



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

Case Reference : **BIR/00CW/HMD/2019/0002**

Property : **125 Merridale Street West, Pennfields,
Wolverhampton, WV3 0RW**

Applicant : **Ms Narash Kumari Badhan**

Representative : **Appeared in person**

Respondent : **City of Wolverhampton Council**

Representative : **Ms Leonie Woodward**

Type of Application : **Appeal against HMO Declaration
Notice under Section 255(7) of the
Housing Act 2004**

Tribunal Judge : **Dr Anthony Verduyn**

Tribunal Member : **Mr Robert Chumley-Roberts MCIEH,
J.P.**

**Date of Site Inspection :
And Hearing** : **9th September 2019**

Date of Decision : **15th October 2019**

DECISION

1. The Applicant is the registered freehold proprietor of the Property, a three-bedroom terraced house in Wolverhampton. The Property has been rented out to tenants under Assured Shorthold Tenancies. On 16th April 2019, following an inspection of the Property on 11th April 2019, Wolverhampton City Council (“the Council”) issued a declaration that the Property was a house in multiple occupation based upon “the standard test” set out in Section 254 of the Housing Act 2004. The Applicant was informed on 29th April 2019 and appealed to this Tribunal under Section 255(7) of the Housing Act 2004 by application dated 7th May 2019 and received the next day. Directions for the exchange of Statements of Case were given on 4th June 2019 and, following receipt, the Tribunal inspected the Property on 9th September 2019, the day of the hearing of the application. The Applicant had expected her solicitors to attend the hearing, but they did not attend. The Applicant wished to proceed with the hearing and made submissions on her own behalf and in answer to the submissions made by the Representative of the Council.
2. The relevant law is set out in the Housing Act 2004:

Section 254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–

- (a) it meets the conditions in subsection (2) (“the standard test”) [...]
- (2) 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.

[...]

(8) In this section–
“basic amenities” means–

- (a) a toilet,
- (b) personal washing facilities, or
- (c) cooking facilities;

[...]

“self-contained flat” means a separate set of premises (whether or not on the same floor)–

- (a) which forms part of a building;
- (b) either the whole or a material part of which lies above or below some other part of the building; and
- (c) in which all three basic amenities are available for the exclusive use of its occupants.

Section 255 HMO declarations

- (1) If a local housing authority are satisfied that subsection (2) applies to a building or part of a building in their area, they may serve a notice under this section (an “HMO declaration”) declaring the building or part to be a house in multiple occupation.
- (2) 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)), [...]
and 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.
- (3) 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.
- (4) The notice must–
 - (a) state the date of the authority's decision to serve the notice,
 - (b) be served on each relevant person within the period of seven days beginning with the date of that decision,
 - (c) state the day on which it will come into force if no appeal is made under subsection (9) against the authority's decision, and
 - (d) set out the right to appeal against the decision under subsection (9) and the period within which an appeal may be made.
- (5) The day stated in the notice under subsection (4)(c) must be not less than 28 days after the date of the authority's decision to serve the notice.
- (6) If no appeal is made under subsection (9) before the end of that period of 28 days, the notice comes into force on the day stated in the notice.
- (7) If such an appeal is made before the end of that period of 28 days, the notice does not come into force unless and until a decision is given on the appeal which confirms the notice and either–
 - (a) the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, or
 - (b) if an appeal to the Upper Tribunal is brought, a decision is given on the appeal which confirms the notice.
- (8) For the purposes of subsection (7), the withdrawal of an appeal has the same effect as a decision which confirms the notice appealed against.
- (9) Any relevant person may appeal to the appropriate tribunal against a decision of the local housing authority to serve an HMO declaration. The appeal must be made within the period of 28 days beginning with the date of the authority's decision.
- (10) Such an appeal–
 - (a) is to be by way of a re-hearing, but
 - (b) may be determined having regard to matters of which the authority were unaware.
- (11) The tribunal may–
 - (a) confirm or reverse the decision of the authority, and
 - (b) if it reverses the decision, revoke the HMO declaration.

(12) In this section and section 256 “relevant person”, in relation to an HMO declaration, means any person who, to the knowledge of the local housing authority, is—

(a) a person having an estate or interest in the building or part of the building concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or

(b) a person managing or having control of that building or part (and not falling within paragraph (a)).

(13) For the purposes of this section and section 256, “appropriate tribunal” means—

(a) in relation to a building in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal [...]

Section 258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless—

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—

(a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes—

(a) a “couple” means two persons who are married to each other or otherwise fall within subsection (3)(a);

(b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

Section 259 HMOs: persons treated as occupying premises as only or main residence

(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

- (a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;
- (b) as a refuge, or
- (c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) In subsection (2)(b) "refuge" means a building or part of a building managed by a voluntary organisation and used wholly or mainly for the temporary accommodation of persons who have left their homes as a result of—

- (a) physical violence or mental abuse, or
- (b) threats of such violence or abuse,

from persons to whom they are or were married or with whom they are or were co-habiting.

3. The Tribunal inspected the Property. It was a terraced house of 19th or early 20th century brick build. The ground floor had a hallway with reception room facing the street off. The reception room had a door with a lock, but there was no key. The fireplace was blocked off. It also contained the gas and electrical meter cupboards. At the end of the hallway was a further reception room with staircase off and no locks to doors. Opening on to this room was a galley kitchen and beyond that a lobby serving the rear garden door and bathroom, with a shower over the bath. The garden was slabbed and fences were in poor condition, it had an independent access via an alleyway between the terraced houses at ground floor level. Upstairs the Property had once comprised two bedrooms, but the larger to the street was partitioned to create two bedrooms, a single and a double. There was a further small double bedroom to rear. There was a small landing area with toilet off, but the toilet was being used for storage at inspection. There was an original lock to one upstairs bedroom, but nothing to suggest the lock was still usable. Other room doors upstairs lacked locks. The Property was generally in serviceable, but not good, condition.
4. The Council's statement of case, supplemented by additional information at the hearing, refers to a complaint of overcrowding at the Property having been received on 18th February 2019. At the hearing it was stated by the Council that this complaint came via a local councillor, but the source was unknown. An initial visit on 15th March 2019 did not secure entry. On 11th April 2019 a further visit took place, with the police present. Eight people were found in occupation of the Property, comprising at least three different households.
5. The Applicant's application was accompanied by a letter setting out her position and her statement of case supplemented this. She set out that the Property was let on 5th April 2019 (hence a week before the visit from the Council) to Mr Gheorghhe Moni and Mrs Ida Moni. She knew of no-one else in occupation of the Property. No permission was given for others to be in occupation and rent was sought and received from Mr and Mrs Moni only. The Applicant disclosed two tenancy agreements. The first was dated 1st October 2018 and was a let to Ms Lucca Beghean. The second was dated 5th April 2019 and was a let to Mr and Mrs Moni. The tenancy agreements were in common form and expressly forbade subletting as a special condition. Further, under Clause 3.5 the tenant covenanted: "Not to assign, sublet or part with possession of the Property, or let any other person live at the Property." Mindful that the Applicant was not

represented, but wished to continue with the hearing in the absence of her solicitors, the Tribunal confirmed with her that the issues she wished to raise were: (i) Who was in occupation? (ii) Does that occupation qualify the Property to be a house in multiple occupation within the meaning of the Housing Act 2004? (iii) Is being unaware of qualifying occupation on the part of the landlord ground for appeal of the notice? (iv) Is want of permission for such occupation a ground to appeal the notice? (v) Is receipt of one rent only a ground to appeal the notice? (vi) Do the terms of the tenancy agreement precluding occupation as a house in multiple occupation constitute a ground to appeal the notice?

6. The Council's position was set out in their statement of case, and at the invitation of the Tribunal, set out first at the hearing to afford the Applicant the best opportunity to respond. The Council contends that the standard test is made out. The Property is a building containing living accommodation, which does not consist of self-contained flat or flats (Section 254(2)(a) of the Housing Act 2004), at inspection they discovered occupation by persons who were not a single household (Section 254(2)(b) of the Housing Act 2004), it was their only or main residence since no other was identified to them (Section 254(2)(c) of the Housing Act 2004), the Property was not used for anything else but accommodation (Section 254(2)(d) of the Housing Act 2004), rent was paid (Section 254(2)(e) of the Housing Act 2004) and basic amenities like bathroom and kitchen were shared (Section 254(2)(f) of the Housing Act 2004). The time for consideration of whether the property qualifies as a house in multiple occupation is at the time of the declaration, and not the Tribunal inspection and hearing (referring to Herefordshire Council v Rohde [2016] UKUT 39 (LC)).
7. The Council confirmed in the hearing the facts as set out in the Statement of Case. Eight occupants had been found at the Property on 11th April 2019, namely Ludovic and Angela Kovacs (a related couple for the purposes of the Housing Act 2004); Susana Otvos and Costel-Loredan Otvos (also a related couple); Gheorghe Moni and Ida Moni (also a related couple); Pitigoiu Marian Ionut; and, Gheorghe Ivloni. Hence, the Council contended, there were at least 3 households. It was confirmed that they all contributed to rent, which was forwarded monthly in the sum of £500 by bank transfer. As to living arrangements, the front reception room had a double mattress, and the rear living room a double bed. Each of the upstairs bedrooms had a bed in it: two doubles and a single. Occupation was exclusively residential.
8. Noting that an appeal in these circumstances takes effect as a re-hearing (Section 255(10) of the housing Act 2004), the Tribunal heard evidence from the investigating Environmental Health Officer who attended the Property on 11th April 2019, Ms Surpreet Rai, and she was appropriately questioned by the Applicant. Ms Rai confirmed the factual background set out above, and accepted that the rent was described as collected by the occupiers either Mr or Mrs Moni, but transferred as a single payment to the landlord (and not by multiple contributions to the rent of £500 pcm). She confirmed the arrangements of beds and that there was some other furniture. The occupiers said there was a tenancy agreement, but were unable to provide it at the time. The occupiers claimed the landlord was aware they were "all residing at the Property" (a point the Applicant denied). Under questioning from the Applicant, it appeared that the occupiers only identified the landlord by mobile

phone number. Costel-Loredan Otvos spoke good English and interpreted for the officer. Upon questions from the Tribunal it was also elicited that the occupants comprised 5 men and 3 women, and the Council Officers attending were two from Environmental Health and two from Housing. The occupiers had cooperated with them. The occupiers stated they were connected because they had a common employer, J.K. Fresh Produce Ltd, but were not related (save as identified above) within the meaning of the Housing Act 2004. Identification documents were received from the occupiers. As a result of the questioning of the Applicant, the Council disclosed and all present at the hearing saw, photographs taken of the beds by Ms Rai at the time of the inspection.

9. The Applicant also gave evidence, stating that she was unaware of the occupation of the Property being shared by Mr and Mrs Moni with others. She had not provided the beds described. She said that interpretation when she visited was by someone called "John", but she did not know who that was and she never met someone identified as Costel-Loredan Otvos. The Applicant had visited when she received the notice and Mr and Mrs Moni had described occupiers to her as "family". The only ones then present were Mr and Mrs Moni and Mr and Mrs Otvos, who claimed to her to be sister and brother in law of Mr or Mrs Moni. They had all since returned to Romania.
10. Closing submissions were made consistent with the content of the Statements of Case.
11. The Tribunal accepts the evidence presented by the Council. Indeed, this was not materially challenged by the Applicant, who was not well placed to assert the contrary for the time of inspection. Sufficient care had been taken by the Council to ensure that the occupants were counted and questioned as to possible relationships. Plainly there was more than one household, even if Mr and Mrs Moni were related to Mr and Mrs Otvos, with Mrs Otvos the sister of one of Mr or Mrs Moni. There were other people in occupation at the time without any asserted relationship. As to principal residence, this was plainly made out since the occupiers were in employment in the area, and otherwise foreigners. There was no evidence to the contrary in any event. The Property was shared in occupation and facilities, and rent was paid.
12. The Tribunal finds that knowledge of the circumstances is not a requirement of the Housing Act 2004. The Tribunal accepts that the Applicant did not know the extent of occupation of the Property, but she is the landlord of it and responsible to monitor who is living there. She could have found out who occupied it by visiting, as she later did and as the Council had done. The absence of permission for multiple occupation and, indeed, a covenant against it, is similarly not a ground for resisting or appealing a notice. It is how the Property is actually occupied, and not how it is contracted to be occupied, that counts. Similarly, the payment of a single rent, rather than multiple rents, affords no defence, so long as some rent is paid (as here). The only questions to be answered of the issues raised by the Applicant is who was in occupation and whether the Property then qualifies as a house in multiple occupation. The Tribunal accepts the evidence of the Council of occupation: its officers investigated thoroughly and recorded their results, and there was no basis for any challenge to the results of those investigations. The results qualify the house

as one in multiple occupation within the meaning of the Housing Act 2004, the Notice was valid and the Application is dismissed accordingly.

Tribunal Judge Dr Anthony Verduyn

Dated 11th October 2019