FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/18UC/HMD/2026/0001
Property	**:**	71 Holloway Street, Exeter, EX2 4JD
Applicant	**:**	Paul Heaton
Representative	**:**	None
Respondent	**:**	Exeter City Council
Representative	**:**	Mr B Merchant
Type of Application	**:**	Appeal against a Declaration of House in Multiple Occupation (HMO) – Section 255(9) Housing Act 2004
Tribunal members	**:**	District Judge Pain, sitting as a Judge of the First-tier Tribunal (Property Chamber) Mr C Davies, FRICS
Date of Hearing	**:**	24 September 2026
Date of Decision	**:**	2 October 2026

DECISION

© CROWN COPYRIGHT

Summary of the Decision

1. **The Tribunal reverses the decision of the Respondent to serve an HMO declaration in respect of the Applicant's property, pursuant to section 255 of the Housing Act 2004, and revokes the said declaration, made on 14 January 2026.**

2. **The Tribunal orders the Respondent to pay the Applicant £341 in respect of the application and hearing fees pursuant to rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 within 28 days.**

3. **The Tribunal gives the Respondent 14 days from the date of this decision to apply to set aside paragraph 2 above.**

The Application

4. By an application received on 4 February 2026, the Applicant seeks to appeal against the Respondent's decision to serve an HMO declaration, dated 14 January 2026, pursuant to section 255 of the Housing Act 2004 ('the 2004 Act'), in respect of the Applicant's property, known as 71 Holloway Street, Exeter, EX2 4JD ('the Property').

5. Although the HMO declaration was issued against the Applicant and Mrs Caroline Heaton, the latter has played no part in these proceedings.

Background

6. The Property is a four-storey building that contains dormitories and larger family rooms over the upper three floors, and a kitchen and other communal facilities on the ground floor. The Property accommodates a maximum of 42 guests.

7. The Property has been operated by Globe Backpackers Limited, under Class C1 permitted use (that is, hotels, boarding or guest houses, where no significant element of care is provided), since June 1999. The business employs two full-time staff and three part-time staff.

8. The Respondent's decision to serve an HMO declaration in respect of the Property followed an inspection made by Mr Merchant, an Environment Health Officer employed by the Respondent, on 9 December 2025, including his discussion with the Applicant about whether any of the people staying at the Property were "permanent residents".

9. On handing the Applicant a copy of the HMO declaration, Mr Merchant explained to the Applicant that, "as there may potentially be permanent residents… the hostel could be deemed [to be] and HMO," and that if the Applicant wanted to disagree, then he could appeal to the Tribunal.

10. The grounds of the application, set out in section 15 of the application form is as follows:

> Property is a hostel, where rooms are rented out on a daily/weekly basis with no tenancy agreements, where all residents have different permanat [sic.] residence.
>
> Some residence [sic.] have a contious [sic.] stay depending on circumstances, however they have their own homes.

11. Mr Merchant's witness statement, filed on behalf of the Respondent, makes clear that the application form was completed with the assistance of the Respondent, by "prepopulating some of the sections for him," and checking the form after its completion by the Applicant and before its submission to the Tribunal.

Directions

12. Directions were given by the Tribunal on 15 July 2026 towards a hearing to be conducted remotely by video on 24 September 2026 ('the Directions').

13. In his witness statement, Mr Merchant states that the Respondent provided the Applicant with further help in understanding the Directions. And while the Directions provided for the Applicant to prepare a bundle of relevant documents, that bundle was in fact put together by the Respondent. Mr Merchant explained the Respondent's assistance as follows:

> We were looking for a decision on if the property was a HMO, where we have a very good working relationship with [the Applicant] and wish for a peaceful resolution and continue working with him and his business, however, we do have to follow the rules and define if his business is an HMO or not.

14. No inspection of the Property has taken place, neither party having made an application for the Tribunal to do so, as provided for in paragraph 16 of the Directions.

The Law

15. Section 254(1) of the 2004 Act sets out five circumstances in which a building or part of a building will be a house in multiple occupation ('an HMO') for the purposes of that Act. The first three of those circumstances are that either the 'standard test', the 'self-contained flat test', or the 'converted building test' are met (sections 254(1)(a) to (c) of the 2004 Act, respectively). The fourth of those circumstances is where a notice served by the local housing authority pursuant to section 255 of the 2004 Act (an "HMO declaration") is in force in respect of the building or part of a building (section 254(1)(d)).

16. The 'standard test' set out in section 254(2) of the 2004 is as follows:

> 254(2) A building or part of a building will satisfy 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 (see section 258);
> (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 (see section 259);
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
> (e) rents are payable or other consideration is to be provided in respect of at least one of those 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.

17. As to section 254(2)(c) of the 2004 Act, in *Williams v Horsham District Council* [2004] EWCA Civ 39 (in a passage quoted at [33] in *Opara v Olasemo* [2020] UKUT 96 (LC)) the Court of Appeal said that "a person's main residence will generally be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home."

18. In *Opara* the Upper Tribunal also noted (at [31]), in the context of establishing beyond reasonable doubt that an offence under section 72(1) of the 2004 Act had been committed, that:

> In the absence of co-operation from other residents, cast-iron certainty is not going to be achievable on this point because of the difficulty of proving a negative… This element of the offence must to some extent be a matter of inference from the circumstances.

However, in *Mitterhuber v Hernandez* [2025] UKUT 194 (LC), having referred to the above passage from *Opara* also stated: "But there do have to be some circumstances from which an inference can be made."

19. An HMO declaration can only be made where section 255(2) of the 2004 Act applies. In essence, this requires that one of the three circumstances set out in sections 254(1)(a) to (c) of the 2004 Act must apply save that (in the case of the standard test) the 'sole use condition' set out in section 254(2)(d) of the 2004 Act is replaced by the 'significant use condition':

> 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.

As such, it is not necessary for the purposes of making an HMO declaration for the occupation set out in sections 254(2)(a) to (c) of the 2004 Act to be the sole use of the building or part of the building; it need only be a significant use of the building or part of the building.

20. Section 255(9) of the 2004 Act provides that any relevant person (defined in section 255(12) of the 2004 Act as including a person with an estate or interest in the building or part of the building) may appeal to the Tribunal against the decision of the local housing authority to serve an HMO declaration. The appeal must be made within 28 days beginning with the date of the authority's decision.

21. Section 255(10) provides that an appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority were unaware. In *Herefordshire Council v Martin Rohde* [2016] UKUT 39 the Upper Tribunal noted that the Tribunal must:

> … look at the evidence, but it can also take into account new evidence of which the local authority was unaware… So it is looking at matters afresh; but what it is looking at is the local authority's decision.

22. Section 260 of the 2004 Act provides that "where a question arises in any proceedings" about whether either the 'sole use condition' or the 'significant use condition' is met, "it shall be presumed, for the purposes of the proceedings, that the condition is met unless the contrary is shown."

The hearing

23. The hearing took place remotely by video on 24 September 2026. The Applicant attended in person, and the Respondent was represented by Mr Merchant.

24. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle in this Decision, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page-numbering.

25. The hearing proceeded by hearing the oral evidence of the Applicant and of Mr Merchant on behalf of the Respondent. Each of the witnesses was also asked questions by the Tribunal. The Tribunal also heard the oral submissions of the Applicants and from Mr Merchant on behalf of the Respondent.

26. This Decision seeks to focus on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received.

Assessment of witnesses

27. The Applicant provided evidence about the Property and the business since its opening in 1999. He sketched changes in the type of persons making use of the Business's services over that time. It was clear to the Tribunal that the focus of his time and energy was on the operation of the business and catering for the demand for the accommodation that it was able to provide. He was less focused on more technical questions presented by the 2004 Act and its regulation of HMOs. As he saw it, the Property was not an HMO; and he was clear that he did not want it to be an HMO.

28. The Tribunal noted, however, a clear difference between the Applicant's grounds of appeal, in which he contends that any longer-term resident also has an alternative residence, and his oral evidence, in which he stated that he did not know whether these residents had another home or not. Nevertheless, given that the effect of the latter evidence would be to make it more difficult for the Applicant to discharge the burden of rebutting the statutory presumption contained in section 260 of the 2004, the Tribunal concluded that it should place weight on the Applicant's account in oral evidence about his limited knowledge of his customer's circumstances.

29. The evidence given by Mr Merchant, on behalf of the Respondent, was based on his inspection and conversation with the Applicant in December 2025, and his discussion with his manager on his return. And while, as noted below, his evidence given in support of the Respondent's decision is limited, the Tribunal accepts that he was seeking to give an honest account of the evidence gathered by him during his inspection and in conversations with the Applicant.

The issues

30. At the beginning of the hearing, the Tribunal sought to clarify the Respondent's position on the Applicant's appeal. When asked whether the Respondent was inviting the Tribunal to uphold its decision that the Property was an HMO, Mr Merchant initially said: "to a degree." He referred to there being 6 long term residents at the Property but there being "no evidence that the Property was their only base." However, when expressly asked by the Tribunal, Mr Merchant confirmed that the Respondent was opposing the Applicant's appeal.

31. It is common ground that sections 254(2)(a), (b), (e), and (f) of the 2004 Act are met in this case. The issues that remain are:

    (1) whether section 254(2)(c) of the 2004 Act is met, and
    (2) whether the 'significant use condition' set out in section 255(2) of the 2004 Act is satisfied.

    The Tribunal also notes that, in addressing the first of those issues, the Respondent does not contend that any person is to be treated as

occupying the living accommodation as their only or main residence by virtue of section 259 of the 2004 Act.

Determination

32. As set out above, an HMO declaration can only be made if the standard test set out in section 254(2) of the 2004 Act is met, save that it is not necessary to meet the 'sole use condition' set out in section 254(2)(d) provided that the 'significant use condition' is satisfied. And in determining whether the 'significant use condition' is satisfied in these proceedings, there is a presumption that it is met, unless the contrary is shown: section 260 of the 2004 Act.

33. The effect of these provisions is therefore that it is for the Respondent to show, on the balance of probabilities, that – at the time of its determination (but also having regard to matters of which the Respondent was unaware) – section 254(2)(c) was met and that, thereafter, it is for the Applicant to rebut the presumption that the 'significant use condition' was also met.

34. Put simply, it is for the Respondent to show that the living accommodation was occupied by persons as their only or main residence and, if it does so, it is for the Applicant to show that such use did not constitute a significant use of the living accommodation.

Issue 1: has the Respondent shown that living accommodation at the Property is occupied by persons as their only or main residence for the purposes of section 254(2)(c) of the 2004 Act?

35. The Respondent's decision to issue an HMO declaration in respect of the Property was based on the conversation between the Applicant and Mr Merchant that took place at the Property on 9 December 2025. In his written evidence, Mr Merchant records that:

> At the end of the inspection, we discussed what type of clients the dwelling had, where there was a very high turn over of backpackers, however there were some who stayed for long periods of time. I asked [the Applicant] if any of these were permanent residents, where he said there were some on a long-term basis who just kept extending their stay. I asked further if this was there [sic.] only residence, where [the Applicant] was not sure.
>
> When I returned to the office I explained the scenario to my manager… where he said this could potentially be an HMO, however, as there was no definitive proof that there were permanent residents or any tenancies as the residents just pay for a period of time. In addition, we have to consider that if these people do not have another residence, they could become homeless where the Globe backpackers had also provided a service for emergency accommodation and works in close conjunction with the community and council to support the city.

The witness statement concluded that:

Therefore, it was best to serve a HMO declaration, where if need be, the tribunal can rule whether or not this would be deemed as an HMO.

36. In answering questions from the Tribunal, Mr Merchant stated that the Property may have been the permanent residence of the longer-term residents at the Property and referred to the fact that some of those longer-term residents had their mail sent to the Property, something that he considered an indication that the Property was their main residence.

37. In his written evidence, the Applicant stated that:

> Our guests vary from tourists to people working in the area for periods of time to people between housing. It is true we have people that stay here for longer periods of time, but there is no contract, they just pay for an extra week if they need one, and leave whenever they want. Many guests over the years prefer to pay for the reduced weekly deal. Guests are permitted to come and go as they please. They can leave belongings on the premises, cook their own meals to keep costs down and are guaranteed a bed for the duration of their paid stay (depending on advance bookings guests are required to move bedrooms as and when it suits the hostel management). This flexible arrangement works well for both guests and management.
>
> Our longer-term guests vary from temporary chefs filling in until a long-term position can be filled, to Amazon drivers, to NHS workers and social care workers. We have also accommodated those wanting to change their circumstances and stay away from trouble. We have been able to offer people a stop gap or leg up until they can move on with their lives and into alternative longer-term accommodation.
>
> Since Covid… the demand for our style of accommodation has moved more toward helping people who need short term accommodation in the city, and for many we are their only option due to affordability and unknown length of stay required.

And having referred to the Property's C1 class use, the Applicant stated that: "It is our understanding that we have no statutory duty to investigate a guest's primary home status." He continued:

> We believe we have struck a good balance between C1 category legislative requirements and a demand in the marketplace for our style of accommodation.
>
> Globe Backpackers offers a unique and much needed service in the City of Exeter for both tourists and others and we hope to have the continued support of Exeter City Council.

38. In his cross-examination, the Applicant was asked whether he agreed that he had a certain number of people who stayed at the Property on a continuous basis. He said yes, in the sense that some people pay for a week, then another week, and, at some point, become long-term guests. But he added that many customers pay for the weekly deal as this is cheaper than paying for 5 nights and ensures that they don't have to check back into the Property if they wish to leave temporarily and come back. The fact that they were paying for the whole week did not mean

that they were staying for the whole week. He also said it was possible that customers would arrange for things to be delivered to the Property while they were staying there; there was, he said, no rule to say that they could not do so.

39. In answer to questions from the Tribunal, the Applicant stated that of the 25 people currently staying at the Property, 10 or so would be longer-term residents. He said he did not know whether any of these residents had other homes. He did not, he said, "get that involved in their lives." He added that, since Covid, the longest-term resident had been there about 18 months, but that person also comes and goes and also stays for periods in Plymouth.

40. In his closing submissions, Mr Merchant stated that he could not say whether the Property should be an HMO or not. The HMO declaration, he said, was based on his discussion at the Property where the Applicant had been unsure whether there were permanent residents of the Property or not. He said, if he were to be completely honest, he did not believe that the Property is an HMO on a regular basis – the position as at the date of his inspection may have been a "one-off". He also accepted that, if there were more business customers at the Property, it would be more likely that they would have mail sent to the Property while they were staying there.

41. The Applicant, in his closing submissions, stated that he was never quite sure why the HMO declaration had been made in the first place. He said he had no idea whether any person was using the Property as their only or main residence.

42. The Tribunal is not satisfied that the Respondent has shown that the Property met the test set out in section 254(2)(c) of the 2004 Act. The Respondent has, in simple terms, not shown that, on the balance of probabilities, the living accommodation at the Property was being used by any of its occupiers as their only or main residence.

43. First, the Respondent has not produced any direct evidence that any of the occupiers of the Property did not have another residence, or that the Property was their main residence. Secondly, and bearing in mind the observations in *Opara* and *Mittelhuber* referred to above, the Tribunal is not satisfied that it should draw inferences of the same from the evidence in this case.

44. The Applicant's descriptions of the general categories of occupant, whether given in his conversation with Mr Merchant in December 2025, or in his written or oral evidence, are insufficient to allow such inferences to be properly drawn. Further, while the duration of an occupier's stay at premises could lead to an inference that the premises are their only or their main residence being properly drawn, the Tribunal is not satisfied that such inferences should be drawn in the present case. First, the Tribunal accepts the evidence of the Applicant that the financial and practical benefits of weekly bookings at the Property likely obscure the

fact that the living accommodation may in fact not be occupied by those persons throughout those periods. Secondly, the Tribunal is satisfied that occupiers who have an economic or other reason to be away from another home for repeated periods of time do not necessarily – applying the objective test set out in *Williams* (above) – fall to be treated as occupying the place in which they live whilst away as their main home. The circumstances of such an individual's occupation might satisfy that objective test, but the Respondent has failed to provide evidence of such circumstances in respect of any occupier of the Property in this case. Thirdly, given the prevalence of short-notice delivery services offered by the suppliers of goods, the Tribunal is not satisfied that an inference can properly be drawn from the fact that an occupier of the Property arranges for items to be delivered to the Property while he or she is staying there.

45. The Tribunal also rejects the Respondent's submission that while the use of the Property may not routinely meet the tests for being an HMO, its use at the time of the Respondent's decision happened to do so. The Tribunal accepts that, as noted in *Rohde* (above), it is required, in looking at the Respondent's decision, to look at the evidence at the time the decision was made while also taking account of matters of which the Respondent was unaware at the time of that decision, and that the statutory presumption of significant use may not be rebutted where a property was shown not to be being used as an HMO on a particular occasion after the Respondent's decision was made. However, in the present case, the Respondent has failed, for the reasons set out above, to show that the Property was an HMO, whether at the time of the decision, or at any other point thereafter.

46. Accordingly, the Tribunal determines that the grounds for making an HMO declaration in respect of the Property were not met in this case as the ground set out in section 254(2)(c) of the 2004 Act was not met.

Issue 2: is the significant use condition set out in section 255(2) of the 2004 Act met?

47. Given the Tribunal's decision on issue 1, issue 2 does not arise. Accordingly, the presumption set out in section 260 of the 2004 Act does not arise, as the Respondent has failed to establish that the standard test is (subject to section 254(d) of the 2004 Act) met in this case.

Decision

48. Accordingly, the Tribunal determines that the HMO declaration made by the Respondent in respect of the Property should be set aside and the HMO declaration, dated 14 January 2026, be revoked.

Fees

49. The Tribunal further considers that, as the Applicant has succeeded in his application, the Respondent should reimburse the fees paid by the

Applicant to the Tribunal, pursuant to rule 13(2) of the Tribunal Rules, also to be paid within 28 days.

50. However, the Tribunal also determines that, as neither party addressed it as to the exercise of this power, it should allow the Respondent 14 days from the date of this decision to apply to set aside this aspect of the Tribunal's decision.

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 by email to rpsouthern@justice.gov.uk 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.