RESIDENTIAL PROPERTY TRIBUNAL

Property	:	**401 London Road, Reading RG1 3PE**
Applicant	:	**Mr. Jim Chandler**
Respondent	:	**Reading Borough Council**
Case number	:	**CAM/OOMC/HML/2007/0002**
Application	:	**Appeal against refusal of a local housing authority to grant a licence for a House in Multiple Occupation ("an HMO") i.e. the property (Sections 64, 71 and Schedule 5 of the Housing Act 2004 ("the Act"))**
Application date	:	**21st September 2007**
Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS MCI Arb Mr. Adarsh Kapur**
Venue and date of Western Appeal hearing	:	**23rd January 2008 at the Emmbrook Suite, Best Reading Moat House, Mill Lane, Sindlesham, Wokingham, Berks. RG41 5DF**

DECISION

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1. The appeal against the refusal to grant an HMO licence for 401 London Road, Reading RG1 3PE to Mr. Jim Chandler is dismissed.

Reasons

Introduction

2. This is an appeal by Mr. Jim Chandler against the decision of Reading Borough Council made on the 10th September 2007 to refuse him a

licence for an HMO in respect of the property. The decision and reasons were committed to writing in the Notice of Refusal and dated 12th September 2007. This appeal is within time. Mr. Chandler also manages 325 London Road, Reading which also is or has been an HMO.

3. For the purpose of this appeal, it is accepted by both parties that the property is an HMO within the meaning set out in Section 254 of the Act. It is a 3 storey property. The ground floor has 3 bed/sitting rooms and a kitchen; the first floor has 3 bed/sitting rooms, a WC and a bathroom. The third floor has a bed/sitting room. The bed/sitting rooms are individual units of living accommodation occupied by people as their only or main residence. They pay rent.

The Facts

4. The use of the property was also agreed as being to provide housing for homeless people and those on benefit e.g. recovering alcoholics and drug users. By definition these were often vulnerable people who were originally entitled to transitional housing benefit which was payable at an enhanced rate. This benefit was abolished in 2003 and replaced by the Supporting People regime. It seems that Mr. Chandler's properties were not used by Supporting People following an adverse inspection in March 2005.

5. Since that time, Mr. Chandler has continued to deal with similar tenants and the property has been used by a service used by the Respondent council to house rough sleepers. Thus, it seems to be accepted by both parties that Mr. Chandler's tenants are hardly likely to take care of the property. They are likely to be unpredictable and neither party would have been surprised if tenants had caused damage and disturbance. It must have come as no surprise to either party that tenants made complaints.

6. The papers submitted to the Tribunal before the hearing reveal a history going back to 1997. The witness statement of Rebecca Clements, Environmental Health Officer, records that there has been a history of action taken in respect of properties managed by Mr. Chandler going back to 1991. None of this was disputed by Mr. Chandler in his evidence despite his assertion in the written statement of case that the evidence was misleading. The history is of inspections being made and Mr. Chandler being told to effect repairs and improvements. It is clear that on some occasions such works have not been done straight away but eventually they have been done.

7. The notices related to improving fire protection and work to bathrooms and kitchens. There was one complaint of an infestation of lice and bed bugs. Most of the notices and work involved 325 London Road.

8. In her statement, Rebecca Clements summarises the position by saying "over the years Mr. Chandler had significantly improved the condition of his properties but this was largely as a direct result of notices served".

9. In its Statement of Case, the Respondent says "Environmental Health has been involved in taking action in relation to the properties owned and managed by Mr. Chandler going back more than 15 years. Whilst we recognise their much improved physical state of repair we remain concerned about Mr. Chandler's management skills."

10. In his written Statement of Case, Mr. Chandler says, in effect, that he has been a reputable landlord for over 30 years, that the people he houses have chaotic lifestyles due to substance misuse and that he is performing a valuable service. He also makes the point that if he were to put the room at the top of the house beyond use, it would not be an HMO and he would not have to go through this process. However, he wants to be 'above board'.

The Fire of 1st May 2005

11. The trigger event which caused the Respondent to refuse the licence was a conviction following a fire at 325 London Road on the 1st May 2005. Although the response to this appeal states that the Respondent's decision is 'supported by the recent history where complaints about his management have continued to be received', the notice of refusal states specifically that the conviction is the only reason for the refusal. It is significant that all the information making up the 'recent history of complaints' was known when the decision was made to refuse the licence but is not recorded as being relevant in the making of the decision. The fire and the reason for the conviction therefore need to be considered in detail.

12. In a first floor bed/sitting room, a dust protection cover had been left on the smoke detector rendering it inoperable. The fire protection system had been installed in 2004 and an Environmental Health Officer had inspected on the 13th September 2004. He pointed out the cover and Mr. Chandler was told to remove it and this was confirmed in a letter dated 24th September.

13. In a letter dated 13th October 2004 from the Respondent to Mr. Chandler it is stated that all the works to the property which the Respondent required had been completed including the fire protection work. It seems that the Respondent did not re-inspect the property and had not realised that the cover on the fire detector had not been removed.

14. The fire was reported in the Reading Evening Post on the 5th May 2005. It was said that 2 rooms were "completely gutted", but no-one seems to

have been hurt. The fire brigade are reported as suspecting that the fire was started by a cigarette.

15. The Respondent has filed a statement from Christopher Coling, Operational Sub Officer of Royal Berkshire Fire and Rescue Service dated 23rd November 2005. It says that the fire detection system had not "actuated" (Mr. Coling's word) during the fire and that the fire detection system box in the hall was open and looked likely to have been tampered with. The back-up battery had been disconnected. An inspection by officers of the Respondent after the fire revealed that the dust cover on the fire detector in the first floor bedroom was still *in situ*.

16. The Respondent also filed a witness statement from Colin Teasdale who had lived on the ground floor of 325 London Road for the previous 4 years. He says that on the day before the fire, the fire detection system box in the hall looked normal and the cover was not open. He then went on to say "my experience with Mr. Chandler is that he is not proactive but will attend to problems if it is brought to his attention".

17. Mr. Chandler attended for an interview under caution wherein he said that he had nothing to do with the fire and alleged arson and that someone else had tampered with the alarm system. In his written submissions to this Tribunal, he says that the cover was the same colour as the detector and he failed to spot that it had been left there by the electrician.

18. The Respondent then instigated a prosecution with 2 allegations under the relevant Regulations i.e. failing to ensure that the fire protection apparatus and systems were kept free from obstruction and failure to ensure that the fire protection system was kept in good repair. The second allegation was withdrawn and there was a conviction in respect of the first allegation which related to the cover on the detector. Mr. Chandler was fined £1,000 and ordered to pay £1,000 in legal costs.

The Law

19. Parts 2 and 3 of the Act deal with the licensing of HMO's. This case involves Part 2. The application for the licence was made pursuant to Section 63 and the refusal was pursuant to Section 66 i.e. it is being said that the Applicant, Mr. Chandler, is not a 'fit and proper person to be the licence holder'.

20. Section 71 and Schedule 5 deal with appeals, which are to be by way of re-hearing. This is, of course, a misnomer as there has actually been no previous hearing. What it means is that this Tribunal can consider matters *de novo* which involves considering all the evidence before it and not just that which the housing authority considered. It may even take into account evidence about which the housing authority was unaware at

the time of its decision.

21. The Tribunal may confirm, reverse or vary the decision of the housing authority. It may also direct the authority to grant a licence on such terms as the Tribunal may direct.

22. The essence of this case is whether Mr. Chandler is a fit and proper person to manage an HMO. The Respondent housing authority says that he isn't and Mr. Chandler says that he is. The only relevant statutory test is set out in Section 66 of the Act which is that, in this case, the Respondent authority:-

"(1)....must have regard (among other things) to any evidence within subsection (2) or (3)

*(2) Evidence is within this subsection if it shows that (*Mr. Chandler) *has-*

(a) and (b) (inapplicable)
(c) contravened any provision of the law relating to housing or of landlord
and tenant law; or
(d) acted otherwise than in accordance with any applicable code of practice approved under section 233"

23. Additionally, subsection 6 says that the housing authority must have regard to the considerations mentioned in subsection 6 i.e.

"(6) The considerations are-

(a) whether any person proposed to be involved in the management of
the house has a sufficient level of competence to be so involved
(b))(inapplicable)
(c) *whether any proposed management structures and funding arrangements are suitable"*

The Hearing

24. Mr. Chandler attended the hearing on his own. The Respondent was represented by counsel, Mr. John Cafferty, his instructing solicitor Mr. Atkinson and the witnesses Mr. Crosbie, Ms. Clements and Ms. Kan.

25. The housing authority called all of its witnesses and tendered them for cross examination. Mr. Chandler then gave his evidence.

26. It should be said that Mr. Chandler did complain that he had difficulty in

hearing. The witnesses therefore gave their evidence from a chair next to him. The Tribunal chair asked him on a number of occasions whether he could hear. At one point he did say that he could not hear a thing but he was interrupting the evidence and counsel's comments from time to time from which it was clear that he was able to hear what was being said. When challenged about this, Mr. Chandler then did not pursue the point any further.

27. The evidence given by the housing authority did not really add much to the facts as outlined above. However, it was said that the housing authority did take the whole history into account when making its decision and did not just rely on the conviction which was contrary to their own Notice of Refusal.

28. The following issues were raised in evidence by the housing authority which were unchallenged and are of relevance:-

(a) It was said that if a landlord was looking after vulnerable tenants, then the housing authority would expect a higher degree of "hands on" care and diligence in protecting their interests and welfare than would be expected with ordinary tenants.
(b) There are about 3,500 HMO's in the Reading area but the housing authority do not come across many landlords with tenants of this 'type'
(c) Mr. Chandler was probably no worse than other landlords with similar tenants
(d) After a complaint is received, the authority inspects the poperty and reviews matters in the light of the complaint.
(e) After a complaint has been dealt with, the file is signed off and there are then no further letters or checks relating to that problem
(f) Both of Mr. Chandler's properties have been subject to a full inspection on more occasions than most HMO's
(g) A full HHSRS check is due on the 2 properties in February 2008. There has been none so far. It was agreed that these checks would offer some protection to the tenants.
(h) It was not being suggested that the fact that the dust cover was left on the fire alarm device at 325 London Road at the time of the fire on the 1st May 2005 was in any way a cause of the fire or an exacerbating factor for the damage caused.
(i) Mr. Crosbie was asked at least twice whether the licence would have been refused if there had been no conviction. To suggest that he was being evasive is, perhaps, unfair. However, he did not really answer the question. He did say that there would have been a review board even without the conviction but he did not say why.

29. Mr. Chandler gave his evidence. He said that he has been a builder for many years. As far as the dust cover on the fire alarm was concerned he

said that he had not seen it and he had just slipped up on the paper work. However, the wires had been pulled out of the control box and the property had been set fire to on 2 occasions.

30. He gave graphic evidence of the types of tenant he has. He said that social services had asked him if he wanted a contract over 2 years ago. They had sent him 5 drug addicts to 325 London Road which surprised him. He was horrified to have drug dealers frequent the house. Then there was the fire and he didn't receive any rental income for a year afterwards.

31. Mr. Chandler said that he won't have drug addicts now. There are 300 homeless people in the area and he has approached Shelter for tenants. He did not take deposits which meant that he lost money because furniture and fixtures were often damaged at the end of the tenancy. He said that he thought he was doing a worthwhile job in housing people whom no other landlord would house.

32. In cross examination, he agreed that the information in his application to the housing authority for a licence was correct. Some of the specific questions were put to him such as whether he had a system or schedule to check electrical goods which are over 12 months' old. He confirmed that the answers he had given were correct i.e. he does not have such a system in the case of those electrical goods.

33. He did not have a manager and felt the money he received would not justify such an expense. He runs a dry cleaning business and a hair salon as well as the 2 HMO's. He visits the properties at least once a week and sometimes twice.

34. On the subject of checking the fire alarm systems, the evidence was a little vague and sometimes contradictory. At one point he said that he looks at the alarms systems every week but he doesn't check their operation. He said that there is a system of coloured lights and if they are on green, he doesn't have to do anything. If they are any other colour, he does. He then said that knows how to re-set the alarm systems. He does it with a tenant called 'Swinger' who resets the system and Mr. Chandler checks it. He has the code numbers written down.

35. He said that he did do work to the properties without prompting from the Respondent. For example, he had replaced some windows, a bathroom and a door. He had never had a fire at 401 London Road. He only charged rent of £75 per week even though he understood that his tenants received more than this as rent allowances from benefits.

36. He finished his evidence by giving a short description of how the people

he had as tenants would get no better care from anyone else because no other landlord would want them. He described how he knew of many prospective tenants or former tenants who had been out sleeping 'rough' and had died from cold. All these people wanted was warmth. The life span of the person who sleeps 'rough' is only 47 years.

Conclusions

37. The first thing to say is that Mr. Chandler struck the Tribunal as being someone who feels strongly that he is providing a service to the community. His policy of not seeking a deposit, of charging rent which is apparently less than he could and his views on the vulnerability of people who do not have a roof over their heads, was clear evidence that he does not appear to be doing this for the rental income alone.

38. The second thing to say is that the notice of refusal of the licence from the Respondent is clearly incorrect and misleading. Despite valiant attempts by counsel and the officers to argue otherwise, it is clear to this Tribunal that although the conviction may have been the 'trigger' event leading to the decision, the conviction alone was not the <u>only</u> reason for the decision which is what the notice says.

40. The task of this Tribunal is to decide whether Mr. Chandler is a fit and proper person to be a manager of an HMO. As the Tribunal has already found that the notice of refusal is defective, it has looked at matters afresh and has exercised its discretion. It has decided that Mr. Chandler is not such a fit and proper person within the confines of the statutory provisions. It's reasons include:-

(a) The conviction is clearly relevant. A dust cover on a fire detector may appear to be a small thing but the evidence is that Mr. Chandler was told about it verbally and this was confirmed in writing. The consequences of a fire detector being inoperative could have been catastrophic particularly where one knows that the type of tenant involved may not be as careful as some about putting out cigarettes etc.

(b) A supplementary reason is that, having been told about this both verbally and in writing, Mr. Chandler clearly has no system of recording and checking occasions when serious problems have been notified to him.

(c) The evidence is that although Mr. Chandler may undertake some works on his own initiative, he clearly relies on the housing authority to tell him when fire protection systems have to be upgraded. A landlord of an HMO should be aware of changes in Regulations and policy before they happen so that work is put in hand immediately.

(d) With regard to the fire detection system at 325 London Road, the evidence is that Mr. Chandler did have a system installed to comply

with the housing authority's requirements but he did not ensure that he had a full instruction manual and a system for checking that the system was working at all times. He said several times in evidence that if the housing authority had told him that he had to do this, he would have done it. However, even now, after the fire, he does not have a proper system of regularly testing the alarm system thoroughly in accordance with manufacturer's recommendations and good practice and keeping a record of when the checks take place and who undertakes them. This is not only good practice but it reassures the tenants that they have protection.

(e) It was clear from the evidence that Mr. Chandler has no management structure. He said "I have people in the properties who keep me in touch". In other words, he relies on the tenants to alert him to problems rather than make sure that he inspects thoroughly and keeps careful records of any problems so that they can be acted upon.

(f) The answers he gave to some of the questions in the written application for an HMO licence were concerning. The answers reveal that no fire risk assessment has been carried out (3.10.2);there are no notices displayed instructing occupants what to do in the event of fire (3.10.7); the hard wired electrical system has not been inspected in the last 5 years (4.1.5); there is no schedule for the testing of electrical appliances over 12 months' old (4.1.6); there is no schedule for the routine inspection of equipment/fittings (4.1.7) etc.

(g) Even though it is not really relevant to the issue in the case i.e. Mr. Chandler's general competence as a landlord of an HMO, the Tribunal does consider that the homeless and the other categories of potential tenant housed by Mr. Chandler do need more care and protection than others. For this, those tenants receive more allowances. If Mr. Chandler chooses not to collect the full amount to cover the cost of the extra care needed, that is a matter for him. However, his obvious failure to understand this general concept is relevant.

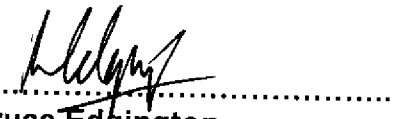
41. These matters lead this Tribunal to the view that, for the purpose, of sub-sections 66(6)(a) and (c) of the Act, Mr. Chandler does not have "*...a sufficient level of competence to be...*" involved in the management of an HMO and neither does he have aa appropriate management structure.

42. Mr. Chandler should be commended for his good intentions and for not attempting to mislead either the Respondent authority or the Tribunal. It is clear that he genuinely feels that he is providing a valuable service and that the sort of management structure, which is a matter of good practice, and the accepted standard for managing HMO's, is not necessary.

43. He may well be right in suggesting that if he doesn't offer his chosen clientele a roof over their heads, then no-one else will. However, that is not the test for either the housing authority or this Tribunal in deciding the

issues in this case. He also complains that most of the alleged defects in his abilities relate to 325 London Road which is not the subject property. However, he should understand that it is his general level of competence which is at issue here, not just his ability to manage 401 London Road. Evidence relating to the other property is relevant.

44. Equally, he may well be right in suggesting that 'good' landlords would not be interested in looking after the people he houses. Once again, however, that is not relevant to the legal issues in this case.



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Bruce Edgington
Chair
28th January 2008