FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CE/HML/2019/0002**
Property	**:**	**13 Watch House Lane, Doncaster DN5 9LZ**
Appellant	**:**	**Mr Mark Nicholls**
Respondent Council	**:**	**Doncaster Metropolitan Borough**
Type of Application	**:**	**Housing Act 2004 – Schedule 5, Paragraph 31(1) –**
Tribunal Members	**:**	**Tribunal Judge Phillip Barber** **Mrs S.A. Kendall MRICS**
Date of Decision	**:**	**29 November 2019**
Date of Determination	**:**	**23 December 2019**

DECISION AND REASONS

Decision

1. The Tribunal confirms the refusal to grant a HMO licence served by the Local Authority Respondent dated 01 February 2019 in relation to rooms 2, 3 and 4 at 13 Watch House Lane, Doncaster DN5 9LZ.

2. We are satisfied, on the basis of our own judgement and following an inspection of the property and the rooms and after hearing arguments on behalf of the parties that each of the rooms is simply too small to allow adequate living space for all reasonable functions of daily life to be carried out in them and in our estimation the Respondent was entirely justified in refusing to grant a HMO licence for each of the rooms.

Factual Background

3. The Appellant, together with Vanessa Henry, owns 13 Watch House Lane, Doncaster, DN5 9LZ (the "property") which he wants to let to 5 tenants as a house in multiple occupation.

4. On the 28 September 2018 the Appellant made a mandatory application for a HMO licence to the Respondent as set out in pages 69 through to 89 of the bundle. At the time of the application there were 4 occupants, but it was proposed to increase this to 5. It was proposed that all 5 occupants would have their own bedroom/living space together with an en-suite bathroom for each 5 occupants. They would share one kitchen.

5. Following various inspections of the property and discussion with the Appellant, the Respondent sent a notification to the Appellant, dated 28 November 2018, that it proposed to refuse to grant a licence. The reasons for the proposed refusal were that the bedroom located on the first floor (Room 4) does not meet "the legal minimum sleeping room size of 6.51m2" and that the rooms on the ground floor (Rooms 2 and Room 3) "are not of sufficient size to allow for all expected functions to be carried out within them. There is no other available shared or communal space within the property to compensate for the size of these rooms."

6. Following further negotiations between the Appellant, his agents and the Respondents as to how the property might be adapted to house 5 distinct households, a further proposal to refuse the application was sent on the 20 December 2018 when it was noticed that room 4 was slightly larger than first thought, and in excess of 6.51m2. However, the Respondent was still of the view that all the rooms (2, 3 and 4) were "not of sufficient size to allow for all expected functions to be carried out within them…etc" [see above paragraph 5].

7. Yet more negotiations ensued but on the 01 February 2019, the Respondent refused to grant a licence to allow the property to be used as a HMO for the reasons set out above.

8. On the 04 March 2019, the Appellant applied to the Tribunal appealing the decision of the Respondent. That application is at pages 245 through to 260 of the bundle. The grounds of the appeal are set out on pages 252 through to 255 of the bundle but ostensibly, the Appellant seeks to challenge the decision on the basis of Doncaster Council's Housing Strategy 2015-2025 to increase the amount of single person and shared units (which the property does by 1 unit); that the furniture and amenities stipulated by the Respondent in their refusal letter are not necessary (for example an armchair and two dining chairs are mentioned) and that as a result the refusal does not stand up to "either subjective or objective analysis".

9. A Case Management Conference was subsequently held in relation to the issues in this appeal and one procedural requirement, relating to the date in the refusal notice, but nothing turns on this. The parties agreed that the appeal was effective and that no procedural issues should impede its progress.

The Legislative Background

10. Section 61 of the Housing Act 2004 (the "Act") provides that every HMO to which the Act applies must be licenced and a licence authorises the "Maximum number of households or persons specified in the licence."

11. Section 65 provides that:

> (1) The local housing authority cannot be satisfied for the purposes of section 64(3)(a) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.
>
> (2) But the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.
>
> (3) In this section "prescribed standards" means standards prescribed by regulations made by the appropriate national authority.
>
> (4) The standards that may be so prescribed include–
>
> (a) standards as to the number, type and quality of–
>
> (i) bathrooms, toilets, washbasins and showers,

(ii) areas for food storage, preparation and cooking, and

(iii) laundry facilities,

which should be available in particular circumstances; and

(b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.

12. Schedule 5 to the Act sets out the procedural requirements and appeal process and paragraph 34 of schedule 5 provides that an appeal is by way of a re-hearing but can have regard to matter which were not before the authority. The Tribunal can "confirm, reverse or vary the decision" of the authority and any grant of a licence can be on "such terms as the tribunal may direct".

13. We accordingly undertook a re-hearing of the application and our assessment of the space available for life to be carried out in the property was considered in the light of the guidance of the Upper Tribunal in *Dhugal Clark v Manchester City Council* [2015] UKUT 0129, in that whilst we took into consideration the views of the Respondent by reference to their published criteria we made our own assessment of the issues in this appeal by reference to the characteristics of the property; the size and layout of each of the rooms and the amenities available in the property as a whole.

The Inspection

14. The Tribunal inspected the property on the morning of the 29 November 2019 in the company of the parties. We had the opportunity to enter in to common entrance hallway; the kitchen; bedroom 2 on the ground floor and bedrooms 3, 4 and 5 on the first floor. We also inspected the rear yard of the property. Each of the rooms had space for a single bed; a wardrobe and a chest of drawers (although there was some discussion about fitting other items of furniture in, and including an "ottoman" style bed which could be lifted for additional storage space, and moving a radiator to give space for a chair). Each of the rooms had en-suite facilities – a shower, washbasin and toilet – and the kitchen was shared. The property is a mid-terrace house with two storeys with a small space to the front of the property and a rear yard where the bins were stored. Each of the rooms had a double-glazed window providing adequate light and ventilation. At the inspection we were provided with up to date plan showing the measurements for the room dimensions, which was agreed between the parties indicating that bedroom 2 is 6.91m2; bedroom 3 is 6.88m2 and bedroom 4 is 7.72m2. The kitchen is 9.42m2 and provided all of the necessary amenities for the cooking and storage of food but nowhere to eat food (to this end the plan also indicated where a "breakfast bar" might be located in the kitchen, but this would require some adaptations to the layout and location of an internal door.

The Appeal Hearing

15. We held an oral hearing of the appeal at Doncaster Crown Court on the afternoon of the 29 November 2019 where Miss Lee and Mr Williams (Chartered Environmental Health Officers), former and current employees of Doncaster Council appeared on behalf of the Respondent and Mr Nicholls appeared in person. The Respondent had prepared a bundle of documents for the hearing and Mr Nicholls submitted additional documents relating to a survey he had carried out amongst tenants in the Doncaster area asking them about what items of furniture they think they would like in their bedrooms and where they liked to sit and watch TV, amongst other things.

16. The Respondent replied on its HMO standards document, dated 2015, together with a HHSRS inspection as the basis for its decision to refuse to grant a licence and in particular the HMO standard for a bedsit with shared kitchen facilities provides for a minimum room size of 10.2m2 for a room for one person where there is no separate living room or living area in the shared kitchen; otherwise (where there is a shared living area) a minimum size of 6.5m2 (hence the view of the Respondent that the property is suitable for occupation by a maximum of 4 persons).

17. The Appellant had previously questioned the alteration in HMO standards from a previous 2007 version, which was produced for the hearing, but it transpired that the room size had not varied since that date. Accordingly, there was nothing of relevance in this objection.

18. The Respondent also referred to its HHSRS inspection reports indicating that each of the rooms in question gave rise to band E hazards (2 rooms with a hazard score of 349) and band F (one room with a hazard score of 199) when hazard type 11: Crowding and Space is considered. In relation to rooms 2 and 3, the Respondent had assessed the range of likelihood at representative scale point 1 in 320; and for room 4, at 1 in 560 by reference to hazard type 11: i.e. psychological distress; mental disorder and the other health effects mentioned in the HHSRS (page 92 of the scheme) and outcomes as spread across the range of classes of harm (I, II, III and IV) are assessed at 10%, 4.6%, 21.5% and 63.8% in relation to each of the rooms. Accordingly, the difference in the score as between rooms 2 and 3 and room 4 relates to the initial assessment of likelihood. We also noted that the Respondent considered the nearest Bristol Worked Example when making its judgment as to the category of hazard (crowding and space) – although as was pointed out at the hearing, the Example is not entirely on point – not relating specifically to a HMO.

19. Mr Nicholls did not seek to challenge the assessment in any meaningful way and in any event, it would probably have required independent expert evidence as to the judgment of the Respondent's EHO in calculating risk.

20. We were satisfied that the Respondent's calculation that the rooms constitute bands E and F to be supported by reference to appropriate judgement and can be relied upon. We note that whilst they do not fall into bands A-C (i.e. the most serious hazards in relation to which a local authority must take action) they do fall within a banding which enables a local authority to take action if thought appropriate. It follows, that we were satisfied that these rooms constitute a hazard to health by reference to the HHSRS.

21. Mr Nicholls challenge to the Respondent's stance in relation to each of the rooms was in the main by reference to his insistence that the rooms were not too small. He referred us to the "Housing Quality Indication" document, which, he states makes no reference to HMOs or bedsitting rooms and that nowhere does it stipulate that en-suite facilities cannot be taken into account when assessing space. He referred the Tribunal to a document produced by the Northern Ireland Housing Executive with an extract from page 293 referring to the type of furniture an occupant might reasonably require and attempted to demonstrate that each of these rooms were big enough to accommodate sufficient furniture and living space. He then referred us to his survey of tenants in which various questions were asked of other tenants in other properties about what furniture they require and where they liked to relax. He told us that of 190 questionnaires sent to occupants, 24 replied – his argument being that the list of furniture stipulated by the Respondent is not actually what tenants want. He then referred to the cost to him as a landlord in running the HMO and that unless they have 5 tenants, then the property is not financially viable.

22. We were not persuaded by any of the Appellant's arguments. Firstly, we thought that the Respondent had properly assessed whether to grant a licence by reference to its published criteria for housing standards in relation to HMOs which we found to be reasonable and appropriate by reference to the type of amenities an occupant might reasonably require; secondly, we could see little relevance to standards in other parts of the UK: each local housing authority sets its standards by reference to the housing conditions in its locality and as mentioned, the standards set by Doncaster are reasonable, in our view. Thirdly, we place no reliance upon what other tenants in other properties deem to be necessary. We note that the response was small; that the questions were vague; we had no idea about what each of the tenants already had in their rooms or what other facilities might be available and what a tenant might think they want is not really the issue – it is what is deemed reasonable for a decent standard of living and the avoidance of a hazard, which is relevant.

Our Findings of Fact

23. Accordingly, we were satisfied that each of the rooms was not of sufficient size to allow for all expected functions to be carried out within them. There is no other available shared or communal space within the property to compensate for the size of these rooms. We found as fact that each of the rooms was less than 10.2m2, a size which we thought might allow for adequate life to be undertaken and for appropriate furniture to be situated. In relation to each of the rooms, they were, by any stretch of the imagination small. In our view, too small for one individual to occupy when the facilities in the rest of the house are considered.

24. The rooms were designated for each occupant to sleep, study, relax, eat, dress and undress, entertain guests and carry out all other activities of daily life with the exception of cooking. In our view, there was no room in each of the rooms for people to share a meal; there was no space for a table to eat at; there was no space for an easy chair in which to sit; very limited space for the storage of personal items (clothes, books, music, etc.). There was no space in which to exercise and move around; dry clothing; store outdoor coats and such-like. In our view, and we find as fact accordingly, there was no space for any furniture other than a bed and a wardrobe in each of the rooms and this is simply inadequate for the purpose of carrying on daily life to a minimum standard.

25. We thought that there would indeed be an increased risk to the mental health of any person required to occupy this room and using our own judgement we thought that an individual living in any of the rooms might readily succumb to symptoms of depression and anxiety by reference to the HHSRS.

26. In short, we found as fact that each of the rooms in question were simply too small to constitute appropriate living space for a single person to occupy, even with shared cooking facilities.

Costs

27. Neither party made any application for costs and we make no order as to costs.

Signed Mr P Barber Tribunal Judge

Date: 23 December 2019