



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

Case Reference : **MAN/30UH/HML/2019/0005V**

Property : **Flat 6, Phoenix Nights, Phoenix Street,
Lancaster, LA1 1DD**

Applicant : **Frances Mister**

Representative : **Zubeir Mister**

Respondent : **Lancaster City Council**

**Type of
Application** : **Housing Act 2004 – Schedule 5 Paragraph
31(1)**

**Tribunal
Members** : **Judge P Forster**
Mr J Faulkner FRICS

Date of Decision : **4 December 2020**

**Date of
Determination** : **8 December 2020**

Decision

The HMO licence issued by the respondent on 22 November 2019 under s.64 of the Housing Act 2004 is confirmed.

Introduction

1. This is an application under paragraph 31(1)(b) of Schedule 5 to the Housing Act 2004 (“the Act”) against a decision to grant an HMO licence under Part 2 of the Act. The applicant, Frances Mister, is the licence holder. The respondent is Lancaster City Council, the relevant local housing authority. The applicant objects to the terms of the licence issued by the respondent on 20 November 2019 under s.64 of the Act. The licence is in respect of Flat 6, Phoenix Nights, 12 Phoenix Street, Lancaster, LA1 1DD (“Flat 6”).
2. 12 Phoenix Street was converted from a working men’s club into student accommodation in 2011. The block is made up of 6 self-contained flats each occupied as a flat in multiple occupation. Flat 6 is on the 2nd floor of the block and has 5 study bedrooms, a living/dining/kitchen area and 2 combined shower/wc rooms. The planning approval granted in 2011 was for a 4 bedroom flat with a separate lounge.
3. The applicant applied on 18 December 2018 for an HMO license for 5 persons in 5 separate households, for a period of 5 years. The respondent carried out an inspection in February 2019 and found the flat to be of a good standard, but the layout did not match either the planning approval or the licence application. The respondent issued a licence on 29 March 2019 for 5 persons in 5 households for a period of 18 months. The respondent considered that the size of the flat was not reasonable for the number of occupants specified in the application. 18 months was granted to allow the applicant time either to change the premises or reduce the occupation to accommodate no more than 3 persons, for which a mandatory license is not be required.
4. On 15 October 2019, the respondent issued a notice of intention to vary the licence to 4 persons in 4 households for a period of 18 months. The applicant made representations, but no agreement was reached. On 22 November 2019, the respondent issued a new licence for an 18-month period for 5 persons in 5 households after which occupancy should be reduced to no more than 4 persons in 4 households which would not require a licence.
5. The tribunal issued directions on 14 January 2020. The tribunal did not inspect Flat 6. The hearing was held by video on 2 December 2020 under the provisions of relevant practice directions in force during the pandemic. The applicant was represented by Mr Zubeir Mister and the respondent by Ms Fiona Macleod.

The applicant's case

6. Flat 6 complies with the standards set out in Schedules 3 and 4 of the Act and is suitable for 5 persons.
7. The applicant lists the floor area of each bedroom. All the bedrooms in Flat 6 exceed the minimum size required for a bedroom to be occupied by one person over 10 years old. There is no prescribed standard for communal areas.
8. The respondent's application of s.67 of the Act is not correct because:
 - i) s.67(1) specifically relates to the licence conditions, and the duration of the licence granted is not a condition of the licence,
 - ii) s.67(2)(a) does not provide for a restriction or prohibition on the number of persons but specifically relates to parts of the premises. In the present case, Flat 6 meets the prescribed standards and it would be unlawful to restrict or prohibit their use,
 - iii) s.67 only provides for regulating a licence under Part 1 of the Act, HHSRS, as held by the upper Tribunal in Clark v Manchester City Council [2015] UKUT 129.
9. When taking regard of Clark v Manchester City Council and taking the whole of the premises into consideration, Flat 6, disregarding the shower rooms and circulation space, exceeds the overall adopted/prescribed standards by 15.15 m². The adopted/ prescribed standard requires 53.6 m² whereas the actual floor area is 68.75 m².
10. Flat 6 meets the prescribed standards set out in Schedules 3 and 4. The overall space standards of the premises exceed the national prescribed and the respondent's adopted space standards when blended together.

The respondent's case

11. Taking into consideration the space in Flat 6, the size of the bedrooms, the size of the communal lounge/kitchen/dining area, and the facilities available, the respondent does not consider the premises to be reasonable for 5 persons.
12. S.65(1) of the Act provides that the respondent cannot be satisfied for the purposes of s.64(3)(a) that the premises is reasonably suitable for occupation by 5 persons if it considers that it fails to meet prescribed standards for occupation by that number of persons or households. However, the respondent may decide that the premises is not reasonably suitable for occupation even if it does meet the prescribed standards.
13. In making its decision the respondent had regard to: (1) Clark v Manchester City Council [2015] UKUT 129, (2) the decision in MAN/ooCE/HIN/2017/0013, (3) student accommodation survey – 2020, (4) HHSRS operating guidance, (4) Lancaster City Council Standards for HMOs and (5) Lancaster City Council Development Management Plan

14. The smaller bedrooms do not provide sufficient living space in addition to sleeping space and this is not compensated by the size of the communal living area. There is inadequate space for 5 persons for meaningful socialising, preparing and eating food.
15. The purpose of an HMO licence is to drive up standards and make HMOs safe places to live. The role that student accommodation plays in supporting wellbeing is well documented. It is important to highlight the quality and usability of social and amenity space provided.

The relevant legislation

16. A licence issued under s.61(2) of the Act authorises occupation of the HMO by not more than the maximum number of households or persons specified in it. Before a licence is granted the local housing authority must be satisfied of the four matters referred to s.64(3). The first of those matters is: “*that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in sub-section (4) or that it can be made so suitable by the imposition of conditions under section 67.*” Sub-section 4 provides that the maximum number of households or persons for whom an HMO may be licensed is either the maximum number specified in the application, or some other maximum decided by the authority. The other matters of which the authority must be satisfied concern the suitability of the proposed licence holder and the intended management arrangements.
17. S.65 makes provision for prescribed standards by which the suitability of a house for multiple occupation is to be determined. These are standards prescribed by regulations made by the appropriate national authority, which in the case of England is the Secretary of State. S.65(4) provides that the standards that may be prescribed include standards as to the number, type and quality of: sanitary and washing facilities; areas for food storage, preparation and cooking; laundry facilities; and other facilities or equipment which should be available in particular circumstances. This list is inclusive and it is therefore clear that standards may be prescribed by the appropriate national authority dealing with other aspects of the suitability of a house for multiple occupation.
18. The power to prescribe standards has been exercised in England by Schedule 3 to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. These standards make no mention of a minimum space requirement for bedrooms or for other rooms within an HMO.
19. Compliance with the prescribed standards is an essential precondition of suitability. By s.65(1) a local housing authority cannot be satisfied that a house is reasonably suitable for occupation by a particular number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number.

20. While compliance with the prescribed standards is necessary, it may not be sufficient in itself to render a house suitable. That is clear from s.65(2) which provides that even if an authority is satisfied that the prescribed standards are met, it may decide that the house is nonetheless not reasonably suitable for occupation by a particular number of households or persons.
21. A licence granted under Part 2 of the 2004 Act may also include such conditions as a local housing authority considers appropriate for regulating the management, use and occupation of the house concerned, and its condition and contents (section 67(1)).
22. By paragraph 31(1) of Schedule 5 to the Act, the licence holder may appeal to the relevant tribunal against a decision by the local housing authority to grant a licence and may in particular relate to the terms of the licence. The appeal is by way of a re-hearing. The tribunal's powers are to confirm, reverse or vary the decision of the local housing authority and the tribunal may direct the authority to grant a licence to the applicant on such terms as it directs.
23. The tribunal is bound to be selective in its references to the evidence when giving reasons for its decision. However, the tribunal wishes to emphasise that it has considered all the evidence in the round in arriving at its conclusions.

Reasons for the decision

24. Both parties have referred the tribunal to Clark v Manchester City Council which is relevant when considering s.65 of the Act. Compliance with the prescribed standards is a precondition but may not be sufficient to render the premises reasonably suitable for occupation. It is appropriate for a local housing authority to give guidance both to its own officers and to the public on how it intends to address the issue of a premises' suitability but the guidance is not determinative. It is only one of a number of factors.
25. The respondent has set its own "standard" of 6.52 m² by reference to the minimum space standards prescribed by s.326 of the Housing Act 1985. There is nothing objectionable to this as guidance for the purposes of HMO licensing but there is a risk that it will be seen as a statutory minimum with the same force as prescribed standards under s.65 of the Act. There is a difference between the prescribed standards, compliance with which is necessary in all cases, and the minimum standards referred to in the respondent's own guidance document.
26. The respondent's guidance is relevant and merits respect but it is for the tribunal to decide what weight to give it. The tribunal needs to consider all of the characteristics of Flat 6, including the size and layout of the individual rooms together with the communal area. The tribunal makes its own assessment of the suitability of Flat 6 for the proposed number of occupiers.

27. The parties in the present case were also party to proceedings in respect of another property, 57 Coulston Road, Lancaster, under case reference MAN/30UH/ML/2009/0006. The issues in both cases are very similar. The tribunal considered the decision in the earlier case and heard submissions from Mr Mister and Ms Macleod on its outcome. This tribunal is not bound by the earlier decision.
28. The respondent has published a document “Standards for Houses in Multiple Occupation” that sets out to provide guidance to landlords and property agents and to help inspecting officers to make consistent decisions. These are not prescriptive standards but help inform decisions on whether the premises is reasonably suitable for occupation by a particular maximum number of persons. They are based on guidance provided by the Chartered Institute of Environmental Health Officers.
29. The purpose of an HMO licence is to improve standards and make HMOs safe places to live. The role that student accommodation plays in supporting wellbeing is well documented. The respondent’s evidence emphasises the quality and usability of social and amenity space provided.
30. The respondent’s standards recommend that where bedrooms are smaller than 10.23 m² a separate living area should ideally be provided which is not a kitchen or kitchen/dining room. Lack of bedroom space should be remedied by the provision of a communal area.
31. The minimum statutory size for a bedroom is 6.52 m² . All the bedrooms in Flat 6 exceed that size. The respondent’s approach is to apply a minimum size for the communal area of 4.2 m² per person. In the present case, based on 5 persons the minimum floor area would be 21 m² .
32. There were some differences between the parties about the measurements for each bedroom and the kitchen/lounge:

	applicant	respondent	Prescribed/adopted standards
Bedroom 1	9.6	8.58	6.52
Bedroom 2	9.2	8.6	6.52
Bedroom 3	9.2	10.42	6.52
Bedroom 4	13.5	7.7	6.52
Bedroom 5	13.5	8.46	6.52
Kitchen/lounge	13.75	13.77	21
total	68.75	57.53	53.6

33. For the purposes of the application, the applicant's case was argued on the basis of the respondent's measurements. Applying the prescribed/adopted standards, the required floor area for Flat 6 would be 53.6 m² which is less than the actual floor area of 57.53 m².
34. The essence of the applicant's case is that having met the prescribed/adopted standards, the respondent is not entitled to go beyond those standards and restrict occupation of the premises.
35. It is obviously appropriate for the respondent to give guidance but that does not prevent the council from departing from it in an appropriate case. The respondent's standards are guidance only and not compulsory. The guidance issued by the respondent is not a substitute for consideration of whether specific premises is reasonably suitable for a particular number of occupiers.
36. The applicant has made specific submissions in respect of s.67 of the Act. It is said that s.67(1) specifically relates to the licence conditions, and the duration of the licence granted is not a condition of the licence. The duration of the licence is as decided by the authority subject to a maximum of 5 years under s.68(4). It is a term of the licence and not a condition.
37. In the present case, the licence was granted for a transitional period of 18 months for 5 persons in 5 households. This was a pragmatic approach to allow the applicant time either to alter the premises or reduce the number of persons to 4.
38. The applicant submits that s.67(2)(a) does not provide for a restriction or prohibition on the number of persons but specifically relates to parts of the premises. The respondent's power to restrict the number of occupants is in s.64(4) which provides that the maximum number of persons or households is that maximum number specified in the application or some other maximum decided by the authority.
39. The applicant submits that s.67 only provides for regulating a licence under Part 1 of the Act, HHSRS, as held by the upper Tribunal in Clark v Manchester City Council. That is not a correct reading of the Upper Tribunal's decision. The HMO licencing regime in Part 2 of the Act takes account of the housing standards in Part 1 but is not restricted to them. S.67(4) stipulates that in general an authority should seek to identify, remove or reduce category 1 or 2 hazards in a house for which it has been asked to grant a licence by exercising its powers under Part 1 and not by imposing conditions.
40. Although all the 5 bedrooms in Flat 6 exceed the prescribed standard of 6.52 m² they are still small rooms. Bedrooms 1, 2 and 3 are particularly small. There is sufficient space for a single bed and some basic items of furniture but there is very little room to move about or that can be utilised for social purposes. How the available space can be utilised must be taken into account and the broader needs in student accommodation to provide for communal activities.

41. The question is whether Flat 6 as a whole is suitable for occupation by a particular number of persons or households. The tribunal concludes that it is not suitable for 5 persons as claimed by the applicant. The respondent's guidance is not prescriptive. The imposition of a period of 18 months is a pragmatic decision and but for that, the respondent would have been justified in refusing to grant a licence to the applicant.

Dated: 4 December 2020

Judge P Forster

RIGHT OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to 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, that 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.