FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMV/2019/0004**
Property	**:**	**Flat 19, Monica Shaw House,31 Purchase Street, London NW1 1EY**
Applicant	**:**	**Mr Runil Shah**
Representative	**:**	**In person, with his father Mr Bharat Shah**
Respondent	**:**	**London Borough of Camden**
Representative	**:**	**Mr Edward Sarkis solicitor with the Council; Mr Richard Umelo EHO and Ms Alison Pruden Operations Manager**
Type of application	**:**	**Appeal in respect of an HMO licence -** Section 64 & Part 3 of Schedule 5 to the Housing Act 2004
Tribunal	**:**	**Tribunal Judge Dutton** **Mr C P Gowman BSc MCIEH MCMI**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR on 6th November 2019**
Date of Decision	**:**	**18th November 2019**

DECISION

DECISION

The Tribunal allows the appeal of Mr Runil Shah (the Applicant) for the reasons set out below. The HMO licence dated 17th July 2019 is amended to remove the restriction in using the bedrooms at the ground floor left and upper floor left of the property as set out at page 13 of the licence.

BACKGROUND

1. This application was an appeal by Mr Shah against the terms of a licence granted by the London Borough of Camden (the Council) in respect of his property at Flat 19, Monica Shaw House,31 Purchase Street, London NW1 1EY (the Property). The licence was issued on 17th July 2019.

2. The Property originally comprised a four-bedroomed maisonette with living room, kitchen diner, bathroom and separate toilet. Presently the living accommodation comprises five bedrooms, three of which are doubles. There are two smaller bedrooms, bedroom A on the ground floor of the maisonette which is 7.72 sq metres in size and the bedroom above, B, which is 7.4 sq metres. It is in respect of these smaller rooms, A and B that Mr Shah appeals to us, it being said by the Council that the rooms are too small to be used as a bedroom, giving the communal living space available at the Property.

3. Prior to the hearing of this matter on 6th November 2019, we were provided with two files. One containing the papers relied upon by Mr Shah and the other from the Council. these bundles included copies of the case reports in respect of the Upper Tribunal case of *Dhugal Clark v Manchester City Council [2015] UKUT 0129 (LC)* and the Supreme Court in respect of the case involving *Nottingham City Council and Parr and others [2018] UKSC 51*. An element of his appeal was that the Council has applied its own local standards as if they had statutory force, and was acting contrary to the Housing Act 2004.

4. In Mr Shah's bundle we were provided with a copy of the application to us, the licence in question and his grounds of appeal. In addition, the bundle contained a floor plan, the Council's Minimum HMO standards and the minimum room sizes for HMO's in Camden. In addition there were witness statements from the current tenants at the Property, including Mr Alexandre Stott, who occupies room A and who attended the hearing. The bundle also included, the Grounds of Application, reasons for the appeal, emails between Mr Shah and the Council and other documents, to which we shall refer as necessary. We noted the contents and were taken through many at the hearing.

5. For the Council their bundle contained a detailed statement by Mr Umelo, who is now employed elsewhere, with some 20 exhibits and a

statement by Ms Pruden, with some 3 exhibits. As with the papers from Mr Shah we noted the contents and were taken to a number of these papers during the course of the hearing.

HEARING

6. We heard firstly from the Council in the form of the evidence from Mr Umelo. His statement is dated 13th September 2019 and contains a statement of truth. We noted all that was said. It set out the provisions of the Housing Act 2004 (the Act), the additional licensing scheme applicable to Camden and the Council's own HMO standards which were effective from May 2016. He also referred to the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England)Regulations 2018 (the Regs). The statement set out the sleeping room area and kitchen area comparisons for other London Boroughs. Details of the inspection, correspondence between Mr Umelo and Mr Shah and the licence provisions were also referred to.

7. The statement then went on to address, in some detail, each ground of appeal. These we noted.

8. At the hearing Mr Umelo gave oral evidence. It was accepted by all concerned that the Property was an HMO, which required a licence. His view was that there was no evidence of a "cohesive" group of tenants occupying the Property. If there was such a group then a minimum size of 7.1sqm for each of rooms A and B might be acceptable but only if there was a shared communal living space of at least 10sqm. If not the Council's view was that a minimum floor size for these two rooms would be 9sqm. In this case he did not consider that the kitchen-diner, measuring some 13.2sqm was sufficiently large nor did not consider that a kitchen/diner was to be regarded as a living area. He had assessed the Property as being sufficient for 5 people to occupy, but that the occupation could only be of the three larger double rooms. In effect 4 people would have to share two rooms. He did confirm that the requirement affecting rooms A and B only applied when the existing tenants vacated.

9. He was asked by Mr Shah whether the Council had updated its standards since the Act came into force. It was pointed out to Mr Shah that the Council's standards were dated May 2016 and not been changed since then as the Council was happy that they met the necessary standards. Mr Umelo thought there may have been a further review after he left. His view of the kitchen/diner was that this was not a space to 'lounge' in. He accepted that the kitchen/diner was acceptable as such a room but not to be taken as living accommodation.

10. On the question of a "Cohesive" group he considered that the tenancies change often and at the time of his inspection he said he noted that there were plates in rooms, suggesting that people used their bedrooms as living accommodation as well as sleeping. He could not remember which rooms this applied to as he had not taken photographs at the time

of his inspection in April 2019. He confirmed that he had inspected during the day and that there was only one person at the property, apart from Mr Shah. His view was that the inspection was a snap shot as to how the Property was being used.

11. Ms Pruden also provided a statement dated 30th September 2019 in which she responded in detail to what is referred to as 'Section B' in the bundle prepared by Mr Shah setting out his reasons for the appeal. This is not dated but it would appear that the document came to the Council's attention after Mr Umelo left its employment. We have noted all that was said in her statement. We did note that she had not been to the Property until the inspection on the day of the hearing and had not been involved, it would seem, in the decision making process leading to the granting of the licence and the conditions imposed.

12. In her evidence to us she confirmed that the Council's standards had indeed been reviewed, but not changed in 2016. Her view was that the kitchen/diner had two functions, one to cook and eat food and to provide a communal space. Her view was that this room did not provide that communal space, which the Council considered in this case should be not less than 10sqm. She did accept that an open plan kitchen/diner could afford living space as well, if large enough, but this was not the case. She did not consider the space was sufficient to "break out", for relaxing and inviting friends.

13. Ms Pruden was asked questions by Mr Shah and his father. She accepted that there had been no review since the introduction of the licensing reforms in 2018 which had imposed a mandatory minimum room size of 6.51sqm for one person. Asked if the replacement of the kitchen table and chairs with a sofa would render the space acceptable she confirmed it would not as the intention was to provide somewhere to cook and eat.

14. We heard from Mr Shah. He said there had been no justification given by the Council to explain their standards and how they differ from the Government ones. He considered that the management of the Property by him, as a live in Landlord, had not been appreciated by the Council, nor that the tenants were students. He told us that the tenants were friends and indeed the original tenancy had been to a group. The only tenant since then (2017) who was not a friend before taking occupation was Mr Stott and he had been put in contact with Mr Shah by a mutual friend. He told us that on occasions he cooked for the group and that other tenants did the same. He used his large bedroom, with a living area and a balcony as an additional living space and tenants would watch films there. He said that the tenants were friends and would each go other's rooms to meet and socialise. Food was in some cases shared, as were meals.

15. He accepted that the appropriate number of occupants should be five but thought it inappropriate for the Council to require people to share rooms. His father was also questioning of the occupation by 5 people,

with four sharing as this would not change the requirement for a communal space.

16. Mr Shah was asked by us whether he had ever objected to anyone becoming a tenant. He said he had not because any replacement was only approved after consultation with the existing tenants, who were presently all males.

17. Mr Alexendre Stott had made a statement and came to the hearing to give evidence in support of Mr Shah. We noted the contents of his written statement. He confirmed that he had made contact with Mr Shah through a mutual friend in France. He found the accommodation ideal, being close to LSE, his university, and affording a nice kitchen and dining area, the more so as he enjoyed cooking and did cook for the other tenants. In addition, in his view, his room was large enough for his living requirements and indeed sufficiently large, with the table turned to entertain people. He told us that Mr Shah also opens his room to communal living and that the tenants often went to other's rooms. He thought the living space in the kitchen was good and that if there was a separate living room he doubted it would be much used, he preferring to switch between the kitchen/diner and his own room. He was of the view that this position was representative of the other students at the Property. He also confirmed that there was ample storage space available in his room and there was additional space throughout the Property.

18. Finally Mr Shah senior was of the view that students would not share bedrooms and that the room sizes were a personal preference. This he reminded was a property used for student accommodation, with his son being one. The lifestyle of students led to a "cohesive" living arrangement. Mr Shah thought consideration should be given as to how the rooms were used. The space in the larger bedrooms should be noted and taken into account when considering the communal living area. He said he would be prepared to accept a condition being included in the Licence that the Property would only be occupied by students.

19. For the Council Mr Sarkis said we should give considerable weight to the Council's standards. They had been reviewed, it seems in 2018 but no change was thought necessary. Further the statutory minimum room size did not relate to the communal living areas. The Council were entitled to impose conditions under section 67 of the Act.

20. The sole issue in this case is whether the rooms, which we have referred to as A and B are of sufficient size to be used as sleeping accommodation, given the living accommodation available in the Property.

THE LAW

21. We have set out below the relevant law. We remind ourselves that under the provisions of Schedule 5 Part 3 to the Act the appeal is by

way of re-hearing but may be determined having regard to matters of which the local authority were unaware.

22. As part of the re-hearing we considered it appropriate to inspect the Property.

INSPECTION

23. We inspected the Property on the day of the hearing, in the company of Mr Shah and his father, together with Mr Sakis and Ms Pruden. Mr Shah had arranged that we could have uninterrupted access to the whole of the Property and we were able to view all rooms

24. The flat comprises five bedrooms, a kitchen-diner and bathroom with separate WC. Three bedrooms were good sized doubles, one occupied by Mr Shah has living space and access to a balcony. The maisonette is in good condition, the kitchen has modern cupboards and appliances and the bathroom is similarly modern and well fitted.

25. We viewed all bedrooms but noted in particular the facilities in rooms A and B. Both were single rooms, with a bed, desk and a large wardrobe. They appeared to have sufficient number of plug sockets. The rooms were pleasant and airy, with good ceiling height and with a view from the window to the rear of the building. Throughout the Property there were storage spaces, which appeared to be underused.

FINDINGS

26. Although detailed statements and documents were produced by both sides the issue for us to decide is whether the rooms A and B could be used as bedrooms, given the living accommodation available in the maisonette.

27. In support of its decision the Council relied upon its own standards, the Regs and the inspection and assessments made by its officers, Mr Umelo and somewhat after the event, Ms Pruden, both of whom we found helpful witnesses. The Regs provides minimum standards for room sizes and it was not argued by Mr Shah that this did not apply in this case. The Government guidance states that “the mandatory room size conditions will however be a statutory minimum and are not intended to be the optimal room size. Local housing authorities will continue to have discretion to set their own higher standards within licence conditions, but must not set lower standards".

28. We have heard all that has been said by Mr Shah and by the Council. We have inspected the Property paying particular attention to the kitchen-dining area and also rooms A and B. We have also considered what we were told about the use of Mr Shah's room as additional living accommodation and the interaction between the tenants.

29. Reference was made to the Nottingham City case which related to student accommodation and communal living and living space. One question in this case is whether the occupation by students, albeit not under a single tenancy agreement can constitute "cohesive living". The Council has its own definition of "cohesive living" which is - "*a type of occupation where a group of tenants occupy the accommodation in a manner which is similar to a household or family. A group of tenants moving into accommodation together, under a single contract where there are clear indications of social interaction between tenants, is an example of cohesive living*". This is an example.

30. We heard from Mr Stott who occupies room A. We found him an honest and believable witness, His assertions concerning the manner in which people interacted at the Property were not challenged. It was interesting to note that he found the accommodation through a mutual friend of Mr Shah's.

31. On the question of cohesive living we find on the evidence provided to us by Mr Shah and Mr Stott, which was not in truth challenged on this point, helpful. Whilst not living as a single family there are many elements of their shared occupation which could be described as "cohesive'". It seems that they share cooking responsibilities and frequent each other's rooms. They are students and would appear to have similar needs and aspirations. This is borne out in the other witness statements provided.

32. We have considered the findings in the Clark case. We accept that the Council cannot impose standards to which it gives the same statutory power as the Regs or indeed any other regulation. We have looked at this licence condition afresh, after inspecting. We place much weight on the Council's standards and would not seek to depart from them lightly.

33. The Property is pleasant, in a good location. The kitchen-diner was sufficiently large to house a table and at the time of our inspection 5 chairs. There was a television fixed to the wall. The cooking area was of a good size, the total room size being in excess of 13sqm. The two rooms, A and B were pleasant accommodation with circulation space between the bed, desk and door. Indeed the tenant of room B, Mr Wellington-Lynn considered his room was sufficiently large to undertake yoga. The witness statements provided from all tenants indicates that they are very happy with the living arrangements.

34. We accept the findings in the Clark and Manchester case. We should reassess the matter in the light of our findings made after considering the evidence put to us in both written and oral form and our inspection. In so doing we have come to the conclusion that as both rooms A and B exceed the statutory minimum sleeping size and that the kitchen-diner, although not providing 10sq m on its own, there is sufficient living accommodation to enable us to remove the restrictions on these two rooms being used as such. The more so in that the Council has concluded that the Property is sufficient to house 5 people, but would

expect that to be by two couples or sharers and one single. The use of the double bedrooms by sharers does not, in our finding, alleviate the living room predicament as it is intended to by the conditions imposed, as we do not consider that rooms A and B could be used for any other purpose than as bedrooms. The proposed arrangements sought by Mr Shah do not seek to increase the number of occupants.

35. Accordingly re-assessing this matter afresh we find that the condition imposed in the licence dated 17th July 2019 intended to prevent the use of the two rooms A and B as sleeping accommodation, albeit not until after the present tenants have left, to be unnecessary and the condition is removed. The other terms of the licence are not in dispute and we understand that the schedule of works has been undertaken to the Council's satisfaction. Accordingly, we allow Mr Shah's appeal.

Tribunal Judge Dutton 18th November 2019

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).

Housing Act 2004
55Licensing of HMOs to which this Part applies

(1)This Part provides for HMOs to be licensed by local housing authorities where—

(a)they are HMOs to which this Part applies (see subsection (2)), and

(b)they are required to be licensed under this Part (see section 61(1)).

(2)This Part applies to the following HMOs in the case of each local housing authority—

(a)any HMO in the authority's district which falls within any prescribed description of HMO, and

(b)if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3)The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4)The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

(5)Every local housing authority have the following general duties—

(a)to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part;

(b)to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time; and

(c)to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises in respect of which such applications are made.

(6)For the purposes of subsection (5)(c)—

(a)"Part 1 function" means any duty under section 5 to take any course of action to which that section applies or any power to take any course of action to which section 7 applies; and

(b)the authority may take such steps as they consider appropriate (whether or not involving an inspection) to comply with their duty under subsection (5)(c) in relation to each of the premises in question, but they must in any event comply with it within the period of 5 years beginning with the date of the application for a licence.

PART 3 APPEALS AGAINST LICENCE DECISIONS

Right to appeal against refusal or grant of licence

31(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

Right to appeal against decision or refusal to vary or revoke licence

32(1)The licence holder or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority—

(a)to vary or revoke a licence, or

(b)to refuse to vary or revoke a licence.

(2)But this does not apply to the licence holder in a case where the decision to vary or revoke the licence was made with his agreement.

34(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.

SCHEDULE 4LICENCES UNDER PARTS 2 AND 3: MANDATORY CONDITIONS

1A.(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.

(3)Conditions requiring the licence holder to ensure that—

(a)where any room in the HMO is used as sleeping accommodation by persons aged over 10 years only, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence;

(b)where any room in the HMO is used as sleeping accommodation by persons aged under 10 years only, it is not used as such by more than the maximum number of persons aged under 10 years specified in the licence;

(c)where any room in the HMO is used as sleeping accommodation by persons aged over 10 years and persons aged under 10 years, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence and the maximum number of persons aged under 10 years so specified.

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