Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SECTION 71 AND PART 3 OF SCHEDULE 5 TO THE HOUSING ACT 2004

Ref: LON/OOAH/HMV/2010/0002

Property: **56 South Park Hill Road**
South Croydon
Surrey
CR2 7DW

Appellant: **Mr Jason St Romaine**

Respondent: **London Borough of Croydon**

Attending: **Mr St Romaine**
Ms S Clarke (House Manager)
(for Appellant)

Mrs Carol Bennett (Case Officer)
Ms Carole Woolnough (HMO Team Leader)
(for Respondent)

Hearing: **3 June 2010**

Tribunal: **Mrs V T Barran**
Ms Sue Coughlin MCIEH
Mr David Wills ACIB

Decision

1.1 The Tribunal **confirms** the decision of the London Borough of Croydon to grant a licence to Mr Jason St Romaine to operate 56 South Park Hill Road, Croydon, Surrey CR2 7DW as a House in Multiple Occupation for a period of 5 years from 21 December 2009.

1.2 The Tribunal directs Croydon to vary one term of the licence contained in Condition 7. Mr St Romaine shall be required to provide **one** additional set of kitchen facilities in a suitable room **on either the first or second floor** of the property. Details of the required facilities remain as set out in Condition 7.

1.3 The Tribunal further directs Croydon to vary the licence so that Mr St Romaine shall provide the additional kitchen facilities within **twelve months** of the date of this decision.

REASONS FOR THE DECISION

Background

2.1 The Residential Property Tribunal is dealing with an appeal from Mr Jason St Romaine, who owns the freehold of 56 South Park Hill Road, South Croydon, Surrey CR2 7DW (the property).

2.2 On 21 December 2009 Croydon granted Mr St Romaine a licence for the property as a House in Multiple Occupation (HMO) subject to various conditions. Mr St Romaine appeals to this Tribunal against two of those conditions namely:

> (1) that the maximum number of people allowed to occupy the property should be 16 and
> (7) that he should provide two sets of additional kitchen facilities in a room suitable for the purpose. [See Croydon Bundle page 45 for detail].

2.3 The Residential Property Tribunal accepted the appeal despite the fact that it was slightly late and issued directions dated 26 February 2010.

2.4 By letter dated 23 February 2010 Croydon reduced condition (7) to one additional set of kitchen facilities, to be provided on the first or second floor of the property.

2.5 It is common ground that the property is an HMO that requires to be licensed.

The Law

2.6 The power of a local housing authority to grant a licence is contained in section 64 of the Housing Act 2004. By section 64(4) the LHA may decide the maximum number of households or persons for which the house is reasonably suitable for occupation.

2.7 By section 67
"(1) a licence may include such conditions as the local housing authority consider appropriate for regulation all or any of the following:
(a) The management use and occupation of the house concerned, and
(b) Its condition and contents"

2.8 Schedule 3 to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 sets out the prescribed standard for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons. The standards with regard to kitchens where, as in this property, the units of accommodation do not contain cooking facilities are:

Kitchens

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 freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers);*
> >
> > *(viii) appropriate refuse disposal facilities; and*
> >
> > *(ix) appropriate extractor fans, fire blankets and fire doors.*

2.9 Schedule 5 (Part 1) to the Act sets out the procedure under which the LHA can grant or refuse licences. The procedure for appeals against licence decisions is set out in Part 3 to Schedule 5 to the Act. The powers of the Residential Property Tribunal hearing the appeal are found in paragraph 34:

> *(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.*

Facts found on Inspection

3.1 We inspected the property in presence of the House Manager, Ms S Clarke in the morning prior to the hearing. The property is a three storey detached double fronted Victorian house which has been extended at the rear at both ground and first floor levels. The house is constructed with plain faced solid brick walls. The original roof has been recovered with concrete interlocking tiles. Windows are PVCU. The extension is of modern cavity brick construction. The house is well maintained both internally and externally and finished internally to a high standard.

3.2 The house comprises;

A laundry room containing 3 large freezers, and a boiler room in the cellar
7 lettings, kitchen/dining room, living room, bathroom and shower room on the ground floor
6 lettings, 2 shower rooms and a separate water closet on the first floor,
4 lettings and shower room on the second floor.

3.3 There were no tenants in the house at the time of our visit and we therefore looked at only one room (no 8 on the first floor) which was currently unoccupied. The room contained a bed and double wardrobe.

3.4 The kitchen/dining room is located in the ground floor extension. The room has no windows. Natural lighting is provided by skylights. It is fitted out with a single large sink, 2 gas hobs, 2 combination microwave ovens, 2 dishwashers, and 2 tall refrigerators as well as cupboards for storage of utensils and of tenants' food supplies. There is an extractor fan above the cooking hobs. There is about 3 meters of worktop in total, located mainly along the front wall to either side of the sink. Each tenant has a marked section of storage shelf and a marked section of one of the refrigerators. Each tenant also has a marked shelf in one of the freezers in the cellar for storage of frozen food.

3.5 The room also contains a dining table and 6 chairs and is open plan with the living room at the rear of the extension.

3.6 The working part of the kitchen is arranged in an L-shape occupying the front and left hand walls of the kitchen. The layout is awkward for multiple use. The two cooking hobs are located adjacent to each other. There is an adequate area of worktop adjacent to one hob, but the other is next to a full height cupboard and the small worktop between them is not sufficient in size to allow a pan to be moved safely from the hob. The two microwave ovens are located immediately under the hobs so that it would be difficult for different tenants to use the hob and microwave at the same time. The dishwashers are located so that their doors open into the working space which would be needed to use the hob or microwave. The cupboards were all tightly packed.

The hearing

4. We would like to thank both parties for their well prepared bundles of documents. Mr St Romaine was assisted by the House Manager Ms S Clarke and Mrs Carol Bennett, Case Officer, and Ms Carole Woolnough, HMO Team Leader, attended on behalf of Croydon. At the hearing Mr St Romaine helpfully provided all with a summary of his closing statement, carefully cross referenced to the bundles. We read the bundles prior to the hearing and referred to them during and after the hearing. The summaries of the parties' cases below are of their main points only, as it is neither necessary nor desirable to repeat all the submitted evidence and representations.

Summary of the Appellant's case

5.1 Mr Romaine explained that his house is a "professional shared house not bed sits". His tenants are professional people, happy with the facilities provided and not the most "vulnerable in society". Thirteen of the tenants signed a petition and indicated that they did not want an upstairs kitchen. When property was previously registered as an HMO in 2005, Croydon had not required a second kitchen, or a reduction in the number of occupiers from 17. He could not understand why Croydon were now insisting on a second kitchen.

5.2 He considered that an extra kitchen on the first floor would increase fire risk and that cooking smells and noise would affect those sleeping in bedrooms nearby. He argued that Croydon lacked consistency in the exercise of their discretion, not only with regard to this property, but also for another property he owns in Clyde Road.

5.3 Ms Clarke explained that there are normally no more than four people in the kitchen at one time and she reiterated that having spoken to the tenants they were happy with the existing kitchen facilities.

5.4 Mr St Romaine also pointed out that the installation of the extra kitchen will be expensive for him. Not only will there be the expense of installation and disruption to all during the work, but also he would lose some £6,000 per year in rental because of loss of a room.

Summary of the Respondent's case

6.1 Ms Bennett relied on Croydon's Guidance "Houses in Multiple Occupation Standards" March 2010 version. This stated:

> "If it is a shared kitchen then each kitchen shall be shared by not more than 5 persons and shall be not more than one floor distance from any room(s) occupied by the person(s) for whom they are provided." (bundle page 116).

6.2 There are also criteria for storage, preparation and cooking food and the disposal of waste water. These standards had been revised since the licence in this case had been granted. Previous standards (2008) stated that each kitchen should be shared by no more than *four* persons, but there was the same requirement as now, that each kitchen shall be no more than one floor distant from occupied rooms.

6.3 Ms Bennett assessed that because the property is rented out to professional tenants it is likely they would want to prepare meals around the same time and the existing facilities would therefore be under strain. She considered that any fire risk from an additional kitchen would be reduced by the provision of fire doors. She relied on the witness statement of Mr Peter Gagg, a Building Surveyor employed by Croydon as to the practicalities of the installation of the second kitchen. She explained the decision of the previous inspecting officer in 2005, not to require a second kitchen as an "oversight". Clyde Road was a two storey house with 12 households and therefore provision of kitchen facilities only on the ground floor did not contravene the recommendation not to have a kitchen more than one floor distance from occupied rooms.

Decision

7.1 Under section 64 of the Housing Act 2004 Croydon clearly has discretion to decide the maximum number of households or persons for which the house is *reasonably* suitable for occupation. The regulations set out above give the detail, in particular that there should be a kitchen *suitably located in relation to the living accommodation* and of such layout and size and equipped with such facilities so as adequately to enable those sharing the facilities to store, prepare and cook food. A detailed list of equipment is prescribed.

7.2 We agree that "The property is of a very high standard and managed very well" (Croydon's words) and we are sympathetic to Mr St Romaine's view. However our primary concern must be for the health and safety of the occupants and on balance we considered that the Council had exercised their discretion in a reasonable manner. They have demonstrated that their main concern is the safety of occupiers, present and future. Under the Housing Act 2004 they must consider the needs of the most vulnerable occupiers, including possible visitors to the property.

7.3 The EHOs at Croydon have used various tools to assess suitability and we were impressed by the bench marking exercise that they had carried out with neighbouring boroughs of Merton, Sutton and Wandsworth. Ms Woolnough explained that every few months the senior Environmental Health Officers of these boroughs meet together, and it was as a result of these meetings that the standards had been revised in March 2010 (which in this case led to the concession for this property, as they relaxed the ratio for persons to kitchens from 4:1 to 5:1).

7.4 Our inspection had revealed safety issues in the existing kitchen and insufficient storage allocation for food. We agree with Croydon that there is also a safety issue where people carry hot food/drinks up and down stairs. This may not happen often in this particular house, but given the open plan lay out in the kitchen/dining room/sitting room there must be occasions when individuals eat in their own rooms. Put simply, in our expert view the present kitchen facilities are not adequate for 16 or 17 people.

7.5 Croydon had exercised their discretion flexibly in requiring three kitchen facilities for 16 occupants rather than 15 (or four kitchens for 16) and also by accepting that the present single, albeit large sink would suffice for the ground floor kitchen.

7.6 We understand Mr St Romaine's concern at having to provide a kitchen on another floor, particularly given the previous registration of the house as an HMO had not reflected in the adequacy of the kitchen arrangements. We cannot however overlook the existing inadequacies because of a previous decision that did just that. In our view Mr St Romaine could reduce the cost by locating the additional kitchen in the first floor back addition room. This room (no 7) is at the rear of the first floor adjacent to the shower rooms/toilets so would not be adjacent to any bedrooms. It is located at the rear so would be easier to install plumbing, electric cables etc. However it is for Mr St Romaine to decide which room on the first or second floor he considers most suitable and and he will have to consider which of his tenants may vacate or agree to swop rooms.

7.7 For all the reasons given above we determine that the licence should be varied to require Mr St Romaine to provide **one** additional set of kitchen facilities on either first or second floor (as conceded by Croydon). The provision of the additional kitchen will of necessity reduce the rooms available to let from 17 to 16. Condition 1 of the licence is therefore confirmed.

7.8 Mr St Romaine informed us that his tenants have assured shorthold tenancies mostly of one year or six months. We are persuaded by his argument that the installation of an additional kitchen will take time. We consider that twelve months should be sufficient time to allow him to obtain vacant possession of a suitable room *and* to carry out the works.

7.9 Therefore we determine that the licence should be further varied to allow Mr St Romaine **twelve** months from the date of this decision in which to carry out the works. It is our hope that Croydon will be reasonable if this timetable cannot strictly be adhered to, providing Mr St Romaine shows evidence of his good intention including possibly copy of notice to quit and building works specification etc.

Chairman Mrs V.T.Barran

14 June 2010