



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

Case Reference : **MAN/32 UD/HML/2023/0007**

Property : **47 Cromwell Street, Lincoln LN2 5LP**

Applicant : **SPERICLE LTD**

Respondent : **CITY OF LINCOLN COUNCIL**

Type of Application : **Appeal against HMO Licensing conditions section
Housing Act 2004**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member P Mountain**

Date of Decision : **26 September 2024**

DECISION

1. By consent, the conditions attached to the HMO Licence dated 2 October 2023 for 47 Cromwell Street, Lincoln are varied by substitution of a licence period of 5 years from 2 October 2023 to 1 October 2028, in place of a period of one year.
2. The licence conditions imposed by the Respondent are otherwise confirmed.

REASONS

BACKGROUND

1. The Applicant owns a portfolio of subdivided and let properties in Lincoln, including 47 Cromwell Street (“the property”). The Applicant is registered with the Respondent under its “Trusted Landlord” scheme.

2. On 2 October 2023 the Respondent issued an HMO licence in respect of the property. The licence permits occupation by up to 6 tenants in 5 bedrooms. Three of the tenants share a bathroom on the ground floor. The tenants occupying rooms on the second floor of the property each have their own small ensuite shower/wc cubicles. The front second floor bedroom is licensed for occupation by 2 people. All the tenants share a living room and kitchen on the ground floor.
3. The HMO licence issued by the Respondent provided, among other things, for the licence to continue for 12 months from 2 October 2023, and for a space heater to be provided in each of the ensuite shower rooms on the second floor. The licence specified “The heat source chosen should be the most appropriate type of fixed heating, which is capable of heating the room to a temperature of 21°C and can be maintained when the external temperature is below 1°C.” On 27 October 2023 the Applicant appealed to this Tribunal for a review of these two licence conditions.
4. Following other First-tier Tribunal decisions regarding the length of HMO licence periods, the Respondent issued a Notice of Proposed Variation dated 5 June 2024, extending the duration of the HMO licence for the property to 5 years expiring on 1 October 2028. That extension is therefore confirmed in this determination, by consent.

INSPECTION

5. The Tribunal inspected the two second-floor rooms in the presence of Mr Vaddaram of the Applicant and Ms Cann and Mr Savage, Housing Standards and Enforcement Officers employed by the Respondent. The rooms are separated by a small landing. The front room measures 10.98m² together with the shower room containing a small shower cabinet, WC and wash hand basin. The rear room measures 10.62m² and a shower room containing a shower cabinet, a WC and a small basin incorporated into the cistern of the WC. In each case the ensuite shower room is situated on the inner wall of the building, the window being on the opposite side of the room. Each shower room has a mechanical extractor fan.
6. By the date of inspection, the Applicant had voluntarily added a heated towel rail to each of the ensuite shower rooms without admitting any obligation to do so. The

parties wished the Tribunal to determine whether the Respondent was right to require the shower rooms to be heated.

THE LAW

7. Schedule 3 to The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions)(England) Regulations 2006 (“the 2006 Regulations”) sets out “Prescribed standards for deciding the suitability for occupation of and HMO by a particular maximum number of households or persons.” At paragraph 4(2) it states:
“Where there are no adequate shared washing facilities provided for a unit of living accommodation an enclosed and adequately laid out and ventilated room with a toilet and bath or fixed shower supplying adequate cold and constant hot water must be provided for the exclusive use of the occupiers of that unit....”
8. The Respondent has issued regulations to be complied with by licensees under its HMO Mandatory Licensing scheme. Under the heading “Washing facilities” these regulations provide that “all bathrooms must be suitably and adequately heated and ventilated.”
9. Paragraph 31 of Schedule 5 to the Housing Act 2004 provides:
“31(1)any relevant person may appeal to [the 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.”
Paragraph 34(3) of the Schedule provides that the Tribunal may confirm, reverse or vary the decision of the local housing authority.

THE PARTIES’ POSITIONS

10. The Respondent relied on the 2006 Regulations and its own regulations to argue that the shower rooms must be independently heated. It claimed that as the room was required to be “enclosed”, it should be possible to heat it independently of the bedroom. Further, it argued that if the tenant relied on the bedroom radiator to heat the ensuite by keeping the door open, then steam would escape, increasing humidity

in the bedroom and creating a risk of damp and mould. In regard to the extractor fans, the Respondent's view was that the fans would not be adequate to disperse humidity prior to the ensuite door being opened, and that to be effective the fans required the assistance of space heating within the ensuite rooms.

11. The Applicant's argument was that given the small size of both rooms it was reasonable to rely on the central heating radiators in the bedrooms to heat the shower rooms as well. It claimed that the extractor fans were sufficient to reduce humidity to a reasonable level, and further relied on the fact that the conversion of the rooms had received Building Regulation approval without the provision of separate heating in the ensembles.

DECISION

12. The Tribunal finds that, pursuant to the 2006 Regulations, the ensuite rooms, although very small, should be treated as separate rooms. The Respondent's regulations require the rooms to contain space heating. The tenants should not be required to leave the bathroom doors open in order to disperse humidity or to obtain a sufficient level of warmth. Extractor fans in themselves are unlikely to be sufficient to disperse humidity before it affects the bedroom, with possible adverse consequences.
13. Paragraph 20 of the Applicant's Design Statement, prepared for its Building Control application, indicated that heated towel rails would be provided in the second floor ensembles, although in the event that was not done at the time the house was converted into an HMO. It is not a function of Building Control to check the adequacy of heating arrangements. The heated towel rails now installed by the Applicant ensure a sufficient level of heating in the ensembles.
14. The Respondent's HMO licence condition requiring space heating in the second floor ensuite rooms is therefore confirmed.