



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

Case Reference : **CHI/00MR/HML/2021/0005**

Property : **56 Whitwell Road, Southsea,
Hampshire PO4 0QS**

Applicant : **Mr Eugene Boyle**

Representative : **Ms Alice Ibbotson**

Respondent : **Portsmouth City Council**

Representative : **Ms Jelena Taylor Housing
Regulation Officer**

Type of Application : **Appeal against imposition of
conditions HMO Licence**

Tribunal Members : **Judge Tildesley OBE
Mr D Banfield FRICS
Mr P Gammon MBE**

**Date and venue of
Hearing** : **Havant Justice Centre, Elmleigh
Road, Havant PO9 2AL
7 December 2021**

Date of Decision : **20 December 2021**

DECISION

Decision of the Tribunal

- 1) The Tribunal dismisses the Appeal and confirms the Respondent's decision to limit the HMO licence at 56 Whitwell Road, Southsea for occupation by no more than eight persons. The Tribunal, however, varies the special condition relating to Bedsit 5 to the effect that it would not be used as sleeping accommodation/bedsitting room until after the present tenant, Mr Norman, vacates Bedsit 5 or 28 July 2026 whichever is the earliest.

The Application

1. The Applicant appeals against a decision of Portsmouth City Council on 29 July 2021 to limit the licence of a house in multiple occupation (HMOs) at 56 Whitwell Road Southsea for occupation by no more than eight persons. The licence was granted for a period of five years expiring on 28 July 2026 and was subject to a special condition that Bedsit 5 would not be used as sleeping accommodation/bedsitting room after 12 months from 29 July 2021. The Respondent imposed the special condition in order to give the present tenant, Mr Norman, time to find alternative accommodation, and thereby reduce the occupation from nine persons to eight persons.
2. The Application was conducted under the fast track procedure. On the 7 December 2021 the Tribunal heard in person from Miss Alice Ibbotson for the Applicant and from Mrs Jelena Taylor, Housing Regulations Officer, and Mr Conway, Senior Housing Regulations Officer for the Respondent. Mr Eugene Boyle was also in attendance. Mr Gammon attended by video link. The Applicant supplied the Tribunal with a hearing bundle which include a separate bundle of photographs. At the commencement of the hearing the Tribunal conducted a virtual inspection of the property by means of a video taken by Applicant and displayed on the big screen in hearing room 4. The parties were present at the virtual inspection.
3. By virtue of this being a fast track case the Tribunal provides a summary of its reasons for the decision. The Tribunal reserves the right to expand upon its reasons if a party applies for permission to appeal.

The Applicable Law

4. This Appeal is concerned with the Respondent's decision to restrict the HMO licence for occupation by eight persons. Previously the Respondent had granted a licence for occupation by no more than nine persons. The specific issue raised by this Appeal was whether bed/sitting room 5 was suitable for occupation by a person living there.

5. Under Paragraph 31(1) part 3 of schedule 5 of the Housing Act 2004 (“2004 Act”) the Applicant has the right to appeal to the Tribunal against the Respondent’s refusal to grant the licence or against the Respondent’s decision to grant the licence. An appeal against a grant may relate to the terms of the licence. Technically this is an appeal under paragraph 31(1)(b) against the term of restricting the licence for occupation by no more than eight persons for one year.
6. Paragraph 34(1) provides that the appeal is by way of a re-hearing and may be determined by the Tribunal having regard to matters of which the Respondent is unaware. The Tribunal may confirm, quash or vary the condition to the HMO licence. The function of the Tribunal on appeal is not restricted to a review of the Respondent’s decision. The Tribunal’s jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.
7. Under section 64(2) of the 2004 Act the local authority if satisfied of the matters mentioned in subsection (3) may grant an HMO licence to the Applicant. The relevant matter for the Application is subsection 3(a):

“(a) That the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67.”
8. Sub-section (4) provides that the maximum number of households or persons for whom an HMO may be licensed is either the maximum number specified in the application, or some other maximum decided by the local authority. In this case the Applicant specified a maximum number of nine persons, the Respondent decided that the maximum number should be eight persons.
9. Section 65 sets out the tests as to suitability for multiple occupation. Under section 65(2) the local authority may decide that the HMO is not reasonably suitable for occupation by a particular number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.

The Facts

10. The property is a terraced house laid out over four floors. The property is a converted Building HMO as defined in section 254 of the 2004 Act with a combination of self-contained bedsits and bedsits sharing sanitary facilities. There was no shared communal kitchen, lounge or dining room. The occupiers of the bedsits had access to two locked cupboards inside the property and a shed in the rear garden for storing personal possessions.
11. The property had been an HMO for a long number of years. Mr Boyle had owned the property since 1984, and had held an HMO licence when

mandatory licensing was introduced by the 2004 Act. The layout of the property has remained the same throughout and had been subjected to inspections by the Respondent's officers during this time. The Respondent had had no issue in the past with the size of Bedsit 5.

12. Mr Norman, the tenant of Bedsit 5, had lived there for three and half years. Mr Norman had expressed no concerns to Mr Boyle about the size of the living area.
13. At the time of the inspection the property had been converted into nine bedsits. The sizes of those bedsits were as follows Bedsit 1: 20 square metres; Bedsit 2: 28 square metres; Bedsit 3: 31 square metres; Bedsit 4 22 square metres, Bedsit 5: 11.36 square metres; Bedsit 6: 17 square metres; Bedsit 7: 17 square metres; Bedsit 8: 38 square metres; and Bedsit 9: 29 square metres.
14. Bedsits 1, 4, 5, 6 and 7 shared the bathroom facilities on the first floor which comprised a separate WC with sink, shower room, and a three piece bathroom. The other bedsits had en-suite facilities.
15. Bedsit 5 was located at the rear of the building on the first floor next to the bathroom facilities. Bedsit 5 had a window which opened on the south facing exterior wall of the property.
16. The size of Bedsit 5 was significantly smaller than the other Bedsits in the property.
17. The virtual inspection showed that Bedsit 5 had a single sink and draining board with a double base unit comprising a draw and two cupboards, two double wall cupboards, a dog-leg work-top on which was a microwave, kettle and toaster with a small fridge underneath. The work top into the room operated as a breakfast bar. There was a small double clothing unit located on top of a three draw chest with six draws and a metal framed chair in the area on the left of the door. A single bed was situated opposite the kitchen area against the two outside walls. It appeared that the space was not sufficient to take the length of the mattress. At the end of the bed there was another chest of drawers in front of the wall-mounted electric heater with a television on it.
18. The Respondent assessed the space in Bedsit 5 against the furniture schedule and the minimum access/activity zones that is expected to be provided for one person's use to accommodate basic activities in accordance with the Housing Standards and the Metric Handbook 6th Edition. The Respondent reported that the outcome of the assessment was that the total floor area of the room was found too small to accommodate most of the basic furniture and necessary activity space to provide an adequate living environment for one occupier. The

Tribunal noted that these two sets of standards applied to new builds and not to existing converted buildings.

19. The Respondent also assessed the hazard risks existing in Bedsit 5 posed by deficiencies with space and crowding against two worked examples produced by RHE Global (a specialist software training, and consultation provider for Public Protection and Housing Services). The assessment suggested that Bedsit 5 suffered category 1 hazards in respect of space. The Tribunal treated this assessment with caution. The Respondent did not undertake a HHSRS inspection of the property. The worked examples did not form part of the current HHSRS operating standards, and they were not in the public domain.
20. The Respondent stated that in its view the perception of HMO accommodation as transient and interim accommodation was no longer applicable to most of the HMOs in Portsmouth. The Respondent estimated that 25 per cent of non-student HMO tenancies in the PO4 and PO5 postcodes had lived in their properties for over four years. The Respondent said that HMOs were becoming long term homes for a variety of reasons and should be assessed as such.

Reasons

21. The Tribunal finds that Bedsit 5 is too small for a single person to live in as his/her home. The Tribunal considers there is not sufficient space for a single person to have a reasonable lifestyle within the Bedsit. Essentially the size of the room only permits the preparation of basic meals and sleeping. There is no space for a single person to sit down at a table to eat a meal, to relax and watch television, to entertain guests and to store personal belongings. In reaching its conclusion the Tribunal relied primarily on its virtual inspection of the property applying its knowledge and expertise as an expert Tribunal, and the fact that the size of Bedsit 5 was significantly smaller than the other Bedsits in the property. The Tribunal took comfort from the Respondent's assessment of the room against the Housing Standards and the Metric Handbook 6th Edition. The Tribunal, however, recognised that these standards related to new builds rather than existing accommodation so the comfort derived was confirming the Tribunal's expert assessment of the space available in the room. The Tribunal placed no weight on the two HHSRS worked examples because they did not form part of the current HHSRS operating guidance, and they were not in the public domain.
22. The Applicants' case was essentially that the Respondent had not questioned the size of Bedsit 5 previously and that the current tenant had no complaints with the space in the room. The Applicant suggested that the availability of storage space elsewhere in the property and in the garden shed ameliorated the space constraints in the room. The

Applicant suggested alternative layouts for the room which might improve the lifestyle of the occupant.

23. The Tribunal was not convinced by the Applicant's arguments. The Tribunal is dealing with the facts that are before it, and is not reviewing the Respondent's previous dealings with the property. The Tribunal did not consider the ability for the tenant to store personal belongings elsewhere and the alternative layouts had any material bearing on its evaluation of the available space in Bedsit 5 for living in.
24. The Tribunal's overriding concern is to ensure that accommodation offers reasonable standards to the occupants that live there. The Tribunal took note of the Respondent's evidence that more tenants are living in HMOs on a more permanent basis and that HMOs should no longer be view as transient accommodation.
25. The Tribunal concludes that Bedsit 5 is not reasonably suitable for occupation by one person, which meant that the property could only be occupied by no more than eight persons. The Tribunal, therefore, dismisses the Appeal and confirms the Respondent's decision to limit the HMO licence at 56 Whitwell Road, Southsea for occupation by no more than eight persons.
26. The Tribunal took a different approach in respect of the special condition which the Respondent had imposed to ameliorate the impact of its decision upon Mr Norman, the current tenant. The Tribunal had regard to the following facts (1) The Respondent had not yet published its standards for bed sitting accommodation, the previous standards having been withdrawn and (2) Mr Norman the present tenant wished to remain in occupation of Bedsit 5. The Tribunal decides that the special condition should be varied to the effect that Bedsit 5 would not be used as sleeping accommodation/bed sitting room until after the present tenant, Mr Norman vacates Bedsit 5 or 28 July 2026 whichever is the earliest. The Tribunal considered that this condition respected Mr Norman's view and provided an incentive for him to find alternative accommodation without the anxiety of facing imminent proceedings to remove him from his accommodation which would have to be commenced well before the end date of 28 July 2022. Further the condition also acknowledged that Mr Boyle would have not been aware of the Respondent's expectations when he made the application for a licence.

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 and is to be sent by email to rpsouthern@justice.gov.uk
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.

Appendix of relevant legislation

Part 2 of the Housing Act 2004

Licensing of Houses in Multiple Occupation

64 Grant or refusal of licence

(1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—

- (a) grant a licence in accordance with subsection (2), or
- (b) refuse to grant a licence.

(2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either—

- (a) to the applicant, or
- (b) to some other person, if both he and the applicant agree.

(3) The matters are—

- (a) that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;
- (b) that the proposed licence holder—
 - (i) is a fit and proper person to be the licence holder, and
 - (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;
- (c) that the proposed manager of the house is either—
 - (i) the person having control of the house, or
 - (ii) a person who is an agent or employee of the person having control of the house;
- (d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and
- (e) that the proposed management arrangements for the house are otherwise satisfactory.

(4) The maximum number of households or persons referred to in subsection (3)(a) is—

- (a) the maximum number specified in the application, or
- (b) some other maximum number decided by the authority.

(5) Sections 65 and 66 apply for the purposes of this section.

65 Tests as to suitability for multiple occupation

(1) The local housing authority cannot be satisfied for the purposes of section 64(3)(a) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.

(2) But the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.

(3) In this section “prescribed standards” means standards prescribed by regulations made by the appropriate national authority.

(4) The standards that may be so prescribed include—

(a) standards as to the number, type and quality of—

(i) bathrooms, toilets, washbasins and showers,

(ii) areas for food storage, preparation and cooking, and

(iii) laundry facilities,

which should be available in particular circumstances; and which should be available in particular circumstances; and

(b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.

67 Licence conditions

(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following—

(a) the management, use and occupation of the house concerned, and

(b) its condition and contents.

(2) Those conditions may, in particular, include (so far as appropriate in the circumstances)—

(a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;

(b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;

(c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;

(d) conditions requiring such facilities and equipment to be kept in repair and proper working order;

(e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;

(f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.

(3) A licence must include the conditions required by Schedule 4.

(4) As regards the relationship between the authority’s power to impose conditions under this section and functions exercisable by them under or for the purposes of Part 1 (“Part 1 functions”)—

(a) the authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;

(b) this does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection (2)(c) above, even if the same result could be achieved by the exercise of Part 1 functions;

(c) the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can be subsequently exercised by the authority.

(5) A licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person has consented to the imposition of the restrictions or obligations.

(6) A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any tenancy or licence under which any person occupies the house.

71 Procedural requirements and appeals against licence decisions

Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.

Schedule 5 of Housing Act 2004 SCHEDULE 5 Sections 71 and 94

31 Right to appeal against decision or refusal to vary or revoke licence

(1) The licence holder or any relevant person may appeal to the appropriate Tribunal against a decision by the local housing authority—

- (a) to refuse to grant a licence, or
- (b) to grant a licence.

(2) An appeal under sub-paragraph 91) may, in particular relate to any terms of the licence

34 Powers of tribunal hearing appeal

(1) This paragraph applies to appeals to a tribunal under paragraph 31 or 32.

(2) An appeal—

- (a) is to be by way of a re-hearing, but
- (b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may confirm, reverse or vary the decision of the local housing authority.

(4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.