FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HB/HML/2021/0002**
Property	**:**	**86 Cotswold Road, Bristol, Avon, BS3 4NS**
Applicant	**:**	**Hugh and Judith Pratt**
Respondent	**:**	**Bristol City Council**
Type of Application	**:**	**HMO Appeal**
Tribunal Members	**:**	**Judge Dovar**
Date of Decision	**:**	**4th August 2021**

DECISION

Introduction

1. This an appeal against the granting of an HMO (house in multiple occupation) Licence by the Respondent on 17th February 2021 and alternatively, against the conditions imposed by that Licence.

2. The appeal is brought under paragraph 31 of Schedule 5 of the Housing Act 2004 ('the Act'), which permits an appeal against the grant of a licence, including an appeal against any of the terms of the licence. Such an appeal is an appeal by way of re-hearing, but with the Tribunal able to take into account matters that the Respondent authority were not aware. The options available to the Tribunal after considering the appeal are to either confirm the Licence, quash it, or vary it.

Background

The Property

3. The application describes the Property as a two storey terraced house with 2 bedrooms, a living room, kitchen and two downstairs rooms. There are four individuals living in the Property. The Tribunal assumes that in addition to the rooms set out in the application, there is also at least one toilet/bathroom.

The Additional Licence Notice

4. The Property falls within an area designated by the Respondent on 8th July 2019 for additional licencing of HMOs under s.56 of the Act. That notice provided that the additional licencing applied to HMOs as defined by s.77 of the Act. The relevance of this is set out later in this decision.

The HMO Licence

5. In about mid-2020, the Respondent notified the Applicants that they considered the Property to be an HMO which was required to be licensed. The Tribunal has not been provided with much detail as to how the correspondence commenced, but is told in the Respondent's evidence, through the statement of Mr Eke, the Respondent's Environmental Health Officer, dated 13th May 2021, that in August 2020, the Applicants queried the requirement for a licence on the basis that the occupants considered themselves to be one household. On that basis it was suggested that it did not all within the definition of an HMO.

6. The Tribunal was provided with some limited correspondence in September 2020 in which the parties debated whether the Property was an HMO. That included an email from the current occupiers showing that they had all lived together for three years, including at a previous property. This was not enough to persuade the Respondent that a licence was not required.

7. On 25th September 2020, the Applicants, reluctantly, applied for an HMO Licence. It appears that they had no option but to state that there were two families in the application as the online application form would not permit them to proceed if they only stated there was one.

8. On 17th February 2021, the Applicants were granted an HMO licence in respect of the Property. The licence contained standard conditions imposed by the Respondent in all of their HMO licences.

The Appeal

9. An application to appeal was first made to the Tribunal on 3rd March 2021. That was said to be an appeal against a decision of the LHA to serve an HMO declaration (under s.255(9) of the Act). That set out two grounds of appeal: discrimination and unlawful intrusion.

10. Section 255 enables an authority to serve a notice declaring that a property is an HMO. If that is done, then the owner can appeal that notice to the Tribunal within 28 days of the decision. However, the Tribunal is not aware than any such declaration was ever made: none has been provided in the bundle or referred to. Instead the Applicants made their application for a licence in response to the Respondent's insistence in correspondence that they needed to obtain a licence. It follows that the appeal as originally brought was bound to fail as it was an attempt to appeal a declaration that was never made.

11. On 10th May 2021, the Applicants applied to amend their application to one in which they appealed against the decision to grant the licence and the terms of the licence (i.e. an appeal under paragraph 31 of Schedule 5 of the Act).

12. On 24th May 2021, the Tribunal gave permission to amend the application so as to stand as an appeal against the decision to grant the licence, including its terms.

First Ground of Appeal: Against the granting of a licence per se

Jurisdiction

13. Section 64 of the 2004 Act deals with the granting or refusal of an HMO licence. Its operation is triggered by an application being made to a local housing authority, such as the Respondent, for a licence under s.64(1). Normally such an application will be made when the owner considers that the property falls within the definition of an HMO. That is not the case here.

14. Once an application is made, s.64 sets out the matters that the local authority must be satisfied of before granting a licence. They are set out at s.64(3). None of the 6 matters set out at s.64(3) require the authority to be satisfied that the property is an HMO; it is assumed that it is.

15. Where there is a dispute between property owner and local authority as to whether the property is an HMO, that normally arises in the context either of a declaration under s.255 or under s.72 of the 2004 Act, when the local authority alleges that an offence has been committed because an HMO is not licensed or when the tenants seek a Rent Repayment Order.

16. The Tribunal does not consider that paragraph 31 is a means by which a property owner can challenge whether or not a property is an HMO. Paragraph 31 as with s.64 presuppose that the subject property is an HMO and is required to be licence. It follows that the Tribunal does not have jurisdiction in the context of this appeal to quash the Licence on the basis that the Property is not an HMO.

Substantive Appeal

17. In the event that the Tribunal is wrong in its assessment of whether it has jurisdiction to consider the first ground, consideration is now given as to whether the appeal would have been successful on the basis that it did have jurisdiction.

18. Section 55 imposes the requirement for owners of certain HMOs to obtain a license. Section 55(2) refers to the following HMOs being required to be licenced, either:

    a. an HMO within any description of an HMO prescribed by a national authority; or

    b. if any area is designated under s.56 as subject to additional licencing by a local authority, then if it is within any description of an HMO provided in that designation.

19. This Property would not need to be licensed under the description provided by a national authority, as that only requires licences where there are 5 or more occupants in total (see article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018).

20. However, the Tribunal considers that this Property does fall within the description provided for under the Respondent's notice of 8th July 2019 in that it referred to s.77 of the Act as providing the description of the HMOs that are required to be licenced.

21. Section 77 in turn refers to ss.254 to 259 for the definition of HMOs. Those sections set out different types of HMO, including those that fit the

standard test. That test applies to buildings or part of buildings which consist of one or more units of living accommodation not consisting of self contained flat or flats, occupied by persons who do not form a single household and where two or more of those households share one or more basic amenity. Basic amenities cover: toilets, washing and cooking facilities.

22. It therefore follows that by referring to s.77 as providing the necessary description of HMOs which require licencing, that removed the 4 or less occupant exemption contained in the national prescription.

23. The issue is therefore whether or not the four tenants occupying the Property can be considered to be one household. Section 258 is the key provision in this matter as it defines who can form a single household (albeit in the negative). It provides as follows:

> **s. 258 HMOs: persons not forming a single household**
>
> (1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.
>
> (2) Persons are to be regarded as not forming a single household unless–
>
> (a) they are all members of the same family, or
>
> (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to, or civil partners of, each other or live together as if they were a married couple or civil partners;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a "couple" means two persons who fall within subsection (3)(a) ;

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations

24. Whilst the section provides for a number of combinations to amount to a household, it is not sufficiently progressive to encompass either groups of friends living together or close relationships of more than two people. No regulations have been made under this section widening the definition.

25. Further, in terms of non-relative relationships, it only extends beyond marriage to those living together '*as if they were a married couple or civil partners*' (s.258(3)(a)); it does not provide for two sets of couples living together or even for more than two people living together in a relationship which could be considered akin to a civil partnership. Although there is some possible ambiguity as to whether 'civil partners' could extend to more than two, in the statutory context from which this wording derives, being the Civil Partnership Act 2004, it is clear from s.1 of that Act, that that only applies to '*a relationship between two people*'.

26. Accordingly, even if the Tribunal were able to deal with the first ground of appeal it would fail, in that regardless of how either the Applicants or the occupiers regarded themselves, the legislation is not sufficiently progressive to consider them as one household.

Second Ground of Appeal: Conditions

27. In respect of the second ground of appeal, the Applicants complain that some of the conditions imposed amount to an unwarranted intrusion into the occupants' privacy. The particular provisions objected to are:

    a. to take reasonable steps to ensure that the Property is not used for illegal or immoral purposes;

b. to carry out regular inspections (at least quarterly) to guard against anti social behaviour;

c. to ensure that no more than the permitted number (or persons and households) occupy the Property and report any contraventions.

28. Mr Eke says in his witness statement that these conditions are standard for every licensable property and no condition had been added '*as a result of the makeup of or the relationships between the occupants of the property.*'

29. None of the conditions challenged are mandatory conditions. There are some as prescribed by s.67(3) and Schedule 4 of the Act. Save for those conditions, s.67(1) provides that '*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.) it condition and contents.*'

30. There is no evidence as to why these particular conditions are required in respect of this Property. Whilst Mr Eke does refer to general problems in the areas within the additional licensing scheme, it appears that this particular Property is simply unfortunate to be in such an area. There is no evidence that it poses any particular risk or problem.

31. There is no suggestion of any anti-social behaviour or illegal or immoral use. Mr Eke, states that these would be the terms contained in the model tenancy agreement, however, that is an agreement between owner and

tenant, not authority and owner. That of itself, does not justify the imposition of conditions.

32. Finally, the licence itself prescribes the numbers of occupants and there is no suggestion that that will be breached. Therefore there seems to be no reason for imposing further conditions in that regard.

33. Therefore, in the absence of any more specific justification of imposing these particular conditions on this Property, the Tribunal considers that they should be removed and the Licence varied accordingly so as to remove them.

Conclusion

34. The Tribunal is not able under this appeal to consider whether or not the Property is an HMO. However, even if it did have jurisdiction to do so, that would not assist the Applicants as the legislation is clear in its description of 'household' and to that extent the Applicants would have failed in an appeal.

35. However, with regard to the conditions imposed, the Tribunal does not consider that they are appropriate in this case, where this Property and these owners (and occupiers) appear to be casualties of the need to more heavily regulate other properties which are not so well run and maintained.

JUDGE DOVAR

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to rpsouthern@justice.gov.uk ,the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.