



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

Case Reference : **BIR/00FY/HMD/2022/0002P**

Property : **Seely Hirst House,
62-68 Mapperley Road,
Nottingham NG3 5AS**

Applicant : **All Saints Homeless Shelter CIO**

Representative : **None**

Respondent : **Nottingham City Council**

**Representative
Environmental** : **David Dott, Nottingham City Council Health
Office**

Type of Application : **Appeal under s255(9) Housing Act 2004
Against decision of the local housing
authority to serve an HMO declaration**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member Mr A McMurdo**

Date of Hearing : **14 June 2023**

Date of Decision : **26 June 2023**

DECISION

The Tribunal confirms the HMO Declaration of 1 September 2022 served by the Respondent on the Applicant.

Introduction

1. This is an appeal against a decision of the Respondent, the local housing authority, to serve an HMO declaration under section 255 Housing Act 2004 (the 2004 Act). The issue identified by the parties for determination by the Tribunal was whether the declaration was properly framed having regard to the usage of the building.
2. The Declaration the subject of this appeal was issued on 1 September 2022 in respect of Seely Hirst House 62-68 Mapperley Road Nottingham, NG3 5AS. By an application received on 28 September 2022 the Applicant appealed the Declaration to this Tribunal.
3. Directions were issued on 20 October 2022 which provided for service of statements of case. The parties indicated they were content with a paper determination, but the tribunal determined that an inspection was necessary. The inspection occurred on the day of the determination.

The Declaration

4. The Notice of Declaration stated that the Respondent was “satisfied that a building, namely 62-68 Mapperley Road Nottingham NG3 5AS met the following test: the standard test within s254(2) of the Housing Act 2004 and the Authority declare the building to be a house in multiple occupation (a HMO)”. The Notice gave information relating to the entitlement of the Applicant to appeal against the decision to this Tribunal within 28 days. The Notice concluded by providing it will come into force on 5 October 2022 in the absence of an appeal.
5. Schedule A to the Notice gave the reasons for the decision to serve the Notice. The covering letter set out action required the Applicant to submit an expeditious HMO licence.

6. Section 255(10) of the Act provides that an appeal is to be by way of re-hearing and may have regard to matters of which the local housing authority were unaware. Section 255(11) provides that on hearing an appeal the Tribunal may confirm or reverse the decision of the authority. If it reverses the decision, it may revoke the Declaration.

The Property

7. The property the subject of the appeal is known as Seely Hirst House. It is used as a multi-bedroom house by the Applicant as a hostel for homeless men. It comprises two semidetached houses which are connected by a full height by an extension. The four houses are of brick and tile construction each with four storeys originally built in late 19th century. The conjoined semidetached houses comprise one building with registered title. It is in an area of residential properties of similar age and construction reasonably close to the city centre.
8. On inspection the Tribunal noted the property has in the region of 36 bedrooms some with wc and washing facilities, occupied by the charity's target group. The rooms themselves were not inspected but the Tribunal members were informed by the Appellant's representative that rooms typically were furnished for single occupancy. Internal connections had been made to facilitate movement around the entire building.
9. There are communal showers and toilets throughout the building as well as a laundry room for residents' use. The ground floor provides a spacious communal living area as well as a large well-equipped communal kitchen. A communal garden is provided to the rear of the building.
10. Entrance to the building was from Mapperley Road although there is a rear exit by which residents can come and go as they please after depositing their keys for safe keeping with a concierge employed for that purpose.
11. In addition to the concierge the Applicant employs staff to work at the property. There are support workers who aid the residents, catering services and

administrative staff. The Tribunal were shown offices used by the support workers and administrative staff as well as private staff rooms and toilet facilities. There are arrangements in place for 24 hour support workers.

12. There are plans of the internal layout of the building throughout. The Tribunal examined the plans to identify the rooms used by the Applicant either for resident support or for its own administration staff.

The Statutory Framework

13. The Applicant contended that the Notice of Declaration was not properly framed because it did not meet the standard test condition of s254(2)(d). Instead, the Applicant contended the Notice should acknowledge the occupation of the property by persons do not form a single household constitutes a significant use of that accommodation.

14. The relevant provisions of the 2004 Act are:

- a. *S254(2)(d) A building or a part of a building meets the standard test if—(d)their occupation of the living accommodation constitutes the only use of that accommodation;*

- b. *S255 (2) & (3) (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).....

(c).....

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),.....

c. S260 provides statutory presumptions.

(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—

(a)“the sole use condition” means the condition contained in—

(i)section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test),.....,and

(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.

15. The jurisdiction and power of the Tribunal in connection with an appeal from an HMO Declaration is in s255(9)(10)& (11)

(9)Any relevant person may appeal to the (the First-tier 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.

The Parties' Submissions

16. The parties made their respective written submissions. The Respondent submitted an extensive bundle of documents setting out the history of the matter. By the time of the hearing the parties had narrowed the dispute to the single issue of whether the property satisfied the sole use condition.
17. The Respondent in its submission at paragraph 19 described the Applicant's application for a Temporary Exemption Notice made on 21 June 2022. The application was exhibited in the Respondent's bundle. By it, the Applicant contended that the sole use condition was not made out because of the use of part of the building for staff offices, plant rooms, laundry room, kitchen and pantry, staff recreation rooms which were not accessible to the residents. By its submission for these proceedings the Applicant repeated the contention that the uncontested description of the use within the property of rooms unavailable to the residents confirmed its case that the sole use condition did not apply. The Declaration was not valid without reciting the substantial use condition. Until that time the Property did not need a HMO licence.
18. The Respondent accepts that there is non-residential use of part of the building but relies on the statutory presumption provided for in s260 of the 2004 Act. It contends that the property is a HMO to which the significant use condition applies and that the standard test is satisfied as it is residential accommodation and meets the requirements laid out in ss 255(2) and 260(2)(b) of the 2004 Act.

Decision

19. This is an appeal by way of a rehearing. There are no new facts of which the Respondent was unaware at the time of the Declaration in September 2022. There is no significant disagreement over the facts of the case. Both sides agree the property is a HMO. The Applicant has conceded that if the Tribunal uphold the declaration or varies it in the way proposed, it must immediately apply for a licence. Its disputed contention is that until that decision is made the property is not a HMO because the HMO Declaration is invalid until varied.

20. The power of the Tribunal is to confirm or reverse the decision of the authority. If it reverses the decision, it may revoke the declaration. There is no reference to varying the declaration in the statute. Other legislation providing a framework for appeals against local authorities' decisions refers to varying such decisions on appeal, such an outcome is not mentioned in this legislation. The parties have not addressed the issue of the extent of the Tribunal's discretionary power. The Applicant asserts the Tribunal should vary the Declaration by adding the significant use to the Declaration. The Respondent's case is a bare denial that the Declaration requires any variation.

21. For the sake of completeness, neither side relied on s256 of the Act although the powers of the Tribunal recited at s260(6) are the same as in s255(11).

22. In this case, it is not disputed that the primary use of the building is a residential hostel for homeless men. The staff of the charity who attend the building, do not reside in the property as their main residence. In *Global 100 Limited v Jimenez* [2022] UKUT 50 (LC), 2022 WL 00581083 a case involving property guardians, Martin Rodger KC said in relation to s 254(2)(d) at paragraphs 50-52:

“The statutory purpose underlying the sole use condition is not immediately obvious. The presumption of sole use in section 260 and the power of a local housing authority effectively to disapply the sole use condition by making an HMO declaration under section 255 suggest that a desire to limit the practical significance of the condition. I was not referred to any material which suggested an explanation of the policy underlying the condition.

51. The condition does not seem to be apt to exclude living accommodation from the protection of Part 2 simply because it is occupied by employees of the owner, as it has nothing to do with the legal status of the occupier. A shared house provided by an employer to a group of service occupiers, each of whom was required to live there and to share basic amenities with their co-workers, would not fail the sole use condition. The only use of the shared house would be as living accommodation, but the sole use condition depends on there not

being different, concurrent uses of the living accommodation, such as there might be if the live-in staff in a hotel shared the use of the hotel kitchen as their only cooking facilities. If a house consisted of four rooms with shared kitchen and bathroom facilities, two of the rooms being let to residents for whom it was their only or main residence and the remaining rooms being used by the landlord for the provision of bed and breakfast accommodation, it would be likely that the living accommodation would properly be treated as having more than one use, and in consequence that the sole use condition would not be satisfied.

52. If the occupation of living accommodation as the main residence of the occupiers is not the only use of that living accommodation, because some additional and different use is also being made of it, then it is possible to see that policy reasons might justify excluding it from the scope of Part 2 . But I do not consider that there is any reason to exclude such accommodation where the suggested additional use is, in substance, the same only or main residential use by the same persons but for a distinct purpose.”

23. The Tribunal is aware the decision is under appeal but the comments of the learned Deputy Chamber President in relation to the interpretation of s254 and the statutory presumption of s260 are respectfully helpful in this case.

24. The Tribunal is in no doubt the property is a HMO requiring a licence. Although it cannot be said the occupation by employees of the Applicant is in substance the same as the residents, their purpose in being there is to facilitate the provision of a home for people in need.

25. Section 260 of the 2004 Act requires that it should be presumed that the significant use condition (260(1)(c)) was satisfied unless the contrary was shown. The burden therefore falls on the appellant to establish that the absence of a reference to the substantial use condition was fatal to the Declaration.

26. The Tribunal is satisfied that the Applicant has not discharged that burden. As both sides agree the substantial use of the property is to provide main

residential accommodation the “sole use condition” in s254(2)(d) is satisfied for the standard test as the Respondent contends. The Tribunal therefore confirms the HMO Declaration of 1 September 2022 served by the Respondent on the Applicant.

27. Having made the finding of fact that the substantial use condition applies and that the statutory presumption in s260 has not been displaced it is not necessary to decide whether the Tribunal has the power to vary a declaration.

Appeal

28. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge PJ Ellis. Chair