



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00MR/HML/2019/0004 &005

Property : 72 & 86 Jubilee Road, Southsea,
Portsmouth PO4 0JE

Applicant : Ms. S. Constantionou

Representative :

Respondents : Portsmouth City Council

Representative : Mr. M Conway

Type of Application : Appeal of condition attached to HMO
Licence

Tribunal Member(s) : Judge D. R. Whitney
Mr. B. H. R. Simms FRICS

**Date and Venue of
Hearing** : 10th May 2019 at Havant Justice Centre

Date of Decision : 3rd July 2019

DECISION

Decision

The tribunal refuses the appeal and confirms the licences issued by the Council.

The Application

1. Ms. S. Constantinou, the Applicant, is the owner of 72 Jubilee Road, Southsea PO4 0JE (“72”) and 86 Jubilee Road, Southsea PO4 0JE (“86”). Both 72 & 86 are within the area covered by Portsmouth City Council (“the Council”).
2. Both properties have been subject to HMO licences issued by the Council in the past. Towards the end of 2018 the current licences were required to be renewed and the Applicant made application to the Council for such renewal. A licence was issued for 72 on 5th December 2018 and for 86 on 18th December 2018. The Council in respect of both 72 & 86 granted an HMO licence pursuant to Part 2 of the Housing Act 2004 to allow use and occupation by 5 persons for a period of 12 months from the date of the respective licence.
3. Ms Constantinou sought to appeal the issuing of the licence. Essentially the basis for the appeal was that it was not appropriate to limit the use and occupation to four or fewer persons and a licence to allow use and occupation of both 72 & 86 should have been granted for the usual period of 5 years.
4. The Properties had previously been subject to a licence under an Additional licencing scheme operated by the Council which had ended in August 2018. The Applicant suggests both Properties have not been altered in any material way. The Council has however adopted new standards, particularly as to the size of amenity space to be provided in HMO accommodation. It is these new standards which have been applied, and which, the Council say mean that the amenity space at both 72 & 86 is inadequate for an HMO with five occupied bedrooms. The Council accept that in reliance on the existing licences the Applicant may have entered into binding tenancy agreements and so grants a licence for a period of one year only. After that time, provided 72 & 86 are not occupied by more than 4 persons they will no longer be a licensable HMO.
5. The Council had adopted new “Standards for HMOs” in September 2018. These replaced those published in 2014. The Council accepted there were no prescribed standards and it was for the Council to formulate its own policy. The Council relied upon its powers under section 65(2) of the Housing Act 2004 to determine that a property is not reasonably suitable for occupation by a particular number of

persons even if it does not meet prescribed standards for occupation by that number of persons.

6. The Applicant contends that the standards being applied are unreasonable. She suggests that the Properties have adequate amenity space and the students to whom she lets are very satisfied with the facilities offered. The Applicant contends that the licences should be issued for the full five year term.
7. Directions were issued in respect of each appeal on 8th February 2019. The two applications were listed to be heard on the same day together with an appeal on similar grounds in respect of 52 Wellington Street, Southsea PO5 4HT under reference CHI/00MR/HML/2019/0006. Earlier in the same week a differently constituted panel had heard three further appeals against licences issued by the Council on similar grounds. Originally it was the intention that same panel would have heard the cases listed for 10th May 2019. The Judge who had sat with Mr Simms, the valuer member, was unable to sit on 10th May 2019 and Judge Whitney sat with Mr Simms. The tribunal reconvened on 7th June 2019 to deliberate and reach its determination.
8. The parties had complied with the directions. The Council had submitted hearing bundles and both parties had provided skeleton arguments. References in [] are to pages within the bundle relevant to the particular Property.

INSPECTION

9. Immediately prior to the hearings the tribunal inspected both Properties. Ms Constantinou attended the inspection together with Mr A. Athill of the Portsmouth and District Private Landlords Association, Mr Conway, Licensing Team Leader for the Council and Miss Sarah Curtis, Housing Standards Officer.
10. Jubilee Road was a relatively quiet residential street of late Victorian, early Edwardian traditional terraced houses. Both 72 & 86 were on the South side of the road. Both had a small garden area to the front opening on to the pavement. The tribunal observes as a general point that both Properties appeared well maintained and in good order with a good standard of fixtures and fittings observed throughout.

72 Jubilee Road

11. A hallway led through to a kitchen/lounge/diner. Off the hallway was a shower room and separate WC.
12. The kitchen area had a hob, cooker, washing machine, fridge freezer and surface mounted fridge. In the lounge area were two sofas, a pull out table and 4 fold up chairs. The tribunal observed 8 cupboards and 7 drawers providing space for the occupants to store food and cooking utensils. At the very rear was the entrance to bedroom 5. There was

also a doorway leading to the small courtyard garden at the rear of the Property.

13. Bedroom 5 was of a modest size but was observed to have within it a double bed, wardrobe and chest of draws. On the ground floor front was Bedroom 5. This contained a double bed, wardrobe and desk.
14. Upstairs was a hallway with Bedroom 3 to the very rear. This contained a double bed, wardrobe and small desk. Bedroom 2 was effectively in the middle and also had a double bed, wardrobe and small desk. Bedroom 2 benefitted from an ensuite bathroom including a wc, basin and bath with shower over.
15. To the front of the first floor was Bedroom 1. Again this contained a double bed, wardrobe and desk and also had within the room a shower and a wash hand basin.

86 Jubilee Road

16. The hallway again led through to the kitchen/lounge/dining space. Off the hallway was a separate wc and shower room.
17. The kitchen included gas hob, oven, washing machine, tumble drier, fridge freezer, countertop fridge and microwave. The tribunal observed 12 cupboards and 5 drawers. There were also 2 sofas a chair and fold up table. A doorway led to the rear small courtyard garden. To the very rear of this area was bedroom 5 which contained a double bed, wardrobe and desk.
18. Bedroom 4 was to the ground floor front of the Property. It had a double bed, wardrobe and desk.
19. Upstairs leading off the hallway to the very rear was Bedroom 3. This contained a double bed, wardrobe and desk. In the middle of the first floor was Bedroom 2 which had a double bed, desk and wardrobe and benefitted from a modest en suite which included a wc, wash hand basin and bath with a shower over.
20. To the front of the first floor was Bedroom 1. This contained a double bed, wardrobe and desk. It also had a shower and wash hand basis within the room itself.

HEARING

21. The hearing was attended by those persons who attended the inspection together with Ms. C. Hardwick, Acting Head of Private Housing for the Council and Mr Constantinou who supported his wife, the Applicant.
22. Ms Constantinou presented her case assisted by Mr Athill. She relied upon a skeleton argument. She suggested that both Properties

complied with national standards fixed by the government for HMO's. All of the bedrooms at the Properties exceeded the minimum sizes as set by government. In respect of 72 details of the room sizes and plan were at [40] and for 86 at [41] in the respective bundles. The kitchen/diner of 72 measured 17.28 square metres and for 86 17.27 square metres. The council standard requiring for an open plan kitchen/lounge/diner a minimum size of 24 square metres for a property occupied by 5 persons was not reasonable.

23. Ms Constantinou highlighted that there are no national standards. It had not been suggested that there were any safety risks present at the Properties. She had owned both for about 7 years and had always let to students. Under the previous additional licensing scheme, she had been granted a full 5 year licence allowing her to let each bedroom at the Property to up to 5 students on joint and several contracts for 10 or 11 months at a time.
24. Ms Constantinou referred to a letter she had received from the University of Portsmouth (in the bundle for 72 [222]). This was dated 8th May 2014 and referred to an inspection the Student housing Officer had undertaken and stated "All rooms that were checked were exceptional and I found your property to be of an excellent standard." It went on to confirm that the Properties complied with the University's criteria and would remain on their register.
25. Ms Constantinou submitted that this clearly demonstrated that the University was satisfied that for student accommodation the Property was of a good standard. She suggested that the Council was too rigid in the standards it adopted and applied. At [62] of the bundle for 72 was a table of the standards the Council would expect. She highlighted that if all the bedrooms had been 10 square metres or more then only 15 square metres of open plan living area would be required. Each of her Properties had two rooms in excess of 10 square metres and 3 rooms of 6.51 square metres or greater.
26. The Applicant referred to a table [214] of standards adopted by various different local authorities. On the face of this it would appear that the Council apply stricter criteria than other local authorities in or around the South Coast area. Ms Constantinou suggested that the amenity space at each Property was well within the standards set by other local authorities, further the size exceeds the standards recommended by Shelter. She had upgraded furnishings to provide what her students required. Hence each room had a double bed. The communal areas have two sofas, a foldable dining table and chairs and a small easily maintainable garden area. The tenants choose to rent the Property. The current set of tenants in each are in their second year of renting the Properties.
27. Ms Constantionou referred to the Council website. At [223-226] of the 72 bundle were printouts of the website. She stated that it was not obvious from this that the Council had changed their standards when

she applied to renew. At no point had she been told that her application would be considered under new, different standards when she applied for the mandatory licence which the property required from 1st October 2018 rather than the licence required under the previous Additional licensing scheme adopted by the Council.

28. Ms Constantinou submitted it was unreasonable for the Council to have not consulted with her over these changes. The Council had taken her fee knowing that her Properties would not meet their standards. She could have limited the lettings to not more than 4 persons and then would not have had to pay the fee for a licence.
29. Ms Constantinou indicated it had been suggested she could possibly have the licences varied so that she could have 2 people in the larger rooms and thereby have 5 persons but only using 4 bedrooms. She failed to see how this resolved the issue. Even couples require privacy and most students prefer to have their own bedrooms. She flagged that the whole application process took 4 months and currently she has the uncertainty of losing 20% of her income for each Property.
30. Mr Athill then gave evidence in support of the Applicants case relying upon his statement at page [209] of the bundle for 72. The same statement was also included within the bundle for 86 and relied upon in that appeal as well.
31. He explained he had put together the table of local authority amenity sizes. This had been to provide to a Portsmouth City councillor. He had simply looked on the internet using some care to check these were the up to date standards. He did accept that usually there is a statement that these are not rigid and that the particular property in question will be considered on its own merits.
32. Mr Conway asked various questions of the Applicant who confirmed she was a member of the Portsmouth and District Private Landlords Association. She was not aware that it was involved in the formulation of the standards but did attend meetings. She was not aware or signposted by the website that the standards were different, she thought she would have been told by the Council.
33. Ms Constantinou confirmed to the tribunal that she does not want a condition that one room may be occupied by 2 people. She wishes to be able to let all 5 bedrooms to one person and the licence to be granted for 5 years.
34. Mr Conway presented the case for the Council. He relied upon the material within the bundles and also his skeleton argument.
35. He explained the space standards adopted by the Council came from the Metric Handbook: Planning and Design Data. This is produced by RIBA and is primarily for architects in designing new buildings.

36. He explained that the size is based on various factors including sufficient separation and the number of people present. Take account of the fact that in these properties the communal living area also acts as a means of access to a bedroom (Bedroom 5 in each Property) and also for accessing the rear garden.
37. Mr Conway explained that the sizes are for guidance. The officer will look at the specific property. In the instance cases the officer took the standard and having regard generally to the Properties allowed a discount of 10% from the standard. A reduction of 1 square metre was then allowed for each bedroom exceeding 10 square metres. This brought the required size down to 19.6 square metres. The officer would then consider if any additional factors could be taken into account to see if the space provided would be adequate given it was still smaller than the requirement. The officer would consider that it was this amenity space that had to be used to access Bedroom 5 and the garden.
38. Mr Conway explained that allowance would be made for the larger rooms as the Council would assess the extra space could be utilised to accommodate extra furniture to enable a visitor to come to the room. He explained the furnishings they would assess as being required to satisfy this would be: an armchair, guest chair, single bed, bedside table, dressing table and stool, chest of draws, single wardrobe, desk and table. He suggested that for all this furniture a room exceeding 10 square metres was required.
39. Given in each of the properties the amenity space was communal the council would consider the provision for cooking, eating and relaxing. He confirmed the exercise undertaken was not simply a numerical exercise but a matter of considering all factors. It would not be considered just as a student house but as an HMO. He agreed both 72 & 86 were nearly identical mirror images of each other in terms of layout although they differed slightly in the dimensions of the rooms.
40. Mr Conway explained the Council considered the actual provisions of amenities including sanitary provision and kitchen/lounge/dining facilities. Consideration was given to the fact that in each Property the amenity space provided access and egress from Bedroom 5 and the garden. He stated it was not simply a numerical exercise but assessing how the room functioned and it was the Councils determination that the room size was too far from what the Council would consider adequate.
41. As a result of this exercise the Council was satisfied that the communal amenity space at both 72 & 86 was not sufficiently large to enable it to be used by 5 persons if all the bedrooms were being occupied and used as such.
42. Mr Conway stated that it is difficult to restrict such accommodation as the subject Properties to only be let to students. Further he did not believe lower standards should be applied to accommodation let to

students. He did not accept that groups of students are “family” groups and in his experience do not live cohesively.

43. On questioning by the Applicant he confirmed the draft licence was issued on the basis of the plans provided. It was only subsequently that the Council inspected on 3rd December 2018. The initial calculations were based upon the plans provided by the Applicant. No further allowance was made for the rooms which were larger than 6.51 square metres (the minimum requirement for single adult occupancy) as in the Council's opinion these were not big enough for a single household and visitors to occupy. If a room is larger than 10 square metres then there is space within the room if occupied by a single person to have visitors see them within that room. As a result a discount is given to the overall communal space required.
44. Mr Conway confirmed that there were no national standards. The HHSRS Guidance referred to the Metric handbook and this is what the Council had adopted. There was no evidence of unacceptable risks but there was a risk from crowding and space. This is based on the fact the Properties were HMO's and he had to make a judgement on the size of rooms, what was contained in each and how the occupant's function. The council make a judgement based on “common man”. The common man is someone of five feet nine inches and not suffering from a disability.
45. Mr Conway confirmed that the furniture requirements to which he had referred came from the Metric Handbook. The guidelines set out the detail as to what furniture would be expected in a bedroom suitable to accommodate guests and visitors.
46. Mr Conway confirmed he did not know if the University had complaints. The assessment they undertake is a prediction of what might happen. Under Additional licensing this was a discretionary scheme. Each application is dealt with on case by case basis. There remains a discretion but in Mr Conway's opinion the standards provide a fairer assessment for all. The standards were reviewed as a matter of policy. There are now (from 1st October 2018) minimum bedrooms sizes which must be adhered to for all HMOs. The cabinet of Portsmouth City Council develop policies which the officer apply.
47. Mr Conway added if one bedroom was not occupied this could provide extra amenity space to those occupying the remaining rooms.
48. Mr Conway accepted that he had not spoken to the actual tenants.
49. Mrs Christodoulou summed up her case. She explained that that was no evidence that the Properties were not safe. The tenants in occupation were happy with the Properties and the amenities included. She criticised the fact the Council's guidelines had changed and were not, she said, readily available.

50. She relied on the fact that other boroughs would have allowed her Properties to be let as HMO's with 5 persons. She took her responsibilities seriously and had held a licence previously with no conditions. She invited the tribunal to allow her a 5 year licence for 5 persons utilising all 5 bedrooms in the Properties.

DECISION

51. In reaching its determination the tribunal had regard to all of the documents supplied within the hearing bundle and the skeleton arguments. All were read carefully and the tribunal also had the benefit of its own inspections.
52. The Applicant appeals under paragraph 31(1)(b) of the Housing Act 2004 against the term restricting the licence for five persons for one year. Such appeals are by rehearing of the matter and the tribunal making its own determination.
53. The Housing Act 2004 gives local authorities powers to licence HMOs. Since the 1st October 2018 as a result of The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England Regulations) 2018 there are now minimum room sizes requiring a single room for occupancy by someone over 10 years of age to be at least 6.51 square metres and for double occupancy at least 10.22 square metres. There are also prescribed standards relating to heating, washing facilities, kitchens and fire precautionary facilities.
54. In both of these cases the Council was satisfied that the prescribed standards were met to allow occupation by 5 persons. In each Property all bedrooms exceeded the statutory minimum and each had two rooms exceeding 10 square metres. The Council determined however that both of these Properties had communal amenity space significantly below its own published standards.
55. The tribunal heard from Mr Athill and Mrs Constantinou that the Council had not consulted over the new standards. Further Mrs Constantinou suggested it was difficult to see on renewing her licence that the standards had changed. As the tribunal pointed out at the hearing this is not a matter as such for the tribunal to focus on.
56. There was some discussion at the hearing as to whether 5 persons could continue to occupy each Property but on the basis that only 4 bedrooms are utilised. It appeared neither party was really asking the tribunal to vary in this way. For the Applicant she made clear that students do not want to share bedrooms, each wishes to have their own bedroom.

57. It was clear from the inspection that both Properties were well maintained and plainly the Applicant was a responsible landlord. However it is the Properties themselves which are the focus.
58. The Applicant relied upon standards set by various other local authorities in a geographical location reasonably close to Portsmouth. The evidence of Mr Conway was that the standard they set for a communal kitchen/lounge/diner of 24 square metres was a high standard. He readily admitted that the Council in assessing a property would make discounts from this level and he explained the numerical basis of this calculation. He then explained how even once this has been done the officer dealing with the case retained a discretion. In the instant cases it was his case that even still the amenity space was not adequate.
59. The tribunal was referred to Nottingham City Council v. Parr and another [2018] UKSC 52. It was suggested that this case could be relied upon to allow lower standards when a property is occupied by students.
60. The tribunal does not agree. Parr concerned the bedroom sizes of the property and specifically referred to the fact that students as a group live cohesively and smaller bedrooms may be compensated by additional amenity space.
61. Turning to the two current appeals both had 5 bedrooms which exceeded the minimum size. Each house had one bedroom exceeding the size for double occupancy and another bedroom exceeding 10 square metres. The tribunal noted that in applying its own standards the Council made a deduction to allow for these larger rooms.
62. The tribunal finds that in each Property the 3 smaller rooms left no space for guests or visitors to reasonably enter the same.
63. The tribunal was satisfied that the standards adopted by the local authority were reasonable. Whilst it is clear they differ significantly from other local authorities we had no evidence as to how these differing standards may be applied. The Council explained how the standards apply to open plan living as opposed to separate kitchen, lounge and dining rooms. In reaching its standards it had regard to the Metric handbook which it was accepted applied to new build modern properties.
64. The Council gave evidence that the standard set is a high one. This was acknowledged and we heard evidence as to how in practice it is applied. A 10% reduction was applied as a general allowance and then further reductions for any room in excess of 10 square metres. Even after this numerical exercise (which for each house then gave a figure to be applied of 19.6 square metres) the Council still considered what further reductions, if any could be met. 72 had space of 17.28 square metres and 86 17.27 square metres. Both being more than 2 square metres below the size assessed. Further the Council took account of the fact

that this amenity space allowed access to Bedroom 5 and the garden for each property.

65. The tribunal was satisfied that the communal amenity space fell significantly below that set by the Council's standards.
66. The tribunal was satisfied having heard the evidence and having inspected that in its opinion the communal living space was not adequate for 5 persons having regard to the size of the 5 bedrooms and other facilities at the Property.
67. The tribunal was told the Properties are always let to students as one group. The tribunal would expect such groups to wish to live cohesively and so adequate provision of amenity space is key to this.
68. In respect of both 72 and 86 the tribunal confirms the Council's decision to limit the HMO licence for each Property for occupation by five persons for a period of 12 months.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking