



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

Case reference : **CAM/38UC/HMV/2020/0002**
HMCTS Code : **P:PAPERREMOTE**

Property : **12 Mill Street, Oxford OX2 0AJ**

Applicant : **Mohammed Ishfaq**

Respondent : **Oxford City Council**

Type of application : **Appeal in respect of an HMO licence conditions**

Tribunal member : **Judge Wayte**

Date : **12 November 2020**

REFUSAL OF PERMISSION TO APPEAL

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. A face-to-face hearing was not held because no-one requested one and all issues could be determined in a remote hearing on paper, in accordance with the tribunal's usual practice on applications for permission to appeal.

DECISION OF THE TRIBUNAL

1. The tribunal has considered the applicant's request for permission to appeal dated 6 November 2020 and determines that:
 - (a) it will not review its decision; and
 - (b) permission be refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by

the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

3. Where possible, you should send your further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.
4. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

REASONS FOR THE DECISION

5. As explained in the decision dated 29 September (sent out on 13 October 2020), the conditions in the HMO licence which were the subject of the appeal were included in the licence in accordance with The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 (“the 2018 Regulations”). Their effect was to require the applicant to obtain possession of the room in his property which was smaller than the minimum size for occupation by an adult.
6. At an early stage in proceedings, the council made a concession to extend the time for seeking possession of that room to the maximum permitted in the 2018 Regulations. That meant that the only issue was whether the room was less than 6.51m². The applicant had plenty of time from the issue of his application back in June to provide his own measurements of the room but chose to rely on the plan in his sales particulars, which indicated an approximate room size of 6.13m². By way of contrast, the respondent relied on the evidence of their Environmental Health Officer who had personally measured the room, obtaining a measurement of 5.7m². Both measurements were below the minimum room size and the tribunal preferred the evidence of the respondent. In any event, the condition could not have been removed from the licence.
7. The grounds of appeal state that it was not appropriate to consider the issue on the papers. I disagree. Rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 clearly provide that proceedings to strike out an application may be determined without a hearing and I also consider that to do so was in accordance with the overriding objective, in particular to deal with the case proportionately and to avoid delay. The applicant was given every opportunity to provide evidence of the measurements of the room but chose to rely on inferior evidence to that provided by the council. In truth, he appeared to accept that the room was smaller than the minimum size but continues to believe that provided the occupant is happy with it, the communal areas of the property mean that the condition should not apply. As explained in the decision, the 2018 Regulations do not

contain any exceptions or *de minimis* provisions and therefore this argument was always doomed to fail.

8. In the circumstances the tribunal considers that there is no realistic prospect of a successful appeal in this case.

Judge Wayte

12 November 2020