



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

Case Reference : **CHI/00MS/HML/2023/0003**

Property : **43 Alfred Street, Southampton, SO14
0NB**

Applicant : **Nelofur Yasmin Qureshi**

Respondent : **Southampton City Council**

**Type of
Application** : **Appeal against licence conditions,
Housing Act 2004, Schedule 5,
paragraph 31(1)**

Tribunal Members : **Tribunal Judge H Lumby
Mr K Ridgway MRICS
Ms T Wong**

Venue : **Havant Justice Centre**

Date of Hearing : **21 March 2024**

Date of Decision : **30 April 2024**

DECISION

Decisions of the tribunal

The tribunal determines that a new HMO licence should be issued to the Applicant on the terms proposed by the Respondent. This is subject to a variation to the special condition at paragraph 1(a) of Schedule 1 of the proposed new licence so it reads as follows:

“Cease making the First floor rear bedroom available to let. The licence holder will be expected to ensure that the numbers are reduced at the earliest opportunity subject to the current occupant of such bedroom finding alternative accommodation, but in any event, within 15 calendar months of the date of issue of the licence. However, existing tenancies must be allowed to run to their full term, unless the tenant(s) agree to an earlier termination. The termination of any tenancy must comply with any statutory procedure.”

Introduction

1. This is an application by the Applicant, who is the licence holder of the Property, in respect of a licence issued by the Respondent in respect of a licence issued by the Respondent on 22 August 2023 pursuant to Part 2 of the Housing 2004 (“**the 2004 Act**”). The application was made on 5 September 2023, within the 28 day time limit required for such applications.
2. The Applicant is appealing against the terms of that licence pursuant to paragraph 31(1) of schedule 5 to the 2004 Act.
3. The 2004 Act contains mandatory provisions for licensing HMOs. In addition, local authorities can increase the standards set out in the 2004 Act by adopting its own policies. The Respondent as local authority has a policy called the “Guidance on Southampton City Council Standards for Houses in Multiple Occupation” (“**the Council’s Standards**”)
4. The Property is a five bedroom two storey terraced house, with a shared kitchen, utility room and communal bathroom. There is no other communal living space within the Property.
5. The Applicant is the registered proprietor of the Property which she acquired on 25 September 2017. At that time the Property had the benefit of an HMO licence from the Respondent, allowing five persons to occupy the house in the five bedrooms. She says that it has been licensed on that basis since 2006.

6. On acquisition, she successfully applied for the licence to be issued in her name. A new licence was issued on 20 April 2018, allowing five occupiers in the house in the five bedrooms. This licence expired on 30 September 2023.
7. Prior to the expiry of the 2018 licence, the Applicant applied for a new licence. The Respondent decided that the Property is not suitable for five occupiers in five bedrooms and is only prepared to issue a licence for four persons or five persons in four households. This licence has not been issued yet, pending the outcome of this case.
8. The licence contained various conditions specific to the Property, including a requirement that the first floor rear bedroom ceases to be available for rent. The Applicant was expected to ensure that the numbers in occupation of the Property are reduced at the earliest opportunity and in any event within 9 months of the issue of the licence. However, existing tenancies were permitted to run to their full term unless the tenant agreed to an earlier termination. As an alternative, the Applicant was required to provide a living room at least 11.5 square metres in size, being the minimum permitted by the Council's Standards.
9. The proposed licence sets the occupancy of the remaining bedrooms as one person, with the exception of the first floor front bedroom which could be occupied by one household comprising a maximum of two persons over ten years of age.
10. The proposed licence also contained various conditions relating to fire safety which are not disputed by the Applicant.
11. The Applicant's appeal relates to the decision not to allow five occupiers in five bedrooms.
12. The tribunal was provided with a bundle running to 96 pages. The contents of all these documents were noted by the tribunal.
13. The hearing was conducted in person. The Applicant was in attendance and represented herself. Mr Steve Hayes-Arter (service manager, private sector housing), Mr Chris McGeehan (HMO licensing surveyor) and Mr Chris Pearce (HMO surveyor) all attended on behalf of the Respondent. Mr Hayes-Arter acted as representative.
14. The hearing took the form of a re-hearing of the Applicant's application, as required by paragraph 34(1) of schedule 5 of the 2004 Act. In doing so, the tribunal applied the mandatory requirements of the 2004 Act and the Council's Standards and considered the submissions of both parties.

Council Standards

15. The Council Standards set out detailed provisions which HMOs within the Southampton City Council area are required to comply with. These include requirements for shared personal washing and WC facilities, a list of kitchen facilities standards and detailed space standards.
16. The space standards are the key issue in this case. The relevant Council Standards provide in relation to HMOs:
 - (i) shared kitchens must be at least 7 square metres in size for up to five occupants
 - (ii) any bedroom for single occupancy by a person over 10 must be at least 10 square metres in size except where a separate communal living space is provided in which case the bedroom may be 6.51 square metres
 - (iii) any bedroom for two persons over 10 and living as one household must be at least 14 square metres in size except where a separate communal living room is provided in which case the bedroom may be 10.22 square metres
 - (iv) the combined kitchen/living room or combined kitchen and living room (subject to the minimum kitchen size referred to above) must at least equal 11.5 square metres for up to five occupants.
17. It is noted in this context that the statutory minimum bedroom sizes are 6.51 square metres for one person over ten years in age and 10.22 square metres for two persons over ten years in age.

Respondent's submissions

18. The Respondent argues that the bedroom sizes in the Property do not all meet the size criteria set out in the Council Standards. This was considered when the Applicant first applied for an HMO licence following her acquisition of the Property in 2017. They contend that the licence issued then provided for the cessation of use of the first floor rear bedroom or the provision of a living room of no less than 8 square metres in size.
19. The bedrooms were measured by Mr Pearce of the Respondent on 10 January 2023. Mr Pearce determined that the first floor rear bedroom measured only 7.5 square metres and that the communal living space in

the Property was 8 square metres. Applying the space requirements of the Council Standards, as the communal living space was less than 11.5 square metres, any bedroom for single occupancy must be at least 10 square metres in size.

20. Mr Pearce in his witness statement also argues that the middle first floor bedroom was too small at 9.5 square metres but taking into account the loss of the first floor rear bedroom and its potential use as communal space, there was sufficient space to allow this bedroom to be used.
21. The Respondent argues that the only communal space is the kitchen, which measures 8.2 square metres.

Applicant's submissions

22. The Applicant argued that as two previous licences had been issued allowing occupancy five persons in five bedrooms, the same should occur here. In addition, she argues that there is sufficient communal space available as the utility room has not been taken into account. She has provided a plan showing this room, which is accessed through the bathroom (which is on the ground floor beyond the kitchen). This utility room (which the Applicant refers to as a pantry) contains a fridge, freezer and kitchen cupboards. She contends that it measures 3.94 square metres. She argues that when this is taken into account, the communal space is over 12 square metres and therefore sufficient to allow the first floor rear bedroom to be used.
23. She also argues that the rear first floor bedroom has been occupied for at least five years by the same tenant and to ask him to leave would render him homeless. In addition, that room would then just stand empty and not be used as communal space as there is no demand for that space from the tenants.

Tribunal consideration

24. The tribunal considered the Council Standards, the evidence provided to it and the submissions of the parties. It concluded that it agreed with the interpretation and application of the policy in relation to the four bedrooms not in contention.
25. The issue to be determined was whether the first floor rear bedroom was big enough to meet the threshold in the Council Standards to allow its use as a bedroom.
26. These standards provide that a room for single occupancy must be at least 10 square metres except where separate communal living space is provided, in which case the bedroom may be 6.51 square metres. On the

face of it, that would suggest that if there is any communal living space, the minimum size is 6.51 square metres. As the bedroom in question is 7.5 square metres and the kitchen is communal living space, this would suggest that it is of sufficient size for the purpose of the Council Standards.

27. The Applicant argued that this is the correct interpretation. The Respondent on the other hand argued that the policy should be read as a whole and therefore any communal living space for these purposes must comply with the relevant requirements for it. The Council Standards provide that this must be of at least 11.5 square metres for a property with up to five occupiers.
28. The tribunal considered that greater clarity of drafting would have assisted. Nonetheless, it determined that the policy should be read as a whole and so determines that in order to rely on the lower size, the communal living space must meet the minimum size requirements. Alternatively, the application would fail for having insufficient communal space and so no occupation as an HMO would be permitted. The tribunal does not consider this is the intention and so determines that for the first floor rear bedroom to be occupied, 11.5 square metres of communal living space is required.
29. This then led to the question of whether there was 11.5 square metres of communal living space at the Property. This issue turned on whether the utility room is included as communal living space. If it was, the total of such space would be over 12 square metres, if not then it fell short at 8.2 square metres.
30. The utility room was accessed through the bathroom with a door at either end of the bathroom. Access was therefore only possible when not prevented by a user locking the bathroom door.
31. The Applicant argued that it should be included on the basis that it contained items that would appear in kitchen and should be measured as though empty in the same way as a kitchen. She contended that access through the bathroom would not affect its treatment as communal living space. The Respondent argued that the utility room was not communal living space, this only applied to kitchens, dining rooms and living rooms. The fact that it was full of equipment meant that occupiers could not use it as communal living space, a point emphasised in their view by the fact that access could be prevented for long periods whilst the bathroom was in use.
32. The tribunal noted that communal living space was not defined in the policy; a definition would have assisted interpretation. Without a definition, the wording should be given its normal meaning. If the requirement was for communal space, then the tribunal considered that the utility room would qualify as it was available for use by all

occupiers. However, the requirement is for communal living space. The addition of the word 'living' implies some sort of area where occupants can gather and linger. The tribunal does not consider that the utility room was living space but more of a storage area. In this regard, it noted that the Applicant had argued that the first floor rear bedroom would not be used as communal living space if it could not be used as a bedroom.

33. Accordingly, the tribunal determined that the utility room did not count as part of the communal living space in the Property. As a result, it determined that there was less than 11.5 square metres of communal living space in the Property. This meant that the first floor rear bedroom was too small to be used as a bedroom for the purpose of the Council Standards and so its use as a bedroom should cease. The fact that it exceeded the minimum size requirements set by the 2004 Act did not affect this outcome as the Council Standards prevailed over the 2004 Act minimum size requirements.
34. However, the tribunal was cognisant that this bedroom had been occupied by the same resident for over five years. It considered that it was unreasonable to require him to leave on notice but instead time should be taken to give him a sufficient opportunity to find alternative accommodation. In any event, as the bedroom met the minimum size requirements set pursuant to the 2004 Act, allowing a degree of interim continued occupation was not unreasonable.
35. The Respondent has addressed this issue by providing the Applicant with nine months to obtain possession and also providing that the occupier could not be required to leave before the expiration of its existing tenancy. The tribunal noted this but considered the risk that the occupier could be rendered homeless as a result. It therefore determines that an additional condition should be added that the occupier should also not be required to give up his room until other accommodation had been found for him. This should be subject to a long stop date of 15 months from the issue of the licence.

Tribunal determination

36. The tribunal determines that a new HMO licence should be issued to the Applicant on the terms proposed by the Respondent. This is subject to a variation to the special condition at paragraph 1(a) of Schedule 1 of the proposed new licence so it reads as follows:

“Cease making the First floor rear bedroom available to let. The licence holder will be expected to ensure that the numbers are reduced at the earliest opportunity subject to the current occupant of such bedroom finding alternative accommodation, but in any event, within 15 calendar months of the date of issue of the licence. However, existing tenancies must be allowed to run to their full term, unless the tenant(s) agree to an

earlier termination. The termination of any tenancy must comply with any statutory procedure.”

Cost applications

37. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £100.00 and the hearing fee of £200.00.
38. As the Respondent has been successful in this claim, the tribunal determines that it is not just and equitable that they should be responsible for the tribunal fees associated with this case.
39. Accordingly, the tribunal makes no order in relation to costs.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.