



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

**Case Reference** : **CAM/00KG/HMF/2021/0012 & 14**

**HMCTS** : **Paper**

**Property** : **62 Ottawa Road, Tilbury, Essex RM18 7RH**

**Applicants (Tenants)** : **Ian Divers**

**Respondents** : **(1) Macturner Estates Limited  
(2) Houselook Limited**

**Representative for Respondent 2** : **CW Law Solicitors**

**Type of Application** : **Application for Review or Permission to Appeal**

**Tribunal** : **Judge JR Morris  
Mr N Miller BSc**

**Date of Original Decision** : **8<sup>th</sup> July 2022**

**Date of Application** : **18<sup>th</sup> July 2022**

**Date of Directions** : **11<sup>th</sup> August 2022**

**Date of Decision** : **16<sup>th</sup> September 2022**

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**DECISION**

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**Decision of the Tribunal**

1. The Tribunal has decided not to review its Decision and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal against its Decision.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier

Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, the Applicant should send the application for permission to appeal **by email** to [Lands@justice.gov.uk](mailto:Lands@justice.gov.uk), as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

3. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

### **Reason for the Decision**

4. The reason for the decision is that the Tribunal had considered and taken into account all of the points now raised by the Applicant, when reaching its original decision.
5. The original Tribunal's decision was based on the evidence before it and the Applicant has raised no legal arguments in support of the application for permission to appeal.
6. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the applicant in the application for permission to appeal, in the appendix attached.

**Judge J R Morris**

APPENDIX TO THE DECISION  
REFUSING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal. References in square brackets are to those paragraphs in the main body of the original Tribunal decision.

**Original Application and Decision**

1. On 15<sup>th</sup> September 2021 the Applicant applied for a Rent Repayment Order as Tenants of 62 Ottawa Road, Tilbury, Essex RM18 7RH (“the Property”). The legislation applicable to this Application is found in the Housing Act 2004 (the “2004 Act”) and the Housing and Planning Act 2016 (the “2016 Act”). The relevant provisions are attached to this decision at Annex 2.
2. The Applicant alleged the Respondents had committed an offence under section 72(1) of Part 2 of the Housing Act 2004 (the “2004 Act”) of being a person having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed. Under section 55(b) and 56 of Part 2 of the 2004 Act a local authority may designate the area of a district or an area within their district as subject to Additional Licensing provided that certain criteria, as detailed in section 57 to 58 of Part 2 of the 2004 Act, are met.
3. The Property is situated within an Additional Licensing area as designated by Thurrock Council. The Additional Licensing Scheme requires that any properties containing more than 3 persons from more than 1 household would require an HMO licence.
4. Mr Divers said that he moved into Room 1 of the Property on 20<sup>th</sup> August 2020 together with three other people. The Property had no HMO licence. [24]
5. The Tribunal found from the evidence of the Tenancy Agreements the Tenants occupied the Property and were of more than one household as follows:  
Mr Ian Divers from 20<sup>th</sup> August 2020 to 19<sup>th</sup> August 2021  
Mr James Ryan Malcolm from 13<sup>th</sup> November 2020 to 12<sup>th</sup> November 2021  
Mr Sohidur Rahman from 13<sup>th</sup> November to 12<sup>th</sup> November 2021 [82]
6. It was further found from the emails dated 9<sup>th</sup> September 2021 that there was no HMO licence when Mr Ian Divers took up occupation on 20<sup>th</sup> August 2020 until 4<sup>th</sup> March 2021. [83]
7. However, it is a defence under section 72(4) of the 2004 Act that at the material time an application for a licence had been duly made and still effective until the licence was granted or refused. [84]
8. Ms Opaleye submitted on behalf of Respondent 1 that she had made an application on 20<sup>th</sup> September 2020 for a licence in respect of the Property for her to be the licence holder and manager. [ 85]

9. The Tribunal considered whether an order should be made in the event that a licence had been required before the application on 20<sup>th</sup> September 2020 due to there being another person occupying the Property in addition to Mr Bernard and Mr Divers who has not been identified. If this were the case then the maximum amount that could be awarded to Mr Divers would be £231.60 for the month 20<sup>th</sup> August 2020 to 20<sup>th</sup> September 2020 as the Universal Credit element is paid by the local authority and so cannot be reimbursed to a tenant. [91]
10. If the Tribunal were to make an order, in accordance with section 44(4) of the 2016 Act, it must consider:
  - a) The conduct of the landlord and the tenant,
  - b) The financial circumstances of the landlord,
  - c) Whether the landlord has at any time been convicted of an offence to which the specific legislation applies. [94]
11. Firstly, no evidence of the Respondent 1's financial circumstances were adduced. [95]
12. Secondly, no evidence that Respondent 1 had been convicted of a relevant offence was provided. [96]
13. Thirdly, the Tribunal considered the conduct of the Landlord and the Tenant. [97]
14. With regard to the Tenant no evidence was adduced to show that Mr Diver's conduct had been anything other than exemplary. [98]
15. With regard to the Landlord, the Tribunal considered the Upper Tribunal Decisions of *Williams v Parma* [2021] UKUT 244 (LC) referred to above and *Parker v Waller and Others* [2012] UKUT 301 (LC) where it was said that the benefit obtained by the tenant in having had accommodation is not a material consideration, however, the length of time that the offence has been committed and the degree of culpability of the landlord are relevant factors. [99]
16. The Tribunal found that Respondent 1 had let the Property to individual tenants as opposed to a single household at the request of Thurrock Council Housing Department. The Tribunal found that a licence would not have been required except for the Additional Licensing designation of which Respondent 1 was unaware until Thurrock Council Licensing Officer's email of 9<sup>th</sup> September 2020. At this stage Respondent 1 was in communication with Thurrock Council and was seeking to both offer accommodation and comply with the legal requirements. On being informed that a licence was required Respondent 1 applied within 14 days, which the Tribunal considered reasonable. [102]. At the hearing one of the Applicants said that the Council had said that they had to take the Tenancy Agreement at the Property or be homeless [29].
17. While Mr Divers was a Tenant the Tribunal found that there was no breach of section 72(1). Even if there had been a breach for the reasons stated the

Tribunal exercised its discretion and determined that a Rent Repayment Order should not be made.

### **Grounds for Appeal**

18. In an email dated 18<sup>th</sup> July 2022, Mr Divers stated that he wished to appeal the Tribunal's decision, made on 5<sup>th</sup> July 2022.
19. His ground for appeal is that the Tribunal was under the impression that there were only 2 tenants in the house at the time he first moved in on 20<sup>th</sup> August 2020, whereas there were in fact four men who moved in on or about 20<sup>th</sup> August 2020. These were:  
Mr Divers in Room 1,  
A person called Tom in Room 2,  
Mr Barnard in Room 3, and  
A person called Jake in Room 4.
20. He added that Thurrock Council had stated in an e-mail, that Macturner Estates, were breaking the law by not having an HMO licence and he believed the Council to be correct in this matter.
21. The Tribunal, on 11<sup>th</sup> August 2022 directed the Respondents to make representations by 25<sup>th</sup> August 2022 but none were received.

### **Decision**

22. The Tribunal considered the evidence adduced and its original decision.
23. The Tribunal must be satisfied beyond a reasonable doubt that an offence under section 72 of the Housing Act 2004 has been committed. For the House to be a House in Multiple Occupation requiring a licence it must be occupied by persons who meet the definition as set out in section 254(2) of the 2004 Act. As stated at [82] of its Decision it was satisfied beyond a reasonable doubt that from the evidence of the Tenancy Agreements there were three Tenants who occupied the Property between 13<sup>th</sup> November 2020 and 19<sup>th</sup> August 2021. It was also satisfied based on Mr Divers evidence that there were other persons in occupation on or around 20<sup>th</sup> August 2020 to 20<sup>th</sup> September 2020. However, without copies of the respective tenancy agreements or oral evidence from those persons of the precise dates they were in occupation and whether they met the definition in section 254 (2) the Tribunal could not be satisfied beyond a reasonable doubt that an offence under section 72 was committed. As a result, the Tribunal found that there was no breach.
24. It also found that if four persons were occupying the Property between 20<sup>th</sup> August and 20<sup>th</sup> September 2020, they were doing so at the request of Thurrock Council Housing Department whose officers at that time were confirming whether or not the occupation by four persons required a licence. On receiving that confirmation, the Respondents applied for a licence. Therefore, the Tribunal exercised its discretion and determined that a Rent Repayment Order should not be made.