



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

Case reference : **LON/00BC/HML/2022/0007**

HMCTS code : **Face-to-Face**

Property : **328 Perth Road, Essex IG2 6DB**

Applicant : **Mr Jehangir Tariq Sheikh**

Representative : **Mr Jehangir Tariq Sheikh**

Respondent : **London Borough of Redbridge**

Representative : **Mr T Fitzgibbon, counsel**

Type of application : **Appeal against a declaration of an HMO
– s.255(9) of the Housing Act 2004**

Tribunal member(s) : **Judge Tagliavini
Mr A Fonka, FCIEH**

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

Date of decision : **16 May 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal refuses the appeal.
 - (2) The tribunal finds the property at 323 Perth Road was at the time of the respondent's declaration dated 24 June 2022 a house in multiple occupation and confirms the respondent's decision to serve the Notice of Declaration of a House in Multiple Occupation.
 - (3) The tribunal refuses the respondent's application for costs under rule 13 of the first-tier Tribunal (Property Chamber) Rules 2013.
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The application

1. This is an application seeking to appeal against the respondent's decision to serve a Notice (Declaration of a House in Multiple Occupation) dated 24 June 2022 declaring the subject property situate at 328 Perth Road, Essex IG2 6DB ('the Property') to be a house in multiple occupation (HMO) under section 255 Housing Act 2004.

The background

2. The Property is a mid-terrace three-bedroom house of which the applicant is the landlord and registered freehold owner. A selective licence was issued on 28 February 2022 in respect of the Property. On 8 June 2022, an inspection of the Property was carried out by the respondent's investigating officer after an anonymous online referral had been made and found to comprise a mandatory HMO i.e. a property occupied by 5 or more persons forming 2 or more households who share facilities such as kitchen, bathroom, or WC. In addition four breaches of the Management of House in Multiple Occupation (England) Regulations 2006 were found i.e. reg. 2 (provision of information to occupiers); reg. 4 (safety measures); reg. 7 (maintenance of common parts) and reg. 9 (waste disposal facilities).

The respondent's case

3. The respondent provided the tribunal with a bundle of 71 pages. This included a witness statement dated 1 December 2022 from Kashef Hameed, Housing Enforcement Officer, who also gave oral evidence to the tribunal. Mr Hameed told the tribunal of his findings on the day he

had carried out an inspection and exhibited the witness statements he had collect from the five occupiers he found present at the Property on that date. As well as the Property being occupied by a minimum of five persons, Mr Hassen gave evidence about the poor conditions found at the property and provided the tribunal with a hand drawn plan of the Property together with a number of black and white photographs. It was accepted that no inspection of the property had taken place before the grant of a selective licence and stated the statutory procedure pursuant to section 255 of the Housing Act 2004 had been followed.

The applicant's case

4. The applicant provided a bundle of 157 pages to the tribunal and gave oral evidence at the hearing of the application and spoke to his witness statement dated 3 November 2022. The applicant stated the Property was wholly let to a Mr Saif Ur Rehman Qureshi in a tenancy agreement dated 1 April 2018 for a term of twelve months at a rent of £1250 per month, with the intention of it being occupied by him and his family members forming one household. Since the grant of the contractual tenancy it has continued a statutory periodic tenancy. The applicant also told the tribunal he had settled a claim made against him by Mr Qureshi who had alleged an unlawful eviction by the applicant.
5. The applicant asserted that due to his serious health conditions he had been unable to visit to inspect the Property and knew nothing about the tenant having created a number of sub-tenancies and allowing a number of persons into occupation form more than one household. The applicant told the tribunal that he was completely unaware of the sub-tenants until informed by the respondent and felt he was a 'victim' and an *'old helpless man trying to have his property back from a greedy tenant.'*

The tribunal's decision and reasons

6. The tribunal finds and is sure the Property was being occupied by five or more persons* who formed more than 2 households who shared the kitchen and bathroom/WC facilities. The tribunal finds therefore, the Property was a house in multiple occupation on the date of the inspection on 8 June 2022 and on the date of the Notice declaring it to be an HMO and satisfies the criteria of s.255 of the Housing Act 2004 which states

(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 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.

**Evidence was given by one occupier that he shares his room with another person who was not present on the date of the respondent’s inspection.*

7. The tribunal accepts the evidence of the applicant and finds the respondent put forward no, or no effective defence to the decision to serve the Notice of Declaration. The tribunal finds the applicant could, despite his ill-health have appointed a manager for the property and could have sought access (through the courts if necessary), to carry out regular inspections of the Property and therefore could reasonably have known who was occupying the Property. However, the tribunal finds the applicant chose to do neither. The tribunal also finds the applicant did not challenge the procedure followed out in the service of the

Notice or the breaches of regulations found by the respondent to have occurred.

Costs - rule 13

8. At the end of the hearing the respondent made an application for costs in the sum of £2,000 citing the applicant's unreasonable behaviour in bringing this appeal and in which he seemed unaware of the statutory criteria and had failed to put forward any 'defence.' However, the tribunal determines that the applicant was entitled to put forward an appeal and honestly believed his lack of knowledge of the sub-letting by his tenant would provide a 'defence.' Therefore, the tribunal does not consider the applicant's conduct to be so vexatious or unreasonable as to merit an award of costs against him.

Name:

Judge Tagliavini

Date: 16 May 2023

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).