



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

Case reference	:	LON/00AQ/HMD/2018/0001
Property	:	76 Howberry Road, Edgware, Middx. HA8 6SY
Applicant	:	Visesh Chhabhadiya
Respondent	:	London Borough of Harrow
Type of application	:	Appeal against HMO declaration
Tribunal members	:	Judge Nicol S Coughlin MCIEH
Venue	:	10 Alfred Place, London WC1E 7LR
Date of decision	:	17th May 2018

DECISION

Background

1. On 29th January 2018, the Tribunal received an appeal by the Applicant against a Declaration of a House in Multiple Occupation dated 2nd January 2018, served by the Respondent council under section 255 of the Housing Act 2004 (the relevant statutory provisions are set out in the Appendix to this decision).
2. Directions were given on 9th February 2018 for the determination of the appeal. Both parties submitted bundles of documents for the hearing. At the hearing on 17th May 2018 the Applicant was represented by a friend, Mr Patel, and the Respondent by counsel, Mr Mark Baumohl. The Tribunal heard evidence from Ms Mykia Angus, a Residential Licensing Enforcement Officer, and from the Applicant himself.

The Tribunal's decision

3. The Tribunal determines that:
 - (i) the appeal is dismissed; and
 - (ii) the Declaration of a House in Multiple Occupation dated 2nd January 2018 is confirmed.

Reasons for the decision

4. The Applicant has been a joint freeholder of the subject property, a three-bedroom semi-detached house, with his sister, Bhartiben Kuvarji Khetani, since August 2016. On 31st August 2016 the Applicant granted an assured shorthold tenancy, purportedly of the whole of the property, to Mr Constantin-Ovidiu Galan and Mrs Valentina-Diana Galan at a rent of £1,900 per month. At the time, they were the only members of the household, Mrs Galan giving birth to their only child sometime later. The tenancy was renewed in identical terms the following year.
5. On 25th January 2017 the Respondent received a complaint that there were 10 people living in the property as an HMO. On 25th September 2017 they received further complaints including that the existence of three cars at the property suggested it was an HMO.
6. Ms Angus went to inspect the property on 29th December 2017 to investigate the allegation of an unlicensed HMO. She was allowed in by a man who identified himself as Mr Galan. There were three women and one other man there, all of whom said they could not speak English. There were also two young children. Ms Angus went around the whole house and took photos of each room, save that she observed most rooms from the threshold rather than go into them in the absence of the occupants and did not take a photo of the ground floor rear room because the women and children were there at the time.
7. There were beds in every room. Two rooms also contained cots. There were no signs of temporary occupation, such as suitcases or travel cots. The garage contained four fridges or fridge/freezers. At least two of the bedrooms had locks on the door. One of Ms Angus's photos also showed there were two cars in the driveway, both parked right up to the sides of the property so as to leave sufficient space for a third.
8. Mr Galan said he could not write in English and his spoken English was not good. Ms Angus said she spent considerable time and effort eliciting information from him so as to complete a standard form her department uses. The form recorded that Mr Galan said he paid half the rent and shared facilities with 5 other occupants whom he only knew by their first names. It also recorded his landlord as "Arun" which later turned out to be a reference to Mr Arun Mistry who acted as the Applicant's agent in relation to the property.

9. Ms Angus said in her witness statement that Mr Galan also said there was one other household and he was not related to them. Ms Angus said she got the strong impression from the state of the furnishings and the arrangement of the occupants' belongings that the occupants were not part of a single family, although she had great difficulty articulating herself any further, despite her experience in this work of 14 years.
10. Ms Angus concluded that the property was being used as an HMO. She obtained a copy of the relevant entry on the Land Register. On 2nd January 2018 she sent the Declaration of a House in Multiple Occupation to each freeholder. The covering letter asked for the usual certificates relating to the electrical installation, gas appliances and fire safety – the Applicant has yet to provide them and did not include them in his hearing bundle.
11. Ms Angus's manager tried to access the property herself earlier this month but was denied access.
12. The Applicant told the Tribunal that, on receiving the Declaration, he visited the property in January, just to see its condition. He did not take any notes or photos and did not go upstairs. As well as Mr and Mrs Galan, he encountered one other adult and no children. The other adult was Ms Marta-Cornelia Stanciu, Mrs Galan's sister. His agent, Mr Mistry, was away at the time but he consulted him later. Mr Mistry later told him that he had visited the property and found only one household there, although he also appears to have made no notes and taken no photos.
13. The Applicant visited further in March, by which time he had yet to receive Ms Angus's witness statement. Ms Stanciu was not there. He went upstairs. There were beds still in every room, although the one in the ground floor front room appeared not to be in use. Again, he took no notes or photos.
14. The Applicant visited for a third time recently. Again, he did not go upstairs and only encountered Mr and Mrs Galan. And again, he took no notes or photos.
15. At least by the time of the third visit the Applicant knew the full extent of the Respondent's allegations. If neither the Applicant nor his agent had allowed additional tenants in, the allegations clearly raised the possibility that Mr and Mrs Galan had themselves taken in sub-tenants or lodgers in breach of clause 3.14 of the tenancy. It is equally clear that at no point has it ever crossed the mind of the Applicant or, on the Applicant's evidence, that of his agent, Mr Mistry, that this might be the case, let alone that it should be investigated. In the Tribunal's opinion, it is not credible that such possibilities would not occur to either the landlord or their professional agent in these circumstances. This strongly implies that the Applicant and/or his agent knew of other occupants or suspected their presence and just did not care.

16. The Applicant did not attempt to suggest at any time that Ms Angus was failing to tell the truth about her visit. Mr Patel went no further than to suggest that Mr Galan's answers were not reliable because his English is poor but it is difficult to see how he could have conveyed false answers on the number of occupants, whether they were related and how much rent he paid.
17. Instead, the Applicant's defence was that Ms Angus was visiting during the Christmas/New Year period when it could have been expected that relatives would visit. Mr Mistry supplied him with the birth certificates for Mrs Galen and Ms Stanciu which showed they were sisters. Under section 258(2)(a) of the Housing Act 2004 persons are to be regarded as not forming a single household unless they are all members of the same family.
18. However, the Applicant's evidence on this issue was poor at best. Apart from the birth certificates and Ms Stanciu's absence on his two visits since January, he pointed to the fact that he was paid a single sum of money for the rent but that came from Mr Mistry, not from the tenants, and so was no evidence of the providence of the money. He alleged that the locks on the doors and three of the fridge/freezers came with the property but never sought to find out whether any of them were in use. He had no explanation for the additional people encountered by Ms Angus or the additional beds and made no effort to get one from his tenants.
19. The Applicant had no explanation as to why he had not called Mr Galan as a witness. He said he had asked Mr Mistry to be a witness but he was kept away by a serious chest infection. However, he had no explanation for why he had not obtained relevant documents, including the electrical, gas and fire safety certificates, from Mr Mistry. Indeed, many questions asked of him by the Tribunal or in cross-examination were simply met by silence.
20. The Tribunal has no doubt in the light of the above matters that Ms Angus observed a house in multiple occupation on her visit on 29th December 2017. It is another question, which the Tribunal does not have to address, who made those arrangements, whether it was the Applicant, Mr Mistry, Mr Galen, someone else or some combination of those people. The evidence indicating to the contrary or that anything has changed since is far too weak to displace this conclusion.

Name: N Nicol

Date: 17th May 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 of relevant legislation

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.

(3) A part of a building meets the self-contained flat test if—

- (a) it consists of a self-contained flat; and
- (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if—

- (a) it is a converted building;

- (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
 - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (d) 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);
 - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
 - (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
- (5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.
- (6) The appropriate national authority may by regulations—
- (a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
 - (b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
 - (c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.
- (7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
- (8) In this section—
- “basic amenities” means—
 - (a) a toilet,
 - (b) personal washing facilities, or
 - (c) cooking facilities;
 - “converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
- “self-contained flat” means a separate set of premises (whether or not on the same floor)—
 - (a) which forms part of a building;
 - (b) either the whole or a material part of which lies above or below some other part of the building; and
 - (c) in which all three basic amenities are available for the exclusive use of its occupants.

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 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 or less), or

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

(13) 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.

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.