



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

Case Reference : **LON/00BG/HML/2020/0026**

**HMCTS code
(paper, video,
audio)** : **V: CVP VIDEO**

Property : **23 Taeping Street, London E14 9UN**

Applicant : **Ms Sharada Naidu**

Representative : **In person**

Respondent : **London Borough of Tower Hamlets**

Representative : **Mr Jonathan Melnick, Solicitor**

**Type of
Application** : **Appeal in respect of an HMO licence - section
64 & Part 3 of Schedule 5 to the Housing Act
2004**

Tribunal Members : **Judge N Hawkes
Ms S Coughlin MCIEH**

**Venue and date of
hearing** : **10 Alfred Place, London WC1E 7LR on 4
December 2020**

Date of Decision : **8 June 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are contained in a single bundle provided by the Applicant and a single bundle provided by the Respondent, the contents of which we have noted. The order made is described below.

Decision of the Tribunal

The appeal is dismissed.

The Tribunal's determination

1. This is an appeal under section 64 and Part 3 of Schedule 5 to the Housing Act 2004 against the imposition of a condition concerning the occupancy of a bedroom on the grant by the Respondent to the Applicant of a licence for a house in multiple occupation ("HMO") in respect of 23 Taeping Street, London E14 9UN ("the Property").

2. The licence is valid from 5 November 2020 and provides in respect of a room known as "Bedroom 4" that the floor area is 6.3 square metres and that the "maximum number permitted for sleeping" is nil. The accompanying notes state:

"Please be aware that Bedroom 4 was excluded because it is less than the minimum standardised size of 6.5m². Do not renew Bedroom 4's tenancy agreement."

3. The Applicant was notified of the licence by a written notice dated 11 November 2021. It is common ground that the size of bedroom 4 is slightly under 6.5 metres square and that the occupant of the room is an adult. The Applicant wishes to continue to let room 4 for occupation by an adult and she informed the Tribunal of various features which make the bedroom 4 particularly attractive to prospective tenants.

4. Paragraphs 31 and 34 of Part 3 of Schedule 5 to the Housing Act 2004 provide:

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.

5. The hearing of the appeal took place by CVP video on 7 June 2021. The Applicant attended the hearing in person and the Respondent was represented by Mr Jonathan Melnick, Solicitor. The Tribunal heard oral evidence from Ms Dos Santos, a Housing Standards Officer within the Respondent's Health and Housing Team.

6. The Applicant wished to explore whether the Tribunal had any discretion to allow an adult to use bedroom 4 as sleeping accommodation. The Respondent relies upon paragraph 1A of Schedule 4 to the Housing Act 2004 which provides (emphasis supplied):

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**;*

7. Having considered the express wording of paragraph 1A of Schedule 4 to the Housing Act 2004, we are satisfied that the HMO licence must include a condition requiring the Applicant to ensure that the floor area of any room which is to be used as sleeping accommodation by an adult is not less than 6.51 square metres and that neither the Respondent nor the Tribunal has any discretion to waive or vary this statutory requirement.

8. Paragraph 1B of Schedule 4 to the Housing Act 2004 provides as follows:

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.

(4) Within the period specified in the notification—

(a) the local housing authority may not revoke the licence for a breach (or repeated breach) of any condition of the licence specified in the notification,

(b) the licence holder does not commit an offence under section 72(3) in respect of any failure to comply with such a condition, and

(c) the local housing authority may not impose a financial penalty under section 249A on the licence holder in respect of such a failure.

(5) Sub-paragraphs (2) to (4) do not apply if, before the licence was granted, the licence holder was convicted of an offence under section 72(2) or (3) in relation to the HMO.

9. The Applicant informed the Tribunal that the current occupant of bedroom 4 is likely to leave the Property in approximately a month's time and that she intends to sell the Property. A question arose as to whether the Tribunal might be willing to vary the licence in order to enable the Applicant to let bedroom 4 to a new tenant for a brief period, not exceeding 18 months "from the date of the notification", pending the proposed sale.
10. Ms Dos Santos gave evidence that, when a room is below the minimum statutory size, it is the Respondent's policy to only allow a licence holder time for compliance in accordance with paragraph 1B to give time for an existing tenant to vacate the room.
11. It is not necessary for the Tribunal to consider whether the 18 month period could serve any other purpose because, on the facts of this case, we are satisfied that the licence should not be varied so as to enable a new tenant to enter into occupation of bedroom 4.
12. The 18 month period runs from November 2020 and therefore ends in May 2022, and there is currently a tenant in occupation of bedroom 4. The Applicant expects this tenant to leave in early July 2021 but she was not certain whether the tenant could be required to vacate in a month's time, if they chose not to leave. Any new tenant would be likely to be entitled to remain in occupation for at least 6 months, following which it might be necessary for the Applicant to take steps to require them to vacate.
13. Any new tenant would be entering into occupation of a room with a floor size of less than 6.51 square metres and there is a real risk that it might not be possible for the Applicant to ensure that a new tenant would vacate bedroom 4 by May 2022.
14. In all the circumstances, we do not consider it appropriate to vary the terms of the licence and we dismiss the Applicant's appeal.

Name: Judge Hawkes

Date: 8 June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).