FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/HML/2023/0040**
Property	**:**	**169 Burnley Road, London, NW10 1EQ**
Applicant	**:**	**Andrew Hai**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Brent**
Representative	**:**	**Ms. Robson – Chief Lawyer**
Type of application	**:**	**Application under Schedule 2 to Part 5 of the Act against the decision and conditions of the Local Authority to grant a HMO Licence**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. S. Mason BSc, FRICS**
Date and Venue of hearing	**:**	**5 November 2024 2024 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**13 November 2024**

DECISION

Decision of the Tribunal

The Tribunal dismisses the appeal against the conditions attached to the Licence to occupy a House in Multiple Occupation relating to 169 Burney Road, London, NW10 1EQ issued on 21 July 2021 and declines to vary the conditions that were imposed

Introduction

1. This is an application (dated 16 October 2024 – A3) appealing against conditions attached to a licence of a House in Multiple Occupation (HMO) pursuant to paragraph 31(1) of Part 3 of Schedule 5 to the Housing Act 2004 ("the Act").

2. 169 Burney Road, London, NW10 1EQ ("the Property") is a three-storey house which is rented as a HMO (House in Multiple Occupation). The Applicant is the owner/landlord. The Respondent is the local authority.

3. On 12 July 2021 (A73) the Respondent granted a licence to the Applicant under section 64 of the Housing Act 2004 ("the Act"). Such a licence is required for the operation and management of a House in Multiple Occupation at the Property.

4. The "Conditions for the Mandatory/Additional HMO Property Licensing Scheme" (A35) are attached to every mandatory or additional property licence issued by the Respondent under Part 2 of the Act.

5. Condition 19 states, in relation to "Compliance Works" and states:
"The Licence holder must ensure that any works found to be necessary by the Council to ensure that the property complies with the Council's standards for HMOs, are carried out within the specified time period given".

6. Condition 21 relates to fire safety and states:
24(1) Smoke alarms
The licence holder must ensure that;
a. A smoke alarm is installed on each storey of the HMO on which there is a room used wholly or partly as living accommodation; and that,
b. Each such alarm is kept in proper working order; and that,
c. On demand, the Authority is supplied with a declaration by him or her as to the condition and positioning of any such alarms.
When considering what smoke alarm installation may be appropriate, hard wired mains operated smoke alarms with battery back-up to BS 5446 should be provided.
For the purpose of condition 24, a bathroom or lavatory is to be treated as a room used as living accommodation.

<u>24(2) Carbon Monoxide Alarms</u>
The Licence Holder must ensure that:
A carbon monoxide alarm is installed in any room in the HMO which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and that,

Any such alarm is kept in proper working order; and that The Authority is, on demand, supplied with a declaration by him or her as to the condition and positioning of any such alarm or alarms.
For the purpose of Condition 24 (2) "room" includes a hall or landing.

7. Condition 22 relates to "Fire precautions" and states:
"The licence holder must ensure that all fire precautions provided to the property, e.g. fire doors, automatic fire alarm and emergency lighting system(s), etc. are maintained in full working order at all times.
Where the HMO is of a type which falls under the remit of the Fire Safety Order, the licence holder must ensure that a fire risk assessment as required under The Regulatory Reform (Fire Safety) Order 2005 is carried out by a competent person".

8. Condition 29 relates to "Compliance with fire safety guidance" and it states:
"The licence holder must ensure that all fire precautions are maintained.
In determining adequate fire precautions reference should be made to the LACoRS guidance: HOUSING – FIRE SAFETY, Guidance on fire safety for certain types of existing housing
NB where the fire safety provisions in place are below the LACORS recommended standard, the Council must be notified of any amendments/alterations…".

9. After an inspection on 4 July 2023, the Respondent sent to the Applicant a letter dated 5 July 2023 (A79) which stated that there had been breaches of the licensing conditions which it required to be resolved. With this letter it sent a "Compliance Inspection Schedule" (A80) which required the following work:
"<u>Condition 21 – Fire Safety and Smoke Alarms</u>
…
Based on the Lacors (2009) Fire Guidance, we recommend the following fire alarm system:
Grade D: LD3 coverage + additional detection to the kitchen (heat sensor), lounge and any cellar containing a risk (interlinked).

<u>Condition 22. Fire Precautions</u>
…
Based on the Lacors (2009) Fire Guidance, we recommend the following fire alarm system:
Grade D: LD3 coverage + additional detection to the kitchen (heat sensor), lounge and any cellar containing a risk (interlinked).
…

<u>Condition 29</u>
The licence holder must ensure that… adequate fire precautions are maintained. In determining adequate fire precautions reference should be made to the Lacors guidance:
…".

10. On 6 July 2024 (A83) the Applicant emailed the Respondent raising issues about the required works. Among other things, he asked, in respect of Condition 21, that the works specified were a recommendation and not a requirement. The same issue was raised in respect of Condition 22, specifically in relation to a Grade D, LD3 system. The Applicant also asks if the current alarms would suffice (Condition 29).

11. The Respondent's case is that it then contacted the London Fire Brigade on 7 July 2023 (R41) asking for guidance, which it received on 11 July 2023 (R42). This stated that "the minimum fire alarm system should be a Grade A LD2 system which should consist of mains wired heat sensors within the kitchens and mains wired smoke alarms on every storey and within risk rooms.."..

12. As a result, a further letter was sent to the Applicant on 19 July 2023 (A84) with a further Compliance Inspection Schedule attached. This schedule required the following work in respect of Conditions 21 and 22:
"Based on the Lacors (2009) Fire Guidance, we advise that you install the following fire alarm system:
Grade A, LD2 System which should consist of mains wired heat sensors within kitchens and mains wired smoke alarms on every storey and within risk rooms Emergency Lighting in the escape routes.
As referenced under condition 29 of HMO licensing conditions, licence holders should use Lacors guidance to determine the level of fire precaution within the property.
You must provide evidence for Condition 21"

13. The Applicant raised a number of issues about this schedule (A89): it was said that there was, in the Applicant's view, no further action to be taken in respect of Conditions 21-23 and 29.

14. A further letter (R47) was obtained from the London Fire Brigade, after further documents were sent to them (R46). This stated that:

"... the minimum fire alarm system should be a Grade A LD2 system which should consist of mains wired heat sensors within the kitchens and mains wired smoke alarms on every storey and within risk rooms. The Provision of the LD3 – Grade D Detection and warning system may be sufficient as set out in Part D, D5 and note 8, however you must be satisfied that the premises meets the risk requirements set out in the case study, see excerpt below.
1. A two storey house occupied by a small group of friends, work colleagues, etc, who occupy the property on a single tenancy, who exhibit no unusual high risk factor and who live together very much as a family. The property would be defined as an HMO under the Housing Act 2004. However this arrangement may present no significantly higher risk than an adjacent similar single family house which is not an HMO.
2. A two storey house which has been divided into bedsit rooms occupied by unconnected individuals who live completely separate lives with no knowledge of who is around them in the house. The bedsit rooms each have individual

cooking facilities, a lack of storage space and an inadequate numbers of electric sockets leading to overloading and trailing leads. mainly the occupancy…".

15. On 20 September 2023, the Respondent wrote again to the Applicant enclosing a further (corrected) inspection schedule (A103), giving until 18 October 2023 for completion of the works. Among the works specified in the schedule were the following:
Condition 21 – Fire Safety and Smoke Alarms
A smoke alarm is installed on each story of the HMO on which there is a room used wholly or partly as living accommodation.
a. Each such alarm is kept in proper working order; and that
b. On demand, the Authority is supplied with a declaration by him or her as to the condition and positioning of any such alarms.

Schedule of work to be undertaken:
Based on the LACORS (2009) Fire Guidance, we advise that you install the following fire alarm system:

1. Grade 1, LD2 System as a minimum which should consist of mains wired heat sensors within kitchens and mains wired smoke alarms on every storey and within risk rooms.
2. Fire control panel
3. Emergency Lighting in the escape route.
4. As referenced under condition 29 of HMO licensing conditions, licence holders should use the LACORS guidance to determine the level of fire precaution within the property
5. Work should be carried out by a competent person, and you must provide evidence of compliance by 18th October 2023

Notes:
The Fire Commissioner is responsible for enforcing the Regulatory Reform (Fire Safety) Order 2005 (as amended) in London. The Council has consulted the Commissioner with regard to your premises and our compliance inspection schedule is in line with their observations.

16. On 2 October 2023 (A109), among correspondence between the Applicant and the Respondent about the issues, the Respondent said, among other things, this:
"We believe that we have been clear in stating what the conditions are and have provided clarification in respect of the fire safety guidance as to how best to satisfy the condition. We have also explained that we have consulted with the Fire Brigade who has recommended the LD2 Grade A system as a minimum. It would be useful to hear the views of your fire consultant as part of the considerations.
We have looked at the licence dates and are satisfied at the start date generated is in line with our processing method. These dates are autogenerated during processing. We will have proposed this date on the stage 1 notice issued. The right to challenge the licence and was provided once the final licence was issued. The allowed 28 days and we note that no appeal was made…".

17. On 3 October 2024 (A111) the Applicant emailed the Respondent stating:

"A fire consultant or "competent person" (to use the correct term) is someone who can perform an agreeable assessment. No one from the council is qualified as a competent person or has even attempted any kind of property-specific assessment, so it is clearly unreasonable to require a generic installation of equipment. This is further evidenced by the fact you more recently requested escape lighting to be added when it has nothing to do with an LD2 Grade A fire alarm system. Furthermore, your requirement is not backed by law or demanded by the 14 year old Lacors guidance.
Please provide the document supporting your claim that the "Fire Brigade" has "recommended the LD2 Grade A" so I can see the context that your local authority has apparently been advised this for certain properties. I will now be making a number of FOI requests to find out various information including other legal cases involving the local authority and specific enforcement matters

18. On 12 October 2024 (A111) the Respondent emailed the Applicant stating:

"…In our earlier responses we believe we that we have been clear on the licensing conditions and the guidance being relied upon to ensure that the HMO has satisfactory measures of fire safety. We have also confirmed that we have consulted with The London Fire Commissioner (the Commissioner). The Commissioner confirmed that the minimum fire alarm system should be a Grade A LD2 system which should consist of mains wired heat sensors within the kitchens and mains wired smoke alarms on every storey and within risk rooms. LACORs guidance helps with the interpretation of Grade A – LD2…".

Documentation

19. The Applicant has provided a bundle of documents comprising a total of 280 pages (references to which will be prefixed by "A__"). The Applicants' bundle includes: statement of the Applicant (A30), Conditions for the Mandatory/Additional HMO Property Licensing Scheme (A35), letter in respect of the issuing of a Property Licence dated 15 September 2021 with licence (A70), letter dated 5 July 2023 stating that breaches of the licence conditions had been identified with Compliance Inspection Schedule (A79), letter dated 19 July 2023 in respect of alleged breaches of the licence conditions with Compliance Inspection Schedule (A83), Response to Compliance Inspection Schedule (A89), letter dated 20 September 2023 with a corrected inspection schedule (A103), letter dated 11 July 2023 from London Fire Brigade (A113), Freedom of Information Act 2000 request response from the Respondent (A118) and from the London Fire Brigade ("LFB") (A120), letter from LFB dated 11 September 2023 (A122), Fire Risk Assessment (A125), LACoRS (A197).

20. The Respondent has provided a bundle of documents comprising 152 pages ("R__"). The Respondents' bundle includes the statement of Mr. Aimable (Private Sector Housing HMO Licensing Officer) (R4), licence application (R10), letters from the Respondent dated 7 June 2021 (R18), 15 September 2021 (R19), Notice of grant of a licence (R20), Compliance Inspection Form (R25),

letter from the Respondent dated 5 July 2023 (R27), Compliance Inspection Schedule (R28), letter from the LHA dated 19 July 2023 (R31), updated Compliance Inspection Schedule (R32), letter from the LHA dated 20 September 2023 (R37), emails between the Appellant and Respondent (R38), letter from the LFB dated 11 September 2023 (R47), Conditions for the Mandatory/Additional HMO Property Licensing Scheme (R51), extracts from the Housing Act 2004 (R86), LACoRS (R91).

21. There is also an "Applicant's Reply to Respondent's Statement" and a Skeleton Argument from the Applicant.

22. The Tribunal has had regard to these all these documents.

Application

23. The applicant states that a licence was granted, but "with unreasonable and varying requests for fire safety equipment to be installed". It is said that the Respondent was not willing to provide a fire safety risk assessment performed by a competent person or to indicate any "law, regulation or guidance (including LACORS 2009) that directly and specifically obliges the Applicant to install a grade A, LD2 fire alarm system and also emergency lighting for the Applicant's particular type of property".

24. It is said that the Applicant had already installed a grade D1, LD3 fire safety system and that after he had provided evidence of the installation of what he understood to be the "agreed and accepted equipment", the Respondent then made further requests which differed from its published and consulted guidance.

25. It is said that the Respondent failed to include statutory information in the notice, such as the right to appeal, making it invalid and making any past notice with such an omission issued in the last six years invalid or entitling the applicants to 28 days from the correct issue of a notice to challenge any past decision in the Tribunal.

26. The Applicant seeks a correction of the start date of the HMO licence, as the Respondent applied a start date based on when payment was made, instead of when it processed the application and formally lists the Property as a HMO on its database. It is said that it was not until July 2023 that the licence was issued and the Property was put on its schedule for inspection, even though the application was made more than two years earlier. The Applicant also asks that the licence expiry date is varied to 23 July 2028.

27. There is a Statement of Case (A17) which states, in summary:

(a) The Applicant applied for a HMO licence in April 2021 after refurbishing the Property and complying with "Conditions for Mandatory/Additional HMO Property Licensing Scheme", particularly section 21;
(b) The Property was inspected on 4 July 2023 for the purpose of licensing it as a HMO;
(c) At the time of the inspection, the Applicant was a "live-in landlord" with two lodgers in a flat comprising two storeys. One the ground floor there was a self-contained one-bedroom flat which had no access to the upper two floors;
(d) The Respondent had never been issued with the HMO licence;
(e) After the inspection, the Respondent produced a list of alleged breaches – Compliance Inspection Schedule, which the Applicant says were inaccurately recorded, resulting in corrections on 19 July 2023 and 20 September 2023;
(f) LACORS is national guidance, not law or regulation;
(g) The Property does not have more than two storeys but the Applicant has installed a system that LACORS suggests when there are three storeys and mixed use;
(h) Only limited information was provided to the Fire Brigade when it was asked for its observations and another letter from LFB favours the Applicant's interpretation of LACORS.

28. On 2 August 2024 (A276) the Tribunal issued Directions for the determination of the application. The directions state that the issues the Tribunal will consider are as follows:

(a) Has the LHA gone through the necessary steps prior to the granting of the HMO licence and to the imposing of conditions?
(b) Is the imposition of conditions, if applicable, appropriate for regulating the management, use and occupation of the HMO, or its condition and content (s.67(1))?
(c) Are such conditions appropriate for requiring facilities and equipment to be made available in the HMO for the purpose of meeting standards prescribed under section 65 of the Act (s.67(2)(a))?
(d) Should the conditions be varied, for example:
(i) as to the terms of any suspension;
(ii) as to their extent or specified works;
(iii) is the timescale reasonable?

Respondent's position

29. Mr. Aimable's witness statement (R4) states, in summary, as follows:

30. The Property, as a HMO, required a routine inspection. The Applicant submitted a licence application on 8 May 2021 and a draft licence was issued on 14 June 2021. The final licence was granted on 12 July 2021.

31. The Property is a three-storey townhouse. It is a HMO (s.257) which applied to buildings converted into self-contained flat. The layout also means that it could be classified as a s.254 converted house.

32. An inspection was carried out on 4 July 2024. The Property was occupied by 4 tenants and the Applicant. It was established that there were fire safety breaches. A schedule of works was sent on 5 July 2023. The Applicant sent an email on 6 July 2023 querying the conditions. Mr. Aimable contacted LFB on 7 July 2023 and on 11 July 2023 they confirmed that the Property required a Grade A, LD2 fire alarm system. An amended schedule of works was issued on 19 July 2023. On 26 July 2023 it was confirmed that all conditions had been met, save those which related to fire precautions. A further request for consultation with LFB was sent and on 12 September 2023, they responded that the installation of a Grade A Fire Alarm System was required. A final schedule of works was sent on 20 September 2023. Mr. Aimable, in preparing his schedule of works, ensured that the Mandatory Licensing Conditions Handbook were followed.

The Hearing

33. No inspection was carried out.

34. The Applicant attended the hearing and represented himself. The Respondent was represented by Mrs. Robson (Chief Lawyer) and Mr. Aimable was also in attendance.

35. The Tribunal started the hearing by asking what system was in place at the Property. The Applicant confirmed that he had installed a Grade D, LD3 in system, as a result of Mr. Aimable's inspection. Prior to that, there was a battery powered smoke alarms. He confirmed that a Grade D system meant that there was an alarm every storey, and they were interlinked. An LD3 system meant heat detection in kitchens. He said that a Grade A, LD2 system had a control panel, potentially core points and, subject to what LACoRS suggested, possibly emergency lighting.

36. He confirmed that he had sent the fire safety certificate, which confirmed that the system was Grade D, LD3 (R45) to the Respondent on 17 August 2023.

37. The Tribunal then asked the Respondent which of the licence conditions it said were breached. Ms. Robson referred to conditions 19 and 29. It was then established that the real issue was whether there was "adequate" fire precautions at the Property, having regard to the LACoRS guidance – the Applicant said that there was (i.e. on the basis of the Grade D, LD3 system which he had installed) and the Respondent said that there was not (as a Grade A, LD2 system was needed).

38. The Applicant said that the Respondent had used words such as "recommendation", "advise" and "suggest" and that LACoRS did not prescribe what needed to be done. The Respondent said that it had two recommendations from the London Fire Brigade which said that the system needed to be Grade A, which it could not ignore. It said that it needed a decision from the Tribunal as to whether that was reasonable and that, without a decision from the Tribunal, it could not ignore the LFB's recommendations.

39. The Applicant then raised the issue of the date of the licence and said that the Respondent had not produced any evidence to show the date that the licence was issued. He queried when the licence was really issued and whether it was only when it was discovered that the Property needed to be inspected. The Tribunal queried its power to vary the licence date and the Applicant was asked what the loss was to the Applicant as the Respondent was saying that the Property was licensed. The Applicant said that he had not received what he had paid for if the Respondent had not processed the licence.

40. The Applicant then gave evidence. He said that The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 set out the bare minimum required for rental properties.

41. He referred to A51, condition 24(1) which he said came from Schedule 4, para. 4 Housing Act. It was put to the Applicant that he was not challenging the condition, but the interpretation of it by the Respondent, that it required a Grade A, LD2 system. The Applicant referred to A104 (the final schedule provided by the Respondent) and he said that the wording in relation to Condition 21 was that the Respondent "advised" installation of a Grade 2, LD2 system and that was not consistent with what the Respondent was saying at the hearing – if the Grade A, LD2 system was part of the condition and necessary because of a fire hazard or breach, he questioned why the Respondent continue to use the word advise? He asked if it was because they knew that they could not compel a certain level of system? He referred to the "Notes" section on A104 and said that this was misleading as the 2005 order gave the Fire & Rescue Authority ("FRA") power to inspect buildings, but makes the person responsible for fire safety in the building carry out the risk assessment, which he said he had done (A125). He said that what the Fire Commissioner was responsible for enforcing were not things which were in legislation and the Respondent had used the Fire Commissioner term to back up what they were saying.

42. The Applicant referred to R6, para. 16 and said that the Respondent had introduced the fact that it had relied on s.10 Housing Act 2004. The 2004 Act introduced the Housing, Health and Safety Rating System and s.10 was clear that it only required contact with the FRA if a fire hazard of Category 1 or 2 was scored and there was no hazard identified here. It was said that there was no obligation to consult with the Fire Brigade. The Tribunal asked the Applicant if he was saying that it was unreasonable for the Applicant to have consulted the LFB and he said that the Respondent was overreaching and they did not have to consult. He said that LACoRS was guidance and it was for the landlord to assess the risk. He said that he could not see any evidence there was a hazard or need to consult the LFB. He asked, if this was such a "big concern" why did the Respondent wait until he had queried the right to impose condition? The Applicant read from s.10 Housing Act 2004 and he said that that section only applied to emergency measures.

43. The Applicant referred to the letter from the LFB mentioned at R7, para. 18 and he said that he had evidence (A120) that the LFB had no record of that letter existing. He referred to the letter of 11 September 2023 (A122) and the reference to a Grade D system being sufficient. The Applicant asked how the author could know better than someone who had performed a risk assessment in person? The Applicant said that he was the "responsible person" in law. He referred to the case study and said that we did not know what information the LFB had received from the Respondent and the LFB's response were just observations based on what they had been told.

44. The Applicant said that the letter at A122 had an error as the case study at D5 (A239) was about 3-4 storey buildings but the letter referred to a two-storey house. He said that the Property did fall within the scope of D5 as the escape routes were protected, the doors were 30 minute doors, they separate each room from escape route and walls were of sound traditional construction, there was a fire blanket (there were no extinguishers but that was only recommended) and the fire safety signs were there from the outset. He referred to para. 1.3 (A201) which made clear the document did not set prescriptive standards, but was guidance for assessing the adequacy of precautions. It said that alternative fire risk assessment methods may be equally valid, so the level of fire detection features could be adjusted depending on the risk that had been assessed. He referred to the photographs of the Property and the floor plan and said that the Property was not a typical 3-storey house – there was ground floor access from the ground floor and also from the first floor (which was the ground floor at the back) so, in the same way as a two-storey house, if someone was trapped on the first floor, s/he would have access to the ground floor exit. The Applicant said that he had taken this into account when assessing the risk. He said that the Respondent had never asked for his fire assessment and it was not shown to the FRA.

45. The Applicant said that the case studies could not cover every eventuality and there was a caveat to that effect (para. 9.4 – A209).

46. The Applicant explained the differences between a Grade A system compared to a Grade D system. He said that they were not that different looking at the bigger picture – there was the control panel and the call points. He said that a Grade A system was less good than a Grade D system as in the former one is reliant on the control panel which LACoRS said only had to be inspected every six months, and one is reliant on a tenant seeing the error message/light. With a Grade D system, there had to be a monthly test of the interlined system which was a better way of ensuring that the system was working as it should. Call points would be excessive for the size and nature of the property. Even the Respondent in the second schedule mentions a Grade A system generally, and did not specify a control panel. Grade A would be unreasonable and would bestow no fire safety benefit.

47. Ms. Robson then asked the Applicant questions as follows:

48. He was referred to A239 and he was asked if D5 was the picture at the top of he page. He said that none of the case studies matched, but the guidance could not cover every situation, but the Property was most like D5, D7 and D15. The Applicant referred to A122 and he said that he did not know what the author had had regard to, to think that D5 was a close match as he had not seen the Property or photographs. He confirmed that the picture at the top of A239 did say D5. It was put to him that it refers to a shared house of three or four storeys and that shared house was defined at para. 35.2 (A236) and he confirmed this. Ms. Robson read out the definition of shared house and the Applicant confirmed this but said it had to be understood in light of para. 33.4. It was put to the Applicant that this did not fit the Property and he said that para. 33.4 said that the Property did no have to meet the definition. He said that it fitted that definition better than that of "bedsit" as there were not cooking appliances in the bedroom, he knew the people he was living with, it was a communal, social property.

49. The Applicant confirmed that the tenants did have separate tenancy agreements. He also confirmed that the downstairs tenant had a separate tenancy agreement.

50. The Applicant was asked if he had been told on 19 July 2023 by Mr. Aimable that the Property would need a Grade A system, and this was after he had been told he would need a Grade D system and the Applicant said that this was what the documents said.

51. The Applicant was asked to confirm that he had not got back to the Respondent until 19 August 2023 to say that he had installed a Grade D system and that he had sent confirmation of this (R45) on 17 August 2023. He said that he had queried the need for the installation of a Grade D system (A89) but the Respondent had not responded. He was referred again to R45 and he said that he could not see what the attachments were but he would trust it was the report as the Respondent said, and he confirmed that the date was 17 August.

52. The Applicant confirmed that the "second" LFB letter (R47) was sent even though he did not agree with its contents. He was asked to confirm his position in respect of the first letter and he said that, on the evidence from LFB, the letter did not exist in terms of them sending it officially and that it was not an official letter.

53. The Applicant was asked if he was saying that the Respondent did not have the right to consult LFB under any circumstances. He said that the law suggested not, but he would leave it to the Tribunal to work that out. He said that he didn't know what the position was in terms of the Respondent being entitled to consult and over-reaching.

54. The Applicant was asked to confirm that he had no evidence confirming the Respondent was prohibited from consulting the LFB. The Applicant said that the Respondent referred to s.10 2004 Act but it had not complied with s.10. He said that he did not know the law.

55. The Tribunal asked the Applicant to confirm that A192 was a plan of the Property and he confirmed that it was. He was asked about the LFB's letters and he said that a control panel would not be of benefit as in an emergency, with alarms going, it was unlikely any would resident would run to the control panel to see where it was going off. If they heard an alarm, tenants would close the doors, and raise the alarm.

56. The Tribunal asked the Applicant about the fact that he had installed the Grade D system having been notified that a Grade A system was required. He said that the fire risk assessment suggested that what the law required was already there, that he was the "responsible person".

57. The Applicant was asked about the fire risk assessment he had done and the fact that, on his assessment, the battery-powered system was sufficient. He confirmed that smoke alarms were one every floor, on the communal escape routes but that there was nothing in the kitchen. He was asked about the fact that the assessment said that the system in place was satisfactory, but that it was not, and the Applicant said that he knew that now. He said that Mr. Aimable was not sure during the inspection what system was needed and then the Applicant received the first schedule which referred to a Grade D system. He received it on 6 July 2023 and ordered the alarms and was then waiting for them to be delivered. He then had then installed and the fire safety certificate was issued. He said that the system was installed about a day or a few days before the date of the certificate. He was asked why he had not stopped the installation once he had received the second version of the schedule, and he said that the alarms had already been purchased and that he had determined that a Grade A system was "too much". He was asked if he could still have used the detectors on a Grade A system and he said that they would not have worked with a control panel system. He said that he was hopeful that the Applicant had misunderstood and the references were only to "advice" and there was nothing in law or in LACoRS which meant that he had to instal a particular system. He said that he would have happily complied with a requirement to instal a Grade

D system, but he was not willing to accept a Grade A. It was put to him that he carried on at his own risk, and he said that it was unsatisfactory to leave the battery system which was in place and that he agreed that an interlinked Grade D system was reasonable.

58. It was put to the Applicant by the Tribunal that the Property did not fit within D5 and he said that it did not strictly match D5. The Applicant said that he did not mind the cost, if the work needed to be done, but the Grade A system was "too big a leap" from what was required and the lower risk that he had determined.

59. Mr. Aimable then gave evidence. He confirmed that he had worked for the Respondent for 7 years and he had been a HMO licensing officer for 4 years. He had a Bachelors degree in commercial law and business management, and a CIH in Housing. He was asked why he had contacted the LFB in July 2023 and he said that when he sent the initial schedule of works to the Applicant, it was challenged by the Applicant and his best option was to contact LFB to get an answer as he had initially recommended a Grade D system. The LFB came back and specified a Grade A system and he confirmed that he had followed that recommendation in his second schedule (19 July 2023). He was asked why he chose to follow that recommendation and he said that it was because of the Property's lay out - self-contained on the ground floor with cooking facilities which presented a heightened fire hazard and a Grade A system would allow the LFB to immediately attend to a fire as the panel would identify where it was.

60. Mr. Aimable was asked what information he had sent to LFB and he said he sent the floor plan, a photograph of the Property and information as to occupation and facilities (a self-contained and communal kitchen). Upon receiving the certification from the Applicant, he sent it to LFB for a second consultation in case they were happy with the existing system and LFB came back and said the Property still needed a Grade A system.

61. Mr. Robson referred Mr. Aimable to R46 and he was asked what he had sent to the LFB. He said that he had sent the fire alarm certification and the letter of 11 July 2023 and the evidence as to the new fire system.

62. The Applicant then asked Mr. Aimable questions as follows:

63. He was referred to R4, para. 3 and he was asked when the licence was completed. Mr. Aimable said that the Property was licensed from 2021. He confirmed that the Respondent's licensing conditions required documents to be displayed in the Property and that only the licence was not displayed. He was asked where in the evidence were the records, emails, or a trail that proved the final licence was issued on date he said it was. Mr. Aimable said that the evidence was on the licence and that there was evidence on the Respondent's system showing that it was sent out on the date it said it was.

64. Mr. Aimable was referred to R4, para. 2 and he was asked as to the reason his manager accompanied him on the inspection. Mr. Aimable said that there was no particular reason.

65. Mr. Aimable confirmed that he was a "trained" EHO as he had Advanced Private Housing Regulation and that he was entitled to conduct rating system assessments, conduct prosecutions, and issue CPN's. He confirmed that he was not a trained and qualified fire officer, risk assessor or a landlord in the private sector.

66. He was asked about his initial assessment that a Grade D system would be sufficient. He said that there were other fire precautions which were not addressed (fire door needed self-closure and intermescent seals) and he thought that a Grade D system in conjunction with addressing those matters, would be sufficient. This was based on his inspection. He was asked why he had "got it wrong" and he said that he had not got it wrong but had then consulted with LFB following the Applicant challenging the need for a Grade D system. He said that it was the LFB who said the system should be Grade A.

67. Mr. Aimable was referred to R6, para. 13-14 and he was asked if the specification of a Grade D system was a recommendation or mandatory. He said that it was a recommendation but if it was in the schedule of works, the landlord would be expected to do those works. He said it was mandatory once the landlord had been advised to install it.

68. Mr. Aimable confirmed that R7, para. 18 was correct. He was asked where on A86 it said the requirement was mandatory and Mr. Aimable said that the wording did not say that. He said that the Respondent could look into that, and repeated that once it was included in a schedule of works, it became mandatory. He confirmed that the Applicant raised this issue at the time in emails. He was asked why the wording did not make clear that this was a mandatory requirement. He said that the Respondent used the word "advise" but it would expect the works to be done. He said that he sent the email at R44 and he did use the word "advised" but he said what was required, provided a deadline and confirmed that the other conditions had been addressed.

69. Mr. Aimable was referred to A86 and he agreed that there was nothing in the wording that said the Applicant must install the system he suggested.

70. Mr. Aimable defined a Grade A system as one equipped or accompanied by emergency lighting, it is mains wired, interlinked and has a fire control panel. He was asked why some of those elements were missing from A86 and whether the reason was that he did not think that a Grade A system would have a control panel. Mr. Aimable disagreed with this and said that all Grade A systems had control panels.

71. Mr. Aimable was referred to A120 and it was put to him that there was no record of the letter of 11 July. Mr. Aimable referred to the paragraph that referred to

an email dated 11 July. The Applicant clarified that this referred to the email the Respondent sent the LFB, but they had no record of the letter they sent. Mr. Aimable said that he could not comment on that, but he did have evidence that the letter was sent by the LFB. He confirmed that the letter at A122 had a reference number and was a digital colour copy. He confirmed that the letter at A133 was sent by email. He had not included that email in the bundle, but he believed that a copy of the letter was sufficient. He said that he received the letter on 11 July 2023. He had contacted the LFB on 7 July 2023 initially. He was asked if it was possible that he did not see the 11 July 2023 email/letter until after he had done the schedule on 19 July 2023 and he confirmed that he had seen it on 11 July. He was asked if he or someone else had received the LFB letter after 19 July, around 4 August, but a LFB contact had backdated the letter and Mr. Aimable said this was incorrect.

72. Mr. Aimable said that LFB did not send someone to inspect the Property. It was confirmed that the Respondent had not asked for the risk assessment at A125 so it could not have been sent to LFB. No internal photographs were sent. Mr. Aimable as asked if he had explained to LFB about the circumstances that would increase or lower the risk and he said that he had made aware of the firm alarm systems in place initially and the one that was now installed, as well as the fact that there was a self-contained unit on the ground floor with its own cooking facilities. He did not tell them about the FD30 doors. He had advised them of the escape route but not about the combustible material. He was asked if it was possible that LFB did not have all the information it needed to make an accurate judgment and to give observations. He said that it had the most important information. He was asked if it was possible that the LFB's observations were incorrect, and they had got it wrong. Mr. Aimable did not accept this. He was referred to A122 and the reference to a two-storey house. He said that the LFB did not get that wrong, they used that as a recommendation and were saying that if the Property were wo-storey, Grade D would be sufficient.

73. Mr. Aimable was asked if there were hazards at the Property and he confirmed that, from his inspection, there were. He was asked if there were still hazards and he said that there were – relating to fire, there was no control panel, having regard to the size of the Property, the self-contained unit and additional communal kitchen, the fact that there could be a maximum occupancy of up to 7 people. He was asked if the hazards were emergency hazards and he said potentially they were.

74. Mr. Aimable confirmed that smoking, a sofa next to a gas hob and storing combustible items in a hallway cupboard were all fire hazards. He said that use of a Grade D system instead of a Grade A, on its own, could be a hazard. He said that there was no reference to a hazard in the evidence and said that the LFB had responded to eliminate hazards. He said that they were serious enough for him to take action and when asked why he had "left it" for a year, he said that he had not. He confirmed that he had not done a HHSRS assessment and said that he had determined the hazards based on his experience and his observation of the Property. It was put to him that his training would dictate that he cannot do an assessment without scoring, he said that he had avoided wasting time and went to the experts. He said that the Property did not have

category 1 hazards but they were borderline. When asked how he had assessed this, he said that there would be scoring if the matter was referred to enforcement, and this was a compliance schedule of works. If the works were not carried out, there would be further inspections. He denied that he was speculating and said that he saw the Property and said that the system the Property had at the time of his inspection was not sufficient. He said that any Property which is three-storeys required a Grade A fire alarm, in particular properties that have not been used as shared house and, based on his inspection, the Property was not used as shared house, and that was where the hazards existed.

75. The Applicant read s.10 and asked what the fire hazards were that he said were close to category 1. He said that it was the lack of fire alarm systems he observed in his inspection.

76. Mr. Aimable was asked if he admitted that s.10 did not require him to contact LFB. He said that if there was any concern, he would always consult them. He said that before taking action, the local authority could consult the LFB.

77. Mr. Aimable was asked what factors would have made a Grade D system acceptable at the Property. He said that if it were no longer used as a HMO. The Applicant referred to the LACoRS guidance and it was put to Mr. Aimable that a HMO could have three storeys. He replied that this was for a shared house, not a HMO. He said that the Property was a bedsit style HMO, with a mix of self-contained cooking facilities, and communal cooking facilities. The Applicant said that a bedsit is where each occupant has his/her own personal cooking facilities (R135). It was put to Mr. Aimable that the Property did not have little or no communal living. His response was that, based on his inspection there was only a shared use of kitchen. There was more than one tenancy agreement. He confirmed that LACoRS is guidance and that the Applicant was the "responsible person".

78. The Applicant put to him that there was no one who had performed a more thorough inspection and he agreed with this.

79. The Tribunal asked Mr. Aimable about A192 and whether the position would be different if it became a three-storey HMO without the separate one-bedroom flat. Mr. Aimable said that the main thing was that it was three storeys and used as a HMO and so the view of LFB would stand.

80. Ms. Robson said that adequate fire precautions was the relevant condition. The question was whether it was adequate? Whether the system needed to be Grade D or A? She said that the letters from the LFB recommend Grade A. On that basis of that, the council felt it had to adopt that. The Tribunal had heard from the Applicant that he had not started to install the system until after he had been told it would need to be a Grade A system. He had chosen to continue. It was said that the fire risk assessment needed to be done by a competent person, suitably qualified. It was said that if the Respondent was to deviate from the recommendations of the LFB, it would need assurance from Tribunal that that

was the correct course. It needed to ensure that the tenants were not at risk. She referred to the witness statement of Mr. Aimable which stated that the Applicant was sent a draft licence and a final licence in September 2021.

81. The Applicant said that there were limited conditions that could be imposed by law on a landlord in terms of fire safety. He said that "adequate" was the key word and this was determined by LACoRs. He referred to the case of *Moseley* and said that in that case there was an inspection by the fire officer, which we did not have here. He accepted that the Respondent had a right to contact who it wanted to understand the law and safety requirements, but advice needed to be credible, thorough and done to a sufficient standard. If a fire officer was involved and had done an assessment which then said Grade A, he said that that would change everything and it would trump his assessment. His assessment was in person and whilst his initial assessment was not as good, it was now of an adequate standard. He referred to LACoRS and the difference between a shared house and a bedsit. He said that there was no legal definition of those terms. He said that some local authorities used the case studies as prescriptive standards, but they were examples, and one size did not fit all. Mr. Aimable had talked about how the only situation which would result in a lower grade would be if the Property were not a HMO but this was not consistent with LACoRS. Hazards as serious and require enforcement action and Mr. Aimable referred them today was guesswork.

82. The Applicant said that he was the responsible person, he had done the risk assessment (and an updated assessment). He said that he knew the tenants, who he selected. He knew he Property. He said that no one else had visited and done an assessment which was more credible than his. He agreed that LACoRS should be followed, but with some flexibility and it should be used as guidance but it was for him to determine what was adequate.

<u>Statutory regime</u>

83. The licensing of HMO's is provided for by Part 2 of the Act. An application for a licence is made to the LHA, which is the Respondent. The Respondent can grant or refuse a licence (s.64) and may include such conditions as the LHA considers appropriate (s.67).

84. By Paragraph 31 of Part 3 of Schedule 5 to the Housing Act 2004:-

(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 paragraph (1)(b) may, in particular, relate to any of

the terms of the licence.2.

85. Paragraph 34 states that an appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority was unaware. *Waltham Forest LBC v Hussain* [2023] EWCA Civ 733. The Tribunal may confirm, reverse or vary decision of the LHA.

86. Section 10 of the Housing Act 2004 states as follows:

(1) This section applies where a local housing authority—

(a) are satisfied that a prescribed fire hazard exists in an HMO or in any common parts of a building containing one or more flats, and

(b)intend to take in relation to the hazard one of the kinds of enforcement action mentioned in section 5(2) or section 7(2).

(2) Before taking the enforcement action in question, the authority must consult the fire and rescue authority for the area in which the HMO or building is situated.

(3) In the case of any proposed emergency measures, the authority's duty under subsection (2) is a duty to consult that fire and rescue authority so far as it is practicable to do so before taking those measures.

(4) In this section—

• *"emergency measures" means emergency remedial action under section 40 or an emergency prohibition order under section 43;*

• *"fire and rescue authority" means a fire and rescue authority under the Fire and Rescue Services Act 2004 (c. 21);*

• *"prescribed fire hazard" means a category 1 or 2 hazard which is prescribed as a fire hazard for the purposes of this section by regulations under section 2*

Determination of the Tribunal

87. As stated above, the issue for the Tribunal is not so much the Conditions imposed for the licence, but whether the Applicant has complied with them and/or the Respondent's interpretation of them. He does not say that the Condition (19) that he must ensure that any works found to be necessary by the Council to ensure that the property complies with the Council's standards for HMOs, are carried out within the specified time period given is an unreasonable one, but he does say that the requirement in the second and third schedules to install a Grade A, LD2 system, is an unreasonable one. Similarly, he does not say that the Condition (29) that requires him to have "adequate fire precautions" is unreasonable, but his contention is that the system currently installed in the Property (being a Grade D, LD2 system) meets this Condition.

88. As was said in *Moseley v Weymouth and Portland Borough Council* CHI/9UJ/HMV/2019/0005 [22]:

'It goes without saying that fire precautions and alarm systems are of fundamental and paramount importance and local councils and fire authorities depart from the LACORS Guidance at their peril. This Guide is not statutory or prescriptive provided that alternative arrangements that are equally effective are implemented. The recommendations are based on the principles of fire risk assessment. At paragraph 22.4 of the Guide it states that the standards recommended in part 6 table 1 are to be regarded as "base guidelines". They are appropriate for premises of "normal risk". Where the risk is lower or higher than normal "then a lower or higher provision of detection and warning may be appropriate."'

89. The Tribunal notes the constitution of the Property, being a self-contained flat on the ground floor, with a three bedroom "maisonette" on the first and second floors – the layout is complicated by the fact that the ground rises, so there is also "ground-floor access" from the first-floor.

90. LACoRS describes a "bedsit-type HMO" as follows:
These are HMOs which have been converted into a number of separate non-self-contained bedsit lettings or floor-by-floor lets. Typically, there will be individual cooking facilities within each bedsit, but alternatively there may be shared cooking facilities or a mixture of the two. Toilets and bathing/washing facilities will mostly be shared. There is unlikely to be a communal living or dining room. Each bedsit or letting will be let to separate individuals who will live independently, with little or no communal living between tenants. Each letting will have its own individual tenancy agreement and there will usually be a lock on each individual letting door". A shared house is defined as HMO's where the whole property has been rented out by an identifiable group of sharers such as students, work colleagues or friends as joint tenants. Each occupant normally has their own bedroom but they share the kitchen, dining facilities, bathroom, WC, living room and all other parts of the house. All the tenants will have exclusive legal possession and control of all parts of the house, including all the bedrooms. There is normally a significant degree of social interaction between the occupants and they will, in the main, have rented out the house as one group. There is a single joint tenancy agreement. In summary, the group will possess many of the characteristics of a single family household,

although the property is still technically an HMO as the occupants are not all related. The Guidance goes on to state that the exact arrangements will vary from house to house and this may result in "grey areas" in determining whether a house is a true shared house which therefore presents a lower fire safety risk due to the mode of occupation and that each case will need to be considered on its merits, and that even if a property is occupied as a shared house, the fire risk may still increase if the property is of a non-standard layout or is the occupants present a higher risk due to factors such as limited mobility or drug/alcohol dependency.

91. In terms of the LACoRS Guidance, the Property does not neatly fit into the description of a "shared house HMO" or a "bedsit HMO". In this case, the tenant of the self-contained flat has a different tenancy agreement to those who live in the "maisonette" and those who live in the "maisonette" have different tenancy agreements to each other, i.e. they are unconnected individuals. None of the rooms in the "maisonette" have their own cooking facilities, there is a communal kitchen. The fact that there is no cooking in bedrooms does reduce the fire risk.

92. LACORS says alternative fire risk assessment methods may be equally valid. Again, as noted in *Moseley*, [16], the LACoRS Guidance does not prescribe standards and does allow alternative solutions to be proposed, but it states that any alternative arrangement will need to achieve at least an equivalent level of fire safety.

93. The Tribunal has taken all of this into account when deciding whether the existing system is adequate.

94. It also has regard to the fact that a Grade A system has a control panel which shows up if there is a fault to the system and the location of the detector which has been activated. Thus, a tenant can see at a glance if there is a problem. With the system currently in place, checks have to be carried out by the landlord on a regular basis to ensure that the system is working properly.

95. The Tribunal does not have a witness statement from the London Fire Brigade, but it does have the letters at A113 and A122. It is noted that, in terms of the information given to LFB (A124), it was told that the Property has a ground floor which was occupied by a couple of two, they had their own self-contained bedroom which has a kitchen and bathroom and the first and second floors were occupied by the landlord and another tenant who shared a communal kitchen. A floor plan of the Property was provided, but it was pointed out that the first floor front and first floor rear usage had been rearranged so the first floor rear was the kitchen/living and the first floor front was a bedroom. It was then told (R46) that the ground floor unit was a self-contained having exclusive use of its own kitchen, bedroom has uPVC double casement doors to the front external which serves as an alternative MOE, the R-wire Limited, the report showed an LD3-Grade D and not a LD2 GRADE A alarm system as a minimum.

96. The Tribunal notes the Applicant's submissions about the letter at A113 (A121) and the Tribunal finds that it was written on 11 July 2013, provided to the Respondent and was taken into account by the Respondent when it produced its second schedule. There is reference to this letter in the email at R46 and we have the witness evidence of Mr. Aimable. In any event, this is a re-hearing and the Tribunal takes account of the two LFB letters when reaching its decision.

97. The same point stands in relation to the arguments raised by the Applicant in respect of s.10 Housing Act 2004. Whether there was an obligation to consult the LFB or not, the Respondent was clearly entitled to consult and, having done so, at this re-hearing, the Tribunal has the responses.

98. The Tribunal agrees with the Tribunal in *Moseley* when it said, in the circumstances of that case, that as the property does not neatly fit into any of the categories illustrated in the LACORS Guide there needed to be a more nuanced risk assessment.

99. The Respondent sees no reason to depart from the view of the LFB that a Grade D, LD3 system is not adequate for the Property, and that it requires a Grade A, LD2 system. The Property does not fall within the risk requirements at A122 which would mean that the Property would be suitable for a Grade D, LD3 system (even assuming the storey requirements are met). It notes the risk assessment done by the Applicant (A125) and that he is the "responsible person" for the purposes of The Regulatory Reform (Fire Safety) Order 2005. That does not mean, however, that the Applicant's risk assessment is conclusive.

100. The Tribunal notes the decision in the *Moseley* case, but: (a) each case turns on its facts; (b) the size and occupancy of a property are very relevant to the potential risk and therefore to the decision as to what system is "adequate". It is noted that the Applicant was, initially, querying whether the system in place before July 2024 would suffice. The Applicant is the "responsible person" for the purpose of The Regulatory Reform (Fire Safety) Order 2005, but the Tribunal has to note that he has not had any training and does not have any specialist knowledge (save his knowledge of the Property). This is contrasted with the Assistant Commissioner from the LFB. The Tribunal does not agree with the Applicant's submission at para. 24 of his Skeleton Argument that only he is in a position to determine adequate fire safety measures.

101. The Tribunal finds that the current system is not appropriate and that the condition to install a Grade A system is reasonable in the circumstances of this particular case. The Tribunal will, however, vary the time for compliance to 20 December 2024.

App for pro rata refund and/or extension of licence period

102. The application for a refund was not pursued at the hearing and in any event, the Tribunal has not jurisdiction to make this order. Even if it had, it would not have ordered it – the licence was in place.

103. The Tribunal does not make an order extending the period of the licence for the same reasons.

Application for refund of fees

104. As the application was not been successful, the Tribunal does not make an order for refund of fees.

Judge Sarah McKeown
13 November 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).