



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

**Case reference : CAM/26UK/HML/2023/0005**

**Applicant: Vinod Mishra**

**Representative : In person**

**Respondents: Watford Borough Council**

**Representative: Ms Milton**

**Property: 18 The Gateway, Watford, WD18 9HM**

**Tribunal: Judge Shepherd, Judge Granby, Marina Krisko FRICS**

**DETERMINATION**

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1. In this case the Applicant, Vinod Mishra (“The Applicant”) is appealing the decision by the Respondents’ Watford Borough Council ( “The Respondents”) to grant him a license in respect of a house in multiple occupation (“HMO”) for the premises at The Gateway, Watford, Hertfordshire, WD18 7HW (“The premises”) but to limit the number of persons occupying the premises to 6, including 4 separate households. The application for a license by the Applicant requested occupation by 12 people. The Applicant considers that the license is too restrictive in terms of the permitted occupation.

2. The premises consist of a freehold, mid terraced town house over three floors. The premises have 7 designated bedrooms which include an internal garage which is awaiting planning approval to use it for residential purposes. There is a shared kitchen. The Applicant says the kitchen is large enough to accommodate 12 people. There are three fridge freezers, 2 washing machines, 2 cookers and 2 microwaves.
3. For their part the Respondents say that two of the rooms in the premises ( rooms 3 and 6) do not meet the Watford Amenity and Space Guide for the Occupancy and room 7 is a void garage awaiting planning consent for conversion into a habitable room and is therefore not in a suitable condition to allow occupation. The Respondents took measurements of the rooms in question when they inspected the premises:

Room 3 - 6.96 m<sup>2</sup>

Room 6 -7.23m<sup>2</sup>

Room 7-11.90 ( this was the garage).

4. The Respondents were clear both in their written representations and at the hearing that the situation was “fluid” in that the license can be varied at a later date following any further alterations carried out by the Applicant.
5. The Tribunal did not inspect the premises as we did not consider this was necessary. The parties were not disputing the layout or size of the rooms. The Applicant’s challenge was to the decision to impose a limit to the occupation of the agreed premises. No objection was raised by either party when we announced we would not be inspecting.

6. The chronology of relevant events was as follows:

- HMO license application was received by the Respondents on 27<sup>th</sup> February 2022. This was an incomplete application.
- The application was validated on 28<sup>th</sup> March 2022.
- The premises were inspected by Environmental Health Officers on various dates.
- The first notice of intention was issued on 28<sup>th</sup> February 2023 updated and served on 26<sup>th</sup> June 2023 then updated and served on 26<sup>th</sup> October 2023.
- The application to the Tribunal challenging the decision to limit the occupation of the premises to six persons was made on 28<sup>th</sup> August 2023.

### **The relevant law**

7. The Housing Act 2004, Part 2 deals with the designation of HMOs. Specifically , section 63 covers applications, section 64 deals with the grant or refusal of applications, and s.67 deals with the imposition of license conditions. Section 65 is the most relevant to this appeal. It states the following:

#### *65 Tests as to suitability for multiple occupation*

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

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

*(3) In this section “prescribed standards” means standards prescribed by regulations made by the appropriate national authority.*

*(4) The standards that may be so prescribed include—*

*(a) standards as to the number, type and quality of—*

*(i) bathrooms, toilets, washbasins and showers,*

*(ii) areas for food storage, preparation and cooking, and*

*(iii) laundry facilities,*

*which should be available in particular circumstances; and*

*(b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.*

8. The Housing Act 2004, Sch 4 states the following in relation to mandatory conditions to be imposed in a license:

*Additional conditions to be included in licences under Part 2: floor area etc*

*(1) Where the HMO is in England, a licence under Part 2 must include the following conditions.*

*(2) Conditions requiring the licence holder—*

*(a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;*

*(b) to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;*

*(c) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;*

*(d) to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.*

*(3) Conditions requiring the licence holder to ensure that—*

*(a) where any room in the HMO is used as sleeping accommodation by persons aged over 10 years only, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence;*

*(b) where any room in the HMO is used as sleeping accommodation by persons aged under 10 years only, it is not used as such by more than the maximum number of persons aged under 10 years specified in the licence;*

*(c) where any room in the HMO is used as sleeping accommodation by persons aged over 10 years and persons aged under 10 years, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence and the maximum number of persons aged under 10 years so specified.*

*(4) Conditions which apply if—*

*(a) any of the conditions imposed pursuant to sub-paragraph (2) or (3) have been breached in relation to the HMO,*

*(b) the licence holder has not knowingly permitted the breach, and*

*(c) the local housing authority have notified the licence holder of the breach,*

*and which require the licence holder to rectify the breach within the specified period.*

*(5) In sub-paragraph (4) the specified period means the period, of not more than 18 months beginning with the date of the notification, which is specified in the notification.*

(6) Conditions requiring the licence holder to notify the local housing authority of any room in the HMO with a floor area of less than 4.64 square metres.

(7) In this paragraph a reference to a number of persons using a room in an HMO as sleeping accommodation does not include a person doing so as a visitor of an occupier of the HMO.

(8) For the purposes of this paragraph a room is used as sleeping accommodation if it is normally used as a bedroom, whether or not it is also used for other purposes.

(9) Any part of the floor area of a room in relation to which the height of the ceiling is less than 1.5 metres is not to be taken into account in determining the floor area of that room for the purposes of this paragraph.

(10) This paragraph does not apply to an HMO which is managed by a charity registered under the Charities Act 2011 and which—

(a) is a night shelter, or

(b) consists of temporary accommodation for persons suffering or recovering from drug or alcohol abuse or a mental disorder.

9. The guidance to local authorities provided by *Houses in Multiple Occupation and residential licensing reform: Guidance for Local Housing Authorities* states the following:

*The mandatory room size conditions will however be the statutory minimum and are not intended to be the optimal room size. Local housing authorities will continue to have discretion to require higher standards within licence conditions, but must not set lower standards.*

10. The Watford Borough Council , *HMO Amenity and Space Guidance to Landlords* states that that one person units of accommodation should be 8m<sup>2</sup>

where provided with separate individual or shared kitchen and two person accommodation should be 13m<sup>2</sup> where provided with separate individual or shared kitchen. Further living and dining rooms which are used by 1-3 persons should be at least 8.5 m<sup>2</sup> and those for 4-6 persons should be 11 m<sup>2</sup>. In addition kitchens used by up to 6 persons should be 10m<sup>2</sup>. The guidance also notes the following:

*Please note that regardless of the room size the layout and ergonomics must be satisfactory and safe. This means considering location of cookers away from exit routes or fire risks and ensuring that there is sufficient space to carry out tasks safely and without risks.*

11. There is some flexibility in the room size standards where the guidance states the following:

*Room sizes can be reduced by a maximum of 1.49m<sup>2</sup> where risks are adequately controlled through provision of use of a communal area in addition to exclusive use of a letting. For example , a communal dining room, lounge or dining kitchen.*

12. In their written submissions the Respondents also relied on LAcors Fire Safety Guide however the real issue in this case was the application of their own space criteria and standards.

13. Sch 5 paragraph 31 of the Act states that the applicant *may appeal to a residential property tribunal against a decision by the local housing authority... to grant the license* and this appeal *may in particular relate to any of the terms of the license.*

14. In the present case it is the terms of the license i.e. the limitation of the number of occupiers that is being appealed.

## **The hearing**

15. The Applicant represented himself. He is to be congratulated for making clear concise submissions and also for the quality of his written submissions.
16. Ms Milton an Environmental Health Officer represented the Respondents. She also conducted herself in an admirable manner.
17. Ms Milton explained how the local authority had assessed and applied the license conditions including the limitation of occupation.
18. It was clear that the crux of the dispute lay in relation to rooms 3, 6 and 7. The Respondents had applied their own space standards ( see above) to rooms 3 and 6 and decided that these rooms were not to be included as habitable rooms. Room 7 was the garage which they considered was not habitable. The kitchen/diner was 15.27 m<sup>2</sup>. There was also a conservatory. The authority had considered the health and safety and ergonomics of the layout of the living areas and considered they were only adequate for the number of people allowed in the license. Ms Milton said that the kitchen would need to be 20 m<sup>2</sup> to accommodate 12 people according to their own guidance.
19. The Applicant steadfastly maintained that the Respondents were wrong to rely on their own guidance when the minimum room standards in Sch4 to the Act would have allowed rooms 3 and 6 to be occupied. In other words he was arguing that the Respondents were wrong to use their own guidance in making the decision. More fundamentally he was arguing that their guidance was



flawed. The latter argument is probably in Judicial Review territory and should be raised in the Administrative Court but it is arguably part of the Tribunal's role to consider the Respondents' guidance and its affect on their decision making in this particular case.

## **Determination**

20. We reject the criticism of the Applicant. The Respondents have applied their guidance properly. It is prudent and sensible. Further the Act and government guidance is clear in stating that the standards stated in Sch 4 are minimum standards. It is for the individual local authority to set their own appropriate standards. These may vary from authority to authority for example those with a high student population may be more flexible in allowing slightly lower standards than here but ultimately the standards are for the local authority itself to use and follow.

21. Aside of the bedroom sizes we are also concerned about the kitchen facilities in the premises. These are patently inadequate in size for the number of people proposed by the Applicant. The Applicant argued that there were adequate facilities in the kitchen. This may be right but there is not enough space for 12 people or indeed any more than 6 people to use safely at the same time. One solution may be to extend the kitchen into the conservatory. Ms Milton repeated that the situation was fluid and that amendments to the license would be considered if the layout of the premises changed.

22. In summary we dismiss the appeal.

## **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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).