



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

Case Reference : **BIR/00CQ/HSL/2019/0001**

Property : **205 Charter Avenue, Coventry, CV4 8ER**

Applicant : **Mr Richard Geens**

Respondent : **Coventry City Council**

Type of Application : **An application under paragraph 31 of Schedule 5 to the Housing Act 2004 to appeal against a condition in a HMO licence**

Tribunal Members : **Judge M K Gandham
Judge D Barlow
Mr R Chumley-Roberts MCIEH, JP**

Date and venue of Hearing : **12th March 2020
Coventry Magistrates Court, 60 Little Park Street, Coventry, CV1 2SQ**

Date of Decision : **19 May 2020**

DECISION

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Decision

1. The Tribunal determines that the licence granted on 2nd October 2019 to the Applicant is confirmed, subject to the wording in condition 6 of the Second Schedule being substituted by the following:

Any room on the second floor (part of letting 6) which has a floor area of less than 6.51m² cannot be used as sleeping accommodation for an occupier of over 10 years of age. The measurement of the floor area must be a measurement of the wall to wall floor area where the ceiling height is greater than 1.5m (no part of the floor area of the room should be included in the measurement where the ceiling height is less than 1.5m).

COMPLETION: This condition must be complied with before 1st March 2021 and must be included in all subsequent licences.

Authority: Section 67(2)(a) and 67(3) of the Housing Act 2004

Reasons for Decision

Introduction

2. On 29th October 2019, the First-tier Tribunal (Property Chamber) received an application from Mr Richard Geens ('the Applicant') for an appeal under Paragraph 31 of Schedule 5 to the Housing Act 2004 ('the Act'). The appeal related to a decision made by Coventry City Council ('the Respondent') to grant a licence to him for a house in multiple occupation (HMO) on 2nd October 2019 ('the Licence').
3. The Licence was issued for a period of five years, from 17th July 2018 to 16th July 2023, and related to the property known as 205 Charter Avenue, Coventry, CV4 8ER ('the Property'), of which the Applicant is the freeholder. The appeal related to a single condition on the Licence, namely condition 6 of the Second Schedule to the Licence, relating to the use of one of the rooms on the second floor, which stated as follows:

"The top floor bedroom is undersized and must not be used by an occupant as their only or main residence unless suitable alterations are carried out to ensure the floor area of the bedroom is not less than 6.51 m².

COMPLETION: This must be complied with before 1 October 2020. This condition will be included in all subsequent licences.

AUTHORITY: Section 67 (2)(a) of the Housing act 2004"

4. The Tribunal issued Directions on 7th November 2019 and both parties provided a Statement and documents setting out their respective cases.

The Law

5. Section 67 of the Act (as amended) details the provisions relating to a local authority's powers to grant a licence and provides:

67 Licence conditions

(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.*

(2) Those conditions may, in particular, include (so far as appropriate in the circumstances)—

- (a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;*

...

(3) A licence must include the conditions required by Schedule 4.

6. Schedule 4 of the Act (as amended) details mandatory conditions to be included in licences for HMOs. Paragraphs 1A to 1C were inserted by The Licences of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 ('the Regulations') and provide as follows:

Schedule 4

1A.— Additional conditions to be included in licences under Part 2: floor area etc.

(1) Where the HMO is in England, a licence under Part 2 must include the following conditions.

(2) Conditions requiring the licence holder—

- (a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;*
- (b) to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;*
- (c) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;*

(d) to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.

...

(8) For the purposes of this paragraph a room is used as sleeping accommodation if it is normally used as a bedroom, whether or not it is also used for other purposes.

(9) Any part of the floor area of a room in relation to which the height of the ceiling is less than 1.5 metres is not to be taken into account in determining the floor area of that room for the purposes of this paragraph.

...

1B.— Time for compliance with conditions under paragraph 1A(2) and (3)

(1) This paragraph applies in relation to an HMO in England in respect of the first licence granted on or after 1st October 2018 in relation to the HMO, regardless of whether a licence was in force in relation to the HMO immediately before that date.

(2) If the local housing authority consider that, at the time the licence is granted, the licence holder is not complying with one or more of the conditions of the licence imposed pursuant to paragraph 1A(2) and (3), the authority must when granting the licence provide the licence holder with a notification specifying the condition or conditions and the period within which the licence holder is required to comply with the condition or conditions.

(3) The period specified in the notification must not exceed 18 months from the date of the notification.

...

7. The licence holder, or any relevant person, may appeal to the First-tier Tribunal (Property Chamber) against a decision by the local housing authority to vary or revoke a licence, under Part 3 of Schedule 5 to the Act:

31 Right to appeal against refusal or grant of licence

(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 Powers of... tribunal hearing appeal

(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.

(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.

...

Inspection

8. The Tribunal inspected the Property on 12th March 2020. Ms. Carly Rockell, the Property Manager (from Simply House Letting Limited), attended on behalf of the Applicant. Miss Taylor, a Senior Enforcement Officer, and Mr Adrian Chowns, a Property Licencing Manager (both employed by the Respondent) attended on the Respondent's behalf.
9. The Property is a three storey, semi-detached house situated on Charter Avenue, close to the University of Warwick. It occupies part of a corner plot and has a fair sized garden surrounding the house, with a covered bicycle-store on the patio area in the rear garden.
10. The house has been substantially extended to the side and rear and is built of solid brick walls with a pitched, tiled roof. The second floor accommodation is located in the loft area, which has also been extended with a flat roof.
11. The Property comprises a HMO with six lettings (referred to as rooms 1-6). Each letting has its own en-suite shower/bathroom and is for occupation by one person. The front door of the Property leads to a hallway from where the communal kitchen/diner and lettings 1 and 2 are accessed. A staircase leads to the first floor, where lettings 3, 4 and 5 are located and a further door gives access to letting 6 ('Room 6').
12. The area comprised within Room 6 includes a staircase from the door on the first floor, leading to the second floor landing. A door to the left of the landing leads to a room, which was being used as a bedroom, and a door to the right leads to a room, which was being utilised as a lounge area with kitchenette. All of the doors were fire doors.

13. The bedroom was located within the eaves of the house and had a sloped ceiling to either side of the room. Consequently, the vast majority of the area beneath each side was below 1.5m in height. A door inside the bedroom led to the en-suite, which comprised a shower, w.c. and washbasin. The en-suite was located in the part of the area with the flat roof and had a suitable head height.
14. A small area of the ceiling in the lounge area was sloped but the majority of the room had a ceiling height of over 1.5m. There was a small kitchenette located within the room, with a work surface, base units, sink, microwave oven, conventional oven and hob. There was also a storage cupboard.
15. In addition to the exclusive use of the second floor accommodation, the occupant of Room 6 also had the benefit, with the other occupants of the Property, of the use of the communal ground floor kitchen/diner. The facilities within the kitchen/diner included two sets of work surfaces with base units under, a large fridge freezer, a washing machine, a tumble-dryer, a microwave and a conventional oven and hob. There was also large dining table located within the room and French doors led from the kitchen/diner to the rear garden.
16. The quality of the accommodation was very good and the finishing was of a high standard, consistent with HMO accommodation at the upper end of the market.

Hearing

17. Following the Inspection, a public hearing was held at Coventry Magistrates Court, 60 Little Park Street, Coventry, CV1 2SQ. The Hearing was attended by the Applicant and Ms Rockell, whilst Miss Taylor and Mr Chowns appeared for the Respondent.

The Applicant's submissions

18. The Applicant stated that his appeal related to condition 6 of the Second Schedule to the Licence, in particular the wording which stated that:

“The top floor bedroom is undersized and must not be used by an occupant as their only or main residence unless suitable alterations are carried out to ensure the floor area of the bedroom is not less than 6.51 m².”

19. He stated that the wording of the condition was incorrect as the bedroom was quite clearly not used by the occupant as their “*only or main residence*”. The occupant of Room 6 had a second room within their exclusive let, in addition to access to the shared facilities in the kitchen/diner.
20. The Applicant confirmed that his representative had been in communication with the Respondent regarding the proposed wording of the condition prior to the Respondent’s notice of intention letter of 11th September 2019 (‘the Notice’) and had made his objections known. He stated that he could not remember the exact dates and did not appreciate

the fact that, unless formal representations were made between the date of the Notice and the grant of the Licence, it would be taken that he had accepted the condition and that the same wording would be included on the Licence.

21. He stated that the whole of the second floor accommodation was let as a single unit due to the fact that the room currently utilised as the bedroom was below the prescribed size. He stated there was a total combined floor space between the two rooms of approximately 12m², where the ceiling height was greater than 1.5 m. He stated that this figure excluded the stairs, landing, built-in wardrobe and en-suite bathroom, which were also included within the exclusive let. As such, he stated that the floor area of the '*main residence*' was greater than 6.51m², so the alterations detailed in the condition were not required.
22. The Applicant submitted that the spirit of the legislation was to provide sustainable accommodation and reduce overcrowding. The Applicant stated that he could have had planning permission for seven bedrooms; however, he took the decision to reduce the number of occupants to six, so that he could control the quality of the space.
23. He referred to the fact that all of the lettable units within the Property had their own en-suite bathrooms, in addition to communal use of the kitchen/diner. He stated that Room 6 was a unique space within the Property, as it included two living spaces, and that he had always experienced a high demand for the unit due to this. He emphasised that the additional space was not communal space, which he understood could not be taken in to account to compensate for bedrooms less than the prescribed minimum, but exclusive space for the private use of the occupant of Room 6.
24. The Applicant stated that, although he could swap the rooms, so that the occupant had the prescribed amount of floor space in the sleeping area, this would make the accommodation a less usable space and would not benefit the occupant. In addition, he could remove the doors, to make one large room, but this would impact on the safety of the occupant.

The Respondent's submissions

25. The Respondent stated that, under section 67 of the Act, a local authority could include in a licence for a HMO, such conditions as it considered appropriate to regulate the management, use and occupation of the house. In addition, the local authority had to include the conditions required by Schedule 4 to the Act. These included setting out minimum sizes for sleeping accommodation in licensable HMOs, as incorporated into Schedule 4 of the Act by the Regulations.
26. The Respondent stated that the conditions included a provision that any floor area of any room in a HMO used for sleeping accommodation by one person over 10 years of age could not be less than 6.51m². Furthermore, for the purposes of the paragraph, a room was considered to be used as sleeping accommodation if it was normally used as a bedroom, whether or not it was used for other purpose, and any part of

floor area of the room where the height of the ceiling was less than 1.5 m could not be taken in to account when determining the floor area.

27. Under paragraph 1B of Schedule 4 to the Act, the Respondent stated that, if a local authority considers that at the time a licence was granted a licence holder was not complying with a condition relating to room size, the local authority had to, when granting the licence, provide the licence holder with a notification specifying the condition and the period within which the licence holder must comply with the condition. This period could not be longer than 18 months from the date of the notification. In addition, under Schedule 5 section (1)(a) of the Act, the local authority was required to issue a notice of intention to grant a licence.
28. The Respondent stated that the Notice, together with a copy of the proposed licence, was issued to the Applicant on 11th September 2019. The Respondent stated that this included the proposed wording of the disputed condition. The Notice provided 21 days for representations to be made and the Respondent stated that they did not receive any representations from the Applicant within this period. The Respondent, therefore, issued the decision to grant a licence on 2nd October 2019, with the wording that had previously been proposed.
29. Mr Chowns accepted that the current wording in the Licence – detailing the bedroom as the “*only or main residence*” could cause confusion; however, stated that, as the Respondent had received no formal representations from the Applicant regarding the proposed wording, the same wording was included in the Licence as was on the Notice.
30. Mr Chowns also confirmed that the Respondent had no concerns regarding the suitability of the accommodation or the fit and proper status of the licence holder. He stated that the Respondent was also of the view that the room could be made suitable for accommodation with the imposition of the proposed licence condition and had included on the Licence a period of 12 months for which the condition needed to be complied with, which they considered to be reasonable.
31. In relation to the Applicant’s submissions, that the prescribed size should include the combined size of both rooms on the second floor, Mr Chowns stated that the Respondent did not accept the same. The smaller room in the unit was a clearly definable area and was set out, and being used, as sleeping accommodation, separate from the remainder of the accommodation. As such, he submitted that it was entirely appropriate to include condition 6 in the Second Schedule to the Licence.
32. Mr Chowns referred to the Houses in Multiple Occupation and residential property licencing reform, Guidance for Local Housing Authorities (‘the Guidance’) and the decision of the Upper Tribunal in *Clark v Manchester City Council* (2015) UKUT 0129 (LC) (‘*Clark*’). He stated that in *Clark*, the Upper Tribunal had indicated that the available space in communal areas could be taken in to account when considering whether a room was suitable for occupation. He submitted that the purpose of the Regulations was to provide clarity for local authorities by specifying mandatory prescribed standards for the size of a room and

why the Guidance also specifically stated that communal space in other parts of the HMO could not be used to compensate for rooms that were smaller than the prescribed minimum.

33. Mr Chowns pointed to the fact that the Guidance confirmed that the mandatory room size was the statutory minimum, not the optimal room size, and that local authorities could impose a higher standard. He also stated that local authorities had received guidance that, when calculating the floor areas of a bedroom, any en-suite bathroom could not be included in the calculation.
34. Mr Chowns accepted that the lounge area on the second floor was for the exclusive use of the occupant of Room 6 and that, had the application been made prior to October 2018, the Respondent would have had some discretion in relation to the room sizes. He stated that, as the new conditions were mandatory, the Respondent had no choice but to include the condition relating to the size of the bedroom on the Licence.
35. He considered that the Applicant could easily swap the two rooms and use the current living space, after removing the kitchenette area, as sleeping accommodation and that the Applicant had been given sufficient time to make such changes. He submitted that there was no need for a kitchenette in the unit, as the occupant already had use of the communal kitchen/diner on the ground floor. He also stated that he would not endorse the removal of fire doors between the two rooms and did not consider that the unit would meet the Respondent's requirements for a bedsit.

The Tribunal's Deliberations

36. The Tribunal considered all of the evidence submitted by the parties, both written and oral and briefly summarised above.
37. The Tribunal notes that the quality of the accommodation at the Property was of a high standard and, had the application been made prior to October 2018, a licence is likely to have been granted without any alterations being required.
38. The Tribunal also notes that there appears to be no dispute between the parties in the dimensions of the relevant areas, namely that the floor area of the room that was being used as a bedroom (where the ceiling height was not less than 1.5 meters) was less than 6.51m² but that the combined floor space between both rooms (where the ceiling height was not less than 1.5 meters) was much greater than 6.51m².
39. The Tribunal concurs with the Applicant, that the wording of condition 6 of the Second Schedule to the Licence was incorrect and that the top floor bedroom was not being used by the occupant of Room 6 as "*their only or main residence*".
40. The Tribunal also agrees with the Applicant that the purpose behind the introduction of minimum sleeping room sizes appears to have been to reduce overcrowding. It is clearly detailed as such in paragraph 3.3 of the Guidance. The Guidance also refers, in the same paragraph, to the

fact that the standards adopted by the amendments are similar but not identical to those relating to overcrowding in dwellings under section 326 of the Housing Act 1985.

41. The provisions in section 326 of the Housing Act 1985, define a “dwelling” as “premises used or suitable for use as a separate dwelling”. It also states at section 326(2)(b):

“a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom”

42. The Tribunal does not consider that any letting of Room 6 to one person would create a problem with regard to overcrowding, nor has the Respondent submitted it would.

43. However, as Mr Chowns has averred, and the Tribunal agrees, the amendments also included statutory minimum requirements for room sizes for sleeping accommodation to provide clarity to local authorities following the decision of the Upper Tribunal in *Clark* (as referred to in Section 2 of the Government Response Document – Extending Mandatory Licensing of Houses in Multiple Occupation, published in October 2016).

44. This purpose is reiterated in the Explanatory Note to the Regulations, which states:

“Regulation 2 inserts new paragraphs 1A, 1B and 1C into Schedule 4 to the Housing Act 2004. This has the effect of introducing new conditions and qualifying provisions in relation to those conditions which require a landlord (a) to comply with minimum standards in relation to the useable floor area of rooms available as sleeping accommodation.”

45. The wording in paragraph 1A (2) refers to the measurement of the “*floor area of any room ... used as sleeping accommodation*”. Although the paragraph confirms that a room is used as sleeping accommodation if it is normally used as a bedroom, “*whether or not it is also used for other purposes*”, unfortunately, the word “*room*” itself is not defined in that section.

46. Had the intention of the legislation been simply to reduce overcrowding, additional provisions or definitions could easily have been included (as they are in section 326 of the Housing Act 1985) detailing a prescribed minimum size for the total floor area of living spaces contained within a separate let– they are not.

47. In addition, in the amendments made to paragraph 1 of schedule 4 to the Act, as inserted by The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (provisions relating to smoke and carbon monoxide alarms), the word “*room*” is defined as including halls and landings.

48. Accordingly, the Tribunal considers that, in the absence of any further definition of the word “room” in paragraph 1A, “room” must take its natural meaning.
49. In this case, Room 6 has been divided into distinct areas: a hallway, a room being utilised as a bedroom (with en-suite) and a room being utilised as a lounge area (with kitchenette). Plainly, when considering the natural meaning of the word “room”, Room 6 has at least two distinct rooms. This is borne out by the fact that the Applicant, in his own statement, refers to Room 6 being “a unit of 2 private rooms” and refers to the “floor space between the 2 Rooms”. As such, the Tribunal cannot consider the whole of the lettable unit as the “room” but instead must look at the purpose and relevant floor area of the individual rooms forming part of the let.
50. Only one of the rooms in Room 6 was being used as “sleeping accommodation”, the bedroom. The floor area in this room fell below the prescribed minimum floor area imposed by Paragraph 1A of the Second Schedule to the Act. As Paragraph 1A is a mandatory condition, the Respondent was required to include a condition on the Licence ensuring conformity with the same.
51. As previously stated, the Tribunal concurs with the Applicant, that the wording of condition 6 of the Second Schedule to the Licence was very poor and did not even convey the Respondent’s true intention. As such, the Tribunal determines that the condition is to be varied as follows:

“Any room on the second floor (part of letting 6) which has a floor area of less than 6.51m² cannot be used as sleeping accommodation for an occupier of over 10 years of age. The measurement of the floor area must be a measurement of the wall to wall floor area where the ceiling height is greater than 1.5m (no part of the floor area of the room should be included in the measurement where the ceiling height is less than 1.5m).

COMPLETION: This condition must be complied with before 1st March 2021 and must be included in all subsequent licences.

Authority: Section 67(2)(a) and 67(3) of the Housing Act 2004”

Appeal

52. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham