

H M COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

Paragraph 31 of Schedule 5 of the Housing Act 2004 ("the 2004 Act")

Appeal against a decision by a local housing authority to attach a condition to the grant of a Licence

Case Number:	CHI/00ML/HMV/2011/0004
Property:	Top Maisonette 121 Preston Road Brighton East Sussex BN1 6AF
Applicant/Freeholder:	I.D. Habens and M.D. Habens
Respondent/Council:	Brighton & Hove City Council
Date of Inspection/ Hearing	1 st December 2011
Tribunal:	Mr. R T A Wilson LLB (Lawyer Chairman) Mr N I Robinson FRICS (Surveyor Member)
Date of the Tribunal's Decision:	7 th December 2011

THE DECISION.

1. For the reasons set out below, the Tribunal confirms the decision of the Brighton and Hove City Council to attach a condition in the HMO Licence for the subject property requiring the installation of a wash hand basin in the rear bedroom on the first floor.

THE APPLICATION

2. This is an application by the Applicant freeholders appealing the decision of the Brighton and Hove City Council to attach a condition to an HMO licence dated 22nd August 2011 in respect of the property. The condition is a requirement for the Applicants to install a wash hand basin ("WHB") in one of the five bedrooms.
3. With the agreement of the parties the appeal has been determined on the basis of written submissions alone and without a hearing.

INSPECTION.

4. The subject property would originally have been constructed over 100 years ago as a single mid-terrace house but has more recently being converted into a self contained basement flat and three-storey maisonette. The maisonette, the subject of this determination, comprises two rooms on the top floor, two rooms on the first floor, a bathroom with bath, washbasin and WC and a separate WC with washbasin on the first floor mezzanine and two rooms and a kitchen on the ground floor.
5. At the time of the inspection, the first-floor front room was being used as a shared lounge, with the remaining rooms being bedrooms. The Tribunal noted that none of the occupants are related, and whilst there is one tenancy agreement it is normal for individual tenants to change from time to time.
6. The Tribunal concentrated on the first-floor rear room where the Respondents are requiring the installation of a WHB. WHB's are not a requirement in the other four bedrooms, as for various reasons the Respondent accepts that it is not practicable to require WHB's in these rooms.
7. The subject room is large enough for a double bed to be installed, as has been done in the identical size room below and retains the original Victorian fireplace as well as a cupboard to the left-hand side of the chimneybreast. The provision of a double bed, given the shape of the room and the positioning of the fireplace and cupboard, could detract from the flexibility of the room if a basin were installed but there was considered to be the space.
8. It was noted that hot and cold water supplies are available in the WC and bathroom just behind this bedroom and the pipes could be extended relatively easily. In addition it was noted that there was a plastic soil and vent pipe running diagonally underneath the bedroom window.

THE FACTS

9. The facts of the matter are not in dispute and are as set out here and as the Tribunal found them to be upon the basis of its inspection and the written submissions made by

the parties. In March 2008 the Applicant was granted a licence for the subject property with a condition attached requiring WHB's in all five rooms. The WHB's were to be provided by May 2011, which was the date that the licence expired.

10. On 8 June 2011 the Applicants applied for a new licence. An inspection of the property took place on 23 June 2011 after which the Respondents concluded that it would not be reasonably practicable for four out of the five bedrooms to have WHB's. Following the inspection the Respondents served a draft licence on the Applicants, which included the condition of the provision of just one WHB in the rear bedroom on the first floor when the tenants on the current assured short hold tenancy vacated. The Applicant wrote a letter of objection.
11. On 22 August 2011 the Respondents granted a new licence to the Applicants, which included the condition requiring a WHB in one bedroom, and the Applicants appeal to the Tribunal requesting that this condition be revoked.

THE APPLICANT'S CASE.

12. The Applicants state that they take their responsibilities as landlords seriously and they have carried out all the health and safety conditions attached to the previous licence. However they object to condition 8.1 in the new licence requiring the installation of a WHB on five grounds, which can be summarised as follows:
 - a) There are other tribunal cases which support their argument that they should not have to install a WHB.
 - b) Bournemouth Council have changed their guidelines and have relaxed their requirements on WHB's. The Respondents should follow their lead.
 - c) The Respondents are inconsistent; they do not require the installation of WHB's in the other four bedrooms.
 - d) Their tenants have expressed a clear wish that they do not want WHB's in any of the bedrooms and these views have been ignored.
 - e) Their tenants are effectively living as a communal/single household and consequently there is no requirement for any HWB's to be installed in the premises.

THE RESPONDENTS CASE.

The Respondent addresses each of the Applicants' five points above as follows:-

- a) Previous LVT decisions not followed
13. The Council submit that each Tribunal decision is independent and does not constitute case law or binding precedent for other appeals. Each case must be decided on its own merits and there are examples of other Tribunal decisions which have taken the opposite view and concluded that the legislation requires wash hand basins in the sleeping rooms of a shared HMO house.
14. The Council contends that their operation of the Licensing and Management of Houses in Multiple Occupation and other houses (Miscellaneous Provisions) (England) Regulations

2006 arises from information received directly from government when the Housing Act 2004 was implemented. Their policy, which accords with LACORS guidance, is that WHB's should be provided in all units of accommodation where reasonably practicable. In shared house type HMO's, this means providing wash hand basins in the bedrooms. The Respondents state that this revised advice was given in October 2007 and it took into account the Camden appeal, which decided that WHB's were not required in that case and it also took into account the latest regulations. In short the Respondents contend that the condition is one that they can and should impose.

b) Bournemouth Borough Council policy changes have been ignored

15. Whilst respecting the views of the Bournemouth Borough Council, the Respondent questions their rationale and do not accept that it should bind any other authority. The Respondent has based its approach on advice directly received from government.

c) Inconsistency of approach.

16. The case officer applied the guidance on what would generally be considered not reasonably practicable to all five bedrooms and concluded that it was practicable to install a WHB in one of the bedrooms but not the other four. They contend this is not evidence of inconsistency, but rather it is evidence of the authority properly exercising its discretion as required by law.

d) The tenants' wishes not respected.

17. The Respondent contends that they have fully taken into account the request of the tenants by drafting the condition so that the WHB does not have to be installed until the named five tenants on the tenancy vacate.

e) Communal/single household tests ignored.

18. The Respondent does not accept that this distinction is relevant. Under the Housing Act 1985 definition of an HMO, living as a communal/shared household had relevance to whether or not a property was an HMO. Under the Housing Act 2004 this is not the case. They contend that as the property consists of three stories and is occupied by five people forming five single households it is therefore licensable as an HMO under the Housing Act 2004 and that the requirement for WHB's exists.

THE TRIBUNAL'S CONSIDERATION.

19. The relevant legislation is to be found in the Housing Act 2004 S.65 which prescribes certain minimum standards for HMO's, and S.65(5) of the Act includes prescribed standards relating to the provision, type and age of WHB's.

20. More detailed provisions are contained in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 which have subsequently been amended by the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

21. From 1st October 2007, the minimum requirements for basic amenities in license HMOs are:

(1) where all or some of the units of living accommodation in an HMO do not contain bathing and toilet facilities for the exclusive use of each individual—

a) there must be an adequate number of bathrooms, toilets and hand washbasins suitable for personal washing for the number of persons sharing those facilities; and

b) where reasonably practicable there must be a wash hand basin with appropriate splash back in each unit other than a unit in which a sink has been provided as mentioned in paragraph 4(1),

having regard to the age and character of the HMO, the size and layout of each flat and its existing provision for wash hand basins, toilets and bathrooms.

22. The Tribunal understands that the wording “where reasonably practicable” has been inserted into 1(b) above following concern about putting wash hand basins into bedrooms in shared and student houses, where tenants are living more communally than those living in bedsits. In effect the changes in the wording enable the Licensing authority to exercise its discretion as to whether or not a WHB should be insisted upon in each room having regard to all the circumstances. In other words it introduces some flexibility into the legislation. Authorities have been provided with guidance as to how to interpret these new Regulations.

23. The guidance is that each property should be considered on its own merits. The guidance further suggests that there are a number of questions which may help the local authority to make a suitable judgement in this respect. For example:

a) Are the units of accommodation to be occupied by a group sharing living accommodation or by persons who live independently?

b) Will long or impractical drainage runs be needed to install a hand basin in each unit?

c) If the building is listed does this mean it is not possible to install wash hand basin?

d) What are the views of the landlord and the tenants?

e) Will the installation of hand basins cause major disruption to the existing occupiers?

24. In the opinion of the Tribunal the legislation as it now stands requires that in the licensed HMO's, such as the subject property, a wash hand basin should be provided in all units of accommodation where reasonably practicable. The licensing authority is given discretion to exercise its own judgement and in determining whether it is reasonably practicable, the above questions will assist a licensing authority in arriving at a reasoned decision.

25. The Tribunal is satisfied that the Respondent has applied such guidance in this case and has properly concluded that it is reasonably possible to install a WHB in the first floor bedroom to the rear, but it is not reasonably practicable to install a WHB in any of the other bedrooms.

26. There is no evidence that the Respondents have failed to take into account the relevant legislation above or have come to an unreasonable or perverse decision. To the contrary, the evidence is that all relevant considerations and guidelines have been taken into account. The legislation has been correctly interpreted, there has been a site inspection, the views of the tenants have been acted upon and the physical practicability of installing WHB's has been evaluated.
27. The Tribunal agrees with the Respondent that the Tribunals' previous decisions do not constitute case law or binding precedent for other appeals. Each case must be decided on its own merits. The Tribunal also accepts that the Respondent should not be bound by the policy of another local authority.
28. Neither can the Respondent be reproached as being inconsistent by requiring a hand basin in only one of the five bedrooms. The Respondent carried out a survey of the five bedrooms and concluded that the condition should only be applied in the one bedroom.
29. The Tribunal noted from its inspection that hot and cold water supplies are available in the WC and bathroom just behind this bedroom and the pipes could be extended relatively easily. It was noted in particular that there is a plastic soil and vent pipe running diagonally underneath the bedroom window and that it would be quite straightforward to plumb a new basin waste into this pipe. In these circumstances the Tribunal takes the view that there is no material constructional impediment to installing a washbasin in this room whereas there could be such difficulties in the other rooms.
30. Furthermore the Respondent has taken into account the request of the tenants, hence the condition of a licence, which stipulates that the WHB does not have to be installed until the named five tenants on the existing assured short tenancy vacate the premises. There will no major disruption if properly managed.
31. Finally The Tribunal has considered S.258 of the Housing Act 2004 which states that people are to be regarded as not forming a single household unless they are all members of the same family or they are covered by Regulation 3 or 4 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. On the facts before us none of these apply to the tenants in question and this in turn means that they constitute five single households living in the maisonette. As the premises consist of three stories and is occupied by five people forming, under section 258, five single households, it is therefore licensable HMO under the Housing Act 2004.
32. For all of these reasons, the Tribunal confirms the decision of the Respondents to attach a condition to the new licence for the subject property requiring the installation of a WHB in the first floor rear bedroom when the existing tenants vacate.
33. If any party wishes to appeal this decision to the Upper Tribunal Lands Chamber they must first seek permission from the Residential Property Tribunal and must do so in writing to the Tribunal offices in Chichester within 21 days of the date of this decision. Valid grounds for seeking permission to appeal must be given.

Signed _____
Robert T A Wilson chairman.

Dated 7th December 2011