



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

Case Reference : CHI/00MR/HMV/2020/0003

Property : 111 St Paul's Road
Southsea
Hampshire
PO5 2AB

Applicant : OMPD Limited

Representative : Hampshire Property Consultants

Respondent : Portsmouth City Council

Representative : Chris Andrews (Housing Standards
Officer)

Type of Application : Appeal against refusal to vary HMO
Licence – Schedule 5 Paragraph 32(1)

Tribunal Member(s) : Judge Tonia Clark

**Date and Venue of
Hearing** : 24th March 2021

Date of Decision : 24th March 2021

DECISION

Summary of Decision

The appeal is granted and the HMO Licence varied such that the period for compliance with the special condition is extended to 1st September 2022.

Application

1. This is an application by OMPD, which is an appeal against a refusal by the respondents to vary the special conditions contained in a HMO licence which was issued pursuant to the Housing Act 2004 Schedule 5 para 32(1)
2. The Applicant seeks an extension of time to carry out building works in order to comply with the special condition of the HMO licence extending the period of time from 1st September 2021 to 1st September 2022.
3. The respondent to the appeal is Portsmouth City Council.
4. An application to vary the HMO licence was made and refused on 27th November 2020.
5. The applicants received the notice refusing the application on 8th December 2020
6. The application to appeal the refusal notice was received by the Tribunal on 21st December 2020.
7. Directions were given by the Tribunal on the 15th January 2021. The directions provided that if witness statements are provided they should contain a Statement of Truth. The Tribunal has read a witness statement from the Respondent (pages 293-296 of the bundle) but there is no witness statement from the Applicant.
8. The Tribunal considered that the matter could be dealt with by way of a paper hearing if no party objected. No objections have been received.

Background

9. The property at 111 St Paul's Road Southsea PO5 4AB is owned by the Applicant. It is described as a 2- storey mid terrace property in multiple occupation. It is accepted by all parties that access is from the front of the property.
10. The property has been used as an HMO since 2007 and has been licenced since 2015.
11. The property is currently let to 5 individuals.

12. Prior to the issue of the current licence, a verification inspection was carried out on 15th April 2019. Two issues were identified and notified to the Applicant; lack of communal space and failure of safe working floor space in the kitchen.
13. On 24th April 2019 a full Housing Health and Safety Rating (HHSRS) was undertaken by Chris Andrews (Housing Standards Officer).
14. The parties entered into negotiations and the Applicant proposed, as an alternative to reducing the number of occupants to 4 (from 5) to build a ground floor rear extension, thereby increasing the common space and resolving the kitchen hazard (“the works”).
15. The respondents in their response confirm that the property “*does satisfy the prescribed standards for amenities but does not satisfy the space standards deemed as acceptable by the Authority.*” (Page 46 of the bundle)
16. The most recent HMO licence was issued on the 14th November 2019 pursuant to the Housing Act 2004 Section 64 (not in the year 2018 as maintained by the Respondents (at Page 45 of the bundle)
17. The licence specifies that the occupancy level is 5 people and is for a period of 5- years – (not 1 year as stated by the respondent in their Statement of Case). The licence is at pages Page 83 -87 of the bundle.
18. The current special condition provides that the specified works must be completed by 1st September 2021.
19. The special condition provides that;

*“The licence Holder will carry out the following works, within the time set out below, to the satisfaction of the council:
the ground floor lounge/kitchen dining room is to be reconfigured with a new extension so as to increase the common floor size to twenty 22.00 M square
The new kitchen installation is to be located to the rear of the room so as to avoid a walkthrough, and must meet the demands of the required space standards as published.
The ground floor rear bedroom as per the new plans submitted must be a minimum of 6.51 metre square
All works to be completed to current building regulations and prior to the 1st of September 2021 or prior to occupation “*
20. Planning permission for the work to be carried out was previously obtained on 4th October 2019
21. The current tenants are each said to occupy the property by virtue of a tenancy agreement which is said to be due to expire on 31st July 2021. It is said by the Applicant that the tenants each wish to remain in occupation for a further year. A periodic tenancy will be automatically created on 1st August 2021.

22. The Tribunal does not have a copy of the tenancy agreements nor any evidence about the extension of the current tenants' lease, whether or not they will occupy by virtue of a periodic tenancy or the grant of a new tenancy agreement.
23. The Tribunal is unclear as to the circumstances of the extension of the period of occupation by the current tenants, having noted that "*the same occupiers have been within the property for some years*" (page 40 bundle) but that the tenants are students who in September 2020 were going to "*finish their university degree. Vacating the property on 31st July 2021*" (page 70 of the bundle). This e mail from the Applicant to the Defendant and dated 3.11.20 is far from clear as it says that works were anticipated to take place during the Easter /Summer 2019 but the Tribunal notes that this was before planning permission had been obtained (or the special condition imposed) and the dates presumably are an error.
24. The Tribunal also noted that the Applicants case is that the property is to be occupied over the summer. (page 65 of the bundle)
25. The current tenants are described as students and it is said that they will be engaged in studies until early/ mid June, possibly later.
26. The Tribunal has considered the following documents provided by the Respondents;
 - Houses in Multiple Occupation – Guidance for Local Housing Authorities December 2018
 - Houses in Multiple Occupation – Ensuring mixed and balanced communities (PCC) revised July 2018
 - Technical Housing Standards – nationally described standard. March 2015
 - Statutory Instrument 2006 No 373
 - Statutory Instrument 2018 No 616
 - Statutory Instrument 2018 No 221
 - Portsmouth City Council Standards for Houses of Multiple Occupation May 2014 and
 - A guide to understanding the basic standards September 2018
 - House of Commons Library Overcrowded housing (England) 1st October 2018.
27. The Tribunal has read the witness statement of the Respondent.

Additional mandatory conditions for licences granted after 1 October 2018

28. The Tribunal has taken into account the imposition of mandatory conditions to licences imposed for HMO licences granted on or after 1 October 2018.
29. The Tribunal is satisfied that the special conditions were appropriately imposed.
30. In the current case the special conditions imposed requires the making of structural alterations.

31. The Tribunal finds that the nature of the proposed works is structural and will inevitably require workmen on site. It is likely to take some weeks to complete.
32. The work must be carried out either with the tenants living in the property or after they have vacated/been evicted.

Decision

33. The Tribunal notes the stated intention of the Applicant to carry out the works required by way of compliance with the special conditions and that planning permission has been applied for and remains valid.
34. The Tribunal concludes that in all the circumstances it is appropriate in this particular case to extend the time period for compliance to 1st September 2022.
35. The Tribunal has taken into account that the Respondents initially considered and agreed to a 22 month- period within which the work had to be completed.
36. The Tribunal concluded that it was envisaged by virtue of the use of the words within the special condition that the works were to be completed prior by 1st September 2021 “... or prior to occupation” -that such works might well run contrary to the requirement set out in the licence that;
“The licence holder is to ensure that any works carried out at the property are done so with due regard to the comfort of the occupying tenants.”
37. The Tribunal finds that in this case, assuming that the tenants are remaining in the property over the summer months, the Applicant will either have to evict the tenants or carry out structural work with the tenants remaining living at the property. Work would likely have to commence in June/July in order to comply with the condition to complete works by 1st September 2021.
38. The Tribunal has considered the Guidance for Local Authorities, to which the Tribunal has had due regard but to which it is not bound, being non- statutory in nature.
39. In the Notice refusing the request for the variation (pages 61-63 of the bundle) the Respondents refers to the failure by the Applicant to provide substantive evidence of homelessness caused by the requirement to carry out the necessary works. The Tribunal is sympathetic to that view taken by the Respondents and the Applicant has still not provided any substantive evidence in this regard.
40. At the time of the Notice of refusal the Respondents did not agree with the “speculations over summer 2021” and that this is not “solid grounds”, citing that Estate Agents and Letting Agents were able to stay open during the (then) most recent lockdown on November 2020.

41. The Tribunal notes that since that date the country has been in a further period of lockdown (and remains so) since 4th January 2021, a period of nearly 12 weeks at the time of this decision.
42. The Tribunal has considered whether there is/has been a change in circumstances since the licence was granted. The Tribunal has concluded that since the end of November 2019 the continuing global pandemic has made the carrying out of structural works within a domestic household environment much more problematic. In addition, it is a matter of common knowledge that this has resulted in alterations to many students plans, where and how they work, working from home and extensions of time for completing works which have not previously been contemplated.
43. The Tribunal has also considered the ability of the landlord to obtain vacant possession and the current extension of the prohibitions on obtaining vacant possession.
44. In the current and exceptional circumstances, the Tribunal therefore concludes that the time for compliance be extended by one year.
45. The Tribunal notes that this will require the work to be commenced at the latest in the summer of 2022 in order to ensure compliance by 1st September 2022.
46. It is clearly a matter for the Applicant and as to how he proposes to comply with his obligations under the terms of the licence and comply with his obligations to his tenant as landlord.

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 by email to rpcsouthern@justice.gov.uk 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.