



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

Case Reference : **BIR/00CQ/HSL/2024/0003**

Property : **City Village. Coventry CV1 4FU**

Applicant : **Downing Students (Mercia) Operator Ltd**

Applicant's Representative : **DLA Piper UK LLP Solicitors**

Respondent : **Coventry City Council**

Respondent's Representative : **Mr Hennessey. Principal Environment Officer**

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. A. Lavender**

Date of Hearing : **20 March 2025**

Date of Decision : **28 June 2025**

DECISION

The Tribunal exercises its powers under paragraph 34(3) Schedule 5 Housing Act 2004 and reverses the decision of the Respondent by deleting the discretionary condition of installing an extra sink or dishwasher.

Introduction and Background

1. This is an appeal against three discretionary conditions imposed upon the licence of a house in multiple occupation (an HMO Licence). The subject licence was issued on 27 March 2024. The appeal proceedings were issued on 24 April 2024. Directions were issued on 8 May 2024 requiring service of statements of case. After issue of Directions the parties were able to agree terms to settle their dispute over two of the conditions. They also agreed to vary the timetable for service of respective statements of case to 23 January 2025. The matter came on for inspection and hearing on 20 March 2025.
2. The Property is an apartment block comprising 74 apartments for accommodation by students. 72 are licenced for six occupiers. The two remaining apartments are licenced for occupation by four. It was constructed in 2017 with the intention of offering high quality accommodation for students. It is one of four properties comprising 440 ensuite cluster bedrooms. The Applicant asserts that at the time of construction it complied with all regulations.
3. There is no dispute over the introduction by the Respondent of an additional licensing scheme in May 2022 which resulted in the Applicant making its application for a licence in May 2022. The Respondent inspected the property in June 2023 and issued a draft licence in January 2024. Three discretionary terms at Schedule 2B of the draft licence were challenged by the Applicant:
 - a. Provide Additional Space Heating (within 9 months of the date of the Licence)
 - b. Additional Sink with Drainer or Dishwasher (within 9 months of the date of the Licence)
 - c. Additional Kitchen Electrical Sockets (within 9 months of the date of the licence)

4. After the negotiations between the parties resolved the first and third conditions but the second condition remained and is the subject of this application namely:

Additional Sink or Dishwasher

The licence holder shall install and maintain a suitable kitchen sink in the HMO. The sink shall be a double bowl sink with bowls of approximately equal size, fitted with at least one tap and optionally two taps, and may optionally include a drainer. The sink must be constructed of stainless steel or a comparable impermeable and easily cleanable material and be provided with an overflow and a constant supply of hot and cold water. All requisite drainage must be installed. The external dimensions of the sink top (i.e. not just the bowls) must be a minimum of 900 mm x 500 mm. The sink must have a tiled or similar waterproof splash-back extending at least 150mm above the sink top, and where the sink abuts a window reveal, the windowsill must be clad in waterproof tiles or similar. A flexible waterproof joint must be installed between the sink and the splashback.

Alternatively, provide a dishwashing machine which should have an A energy efficiency rating, and maintain it in good working order.

Completion:

This must be done before the expiry of the licence.”

5. Although the grounds of appeal set out in the originating application substantially related to conditions one and three grounds (d) and (e) of paragraph 15 (3) are still relevant. The Applicant maintains at paragraph (d) “the works required to comply with the Conditions would produce significant disruption and would be extremely difficult to achieve within the provided timeframe” and at paragraph (e) “The design solution to implement the Conditions is both complex and extensive, and the costs associated with the required retro-fit would be hugely disproportionate”.
6. The Respondent asserted the justification for this condition is The Licensing and Management of Houses in Multiple Occupation and Other Houses

(Miscellaneous Provision) Regulations (the Regulations) Paragraph 3(i) of Schedule 3:

(b) the kitchen must be equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities—

(i) sinks with draining boards;

The Inspection

7. The Tribunal inspected three apartments in the presence of Ms Kate Carr a surveyor with the Applicant and the building manager, an employee of the Applicant. The door to each apartment opened onto a corridor with six ensuite study bedrooms off. The common room comprising the kitchen area and sitting and dining area was at the end of the corridor.
8. The kitchen area was well equipped with micro-wave cooker, hob and cupboard space. The sink and draining board combination were substantially the same in each apartment. The sinks were larger than prescribed in the Respondents policy and alongside each sink was a small secondary bowl.

The Hearing

9. The matter was heard at the Coventry Magistrates Court later that day. The Applicant was represented by Mr Chris Hopkins of Counsel. Ms Carr attended the hearing. The Respondent was represented by Mr Hennessey, Principal Environmental Health Officer.
10. Mr Hopkins submitted that the existing sinks were adequate for the accommodation. He accepted that the meaning and effect of the relevant legislation empowered the local housing authority to impose conditions on a licence but the effect of s67(2) and paragraph 3 of the Regulations required the conditions be reasonable.
11. Moreover, the guidance notes issued by the local housing authority and the implementation of the requirement of additional licencing both occurred after

construction and opening of City Village. In effect the Respondent requires the Applicant to retro fit the entire building.

12. Mr Hopkins submitted that no occupiers had ever complained about the adequacy of the kitchen facilities. The guidelines are too rigid. Fitting either new sinks or dishwashers will cause significant disruption because many students continue in occupation throughout the period of their tenancy which is for a period of 51 weeks.
13. Installation of two sinks will require cutting a larger hole in the surface reducing available space for food preparation. Some kitchens have disposal bins underneath the proposed space requiring relocation. Cupboard space will be affected in any event. The kitchens were specifically designed for the dimensions of each flat. Two sinks will not assist occupiers as two people cannot use one drainer. Placing wet item on the work top will cause water damage. An additional drainer will reduce workspace.
14. Fitting dishwashers is not a suitable alternative as they will reduce cupboard space, require electrical alterations and cause significant disruption for fitting. The cost of dishwasher installation is likely to be in the region of £63.000 without allowances for contingencies and possible changes to electrical requirements.
15. Mr Hopkins pointed out that the Respondent's guidelines provided that for a property with five occupiers one sink is sufficient. Two sinks are required if any subject property provides accommodation for up to 15 people. In his submission he suggested two sinks provided a ratio of one sink per 7.5 people. As this accommodation is for 6 people, the present provision is well within local authority guidelines.
16. In answer to questions from the Tribunal Ms Carr a surveyor stated work to install an additional sink would take about half to one whole day.

17. Mr Hennessey on behalf of the Respondent maintained the condition was within the council's mandate and its powers to ensure compliance with standards.
18. The Respondent had offered a compromise over the sinks. Ordinarily two sinks would require two draining boards but in this case the council will agree to one draining board.
19. The conditions were based on the Respondent's experience of the regulating HMOs. He asserted the relevant condition was in force in 2016 and was reproduced in the new regulations when they were published in 2020. They are in line with conditions applied by other councils. He agreed the 2016 regulations were not disclosed in the Respondent's Statement of Case. Also the conditions were not included in building regulations at the time of construction.
20. He acknowledged that the property is of a high quality, however the licensing scheme focuses on the occupancy of a property, which is why it is separate to the building control and planning regulatory regimes.
21. The suggestion that there would be significant disruption was not an adequate reason for failing to carry out the work. Further he did not accept there were any enhanced safety risks in either carrying out the work or after the required changes were carried out. He considered the Applicant was able to afford the costs associated with compliance with the conditions.

The Statutory Framework

22. The statutory framework relevant for this case regulating the imposition of conditions on a HMO licence is set out in ss,67, 71 and Schedule 5 Part 3 paras 31 and 34 Housing Act 2004 (the Act).
23. 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”

24. 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 “Those conditions may, in particular, include (so far as appropriate in the circumstances) (at paragraph (c))

- (c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;*

25. 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.*”

26. 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.

27. The Tribunal has referred to Schedule 3 of the Regulations in paragraph 6 of this Decision.

Discussion and Decision

28. 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 v Manchester City Council* [2015] UKUT 0129 (LC) 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.”

29. 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.”*

30. 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 that policy.

31. The parties are agreed that the subject property is high quality. The Tribunal observed student accommodation of a high standard. Each room was ensuite with desk bed and work table. The common areas including the kitchen quarter was spacious and well furnished. The kitchen quarter appeared well equipped.
32. There are no new facts not known to the Respondent at the time of the inspection and issue of licence. The Respondent's case is based upon a strict application of its policy and paragraph 3(b)(1) schedule 3 of the Regulations. Sinks are expected to have draining boards. There is a dispute regarding the Respondent's ratio of sinks for up to six or fifteen occupiers. The Applicant contend that ratio was not introduced until after the property came into use. The Respondent contends the requirement was in place from 2016. Whatever the date of implementation, at the time of inspection there was only one sink of appropriate size in the kitchens. The Respondent then applied its policy seeking either an extra sink or a dishwasher.
33. Having inspected the property, the Tribunal is of the view that the requirement for a dishwasher is not a suitable alternative to the requirement for an additional sink. The installation of a dishwasher will reduce cupboard space and require extra work associated with plumbing and power. The Tribunal does not consider the Applicant's financial circumstances are relevant in this case, but it accepts and agrees a dishwasher is not the solution to the perceived problem of inadequate washing facilities.
34. There would undoubtedly be considerable disruption and inconvenience in fitting an extra sink. The Respondent had agreed to an extended time for compliance with its requirement but the disruption would occur whenever the work is carried out albeit for a short period of time per each apartment. However the outcome would be loss of working space for no major gain in amenity.
35. The Tribunal is not satisfied there was or is a problem with the adequacy of the washing facilities in these apartments. The Applicant averred it had not received any complaints from occupiers regarding the facilities. The suggestion

that two sinks specified in the policy for up to 15 people is the equivalent of one for every 7.5 people. Although the Tribunal accepts there must be some line drawing in a policy for a wide variety of properties these are discretionary conditions. In response to a question regarding the exercise of discretion Mr Hennesey referred to the obligation of the Applicant to comply with regulations and asserted that two sinks would provide improved functionality.

36. The Tribunal is satisfied the purpose of the policy is to ensure both the Respondent and property owners discharge their respective duties in monitoring and enforcement of and compliance with regulations aimed at improving housing standards.

37. However, it is unlikely that two occupiers will routinely wish to use the sinks and single draining board at the same time. An extra sink in use would result in crowding and mutual inconvenience to the users. In practical terms, it would be more natural for an occupier to wait at the dining area, until the sink area was clear rather than try to use the sink simultaneously. In this case the Tribunal considers it reasonable for the Respondent to waive the requirement to install an additional sink. Accordingly, the Tribunal exercises its powers under paragraph 34(3) Schedule 5 Housing Act 2004 and reverses the decision of the Respondent by deleting the discretionary condition of installing an extra sink or dishwasher.

Appeal

38. 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

