RESIDENTIAL PROPERTY TRIBUNAL SERVICE
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Charles Douglas Solicitors
DX 82976 Mayfair

Your ref:
Our ref: **KH/LON/00AG/HXV/2009/0001**

Date: 14-Dec-2009

Dear Sirs,

RE: HOUSING ACT 2004 - SCHEDULE 6 PARAGRAPH 28

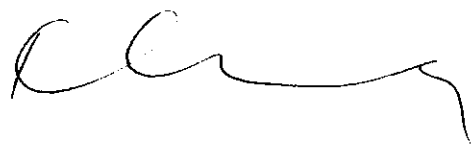
PREMISES: 139 FELLOWS ROAD, LONDON, NW3 3JJ

The Tribunal has made its determination in respect of the above application and a copy of the document recording its decision is enclosed. This includes reasons for the Tribunal's decision. A copy of the document is being sent to all other parties to the proceedings.

If you are considering appealing, you are advised to read the guidance attached to this letter.

Any application from a party for permission to appeal to the Lands Tribunal must normally be made to the Residential Property Tribunal within 21 days starting with the date specified in the decision notice as the date on which reasons for the decision were given. If the Residential Property Tribunal refuses permission to appeal you have the right to seek permission from the Lands Tribunal itself.

Yours sincerely



Katharine Hanley
Case Officer

GUIDANCE NOTE ON APPEAL FROM THE RPT

Introduction

1. The decision of the Residential Property Tribunal (RPT) is final and there is no power for the RPT to revisit or reconsider that decision. If a party to a decision is dissatisfied with the decision of an RPT, the statutory remedy is to appeal to the Lands Tribunal.[1]

2. A decision and reasons may be issued together. Alternatively, a decision may be issued and reasons sent at a later stage.

Permission to appeal

3. In order to appeal to the Lands Tribunal, the party who wishes to appeal ("the appellant") must first obtain permission to do so. A request for permission to appeal must first be made to the RPT. If the RPT refuses permission the request may be renewed to the Lands Tribunal. (See paragraph 7 below for details). A request should normally be made in writing to the RAP. (Alternatively a request for permission may be made orally at a hearing if the tribunal announces at that hearing the decision the appellant wishes to appeal).[2]

4. The general rule is that a request to the RPT for permission to appeal must be made within the period of 21 days starting with the date on which the reasons for the decision were sent to the party seeking to appeal.[3] However, despite that rule, the RPT has power to extend the time within which a request for permission to appeal may be made even if the 21 day period has expired. This power may only be exercised where (a) it would not be reasonable to expect the appellant to request or to have requested permission within the 21 day period or (b) where not to permit a request to be made out of time would result in substantial injustice.[4]

5. A request for permission to appeal that is made in writing must be signed by the appellant or their representative and must
    a. state the name and address of the appellant and any representative of the appellant;
    b. identify the decision and the tribunal to which the request for permission relates and
    c. state the grounds on which the appellant intends to rely in the appeal.

6. On receipt of a request for permission to appeal the RPT will serve a copy on every other party to the decision that is being appealed. To facilitate the process it would assist if sufficient copies were provided with the request for this purpose.

7. The RPT will give the appellant and every other party written notification of its decision. If permission to appeal to the Lands Tribunal is granted by the RPT

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[1] Housing Act 2004, Section 231
[2] Residential Property Tribunal (Procedure)(England) Regulations 2006 (SI 2006 / 831), reg 35(2)
[3] SI 2006 / 831), reg 35(3)
[4] SI 2006/831, reg 24

the appellant's notice of intention to appeal must be sent to the registrar of the Lands Tribunal so that it is received by the registrar within 28 days of the grant of permission by the RPT.[5] If the RPT refuses to give permission to appeal, a renewed application for permission may be made to the Lands Tribunal within 14 days of that refusal.[6] (Details as to the power of the Lands Tribunal to permit a notice of appeal or application for permission to appeal to be made outside the relevant time limit are given on the appropriate Lands Tribunal notice obtainable from the Lands Tribunal).

Costs

8. In contrast to the RPT, the Lands Tribunal may order a party to the appeal to pay costs incurred by another party in connection with the appeal.

The Lands Tribunal may be contacted at:

43-45 Bedford Square
London
WC1B 3AS

DX : 149065 Bloomsbury 9

Tel: 020 7612 9710
Fax: 020 7612 9723

Email: lands@tribunals.gsi.gov.uk
Website: www.landstribunal.gov.uk

July 2009

[5] If it is satisfied that it is in the interests of justice to do so the Lands Tribunal may by direction reduce this period or permit the application to the RPT for permission to appeal to stand as notice to the registrar of the Lands Tribunal of an intention to appeal. See the Lands Tribunal Rules 1996 (SI 1996/1022), rule 6 as amended.

[6] SI 1996/1022, rule 5C as amended.

Residential
Property
TRIBUNAL SERVICE

DECISION BY A RESIDENTIAL PROPERTY TRIBUNAL ON AN APPEAL AGAINST A FINAL MANAGEMENT ORDER UNDER PART 3 OF SCHEDULE 2 TO THE HOUSING ACT 2004

Reference number:	LON/00AG/HXV/2009/0001
Property:	139 Fellows Road, London NW3 3JJ
Appellant:	Windsor Properties
Respondent:	The London Borough of Camden
Interested parties:	Five Star Finance Corporation Gladewater Holdings Ltd Clifton Development Ltd
Appearances:	For the Appellant: Michelle Glazebrook, consultant environmental health practitioner instructed by Charles Douglas, solicitors For the Respondent: Mr R Lewis, a barrister instructed by Mr E Sarkis, a solicitor and Ms R Fell, environmental health officer
Tribunal members:	Mr A J Andrew Mr T Sennett MA FCIEH Mr L G Packer
Final Management Order dated:	25 August 2009
Appeal received:	21 September 2009
Directions:	5 October 2009
Hearing:	5 November 2009
Decision:	11 December 2009

DECISION

1. We revoked the final management order.

BACKGROUND

2. The Property is a five storey Victorian mid-terrace townhouse that has been converted into four self-contained flats including a basement flat with a separate front access. Additionally there are two non-self contained units together with a separate bathroom that serves both units.

3. In October 2000 a Panamanian company, Sakina Investments Limited was registered as the proprietor of the freehold interest in the Property. That company granted five long leases, of the various flats and units in the Property, to the Interested Parties that are all Liberian registered companies having a common correspondence address in the United Kingdom. Finally on 2 October 2007 Sakina Investement Limited transferred the freehold interest to Gladewater Holdings Ltd, one of the Interested Parties. Following this transfer Windsor Properties were appointed to manage the Property and the actual day to day management was dealt with by Mr Naqui and Mr Sorenson.

4. On 28 August 2008 Camden made an Interim Management Order ("the IMO") under section 102 of the Housing Act 2004 ("the Act"). The grounds relied on by Camden were that:

> *"The property is a House in Multiple Occupation and the Council considers that there is no reasonable prospect of the property being so licensed in the near future and the health and safety condition (as defined in section 104 of the Act) is satisfied.*
>
> *The Council accordingly makes this Interim Management Order in respect of the property which is effective immediately and will cease to be effective after 27 August 2009."*

5. Windsor Properties appealed against the IMO and the appeal was heard by a differently constituted tribunal on 9 December 2008. By a decision of 12 January 2009 the tribunal dismissed the appeal and confirmed the IMO.

6. On 19 April 2009 Windsor Properties applied for a licence for the Property as a House in Multiple Occupation, which is required by section 61 of the Act. By notice dated 13 July 2009 Camden refused a licence on the grounds that Windsor Properties were not considered to be a fit and proper person to be a licence holder as required by section 64(3)(b)(i) of the Act. There was no appeal against that decision.

7. On 25 August 2009, two days before the IMO was due to expire, Camden decided to revoke it pursuant to section 112 of the Act and on that day it issued notice of revocation on the grounds that:

"A final management order has been made in respect of the house to replace the interim management order"

The notice continued by recording that the IMO: *"will cease to have effect on the day the final management order comes into force (being not less than 28 days from the date of the decision to revoke was made)".*

8. On the same date, that is 25 August 2009, Camden made a final management order ("the FMO") pursuant to section 113(3) of the Act and on same date gave notice of the FMO to the relevant parties. The grounds relied on by Camden are set out in paragraph 4 of the FMO in these terms:

   "The Authority considers that the making of the Order is necessary on the grounds that:
   (a) On the date of expiry of the current interim management order the house would be required to be licensed under part 2 of the Housing Act 2004; and
   (b) The authority considers that they are unable to grant a licence under Part 2 in respect of the house that would replace the IMO from that date for the reasons explained overleaf."

   Those reasons are not material to this decision.

9. On 21 September 2009 Windsor Properties appealed Camden's refusal to revoke the FMO although no such decision had ever been made. The grounds relied were that the Property was no longer a licensable HMO owing to the reduction in the number of tenants from seven to three. The appeal first came before a differently constituted tribunal on 5 October 2009. Having heard submissions from both parties' representatives the tribunal decided that (a) the appeal should be treated as if it had been an appeal against the FMO under paragraph 24(1)(a) of Schedule 6 to the Act and (b) the terms of the IMO were extended until the final determination of the appeal. That decision was not appealed and indeed there was no appeal against the tribunal's earlier decision of 12 January 2009.

10. At the hearing it was expressly agreed by the parties' representatives that until and including 27 August 2009 the Property was occupied by at least five people but that as from and including 28 August 2009 it had been occupied by three people. This was because on that date Ms E Kukaj and her two sons vacated the flat that they had previously occupied to take up permanent council accommodation that had been offered to them.

STATUTORY FRAMEWORK

11. The Act is in seven parts with fourteen schedules. The first four parts of the Act together with the supplementary and final provisions in part 7 provide a comprehensive framework for the maintenance of housing standards and give local authorities extensive powers to enforce those standards.

12. Part 1 introduces a new system for assessing housing conditions by reference to hazards found on inspection. Local authorities are empowered to enforce housing standards by the issue of improvement notices, prohibition orders and hazard awareness notices.

13. Part 2 provides for the licensing of houses in multiple occupations ("HMO") whilst part 3 provides for the selective licensing of other residential accommodation

14. Part 4 introduces additional control provisions that enable local authorities to make management and empty dwelling management orders and to issue overcrowding notices.

15. It was common ground that the Property was an HMO within the meaning of section 254 of the Act. However section 55(2)(a) provides that the licensing provisions of Part 2 of the Act shall only apply to: *"any HMO in the authorities' district which falls within any prescribed description of HMO".*

16. The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 give effect to Section 55(2)(a) by describing the HMOs that are to be the subject to the licensing regime of Part 2 of the Act. In so far as relevant to this decision paragraph 3(2)(b) limits the licensing regime to HMOs that are: *"occupied by five or more persons".*

17. Section 113 of the Act provides for the making of final management orders. In so far as relevant to this decision it reads as follows:

> ***113 Making of final management orders***
>
> *(1) A local housing authority who have made an interim management order in respect of a house under section 102 ("the IMO")—*
>
> > *(a) have a duty to make a final management order in respect of the house in a case within subsection (2), and*
> >
> > *(b) have power to make such an order in a case within subsection (3).*
>
> *(2) The authority must make a final management order so as to replace the IMO as from its expiry date if—*
>
> > *(a) on that date the house would be required to be licensed under Part 2 or 3 of this Act (see section 61(1) or 85(1)), and*
> >
> > *(b) the authority consider that they are unable to grant a licence under Part 2 or 3 in respect of the house that would replace the IMO as from that date.*
>
> *(3) The authority may make a final management order so as to replace the IMO as from its expiry date if—*
>
> > *(a) on that date the house will not be one that would be required to be licensed as mentioned in subsection (2)(a), and*

(b) the authority consider that making the final management order is necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

(8) In this section "expiry date", in relation to an interim or final management order, means—

(a) where the order is revoked, the date as from which it is revoked, and

(b) otherwise the date on which the order ceases to have effect under section 105 or 114;

and nothing in this section applies in relation to an interim or final management order which has been revoked on an appeal under Part 3 of Schedule 6.

18. To establish the *"expiry date"* in sub section 113(8) reference has to be made to the following further provisions in the Act:-

(a) Sub-section 112(2) which provides that:

A revocation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under paragraph 31 of Schedule 6 (time when period for appealing expires without an appeal being made or when decision to revoke is confirmed on appeal).

(b) In the context of this case the relevant provisions of paragraph 31 of schedule 6 are contained in sub paragraph (2) which provides that:

If no appeal is made under paragraph 28 before the end of the period of 28 days mentioned in paragraph 29(2), "the operative time" is the end of that period.

(c) Section 105 relates to the operation of IMOs and again the relevant provisions for the purpose of establishing the *"expiry date"* are:-

105 Operation of interim management orders

(1) This section deals with the time when an interim management order comes into force or ceases to have effect.

(4) The order ceases to have effect at the end of the period of 12 months beginning with the date on which it is made, unless it ceases to have effect at some other time as mentioned below.

(5) If the order provides that it is to cease to have effect on a date falling before the end of that period, it accordingly ceases to have effect on that date.

(8) *Subsections (9) and (10) apply where—*

(a) a final management order ("the FMO") has been made under section 113 so as to replace the order ("the IMO"), but

(b) the FMO has not come into force because of an appeal to a residential property tribunal under paragraph 24 of Schedule 6 against the making of the FMO.

(9) If—

(a) the house would (but for the IMO being in force) be required to be licensed under Part 2 or 3 of this Act (see section 61(1) or 85(1)), and

(b) the date on which—

(i) the FMO,

(ii) any licence under Part 2 or 3, or

(iii) another interim management order,

comes into force in relation to the house (or part of it) following the disposal of the appeal is later than the date on which the IMO would cease to have effect apart from this subsection,

the IMO continues in force until that later date.

(10) If, on the application of the authority, the tribunal makes an order providing for the IMO to continue in force, pending the disposal of the appeal, until a date later than that on which the IMO would cease to have effect apart from this subsection, the IMO accordingly continues in force until that later date.

(11) This section has effect subject to sections 111 and 112 (variation or revocation of orders by authority) and to the power of revocation exercisable by a residential property tribunal on an appeal made under paragraph 24 or 28 of Schedule 6.

19. The provisions relating to the operation of FMOs are to be found in section 114. Sub section 114(2) provides that:-

The order does not come into force until such time (if any) as is the operative time for the purposes of this subsection under paragraph 27 of Schedule 6 (time when period for appealing expires without an appeal being made or when order is confirmed on appeal).

20. The effect of paragraph 27 of Schedule 6, in the context of this case, is to postpone the operation of the FMO either:-
    a. Until the time for appealing this decision expires, if there is no appeal to the Lands Tribunal; or
    b. If there is an appeal against this decision, until the time that the Lands Tribunal confirms the FMO.

21. Finally it is necessary to have regard to the provisions relating to appeals against FMOs. They are to be found in part 3 of Schedule 6 to the Act. For the purpose of this decision the following provisions are relevant:-

24 - (1) A relevant person may appeal to a residential property tribunal against—

(a) a decision of the local housing authority to make an interim or final management order, or

(b) the terms of such an order (including, if it is a final management order, those of the management scheme contained in it).

26 - (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 24 in respect of an interim or final management order.

(2) The appeal—

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may confirm or vary the order or revoke it —

(a) (in the case of an interim management order) as from a date specified in the tribunal's order, or

(b) (in the case of a final management order) as from the date of the tribunal's order.

ISSUES IN DISPUTE

22. On the basis upon which the case was put to us there were essentially three issues that we had to decide, viz:-

a. The identification of the *"expiry date"* in section 113 of the Act; and

b. Having identified the *"expiry date"* whether we should have regard to the number of occupiers in the Property at that date or some other date for the purpose of establishing whether it had to be licensed as an HMO under Part 2 of the Act; and

c. If we decided that the Property had to be licensed whether Camden was unable to grant a licence to replace the IMO. At the hearing this issue was referred to as "the merits issue". As will become apparent we did not have to decide the issue because we found that the Property did not have to be licensed.

SUBMISSIONS ON THE FIRST TWO ISSUES

23. As recorded in paragraph 9 the ground relied in the application form was simply that the Property was no longer a licensable HMO owing to the

reduction in number of occupiers from 7 to 3. In its statement of case the Appellant contended that we should have regard to the number of occupiers on the 28 August 2009 being the date, it was said, when the IMO expired. At the hearing Ms Glazebrook said that the date of the hearing was both the *"expiry date"* and the relevant date, for the purpose of considering the number of occupiers in the Property.

24. In making the FMO on 25 August 2009 Camden relied entirely on sub-section 113(2) of the Act and took the view that it was obliged to make the FMO because from the *"expiry date"* of the IMO the Property had to be licensed under Part 2 of the Act and Camden considered that they were unable to grant such a licence.

25. In answer to our questions Mr Lewis said that he did not ask us to vary the FMO to enable Camden to rely upon the discretionary grounds contained in subsection 113(3): that is, that although the Property did not have to be licensed under Part 2 an FMO was necessary for the purpose of protecting the health, safety or welfare of the remaining occupants.

26. At the hearing Mr Lewis said that the *"expiry date"* was the hearing date: that is 5 November 2009. He said however that we should have regard to the facts as they existed on the 25 August 2009 when Camden decided to make the FMO and when there were at least five occupiers in the Property and it was, in consequence, a licensable HMO. He readily conceded that, if we had regard to the number of people in the Property at the hearing date, the appeal must succeed because after 27 August 2009 it was occupied by less than 5 people.

27. In asserting that we should have regard to the facts as they existed when the FMO was made, Mr Lewis relied heavily on the judgement of Stuart-Smith L. J. in SFI Group PLC v Gosport BC [1999] Env LR 750. In that case the Court decided that on an appeal against a Noise Abatement Notice, issued in respect of a statutory nuisance, the Court should have regard to the facts at the time of the service of the abatement notice and not the facts at the time of the appeal.

28. He also urged us to adopt a purposive approach to the legislation. He suggested that if we revoked the FMO Camden would have no means of improving the unacceptable housing conditions within the Property and he said that that was contrary to the intention of the Act.

29. Finally Mr Lewis said that having regard to the number of occupiers at the hearing date would give rise to an anomaly in the event of subsequent appeals to the Lands Tribunal and the Court of Appeal. The number of occupiers might vary between each hearing resulting in a decision being overturned not because it was wrong but because there had been a change of circumstances during the period between the hearings. Furthermore parties would be encouraged to pursue the appeal process in the hope that there might be a change of circumstances before the appeal hearing.

30. At the hearing both parties were given every opportunity to present their respective cases. Nevertheless, some three hours after the hearing concluded we received further unsolicited written representation from Mr Lewis. The thrust of those representations was to enforce the argument made in the preceding paragraphs by drawing our attention to the possibility of a change in circumstances between the hearing date and the publication of our determination. We declined to have regard to Mr Lewis' unsolicited representations not least because in making them he asserted that on 28 August 2009 the Property was still occupied by at least five people. The hearing had proceeded on the express agreement of the parties, recorded in paragraph 10 above, that as from and including 28 August 2009 the Property was occupied by less than five people. Neither party had, at the hearing, adduced any evidence as to the number of people occupying the Property at any given time and consequently it was not open to either of them to subsequently resile from the clear agreement recorded at the hearing.

REASONS FOR OUR DECISION

31. The *"expiry date"* is defined in sub-section 113(8). It is clear from the wording of that section, and in particular the use of the word *"otherwise"* in sub-section (b), that where an IMO is both revoked and ceases to have effect in accordance with section 105 the date of revocation shall prevail for the purpose of identifying the *"expiry date"*. The precedence of revocation, as a means of identifying the *"expiry date"*, is reinforced by the wording of sub-section 105(11), which make it clear that the provisions in sub-sections 105(9) and (10) (which extend the operation of an IMO) are subject to earlier revocation.

32. Revocation is dealt with by section 112. The clear implication of sub-section (2) and in particular the use of the words *"does not"* (rather than "cannot") is that where, as in this case, there is no appeal the revocation will come into effect after a period of 28 days. In this case Camden decided to revoke the IMO on 25 August 2009 and the revocation would therefore have come into effect on 22 September 2009. In determining *"the date as from which it is revoked"*, in sub-section 113(8), the choice lay between the two dates. Mr Lewis said, in answer to our questions, that he did not assert that 25 August 2009 was either the *"expiry date"* or the date *"from which"* the IMO was revoked.

33. The alternative date of 22 September 2009 would have surprising consequences that are outwith this decision. In this case it would mean that from the 22 September 2009 until the expiration of this appeal process the Property would not be subject to any management order although that consequence could have been avoided by the simple expediency of making the FMO without revoking the IMO. At the hearing neither Mr Sarkis nor Ms Fell were able to provide a coherent explanation for the decision to revoke the IMO.

34. Nevertheless neither party relied upon sub-section 113(8)(a) to establish the *"expiry date"* and neither canvassed 22 September 2009 as the *"expiry date"*. Accordingly on the basis of the representations made to us we consider the *"expiry date"* on the basis that it is to be ascertained by reference to sub-section 113(8)(b): that is, the date upon which the IMO ceases to have effect under section 105. The effect of sub-sections 105 (4) and (5) are that, in this case, the IMO would have ceased to have effect *"after 27 August 2009"* unless continued beyond that date by either sub-section (9) or (10).

35. On the basis of the parties' agreement that the Property was occupied by three people on 28 August 2009 sub-section 105 (9) cannot apply because after 27 August 2009 the Property did not have to be licensed and an IMO can only continue in force under sub-section (9) if the conditions set out in both sub-sections (a) and (b) are satisfied.

36. Nevertheless a differently constituted tribunal had by its decision of 5 October 2009 extended the IMO *"until the final determination of this appeal"* pursuant to subsection 105(10). The clear intention of section 114(2) is to postpone the operation of the FMO until the expiration of the appeal process, which is expressly stated (in paragraph 27 of Schedule 6) to include any subsequent appeal to the Lands Tribunal (but not any subsequent appeal to the Court of Appeal). In that context we considered that the words *"final determination of this appeal"* had the effect of extending the IMO and thus the *"expiry date"* until the appeal process has been exhausted. Thus the *"expiry date"* is a future indeterminate date.

37. Notwithstanding the wording of section 113(2) it is impossible to determine if the Property *"would be required to be licensed"* at a future indeterminate date. Consequently we agreed with Mr Lewis that we had to have regard to the number of occupiers in the Property at some other date. As we were considering an appeal against the making of the FMO we also agreed with him that the choice lay between 25 August 2009, when the FMO was made, and the date of the hearing.

38. In the SFI Group case the Court had considered two statutory regimes for Noise Abatement Notices. The first was that enacted by the Public Health Act 1936 and the second was that enacted by the Control of Pollution Act 1974 as substantially re-enacted by the Environmental Protection Act 1990. Although the regimes had many similarities the Court concluded that one could not draw assistance from the first regime when interpreting the second regime. At paragraph 25 Stuart Smith LJ remarked that: *"In my view the reasoning in Coventry C.C. v. Doyle based as it was on the language of PHA 1936 is plainly correct. It has no bearing on the quite different language of the 1990 Act"*.

39. Those remarks apply with even greater force when considering a wholly different statutory framework and consequently we concluded that no assistance could be drawn from the decision in the SFI Group case.

40. We also disagreed with Mr Lewis' submissions that if we revoked the IMO Camden would have no means of improving the unacceptable housing conditions within the Property. Camden still had at its disposal all the powers granted by the other provisions of the Act and in particular the power to issue improvement notices, prohibition orders and hazard awareness notices granted by Part 1 of the Act. Furthermore when Camden made the FMO it could have relied on the provisions of both sub-sections 113(2) and (3) much as it had done when issuing the IMO. In consequence the reduction in the number of occupiers to three would not necessarily have proved fatal in the event of Camden being able to satisfy us that the health, safety and welfare condition referred to in sub-section (3) was met. Indeed at the hearing Camden specifically declined the opportunity to seek a variation in the FMO to enable it to rely upon that condition.

41. We agreed with Mr Lewis that a potential anomaly could arise if on a subsequent appeal the Lands Tribunal decided to deal with the appeal by way of a re-hearing and then proceeded to consider the number of occupiers at the date of that re-hearing. That was, however, a wholly speculative scenario. Furthermore making a decision on the basis of the number of occupiers on 25 August 2009 could give rise to an even greater anomaly. Section 122 of the Act provides for the revocation of FMOs on the application of a relevant person, which would include the Appellant. Section 123 and schedule 6 of the Act make provisions for appeals against a refusal to revoke an FMO that are similar to those described above. As Ms Glazebrook pointed out, if we confirmed the FMO on the basis that there were five or more occupiers in the property on 25 August 2009 the Appellant would immediately apply to revoke the FMO on the basis of a subsequent change in circumstances. If the application were refused the Appellant would appeal and the identical facts would then come back to be heard by a differently constituted tribunal.

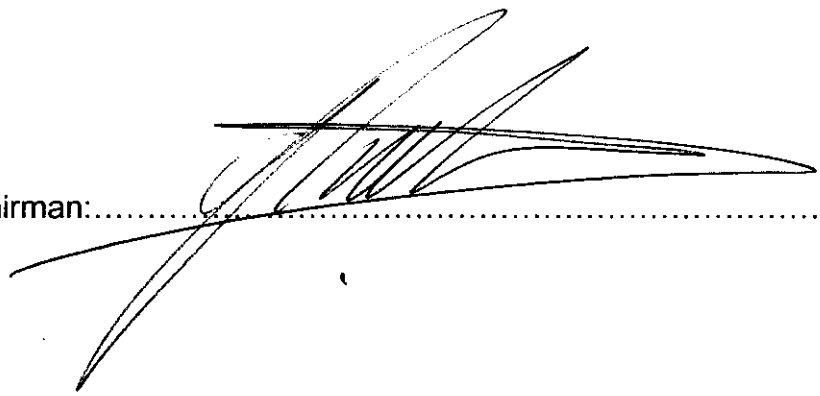
42. Management orders are punitive in nature. For all practical purposes the owner is for a temporary period deprived of his property. In this case the proposed management scheme envisaged Camden's managing agents, based in Bath, supervising work that would cost *"in the region of £209,367"*, which would then fall as a charge on the Property to be paid by the owner. The intention of the Act was clearly that management orders should only be made in respect of licensable HMO's, in the absence of the authority relying upon the discretionary health, safety and welfare condition. The Property had not been licensable since 27 August 2009 and consequently we considered that it would be perverse, in such circumstances, to confirm the FMO.

43. We also consider it appropriate to have regard to the wording of paragraph 26 of Schedule 6 to the Act. To remind ourselves it provides in sub-paragraph (2) that *"the appeal (a) is to be by way of re-hearing, but (b) may be determined having regard to matters of which the authority were unaware"*. We consider that the clear intention of those words is that the

tribunal, on appeal, should have regard to the facts as they exist at the date of the hearing rather than at some earlier date.

44. Furthermore sub-section 113(2) requires us to consider whether the Property was licensable on the *"expiry date"*. For all the reasons explained above that is not possible. Nevertheless we considered that we could best give effect to Parliament's intention by considering the number of occupiers as at the closest possible date to the *"expiry date"* which for reasons that are self evident must be the hearing date.

45. Consequently and for each and all of the above reasons we concluded that the Property was not at the *"expiry date"* a licensable HMO, in which case, as conceded by Mr Lewis, the appeal must succeed.



Chairman:.....(A J Andrew)