



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

Case Reference : **CHI/00MR/HMV/2019/0002/0003**

Property : **12 Playfair Road, Southsea,
Hampshire PO5 1EQ
105 St Pauls Road, Southsea, Hants
PO5 4AB**

Applicant : **Mr Graham Martin Harvey**

Representative :

Respondent : **Portsmouth City Council**

Representative :

Type of Application : **Appeal against the decision to limit
the licence for a house in multiple
occupation (HMO) to one year**

Tribunal Members : **Judge Tildesley OBE
Mr Brandon Simms FRICS**

**Date and venue of
Hearing** : **Havant Justice Centre, Elmleigh
Road, Havant PO9 2AL
8 May 2019
Reconvene 7 June 2019 in absence
of the parties.**

Date of Decision : **2 July 2019**

DECISION

Decision of the Tribunal

- 1) The Tribunal dismisses the Appeals and confirms the Council's decision to limit the HMO licence for occupation by five persons at each of the properties, 12 Playfair Road, Southsea, Hampshire PO5 1EQ and 105 St Pauls Road, Southsea, Hants PO5 4AB for a period of 12 months.

The Application

1. The Applicant appeals against decisions of Portsmouth City Council (the Council) to limit the licences of two separate houses in multiple occupation (HMOs), 12 Playfair Road and 105 St Pauls Road, in Southsea for one year which the Applicant has been letting out to groups of five persons, normally students for a number of years.
2. The Applicant objects to the Council's decision to reduce the occupancy numbers for both properties to four persons. The Council's reason for its decision was that the communal space in each property was not adequate to support five persons living at the respective properties.
3. The Council decided to grant an HMO licence for each property for a period of one year expiring on 12 December 2019 for 12 Playfair Road and on 13 December 2019 for 105 St Pauls Road. During that year the Applicant was permitted under the terms of the licence to have five occupants but after that year the number of occupants must reduce to four. The Council made this concession because the Applicant had already let the properties to five occupants.
4. The Applicant put forward the same grounds of appeal for each property. Essentially the Applicant argued that both properties had been previously licensed for occupancy for five persons for a period of five years without objection under the Council's Additional Licensing Scheme which came to an end in August 2018. In the Applicant's view, the decision now by the Council to reduce the occupancy level to four persons was irrational and had no justification in law. The Applicant pointed out that the effect of the Council's decision was that one perfectly serviceable room would be left empty at a time of growing homelessness and that he would lose one whole year's income for one room.
5. The Council explained that following a review it had issued in September 2018 a new set of "Standards for HMOs" which replaced the previous Standards document published in 2014. In the new 2018 Standards document the Council had upgraded its space standards for communal areas in HMOs. The Council acknowledged that the legislation had imposed no prescribed standards for the sizes of communal areas. The Council, however, maintained that it was entitled

to determine and publicise suitable and reasonable space standards for communal areas. The Council contended that it had power under section 65(2) of the Housing Act 2004 to decide that a property is not reasonably suitable for occupation by a particular maximum number households or persons even if it does meet prescribed standards for occupation by that number of households or persons.

6. The Council stated that in relation to both properties they used the space standards for communal areas as a guideline and considered those standards in the context of all relevant circumstances. The Council having completed that exercise decided that the properties were not suitable for occupation by five persons.
7. The question for the Tribunal to determine is whether each property is not reasonably suitable for occupation by five persons even though each property meets the prescribed standards for occupation by five persons.
8. The Tribunal issued directions to progress the Appeals. The Tribunal heard the Appeals on the 8 May 2019 together with the Appeal on 4 Grosvenor Street, Southsea which is subject to a separate decision as it involves a decision under section 67 of the 2004 Act. The Tribunal inspected the properties prior to the hearing.
9. Mr Harvey presented his case at the hearing on 8 May 2019. Mr Harvey was assisted by Mr Anthony Athill of the Portsmouth and District Private Landlords Association (“The Association”) who provided a witness statement. Mr Michael Conway, Licensing Team Leader, made the case for the Council. Mr Christopher Andrews, Housing Standards Officer and Clare Hardwick Acting head of Private Sector Housing were also in attendance. The Tribunal reconvened on 7 June 2019 in the absence of the parties to make its decision.
10. The Tribunal had also listed four appeals on the application of section 65(2) to four other HMOs before the same Tribunal on 10 May 2019. As a result of unexpected circumstances a new Judge had to be appointed for the hearings on the 10 May 2019.

The Properties

11. **12 Playfair Road** is an inner terrace Victorian style house built of brick with a tiled roof originally as a private house but now converted to student accommodation. It is located in a densely populated residential area. Layout plans are provided in the bundle.
12. On the Ground Floor is an Entrance Hall; Two Letting Rooms one with a washbasin; Cloakroom with W.C. and washbasin; Galley Kitchen with sink, worktops, cupboards, built-in electric hob and oven, leading to: Living Room with access to the garden. First Floor: Landing; Three

Letting Rooms, two with washbasins; Bathroom with bath, W.C. and washbasin; Shower Room with shower cubicle and washbasin. Outside: gardens to front and rear; Shed housing tumble drier.

13. The size of the kitchen area is 9m² and of the lounge 8.8 m² making a combined total of 17.8m². The Council's published communal space standards for five occupants where the kitchen/dining area is open planned is 24m². The standards for communal spaces not open planned is 11m² lounge, 11m² dining room and 7m² for a kitchen.
14. The sizes of the bedrooms are: bedroom 1: 12.2m², bedroom 2: 9.6m²: bedroom 3: 12.4m², bedroom 4: 9m² and bedroom 5: 7.3m².
15. The Council accepted that the property met the prescribed standards as defined in section 65(3) of the 2004 Act.
16. The Tribunal noted that the kitchen and living room were at the rear of the house and acted as thoroughfare to the garden at the rear via French doors. The kitchen and the lounge were relatively narrow being some 2.5m² wide. The furniture for the lounge was located either side of the thoroughfare, against the party wall and external wall. Two ends of a settee with two dining chairs in between were located on the party wall. A small square table with two dining chairs either side and a coffee table were located on the other wall.
17. The kitchen had a sink with draining board, electric hob with a single oven, microwave, washing machine and fridge freezer. The kitchen was fitted with wall and floor cupboards which were in good condition and in sufficient numbers for each tenant to have his/her own cupboard. The Applicant also provided a tumble dryer which was located in the shed in the rear garden.
18. **105 St Pauls Road** is an inner terrace house probably built in the 1960s or 70s of brick under a low-pitch tile-covered roof.
19. On the Ground Floor is an Entrance Hall; Two Letting Rooms; Shower Room; Cloakroom with W.C.; Galley Kitchen with sink, worktops and cupboards, built-in electric hob and oven, leading to: Living Room with access to the garden. First Floor: Landing; Three Letting Rooms; Bathroom with bath, W.C. and washbasin; Outside: gardens to front and rear; Shed housing tumble drier.
20. The size of the kitchen area is 6m² and of the lounge 9.6 m² making a combined total 15.6m². The Council's published communal space standards for five occupants where the kitchen/dining area is open planned is 24m². The standards for a communal area not open planned is 11m² lounge, 11m² dining room and 7m² for a kitchen.

21. The sizes of the bedrooms are: bedroom 1: 8.8m², bedroom 2: 10.5m²: bedroom 3: 9m², bedroom 4: 11.4m² and bedroom 5: 6.9m².
22. The Council accepted that the property met the prescribed standards as defined in section 65(3) of the 2004 Act.
23. The Tribunal observed that the lounge was wider than the kitchen, 2.7m² as against 2.5m². The patio doors giving access to the rear garden was on the side wall (North facing). A large two seater soft leather seater with matching armchair were located on the wall facing the patio doors. A small dining table with two chairs were located in the corner of the lounge just above the patio doors looking from the kitchen. The residents gained access to the rear garden through the patio doors to the lounge.
24. The kitchen had a sink with draining board, electric hob with a single oven, microwave, washing machine and fridge freezer The kitchen was fitted with wall and floor cupboards which were in good condition and in sufficient numbers for each tenant to have his/her own cupboard. The Applicant also provided a tumble dryer which was in the passageway of the rear access to the property.

The Applicant's Case

25. The Applicant argued that the Council's decision was irrational on a range of criteria. First, the Applicant said that experienced Council Officers had inspected both properties in connection with the Additional Licensing Scheme and had decided they were suitable for occupation by five persons. Second, the Applicant maintained that the Council's approach was not consistent. Mr Athill cited a property in Langley Road which had been accepted by the Council for five occupants despite the fact that the communal space only measured 17m². Third the Applicant asserted that the Council applied more rigorous space standards for communal areas than neighbouring local authorities. The Applicant supplied the following data on communal space standards for neighbouring authorities: 11.5m² Southampton; 12m² Brighton, 11.5m² Adur/Worthing and 15m² Chichester.
26. The Applicant believed that the Council had unnecessarily raised the bar for standards for HMOs and that it was applying a less flexible approach than previously. The Applicant pointed out that Council officials had not visited the properties but did a desk top exercise using the layout plans provided with the applications for new licences. Mr Athill acknowledged that the Council had regard to individual circumstances when giving effect to the Standards but he said that Council officials were working from an exceedingly high benchmark.

27. The Applicant's case was that the Council gave too much attention to space standards for communal areas which were not mandatory under the legislation. The Applicant asserted that the approach adopted by the Council was contrary to the ruling of the Upper Tribunal in *Clark v Manchester* [2015 UKUT 0129 (LC), namely: "*The guidance adopted by the Council is not a substitute for consideration of whether a specific house is reasonably suitable for a particular number of occupiers*".
28. Mr Athill indicated that the Council had not consulted The Association on the 2018 Standards document, and that its members were not aware of its release on the Council's website. Mr Athill said that The Association would be asking the Council to review the 2018 Standards document if its members were successful with their Appeals.
29. The Applicant explained that his letting business was targeted at the student market, which he had been operating in for around ten years. The Applicant let the properties to groups of students who generally knew one another. The Applicant granted furnished assured shorthold tenancies on a joint and several liability basis to the students. The Applicant supplied a copy of a tenancy agreement for 12 Playfair Road which was for a period of 10 months commencing 1 September 2018 and ending 30 June 2019 with no implied or permitted break in the tenancy.
30. The Applicant asserted that the students who occupied the properties were content with the size of the communal areas. In his view the students did not give priority to the communal areas when choosing a property, as they had bars and Student Union facilities in which to socialise. The Applicant pointed out that he had recently upgraded both properties with shower rooms which were in addition to the existing bathing and washing facilities. The Applicant said that he had carried out this improvement because it was what the students demanded. The Applicant did not want a "student only" licence condition but would consider it if the Tribunal deemed it appropriate.
31. The Applicant stated there was no safety reason for why the properties should not be licensed for five years. The Applicant pointed out that the Council had not carried out an HHSRS assessment to evaluate the risks posed by the sizes of the communal spaces.
32. The Applicant said that the five bedrooms in the two properties exceeded the prescribed minimum requirement of 6.51m² with two bedrooms in each property qualifying as double rooms in excess of 10m². The Applicant also considered that the size of the communal area of 17.8m² for 12 Playfair Road was only marginally below the Council's space standards.

33. The Applicant asked the Tribunal to extend the licence until July 2020 if it was not minded to grant the Appeals. The Applicant explained that students were now looking for properties for the next academic year, and that it would give him certainty in offering new tenancies for the coming year.

The Council's Case

34. The Council contended that it had a duty under section 64 of the Housing Act 2004 to be satisfied that an HMO is reasonably suitable for occupation by the number of households or persons specified for the licence. The Council stated that the purpose of the Standards document was to ensure that all properties subject to HMO licensing were stable in respect of quality and space. The Council asserted that it assessed each individual property that required a licence and did not apply its standards inflexibly.
35. The Council explained that the occupancy levels were based on the property being occupied as an house in multiple occupation not a single occupation family home. The Council said that its decision on the occupancy level was taken from the perspective that each person is seen as an individual household who could potentially reside at the property indefinitely.
36. The Council pointed out that the legislation prescribed national minimum amenity standards for washing facilities, kitchens and sizes of bedrooms but there were no prescribed standards for communal living spaces. The Council considered that it was necessary to have its own published space standards for communal areas in order to make an assessment of the suitability of the property as a whole for occupation by a maximum number of persons.
37. The Council relied on the various studies highlighting the adverse effects of overcrowding on occupants to justify the need for local space standards¹. The adverse effects included deterioration in mental health and exposure to increased risk of accidents and infectious diseases. The Council referred to *Shelter's Living Home Standard* 17 October 2016 which emphasised the importance of enough space for socialising and adequate space to prepare and cook food.
38. In arriving at the local space standards the Council had regard to the "Living space furniture" requirements measured in mm as published by the National Housing Federation. The Council in the bundle recited details of the size and type of furniture recommended for five people for living and dining.

¹ See House of Commons Briefing Paper Overcrowded Housing (England) Number 1013, 1 October 2018 included in the hearing bundle

39. The Council considered that its 2018 space standards for communal living areas had not changed significantly from those that were published in 2014.
40. The Council said that the initial decisions for the licences of 12 Playfair Road and 105 St Pauls Road were made using the information supplied by the Applicant with his licence applications.
41. The Council said that it took account of the fact that the properties had two bedrooms of over 10m² in size which would have allowed for some activity beyond sleeping, dressing, storing personal belongings and having privacy. The Council considered that the space standard for the communal living areas could be reduced for the two properties because of the extra space provided for socialising in the two larger bedrooms. The Council, however, concluded that after allowing for this extra space in the two bedrooms the communal living spaces in both properties were still significantly deficient for five occupants.
42. The Council said in respect of 12 Playfair Road that the space devoted to the thoroughfare also had a direct impact on the useable space for communal living. In respect of 105 St Pauls Road, the Council performed a calculation for the effect of the two bedrooms on its recommended space standards which brought down the recommended combined communal area to 20.8m². The Council pointed out that the actual communal space of 15.6m² at 105 St Pauls Road was still significantly below the adjusted figure of 20.8m².
43. The Council said that it had restricted the licences for both properties to one year because it enabled the Applicant to honour the current tenancy agreements for the properties and gave him time to reduce the number of occupiers below five.
44. The Tribunal noted that once the number of occupiers was reduced below five the properties would no longer be subject to the mandatory HMO licensing scheme.

Consideration

45. This Appeal is concerned with the Council's decision not to give a licence for these properties for occupation by five persons. Although the Council has granted a licence for five persons for one year, it is effectively a stop gap to allow the Applicant to meet his legal obligations under the current tenancy agreements. Effectively the Council's decision amounts to a refusal of a HMO licence because if the Council is right the properties would stand outside the regulatory scheme for HMOs. The question for the Tribunal is whether these properties are suitable for five persons

46. Under Paragraph 31(1) part 3 of schedule 5 of the 2004 Act the Applicant has the right to appeal to the Tribunal against the Council's refusal to grant the licence or against the Council'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 five persons for one year.
47. 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 Council 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 Council's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.
48. The Tribunal starts with the legislative and policy background for HMOs. The Housing Act 2004 introduced a new statutory system for the licensing of HMOs. The purpose of such state intervention was to ensure that all HMOs met minimum standards of management and basic amenities because of numerous studies showing that HMOs suffered from some of the worst housing conditions². The mandatory licensing scheme was restricted to large HMOs which is said to have had the effect of rogue landlords focussing on smaller HMOs. As a result in October 2016 the government announced an intention to extend mandatory licencing to smaller HMOs and also to introduce a minimum room size in these properties³. The Government's intention was enshrined in legislation which came into effect on 1 October 2018 and extended the mandatory scheme to small HMOs by removing the requirement of three or more storeys and introduced minimum room sizes for sleeping accommodation⁴.
49. Local authorities are the bodies responsible for the licensing of HMOs which is in addition to their responsibilities under part 1 of the 2004 Act to review housing conditions in their areas and to take action in respect of hazards in residential properties.

² See 4.6 & 4.8 *Housing: The New Law: A Guide to Housing Act 2004*, LexisNexis Butterworths 23 April 2007 which summarises the evidence in respect of housing conditions for HMOs.

³ House of Commons Briefing Paper 0708 14 July 2017 Houses in Multiple Occupation England and Wales.

⁴ The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018; The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.

50. Under section 64(2) of the 2004 Act the local authority if satisfied of the matters mentioned in subsection (3) may grant a HMO licence to the Applicant. The relevant matter for these Applications 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.”
51. 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 these two cases the Applicant specified a maximum number of five persons, the Council decided that the maximum number should be less than five.
52. Section 65 sets out the tests as to suitability for multiple occupation. Under section 65(1) an HMO is not reasonably suitable for occupation if the local authority considers that the house fails to meet the prescribed standards for occupation by the number of persons specified.
53. The prescribed standards for deciding suitability for occupation are found in Schedule 3 to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. The standards relate to heating, washing facilities, kitchens, fire precautionary facilities and kitchens. There are no prescribed standards for minimum space standards for rooms.
54. The Government chose a different route for the introduction of minimum room sizes for sleeping accommodation. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England Regulations) 2018 [SI 2018 No 616] amended schedule 4 of the Housing Act 2004 by requiring the insertion of mandatory conditions to Part 2 HMO Licences dealing with the minimum floor areas for rooms used for sleeping accommodation. Essentially the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years should be not less than 6.51 square metres, and by two persons not less than 10.22 square metres.
55. In these two cases the Council accepted that both properties met the prescribed standards for five persons, and that the five rooms used for sleeping accommodation exceeded the statutory minimum floor area for one person with two bedrooms in each property also exceeding the statutory minimum floor area for two persons.
56. Given that both properties meet the mandatory standards and conditions for part 2 HMOs, section 65(2) provides the alternative test for suitability, namely, the local authority may decide that the house 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.

57. In this case the Council said that the two properties were not reasonably suitable for occupation by five persons because the sizes of the communal living spaces were significantly below its locally published standards. The Applicant contended that the Council had acted irrationally which had adverse financial consequences for his rental business.
58. The Tribunal shares some of the Applicant's concerns with the Council's decision making processes. The Council contended that the space standards in the 2018 Standards document were not substantially different from those set out in the 2014 Standards document.
59. The Tribunal noted that the 2014 Standards document contained the statement in relation to space standards: "*Portsmouth City Council when making a judgement accepts that some properties do not wholly meet these standards and when taking account of the whole property and the liveable space available to the occupants. Officers will assess the usability of the space available in the whole property for the use of all the occupants*". This statement was omitted from the 2018 Standards document which in the Tribunal's view gives the impression that Council had changed its policy and was applying the new standards more rigorously.
60. The Tribunal did not understand the Council's reference in the hearing that it might consider two people occupying the larger bedrooms at the respective properties as a concession to the Applicant. If that is so it would not alter the current position of five persons sharing the communal living spaces, and run counter to the Council's case that these properties were unsuitable for occupation by five persons.
61. The Tribunal reminds itself that on Appeal its job is not to review the Council's decision but to make its own mind up as to what to do.
62. The Applicant, on the other hand, emphasised that he was a responsible landlord and that he was providing the tenants of his properties with the accommodation and services they wanted. Further his letting business would suffer financially as would prospective tenants faced with a reduction in the supply of accommodation available for letting.
63. The Tribunal accepts that the Applicant is a responsible landlord who is responding to market forces. The Tribunal, however, is not guided by these considerations when it comes to the application of section 65(2) of the 2004 Act. Under that subsection the Tribunal is satisfied that the focus must be on the individual properties rather than on the landlord.

Further the Tribunal considers that the phrase “not reasonably suitable” must be viewed from the perspective of the aims of the legislation regulating HMOs rather than from the demands of the market.

64. The Tribunal’s approach to section 65(2) is best summed up by the Upper Tribunal decision in *Clark v Manchester City Council* [2015] UKUT 0129 (LC) at [53]:

“In every case the views of the local housing authority will be relevant and merit respect, but once the tribunal has carried out its own inspection and considered all of the characteristics of the Property, including the size and layout of individual rooms and any compensating amenities, it will be in a position to make its own assessment of the suitability of the house for the proposed number of occupiers”.

65. The Tribunal finds that the Council’s space standards for the communal living areas were relevant and had merit in respect of the circumstances of the two individual properties. The Tribunal considers that the Council’s objective in ensuring that HMOs offered decent communal living areas was justified by the quoted research citing the positive benefits of a home providing adequate space for socialising, which was in line with the aims of the legislation of raising the standards for HMOs.
66. The Tribunal was also satisfied that the minimum sizes adopted by the Council for communal living areas with an adjustment for open plan living were well thought out with an objective foundation applying the data for furniture requirements in the “Metric Handbook Planning and Design Data” published by the National Housing Federation. The Tribunal did not consider the Council’s approach was undermined by the Applicant’s reference to the practices of neighbouring local authorities which appeared to adopt lower space standards for communal living areas. Mr Athill for the Applicant acknowledged that he had been selective in his choice of local authorities. Also the Tribunal was not in a position to assess how those authorities arrived at their respective policies. In contrast the Tribunal was able to scrutinise in detail the Council’s space standards for communal living areas.
67. The Tribunal now considers the individual properties starting with 12 Playfair Road. The Tribunal adopts the description of the property as set out in paragraphs 11 – 17 of this decision. The measurements quoted for the various rooms were agreed by the parties.
68. The Tribunal finds that the combined size of the kitchen and lounge was 17.8m², some 6.2m² short of the Council’s published space standard of 24m² for an open plan kitchen/dining area. The Tribunal recorded its observations of the kitchen and lounge area at paragraph 16 above.

The Tribunal formed the view from its inspection that the narrowness of the two rooms coupled with its use as a thoroughfare to the rear garden severely restricted the use of these rooms for communal activities. The Tribunal observed that the kitchen was designed purely for the preparation and clearing up of meals and would only accommodate one or two persons cooking simultaneously. Further the Tribunal noted that there was no space for all the residents in the lounge to sit down together and have a meal or to socialise on comfortable furniture. The Tribunal concluded that the useable floor area for communal activities was significantly less than the measured area of 17.8m².

69. The Tribunal considered whether the severe inadequacies in the communal living areas were mitigated by other features of the property. The Tribunal noted that two bedrooms exceeded 12m², and would be able to accommodate visitors to the resident occupying the bedroom. The Tribunal, however, decided that the extra space offered by the two larger bedrooms was insufficient compensation for the severe inadequacies of the communal areas. The Tribunal decided that the remaining spaces in the building did not provide alternative areas in which the five occupants could socialise.
70. The Tribunal finds that the combined communal rooms at 12 Playfair Road in terms of design and useable floor area were not suitable for occupation of the house by five persons, and those inadequacies were not compensated by the sizes of the bedrooms.
71. The Tribunal turns now to 105 St Pauls Road which was a modern property with a functional design and box like appearance typical of 1960's housing. The property would have originally started up as a three bedroom family home with one of the bedrooms being a box room. The living accommodation would have been located on the ground floor: front room, dining room and small kitchen. The property now has the benefit of an extension at the rear which is the site of the present lounge. The previous living and dining rooms have been changed for use as bedrooms.
72. The Tribunal adopts the description of the property at the preceding paragraphs 18 – 24. The measurements quoted for the various rooms were agreed by the parties.
73. The Tribunal finds that the combined size of the kitchen and lounge was 15.6m², some 8.4m² short of the Council's published space standard of 24m² for an open plan kitchen/dining area. The Tribunal recorded its observations of the kitchen and lounge area at paragraph 23 above.
74. The Tribunal's overriding impression of this property from its inspection was that it was small and not large enough to accommodate

five persons. The Tribunal's impression is supported by the space offered for communal interaction which was 8.4m² (35 per cent) smaller than the recommended standard of 24m². The available communal space of 15.6m² was further compromised by the fact that access to the rear garden was through the kitchen and lounge. The shortcomings in the communal areas were not offset by other features in the property. Three bedrooms were 9m² or less in area with the size of the box room of 6.9m² being just above the minimum room size of 6.51m². The Tribunal viewed the two larger bedrooms as standard double rooms.

75. The Tribunal finds that the size of the communal areas at 105 St Pauls Road fell significantly below the Council's published space standard for open plan communal area, and that overall the house was not large enough for accommodation by five persons.
76. Before making its final determinations for both properties the Tribunal considers it necessary to assess the relevance of Supreme Court judgment in *Nottingham City Council v Parr and Another* [2018] UKSC 51. The Applicant relied on this case because he said it supported his proposition that lower space standards were reasonable when the occupants are students.
77. The Tribunal's considers the Applicant's reliance on this judgment misguided. The facts of *Nottingham City Council v Parr and Another* concerned the size of a bedroom and that its smaller size could be compensated by the availability of additional features including a kitchen/diner and a living room, particularly where it is occupied by a group living cohesively together.
78. The Supreme Court approved of the use by the Deputy President of the Upper Tribunal of the various categories of HMOs which applied before the current legislation came into force in particular the distinction between Category A and Category B HMOs. Lord Lloyd-Jones at paragraph 21 adopted the following descriptions:

“ Category A comprised houses occupied as individual rooms where there was some exclusive occupation and some sharing of amenities but each occupant lived otherwise independently of all others. Category B comprised houses occupied on a shared basis which would normally be occupied by members of a defined social group, for example students or a group of young single adults. In such houses the occupants each enjoyed exclusive use of a bedroom but would share other facilities including a communal living space”.
79. Lord Lloyd-Jones then went on at paragraph 25 to explain the significance of this distinction:

“It is entirely appropriate, when considering the suitability of accommodation in an HMO for a particular purpose, to have regard to the mode of occupation. If the house is to be occupied by a group living together “cohesively”, each having his or her own bedroom but sharing other facilities including a kitchen/diner and a living room, the availability of those additional facilities is a material consideration. In these circumstances the mode of occupation means that the shared facilities will benefit all the occupants and, as a result, this may compensate for a bedroom which is slightly smaller than the recommended minimum. By contrast, where occupants of an HMO each live independently of all others, sharing only bathroom, toilet and kitchen facilities, any communal living space made available will not benefit the occupants in the same way because of their different living arrangements”.

80. The Tribunal observes that the two properties which were the subject of this Appeal have been let as student houses throughout the Applicant’s ownership. Further the Applicant gave evidence that the group of students who occupied the properties knew one another and generally were friends. Given those facts the Tribunal considers it apt to describe the properties as being occupied by a group living together cohesively which is more likely to value the importance of shared facilities in the house. Thus the category of occupation of these properties lends support to the Council’s case regarding the inadequacies of the communal areas at both houses.
81. The question for the Tribunal for each property is whether the house is not reasonably suitable for occupation by five persons even if the house meets the prescribed standards for occupation by that number of persons.
82. The Tribunal found in relation to 12 Playfair Road:
 - a) The Council accepted that the house at 12 Playfair Road met the prescribed standards for five persons, and that the five rooms used for sleeping accommodation exceeded the statutory minimum floor area for one person with two bedrooms exceeding the statutory minimum floor area for two persons.
 - b) The Council’s space standards for the communal living areas were relevant and had merit in respect of the circumstances of this property.
 - c) The minimum sizes adopted by the Council for communal living areas with an adjustment for open plan living were well thought out with an objective foundation.
 - d) The combined communal rooms at 12 Playfair Road in terms of design and useable floor area were not suitable for

occupation of the house by five persons, and those inadequacies were not compensated by the sizes of the bedrooms.

- e) The Tribunal considers it apt to describe the property as being occupied by a group living together cohesively which is more likely to value the importance of shared facilities in the house.

83. In the light of the above findings the Tribunal decides the house at 12 Playfair Road, Southsea, Hampshire PO5 1EQ is not reasonably suitable for occupation by five persons even though the house meets the prescribed standards for occupation by five persons.

84. The Tribunal, therefore, dismisses the Appeal in respect of 12 Playfair Road and confirms the Council's decision to limit the HMO licence for occupation by five persons at the house at 12 Playfair Road for a period of 12 months.

85. The Tribunal found in relation 105 St Pauls Road:

- a) The Council accepted that the house at 105 St Pauls Road met the prescribed standards for five persons, and that the five rooms used for sleeping accommodation exceeded the statutory minimum floor area for one person with two bedrooms property exceeding the statutory minimum floor area for two persons.

- b) The Council's space standards for the communal living areas were relevant and had merit in respect of the circumstances of this property.

- c) The minimum sizes adopted by the Council for communal living areas with an adjustment for open plan living were well thought out with an objective foundation.

- d) The size of the communal areas at 105 St Pauls Road fell significantly below the Council's published space standard for open plan communal area. The shortcomings in the communal areas were not offset by other features in the property. Overall the house was not large enough for accommodation by five persons.

- e) The Tribunal considers it apt to describe the property as being occupied by a group living together cohesively which is more likely to value the importance of shared facilities in the house.

86. In the light of the above findings the Tribunal decides the house at 105 St Pauls Road Southsea Hampshire PO5 4AB is not reasonably suitable

for occupation by five persons even though the house meets the prescribed standards for occupation by five persons.

87. The Tribunal, therefore, dismisses the Appeal in respect of 105 St Pauls Road and confirms the Council's decision to limit the HMO licence for occupation by five persons at the house at 105 St Pauls Road for a period of 12 months.

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.

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.