

UPPER TRIBUNAL (LANDS CHAMBER)



LC-2023-000509
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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPLICATION FOR PERMISSION TO APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER) UNDER S.11 OF THE TRIBUNALS COURTS AND ENFORCEMENT ACT 2007

Applicant: Safety Estate Agency Limited

Property: 36 Upper Street (Flat 1 and Flat 6), London, N1 OPN

Decision of the First Tier Tribunal (Property Chamber) dated 28 April 2023

Permission to appeal is REFUSED for the following reasons:

1. There is no realistic prospect of a successful appeal in this case.
2. Grounds 1, 2, 3, 4 - The applicant challenges the decision on a number of procedural grounds, but these cannot be substantiated and are contradicted by the FTT's refusal of permission to appeal. The applicant asserts that its representative was not debarred from participation, but it has not produced a copy of the order it relies on despite the FTT having confirmed its effect in its refusal. It is apparent that Dr Donmez was permitted to give evidence and the FTT has confirmed that it had regard to all of the documents supplied to it. The applicant has not identified any particular document or explained how it might have made a difference to the outcome of the proceedings, despite the FTT having highlighted this deficiency in its refusal of permission.
3. Grounds 5 and 6 - The applicant also seeks to challenge the FTT's determination of the underlying facts. Such a challenge could only be successful if there was no evidence to support the findings of fact which are challenged. That is not how the applicant puts its case. There was evidence on which the FTT could be satisfied that the building was a section 257 HMO, as the FTT found. It had clearly been converted in the recent past and Dr Donmez does not appear to have disputed that it was not compliant with current building standards. The FTT was correct in stating that the applicant's status as leaseholder was irrelevant to the status of the building as an HMO.
4. Grounds 7 to 12 - These grounds challenge the FTT's exercise of its discretion to make a rent repayment order, and the amount of the order. A challenge to the exercise of a judicial discretion will only succeed if it is shown that the decision maker erred in principle, for example by failing to take account of some relevant matter, or by having regard to some irrelevant matter, or reached a conclusion which was not open to it or which no reasonable tribunal would have reached. This was plainly a case in which deterrence required the making of an order. The applicant's suggested lack of knowledge of the need to obtain a licence was a negative, rather than a positive

consideration, as it is clearly a commercial landlord which can be expected to make proper enquiries. The matters which it draws attention to in grounds 9 and 10 cast no doubt on the FTT's decision making, and the matters which the FTT is said in ground 11 to have failed to take into account either were taken into account or are contrary to the evidence (see paragraph 33). The FTT correctly directed itself on the proper approach to determining the amount of the order and referred to and applied each of the cases the applicant refers to. An order for repayment of 100% of the rent is exceptional, but the FTT was entitled to regard this as an exceptional case.

Martin Rodger KC,
Deputy Chamber President
15 August 2023