RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

HOUSING ACT 2004: PART 3 AND SCHEDULE 5 PARAGRAPH 31 (1)(B)

REFERENCE: LON/OOAP/HMV/2010/0004

Property: 79 Warham Road, London, N4 1AS

Appellant: Ms Angela Hunter

Respondent: London Borough of Haringey

Appearances: Ms Angela Hunter

For the Applicant

Mr Ian Gardner, HMO Lead Officer, London Borough of Haringey
Ms Marta Hardy, Senior Officer, London Borough of Haringey

For the Respondent

Date of hearing: 29 July 2010

Date of Tribunal's Decision: 4 August 2010

Members of the Tribunal
Mrs J S L Goulden JP
Mr W J Reed FRICS
Mrs J Dalal

REF: LON/OOAP/HMV/2010/0004

PROPERTY: 79 WARHAM ROAD, LONDON N4 1AS

Background

1.The Tribunal received an appeal from Ms Angela Hunter against the terms of a Licence dated 22 March 2010, which had been issued by the London Borough of Haringey in respect of a House in Multiple Occupation ("HMO") under Schedule 5 paragraph 7 of the Housing Act 2004 ("the Act").

2.The Licence was in respect of 79 Warham Road, London N4 1AS (" the property").

3.The appeal, which was made under paragraph 31(1)(b) of Schedule 5 to the Act, was dated 19 April 2010 and was received by the Tribunal on that date.

Duties of the Tribunal

4.As set out in the Tribunal's Directions dated 14 May 2010, the Tribunal is able to confirm, reverse or vary the council's decision. The issues that the Tribunal would need to consider included:

- whether the council had gone through the necessary steps prior to the issue of the licence (including the draft and final licence) Schedule 5 paragraphs 1 to 4 of the Act

- whether the Tribunal should confirm, reverse, or vary the licence and, if so, how.

The licence

5.The Notice of the council's decision to grant an HMO licence for the property, together with the licence and attached schedules was sent to Ms Hunter on 22 March 2010.

6.The Licence had been granted following –

(a) the Council's receipt of an Application for a Licence in respect of a House in Multiple Occupation made by Ms Hunter and dated 3 February 2010,
(b) the Council's Notice of Proposal to Grant an HMO Licence dated 4 March 2010,
(c) the requirement that Ms Hunter should make written or oral representations within 14 days of the Notice if she considered that the licence should not be granted or that its requirements should be modified,
(d) the Council's consideration of Ms Hunter's representations dated 15 March 2010, and
(e) the Council's decision on 22 March 2010 to grant an HMO Licence in respect of the property.

7.The licence was for five years from the date of issue. The following conditions attached to the licence were appealed:-

- Schedule 1 (schedule of occupation) in respect of the ground floor front and rear rooms
- Schedule of works in respect of kitchen facilities
- Schedule 2, paragraph 5 in respect of issues relating to anti social behaviour

8.A draft copy of the proposed Licence had been attached to the Council's Notice of Proposal to Grant an HMO Licence dated 4 March 2010, and the Council had stated that it was of the opinion that the following requirements had been or would be satisfied –

- *the house is or will be made reasonably suitable for occupation by not more than the maximum number of households or persons as specified in the licence*
- *the proposed licence holder is the most appropriate person to hold the licence*
- *the proposed licence holder is a fit and proper person*
- *the proposed manager is either the person having control of the house or a person who is an agent or employee of the person having control of the house*
- *the proposed manager is a fit and proper person, and*
- *the proposed management arrangements for the hours are or will be made satisfactory.*

Inspection

9.The Tribunal inspected the property on 29 July 2010 before the hearing commenced.

10.The property was a brick built end of terrace three storey house c 1900 with ground and first floor bays, slate roof and three Velux windows. The property, which was one of a pair, with adjoining halls and a shared porch, had been converted into bedsits, all of which were inspected internally and all of which were unoccupied as at the date of inspection. The external decorations were good. There was a burglar alarm. To the front of the property, there was a small tiled front garden with shrubs and refuse bins. There was a communal garden to the rear, access to which was via one of the rear ground floor rooms, the kitchen and the communal lounge at the rear.

11.The Tribunal took particular note of the front and rear rooms on the ground floor. These rooms were interconnecting by way of a pair of sliding wooden doors. In both the front and rear rooms, the sliding doors had been blocked by a free standing wardrobe.

12.The Tribunal also took particular note of the kitchen. This had wall and base units along one side, with worktops, a gas hob, oven and microwave and fridge/freezer as well as a washing machine and dryer. In the centre of the kitchen was a central unit incorporating a sink and drainer. It appeared that the central unit was also used as a breakfast bar and there were three bar stools opposite the sink.

Hearing

13.The hearing took place on 29 July 2010 after the Tribunal's inspection. The Appellant, Ms Angela Hunter appeared in person and was unrepresented. The Respondent, London Borough of Haringey, was represented by Mr Ian Gardner, HMO Lead Officer, assisted by Ms Marta Hardy, Senior Officer. There were two observers, namely Ms Sally Stewart of London Borough of Haringey and Mr Sean Tiptaft of London Borough of Barnet.

14.Ms Hunter had prepared a bundle for the hearing, which had included a statement of her Grounds for Application signed and dated 19 April 2010, and asking the Tribunal to order the following -

- Item 1 (kitchen facilities) be removed from the schedule of works,
- That the two rooms on the ground floor be treated as two rooms and the schedule of occupation be changed to reflect this.
- The licence should reflect the numbers of persons and be changed to six households.
- Paragraph 5 of the schedule of licence conditions to be removed.
- Any other order the tribunal sees fit.

15.Mr Gardner had also prepared a bundle for the hearing which had included a statement, signed, and dated 23 June 2010, in which he had summarised the history of the application for a licence and had responded to Ms Hunter's specific requests. He also confirmed that copies of the Notices and Licence had been sent to HBOS (Halifax) as the mortgagee.

16.Several adjournments were given during the hearing in order for the parties to discuss and if possible to narrow the issues. This proved unsuccessful.

17.The Tribunal sets out the evidence, together with its determination under each head.

Schedule 1 (schedule of occupation) in respect of the ground floor front and rear rooms

18.The schedule in respect of the unit of occupation being the ground floor front and rear rooms stated that the maximum number of persons was two, and that these numbers must not be exceeded.

19.In Ms Hunter's statement she requested that the two rooms *"currently divided by a door and regarded by the respondent as one room, be treated as two rooms and the schedule of occupation be changed to reflect this. The number of occupants to be changed accordingly. Any works required to allow this, to be added to the schedule of works."* Ms Hunter accepted that the two rooms were one unit as at the date of the hearing, but said that she had set out her proposals to the local authority, but the council had never answered her queries as to what was required.

20.In a letter to Ms Hunter of 22 March 2010, Mr Gardner confirmed that he was not requiring Ms Hunter to provide a proper partition between the ground floor front and rear rooms. He said that it was not for him to do so and Ms Hunter was entitled to do

as she wished in this regard. Mr Gardner explained that he had had *"lengthy"* discussions with Miss Hunter about the council's standards. However, in his witness statement, Mr Gardner said that having considered her representations, *"I did not feel that I could accept the use of the ground floor front and back rooms as separate units of accommodation as long as they were connected by dividing doors, and the "prescribed standards" do not provide for the proper fire separation between rooms".*

21.It is not fully understood why Ms Hunter pursued the challenge to this condition. As was discussed at the hearing, based on the Tribunal's inspection and her own admission that the two ground floor rooms could reasonably be considered as one unit as at the date of the inspection/hearing, the Tribunal had indicated to Ms Hunter that it was probable that her appeal would be unlikely to succeed.

22.The Tribunal determines that the Respondent went through the necessary steps prior to issue of the licence. The units of accommodation and the maximum number of persons in those units as set out in Schedule 1 remain as drawn and are not to be varied.

Schedule of works in respect of kitchen facilities

23.The conditions attached to the licence under the above head which were appealed were as follows:

*"Upgrade and re-arrange as necessary the ground floor kitchen to provide two sets of facilities, arranged as **two distinct** working areas. **Each set** of facilities is to comprise of the following as a minimum:*

- *Adequate cupboard space for food storage **for each letting**, to consist of a 500mm base unit or a 1000 mm wall unit as a minimum (a sink base unit will **not** be acceptable for this purpose). NB these can be provided within the bedsit rooms if preferred or if there is insufficient space in the kitchen;*
- *An adequately sized refrigerator with a freezer compartment **for each letting.** NB these can be provided within the bedsit rooms if preferred or if there is insufficient space in the kitchen;*
- *Adequate cupboard space for the storage of kitchen utensils;*
- *A sink and drainer, set on a suitable base, with proper connection to the soil drainage system and adequate and constantly available hot and cold drinking water supplied via suitable taps;*
- *A suitable gas or electric cooking appliance with oven, grill and minimum of four burners or hotplates;*
- *An impervious work surface of minimum length 2000 mm (**excluding** any area covered by a major appliance or two separate lengths of 1000mm each;*
- *Glazed tiled splashbacks to the sink unit, cooker and work surface(s) to a minimum height of 300 mm, where practicable;*
- *A minimum of one double power socket **per** 1000mm of work surface, located at least 150mm above the work surface(s), in addition to any sockets used for the connection of major appliances; and*
- *A suitable bin for kitchen waste;*

24.Ms Hunter went through the list and either argued that the existing provisions were adequate and/or that her proposals had addressed the council's concerns and/or that the conditions were unnecessary and/or that the work had already been carried out. In her view the conditions should be removed from the schedule of works.

25.Mr Gardner confirmed that the standards adopted by Haringey were more onerous than some authorities and less onerous than others, examples of which were provided. He said that the ideal would be *"for all lettings to have exclusive use of their own kitchens, so that normal risks inherent with the use of kitchens (hot surfaces, accidents involving sharp knives, fires, cross contamination of food, etc) is not increased by numbers of persons potentially working in close proximity and trying to use the same facilities.....However, there is an acceptance that exclusive kitchen facilities is not always viable and a sharing ratio of one set of kitchen facilities to every three lettings was considered an acceptable compromise.....It is understood that many HMO tenants, as with many people these days, do not cook a great deal, but that is no reason to deny them choice and potentially limit them to "one ring cooking" or having to "wait in line" to prepare their meals"*

26.The prescribed standard for deciding the suitability of a house for multiple occupation by a particular maximum number of households or persons is set out in Regulation 8 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 ("the Regulations") which states:-

"The standards prescribed for the purpose of section 65 of the Act (tests as to suitability of HMO for multiple occupiers) are those set out in Schedule 3"

27.Schedule 3 of the Regulations (referred to above) states:-

"Where all or some of the units of accommodation within the HMO do not contain any facilities for the cooking of food-

- **(a) there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food;**
- **(b) the kitchen must be equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities-**
  - **(i) sinks with draining boards;**
  - **(ii) an adequate supply of cold and constant hot water to each sink supplied;**
  - **(iii) installations or equipment for the cooking of food;**
  - **(iv) electrical sockets;**
  - **(v) worktops for the preparation of food;**
  - **(vi) cupboards for the storage of food or kitchen and cooking utensils;**
  - **(vii) refrigerators with an adequate freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers);**
  - **(viii) appropriate refuse disposal facilities; and**
  - **(ix) appropriate extractor fans, fire blankets and fire doors"**

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28.Mr Gardner confirmed in his statement and during the hearing that the Council's Standards for Licensable Houses in Multiple Occupation had been carefully considered by four experienced officers, including himself and Ms Hardy, and had been determined having regard to the requirements set out in the Regulations, and to health and safety and convenience.

29.The Tribunal determines that the Respondent went through the necessary steps prior to issue of the licence. The specification of works in respect of the kitchen facilities as set out in the schedule of works required to comply with HMO licence conditions remain as drawn and are not to be varied.

Schedule 2, paragraph 5 in respect of issues relating to anti-social behaviour

30.The Appellant requested that this paragraph be deleted and the licence conditions removed. Although her statement confirmed that she had no objection to the conditions relating to this issue, she considered that the wording was vague and if the condition was not removed it should be varied *"offering clarification as to what will be acceptable actions by the appellant in the event of anti social behaviour"*.

31.In his witness statement, Mr Gardner stated *"Section 67 of the……Act allows the council to include conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by occupiers or visitors. The wording of the condition has deliberately been kept fairly general, rather than try to specify "acceptable actions"...for what may be different types of anti-social behaviour"*

32.Schedule 2 paragraph 5 of the licence states:

"5.1 The licence holder must ensure that any anti-social behaviour by tenants or their visitors is dealt with appropriately and effectively.
5.2 In this regard, complaints of noise or other anti-social behaviour must be properly investigated, whether these complaints are made by other tenants of the property or by residents of neighbouring properties
5.3 Where complaints are found to be justified, the licence holder must ensure that all reasonable steps are taken to resolve the problems"

33.The requirements are reasonable, as is the wording. The fact that the tenancy agreements contain a similar clause is irrelevant for the purpose of licence conditions.

34.The Tribunal determines that the Respondent went through the necessary steps prior to the issue of the licence. Paragraph 5 of Schedule 2 (schedule of licence conditions) relating to the management of anti-social behaviour remains as drawn and is not to be deleted.

CHAIRMAN.....

DATED.....4...August 2010.....