



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

Case Reference : **BIR/00FY/HML/2018/0008**

Property : **284 Alferton Road Nottingham NG7 5LS**

Applicant : **Lukas Lakatos**

Representative : **Tarjinder Singu Khamba**

Respondent 1 : **Nottingham City Council**

Representative : **Sarah Mills Solicitor**

Respondent 2 : **Clarence Hotel Limited**

Type of Application : **An appeal against the Conditions attached to a Licence for a House in Multiple Occupation under Schedule 5 of the Housing Act 2004**

Tribunal Members : **V Ward BSc (Hons) FRICS
P Wilson – BSc (Hons) LLB MRICS MCIEH
CEnvH**

Date of Decision : **29 January 2019**

DECISION

Introduction & Background

1. On 28 June 2018, Nottingham City Council, the Local Housing Authority and first Respondent, granted a licence for the use of 284 Alfreton Road Nottingham NG7 5LS (“the Property”) as a house in multiple occupation (HMO).
2. On 24 July 2018, the Applicant appealed to the Tribunal. The grounds for the appeal were as follows:

Condition 3 of the Licence which details the permitted occupation of rooms 20 to 29 was unreasonable.

The appropriate Licence holder should be Clarence Hotel Limited rather than the Applicant who is the Hotel Manager.

3. The Clarence Hotel Limited is the second Respondent in this matter. The Tribunal understands that the Clarence Hotel Limited hold a lease over the property from the freeholder Huntingdon Properties Limited.
4. The relevant parts of the HMO Licence issued by the first Respondent were as follows:

1. *The licence holder is Mr Lukas Lakatos of 3 Hazlewood Road, Nottingham NG7 5LA.*
2. *The person having responsibility for the management of the HMO (the person managing) is Lukas Lakatos.*
3. *The Authority has decided that the house is reasonably suitable for occupation by not more than the maximum as follows:*

*Room 20 – Maximum of 1 person in 1 household
Room 21 – Maximum of 2 persons in 1 household
Room 22 – Maximum of 2 persons in 1 household
Room 23 – Maximum of 2 persons in 1 household
Room 24 – Maximum of 1 person in 1 household
Room 27 – Maximum of 2 persons in 1 household
Room 28 – Maximum of 2 persons in 1 household
Room 29 – Maximum of 1 person in 1 household*

Total maximum: 13 persons in 8 Households.

These designated bedrooms are all located on the second floor and are indicated on the plan reference “284 Alfreton plan 1” attached to this licence.

4. *Licence expiry: 28 July 2019*

5. The rooms which are the focus of this application were the subject of a Notice of HMO Declaration issued under Section 255 of the Housing Act 2004 by the first Respondent on 14 December 2016 to Huntingdon Properties Limited. In their Statement of Reasons, the first Respondent indicated that they had been satisfied that the property met the standard test under Section 254(2) of the Act at the time the declaration was made. An appeal against this Declaration was made but withdrawn prior to determination. Section 255(8) provides that where an appeal against any such declaration is made under Section 255(9), then the withdrawal of an appeal has the same effect as a decision which confirms the Notice.

Inspection

6. The Tribunal inspected the Property on 11 December 2018. Present at the inspection were the Applicant, his representative, Mr Tarjinder Singu Khamba, Mr M Galloway, an administrator for the second Respondent, the Clarence Hotel Limited and on behalf of the first Respondent, Mr R Chubb and Mr M Gilmour both Environmental Health Officers.
7. The Clarence Hotel is situated on the corner of Alfreton Road and Palin Street approximately 1 mile from Nottingham city centre. The property offers 25 budget priced hotel rooms over ground, first and second floors.
8. The Tribunal were given access to the rooms in question which are located on the second floor of the hotel. Each room had the benefit of a kitchenette and shower room with WC. At the time of the inspection some rooms were laid out for single accommodation and others as doubles.
9. The Tribunal also inspected some of the hotel rooms on the ground and first floor which were laid out in a similar manner to those on the second floor. On the ground floor of the hotel was a bar area which the Applicant indicated was due to be fitted out for use as a communal kitchen area for HMO occupiers.

The Hearing

10. A Hearing was held later that same day at Nottingham Justice Centre, Carrington Street, Nottingham.

11. Present at the Hearing were those who had attended the inspection and in addition, on behalf of the Respondent, Sarah Mills, solicitor, of the Legal Services, Planning, Environment and Leisure Team of Nottingham City Council.
12. Prior to the hearing, negotiations between the parties had led to the second Respondent offering to qualify the licence with the addition of the following paragraph:

The maximum occupancy for the rooms does not apply when the rooms are occupied by registered temporary hotel guests with another main resident address, as documented on the hotel register.

13. The Tribunal allowed a further short period before the start of the hearing to allow the parties time to see if the amendment could be agreed. Unfortunately, the parties could not reach agreement.
14. The submissions made on behalf of the parties both in writing and in person at the hearing were briefly as follows.
15. Initially, Mr Khamba, on behalf of the Applicant, specified the changes they sought to the licence:

- a) Rooms 20, 24 and 29 to be able to be used for 2 people. All rooms to be occupied by people from 2 households.
- b) The licence period to be extended from the date indicated in the licence 28 July 2019 as the period was too short.
- c) The licence holder to be changed from the Applicant to the second Respondent.

16. The Tribunal advised that it would not consider any arguments relating to 15. b) above. This was not one of the grounds of appeal put forward in the application which were carried forward to the Directions issued by the procedural Judge. Further it was not an issue that was intertwined with the others.
17. The Tribunal then first heard evidence relating to 15. a) above, the permitted use of the rooms in question.
18. Initially, Mr Khamba said that the size of all the rooms was sufficient for them to all be occupied by 2 people. Continuing, in respect of the limitation of the one household per room, he stated that this was not acceptable as the subject rooms could not be consistently filled with permanent occupiers. When this was the case, the Applicant and the second Respondent wished to be able to have non-

permanent guests in these rooms. As the Applicant considered that the first Respondent was concerned that permanent residents might be placed in bedrooms with other parties, details were given as to how hotel bookings were made. The Applicant stated that the party that makes the booking dictates the occupation of the room. As a hotel the second Respondent would not allocate new residents into rooms already occupied. The rooms are allocated to a single party prior to their arrival and this cannot be amended whilst the room is occupied. If the household restriction was removed the second Respondent would still be unable to place permanent residents into rooms with other permanent occupiers but the rooms may still be used as hotel homes. If a company booked a room for 2 employees for business purposes, then with the restriction removed the second Respondent would be able to offer one of the subject rooms.

19. On behalf of the first Respondent, Richard Chubb stated that the occupation levels for the individual rooms were arrived at by reference to the space standards adopted by the first Respondent. With reference to the number of households permitted per room, the first Respondent said they would have safeguarding concerns if two unrelated parties were allowed to share the same room. The first Respondent thought there was a possibility of this happening considering the client group accommodated at the hotel who have no alternative abode. Further there is a considerable history of the hotel being used by persons claiming housing benefit with no other place of residence. These people are generally homeless, vulnerable and require a place for themselves or themselves and a partner. The first Respondent was asked by the Tribunal if the first Respondent had ever issued a HMO licence where in respect of room occupation more than one household had been permitted? In the experience of the Environmental Health officers of the first Respondent present at the hearing, room occupation had always been limited to one household.
20. The Applicant was questioned by the Tribunal as to why the amendment suggested by the first Respondent would not satisfy their concerns over the household restriction? The Applicant said that the amendment suggested would not allow the hotel to make bookings for two guests with no fixed abode who wished to stay for more than 30 days. The example of this type of occupation given by the Applicant was contractors from Eastern Europe.
21. The Tribunal then considered the second strand of the appeal, that relating to the licence holder. The Applicant sought to be replaced as the HMO Licence holder by the second Respondent company which held a lease over the entire property. It was suggested by Mr Khamba that if the Applicant were to leave the employment of the second Respondent, this would leave the latter in a difficult position.
22. In response the first Respondent stated that at no point had the licence applicant requested that the second Respondent hold the licence and further there was

opportunity during the application process and the subsequent representation periods to put forward this proposal.

23. The original licence applicant, Mr Warjinder Khamba, was found by the Applicant not to be a Fit and Proper person to hold the licence. The identity of the proposed licence holder was then changed to Karolina Wisniewska and then following a request in January 2018 to the Applicant in this matter. Mr Warjinder Khamba is the sole shareholder of the second Respondent.
24. The first Respondent reminded the Tribunal that section 68(6) of the Housing Act 2004 states that a HMO licence may not be transferred to another person. Therefore the licence cannot be transferred to the second Respondent and in any event has insufficient information to make a decision as to whether the second Respondent would be a suitable licence holder and further Warjinder Khamba's association with the company would also need to be considered.

The Law

25. The relevant sections of Part 3, Schedule 5 of the Housing Act 2004 are as follows:

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.

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.

The Tribunal's Determination

26. The Tribunal initially considered the occupation of rooms 20, 24 and 29 and the Applicant's desire for them to be able to be used for 2 people. The limits in the licence had been arrived at by a policy of the first Respondent and no argument of sufficient merit was advanced by the Applicant for the Tribunal to interfere with the application of that policy. The first Respondent did however agree to remeasure rooms 20, 24 and 29.
27. Turning then to the household limitation of one per room, the Tribunal could not see that the amendment proposed by the first Respondent would not allow the rooms to be used as hotel rooms. The example given by the Applicant where contractors from overseas with no fixed abode, who require the accommodation for more 30 days, would be denied use of the rooms is not of sufficient merit for the Tribunal to adjust the one household limit per room which in the Tribunal's opinion is needed to protect vulnerable occupiers from being given accommodation with unknown third parties. The Tribunal would question whether the occupiers given in the Applicant's example were hotel guests in any event.
28. The Tribunal will not therefore adjust the number of households permitted in any room and it remains limited to one. The Tribunal does, however direct that the following amendment be incorporated in to the licence:

The maximum occupancy for the rooms does not apply when the rooms are occupied by registered temporary hotel guests with another main resident address, as documented on the hotel register.

29. Very little evidence was given by the Applicant to encourage the Tribunal to change the licence holder to the second Respondent. The Tribunal notes that it may cause the second Respondent problems if the Applicant were to leave their employment however the Tribunal notes that the Applicant is a Director of the second Respondent, the Clarence Hotel Limited, so is more than just a mere employee. The first Respondent has submitted that the sole shareholder of the second Respondent, Warjinder Khamba, had already failed a Fit and Proper person test. The Tribunal would therefore need compelling evidence to direct that the first Respondent change the licence holder to the Clarence Hotel Limited, the second Respondent and as none has been presented, declines to do so.

Appeal

30. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

V Ward