



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case reference : CHI/00MR/HML/2024/0003

Property : 87 Binstead Road, Portsmouth, PO2 7PJ

Applicant : Elizabeth Collins

Representative : The Shared Homes Company

Respondent : Portsmouth City Council

Representative : None

Type of application : Appeal of condition of attached to HMO  
Licence

Tribunal members : R Waterhouse FRICS,  
P Cliffe-Roberts FRICS  
T Wong

Venue : Havant Justice Centre, Elmleigh Road,  
Havant, Hampshire, PO9 2AL

Date of hearing : 11 February 2025  
Date of decision : 24 February 2025

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DECISION

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Decision The tribunal allows the appeal and revokes the condition, “take reasonable steps to reduce the occupancy of the property from (4) to (3) occupiers.”

### The Application

1. Elizabeth Collins, the Applicant, is the owner of 87 Binstead Road, Portsmouth, PO2 7PJ (“the Property”). The Property falls within the area of Portsmouth City Council (“the Council”).
2. An HMO licence was issued for the Property on 2 April 2024. The Council granted the HMO licence pursuant to Part 2 of the Housing Act 2004 to allow use and occupation with the condition “take reasonable steps to reduce the occupancy of the property from (4) to (3) occupiers”.
3. Elizabeth Collins, the owner and Applicant, 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 three or fewer persons.
4. The Tribunal was furnished with a bundle of 177 pages which has been carefully read.

### Background

5. The Property was purchased in December 2000 and the four rooms were let on four separate assured shorthold tenancies with bills included. In June 2005 the kitchen was extended and a ground floor WC installed. In 2011 a risk assessment was carried out, under the Housing Health and Safety Rating System, by Portsmouth City Council. Risks were rectified by the installation of fire doors and a fire alarm system. The Property has been rented out as a 4-bedroom HMO for the last 24 years.
6. Portsmouth City Council designated the whole of the area of Portsmouth City Council’s district for Additional Licensing of HMOs on 22 November 2022. This designation came into force on 1<sup>st</sup> September 2023 requiring HMOs as defined by Section 254 of the Housing Act 2004 to be licensed.
7. The Housing Act 2004, Section 64, states that a Local Housing Authority (LHA) must grant a licence for an HMO if the house is reasonably suitable for occupation either by the number of households or persons specified in the application, or some other maximum number decided by the authority. If the LHA consider that the HMO is not suitable for occupation, Section 64 allows for an HMO to be made suitable by the imposition of licence conditions under Section 67.
8. Section 65 applies to the purposes of suitability, and state that an LHA cannot be satisfied that a house is reasonably suitable for occupation if the LHA consider that the HMO fails to meet the prescribed standards for occupation by a number of households or persons.
9. These prescribed standards are set within Schedule 3 of The Licensing and Management of Houses in Multiple Occupation and Other Houses

(Miscellaneous Provisions) (England) Regulations 2006 Statutory Instrument 2006 No. 373.

10. These standards provide descriptions for the minimum acceptable standard for heating, washing facilities, kitchens, units of living accommodation without shared basic amenities, and fire precautionary facilities.

11. There are no minimum prescribed standards for the sizing of these areas within HMOs, with the exception of bedrooms, which are set by the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences). (England) Regulations 2018 Statutory Instrument 2018 No616. These sizes are 6.51 m<sup>2</sup> for a bedroom occupied by one person over 10 years of age, 10.22m<sup>2</sup> for a bedroom occupied by two persons over 10 years of age, and 4.64m<sup>2</sup> for a bedroom occupied by one person under 10 years of age.

12. The Regulations state "there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food."

13. The Local Authority Coordinators of Regulatory Services (LACORS) provides guidance on the regulation of "Crowding and Space" in Residential Premises. The LACORS Guidance states that councils should set their own room standards. This guidance also states the maximum number of persons and households within licensable HMOs, should also be set. The LACORS also refers to the "Metric Handbook" which relates to new design requirements rather than existing.

14. Portsmouth City Council have published Space and Amenity Standards for HMOs for guidance. These space standards are not a rigid requirement but instead act as guidance. The guidance at page 9 notes "Council Officers will assess each property individually, but the following acts as a guide for the minimum space requirements expected."

### Inspection

15. The tribunal did inspect the property and also relied upon scale plans provided by the parties and an agreed set of areas relating to the rooms in the property.

### The Property Layout

16. The property is a flat fronted, mid terraced two storey house accessed from the ground floor front door. The ground floor comprises an entrance hallway, with bedrooms located in the ground floor front room (bedroom 1) and ground floor middle room (bedroom 2). There is a lounge/dining room located toward the rear of the ground floor, WC with wash hand basin, and then a small kitchen at the rear. The first floor comprises of first-floor front bedroom (bedroom 3), first floor middle bedroom (bedroom 4), shower room with WC and wash hand basin, and a small box room at the rear.

The areas of the rooms are;

Bedroom 1 – 10.10m<sup>2</sup>

Bedroom 2- 9.76 m<sup>2</sup>

Bedroom 3- 13.34m<sup>2</sup>

Bedroom 4 – 9.81 m<sup>2</sup>

Lounge Dining Room – 7.25m<sup>2</sup>

Kitchen- 4.86m<sup>2</sup> (not agreed)

1<sup>st</sup> floor box room – 3.76 m<sup>2</sup>

These areas are agreed between the parties other than the kitchen.

The Applicants case

17. Statement of case provided by Alice Ibbotson acting for the owner Elizabeth Collins. The statement confirms that the room measurements are agreed. Although it later transpired the exact measurements of the kitchen were still in debate.

18. The Applicant submits that the standards are not “legislative” and suggests the smaller living room should be offset by the first-floor storage area and that overall, the tenant’s bedrooms are on average at least 10m<sup>2</sup> each.

19. The Applicant notes that although the kitchen is below the Councils dictated size of 6m<sup>2</sup> it is well laid out and fully functionable and without hazards, Further the Applicant contends the Respondents have not provided an explanation why 6.5m<sup>2</sup> is required.

20. The Applicant raises number 9 Toronto Road which is said to be licensed by Portsmouth City Council for 4 people, and that an online search has revealed that this house is approximately 88m<sup>2</sup> whereas 87 Binstead is approximately 125m<sup>2</sup>.

21. Further the Applicant contends that the wording of the special condition within the HMO licence is unclear and so it is not clear how it should be complied with.

22. The Applicant has submitted a witness statement dated 27 November 2024, which has been carefully read.

23. The Applicant has also included letters of support from the occupiers of three of the rooms.

The Respondents case

24. The Respondent, outlined in their verbal submissions the aim which they hoped would be achieved by the space standards, that of occupiers being able to socialise, cook and eat outside their rooms if they wished.

25. The Respondent notes that if the bedrooms were of an adequate size some activities can be accommodated within the bedrooms, however this does not

exclude the need for a communal area that can be shared by all occupiers and their visitors.

26. Explaining that the space standards were designed to take into account that different occupiers may choose to live in different ways some as a group with shared cooking and some individually.

27. The Respondents statement of case noted in the written submission, the areas as being agreed subject, although in the actual hearing there was a minor difference in the area of the kitchen.

28. The measurements are caveated with statement that "the Council believe these measurements to be accurate and have agreed these with the applicant's representative.....there may be some minor variation to the above due to the shape of the dwelling, however, do not consider this to be material."

29. The Respondent notes there are two different standards within the Space and Amenity Standards: one for existing HMOs and one for new HMOs. The standard for existing HMOs has been applied by the Council and in doing so the Council notes, that it has not significantly changed since 2014.

30. The Respondent also refers to the Metric Handbook which they state is to inform design requirements of new and so limited application to existing housing. The Metric Handbook sets out communal furniture required in the "living room" and in the "dining space".

31. The Respondent contends that the actual size of the kitchen 4.86m<sup>2</sup> falls far below that of the space standard of 6.5m<sup>2</sup> suitable for 4 sharers but also noted that officers had taken into account the layout of the kitchen. The conclusion reached was that it "is not a suitable layout and size to accommodate those sharing the facilities to prepare and cook food." Nor did the Respondent think that the layout of the living room could mitigate through the siting of appliances.

32. The communal living /dining room, within the space standards should be 11 m<sup>2</sup> in size where there are four sharers if all four bedrooms are 10m<sup>2</sup>. Given that two are below 10m<sup>2</sup> standard the space standards provide for 14.5m<sup>2</sup>. The Respondent acknowledged the margin below the desired 10m<sup>2</sup> in two of the rooms was very marginal and "would likely accept a communal lounge/dining area of 11m<sup>2</sup>." [42]

33. The Respondent contends that much of the room is taken up by the walk-through route to the kitchen and at 7.25m<sup>2</sup> there is limited space to accommodate furniture. Concern is expressed that as currently laid out the occupants are likely to eat in their rooms and the cleanliness of rooms are not in the control of the licence holder. The Respondent at [44] provides an illustration of a table and four chairs in the room. This shows the chairs area impinging on the access areas of the room.

34. The first-floor box room at the time of the Respondents inspection was being used for drying clothes and contained a wardrobe, as a result it is contended by the Respondent's that this room offers little benefit.

35. Responding to the inclusion of number 9 Toronto Road in the Applicants statement of case, the comparable is considered to have a different layout and so not comparable. Although it is noted that the property has a kitchen of 6.6m<sup>2</sup> and that the living /dining room is approximately 10m<sup>2</sup>.

36. Alternative arrangements, were suggested to the Applicant, involving structural works to remove the downstairs WC, but these were not accepted by the Applicant.

37. In terms of the Applicant's contention that the condition is poorly worded, the Council refutes this.

38. In terms of the tenants' views there is no statutory requirement to consider these, but the Council accepts it is reasonable to do so, although in some cases such statements may not have been made freely, the Council in this case has no evidence to believe that is the case here.

#### The Law

39. 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.

40. The Applicant appeals under paragraph 31(1)(b) of the Housing Act 2004 against the condition;

"take reasonable steps to reduce the occupancy of the property from 4 to 3 occupiers

To utilise the newly vacated room to create additional communal space that complies with the guidance in Portsmouth City Councils Space and Amenity Standards."

41. The Housing Act 2004 Part 3 Appeals Against Licence Decisions" at section 34 34(1) This paragraph applies to appeals to [the appropriate 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.

## Discussion and determination

42. The tribunal does not have recourse to the Applicant's comparable number 9 Toronto Road. The tribunal in making its determination here relies solely on the facts of the subject property.

43. The tribunal is in receipt of the views expressed in statements of the four occupiers. The tribunal gives weight to the views to the extent that they provide evidence in the functioning of the licensed premises within the context of the space standards.

44. The tribunal is conscious of the aim of the Council expressed in the hearing that of the shares being able to collectively cook, eat and socialise.

45. The test the tribunal applies is whether each room as part of the Property can fulfil the Council's aim, that of occupiers having access to accommodation for shared cooking, eating, and socialising within the reasonable application of the space standards.

### The Rooms

46. The bedrooms- The bedrooms under strict reading of the space standards are; two bedrooms above 10m<sup>2</sup> and two bedrooms very marginally below. When considered as a whole the bedrooms are cumulatively 3m<sup>2</sup> above the minimum of 10m<sup>2</sup>, the average size being 10.75m<sup>2</sup>, over the threshold. The tribunal finds that in the case of bedroom 2, the area is 0.24m<sup>2</sup> below and in the case of bedroom 4, it is 0.19m<sup>2</sup> under.

47. The kitchen- The area of the kitchen 4.86m<sup>2</sup>, this is below the space standard of 6.4m<sup>2</sup>. The tribunal inspected the property prior to the hearing. The kitchen comprises a rectangular area with fitted cupboards units and white goods. Before reaching the area fitted as a kitchen, there is a further rectangular area which allows access to the main part of the kitchen and the downstairs toilet. This area is needed to access the main kitchen area and the WC so its function is primarily circulation space. The main kitchen area is not agreed by the parties but is approximately 4.86m<sup>2</sup>.

48. The space standard provides that for a property with 4 occupiers with bedrooms of 10m<sup>2</sup> in size or more the kitchen size should be 6.5m<sup>2</sup> [42]. On the specific facts and layout as found in the inspection the kitchen is functional for the number of shares using it. The kitchen worktops were clear and there were sufficient storage cupboards

49. The living room/ dining area- The ground floor living/ dining area had at the time of inspection a sofa with a breakfast bar for two on the right side of the wall. This room has an exit/entrance way at one corner and an exit / entrance to the kitchen at the opposite corner, where the kitchen is on the left wall, there is also a side door with access to the outside garden.

50. The Respondent had demonstrated a proposal that would allow the removal of the downstairs WC, utilisation of that space and the installation of a table and four chairs. The Applicant had declined this.

51. The Applicant in turn outlined a proposal that kept the structure of the building unaltered and the downstairs WC in place but provided a smaller table and bench arrangement, which the Respondent dismissed.

52. The tribunal considered these proposals carefully in the context of the space standards and the overarching aim of the Council. The living/dining room had an agreed area of 7.25m<sup>2</sup>.

53. The standards [43] in the bundle provide that the living area for a property with 4 occupiers with rooms over 10m<sup>2</sup> each should be 11m<sup>2</sup>. The bedrooms in this case have been agreed at bedroom 1- 10.10m<sup>2</sup>, bedroom 2 9.76 m<sup>2</sup>, bedroom 3 13.34m<sup>2</sup> and bedroom 4 9.81m<sup>2</sup>. On strict reading of the standards two would fall under the 10m<sup>2</sup> threshold. This would default to a requirement of a living area of 14.5m<sup>2</sup>.

54. The tribunal finds that the Applicant's proposal could accommodate a number of the occupiers for shared eating and socialising.

Consideration of the licensed premises as a whole.

55. Whilst not all areas are of equal value and their location and nature are not of equal importance, in summary the bedrooms are 3m<sup>2</sup> cumulative in excess of the 10m<sup>2</sup> per occupant threshold, the box room another 3.76 m<sup>2</sup> giving a total of 6.76 m<sup>2</sup>, contrasted with combined shortfall being 5.29 m<sup>2</sup>, the kitchen being around 1.54 m<sup>2</sup> below standard and the living room being around 3.75m<sup>2</sup> below standard. The combination being 5.29m<sup>2</sup>

56. The kitchen at the time of the inspection appeared clean, tidy and orderly, with sufficient storage space for the number of occupiers in the licensed premises. The kitchen's utility value being enhanced by the proximity of the living room.

57. The living room is not spacious, but a layout of furniture as proposed by the Applicant could reasonably be envisaged to provide dining facilities for the occupants. The utility of the living room being enhanced by the proximity to the kitchen and the downstairs WC.

58. The combined area in excess of the 10m<sup>2</sup> for a bedroom, some 3m<sup>2</sup> will alleviate pressure of storage, likewise that of the 3.75m<sup>2</sup> in the box room. The Council in their inspection noted the box room being used for drying clothes which is a facility which if used there does not need to take up space in the kitchen or living room.

60. This tribunal finds on the facts of this case that the Property is capable of reasonably satisfying the space standards, and the condition restricting the use of the property to 3 occupants is not reasonable and the condition should be revoked.



## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).