First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/21UD/HML/2019/0017**
Property	**:**	**10 Warrior Gardens, St. Leonards-on-Sea, East Sussex, TN37 6EB**
Applicant	**:**	**Linda Turner**
Respondent	**:**	**Hastings Borough Council**
Application	**:**	**Appeal against grant of House in Multiple Occupation ("HMO") licence (Part 3, Schedule 5 of the Housing Act 2004 ("the 2004 Act"))**
Application date	**:**	**8th August 2019 (rec'd 13th)**

DECISION

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1. The Respondent's only assertion as to the property's status as an HMO is that it is a building that it fulfils the conditions laid down by section 257 of the 2004 Act ("section 257"). This has not been proved on the balance of probabilities and, hence, the Tribunal is not satisfied that it is an HMO. The licence HMO is hereby revoked.

Reasons

Introduction

2. The Applicant is the long leaseholder of and lives in the ground floor flat at the property which is a terraced house in central St. Leonards-on-Sea. She also has a share of the freehold title. On the 26th February 2019, the Respondent local authority gave formal written notice to the Applicant that the property is an HMO. The letter is unhelpful and abrupt in the sense that (a) it does not set out why the Respondent comes to that view (b) it says that the Applicant 'must' apply for a licence and (c) it says that if she fails to apply for a licence, she is 'committing an offence'.

3. The letter does, in its heading, refer to the 2004 Act and then just says 'Part 2 (61)'. Assuming that this is a reference to Section 61 of the 2004 Act, this simply sets out the requirement to license an HMO. An ordinary member of the public is not likely

to understand the significance of this and, in particular, the failure to mention the section defining this particular HMO. No suggestion is made for the recipient to seek independent legal advice.

4. A notice dated 18th June 2019 was then sent to the Applicant informing her that the Respondent proposed to grant a licence. Again, the wording is not clear. It does not say what the licence is for or to whom the licence is to be granted but just says that they have received an application for a licence from Ian Lawson, who is the long leaseholder of the first floor flat. He does not have an interest in the freehold title.

5. There is then another notice from the Respondent to the Applicant dated 16th July 2019 giving notice of a decision made on the same date to grant a licence but, again, it does not say what for or to whom. It says that the licence comes into effect 28 days after 16th July 2019 unless an appeal is made.

6. Finally, there is a copy of an HMO licence said to have been issued on the 16th July 2019 with the words 'start date 19th March 2019; expiry date 18th March 2020'. There is no explanation as to why the dates are different to those in the notice. It sets out the following under the heading 'Responsible Persons':

   "Licence Holder
   Indigo Properties UK Ltd.
   Ms Anne Barett
   Mr. Ralph Black
   Mr. Lewis Brown

   Manager
   Indigo Properties UK Ltd."

   Alongside all names are addresses, none of which is at the subject property. The applicant, Ian Lawson is not mentioned.

7. This appeal is against the granting of the licence and sets out 5 pages of single spaced writing and printing which basically say that the property is not an HMO, the licence has been wrongly granted and the whole situation is unjust.

8. The Applicant said that the case could be determined by the Tribunal on the papers and written representations of the parties. Judge Agnew issued a directions order dated 28th August 2019 in which it is said that the issue as to whether the property is an HMO should be determined as a preliminary issue. Such determination is to be made on a consideration of the papers as soon as possible after 18th October. Directions for both parties to file written representations were made and such representations have been made and considered. No request for an oral hearing has been received.

The Law

9. The Respondent was ordered to set out its reasons for deciding that the property is an HMO. It has done so and, in essence, it says that the building comes within the definition of an HMO as set out in section 257 i.e. it is a 'converted block of flats'.

10. This section sets out the requirements for a building to come within that definition i.e.

> "*(1) For the purpose of this section a 'converted block of flats' means a building or part of a building which___*
> *(a) has been converted into, and*
> *(b) Consists of,*
> *self-contained flats.*
>
> *(2) This sections applies to a converted block of flats if___*
> *(a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and*
> *(b) less than two-thirds of the self contained flats are owner-occupied."*

11. As to whether the property meets prescribed standards, the parties may also wish to consider the **Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006** (SI 2006/373) and the **Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007** (SI 2007/1903).

12. A great deal is said by both parties about whether the building is an HMO. However, is it agreed that this building has been converted into 5 self contained flats and long leases were granted for each flat for 99 years commencing 25th December 1988. It is also agreed that the only owner-occupied flat is that of the Applicant and that is clearly less than two-thirds of the total number of flats.

Discussion

13. I remind myself that these are adversarial proceedings and it is up to the Respondent to establish, on the balance of probabilities, that this building comes within the definition set out in section 257 as mentioned in section 61. Also, it should be mentioned that as the Respondent was not at all clear in its earlier notices about why it said that this particular property is an HMO, the Applicant has brought all sorts of other arguments before the Tribunal in her application which are simply not relevant at the moment.

14. It really is not clear who is actually appointed to manage the building. A licence holder must be a fit and proper 'person' and there are provisions relating to what happens when a licence holder becomes deceased. There are no similar provisions to cover what may happen if a limited company goes into liquidation. In other words, it seems clear from the wording in the 2004 Act that a licence holder and, indeed, a manager must be a 'person' in the generally accepted meaning of the word rather than a legal 'person' such as a limited company. In her statement on behalf of the Respondent, Deborah Jane Watts, at page 39 in the bundle says that Ian Lawson applied for the licence 'on behalf of 'Indigo Properties'. *"He was applying as the manager of the property"*. He is not named as such in the licence.

15. There are a number of problems with the granting of the licence and I set out some of those in the final section of the reasons for this decision. However, at the end of the day, I just have to determine whether the building is an HMO within the definition set out in section 257, which is the only section relied upon by the Respondent.

Conclusions

16. I find, on balance, that the definition in section 257 has been complied with save for the issue of whether the building was converted in accordance with the appropriate building standards and, if so, whether it still does not comply with them. SI 2006/373 also says that the property must meet prescribed standards. The long leases commenced in 1988 which means that the conversion is almost certain to have been in 1988 or beforehand. This means that the building work had to comply with the applicable regulations and/or standards at the time the work was undertaken in accordance with the **Building Act 1984**.

17. There is no reference to any building regulations or consideration of prescribed standards in the Respondents' evidence. On page 5 of the Respondent's bundle, as part of their legal submissions, it says that the only 'evidence' the Respondent has of any failure to comply with building standards is in the application for a licence. That 'evidence' is at page 93 when, in answer to the question 'Does the conversion to flats comply with the 1991 Building Regulations (or later)?' The answer given by Mr. Lawson is simply 'No'.

18. This assertion on the part of the Respondent highlights the flaw in its case. If their only evidence on this issue is in Ian Lawson's application dated 19th March 2019, then why have they written to the Applicant on the 26th February 2019 telling her that the property is an HMO with the inference that if she does not apply for a licence, she will be prosecuted? Also, why do they restrict the standard to the 1991 Building Regulations when those regulations clearly did not exist at the time of conversion in 1988 or before?

19. The representations go on to say that a search was made on the Wealdon District Council website and 'it is clear no applications have been made'. There is no evidence of when the conversion work was carried out, who made the search, what was searched and exactly what was found. There is no evidence of an examination of the building by anyone to find out whether any lack of building standards exists. In view of the wording of section 257 and the subsequent Statutory Instrument i.e. that the building "*did not comply with the appropriate building standards and still does not comply with them*" and does not meet prescribed standards, it seems to me from the evidence submitted, that these minimum requirements have not even been considered by the Respondent. Therefore, the property does not come within the definition of an HMO as defined by section 257 and the licence must therefore be revoked.

20. I did consider whether I should inspect the property to see what I could ascertain about the present condition of the building. However, I have taken the view that the Respondent local authority knows that the preliminary issue is to determine whether the property is an HMO and if it wanted to rely on evidence or submissions, they

should have been provided. It is not my task to fill gaps in the Respondent's case, if indeed, they are capable of being filled.

The Future

21. As I have mentioned above, the parties may find it helpful if I highlighted some other problems in this case if further action is anticipated. This is not an exhaustive list:

- A great deal has been said by the Respondent about its Additional Licensing Scheme. This is not relevant to the preliminary issue as the scheme still has to apply to HMOs as defined by the 2004 Act. The Applicant says that she received no notice of any consultation as required by the 2004 Act but even she refers to 2 consultation meetings held by the Respondent and to information on its website. I am just about satisfied, on the evidence I have seen, that there was sufficient consultation.
- The freehold owners of this building are, according to the Land Registry documents supplied, the Applicant, Lewis Jeffery Brown, Anne Rosemary Barett and Caroline Frost. In an e-mail from Ian Lawson dated 1st March 2019 which is at page 99 in the Respondent's bundle, it appears clear that he is taking control of the application for a licence. He addresses the message to his 'fellow freeholders', which is not, of course, a correct form of address as he is not a freeholder. The licence, a copy of which appears at page 33, states that Indigo Properties UK Ltd is a licence holder and the manager, despite the fact that such company is only the leasehold owner of flat 4. Mr. Lawson says that he 'will pass the fit & proper declaration as I've already done so with other local authorities and I'm also an accredited landlord'. It seems that the Applicant's allegations of anti-social behaviour on the part of his tenants and how Mr. Lawson and/or Indigo Properties UK Ltd. dealt with the problems will need to be considered by the Respondent, so that the 'fit and proper person' test can be satisfied.
- In the **Housing in Multiple Occupation (Certain Blocks of Flats)(Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs)(England) Regulations 2007** it says, in regulation 4, that when deciding whether the proposed licence holder is a fit and proper person to be the licence holder, the local authority must take into consideration whether that person has control of the HMO and the extent to which he has control over it. There is no evidence of this whatsoever save for the Applicant's allegations of incompetent management referred to above.
- The Applicant mentions, in her application, that 2 of the freeholders held 'selective licences' for their flats which, she says, expired on 11th January 2013. The Respondent makes no mention of these licences. These historical facts need to be explained.

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Judge Edgington
1st November 2019

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.