



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

**Case reference** : **LON/00AQ/HML/2018/0014**

**Property** : **70 Lowlands Road, Harrow, Middlesex,  
HA1 3AN**

**Applicant** : **Dr Yan Zhou**

**Representative** : **In person**

**Respondent** : **London Borough of Harrow**

**Representative** : **Ms V Siefert Barrister employed by HB  
Public Law**

**Type of application** : **Appeal under para 31(1) of Schedule 5  
of the Housing Act 2004 against a  
decision to grant an HMO licence under  
the s255 of the Act**

**Tribunal member** : **Mr Anthony Harris LLM FRICS FCI Arb  
Mr H Geddes**

**Date and venue of  
hearing** : **8 August 2018 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **3 September 2018**

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**DECISION**

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## **Decision**

- (1) We dismiss the appeal by Dr Zhou against the grant of a licence for 70 Lowlands Road Harrow as a House in Multiple Occupation.

## **Appeal**

1. By an application dated 2 May 2018, the applicant appealed under para 31(1) of Schedule 5 of the Housing Act 2004 against a decision made on 4 April 2018 by the respondent local housing authority, the London Borough of Harrow (“Harrow”) to declare that 70 Lowlands Road Harrow is a House in Multiple Occupation (HMO) and requiring the owner to apply within 7 days for an HMO Licence unless an appeal is made with 28 days.

## **Hearing and procedural history**

2. We heard the appeal at an oral hearing on 8 August 2018. The members of the tribunal had not seen the papers beforehand. Dr Zhou appeared in person and was not represented. Harrow was represented by Ms Siefert a barrister employed by HB Law who called Ms Mykia Angus and Mr Andrew Sedman who are both employed by Harrow as Residential Licensing Enforcement Officers.
3. The applicant’s bundle in support of the appeal contained a short statement by Dr Zhou, received by the tribunal on 26 June 2018 with an email to the tribunal dated 7 June 2018 and several black and white photographs.
4. Harrow’s bundle contained a statement of case, a witness statement from Mykia Angus, giving the Council’s reasons for opposing the appeal, and numerous exhibits relating to the Property, including a statement from an occupant, photographs, correspondence with Dr Zhou and copies of emails from the Metropolitan Police and Harrow’s community safety officer which triggered an investigation into the property in the first place. Ms Angus' evidence was supported by a short statement from Mr Sedman.
5. Directions in this case were made on 10 May 2018 requiring the applicant to provide names and room numbers of occupants of the property so that they could be notified of the hearing. The applicant was to lodge a bundle by 1 June. Harrow wrote to the tribunal on 18 June stating that a bundle had not been received as directed and asking for the appeal to be struck out. The case was listed for a half day hearing on 8 August.
6. On 6 June 2018 Dr Zhou emailed the tribunal giving details of occupants at the property.

7. On 22 June, the tribunal wrote to the parties saying that the strikeout application had been reviewed by a procedural judge. The applicant had contacted the tribunal and did not understand why a bundle was needed. In the circumstances the tribunal revised the directions to state that *“the applicant is required to serve a statement of case which should attach any documents she wishes to rely on. The application form is not sufficient as it only contains a brief summary of the grounds for the appeal. A full statement must be made giving more details of the reasons for the appeal, why the applicant does not consider the property is an HMO and the history of past and present occupiers. She may wish to consider the other occupants of the property making short witness statements and whether they should attend the hearing as witnesses. It is for the applicant to give her reasons to the tribunal why the house should not have been declared a house in multiple occupation. She should seek legal advice.”*
8. The dates for the applicant to file papers were amended to 13 July with the respondent to reply by 27 July 2018.
9. On 25 June 2018 Dr Zhou wrote to the tribunal stating she had not received Harrow’s bundle which was in breach of the tribunal’s directions.
10. On 16 July 2018 Harrow again wrote to the tribunal stating that the appellant had not served a bundle on Harrow and again requesting that the matter be referred to a procedural judge to consider whether to strike out the appeal.
11. The tribunal replied that a judge had read the letter of 16 July. *“The applicant has submitted a short statement on which she relies. As the applicant appears in person she is entitled to have the application determined”*. The Council were directed to respond by 27 July as previously directed.
12. Before the hearing Ms Siefert handed in a skeleton argument with a copy of the decision of the Upper Tribunal (Lands Chamber) in *Herefordshire Council v Martin Rohde* [2016] UKUT 39 (LC) and extracts from the relevant statutes.
13. At the commencement of the hearing Dr Zhou wished to hand in several documents. The tribunal asked Dr Zhou to show these to Ms Siefert to see if there was any objection to the admission of the material. Harrow objected to the admission of the material as the applicant had had two opportunities to submit this material and it was difficult to deal with unseen. The tribunal retired to consider the application and decided not to admit the documents.

14. The tribunal took the view it would not inspect the property as the circumstances in August were unlikely to be the same as those seen by the Council in April.

### **The applicant's case**

15. The tribunal was conscious the applicant was appearing in person and that English was not her first language. The tribunal gave considerable leeway to the applicant in presenting her case and in cross examination but intervened on a number of occasions to clarify the question and answer required.
16. The applicant stated that the house was her family house and she did not intend to let the house as an HMO. She has lived in the house for 20 years and the structure and doors have not been changed. Previously her two daughters and a niece lived at the property but only one daughter remains. The appellant takes in two lodgers in order to take advantage of the tax allowance for home owners who let a room with a benefit of £7800 per year tax-free. Last year she had a student for two years and another person she refers to as a family helper before going to visit her husband in China for six months.
17. The Applicant further stated the definition of a house in multiple occupation is complex and she has sought advice from Harrow citizens advice bureau and from Shelter who have both stated that on the basis of her statement her house should not be an HMO. The Council officer she met on 30 May 2018 was not at all helpful.
18. Attached to the statement is an email from the applicant to the tribunal dated 6 June 2018 stating that the people in the house are A Adam in the front room upstairs, KK Wai in the back room upstairs, her daughter, her brother and herself. There were a number of undated and untitled black and white photographs showing a hall and staircase.
19. In oral evidence, the applicant stated that the property was a family house and the locks on the rooms were for privacy when her daughter was at home. She bought the house in April 1996 and it had previously been used as a letting property. The ground floor front room was used as her office and the rear room had previously been used as a clinic. It was a family house for her two daughters and a niece who stayed there during GCSE and A levels. Since 2015 she had had one lodger in the spare room but was vague as to the dates. There may have been lodgers at various times in January 2016 and June 2016. The present occupier had been there since August 2016. There is no tenancy agreement and no restriction or rules. From August 2017 a person called Andrew helps to keep the house and is a house helper or lodger. There are two lodgers at present and they use locks on their rooms for peace of mind.

20. In response to a question from the tribunal the applicant confirmed that living there full-time were her daughter, brother and two lodgers. The applicant had been away from August 2017 to May 2018 and on 4 April, the date of the inspection by Harrow there were only two lodgers in occupation as her brother was away for three months. Her daughter was away staying with a boyfriend.
21. The applicant stated that because of family issues she moved out of the property in November 2016 but was reconciled with her husband in October 2017 and that she rented another property in this time. Her husband has been in China since October 2017 and he is due back on 14 August 2018.
22. The applicant stated she did not know about HMO requirements which are complicated, and she did not understand them. The Council were not helpful.
23. On the evidence of the applicant various rooms had been occupied in different ways with one room used for storage, the applicant's room appeared to vary from a room on the first floor to one on the ground floor, the ground floor rear room was sometimes a bedroom and at others a lounge.
24. Despite clear photographic evidence in the Harrow bundle the applicant denied any cupboards in the kitchens were ever locked although padlocks and hasps were visible. The applicant denied that any rooms were locked. It also emerged that there was another occupant who was her husband's cousin's daughter's daughter who was said to have been in the house for 3 months, but Dr Zhou did not know about her.
25. In cross-examination it was put to the applicant that there was no documentary evidence to support a statement that she lived there. She had not produced for example a driving licence, bank statements passport or any other documents. There are no witness statements and no witnesses. She confirmed she had an AST for another property.
26. The applicant denied that there were five locked rooms when the Council inspected. The applicant denied that the ground floor rear room photographed on page 40 of the bundle was not accessible. The evidence of the Council was that the photograph was taken by opening the rear patio doors but the room itself was not entered. The hall door was locked. The applicant denied this. The room contained a fridge which the applicant stated was a spare fridge.
27. In response to a question she confirmed there were two lodgers and the husband's cousin's daughter's daughter also stayed there. In response to a question about the occupier questionnaire on page 36 of Harrow's

bundle, document MMA/06i she could not explain why the landlord was named as Mia Chan Huang and claimed to know no one of that name.

### **The Respondent's case**

28. The Respondent submits it was correct to make the declaration that the premises are an HMO following its inspection on 3 April 2018. The inspection was made by Mykia Angus and Andrew Sedman and witness statements from both of these are before the tribunal. The respondent submits that the applicant does not live at the premises and that she has an assured shorthold tenancy at 259A Station Road.
29. The respondent submits that the test to be applied is the standard test as set out in section 254 of the Housing Act 2004 (The Act). The standard test is that the property consists of one or more units of living accommodation not consisting of a self-contained flat or flats. On the applicant's case it is a house not a self-contained flat or flats which means that it is at least one unit of living accommodation. The respondent's officers found five lockable rooms as shown in photographic evidence and in the witness statements and the respondent submits that there are therefore numerous units of living accommodation.
30. The second limb of the test is that the living accommodation is occupied by people who do not form a single household. The applicant has asserted she lives at the premises with her brother her daughter a lodger and a family helper but has not provided any evidence to prove this. There is significant evidence there are several people living there who do not form a single household. The respondent relies on the two witness statements and a questionnaire completed by KK Wai who asserts he shares the premises with four others and pays rent. There is a hasp suitable for a padlock on at least one of the bedrooms while other bedrooms have rim locks and some are locked. The respondent could only gain access to one of the bedrooms. There are bunkbeds in one of the rooms and lockable hasps on the cupboard doors of the base and wall units in the kitchen.
31. Polling cards were found in the names of Zhaocan Huang, Yan Zhou (The Applicant) and Jigneshkumar M Pandya. The respondent has also consulted the open electoral roll and has noted the above individuals are still listed and in addition Ronan P Caheny is listed. There is correspondence addressed to a Daniel Farrell. There are notices in Chinese and English asking individuals to close the door properly and to leave the toilet flushed and wiped for the next user in the bathroom.
32. The next stage of the test is that the living accommodation is occupied by other persons as their only or main residence or they are to be treated as so occupying it, and their occupation of the living

accommodation constitutes the only use of that accommodation. Under section 260 of The Act it is for the applicant to show that this test is not satisfied. The applicant has not provided any evidence.

33. The next test is that rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation. Mr KK Wai has confirmed in the completed questionnaire he pays rent.
34. The final limb relied on is that 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. The respondent asserts from the statement of Ms Angus that the household share the basic amenities and the living accommodation is lacking one or more basic amenities. The respondent relies on the sign in the bathroom asking individuals to flush after use, the fact that there are hasps on the cupboard doors of the base and wall units suggest that the kitchen is shared and the fact that there is a fridge in one of the bedrooms.
35. The respondent asserts these issues are all inconsistent with a family lodger and helper only occupying the premises and instead are indicators of multiple individuals occupying an HMO.
36. The witness statement of Ms Angus states that the property came to their attention following a report from a Community Safety Officer that the police had visited some properties in February 2018 including the subject property. The report alleged the property was associated with a brothel, was overcrowded and in multiple occupancy. The report linked the property with 259 A Station Road which the applicant has already admitted is in her name.
37. Following receipt of the report internal checks were made of Council records which show the applicant as being liable for council tax with a Mr Hubert Herman Knight as being the responsible party.
38. On 3 April 2018 Ms Angus and Mr Sedman made an unannounced visit to the property and the door was opened by Mr KK Wai who completed an occupier's questionnaire.
39. Photographs were taken which are before the tribunal. The property is described as a mid-terrace house on two floors. To the front, bins were overflowing and the property was untidy. The ground floor front room appears to be commercial premises. To the rear elevation downpipes and guttering were not connected and there was evidence of dampness at ground and first floor in various locations. Drain grates were missing and the soil stack was not at the correct height above the roof . The rear garden contained discarded appliances/white goods and other rubbish.

40. The Council officers' report says that internally there is extensive use of extension cables which were overloaded and showed signs of scorching. The kitchen is basic with hasps on the cupboard doors of the base and wall units, there is no fire door to the kitchen, the property was lacking fire detection separation or protection, there is defective electrical installation including wiring sockets switches and lights.
41. The ground floor shower room is damp affected, there is an open lightbulb instead of a sealed light unit and evidence of leakage from above.
42. The ground floor has two habitable rooms, one of which was not occupied, and this room showed signs of damp and mould. The kitchen, shower room and separate WC and both habitable rooms had locks on them and the occupied room was locked.
43. On the first floor there were five lockable rooms with a shared shower room with leaking water using appliances. The officers were able to gain entry to the first-floor middle room which contained a set bunkbeds. The respondents suggest this showed there were two occupants for this room. Wiring is overloaded, and the room is too small for two persons. The back addition front shower room had the notes regarding flushing the toilet commented on above. There are leaks in this room and no sealed light unit. Wiring is in close proximity to a leaking hot water cylinder
44. Internal room doors were locked but do not fit the door frames. Although smoke detectors were present none worked when buttons were pressed for checking. Mail addressed to various names was found and some names were registered for voting.
45. The officers formed the view the property was being used as an HMO but not one within the mandatory scheme as it is not a house of three or more floors in height. The additional requirement is defined in section 254 of The Act which defines an HMO as a property occupied by three or more individuals comprising two or more families (irrespective of the number of stories within the HMO).
46. On 4 April 2018 an HMO declaration was served on the applicant which was followed by email correspondence between 18 May and 30 May 2018.
47. The witness statement states that the property was re-inspected on 30 May and while the house presented a little bit cleaner nothing of substance had changed. There was still very little fire safety provision; detection separation and/or protection. The applicant did not have keys for the locked rooms. The applicant confirmed that people/individuals paid her to live there.



48. The main concern of the respondent was the lack of adequate fire precautions in accordance with The Regulatory Reform (Fire Safety) Order 2005 and the absence of any carbon monoxide detectors. The layout of the property was poor with travel distance more than 15 m from some rooms. There were a number of electrical safety issues. To date the respondent has not seen any gas or electrical safety certificates or any current assured shorthold tenancy agreements.
49. Enforcement action is suspended while the appeal is considered.
50. The witness statement of Mr Sedman supports that of Ms Angus.
51. In cross-examination Ms Angus stated that the photograph of the ground floor rear room internally had been taken from the patio door which could be opened but the room itself was not entered. The internal door was locked. Despite repeated questions from Dr Zhou, Ms Angus did not move from this position.
52. In relation to the first-floor bedroom with bunk beds the Council had concluded this showed the room was occupied by two persons. In response to a question Ms Angus stated she concluded this from the goods in the room. In response to a question from the tribunal Ms Angus conceded that she should have made a more qualified statement rather than an absolute statement and accepted that the room could be occupied by one person.
53. Ms Angus was then asked where the Council's information had come from and referred to the email dated 14 February 2018 from the community safety officer. Dr Zhou suggested this statement had been made up, which was denied.
54. Dr Zhou asked the witness if the cupboards were locked in the kitchen at the inspection. The photographs show padlock hasps but do not show the cupboards themselves as being locked. The witness statement of Ms Angus states that a number of rooms upstairs were locked. This was challenged by Dr Zhou as at least one door had a padlock hasp but had no lock fitted. The evidence is misleading.
55. In response to a further question Ms Angus stated the following in relation to each room and whether it was locked

Ground floor front	Office not entered
Ground floor rear	Locked not entered assumed occupied

Ground floor back addition	Locked internally but photographed from outside
First floor back addition rear	Locked assumed occupied
Back edition front room	Door locked
Right front room	Not locked
Rear right hand room	Locked
Front right hand room	Locked
Front left hand room	Box room used for storage

56. In relation to the photograph exhibit MMA/41 Dr Zhou suggested this showed a room which was not locked. Ms Angus stated the door did not open when pushed and the door did not fit the frame properly.
57. Dr Zhou challenged the witness on the statement that nothing changed between the two inspections whereas the notices had been removed. It was suggested this was a major plank of the Council's case and this was denied.
58. In relation to the photograph of dampness, Dr Zhou denied this was damp, but the witness maintained her position.
59. The witness was challenged over the location of dampness and a roof leak together with evidence of plumbing leaks. These were shown in photographs but denied by Dr Zhou.
60. When questioned Mr Sedman was asked if there was no notice on the WC and front door and most rooms were locked how did he come to the conclusion the house was an HMO. He confirmed this was from an overall impression based on experience.
61. In closing, Ms Siefert argued that the evidence supports the designation as an HMO as set out in the statement of case. Despite numerous questions Dr Zhou cast doubt on the view of the officers that the number of locks and padlock hasps together with the repair and leaks were more indicative of an HMO than an owner-occupied house. The signs which were removed between the two inspections were also more consistent with an HMO.

62. Dr Zhou has been inconsistent with details of the occupants on the material date. There is no evidence that her brother and daughter live at the property and the distant relative does not qualify as a member of the family under the definition set out in section 258 (4) (b). On Dr Zhou's own evidence there were three separate households on the date of the inspection so the test is satisfied.
63. The presence of a fridge in one of the bedrooms suggests the property is not a single household. Dr Zhou has not provided any documentary evidence or called any witnesses to support her account of the occupation of the property and on the balance of probabilities has not discharged the burden of showing the order is wrong.

### **Applicant's closing argument**

64. The applicant questioned why no witnesses or witness statements have been provided by the Metropolitan Police and that she was not able to challenge the information which led to the initial Council visit. She suggested the evidence had been concocted. Dr Zhou suggested that most of the statements are not correct and she had been away for almost 6 months before April. The freeholder should be consulted before a house is declared as an HMO.
65. The lodgers may lock different doors, but she has keys and access to all parts of the house. If the freeholder is away her husband used one large room as a bedroom. The fridge in the bedroom had been there for two years and had been kept just in case. When Dr Zhou was away her husband had brought in an additional lodger.
66. The house is in the same layout it was when she bought it 22 years ago including the door locks. The house had previously been an HMO.
67. Dr Zhou took in two lodgers for tax-free income and accepted she had not read or understood the rules relating to houses in multiple occupation. It had not been her intention to change the use of the house to an HMO. The notices were not significant and have been put up by her daughter. The purpose of the house as a family house had not changed even though she had moved out due to a family difficulty. Dr Zhou said she would evict the lodgers and return the house to a single family house and suffer the loss of income. There are special circumstances and the Council should have clarified evidence from her and not classified the house as an HMO.
68. Dr Zhou said she had been in China for about 5 months when the Council inspected and it was not right to use information gained on that inspection without consulting the freeholder. She said that on April 3 she had not been around for about six months, which was a reasonable period. She asked why the Council had not used material from May 30.

She said that the freeholder should have a say in the HMO designation. There were only two lodgers under normal circumstances and she usually had access to all rooms; if the freeholder was away for so long, it is acceptable and reasonable. The evidence is of special circumstances, not normal circumstances, so the Council shouldn't take advantage to classify as an HMO. She didn't understand everything and had not got her evidence out; she had only read the bundle two nights ago.

## **The Law**

69. In her legal submissions, Ms Siefert reminded the tribunal of the decision of the Upper Tribunal (Lands Chamber) in the case of Herefordshire Council v Martin Rohde [2016] UKUT 39 (LC). In the decision the member said

*11. The Appellant's principal argument is that the First-tier Tribunal did not do what the statute directed it to do. It revoked the HMO Declaration on the basis of what it saw when it inspected the property on 16 February 2015. The Appellant says that what it should have done was to confirm or reverse the decision to serve the HMO declaration in October 2014, and to do so on the basis not only of its inspection but also of what was available to the local authority when it made its decision. In other words, the First-tier Tribunal made a decision about the HMO Declaration whereas what it should have done was to make a decision about the local authority's decision; and in addition, the First-tier Tribunal looked at insufficient material.*

*12. As a matter of construction of the statute that argument must be right. **The First-tier Tribunal is to deal with the appeal by way of a re-hearing. It must look at the evidence, but it can also take into account new evidence of which the local authority was unaware, according to section 255(1)(b). So it is looking at matters afresh; but what it is looking at is the local authority's decision. The First-tier Tribunal may confirm or reverse that decision, and if it reverses the decision it can then revoke the HMO declaration. The First-tier Tribunal in this case did not follow the path laid out for it in section 255(11). In formal terms, it erred by revoking the HMO Declaration without first confirming or reversing the local authority's decision. But more fundamentally, it made a decision solely on the basis of the physical state of the property in February 2015, rather than taking into account all the evidence available to the local authority in addition to its own later inspection.***

(emphasis added)

70. The relevant legislation is found in 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”);...*

*(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. ...*

*(8) In this section—*

*“basic amenities” means—*

*(a) a toilet,*

*(b) personal washing facilities, or*

*(c) cooking facilities;*

**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 [F1Upper 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 ....*

*(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; ...*

*(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.*

### **Housing Act 2014 Schedule 14 Buildings which are Not HMOs for purposes of this Act**

#### **6 Buildings occupied by owners**

*(1) Any building which is occupied only by persons within the following paragraphs—*

*(a) one or more persons who have, whether in the whole or any part of it, either the freehold estate ...*

*(b) Any member of the household of such a person or persons;*

*(c) no more than such other persons as are specified for the purposes of this paragraph in regulations made by the appropriate national authority*

### **The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (The Regulations)**

## **6 Buildings that are not HMOs for the purposes of the Act (excluding Part 1)**

*(2) the number of persons specified for the purposes of paragraph 6(1)(c) of Schedule 14 to the Act is two*

### **The tribunal's decision**

71. The tribunal dismisses the appeal against the designation of the property as an HMO and upholds the Council's decision.

### **Reasons for the tribunal's decision**

72. The tribunal is hearing the appeal by way of rehearing and is not confined to deciding the appeal on the basis only of the evidence available to the Council when it made the declaration. The tribunal has had regard to the additional information presented at the hearing and in the email dated 6 June from Dr Zhou to the tribunal.
73. In making its decision, the tribunal took account of the fact that the applicant is a litigant in person and that English is not her first language.
74. The tribunal notes the information which led to the initial inspection by the Council but as there is no evidence in the form of witness statements or witnesses to substantiate any of that information or allegations the tribunal has not taken any of the allegations into account in making its decision.
75. Despite two sets of directions the applicant has produced no documentary evidence showing that this was her primary residence or the residence of various family members. No witnesses were called.
76. In evidence the applicant accepted she was linked to 3 addresses.
77. In the email of 6 June Dr Zhou stated that the occupants were: A Adam, KK Wai, her daughter M Huang, her brother, L Zhou and herself. In evidence Dr Zhou confirmed that Mr Adam and Mr Wai were lodgers. Other than the statement of Mr Wai to the Council that he was a tenant there is no evidence in corroboration of Dr Zhou's email despite the directions of the tribunal.

78. The Council has produced evidence that the electoral roll also included Rohan P Caheny, Pandya Jigneshkumar and Zhaocan Huang. The electoral roll is updated annually by way of a legal declaration which may indicate that these individuals were resident at the date of the declaration and within the previous year. The tribunal does not place significant weight on the evidence of the electoral roll the accuracy of which depends on the annual form being updated in August each year and submitted. Dr Zhou said she did not know who Mr Caheny is and that Pandya Jigneshkumar was no longer resident and this casts doubt on the accuracy of electoral records. On the other hand, if they are accurate it shows more than three households at the property.
79. Council tax records show that Dr Zhou is the liable party and an occupant of the property. The records also show that the responsible party is Mr Hubert Herman Knight although the tribunal heard no evidence regarding this person.
80. There is post addressed to a Mr Daniel Farrell shown at exhibit MMA/46. Dr Zhou denied knowledge of this person. The tribunal places no weight on this evidence of occupation.
81. The council produced in evidence document MMA/06i which is an occupier questionnaire completed by Mr KK Wai in the presence of Andrew Sedman. The form states that the landlord is Mia Chan Huang and that there are four other occupants renting out separate rooms in the house. He moved in in September 2016 and pays a rent of £400 per month. The form confirms he locks his own room and that other occupants also lock their rooms. The form confirms Mr Wai lives independently of the other residents although he socialises with them. The tribunal places weight on this evidence which is supported by the evidence of two experienced Council Officers gained at their inspection.
82. The tribunal also heard evidence that Dr Zhou's husband's cousin's daughter's daughter was resident for a period. The tribunal heard no other evidence about this person and Dr Zhou's evidence was that she did not know about her. The tribunal places no weight on this evidence.
83. The tribunal finds that the evidence shows that the house was occupied on 3 April 2018 by 5 households as set out in the form completed by Mr Wai. Dr Zhou was not able to explain or rebut the information contained in the occupant form signed by Mr KK Wai. There was no supporting evidence before the tribunal such as identity documents or bills to show that any of Dr Zhou or her family were resident at the house. The Applicant has had ample opportunity to produce this evidence both to the tribunal and the Council but has not done so.
84. The Housing Act in Schedule 14 (6) provides that buildings which are only occupied by freeholders or the household of such a person is not an HMO. It also allows other persons up to the specified number of two

without the house being an HMO. Applying the standard test set out in section 254 of the Housing Act

- i. Does the accommodation consist of one or more units of living accommodation not forming a self-contained flat or flats?

The tribunal is satisfied that the evidence of locked rooms and the supporting information regarding occupancy shows that there are one or more units of living accommodation in the property.

- ii. Is the living accommodation is occupied by persons who do not form a single household?

As set out above the tribunal is satisfied that there are at least three households in the property.

- iii. Is the living accommodation occupied by those persons as their only or main residence or are they to be treated as so occupying it?

In the absence of any rebutting evidence the tribunal accepts that this is so. While the evidence of Dr Zhou's own residence over the preceding 18 months is unclear, the tribunal is satisfied that she claims it as the residence for herself and her family, Mr Wai has also confirmed his residence and there is no evidence to the contrary in respect of Mr Adam or any other lodger.

- iv. The occupation of the living accommodation constitutes the only use of that accommodation.

There is no evidence to the contrary

- v. Are rents payable or other consideration provided in respect of at least one of those persons occupation of the living accommodation.

The statement of Mr Wai is that he pays rent and that 4 other occupants pay rent.

- vi. 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.

The tribunal is satisfied on the evidence that kitchen and bathroom facilities are shared. The tribunal is satisfied that the presence of numerous lockable doors is an indicator of an HMO

as is the means of locking kitchen cupboards, whether or not in fact they were locked.

85. Evidence of disrepair was not challenged by any form of expert evidence or witness statement and the evidence regarding the unserviceable smoke alarm was not challenged.
86. The tribunal finds that the Council was entitled to rely on the evidence gained at its inspection which has not been rebutted by any subsequent documentary evidence as to her residence from the applicant. On the balance of probabilities, the tribunal prefers the evidence of the Council as to occupation. The tribunal is satisfied that there was sufficient evidence available to the Council when it made its first inspection to support the designation of the property as an HMO.

**Name:** A Harris LLM FRICS FCI Arb      **Date:** 3 September 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.