



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

**Case Reference** : **LON/00BE/HML/2018/0020**

**Property** : **65A Lant Street, London SE1 1QN**

**Applicant** : **Mrs Shobhna Shah**

**Representative** : **Husband - Mr Arvind Shah**

**Respondent** : **London Borough of Southwark**

**Representative** : **Mr Dean Underwood, Counsel  
Miss Laura Wilkinson Principal Enforcement  
Officer with the Council**

**Type of Application** : **Appeal in respect of an HMO licence – section  
64 and part 3 of schedule 5 to the Housing Act  
2004**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr P S Roberts DipArch RIBA**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR on 9th  
November 2018**

**Date of Decision** : **26th November 2018**

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**DECISION**

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## DECISION

The Tribunal dismisses the appeal of Mrs Shah for the reasons set out below.

### **BACKGROUND**

1. This hearing followed an appeal by Mrs Shobhna Shah who is the owner of the property 65A Lant Street, London SE1 1QN (the Property).
2. The appeal is against the terms of a licence granted under section 64 of Housing Act 2004 in respect of the Property by the London Borough of Southwark (the Council). The licence is dated 21<sup>st</sup> May 2018 effective from 21<sup>st</sup> June 2018 expiring on 31<sup>st</sup> December 2020. The reason for the complaint is that the Council has only granted a licence for a maximum of four people in two households. In the licence the Council has determined that the basement bedroom, although of a sufficient size, should not be used as a bedroom as, in the Council's opinion, it is not habitable.
3. There is no argument that the Property requires to be licensed, it merely relates to the usage of the basement bedroom.
4. Before the hearing we were provided with some relevant documents which included the application and the directions. We were also provided with a copy of the response from Mrs Shah to the draft HMO licence and some expanded reasons. The Respondent's documents included a witness statement from Laura Wilkinson, certain cabinet meeting minutes, certificates for gas, electrical and fire safety issues and the licence. Within the papers was the HHSRS guidance for Landlords and Property Related Professionals and certain other correspondence passing between Mrs Shah and the Council and Mrs Shah's agents, XXL Property Limited. We had the opportunity of considering the bundle in advance of the hearing.
5. Before the hearing we inspected the subject Property. It is a four storey (including the basement) terraced house with a roof terrace. On the first and second floor are bedrooms with en suite facilities. On the ground floor is a kitchen/living room of good standard and good size, with an entrance hallway with front door leading directly onto the pavement, and stairs leading down to the basement. The basement is the room which is the subject of the appeal. It is of a reasonable size, 13 feet 3 by 11 feet 5 with en suite facilities. However, there is no direct natural light. Any light comes from the stairwell above which is extremely limited.

### **HEARING**

6. Mr Shah represented his wife and told us that the building had been erected some time towards the end of the 19<sup>th</sup> Century. The basement had been refurbished in April or May of 2010 when the rest of the building had been renovated. A certificate from the Council's Building Regulation Department certified that the works of "*general refurbishment and modernisation of the Property had complied with Building Regulations 2000.*" In addition, we were provided with a copy of an email from the Council, which insofar as the lower ground floor

(basement) is concerned, indicated that ventilation was required to be provided if it was to be used as a habitable room and that also the internal WC required mechanical ventilation. A smoke detection system was also required to be linked to the ground floor.

7. Since refurbishment, it appears that the Property had been mostly let as an AST on yearly tenancies, not only to families but also to individuals.
8. We were told that XXL are now the tenants of the Property, they having a tenancy agreement which ends in December of this year. We were told that they were letting the Property solely on an Airbnb basis. This had apparently been originally for one year but extended for another period. It was with Mrs Shah's knowledge that it was being used as an Airbnb and the agreement, which we did not see, said that such usage was allowed. It appears that this letting to XXL was the first time an agency had been involved and prior to that the letting had always been to professional people. The basement was currently not being used and XXL were paying less as a result.
9. On the question of the basement, Mr Shah accepted that concerns had been raised about daylight, ventilation, health and anti-social behaviour. He told us that that ventilation system was in place. When they had bought the house, it had been used as a utility room or play room for children. He was directed to the Housing, Health and Safety Rating System (HHSRS) a copy of which was included in the bundle and in particular under the heading Psychological Requirements Section 13 Lighting which says as follows:

*“Includes threats to physical and mental health associated with inadequate natural/artificial light.*

*It also includes a psychological effect linked with a view through glazing from the dwelling.*

*Health Effects. Figures suggest that 100,000 plus people are affected by Class IV harms annually.*

*Distinct types of health conditions can be caused by inadequate light, eg depression and psychological affects because of lack of natural light/lack of window with a view/stress caused by intrusive artificial external lighting at night.*

*Eye strain from glare and lack of adequate natural/artificial light. Discomfort caused by certain types of artificial light/possible photo convulsive reactions.*

His view was that the room was capable of being used as habitable accommodation, the more so as of course the Council had granted a certificate in 2009.

We were also referred to the proposals in respect of the extension of licensing powers under the Housing Act 2004 which was dated 21<sup>st</sup> July 2015. At section 73 of that document under the heading Discretionary Conditions, it was suggested that these could have been waived in this particular case.

10. For the Council, Mr Underwood called Miss Wilkinson who had produced a witness statement. She is the Principle Enforcement Officer of the Council having 11 years' experience working in the private sector housing and licensing team. She had the conduct of the licence application and had visited the Property. She was satisfied, as does not appear to be in dispute, that the house is an HMO. She told us that in September of 2017 an application for a HMO licence was made by Mrs Shah. In March of 2018 Miss Wilkinson inspected the Property and the room dimensions are recorded in her statement. The issues highlighted were 3, the main one being that the basement room had no windows so no access to natural light or ventilation. It confirmed that an air filtration system had been installed as a condition of building control's approval. Her conclusion was that the Property was suitable for four people in two households and a draft HMO licence was accordingly issued.
11. Miss Wilkinson confirmed that Mrs Shah's appeal was set out in the response which said as follows.

*The maximum occupancy for this house is to be increased from 4 to 6 as no account appears to have been taken for the bedroom in the basement (see clause 9.2.1). The bedroom in the basement has been passed for its intended use as a habitable room as per email received by me from Southwark Building Control dated 30<sup>th</sup> April 2009. I can confirm that the conditions for the habitable room as per item 2 have been fully complied and further a completion certificate was grated on 5<sup>th</sup> May 2010 ...*
12. It appears that the matter was reviewed by the Licensing Team Leader and three managers and it was accepted that it was not appropriate to increase the occupancy to allow the basement room to be used as a habitable room notwithstanding building control approval. This was because of the lack of natural light or ventilation. The statement and indeed the letter from the Council confirmed that all licensable properties in Southwark were required to comply with the private rental standards and it was a requirement that all habitable rooms, being living rooms and bedrooms, should have glazed openable windows of an area allowing reasonable levels of natural light and ventilation. During the course of Miss Wilkinson's evidence, it appeared to be conceded by Mrs Shah that the maximum number of people who could occupy would be 5 and not 6 because of the kitchen facilities. There was also some dispute on what may have been said at the time of Miss Wilkinson's visit. It is not a matter that we need to consider.
13. What did come out is that it appears the Building Control officers were not advised by Mrs Shah as to the intended use of the Property as an HMO at the time of the conversion works.
14. In closing submissions, Mr Underwood set out the legal framework, the facts and the conclusion reached by the Council. We were referred to the relevant sections of the Act, being section 64 and 65, as well as the Council's Private Rental Standards and the HHSRS guidance. Reference was made to the Upper Tribunal case of *Clark v Manchester City Council* [2015]UKUTO129(LC). This case dealt with the FTT's ability to dis-apply the guidance although we should be slow in so

doing. It was also suggested to us that the private licensing scheme in 2015 post-dates and supersedes the Building Regulation Control given in 2010.

15. We did raise with Mr Underwood whether the use of the Property as an Airbnb would in fact mean that it was not an HMO. That is not a matter that was pursued to any great degree but it is something Mrs Shah will need to consider.

## **FINDINGS**

16. Our inspection confirmed that the basement room has no direct natural light and when the electric lights are turned off is very dark. Access to the room is from the ground floor hallway which has a door closing it off to the front door area. There are some steps down to a turn and then a long flight of stairs going down. The only natural light is via glass bricks in a fanlight above the door to the room, which is extremely limited; in turn daylight to the front hallway is gained through a glazed fanlight over the front entrance door to the pavement. When the lights were turned off, it was extremely dark in the basement; the stair treads were barely visible.
17. We have borne in mind the provisions of the HHSRS guidance which we have set out above. We have borne in mind also the Private Rental Housing Standard document produced by the Council and modelled, we were told, on the London Rental Standards document. At paragraph 2(e) under the heading Working Homes, it says as follows: *(e) Ventilation. The following standards shall apply (i) all main habitable rooms ie livings rooms and bedrooms shall have at least one window that opens.* In 2(d) under the heading Window and Glazing, it says at (d)(iii) *All main habitable rooms (living rooms and bedrooms) shall have a glazed window of an area allowing reasonable levels of natural light. Bedrooms and living rooms should not have borrowed light or ventilation.*
18. Having inspected the room and considered the documents we have just referred to above it seems to us that this is not a room that should be used for living accommodation.
19. We understand Mrs Shah's frustration that the Council's Building Regulation Department appear to have accepted that the conversion works were adequate. However, we are concerned as to the information given to Building Control at the time of the application. No copy of the application was produced to us and it appears from what Mr Shah indicated orally at the hearing, that the Council may not have been told the intention was to use the Property as an HMO. If that had been known, then the Council's Building Regulation approval may have been different. Use of the room as part of family accommodation of the whole building may be another matter but as an HMO the basement, we find is not a habitable room and should not be used as living accommodation.
20. In the circumstances having considered the evidence both written and oral and our inspection as well as the authority of Clark and Manchester City Council and the relevant sections of the Act and the Licensing and Management of Houses in Multiple Occupation provisions, we find that Mrs Shah's appeal must be dismissed.

*Andrew Dutton*

Judge:

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A A Dutton

Date:

26th November 2018

**ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.