



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

<b>Case Reference</b>	<b>:</b> LON/ooAG/HML/2019/0041
<b>Property</b>	<b>:</b> 148 Camden Street, London NW1 9PA
<b>Applicant</b>	<b>:</b> Redcourt Limited
<b>Representative</b>	<b>:</b> Mr Paul Fitzgerald, consultant Environmental Health Officer with Southern Environmental Services Limited
<b>Respondent</b>	<b>:</b> London Borough of Camden
<b>Representative</b>	<b>:</b> Mr Edward Sarkis, in-house solicitor
<b>Also present</b>	<b>:</b> Mr Leo Kaufman (director of Redcourt Limited) and Mr Iain Clark (Respondent's Environmental Health Officer)
<b>Type of Application</b>	<b>:</b> Appeal against the terms of an HMO Licence under the Housing Act 2004
<b>Tribunal Members</b>	<b>:</b> Judge P Korn Mrs S Redmond MRICS
<b>Date and venue of Hearing</b>	<b>:</b> 16 <sup>th</sup> December 2019 at 10 Alfred Place, London WC1E 7LR
<b>Date of Decision</b>	<b>:</b> 6 <sup>th</sup> January 2020

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**DECISION**

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## **Decisions of the tribunal**

- (1) The HMO Licence is hereby varied as follows:-
- Schedule of Works items 1.1 to 1.5 to be completed within 3 months after the date of this decision.
  - Schedule of Works items 2 and 4.1 to be completed within 9 months after the date of this decision.
  - The remainder of the items in the Schedule of Works to be completed within 2 years after the date of this decision.
- (2) Save as varied above, the decision of the local housing authority is confirmed.

## **Introduction**

1. The Applicant is appealing pursuant to Part 3 of Schedule 5 to the Housing Act 2004 (“**the 2004 Act**”) against certain conditions contained in a licence (“**the HMO Licence**”) granted by the Respondent in relation to the Property.
2. The Property is an end-of-terrace 5 storey house (including the basement) converted into 5 self-contained flats. It is currently let out to 4 persons comprising 4 separate households. The fifth flat, which is within a 2 storey back addition on basement and ground floor levels, is stated to be currently unoccupied. Each flat has exclusive use of its own kitchen and bathroom/WC.
3. There is a basement well to the front, and there is an enclosed yard to the basement rear. The basement has separate access from the basement well, whilst the remainder of the Property is accessed from the front door at street level.
4. The disputed conditions in the Schedule of Works attached to the HMO Licence are as follows:-
  - *Item 1.2 – “There is no emergency lighting to the escape route (communal staircase) with a record of inspection and servicing made available”.* This is followed by a requirement to ensure that the Property has an emergency lighting system complying with BS 5266 and ensuring that it is tested, inspected and regularly maintained.
  - *Item 2 – “Flat A (Basement). The escape route from the Bedroom leads through the open plan Kitchen / Living Room”.*

This is followed by a requirement either to create a protected escape route or to install a water misting system, further details of the required works being set out in the Schedule of Works.

- *Item 3.1 – “Flat B (Ground Floor Front Left). There is no door between the Lounge / Kitchen and the hallway which forms the escape route from the Bedroom, allowing smoke and flame to spread rapidly. Provide and fit a solid, substantial door of sound traditional construction to the opening between the Lounge and the Hallway. Provide all necessary door furniture and leave close fitting to the frame with the latch fully engaging the keep.”*
- *Item 4.2 – “Flat C (First Floor). There is no door between the Lounge / Kitchen and the hallway which forms the escape route from the Bedroom, allowing smoke and flame to spread rapidly. Provide and fit a solid, substantial door of sound traditional construction to the opening between the Lounge and the Hallway. Provide all necessary door furniture and leave close fitting to the frame with the latch fully engaging the keep.”*
- *Item 5.1 – “Flat D (Second Floor). There is no door between the Lounge / Kitchen and the hallway which forms the escape route from the Bedroom, allowing smoke and flame to spread rapidly. Provide and fit a solid, substantial door of sound traditional construction to the opening between the Lounge and the Hallway. Provide all necessary door furniture and leave close fitting to the frame with the latch fully engaging the keep.”*
- *Item 6.1 – “Flat E (Third Floor). There is no door between the Lounge / Kitchen and the hallway which forms the escape route from the Bedroom, allowing smoke and flame to spread rapidly. Provide and fit a solid, substantial door of sound traditional construction to the opening between the Lounge and the Hallway. Provide all necessary door furniture and leave close fitting to the frame with the latch fully engaging the keep.”*

### **Agreed point**

5. During the course of the hearing, despite initially raising some objections, Mr Fitzgerald said that the Applicant was no longer appealing against Item 1.2 (the one relating to emergency lighting to the escape route).

### **Inspection**

6. Prior to the hearing the tribunal inspected the Property. All but one of the rooms were available to be inspected and the Applicant pointed out

the areas of contention. He also showed the tribunal his suggested alternative escape route from Flat A through the back yard and over the wall.

### **Applicant's case**

#### **Flat A (Basement) – issue with escape route**

7. The Applicant states in written submissions that the layout and design of Flat A is compliant with British Standard 9999: 2017 which allows for a single means of escape without a protected route or corridor where (as is the case here) the furthest point of the unit of accommodation from the fire exit does not exceed 9 metres and where the kitchen facilities are not immediately adjacent to the exit.
8. The flat will also have a stand-alone LD3 fire alarm system to comply with British Standard 5839: 2019 which will provide occupiers with sufficient warning and time to exit to a place of ultimate safety. The door and partition between the bedroom and lounge will be ½ hour fire resistant and there is an alternative means of escape from the bedroom into the rear yard as between that yard and the adjacent yard (which is owned by the Respondent) there is a brick wall which is only 1.5 metres high. Instead of the works required by the Respondent the Applicant proposes simply installing a fixed iron ladder to the rear yard party wall.
9. Mr Fitzgerald states that the provision of a protected means of escape is unnecessary as the design of the flat complies with British Standard 9999 and the kitchen area is not located in such a position as to jeopardise or impede the means of escape. A secondary means of escape is not a statutory requirement, but in any event the rear yard can be used as a secondary means of escape if an iron ladder is fitted to the rear left dividing wall. A ½ fire door should be installed between the bedroom and front lounge.

#### **Flats B, C, D and E – no door between lounge/kitchen and hallway**

10. The Applicant states that the layout and design of the flats are compliant with British Standard 9999: 2017. All flats will also have a stand-alone LD3 fire alarm system to comply with British Standard 5839: 2019. The bedrooms will have ½ hour fire doors fitted to British Standard 476, and the distance from the bedroom door to the flat entrance door in each case will be under 2 metres so that adequate warning of a fire will be given and travel distance to a place of safety will be minimal.
11. The Applicant objects that the fitting of a fire door and partition to the lounge, as required by the Respondent, would form a small dark lobby

with no natural light and it would be difficult to bring large items of furniture into the flat. He also comments that statistical evidence from the London Fire and Rescue Service and the Home Office indicates that the source of almost 70% of domestic fires is the kitchen.

12. The Applicant proposes instead that he should install a 1/2 hour fire resistant door and frame to the kitchen of each flat and install a heat detector to the kitchen which is connected to the stand-alone detection system in each flat.
13. Mr Fitzgerald states that the layout of these flats complies with BS 9999 and therefore that it is unnecessary to fit a door to the lounge. Most domestic fires start in the kitchen and therefore he recommends fitting a door between the kitchen and the lounge.

### **Respondent's case**

#### **Flat A (Basement) – issue with escape route**

14. The Respondent states in written submissions that the British Standards referred to by the Applicant are of little relevance in this case. Those British Standards state in their foreword that they take the form of mere guidance and recommendations and should not be quoted as if they were specifications. The Respondent also states that the applicable code of practice for fire safety in residential buildings is BS 9991: 2015, not BS 9999, and that BS 9991: 2015 gives some useful principles. However, even BS 9991: 2015 is not directly relevant to section 257 HMOs such as the present one, because it states (at paragraph 7 on page 26) that its guidance on means of escape for flats is based on the assumptions that "*the building is provided with a high degree of compartmentation and therefore a low probability of fire spread beyond the dwelling of origin, so that simultaneous evacuation of the building is unlikely to be necessary*".
15. In the Respondent's opinion the Property has neither a high degree of compartmentation nor a low probability of fire spreading beyond the flat of origin. It is not a purpose-built block and the works relating to the conversion into flats was not of a high enough standard to meet the 1991 building regulations requirements. The lower standard of works means that the Property has a lower standard of fire safety than either a single house or a purpose-built block of flats.
16. The LACORS guidance referred to in BS 9991: 2015 is widely regarded as the relevant guidance, and although some aspects are in need of updating the general approach and principles remain sound. The LACORS guidance makes very strong distinctions between different types of residential accommodation, including between single

household properties, section 257 HMOs and other HMOs. The requirements set out in the HMO Licence follow the LACORS guidance.

17. The fundamental principle which should be followed is that the means of escape should allow a person to pass to a place of ultimate safety without having to pass through an area or room which is exposed to fire or smoke. The escape route should be low risk and have as few sources of ignition as possible, and smoke and flame should be prevented from spreading onto the escape route. The layout of Flat A means that the rear bedroom is an 'Inner Room', i.e. a room where the only means of escape is through another room. In this case, the outer room is also a much higher risk room because it is a kitchen / living room. In discussing Inner Rooms, LACORS states: "*This arrangement should be avoided wherever possible. However, where unavoidable it may be accepted where the inner room is a kitchen, laundry or utility room, a dressing room, bathroom, WC or shower room*". There is no suggestion that it is acceptable for a bedroom to be an Inner Room.
18. As regards the use of the rear yard as an alternative means of escape, the Respondent regards this route not as a means of escape but a means of entrapment. As regards the use of a vertical ladder, the LACORS guidance states that "*fixed or removable vertical ladders ... are not suitable as secondary means of escape*" and BS 9999 states that fixed ladders are a generally unacceptable means of escape. The Respondent also questions whether the escape route through the rear yard would actually lead to a place of ultimate safety.
19. The Respondent also refers to Case Study D11 in the LACORS as being most relevant to the present case as it relates to a 3 or 4 storey building converted into self-contained flats where the conversion did not meet the building standards under the Building Regulations 1991. This case study confirms, in relation to the communal escape route from a number of flats, that a 30 minute protected route is required.
20. The Respondent notes Mr Fitzgerald's contention that the kitchen area is not located in such a position as to jeopardise or impede the means of escape, but as the kitchen area is close to the front door anyone leaving the flat will pass close to the cooking facilities.
21. The Respondent recognises that the measures required to provide a protected escape route are significant and disruptive but it has allowed a year for the works to be done and has also offered the quicker and less disruptive alternative measure of providing a water misting system.

#### Flats B, C, D and E – no door between lounge/kitchen and hallway

22. The HMO Licence does not require a 1/2 hour fire door to the lounge but only a solid substantial door of sound traditional construction as per

case study D11 in the LACORS guidance. Similar to the position in relation to the escape route issue for Flat A, if there is no lounge door then the means of escape from the bedroom in each case is through an inner room, i.e. through the lounge. Smoke and flames are free to spread easily, and in the early stages of a fire it is usually the smoke which kills. It is recognised that a fire is less likely to start within a lounge than a kitchen but there is still a significant risk of a fire starting in a lounge, for example from overheated electrical chargers, candles and people smoking.

23. Providing lounge doors should be straightforward and inexpensive, and the Respondent disagrees with the Applicant's assessment that it would be difficult to achieve.

Separate point re Flats D to F and short term letting generally

24. As part of its written submissions the Applicant had stated that Flat F was currently unoccupied as at 24<sup>th</sup> September 2019. Mr Clark revisited the Property on 1<sup>st</sup> November 2019 and found Flat F to be occupied by a couple. They told him that they had moved in on 14<sup>th</sup> September and would be leaving on 14<sup>th</sup> November. In his view, short term lettings of this nature are inherently higher risk in terms of fire safety, for example because the occupiers are less familiar with the layout of the flat and often indulge in riskier behaviour than longer term tenants. This is therefore a factor to be taken into account in relation to fire risk assessment.
25. In addition, during his visit on 28<sup>th</sup> February 2019 Mr Clark noted that either Flat D or Flat E also appeared to be being used for a short term let.
26. Mr Clark states that there are 53 reviews for the Property over the last 2 years on the website Booking.com in relation to flats on different floors of the Property, the implication presumably being that this suggests a high incidence of short term lettings at the Property, as he goes on to express concern (as he does in relation to Flat F) about the increased fire hazard that comes with short term lettings.

**Further points made at hearing**

27. At the hearing Mr Fitzgerald said that the alternative works proposed by the Applicant were both reasonable and proportionate. The legislation needed to be applied on a case by case basis and Mr Fitzgerald had looked at a range of relevant guidance to reach his own conclusions as to what was necessary in this case.
28. Mr Sarkis said that the Property is a high-risk building because of poor compartmentation and because it is on 4 storeys and has been partly

occupied on a short-term basis, thereby increasing the fire risk. Mr Clark is an experienced Environmental Health Officer and has made reference to LACORS in his written submissions as it is considered to be the prime guidance for HMOs and buildings not complying with planning legislation. In its decision in *Vaddaram v East Lindsey DC (2012) UKUT 194 (LC)* the Upper Tribunal stated that the LACORS guidance adopts the risk-based approach to fire safety that will satisfy both the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005.

29. There was also a discussion about length of time limits for the carrying out of any works. Without prejudice to the parties' disagreement as to what works were necessary, the parties were in agreement that items 1.1 to 1.5 in the Schedule of Works should be completed within 3 months after the date of the tribunal's decision, items 2 and 4.1 should be completed within 9 months and the remainder of the items should be completed within 2 years.

#### **Cross-examination of Mr Fitzgerald**

30. At the hearing Mr Fitzgerald accepted that LACORS was relevant but felt that it had 'slipped behind' British Standards to some extent and noted that it was currently under review.
31. As regards the Respondent's point about compartmentation, Mr Fitzgerald felt that the Property had adequate compartmentation. There was 30 minutes separation between the bedroom and the lounge and therefore fire would not spread rapidly through Flat A.
32. Mr Fitzgerald did not accept that a door to the lounge would offer greater fire protection than a door on the kitchen as the Respondent was not proposing a fire door. In addition, a kitchen door would close off the primary source of fire.
33. As regards the option of a water-misting system, Mr Fitzgerald did not consider this necessary. Also, it would not work with the windows open, it would be expensive to maintain and might only be triggered once people had left the building.

#### **Cross-examination of Mr Clark**

34. On the issue of compartmentation, Mr Clark said that the problem was insufficient compartmentation within each flat so that fire and smoke would spread more quickly between flats than in a purpose-built block. The fire risk was also increased by the problems with the recent building works to Flat F and by the apparent short-term occupation of Flat F and possibly of other flats within the Property.

35. He accepted that the LACORS guidance was not intended to be applied in a ‘tick box’ manner, but it provided a framework. Case study D11 in the LACORS guidance was not identical to the current situation but seemed to him to be the closest match available.
36. As regards the means of escape from Flat A, there was an issue with going through an inner room and the key issue in his view was not allowing smoke to get into the escape route. As to the alternative possibility of partitioning the kitchen off, Mr Clark said that there would still need to be a corridor or a water misting system.

### **Mr Barry’s evidence**

37. Mr Barry is a fire safety professional with 30 years’ experience as a fire safety officer in UK local authority fire services. He has specialised in fire safety since 1999 and has developed and delivered fire safety training for the Fire Service College & Fire Protection Association. He also has other relevant experience as set out in his witness statement.
38. His witness statement was commissioned by the Applicant. Mr Barry was not available to be cross-examined on his witness evidence.
39. Mr Barry states that the provision of an egress window from the bedrooms on the basement, ground and first floors is possible as long as a means of escape can be provided from the enclosed yard that the windows would discharge into.
40. As regards the Respondent’s suggestion of creating internal hallways, Mr Barry accepts that this would provide a suitable solution as a means of escape but notes that this is not the Applicant’s preferred option. He states that an alternative solution that may be considered is to remove the doors and parts of the partitions between the bedrooms and the lounges so as to create an open-plan layout.
41. As regards the relevance and application of LACORS, Mr Barry emphasises the need in particular to consider the travel distance to a place of safety, the location of any cooking facilities, and the extent to which those cooking facilities are enclosed.

## **Relevant statutory provisions**

42. *Housing Act 2004*

### *Schedule 5, Part 3*

31.

- (1) *The applicant or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority on an application for a licence – (a) to refuse to grant the licence, or (b) to grant the licence.*
- (2) *An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.*

34.

- (1) *This paragraph applies to appeals to the appropriate tribunal under paragraph 31 ...*
- (2) *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.*
- (3) *The tribunal may confirm, reverse or vary the decision of the local housing authority.*

## **Tribunal's analysis**

- 43. Under paragraph 34 of Schedule 5 to the 2004 Act, an appeal against a licence decision is to be by way of re-hearing but may be determined having regard to matters of which the authority was unaware. Therefore, it is for the tribunal to decide, on the basis of the evidence before it, whether the disputed licence conditions are appropriate.
- 44. As stated by the Upper Tribunal (Martin Rodger QC) in *Clark v Manchester City Council*, in rehearing the matter the tribunal is not required to start with a blank sheet of paper but is entitled to have regard to the views of the local housing authority whose decision is under appeal. However, Martin Rodger QC then added that the recommendation by Buxton LJ in the Court of Appeal's decision in *London Borough of Brent v Reynolds (2001) EWCA Civ 1843* that a county court judge should be slow to disagree with the views of the authority did not seem to him to apply with the same force to a specialist tribunal.

45. We have noted the parties' respective written and oral submissions and have also noted the points apparent from our inspection.
46. Mr Clark and Mr Fitzgerald are both experienced professionals and they have both come across as knowledgeable. This is not, in our view, a case in which one of the experts is obviously correct and the other is obviously wrong, as both have presented a case for their preferred solution to the disputed issues. In part this is because no two cases are identical and because there are particular features of this case which make it quite complex. There is a large element of professional judgment call needed in order to calculate what weight to give to each element of the available guidance, what the particular risk factors are in this case and what solutions would be sufficiently effective whilst not involving the Applicant in unnecessary expense and inconvenience.
47. Mr Fitzgerald was in the slightly unusual position of being both the Applicant's expert witness and its advocate. His cross-examination of Mr Clark was fairly aggressive, and whilst that level of aggression in cross-examination is not a problem in itself, it did raise a slight question as to how objective Mr Fitzgerald's own analysis was in reaching the conclusions that he did.
48. Mr Barry's witness statement showed him to have a wealth of relevant experience, and any detailed views expressed by him in his witness statement deserve to be taken seriously. He was not available for cross-examination, and therefore to the extent that his evidence supports the Applicant's case this needs to be taken into account in deciding what weight to give to that evidence. However, if and to the extent that his evidence supports the Respondent's case his unavailability to be cross-examined does not lessen the weight of that evidence as (to that extent) there was no need for the Respondent to challenge it.
49. Mr Barry states that the Respondent's suggested solution of creating internal hallways would be a suitable solution, and the only qualification he offers to this endorsement of the Respondent's position is that it is not the Applicant's preferred solution. He does not state that the Applicant's solution is better or that it is a fairer way of dealing with the Respondent's fire safety concerns, whether because of cost, convenience or otherwise. Instead he states that an alternative solution that may be considered is to create an open-plan layout, but this was not the solution being proposed by the Applicant and insufficient details have been provided to enable the tribunal to consider it as a practical option, let alone for it to draft appropriate variations to the licence conditions on this basis. And even if the tribunal were able to extrapolate sufficient details to put together a meaningful variation of the licence conditions on this basis there would still be the problem that the Respondent would not have been afforded an opportunity to make submissions on those details.

50. Mr Barry also states that the provision of an egress window from the bedrooms on the basement, ground and first floors is possible as long as a means of escape can be provided from the enclosed yard. As regards what it would be necessary to put in place to facilitate such a means of escape Mr Barry states, contrary to the Applicant's own solution, that it would be necessary to build a small set of steps (not merely to fit an iron ladder to the wall). In any event, as an expert tribunal we are entitled to use our experience and judgment to prefer the Respondent's position on the issue of the back yard, which we do. We have inspected the Property and were shown the back yard as well as an alternative view of the proposed escape route from that back yard. Whilst we are not persuaded that the absence of a legal right to escape into the adjoining property is a key issue, given that in an emergency it is highly doubtful that an adjoining owner or tenant would actively seek to prevent the occupiers from escaping, nevertheless there are other problems. One is the inadequacy, in our view, of an iron ladder attached to a relatively high wall in an emergency situation where time is of the essence. This is confirmed by the LACORS guidance. Another is the inability of the Applicant to know or control what is going to be on the other side of that wall at any one time or to know or control what would happen next if the occupiers did manage to make it over the wall.
51. The inadequacy of the back yard escape route renders the Respondent's solution for Flat A an incomplete solution. In addition, the remainder of the Applicant's proposed solution in relation to Flat A has not been – or at the very least has not clearly been – advocated by Mr Barry, whose evidence one would have assumed would have been commissioned by the Applicant to support its own proposed solution. Furthermore, the Applicant's proposed installation of a protected fire escape route has not been formulated with sufficient detail to enable the tribunal to vary the licence conditions in a detailed manner or to enable the Respondent to make meaningful submissions on any such detail. We also take on board the Respondent's concern that the kitchen cooking facilities are close to the main exit route.
52. In relation to the disputed licence conditions for Flats B to E, we accept that the kitchen is generally the main source of fire risk. However, as the Respondent points out, there are many other potential sources of fire risk which can emanate from the lounge area. In addition, in the light of the Respondent's evidence regarding the use of parts of the Property for short-term lets coupled with the fact that the Property is divided into separate flats but has not been built as a purpose-built block of flats, we accept the validity of the Respondent's concerns about the heightened risk of fire. It is right in our view to be concerned that short-term occupiers are likely to be less careful and less used to the Property than long term tenants and to conclude that this increases the risk of fire.
53. In our view, the Respondent has approached the setting of licence conditions in an appropriate and proportionate manner and has

considered LACORS and other guidance in a reasonable way. We do not accept Mr Fitzgerald's implication that LACORS is out of date, as it remains in force until formally updated or superseded. Mr Clark has used his judgment to identify the key features of the Property in the context of fire risk and has identified suitable case studies whilst not applying them slavishly. Whilst we were not wholly convinced by his alternative option of a water-misting system in the light of Mr Fitzgerald's credible objections, this was only offered to the Applicant as an alternative option and there is no obligation for the Applicant to pursue this option.

54. In conclusion, in relation to Flat A and also to Flats B to E, the Respondent has in our view (with some assistance from Mr Barry) shown the disputed licence conditions to be credible. This does not by itself mean that they are the best solution in each case, and we note for example the Applicant's concerns about the practicalities of fitting a door to the lounge area in Flats B to E, but the Applicant has in our view failed to offer alternative solutions which are sufficiently credible or (in certain respects) sufficiently detailed for us to be satisfied that the existing conditions should be substituted by the Applicant's alternative solutions.

#### The time limits

55. The parties are in agreement as to the variations that it would be appropriate to make to the time limits for complying with the licence conditions, namely that items 1.1 to 1.5 in the Schedule of Works should be completed within 3 months after the date of the tribunal's decision, items 2 and 4.1 should be completed within 9 months and the remainder of the items should be completed within 2 years.
56. We agree that the above time limits are appropriate, and consequently the HMO Licence needs to be varied to reflect this. In all other respects, the licence conditions are confirmed.

#### **Cost applications**

57. No cost applications were made.

**Name:** Judge P Korn

**Date:** 6<sup>th</sup> January 2020

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.