



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

**Case reference** : **LON/00BE/HML/2021/0011**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **888 Old Kent Road, London SE15 1NQ**

**Applicant** : **Cityglen Limited**

**Representative** : **Mr Paul Kyriacou**

**Respondent** : **London Borough of Southwark**

**Representative** : **Mr Jack Barber of Counsel**

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

**Tribunal  
member(s)** : **Judge H Carr  
Mr S Wheeler MCIEH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **14<sup>th</sup> June 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. 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 the Tribunal were referred to are in a bundle of 175 pages provided by the Respondent and the application and further statement amplifying the appeal grounds provided by

the Applicant. The Applicant also provided further documents to the tribunal. The tribunal has noted the contents.

### **Decision of the tribunal**

- (1) The decision made by the London Borough of Southwark on 22nd June 2021 to grant a Mandatory Licence for a House in Multiple Occupation for a maximum of 43 people in 25 households in respect of 888 Old Kent Road London SE15 1NQ is confirmed. The appeal by CityGlen Ltd is therefore dismissed.

### **Reasons for the tribunal's decision**

#### **Introduction**

1. CityGlen Ltd appealed against the decision by the London Borough of Southwark, to grant a licence under Part 2 of the Housing Act 2004 .in respect of a property known as 888 Old Kent Road London SE15 1NQ. The appeal is against the decision of LB Southwark not to allow the two smallest bedrooms in the property to be occupied.
2. The decision was made on 22nd June 2021. The appeal to the tribunal was received on 22nd July 2021, directions were issued on 26th January 2022 and amended on 8th March 2022 and the matter was heard on 9th June 2022.
3. At the hearing, Mr Kyriakou represented the Applicant The Respondent was represented by Mr Barber of Counsel. In attendance for the Respondent were Ms Carty and Ms South. In the event they were not called on to give evidence.

#### **Background**

4. The property at 888 Old Kent Road London SE15 1NQ is a Public House. The upper parts of the property are occupied as a large HMO and used for temporary accommodation by local authorities on a nightly basis. It comprises 26 rooms, 25 of which use shared facilities. The property provides the following shared facilities: 8 kitchens, 3 bathrooms, 9 showers/wc and one single toilet with hand wash basin.
5. On 30th September 2020 the Applicant submitted to the Rrespondent a Mandatory HMO application for the renewal of the licence of the property. Following requests by the Respondent the Applicant provided the Gas Safety Records and floor plans to the property by email on 3rd February 2021. On 9th February 2021 the Applicant confirmed there had been no changes to the floor plans of the property since it had been previously licensed in 2016.

6. The previous HMO licence allowed the property to be occupied by no more than 44 people in 26 households. This allowed the use of a room measuring 6.4m<sup>2</sup> as the property was being occupied as temporary accommodation. The room measuring 6.3m<sup>2</sup> was not permitted to be used.
7. On 10th March 2021 a draft Mandatory HMO licence together with conditions and a Response form for Representations on a Proposed HMO Licence pursuant to Schedule 5 Part 1 Paragraph 3 was issued by the Respondent to the Applicant and all interested parties.
8. On 17 March 2021 the Applicant emailed the Respondent concerning the draft HMO licence stating that an error had been made in the draft HMO licence in that it referred to 43 people in 25 households were permitted in the property, rather than 44 people in 26 households as per the previous HMO licence.
9. The Respondent responded to the Applicant by email dated 17 March 2021. It explained that pursuant to Housing England, The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 the Respondent could not permit the use of any room in a HMO as sleeping accommodation for a person over the age of 10 years if the room measured less than 6.51m<sup>2</sup>.
10. On 24 March 2021 the Applicant submitted representations in response to the draft licence and conditions pursuant to Housing Act 2004, Schedule 5, Part 1 Paragraph 3 which was passed to the Licensing Panel for consideration.
11. The Licensing Panel comprised three officers: a Team Leader from the Private Sector Housing Licensing and Enforcement Team, the Business Unit Manager for the Housing Enforcement and Licensing and a lawyer from the Regulatory Team in Southwark's Legal Service. The Housing Act 2004, Schedule 5, Part 1 Paragraph 3 representation was rejected by all three panel members on 18 May 2021.
12. The Applicant was notified that the representation was rejected in a letter dated 19 May 2021.
13. On 22 June 2021 the Mandatory HMO Licence number 1525564/873527 was issued and sent to all interested parties, including the Applicant. The Applicant subsequently appealed to the Tribunal.

## **The law**

14. The relevant law is contained within the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.
15. This provides as follows: “Amendment to Schedule 4 to the Housing Act 2004 2. In Schedule 4 to the Housing Act 2004 (licences under Parts 2 and 3: mandatory conditions), after paragraph 1 insert—  
“Additional conditions to be included in licences under Part 2: floor area etc 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. ....”
16. Further, the Guidance Note for STS (Setting the Standards) Inspection Officers and Local Authorities October 2020 provides: “APPENDIX 1: SPACE STANDARDS a. The following space standards are regarded as an absolute minimum for sleeping rooms and are based on the Statutory Overcrowding provisions in Part X of the Housing Act 1985. Where the property comprises a licensed HMO, the licensing standards adopted by the LHA in which it is situated will take precedence. Floor Area of Sleeping Room Maximum Number of Persons Less than 6.5m<sup>2</sup> Nil

(page 32, Appendix 1 Space Standards, Setting the Standard, Temporary Accommodation, Guidance Note for STS inspection Officers and Local Authorities).

## **The grounds of appeal**

17. As set out in the application and expanded upon subsequently by Mr Kyriacou , City Glen Ltd ’s grounds of appeal were:
  - a. The Respondent should use common sense and discretion to licence the use of the two rooms in dispute;
  - b. The licence was not a new licence but a renewal and therefore the mandatory conditions about room sizes do not apply;
  - c. The measurements of the room are inaccurate
18. At the hearing on 9th June 2022, the tribunal took evidence and submissions from the Applicant, in respect of each of the grounds of appeal in turn.

## **The tribunal’s reasons for rejecting the appeal**

19. The regulations provide no discretion to the Respondent. The tribunal understands that this makes little sense to the Applicant but that is the position. Any risk assessment under the HHSRS would be irrelevant to the outcome and similarly the finding that the rooms were acceptable under Setting the Standard, an independent inspection regime for HMOs is also irrelevant.
20. The tribunal also rejects the argument that there is a difference between a renewal of a licence and a new licence and that the mandatory conditions do not apply to a renewal of a licence. There is no basis to this argument. The application is for a new licence and describing it as a renewal makes no difference to the applicability of the regulations on mandatory minimum room sizes.
21. The tribunal accepts the evidence of the Respondent in connection with the measurement of the rooms. The evidence of the Applicant on the room sizes was vague and unconvincing. There was no witness statement from the person who had remeasured the room on behalf of the Applicant. It notes that the Respondent emailed the Applicant on 15 and 28 March 2022 offering to re-measure the rooms of the property, but the Applicant has been unable or unwilling to allow the Respondent access in order to do so. The tribunal notes that the Applicant confirmed the details of the floor plan in the application for renewal and also notes that at the hearing the Applicant said that this was not his main ground of appeal.
22. The tribunal therefore dismisses the appeal.

### **The Respondent's application under Rule 13 (b) (ii)**

23. The Respondent argues that the Applicant's appeal was unreasonable as it had no or little merit. It also notes that the Applicant made very little effort to engage with the Respondent to narrow the issues between them. It therefore argues that the Applicant acted unreasonably in bringing, defending or conducting the proceeding.
24. The Applicant argues that the Respondent behaved in a bullying way and its decision put its business model at risk. Mr Kyriacou also argues that it was unreasonable to use Counsel in the case.

### **The decision of the tribunal**

25. The tribunal does not make an order under Rule 13.

## **The reasons for the tribunal decision**

26. The starting point for costs at the tribunal is that each party bears its own costs. The threshold for an award of costs under Rule 13 is high see *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT. In the circumstances of the case, the fact that the licence was being renewed and in particular the existence of out-of-date documentation on the approach to HMO licensing on the council's website, the tribunal does not consider that the conduct of the Applicant in pursuing its appeal was unreasonable.
27. The tribunal notes that Mr Kyriacou also made an application for costs. Mr Kyriacou must understand that the standard position is that each party bears its own costs. The only exception is where there has been a breach of Rule 13. In the light of the outcomes of the appeal there is nothing to suggest that the Respondent was unreasonable in defending the appeal and nothing to suggest that its conduct was anything other than proper.

Name: Judge H Carr

Date: 14<sup>th</sup> June 2022

## **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)