



Property : **Markfield Lodge, 12 – 20 Markfield Road,
London N15 4QF**

Applicant : **London Borough of Haringey (“the
Council**

Respondent : **Mehmet Parlak**

Representatives : **For the Council
Christopher Cooper of the Council
For Mr Parlak
Messrs Devereaux solicitors**

Type of Application : **Application for a Rent Repayment Order
section 73(5) Housing Act 2004 (“the
Act”)**

Tribunal : **Mr A A Dutton Chair
Mr P Tobin FRICS**

Date of Determination : **26th March 2013**

DECISION

The tribunal finds that the sums set out in paragraph 5 below are due and owing in respect of a Rent Repayment Order being the Housing Benefit paid for the period 19th December 2011 to 18th December 2012 to be paid within 28 days or such other period as the parties may agree between themselves.

Reasons

BACKGROUND

1. This Application was made by the London Borough of Haringey (“the Council”) for a repayment order under section 73(5) of the Housing Act 2004. Briefly the facts are as follows. On 28th November 2012 the Respondent was convicted at Haringey Magistrates Court under the Housing Act 2004 of failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 and failure to apply for an HMO licence under section 61 of

the Act. He was fined the total sum of £26,190, including costs, of which £10,000 represented the failure to licence the property.

2. A Notice of Intended Proceedings (the Notice) was issued dated 18th December 2012 and sought to recover the sum of £14,944.94 in respect of rent payments made by the Council to the three named tenants. Accompanying the Application to the Tribunal appeared to be a Supporting Statement and details of the sums of Housing Benefit paid during the period covered by the Notice. We were also provided with extracts of the relevant tenancy agreements showing Watchacre Properties Limited as the Landlord, although the registered proprietor is recorded as Eve Estates Limited. A licence under section 64 was granted for the property for one year on 15th January 2013.
3. On 26th March 2013 we received a letter by fax, from Messrs Devereaux which said as follows:
 - “1. My clients accept the liability to repay the amounts that are sought, having pleaded guilty in the Magistrates Court but having raised grounds of mitigation.
 2. The only two issues are:
 - (a) Firstly, a period in which to pay by way of instalments of the amounts that are to be repaid, and
 - (b) Secondly, that there should be some credit given to my client for housing the tenant, which effectively was a saving to the Counsel.”

THE LAW

See below

FINDINGS

4. The letter from Messrs Devereaux received today appears to accede to the Council's assertion, by reference to the Notice, that Mr Mehmet Parlak is the “appropriate person” for the purposes of the application under section 73(5). On that basis we find that the Council has followed the procedures correctly and that there is a liability to repay the rent which was paid from Housing Benefit.
5. The provisions of section 74(8) limits the period to which the rent repayment order can bite, that is to say no more than 12 months before the date of the Notice, which would be 19th December 2011. It therefore requires us to check the sums demanded and we find that in the three sums claimed there is an

error. We find that we cannot order repayment for a period before 19th December 2011. Accordingly, in respect of the tenants we find that the following sums are due

- Mrs Mehmed, claimed £7,969.71, **allowed £6,566.77**. The reduction is in respect of the period 3.10.11 to 19.12.11 (77 days @£18.22 per day)
- Mr Hyusein claimed £2,861.47 **allowed £2,728.54**. The reduction is in respect of the period 28.11.11 to 19.12.11 (21 days @ £6.33)
- Mrs C Ilieva claimed £4113.76 **allowed £2,942.35**. The reduction is in respect of the period 19.11.11 to 19.12.11 (£1045.84 for 19.11 to 11.12 and £5.38 for period 12.12 to 19.12 (£10.76) and £120.19 for period 12.12 to 19.12 (£480.76).

6. Although Messrs Devereux asked for the possibility of instalment payments and that there be a reduction as set out in 2(b) of their letter it does not seem to us that we have ability to make such orders. There is judicial authority that the fact that the tenants have been housed is not mitigation and although it might be possible to offset the sums claimed to an extent by reference to the fine, the breach of the Act is, on the face of the papers before us, substantial. We have reduced the amounts to reflect the period of recovery and do not propose to make any further reductions. It is hoped that the Council can reach an agreement with the Respondent to enable payments by instalments.
7. The parties are informed of their rights to appeal this decision for which permission must be sought. The provisions of regulation 38 of the Residential Property Tribunal Procedures and Fees (England) Regulations 2011 apply and the application for permission must be made within 21 days of the date of this decision.

Andrew Dutton - chair 26th March 2013

The Relevant Law

Section 73 Other consequences of operating unlicensed HMOs: rent repayment orders

(1) For the purposes of this section an HMO is an "unlicensed HMO" if—

- (a) it is required to be licensed under this Part but is not so licensed, and*
- (b) neither of the conditions in subsection (2) is satisfied.*

(2) The conditions are—

(a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));

(b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).

(3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—

(a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or

(b) any other provision of such a tenancy or licence.

(4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74.

(5) If—

(a) an application in respect of an HMO is made to a residential property tribunal by the local housing authority or an occupier of a part of the HMO, and

(b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—

(a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),

(b) that housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed, and

(c) that the requirements of subsection (7) have been complied with in relation to the application.

(7) Those requirements are as follows—

(a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)—

(i) informing him that the authority are proposing to make an application under subsection (5),

(ii) setting out the reasons why they propose to do so,

(iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and

(iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;

(b) that period must have expired; and

(c) the authority must have considered any representations made to them within that period by the appropriate person.

(8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—

(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of a part or parts of the HMO,

(b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and

(c) that the application is made within the period of 12 months beginning with—

(i) the date of the conviction or order, or

(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

(a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and

(b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

- *“the appropriate person”, in relation to any payment of housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;*
- *“housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);*
- *“occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “occupation” has a corresponding meaning);*
- *“periodical payments” means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) or any corresponding provision replacing that regulation.*

(11) For the purposes of this section an amount which—

(a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and

(b) is not an amount of housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

Section 74

(1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).

(2) Where, on an application by the local housing authority, the tribunal is satisfied—

(a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and

(b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO,

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority an amount equal to the total amount of housing benefit paid as mentioned in paragraph (b).

This is subject to subsections (3), (4) and (8).

(3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) (“the rent total”) is less than the total amount of housing benefit paid as mentioned in that paragraph, the amount

required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.

(4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.

(5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

(6) In such a case the tribunal must, in particular, take into account the following matters—

(a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);

(b) the extent to which that total amount—

(i) consisted of, or derived from, payments of housing benefit, and

(ii) was actually received by the appropriate person;

(c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;

(d) the conduct and financial circumstances of the appropriate person; and

(e) where the application is made by an occupier, the conduct of the occupier.

(7) In subsection (6) “relevant payments” means—

(a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;

(b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.

(8) A rent repayment order may not require the payment of any amount which—

(a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or

(b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5);

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

(9) Any amount payable to a local housing authority under a rent repayment order—

(a) does not, when recovered by the authority, constitute an amount of housing benefit recovered by them, and

(b) until recovered by them, is a legal charge on the HMO which is a local land charge.

(10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

(11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder—

(a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and

(b) to do so in such instalments as are specified in the licence.

(13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.

(14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.

(15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 73, and in particular—

(a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of housing benefit or otherwise);

(b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.

(16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.