**RESIDENTIAL PROPERTY TRIBUNAL**

**Case Reference: TW/LON/OOAE/HMD/2013/0002**

**Premises: 24 High Street, London NW10 4LX**

**DECISION OF THE TRIBUNAL ON AN APPEAL AGAINST THE MAKING OF A DECLARATION UNDER SECTION 255 HOUSING ACT 2004 (‘The Act’)** **THAT THE PREMISES ARE A HOUSE IN MULTIPLE OCCUPATION**

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| Appellant | Lomin Limited (landlord) |
| Representation | Winckworth Sherwood, solicitors, instructed by Crawford Management Limited (managing agents) |
| Respondent | London Borough of Brent |
| Representation | Ms K. North, Housing and Litigation Team (London Borough of Brent) |
| Pre-trial review | 22 February 2013 |
| Hearing and inspection date | There was no inspection |
| The Tribunal | Professor J. Driscoll, solicitor (Lawyer chair and Mrs S. Redmond MRICS BSc(Econ) |
| The Decision Summarised | The appeal against the declaration that the premises are a house in multiple occupation is dismissed. The building is a house in multiple occupation under the standard test in section 254(2) of the Act and the respondents were correct in making the declaration under section 255 of the Act. The decision by the respondents to declare the premises an HMO is confirmed. |
| Date of the decision | 15 May 2013 |

**Introduction**

1.   This is an appeal against the decision to declare the premises a house in multiple occupation under the provisions in section 255 of the Act. The appellant is the owner of the premises and the landlord of the units into which the premises have been divided and which are let as temporary accommodation to homeless people. The premises may be described as a hostel. The respondents are the local housing authority (‘the authority’) who have various powers and duties under the Housing Act 2004 including powers over premises which are houses in multiple occupation (amongst other many other provisions).

2.   The owners of the premises have appointed Crawford Management Limited (‘the managers’) to manage the premises. By a long-standing agreement between this company and the authority, homeless people are placed with the managers as part of their duties under Part 7 of the Housing Act 1996, such as the duty on the part of the authority to make available temporary accommodation to those who appear to be homeless.

**The appeal**

3.   On 11 January 2013 the authority made a declaration that the premises are a house in multiple occupation (HMO) under section 255 of the Act. Acting on behalf of the owner, the manager has appealed to this tribunal against this decision.

4.   The tribunal gave directions on 22 February 2013. This included the direction that this appeal should be considered on the basis of written representations unless either party requested an oral hearing. As such a request was not made, we considered the appeal on the basis of the documents provided in a bundle by each of the parties and we did so on 22 April 2013.

**The submissions**

5.   The managers’ bundle of documents included a copy of their application to the tribunal, a statement prepared by their solicitors setting out the grounds of the appeal, a response to the authority’s statement, copy correspondence between the solicitors advising the parties, a copy of a ‘service level agreement’ between the managers and the landlords, a copy of a block booking agreement between the authority and the landlords, copy correspondence relating to the change of ownership of the premises and a statement of Mr S. Mendorcan who is the manager of the hostel with copies of various documents referred to in that statement.

6.   The managers also applied to this tribunal for permission to appeal out of time and there was, to begin, with some dispute over who could properly bring the appeal.

7.   In response to the managers’ statement, the lawyer for the authority Ms K. North prepared a written response to the appeal and in her bundle of documents she also included Land Registry entries, an extract from the Encyclopaedia of Housing, and witness statements of Mr K. Dankwah and Mr Z. Iqbal, with copies of various documents relating to the placements at the hostel.

8.   The authority claims that the premises are an HMO under the ‘standard test’ in section 254(2) of the Act as modified for premises where there is occupation by individuals who do not occupy as their permanent home (as is almost invariably the case with hostels).

9.   The manager appeals this decision arguing that the premises are not an HMO under the standard test as (a) no rent is payable by the occupiers (section 254(2)(e)), and (b) that none of the residents occupy any part of the premises as their only or main residence (or are to be treated as so occupying it) (sections 254(2)(c) and 259 of the 2004 Act). They argue that as none of the residents pay rent (the authority pays for the costs of their accommodation) this condition does not apply either.

10.               Their statement also claims that the authority agreed to extend their time for mounting an appeal. To repeat, one of their grounds is that as the accommodation is provided as temporary accommodation for the homeless and that none of the occupiers use it for their only or main home. They also argue that as no rent is payable by the occupiers that is another reason why the hostel is not an HMO. They also argue that as the authority has used the hostel for the placement of the homeless for a number of years without previously suggesting that it is an HMO, and that this shows that the authority did not previously take the view that the property is an HMO.

11.               In response the authority stated that having carried out a number of enquiries it has established that the hostel is owned by a company called Lomin Limited having previously assumed that the managers were both the owners and the landlords. Their employee Mr Dankwah, who has been dealing with the property, concluded that it is an HMO within the standard test in section 254 of the Act. As he had always dealt with the managers it was decided that the HMO declaration should be served on Mr Mendorcan as the manager of the hostel.

12.               The authority also challenge the authority of the managers to bring the appeal as they are not the owners. It also states that it formed the view that the hostel, which has 41 rooms, 9 of which involve shared facilities, is occupied by persons who do not form a single household who use the hostel solely as living accommodation. The documents also show that the authority pays for the use of the accommodation and that it has made placements on numerous occasions.

13.               The authority also argues that the managers have misunderstood section 259 declarations. In certain cases, such as this one, occupiers are ‘deemed’ to be occupying the property as their only or main residence. This is what the authority has relied on in making the HMO declaration.

14.               In his statement dated 25 March 2013 Mr Dankwah states that he is employed by the authority as a housing standards enforcement officer and that he has been carrying out inspections of the hostel for nine years. Its sole use, he says, has been to provide temporary accommodation for the authority when they wish to place homeless households in temporary accommodation. Appended to his statement are various documents which record how the rooms are booked by the authority.

15.               In a response to this the managers’ solicitors seek to refute the argument that the manager does not have standing to bring the appeal. They set out details of the working relationships between the managers and the authority which shows that the authority are fully aware of the fact that they have been appointed managers by the landlord. They repeat their contentions that the hostel is not an HMO under the standard test and they claim that the block booking agreement has expired and that whilst they continue to accept bookings from the authority they consider that the current use of the property as a hostel is diminishing and some of the rooms are now empty.

16.               They also state that an application to the authority has been made for a change of use to allow the hostel to be used as a hotel (which was its previous use).

**Our decision and our reasons for the decisions**

17.               We deal first with the appeal being made out of time. It should have been made within the period of 28 days starting with the date of the authority’s decision (section 255(9) of the Act). As the authority agreed to extend the time for appealing and have raised no objection we accept that we have jurisdiction to consider the appeal.

18.               We turn to the issue of whether the managers have standing to make this appeal and we accept the managers’ submission and reject those made on behalf of the authority. An appeal may be made by any ‘relevant person’ defined as someone who to the knowledge of the authority has either an estate or other interest in the premises or is a person who is managing or controlling the building (see: section 255(12)(b)). The evidence produced shows that the managers have. to the knowledge of the authority, been appointed to manage for several years. They clearly are a ‘relevant person’ for the purposes of making an appeal against the decision to declare the premises an HMO so the appeal was properly made on behalf of the landlords.

19.               Turning now to the substantive issue as to the merits of the appeal, we have little hesitation in confirming the decision of the authority. This is because the managers’ primary grounds of the appeal, that the premises are not an HMO under the standard test, is, with respect misconceived and the appellant does not appear to understand how the standard test is modified in the case of premises such as hostels where residents (homeless in many cases) are living there temporarily with the costs of their accommodation being met by the relevant authority.

20.               The standard test for treating premises as an HMO states: ‘: a building or a part of a building meets the standard test if (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats; (b) the living accommodation is occupied by persons who do not form a single household (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.’

21.               Dealing first with the rent issue, section 254(2)(e) of the Act states: ’rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation’.

22.               It is common ground that as the residents are accommodated by the authority under their statutory homeless duties, they are not charged a rent by the managers. However, it is also common ground that the authority pays the manager fees for the occupation. We interpret this to be a form of ‘other consideration’ referred to in section 254(2)(e) of the Act. That subsection does not refer to the rent or other consideration having to be made by the occupier and, as a matter of statutory construction, we consider that this provision may be properly be construed as including the case where the payments are made by another party. We reach this conclusion for two reasons: first, if it was the legislative intent that the rent or consideration must come from an occupier the subsection could have been drafted in that way; second, to exclude cases such as this, where a public authority are arranging temporary accommodation for the homeless, would exclude many hostels which are used for the homeless as being treated as HMOs.

23.               Turning to the second point, we conclude that the managers have misunderstood the HMO declaration provisions of the Act. As the respondents point out in the statements, the power to make a declaration under section 255 of the Act may be exercised where the building or part of the building is an HMO under one of the tests including the standard test.

24.               Section 255 (2) provides that this subsection applies to a building or part of a building if the building or part meets any of the following tests (as it applies without the sole use condition) (a) the standard test (see section 254(2)), (b) the self-contained flat test (see section 254(3)), or (c) the converted building test (see section 254(4)),where 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 (section 255(2)).

25.               In subsection (2) “the sole use condition” means the condition contained in (a) section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or (b) section 254(4)(e), as the case may be. In other words, in this case, the authority were entitled to declare premises an HMO applying the standard test as the occupation by persons who do not form a single household constitutes a significant use of the accommodation.

26.               As to the issues of the ‘sole use’ and ‘significant use conditions’, there is a statutory presumption that in any proceedings the condition is met unless the contrary is shown (section 260(1) of the Act). The managing agents have not adduced evidence to rebut either presumption in this case. As the authors of the Encyclopaedia of Housing point out in the commentary appended to the of the authority’s statement (at page 10 of their bundle) ‘In some circumstances the profile of the residents may fluctuate with the consequence that it is difficult for an authority to know whether the living accommodation is the only or main residence of the residents’.

27.               This is why the legislation provides that certain premises which are HMOs under certain of the tests in section 254(1) of the Act may be declared HMOs by an authority applying the statutory modifications to the ‘sole use’ and the ‘significant use’ conditions in section 255 allied with the statutory presumption that either or both are met in section 260.

28.               We accept that the authority have been aware of the occupancies and the arrangements for them for several years and that it is only recently that they have taken the action they did. According to their evidence they have decided to adopt a different practice for hostels and similar establishments in their area.

29.               This tribunal accepts that on the date of their declaration the authority justifiably decided to make an HMO declaration. The manager’s appeal is rejected and the decision to make an HMO declaration is confirmed (see: section 255(11)(a)).

James Driscoll (Lawyer Chair)

15 May 2013