaddaram submitted the interventions could be wide ranging and of a trivial nature and this had to be considered within the context of the number of properties managed by the Applicant. It manages 400 properties within the Lincoln area and the interventions represent a small percentage of the tenancies. He had made a Freedom of Information Request to try and establish the level of interventions for other landlords within Lincoln since he believed there was discrimination against him. Whilst some information had been received, it did not answer his enquiries. The point being made was that it is unfair for the Respondent to compare the number of interventions of 21, over a five-year period, when managing 400 properties with a landlord who may only have 4/5 properties to manage. Ms Del Loungo submitted the Respondent's view is there should be no interventions when considering a licensing application.

21. When looking at the issue of poor management, Mr Vaddaram explained the Applicant has a policy of inspecting its properties each month. It was possible that a property is satisfactory when inspected, but an issue may arise before the next inspection takes place. It was also an issue as to whether any problems arose from the state of the property itself or from a tenant. In either case it is dealt with.
22. Mr Vaddaram stated that whilst part of the appeal related to the licence conditions, the Applicant had received a letter from the Respondent in March 2023 threatening enforcement action in respect of the work required under the licence. It had therefore undertaken the work required to comply with the licensing conditions because of this and after the current application had been filed with the Tribunal.
23. Mr Vaddaram submitted the duration of the licence was unreasonable. It was unnecessary and simply enabled the Respondent to charge more fees. The Respondent had been unreasonable in their dealings with him and had not shown a licence of only one year duration was necessary.

Determination

24. The appeal is in respect of two issues. The first is the conditions imposed on the licence granted for the Property on 23rd August 2022. The second is the duration of the licence for one year. The Applicant seeks the term to be extended to the maximum of five years.
25. Paragraph 31(1)(b) of Schedule 5 of the Act provides a right of appeal in respect of conditions attached to a licence. Paragraph 34(1) further provides for such an appeal to be by way of re-hearing that allows the Tribunal to consider matters of which the Respondent may be unaware.
26. At the inspection of the Property, it was apparent the Applicant had undertaken work that satisfied all the conditions set out in the licence and this was acknowledged by Ms Cann at the inspection. The Tribunal noted the Applicant had not informed the Tribunal or the Respondent of this prior to the inspection. Consequently, the Tribunal does not need to make any findings relating to each of the conditions, as set out in the application and determines they should all be deleted from the licence.
27. The Tribunal considered the issue of the duration of the licence. It noted the Respondent's view that the Applicant's alleged history justified its decision to only grant the licence for one year in accordance with Appendix 16 of its policy. In their submissions, the Respondent had referred to an illegal eviction and cases where civil penalties had been issued. The Tribunal noted that no determinations had been made in any of these matters. The case before the Magistrates Court for illegal eviction had been withdrawn and consequently no findings had been made. The appeals to the Tribunal for civil penalties had not yet been determined.

28. The Tribunal also took note of the potential cost to the Applicant should it be required to renew the licence annually which would be considerably more than the fee for a licence granted for five years.
29. The Tribunal considered the purpose of the time limit imposed on the licence. It was said the Respondent had no confidence in the Applicant's ability to maintain the necessary housing standards for a five-year period and the one-year term would require the Applicant to reapply for a licence. This would provide the Respondent with the opportunity to re-evaluate whether a further licence should be granted. However, the Respondent has powers available to it, pursuant to section 70 of the Act, which effectively protects its position should the Applicant fail in its obligations as a Landlord whilst holding a HMO licence. Accordingly, the Tribunal did not consider it necessary to limit the period of the licence as imposed by the Respondent.
30. The Tribunal determined the licence is to be granted for five years.