RESIDENTIAL PROPERTY TRIBUNAL

Property	**:**	**16 Riverside Road, Norwich NR1 1SN**
Appellant	**:**	**Mr. Gursel Uslu**
Respondent	**:**	**Norwich City Council**
Case number	**:**	**CAM/33UG/HMO/2006/0001**
Type of Appeal	**:**	**against notice designating property as a house in multiple occupation (Section 255, Housing Act 2004 ("the Act"))**
Date of Appeal	**:**	**27th July 2006**
Tribunal	**:**	**Mr. Bruce Edgington (Lawyer Chair) Mr. David Brown FRICS MCI Arb**
Hearing	**:**	**26th October 2006 at the Nelson Hotel, Prince of Wales Road, Norwich NR1 1DX**

DECISION

---

1. The appeal against the declaration by Norwich City Council that the property is a house in multiple occupation ("HMO") fails and, accordingly, the decision of the authority is confirmed.

REASONS

Introduction

2. This is an appeal against a declaration made on the 7th July 2006 that the property is an HMO as defined in Section 255(2) of the Act.

3. The appeal was lodged within the 28 day limitation period set out in Section 255(6) of the Act.

4. The appellant says, in his appeal:-

"Our appeal is against the HMO declaration which we recently received and is on the grounds that this property is both classified (type C1 planning category) and used as a hotel. Properly operated hotels are exempt from the definition of HMO as specified by the Housing Act (2004). Whilst we know that there are some special exclusions against this type of appeal for certain types of B+B Hotels, our records show that this should not apply to us. The Riverside Hotel is used primarily for short-term business but we do also ensure that there are no instances were it is (or could be) used as a main, or only, place of residence to any tenant for periods of 30 or more consecutive days."

The Law

5. Section 255(1) of the Act states that if a local housing authority, such as the Respondent in this case, is satisfied that subsection (2) applies to a building or part of a building, it may serve a notice declaring the building to be an HMO.

6. Section 255(2) applies to a building or part of a building which satisfies one of the 3 tests set out in Section 254 (excluding the sole use condition) *"and the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in question constitutes a significant use of that accommodation or flat."*

7. In its written response to the appeal, the Respondent seeks to establish what is described in the Act as the 'standard' test for an HMO set out in Section 254(2) which is:

   <u>The Standard Test</u>
   "A Building or part of a building meets the standard test if –
   (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
   (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
   (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
   (d) (the sole use condition – not applicable)
   (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
   (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

8. There is a list of properties which are not HMO's in Schedule 14 which

includes a building whose occupation is regulated otherwise than by or under the Act and which is specified in regulations. The only such regulations in force are **The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.** These regulations do not include premises such as ordinary hotels or premises offering bed and breakfast accommodation. Unfortunately, it may be that Mr. Uslu has not realised that as from 6th April 2006, the test for designating a property as an HMO has changed.

9. The Act states, in Section 255(10) that this appeal is to be by way of a re-hearing and that the Tribunal's decision may be determined having regard to matters of which the Respondent was unaware. The Tribunal may confirm or reverse the Respondent's decision and, if it reverses it, revoke the HMO declaration.

Papers Lodged

10. The Respondent has filed a statement from Ellen Louise Spencer, a statement of case, Housing Benefit and Council Tax Benefit receipts of Richard Grant and James Welsh, and a copy letter from the Rent Service dated 26th January 2006 giving a decision on the maximum rent figure to be used to work out the amount of Housing Benefit to be paid to a claimant identified only by case number and property number. There are also print outs of Housing Benefit status forms for James Welsh and Henry Tickner and forms relating to homeless people referred in 2005.

11. The submissions say that the property has a history of being used for temporary accommodation and has had works carried out to make it suitable for multiple occupation. The submission records that the Appellant denies that the property is an HMO and then sets out by reference to the various components of Section 254(2), why the Respondent considers that the standard test has been satisfied.

12. Despite being directed to lodge his reply to the Respondent's case, the Appellant did not do so.

The Inspection

13. The members of the Tribunal inspected the property in the presence of the Appellant. They were able to look at all the rooms. The property obviously set itself out to give the appearance of being Bed and Breakfast accommodation by the use of signs on the front. The front door was locked and entrance was obtained by ringing a doorbell. The property is close to the railway station and on a road with a river on the other side close to what could be described as the tourist area.

14. On entering the property there is a small hallway with various signs on the

wall, one of which the Appellant had copied for the Tribunal. It is headed "House Rules" and sets out 17 rules. One prevents the hanging of posters in rooms because of the fire hazard; one prevents soft furnishings such as easy chairs and floor cushions for the same reason and it also says that cycles, parties and pets are not permitted in rooms.

15. On the ground floor was room 6, a small combined toilet and shower room and a small kitchen with clothes washing facilities, fridge, freezer, microwave oven and limited storage and seating. To the rear is a small office, with bedroom attached for the 'caretaker'. There was also a ground floor extension which was a store room but may once have been used as another bedroom.

16. On the second floor are rooms 1, 2, 3 and 4 with a bathroom and toilet. On the third floor was room 5 with a separate room containing a toilet, basin and shower.

17. All rooms had the most basic of furnishings i.e. one or more beds, a washbasin and a cupboard or unit on which was a television. Some had a wardrobe and some had one or more chairs. The Tribunal noted that most of the rooms appeared to have some evidence of occupation including clothing but only one person actually in at the time of inspection. He said he was visiting and had been there 4 or 5 days. He said that he lives in London but had also lived in York

18. The only way the members of the Tribunal could describe this property is to say that it had the characteristics of a hostel rather than a Bed and Breakfast establishment or an hotel. The condition and facilities were very basic.

The Hearing

19. The hearing was attended by Mr. David Johnson, solicitor, and Ms. Ellen Spencer, private sector housing officer from Norwich City Council and by Mr. Uslu and his friend and accountant Mr. Chris Hayes.

20. At the outset, it was accepted by both parties that all the constituent parts of the definition of an HMO, using the Standard Test, if appropriate, were satisfied except that contained in sub section (2)(c). Thus the only dispute was whether "the living accommodation is occupied by …. persons as their only or main residence".

21. Mr. Uslu's case was that some time ago, this property was an hotel. Then he started using it for homeless people and before Christmas 2005, he would be housing upwards of 50 such people on referral from the Respondent in this property and others. He said that the figure

nowadays is 1 or 2 and they are in other properties owned by Mr. Uslu's company. It was conceded on behalf of Mr. Uslu that the property was an HMO in 2005.

22. As a result of this change in policy on the part of the Council, Mr. Uslu said that he made the decision to change the use of the property so that he would only take in paying guests from off the street. He would charge £25 per night and offer a continental breakfast or, by prior arrangement, an English breakfast. He contacted the fire department and produced a letter dated 20th January 2006 from Norwich City Council Fire Service which corroborated this to a certain extent. It confirmed that this is what Mr. Uslu had told them, that there was, at that time, a fire certificate, and it required certain works to be done to bring the property up to standard. Mr. Uslu said that this work had been done.

23. The Tribunal took the lead in asking most of the questions of each party. During the course of the hearing it became clear that the Appellant kept a register of occupiers, namely the records seen by Ms. Spencer when she inspected the property on the 4th September 2006. Mr. Uslu had not produced these but they were clearly relevant to the issue and he was given permission to go and get them. The first set came from the property and went back about a month. He then went and retrieved further records going back to April 2006 from his office.

24. Mr. Uslu was told that he had been directed to file and serve all documents upon which he wanted to rely and had failed to file and serve any. The Respondent was therefore asked, through its solicitor, whether it wanted an adjournment to give Mr.Johnson time to consider this additional paperwork. He was given time to look at the documents and said that he wanted to continue.

25. Of relevance to the outstanding issue, the following points emerged from questioning:-

(a) The adjoining property at 17 Riverside Road is owned by the Appellant or his company and is an HMO. The Appellant had not disputed this designation.

(b) The property itself has not changed in appearance and the furniture has not changed since 2005 when, on the Appellant's own case, it was an HMO. There are still facilities for cooking and food storage and clothes washing available for residents. The House Rules sign was there then and is there now. Some aspects of these rules are consistent with long term occupancy

(c) Mr. Uslu said that Mr. James Welsh lives at 17 Riverside Road and

Mr. Henry Tickner had died in May 2006. He could not explain why Mr. Tickner appeared to have continued to receive housing benefit until 9th July 2006. Neither party could explain why the records relating to both Mr. Welsh and Mr. Tickner appeared to show them as residing at Room 1, 16 Riverside Road whereas there is only one single bed in that room. This was further compounded by the application for Housing Benefit produced by the Respondent and signed by Mr. Welsh which says that he moved into Room 3 at the property on the 6th January 2006 and gave his "home" telephone number as that of Mr. Uslu's company.

(d) Mr. Johnson could not explain why an inspection of the Appellant's records was not carried out immediately prior to the HMO declaration being made on 7th July. This may have produced highly relevant evidence.

(e) Mr. Uslu could not explain why, on the one hand, he was saying that Mr. Richard Grant was occupying Room 5 in 17 Riverside Road whereas his own records showed that he moved into Room 1 at the property on 11th July 2006. He also could not explain why Mr. Grant completed an application for Housing Benefit on 8th August 2006 saying that he had moved into his present accommodation on 7th July 2006 and, in answer to the question "do you have a main home somewhere else", he replied "no".

(f) Mr. Uslu's records appeared to show that he had been keeping them since at least April 2006 and most occupiers' registration forms showed a residence address and none showed a residence address at the property. However, there was no comprehensive chart prepared from the records to show the occupancy of each room at the property since these records began.

(g) Mr. Johnson urged the Tribunal to reflect on the purpose of this legislation i.e. to ensure that people who occupied HMO's were adequately protected; to be wary of just allowing this appeal because there may be no present occupiers using the accommodation as their main residence and to bear in mind the advice given by the Court of Appeal in **London Borough of Brent v. Reynolds [2001] EWCA Civ 1843** which was to the effect that this Tribunal should be slow to disagree with a view expressed by a local housing authority.

Conclusions

26. The Tribunal accepted that Mr. Uslu may well have decided to change the use of this property from an HMO to Bed and Breakfast short term accommodation for people from the street rather than the homeless or Housing Benefit cases. After all, in view of the change in policy by the Respondent in referring homeless people to him, and in view of the fact

that he has at least one other HMO, this would make commercial sense.

27. The Tribunal accepted that, in the main, the property has recently been occupied by people with a permanent address elsewhere.

28. Even though Section 254(2)(c) sets the test as being that the accommodation **is** occupied by persons as their only or main residence i.e. present tense, and that this hearing is a re-hearing, the Tribunal must take into account the position when the declaration was made and the ongoing situation since then, not just the nature of the occupation on the day of the hearing. Otherwise, it would be open the unscrupulous appellant just to change the use of the property as soon as the declaration was made, or empty it to ensure that when the Tribunal inspected the property on the appeal it could not be shown that it was then occupied by people as their main residence. That would make a nonsense of the appeal procedure.

29. That is not to say that this Tribunal finds that Mr. Uslu or his company is unscrupulous. It is to his credit that he did not dispute the classification of 17 Riverside Road as being an HMO. It is simply to explain why the Tribunal must have regard to the position on 7th July 2006 and the ongoing situation since then in deciding whether the property **is** occupied by people as their only or main residence.

30. The problem the Appellant has, which is why this appeal fails, is that there is clear evidence that Mr. Welsh and/or Mr. Tickner and/or Mr Grant have lived at the property after he took the policy decision to change its use. Indeed, the clear evidence from the Appellant's records is that Mr. Grant moved into the property after the declaration at a time when he certified that he had no other address.

31. The Tribunal also takes into account it's stated impression of the property at inspection namely that it had the characteristics of a hostel. There are cooking and clothes washing facilities in the communal kitchen. It had not changed in any material way from the time when the Appellant admits that it was an HMO.

32. In essence, the Tribunal finds that whilst there may have been an intention to change the property's use, Mr. Uslu did not carry through his intention and provide sufficient safeguards to prevent the property actually being occupied by people as their only or main residence and the Tribunal was not satisfied that such occupation had ceased when the declaration was made. It was also satisfied that such occupation continued after the declaration was made. The Tribunal also finds that this use is significant enough to satisfy Section 255(2). The relevant parts of the Standard Test in Section 254(2) are also satisfied and the property was therefore

correctly declared to be an HMO.

……..
Bruce Edgington
Chair
30th October 2006