

**SOUTHERN RENT ASSESSMENT PANEL
RESIDENTIAL PROPERTY TRIBUNAL**

Case Number: CHI/18UC/HML/2006/0001

Re: 13 Union Road, Pennsylvania, Exeter.

Between:

Mrs Judith Greenman

Applicant

and

Exeter City Council

Respondent

Hearing: 22nd February 2007

Appearances:

Mr Adrian Thompson for Mrs Greenman. Mrs Greenman

Mr James Bax of Counsel for Exeter City Council, Ms Baan al-Khafaji, Mr Keith Williams and Mr Jamie Turner

Decision of the Tribunal with Reasons

Issued: 5th March 2007

Tribunal

Mr R P Long LLB (Hons)
Mr T N Shobrook FRICS
Ms K Firth-Butterfield BA (Hons)

Decision

1. In accordance with the powers conferred upon it by the provisions of Part 3 of Schedule 5 of the Housing Act 2004 ("the Act") the Tribunal directs, for the reasons set out below, that the licence granted to the Applicant by the Respondent in respect of the property at 13 Union Road, Pennsylvania Exeter ("the Property") dated 11th August 2006 ("the licence") shall be varied by substituting for the conditions presently attached to it the revised conditions attached to this decision and initialled by me. Those conditions are in the revised form submitted by the Respondent at the hearing as amended only by the amendment of the reference to a "combination microwave oven" in sub paragraph 1 (k) of the discretionary conditions so that it refers only to a "microwave oven".

Reasons

Inspection

2. The Tribunal inspected the Property immediately before the hearing on 22nd February 2006 in the presence of all those who attended that hearing. It is a brick built terraced house consisting of four stories that appears to have been built in the later part of the nineteenth century. Each of the three upper storeys includes two bed sitting rooms accessed from a common staircase, and there are bathroom or shower rooms on the ground and first floors. In the basement there is a large kitchen, a communal sitting room and a toilet with hand basin, together with a washing machine that is located in a cupboard next to the toilet. The Tribunal was informed that one student occupies each bed sitting room – a total of six occupants of the house in all. The bathroom, kitchen and toilet facilities are shared. The Tribunal is informed that the bed sitting rooms do not contain any facilities for the cooking of food. The parties accept that the Property constitutes a house in multiple occupation ("HMO") that is licensable in accordance with the terms of Part 2 of the Act.
3. The issues in the present case concern the provision of kitchen facilities. The Tribunal saw a large kitchen with lengthy Formica worktops. It is large enough to accommodate a dining table able to accommodate six people. Above and below the worktops are a number of cupboards and there is no issue about the sufficiency either of the worktops or of the cupboards. Set into the base units is a four ring electric cooker with a grill and oven beneath it. There is a large sink with a single draining board and a separate hot water heater above it to serve it. Two refrigerators (one with a freezer section) are provided and the residents have provided a third of their own. On the opposite wall from the cooker is a microwave oven. The kitchen units and fittings all appear to be quite modern.

The Law

4. Section 67 of the Act deals with the ability of a licensing authority to impose conditions on the grant of an HMO licence under Part 2 of the Act. Subsections 5 and 6 of that section are not relevant to the issues before the

Tribunal, but the first two and the fourth subsection are relevant to the present case, and they read:

- “(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following -
 - (a) the management use and occupation of the house concerned, and
 - (b) its condition and contents.
- (2) Those conditions may in particular include (so far as appropriate in the circumstances) –
 - (a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
 - (b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti social behaviour by persons occupying or visiting the house;
 - (c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;
 - (d) conditions requiring such facilities and equipment to be kept in repair and proper working order;
 - (e) conditions requiring, in the case of any works needed in order for any such facilities and equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;
 - (f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.
- (4) As regards the relationship between the authority’s power to impose conditions under this section and powers exercisable by them under Part 1 (“Part 1 functions”) –
 - (a) the authority must proceed on the basis that in general they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;
 - (b) this does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection 2(c) above, even if the same result could be achieved by the exercise of Part 1 functions;
 - (c) the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can subsequently be exercised by the authority.”

5. The law relating to the prescribed standards for deciding the suitability of an HMO by a particular maximum number of households or persons is, so far as it relates to kitchens, set out in paragraph 3 of Schedule 3 of The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) (“the Regulations”). That schedule is given effect by regulation 8 of the Regulations, and the Regulations are in turn made pursuant to numerous authorities for the purpose contained in the Act that are cited in the preamble to the Regulations, section 65(3) being particularly relevant in the present case.

6. Paragraph 3 of Schedule 3 reads:

Where all or some of the units of accommodation within the HMO do not contain any facilities for the cooking of food-

- (a) there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store prepare and cook food;
- (b) the kitchen must be equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities –
 - (i) sinks with draining boards;
 - (ii) an adequate supply of cold and constant hot water to each sink supplied;
 - (iii) installations or equipment for the cooking of food;
 - (iv) electrical sockets;
 - (v) worktops for the preparation of food;
 - (vi) cupboards for the storage of food or kitchen and cooking utensils;
 - (vii) refrigerators with an adequate freezing compartment (or, where the freezer compartment is not adequate, separate freezers);
 - (viii) appropriate refuse disposal facilities; and
 - (ix) appropriate extractor fans, fire blankets and doors.

7. The Tribunal’s jurisdiction to hear appeals against conditions imposed upon HMO licences is to be found in Part 3 of Schedule 5 of the Act. Its power to vary a licence is contained in paragraph 34(3) of that Schedule.

Hearing

8. The hearing was conducted, with the agreement of the parties, upon the basis that the Respondent set out its position first in order that the Applicant might then indicate precisely what parts of the licence were contested and why that was. It followed of course that appropriate opportunity for response would be required. The issues before the Tribunal were identified as two in all, namely:

- a. whether the Respondent could lawfully require the Applicant to provide, in addition to the present sink, either a further sink and draining board or a dishwashing machine, and
 - b. whether the Respondent could lawfully require the Applicant to provide, in place of the present microwave cooker, a combination microwave cooker, that is to say such a cooker incorporating a grill
9. The Tribunal was provided with the witness statements of Mr Williams, a principal environmental officer with the Respondent, and Mr Turner, a senior environmental health technician with the Respondent. Mr Williams outlined the considerations arising from the Council's experience of standards for properties like the Property that had been developed from guidance given in 1992 in relation to the requirements contained in the Housing Act 1985. Their experience in operating that legislation had led them to a position where by in houses accommodating six or seven persons who shared kitchen facilities, they required the provision of either two sinks with draining boards, or one sink with draining board and a dishwasher. Similarly they required either a combination microwave cooker and grill or a two-ring cooker and oven in addition to the main four-ring cooker in the same circumstances. These were published requirements, and were applied as conditions in the case of HMO licences of properties having that level of occupation.
10. Mr Williams added that in the Respondent's opinion the requirements specified in Schedule 3 of The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) ("the Regulations") were a minimum, and it was permissible for local authorities to specify ratios. He produced a copy of a circular letter of guidance from the then Office of the Deputy Prime Minister dated 7th April 2006 in which it was stated that "The Act enables Local Authorities to set locally prescribed standards provided that they do not fall below any set nationally. The principal enforcement route is via the licensing regime which provides the flexibility to take a proportionate approach in raising standards".
11. The Respondent's approach was that for a HMO with less than eight occupants a lesser requirement than a second full set of kitchen facilities was appropriate, and the reduced standard that it had produced was proportionate. The same standard was adopted in Birmingham and Newcastle, as well as by all of the local authorities in Devon. The requirements that the Respondent had published for HMO's with six or seven a occupants were proportionate, although he accepted that it would have been clearer to indicate which were mandatory and which were discretionary conditions, and that reasons should be given for imposing conditions. The revised form of conditions that he produced marked "KW3" were more appropriate than those attached to the licence at present and he invited the Tribunal to vary that licence by substituting them for those presently attached.
12. In this case, the practicalities of six people trying to cook and clear up after meals in one kitchen at much the same time with only one cooker and only

one sink led to hazards of congestion and accidents in the vicinity of the cooker at a time when hot pans and other utensils were being carried, as well as scope for arguments. From a health point of view the use of only one sink for preparation, for draining and for washing up led to a danger of cross contamination of food.

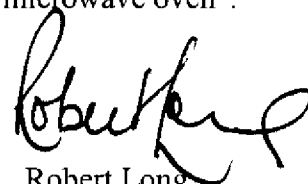
13. Mr Turner said that the Respondent had presently licensed some 800 HMO's. He had personally inspected the Property in January 2006 when invited to do so by the Applicant, and had advised her verbally at that time of what the Respondent would require. He had subsequently confirmed that advice in writing and correspondence had followed. Eventually the licence the subject of these proceedings had been issued to the Applicant. In his opinion the kitchen was large enough to accommodate a dishwasher and combination microwave oven without any alterations. Apart from the matters in dispute the Property otherwise met the Council's requirements.
14. Mr Bax outlined the Respondent's approach to the requirements of the Act and described how they had grown from its experience in dealing with the Housing Act 1985. He said that section 67 of the Act provided the Respondent with wide authority to deal with licensing conditions, and that section 65(2) of the Act permits the respondent to decide that even if the standards in Schedule 3 of the Regulations are met the Property may still not be of the required standard. Schedule 3 did not provide a tangible standard of the number of facilities to be provided. That aspect was to be determined by what was considered adequate, and the Respondent considered that what was adequate was what was contained in its published standards, and incorporated in this licence.
15. Practicality dictated that what the Respondent expected as a minimum standard should be extended to all licensees so that they would know what was expected of them. The requirements in this instance were not expensive to implement or onerous. There had to be a numerical cut off point in such standards, and in this case the Respondent had set that at what it considered appropriate for six or seven occupiers. The Respondent had worked hard to maintain standards in the City and it would be inappropriate in the case of legislation intended further to improve the housing stock to resile from those standards. Its policy was reasonable, although it would be appropriate to substitute the new draft conditions mentioned by Mr Williams for the existing ones.
16. On behalf of the Applicant Mr Thompson said that his client had no objection to the revised conditions put forward by Mr Williams except so far as they referred to the two items in dispute. As the fact that the Respondent published 'blanket' conditions he said that section 67 allowed a local authority to impose conditions only on an individual basis. The wording used there and in Schedule 3 of the Regulations implied such an individual basis. The 1992 guidance that the Respondent had mentioned was now out of date following the new Act. The fact that Schedule 3 of the regulations reduced certain requirements for bathrooms and toilet facilities indicated that had Parliament wished to make numerical provision in respect of kitchen equipment it could

and would have done so. Instead it had left assessment of the matter to local authorities on an individual, not a 'blanket' basis.

17. A commonsense approach should be taken when establishing what were facilities 'to adequately enable those sharing the facilities to store, prepare, and cook food'. The expression adequately meant what it said; it did not import any suggestion that the work could be done "easily" or "wonderfully". The appliances in the Property met that definition in his submission. There had been no complaint from any of the occupiers about them or their adequacy. To adopt the additional items that the Respondent required would cause the Applicant unnecessary expense. The kitchen as it stood with its present facilities was adequate, and there was nothing to indicate that it would operate any differently whether the Property had five or six occupants. To ask for more was unreasonable.
18. The Tribunal first considered the effect of section 67 of the Act. Section 67(1)(a) refers to "the management use and occupation of the house concerned". In the Tribunal's judgement these words require it to address itself to what is objectively required to satisfy the requirements of section 67 and of Schedule 3 of the Regulations at the Property. Those are the statutory standards, and there is nothing in the Act or the Regulations to which the Tribunal's attention has been drawn to suggest that further regulations having the same force may be drawn up by a local authority. In that sense the Act and the Regulations do not appear to bear out the suggestion in the letter from the Office of the Deputy Prime Minister mentioned in paragraph 10 above that local authorities have power to make additional regulations.
19. There is nonetheless no doubt that it is open to local authorities to do as they have done here, and to set indicative standards in their areas that they would expect to be followed. No doubt those standards may then properly apply to the majority, and possibly the great majority, of the properties that come before them for licensing purposes if they are as sensibly drawn as the standards under particular discussion in this case appear to be.
20. When a Tribunal then comes to consider an appeal of this sort (and these are early days in the operation of this legislation) it appears to this Tribunal that it must examine the matter against the express statutory conditions rather than any others. It will properly bear in mind the local requirements, and the reasoning and objectives that lie behind them, but its task is to apply the statutory framework. In very many cases it is likely that there will be no conflict between the statutory and the local requirements, but where that occurs the effect of the wording quoted from section 67 drives it to an objective assessment of what the statutory framework requires in the individual HMO in question.
21. Hence in the present case the Tribunal first considered the need for a second sink or a dishwasher. It is satisfied that there is such a need. The layout of the kitchen in question is such that the sink is fairly close to the cooker. At times when meals are prepared it is likely that several of the occupiers will seek access to those facilities at more or less the same time. They will require the

sink variously for purposes of food preparation, draining and washing up. Hot pans and other cooking vessels may have to be carried from the cooker to the sink. There are clear potential hazards of collision and scalding in such a scenario, as well as potential hazards of contamination, so that the reduction of the number of people operating at more or less the same time in that relatively small area is of considerable importance.

22. For that reason, the Tribunal is satisfied that the provision of a dishwasher, preferably located as far as may conveniently be from the area around the cooker and the present sink, will assist materially in reducing the potential crowding in the area of the sink and the cooker in this kitchen, and that such a provision is reasonably required to enable those sharing the facilities in this kitchen adequately to prepare and cook food. That view reflects too the requirements of section 67(4) of the Act concerning the approach to hazards.
23. The Tribunal is satisfied too that the same objectives could alternatively be achieved by the provision of a further sink and drainer instead of a dishwasher as the Respondent suggests if that is practical.
24. In the present case there is a modern microwave cooker of reasonable size located on the far side of the room at some distance from the cooker and the sink. In the Tribunal's judgement it plainly achieves the objectives described at paragraph 22 above and, seeking to apply common sense to the matter as the parties variously urged the tribunal to do, it concludes that nothing very material would be achieved in this particular case by changing the oven presently in the kitchen for a combination microwave oven.
25. The tribunal accepts that the revised form of conditions exhibited by Mr Williams at pages 104-106 of the Respondent's bundle is an improvement upon those originally attached to the licence, and that the licence should (subject to the revision mentioned in the following paragraph) be varied so that those conditions are attached to it in place of those originally attached.
26. Consequently the Tribunal determines that the licence shall be varied by substituting for the conditions in the form presently attached to it the revised copy of the conditions attached to this decision as amended in manuscript and initialled by me. Those amended conditions are in the revised form submitted by the Respondent at the hearing as amended only by the amendment of the reference to a "combination microwave oven" in sub paragraph 1 (k) of the discretionary conditions so that it refers only to a "microwave oven".


Robert Long
Chairman



**SOUTHERN RENT ASSESSMENT PANEL
RESIDENTIAL PROPERTY TRIBUNAL**

Case Number: CHI/18UC/HML/2006/0001

Re 13 Union Road Exeter EX5 6HY

**Revised Conditions to be applied to the Premises Licence for 13 Union Road,
Exeter, EX4 6HY as amended by the Tribunal (see deletion in paragraph 1(k))**

**Conditions to be applied to the Premises Licence for 13 Union Road,
Exeter, EX4 6HY ("the Premises")**

Mandatory Conditions:

1. Where gas is supplied to the Premises the licence holder must provide Exeter City Council with a copy a gas safety certificate obtained in respect of the Premises within the last 12 months, on an annual basis.

Reason: Mandatory condition required by Schedule 4 of the Housing Act 2004.

2. The licence holder must keep electrical appliances and furniture made available by her in the house in a safe condition, and supply to Exeter City Council, on demand, a declaration by him as to the safety of such appliances and furniture.

Reason: Mandatory condition required by Schedule 4 of the Housing Act 2004.

3. The licence holder must ensure that smoke alarms are installed in the Premises and are kept in proper working order. The licence holder must supply Exeter City Council, on demand, with a declaration by her as to the condition and positioning of such alarms.

Reason: Mandatory condition required by Schedule 4 of the Housing Act 2004.

4. The licence holder must supply the occupiers of the Premises with a written statement of the terms on which they occupy the Premises.

Reason: Mandatory condition required by Schedule 4 of the Housing Act 2004.

Discretionary Conditions imposed by Exeter City Council:

The Premises must fully comply with the conditions 1 – 6 set out below by 11th August 2009 with the exception of condition 3b set out below which must be complied with by the 1st April 2007:

1. **Kitchen Facilities**

The license holder shall provide and maintain the following kitchen facilities at all times:-

- (a) All kitchens must be provided with a fire blanket and fire resistant FD30(s) door.
- (b) A four-ring cooker complete with oven and grill
- (c) A suitable and impervious sink and draining board complete with a constant supply of hot and cold water.



- (d) A minimum of 1 metre of worktop (600mm deep). All worktops fitted shall be provided with a minimum of two rows of ceramic tiles above the worktop to be used as a splashback.
- (e) 2 x double 13 amp electric sockets over the worktop.
- (f) A refrigerator or refrigerators of adequate size for the number of occupants using the facilities.
- (g) Suitable and sufficient food storage cupboards for the number of occupants using the facilities. All floors walls and ceilings shall be capable of being effectively cleaned.
- (h) One Kettle
- (i) Refuse disposal facilities

In addition to the first complete set of kitchen facilities set out in condition 5(1)(a) - (e) above, the license holder must provide either a second complete set of kitchen facilities or:-

- (j) A properly fitted and plumbed dishwasher (in lieu of the second sink).
- (k) A ~~combination~~ microwave oven or a 2 ring cooker oven and grill (in lieu of a second 4 ring cooker).
- (l) An additional 0.5 metres of worktop.
- (m) An additional double 13 amp electric socket.

Note: The cooking facilities must be so located as to allow safe use of those facilities particularly with respect to the cooker that should not be located near door openings to minimize the risk of collision with people working at the cooker. The cooker should also be so located in relation to the sink to minimize the risk of collision and spillage when transferring hot materials between cooker and sink.

Reason: To ensure that the property complies with the minimum standards adopted by Exeter City Council for Houses in Multiple Occupation.

2 Personal Washing and Toilet Facilities

The license holder shall provide a constant supply of hot and cold water to all wash hand basins in the Premises.

Reason - To ensure that the property complies with the minimum standards adopted by Exeter City Council for Houses in Multiple Occupation.

3 Fire Precautions

The license holder shall:-

- (a) Maintain the fire precautions provided to the Premises, namely fire doors, automatic fire alarm system and emergency lighting in full working order at all times.



- (b) Provide spare door keys, contained within a break glass box, securely fixed to the wall adjacent to the basement front and rear entrance doors for use in cases of emergency.

Reason: To safeguard the health, safety and wellbeing of the tenants in the event of fire.

4. The licence holder shall have a management system in place for tenants to report defects and emergencies, and arrangements to respond to those reports.

Reason: To ensure that tenants' complaints are addressed.

5. The licence holder shall take reasonable to deal with any complaints of anti social behaviour taking place in the Premises as a result of the actions of residents or their visitors.

Reason: To safeguard the wellbeing of residents of the licensed property and local residents.

6. The licence holder must have arrangements in place for periodic inspections of the Premises to identify where repair or maintenance is needed, and arrangements to carry out essential repairs and maintenance.

Reason: To ensure that the condition of the licensed property is maintained.

Note: The licence holder has a duty to ensure compliance with the Management of HMOs (England) Regulations 2006 [ISBN 0-11-074074-2]

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