FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/HMD/2021/0004 CVPREMOTE**
Property	**:**	**108A Uxbridge Road, London, W12 8LR.**
Appellant	**:**	**Mohammed Hanif.**
Representative	**:**	**Simon Strelitz of Counsel; Simon Cook, Hodders Law.**
Respondents	**:**	**London Borough of Hammersmith and Fulham.**
Representative	**:**	**Ms. Mykia Angus MCIEH Ref: 2021/00442/Has255.**
Type of Application	**:**	**Appeal in respect of a declaration of an HMO –** Schedule 256(g) & Part 3 of Schedule 5 to the Housing Act 2004
Tribunal Members		**Judge Professor Robert Abbey Peter Roberts DipArch RIBA (Professional Member)**
Date of Video Hearing	**:**	**14 January 2022 and 11 April 2022**
Date of Decision	**:**	**21 April 2022**

DECISION

Decision

The tribunal reverses the decision of the respondent local authority, and consequently revokes the House in Multiple Occupation declaration dated 10 August 2022

Introduction

1. The tribunal has received an appeal under section 256(g) of Schedule 5 to the Housing Act 2004 (the Act) against the declaration by the Local Housing Authority (LHA) that the subject property is/was operated as an HMO, without an appropriate licence.

2. The Tribunal by Judge Hamilton-Farey had issued Directions dated 21 September 2021 that included the following: -

> *The basis of the appeal is that the applicant did not either directly let, or knowingly let the property as an HMO. This may be amplified further in the applicant's statement.*
>
> *The tribunal sent to the respondent LHA copies of the appeal with supporting documents.*
>
> *In accordance with paragraph 34(2) of Schedule 5 to the Housing Act 2004, the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the LHA were unaware.*
>
> *The **issues** that the Tribunal will need to consider when deciding whether to confirm, vary or reverse the decision of the LHA include:*
>
> a. *Has the LHA shown, through the necessary steps prior to making the declaration, that the property is/was an HMO on the relevant date?*
>
> *The parties are referred to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.*

The Hearing

1. The appeal was set down for hearing on 11 April 2022. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the MoJ Cloud Video Hearing Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two

bundles of many pages, the contents of which we have recorded and which were accessible by all the parties

2. In the context of the Covid 19 pandemic and the government social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination including photographic evidence of the property. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

3. The Tribunal had before it two electronic bundles of papers prepared by the applicant and the respondent in the form of PDF files. These contained copies of documentation and title copies and photographs of the property as well as copy correspondence, notices and all other relevant papers.

3. Relevant legislation is set out in the appendix to this decision and rights of appeal are set out in an annex.

4. The applicant advanced the appeal because (i) he did not let the property either on 6th August 2021 or at all to three or more people who are not from one household and/or (ii) that he did not knowingly allow the property to be let either on 6th August 2021 or at all to 3 or more people who are not from one household.

5. Further it is the applicant's case that there is no evidence that the applicant either on 6th August 2021 or at all let the property to 3 or more people who are not from one household or that he knowingly allowed the property to be let to 3 or more people who are not from one household. Alternatively, at the date of issue of the Declaration, the respondent did not have any or sufficient evidence that the applicant had let the property to 3 or more people who are not from one household or that he had knowingly allowed the property to be let to 3 or more people who are not from one household.

6. In support of these contentions the applicant asserts that the property was explicitly let to Mr Jackson Nascimento Da Silva and Mrs Tiany Medeiros Pagotto who are from one household and who together are the tenant under a written AST ("the AST") dated 11th November 2020. The AST contained a clause (4.8) which provided that the tenant must not allow the number of persons occupying the property to exceed the Maximum Number of Permitted Occupiers specified in the AST without the landlord's (applicant's) written consent. The maximum number of Permitted Occupiers under the AST was 5. This provision was, the applicant says intended by the applicant to ensure that only the tenants and their children (being minors) lived in the property. Therefore, the applicant says it was expressly (alternatively impliedly) agreed between

the tenant and the applicant that only the tenants and their children were entitled to occupy the property.

7. The applicant says that the property was and is intended to be used as a single-family dwelling, and a selective licence was duly granted by the Respondent with effect from 19th March 2019. Having inspected the property in June 2021 the applicant says he was not satisfied that the tenant was adhering to the terms of the AST. In particular, the applicant noticed signs that persons other than the tenants and their children were in occupation. On 28th June 2021, the applicant therefore served notice on the tenant under s21 of the Housing Act 1988 (as amended), such notice expiring on 10th November 2021. This action was taken before the unannounced inspection carried out by the Respondent on 6th August 2021 and the applicant says was not taken in response to any enquiry or demand made by the Respondent.

8. The applicant says he let the property through a reputable letting agency, Milestone Estate Agents. Milestone managed the property until June 2021. Milestone collected the rent from the tenants and passed it on to the applicant, subject to deduction of their commission. At no time was rent tendered to the applicant or the letting agents and at no time was rent received from, any persons other than the tenants. On 1st September 2021 the applicant informed the Respondent that the unauthorised occupiers had vacated the property and invited the Respondent to inspect the property but, to the best of the Appellant's knowledge, the Respondents has not inspected the property since 6th August 2021

9. In reply the respondent asserted that this address was being used and operated as an unlicensed HMO as there were more than two households in occupation and therefore under the provisions of the Housing Act 2005, Part II, section 72(1)(2) an offence was being committed by there being an unlicensed HMO and this was the case at the time of the inspection of the property by the respondent's representative Ms Mykia Angus who is an Environmental Health Practitioner. At the time of the making of the declaration she was in the employ of the respondent but at the time of the hearing had ceased her employment with the local authority.

10. She confirmed that the property was brought to the attention of the Council by the local police who wanted to make a joint visit for a welfare and immigration status check. She made an unannounced visit on 5 August 2021. She took photographs and persons at the property were interviewed, not all by her. Her colleague Mr Michael Simms Davis was also involved by interviewing occupants but although he put in a witness statement, he was not present at the hearing and could not be cross examined on his evidence. Ms Angus detailed at great length what she said were failings in the condition of the property.

11. Ms Angus says that the first-floor front room at the property was occupied by a family. She then said that there was another separate household in the property, on the second floor where there were two brothers in occupation. This assertion was made based on the contents of the occupant questionnaires completed by Mr Simms Davis. It became clear at the hearing during cross examination that these forms were not filled out by the persons concerned and that English was not their first language and that there had been no interpreters present. Ms Angus said there were other occupants but she could not provide their names. She said that the police in attendance could speak other languages but was not sure of the details. Several of the rooms in the property were locked so she was unable to gain access at the time of the inspection visit.

12. Counsel for the applicant also told the Tribunal that in open correspondence the respondent had, prior to the hearing, tried to reach a compromise and settlement with the applicant on the basis of a written undertaking from the applicant which would enable the respondent to revoke the notice. This was offered but then withdrawn by the local authority before the hearing date when these settlement negotiations broke down.

Decision and Reasons

13. The Tribunal has decided to reverse the decision of the respondent local authority, and consequently to revoke the House in Multiple Occupation declaration issued by the respondent dated 10 August 2022 for the following reasons.

14. The Tribunal noted that a house in multiple occupation (HMO) is a property rented out to at least 3 people who are not from 1 'household' (for example a family) but share facilities like the bathroom, toilet and kitchen. All HMOs require a license within the borough of Hammersmith and Fulham. There being a "house" as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the Act but is not so licensed.

15. The respondent's case rested upon the evidence given by Ms Angus. She did not make a convincing witness. Her evidence was confused and she was forced in cross examination to concede that there were several problems with her evidence. Moreover, her trial bundle was not helpfully compiled as there were two numbering systems and it was separated into several unconnected files. This did not help the Tribunal follow her evidence.

16. The Tribunal were not satisfied that there was satisfactory or convincing evidence of the required multiple occupation of the property such that a notice could be issued. Mr Simms Davis was not at the

hearing and so all we had were the completed questionnaires. The persons making them were not in front of the Tribunal and they were not completed by the witness before the Tribunal, Ms Angus, and so the Tribunal was in difficulties in coming to a decision on the merits of this evidence. There were also the issues of the language of the person giving the evidence and whether or not they had understood what they were doing or supposedly saying. Moreover, while the forms purport to be signed by the person allegedly completing the forms there is no signature from a Case Officer from the local authority or indeed an indication of the name of the case officer involved in the completion of the forms. The two forms disclosed in the trial bundle also appear to be undated.

17. The Tribunal looked at the case of *Herefordshire Council v Martin Rohde* [2016] UKUT 39 (LC) that said that the Tribunal should make a determination not only on the basis of its own inspection, but also on the evidence that had been available to the local authority at the time the declaration was served. In this case no inspection by the Tribunal was possible as the circumstances of the occupancies had changed substantially since the time of the respondent's inspection and because at present as a consequence of the Covid pandemic the Tribunal is not inspecting properties. Therefore, the Tribunal did rely heavily upon the evidence available to the respondent at the time the declaration was made.

18. In the *Herefordshire* case the local authority made a declaration that the respondent's property was a house in multiple occupation on the basis of evidence from two police officers and two environmental health officers. In contrast, in the case before it there was no evidence from Police Officers. Only Ms Angus gave evidence and that evidence was unconvincing and confused and not backed up by paperwork that the Tribunal might feel it safe to rely upon.

19. For all these reasons the Tribunal could not be satisfied that there was sufficient evidence that they could accept of the property being in multiple occupation and consequently the Tribunal determined it should revoke the House in Multiple Occupation declaration issued by the respondent dated 10 August 2022

Application for costs

20. The applicant confirmed that an application for costs will be considered by the landlord once this decision was issued and therefore there was nothing for the Tribunal to consider in regard to costs at the time of the hearing and certainly it had no detailed submissions on costs before it. The Tribunal therefore refers the parties to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) that deals with costs as well as the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander*

[2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type.

Name:	Judge Professor Robert Abbey	**Date:**	21 April 2022

Annex

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).

Appendix

Housing Act 2004

255HMO declarations

(1)If a local housing authority are satisfied that subsection (2) applies to a building or part of a building in their area, they may serve a notice under this section (an "HMO declaration") declaring the building or part to be a house in multiple occupation.

(2)This subsection applies to a building or part of a building if the building or part meets any of the following tests (as it applies without the sole use condition)—

(a)the standard test (see section 254(2)),

(b)the self-contained flat test (see section 254(3)), or

(c)the converted building test (see section 254(4)),and the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in question constitutes a significant use of that accommodation or flat.

(3)In subsection (2) "the sole use condition" means the condition contained in—

(a)section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or

(b)section 254(4)(e),as the case may be.

(4)The notice must—

(a)state the date of the authority's decision to serve the notice,

(b)be served on each relevant person within the period of seven days beginning with the date of that decision,

(c)state the day on which it will come into force if no appeal is made under subsection (9) against the authority's decision, and

(d)set out the right to appeal against the decision under subsection (9) and the period within which an appeal may be made.

(5)The day stated in the notice under subsection (4)(c) must be not less than 28 days after the date of the authority's decision to serve the notice.

(6)If no appeal is made under subsection (9) before the end of that period of 28 days, the notice comes into force on the day stated in the notice.

(7)If such an appeal is made before the end of that period of 28 days, the notice does not come into force unless and until a decision is given on the appeal which confirms the notice and either—

(a)the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, or

(b)if an appeal to the [F1Upper Tribunal] is brought, a decision is given on the appeal which confirms the notice.

(8)For the purposes of subsection (7), the withdrawal of an appeal has the same effect as a decision which confirms the notice appealed against.

(9)Any relevant person may appeal to the appropriate tribunal against a decision of the local housing authority to serve an HMO declaration. The appeal must be made within the period of 28 days beginning with the date of the authority's decision.

(10)Such 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.

(11)The tribunal may—

(a)confirm or reverse the decision of the authority, and

(b)if it reverses the decision, revoke the HMO declaration.

(12)In this section and section 256 "relevant person", in relation to an HMO declaration, means any person who, to the knowledge of the local housing authority, is—

(a)a person having an estate or interest in the building or part of the building concerned (but is not a tenant under a lease with an unexpired term of 3 years of less), or

(b)a person managing or having control of that building or part (and not falling within paragraph (a)).

For the purposes of this section and section 256, "appropriate tribunal" means—

(a)in relation to a building in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b)in relation to a building in Wales, a residential property tribunal.

256Revocation of HMO declarations

(1)A local housing authority may revoke an HMO declaration served under section 255 at any time if they consider that subsection (2) of that section no longer applies to the building or part of the building in respect of which the declaration was served.

(2)The power to revoke an HMO declaration is exercisable by the authority either—

(a)on an application made by a relevant person, or

(b)on the authority's own initiative.

(3)If, on an application by such a person, the authority decide not to revoke the HMO declaration, they must without delay serve on him a notice informing him of—

(a)the decision,

(b)the reasons for it and the date on which it was made,

(c)the right to appeal against it under subsection (4), and

(d)the period within which an appeal may be made under that subsection.

(4)A person who applies to a local housing authority for the revocation of an HMO declaration under subsection (1) may appeal to the appropriate tribunal against a decision of the authority to refuse to revoke the notice. The appeal must be made within the period of 28 days beginning with the date specified under subsection (3) as the date on which the decision was made.

(5)Such 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.

(6)The tribunal may—

(a)confirm or reverse the decision of the authority, and

(b)if it reverses the decision, revoke the HMO declaration.