



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

Case Reference : **BIR/00FY/HML/2023/0005 & 6**

Property : **4 & 10 Chilwell Street Nottingham**

Applicant : **Peter David Orange**

**Applicant’s
Representative** : **Claire Orange**

Respondent : **Nottingham City Council**

**Respondent’s
Representative** : **Mrs Sarah Mills Solicitor**

Type of Application : **Appeals against the Conditions attached to a
Licence for a House in Multiple Occupation
under Schedule 5 of the Housing Act 2004**

Tribunal : **Tribunal Judge Peter Ellis
Tribunal Member Mr. Peter Wilson**

Date of Hearing : **23 April 2024**

Date of Decision : **23 May 2024**

DECISION

Introduction

1. This matter is for determination of conditions attached to a licence of a house in multiple occupation (HMO Licences). There are two applications each relating to separate properties owned by the Applicant Peter David Orange represented by his daughter, Claire Orange. The applications were consolidated by order of the Tribunal because they raise substantially the same issues of fact and law.
2. The applications were issued on 12 December 2023. Directions, including the order for consolidation were given on 28 December 2023. The matter came on for oral hearing after an inspection on 23 April 2024. The Respondent, Nottingham City Council is the local housing authority. It was represented by Mrs Sarah Mills of the Respondent's legal services department. The Applicant, Peter David Orange, was represented by his daughter Claire Orange who is also responsible for the management of the subject properties along with the Applicant.
3. The HMO licences were issued by the Respondent on 16 November 2023. The conditions the subject of this matter are:
 - a. *32 Provision of a fire escape window to the first floor bedroom and remove the security locks from both first floor bedrooms to allow easy access to escape in the event of fire for all occupants and visitors*
 - b. *33. Upgrade the escape hatch to provide 30 min fire protection to the ground floor front bedroom and stairs, by installing combined smoke seals and intumescent strips*
 - c. *34 The Licence Holder or Manager shall conduct an inspection of the HMO at least monthly to inspect the escape hatch & the 1st floor front bedroom doors to ensure the following:*
 - i. *The escape hatch is maintained in good working order, good repair and kept free from obstruction at all times, and*
 - ii. *That no locks have been fitted to either 1st floor bedrooms**The inspection could be in the form of a video call with the tenants or an in person visit. Written records of such inspections shall be kept for the duration of the Licence. As a minimum requirement the records must contain a log of who carried out the inspection, the date and time of inspection and any issues found and action(s) taken. Copies of these records must be provided within twenty-eight (28) days of the Council's demand.*
 - d. *35 The Licence Holder shall ensure that the HMO is occupied by a cohesive group of tenants on a share single tenancy for the whole property.*

- e. *36 The Licence Holder will ensure that a condition is added on all tenancy agreements which would prohibit tenants putting locks onto the first floor bedrooms.*
- f. *37 At the beginning of each tenancy the Licence Holder will ensure that the following documentation is provided to all tenants*
 - i. *A fire escape route plan detailing the different escape routes in the property*
 - ii. *A written explanation of how to report disrepair and how to keep these areas clear*
 - iii. *The Licence Holder shall provide a written policy demonstrating what action would be taken if it became apparent that tenant(s) had put locks on bedroom doors or blocked escape routes*

Copies of these documents must be provided within twenty-eight (28) days of the council demand

4. The subject conditions were imposed in the same terms on both licences. By the time of the hearing the applicant had agreed to condition number 37.
5. There was no dispute over the entitlement of the local housing authority to impose conditions on the licence. The Applicant has held HMO licences for both properties for several years. The dispute arose because the Applicant considered the Respondent licencing authority had introduced new conditions which were unnecessary in the absence of any material changes to the properties. The Applicant's challenge to the conditions related to their practicality, the effect on the amenity of the property and the interference with the tenants right to quiet enjoyment of the property.

The Properties

6. The Tribunal inspected both properties on 23 April 2024. The description is taken primarily from the statement of case of the Respondent. It is not controversial.
7. The Properties are both three storey terraced houses constructed prior to 1920. Each has a front door which opens directly onto the street and which leads into the ground floor front reception room which in both cases is used as a bedroom. Both properties have a cellar under their ground floor front room.
8. In each case, there is a communal tunnel entry to the left hand side (viewed facing) of the property which opens from the street and gives access to the rear of each subject property and its neighbouring property. These entries are secured by lockable timber gates but the locks permit keyless escape.

9. At 4 Chilwell Street ('Property 4'), the ground floor rear room is open plan with the kitchen dining area and the stairs to the upper floors rise from that room. The rear entrance doors to the house are located in the kitchen-diner and the Property is ordinarily accessed by entering through the rear kitchen, which, in terms of fire safety, is considered to be a high-risk room. Access to the kitchen door is via the tunnel entry. The first floor of the property comprises two bedrooms and a shared shower room, and the second floor comprises two bedrooms.
10. At 10 Chilwell Street ('Property 10'), the ground floor rear is open plan with the kitchen area at the rear and forms a communal kitchen diner. The stairs to the upper floors rise from that room. The Property is ordinarily accessed by entering through the kitchen (again via the tunnel entry). The first floor of the house comprises two bedrooms, a WC compartment with a wash hand basin, and a shower room. The second floor is made up of two bedrooms each having separate access to a bathroom located between the two bedrooms.
11. Following inspection, the Tribunal noted further matters of relevance at both properties. In both properties there were openings from the stairway into the ground floor front room providing an escape route in the event of fire ('escape hatches'). Each opening was provided with a door which was kept closed to ensure privacy but readily opened in the event of emergency. In neither case is there a communal passageway to allow access to the front door and thence the street; both rooms are in exclusive possession of the relevant tenant.
12. These hatches were provided as one element in the escape route in each property. . They are described in a Fire Safety assessment as "*An escape hatch, with intumescent strips and cold smoke seals, has been fitted in the staircase which opens into the ground floor front bedroom*"(property 4). In property 10 "*there is an escape hatch (no intumescent strips or smoke seals) has been fitted in the staircase. This opens into the ground floor front bedroom which contains the front door.*"
13. According to the Applicant, the hatches were constructed about 15 years ago at the request of the Respondent.
14. It was noted that the Applicant has extended the automatic fire detection and warning system, which was formerly LD2 Grade D1 by adding additional smoke detector heads to every bedroom in both properties. these are interlinked to the existing systems essentially extending the coverage to LD1. In addition, a facility for testing of the system as a whole has been added. This was at the instigation of the Applicant and not a requirement of the local housing authority.

The Parties Submissions

The Applicant

15. The Applicant complained that the Respondent had been unreasonable with its demands for alterations to the properties and conduct of the tenancy agreements. He did not consider the Respondent had a good reason for imposing the new conditions which, in his view, would render the properties almost unlettable.
16. The Respondent requirement for the construction of a landlord protected means of escape namely a corridor which would substantially reduce the size of the common area available for tenants was a novel demand and unreasonable. After some negotiation the requirement for a corridor was replaced by a demand for a first floor window as prescribed at condition 32.
17. In March 2023 the Applicant had commissioned a Fire Safety Assessment of both properties from FSC. Their report was produced some of which the Applicant had accepted and adopted. The report had been shown to the Respondent.
18. Regarding condition 32 the Applicant explained the first-floor window in 4 Chilwell Street was fitted with an escape window as required. The door to the room was fitted with a lock which the Applicant proposed to replace with a breakable security lock made from glass. In the event of an emergency the tenants could break the lock to gain access to the room and escape route. The Applicant contended that requiring removal of locks prevented the tenants who occupy the room from ensuring their own privacy. A lock of the type proposed would satisfy the requirement of condition 32.
19. The requirement of condition 34 was too onerous. It amounts to an interference with the tenants right to quiet enjoyment of the property. Another condition requires a quarterly inspection of the property. The inspection requirement of this condition could be carried out at the quarterly inspection. Further testing and inspecting monthly is time consuming for both landlord and tenants. The burden would fall on Miss Orange who is responsible for all management of their properties including inspections.
20. The requirement of condition 35 that there be a cohesive group of tenants was unrealistic. The Applicant offers the property to students. Although there may be a cohesive group at the commencement of a tenancy it is not uncommon for membership of the group to change during occupation resulting in separate tenancies.

21. Condition 36 was inconsistent with a tenants right to privacy however, this condition could be satisfied by the installation of break glass emergency panic bolts. The Applicant offered to supply data sheets of a proposed supplier of suitable products to the Respondent.
22. The Applicant accepted and agreed to condition 37 requiring the supply of documents relating to fire safety and escape at the outset of a tenancy.
23. The Applicant asserted the escape hatches in both properties were an adequate means of escape. Any obstructions seen by the Respondent at inspection had been cleared. Both hatches give access from the stair way to a front ground floor room with a door to the street. The drop from the hatch to the floor could be negotiated by fixing secure shelves or other furniture to provide a rudimentary step down to floor level. The position of the hatches in both properties enabled all tenants to escape rendering the installation of escape windows at first floor level unnecessary. Nevertheless, the Applicant had installed an escape window to the first floor front bedroom of Property 4.
24. In the case of Property 10 the Applicant contended an escape window at first floor level was inappropriate. The occupiers would be at risk of injury on exiting from the first-floor window.
25. The Applicant had instructed a fire risk expert to advise on suitable fire safety measures. His main concern was for the good of the tenants. Changes have been made further to the requirements of the Respondent and the advice of the expert but he considered the conditions the subject of this application unnecessarily onerous or impractical. Moreover, his efforts to meet the Respondent's officials and agree a suitable compromise had been rejected.
26. He agreed that his fire safety assessor's report had recommended fitting an escape window at first floor level at Property 10 .
27. The Applicant and Miss Orange own and let 25 properties 7 of which are in Nottingham. They are all let to students.

The Respondent

28. Mrs Mills on behalf of the Respondent called Ms Elizabeth Metcalfe the Respondent's Principal Environment Health Officer to explain the conditions and Ms Julie Liversidge an environmental health officer who conducted a property inspection.
29. The construction of a protected corridor to ensure that the escape route passed only through communal areas rather any part of both properties in exclusive possession of a tenant was the preferred method of ensuring a safe

means of escape in the event of fire. The provision of suitable escape windows on the first floor was a compromise offered by the Respondent in respect of both properties after consultation with Mr Nick Gawden-Bone of Nottinghamshire Fire and Rescue. The installation proposed is consistent with the standard written in the guide produced by the Local Authorities Coordinators of Regulatory Service a body which produces fire safety advice and guidance for local authorities in England and Wales (the ‘ LACORS guide’). The guide does not make any provision for escape hatches of the type in place in these properties. A window of the type proposed can be prescribed whereas there is no standard for dimensions or construction of an escape hatch in the LACORS guide.

30. On 13 July 2023 the Fire Safety inspector. Mr Nick Gawden-Bone of Nottinghamshire Fire and Rescue reported to Ms Metcalfe that *“both properties generally achieve the minimum level of fire safety in the LACORS guide except for the use of hatches as alternative escape routes, allowing escape from the staircase into a ground floor bedroom”* because *“The stair does not lead directly to a final exit without passing through a risk room, in both cases this is the kitchen and the use of a hatch for means of escape presents a higher than normal risk to occupants escaping to ultimate safety”*. He further commented about Property 10 *“ On inspection of the hatch in no. 10 this was not fitted with combined strips and seals and was located at over 1.5m from the floor requiring the occupants to drop onto a set of draws (sic) before dropping onto the floor to make their escape via the front door of the property and Chilwell Street.”*
31. The Respondent has applied the principles of LACORS to the properties in determining condition 32. It is not known how an occupier would behave in the event of fire but LACORS guide at D8 assumes a person evacuating from a first floor window will hang from the lower sill then drop in order to reduce the risk of harm to themselves.
32. On examination of the Applicant’s website advertising the properties at the time of the application for the HMO licence Ms Metcalfe had seen blockages to the hatches. Moreover at the time of the Respondent’s inspection of the property the officer had observed obstructions to the hatch.
33. Ms Metcalfe was concerned by the drop to the floor from the hatch. Prescribing fixing furniture to the floor would prevent occupiers moving it into a position which could block the access. Also, by constructing or placing a strong shelf or cupboard below the hatch would provide a step.
34. The Respondent is aware of two other properties with hatches but they provide an exit to an alley way which is a suitable alternative of a landlord

protected route by an enclosed corridor. Further if the tenants were not occupying either of the Properties as a cohesive group (as students generally do), the Respondent would require a 30-minute fire protected escape route by a corridor because of the increased risk associated with bedsit type properties .

35. Condition 34 relating to an inspection by the landlord was suggested in the Fire Safety Assessment at paragraph 15.3 which specifically provides'
"The property is inspected by the landlord quarterly and the tenants test the fire alarm system on a monthly basis and confirm to the landlord once this has been done. The landlord tests the emergency lighting regularly and records this information".
36. Ms Metcalfe considered this condition a short-term solution which could be relaxed or removed once the Respondent was satisfied with the management of the properties.
37. Condition 35 aids cohesion in view of the Respondent but it is willing to consider a solution using locks which can be overridden by breaking a glass cover when the Applicant submits details of the proposed products.
38. Mrs Mills submitted the Respondent had not changed its position in relation to its requirements as the licensing authority. The matter at hand is the adequacy of the escape route. The conditions are consistent with s67 Housing Act 2004. The preferred option is the construction of a corridor, but the Respondent will compromise for a cohesive group and an escape window at first floor level. The Applicant's own Fire Safety assessment supported the Respondent's view.
39. The Tribunal should put weight on the view of the local housing authority as directed by *Clark v Manchester City Council [2015] UKUT 0129 (LC)* and *Brent LBC v Reynolds [2001] EWCA Civ 1843, [2002] H.L.R. 15, [2001] 12 WLUK 66*. The Respondent has acted reasonably in its decision making in connection with the conditions imposed on the HMO Licence.

Statutory Framework

40. The statutory framework relevant for this case regulating the imposition of conditions on a HMO licence is set out in ss64,67, 71 and Schedule 5 Part 3 paras 31 and 34 Housing Act 2004 (the Act).
41. S64(3) of the Act imposes a duty on the local housing authority to consider the suitability of a property for the grant of a HMO licence in these terms.
" that the house is reasonably suitable for occupation 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”

42. S67 (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.

Subsection 2 provides what conditions may or must be included in a licence. There is no dispute that the local housing authority may impose conditions. It is not necessary to recite subsection 2 here.

43. By s71 “*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.*”

44. Schedule 5 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.

(3) 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.

And

para

34

(1) This paragraph applies to appeals to the appropriate tribunal under paragraph 31 or 32.

(2) 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.

Discussion

45. There is no dispute the two properties are suitable for an HMO licence for the number of people proposed. The Tribunal inspected both properties on the morning of the hearing. They are well equipped and well presented. The Tribunal was satisfied that the Applicant and his daughter Miss Orange who is involved in the management of all the properties intend to offer

accommodation of a good standard to students. Mr Orange at times in the hearing expressed strong feelings that his integrity as a good landlord was under attack by the Respondent. The Respondent felt its conditions were consistent with current regulations and LACORS guidance and reasonable having regard to its observation of blockages to the means of escape at the time of its inspection.

46. However, the Respondent is under a duty to ensure a property is suitable for occupation by not more than the maximum number of persons permitted. It does so by inspection and enquiry by experienced officers. Ms Metcalfe is the Principal Environmental Health Officer holding a BSc in Environmental Health and membership of the Chartered Institute of Health Officers who has conducted Fire Safety training levels 1,2& 3 and Fire Risk of Tall Buildings. She has worked for the Respondent for six years, two as Principal.

47. In short, both sides are trying to provide a reasonable solution to a well-established need for good safe housing for those who need it, in this case, students.

48. These proceedings are a rehearing of the application for a HMO licence. The Tribunal can rely on its own inspection and have regard to matters previously unknown to the Respondent as summarised in the decision of the Upper Tribunal in *Clarke* at paragraph 53

“In every case the views of the local housing authority will be relevant and merit respect, but once the tribunal has carried out its own inspection and considered all the characteristics of the Property, including the size and layout of individual rooms and any compensating amenities, it will be in a position to make its own assessment of the suitability of the house for the proposed number of occupiers.”

49. In *Waltham Forest LBC v Hussain* [2023] EWCA Civ 733 the Court of Appeal considered further the role of the FTT in considering an appeal by way of a rehearing when Lady Justice Andrews commented favourably on a proposition put forward by counsel that *“the licensing decision to be taken by the local housing authorityshould not be treated as a mere step on the path to a final decision being taken by the FTT, based on the latter's own evaluation of the evidence, including matters which could only be relevant if the decision were to be taken afresh as at the date of the appeal.”*

50. In considering the conditions imposed by the local housing authority the Tribunal will come to its own decision but start from the local authority's policy, and afford respect to its decision.

Condition 32

51. These properties presented a problem of assessment in that the proposed alternative escape route in the event of fire involved climbing through an escape hatch and dropping a distance to the floor (measured at 1.8 metres in the case of No. 10) of the ground floor front bedroom then exiting the building onto the street. A particular concern is that in both cases the room is in exclusive possession of the tenant and it is possible that the exit could be impeded by furniture. The report of the Applicant's Fire Safety adviser indicated that "*A solution to the escape route will need to be agreed with NCC.*"
52. The compromise solution proposed by the local authority is the installation of escape windows on the first floor. At property 4 the Applicant has already installed a fire escape window. He does not want to make the same installation at property 10 as it poses a risk of injury to tenants evacuating by that route. The proposal was linked to a requirement that the door locks to the room be removed although the parties are considering an alternative means of locking the door.
53. The preferred alternative is the provision of a protected corridor in each property with control of the whole escape route retained by the Applicant. The Tribunal is aware from the expertise of its members that it has been preferred practice for some years for all parts of a protected escape route to be comprised of communal parts of a property in possession of and under the control of the landlord.
54. However, Tribunal recognises that the provision of such corridors as a means of escape would have a substantial impact on the available space within the Properties. It considers an escape window on the first floor of each property as a suitable compromise as does the Respondent and Nottingham Fire and Rescue. As one is already in place at Property 4 the matter is settled in that Property. The lock presently installed should be removed and either replaced with a handle only or with a suitable lock which can be opened from outside the room in the event of emergency. Any such lock must be approved by the Respondent before fitting.
55. **Condition 32** on the licence of property 10 is varied to provide that the existing lock should be either replaced with a handle only or with suitable lock which can be opened from outside the room in the event of emergency. Any such lock must be approved by the Respondent before fitting.

56. **Condition 33** The requirement to fit intumescent strips and smoke seals to the escape hatch to Property 10 is agreed.

Condition 34

57. The landlord already conducts a quarterly inspection of the properties. The inspection should cover the matters prescribed in condition 34. The interval is sufficient to ensure the safety procedures in place are fully complied with. However, the Condition is varied to include a requirement for the tenants to test the automatic fire detection and warning systems on a monthly basis (as set out in the LACORS guidance and also BS 5839-6), to record this in a log and to confirm this to the landlord by email/ in writing is agreed, with the Respondent having right to see confirmation on demand.

Condition 35

58. The Tribunal is satisfied the administration involved in monitoring the occupants is not significant. If there is a variation in the occupiers then they should be joined to the single tenancy. The Tribunal further notes that the manner in which the Properties are occupied has a significant bearing on fire safety matters as is shown in the LACORS Guidance and in the event of either or both Properties being occupied by tenants not forming a cohesive group would require a new fire risk assessment. The Tribunal confirms this condition.

Condition 36

59. This condition is agreed.

Conclusion

60. The Tribunal upholds condition 35 and varies conditions 32 and 34. The conditions as determined by the Tribunal are set out in the Schedule attached.

Appeal

61. 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.

Judge P.J. Ellis

Schedule

Condition 32 *Provision of a fire escape window to the first floor bedroom and remove the security lock from the door to the first floor bedroom to allow easy access to escape in the event of fire for all occupants and visitors and should be either replaced with a handle only or with suitable lock which can be opened from outside the room in the event of emergency. Any such lock must be approved by the Respondent before fitting. Escape windows must not be fitted with locks which do not allow keyless access.*

Condition 33 *Upgrade the escape hatch in Property 10 to provide 30 min fire protection to the ground floor front bedroom and stairs, by installing combined smoke seals and intumescent strips*

Condition 34 *The Licence Holder or Manager shall conduct an inspection of the HMO at least monthly to inspect the escape hatch & the 1st floor front bedroom doors to ensure the following:*

- i. The escape hatch is maintained in good working order, good repair and kept free from obstruction at all times, and*
- ii. That no locks have been fitted to the 1st floor front bedroom.*
- iii. That the tenants have tested the automatic fire detection and warning systems on a monthly basis (as set out in the LACORS guidance and also BS 5839-6), and have recorded this in a log.*

The inspection could be in the form of a video call with the tenants or an in person visit. Written records of such inspections shall be kept for the duration of the Licence. As a minimum requirement the records must contain a log of who carried out the inspection, the date and time of inspection and any issues found and action(s) taken.

Copies of these records must be provided within twenty-eight (28) days of the Council's demand.

Condition 35 *The Licence Holder shall ensure that the HMO is occupied by a cohesive group of tenants on a share single tenancy for the whole property.*

Condition 36 *The Licence Holder will ensure that a condition is added on all tenancy agreements which would prohibit tenants without consent changing or putting locks onto the first-floor bedrooms.*

Condition 37 *At the beginning of each tenancy the Licence Holder will ensure that the following documentation is provided to all tenants*

- i. A fire escape route plan detailing the different escape routes in the property*
- ii. A written explanation of how to report disrepair and how to keep these areas clear*
- iii. The Licence Holder shall provide a written policy demonstrating what action would be taken if it became*

*apparent that tenant(s) had put locks on bedroom doors or
blocked escape routes*

*Copies of these documents must be provided within twenty-eight
(28) days of the council demand*