FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HML/2019/0011**
Property	**:**	**Flat 55, Radcliffe Building, Bourne Estate, Portpool Lane, London EC1N 7TY**
Applicant	**:**	**Mr Andrew Hai**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Camden**
Representative	**:**	**Mr Edward Sarkis solicitor with the Council; Miss Lauren Adlam EHO and Ms Judith Harris Principle EHO**
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 Gowman BSc MCIEH**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR on 22nd August 2019**
Date of Decision	**:**	**4th September 2019**

DECISION

DECISION

The Tribunal dismisses the appeal of Mr Andrew Hai (the Applicant) for the reasons set out below.

BACKGROUND

1. This application was an appeal by Mr Hai against the terms of a licence granted by the London Borough of Camden (the Council) in respect of his property at 55 Radcliffe Buildings, Bourne Estate, Portpool Lane, London EC1N 7TY (the Property).

2. The Property comprises a three-roomed flat (all presently used as bedrooms) with kitchen and bathroom. Two bedrooms are doubles, one with an en-ensuite. It is in respect of the third room that Mr Hai appeals to us, it being said by the Council that the room is too small to be used as a bedroom.

3. Prior to the hearing of this matter on 22nd August 2019, we were provided with two files. One containing the papers relied upon by Mr Hai and the other from the Council. On the morning of the hearing Mr Hai provided a further bundle which contained 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*. In addition, he had prepared a skeleton argument. The nub of his claim is to be found under the heading "Facts and "Submissions". Under the Facts he says that the Council *'has at all times failed to consider the property as a whole when considering the size of a sleeping room that it says is too small by its standards'*. In respect of the 'Submissions' he says that the Council *has applied its own local standards as if they had statutory force*, has not offered guidance to its officers to consider each property on its own merits and is acting contrary to the Housing Act 2004 and as set out in the UT case of Clark and Manchester City Council.

4. In Mr Hai'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, a photograph of the room in dispute, the Council Minimum HMO standards and the minimum room sizes for HMO's in Camden. Mr Hai had provided a witness statement as had the tenant of the room in dispute. There were further documents under the heading "Evidence", which included a copy of the tenant's tenancy agreement, various data concerning licensing in the Borough with some suggested comparables. A number of emails were included as was a Freedom of Information request made by Mr Hai. We noted all that was included and were taken through most at the hearing.

5. For the Council their bundle contained a detailed statement by Miss Adlam, with some 40 exhibits and as with the papers from Mr Hai 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 Miss Adlam. Her statement is dated 10th July 2019 and contains a statement of truth. She told us the relevant legislation, being the Housing Act 2004 (the Act) and the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses)(England) Order 2018 (the Order) had been applied, the latter being introduced into the Act under Schedule 4 section 1A. In addition, the Council had produced its own HMO standards which were effective from May 2016. A copy was to be found in the exhibits to her statement.

7. The sole issue in this case is whether the room, colloquially known as RCB (rear centre bedroom), is of sufficient size to be used as sleeping accommodation. It is the Council's case that the room is too small "*to provide sufficient pace for normal household activities to be carried out safely and to allow for belongings and personal effects to be stored safely. The room must have space to accommodate the appropriate furniture and fittings for the average occupant(s) to live within the room and to allow adequate circulation for themselves and guests"*.

8. In support of this proposition they rely on their standards which give rise to a minimum size of 9sq metres for a room of this nature being a single room with separate kitchen facilities. The statement explained how this was achieved by reference to such matters as circulation size and the presumed measurements for furniture. It was confirmed that in fact Ms Adlam had not measured the circulation space but there is no dispute that the RCB is 7.1sq m in size.

9. A comparison with Islington, Kensington and Chelsea and Westminster showed that Camden was following a trend, save that Westminster appeared to adopt the same minimum size provided for in the Order of 6.51sqm for one person over the age of 10.

10. Subsequently the Council has amended its guidance by providing that the minimum size can be reduced to 7.1sqm *"where a cohesive group of tenants benefit from a shared lounge of a minimum of 10sqm for use as a place for recreation and socialising as they would expect to spend less time and require less furniture and storage space in their bedrooms*". It is accepted that the tenants at the Property are not a 'cohesive group' in that they came to rent at separate times and under separate agreements.

11. Miss Adlams statement goes on to set out the chronology surrounding the application for a licence and the granting of same, which finally happened on 26th March 2019. This contained the licence condition

under the Schedule at paragraph 1 as follows: *The licence holder/manager is prohibited from allowing a new resident to occupy the HMO and/or parts of the HMO if:*

- *That occupation exceeds the maximum number of permitted persons in the HMO* (that being 4)
- *That the occupation exceeds the maximum number permitted for any unit of accommodation: and*
- *A room used as sleeping accommodation has a maximum permitted number of zero the room must not be re-let/occupied again once the current tenant has vacated.*

12. The licence also contains a waiver relating to the RCB avoiding the need to install additional power sockets as the room must not be re-let/occupied again in the future once the current tenant has vacated. It does not seem necessary for us to set out the chronology as the papers are common to both parties and this history has no real impact on the decision we are required to make, other than to say that there does appear to have been a substantial delay in processing the licence application, which was made on 9th February 2019.

13. The statement then seeks to rebut the grounds of appeal set out in the application and we noted all that was said. In particular it is said that the communal space of 10sqm would not apply as there was no cohesive group and in any event, there was no room of this size which could be used as a shared lounge. Accordingly, the higher standard of 9sqm would apply. Suggestions had been made that there could be alterations to the layout to give extra space to the RCB but this was complicated, requiring the landlord consent (The Council is the landlord) and expense in making the changes which Mr Hai was not, it seemed prepared to incur.

14. Reference had been made to the case of Nottingham City Council v Parr, which related to lettings by students and which it was said did not apply to this case and the findings of the UT in the Clark case, to which we will return.

15. In her conclusion Miss Adlam considered that the RCB was below the minimum size as set out in the Councils' standards, which had been developed following review, research and comparison with other local authorities in Central London. If enlarged it might be capable of being used as sleeping accommodation without unduly impacting on the two other bedrooms, over which there was no issue.

16. Miss Adlam was asked questions by Mr Hai and her experience was brought into question, which she rebutted. Suggestions that a single bed would assist and that a sofa could be installed in the kitchen to give the additional communal space where made, but it was not accepted that these suggestions would sufficiently ameliorate the smallness of the RCB. It was accepted that the current tenant, Mr Simon Ryan, could remain in the room until he chose to leave. The use of storage facilities

in the hall were discussed and increased circulation space in the RCB but this did not, in the view of Miss Adlam assist.

17. Mr Hai had provided a witness statement which set out the chronology, which did not appear to be in dispute and comments on the issues as to the size of the RCB, the furniture within that room and the apparent anomalies in the measurements of the kitchen. He had made a Freedom of Information request, not fully complied with and obtained details of other HMO's in the Borough which he said showed flats where bedrooms smaller than the RCB in the Property appeared to be allowed.

18. He told us that he was not specifically challenging the standards created by the Council but rather their lack of flexibility and compromise. Indeed, he appeared to accept the licence for 4 occupiers but wanted such occupancy spread across the three bedrooms. He relied on the statement of Mr Ryan, the tenant of the RCB who stated that he was very happy with the room, had chosen same in preference to others and that he considered the space in the kitchen to be large enough for communal living. Mr Ryan said he enjoyed living in the flat and had no plans to leave.

19. In final submissions Mr Hai confirmed that there was no dispute that the Council could set its own standards. The RCB was 10% larger than the minimum size allowed and the tenant was happy. He told us he had tried to encourage the Council to be flexible and referred us to the proposals he had put forward to enhance the lounge area of the kitchen. He considered that the Council were just 'ticking boxes'

THE LAW

20. 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.

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

INSPECTION

22. We inspected the Property on 4th September 2019, in the company of Mr Hai. The Council had indicated at the hearing that they would not attend. Mr Hai had very helpfully arranged that we could have uninterrupted access to the whole of the Property and we were able to view all rooms
23. The flat comprises three bedrooms, a kitchen diner and bathroom, with wash hand basin, bath with shower attachment and low level WC. Two bedrooms were good sized doubles, one with an en-suite shower room. The flat has recently had new windows fitted, apart from that to the bathroom, which retains a somewhat dated metal window.

24. The RCB was fully inspected by us. At the time of the inspection there was a queen sized double bed around 4 feet in width, a double wardrobe, chest of drawers and some shelving. There was limited circulation space, the more so as the door opens into the room.

FINDINGS

25. Although some 340 pages of documents were produced by the Council and 126 pages by Mr Hai, together with the secondary bundle enclosing the skeleton argument and case reports the issue in this case is, we consider, limited. Was the Council entitled to find that the RCB was too small to be used as a bedroom?

26. In support of its decision the Council relied upon its own standards, the Order and the inspection and assessments made by its officers, including Miss Adlam and Ms Harris, the latter, it would appear acting in a mentoring capacity and providing peer review. The Order provides minimum standards for room sizes and it was not argued by Mr Hai 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".

27. We have heard all that has been said by Mr Hai and by the Council. We have inspected the Property and in particular the RCB and kitchen area.

28. It is noted that it may be that the Council has allowed licences to be granted where the room sizes are below 9sqm but the evidence in this regard from Mr Hai was inconclusive. Indeed in one case it appeared not to truly reflect the licence conditions imposed (Camelot House) where the use of the small middle bedroom had not been allowed, consistent with the Council's position in this case.

29. The Nottingham City case did not assist, it relates to student accommodation and communal living and living space. In this case although the tenants may get on well there is no evidence of 'cohesive living'. The tenants, we were told, occupy under separate agreements and, in any event, there would not appear to be a living space of 10sqm, the only available being in the kitchen/diner, which appears to have an agreed total size of 12.2sqm. On inspection we noted that the use of the Property did not appear to be on a cohesive basis but as individuals/couples.

30. In so far as the Clark case is concerned, the relevant section is recounted at page 25 of Miss Adlams statement. We accept that the Council cannot impose standards to which it gives the same statutory power as the Order or indeed any other regulation. We have looked at this licence condition afresh, after inspecting.

31. The Property is pleasant, in a very good location. It benefits from the new windows. The two double bedrooms are of a good size and would comfortably accommodate two people in each, the more so considering the en-suite facility in the larger bedroom. However, there is little communal space. The dining area is quite small and the kitchen table, which would seat four would need to be pulled out from a small alcove to be used comfortably. A soft chair had been positioned in this space but it did nothing to persuade us that this gave the additional communal space, said by Mr Hai to be available in the kitchen, that the Council considers appropriate for the standard single size of 7.1sqm to be applied.

32. The RCB is a small room at 7.1sqm. Nearly two metres below the Council's requirement for a bedroom with no shared lounge or other communal space of a minimum size of 10sqm, in addition to the kitchen. There is little or no room to provide for useage other than sleeping. To use for other purposes would require sitting on the bed with little or no circulation space. It is a cramped piece of accommodation with no where else in the Property to 'spread your wings'. The alternative storage in the hallway is very limited, being under one foot in depth. It is appreciated that the current tenant has no complaints and is indeed free to remain until he wishes to leave or the licence requires renewal. The fact that the Council have allowed this continuing occupancy rather flies in the face of Mr Hai's assertion that it has failed to show flexibility.

33. We accept the findings in the Clark and Manchester case. However, re-assessing this matter afresh we find that the condition imposed in the licence dated 26th March 2019 preventing the use of the RCB as sleeping accommodation after the present tenant has left to be reasonable. The other terms of the licence are not in dispute. Accordingly, we confirm the terms of the licence and dismiss Mr Hai's appeal.

Tribunal Judge Dutton 4th September 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 4 LICENCES 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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