



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

**Case Reference** : CHI/00MR/HML/2019/0006

**Property** : 52 Wellington Street, Southsea,  
Portsmouth PO4 0JE

**Applicant** : Ms. Helen Harrison

**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** : 10<sup>th</sup> May 2019 at Havant Justice Centre

**Date of Decision** : 3<sup>rd</sup> July 2019

---

DECISION

---

## **Decision**

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

### **The Application**

1. Ms. H. Harrison, the Applicant, is the owner of 52 Wellington Street, Southsea PO5 4HT (“the Property”). The Property falls within the area of Portsmouth City Council (“the Council”).
2. An HMO licence was issued for the Property on 13<sup>th</sup> December 2018. The Council granted a 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. Harrison 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 the Property 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 the Property 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 the Property 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 the Property is 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 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 Property has 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 8<sup>th</sup> February 2019. The application was listed to be heard on the same day together with an appeal on similar grounds in respect of 72 & 86 Jubilee Road, Southsea under reference CHI/00MR/HML/2019/0004 & 005. 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 10<sup>th</sup> May 2019. The Judge who had sat with Mr Simms, the valuer member, was unable to sit on 10<sup>th</sup> May 2019 and Judge Whitney sat with Mr Simms. The tribunal reconvened on 7<sup>th</sup> 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 Harrison attended the inspection together with her husband and 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. The Property was a two storey maisonette on the second floor of a purpose built block. Wellington street was a cul de sac which overlooked the A2030 Winston Churchill Avenue. There appeared to have been constructed in the 1970's. Access was via a central stairway and then an external walkway. Internally the property appeared well maintained.
11. The front door opened on to a hallway off which to the left hand side was the kitchen/lounge/diner. This had a range of wall and base units to the front of the Property. There was a 4 ring gas hob, oven, microwave, washer drier and American style fridge freezer. There was a breakfast bar with stools, a flat screen tv and sofa.
12. The ground floor also had a wc and shower and basin. Bedroom 1 was to the rear left and was a smallish room with access to a small balcony overlooking the rear. It contained a double bed, wardrobe and small desk.
13. Bedroom 2 was again on the rear of the ground floor. Access was difficult due to the doorway. The room contained a double bed, wardrobe and desk.

14. From the hallway was a stairway leading to a large landing which had a sofa on the same. There was a bathroom with a bath and shower overhead and basin and a separate room with a wc.
15. Bedroom 3 to the rear contained a double bed, wardrobe and desk.
16. Bedrooms 4 & 5 also contained a double bed, wardrobe and desk.
17. The Property had wooden floors throughout.

## **HEARING**

18. The hearing was attended by those persons who attended the inspection together with Ms. C. Hardwick, Acting Head of Private Housing for the Council.
19. Ms Harrison's case was heard immediately after the case for 72 & 86 Jubilee Road. She looked to adopt the arguments made by the Applicant in that case and also relied upon evidence given by Mr Athill and a statement he made [245-249]. Ms Harrison's statement of case [232-244] sets out her grounds of appeal.
20. Ms Harrison stated there was no evidence as to safety issues. The Property has been let to groups of 5 students since 2014. She is not aware that any complaints have been made. She relied upon various emails and messages from previous tenants supporting the use of the Property.
21. Ms Harrison stated there were no national standards. She also referred to the figures for other local authorities annexed to Mr Athill's statement and obtained by him. In her opinion as an overall space the flat works. The communal space gives each tenant a cupboard and drawer and provides room to cook, eat and watch tv/socialise. This is what in her opinion the students require. She believed many would socialise using the larger bedrooms and might even move the sofa off the landing into one of the bedrooms.
22. On questioning by Mr Conway she explained that she leaves it up to the tenants to determine where the sofa which we saw on the landing goes. Provided it does not block the passageway she is happy for it to remain on the landing.
23. Ms Harrison did not accept that the Council should have changed the policy as they did and that little or no warning was given to people. In her opinion her Property afforded adequate accommodation for 5 students living together.
24. Ms Harrison was of the view that each room had some provision for guests. Although each room had a double bed because this was what

the tenants wanted these could be taken out and a single bed only provided thereby giving more space.

25. Mr Athill explained that whilst he had been on the Council Governance Board he supposedly had no knowledge and had not been consulted as to the changes in standards adopted by the Council.
26. Mr Conway relied upon his earlier arguments. These being that the Council had previously had a selective licencing scheme which ended in 2018. The Council had not renewed this but had updated its policy standards. He agreed there were no national standards but the Council had created its own relying upon the Metric Handbook to determine sizes for communal amenities. These sizes differed for open plan and single use rooms and were dependent upon the number of occupiers. For 5 persons with a single open plan kitchen/lounge/diner the starting point was that a room should be 24 square metres.
27. He explained the Council looked at the Property as a whole and assessed having regard to each bedroom. Bedrooms 3 and 5 were in excess of 10.22 square metres and so were suitable for double occupancy. The other three bedrooms were all less than this figure being 8.16, 7.50 and 7.8 square metres. The communal amenity space was only 14.42 square metres. Even making allowances for the larger rooms and a general 10% allowance meant the Council assessed the Property as requiring 19.6 square metres. As a result the Property fell significantly below this level.
28. Mr Conway confirmed in his opinion it was not correct to include any part of the upper landing area as this formed part of the escape route for the Property and had no ventilation or windows and so was not suitable for this purpose.
29. Mr Conway explained the Council allows 10% to take account that some rooms are larger than the statutory minimum. He accepts that there was no evidence the Property was unsafe. The reduction of 1 square metre is based on the fact that this is the space standard required to accommodate an armchair, guestchair and amenity space in a room primarily used as a bedroom.
30. Mr Conway explained he had tried to look at the figures supplied for other local authorities. He did not accept you could look at them in table without understanding the context in which they would be applied. To do so would not be necessarily comparing the same points.
31. In summing up Ms Harrison pointed out she purchased the Property with a Licence. She is accredited with Portsmouth Council as a landlord and the Property had always been rented to students. The changes in the standards came as a total shock to her. In her opinion the Property complies with all national standards and is safe. She is not a rogue landlord.

32. She relied on the fact that other local authorities would licence her Property for 5 persons. In her opinion Portsmouth is out of line with its standards and she requests a 5 year licence.

## **DECISION**

33. 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.
34. 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.
35. The Housing Act 2004 gives local authorities powers to licence HMOs. Since the 1<sup>st</sup> 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.
36. In this case the Council was satisfied that the prescribed standards were met to allow occupation by 5 persons. In this Property all bedrooms exceeded the statutory minimum and had two rooms exceeding the minimum for double occupancy. The Council determined however that this Property had communal amenity space significantly below its own published standards.
37. There was some discussion at the hearing as to whether 5 persons could continue to occupy the 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.
38. It was clear from the inspection that the Property was well maintained and plainly the Applicant was a responsible landlord. However it is the Properties themselves which are the focus.
39. 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.

40. 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.
41. 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.
42. Turning to the current appeal the Property had 5 bedrooms which exceeded the minimum size. Two rooms exceeded the size for double occupancy. The tribunal noted that in applying its own standards the Council made a deduction to allow for these larger rooms.
43. The tribunal finds that in each Property the 3 smaller rooms left no space for guests or visitors to reasonably enter the same. Further the tribunal was satisfied that the landing area was not suitable for use as an amenity space. This was the escape route for the first floor bedrooms and should be kept clear of furnishings.
44. 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.
45. 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. The communal space at the Property was 14.42 square metres being more than 5 square metres below the size assessed by the Council as being the minimum.
46. The tribunal was satisfied that the communal amenity space fell significantly below that set by the Councils standards.
47. 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.

48. 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.
49. In respect of the Property 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