



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

**Case reference** : **LON/00AL/HMD/2022/0001**

**Property** : **St Nicholas Centre, 798 Tewson Road,  
London SE18 1BB**

**Applicant** : **Global Guardians Management Ltd**

**Representative** : **Anthony Owen, Solicitor**

**Respondent** : **Royal Borough of Greenwich**

**Representative** : **Ali Dewji, Counsel**

**Type of application** : **Appeal in respect of a declaration of an  
HMO - Section 255(9) of the Housing  
Act 2004**

**Tribunal  
member(s)** : **Judge D Brandler  
Mr S Wheeler MCIEH, CEnvH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **12<sup>th</sup> August 2022**

**Date of decision** : **24<sup>th</sup> August 2022**

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**DECISION**

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**Decision of the tribunal**

**The HMO Declaration made by the Royal Borough of Greenwich issued on 20<sup>th</sup> January 2022, namely that St Nicholas Centre, 798 Tewson Road, London SE18 1BB is a House in Multiple Occupation, is confirmed. The appeal by Global Guardians Management Ltd is therefore dismissed.**

## **Reasons for the tribunal's decision**

### **Introduction**

1. By an application dated 6<sup>th</sup> February 2022, Global Guardians Management Ltd (“GGM”) appealed against the making of a Declaration by the Royal Borough of Greenwich (“Greenwich”) under section 255 of the Housing Act 2004 (“the Act”) that St Nicholas Centre, 798 Tewson Road, London SE18 1BB (“the Property”) is a House in Multiple Occupation (“HMO”).
2. The property is owned by Oxleas NHS Foundation Trust (“the Trust”) who entered into a written agreement in May 2017 with GGM for the provision of property guardian services. In January 2018 GGM entered into an inter-company arrangement with G100 who grant licences to the individual occupier property guardians.
3. Further to the decision dated 17<sup>th</sup> January 2022, Greenwich issued the Declaration dated 20<sup>th</sup> January 2022, which was then appealed
4. On 4<sup>th</sup> April 2022 the Tribunal issued Directions which included the requirement for GGM to file and serve a bundle of all relevant documents by 10<sup>th</sup> May 2022. Greenwich were required to file and serve their bundle of documents by 1<sup>st</sup> June 2022.
5. Greenwich complied with the direction in relation to their bundle. GGM did not. Upon the Tribunal contacting GGM in this regard, Mr Owen responded on 25<sup>th</sup> July 2022, apologising for the error, requesting that the hearing proceed on the basis of Greenwich’s bundle, and asking for permission to rely on that letter setting out his submissions, as well as an additional email trail. No objection was received from the Respondent.
6. On 8<sup>th</sup> August 2022 Ms Bowers, a Procedural Chair, wrote to the parties confirming that the case is permitted to proceed and that GGM be permitted to participate as indicated.
7. On 11<sup>th</sup> August 2022 the Applicant submitted 14 documents in preparation for the hearing, these included caselaw, various sections from the Act, the letter and the email.
8. On the morning of the hearing the Respondent submitted their written submissions, together with s.25 and s.30 of the NHS Act 2006, and an article from Westlaw in relation to NHS foundation trusts.
9. The sole issue for this Tribunal to determine is whether at the material time the Property was a HMO, as defined by s. 255 of the Housing Act 2004 (‘the Act’).

## The hearing

10. At the hearing, the Applicant was represented by Anthony Owen, Solicitor and the Respondent was represented by Ali Dewji, Counsel.
11. The parties agreed that there is no factual dispute. The issues before the Tribunal were questions of law in the application of the facts. The Tribunal does not therefore propose to set out the facts other than as is relevant to the arguments of the parties. The factual starting point is therefore that, with the exception of section 254(2)(d) of the Act, the standard test in section 254(2) of the Act is satisfied in terms of the nature and occupation of the property.
12. GGM's grounds of appeal are:
  - (i) The property is not an HMO under s.254(2)(d) of the Act (the 'only use' ground).
  - (ii) The property is controlled or managed by the owner, Oxleas NHS Foundation Trust, and it is neither controlled nor managed by the Appellant GGM under s.263 (the 'manage or control' ground).
  - (iii) Schedule 14 of the Act applies to take the property out of the need for licensing.
13. Greenwich's grounds for opposing this appeal were:
  - (i) In relation to the first ground *s.255 of the Act gives the Respondent the power to declare that a building is an HMO if it meets the standard test "as it applies without the sole use condition", so long as the occupation constitutes a "significant use" of the living accommodation (see s.255(2) and s.260 of the Act). That is the point of a s.255(1) declaration. If the test was the same, the building in question would already be an HMO by virtue of meeting the standard test. The 'only use' ground advanced by the Appellant presupposes that a 'sole use' or 'only use' condition applies.*

*The presumption in relation to both the "sole use" condition and the "significant use" condition is that they are met unless the contrary is shown (see s.260 of the Act).*

*In any event, as the Appellant has conceded, the Tribunal is currently bound by the authority of the Upper Tribunal (see the UT decision in Global 100 Limited v Jimenez, [2022] UKUT 50 (LC))*
  - (ii) In relation to the 'manage or control' ground, Greenwich submits that this argument is not relevant to whether the declaration is

valid because the s.255(1) declaration at issue concerns only whether the property is an HMO within the meaning of s.255 of the Act. The declaration does not declare or determine who is or is not a person managing or controlling the property for the purposes of any liability in relation to licensing.

While it is true that the Respondent served notice on the Appellant on the basis that the Respondent believed (and maintains) that the Appellant is a “relevant person” within the meaning of s.255(12) of the Act, even if this were incorrect it would not follow that the property is not an HMO and the declaration would remain valid.

It would, however, follow that the Appellant lacks standing to bring the appeal under s.255(9) of the Act.

In any event, it is argued, the Appellant has conceded that the Tribunal has already decided that analogous arrangements do amount to the Appellant being a person ‘having control of or managing’ the building for the purposes of s.72 of the Act

- (iii) In relation to the ‘Schedule 14’ Ground, it is submitted that this is not relevant as to whether the declaration is valid:

The Respondent submits that the property is not exempt because even if the property is controlled or managed by Oxleas NHS Foundation Trust, an NHS Foundation Trust is not the same as an NHS Trust. They are legally different bodies. Only NHS Trusts are listed in s.9 of the National Health Service 2006 and therefore exempt under Schedule 14 of the Act.

## **The issues**

14. In oral submissions, Mr Owen confirmed that he would not pursue GGM’s Grounds (ii) and (iii).
15. The only issue remaining therefore was the ‘only use’ ground. Mr Owen acknowledges that the Tribunal is bound by the Upper Tribunal decision in Global 100 Limited v Jiminez [2022] UKUT 50 (LC). Although he suggested that it may be a good idea to adjourn the matter until that case has been decided, Mr Dewji opposed a delay in proceedings.
16. The Tribunal have no formal application for an adjournment in this matter and decided that it was in the interests of justice proceed and hear the legal arguments on this ground. For the reasons given below, the outcome of Global 100 Limited v Jiminez [2022] UKUT 50 (LC) is unlikely to have any bearing on the Tribunal’s determination of this case.
17. There was some discussion as to whether or not the Appellant had standing to bring the appeal.

18. A ‘relevant’ person has a right of appeal against a declaration under s.255(9) of the Act. A relevant person is defined in section 255(12) of the Act which refers, with an exception, to people who have an estate or interest in the building or to those, who do not have an estate or interest, but nevertheless manage or have control of the building or part of it.
19. Mr Owen’s argument was that GGM does not come within the definitions in section 255(12) as they do not have an estate or interest in the building and nor do they manage or control it (the abandoned Ground ii argument).
20. GGM’s own position was therefore arguably that they did not have standing to bring the appeal. There were submissions by both parties about the meaning of ‘to the knowledge of the Local Authority’ in section 255(12) of the Act, which the Tribunal did not find particularly useful in determining the question before it.
21. Section 255(12) of the Act states:
- (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)).*
22. The function of a declaration is that it removes doubt as to whether a building is an HMO so as to ensure compliance with relevant HMO management and safety obligations including licencing. For a building where it is not clear to the Local Authority who would be responsible for licencing it, the declaration would warn the diverse parties that might come within section 255(12) of the Act that at least one of them should be applying for a licence. The use of the phrase “*any person who*” within sub-paragraph (a) or (b) means that the Local Authority may have identified different parties who may need to apply for a licence and it is for those parties to determine which of them applies for it.

23. In multi-layered contractual arrangements such as in the current case, it is not the function of the declaration to identify which party controls or manages the building but rather to declare that a building is an HMO with its associated obligations and for the Local Authority to identify according to its researches which parties it knows could be liable. GGM has been identified by the Local Authority as a party which it considers might be responsible and as such was notified that the building over which it may or may not have control or management was an HMO. As a party so notified, GGM had standing to bring the appeal.
24. This reasoning also assists in determining the Ground of Appeal not conceded.
25. Mr Owen's argument that GGM did not have control or management of the building is in fact immaterial to the appeal. Such an argument would be available to GGM had the Local Authority brought proceedings against them for an offence such as having control or managing an HMO that was required to be licenced and was not so licenced. The declaration is not concerned with who has control or management but rather that the building itself, because of its organisation and the nature of its occupation, was an HMO with all its associated obligations
26. Further, the Tribunal means no disrespect to the arguments made by Mr Owen by not reciting them here, but even if he were right about the meaning of 'only use' in section 254(2)(d) as read into section 254(3) and in section 254(4)(e), it is not relevant to a declaration.
27. Section 255(1)-(3) of the Act state:

**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)),*

*(b) the self-contained flat test (see section 254(3)), or*

*(c) the converted building test (see section 254(4)),*

*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.

28. Section 255(2) of the Act excludes the 'sole use' condition as identified in subsection 3 from being a requirement that a building meets the tests in subsection 255(2)(a)-(c).
29. The Tribunal agrees with the Respondent's argument that in order to make a declaration the Local Authority does not have to be satisfied that the occupation of the living accommodation in a particular building is the only use of that occupation. Such a consideration is expressly excluded
30. The meaning of 'only use' confusingly then defined as 'sole use' in section 255(3) of the Act is not relevant to whether or not the declaration was properly made.
31. The Local Authority and the Tribunal have to be satisfied not that the building was only used for occupation as living accommodation but rather that the occupation constitutes '*a significant use*' of the accommodation as defined in section 260(2)(b) of the Act. The Tribunal did not understand Mr Owen to be arguing that the occupation of the building by guardians as living accommodation was not a significant use of the building. His argument was that it was not the 'only' use of the building.
32. The Tribunal agrees with Mr Dewji's contention that the test for a declaration under section 255 of the Act is different from the "standard test" definition of an HMO in section 254 of the Act. The declaration establishes that a building is an HMO but not that an offence has been committed. This is because it appears to them that a significant use of the building or part of it is being used for living accommodation that might mean it comes within section 254 of the Act. It therefore notifies those with an estate or interest in the building and those to whom management or control of the building that the building is an HMO.
33. The Tribunal therefore affirms the HMO declaration made by the Royal Borough of Greenwich issued on 20<sup>th</sup> January 2022, namely that St Nicholas Centre, 798 Tewson Road, London SE18 1BB is a House in Multiple Occupation. The appeal by Global Guardians Management Ltd is therefore dismissed.

**Name:** Judge D Brandler **Date:** 24<sup>th</sup> August 2022

## **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. 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.