LON/00AF/HML/2007/0009

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SCHEDULE 5 PART 3 OF THE HOUSING ACT 2004

Address:	Azalea House, 2 Whitmore Road, Beckenham, Kent, BR3 3NT
Applicant:	Mr M Gora
Respondent:	London Borough of Bromley
Application:	
Hearing:	21 February 2008

Appearances:

Landlord
Mr M Gora

For the Applicant

Local Authority

Ms L Tingay	Environmental Health Officer
Mr R Clegg	Environmental Health Officer
Mr C Millward	Observer

For the Respondent

Members of the Tribunal:	Mr I Mohabir LLB (Hons) Mr L Jarero BSc FRICS Mrs S Justice BSc

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AF/HML/2007/0009

IN THE MATTER OF SCHEDULE 5 PART 3 OF THE HOUSING ACT 2004

AND IN THE MATTER OF AZALEA HOUSE, 2 WHITMORE ROAD, BECKENHAM, KENT, BR3 3NT

BETWEEN:

MARK GORA

Applicant

-and-

LONDON BOROUGH OF BROMLEY

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an appeal brought by the Applicant pursuant to Schedule 5 Part 3 paragraph 31(2) of the Housing Act 2004 ("the Act") against the Respondent's refusal to remove a condition on the licence granted in respect of the subject property as a house in multiple occupation ("HMO").

2. On 11 July 2007, the Applicant applied to the Respondent to have the subject property licensed as an HMO. On 4 September 2007, Ms. Tingay, an Environmental Health Officer employed by the Respondent, visited the property to carry out an inspection. It appears that the subject property comprises two adjacent semi-detached dwellings, which have been interconnected to form one dwelling. There are 17 bedrooms, 10 of which are provided with cooking facilities, with two separate kitchens provided for

shared use by the occupants of the other seven bedrooms. Ms. Tingay states that during her inspection she noted that the fire precautions and means of escape from fire were satisfactory save that the fire doors to the bedrooms had been fitted with locks operated by key from both sides. Apparently, she informed the Applicant that this was not a satisfactory arrangement as the residents were at risk of being trapped or delayed in their rooms in the event of a fire, should they fail to leave the key in the lock.

3. By a letter dated 7 September 2007, the Respondent informed the Applicant that it was proposing to grant such a licence subject to the sole condition that the locks on the bedroom doors be replaced with locks that could be operated from the inside without the use of a key. In the alternative, a plate would have to cover each keyhole from the inside of each room ("the condition"), and the occupant could secure the door from the inside with a bolt.

4. On 17 September 2007, the Applicant initially sought to appeal the imposition of the condition to the Respondent on the basis that the present arrangements in the property satisfactorily addressed the risk of a resident being trapped in a room in the event of a fire. Subsequently, extensive *inter partes* correspondence ensued as to the relevance of the condition and, ultimately, the Applicant was unsuccessful. On 18 October 2007, the Respondent granted the HMO licence with the same condition. The Applicant then appealed to the Tribunal to vary the decision made by the Respondent by removing the condition on the basis that it was not necessary and/or irrelevant.

Hearing

5. The hearing in this matter took place on 21 February 2008. The Applicant appeared in person. The Respondent was represented by Ms. Tingay and Mr. Clegg, both of whom are Environmental Health Officers. The Tribunal did not inspect the subject property, as it was not necessary to do so having regard to the issue before it. The Tribunal heard, in turn, the submissions made by both parties. These had also, helpfully, been reduced to writing by the parties and were supported by the relevant documents relied upon respectively. In general terms, the Applicant had submitted the imposition of the condition was

not reasonable having regard to the particular circumstances in this case. However, in his written submissions[1], the Applicant had taken every point that could possibly be taken in an unnecessarily analytical and disproportionate manner, having regard to the single issue before the Tribunal. It is not intended, therefore, by this Tribunal in this Decision to deal with each and every point raised by the Applicant in his written submissions on the basis of proportionality. Similarly, the Tribunal does not intend to consider here the wider issues raised by the Applicant in his grounds of appeal[2] concerning the wider economic effect of excessive regulation on small business and any breach of his Human Rights. To the extent that the Applicant may have a remedy in relation to either of these matters, that must be pursued elsewhere and they do not fall within this application. Instead, the Tribunal limits itself to the basis on which the Respondent concluded that it should impose the condition. This is set out in the Respondent's written submissions and it is perhaps convenient to set these out firstly.

The Respondent's Submissions

6. The considerations upon which the Respondent had regard to when imposing the condition are as follows:

(a) DOE Circular 12/92

7. At paragraph 9 of its written submissions, the Respondent states that it imposed the condition under section 67 of the Act. This section states that whilst the Authority must in general seek to reduce hazards by exercise of Part 1, this did not prevent it from imposing licence conditions for the purpose of meeting prescribed standards, which include fire precautions, as set out in the Statutory Instrument 2006 No. 373: the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations. Under Regulation 8 appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary. However, no further detail or guidance is provided. Accordingly, the Respondent had regard to DOE Circular 12/92

[1] see p. 80 of the bundle
[2] see p. 44 of the bundle

(issued in relation to the Housing Acts 1985 and now repealed). This advised that doors used for means of escape should be fastened so that they could be immediately opened by persons escaping without the use of a key. This specific requirement is contained within the Technical Appendix to the circular. It was submitted by the Respondent that in the absence of any specific fire guidance issued under Part 2 of the Act, it was pertinent to refer to this previous guidance.

(b) Fire Precautions for Houses in Multiple Occupation

8. At paragraph 10 of its written submissions, the Respondent states that it also had regard to the publication known as "Fire Precautions for Houses in Multiple Occupation: A Practical and Technical Guide" issue by the Chartered Institute of Environmental Health in 1997. The chapter on door hardware specifies that doors leading to escape routes should be fitted with simple fastenings that can be readily operated from the inside by people making their escape. Further, the operation of these fastenings should be without the use of a key.

(c) The Fire Authority

9. At paragraph 13 of its written submissions, the Respondent goes on to state that it had also consulted the Fire Authority on the matter by means of a telephone conversation with Fire Officer John Simmons and Bromley Fire Station. He confirmed to the Respondent that the "Fire Safety Guide for employers, managers and owner of premises providing sleeping accommodation" issued under the Regulatory Perform (Fire Safety) Order 2005 applied to the common parts of premises. This guide advises that escape routes should be easily usable without having to pass through doors requiring a key to unlock. Any door fastening that impedes escape was not acceptable. This advice was confirmed in writing by Mr. Simmons on 17 December 2007.

10. Having regard to the above matters, the Respondent submitted that the licence condition was proportionate to the risk of fire and was a fundamental requirement of any fire door forming part of the means of escape.

The Applicant's Submissions

(a) Generally

11. In opening, the Applicant submitted generally that it was incumbent on the Respondent to demonstrate that the doors in respect of which the lock condition applied fell within the common parts and fire escape routes as defined by the relevant fire safety publications to which it had regard. He further submitted that whilst such an approach may be justified on the basis that these publications addressed the general fire risk in HMOs, there was a danger that any such interpretation of these publications distracted from the assessment of the actual risk posed by the subject property. A consequence of this was that any specification of works required would go beyond what was necessary. Furthermore, none of these publications expressly mentions the issue of private room door locks being important in terms of fire risk. The inference to be drawn from the absence of any such express provision is that it was not considered necessary or important to have regard to this matter when the fire risk assessment was carried out by a local authority.

(b) DOE Circular 12/92

12. The Applicant submitted that this circular had no application or relevance for a number of reasons. Firstly, it was no longer current. Secondly, the guidance given in the circular was not of relevance because new guidance issued under Part 1 of the Act (HHSRS) does not expressly mention locks. This demonstrated that many of the former fire precaution standards adopted in the circular had become redundant in the light of improved understanding of the fire risk. Indeed, the provisions in the circular were only intended as guidance and not to be binding it all circumstances. Thirdly, the circular mainly applied to much larger HMOs with floors that were the same size as the subject property in its entirety. Fourthly, when the previous licence for the subject property was granted in 1999, when the circular applied, no lock condition was imposed. Fifthly, the definition of means of escape within the circular as defined by the Fire Precautions Act 1971 no longer applied because that Act had been repealed.

(c) Fire Precautions for Houses in Multiple Occupation

13. The Applicant submitted that this guidance relied on by the Respondent was overly prescriptive and should be avoided, as directed by the DOE Circular 12/92 Annex. Indeed, that this guidance been endorsed by the government the circular would have expressly referred to it. Instead, the circular referred to the ENTEC recommendations, none of which mentions door locks.

(d) The Fire Authority

14. The Applicant submitted that Regulatory Perform (Fire Safety) Order 2005 only applied to the common areas in HMOs and, therefore, had no application in this instance because the rooms to which the license condition applied did not form part of the common areas in the property. The Applicant further submitted that the reference to Building Regulations 2000 (6.11) referred to in the letter from Fire Officer Simmons had no application here because he was not altering the building. In any event, the letter only expresses an opinion or postal interpretation instead of making a recommendation.

(e) Other Submissions

15. The Applicant, in his written submissions[3], then went on to make detailed and extensive submissions regarding the actual fire risk that existed in the subject property. However, for reasons that will become apparent below, it is not necessary to set out those submissions here.

Decision

16. This matter takes the form of an appeal against the Respondent's decision to impose the condition on the HMO licence granted to the Applicant. Paragraph 34 (3) of Schedule 5, Part 3 of the Act provides that the Tribunal may confirm, reverse or vary the decision of the local housing authority. There is no express provision in the Act as to the exercise of this discretion and it is to be assumed that this lack of prescription was intended. The inference to be drawn,

[3] see p 82 onwards

therefore, is that a Tribunal must have regard to all the circumstances in each appeal.

17. The reason for the decision to impose the lock condition on the HMO licence granted to the Applicant was the perceived increased fire risk to the occupants of the subject property by not imposing such a condition. It was not challenged by the Applicant that Regulation 8 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations places a positive duty on the Respondent to carry out such a risk assessment in relation to the fire precaution facilities and equipment when considering application for an HMO licence. Having considered the evidence carefully in this appeal, the Tribunal concluded, on balance, that the potential fire risk in the subject property was decreased by the imposition of the lock condition on the licence granted to the Applicant. The Tribunal, therefore, confirms the decision of the Respondent to impose this condition on the licence. It did so for the following main reasons:

(a) the subject property is used as an HMO with 17 rooms let by the Applicant, as the landlord. In 10 of those rooms, cooking is carried on by the tenant using electric cookers, toasters, kettles and possibly microwaves. It must follow as a matter of logic that this activity must *per se* give rise to a greater potential risk of fire occurring in one or more of those bedrooms than if this cooking activity was carried on in a communal or shared kitchen.

(b) whilst the Applicant made extensive and detailed submissions that the actual risk of harm from fire in the subject property, given the existing fire precautions, was remote, he did not submit that it could be entirely discounted. Having already concluded at (a) above that the potential fire risk was higher if the lock condition was not imposed, given the cooking activity in the bedrooms, it was not necessary to deal with the Applicant's submissions about the actual decreased risk in the light of the existing fire precautions.

(c) the Tribunal had regard to the fact that the doors of each bedroom in which cooking activity was carried on, especially on the first and second floors, were the main exits in the event of a fire. Therefore, the Applicant's arguments in relation what amounts to a means of escape appeared to be irrelevant.

(d) the Tribunal did not accept the Applicant's contention that the same fire risk existed in a number of other theoretical scenarios if other bedroom locks were used. The correct test to be applied is the ordinary everyday use of the bedrooms by the tenants. They may not necessarily leave keys in locks as he contended. This would give rise to a greater risk to the tenants in the event of a fire if they had to firstly locate the key to the bedroom door. This possibility would not arise if some other type of lock was used, for example, a " Yale" lock.

(e) the Tribunal also had regard to the fact that the condition imposed on the license was not a financially onerous one on the Applicant and that he had been given a generous time period of 5 years in which to comply with it.

(f) the absence of any such condition when the earlier licence was granted in 1999 did not prevent the Respondent from carrying out a further risk assessment and imposing this condition. In other words, it was not conclusive that the fire risk remained the same or that such a condition was not necessary.

(g) the Applicant's reliance on the earlier LVT decision of ***Kexgill (Preston) Ltd v Preston City Council*** (MAN/30UK/HML/2007/0001) provided him with no assistance for three reasons. Firstly, as a Tribunal decision it was not a binding precedent on this Tribunal. Secondly, in that decision the Tribunal clearly stated (at paragraph 32) that *"it is for each authority to decide how it wishes to do with licence applications"*. Thirdly, and it any event, this Tribunal did not consider

the imposition of the licence condition was proportionate in the circumstances.

(h) the Tribunal was satisfied that, in the absence of any specific fire guidance issued under Part 2 of the Act, it was entirely proper and correct for the Respondent to have regard to previous guidance and, in particular, to DOE Circular 12/92. The fact that the circular had been issued in relation to the Housing Act 1985, which had now been repealed, did not necessary mean that it had any less validity in terms of guidance. This was equally so even though guidance issued under Part 1 of the Act did not mention locks. It does not necessarily follow that this omission that former fire precaution standards had become redundant. In addition, the circular makes no express distinction between HMOs of varying sizes. The lack of guidance under Part 2 of the Act also does not prevent the Respondent from having regard to the "Fire Precautions for Houses in Multiple Occupation: A Practical and Technical Guide" issued by the Institute of Environmental Health in 1997. The Respondent is not compelled to adopt the ENTEC recommendations referred to in the DOE Circular 12/92. This is yet a further reference document to which the Respondent *may* have regard when exercising its discretion on what, if any, conditions should be imposed on a HMO licence when granted. Even if the Applicant was correct in his submission that Regulatory Perform (Fire Safety) Order 2005 Building Regulations 2000 (6.11) had no application in this instance, in the Tribunal's view, it did not render the Respondent's decision to impose the licence condition unreasonable for the other and perhaps more significant reasons set out above.

18. Accordingly, the Tribunal confirms the Respondent's decision to impose the HMO licence condition on the subject property and dismisses the Applicant's appeal.

Fees

19. Given that he has lost this appeal, the Tribunal does not make an order that the Respondent should reimburse the Applicant any fees paid by him to the Tribunal.

Dated the 29 day of April 2008

CHAIRMAN.....

Mr. I. Mohabir LLB (Hons)