



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AB/HMD/2017/0004**

Property : **50 Farrance Road, Chadwell Heath,
Romford, Essex RM6 6EJ**

Applicant : **Ms Charlotte Francoise Loughlin**

Representative :

Respondent : **London Borough of Barking &
Dagenham**

Representative : **Ms Eliz Bojte**

Type of application : **Appeal against an HMO
Declaration made under section
255(1) of the Housing Act 2004**

Tribunal members : **Mr Jeremy Donegan (Tribunal
Judge)
Ms Susan Coughlin (Professional
Member)**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **18 January 2018**

DECISION

Decision of the Tribunal

The HMO declaration made by the respondent on 27 October 2017 is confirmed. The appeal by applicant is therefore dismissed.

Reasons for the Tribunal's decision

Introduction

1. The applicant appealed against the respondent's decision to serve an HMO declaration pursuant to section 255(1) of the Housing Act 2004 ('the 2004 Act') for 50 Farrance Road, Chadwell Heath, Romford RM6 6EJ ('the Property')
2. The HMO declaration was served on 27 October 2017. The appeal to the Tribunal was received on 06 November 2017, directions were issued on 07 November 2017 and the matter was heard on 18 January 2018.
3. The applicant did not appear at the hearing. The Tribunal case officer called her on the morning of the hearing and was told she would not be attending. The respondent was represented by Ms Eliz Botje, who is a Senior Housing Enforcement Officer.

Background

4. The appeal concerns the letting of the Property. On the appeal form, dated 01 November 2011, the applicant stated that she was the "LANDLADY". She was granted a private rented property licence for the Property, by the respondent on 12 October 2017. This stipulated that the "*Maximum Number of households is 1*" and the "*Maximum Number of persons permitted to occupy the house: 6*".
5. Ms Botje inspected the Property on 27 September 2017. Based on that inspection and information provided by one of the occupants/tenants, Mr Christian Neascu she served an HMO declaration on the applicant on 27 October 2017. This declared the Property as an HMO. The declaration was also served on the applicant's mortgagees, as well as Mr Neascu and his joint tenant, Ms Elena Stoican.

The law

A "*house in multiple occupation*" is defined at section 254 of the 2004 Act. There are three tests, "*the standard test*", "*the self-contained flat test*" and "*the converted building test*". A building or part of a building meets the standard test if it satisfies the criteria at subsection (2), namely:

- (a) *it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
- (b) *the living accommodation is occupied by persons who do not form a single household (see section 258);*

- (c) *the living accommodation is occupied by those persons as their only or main residence (see section 259);*
- (d) *their occupation of the living accommodation constitutes the only use of that accommodation;*
- (e) *rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and*
- (f) *two more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.*

6. Sections 255(1) and (2) of the 2004 Act provide:

- (1) *If a local housing authority is 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.

7. Appeals in respect of HMO declarations are dealt with at section 255(9), which is set out below:

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.

The grounds of appeal

8. The applicant's case was set out in the appeal form and a short letter to the Tribunal dated 09 January 2018. She submitted that the Property is not an HMO because it is privately rented to two joint tenants. If this is correct then no HMO declaration should have been made.
9. The applicant supplied the Tribunal with copies of the current tenancy agreement and a deposit protection certificate, which named the tenants as Mr Emmanuel Avielele and Mr Bogdan Surma. The agreement was dated 10 September 2017 and was for a term commencing on 11 September 2017 and expiring on 10 September 2018. The rent was stated to be £1,395 per calendar month.
10. The applicant's case is that that Property is not an HMO as it is let to just two people, Mr Avieiel and Mr Surma.

The respondent's case

11. The respondent supplied the Tribunal with a bundle of documents, in accordance with the directions. These included a statement of reasons for opposing the appeal and various supporting documents, including witness statements from Mr Kieran Smith, Ms Natalie Males and Ms Jacqui Hilsdon, who are all employed by the respondent. These witness statements were of limited evidential value, as the witnesses did not attend the hearing. However, Ms Botje was able to confirm the information contained in the statement of reasons.
12. The respondent's case was primarily based on Ms Botje's inspection of the Property on 27 September 2017. She was shown around by Mr Neascu, who described himself as the main tenant. He provided details of the various occupants and stated that he occupied part of the ground floor sitting room, which had been subdivided, with a friend. The first floor rear bedroom was occupied by Florin, the first floor front bedroom was occupied by Constantin and Ionut and the first floor box room was occupied Ionana. The loft space on the second floor had been converted into a bedroom and bathroom. This bedroom is occupied by Catalin.
13. Ms Botje stated that all of the bedrooms had locks on their doors and there were shared facilities in the form of the kitchen, two bathrooms and the other 'half' of the ground floor sitting room. Based on the information provided by Mr Neascu, there were 7 occupants of the Property. He stated that the applicant was aware of this, having visited as recently as 25 September 2017. She occasionally collects the rent, which he pays.

14. Mr Neascu showed Ms Botje a copy of his tenancy agreement for the Property and she took photographs of the front and back pages, which were included in the respondent's bundle. This was dated 01 May 2017 and was for a term commencing on this date and expiring on 30 April 2018. The tenants were named as Mr Christian-Bogdan Neascu and Ms Elena-Jonela Stoican. The rent was stated to be £1,695 per calendar month.
15. Based on the inspection and the tenancy agreement, Ms Botje concluded that the Property was being used as an HMO and served the HMO declaration. She subsequently undertook a credit search for the Property on 12 December 2017, which indicated there were 8 occupants.
16. Ms Botje has also discovered that Mr Avieiel and Mr Surma made housing benefit applications for the Property on 13 September 2017.

The Tribunal's reasons for rejecting the appeal

17. The applicant did not attend the hearing to challenge the information contained in the respondent's statement of reasons and the Tribunal accepts the information contained in that document.
18. Based on Ms Botje's inspection and the information provided to her by Mr Neascu, it is clear that the Property was occupied by at least seven people on 27 September 2017. They shared one or more basic amenities. They did not form a single household and the presumption is that they were occupying as their only or main residence. Their occupation of the living accommodation constituted the only use of that accommodation and rents were payable by Mr Neascu and Ms Stoican, as evidenced by their tenancy agreement.
19. It is curious that there are two concurrent tenancy agreements with different rent figures; one in favour of Mr Neascu and Mr Stoican and one in favour Mr Avieielele and Mr Surma. No explanation has been proffered by the applicant.
20. Applying the standard test, the Tribunal is satisfied that the Property was an HMO at the time of Ms Botje's inspection on 27 September 2017. Accordingly the respondent was entitled to serve an HMO declaration on 27 October 2017.

The next steps

21. If the use of the Property has changed since the inspection and it is no longer being used as an HMO then the applicant can make an application to revoke the HMO Declaration, pursuant to section 256(2)

of the 2004 Act. She may wish to seek independent legal advice in this matter.

Name: Tribunal Judge Donegan **Date:** 18 January 2018

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).