



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

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

Property : **4 Grosvenor Street, Southsea,
Hampshire PO5 4JG**

Applicant : **Mr Graham Martin Harvey**

Representative :

Respondent : **Portsmouth City Council**

Representative :

Type of Application : **Appeal against conditions imposed
to a licence for a house in multiple
occupation (HMO)**

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 on 7 June 2019 in
absence of parties**

Date of Decision : **2 July 2019**

DECISION

Decision of the Tribunal

- 1) The Tribunal finds that the floor area of the first floor rear bedroom in 4 Grosvenor Street used as sleeping accommodation by one person is not less than 6.51m².
- 2) The Tribunal reverses the Council's decision by deleting the special condition to the HMO licence for 4 Grosvenor Street relating to the first floor rear bedroom.
- 3) The Tribunal grants the HMO Licence for 4 Grosvenor Street, Southsea PO5 4JG for occupation by five persons for a period of five years from 23 October 2018.

The Application

1. The Applicant appeals against the decision of Portsmouth City Council (the Council) to impose a special condition on the HMO Licence for 4 Grosvenor Street, Southsea PO5 4JG.
2. The special condition is the *"Room marked 4 on the plan provided (first floor rear bedroom) must not be occupied by a person over the age of 10 years"*. As a result of the special condition the HMO licence for 4 Grosvenor Street for occupation by five persons was restricted to one year.
3. The Applicant objected to the Council's decision because he disagreed with its measurement of the room. The Applicant said that the correct floor area of the room was 6.97m² which was above the mandatory minimum size of 6.51m² for a room used as sleeping accommodation by one person.
4. The Council said that the Applicant could not include the area of the door alcove as part of the floor area of the room for the purposes of HMO licensing. The Council said the correct measurement was 6.46m² which took the room below the mandatory minimum size of 6.51m².
5. The Council said that it was required by the legislation to impose a condition to the HMO Licence prohibiting the use of rooms below the mandatory minimum sizes for sleeping accommodation. As the legislation is new the Council is required to give the licence holder period of time (not exceeding 18 months) to comply with the condition. The Council granted the Applicant a period of 11 months for compliance, and restricted the HMO licence for occupation by five persons to a period of one year.

6. There is no dispute about the measurements of the room with or without the alcove. Also it was not part of the Council's case that if the Tribunal found against the Council on the size of the room, that the property was unsuitable on other grounds for an HMO licence for occupation by five persons.
7. The question for the Tribunal is straightforward: is the floor area of first floor rear bedroom 6.46m² or 6.97m²?
8. The Tribunal issued directions to progress the Appeal. The Tribunal heard the Appeal on the 8 May 2019 together with the Appeals on 12 Playfair Road and 105 St Pauls Road which are subject to a separate decision as they involved different issues relating to HMO licensing. The Tribunal inspected the property 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. 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 Council supplied a copy of the hearing bundle which was admitted in evidence. The Tribunal reconvened on 7 June 2019 in the absence of the parties to make its decision.
10. The property is an inner terrace house probably built in the 1970s of brick with a part boarded elevation under a pitched tile-covered roof in a residential area. Layout plans are provided in the bundle. On the Ground Floor is an Entrance Hall; One Letting Bedroom; Shower Room with shower and W.C.; Living Room leading to Kitchen. First Floor: Landing; Four Letting Bedrooms; Bathroom with bath, washbasin and W.C. Outside: Gardens.
11. The subject bedroom has a window overlooking the rear garden. Access to the room is gained from the landing with the bedroom door opening inwards into a small alcove measuring 0.51m². The body of the room is rectangular in shape measuring 6.46m² with a single bed located on the inner wall facing the window and various items of bedroom furniture and a desk situated on the exterior wall. The resident also has use of a cupboard on the landing for storage.

The Applicant's Case

12. The Applicant supplied the measurements for the floor area of the rear first floor bedroom with and without the alcove which were not disputed by the Council.

13. The Applicant also provided a calculation for the circulation space behind the door which he said was 0.38m². The Applicant contended that if the Council was correct, the area that should be removed from the calculation for the floor area was the circulation space and not the whole alcove. The Applicant pointed out that if this was correct the floor area of the room would be 6.59m² which was above the mandatory minimum size for a bedroom sleeping one person.
14. The Applicant included in his evidence furniture layouts for the bedroom as it is and for a rectangular room without the alcove taking in additional space from the neighbouring bathroom. An architect had drawn up the layouts which showed that the room with an alcove made for a more practical layout with extra space for a soft chair than the rectangular room without an alcove.
15. The Applicant disputed the Council's reliance on the RICS Code of Measuring Practice 6th edition May 2015. The Applicant stated that the Council was citing those parts of the Code that related to commercial properties and not residential properties. The Applicant maintained that a useable area for commercial properties was completely different from what would be considered as a useable area in a home.
16. The Applicant did not consider the Council's proposal of re-hanging the door so that it opened outwards was practicable and would present a hazard to other residents. In the Applicant's view the Council's proposal for re-hanging the door demonstrated the weakness of its position because it would not create any more "useable space".

The Council's Case

17. The Council's position was that the measurement of the bedroom was limited to the "useable space". The Council argued that the alcove was not useable space because of the opening of the door into that area. In support of the Council's proposition, Mr Conway referred to the definition of Net Internal Area at section 3.15(b) of the RICS Code of Measuring Practice 6th edition May 2015, which he said excluded recesses associated with access for useable area when measuring net internal area. Mr Conway acknowledged that if the room had been rectangular the area behind the door opening inwards would be included in the measurement of useable area.
18. Mr Conway stated that the Council had made proposals to the Applicant for extending the floor area above the mandatory minimum size. The proposals included part of the neighbouring bathroom which would involve taking down the dividing wall and re-hanging the door so that it opened outwards.

Consideration

19. This Appeal is concerned with the Council's decision to impose a condition that the first floor rear bedroom must not be occupied by a person over the age of 10 years for the purpose of sleeping. The Council stated that it is obliged to impose this condition because the room is less than 6.51m². The Applicant contends that the Council has taken the wrong measurement for the room. The Applicant asserts that the correct measurement for the floor area of the bedroom is 6.97m² which is above the mandatory minimum size.
20. 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 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 condition banning the use of the firstfloor rear bedroom for sleeping.
21. 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. 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.
22. The Tribunal starts with the legislation. Under section 67(3) of the 2004 Act an HMO Licence must include the conditions required by Schedule 4.
23. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 No 616 inserted additional conditions dealing with floor areas for Part 2 HMO Licences in schedule 4. The relevant parts of those changes are as follows:

“1A – (1) Where the HMO is in England a licence under Part 2 must include the following conditions -

(2) Conditions requiring the licence holder –

(a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;

(9) Any part of the floor area of a room in relation to which the height of the ceiling is less than 1.5m is not to be taken into account in determining the floor area of that room for the purposes of this paragraph”.

24. The Explanatory Note to SI 2018 No 616 as far as is relevant to this Appeal states that

“Regulation 2 inserts new paragraphs 1A, 1B and 1C into Schedule 4 of the Housing Act 2004. This has the effect of introducing new conditions and qualifying provisions in relation to those conditions which require a landlord (a) to comply with minimum standards in relation to the useable floor area of rooms available as sleeping accommodation”.
25. The Ministry of Housing Communities and Local Government’s guidance for Local Housing Authorities on HMOs and Residential Property Licensing Reform (December 2018) states at paragraph 3.4 that the measurement for a bedroom to determine whether it meets the minimum room size is *“one of wall to wall floor area where the ceiling height is greater than 1.5m”*.
26. The Guidance also said at paragraph 34 that the standards are designed to ensure consistency of approach on minimum room sizes used for sleeping within HMOs and so give certainty for landlords, tenant and local authorities on the absolute minimum standards that are acceptable.
27. The Tribunal decides that the dispute between the parties is essentially one of statutory interpretation. SI 2018 No 616 defines minimum room sizes by reference to the floor area of the room. The only part of the floor area that is excluded within the terms of the SI is where the height of the ceiling does not exceed 1.5m.
28. The Tribunal is satisfied that the meaning of floor area as used in SI 2018 No 616 is obvious and refers to the measurement of the floor within the room provided the ceiling height of that room is greater than 1.5m. The Tribunal notes that the Guidance for Local Authorities at paragraph 34 arrives at the same conclusion with its statement that the measurement is one of wall to wall floor area.
29. The Tribunal observes that the Explanatory Note to the SI 2018 No 616 refers to useable area which in the context of the SI means floor area where the ceiling height is greater than 1.5m.
30. The Tribunal finds that the Council has stretched the interpretation of floor area beyond its natural and ordinary meaning as used in the SI and has put its own gloss on useable floor area. The Council’s reliance on external standards for property measurement is unnecessary and likely to lead to uncertainty. The Tribunal adds that the RICS Standards of Measurement for Residential Properties would include the alcove in its measurement of the interior area of a residential building.

31. The Tribunal finds that
- a) The alcove is part of the floor area of the first floor rear bedroom.
 - b) The ceiling height of the room is greater than 1.5m².
 - c) The floor area of the room is 6.97m².
 - d) The Council has raised no objections to the suitability of the home for occupation by five persons except the size of the first floor bedroom.

Decision

32. The Tribunal decides that the floor area of the first floor rear bedroom in 4 Grosvenor Street used as sleeping accommodation by one person is not less than 6.51m².
33. The Tribunal reverses the Council's decision by deleting the special condition to the HMO licence for 4 Grosvenor Street relating to the first floor rear bedroom.
34. The Tribunal grants the HMO Licence for 4 Grosvenor Street, Southsea PO5 4JG for occupation by five persons for a period of five years from 23 October 2018.

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.