



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

Case Reference : **LON/00AG/HML/2018/0010**

Property : **Second Floor Flat, 71 Mornington Street, London NW1 7QE**

Applicants : **71 Mornington Street London Limited, Ms Joanna Alexiou and Ms Danielle Roffe**

Representative : **Not represented at hearing and not in attendance**

Respondent : **London Borough of Camden**

Representative : **Ms G Screeche-Powell of Counsel**

Also in attendance : **Ms A Pruden (Respondent's Operations Manager), Mr I Clark (Respondent's Environmental Health Officer) and Ms M deKlerk (Respondent's Licensing Officer)**

Type of Application : **Appeal against the grant of an HMO Licence under the Housing Act 2004**

Tribunal Members : **Judge P Korn
Ms S Coughlin MCIEH**

Date and venue of Hearing : **29th June 2018 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **16th July 2018**

DECISION

Decisions of the Tribunal

- (1) The decision of the local housing authority to grant the HMO Licence is hereby confirmed, with no variations.
- (2) No cost awards are made.

Introduction

1. The Applicants are appealing pursuant to Part 3 of Schedule 5 to the Housing Act 2004 (“**the 2004 Act**”) against the grant by the Respondent of a licence (“**the HMO Licence**”) to Mr Adule Wariebi in relation to the Property.
2. The Applicants comprise the freehold owner of the building of which the Property forms part (“**the Building**”) and the two majority shareholders in the freehold company (who are also leaseholders of the other two flats within the Building).
3. The Respondent was represented at the hearing by Ms G Screeche-Powell of Counsel. The Applicants were not present or represented at the hearing, their solicitors Johns & Saggar LLP having notified the Tribunal on the morning of the hearing that neither they nor their clients would be attending the hearing and that the Applicants would be relying on their solicitors’ written submissions alone.
4. The Building is a three-storey purpose-built block with a flat on each floor. The Property is a flat situated on the top floor. Mr Wariebi (“**the Licence Holder**”) is the leaseholder of the Property, and he occupies the Property pursuant to a lease (“**the Lease**”) dated 7th March 2004 and made between 71 Mornington Street London Limited (1) and the Licence Holder (2).

Applicants’ case

General

5. The Applicants’ stated grounds of appeal against the decision to grant the HMO Licence are that the Property is not reasonably suitable for occupation by up to five persons and/or that it cannot be made so by the imposition of conditions.

The Lease

6. The Applicants also note that the HMO Licence was granted subject to conditions including the completion of a schedule of works. One specific requirement was the installation of mechanical extract ventilation in the kitchen, and the freehold owner of the Building is disinclined to grant consent to this. If the Licence Holder were to install mechanical extract ventilation without obtaining the freehold owner's consent he would be in breach of the terms of the Lease.
7. The Lease also contains a tenant's covenant only to use the Property as a self-contained residential flat in one family occupation only. The HMO Licence allows the Licence Holder to accommodate five people in three bedrooms (two doubles and one single) and the Applicants state that it is highly unlikely that the occupiers in such a scenario would constitute one family. Therefore, to allow the Property to be occupied in this way could also constitute a breach of the terms of the Lease.
8. The Lease also contains a tenant's covenant (broadly) not to do or permit to be done anything on the Property which could cause a nuisance. The Property is on the top floor and is not carpeted, the HMO Licence permits five persons from three households to occupy the Property, the walls of the Property are thin and there is inadequate sound insulation. In the circumstances, the grant of the HMO Licence will cause a significant noise/nuisance issue.

Damp issues

9. The Applicants state that there has been a continuous issue of dampness in the Property for several years, and there have been signs of leakage from the ceiling and the walls of the flats below. The damp issue makes the Property unfit for occupation as an HMO.

Parking issues

10. The Applicants also state that there is insufficient car and cycle parking for any additional occupiers and visitors.

Waste/recycling

11. The Applicants also submit that there is inadequate off-street waste and recycling storage available to accommodate the Property as an HMO.

Respondent's case

General

12. The Respondent has provided witness statements from Ms Pruden, an Operations Manager, and from Mr Clark, an Environmental Health Officer. It has also provided other written submissions. At the hearing Ms Screeche-Powell of Counsel made oral submissions on behalf of the Respondent, and both Ms Pruden and Mr Clark were made available for cross-examination.
13. As to the objection that the Property is not reasonably suitable for occupation by up to five persons, the Respondent had regard to its Minimum HMO Standards and in its submission was entitled to conclude that the front right and front left bedrooms were suitable for two persons each and that the rear right bedroom was suitable for one person. The kitchen was suitable for a maximum of five persons; it broadly met the prescribed standards, and to the extent that it did not meet those standards it could easily be made to do so by the imposition (and compliance with) suitable licence conditions.
14. As a general point the Property was considered to be in good condition and decorative order.
15. At the hearing Ms Screeche-Powell went through sections 64 to 66 of the 2004 Act, commenting on the matters of which the local housing authority needs to be satisfied. She also focused on the requirement that the licence holder be a "fit and proper person" and the test for this. She confirmed that the Respondent had considered representations made by third parties in response to the grant of the HMO Licence.
16. Also at the hearing Ms Screeche-Powell handed out copies of the Respondent's Minimum HMO Standards and copies of the various notices served.
17. The Tribunal cross-examined Mr Clark on various aspects of his witness statement and also about his inspection. Specifically as regards damp, Mr Clark confirmed that he had not seen any and he was confident that if there had been any he would have seen it. As regards recycling, nothing about the Property or the Building led him to think that there were any problems; there was no rubbish in the Property or in the common parts or on the street and the Property was generally very well kept.
18. Mr Clark was asked about fire safety, particularly in relation to the common parts. He said that the front door to each flat was a very substantial fire door and that all walls and ceilings in the common parts were in good condition. He observed that there was no fire detection

system in the common parts but that as a purpose-built block there would generally be no requirement for this.

The Lease

19. The Respondent submits that complaints relating to potential breaches of the Lease are not relevant to the matters which need to be considered under the 2004 Act when deciding whether, and if so on what basis, to grant an HMO Licence.
20. Specifically on the issue of noise/nuisance, when Mr Clark inspected the Property he did so with a view to assessing whether it met the Respondent's required standards and whether there were any hazards as assessed under the Housing Health and Safety Rating System. Mr Clark did not come across any such hazards, and nor did he detect any noise/nuisance concerns. Furthermore, the Property appeared already to be in use as an HMO at the time of inspection, and no noise or nuisance complaints had been received. Also, three of the licence conditions address the issue of anti-social behaviour, and if a problem were to arise it could be dealt with by enforcing these conditions.

Damp issues

21. No damp problems were noted on inspection. Even if there were some problems with damp these could be alleviated by the installation of mechanical extract ventilation as per one of the licence conditions.

Parking issues

22. No problems were noticed on inspection, but in any event the Respondent submits that this point does not have a bearing on the suitability of the Property as an HMO.

Waste/recycling

23. Again, no problems were noticed on inspection, and one of the licence conditions is for the Licence Holder to ensure that sufficient containers are provided for recycling and waste storage.

Relevant statutory provisions

24. Housing Act 2004

Section 64

- (1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either – (a) grant a licence in accordance with subsection (2), or (b) refuse to grant a licence.
- (2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either – (a) to the applicant, or (b) to some other person, if both he and the applicant agree.
- (3) The matters are – (a) 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; (aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who (i) owns an estate or interest in the house or part of it, and (ii) is a lessor or licensor of the house or part; (b) that the proposed licence holder – (i) is a fit and proper person to be the licence holder, and (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder; (c) that the proposed manager of the house is either (i) the person having control of the house, or (ii) a person who is an agent or employee of the person having control of the house; (d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and (e) that the proposed management arrangements for the house are otherwise satisfactory.
- (4) The maximum number of households or persons referred to in subsection (3)(a) is – (a) the maximum number specified in the application, or (b) some other maximum number decided by the authority.
- (5) Sections 65 and 66 apply for the purposes of this section.

Section 65

- (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.

Section 66

- (1) In deciding for the purposes of section 64(3)(b) or (d) whether a person (“P”) is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).
 - (1A) A local housing authority in England must also have regard to any evidence within subsection (3A) or (3B).
- (2) Evidence is within this subsection if it shows that P has – (a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c 42) (offences attracting notification requirements); (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; (c) contravened any provision of the law relating to housing or of landlord and tenant law (including Part 3 of the Immigration Act 2014); or (d) acted otherwise than in accordance with any applicable code of practice approved under section 233.
- (3) Evidence is within this subsection if – (a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and (b) it appears to the authority that the evidence is relevant to the question whether P is a fit

and proper person to be the licence holder or (as the case may be) the manager of the house.

- (3A) Evidence is within this subsection if it shows that P – (a) requires leave to enter or remain in the United Kingdom but does not have it; or (b) is insolvent or an undischarged bankrupt.
- (3B) Evidence is within this subsection if – (a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) is a person to whom subsection (3A)(a) or (b) applies; and (b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.
- (3C) A person is not a fit and proper person for the purposes of section 64(3)(b) or (d) if a banning order under section 16 of the Housing and Planning Act 2016 is in force against the person.
- (4) For the purposes of section 64(3)(b) the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it.
- (5) In deciding for the purposes of section 64(3)(e) whether the proposed management arrangements for the house are otherwise satisfactory, the local housing authority must have regard (among other things) to the considerations mentioned in subsection (6).
- (6) The considerations are – (a) whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved; (b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and (c) whether any proposed management structures and funding arrangements are suitable.
- (7) Any reference in section 64(3)(c)(i) or (ii) or subsection (4) above to a person having control of the house, or to being a person of any other description, includes a reference to a person who is proposing to have control of the house, or (as the case may be) to be a person of that description, at the time when the licence would come into force.

Schedule 5, Part 3

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.*

34.

- (1) *This paragraph applies to appeals to the appropriate tribunal under paragraph 31 ...*
- (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.*
- (4) *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.*

Tribunal's analysis

General

25. Under paragraph 34(1) of Schedule 5 to the 2004 Act an appeal against the grant of a licence is to be by way of a re-hearing (and may be determined having regard to matters of which the authority were unaware). As stated at the hearing, it follows from this that the Tribunal is not merely concerned with the specific points raised by the applicant/appellant. It being a re-hearing the Tribunal's role is to make the decision afresh, and therefore as well as considering the specific points raised it also needs to consider whether the local housing authority has gone through the correct process, has complied with its own minimum HMO standards, etc.
26. In this case the Respondent has produced a very thin hearing bundle primarily designed to address the specific issues raised by the Applicants rather than any wider issues. We consider this to be a flawed approach, and in our view a local housing authority should put

together a more detailed bundle of information aimed at addressing these wider issues, as is apparent from the wording of the Tribunal's directions.

27. On the other hand, it is only fair to add that the Applicants have not sought to argue that the Respondent has failed to comply with any requirements other than the specific ones articulated in their appeal. In addition, when prompted by the Tribunal, the Respondent was able to hand over at the hearing copies of the Respondent's Minimum HMO Standards and copies of the various notices served.

The Lease

28. We agree with the Respondent that the possibility that the Licence Holder might be in breach of one or more provisions of the Lease is not a relevant consideration in determining whether to grant an HMO Licence.
29. Section 64 of the 2004 Act sets out the matters as to which the local housing authority needs to be satisfied, the relevant matters in the context of this case being (i) that the house is reasonably suitable for occupation by not more than the maximum number of households, (ii) that the proposed licence holder is a fit and proper person to be the licence holder and the most appropriate person and (iii) that the proposed management arrangements for the house are otherwise satisfactory.
30. Section 65 deals with prescribed standards for occupation and section 66 deals with the matters to which the local housing authority must have regard in deciding whether a person is fit and proper and whether the proposed management arrangements for the house are satisfactory.
31. In our view there is nothing in the wording of the statutory provisions to indicate that the local housing authority should take into account the possibility that the proposed licence holder might be in breach of his own lease. Nor do we think that Parliament could have intended the local housing authority to take such a consideration into account. Had Parliament wanted to provide for this it could easily have done so. A lease is a private contract between a landlord and its tenant, and in our view this contractual arrangement has no relevance to the local housing authority's role under this part of the 2004 Act to regulate standards in houses of multiple occupation. In addition, it would be a significant additional burden on a local housing authority to try to police possible breaches of lease covenants/conditions, and it is open to a landlord to enforce such covenants/conditions in the usual way. Furthermore, the Applicants have brought no legal authority to support their position on this point.

32. Therefore, the Respondent was under no obligation to consider whether the grant of the HMO Licence could lead to the Licence Holder doing something which might put him in breach of the Lease when deciding whether and, if so on what basis, to grant a licence.

Other issues

33. On the other specific issues raised by the Applicants we prefer the Respondent's evidence. The Applicants have produced no evidence to support any of their assertions. On the damp issue we have evidence from the Respondent's environmental health officer that he inspected the Property and found no damp problems, and he was a credible witness in cross-examination. Even if it is true that there were damp issues at some point, the evidence indicates that there are no such issues now.
34. The Applicants' assertion that the Property is not suitable for five persons is unsubstantiated and we have evidence that the Property meets the Minimum HMO Standards. The parking issues raised by the Applicants are not issues which in our view need to be considered by the local housing authority in this context and the Applicants have offered no real analysis as to why this should be part of the local housing authority's remit under section 64 to 66 of the 2004 Act. As regards the recycling issue, whilst the Respondent's evidence was not perfect it was more persuasive than that of the Applicants and the HMO Licence also includes a condition to deal with any non-compliance.
35. As regards the noise/nuisance issue, again we have credible evidence from the Respondent's environmental health officer that he did not detect any noise/nuisance problems and that the Property appeared already to be in use as an HMO at the time of inspection and that no noise or nuisance complaints had been received. In addition, three of the licence conditions deal with anti-social behaviour and therefore if any problems were to arise the relevant conditions could be invoked. By contrast, the Applicants have offered no evidence to support their assertion that the granting of a licence will cause noise problems.
36. As a general point regarding the Respondent's written submissions and as already noted above, the Respondent should have provided fuller written submissions in order to cover all relevant issues, given that the appeal is a re-hearing and that the Tribunal is therefore not just concerned with the specific points raised by the appeal itself. However, on the basis of the oral submissions made at the hearing and the further documents handed over, coupled with the limited nature of the Applicants' written submissions, we consider that the Respondent has done sufficient in this case to persuade us that the proper procedures have been followed in granting the HMO Licence. In addition and more specifically, we accept that it was appropriate to approve an HMO Licence for five persons in the light of both the prescribed standards

under section 65 of the 2004 Act and the Respondent's own Minimum HMO Standards.

Cost applications

37. At the end of the hearing Counsel for the Respondent applied for an order that the Applicants reimburse the Respondent's legal costs incurred in attending the hearing of the appeal pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**Rule 13(1)(b)**").
38. Counsel for the Respondent argued at the hearing that the Applicants had "acted unreasonably in ... conducting proceedings" within the meaning of Rule 13(1)(b) by requesting an oral hearing and then only notifying the Respondent the night before the hearing (and without explanation) that they would neither be attending the hearing nor be represented at the hearing. It was too late for the Respondent to cancel its own legal representation, and the cost incurred in Counsel being briefed and attending could have been saved had the Respondent been given more notice of the Applicants' wish to rely on written submissions alone. Counsel for the Respondent confirmed at the hearing that the Respondent was happy to rely just on Counsel's oral submissions on the cost application.
39. In response, the Tribunal directed that the Respondent provide a written breakdown of its costs (but no other written submissions) within 7 days and that the Applicants be entitled to make written submissions on the Respondent's cost application within 14 days.
40. In written submissions the Applicants disagreed that they could be held responsible for the Respondent's decision as to whether to instruct Counsel, and they referred to the decision of the Upper Tribunal in *Willow Court v Alexander (2016) UKUT 0290* as to what amounts to unreasonable conduct for these purposes. In their submission there was no connection between the Applicants' conduct and the costs incurred by the Respondent.
41. Having considered the circumstances and the parties' respective arguments, we do not accept that the facts of the case justify the making of a cost award against the Applicants under Rule 13(1)(b). Whilst it would arguably have been courteous for the Applicants to have provided an explanation for their last-minute decision not to attend, any lack of courtesy in these circumstances is not by itself a reason to award costs under Rule 13(1)(b). In order for the conduct to justify a cost award under Rule 13(1)(b) there needs to be a causal link between the behaviour and the incurring of the costs which the other party is seeking to recover. In addition, the conduct must be such that it can properly be categorised as "unreasonable" for these purposes.

42. The Applicants were perfectly entitled to request an oral hearing. As for the decision not to attend the hearing, it is difficult to see in what sense that decision caused the Respondent to incur costs; rather it was the – wholly legitimate – request for an oral hearing in the first place. Whilst it is fair to argue that it would have been helpful to the Respondent to be given more notice of the Applicants’ intention not to attend, we do not know why the decision was made at the last moment and it is possible that the Applicants fully intended to attend until that moment. In addition, it is possible that in order fully to present its case the Respondent would have chosen to continue with an oral hearing in any event even if it had received more notice of the Applicants’ non-attendance.
43. Furthermore, the test for what amounts to unreasonable conduct in the context of this type of cost application in the leading case of *Ridehalgh v Horsefield (1994) 3 All ER 848* (a case quoted in the *Willow Court* case) is whether there is a reasonable explanation for the conduct complained of, and we are not persuaded that there is no reasonable explanation for the Applicants’ conduct.
44. Therefore, we do not accept that the Applicants have acted unreasonably in conducting proceedings for the purposes of Rule 13(1)(b) and accordingly the Respondent’s cost application is refused.

Name: Judge P Korn

Date: 16th July 2018

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.