FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/HML/2021/0002**
Property	:	**35 Wicksteed House**
Applicant	:	**Tal Edgar**
Representative	:	**Mr Paul Fitzgerald**
Respondent	:	**London Borough of Southwark**
Representative	:	**Wayne Beglan**
Type of Application	:	**Licensing appeal**
Tribunal Members	:	**Judge Jim Shepherd** **Fiona Macleod MCIEH**
Date of Decision	:	**10 August 2021**

1. In this application dated 15th of January 2021 the Appellant Tal Edgar appeals the decision of London Borough of Southwark (the Respondents) granting an HMO licence in relation to 35 Wicksteed House, Rockingham estate, County Street, London SE1 6RQ (" The premises") but limiting the license to three households/three people. Specifically the grounds of application challenge the

limitation in occupancy numbers and the exclusion of rooms which meet the minimum standards statutory requirement. The Appellant submits that the licence should have been granted for five people in five households. This application is opposed by the Respondents who maintain the position that the licence granted is appropriate.

2. The Appellants position is that the licence should be for five persons because the rear middle left bedroom (6.6 m²) and rear middle right bedroom (6.63 m²) meet the statutory minimum room sizes as outlined under the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.The Respondents counter that the locally adopted standards are not met in this case and those are the criteria that should be followed.

3. The tribunal had written and oral evidence from Ms Samantha South and William Radford for the Respondents and their case was presented by Wayne Beglan. The Appellant's case was presented by Paul Fitzgerald.

4. According to the Southwark standards an HMO with a separate kitchen but no separate lounge/living room within the property should have minimum room sizes of 10 m² for a single room and 14 m² for a double room. A kitchen for five people should be at least 9.5 m². It is the Respondents case that all of the bedrooms in the present case failed to meet the local standard.

5. The premises were originally constructed by the Greater London Council as a purpose-built four bedroom flat with lounge kitchen and bathroom on the ground floor of the five-storey block of flats. Mr Fitzgerald said that the premises would have been suitable for occupation by five persons in a single family unit. In its current configuration it is let is a flat in multiple occupation and is occupied as five separate households in five single bedrooms with a shared kitchen and to shared shower rooms each with a wash hand basin and WC. Mr Fitzgerald provided a plan which showed the layout.

6. In September 2020 the Appellant made an application for an HMO licence. The Respondents issued the draft license indicating that it would be granted for three persons forming three households. On 27th of November 2020 the Appellant made representations to the effect that the licence should be granted for five persons as per the original application. On 22 December 2020 this request was refused and the license was issued on 23 December 2020.

7. Mr Fitzgerald stated in his submissions that the Respondent's additional licensing scheme came to an end on 31 December 2020 and that from 1st January 2021 the flat would not require a licence under the mandatory scheme. He called this a conundrum. Mr Beglan said there was no conundrum. This was an appeal against a licensing decision made before 1st January 2021. The Tribunal considers this must be right.

8. Mr Fitzgerald stated that the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018 give a nationally prescribed minimum size for a single bedroom of 6.51 m^2 and 10.22 m^2 for a double bedroom. He said that all of the bedrooms in this flat meet that prescribed standard. He submitted that the council has set and adopted a standard of 10 m^2 for single bedrooms and 14 m for a double bedroom where there is a shared kitchen. He said that none of the authorities that had adopted enhanced standards had explained how the health and safety and welfare of the occupants had improved as a result of these enhanced standards.

9. Mr Fitzgerald argued that although s.64 (3) of the Housing Act 2004 makes provisions for local authorities to set their own standards the tribunal should determine each case on its own merits. This undoubtedly is true however the tribunal must give some credence to the fact that a local authority will have knowledge of its own area and will have reasons for setting standards at a particular level.

10. As well as relying on the standards in the 2018 regulations Mr Fitzgerald relied on part X of the Housing Act 1985 which gives minimum room standards for the purposes of determining overcrowding. He said that these standards militate against the size of rooms required by the Respondents in the present case. Part X of the Housing Act 1985 is of course dealing with a different issue and it is not possible for the Tribunal to place reliance on those standards.

11. Mr Fitzgerald argues that the higher standards imposed by the local authority in the present case result in less property being available and this affecting the bottom end of the property rental market causing social exclusion. He identifies the fact that the respondents have a large number of homeless applicants and people sleeping rough to support this contention.

12. Mr Fitzgerald identified the London Borough of Enfield as an authority which has a borough wide additional HMO licensing scheme covering about 4000 properties and which accept the government minimum bedroom sizes. He challenged the use of the London Design Guide by the Respondents as the basis for making its decisions. He says that the guide provided is a draft and applies to the design and construction of new build properties and clearly relates to single family dwellings and not HMOs.

13. He said that he inspected the property on 25 September 2020 and considered that there was no significant risk to the health safety and welfare of the occupants and the premises were suitable for five persons forming five households

14. He argued that the decision on the licence should have been deferred until precise measurements of the kitchens were known. An assessment of the kitchen size had been made by the Respondents based on plans and information

relating to other HMO applications in the same block. The estimated size was 6.5 m². Furthermore the Appellant was asked on a number of occasions to provide the measurements of the kitchen and was given a period of about eight weeks to do this. It is disingenuous therefore for him to now argue that the Tribunal ought to defer the decision pending an accurate measurement of the kitchen. Indeed, the Appellant had actually broken the law by failing to comply with a notice issued under s. 235 of the Housing Act 2004 addressing the issue of the size of the kitchen.

15. In their statement of case the Respondents explained the history of the case stating that there were concerns about unauthorised alterations being carried out at the premises resulting in additional bedrooms being created. On 18 November 2020 an email was received by the Respondents from the Residential Conveyancing Compliance dept who confirmed the premises were on their records as being a three-bedroom property. The officer stated that the Appellant who is the leaseholder would be written to and asked to make a retrospective permission application. This application has yet to be made. No inspection of the premises was carried out due to covert 19 and the processing of the application was in effect a desktop exercise. The Appellant had failed to provide information relating to the size of the kitchen and the licence was therefore granted based on estimates as indicated.

16. The Respondent's standard for houses in multiple occupation (July 2015) provide that the following space standards apply :

Single room-10 m²

Double room-14 m²

Kitchen-5.5 m² +1 m² for each additional person sharing use of the kitchen.

17. The Respondent's standards for houses in multiple occupation were formally adopted by their Environmental Services Committee in July 2015 and are reviewed at regular intervals to ensure that they are in line with local and regional standards. The Respondents also had informal discussions with the National Landlord Association and a number of large portfolio landlords about the standards. Following these discussions it was decided that the standards would remain the same. Indeed following the review it was decided that the Respondent should adopt a "whole house" approach. In other words assessing a property's suitability by taking into account the whole property and all available and suitable space and amenities for the occupiers.

18. The Respondents also state that the standards have been benchmarked with other local London local authorities. They state that a number of factors are considered when deciding whether or not to grant a licence. These include:

    a) The suitability of the HMO for the number of occupiers.

    b) The suitability of the facilities within within the HMO such as toilets bathrooms and cooking facilities.

    c) The suitability of the landlord and or the managing agent to manage the HMO.

    d) The general suitability of the existing management arrangements of the property.

19. The Respondents stated that it is important that a licensed HMO is not overcrowded and has suitable shared amenities and facilities for the number of persons occupying it. They rely on the Housing Design Guide August 2010

report which states that the minimum area of a single bedroom should be 8 m² and the minimum area of a double or twin bedroom should be 12 m².

20. The Respondents stated that the lack of additional living space within the premises means that all of the bedrooms must be capable of being multifunctional. The smallest box bedrooms will have to be used by the tenant for living, entertaining, working studying and sleeping. They said that Lambeth and Greenwich both had standards which require a kitchen being used by five people to be at least 9.5 m² which is the same standard adopted by the Respondents.

21. In the present case they stated that there is no shared communal areas in the premises except the kitchen which is 10 m². They also state that whilst all the bedrooms in the kitchen are undersized the rooms which were not licensed fell far short of that standard. In other words the Respondents had shown some flexibility about the size of the rooms which were allowed to be included within the license but excluded the rooms which were substantially less than their standards.

22. The Respondents accepted that the bedroom dimensions in the premises do meet the standards in the 2018 regulations but submit 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.

23. The Respondents' standards have been endorsed in another case before the tribunal. In 62 Denman Rd LON/00BE/HMR/2018/0002 the Tribunal endorsed the arguments of the Respondents that consistency in applying and enforcing minimum standards is important for the welfare of occupiers.

24. The Respondents argued that local authorities are entitled and encouraged to have minimum standards and the tribunal should be slow on appeal to depart from such standards. They also say that the Appellant has given no exceptional reasons for departing from the standards in this case.

25. The tribunal were impressed by the respondents written and oral evidence in particular Mr Radford the team leader who has 27 years experience working in the private sector housing and licensing team gave clear and compelling evidence. In addition, Samantha's South gave clear evidence about how she had assessed the size of the kitchen by reviewing the records on the database. The tribunal is satisfied that this was the correct approach to take particularly, in light of the fact that the appellant had not provided the measured kitchen sizes.

26. The Respondents state that the common space within the premises is very limited for five occupants. The only common space is the kitchen. The Tribunal considered the photographs and plans of the kitchen and expressed real concern about the practicality of five people using the kitchen at the same time. Mr Fitzgerald's response to this was that the kitchen would not be used at the same time. This is not the answer because plainly there is a possibility that the kitchen would be used at the same time this would not be safe. The size of the kitchen in this case militates against the use of the premises for more than three people in the Tribunal's view.

The law

27. Under s.64 of the Housing Act 2004 where an application in respect of an HMO is made to the local housing authority under section 63 the authority must either grant a license or refuse to grant a licence. Under s.64 (3) the local authority must consider whether the house is reasonably suitable for

occupation by not more than the maximum number of households or persons mentioned in s. 4 or that it can be made so suitable by the imposition of conditions under section 67. Under s.64 (4) the maximum number of households or persons referred to in subsection 3 a is the maximum numbers specified in the application or some other maximum number decided by the authority. This means that the authority are able to impose a maximum number of persons for a particular HMO.

28. Under part 3 of schedule 5 to the Act the Applicant or any relevant person may appeal to the Tribunal against a decision by the Local Housing authority on an application for a licence either to refuse to grant a licence or to grant the licence. The latter expressly includes a challenge to any of the terms of the licence. The appeal is made by way of rehearing but can consider matters of which the authority were unaware. The Tribunal may confirm reverse or vary the decision of the authority.

Determination

29. The tribunal has no hesitation in dismissing this appeal. The Appellant is in effect challenging the Respondent's decision to set its own standards rather than simply relying on the standards in the regulations. Arguably such a challenge should have been brought by way of judicial review rather than in the First-Tier Tribunal. It is not the first time that the Appellant has brought a challenge against the Respondent's standards and the First-Tier Tribunal has previously upheld those standards. This ought to have militated against the Appellant bringing this challenge. Whilst it is correct that each case must be decided on its own merit the challenge here is against the standards themselves not against the imposition of those standards in a particular case.

30. It is entirely correct that a local authority can impose its own space standards over and above those imposed nationally. The local authority is best fixed to do

this because its officers have detailed local knowledge of the area in which they are operating. None of the arguments put forward by the Appellant came close to challenging the authorities decision to impose their own standards.

31. As indicated previously the Tribunal expressed real concern about the safety of the kitchen at the premises in circumstances in which five individuals are occupying. Although the premises were used previously as a single unit for up to 5 people this is very different from an HMO where individuals are expected to share facilities. Mr Fitzgerald did not seem to acknowledge the risk to the occupiers of using a very small kitchen at the same time. In addition, all of the rooms at the premises were below the local authority's own standards and yet the local authority had shown some flexibility in allowing three of the rooms to be used.

32. The Tribunal understands that the Appellant has a number of properties in London and possibly elsewhere. It is hoped that he will consider this decision closely and in future will manage his properties accordingly. It matters not whether the flats he is managing are in good condition and well provided in terms of facilities if the space standards are simply insufficient for the number of people using those facilities.

33. The tribunal was also not impressed by the arguments of Mr Fitzgerald in relation to the reduction in social housing available. Whilst homelessness in London is undoubtedly a problem it is not the answer to allow landlords to pack people into flats without proper concern as to the safety and practicality of using those premises as a home.

34. Accordingly without any hesitation the appeal is dismissed. If the parties wish to make any costs submissions they should do so within 14 days of receiving this judgement.

Judge Shepherd

August 2021

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.