



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

**Case Reference** : CHI/00MR/HML/2019/0001

**Property** : 40 Wellington Street, Southsea,  
Portsmouth PO4 0JE

**Applicant** : Dr F Memon

**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 of inspection** : 10<sup>th</sup> May 2019

**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. Dr F Memon, the Applicant, is the owner of 40 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 5<sup>th</sup> November 2018. The Council 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. Dr Memon 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 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 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. It was agreed that the matter would be determined upon the papers and a hearing bundle was supplied by the Council.

## **INSPECTION**

8. The tribunal inspected the Property on the morning of 10<sup>th</sup> May 2019 in the presence of Mrs Memon, Mr Conway, Licensing Team Leader for the Council and Miss Sarah Curtis, Housing Standards Officer.
9. The Property was a two storey maisonette on the ground 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.
10. There was a small walled courtyard area to the front of the Property. 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 two fridge freezers. There was a flat screen tv on the wall and a table with 5 chairs.
11. The ground floor also had a wc and shower and basin. Bedroom 1 was to the rear left and was a smallish room overlooking the rear. It contained a double bed, wardrobe and small desk.
12. Bedroom 2 was again on the rear of the ground floor. The room contained a double bed, wardrobe and desk.
13. From the hallway was a stairway leading to a landing with cupboards. There was a bathroom with a shower and basin and a separate room with a wc.
14. Bedroom 3 to the rear contained a double bed, wardrobe and desk.
15. Bedrooms 4 & 5 also contained a double bed, wardrobe and desk.

## **DETERMINATION**

16. In reaching its determination the tribunal had regard to all of the documents supplied by the parties. All were read carefully and the tribunal also had the benefit of its own inspections.

17. This application was dealt with on paper. The tribunal who determined this matter heard three further oral appeals on 10<sup>th</sup> May 2019 in respect of appeals by landlords of HMO's against licences issued by Portsmouth Council which were limited to a period of one year on the basis that the amenity space was not sufficiently large. One of these appeals (CHI/00MR/HML/2019/006) concerned 52 Wellington Street being the maisonette immediately above the subject Property.
18. 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.
19. 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.
20. 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 given the amenity space only measured some 14.2 square metres. The Council's standard suggested for a Property occupied by 5 persons with a combined lounge/diner/kitchen a space of 24 square metres was required.
21. At the time of the inspection the Property was occupied. the Property appeared to be in reasonable order. However, the tribunal reminds itself it is the Property itself which is the focus.
22. The Applicant referred to the fact that he had previously spent monies on the Property and had been granted a previous licence. He suggested it would be unfair to not grant a further licence. He accepts that the communal space was about 10 square metres below that required by the Council. He suggests that all 5 bedrooms exceed the statutory minimum size of 6.51 square metres and so the increased size should be taken account of in assessing the Property as a whole.
23. 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.
24. Further the Council in their submissions set out how they considered using the Metric Handbook Planning and Design Data what furnishings

should be provided. The Council explained what allowances they made and how in their opinion a combined amenity space of 20.8 square metres was required. As a result the Council suggested that even with such allowances the amenity space of the Property fell significantly short and so was not suitable for 5 persons.

25. The tribunal was satisfied that the standards adopted by the local authority were reasonable. 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.
26. The Council's evidence was that the standard set is a high one. The Council accepted some allowances needed to be made given two bedrooms exceeded the size for double occupancy and generally allowances should be made. Even having done this the amenity space fell substantially short by about 6 square metres. This tribunal accepts the methodology applied by the Council was a reasonable one. The tribunal finds, relying on the evidence and its own inspection, that the amenity space at the Property was not sufficiently large to accommodate 5 persons taking account of the sizes of the bedrooms.
27. 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.
28. 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