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Property Guardian Scheme was a House in Multiple Occupation

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Property guardian schemes have proven popular over the last 20 years as a way to protect derelict buildings from vandals and squatters. In theory, the guardians get a cheap place to live and the property owner gets on-site security, as well as escaping liability for non-domestic rates. In practice though, a number of recent court decisions may make these schemes less attractive.

The Upper Tribunal has recently held that a former office block in Euston occupied by property guardians was a House in Multiple Occupation (HMO) (Global 100 Limited v Carlos Jimenez & Ors). An HMO must have a licence from the local authority, specifically to reduce risks to the health and wellbeing of residents, because such properties have a track record of poor living standards. Failure to licence is a criminal offence and can result in prosecution or financial penalties for the owner. There are five alternative tests listed in section 254(1) of the Housing Act 2004, to decide whether a building or part of a building is an HMO. One of these tests is subject to a "sole use condition", which means that it will be satisfied only if the accommodation has no use other than being occupied as living accommodation.

The guardians in this case occupied under the terms of a "Temporary Licence Agreement", which set out their functions. They provided their own white goods and furniture and paid the scheme operator a weekly fee to act as guardians. Their duties included sleeping at the property for at least five nights out of any seven, ensuring the property was never left empty, that doors and windows were closed/locked as appropriate, reporting damage, or risk of damage, and unauthorised entry (but they did not have to prevent entry). They were not permitted to conduct a business or hold meetings on the premises.

The operators of the scheme argued that the sole use condition was not met, as the guardians' use included protecting the property and was not limited to using it for accommodation. The Upper Tribunal disagreed and said that protecting the property was only a side effect of the guardians' occupation. Ultimately, they were there to have a roof over their heads.

Getting guardians into a property may meet an immediate need for cheap security but owners should be wary of unintended consequences, especially as they may not even get the rates advantage they are expecting.

This case follows on from others in the last couple of years dealing with different aspects of property guardian schemes. In another case concerning Global 100 Limited, the Court of Appeal held that a guardian occupied as a licensee and not a tenant, so the owner could bring trespasser possession proceedings when the guardian refused to vacate. In the highly significant case of London Borough of Southwark v Ludgate House Limited, also a Court of Appeal decision, it was held that a guardian scheme did not relieve the property owner of liability for non-domestic rates, thereby significantly diluting their benefits. Finally, a recent planning inspectorate appeal upheld an enforcement notice that had been served because guardians occupying of a public house was a material change of use to residential.

Getting guardians into a property may meet an immediate need for cheap security but owners should be wary of unintended consequences, especially as they may not even get the rates advantage they are expecting.