FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00MR/HMF/2025/0620
Property	**:**	Flat 5, 14 Victoria Road South, Southsea, Portsmouth, Hampshire, PO5 2BZ
Applicants	**:**	Victoria Murphy Dillan Compton Taylah Down Heather Chapman
Representative	**:**	
Respondent	**:**	Richard James Smith
Representative	**:**	
Type of Application	**:**	Application for Rent Repayment Order Section 41 Housing & Planning Act 2016
Tribunal Members	**:**	Judge N Jutton, Mr Colin Davies FRICS.
Date and Venue of Hearing	**:**	11 December 2025 Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL - remote hearing
Date of Decision	**:**	15 December 2025

DECISION

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1. **Background**

2. The Applicants are all former tenants of the property known as Flat 5, 14 Victoria Road South, Southsea, Portsmouth, Hampshire PO5 2BZ (the Property). The Respondent was at all material times the Applicants' landlord.

3. From 1 September 2023 the local authority, Portsmouth City Council, designated the area in which the Property is situated as an area subject to additional licensing in relation to a description of houses in multiple occupation (HMOs) pursuant to section 56 of the Housing Act 2004 (the 2004 Act). The designation applied to all HMOs occupied by 3 or more persons, forming 2 or more separate households.

4. The 1st and 2nd Applicants, Victoria Murphy and Dillan Compton, occupied the Property under two separate assured shorthold tenancy agreements (the First AST and the Second AST) between 7 August 2023 and 6 January 2025. They together occupied the room at the Property known as bedroom 1. The 3rd Applicant, Taylah Down, occupied the Property under the terms of the First AST between 7 August 2023 and 6 August 2024. She occupied the room of the Property known as bedroom 2. The 4th Applicant, Heather Chapman, occupied the Property under the terms of the Second AST from 8 August 2024 to 7 January 2025. She occupied the room known as bedroom 2.

5. On 4 June 2024 the Respondent submitted an application for an additional HMO licence to Portsmouth City Council (PCC). On 3 January 2025 the Respondent applied to PCC to withdraw his application for a licence. It was accepted as withdrawn by the PCC on 6 February 2025.

6. By an application dated 4 August 2025 the Applicants seeks Rent Repayment Orders in respect of rent paid by them to the Respondent during their respective periods of occupation of the Property. They contend that at all material times the Respondent committed an offence under section 72(1) of the 2004 Act in that he was a person having control of or managing an HMO which was required to be licensed but was not so licensed.

7. There was before the Tribunal an electronic bundle of documents prepared by the Applicant of some 515 pages that included the application form, Directions made by the Tribunal, statements of case, and witness statements (with exhibits). References to page numbers in this decision, e.g. [10], are references to the pdf page numbers of the bundle of documents. The Tribunal also received a skeleton argument filed on behalf of the Applicants.

8. **The Law**

9. Chapter 4 of the Housing and Planning Act 2016 (the 2016 Act) enables a Tribunal to make a Rent Repayment Order in favour of a tenant if it is satisfied beyond reasonable doubt that the landlord has committed one or more of certain specified offences during the tenancy. Those offences are set out in a table at section 40(3) of the 2016 Act. There are 7 offences listed.

Those include Section 72(1) of the Housing Act 2004, which provides: '*A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part…. but is not so licensed*'.

10. Section72(4) states:

> *In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time-*
> *(a) a notification had been duly given in respect of the house under section 62(1), or*
> *(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).*

11. Section 72(8) states –

> *For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either –*
> *(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or*
> *(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.*

12. Section 72(9) states;

> *The conditions are-*
> *(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or*
> *(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.*

13. Section 72(5) provides that it is a defence that the defendant had a reasonable excuse for having control of or managing a house which is required to be licensed but is not so licensed.

14. Section 63 addresses applications for licences. Subsection 2 provides that the application must be made in accordance with such requirements as the local housing authority may specify. Subsection 3 provides in particular that the local housing authority may require the application to be accompanied by a fee. Subsection 4 provides that the power of the authority to specify requirements is subject to any regulations made under subsection 5. That is reference to the Licensing and Management of Houses in Multiple

Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 as amended and added to.

15. Section 64(1) states:

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.

16. Section 41(2) of the 2016 Act provides:

(2) A tenant may apply for a rent repayment order only if-

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

17. Accordingly, it is for the tenant(s) to prove, to the criminal standard of proof, that the offence or offences alleged had been committed on a date or over a period within the 12 months ending on the date of the application to the Tribunal.

18. If the Tribunal decides to make a Rent Repayment Order in favour of a tenant the amount is determined in accordance with the provisions of section 44. In determining the amount the Tribunal must in particular take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies.

19. **The Hearing**

20. The hearing was attended by all 4 Applicants, by the Respondent and by Mr Sam Curtis a Housing Regulations Licencing Team leader employed by Portsmouth City Council. Ms Victoria Murphy spoke for all 4 Applicants.

21. It is the Respondents case that he has a complete defence under Section 72(4)(b) of the 2004 Act (the Section 74(4)(b) defence) in that he contends that at the material time an application had been duly made by him for an HMO licence in respect of the Property which remained effective until his application to withdraw that application was granted by Portsmouth City Council (PCC) on 6 February 2025. Thereafter the Property was no longer an HMO. Mr Smith confirmed that he did not raise a defence of reasonable excuse. At the hearing the Tribunal was addressed on the Section 74(4)(b) defence and then upon the issue of quantum, should it determine to make a Rent Repayment Order.

22. **The section 72(4)(b) defence**

23. It is not in dispute that with effect from 1 September 2023 the Property became subject to the additional licensing designation introduced by PCC. Nor is it disputed that on 4 June 2024 the Respondent submitted an application for an HMO additional licence to PCC. On the same day PCC sent to the Respondent an email [458] acknowledging receipt of the application and stating '*Your application will not be processed until the stage one fee has been paid*'.

24. The fees charged by PCC in respect of HMO licence applications are levied in 2 parts. The part 1 fee is described as follows [124]:

    '*Part 1*: *Application fee (payable at the time of submitting an application) - This element of the fee will cover the costs incurred by the council to process the application up to the point of the decision being made to issue or refuse the licence. This fee is non-refundable.*'

25. The part 2 fee is described as:

    'Part 2: Licence Issue fee (payable within 14 days following receipt of the 'Notice of Intention to Grant a License') - This element of the fee covers the cost of issuing the licence, as well as operating and enforcing the HMO licensing scheme. Failure to make this payment will leave the property unlicensed and likely to result in enforcement action. This licence fee is not required if the licence application is refused .'

26. The part 1 licence fee was £195 and it is not disputed that the Respondent subsequently paid that to PCC later on the same day [462].

27. The Tribunal heard evidence from Mr Sam Curtis a Housing Regulations Licensing Team Leader employed by PCC. In answer to questions put to him by Mr Smith, Mr Curtis confirmed that the correct online application form had been used. That after the form had been submitted and the part 1 application fee paid there was no further action for the Respondent to take pending hearing from PCC. The next stage, Mr Curtis said, was for PCC to process the application. That process required an inspection of the Property to include the taking of room measurements.

28. On 12 September 2024 the Respondent received an email from Alexander Sharman a member of the private sector housing department at PCC [389]. Mr Curtis confirmed that this was the first contact made by PCC with the Respondent following receipt of the application and part 1 fee.

29. The email said that the application was missing two documents. Firstly a fire detection certificate or fire detection self-declaration. Secondly, an In-date comprehensive Fire Risk Assessment. In respect of the latter the email stated that if not supplied a special condition would be added to the licence requiring one to be completed.

30. The email went on to state that the Property would require a 'verification inspection' as the floor plan supplied appeared to show that bedroom 3 was too small for use in an HMO property. An inspection date was proposed for either 19 August or 24 September 2024. The Respondent was invited to suggest alternative dates if those were unsuitable for him.

31. On 15 September 2024 the Respondent sent Mr Sharman an email stating that the third bedroom was being used as an office and suggested that accordingly an inspection would not be necessary [393]. Mr Sharman responded the next day saying that an inspection would be necessary as the HMO licence application listed the room as a bedroom and listed the proposed maximum number of occupiers as 4. Mr Sharman again proposed the same inspection dates but invited the Respondent to provide alternatives if neither were viable for him [392].

32. Following a telephone conversation between the Respondent and Mr Sharman they exchanged emails on 16 September 2024 confirming that the application be amended by removing bedroom 3 and allowing for a maximum occupancy of 3 people. Mr Sharman confirmed that there would still be a visit made to the Property during the course of the application.[391-392].

33. The property was inspected by PCC on 23 December 2024. Measurements were taken of the bedrooms.

34. On 3 January 2025the Respondent emailed PCC stating that he wished to withdraw his HMO licence application as the Property was no longer being rented to '*multiple household occupants*' [399]. On 7 January 2025 Mr Sharman responded asking for proof that the Property was no longer in use as an HMO, he suggested that proof could take the form of providing the '*current tenancy agreements in place for the property, evidence of the end of the previous tenancy and/or evidence of eviction'* [398].

35. On 23 January 2025 Mr Sharman sent a further email to the Respondent again asking that he provide the documents requested to verify that the Property was no longer an HMO and stating '*If you do not provide evidence proving the property is no longer an HMO, we are unable to withdraw your HMO licence'* [397].

36. On 4 February 2025 the Respondent sent a copy of a new tenancy agreement '*for the new couple who have moved into the flat'* [397]. On 6 February 2025 Mr Sharman replied stating '*Your application has now been made dead in our system*'.

37. The Applicants contend that for the purposes of section 72(4)(b) the licence application made by the Respondent was not 'duly made'. That because they say the Respondent did not provide the mandatory safety documentation required by PCC nor did he pay the part 2 licence fee. They contend that both of those were required for the application to progress. That without those it is their understanding that the PCC could not process the application (see

paragraph 8 of the Applicant's Reply [510]). They also say that the Respondent declined access to the Property to PCC so that it could carry out the required verification inspection in September 2024 and that without an inspection PCC could not fulfil its statutory duties under sections 64–66 of the 2004 Act. That the subsequent withdrawal of the application (which they describe as an 'incomplete application') by the Respondent did not retrospectively make the application duly made. That the application never became capable of determination.

38. The Applicants rely upon the evidence of Mr Sam Curtis as set out in his witness statement [85-88]. Mr Curtis says at paragraph 25 of his witness statement; '*At no point during the licensing process outlined above was the licence application considered to be duly made in accordance with the requirements set by the Council, as set out within section 63 of the Housing act 2004*'.

39. He goes on to say paragraph 26: '*This is because:*
    a. No Part 2 licence fee was paid.
    b. The landlord did not provide the required documents as requested'.

40. When he gave his oral evidence Mr Curtis slightly departed from that position. In reply to questions put to him on re-examination by Ms Murphy he said that in his view the application was duly made once the Property had been inspected on 23 December 2024.

41. The Applicants say that just starting the application is not sufficient. They refer to a decision of this Tribunal, **Dawson v Humphries [2025] UKFTT(PC) (CAM/00KF/HMG/2024/0002)** in which they contend the Tribunal determined that an application could not be duly made unless and until it was completed and the fee paid.

42. For those reasons the Applicants say that the Respondent cannot rely upon the defence provided by Section 74(4)(b) of the 2004 Act.

43. The Respondent says that his application was for the purposes of Section 74(4)(b) duly made. That to suggest otherwise would be to render meaningless the defence provided by that section.

44. The PCC understood, Mr Smith said, their legal obligation under Section 64(1) of the 2004 Act (set our at paragraph 15 above) to either grant or refuse to grant a licence once an application is made to it under section 63. That means processing the application once it is properly made to it. That is what PCC did. It would not have done so had the application not been duly made.

45. In evidence Mr Curtis said that he didn't agree. He suggested that PCC had started progressing the application but was hindered by the missing documents and initially a lack of inspection.

46. The Respondent says that the Applicants are wrong to suggest that an application could not be deemed duly made until the part 2 licence fee was

paid. That the only fee payable at the point of the application is the part 1 fee. As PCC's own guidance says that fee is to cover the costs incurred by it to process the application up to the point that a decision is made to either issue or refuse a licence. That was confirmed, if confirmation were needed, by the email from PCC dated 4 June 2024 [458] which stated: '*Your application will not be processed until the stage 1 fee has been paid*'. Further as PCC's own guidance makes clear payment of the part 2 fee is contingent upon PCC having made a decision to issue a Notice of Intention to Grant a Licence. As such notice was never received by the Respondent payment of the part 2 fee never fell due.

47. If the Applicants interpretation of the legislation were correct, the Respondent says, the effect would be that a landlord would continue to commit an offence under section 72(1) of the 2004 Act even after having submitted an application while he waited for the council to process the application and to make a decision as to whether to grant a licence. That he suggests would be to warp the plain reading of Section 72(4)(b) which only requires that the application has been duly made not for the application to be processed to a stage where the council indicates that it's willing to grant a licence and for at that stage a further fee to be paid. That is consistent with PCC's own guidance that provides that the part 2 fee is designed to cover the cost of issuing the licence as well as operating and enforcing the HMO licensing scheme.

48. As to the submission of the required safety documents the Respondent says that can only be relevant to the decision to be made by the council as to whether or to not grant the application. Their provision has no bearing on whether the application is duly made. That the common sense approach is that an application is duly made when the correct application form is properly filled out and submitted together with the requisite fee to process the application. The Respondent met both of those criteria. That is consistent with the provisions of section 63 of the 2004 Act.

49. Further the fact is that in this case, following receipt of the completed application form and stage 1 fee, the PCC did (albeit rather belatedly) process and proceed with the application. They acknowledged receipt of the application and of the part 1 fee. At no stage did they say that the application had not been duly made. They proceeded to seek to arrange an inspection and carried out an inspection on 23 December 2024. That the Respondent did not decline the PCC access to the Property in September 2024 he just queried whether an inspection were necessary given that bedroom 3 did not form part of the application. That when PCC advised that nonetheless that it did still need to inspect the Property access to it was allowed

50. That is the Respondent says consistent with PCC's own guidance in relation to the issue of a 1 year HMO licence [123]. The guidance lists issues which it identifies would lead to a 1 year licence being issued (as opposed to a 2 and a half year or 5 year licence). Those include '*Safety certificates not submitted with application (or they are not current and/or satisfactory).*

51. It is clear the Respondent says from the evidence of Mr Curtis that he accepted that the licensing process was in train and, that the application would likely have resulted in the granting of a licence for one year (see paragraph 18 of Mr Curtis's statement [87]).

52. Further, that it is contrary to sense to grant consent to a request to withdraw an application if the application had not been deemed to have been duly made in the first place.

53. **The Tribunals Decision**

54. This Tribunal is not assisted by the FTT decision in **Dawson v Humphries** referred to by the Applicants. Firstly it is not bound by a decision made by the same Tribunal. Secondly in that decision, the reference made to an application not being 'completed', was a reference to the applicant for a licence not completing the application form and to not paying the application fee that was due when the form was submitted.

55. In the view of the Tribunal in this case the application for a licence was duly made by the Respondent on 4 June 2024 when he submitted an application form, which Mr Curtis confirmed was in the correct form, and the part 1 fee paid to PCC. That application remained effective for the purposes of section 72(4)(b) until PCC confirmed its withdrawal on 6 February 2025. To suggest that the application is not deemed to be made until a later date or event or even not until the end of the process, would be to make the defence afforded by that subsection to a large extent, or even entirely, meaningless.

56. Payment of the part 2 fee was not, as the Applicants contend, required to progress the application or to deem it duly made. It is clear from PCC's own guidance that the part 2 fee is only payable once a decision is made to grant a licence (more particularly to issue a Notice of Intention to Grant a Licence). It is not payable at all if it is decided not to grant a licence. Thus by the time that a part 2 fee becomes payable the application process has in effect been completed. All that is required, as far as payment of fees are concerned, for the application to be deemed duly made, is payment of the part 1 fee. That is consistent with PCC's own guidance which provides that the part 1 fee covers the costs incurred by it to process the application up to the point of a decision being made to issue or refuse a licence. [124].

57. As to the provision of the safety documents requested by PCC, the failure on the part of the Respondent to provide those was not fatal to the application being deemed to have been duly made.

58. The fact is that PCC did process and progress the application (once the stage 1 fee was paid). They carried out an inspection of the Property in accordance with their process for such applications. At no stage did they say to the Respondent that his application had not been duly made. They subsequently addressed the request to withdraw the application and granted that request once evidence was produced that the Property was no longer to be an HMO. The Tribunal agrees with the Respondent that it would be contrary for the

PCC to grant consent to withdraw an application if an application was deemed never to have been duly made.

59. The PCC's own guidance sets out criteria for granting an HMO licence whether that be for five years, two and half years or one year. It states that the issues that would lead to granting a one year licence include '*safety certificates not submitted*' [123]. Consistent with that Mr Curtis says at paragraph 18 of his witness statement [87] '*…. had the landlord carried on with the licensing process, the Council would likely have issued a licence for one year only, with a condition requiring that the property is brought out of licensing at the end of the licence, as it was not considered to be reasonably suitable for 3 occupiers*'.

60. Mr Curtis told the Tribunal that in the absence of safety certificates PCC would continue the application process in accordance with its duty to make a decision to grant or to refuse a licence. It would be wrong he said to leave an applicant 'in limbo'. That where documents were missing PCC would proceed to issue a licence for one year provided that it was satisfied that the property was suitable for occupation through either an inspection or desktop survey. That accords with the PCC guidance in relation to additional licensing fees [124] which states: '*The HMO licence application process involves a verification inspection, or a desktop survey, after which a draft licence will be issued to the applicant for comment, along with a request for the Part 2 payment*'.

61. Mr Curtis told the Tribunal that he believed that if the Respondent had not withdrawn his application then a notice of intention to issue a one year licence would have been issued by PCC following the inspection of the Property in December 2024.

62. Section 64(1) of the 2004 Act provides that where an application is made for a licence under section 63 the local housing authority must either grant or refuse to grant a licence. PCC accept that statutory duty and in this case undertook the process towards making a decision in accordance with that duty. To do so they must have been satisfied that an application had been duly made under section 63. To that end, section 63(2) provides that the application must be made made in accordance with such requirements as the local housing authority may specify. Had the Respondent's application not met with such requirements it would doubtless not have been deemed to have been duly made under section 63 and the duty to make a decision to either grant or to refuse to grant a licence as required by section 64 (1) would not have arisen. PCC would in those circumstances no doubt not have gone to the time and expense of progressing the application.

63. In the view of the Tribunal the conduct of PCC in processing the application, in carrying out an inspection of the Property as part of that process and of subsequently consenting to withdraw the application is conduct that can only be consistent with an acceptance that the application had been duly made. Consistent with that is PCC's own guidance that provides that where safety certificates are not submitted a one-year licence may be granted and of the

evidence of Mr Curtis that that would have most likely have been the outcome in this case had the application not been withdrawn. In summary; the failure by the Respondent to supply safety certificates was relevant to the length of the licence that may be granted, but not to the question of whether the application was duly made.

64. In the view of the Tribunal it is clear that the requirements of PCC at the material time for an application for a licence under section 63 to be deemed to be duly made, were the completion of the prescribed application form and the payment of the part 1 fee. Such requirements are in accordance with the provisions of section 63. That thereafter, the application remains effective until it is withdrawn (as in this case) or the authority decide not to grant a licence and the period for appealing against that decision has expired.

65. For those reasons the Tribunal is satisfied that the Respondent has a good defence pursuant to section 72(4)(b) of the 2004 Act to an offence under section 72(1) of that Act. That defence was effective from the date of the application for a licence on 4 June 2024 until PCC consented to its withdrawal on 6 February 2025. The Tribunal is further satisfied that after that time the Property was no longer an HMO. It follows that at no time during the 12 month period ending on the date of the application to the Tribunal is the Tribunal satisfied beyond reasonable doubt that the Respondent was guilty of an offence under section 721 (1) of the 2004 Act.

66. Accordingly the Applicant's applications for Rent Repayment Orders are refused.

67. **Summary of Decision**

68. The applications for a Rent Repayment Orders are refused. The Tribunal is not satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the Housing Act 2004 during the period of 12 months ending with the day on which the applications to the Tribunal were made.

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 rpsouthern@justice.gov.uk being 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