FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00MR/HML/2024/0003
Property	:	87 Binsteed Road, Portsmouth, PO2 7PJ
Applicant	:	Elizabeth Collins
Representative	:	The Shared Homes Company
Respondent	:	Portsmouth City Council
Representative	:	
Type of Application	:	Appeal of condition attached to HMO Licence
Tribunal Members	:	Tribunal Judge C Skinner Mr N Robinson FRICS Mr S Mason BSc FRICS
Date of Hearing	:	12 March 2026
Date of Decision	:	9 April 2026

DECISION

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SUMMARY OF DECISION

a. **The Tribunal rejects the appeal and confirms the licence issued by the Respondent Council including the Specific Condition save for the timescale referred to for compliance is to be 1 year from the date of this Decision.**

Background

1. The Applicant is the landlord and owner of 87 Binsteed Road, Portsmouth, PO2 7PJ ("the Property"). By way of application dated 29 April 2024, the Applicant appealed against the decision of the Respondent on 2 April 2024 to grant a licence to operate the Property as a house in multiple occupation ("HMO") which attached a Specific Condition to that licence.

2. The licence permitted the Applicant to let the Property as an HMO but limited the number of permitted occupiers to "no more than 4 persons". The licence is subject to conditions. There are the mandatory conditions that must be applied in accordance with Section 67(1) and Schedule 4 Housing Act 2004 but also the Respondent added the following "Specific Condition" under powers granted by Section 67(2) Housing Act 2004:

   "Take reasonable steps to reduce the occupancy of the property from (4) to (3) occupiers.

   To utilise the newly vacant room to create additional communal space that complies with the guidance in Portsmouth City Council's Space and Amenities standards.

   The timescale for this change is 1 year from the issue of the full licence"

3. The Applicant's appeal is focused on that Special Condition and seeks its removal on the basis that it is not appropriate or proportionate to limit the number of occupiers to only 3 and that no such condition should be made.

4. The matter was originally heard on 11 February 2025, with a written decision issued on 25 February 2025. The Respondent obtained permission to appeal that decision and on 21 November the Upper Tribunal allowed that appeal, finding the original decision failed to give proper weight to the Respondents guidance, failed to take into account relevant considerations and took into account irrelevant considerations. The matter was therefore returned to the Tribunal for consideration by a different panel.

5. Following the matter being returned from the Upper Tribunal, further directions were issued and the matter was listed for a final hearing on

12 March 2026 with an inspection of the Property scheduled to take place before the start of the hearing.

6. The Tribunal has been provided by the Applicant a hearing bundle consisting of 195 pages. The Tribunal read the bundle and all associated material in advance of the final hearing. References in this decision to page numbers in the bundle are indicated as [ ].

7. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

8. The final hearing took place at the Havant Justice Centre. The Applicant was represented by Alice Ibbotson of The Shared Homes Company. The Respondent was represented by Mr Potterton of Counsel. Alice Ibbotson and the Applicant gave evidence at the hearing on behalf of the Applicant. Millie Hunter (Housing Regulations Licencing Officer) and Samuel Curtis (Housing Regulations Licencing Team Leader) gave evidence on behalf of the Respondent.

Inspection

9. An inspection of the Property took place on the morning of the hearing. The Tribunal was not permitted access to the bedrooms as the tenants of those rooms worked shift patterns and therefore the timing of the inspection was inconvenient to them. The Tribunal decided that on balance the inspection should go ahead on the basis that the main dispute related to the size of the kitchen, box room and living room which could be comfortably inspected without disturbing the tenants.

10. The Tribunal did not independently measure the rooms given the disputed floor space related solely to whether an area of floor situated by the rear door should be included in the floor space measurements for the kitchen. The Tribunal spent time in each room and considered carefully the layout and space within each room, the scale plans provided by the parties and an agreed set of areas relating to the rooms in the property.

11. The Applicant purchased the Property in December 2000. The Property is a flat fronted, mid terraced two storey house accessed from the ground floor front door. On the ground floor there is an entrance hallway, with bedroom 1 (front room) and bedroom 2 (middle room). There is then a lounge/dining room located toward the rear of the ground floor, after which there is a small WC with wash hand basin, with a small kitchen at the rear of the Property.

12. The first floor comprises of a front bedroom (bedroom 3), first floor middle bedroom (bedroom 4), a shower room with WC and wash hand

basin, and a small box room to the rear. The Property also contains a small patio area at the rear of the Property and a strip of garden.

13. The areas of the rooms are agreed between the parties as follows save where indicated;

Bedroom 1 – 10.10m2

Bedroom 2- 9.76 m2

Bedroom 3- 13.34m2

Bedroom 4 – 9.81 m2

Lounge/Diner – 7.25m2

Kitchen- 4.86m2 (not agreed)

1st floor box room – 3.76 m2

The Law

14. Under the Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, all properties with five or more occupiers are required to be licenced as HMOs. Further to that requirement, Section 56 Housing Act 2004 enables Local Authorities to designate their district or part of a district, as subject to additional licencing requirements.

15. On 22 November 2022, the Respondent designated the whole of its district for additional licencing. This came into force on 1 September 2023 meaning from that date the Respondent required all HMO's as defined by Section 254 Housing Act 2004 to be licenced. As a result, the Applicant's Property required a licence while it remained an HMO as per Section 254 Housing Act 2004.

16. Section 64(1) Housing Act 2004 states that when a Local Authority receives an application for a licence in respect of an HMO, it must either grant a licence or refuse to grant a licence. Section 64(2) then provides the Local Authority may grant a licence if it is satisfied upon matters mentioned in Section 64(3). The relevant provision in Section 64(3) in this matter reads as follows:

> *"that the house is reasonably suitable for occupation by not more than the maximum number of households or persons specified in subsection (4), or that it can be made so suitable by the imposition of conditions under section 67;"*

17. Section 65 Housing Act 2004 sets out the test for suitability for multiple occupation. In summary it states that a Local Authority cannot be satisfied that a house is reasonably suitable for occupation if the Local Authority considers that the HMO fails to meet the prescribed

standards for occupation by a number of households or persons. The relevant parts read as follows:

> *"(1) The local housing authority cannot be satisfied … 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."*

18. Section 67 provides that an HMO licence must include the conditions set out in Schedule 4 to the Housing Act 2004 and may include *"such conditions as the local housing authority consider appropriate for regulating … the management, use and occupation of the house concerned.*

19. The prescribed standards referred to within Section 65 Housing Act 2004 are contained within Schedule 3 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. 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.

20. They include minimum sizes for bedrooms, depending upon the number of occupiers. These sizes are 6.51 m2 for a bedroom occupied by one person over 10 years of age, 10.22m2 for a bedroom occupied by two persons over 10 years of age, and 4.64m2 for a bedroom occupied by one person under 10 years of age. There are no minimum prescribed standards for the sizing of other rooms. Instead of setting prescribed sizes for other rooms, the standards 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 enable those sharing facilities to prepare and cook food."

21. Therefore, the effect of section 65(2) Housing Act 2004 is that even where a property may meet the requirements of the prescribed standards, that does not mean that the Local Authority is obliged to regard the property as suitable for the number of persons in question.

22. The Respondent like many Local Authorities published guidance around how it will determine applications for HMOs. This is set out in a

document entitled "Private Sector Housing Space and Amenity Standards for HMOs" ("the Policy") [137]. This document is designed to provide guidance rather than setting strict requirements.

23. Within the Policy, it states on page 9 [145]: "Council Officers will assess each property individually, but the following acts as a guide for the minimum space requirements expected.". A summary of the guidance for the minimum space that will be considered acceptable under the Policy is set out below [148-149].

- For four sharers a kitchen of 6.5 m2 is expected
- For three sharers, a kitchen of 6m2
- If all four bedrooms are 10m2 or more then the lounge/dining room should be 11m2 or more
- Where two of the bedrooms are less than 10m2 and there are four sharers, a lounge/dining room should be 14.5m2
- For three sharers with two bedrooms over 10m2 the lounge/dining room should be 12m2; if three bedrooms were over 10m2 the guidelines indicate a lounge/dining room of 11m2

24. 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.

25. Section 71 Housing Act 2004 provides a right of appeal against decisions relating to licences, referring to procedural requirements contained within Schedule 5 Housing Act 2004.

26. Paragraph 31(1) of Schedule 5 Housing Act 2004 gives an applicant or relevant person the right to appeal to this Tribunal against a decision of the Local Authority to refuse or to grant a licence with paragraph 31(2) extending that right of appeal to any term the Local Authority may apply to the licence.

27. Paragraph 34 to Schedule 5 Housing Act 2004 makes it clear the appeal is to be by way of a re-hearing, the Tribunal having the power to confirm, reverse or vary the original decision and/or if appropriate direct the Local Authority to grant the licence on such terms as the Tribunal may direct.

28. As indicated, it is the Specific Condition set out at paragraph 2 above that the Applicant appeals against.

29. Where this appeal is to be determined by way of re-hearing, the Tribunal must make its own decision. It is not a review of the original decision by the Respondent. However, the Tribunal must give due regard and weight to that original decision and the facts that influenced it when coming to its decision. This was set out at paragraph 53 of Clark v Manchester City Council [2015] UKUT 129 (LC) which reads:

> *"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."*

30. Further to the above, the Court of Appeal's decision in Waltham Forest London Borough Council v Hussain [2023] EWCA Civ 405 where Andrews LJ said at paragraph 80:

> "True it is that the FTT is not asking itself whether the decision of the authority was within the range of decisions reasonably open to it, as it would do on a judicial review. It is deciding whether the authority made the wrong decision. But in doing so, the FTT must pay careful attention to the reasons why the authority reached the decision that it did, and explain why it disagrees with them. Since Parliament intended such decisions to be taken by the authority, the FTT must afford the decision the weight and respect that must be afforded to any decision involving a value judgment made by the decision maker which was also the finder of primary fact."

Parties Submissions and Evidence

31. The Tribunal heard first from Alice Ibbotson on behalf of the Applicant who summarised the Applicant's position and submissions. It was argued that the decision to impose the terms requiring the reduction in occupiers from 4 to 3 was disproportionate in the circumstances and the proposals from the Applicant within the bundle to adapt the layout to the living room and box room would be an adequate way to manage the concerns of the Respondent.

32. The Applicant believed the area in front of the rear door to the Property should have been included in the measurements for the kitchen floor space. If that area was included, the floor space would be 5.85m2. If this measurement was accepted, it would mean that the kitchen floor space, whilst still under the 6.5m2 referred to in the guidance, could be considered close enough to allow sufficient space for the purposes of the Policy.

33. The prejudice and impact on the Applicant in either having to reduce the number of occupiers and thus lose rental income or incur the anticipated costs of meeting with the Respondents alternative proposals to remove the downstairs WC was disproportionate in either scenario. Further if any of the tenants were forced to leave, there was a high chance they would present to the Respondent for assistance with housing which would be to the Respondents detriment and add to already stretched waiting lists and resources.

34. The Applicant argued that were the Property used as a family home, the same type of risks would exist, but no changes would be required to the layout, and the Property wouldn't be deemed overcrowded.

35. The Applicant was of the view that the supporting letters and views of the current occupiers were directly relevant and should be taken into account. These were relevant considerations the Tribunal should factor into its decision and whilst there was an acceptance that the general starting point around compliance with the statutory requirements and the Policy was an objective standard, the discretionary elements such as the Specific Condition, should be subjective to the current occupiers and circumstances. This was supported by the Policy making it clear that individual circumstances would be considered when decisions under the Policy were being made.

36. The Applicant argued that the Respondent's interpretation of the Prescribed Standards was unreasonable and no where did it state that 4 people should be able to use a kitchen to cook and prepare food at the same time. The Applicant submitting it was telling and a key factor that the Respondent had taken no enforcement action under Part 1 Housing Act 2004 (such as seeking a prohibition order) and that inferences could therefore be drawn that the Property did not present any significant risk to the occupiers based on its current layout and occupation levels.

37. It was suggested that the Property and its layout could be seen as fairly unique or more so that the area in which it was the Property is situated had resulted in lots of different styles and layouts within those properties meaning there was a justification to depart from the Respondent's guidance within the Policy and the Tribunal could rely on all the circumstances as reasons to justify that departure.

38. Under cross examination and upon answering questions from the Tribunal, the Applicant's Representative conceded that the disputed kitchen floor space could only be used as a standing area. Further the Tribunal could not be guided to any part of the RCIS measurement guidance that supported the Applicant's interpretation of measuring the kitchen floor space to include the disputed area.

39. The Applicant also gave evidence and felt the current layout and facilities benefited the occupiers and offered better hygiene standards because of the downstairs WC. It was suggested that in terms of

marketing rooms within the Property, potential tenants would place a high value on this and it would assist occupiers when hosting visitors as it makes the downstairs living space more comfortable and useable.

40. In response the Respondent referred to the skeleton argument that they had submitted and essentially adopted the arguments set out within the same.

41. The Respondent acknowledged that the Prescribed Regulations did not expressly require 4 people to be able to cook and use the kitchen at the same time but that the size and space of the room was directly relevant to the numbers of people that could safely access and use the room and its facilities such as the hob, worktops, sink and fridge. It was submitted on its current size, only one person could realistically use the kitchen at any one time.

42. The Respondent argued that on the facts, it was clear that there had not been a rigid application of the Policy and the Respondent had demonstrated consideration of the Applicant's individual circumstances and tried to find a balance between the application of the Policy and the importance of meeting the statutory and regulatory requirements.

43. This was evidenced by the allowance to reduce the number of occupiers over the space of a year, allow flexibility over what adjustments the Applicant would prefer to put in place at the Property (although the Respondent had made suggestions to try and assist) and would continue to allow 3 occupiers under the licence even though under a strict interpretation of the Policy and the room sizes therein, the Property may still not have suitably sized kitchen space or living room space.

44. It was argued that the Applicant had provided no good reasons why there should be any departure from the Policy and it was incumbent on them to do so. In the absence of any good reason being provided, the Tribunal should be slow and cautious to depart from the Policy and give appropriate weight to the original decision made by the Respondent.

45. The suggestion the Tribunal could find the Property was unique was not supported in evidence and further the Tribunal should consider that even with the concessions made by the Respondent over the bedroom sizes, the kitchen and living room floor sizes were still substantially under the minimum sizes required under the Policy, these were not minor deviations.

46. The Respondent addressed the Tribunal on the decision of The First-tier Tribunal of 2 July 2019 (ref: CHI/00MR/HMV/2019/0001) which the Applicant had submitted in the bundle [60] and was suggested could be used as persuasive authority over the approach to take where there was a dispute over floor sizes and the method adopted in determining those floor sizes. The Respondent arguing that decision was around putting a gloss on statutory language that was simply not

permissible by a Local Authority. This matter was entirely distinguishable on the basis the floor sizes in question were not statutory sizes and the way they had been measured was initially as per the Applicant's own measurements, which were agreed by the Respondent. There was no evidence to suggest the initial measurement of the kitchen as 4.86m2 was wrong or counter to any established measuring principles.

47. The Tribunal heard evidence from Millie Hunter and Sam Curtis on behalf of the Respondent. Millie Hunter set out the initial process the Respondent followed in determining whether to grant the HMO licence and how the matter was escalated when it became apparent the floor sizes presented an issue when considering the number of occupiers at the Property.

48. Millie Hunter also gave evidence over why the Respondent did not use its powers under Part 1 Housing Act 2004, confirming that in general when looking at the type of issues at the Property, the Respondent would use HMO licencing conditions to deal with such matters as on balance that was felt proportionate and more effective to such circumstances.

49. Sam Curtis gave evidence which supported Millie Hunter's evidence and expanded upon the Respondent's process and how decisions were reached over the application of the Policy and the attaching of the Specific Condition, along with further explanation around why the Respondent did not feel in this particular matter the use of the powers under Part 1 Housing Act 2004 were appropriate.

50. The Tribunal also received submissions from both parties over the wording of the Specific Condition and whether any alternative wording or conditions had been considered or could be considered. Clarity was sought over the rationale for the terms being applied.

Decision

51. In accordance with provisions of Paragraph 34 to Schedule 5 Housing Act 2004 the Tribunal is required to effectively conduct a re-hearing of the original decision to grant the HMO licence with the Specific Condition attached to that licence. The Tribunal effectively steps into shoes of the Local Authority and must apply the Local Authority's Policy in determining these matters unless there is a good reason to depart from that Policy. If the Tribunal departs from that original decision, it must give clear reason why it has departed from that original decision.

52. The Tribunal is also required to give appropriate weight to the Local Authority's original decision making when applying its Policy to the evidence before it, paying careful attention to the reasons why the original decision was made. (*Waltham Forest London Borough Council v Hussain* [2023] EWCA Civ 405)

53. In light of the parties' disagreement over the floor size of the kitchen, the first matter for the Tribunal is to make a finding over the same. The Applicant arguing the correct size is 5.85m2 on the basis the area outside the rear door and downstairs WC should be included. The Respondent arguing that the initial measurement of 4.86m2 is the correct floor size, that the area outside the WC and rear door is effectively a walkway or corridor space and therefore should not be included.

54. The Tribunal had the benefit of inspecting the Property and seeing the floor space in dispute. In considering the evidence from the parties and inspecting the floor size, the Tribunal finds the disputed area should not be taken into account in respect of the floor size attributable to the kitchen. Therefore, the appropriate measurement for the kitchen floor space is 4.86m2.

55. This is based on the Tribunal finding that the disputed area is on balance a walkway or corridor. It does not form any realistic useable space for the purposes of the kitchen area. In evidence the Applicant accepted it could only really be used as a standing area. The area currently can be blocked off if the WC door is opened. Kitchen worktops or facilities cannot be used whilst stood in this disputed space.

56. The Applicant was unable to refer to any part of the RCIS guidance (or any other guidance) that suggested such space should be included in the floor space measurement and upon review, the guidance appears to specifically exclude such areas when measuring floor space [102]. The finding is also consistent with the Applicants initial submission and statement of case [40].

57. All other room sizes were agreed between the parties. The Tribunal therefore adopts the following room sizes to be applied to the Policy:

    Bedroom 1 – 10.10m2

    Bedroom 2- 9.76 m2

    Bedroom 3- 13.34m2

    Bedroom 4 – 9.81 m2

    Lounge/Diner – 7.25m2

    Kitchen- 4.86m2

    1st floor box room – 3.76 m2

58. The parties are not in disagreement that the number of occupiers at the Property is 4 and the Tribunal accepts that to be the case.

59. The Respondent, in applying its Policy, conceded that given Bedroom 2 and Bedroom 4 were only marginally under the 10m2 threshold that

links to the minimum space required when assessing the kitchen and communal living space, that they would apply the Policy on the basis all 4 bedrooms were over 10m2. This allowance reflects a very small area in real terms. 0.24m2 for Bedroom 2 and 0.19m2 for Bedroom 4.

60. The Tribunal accepts this concession was appropriate and proportionate in the circumstances. The Policy allows for the Respondent to consider the suitability of a property taking into account size, layout, occupancy levels and other relevant factors. It is guidance and not a set of strict rules. In light of the Respondents decision to accept those bedrooms as being over 10m2, it demonstrates a sensible and proportionate application of the Policy and its guidance. In the circumstances, when considering the Property in general, this amounts to a good reason for a departure from the Policy.

61. The Tribunal sees no reason to depart from that decision given how close the room sizes are to the 10m2 measurement and the practical application of the Policy. There is no good reason why the Tribunal should depart from that decision the Respondent made and the Tribunal adopts the same position to treat all bedrooms as being 10m2 for the purposes of the Policy.

62. The relevant tables that then give guidance in the Policy to the minimum space standards expected for communal living space and kitchen space are set out at [149]. Where the Tribunal has accepted the number of bedrooms over 10m2 is 4, the minimum space required for communal living space is set at 11m2.

63. The minimum space for a kitchen is simply set by reference to the number of occupiers, meaning the bedroom size is not a relevant factor. That states that where a property has 4 occupiers, the minimum floor space requirement for a kitchen is 6.5m2

64. The Policy goes onto set out that if it is claimed the communal living space is split into separate rooms, the minimum space for each of those rooms would be 11m2 for a property with 4 occupiers.

65. Applying the findings of fact over the kitchen floor size and the agreed bedroom sizes all being over 10m2, the Policy shows that both the communal living space and the kitchen at the Property do not meet the minimum required space. The communal living space at the Property is 7.25m2. Even when applying the concession around the bedroom sizes, the minimum space required under the policy is 11m2. Therefore, the Tribunal finds the communal living space is 3.75m2 below the minimum space required under the Policy.

66. The Tribunal notes that the communal living space is of a size that means it does not meet any minimum space standard under the guidance regardless of the number of occupiers.

67. The Applicant has argued that Box Room should be taken into account when considering the available living space. The Policy clearly states that the minimum space requirements for communal living space apply to each room. Therefore, on application of the Policy, the Box Room and the cumulative floor space cannot be taken into account in the way the Applicant suggests. If the Box Room is to be considered as living space, it falls significantly short of the 11m2 space requirement.

68. The Tribunal can depart from the Policy in circumstances where it believes it is appropriate to do so. If it does depart from the Policy, it must set out good reasons why in the circumstances it has chosen to.

69. The Tribunal notes that even if the Box Room was considered living space, and even if the Tribunal chose to depart from the Policy requirement that each separate living space must be a minimum of 11m2, the cumulative total of floor space for the Property's living room and Box room is 11.01m2.

70. Considering all the evidence provided and having inspected the Property, the Tribunal declines to depart from the Policy to that extent. The Box Room is not currently used as living space. It is clearly used to facilitate additional storage and to dry clothes after washing. This was accepted by the Applicant and the Applicant's own evidence confirmed the storage space was useful to facilitate more space to occupiers within bedrooms. This is a sensible and practical use of such a room but as a result it cannot be said to be a living space for the purposes of the Policy.

71. In light of that finding, the Tribunal does not believe there is a good reason or that it is proportionate to depart from the Policy in the circumstances or based on the evidence before the Tribunal.

72. Following the above findings, the Tribunal is then required to determine whether it should grant or refuse the HMO licence for the purposes of Section 64(1) Housing Act 2004. In order to make that decision, the Tribunal must be satisfied as to the matters mentioned in Section 64(3), the relevant provision for this application being Section 64(3)(a) and whether;

> *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;*

73. The Applicant seeks the maximum number of households or person to be 4. Therefore, the Tribunal must be satisfied that the house is reasonably suitable for occupation by 4 households or determine what number that maximum should be under Section 64(4)(b). The Tribunal can impose conditions to the licence if those conditions (assuming they are complied with) will have the effect of making the house reasonably suitable for occupation by that maximum number.

74. In order to make that decision, the provisions of Section 65 Housing Act 2004 must be taken into account. They direct the Tribunal to Schedule 3 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 and the Prescribed Standards.

75. Under those Prescribed Standards, the Tribunal must determine if the kitchen is suitably located in relation to the living accommodation and is of such size and layout and equipped with such facilities to adequately enable those sharing the facilities to store, prepare and cook food and also that it is equipped appropriately for the number of people sharing the facilities.

76. The test is an objective one and crucially at first instance is to determine if the kitchen itself is a suitable kitchen and appropriately equipped. The Tribunal finds on evidence and from its inspection of the Property it is a compliant kitchen for the purposes of the Prescribed Regulations.

77. This finding is not essentially in dispute between the parties. What is disputed is the Respondent's application of Section 65(2). This Section allows a Local Authority to decide that despite meeting the Prescribed Standards, the house is not reasonably suitable for occupation by a particular maximum number of households.

78. It is the Respondents decision in respect of Section 65(2) that is at the heart of the dispute. The Respondent's decision was that the Property was not reasonably suitable for a maximum of 4 households because the kitchen and living room do not meet the minimum space standards within its Policy. The Respondent taking a view that those deficiencies meant a risk to the health, safety and well being of those households.

79. The Tribunal agrees with this assessment of the kitchen and its suitability. The kitchen is small and can only reasonably be used by one person at a time. If two or more people attempted to use the kitchen at the same time, there is an increased risk due to the lack of space for accidents or injuries to occur.

80. By its nature a kitchen will involve the use of hobs, there may be hot food being removed from the oven, boiling water and other uses that are normal for a kitchen. The kitchen has limited worktop space and although there is space for a person to stand at the fridge whilst another person used the main kitchen space, they could not use any of the available work tops or the sink at the same time as another user.

81. The Tribunal having inspected and considered the evidence agrees that when the above is then also considered in light of the living room being significantly under the minimum space standard within the Respondents Policy, it cannot be reasonable or appropriate to determine the maximum number of households to be 4. Weight must

be given to the guidance set out in the Policy and the Tribunal does not find any good reason to depart from it.

82. In an attempt to resolve those deficiencies, the Respondent decided to grant the licence but with the Specific Condition attached for the purposes of Section 64(3)(a).

83. In making the above decision, the Respondent considered many factors. This is set out in the evidence of the Respondent and the Tribunal heard live evidence from Millie Hunter and Sam Curtis on how those factors were weighed.

84. The Respondent did not apply its Policy in a strict manner. To do so, may have resulted in no licence being granted at all given the deficiencies in space for both the kitchen and living room. Neither room meeting even the minimum requirement for space under the Respondent's Policy regardless of the number of occupiers.

85. Instead, the evidence showed the Respondent carefully considered its options including factors such as the long standing nature of the Property being used as a letting, the current occupiers present and what steps may be proportionate to achieve a careful balance of getting the Property to comply with its Policy, without using oppressive or unreasonable means to do so.

86. The decision was therefore to grant the licence but to allow a year for the Applicant to reduce the number of occupants and to make adjustments to the layout of the Property to remedy the deficiencies relating to room sizes and layout. The evidence was that the Respondent felt this gave a fair balance when considering the Applicant and the current tenants but without being overly prescriptive or heavy handed over the exact steps the Respondent required in respect of both removing any particular tenant or making alterations to the rooms or layout of the Property.

87. The Tribunal accepts and prefers this evidence. It is clear to the Tribunal that the Respondent considered the individual circumstances of the Applicant when making its decision. It tried to strike a careful balance over the need to improve the layout and space available at the Property against being to forceful or unfair in that application of its requirements under its Policy. The evidence of Sam Curtis and Millie Hunter was consistent on the approach taken and the factors that were considered in reaching the decision.

88. The Tribunal attaches appropriate weight to the original decision made and upon making its own assessment of the facts and evidence decides it will grant a licence for the Property to be an HMO in accordance with Section 64 Housing Act 2004. Further the Tribunal considers the imposition of a condition to the licence in accordance with Section 64(3)(a) to be suitable in this matter.

89. The reason why the original decision to grant a licence was subject to the Specific Condition is set out above. The Applicant has argued that the licence should be granted but without any Specific Condition and only subject to the mandatory conditions required under Section 67 Housing Act 2004.

90. The Tribunal rejects the Applicant's appeal against the imposition of the licence Specific Condition. Whilst the Tribunal understands the Applicant's feeling that the Specific Condition is unfair and will result in difficult decisions over the future of the Property, that in itself is not the only compelling factor when considering the matter as a whole and the objective to impose appropriate standards for HMO's across the Respondents designated district.

91. The evidence from the Applicant was that the Tribunal should apply the Policy in a subjective way and give sufficient weight to the views of the current tenants. The Applicant arguing that the Tribunal should depart from the Policy on the basis the Property was relatively unique and the layout within the Property was such that it warranted a departure from the Policy.

92. The Tribunal rejects these arguments. The Policy by its very nature must be an objective one from a starting point. It must provide guidance to those who will be subject to its criteria and that criteria must be objective to the minimum standards the Respondent expects from properties to be let as HMOs. The views of the current occupiers for this purpose are irrelevant considerations when determining if the Property is suitable for a maximum number of households.

93. However, the Policy quite sensibly incorporates provision for each application to be considered individually and on its own facts. As referred to above, this allows for an element of discretion and flexibility when applying the guidance within.

94. As per the findings above, that is exactly what the Respondent did when allowing all four bedrooms to be deemed at 10m2 and determining that it would grant a licence when taking into account the Applicants circumstances, background and current situation with tenants, but apply the Specific Condition to try and ensure the Property is brought within the guidelines set out in the Policy within a reasonable time, namely one year.

95. The Tribunal also rejects the argument that the Respondent should have taken enforcement action under Part 1 Housing Act 2004 and that a failure to do so shows the risk presented by the kitchen at the property, or even the property more generally, is not significant and that the Respondent would have no prospect of succeeding with such enforcement action.

96. The Tribunal finds no merit to this argument. As per the evidence of Sam Curtis which is preferred, the Respondent has a range of options

available in law to try and regulate the letting of properties and the health and safety of those rented properties. The options within Part 1 simply form a range available to any Local Authority.

97. The Tribunal accepts that in this matter, the Respondent decided the proportionate way to attempt to resolve the concerns held about the Property was via attaching a licencing condition to the HMO licence. This is clearly within the range of reasonable options open to the Respondent.

98. This is supported by the provisions set out in Section 67(4) Housing Act 2004 which directly sets out the different approaches available and of note Section 647(4)(b) reads:

> *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;*

99. The Tribunal finds this persuasive and supportive of the Respondents' evidence and position adopted in its decision making.

100. On balance the Tribunal prefers the evidence of the Respondent when assessing its rationale behind the imposition of the Specific Condition. The Tribunal accepts it was attempting to strike a balance between allowing time to the Applicant to resolve matters in a way that best suited her and gave time to consider how to deal with the current occupiers of the rooms and the requirement to see the Property move towards compliance with appropriate safety standards in line with intention of legalisation that now surrounds lettings in HMOs.

101. The Tribunal finds the Respondent had considered all the relevant circumstances, including the Applicant's individual circumstances which is why the Specific Conditions was drafted and implemented the way it was. This is clear from the timescales for compliance with its terms. The Tribunal preferring the evidence from Sam Curtis on this point for the reasons already stated

102. The Tribunal making its own assessment of achieving future compliance and what terms may be suitable for the purposes of Section 64(3)(a) considered the current wording of the Specific Condition and whether any variation or changes to the current wording would be more appropriate or effective.

103. No alternative wording was suggested by the parties, the Applicant maintaining no condition should be attached, the Respondent setting out in evidence why they were of the view the current condition worked and how it was designed to achieve a set purpose.

104. In the absence of any alternative wording and the Tribunal finding no good reason to depart from the original decision of the Respondent, the Tribunal makes the same Specific Condition on same terms for same reasons the Respondent originally concluded. The Tribunal preferring and accepting the evidence of the Respondent on this point.

105. The Tribunal orders that compliance with those terms is to be 1 year from the date of this decision.

RIGHTS OF APPEAL

106. 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 by email at rpsouthern@justice.gov.uk

107. 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.

108. 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.

109. 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.