



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

Case Reference : **MAN/00EX/HMD/2021/ 0002**

Property : **Hill View Hotel, 90, Preston New Road
Blackburn BB2 6BH**

Appellant : **Ejiz Ahmed Hussain**

Respondent : **Blackburn with Darwen Borough Council**

Type of Application : **Appeal against making of an HMO
declaration**

Tribunal Members : **Mr J R Rimmer
Mr I James MRICS**

Date of Decision : **19th August 2023**

Decision : **The HMO declaration in respect of the Hill
View Hotel, Preston New Road, Blackburn,
made on 25th October 2021 is revoked for the
reasons set out herein.**

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Application and background

- 1 The Applicant is the owner of the property known as the Hill View Hotel, situated on Preston New Road in Blackburn.
- 2 Blackburn with Darwen Borough Council, being the local housing authority, has made a declaration under Section 255 Housing Act 2004 (“the Act”) that the property satisfies the definition of a house in multiple occupation (HMO). The effect of such a declaration is that the licensing requirements of the Act would then apply to the property and the Applicant would be required to engage with the licensing process.
- 3 The basis for the declaration is that the occupation of the living accommodation within the building by persons, not being persons in the same household, as their only or main residence constitutes a significant use of that accommodation.
- 4 The Applicant has appealed against the decision to make that declaration and it is his application to the Tribunal that is now being determined.

The Law

- 5 The following is relevant to the determination being made by the Tribunal:

Section 254 of the Act provides the definition of a HMO according to whether the property in question satisfies one of 5 tests provided by the section.

Section 254(1)(d) provides that for the purposes of the Act a building, or a part of a building, is a HMO if an HMO declaration is in force in respect of it under section 255.
- 6 Sections 254 (2), (3), and (4) all provide tests for a house to be an HMO only if the occupation of the living accommodation by persons as their only or main residence constitutes the only use of the accommodation, (except in the case of a self-contained flat when it need only be the main use). Particularly, Section 254(2) provides:

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;
 - (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;
 - (d) Their occupation of the living accommodation constitutes the only use of that accommodation; and

- (e) Rents are payable or other consideration is to be provided in respect of at least one of the 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

Section 254(6) lists the basic amenities as toilet, personal washing facilities or cooking facilities.

7 Section 255 provides:

- (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 meets any of the following tests (as it applies without the sole use condition)-
 - (a) The standard test, (see section 245(2)),
 - (b) The self-contained flat test (see section 245(3)), or
 - (c) The converted building test 9 see section 245(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 of 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.

8 In the event of an appeal to the Tribunal Section 254(10) provides that such an Appeal:

- (a) Is to be by way of re-hearing, and
- (b) May be determined by having regard to matters of which the authority were unaware

And Section 254(11) provides that the tribunal may-

- (a) Confirm or reverse the decision of the authority, and
- (b) If it reverses the decision, revoke the HMO declaration.

Evidence and Submissions

9 The case for the making of the declaration is set out in the statement of Paul John Hodges, an Environmental Health Officer in the authority's Housing Standards Team. It is contained in the bundles supplied to the Tribunal.

10 His evidence is that the property was traditionally used for providing bed and breakfast hotel accommodation, but it has latterly been used to provide homeless accommodation. At the height of the covid pandemic, in April 2020 contact took place to ensure compliance with relevant covid regulations and thereafter an inspection took place.

11 Information that he received from that inspection and further subsequent enquiries suggested that at around that time either all, or a substantial proportion, of the accommodation was occupied by persons directed there by various local authorities as being either homeless, or in need of temporary accommodation.

12 Mr Hodges statement provided to the Tribunal referred to the various enquiries made by himself and colleagues as to the nature and occupation of the property from a date on or about 6th May 2020, when Mr Hodges received information from one of his HMO compliance officers, until the date of the making of the declaration on (25th October 2021). In particular Mr Hodges received information, referred to at paragraph 29, item (4), below, that all 17 rooms in the property were, on 12th May, occupied by persons placed there by the Council. This was the starting point of his enquiries.

13 A large number of exhibits are provided to that statement showing snapshots of the occupation of the premises at times between May 2020 and the date of the declaration, together with information obtained from other local authorities who had placed homeless persons in the property up until early 2023.

14 The Applicant did not disagree with the broad observations of the Respondent's officer and set out the case that the property ordinarily operated as a bed and breakfast hotel (supported at some length in his witness statement), but had, like

many others, answered the difficulties of the Coronavirus pandemic, by agreeing to accommodate those persons being encouraged to find accommodation during the pandemic. This should not, in his view, detract from his basic business model.

- 15 The Tribunal inspected the Hill View Hotel on the morning of 17th May 2023 and found it to have the appearance of a bed and breakfast hotel with rooms set out for occupation on a short term basis, rather than for longer, more permanent residence. Nearly all rooms had private facilities of toilet and shower/bathroom, with others sharing such accommodation. There was a residents' lounge which served also as a breakfast room where a limited number of breakfast items were on display. There was only one kitchen in the building, being used at the time of the inspection as a laundry. The linen being of a style that appeared to be common to all rooms. Those rooms showed little by way of individualisation. Certain rooms evidenced use as transient accommodation. The Kitchen appeared not to be one in which occupants were able to provide meals for themselves. Although there was a reception desk in the entrance hall, it provided little evidence of use as such to offer support as to current use of the property.
- 16 The Tribunal was of the view that the inspection was of somewhat limited assistance in making its determination as whatever its appearance might be some 18 months after the declaration, it was clearly a building that was capable of being an HMO.
- 17 Later the same day the Tribunal reconvened at the Tribunal Hearing Centre, Ciceley Lane, Blackburn to hear further from the Applicant who represented himself and the Respondent, represented by Counsel.
- 18 The Tribunal explored with the parties their respective positions. The Respondent averred that it was satisfied that the provisions of the Housing Act 2004 entitled them to make the declaration against which the appeal was being made. Its fundamental position was that the property met the description of an HMO within the standard test of section 254(2) and that the occupancy of the accommodation amounted to a significant use of that accommodation so as to satisfy Section 255(2). For the making of a declaration the use need only be significant and not the only use.
- 19 The Tribunal and the Applicant had the opportunity to explore the varying policies of local authorities in sourcing accommodation generally and with particular reference to the Coronavirus pandemic, so as to engage with this property. All of which took place, according to the Respondent, against the background of the accommodation providing the only accommodation available to those making use of it and therefore being persons to whom the HMO designation was aimed in order to maintain minimum standards of accommodation.
- 20 The Applicant argued that the purpose of a designation was not intended to deal with a situation such as that which arose on an emergency basis in the pandemic

when the principal business was providing a bed and breakfast hotel, which it was still the case when the covid circumstances permitted. He also made a number of observations on the information provided by the Respondent and its reliability so far as confirmed occupation and length of stay were concerned, when compared to the Applicant's recollection.

- 21 With those previous observations in mind the Tribunal explored with the parties the evidence provided by Mr Hodges as to the nature and extent of the use of the accommodation in the period leading up to and following the declaration in order to get a picture of the situation as at 25th October 2021. The information is found within the many exhibits supplied and relates to the observations of Mr Hodges and his colleagues, information supplied by the Applicant as to occupation and responses from local authorities, other than Blackburn with Darwen, seeking to place persons at the property.
- 22 The Respondent sought to persuade the Tribunal that the information was more than sufficient to establish a pattern of significant use within Section 255(2). The Applicant was keen to challenge extensively the information as to persons who had stayed at the property and for how long, when compared to the indications given in response to Mr Hodges enquiries.
- 23 Following the conclusion of those submissions the Tribunal indicated that it would give consideration to the matters raised as speedily as it could and would endeavour to provide a decision within a timescale appropriate to the subject matter.
- 24 Unfortunately that timescale has been eroded by the time it has taken the Tribunal to explore fully the information with which it has been provided and is considered below.
- 25 The Tribunal is satisfied that its determination should relate to the situation that existed at the time the Council made the decision to make the HMO declaration: that is on or about 25th October 2021. It has no snapshot of that particular day in the life of the Hill View Hotel, but it has available, through the information provided by the Applicant on the one hand and Mr Hodges and Mr Johnson, for the Respondent, on the other, information that leads it to a picture of the situation leading to 25th October and then after.
- 26 The Tribunal regards these snapshots as important because the period of time when the Respondent is considering the status of the property, which extends from May 2020 up to the date of the declaration, is one where times were not normal and the housing of persons who were without accommodation, was a matter that appeared to be attracting considerably more attention than at other times.

- 27 That situation was a fluid one with the pressure to provide accommodation being at its highest at the time of the worst impact of the pandemic and coming under less stress as the situation gradually improved.
- 28 The Tribunal has considered the large amount of information provided to try to discern a pattern in the occupancy of the property because it needs to establish one fundamental situation – On or about 25th October 2021 was the property providing accommodation such that there was significant use of the property satisfying the test in Section 245(2) of the Act.
- 29 On several occasions the Applicant provides details of the occupation of the property, three of which are:
- (1) 16th June 2020, one room reserved by Hyndburn BC, but not occupied, 16 other rooms occupied, 9 by people offering other addresses, 5 not.
 - (2) 7th October 2020, 9 rooms occupied, 8 with other addresses, 1 without.
 - (3) 17th November 2021, 16 rooms occupied, 11 offering other addresses, 5 not. The Tribunal will return to this, below, as this is the evidence closest in time to the date of the declaration.
- 30 Mr Hodges in his evidence provides the following:
- (4) 12th May 2020, an email from the Applicant indicating there are 16 occupants, all placed by local authorities
 - (5) A visit to the property on 18th May 2020 where he is informed that 12 rooms are occupied, all by council placements.
 - (6) A list of occupants provided by the Applicant the following day, 19th May 2020, showing 14 occupants, of whom one offers no alternative address.
 - (7) 19th May 2021, a further visit from the Respondent’s officers eliciting the comment “Mr Hussain also provided an updated list of residents...during the visit however it was noted that the majority of the residents on the list had an alternative home address”.
 - (8) 28th April 2021, a composite of responses to requests to other authorities suggesting 19 occupiers of 17 rooms are placed by them.
 - (9) 5th May 2021, a similar response suggesting 21 such placements for the 17 rooms.
 - (10) 2nd November 2021, a note of a telephone call with the Applicant the previous day in which the Applicant indicated 5 occupants were placed by local authorities.
 - (11) 8th December 2021, an email from an officer of South Ribble Borough Council indicating that they no longer used the property, but providing a copy of a circular from the Hotel seeking local authority referrals. There is no date on that circular.

- (12) September 2021 to May 2022, A large number of responses to a template provided to other authorities seeking information as to the number of placements currently at the property and how many referrals had been made within the previous 18 months.

Responses came from Hyndburn, Burnley, Rossendale and Pendle Borough Councils. At the time responses were provided in late summer 2021 they indicated a total of 22 occupants were placed by local authorities on the different dates they provided their responses. In the Spring of 2022 responses, again from different dates indicated 18 placements on those relevant dates.

- (13) A spreadsheet from the Respondent showing the collated information relating to referrals made specifically to the property by other local authorities.

31 Additionally the Tribunal had heard from both parties concerning:

- (14) Apparent discrepancies between referrals made in respect of accommodation at the property and those who actually took up an offer of a room, together with a lack of information as to when any of the occupancies came to an end and whether these were recorded accurately, or at all.

32 The Tribunal also noted that the spreadsheet (13) did not accord with the information provided at (12) with regard to the number of referrals purportedly made to the property, there being considerably fewer on the spreadsheet than alleged in the responses to the template. The Tribunal draws no conclusions whatsoever as to why that might be. It does note however that as near to the date of 25th October 2021 as can be established a number of the occupants mentioned on the spreadsheet appear on a list of occupiers, This situation is considered further, below.

33 All the above suggests to the Tribunal that information provided as to the occupancy of accommodation within the property by persons using it as their only or main residence may not be entirely reliable, or consistent:

- The number of local authority referrals varies according to the source of the information.
- Actual occupancy may differ from believed occupancy.
- The provision of an alternative address may not be indicative of its availability as a residence.
- There is no clear or consistent picture of occupancy as the only or main residence over the extended period of the Respondent's enquiries.
- The Applicant has clearly sought to engage with the referral process of local authorities, but the timeframe in relation to the making of the declaration is unclear.

- 34 Without hesitation the Tribunal would have concluded that a declaration made in the early summer of 2020 would have been unimpeachable looking at the entirety of the above information. So far as it can see from primary and subsidiary legislation surrounding the pandemic HMO accommodation was unaffected by any temporary amendment, unlike other provisions in relation to other housing and tenanted accommodation. This would be consistent with the view that an HMO declaration is a living document. The Housing Act 2004 provides a mechanism for a declaration to be voided if the circumstances no longer merit it, if the occupation of the property cease to fall with in Section 254(2), or the character and layout of the property changes.
- 35 The situation as at 25th October 2021 is somewhat different. The worst of the pandemic is over. There was, so far as the Tribunal is concerned less pressure on providing accommodation for those who might be considered homeless, or at risk of homelessness, in the sense of those not necessarily seeking accommodation and not being considered to be in need of it for their own safety and security, or that of the wider community, as was the case at the height of the pandemic.
- 36 This is reflected in the changes in the level of occupancy by local authority referrals by the time October 2021 is reached. Compared with the figures mentioned in items (8) and (9) in paragraph 29, above, the dynamic is very different. Item (3) in paragraph 28, together with items (10) and (11) in paragraph 29 and the information in paragraph 30 provide probably the best picture of the situation on 25th October 2021.
- 37 Even then the Tribunal considers it is difficult to be entirely certain that the occupation is what it seems to be. If the accommodation list provided by the Applicant for 17th November 2021 is accepted at face value, and the Tribunal is not aware of anything to suggest that should not be the case, it suggests the following:
- (1) There are 17 rooms listed, 1 is empty, 16 are occupied.
 - (2) Of the 16 that are occupied, in relation to 6 the occupants provide addresses well out of the local area, consistent with being transient workers. This is consistent with what the pre-covid position appeared to be, that of B&B short term accommodation.
 - (3) Of 10 remaining, 2 are occupied by persons offering Blackburn addresses and the Tribunal was advised that Blackburn with Darwen does not place its homeless persons at the subject property. Another 1 is not marked as a council referral and offers an alternative address in Preston. Preston Borough Council is not one that appears as having any significant relationship with the property.
 - (4) 4 are shown marked as “c/o council”. They offer no alternative address.
 - (5) 1 occupant provides no alternative address, but is not marked “c/o council”. He does, however, appear on the computer print-out spreadsheet record provided by Gary Johnson.

- (6) The 2 remaining occupants are finally shown with alternative addresses that do appear to be situated within local authority areas which do have some relationship with the accommodation at the property. 1 appears on the computer print out referred by Rossendale Council, but providing an alternative address in the Borough of Wyre. The other provides an address in the Borough of Pendle, but does not appear to be referenced in the print-out, or in the questionnaires sent out relating to later occupancy after the making of the declaration.
- 38 An email from Mr Hodges dated 2nd November 2021 makes the following point: “You advised that you wish to operate this property as a Hotel only so you will need to provide evidence to the council to prove that the residents staying at the property are only staying there on a temporary basis and they each have an alternative address that they are returning to once their temporary stay is complete.”
- 39 It might be assumed that this is what the Applicant tries to do when he submits his occupancy list for 17th November, although the format is not noticeably different from the others he provides.
- 40 There is limited evidence as to what amounts to the occupancy of rooms on a temporary basis. It is clear from other information provided that two occupants, those in rooms 7 and 15 on the 17th November return, remain for some considerable time. There is no clear and consistent evidence as to the length of occupancy by others and the whole premise of the use of the property from May 2020 onwards appears to envisage temporary rather than permanent occupation. No statements are provided that would give clearer answers to those matters, but given the circumstances surrounding the occupation of rooms in that time frame, that is hardly surprising. The Applicant also challenges some of the assumptions as to who stays and for how long, compared to the suggested referrals made, even to the extent that some never appear to take up occupancy.
- 41 It is clear to the Tribunal from the amalgam of information provided that there are occupiers of rooms on and around 25th October 2021 who have no other accommodation, irrespective of addresses being given in some cases, and therefore must be seen as occupying their accommodation as their only or main residence. There are others who, so far as it is possible to tell, have other accommodation and are indeed temporary occupants. There are others who may fall into either category.
- 42 the Tribunal asks itself whether the Respondent has satisfied it that on balance there are a significant number of those clearly satisfying that test as to their residence. To the Tribunal's view that number is likely to be 5, or 6, of a total of 17 rooms.
- 43 Does that amount to significant use of the accommodation for the purpose of providing the only or main residence of a number of occupiers? The Tribunal

believes it must consider this in context. The mischief that section 254 of the Act is aiming to control is the exploitation of some of the more vulnerable in society from housing that of its nature may tend to be of a lower standard and less safe than other accommodation and to provide a mechanism for that control.

- 44 A greater immediate mischief appeared in the form of the Covid pandemic and accommodation was required to protect many persons who might tend to be similarly vulnerable. That mischief was continuing, but reducing, in October 2021. Against that background the Tribunal is reluctant to consider the use of the accommodation as an HMO as significant so as to justify an HMO declaration, although in other contexts that use might amount to being significant, thus leading to a different conclusion.
- 45 For the reasons set out above the Tribunal revokes the declaration of 25th October 2021.

Mr JR Rimmer
Tribunal Judge
19 August 2023