SOUTHERN RENT ASSESSMENT PANEL

SOUTHERN RESIDENTIAL PROPERTY TRIBUNAL

In the matter of an application under part 3 of Schedule 5 of the Housing Act 2004 (HMO Licensing)

Case number: CHI/00HB/HML/2007/0004

Re: 22 College Road, Fishponds, Bristol, BS16 2HN

Between:

STEPHEN JOHN SWEET

Applicant

And

BRISTOL CITY COUNCIL

Respondent

Hearing and inspection: 8th May 2007

Appearances:

Mr. Adrian Thompson (a director of the Guild of Residential Landlords) for Mr. Sweet, Mr. and Mrs. S Sweet

Ann Nugent, Messrs A Riddell, J Mallinson and D Fontaine for Bristol City Council

Decision of the Tribunal with Reasons

Issued 4 June 2007

Tribunal

J. S. McAllister, FRICS (Chairman)
Mr. J. G. Orme, (Lawyer)
Mr. P. E. Smith, FRICS

Decision

In accordance with the powers conferred upon it by the provisions of Part 3 of Schedule 5 of the Housing Act 2004 ("the Act") the Tribunal directs, for the reasons set out below, that the licence granted to the Applicant by the Respondent in respect of the property at 22 College Road, Fishponds, Bristol ("the Property") dated 8th February 2007 ("the Licence") shall not be varied and is confirmed in its entirety without any alteration whatsoever.

The operative time pursuant to Paragraph 35, Schedule 5 of the Act is, in summary: if this order is appealed to the Lands Tribunal, the time when a decision is given on appeal which confirms the order; or if this order is not appealed to the Lands Tribunal, the time when an appeal may be brought to the Lands Tribunal expires.

Reasons

Background

1. By an application in writing dated 23 June 2006, Christopher Malcolm Perry applied to the Respondent for a licence to be issued to the Applicant to use the Property as a house in multiple occupation for occupation by 6 persons and 6 households. At the date of the application form, the Property was occupied by 5 persons in 5 households. On the application form it was declared that the Property contained 2 bathrooms each containing a bath or shower, a wash hand basin, a toilet, mechanical ventilation and fixed heating.

2. By letter dated 20 November 2006, the Respondent sent to the Applicant a notice of intention to grant a licence for a house in multiple occupation. A draft of the proposed licence was sent with the notice. The draft licence was for occupation by not more than the maximum of 6 households and 9 persons. A condition was attached to the licence that the Applicant was to supply an additional WC compartment with wash hand basin.

3. By letter dated 24 November 2006, the Applicant objected to the condition requiring him to provide an additional WC compartment.

4. By letter dated 7 February 2007, the Respondent notified the Applicant that it had considered his representations but would not withdraw any of the requirements made in the proposed licence.

5. On 8th February 2007 the Respondent issued to the Applicant the Licence in which it stated that it had decided that the Property is reasonably suitable for occupation by not more than the maximum of 6 households and 9 persons. The Licence was stated to come into force on 8 March 2007 and to remain in effect for a period of 5 years from that date unless previously revoked. The Licence was expressed to be subject to a number of conditions of which the following are pertinent to this application:

a. Schedule 2, condition 10 – "Tenants are to have 24hr direct access to all toilet, personal washing and cooking facilities and equipment."
b. Schedule 2, condition 11 – "The HMO licensing standards are to be complied with. ... ... The following facilities and /or equipment detailed in the attached schedule of works must be provided by the following dates: ... ... Toilet facilities 12 months Above time scales start from the issue date of the licence." At paragraph 5 of the schedule of works is the requirement for "Provide an additional WC compartment with wash hand basin."

c. Schedule 2, condition 16 - The Property is to be occupied in accordance with and by no more than the number of persons and households specified below: A maximum number of 6 households comprising 9 individuals can occupy the property. This is the permitted number. (The condition contains a table setting out details of the rooms and allowed a period of 12 months for the number of occupiers to be reduced to the permitted number.)

6. By an application dated 21 February 2007 the Applicant appealed to this Tribunal against the decision of the Respondent to grant the Licence. The grounds of the appeal were set out in a document sent with the application. The Applicant seeks the removal of the condition requiring the Applicant to provide an additional WC compartment with wash hand basin. If he is successful on that ground he asks for the permitted number of persons to be reduced to 8.

7. The Property is divided into bed sitting rooms for occupation by students. The dispute is as to the quantity of bathing and toilet facilities that must be provided in such accommodation.

Inspection

8. The Tribunal inspected the Property immediately before the hearing on 8th May 2007 in the presence of all those who attended the hearing except Mr. Fontaine.

9. The Property is a traditionally built end terraced house of stone and tile consisting of three storeys. It appeared to be about 150 years old. Briefly, the accommodation provided was as follows: on the ground floor, entrance hall leading to three separate bed sitting rooms; on the first floor, a landing, two bed sitting rooms and two bathrooms; on the second floor, one bed sitting room. Each bathroom contained a shower, wash hand basin, toilet, electric water heater to each hand basin, extractor fan, electric shower unit to the shower cubicle, partly tiled walls, electric space heater. One bathroom was slightly larger than the other and there was no issue over the area of each bathroom as provided to the Respondent in the application for the licence.

10. The Tribunal was unable to inspect all of the bed sitting rooms but was informed by both parties that each bed sitting room contained a hand basin or sink unit.

The Law

11. Before granting a licence, the local housing authority must be satisfied as to certain matters. Section 64 of the Act provides:

(1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either:-

(a) grant a licence in accordance with subsection (2), or

(b) refuse to grant a licence.

(2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either :-

(a) to the applicant, or

(b) to some other person, if both he and the applicant agree.

(3) The matters are:-

(a) that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;

(b) .....

(4) The maximum number of households or persons referred to in subsection (3)(a) is:-

(a) the maximum number specified in the application, or

(b) some other maximum number decided by the authority.

(5) Sections 65 and 66 apply for the purpose of this section.

12. Before deciding that a house is reasonably suitable for occupation by a certain number of persons, the local housing authority must be satisfied that the house meets certain mandatory prescribed standards. The local housing authority has no discretion in this respect. Section 65 of the Act provides:

(1) The local housing authority cannot be satisfied for the purposes of section 64(3)(a) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.

(2) But the authority may decide that the house is not reasonably suitable for occupation by a particular

maximum number of households or persons even it does meet prescribed standards for occupation by that number of households or persons.
(3) In this section "prescribed standards" means standards prescribed by regulations made by the appropriate national authority.

13. The prescribed standards are set out in schedule 3 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) ("the Regulations"). Schedule 3 is introduced by regulation 8. The relevant part of schedule 3 is paragraph 2 which is headed "Washing facilities". Paragraph 2 reads:

(1) Where all or some of the units of living accommodation in an HMO do not contain bathing and toilet facilities for the exclusive use of each individual household:-

(a) Where there are four or fewer occupiers sharing those facilities there must be at least one bathroom with a fixed bath or shower and a toilet (which may be situated in the bathroom);

(b) Where there are five or more occupiers sharing those facilities there must be:-

(i) One separate toilet with wash hand basin with appropriate splash back for every five sharing occupiers; and

(ii) At least one bathroom (which may contain a toilet) with a fixed bath or shower for every five sharing occupiers;

(2) Where there are five or more occupiers of an HMO, every unit of living accommodation must contain a wash hand basin with appropriate splash back. (except any unit in which a sink has been supplied as mentioned in paragraph 4(1)).

(3) All baths, showers and wash hand basins in an HMO must be equipped with taps providing an adequate supply of cold and constant hot water.

(4) All bathrooms in an HMO must be suitably and adequately heated and ventilated.

(5) All bathrooms and toilets in an HMO must be of an adequate size and layout.

(6) All baths, toilets and wash hand basins in an HMO must be fit for the purpose.

(7) All bathrooms and toilets in an HMO must be suitably located in or in relation to the living accommodation in the HMO.

14. Section 67 sets out the provisions relating to conditions which may be imposed on a licence. It is only necessary to set out sub section 6 which reads:

(6) A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any

tenancy or licence under which any person occupies the house.

The Issue

15. The issue in this application is whether the Property meets the prescribed standards set out in sub paragraph 2(1) of schedule 3 to the Regulations.

The Hearing

16. This is one of two applications which were heard together. The Applicant in each case was different but Mr. Thompson represented both Applicants. The Respondent was the same in both cases. Both applications concerned the same issue.

17. The hearing was conducted, with the agreement of the parties, on the basis that the Respondent set out its position first in order that the Applicant might then indicate precisely what parts of the licence were contested and why that was. It followed of course that appropriate opportunity for response would be required.

18. At the outset of the hearing both parties agreed that the Property is a house in multiple occupation which is subject to mandatory licensing under Part 2 of the Act. Both parties also agreed that the issue to be determined is the interpretation of sub paragraph 2(1) of schedule 3 to the Regulations. It was agreed that the Applicant had made a valid application for a licence and that the Respondent had issued a licence. The Applicant was not challenging the procedure for issuing a licence. The Applicant was not challenging any other conditions to the licence.

The Respondent's case

19. The Respondent's case is set out in the witness statement of Mr. Andrew Riddell, Assistant Environmental Health Officer employed by the Respondent, made on 17 April 2007.

20. He refers to guidance issued in a letter dated 7 April 2006 by Mr. Richard Footitt, Head of Housing Markets Division, Office of the Deputy Prime Minister addressed to Housing Act Stakeholders. Attached to that letter is a schedule setting out what washing facilities were required for specified numbers of persons in an HMO. Both parties agreed that this letter was for guidance only and was not binding on the parties. Both parties agreed that what is binding on the parties and the Tribunal is the Regulations.

21. He mentioned that in Bristol, the development and implementation of the H.M.O. licensing procedure and policy was co-ordinated with the three neighbouring authorities i.e. Bath and North East Somerset, North Somerset and South Gloucestershire using all the appropriate legislation and guidance to provide local landlords with a uniform

standard for overcrowding, amenities and fire safety for all landlords operating within the four local authorities.

22. The Respondent says that the terms of sub paragraph 2(1) are clear.

    a. Where there are 5 persons sharing the bathing and toilet facilities in an HMO, there must be provided 1 bathroom (with or without a toilet) and a separate toilet with a wash hand basin.
    b. Where there are 6 to 10 persons sharing the bathing and toilet facilities in an HMO, there must be provided 2 bathrooms (with or without a toilet) and 2 separate toilets with wash hand basins.

23. The Applicant applied for a licence for 6 households and 6 persons. None of the bed sitting rooms in the Property have exclusive use of bathing and toilet facilities. All of the occupiers share the bathing and toilet facilities and so the Respondent says that the Property falls within the requirement of 2 bathrooms and 2 separate toilets.

24. However, the guidance from the ODPM for 6 to 10 persons says that what is required is *"2 bathrooms and 2 separate WCs with WHBs (but the one of the WCs can be contained within one of the bathrooms.)"* This is a lesser requirement than the prescribed standards. The Respondent has adopted the guidance for HMOs within its area and therefore it imposed a condition on the licence requiring the Applicant to provide only one additional WC on the basis that the other could be and was contained in one of the bathrooms. On the basis of the Respondent's calculations of space, the 6 bed sitting rooms in the Property were able to accommodate 9 persons, hence the limitation in the licence.

The Applicant's case

25. In the Applicant's response dated 24 November 2006 to the Respondent's notice of intention to grant a licence, the Applicant said *"I have two bathrooms currently and both contain a toilet. I have put a lock on the door of both bathrooms and given 3 occupants keys to one bathroom and the other 3 occupants keys to the second bathroom."* He went on to say that *"As I have placed locks on the doors of the bathrooms that contain toilets and there are four or fewer occupiers sharing those facilities and the facilities contain a fixed bath or shower and a toilet (which may be situated in the bathroom) I am fully complying with the minimum standards prescribed by the regulations."*

26. The Applicant's case is that by providing locks on bathroom doors and allocating keys to only certain occupiers or by providing in tenancy agreements that tenants may only use certain bathroom and toilet facilities, it is possible to limit the number of occupiers sharing each bathroom to 4 persons so that the provision of paragraph 2(1)(a) would then apply. By this means, the Applicant says that the Property meets the prescribed standards for up to 8 persons with 4 sharing each

bathroom. The Applicant says that the landlord is able to stipulate who uses what bathing and toilet facilities and that the housing authority may not disturb such arrangements. The Applicant relies on the provision of section 67(6).

27. At the hearing, Mr. Thompson submitted in support of that interpretation:
    a. It is only by interpreting sub paragraph 2(1) in this way that it makes sense of the situation where *"All ... of the units of living accommodation in an HMO do not contain bathing and toilet facilities for the exclusive use of each individual household."* He accepted that sub-paragraph 2(1)(a) could apply where some of the units had their own exclusive facilities leaving 4 or less persons to share common facilities but the sub-paragraph would never apply if none of the units had their own exclusive facilities. By virtue of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 2006/371), a house can only be an HMO for the purposes of section 55(2)(a) of the Act if, among other factors, it is occupied by five or more persons. Therefore, sub paragraph 2(1)(a) would never apply to an HMO where none of the units of living accommodation have exclusive bathing and toilet facilities because there would always be at least 5 persons sharing those facilities. In those circumstances, the words *"All ... of the units"* are otiose. He said that this could not have been intended by Parliament when making the legislation.
    b. He re-iterated that the landlord may make whatever arrangements he wants with his licencees or tenants with regard to sharing bathing and toilet facilities and that the housing authority may not interfere with those arrangements.
    c. The words *"those facilities"* in sub paragraph 2(1)(a) refer to the bathing and toilet facilities which are shared by the occupiers entitled to use them.

The Respondent's reply

28. In reply to those submissions, the Respondent says:
    a. The Regulations apply at present only to mandatory licensing of HMOs. However, they have been drafted so that they may apply to HMOs subject to licensing under section 56 of the Act (designation of areas subject to additional licensing). There is no limitation on the minimum number of persons occupying such HMOs. The situation may well arise under additional licensing where there are 4 or fewer persons sharing bathing and toilet facilities and sub paragraph 2(1)(a) would then apply.
    b. The provision of locks on the bathroom doors would result in the denial of access to facilities as occupiers would now only have access to one bathroom containing a toilet. This would be in breach of the condition attached to the Licence at schedule 2, condition 10. The Respondent submits that such an

arrangement would be unlikely to be the intention of the Regulations.

c. If the Regulations are interpreted as the Applicant suggests (ie a full set of washing facilities for every 4 persons occupying the Property) there would be no need for the Regulations to prescribe a different level of provision for every 5 or more persons.

d. The Applicant's interpretation of paragraph 2(1) does not take account of the use of the word *"or"* in the words *"All or some"*. It is specifically drafted in the alternative. If "all" of the units do not have exclusive use of bathing facilities, then sub paragraph 2(1)(b) applies because, in the case of an HMO subject to mandatory licensing, there will always be more than 5 persons sharing bathing and toilet facilities. If "some" but not all of the units have exclusive use of bathing and toilet facilities then either 2(1)(a) or 2(1)(b) may apply depending on the number of persons sharing.

Decision

29. The Tribunal prefers the arguments and submissions of the Respondent.

30. It appears to the Tribunal that the words of sub paragraph 2(1) are clear and that they have the meaning attributed to them by the Respondent. The Tribunal considers that the words "those facilities" in sub paragraphs 2(1)(a) and (b) refer to the bathing and toilet facilities which are shared by all the occupiers in the house who do not have exclusive use of such facilities. The interpretation put on those words by the Applicant stretches the meaning of the words too far.

31. The Regulations are intended to provide minimum standards for the provision of bathing and toilet facilities in HMOs so that there is sufficient provision depending on the number of persons occupying the house. It cannot have been intended that the detailed specifications set out in sub paragraph 2(1)(b) can be made redundant merely by a landlord putting locks on bathroom doors and allocating keys to selected tenants. If that were to be the case then the Regulations could have said that there should be one bathroom with bath and toilet for every 4 occupiers who are sharing the bathing and toilet facilities.

32. The condition requiring the provision of a further WC compartment does not require any alteration in the terms of the tenancy or licence agreements under which the occupiers occupy the house. What that condition does is to ensure that the Property contains the minimum provision of bathing and toilet facilities. The landlord may make such internal arrangements as he wishes with the occupiers provided that the Property meets the prescribed standards.

33. The Applicant does not challenge the condition imposed at condition 10 of schedule 2 of the Licence. As the parties did not argue the validity of that condition, it is not appropriate for the Tribunal to comment on it.

34. In view of the Tribunal's conclusions, it is the case that, in order to meet the prescribed standards, the Property should have 2 separate toilets with wash hand basins and 2 bathrooms if the Applicant wishes to properly accommodate 6 persons. The Respondent, by adopting the guidance issued by ODPM has said that one of the separate toilets may be in a bathroom. Therefore, if the Applicant wishes to accommodate 6 persons, he will need to provide a separate toilet with wash hand basin in order to meet the prescribed standards. If he does that, he will be able to accommodate up to 9 persons as indicated in the Licence.

35. In the circumstances the condition requiring the provision of an additional WC compartment with wash hand basin is a proper one to impose in order to meet the Applicant's requirement to house 6 persons. The Tribunal does not consider it appropriate to vary that condition. It follows that the Tribunal will not reduce the number of permitted persons to 8.

36. The operative time pursuant to paragraph 35, Schedule 5 of the Act is, in summary: if this order is appealed to the Lands Tribunal, the time when a decision is given on the appeal which confirms the order; or if this order is not appealed to the Lands Tribunal, the time when an appeal may be brought to the Lands Tribunal expires.

J S McAllister, FRICS
Chairman

Dated 4 June 2007