In the matter of:
LDC (Ferry Lane) GP3 Limited v Garro and others - Flats 201 & 601 North Lodge Lebus Street
LC-2023-000418

Tenants' Response to Application for Permission to Appeal by UNITE Group PLC

1. We follow the Respondent's reference to the parties as Respondents and Applicants before the First-tier Tribunal Property Chamber (Residential Property) (FtT).

2. We refer to R also as "UNITE" and "UNITE Group PLC".

3. The Applicants resist the application for permission to appeal the decision of the FtT.

Reasonable Excuse

4. The Respondent (R) is a subsidiary of UNITE Group PLC a student accommodation provider listed on the London Stock exchange with a value exceeding £4 billion. R was well aware of the need to license its properties in boroughs where there are discretionary schemes, having licensed such properties before in other boroughs such as Camden, Tower Hamlets, Brent, Nottingham, Oxford and Southampton. R is likely the largest private HMO landlord in the country, housing over 70,000 students.

5. Quite apart from the statutory requirements, under the ANUK/Unipol code, of which R was a founding member, there is a requirement for all members to ascertain whether their properties require to be licensed and to then license them accordingly.

6. If R had genuinely believed that Haringey had not discharged its duty to consult in the implementation of the Additional licensing scheme then it would have been open to R to challenge the council's implementation through a judicial review. Instead it has chosen to license North Lodge, at a cost of over £100,000 and, we understand, is also licensing other similar blocks in the borough (Emily Bowes Court and Station Court), presumably at a similar cost. A judicial review would not only have been cheaper but, had it been successful, might also have exonerated R's failure to license many of its properties across the country. Clearly they have taken the view, rightly we believe, that the prospects for such a challenge were dim to non-existent.

7. To the best of our knowledge, R has never sought a judicial review of any licensing schemes affecting any of their properties on the basis that they were not directly contacted by the council for consultation on the scheme: they operate over 50 buildings that are within discretionary licensing schemes across England alone.

8. Councils are not necessarily aware of all landlords in their borough. Indeed, that is part of the point of the licensing schemes: so that the number and quality of HMOs

within their borough can be assessed and controlled. That one officer in Haringey expressed that they were unaware of the inclusion of R's blocks is not indicative of any intention at the level of the council to exclude such blocks, we submit. The intention of the licensing scheme was to make all HMOs in the borough licensable.

9. The Housing Act 2004 (HA) requires that councils consult before the introduction of a discretionary licensing scheme such as that in Haringey. The legislation, in this respect, only specifies that councils must

   "*take reasonable steps to consult persons who are likely to be affected by the designation and consider the representations that are made*"
   (section 80(9), HA 2004).

   The meaning of this part of the legislation has been considered in a case where landlords did challenge such a designation on the basis that there had been insufficient consultation. In 2015 a judicial review request was considered in *R (Croydon Property Forum Limited) v London Borough of Croydon* [2015] EWHC 2403 (Admin). In considering this matter, the court took into account further guidance on the consultation process within the government's publication "*Approval steps for additional and selective licensing designation in England*" (2010 Department for Communities and Local Government). This refers to councils ensuring that the consultation is "*widely publicised using various channels of communication*".

   The court was satisfied that the council had complied with its duty to take reasonable steps to consult those people who were likely to be affected by the designation. "Reasonable steps to consult" does not mean "all steps" or "every step" or *even* "all reasonable steps". Indeed, there is clear authority that the council must have a comparatively wide discretion as to how the consultation process is carried out and the process will not be considered unlawful unless something went clearly and radically wrong. That is a high threshold for a claimant challenging a consultation process to reach.

   On the facts of the case, the court was satisfied that the council had complied with what was stated in the guidance. It had ensured that the consultation was widely publicised using various channels of communication. Interestingly, the guidance did not state expressly, nor did it imply, that a council should target any particular group or groups and this omission supported the council's case that it had complied with its section 80(9) duty.

   Applying these principles to that case, the court was satisfied that:

   - The council had a comparatively wide discretion as to how the consultation process was conducted.

- Nothing went "clearly and radically wrong" in the consultation exercise, bearing in mind that it was almost impossible to suggest ways in which the consultation exercise might have been improved.
- The authority had taken reasonable steps to consult the developers as a class, even if individual developers were unaware of the consultation process (and indeed the judge commented that he did not understand how that had occurred bearing in mind the extensive publicity that the council organised).

Therefore, the claimant's application for judicial review was dismissed.

In the instant case, Haringey confirmed that they had widely publicised their intended scheme and this was taken into account at the FtT at §40 of their decision. We would also comment, as in the Croydon case, that it is difficult to comprehend how one of the largest private HMO operators in the country could have missed the wide publicity given to the Haringey scheme. Even more saliently, one is left wondering why UNITE does not routinely check at the councils where it operates for any schemes that may affect its properties.

10. The Upper Tribunal has often considered this matter itself in RRO cases, finding that professional landlords must make themselves aware of their duty to license:

    a. In *Chan v Bilkhu & Anor* [2020] UKUT 0289 (LC) at §25:

    "*However, I do take into consideration that a landlord with a portfolio of properties is to be expected to keep abreast of their professional and legal responsibilities.*"

    b. In *Williams v Parmar & Ors* [2021] UKUT 244 (LC) at §52:

    "She was, however, a professional landlord who must be taken to have known the requirements for licensing an HMO"

    c. In *Aytan v Moore* [2022] UKUT 27 (LC) at §23:

    "*they are clearly investors in property who can be expected to take responsibility for the legal responsibilities that go with their receipt of rent from tenants*"

    d. *Simpson House 3 Limited v Osserman & ORS* [2022] UKUT 164 (LC) at §50:

    "*I take into account that the Landlord is a substantial property investment company with resources sufficient to ensure that is* [sic] *complies fully with its responsibilities*."

11. Having dismissed similar attempts at a “reasonable excuse” previously so many times for professional landlords, it would be difficult to understand why an appeal would now be allowed for a professional landlord of the size of UNITE on this ground.

Quantum

12. R has argued that the award of 50% was too high and that an award similar to that in *Hallett v Parker* [2022] UKUT 165 (LC) (*Hallett*), i.e. 25% should have been made.

13. It seems almost trite to make the argument why this should not be so, given the diametrically different circumstances of the landlords in these cases.

    In *Hallett*, the UT allowed for a lower RRO award because the landlord was:
    ● Not a professional landlord, who let only 1 property
    ● He employed an agency
    ● He had not let the property previously as a HMO but only to single households
    ● He was unaware of the requirement to license
    ● The property was in reasonably good condition
    ● He had immediately made a licence application when he became aware of the necessity
    ● He was abroad most of the year so had not been aware of the change in legislation

14. The instant case differs in a number of important respects from that of Hallett:

    ● R is a subsidiary of one of the largest professional student landlords in the United Kingdom
    ● R did not use an agency. While R did use the services of a management company, this was a company that was part of the same business consortium as R.
    ● R has let countless other buildings to students that form HMOs
    ● R was certainly aware of the requirement to license HMOs, having licensed similar properties across the country.
    ● We maintain that there were considerable problems with the condition of the property, despite FtT’s summary dismissal of this evidence. We have since submitted further applications for the same property from tenants in the following year, 2021-22, who all report very similar problems including excessive heat, blocked drains, fly infestations, broken equipment etc.
    ● R’s application for a licence has been lengthy and complicated by delays, not least of which were the multiple requests to make a paper application. At the time of the subsequent hearings in February and March 2023 no complete licence application had yet been made after the initial enquiry at Haringey by UNITE in July 2022.
    ● R is a UK based company.

We request that R’s application for permission to appeal be rejected.

Should the tribunal be minded to grant permission to appeal, we give notice that we would then want to request permission to cross appeal on a number of points, including the lack of consideration given to the evidence on the condition of the property and the deduction of utilities costs from the award.

Flat Justice