



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

Case Reference : LON/00AY/HML/2024/0005

Property : Flat 28 Rutland Court, London, SE5 8ED

Applicant : Ms Joanna Swaney

Representative :

Respondent : London Borough of Lambeth

Representative : Ms Angela Pears of Counsel

Type of Application : Appeal against the grant of a Licence for a House in Multiple Occupation Paragraph 31(1) schedule 5 Housing Act 2004 (2004 Act)

Tribunal : Judge Tildesley OBE
Mr A Lewicki FRICS

Date and Venue of the Hearing : 20 May 2024
London Tribunal Centre, 10 Alfred Place,
London WC1E 7LR

Date of Decision : 6 June 2024

DECISION

Summary of the Decision

The Tribunal confirms the decision of the Respondent to grant Mr Naresh Gohil a HMO Licence at 28 Rutland Court, Denmark Hill, London SE5 8EB.

The Appeal

1. On 4 December 2023 the Applicant appealed against the Respondent's decision on 7 November 2023 to grant Mr Naresh Gohil a licence for a house in multiple occupation at 28 Rutland Court, Denmark Hill, London SE5 8EB. The Applicant said that she only became aware of the grant of the licence on 29 November 2023.
2. The Tribunal understands that 28 Rutland Court is a three bedroom self-contained flat situated on an Estate known as Rutland Court comprising two blocks of flats arranged over four floors and containing 60 flats in total.
3. Rutland Court Denmark Hill Limited holds the freehold of Rutland Court and its title is registered with HM Land Registry under title number SGL31789. The address given for the Company in the Proprietorship Register is Flat 39 Rutland Court, Denmark Hill London SE5 8ED.
4. Mr Naresh Gohil holds the leasehold title to 28 Rutland Court under a lease dated 27 August 1990 for a term of 125 years from 29 September 1989. The leasehold is registered with HM Land Registry under title number TGL58844.
5. The Applicant in her witness statement describes herself as a leaseholder of Flat 43 Rutland Court, and a member of the Board of Directors of Rutland Court Denmark Hill Limited, having been elected as a director in September 2022. The Application for Appeal is made and signed in her own name.
6. The Applicant gave five grounds of Appeal in her application which were contested by the Respondent. The Tribunal identified three substantive issues for determination:
 - i. Whether the Applicant is a relevant person for the purpose of making an appeal under paragraph 31(1) part 3 schedule 5 of the 2004 Act?
 - ii. Whether the Respondent complied with the requirements for service of a notice proposing to grant the licence in accordance with paragraphs 1-4 part 1 schedule 5 of the 2004 Act?
 - iii. Whether the Tribunal should give weight to the Applicant's representations against the grant of the HMO licence when determining the Appeal.

The Proceedings

7. On 12 February 2024 the Tribunal directed that the application be heard in person and ordered the parties to exchange their cases with the Applicant given the final right of reply by 3 May 2024. On 14 March 2024 the Tribunal informed the parties of the hearing date of 20 May 2024. The parties complied with the directions and supplied bundles of evidence.

8. On 17 May 2024 at 13:02 (Friday pm before the hearing) the Applicant emailed the Tribunal and HMO Licensing at Lambeth a supplementary bundle comprising 21 pages and the original bundle with an index. The Applicant made the following application:

“To rely on the attached supplementary bundle. This contains my submissions, my supplementary witness statement and three additional documents. The statement and the additional evidence go to issues that were raised by the respondent in the respondent's submissions and bundle. I apologise for the short notice with which this evidence has been submitted, however I submit that my submissions are brief and should cause no prejudice to the respondent. My statement and the additional evidence address issues raised by the respondent in their submissions. Two of the additional documents are in the public domain, having been obtained from the Companies House website and the third relates to my standing as a relevant person. I submit that it is in the interests of justice to admit this evidence”.

9. On 19 May 2024 at 14.52 the Applicant emailed the Tribunal stating that

“I write regarding the above matter, which is listed for hearing on Monday 20 May 2024. I advise that I am unwell and unable to attend the hearing. I have been suffering from symptoms including severe sore throat and cough for several days which has exacerbated pre-existing asthma. In addition, I have largely lost my voice and am struggling to speak. I am not seeking an adjournment and request that the tribunal determines my appeal in my absence on the basis of the evidence and submissions for the Respondent I have provided”.

10. Ms Angela Pears of Counsel for the Respondent attended the hearing on 20 May 2024 and was accompanied by Ms Carol Bennett, Environmental Health Officer and HMO licensing team leader. The Tribunal advised Counsel that the Applicant would not be attending, and gave Counsel time to consider the contents of the Applicant's supplementary bundle with Ms Bennett to form a view on whether the Respondent should object to the admission of the supplementary bundle.

11. Counsel argued that the Applicant had ambushed the Respondent with the supplementary bundle particularly the Applicant's assertion that

the Respondent had produced no evidence of delivery/receipt of the letter of 17 October 2023 notifying relevant persons of the Respondent's intention to grant an HMO licence. Counsel contended that the Respondent would be prejudiced by the late admission of the supplementary bundle but on balance the Respondent was in a position to proceed and did not object to the admission of the supplementary bundle in evidence. The Tribunal admitted the Applicant's original and supplementary bundles in evidence.

12. The Tribunal drew Counsel's attention to the Upper Tribunal decision of *Hastings Borough Council v Ms Linda Turner* [2021] UKUT 258 (LC) where Martin Rodger QC, Deputy Chamber President, said at paragraph 56:

“In rare cases such as this one, where the appeal is brought by someone who was not the applicant for the licence, the FTT should give directions for the applicant to be joined as a party otherwise the outcome of the appeal risks being unfair”.

13. The Tribunal understands that Mr Naresh Gohil, the licence holder, was sent the “interested persons letter” but did not respond to the Tribunal's invitation to be joined as a party to the proceedings. The Tribunal as a result made no directions naming Mr Gohil as a party. Counsel's view was that the issues in this Appeal could be fairly determined without the participation of Mr Gohil.
14. The Tribunal decided to proceed with the hearing in the absence of the Applicant. The Tribunal is satisfied that it was in the interests of justice do so in accordance with rule 34 of the Tribunal Procedure Rules 2013. The Tribunal took into account the Applicant's representations that she was not seeking an adjournment and wished her appeal to be dealt with in her absence. The Tribunal had regard to the potential prejudice to the Respondent by the admission of the supplementary bundle but decided that this could only be determined by evaluating the parties' evidence. The Tribunal considered that if Mr Gohil had been named as a party his evidence would have minimal impact on the first two issues, and its impact on the third issue would depend upon the relevance of the Applicant's objections to the grant of the HMO licence.

Legislation for HMO licensing

15. Section 254 of the 2004 Act defines an HMO as a building or part of a building which meets either “the standard test” or “the self contained flat test”, or “the converted building test” or an HMO declaration is in force or is a converted block of flats. In this case the property meets the self -contained flat test where the flat is occupied by persons who do not form part of a single household and share one of more basic amenities. The persons occupy the flat as their only or main residence, and pay rent for their occupation.
16. Part 2 of the 2004 Act deals with the licensing of HMOs. By section 61(1) every HMO to which Part 2 applies must be licensed. By section

55(2)(b) an HMO will fall within Part 2 if it is in an area designated by the local housing authority under section 56 as subject to additional licensing.

17. It is an offence, contrary to section 72(1) of the 2004 Act to be a person having control of or managing an HMO which is required to be licensed under Part 2 but which is not so licensed. A person who commits that offence is liable on summary conviction to a fine (section 72(6)). The offence is also a relevant housing offence for the purpose of section 249A of the 2004 Act, under which, as an alternative to prosecution, a person whose conduct amounts to the commission of the offence may be subject to a civil penalty of up to £30,000.
18. Section 63 of the 2004 Act requires that an application for a licence must be made to the local housing authority. By section 64(1), where an application is made the authority must either grant a licence in accordance with section 64(2) or refuse to grant a licence. Section 64(2) provides that the authority may grant a licence if they are satisfied as to the matters mentioned in section 64(3). Those matters include that the house is reasonably suitable for occupation for the number of households specified; no banning order is in force against the lessor of the house or part of it; that the proposed licence holder is both a fit and proper person to be the licence holder, and is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder; that the proposed manager of the house is a fit and proper person to be the manager; and that the proposed management arrangements for the house are otherwise satisfactory.
19. Regulation 7 of The Licensing & Management of HMOs and other houses (Miscellaneous Provisions) (England) Regulations 2006 requires the Applicant for an HMO Licence to complete an application form which complies with the contents set out in schedule 2. An Applicant is required to provide detailed information about the property to be licensed including the number of households, the number and size of habitable rooms and the scale of the amenities, and about any previous convictions, contraventions of any enactment relating to housing, environmental and landlord and tenant law and any findings by a Tribunal or Court against the Applicant that s/he has practised unlawful discriminations on the grounds of sex, colour, race, ethnic of national origin or disability. The Applicant is obliged to notify various persons of the application including any mortgagee and freeholder. The Applicant is required to declare that the information contained in the application is correct to the best of his/her knowledge, and that s/he understands s/he is liable if false or misleading information is given. The Applicant is also required to make a separate declaration that s/he has served the application on stated persons at a given address.
20. Procedures relating to the grant or refusal of HMO licences are found in schedule 5 of the 2004 Act. Before granting a licence the local housing

authority must serve a notice on the applicant for the licence and each “relevant person”, and consider any representations received in response (paragraph 1). The notice must state that the authority are proposing to grant a licence and set out their reasons. Where the authority decides to grant a licence they must serve a copy of the licence and a notice setting out their reasons for deciding to grant it on the applicant and each relevant person (paragraph.7). A “relevant person” is a person who has an estate or interest in the HMO (other than any tenant under a lease with an unexpired term of 3 years or less) (paragraph 13(2)).

21. By paragraph 31(1) of part 3 of schedule 5 of the 2004 Act the applicant for the licence or any relevant person may appeal to the appropriate tribunal against a decision to grant or to refuse to grant a licence. By paragraph 34(2) any appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority were unaware. Under paragraph 34(3) the Tribunal may confirm reverse or vary the decision of the Authority.

The Evidence

22. The Applicant made a witness statement dated 15 March 2024 and a supplementary witness statement dated 16 May 2024. The Applicant also supplied witness statements from Simon Paul Osbon, the leaseholder of Flat 19 and a member and director of Rutland Court Denmark Limited dated 15 March 2024, Michael Agyei, Assistant Property Manager of Kinleigh Folkard & Hayward (KFH), the managing agent for Rutland Court dated 14 March 2024 and Pauline Grace Renfrew, leaseholder of Flat 6 and the Chair of the Board of Directors of Rutland Court Denmark Hill Limited.
23. The Applicant, Mr Osbon and Ms Renfrew stated that:
 - I. They owned a share of the freehold of Denmark Court and that they believed they met definition of relevant person to receive a Notice of Intention to Grant a Licence from the Respondent.
 - II. They were not notified of the Application for an HMO Licence by Mr Gohil and did not receive a Notice of Intention to Grant an HMO Licence from the Respondent.
 - III. If they had been notified of the intention to grant the licence they would have made representations to the Respondent as to why the licence should not be granted. The representations would have included that the use of a flat in Rutland Court as an HMO was not permitted by the terms of the lease. Further the grant of an HMO licence would have more occupants in the flat which would give to rise to increased noise and disturbance, greater wear and tear in common areas, pressure on amenities such as lifts and parking, higher insurance premiums and negative impact on property values.

24. Mr Agyei said that the leaseholder of Flat 28 Rutland Court and the Respondent had not notified KFH of the HMO application. Mr Agyei added the leaseholder had not made any enquiries of KFH regarding fire safety measures in the block and not made any application to make alterations to Flat 28.
25. The Applicant in her supplementary witness statement exhibited extracts from Companies House which showed that that the Registered Office of Rutland Court Denmark Hill Ltd was KFH House, 5 Compton Road, London, England SW19 7QA, and that Kinleigh Limited part of KFH was appointed company secretary on 13 July 2017. The Applicant asserted that the address of KFH House had been the correspondence address of Rutland Court Denmark Hill Ltd for at least seven years.
26. The Applicant also testified in her supplementary witness statement that the Respondent had supplied no evidence as to the method of sending the Notice of Intention to Grant HMO Licence to the address of Rutland Court Denmark Hill Ltd as stated in the proprietorship HM Land Registry (Flat 39) and no evidence of delivery/receipt. According to the Applicant, the leaseholder of Flat 39 had confirmed to her on two occasions that the first and only correspondence he received in relation to the HMO licence was the letter dated 7 November 2023 advising that the licence had been granted.
27. The Respondent relied on the evidence of Ms Carol Bennett who attended the hearing and the witness statement of Mr Donald Cooper.
28. Ms Bennett is employed as the HMO Licensing Team Leader in the Respondent's Property Standards and Enforcement Team (PSE Team). Ms Bennett is a qualified Environmental Health Officer with over 20 years' experience specialising in HMOs. Ms Bennett was not the officer who dealt with Mr Gohil's application which had been allocated to Ms Grace Adesanya, an experienced licensing officer who had left the Respondent's employment on 11 January 2024. Ms Bennett's evidence was based on her review of the data held in respect of Mr Gohil's application, and her own knowledge of the Respondent's procedures for handling applications for HMO licences.
29. Mr Cooper is employed as the Intelligence Support Officer in the PSE Team. Mr Cooper's witness statement dealt with the administrative systems for HMO licensing, and the impact on these systems by the Respondent's migration to the Metastreet system for managing HMO licences. Mr Cooper explained the reasons why the Respondent was not able to supply a hard copy of Mr Gohil's application. Mr Cooper's evidence was not material to the substantive matters raised by the Appeal.
30. Ms Bennett stated that on the 8 September 2021 the Respondent designated for additional licensing the whole of the area in its district pursuant to section 56 of the 2004 Act. The designation applied to all

HMOs that were privately rented and occupied by three or more persons forming two or more households under one or more tenancies or licences unless it was an HMO that is subject to mandatory licensing under section 55(2)(a) of the Act. The designation came into force on 9 December 2021.

31. Ms Bennett said that on 17 March 2022 the Respondent received an application from Mr Gohil to licence 28 Rutland Court which was occupied by three unrelated tenants. Ms Bennett stated in the hearing that the tenancy agreements which accompanied the application had been in existence since 2019 which indicated that the property had been operating as an HMO for some time prior to 9 December 2021 when it would not have required a licence from the Respondent. Ms Bennett did not have with her a copy of the tenancy agreement.
32. Ms Bennett confirmed that the application named Mr Gohil as the holder of the licence and named Aldermore Bank PLC (the mortgagee) and Rutland Court Denmark Hill Ltd (the freeholder) as relevant persons. The application supplied an address and email for the proposed licence holder and mortgagee, and an address for the freeholder which was Flat 39, Rutland Court, Denmark Hill, London, SE5 8ED. In addition, Mr Gohil supplied a copy of the HM Land Registry for the freehold title dated 24 February 2022 which corroborated the name and address of the freeholder given in the application form.
33. Ms Bennett exhibited screen shots of the Application displaying the information provided about “Property Details”, “Owner Details”, “Electrical and Gas Safety”, “Emergency Lighting”, “Tenancy Details”, “Property Amenities”, “Fire Safety”, “Heating and Insulation”, and “Doors and Windows”.
34. Ms Bennett said that the Application contained information about the fitness of Mr Gohil to hold a licence and included a plan of the property.
35. Ms Bennett stated that Mr Gohil completed the required declarations about the correctness of the information contained in the application and about notifying the interested persons of the Application.
36. Ms Bennett testified that she had reviewed the data held in respect of Mr Gohil’s application and confirmed that all the necessary checks had been marked as satisfactory on the licensing portal to support a conclusion that the property was deemed suitable for use by three people living as three households. Ms Bennett said this conclusion enabled the licensing officer to notify each relevant person of the Respondent’s proposal to grant a licence.
37. Ms Bennett stated that on the 17 October 2023 the Respondent sent the Notice of Intention to grant an HMO licence together with a copy of the proposed licence to Mr Gohil, Aldermore Bank PLC (the mortgagee) and Rutland Court Denmark Hill Ltd (the freeholder). The Notice was

emailed to Mr Gohil and Aldermore Bank PLC and posted to Rutland Court Denmark Hill Ltd at the address given in the Application. Mr Gohil had provided only a postal address for the freeholder. Ms Bennett exhibited a copy of the Notice dated 17 October 2023 sent to Rutland Court Denmark Hill Ltd. Ms Bennett acknowledged that there was no record of the posting to Rutland Court Denmark Hill Limited on the Respondent's H-POD mailing system for 17 October 2023. Ms Bennett could not explain why there was no record of posting but Ms Bennett was adamant that the Notice had been posted to the freeholder.

38. Ms Bennett advised that the Respondent received no representations to the draft licence. Further the Respondent was satisfied that the relevant statutory requirements had been met and issued an HMO licence to Mr Gohil for 28 Rutland Court for a period of five years. The licence was subject to standard conditions which ensured that the property was of appropriate standard for the number of occupants, addressed anti-social behaviour and prevented overcrowding. The Respondent also imposed additional conditions to the licence to secure compliance with the appropriate fire safety standards for an HMO on a single storey. The additional works included the provision of a fire blanket to the communal kitchen, provision of a Carbon monoxide alarm, hardwired smoke detectors within the hallway and living room, a heat detector within the kitchen and the installation of 30-minute fire resistant doors to the living room, kitchen and the bedrooms. Mr Gohil in his capacity of leaseholder was responsible for completion of the works within three months. Ms Bennett asserted that the licence imposed no conditions on the freeholder to undertake works to the property.
39. Ms Bennett did not accept that the Applicant in her capacity as leaseholder with a share of the freehold was a relevant person for the purposes of making an appeal and or receiving Notices of the Proposed Licence. Ms Bennett pointed out that the Respondent was entitled to rely on the information provided by Mr Gohil on the identity and contact details of the freeholder and mortgagee.
40. Ms Bennett considered that the Applicant's representations about potential breaches of the lease by Mr Gohil using the property as an HMO was not a relevant consideration when the Respondent exercised its powers under the statutory framework for HMO licensing. In Ms Bennett's view, potential breaches of the lease were a private law matter between the freeholder and the leaseholder concerned. Further the grant of an HMO licence did not prevent the freeholder from taking action against the leaseholder for breach of the covenants under the lease.
41. Ms Bennett was not convinced by the concerns expressed by the Applicant and her witnesses about the potential adverse effects of a licensed HMO in respect of noise, anti-social behaviour, and increased use of scarce resources such as parking and lifts. Ms Bennett pointed out that the same concerns could be levelled at a family comprising three adults. Also Ms Bennett stated that the property had been operating as

an HMO for sometime prior to the introduction of Additional Licensing and the Respondent was not aware of any reports of anti-social behaviour in relation to this property. Finally Ms Bennett indicated that the licensing of the property provided greater controls over the management and operation of the property as an HMO including conditions relating to anti-social behaviour, and if Mr Gohil breached the conditions of the HMO licence he would be liable to prosecution for a criminal offence.

Issue One: Whether the Applicant is a relevant person for the purpose of making an appeal under paragraph 31(1) part 3 schedule 5 of the 2004 Act?,

42. Paragraph 31(1) of part 3 schedule 5 of the 2004 Act enables the Applicant or any relevant person to appeal to the Tribunal against the Respondent's decision to grant a licence.
43. Paragraph 36(2) defines a relevant person as any person having an estate or interest in the HMO or a person managing or having control of that HMO. Paragraph 36(3) excludes the Applicant for the licence and any tenant under lease with an unexpired term of three years or less from being a relevant person.
44. In this Appeal the persons who have an estate or interest in the HMO are Rutland Court Denmark Hill Limited, the freeholder, and Mr Gohil, the long leaseholder. Mr Gohil is the Applicant to the licence and so is excluded from the definition of relevant person. Mr Gohil has a right of appeal in his capacity of Applicant.
45. The person making the Appeal in this case is Ms Joanna Kate Swaney, the leaseholder of Flat 43 Rutland Court. The Appeal has not been made in the name of Rutland Court Denmark Hill Limited, the freeholder, with Ms Swaney as the Company's representative in her capacity as director of the Company.
46. Ms Swaney relied on the fact that she owned one share of the freeholder company for her assertion that she met the definition of relevant person for the purpose of making an appeal against the grant of the licence. The Tribunal notes that all leaseholders at Rutland Court owned one share in the freeholder company. The Tribunal is satisfied that a leaseholder who owns one share of the freeholder company other than the leaseholder of Flat 28 is not a person who has an estate or interest in Flat 28, the HMO which is the subject of this Appeal.
47. The Tribunal finds that Ms Swaney is making this Appeal in her individual capacity as a leaseholder and shareholder of the freeholder company. This is supported by the fact that the Appeal is in her name and not of the freeholder company, and the various assertions made in her submissions and witness statements. At paragraph 8 of her submissions Ms Swaney stated that "I have lodged the appeal and have standing to do so, but as an individual am not able to make decisions or

make representations that have consequences for other leaseholders”. At paragraph 12 of the supplementary witness statement Ms Swaney stated that “The respondent has disputed that I am a relevant person. I am a shareholder in Rutland Court Denmark Hill Ltd and I maintain that I am a relevant person and therefore have standing to bring this appeal”. Ms Swaney studiously avoids in her submissions and witness statements holding herself out as a director speaking for the freeholder company.

48. **The Tribunal decides that Ms Swaney in the capacity of leaseholder and shareholder of the freeholder company was not a relevant person for making an appeal against the Respondent’s decision to grant an HMO licence for Flat 28.**
49. The Tribunal has decided to determine the other two issues identified if in the event it is wrong on its determination that Ms Swaney was not a relevant person for making the Appeal.

Issue Two: Whether the Respondent complied with the requirements for service of a notice proposing to grant the licence in accordance with paragraphs 1-4 part 1 schedule 5 of the 2004 Act?

50. Paragraphs 1-4 require the local housing authority to serve a Notice of its intention to grant an HMO licence together with a copy of the proposed licence on the applicant for the licence and each relevant person, and to consider any representations made in accordance with the Notice. The Notice must state the reasons for granting the licence, the main terms of the licence, and the end of the consultation period.
51. In this case the Respondent sent a copy of the Notice which complied with the statutory requirements to Mr Gohil, the Applicant for the Licence, Aldermore Bank PLC (the mortgagee) and Rutland Court Denmark Hill Ltd (the freeholder). The Notice was emailed to Mr Gohil and Aldermore PLC. The Notice was posted to Rutland Court Denmark Hill Ltd at the address Flat 39, Rutland Court, Denmark Hill, London, SE5 8ED which was the address given in the Application for an HMO Licence and corresponded with the address on the HM Land Registry Proprietorship register for the freehold title of Rutland Court.
52. The Applicant stated that the Respondent failed to comply with the statutory requirements of giving notice in three respects, namely, (1) the notice was not served on all relevant persons, (2) the notice to the freeholder was sent to the wrong address and the Respondent should have made reasonable enquiries to ascertain the correct address, and (3) the notice to the freeholder was not served on the address given in the application for an HMO licence and in the proprietorship register.
53. The Applicant contended that as a leaseholder who was also a shareholder of the freeholder company she was a relevant person for

the purpose of receiving a Notice proposing to grant a licence. Further the Respondent had not served a Notice on the Applicant and, therefore, had not complied with the statutory requirements for service of the notice. Leaving aside the Tribunal's earlier determination that a leaseholder with a shareholding in the freeholder company is not a person who has an estate or interest in the HMO, there is an additional reason why the Applicant's contention fails.

54. The definition of relevant person for the service of a Notice is found in paragraph 13(2) and differs from the definition of relevant person for the purposes of appeal under paragraph 36(2). Under paragraph 13(2) the definition of relevant person is qualified by the phrase "*who to the knowledge of the local housing authority is*" a person having an estate or interest in the HMO. In this case the Respondent was entitled to rely on the information given in the Application form by Mr Gohil about the identity of the relevant persons. Mr Gohil supplied details of the mortgagee and the freeholder which in the case of the freeholder was corroborated by entries in the HM Land Registry. Mr Gohil did not put forward the Applicant or any other leaseholder at Rutland Court as relevant persons. The Tribunal is satisfied that the legislation does not oblige the Respondent to make further enquiries about the identity of relevant persons. Thus the Respondent was not required to serve the Applicant with the Notice because at the time of service of the Notice the Respondent only knew about the mortgagee and the freeholder company having an estate or interest in the HMO.
55. The second point of contention concerns whether the Respondent posted the Notice to the correct address for the freeholder company. The Applicant stated that the address of Flat 39, Rutland Court, Denmark Hill, London, SE5 8ED had not been the registered address for the freeholder company for a considerable number of years, and that if the Respondent had made enquiries of the Companies House it would have discovered the registered address to be Kfh House, 5 Compton Road, London, England, SW19 7QA.
56. In this regard the Tribunal refers to the Upper Tribunal decision in *Newcastle City Council v Mahmoud Abdallah* [2024] UKUT 140 (LC) which reviewed the legislative requirements for service of notices by Local Authorities.
57. The Tribunal highlights the following parts of the decision which are relevant to the second point of contention:

"Section 233 of the Local Government Act 1972 ("the 1972 Act") makes special provisions for the service of documents by local authorities. These are less demanding than provisions applicable to documents served by other parties, including section 196 of the Law of Property Act 1925 ("the 1925 Act") and section 7 of the Interpretation Act 1978 (paragraph 17)".

"Section 233(2), 1972 Act permits service by a local authority of any

document required or authorised by or under any enactment by delivering it to the person to be served, or by leaving it or sending it to them by post, at their “proper address” (paragraph 48)”

“Section 233(4) (4) For the purposes of this section and of section 26 of the Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;”
(An insertion by this Tribunal)

“*Oldham MBC v Tanna* [2017] EWCA Civ 50 concerned the service by a local authority of a notice under section 215 of the Town and Country Planning Act 1990 requiring steps to be taken to improve the condition of a derelict building. The authority served the owner at the address given for them in the proprietorship register for the land, which was an address at which the owner no longer lived. At [28], Lewison LJ explained: “I would hold that as a general rule, unless there is a statutory requirement to the contrary, in a case in which (i) a person (in this case the local planning authority rather than the council taken as a whole) wishes to serve notice relating to a particular property on the owner of that property, and (ii) title to that property is registered at HM Land Registry, that person's obligation to make reasonable inquiries goes no further than to search the proprietorship register to ascertain the address of the registered proprietor. It is the responsibility of the registered proprietor to keep his address up to date. If the person serving the notice has actually been given a more recent address than that shown in the proprietorship register as the address or place of abode of the intended recipient of the notice, then notice should be served at that address also.” (paragraphs 51 & 52)”

“I therefore agree with Miss Salmon’s submission that knowledge held by the council tax department is not to be imputed to the housing department when considering what was Mr Abdallah’s last known address. The licensing team satisfied the requirement of due diligence by looking no further than the licence application, which gave the applicant’s address at the time he made the application, and at the licence, which required that he notify the licensing team (specifically) of any change of circumstances, including a change of address. The Council was entitled to assume, in the absence of any such notification received by the licensing team, that Mr Abdallah still lived at 6 Primrose Lane (paragraph 57)”.

- 58. The Upper Tribunal decision in *Newcastle City Council* was primarily concerned with the interpretation of last known address. However, in this case section 233(4) of the 1972 Act provides that the proper address for a company it shall be the address of the registered office or principal office of that company. The issue, therefore, is whether the Respondent should have made enquiries of Companies House to check the address given on the application form was the correct address for Rutland Court Denmark Hill Ltd (the freeholder).

59. The Tribunal takes the view that the Respondent met the requirement of due diligence by checking the details of the address given for the freeholder Company against the address in proprietorship register held by HM Land Registry. In the Tribunal's view it was not necessary for the Respondent to make further enquiries of Companies House to confirm the accuracy of the information regarding the address of the registered office. In this respect the Tribunal is mindful of the comments of Lewison LJ in "*Oldham MBC v Tanna* [2017] EWCA Civ 50: "It was the responsibility of the registered proprietor to keep his address up to date". The Tribunal is, therefore, satisfied that the Respondent's service of the notice on Flat 39, Rutland Court, Denmark Hill, London, SE5 8ED a former registered address of Rutland Court, Denmark Hill Ltd complied with section 233 of the 1972 Act.
60. The third point of contention is whether the Notice was sent to the freeholder company at Flat 39, Rutland Court, Denmark Hill, London SE5 8ED. The Applicant refers to conversations recorded in her witness statement with the owner of Flat 39 who said that the only document he received in relation to the HMO licence was the final licence. There was however, no witness statement to this effect from the owner of Flat 39. The Respondent relies on the existence of Notice addressed to the freeholder company at Flat 39 which is exhibited in its bundle which creates a presumption that the Notice was sent. The Respondent, however, is unable to find a record of the posting to Rutland Court Denmark Hill Limited on its H-POD mailing system for 17 October 2023. Despite the absence of the record of postage, Ms Bennett was adamant that the Notice had been sent to Flat 39. The Tribunal on balance prefers Ms Bennett's evidence which was scrutinised at the hearing to the hearsay comments of the owner of Flat 39. The Tribunal, therefore, decides that the Notice was sent to the freehold company at Flat 39 Rutland Court, Denmark Hill, London SE5 8ED.
61. **The Tribunal determines that the Respondent complied with the requirements as set out in paragraphs 1-4 part 1 schedule 5 of the 2004 Act.**

Issue Three: Whether the Tribunal should give weight to the Applicant's representations against the grant of the HMO licence when determining the Appeal?

62. The Tribunal is determining Issue Three in the alternative if its decision about the Applicant not being a relevant person is wrong.
63. Under paragraph 34 of schedule 5 an appeal before the Tribunal is to be by way of rehearing but the Tribunal may determine the Appeal by having regard to matters of which the Local Housing Authority were unaware. The Tribunal may confirm, reverse or vary the decision of the Authority.
64. The role of the Tribunal on a rehearing is to make its own mind on the

basis of the material presented to it and give proper weight to the decision of the Authority. Its task is not to conduct a review of the authority's decision making. On an appeal by way of re-hearing from a decision of a Local Housing authority it falls to the Applicant to lead evidence and to establish a basis on which the Tribunal can be satisfied that a different outcome is justified.

65. The Applicant's case comprised two strands: process and substance. The Applicant in her supplementary bundle submitted that the loss of the opportunity to make representations amounted to a material procedural irregularity which could only be remedied by the Tribunal by setting aside the decision of the Respondent to grant an HMO licence and requiring the Respondent to start the process again. If the Tribunal followed this route it would amount to a review of the Respondent's decision-making process which is not within the Tribunal's remit when hearing appeals against Local Housing Authority's decisions to grant or refuse an HMO licence. Any potential unfairness to an Applicant who has been denied the right to make representations is catered for by the Tribunal's power when determining an Appeal to have regard to matters of which the Local Housing Authority were unaware.
66. The Applicant's principal submission on substance was that the Respondent failed to have regard to the terms of the lease for Flat 28. According to the Applicant, the use of 28 Rutland Court as an HMO is not permitted by the lease which could have serious consequences for the leaseholder including forfeiture of the lease.
67. The Tribunal agrees with the Respondent that a potential breach of the Mr Gohil's lease for 28 Rutland Court by using it as an HMO is a private law matter between the freeholder company and Mr Gohil. It is not a matter which the Respondent or the Tribunal is required to take account of under Section 64(3) when considering the grant of an HMO licence. The fact that there is an HMO licence in force for Flat 28 does not prevent the freeholder company from taking action against Mr Gohil for potential breaches of the lease.
68. The Applicant and her witnesses said they would have made representations that the grant of an HMO with its number of occupants would give rise to increased noise and disturbance, greater wear and tear in common areas, pressure on amenities such as lifts and parking, higher insurance premiums and have a negative impact on property values.
69. The Tribunal observes that the Applicant provided no evidence to support her assertions which was perhaps surprising because it would appear that the Flat 28 was operating as an HMO for some time prior to the introduction of additional licensing. The Tribunal is satisfied that the adverse effects identified by the Applicant could equally apply to a flat occupied by a family of three adults. The adverse effects are not

peculiar to an HMO. Further the Tribunal considers that the Applicant has overlooked the fact that the grant of an HMO licence provides greater controls over the management and operation of the flat including a limit on the number of occupants and conditions relating to anti-social behaviour. If Mr Gohil breached the conditions of the HMO licence he would be committing an offence under section 72 of the 2004.

70. The Tribunal finds that the Respondent paid due regard to the matters identified in section 64(3) of the 2004 Act and that its proposal to grant an HMO licence was reasonably arrived at on the information before it. Further the Respondent sent a Notice of its intention to grant a licence to the Mr Gohil, the proposed licence holder, and the relevant persons identified in the Application for an HMO Licence. The Respondent received no representations and as a result confirmed the grant of the HMO Licence. The Tribunal has held a rehearing on Appeal of the Respondent's decision to grant a licence and has had regard to matters of which the Respondent was unaware at the time it granted the licence. The Tribunal holds that the Applicant has failed to establish a basis on which the Tribunal can be satisfied that a different outcome is justified.

Decision

71. **The Tribunal confirms the decision of the Respondent to grant Mr Naresh Gohil a HMO Licence at 28 Rutland Court, Denmark Hill, London SE5 8EB.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.