RESIDENTIAL PROPERTY TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL

Case number : CAM/42UD/HML/2006/0001

Property	:	**8 Burrell Road, Ipswich, Suffolk IP2 8AB**
Application	:	Appeal against conditions imposed by the local authority in a House in Multiple Occupation Licence [Housing Act 2004, ss. 64, 71 & Sch 5, para 31]
Appellant	:	Charles Mark Stennett, of Brute Force Limited t/a Stennett Accommodation, Pine Tree Cottage, Bridge Road, Levington, Ipswich, Suffolk IP10 0NA
represented by	:	himself (assisted by Lucille Duggins — secretary)
Respondent	:	Ipswich Borough Council, Grafton House, 15–17 Russell Road, Ipswich, Suffolk IP1 2DE
represented by	:	Peter Sparkes — employed barrister Timothy Clarke, Senior Environmental Health Officer

DECISION

(Handed down 12th February 2007)

Hearing date	:	Thursday 1st February 2007, at the Holiday Inn, London Road, Ipswich
Tribunal	:	G K Sinclair, G J Dinwiddy FRICS, Ms C St Clair MBE BA

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- Background ..... paras 2–3
- Applicable law ..... paras 4–9
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Decision

1. For the reasons which follow the tribunal allows the appeal and directs that Ipswich Borough Council grant to the Appellant a licence permitting the premises at 8 Burrell Road, Ipswich to be used as a house in multiple occupation by up to a maximum of eight occupants at any one time.

Background

2. The Applicant, Mr Stennett, is the managing director of the unfortunately named Brute

Force Limited, which perhaps wisely trades as Stennett Accommodation. He is the freehold owner of the semi-detached premises at 8 Burrell Road, Ipswich. For his own financial reasons, although he is the freehold owner and actually receives the rent, management of the premises is carried out by his limited company. In accordance with the legislation he has control[1] and is therefore correctly named as the licence holder.

3. In February 1987, in response to an application made by the Applicant's predecessor in title in August 1986, Ipswich Borough Council granted planning permission for use of the premises as a house in multiple occupation, with a maximum of 12 persons being permitted to live there. With the coming into force of Part II of the Housing Act 2004 the premises, comprising three floors or more and with at least 5 people in occupation, became subject to licensing by the local authority. Mr Stennett duly applied for a licence for occupation by up to the existing maximum number in the planning permission, but on 6th October 2006 a licence was granted limiting occupation to only six, viz one person in each of the six bedrooms. On 1st November 2006 Mr Stennett appealed to this tribunal.

The law

4. The Housing Act 2004, sections 55 and 61 provide that houses in multiple occupation (as defined by the Act)[2] must be licensed if they fall within a description prescribed by the appropriate national authority. In the case of England that authority is the Secretary of State. By article 3(2) of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006[3] an HMO satisfies the description if the following conditions are satisfied, viz

a. The HMO or any part of it comprises three storeys or more;
b. It is occupied by five or more persons, and
c. It is occupied by persons living in two or more single households.

In calculating the number of storeys any basement or attic which is used wholly or partly for living accommodation shall be taken into account.

5. Section 65 provides for certain tests as to suitability for multiple occupation.

(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 if 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.

(4) The standards that may be so prescribed include-

(a) standards as to the number, type and quality of-

(i) bathrooms, toilets, washbasins and showers,

[1] See Housing Act 2004, s.263(1)

[2] See s.254

[3] SI 2006/371

(ii) areas for food storage, preparation and cooking, and
(iii) laundry facilities,
which should be available in particular circumstances; and
(b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.

6. Please note that if the HMO fails to meet prescribed standards the local authority cannot be satisfied that the property is suitable for occupation. However, if the HMO does meet those standards the local housing authority may still refuse to declare it suitable, because for example its own assessment policy relies upon other, more detailed criteria going beyond the prescribed minima, or for any other reason it is able to justify.

7. The prescribed standards are laid down, in England, by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, regulation 8 and Schedule 3.[4] Of particular relevance to this case are Schedule 3, para 2 (washing facilities) and para 3 (kitchens). It is worth quoting some material parts of para 2 :

(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—
... (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...

8. Schedule 3, para 3 requires kitchens to be suitably located, of such layout and size, and equipped with adequate facilities to enable those sharing it "to store, prepare and cook food". A list of specific kitchen equipment is then set out. Nowhere is there mention of a table, or of anywhere within the kitchen for eating food prepared there.

9. Finally, section 71 of and Schedule 5 to the Act deal with procedure and appeals. Part 1 of the Schedule provides for the grant or refusal of licences, Part 2 with their variation or revocation, and Part 3 for appeals to be dealt with by this tribunal. Para 31(2) makes clear that where a licence has been granted appeal may lie against any of the terms of the licence. The powers of the tribunal on any such appeal are set out in para 34, and can be summarised thus :

a. The appeal is to be "by way of rehearing"
b. Fresh material not before the local authority at the time of the original decision can be considered
c. The tribunal may confirm, reverse or vary the decision of the local housing authority; and
d. On an appeal under para 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.

[4] SI 2006/373

Inspection and hearing

10. The tribunal inspected the property at 10:00 on Thursday 1st February 2007, immediately prior to the hearing. Also present were Mr Stennett and two or three occupants of various rooms.

11. The building is very probably of Victorian origin, and is semi-detached. It is situate at the railway station end of Burrell Road, with the rear garden sloping quite steeply up to meet Willoughby Way. Externally, the property looked in reasonable condition. The tribunal inspected the basement lounge, the large ground floor kitchen and the common parts including toilets, bathroom and shower room. The tribunal noted two toilets – one on the ground floor and the other on the second floor, neither of which had a wash hand basin. On the first floor is a bathroom with WC and wash hand basin. On the second floor is a separate shower room. Fire safety equipment, both in the common parts and individual rooms, appeared to be adequate and in working order.

12. Permission was also obtained for the tribunal briefly to inspect each bedroom. Each has a wash hand basin. The tribunal notes the standards laid down by the local authority, inter alia for the sizes of bedrooms.[5] Each of the six bedrooms comfortably exceeds the larger size recorded as the required space standard for a "bedroom and study/living room". Five rooms contain a double bed but at the date of inspection were each in single occupancy.[6] The sixth room had two bunk beds which, the tribunal was told, had been provided by the occupants – two brothers from Slovakia.

13. So far as the local housing authority was concerned the crux of the appeal was the kitchen and associated dining facilities. The tribunal was therefore anxious to see how suitable the facilities are for use by up to 12 people. The kitchen is broadly rectangular in shape, with the entrance door forming a cut off corner. The room's dimensions are about 5.5m x 3.55m, with a gross internal area of about 19m^2. It is adjacent to the front door of the building and forms a single storey side extension to it, under a tiled roof. The room can broadly be divided in two. Near the front are storage facilities for food (fridge, cupboards and worktops) and a rectangular table around which one could, at a pinch, squeeze six. To the rear of the room is the food preparation area, with two gas hobs and an oven on one side of the room and two adjacent stainless steel sinks, each with a single drainer and washing machines under, on the other. At the rear of the room is a french window giving access to the rear garden and clothes drying area. To a certain extent it is therefore a traffic route.

14. The hearing began at 11:15, shortly after the inspection. The local housing authority was represented by Peter Sparkes, an employed barrister, and its evidence was provided by the witness statement of Mr Timothy Clarke, a senior environmental health officer. In opening Mr Sparkes explained that the council's standards, exhibited to Mr Clarke's statement, were taken from and based on the regulations referred to previously in this decision, but that prior to that advice and guidance notes had been produced in July 2004, in anticipation of the various 2006 HMO regulations and orders.

[5] See the document entitled *Risk Based Fire and Amenity Standards to be achieved in HMOs in Ipswich*, exhibited to Mr Clarke's statement as "TC 3"

[6] Or, as it was expressed at the hearing, were occupied by "optimistic singles"

15. The council stressed that its sole point of concern was the inadequacy (as it saw it) of the kitchen and dining facilities for as many as 12 occupants at any one time. Layout is a problem : with hobs either side of the boiler it becomes difficult to move a pan from that in the corner to a safe resting place. According to its amenity standards (on the third page) the requirement where there are six to ten occupants is for at least two kitchens, with not more than one floor between kitchen and furthest bedroom. One reason was to discourage occupants from carrying hot meals, and especially perhaps liquids, up flights of stairs due to the risks of tripping, spillage or bumping into others. As a concession, Mr Clarke was willing to accept just this one kitchen provided the position of the corner hob was rejigged and another room made available as a dining room. The basement lounge was suggested for this purpose.

16. Upon the chairman intervening, on the subject of the property's non-compliance with the prescribed standards for provision of washing facilities for more than ten occupants – with only one bath and one shower – both parties agreed, and Mr Stennett announced that in fact he was only seeking a licensed occupancy of up to eight persons. Invited to consider whether this justified a short adjournment for discussions between the parties, Mr Sparkes stated that the council was already aware of this and it saw no reason to alter its position.

17. Mr Stennett's evidence can be summarised as follows :

a. The house was given planning permission for up to 12 in 1986. Five years ago he complied with requirements for fire alarms, lighting and fire doors; fire blanket and extinguishers

b. This is a house which works quite well as a bedsit because of its size and shape – and has done so for 20 years

c. This licence has imposed restrictions on the house and its ability to earn rent, which in this case is a rate of £60 per week per room (£80 for the two brothers sharing) inclusive of all services

d. Apart from the cost of the conversion to kitchen (estimated at over £1,000) and separate dining room this reduction in number of occupants to 6 is not something he would want, because it would be uneconomic

e. It would not suit the standards and way of living of those using bedsits – who tend to have their main meal at work (where there is often a canteen), and use the kitchen in the evening for reheating meals or take-aways

f. This evidence of kitchen usage was based on Mr Stennett's personal experience of having lived there for several years himself

g. He was requesting 6 households and 8 tenants. He recognised from his own past experience of managing properties that too many occupants can cause problems – with arguments about food pilfering, for example – but too few make a house uneconomic.

h. His habit is to let only to single occupants, but there are times when he has let a room to a single occupant who has then arrived with a girlfriend. This is something which is infrequent but not easy to police. Double occupancy by the Slovak brothers was an exception. One already living in the house approached him for permission to let his brother come and stay with him. This Mr Stennett was prepared to allow.

Discussion and findings

18. Having carefully considered the evidence, both oral and written, the tribunal finds that the property layout makes it suitable for use as an HMO. The kitchen, roughly 19m² in size and divided quite well between a working and a storage/dining area, is of reasonable size. It has a small table but, taking into account its own members' experience and the evidence given, the tribunal accepts Mr Stennett's view that not every occupant would be using the kitchen at any one time.

19. The six rooms are generously proportioned, five with double beds (but single occupancy) and one with bunk beds. Each is equipped with a wash hand basin. All are in excess of the sizes suggested by Ipswich as a bedroom and study/living room. Two are more than one floor from the kitchen, but the standard required by the local authority is that a dining room be provided where :

    Bedrooms are not large enough for use as study/living rooms, or
    Where bedrooms/study/living room is provided, and any room is more than one floor distance away from a kitchen

1–5 persons	11m²
6–10 persons	16.5m²

    Kitchen/diners are acceptable, where the dining area is separate from cooking and sink areas and is of the above dimensions.

20. The local authority's standard (which it states is a guide only, and dependant on the layout of the property) would therefore require a dining room for those two distant rooms on the top floor, with a maximum of 4 occupants. Other occupants could use their rooms, or eat in front of the television in the lounge downstairs. Having inspected the property and listened to the various arguments the tribunal takes the view that the dining facilities provided in this property are sufficiently capacious.

21. The tribunal was impressed by the standard of the rooms, the landlord's emphasis on single occupancy, and the contribution he is making to the provision of much needed accommodation of this type at a reasonable rent. It would be a pity if unnecessary restrictions made the provision of such a service uneconomic.

22. Occupancy by more than ten would breach the requirements in the regulations for washing facilities. This is accepted. Occupancy by as many as ten could cause practical problems of the type identified by Mr Stennett. The tribunal considers that his approach of letting the six rooms to individual tenants, but with an allowance for some modest flexibility to cater for partners or family members, strikes the right note.

23. The appeal is therefore allowed and the local housing authority directed, under Schedule 5, para 34(4) to the Act, to grant a licence for occupation of the HMO by a maximum number of eight persons, and otherwise subject to the conditions originally imposed in the Schedule.

Dated 12th February 2007

Graham Sinclair – Chairman
for the Residential Property Tribunal