

**Date:** 23 December 2009  
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Dear Mr Pace,

**Your Ref: LON/OOAG/HXV/2009/0001**  
**139, Fellows Road, NW3 3JJ**

Please find enclosed a copy of our Application for Permission to Appeal lodged at the RPT today.

Kindly note that this office is closed from the afternoon of Christmas Eve until the 4<sup>th</sup> January.

Yours sincerely

A handwritten signature in black ink that reads "E. Sarkis".

**Edward Sarkis**

**On behalf of head of legal services**



INVESTOR IN PEOPLE

**IN THE RESIDENTIAL PROPERTY TRIBUNAL**

**Ref: LON/00AG/HXV/2009/0001**

**BETWEEN:**

**WINDSOR PROPERTIES**

Appellant

**AND**

**THE LONDON BOROUGH OF CAMDEN**

Respondent

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**RESPONDENT'S APPLICATION  
FOR PERMISSION TO  
APPEAL**

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The Respondent hereby applies for permission to appeal to the Upper Tribunal (Lands Chamber) the decision of the Residential Property Tribunal ('the RPT') in this matter dated 11 December 2009, sent under cover of a letter dated 14 December 2009. In the decision the RPT revoked a final management order (FMO) made by the Respondent under s.113(2) of the Housing Act 2004 in respect of the property 139 Fellows Road, London NW3 3JJ managed by the Appellant.

The grounds on which the Respondent intends to rely in the appeal are as follows:

1. S.113(2) imposes a duty on housing authorities, including the Respondent, to make a FMO so as to replace an interim management order (IMO) 'as from its expiry date' if

'on that date' the house in question would be required to be licensed and the authority is unable to grant a licence.

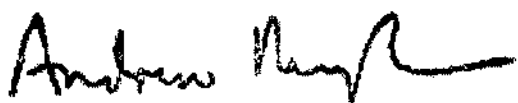
2. One of the circumstances in which a FMO is required to replace an IMO is where the latter is revoked. S.113(8)(a) states that where an IMO is revoked, its 'expiry date' for the purpose of the section means the date 'as from which it is revoked'. It is from that date that the FMO must take effect under s.113(2).
3. The order revoking the IMO in the present case stated that the IMO would cease to have effect on the day the FMO came into force. An FMO does not take effect immediately it is made but, by virtue of s.114(2), only at the 'operative time'. That is defined by paragraph 27 of Schedule 6 as the time when the period for appealing against the making of the FMO expires without an appeal being made, or when the FMO is confirmed on appeal. Thus the operative time for the coming into effect of the FMO, and the consequential expiry date of the IMO, was not known, and could not have been known, at the date when the FMO was made.
4. The RPT recognised that the Act cannot be interpreted literally because it is impossible to know, at the date that the FMO is made, whether the statutory requirements set out in s.113(2) will be satisfied on the day that it takes effect, a day that may lie a considerable time in the future. It is therefore necessary, in order to give effect to the legislation, to ascertain whether those requirements are satisfied by reference to the position at a different date. Two alternative dates were identified by the RPT: the date the FMO was made (as argued for by the Respondent) or the date of the hearing of the appeal against the making of the FMO. The RPT adopted the latter.
5. It is submitted that the RPT's decision was wrong for the following reasons:
  - (i) The Act places a duty on a housing authority to make a FMO in the circumstances set out above. It would be highly unsatisfactory if the exercise of that duty were to be dependent on future events of which the authority must perform be unaware.

- (ii) The statutory requirements set out in s.113(2) are ambulatory in that they may come and go with respect to a particular property from time to time. The date of the hearing of an appeal is arbitrary and the correct exercise of an authority's statutory duty should not depend on an arbitrary factor. The facts may change between the hearing date and the date of judgment (in the present case some five weeks elapsed between the hearing and the date of the judgment) and even following the judgment (in the present case, if permission to appeal is granted, the IMO will remain in force until the determination of the appeal to the Upper Tribunal which may be many weeks into the future).
- (iii) If the approach adopted by the RPT is correct, but by the time the appeal to the Upper Tribunal is heard the statutory requirements are satisfied, the Upper Tribunal would be required to allow the appeal on the basis of the changed factual circumstances. This would be a highly unsatisfactory way of determining appeals and should be avoided if there exists an alternative approach that avoids that conclusion.
- (iv) The RPT's approach ignores the fact that reducing the number of occupiers of a house in multiple occupation is frequently necessary in order for repair works to be carried out. It would be highly unsatisfactory if housing authorities were required to ensure that a minimum number of occupiers remained in the property following the making of a FMO just in order to ensure that the statutory requirements continued to be satisfied at the date of a possible appeal hearing and at the date of a possible subsequent appeal to the Upper Tribunal.
- (v) At paragraph 43 the RPT sought support for its approach from the provision contained in paragraph 26(2) of Schedule 6 to the Act whereby appeals may be determined 'having regard to matters of which the authority were unaware'. The RPT interpreted this as indicating a clear legislative intention that it was required to judge the existence of the statutory requirements as they stood at the date of the appeal hearing. However, the wording is simply aimed at confirming that the appeal is not to be restricted to a review of the reasonableness of the authority's decision but is a rehearing. It does not imply

that an appeal should succeed because of events that occur after a FMO is made when, at the time of making the Order, the Order was justified.

- (vi) The concern expressed by the RPT, that it would be wrong to reject an appeal and uphold a FMO where the statutory requirements are not satisfied on the date of the hearing, was misplaced because a landowner may, in those circumstances, apply for the FMO to be revoked and appeal to the RPT if the authority refuses to do so. If an authority were required to revoke a FMO where the statutory requirements were no longer satisfied the RPT's concern might have some validity, but this is not the position. In those circumstances the authority has a power to agree to the revocation, not a duty to do so. The RPT was therefore wrong to state at paragraph 41 that if it rejected the appeal but an application to revoke was then made and refused, on any subsequent appeal the 'identical facts' would fall for determination as were before them. An appeal against an exercise of an authority's discretion raises a completely different set of considerations from an appeal based on the purely factual position as to the existence of the statutory requirements at a given date.
- (vii) The case of *SFI Group PLC v Gosport BC* [1999] Env LR 750, although decided under different legislation, supports the interpretation contended for by the Respondent.
- (viii) The point of law raised by this application is both novel and important. It merits consideration by the Upper Tribunal.

22 December 2009



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Signed by Mr Andrew Maughan, Head of Legal Services, Solicitor to the Council and for the Respondent, Camden London Borough Council of The Town Hall, Judd Street, London WC1H 9LP.