



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

<b>Case Reference</b>	<b>: MAN/ooCJ/HMF/2023/0033, 0034, 0035</b>
<b>Property</b>	<b>: Flat 501, Magnet Court, 8, Gallowgate, Newcastle upon Tyne</b>
<b>Applicants</b>	<b>: (1) Aananda Krishnan (2) Vytene Janiukstyte (3) Firdevs Godul</b>
<b>Respondent</b>	<b>: Unite Integrated Solutions PLC</b>
<b>Type of Application</b>	<b>: Rent Repayment Order, section 41(1) Housing and Planning Act 2016</b>
<b>Tribunal Members</b>	<b>: Tribunal Judge A M Davies Tribunal Member N Swain, MRICS</b>
<b>Date of Decision</b>	<b>: 7 March 2024</b>
<b>Date of Determination</b>	<b>: 22 April 2024</b>

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**DECISION**

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The applications for Rent Repayments Orders are dismissed.

## **REASONS**

### **BACKGROUND**

1. Magnet Court at 8 Gallowgate, Newcastle upon Tyne was erected in the 1930s as an industrial unit and was used subsequently as offices. In 2001 Newcastle City Council granted planning permission to change the use of the first to the fifth floors of the building to student accommodation and to add a 6<sup>th</sup> storey. As the property was a listed building, the developers were required to retain the façade and some internal features including the staircases.
2. By 2021 the upper floors of the property contained a number of 3 and 4 bedroomed flats. Flat 501 has three bedrooms and meets the definition of a “self-contained flat” as set out at section 254(3) of the Housing Act 2004 (“the 2004 Act”).
3. The Applicants, who are not related to each other, took tenancies of their respective rooms in flat 501 from 18 September 2021. In each case the tenancy was to expire on 10 September 2022 and the rent for the year was £6,273.

### **THE LAW**

4. Section 55 at Part 2 of the 2004 Act provides for HMOs to which that Part applies to be licensed by the local housing authority. The purpose of the licensing system is to enable local housing authorities to control the standard of accommodation in HMOs and to ensure that appropriate safety measures are in place.
5. Subsections 254(6) and (7) of the 2004 Act provide that the “prescribed description” of an HMO may be amended from time to time by Regulations. The current prescribed description of HMOs is contained in the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (“the Prescribed Description Order”).

6. Paragraph 4 (c)(ii) of the Prescribed Description Order is relevant to Flat 501 and reads

“4. *An HMO is of a prescribed description for the purpose of section 55 (2)(a) of [the 2004 Act] if it .....*  
(c) *meets - .....*  
(ii) *the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats...”.*

Therefore a self-contained flat which is purpose built and situated in a block containing three or more self-contained flats does not need to be licensed under the HMO licence provisions.

7. From 6 April 2020 an Additional Licensing Designation took effect in Newcastle. This extended the number of properties requiring an HMO licence in the city to those occupied by 3 or more persons living in two or more separate households (as opposed to 5 persons as specified in the Prescribed Descriptions Order) but otherwise repeated the wording of paragraph 4(c)(ii).
8. Section 41 in Part 2 of the Housing and Planning Act 2016 enables a tenant to apply to the Tribunal for an order for repayment of rent (RRO) against a person who has committed one of the offences listed, including the offence of controlling or managing an HMO which is required to be licensed but for which a licence has not been issued.

## THE APPLICATION

9. The Applicants applied for RROs pursuant to section 41 of the 2016 Act in the full amount each of them had paid the Respondent. Each of them provided a witness statement and a schedule of the rent he or she had paid, with supporting documentation.
10. The Application was opposed firstly on the ground that the flat did not require an HMO licence, and secondly as to quantum of any rent repayment order that may be made.

## THE HEARING

11. The case was heard by video link. The Applicants were present and were represented by Mr Morris of Flat Justice. The Respondent was represented by Mr Whatley of counsel. Comprehensive bundles of documents were supplied, together with skeleton arguments.
12. It was convenient to deal with the licensing issue as a preliminary issue, and the Tribunal heard both representatives' arguments prior to pausing the hearing in order to determine whether Flat 501 fell within the purpose-built flat exemption from HMO licensing.

## THE APPLICANTS' ARGUMENTS

13. Mr Morris argued that the plain meaning of paragraph 4(c)(ii) was that the "block" in which the flat was situated must be "purpose built". The words "purpose built" are not defined in the Prescribed Descriptions Order, and need to be understood in their normal meaning. Mr Morris referred to the Guidance for Local Housing Authorities last updated in October 2019 by the Department for Levelling up, Housing and Communities. At paragraph 2.3(b) of the Guidance Local Housing Authorities are advised that "purpose-built" in paragraph 4(c)(ii) is to be "*given its ordinary and natural meaning, ie the building was originally designed and constructed for a particular use.*"
14. Clearly the building known as Magnet Court was not purpose built as a block of flats, having been constructed originally for non-residential purposes.
15. In terms of construction of the Prescribed Description Order, Mr Morris said that it was not necessary to insert the words "purpose-built" before the word "block" in paragraph 4(c)(ii), since they were to be understood. Essentially, if the flats had to be purpose-built, it must follow that the block in which they were situated must have been purpose-built. He said that the definition of a purpose-built block was indicated by earlier (unconnected) legislation in which purpose-built buildings or blocks are defined by such words as "*a building which contained as constructed, and contains...*" or "*a building that was built*

*as and remains...".* On this basis, Magnet Court was not purpose-built and therefore the flats within it were not covered by the exemption from licensing.

16. Further, Mr Morris argued that an interpretation of paragraph 4(c)(ii) to allow exemption from licensing would make the licensing legislation meaningless. As all flats are built "on purpose" it would no longer be necessary to obtain an HMO licence for any self-contained flat created within a building which had previously been constructed for another use. This would enable landlords to side-step the stringent licence conditions which were designed to protect tenants of HMOs in all properties except purpose-built blocks of flats which should already have been built to safe construction specifications.
17. Finally, Mr Morris pointed out that if flats in converted buildings were not to be licensed, at some point it would be necessary for the licensing housing authority to decide on the extent of the internal building work in order to determine in each case whether a flat was "purpose-built" or not, and this would create complexity and uncertainty.

#### RESPONDENT'S ARGUMENTS

18. Mr Whatley argued that if the parliamentary draftsmen had intended the licensing exemption to apply only to self-contained flats within purpose-built blocks, they would have said so. He pointed out that in the earlier legislation quoted by Mr Morris parliament had explicitly included definitions of purpose-built buildings, and therefore the omission of the words "purpose-built" (with or without a further definition) before the word "block" in paragraph 4(c)(ii) must be treated as deliberate.
19. He said that the words "purpose-built" in paragraph 4(c)(ii) therefore applied only to the self-contained flats. In this case new living accommodation had been created within the shell of the original building, and, as an additional construction, on the sixth floor above it. He argued that it would be inappropriate to treat the flats on the sixth floor as any different, in terms of licensing, to the flats on the lower floors merely because the building envelope in which they were situated was newly built.

20. In terms of safety, Mr Whatley said that the Building Regulations applied equally to a new build and to a conversion such as took place at 8 Gallowgate. There was a clear distinction, he said, between a project such as this where the interior of the building had been dismantled and purpose-built accommodation had been created within the envelope, and the creation of HMOs by “adding a front door here and there” within an existing property.
21. Mr Whatley said that the Guidance quoted by Mr Morris should not be used as an aid to construction of legislation, but in any event the advice quoted at paragraph 13 above is ambiguous, since it does not define what the authors meant by “the building”.
22. Finally, Mr Whatley said that failure to license a licensable property was an allegation leading, if proved, to the commission of a criminal offence. Where there was any doubt as to the parameters of a statutory offence, the uncertainty should be resolved in favour of the alleged offender.

## CONCLUSION

23. If parliament had intended to specify that the exemption from HMO licensing was to apply only to purpose-built flats in purpose-built buildings, it would have made this clear in the drafting of paragraph 4(c)(ii). While the Tribunal does not consider that there is any real issue about the meaning of the paragraph, if there is any uncertainty the Respondent is entitled to the benefit of the doubt.
24. The drawings supplied by the parties demonstrate that other than the outer walls, floors and staircases, very little of the original structure of the building was utilised in the creation of student accommodation within the outer envelope. The self-contained flats, of which the Applicants’ was one, were “purpose-built” and were not a conversion of the original construction.
25. The Tribunal does not agree that this decision causes difficulties in distinguishing between purpose-built flats and flat conversions. Where existing rooms have been used to create self-contained flats, albeit after partitioning, re-

purposing or other reconfiguration, the licence exemption at paragraph 4(c)(ii) will not apply.

26. There is no requirement either under the legislation or under Newcastle upon Tyne's Additional Licensing Designation for Flat 501 to be licensed as an HMO.