



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

**Case reference** : **LON/00AK/HMD/2018/0009**

**Property** : **37 South Street, Enfield, EN3 4LA**

**Applicant** : **Mr Muhammed Aftab Uddin**

**Representative** : **Mr Mohammed M Alom (Harris Homes)**

**Respondent** : **London Borough of Enfield**

**Representative** : **Ms Patricia Cannon (Housing Enforcement Officer)**

**Type of application** : **Appeal against a declaration of a property as an HMO - under Schedule 5 to the Housing Act 2004**

**Tribunal members** : **Judge Robert Latham  
Mr Richard Shaw FRICS**

**Date and Venue Of Hearing** : **31 October 2018 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **19 December 2018**

---

**DECISION**

---

**Decision of the Tribunal**

The Declaration made by the London Borough of Enfield on 22 June 2018, namely that 37 South Street, Enfield, EN3 4LA is a House in Multiple Occupation is confirmed. The appeal by Mr Muhammed Aftab Uddin is therefore dismissed.

## **Introduction**

1. By an application notice issued on 23 July 2018, Mr Muhammed Aftab Uddin appeals against the making of a Declaration by the London Borough of Enfield (“Enfield”) under section 255 of the Housing Act 2004 (“the Act”) of a Declaration that 37 South Street, Enfield, EN3 4LA (“the Property”) is a House in Multiple Occupation (“HMO”). On 22 June, Enfield made the Declaration. On 18 April, Enfield had first inspected the Property and determined that this notice be served.
  
2. On 30 July 2018, the Tribunal gave Directions:
  - (i) The Parties were directed to meet with a view to settling the dispute or narrowing the issues. The parties met on 14 August.
  
  - (ii) The Applicant was directed to inform the Tribunal by 7 August of the names and room/flat numbers of the occupants/tenants so that the tribunal could notify them of the appeal. The Applicant failed to comply with this Direction.
  
  - (iii) On 11 September, the Respondent filed their Bundle of Documents. This included a witness statement from Ms Patricia Cannon (Housing Enforcement Officer). References to this bundle with be prefixed by “R.\_\_\_\_”.
  
  - (iv) On 16 October, the Applicant filed his Bundle of Documents. This should have been filed by 27 August. This included witness statements from the Applicant (Mr Aftab Uddin); Mr Mohammed Alom (the Director of Harris Homes Ltd, the letting agents); and Mr Shisir Sukul (a joint tenant). In his statement, Mr Sukul’s second name is wrongly given as “Sokul”. References to this bundle with be prefixed by “A.\_\_\_\_”.
  
  - (v) On 19 October, the Respondent filed an additional witness statement from Mrs Cannon.
  
3. At the hearing, the Applicant was represented by Mr Alom. The Tribunal heard evidence from Mr Uddin, Mr Alom and Mr Sukul. All are of British Bangladeshi origin. Mrs Cannon appeared on behalf of the Respondent. She also gave evidence.
  
4. The appeal is a rehearing. We are permitted to have regard to matters of which the Respondent was unaware. The Respondent had not inspected the premises since 14 August. The Tribunal therefore arranged for the parties to meet on 1 November. Mrs Cannon, Mr Alom and Mr Sukul agreed to attend. Mr Sukul agreed to take reasonable steps to ensure that all those currently residing at the premises would be present. The purpose of the inspection was to seek to agree: (i) who is currently occupying the premises; and (ii) the family relationship between the

occupants. The occupants were directed to produce such documents as available to establish their identities and family relationships (including passports). At the hearing, Mr Alom stated that he had taken photocopies of the passports of Mr Hasir Sukul and Mr Subrata Saha when he had granted them an AST in August 2016. Mr Alom agreed to provide the Respondent with copies of these. He also agreed to attend with his file for the premises to clarify some of the issues which were canvassed at the hearing.

5. The Tribunal gave further Directions. On 7 November, the Respondent filed a Supplementary Bundle of Documents relating to the inspection, reference to which shall be prefixed by “SB.\_\_\_\_”. In the absence of an Agreed Note of the inspection, the Applicant was permitted to send a copy of their Note in Response. No such Note has been filed.
6. The sole issue for this Tribunal to determine is whether at the material time the Property was a HMO, as defined by section 255 of the Act. The Applicant contends that the Property has not been an HMO as it has been occupied by a single household, namely by members of the same family. If the joint tenants to whom Mr Uddin had granted an Assured Shorthold Tenancy (“AST”), had sub-let the property, they had done so without his permission and in breach of the terms of their tenancy. Upon learning that it had been sub-let, Mr Uddin had served a Notice Seeking Possession.

### **The Law**

7. The regulation of HMOs aims to ensure that decent conditions are provided for tenants. The relevant statutory provisions are set out in the Appendix.
8. The effect of these provisions is that although a building may be a HMO because it meets certain factual criteria, for example the “standard test” in section 254(2), it will also be a HMO where the local authority has made a HMO declaration under section 255. Section 255 enables the local authority to make an HMO declaration if it is satisfied that the building meets the “standard test”, but with an important modification: rather than having to find that all six conditions in section 254(2) are met, the local authority need only be satisfied that “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” (my emphasis) rather than the “only use” as required in section 254(2)(d). In proceedings where there is an issue as to whether that “significant use” provision is met, section 260 provides that it is presumed to be met unless the contrary is shown.
9. The Respondent contends that the Property has been an HMO within “the standard test” defined by section 254(2). The Applicant rather

contends that the accommodation has been occupied by persons who form a single household as defined by section 258. They have all been members of the same family. The persons who have occupied the Property have either been married to each other, or have been related. Relative is defined as a “parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin” (see section 258(4)(a)).

10. The notice has been served on the Applicant as Enfield have treated him as “the relevant person” as defined by section 254(12), namely the “person having an estate or interest in the building”.
11. In *Hertfordshire Council v Martin Rohde* [2016] UKUT 39 (LC), the Upper Tribunal provided guidance on how these provisions are to be applied. We deal with the appeal by way of a re-hearing. We must look at the evidence, but we can also take into account new evidence of which the local authority was unaware (section 255(1)(b)). We thus look at matters afresh. But what we are looking at is the local authority's decision. This Tribunal may confirm or reverse that decision. If we reverse the decision, we can then revoke the HMO declaration.
12. In *Rhode*, The Tribunal had erred by revoking the HMO Declaration without first confirming or reversing the local authority's decision. It had, more fundamentally, made a decision solely on the basis of the physical state of the property when it had inspected it in February 2015, rather than taking into account all the evidence available to the local authority in addition to its own later inspection. The local authority pointed out that for a tribunal to make its decision solely on the basis of its inspection, made a mockery of the protection that Parliament intended to create. It made it far too easy for a landlord simply to clear the house out the day before an inspection (since the owner would be told when the inspection would take place). It would also increase the incidence of hasty and unlawful evictions. Secondly, the Tribunal had erred in that it had not taken into account the requirement that the test for an HMO declaration is significant use, not sole use. Thirdly, the Tribunal had not had sufficient regard to the statutory presumption in section 260. The starting-point of an appeal has to be that the significant use test is met, unless the contrary is shown. Manifestly the contrary is not shown merely by the fact that on a particular occasion the house was unoccupied.

### **Background**

13. The property at 37 South Street is a three-storey mid-terrace house built c.1900. There has recently been a loft conversion which has created two additional rooms together with a bath/shower room. Mr Uddin is the freehold owner of the property. He initially bought it with his father in 1981. He is now the sole owner.

14. Mr Uddin has provided Enfield with an AST Agreement dated 31 August 2016 (at A13), whereby Mr Uddin let the property to Mr Shisir Sukul and Mr Sabrata Saha. The tenancy was for a term of twelve months at a rent of £2,000 a month. The letting was arranged by Mr Alom. Mr Alom stated that Mr Sukul and Mr Saha were cousins. The Tribunal was told that they had a common grandfather, Sharal Chandra Sukul. Mr Uddin stated that the property was to be occupied by Mr Sukul, his wife and two children; and by Mr Saha, his wife and their child. The AST prohibited any sub-letting. Mr Alom stated that he had made it clear to the tenants that they should not sub-let.
15. Mr Uddin stated that upon being told by Enfield that it was being used as a HMO, he had served a Section 21 Notice Seeking Possession. The Notice Seeking Possession is dated 27 March 2018 and is at A24. Mr Sukul was still in occupation of the property at the date of the hearing.
16. Mr Sukul conceded that he had sub-let two rooms. He stated that Mr Saha had lost his job in September 2017 and had been unable to contribute his proportion of the rent and two months arrears of rent had accumulated. Mr Saha had therefore moved out. Mr Sukul's wife was pregnant at the time and subsequently gave birth to their third child in August 2018. Mr Sukul was working for Tesco's and had a net salary of £13,000 per annum. His wife was also working. He had not told Mr Uddin that he had sublet the rooms. As soon as he was informed that he was not permitted to do so, he had "emptied" them within a month. He stated that on her second visit, Mrs Cannon had been satisfied that he was occupying the property with another cousin. The last letting which he had arranged had been in February 2018.
17. Mrs Cannon described how Enfield first became involved with this property after an e-mail had been received, dated 20 February 2018 (at A22). The author described how he had been staying at the property with some 7 other people. The house owner was always advertising on gumtree and bringing in new tenants. In the past two months, he had threatened and beaten two tenants who had immediately left. The author had been beaten the previous night and had left the property. The landlord had refused to pay back the rent which he had paid in advance.
18. Mrs Cannon confirmed that rooms had been advertised by Mr Sukul on gumtree on 5 December 2017 (at R30-31 – first floor rear at £40pm); 1 February 2018 (R29 – first floor rear at £450 pm); and 1 April 2018 (R25-6 ground floor middle room, at £550pm; R27-28 - king size double bedroom at £450 pm).
19. On 11 April 2018 (at R34), Mrs Cannon sent an e-mail to Harris Homes inquiring whether they were managing the property. She received no response. She also telephoned the firm, but they would not confirm whether they managed the property. Mr Alom stated that he was

visiting Bangladesh at this time. On the same day (at A35), Mrs Cannon served a Notice Before Exercising Power of Entry on Harris Homes. On 13 April (at R36), Mrs Cannon served a Notice to Enter to Inspect of 18 April. Similar Notices were also served on Mr Uddin (at R40) and “the Occupants” (A44).

20. At 14.30 on 18 April, Mrs Cannon attended the property. Neither Mr Uddin nor any representative from Harris Homes was present. She was admitted by Ms Supria Roy who is Mr Sukul’s wife. She stated that she was paying a rent of £2,000 pm. Mrs Cannon gave detailed evidence of her inspection and took a number of photographs of various rooms (at R46-51). There were seven rooms, two bathrooms and a shared kitchen. The ground floor front room was occupied by a tenant, Paul Okele Izuckwu (dob 10.3.79). He was a Portuguese national. Mr Sukul accepted that he has sub-let this room to him. Mrs Cannon was told that the ground floor middle room was empty, but she noted that this contained a double bed and mattress (see photo at p.46). This room was being advertised on gumtree (see R25-6). Mrs Cannon was told that the first-floor front and middle rooms were being occupied by Mr Sukul, Ms Roy and their twins, Shumojit and Sherosh. Mrs Cannon was told that the first-floor rear room was empty. However, there was a double bed and a wardrobe (see R48). Mrs Cannon recorded that there were two tenants on the second floor. Mr Ratan Barman introduced himself as the tenant of the front room (see photo at A51). Mr Barman stated that a woman called Lilah occupied the rear room. There was a double bed and a fridge in this room (see R49-50).
21. It is at this inspection that Enfield satisfied themselves that the property was a HMO. On 20 April (at R52), Mrs Cannon sent Mr Uddin an application to licence the property as a HMO. On 8 May, Mr Uddin telephoned her asking for more time to complete and return the application. There is a File Note at Exh LBE/22. Mrs Cannon agreed to this request and to give an extension of 14 days. Mrs Cannon made further attempts to telephone Mr Uddin to chase up the application on 25 May and 12 June. Mr Uddin stated in evidence that he had merely asked for more time to seek legal advice as he had never managed a property. The Tribunal prefers the evidence of Mrs Cannon which is confirmed by her File Note.
22. Mrs Cannon arranged for a further inspection on 20 June to check whether Mr Uddin had complied with a Hazard Awareness Notice which she had served on 8 May (at R60). On this occasion, Mr Alom was present. He stated that Mr Uddin was unable to attend due to ill health. No work had been carried out to comply with the Hazard Awareness Notice. Mr Alom denied that the property was a HMO. He conceded that Mr Sukul had sublet rooms, but provided a copy of the Notice Seeking Possession and two pages of the AST. Mrs Cannon confirmed that Mr Izuckwu, Mr Barman and Lilah were no longer residing at the property. Mrs Cannon recorded (at Exhibit LBE/23) that Mr Alom and Ms Roy informed her that the following were now

occupying the property: Mr Sukul, Ms Roy and their two children; Sabrida Saha (Mr Sukul's brother); Dipa Roy (Mr Sukul's sister); Shumi Roy (family); and Gange Roy (Mr Sukul's mother).

23. In his witness statement, dated 28 September, Mr Sukul states that he was staying at the property with his "family" and his "cousin, Ratan Kumar". This does not correspond with the details recorded by Mrs Cannon.
24. On 21 June (Exhibit LBE/24), Mrs Cannon wrote to Mr Uddin requesting copies of the tenant's passports, the tenant's national insurance numbers and date of birth. She further requested a plan of how the family were related. This information was not provided.
25. On 22 June (at A74), Enfield made their Declaration that the property is a HMO. This decision had been reached on 18 April when Mrs Cannon had made her first inspection. It is this decision that is subject to the current appeal.
26. Pursuant to the directions made by the Tribunal, a further inspection was arranged for 14 August. Mrs Cannon's Note of the inspection is at R82. She recorded that the tenant was very distressed. Ms Roy was expecting her baby at any time. Mr Alom asserted that the property was let to a single household. Mr Sukul had sublet the property without the consent of the landlord and the Notice Seeking Possession had been served in March.
27. On 1 September (at A33), a further advertisement appeared on gumtree seeking a rent of £460pm. There is a photograph of the first-floor front room. On 16 September (at SB53), another room was advertised on gumtree at a rent of £450pm.
28. At the hearing on 31 October, the Applicant informed the Tribunal that the following were residing at the property: Mr Sukul, Ms Roy and their three children, Shumojit, Sheoshi (both born on 27 November 2015) and Susmita (born in August 2018); Mr Ratan Kunar (Mr Sukul's cousin) and Ms Ganga Roy (Mr Sukul's sister). Mr Sukul stated that Mr Kunar had been occupying the rear room on the second floor since February 2018, paying a rent of £450 pm. Ms Ganga Roy was occupying the front room on the second floor and was paying £400 pm.
29. Pursuant to the Directions of this Tribunal, there was a joint inspection on 1 November. The Tribunal was not present. On 7 November, the Respondent has provided a detailed Note. The Applicant has neither agreed the Note nor sent a Note in Response as was contemplated in the Directions.

30. Mrs Cannon was accompanied by Mrs Fabiola Razack and Mr Muhammed Islam, officers employed by Enfield. Mr Islam is fluent in Bengali and helped to interpret. Inspection Notes have been provided by Mrs Razack (at SB29) and Mr Rahman (at SB30). Mr Alom and Mr Sukul were also present.
31. Mr Alom provided photocopies of the passports for Mr Sukul (at SB 8), Ms Supria Roy (at SB9) and Mr Subrata Saha (at SB 10). They were all born in Bangladesh. The photocopy of Mr Saha's passport is indecipherable. Mr Alom was requested to provide a digitalised copy. This request was confirmed by e-mail (at SB11). The Applicant has not provided this. The Bangladeshi passport for Mr Sukul is dated 10 July 2017 and was issued in Dhaka. Mr Saha has a British Passport which was issued on 11 June 2018. Both were issued after 31 August 2016, the date of the purported AST. This undermines Mr Alom's evidence that he took photocopies of their passports which he retained on file, prior to granting the AST.
32. Mr Sukul informed Mrs Cannon that the ground floor front room was not occupied and was used as a play room for children. There was a wardrobe and a double bed with covers. There are photos at SB12-13. Mr Sukul and Mr Alom informed Mrs Cannon the ground floor middle room was occupied by Mrs Ganga Roy. Mr Sukul stated that Mrs Roy was not prepared to supply any information as she is only a tenant. There are photos at SB 14-18. This room was clearly being occupied. Mr Islam subsequently made contact with Mrs Roy who refused to provide any information. She stated that she would be leaving in the following month, but would not say why. She stated that she paid rent to Mr Sukul who is her "cousin brother". She is from the Jessore District in Bangladesh.
33. Mr Sukul stated that the first-floor rooms were occupied by his family. He initially stated that the family slept in the front room. There are photos at SB19-21). He stated that the middle room was used as a living room (photos at SB24-25). Mr Sukul informed Mrs Cannon that he slept in the rear room when he was working double shifts and did not want to be disturbed. There were two single beds pushed together and a mattress with a cover leaning against the wall (see photos at SB26-28). Mr Sukul informed Mrs Razack that two of his children slept in this room.
34. Mr Sukul informed Mrs Cannon that the second-floor front room was occupied by Mr Ratan Barman. Mr Barman was not present and no identity documents have been provided. Mr Sukul told Mrs Razack that Mr Barman was not related to him, but was Ms Ganga Roy's brother. He added that Mr Barman was also related to Mr Subrata Saha, the other joint tenant to the AST. Whilst Mrs Razack was questioning Mr Sukul, she states that Mr Alom interrupted and said to Mr Sukul "why don't you stick to your original statement" and asked "why are you



changing your statement?”. Mr Islam records that Mr Alom said to Mr Alom in Bengali “do not make it complicated and tell them what you told in front of the judge”.

35. Mr Sukul informed Mrs Cannon that the second-floor rear room was not occupied. There was a double bed, wardrobe and chest of drawers in this room. There are photos at SB35-39. There were numerous personal effects stored in the wardrobe and drawers. Under the bed covers there was a bottle of water and a roll of toilet paper. These factors suggest that the room was being occupied.

### **The Tribunal’s Determination**

36. On a number of factual issues, there is a conflict between the evidence of the Respondent (Mrs Cannon, Mrs Razack, and Mr Islam) and that of the Applicant (Mr Uddin, Mr Alom and Mr Sukul). Where there is such a conflict, we prefer the evidence adduced by Enfield. The Tribunal found Mrs Cannon to be careful and reliable witness. Much of her evidence was supported by contemporaneous file notes and photographs.
37. We found both Mr Uddin and Mr Alom to be unsatisfactory witnesses. They both sought to give answers that would support the Applicant’s appeal. Mr Alom informed the Tribunal that he took photographs of the passports of both Mr Sukul and Mr Saha before granting them the AST in August 2016. He was unable to produce copies of these. Mr Uddin stated that he had served the Notice Seeking Possession in March 2018 as soon as he learnt that Mr Sukul was sub-letting the property. Mrs Cannon was definite that she did not make contact with the landlord (via Mr Alom) until 11 April 2018. Mrs Cannon was clear that Mr Uddin had telephoned her on 8 May asking for more time to complete and return the application to register the property as a HMO. The Tribunal does not accept Mr Uddin’s account that he merely requested more time to seek legal advice.
38. It is not necessary for this Tribunal to determine the relationship between Mr Uddin and Mr Sukul. However, it was apparent at both the hearing and the joint inspection on 1 November, that Mr Alom was anxious to ensure that Mr Sukul’s evidence would support the Applicant’s appeal. We suspect that Mr Uddin’s primary concern was to ensure that he received rent of £2,000 pm from Mr Sukul and that he was indifferent as to how Mr Sukul secured the money to pay the rent.
39. The Tribunal would normally have given limited weight to the e-mail that Enfield received from the tenant on 20 February 2018 (see [20] above). This tenant was not called to give evidence. However, there is ample evidence that Mr Sukul had been advertising rooms to let at the property before and after this date. In his statement, Mr Sukul described how he had “emptied the rooms within a month” after being

told that he could not sub-let. He did not explain the circumstances in which Mr Okele had vacated the property. There was no evidence that he had respected the legal rights of his tenants.

40. The first issue which we are required to determine is whether we should confirm or reverse the Respondent's Declaration that the property was a HMO. This is dated 22 June 2018. However, the Respondent had resolved on 18 April 2018 that the Declaration should be served. This is the date on which Mc Cannon made her first inspection.

41. The Applicant did not challenge Mrs Cannon's evidence relating to her inspection on 18 April (see [23] above). There was clear and cogent evidence, which was uncontradicted, that the property was being occupied as a HMO on this date and met the "standard test" for a HMO as defined by section 254(2) of the Act:

(a) It consisted of a number of units of living accommodation not consisting of self-contained flats:

(b) the living accommodation was occupied by persons who do not form a single household. The occupants were not members of the same family as defined by section 258. We accept that Mr Sukul was living there with his wife and two children. However, Mr Paul Okele was renting the ground floor; Mr Ratan Barman was renting the second-floor front room and Lilah was renting the second-floor rear room. There is no suggestion that there was any family relationship between Mr Sukul and either Mr Okele or Lilah. The Tribunal is not satisfied that Mr Barman is related to Mr Sukul.

(c) The living accommodation was occupied by those persons as their only or main residence.

(d) Their occupation of the living accommodation constituted the only use of that accommodation;

(e) Rents were payable in at least one of those persons' occupation of the living accommodation; and

(f) Two or more of the households who occupied the living accommodation were sharing basic amenities, namely cooking, bathroom and toilet facilities.

We therefore have no hesitation in confirming the Declaration made by the Respondent.

42. Our appeal is by way of a re-hearing and we are entitled to have regard to matters of which the Respondent were unaware. We have asked ourselves whether we would have reached a different decision had we been required to consider whether the property was a HMO on 31 October. We are satisfied that we would not. We accept that Mr Sukul

was living there with his wife and two children. However, there were a number of other occupants who were paying rent. We are not satisfied that they were members of Mr Sukul's family. There were other rooms, with beds, which were available for letting. Even as late as September, rooms were being advertised on gumtree. We reach this decision without having to resort to either the "significant use condition" or the statutory presumption in section 260 of the Act.

**Judge Robert Latham**  
**19 December 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).

## **Appendix – Relevant Provisions of the Housing Act 2004**

### **254 Meaning of “house in multiple occupation”**

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if—

- (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 or they are to be treated as so occupying it (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 or 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.

[subsections (3) and (4) define the “self-contained flat test” and the “converted building test”, neither of which is relevant to this appeal; nor are the provisions of sub-sections (5), (6), (7) and (8)]

### **255 HMO 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 Upper 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 a residential property 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 or less), or
- (b) a person managing or having control of that building or part (and not falling within paragraph (a)).

#### 256 Revocation 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.

...

(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.

...

(6) The tribunal may—

- (a) confirm or reverse the decision of the authority, and
- (b) if it reverses the decision, revoke the HMO declaration.

.....

#### 258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless—

- (a) they are all members of the same family, or
- (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—

- (a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);
- (b) one of them is a relative of the other; or
- (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes—

- (a) a “couple” means two persons who are married to each other or otherwise fall within subsection (3)(a);
- (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
- (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
- (d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

260 HMOs: presumption that sole use condition or significant use condition is met

(1) Where a question arises in any proceedings as to whether either of the following is met in respect of a building or part of a building—

- (a) the sole use condition, or
- (b) the significant use condition,

it shall be presumed, for the purposes of the proceedings, that the condition is met unless the contrary is shown.

(2) In this section— ...

- (b) “the significant use condition” means the condition contained in section 255(2) that the occupation of the living accommodation or flat referred to in that provision by persons who do not form a single household constitutes a significant use of that accommodation or flat.

4. The provisions of section 254 are modified by paragraph 7 of Schedule 14 to the Housing Act 2004 which states that any building occupied by only two persons who form two households is not an HMO.