FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HSL/2025/0001**
Property	**:**	**178 Brettenham Road, London E17 5AY**
Applicant	**:**	**Mr Finbarr Fealy**
Representative	**:**	**Mr Joe Henry**
Respondent	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Dr Alex Williams, counsel**
Type of application	**:**	**Appeal against a refusal to grant a HMO licence – schedule 5, para. 31(1) of the Housing Act 2024**
Tribunal members	**:**	**Judge Tagliavini** **Mr S Wheeler MCIEH, CEnvH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing **Date of decision**	**:**	**18 September 2025** **5 October 2025**

DECISION

The tribunal's decision

(1) The tribunal refuses the applicant's appeal.

The application

1. This is an application made pursuant to Schedule 5, para. 32(1) of the Housing Act 2004 seeking to appeal against the respondent's refusal to grant a HMO licence for the subject property at **178 Brettenham Road, London E17 5AY** ('the property').

The background

2. In the application form, the applicant stated:

> *An application for a House in Multiple Occupation (HMO) licence was submitted for the property known as 178, Brettenham Road, London, E17 5AY "the house". On 02 January 2025, the council decided that it would refuse to grant the licence.*
>
> *The reason for the refusal was as follows:*
>
> *"A previous one year Additional HMO licence was granted on 10 May 2022 due to a breach of planning regulations, the property was converted from a C3 dwelling house to a C4 HMO without the necessary planning permission. The licence was granted for the shorter term of 1 year, to allow the owner/landlord to legally rent the property whilst taking steps to regularise the use of the address. The notice of decision and covering letter which accompanied the Licence advised the landlord that the council would expect the owner/landlord to take steps to regularise the use of the address. This could have included, if necessary, obtaining possession of the property through the service of a section 21notices (Housing Act 1988), or by applying to the Council's Planning Department for a Certificate of Lawfulness to legalise the change of use from a C3 Class dwelling house to a C4 Class HMO. ln circumstances where no steps to regularise the use of the dwelling have been taken it is Council policy not to grant another licence. A search of the Council's planning database has confirmed that no application for a change of use or established use has been made and so the property is still in use illegally as an HMO."*

The grounds for appeal

3. The applicant's representative stated on behalf of the applicant in the application the following:

> *I am a planning expert (I have over 30 years of planning experience and I was previously Director of Planning at Barnet Council) therefore, I fully understand all permitted development rights and how Articles 4 directions work.*
>
> *In the case of this property the HMO use commenced before the Article 4 Direction was imposed on16th September 2014 meaning the change of use to a HMO was lawful at the time.*
>
> *The HMO team claim the use as a HMO is "illegal". This is not correct. Even if the HMO did require planning permission the use would not be illegal but unauthorised. The use of the property as a HMO can only become illegal if an effective planning enforcement notice is in place.*
>
> *The Council's HMO team have stated that the property requires a certificate of lawfulness to prove it is lawfully a HMO. I have continually advised the Council that there is no legal requirement to apply for planning permission or a certificate of lawfulness. I advised the HMO team to seek advice from their planning colleagues if they had doubts about the advice I gave but they did not respond to this point.*
>
> *The HMO team's argument is that the planning lawful use of the property is not a HMO, but they are not experts on planning law. Also, the Council's planning enforcement team are aware of the use of the HMO for many years yet they have not taken any enforcement action against the use, indicative that they accept the use is lawful.*
>
> *There is no requirement in the Housing Act requiring either planning permission or a certificate of lawfulness to demonstrate a properties use as a HMO is lawful under the Planning Act before a HMO licence can be issued.*

My stated position is evidenced by my knowledge that other Council's do not require a planning permission or certificate of lawfulness for a HMO before they issue a HMO licence. This is because any issues of planning should only be dealt with by the local planning authority and not the Council's licensing department.

The hearing

4. The applicant did not attend the hearing in person and was represented by Mr Joe Henry (planning consultant). The respondent was represented by Mr Alex Williams of counsel. In addition the tribunal was provided with a hearing bundle of 160 digital pages by the respondent. The applicant did not provide a hearing bundle despite the tribunal's clear directions dated 3 April 2025. Consequently, the applicant sought to rely on the application form and the accompanying documents as well as a Reply of 4 digital pages to the respondent's bundle.

5. Section 71 HA 2004 gives effect to Schedule 5, on appeals. 25. Paragraph 31(1)(a) of Schedule 5 provides that the applicant for an HMO licence may appeal to the Tribunal against any decision to refuse the licence. Paragraph 34(2) provides that an appeal is to be by way of a re-hearing but may be determined having regard to matters of which the Council was unaware. The tribunal may confirm, reverse or vary the Council's decision (para 34(3)) and may direct the Council to grant a licence to the Appellant on such terms as the Tribunal may direct (para 34(4).

6. At the re-hearing of the decision to refuse to grant a licence the respondent relied on its bundle of documents and the oral evidence of Mr Jon Fine who spoke to his witness statement dated 9 June 2025.

The issues

7. The substantive issues between the parties were one of fact, as the respondent accepted that if the property had been in use before the coming into force before the Article 4 Direction took effect on 16 September 2014, planning permission to change the use of a small 'C4' HMO without seeking planning permission for that change was not required. Consequently, the application for a HMO licence may have been successful.

8. The respondent asserted that:

For several years – although it is wholly unclear from when – the Appellant has used the Property as an HMO but without seeking planning permission for the change of use to HMO from residential. As early as 7 February 2018, the Council's licensing

team invited the Appellant to apply for planning permission for the HMO use: see Exhibit JF6 to Fine WS [11]. On 10 September 2018, the Appellant completed a Council questionnaire in which he stated that he was "not sure if the property is an HMO because the property is only occupied by 3 persons": see Exhibit JF7 [45]. On 11 January 2019, the Applicant told the Council's licensing team that he had "put the property up for sale" and that some of the tenants had moved out: Exhibit JF9 [54].

On 11 July 2019, the Council designated areas within its ward for additional licensing [21] under s.56 of the Housing Act 2004 ("HA 2004"). The designation came into force on 1 April 2020.

. *…*

On 10 May 2022, the Council formally granted the Appellant an HMO licence in respect of the Property, for the reduced period of 1 year [91].

It was not until 16 July 2024, some 14 months after the expiry of the licence granted in 2022, that the Appellant applied for a subsequent HMO licence [106]. On 24 October 2024, the Council proposed to refuse that licence on the basis that the Appellant had not regularised the planning position since the grant of the previous licence in 2022 [125]. In subsequent correspondence with the Appellant's agent on 5 November 2024, the Council indicated that the issue was the lack of any record confirming that the HMO use began before the Article 4 Direction came into force: see Exhibit JF20 [130]. The Council was clear that, had such a record existed, it would not require planning permission for the HMO use and would grant a full-term licence.

Despite the correspondence about the planning issue stretching back several years, the Appellant has never provided any evidence as to when the HMO use began.

9. The respondent asserted that the burden of proof to establish us of the property as an HMO was on the applicant. In the absence of this evidence, the respondent asserted the applicant's change of use of the property to a HMO was unauthorised and requires regularising before a full-term licence can be granted.

10. The respondent also submitted that:

In extreme circumstances, failing to take enforcement action within the relevant period (usually 10 years, for the material change of use of a building: s.171B TCPA) renders the development immune from enforcement. But again, there can be

no credible claim to immunity without the Appellant providing evidence as to when the change of use took place. In any event the proper forum for testing any immunity claim would be through the submission of an LDC application, not simply by raising it in the Tribunal as part of a licensing appeal. The Appellant appears to accept this, in the appeal form: "any issues of planning should only be dealt with by the local planning authority."

11. No written or oral evidence was given by or on behalf of the applicant and no documentary evidence was provided to demonstrate when the letting of the property as an HMO first began or the continuous, uninterrupted use as a HMO. Mr Henry accepted that the applicant had not provided any evidence to the tribunal to establish when the property was first used as an HMO or for what periods this had continued. In the event the use of an HMO was proved by the applicant a 4 year (exemption) applied rather than the 10 years claimed by the respondent. In any event this was not an issue for the tribunal in this application.

The tribunal's reasons

12. In considering its decision the tribunal had regard to s.64 of the Housing Act 2004 which states:

(1)Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—

(a)grant a licence in accordance with subsection (2), or

(b)refuse to grant a licence.

13. The tribunal was satisfied by the respondent's written and oral evidence that it had carefully considered the applicant's application for a HMO license for the subject property and in the absence of planning permission or evidence of continuous use as a HMO prior to 16 September 2014, had reached a decision to refuse to grant a licence that was both reasonable and supported by the documentary evidence

14. The tribunal finds the applicant either misunderstood or chose to ignore the respondent's requests that he provide evidence of his use of this property as an HMO. This 'misunderstanding' continued at the hearing and appeared to the tribunal to take Mr Henry somewhat by surprise despite the respondent's Statement of Case making it clear what the disputed issues were.

15. The tribunal accepts the respondent's submission that it is for the applicant to establish the applicant's use of the property as this

information is within his knowledge and control. The tribunal also accepts the respondent's submission that the grant of a temporary licence allowing the applicant to 'regularise' the position is not tantamount to surrendering the right to refuse to grant a full-term licence.

16. In conclusion, the tribunal affirms the respondent's decision to refuse the grant of a licence and refuses the appeal.

Name: Judge Tagliavini **Date:** 5 October 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).