RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL

HOUSING ACT – SCHEDULE 5 PARAGRAPH 31(1)

LON/00AU/HML/2007/0006

Premises:	24 Hanmer Walk, London N7 7RE
Appellant:	Ms Cali Zhao
Represented by:	Ms. R of Dassa, Counsel, instructed by De Cruz Solicitors
Respondent:	London Borough of Islington
Represented by:	Ms. J Ellenby, Service Manager, Residential Environmental Health
Tribunal:	Ms. L M Tagliavini, Chairman, LLM, Dip. Law, BA(Hons) Mr. T Sennett, MA FCIEH Dr. A Fox, BSc, PhD, MCIArb
Hearing date:	21st September 2007

1. This is an appeal pursuant to section 143 of the Housing Act 2004 ("the Act"), against an Overcrowding Notice in Respect of a House in Multiple Occupation ("HMO") dated 2nd July 200 and served pursuant to section 139 of the Act. The subject premises comprise a three-bedroom ex-local authority flat situated on the second and third floors of a four-storey building purpose built block. The flat is used as an HMO but does not require a license under Part 2 of the Act. The grounds for the appeal state that the Appellant took issue with (i) the measurements taken by the Respondent of the room sizes asserting they were in fact larger in part than had been recorded; (ii) the descriptions and location of the rooms are unclear on the Notice, (iii) the Appellant had continued to use the flat as three bedroom accommodation as previously used before sold by the Respondent under the "Right to Buy" legislation and (iv) four persons are permitted to occupy the premises and only four persons are currently in occupation, the Appellant having required all other persons to leave. The Appellant asked the Tribunal to quash the notice or to vary it in order to allow one of the smaller single bedrooms to be occupied by one person rather than none as

specified in the Local Authority's Notice, thereby permitting a total of five persons. It was not contested that the property had at the time of the service of the Notice been overcrowded with eight persons (seven adults and one child) in occupation, including one living in a cupboard at the top of the stairs, but as stated, this had now been remedied.

2. In response to the Appellant's grounds, the Respondent stated that on measuring the rooms in the property two of them were found to be undersized and on re-measurement equated to 5.74m^2 and 5.36m^2 for the two single bedrooms, neither of which was sufficient to meet the 9m^2 standard requirement for a single room to be used for occupation by one person in an HMO. The Respondent asserted that, having regard to the Housing Act 1985 and the Room Standard and Space Standard, a property is overcrowded if it is occupied in excess of a permitted number of persons. In accordance with the Housing Act 2004, the Housing Health and Safety Rating System (HHSRS) was used to determine the hazards of Crowding and Space. The HHSRS Enforcement Guidance recognises that Part X of the Housing Act 1985 does not apply to HMOs and that dwellings comprising single households must be assessed differently from multi-occupied accommodation. It was stated that the London Borough of Islington had no specific prescribed standards for determining overcrowding in HMOs but can adopt their own HMO standards for licensable properties. Similarly there are no specific or separate overcrowding standards applicable to non-licensed HMOs, but in serving the Notice under appeal the Respondent took into account all the guidance available and made reference to its own specific HMO standards as recommended by LACORS.

3. The Respondent did not accept that the single bedroom measuring 6.35m^2 (as measured by the Appellant and 5.74m^2 by the Respondent), could be permitted to be used as a bedroom in an HMO either by itself, or used together with the other smaller single bedroom for storage purposes, as issues of privacy arose and were not satisfied by such an arrangement. It was accepted that the descriptions of the rooms on the original notice were unclear and were amended accordingly but it was said these inaccuracies would not have misled the Appellant. The Tribunal also had witness statements from Mr. J Harrison, Principal Technical Officer, as well as statements from Ms. J Goodall and Mr. Omogbehin on behalf of the Respondent describing the extent of their involvement in this matter.

4. At the hearing of the appeal, the Appellant Ms. Zhao stated that when she had purchased the property the Respondent, then the vendor, had said that, with two single bedrooms and one double bedroom, it was suitable for occupation by five people. Currently, four people were in occupation of the premises with exclusive use of two of the bedrooms and one person in the living room, all with shared use of the kitchen and bathroom. The smallest of the bedrooms was not currently in use. Ms. Zhao stated that seven of the eight people previously living there were all related to one another and to her, but she had asked them to leave because of the Respondent's intervention. Of the eight occupants that had resided at the property at the time of the Respondent's initial inspection, only one occupier, a Mr. Hannay was not related. Now, only four tenants remained in three households.

5. In evidence, Ms. Jenni Goodall stated that she had been concerned at the severe overcrowding she had seen at the premises on her visit on 15th January 2007 but accepted this had been reduced by the time of her second visit on 19th March 2007. Ms. Goodall accepted that, in its Notice of Intention dated 19th June 2007, the Respondent had not specified what steps Ms. Zhao was expected to take to remedy the situation and accepted it would have been preferable to give some guidance. However, she was concerned that the number of occupants would rise in the future if a Notice of Overcrowding was not served. Ms. Goodall accepted that, contrary to Islington's Standards for Houses in Multiple Occupation Housing Act 2004 at the end of paragraph 2.4, her measurements had not taken into account the built-in cupboards located in the single bedrooms, and that, as a result, her measurements might be "slightly out". She said that her principal, Mr. Omogbehin, checked her calculations and plan but he had not noticed the errors in the measurements or descriptions either.

6. Ms Goodall said that she was satisfied on her visit that the occupants were not part of one household as there were locks on the individual doors, although she accepted she had not expressly asked Ms. Zhao whether the occupants were in fact related to each other or to her. She also admitted that she had not enquired from the Housing Benefit Department whether payments were being made in respect for some or all of the occupants in order to obtain further information on the number of households in the property and details of the tenancy or tenancies.

7. Mr. Godwin Omogbehin also gave evidence to the Tribunal. He accepted that if the cupboards should have been included in the measurements, they were incorrect, but

believed that it was right to exclude them. He also accepted that he should have checked to ensure the property had been correctly described.

8. In submissions by the Respondent, it was stated that a request for information pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976, had been served and came back with the names of four different persons comprising three households. As there is no statutory prescription of room/space standards to be applied in these circumstances, it leaves the local authority with discretion, as to how to implement the overcrowding provisions under the Housing Act 2004. It was said that the Local Authority did this by having regard to all the previous guidelines and standards that had been used. Although a Land Registry search had been carried out and HSBC noted as having a charge on the property no Notice of Intention was served on that bank.

9. In her submissions, Ms. Dass stated that although the Respondent proposed amendments to the Notice, they did not form part of the Notice of Overcrowding and other persons who might have been served e.g. the mortgagee or other occupants may have been misled by the misdescriptions. It was accepted that Part X of the Housing Act 1985 does not apply, but asserted that the single bedroom measured by the Appellant at $6.35m^2$ is suitable in any event for use by one person, and even more suitable where it is coupled with the use of the other smaller single bedroom. It was submitted therefore, the Tribunal should vary the Notice and permit the larger of the single bedrooms to be occupied by a single person either on its own or together with the other second single bedroom.

The Tribunal's Decision

10. Section 139(2) of the Housing Act 2004 states:

> *"The local housing authority may serve an overcrowding notice on one or more persons if, having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be accommodated in the HMO concerned.*
>
> *(3) The authority must, at least 7 days before serving an overcrowding notice-*
>
> *(a) inform in writing every relevant person (whether or not the person on whom the authority is to serve the notice) of their intention to serve the notice; and*

(b) ensure that, so far as is reasonably possible, every occupier of the HMO concerned is informed of the authority's intention."

Section 144(7) HA 2004 defines "relevant person" as:

"(a) any person who has an estate or interest in the HMO concerned, or (b) any other person who is a person managing or having control of it."

11. The Tribunal notes that although the other occupiers of the subject premises were notified of the Respondent's intention to serve an Overcrowding Notice, it was accepted by the Respondent that no notices were served on HSBC, a mortgagee and as such a legal person with an interest in the property, despite having conducted a Land Registry search and made aware of the bank's interest. The Tribunal finds that no adequate reasons for this omission were offered by the Respondent for its failure to comply with this mandatory statutory requirement before being entitled to take the next step in the process. Therefore, the Tribunal finds that the Notice of Overcrowding is not a valid notice, as a person with an interest in the property has had no notification of these proceedings as required by the Act.

12 Further, the significant defects in the Notice of Overcrowding are, in the Tribunal's opinion, sufficiently substantive to undermine its validity due to the premises being wrongly described both in respect of the floors of the building it occupies and the individual location of some of the rooms. The Tribunal is of the view that the Notice of Overcrowding should have been withdrawn by the Respondent pursuant to section 140 HA 2004, once it was realised that it was defective and a new Notice served with the accurate floor, and room descriptions and served on all or more of the relevant persons as well as accurate floor measurements having first been taken.

13. Moreover, it is accepted by the Respondent that by the time the Notice of Overcrowding was served the number of occupants had been reduced from eight to four, thereby providing further argument as to whether the property was in fact over crowded at all at the date the Notice was served. Although, this was not a point expressly taken by the Appellant and the Tribunal makes no findings on it, as the issue as to which rooms could be occupied remained extant.

14 The Tribunal finds that the Appellant did not successfully make out its challenge to the manner in which the Respondent carried out its subjective exercise leading to the conclusion that neither of the two single bedrooms are fit for occupation by one single person household in an HMO. Even on the Appellant's own measurements,

the single room said to measure 6.35m^2 fails significantly to meet the room standard for one person as set out by the Respondent's standards for HMOs. The Tribunal accepts the Respondent's arguments that this small bedroom either alone or together with the smallest bedroom is insufficient in size or does not afford adequate privacy for an individual household within an (unlicensed) HMO. Consequently, had the Notice of Overcrowding been valid the Tribunal would not have varied it to allow occupation of the two smallest bedrooms even by a single person or when both rooms are taken together as one letting.

15. The Tribunal finds the Respondent failed to make reasonable enquiries of the occupants as to their status in the premises and their relationship (if any) with each other, at the time of their inspection, particularly since an interpreter was present to assist. Nor did the Respondent enquire of its own Housing Benefit Department to ascertain if Housing Benefit was in payment for any of the occupants, which may have gone some way to establishing the basis of their occupation. The Tribunal recognises that there appears to be no statutory requirement for a local authority to make recommendations in any Letter of Intention as to how to remedy the overcrowding, although it is of the opinion that commonsense would dictate that recommendations for remedying the overcrowding might be helpful to the recipient of such a Letter of Intention and possibly avoid service of a Notice altogether. The Tribunal also notes the lack of evidence to support Ms. Goodall's assertion that it was necessary to serve the Notice of Overcrowding because she believed the number of occupants would increase. The Tribunal finds that by the time of the second visit on 19th March 2007, the number of occupants had been reduced to four, and there was no evidence other than Ms. Goodall's stated "belief" to show that this number was likely to be increased.

16. In conclusion, the Tribunal finds that the Notice of Overcrowding is invalid, as the Respondent has failed to comply with mandatory statutory requirements in addition to the substantive inaccuracies the Notice contained on service. The Tribunal therefore allows this appeal and quashes the Notice of Overcrowding.

Chairman: Lorna Tagliavini

Dated: 25/4/07