



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

Case Reference : **MAN/OOFF/HEP/2021/0001**

Property : **21 Thoresby Road, York, YO24 3EL**

Applicant : **Mr Graham Plunton**

Respondent : **City of York Council**

Type of Application : **Housing Act 2004 – Section 45(2)**

Tribunal Members : **Tribunal Judge M Simson
Tribunal Member Mr N Swain**

Date of Determination : **28 June 2021**

Date of Decision : **7 July 2021**

DECISION

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Decision:

The Suspended Prohibition Order re 21 Thoresby Road. York. YO24 3EL, dated 26th February is revoked.
No Order as to costs.

Background:

1. Mr Plunton appeals against the issue of a Suspended Prohibition Order (“SPO”) dated 26th February 2020 issued by the appropriate Directorate of the City of York Council (“YC”) in respect of 21 Thoresby Road, which is a house let in multiple occupation (“HMO”).
2. The house has been a 5 occupancy HMO since at least 1998, i.e. before the current licensing regime. It was acquired as such by Mr Plunton in 2001 and has been run by him in the same manner.
3. Since 1st October 2018 the house has come within the licensing regime. Mr Plunton promptly submitted an application, which was granted on 7th December 2018, on the basis of a desk top assessment, utilising the information supplied by Mr Plunton in the 72 page application form and his response, on 18th October, to the questions raised in YC’s (Michelle Tunstall) email of 17th October.
4. The house was inspected by YC Housing Standards and Adaptions Team on 31st January 2020.
5. Rooms 1, 2 and 3 were not measured because it was visually apparent that there were no size issue and that they were sufficient in themselves to require no more than the cooking and bathroom facilities that were provided in the house.
6. Rooms 4 and 5 were re-measured. The kitchen and dining bar were inspected and measured. YC’s assessment was that both rooms were inadequate, unless there was a provision of communal space for eating., relaxing, entertaining guests and all the other activities of daily life, and that the kitchen and 5 seat dining bar was insufficient to provide what was required.
7. The SPO was issued following consideration by YC of the outcome of the inspection.
8. With the onset of Covid restrictions there were some administrative delays in respect of Mr Plunton’s appeal which was eventually formalised on an application dated 20th August 2020. YC reserved its position on contending for a strike out based on a failure to properly progress the application, but has, rightly, not pursued that.
9. Mr Plunton’s appeal statement is dated 25th February 2021. YC response to the application (Section G of the Bundle) is undated on the face of the document, but said to be 3rd February 2021, supported by the witness statement of Pamela Shaw, senior Housing Officer, dated 11th March 2021. Direction had been given on 15th February by the Tribunal, with which the parties have complied and in respect of which YC has helpfully prepared the Bundle.

The Tribunal's task:

10. Following *Clark v Manchester City Council* [2015] UKUT129 (LC)(27 March 2015) we will deal with the appeal as a rehearing.
11. We are to consider the evidence, especially of YC, as though it was presented to persuade us to make (i.e. in this case, confirm) the SPO and if in the light of that evidence and Mr Plunton's evidence we are not persuaded, the should decline to make (i.e. in this case , revoke) the SPO.
12. In that sense this is YC's application. The burden is upon it to satisfy us that it is more likely than not that the criteria for making an SPO are made out in this case.
13. Our task has been inhibited by Covid restrictions. The parties agreed that we should proceed by way of paper determination following an external inspection, and we are grateful for the thorough documentation provided.

York City Council evidence:

14. This is primarily set out in the statement and exhibits of Pamela Shaw.
15. The YC Response [G19-G25] properly sets out the statutory background, which is not contentious. As to the evidence upon which the decision to issue a SPO was based, it reflects, but does not precisely replicate, the evidence of Pamela Shaw, particularly with room size measurements.
16. The Response says bedroom 4 measured 9sq m., at least 1sq m. of which is corridor. Pamela Shaw measures the corridor (two differing widths as per the plan) as 1.97 sq m. She appears to discount that area completely to arrive at a useable living/ sleeping etc area of 7.92sq m. She does not comment on the size or effect of the fitted wardrobes. The response says that bedroom 5 measured 8sq m. Pamela Shaw says 8.1sq m. without comment as to fitted wardrobe.
17. We are not provided with a narrative statement of measurements as to how the areas have been computed, but have several versions of the house plan with some measurements on them.
18. As to the communal area it avers that, "The communal area provided for eating is off the communal kitchen, it is 1.3m wide and forms a corridor between the side door and back door. Though there are stools and a breakfast bar in this area, there is insufficient room for eating comfortably. There is no other communal area.... where residents can conduct everyday activities and socializing." Pamela Shaw describes the breakfast bar area without reference to specific measurements, but asserting that up to 50% of the width would be taken up by those seated at the bar
19. As a result of that assessment a HHRSS assessment was carried out on the assumption that each of bedrooms 4 and 5 required a minimum of 10sq.m. and that the situation in respect of both rooms represented a Category 1 hazard. The reference to 10 sq m. is repeated at paragraph 13 of Pamela Shaw's statement, in the letter of 26th February serving the SPO and in the SPO itself.
20. In that HHSRS assessment the communal eating area was disregarded on the basis that it was a corridor running from secondary front door to rear door.

21. Rehearing the case rather than reviewing it, we take the evidence to be that in the opinion of a Senior Housing Officer, the rooms are each too small to carry out all the things associated with everyday activity, with the exception of cooking; the communal eating area should be disregarded as lacking sufficient space for table chairs and comfortable seating, and is located in a corridor; the psychological effect of the provision (or in her view, lack of it) created a hazard. The fact that YC accepted a lesser communal/kitchen space re 3 Leven Road is rational and justified on the basis of a different layout.
22. In the event that YC established a category 1 hazard the tribunal would have no choice but to endorse the SPO, as, upon a re-hearing, the Tribunal is in the same position as the Local authority so far as enforcement obligations are concerned.

Mr Plunton's evidence:

23. This is contained in his application for the licence, the letter of 18th October 2018, his Appeal application and letters of 21st March 2010 and 25th February 2021.
24. He avers that room 4 is 9.78 sq m. and room 5 is 7.8sq m. Excluding, in both cases the fitted wardrobe. He had contended in his reply to questions raised in respect of his 2018 application for room sizes of 10.06sq m. and 7.58 sq m. respectively.
25. Room 4 has, in addition to the fitted wardrobe, a bed, 2 seater sofa, a fridge, set of drawers and a bedside cabinet. Room 5 has, in addition to the fitted wardrobe, a bed, lounge chair, fridge and bedside cabinet. He contends for that being sufficient for the occupants to be able to spend time and relax in their rooms.
26. When remodelling the house in 2018 (to comply with specific legislative room size space standards – we assume, for example, Section 326 of Housing Act 1985) he renovated the kitchen to provide total floor space of 17.23 sq m. including the breakfast bar and 5 seats. In his reply to questions in October 2018 he contended for 19.43sq m. of which 8.85sq m. was the breakfast bar area.
27. He challenges the 10 sq m. as an immutable figure and refers anecdotally to other Housing Authorities with different views as to both room size and communal areas. He quotes the web site of Hinkley-Bosworth advising a minimum kitchen diner size of 16.5 sq m. There are no minimum space standards that he can find on the YC website for communal areas in HMOs. He was advised by Pamela Shaw in respect of 3 Levens Rd that the perceived hazard in that very similar house would be removed if a combined kitchen/dining/living space is provided which measures 15 sq m. or above. He has provided 17.23 sq m. at 21 Thoresby Rd.
28. In summary, he doubts, even if the 10sq m. 'rule' is immutable, that room 4 offends any such rule. He accepts that room 5 does, but that, whether or not either, or both, are less than 10sq m., the provision of communal dining and seating space in the kitchen/breakfast bar area removes, to a satisfactory extent, any hazard.

Inspection:

29. We visited the property at 10.00am on Tuesday 22nd June 2021. Although HMCTS Covid protocols prevented our entering the property we did, out of courtesy, make our presence and the reason for our visit known to an occupant. Fortuitously he was willing to open the side door so that from outside we could internally inspect the breakfast bar area.
30. The property is a well maintained post-war semi-detached house, with evidence, even from external inspection, of double glazing, modern central heating system and diligent upkeep.
31. To the front elevation room 4 had one window and room 5 two windows.
32. The breakfast bar area was viewed. It appeared to be sufficiently spacious for eating meals. It was a bar construction not a table, but the stools provided were of suitable height and configuration to facilitate both eating and 'pub style' socialising. The area had reasonable natural light from the glazed doors, especially the rear door which led to the patio and garden. It is situated in the area between the secondary front elevation door and the back door, but with the open area into the kitchen it did not present as cramped.

Review of the evidence:

33. The 10 sq m. size standard is not an immutable rule. It is guidance. It is guidance that a Housing Authority can, and ought to, give, but it does not mean that every room that falls short is one that is automatically unsuited for HMO occupation as in 21 Thoresby Road.
34. Patently, the greater the discrepancy between the actual size of the room and the guidance the more likely the absence of any communal facilities is to be seen as a hazard.
35. Because we have not visited room 4 for ourselves, and in the absence of very detailed measurements, and the variation in the several plans we have seen, we have to say that, candidly, we are not sure if the guidance standard is met or not. We are not clear as to how much allowance, if any, has been given for the 'corridor' space between the door and rectangular space. It does not appear that, in the measurements at least, the fitted wardrobe has been taken into account.
36. Whether the room is sufficient, with the shared bathroom and kitchen (only) for everyday living is a matter of judgement. We find that the size of the room is very close to, if not exceeding, the guidance size. That is not determinative but is an important factor. The provision of bed, wardrobe, 2 seater- settee etc is also significant. The room has a facility, although somewhat modest, to entertain one other in privacy.
37. It is probable that even without the breakfast bar area room 4 is not a hazard or unfit for want of communal space. With the provision of the breakfast bar, which whatever its faults, should not be discounted entirely, we are satisfied that room 4 does not require a Hazard assessment and is, albeit at the margin, in the same position for one occupant as rooms 1, 2 & 3.
38. We do not discount the breakfast bar. To do so, on the basis that it is in an area between doors at the front and back of the property, is to treat it as dead and unusable space. In our view, literally and metaphorically, it is not unusable.

39. The likelihood of traffic coming through the front secondary door, past the bar and out of the back door is low. If the secondary door is used to gain access to the main part of the house it is unlikely to impinge on the breakfast bar use because the opening into the kitchen precedes the bar. Room 2 has an exclusive French Window access to the rear of the house.
40. Access from the house via the kitchen to the downstairs bathroom does not require travel in the area of the bar to the disruption of those seated.
41. Certainly 3, and in our view possibly 4, rooms in the HMO do not require communal space beyond the kitchen. In those circumstances we are reinforced in our view that the breakfast bar is adequate for room 5 and guests, and even also for room 4. We accept that rooms 5, and possibly 4, will not have exclusive contractual use of the bar, and others in larger rooms may not always chose to use their own exclusive space, but that is in the nature of HMOs. The bar is just adequate for 5 people to eat at and socialise in the manner of sitting at the bar in a public house.
42. Given our findings we would have difficulty in determining that there was a likelihood of psychological damage to the occupants. That is a far more difficult matter to assess than the more common harms from hazards such as bare electric wires, damp, trip hazards or insecure 3rd floor window catches. We are not persuaded that the facilities at 21 Thoresby Rd. justify a hazard assessment and certainly not a category 1 hazard.
43. To the extent that the reasons for suspending the PO can be relevant to a consideration as to whether one should be granted in the first place, we note that the evidence of YC is that even though they determined a Category 1 hazard the PO should be suspended for the reasons set out in the SPO. Depending on circumstances the suspension could be for years and has already been for 18 months. Whilst sensibly time would normally be afforded to rectify even category 1 hazards, it begs the question as to whether the situation at 21 Thoresby Rd. justifies a Category 1 assessment. We find it does not.
44. None of the above reasons for decision should be taken as setting any precedent on issues of this type. Each case is fact sensitive and a matter of nice judgement. Nor should it be taken as a criticism of the guidance or advisory standards set out by YC (Although we feel, as an aside, that they could be more easily accessible on the YC website). More importantly our findings are not a criticism of Senior Housing officer Pamela Shaw, whose evidence we have treated as expert, but in respect of which as an expert tribunal we have taken a different view. These decisions are not binary but a matter of judgement. The imposition of a Prohibition Order, even suspended, is a significant imposition on a landlord and we are not satisfied on this occasion that the case is made out.
45. Neither party has made representations regarding costs, and none have been sought. YC have been, rightly, circumspect with regard to the costs of issue of the SPO. We make no order as to costs.

Tribunal Judge Martin J Simpson.
28th June 2021.