

IN THE Highbury Corner  
Magistrates Court.

EXHIBIT

This is the Exhibit **MAW / 01** referred to in the Witness Statement  
of Michael Anthony Warren.

Dated... 20 August 2014

Signed:  .....

**WITNESS STATEMENT**

*(Criminal Procedure Rules, r.27.2; Criminal Justice Act 1967, s.9; Magistrates' Courts Act 1980, s.5B)*

Statement of Michael Anthony Warren BSc MCIEH CMIOSH ARPS .....

Age of witness (if over 18 enter 'over18')..... **Over 18**.....

This statement (consisting of 31 pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything, which I know to be false or do not believe to be true.

- 1.1 I qualified as an Environmental Health Officer in 1975 and after working in a range of roles in London and Derby, I was appointed as Chief Environmental Health Officer at Hove Borough Council. This designation was subsequently changed to Director of Environmental Health until Hove B.C, became Brighton & Hove Council following local government re-organization. Since then I have provided consultancy service for many local authorities and am currently employed as an Environmental Health Officer by the London Borough of Camden.
  
- 1.2 Happy Vale Hotel is situated at 21 Harrington Square, London NW1 2JJ. This property is part of a terrace of 10 houses, forming the east side of the former square. The Listed Building description states: 'that the properties were constructed around 1842-48 and were constructed of grey brick, with

Signed: [Redacted] .....(witness)

Date: *20 August 2014*

(To be completed if applicable: ..... being  
unable to read the above statement, I ..... of  
.....read it to him/her before he/she signed it.

Signed: ..... Date: .....

**WITNESS STATEMENT**

*(Criminal Procedure Rules, r.27.2, Criminal Justice Act 1967, s.9, Magistrates' Courts Act 1980, s.5B)*

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examination of the plans submitted with the licence application revealed that many of the rooms were undersized. For many years the property was used to accommodate homeless people referred by religious charities. The property had been subject to regular inspections under the Bed & Breakfast Information Scheme. (BABIE Scheme) . The consistent very low rating meant that local authorities should not have placed any homeless people there. The layout plans are shown in **(Exhibit MAW / 01)**. **It can be seen from the height of the building that it would be a sui generis HMO, not a C4 HMO.**

**2.0 House in Multiple Occupation**

2.1 The comments below relate to the complex Housing Act 2004 definition of 'house in multiple occupation', given that planning guidance now adopts the Housing Act 2004 definitions.

2.2 It was clear to me, having looked through the Council records for the Happy Vale Hotel, that [REDACTED] had been managing the property as a house in multiple occupation providing long-term accommodation for people who might otherwise be homeless. I have stayed at many genuine guest houses and they have all catered for people who are staying away from their home, because they are working nearby on a short contract, or are visiting the area. They were all very well managed and provided a high standard of accommodation, with facilities to make refreshments and excellent sanitary facilities. When you book your stay in such a premises, you have to supply various details including name, home address, car details, credit card details etc., and on arrival have to sign into a proper register. When I visited Happy Vale there was no sign of a reception or

Signed: ..... [REDACTED] .....

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England and Wales. The premises was not being operated in accordance with its planning established use certificate.

- 2.3 I have provided four tables showing the periods of occupation of residents claiming benefit: On 5 April 2004, the 17 residents identified in bold in the From column in Table 1 below were tenants in receipt of housing benefit. **From May 2004, 6 of the residents names in bold italics were still living there at beginning of June 2014. That means that it was an HMO throughout.**

**TABLE 1 – ALL HOUSING BENEFIT CLAIMS BETWEEN 2003 & 2011**

Claim No/	Room	From	To	Resident's name
280920	Flat A, 12, 9	<b>13/10/2003</b>	26/06/2005	[REDACTED]
280917	Flat A, 9, 12	<b>20/10/2003</b>	26/06/2005	[REDACTED]
280897	6	<b>27/10/2003</b>	08/02/2004	[REDACTED]
281152	Flat A, 17	<b>03/11/2003</b>	25/07/2004	[REDACTED]
282196	Flat A, 7	<b>08/12/2003</b>	06/03/2005	[REDACTED]
283224	3	<b>12/01/2004</b>	06/02/2005	[REDACTED]
282802	Flat A	<b>12/01/2004</b>	19/04/2004	[REDACTED]
274902	11, 9	<b>09/02/2004</b>	12/08/2007	[REDACTED]
284159	3, 7, 12	<b>23/02/2004</b>	17/09/2006	[REDACTED]
280895	9	<b>05/04/2004</b>	23/03/2011	[REDACTED]
126019	10	<b>05/04/2004</b>	23/03/2011	[REDACTED]
266126	16	<b>05/04/2004</b>	05/04/2009	[REDACTED]

Signed: ..... [REDACTED] .....

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281090	6, 7	03/05/04	23/03/2011	[REDACTED]
307210	15	06/05/2008	01/02/2009	[REDACTED]
307862	3	28/06/2008	01/07/2009	[REDACTED]
309331	3	23/10/2008	23/01/2011	[REDACTED]
309451	2	30/10/2008	23/03/2011	[REDACTED]
160965	6	01/01/2009	23/08/2009	[REDACTED]
310265	15	26/01/2009	09/01/2011	[REDACTED]
310499	15	26/01/2009	03/06/2010	[REDACTED]
310518	11	01/02/2009	09/01/2011	[REDACTED]
310518	11	01/02/2009	09/01/2011	[REDACTED]
310500	11, 3	01/02/2009	23/03/2011	[REDACTED]
310264	7	01/01/09	17/01/2011	[REDACTED]
312134	8	29/04/2009	11/10/2009	[REDACTED]
301481	17	29/04/2009	23/03/2011	[REDACTED]
309452	2	27/10/08	23/03/2011	[REDACTED]
313257	16, 14	14/07/2009	23/03/2011	[REDACTED]
312187	14, 16	01/09/2009	23/03/2011	[REDACTED]
314296	10	05/10/2009	23/03/2011	[REDACTED]
314717	8	13/10/09	23/03/2011	[REDACTED]
311700	6	29/07/2010	23/03/2011	[REDACTED]
318714	15	04/08/10	23/03/2011	[REDACTED]
310518	11	01/02/2009	09/01/2011	[REDACTED]
310500	11, 3	01/02/2009	23/03/2011	[REDACTED]
310264	7	01/01/09	17/01/2011	[REDACTED]
312134	8	29/04/2009	11/10/2009	[REDACTED]

Signed: ..... [REDACTED] .....

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storey premises meeting the requirements of The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006, and not consisting wholly of self-contained flats, could be subject to mandatory HMO licensing if it was suitably occupied. In the case of 21 Harrington Square there was only one unit that approached being self-contained, but its kitchen was not provided with a proper cooker: unit (18) situated in the rear basement. This unit was built over the rear yard, and beneath it was found a choked manhole. All of the units were bed-sitting rooms, some contained a basin and shower, and a few contained a toilet. However, none of the rooms contained a proper kitchen. All of the occupants could share communal kitchen facilities, except [REDACTED] in unit 18. [REDACTED] had put a portaloos in an unventilated compartment within room 3 in order to claim a higher rate of Housing Benefit..

3.1.3 Whilst most residents had some cooking facilities in their room, only unit 18 contained a proper work top and food cupboards, but it did not contain a suitable cooker. It had a microwave cooker but not a cooker with hobs, oven etc. In the RPT appeal hearing [REDACTED] appeal, on Friday 20 July 2012, the Tribunal accepted that in order to be self-contained under the Housing Act 2004, a flat had to contain an adequate kitchen. I argued during that hearing that an adequate kitchen contained a sink and drainer with hot and cold water, an adequate food preparation work top, food cupboards, refrigerator and sufficient power points, a cooker with at least two hobs and oven (such as Baby Belling) for a single person and full 4-hob cooker with oven, either fitted or free standing for a 2 person unit. Whilst a sink might substitute for a basin, a basin was not suitable for preparing food and washing up afterwards. Some of the basins had

Signed: ..... [REDACTED] .....

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3.2 ***“(c) the living accommodation is occupied by persons who do not form a single household .”*** We found that each of the units was occupied by persons who comprised a separate household. All, apart from Mr Gethin, were in receipt of Housing Benefit. I have encountered two households with children living in the property..

3.2.1 *Many of the rents were originally assessed on the basis of a Rent Officer decision and the room being 'self-contained', but the definition of 'self-contained' under Benefits legislation differs from that in the section 254(8) of the Housing Act 2004 which requires all of the standard amenities: full kitchen, toilet, shower/bath , to be inside the residents unit of accommodation. A deduction was being made of £3.10 / week for the alleged breakfast.*

Signed: .....  .....

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15							
15	0	9.1				350	121.90
16	0*	10.3		<b>07 03 11</b>	23	350	146.85
17	0	8.4		19 04 09	46	350	146.85
18	1	14 + 2.8 bathroom		13 10 08	52	385	250
19	0	6.2 + 2.8 bathroom				0	0
<b>TOTAL:</b>			occupation on 14 February 2013 = <b>18</b>			5680	2519.70

Where rooms 2, 3, 6, 10, 11 and 16 could accommodate 1 person if the shower was removed and rooms 4, 5, 6, 8, 9, 12, 14, 15 and 17 were simply too small to be let.

Signed: .....  .....



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12	0	7.0		07 11 06	81	350	146.90	
14	0	6.9		29 07 10	37	350	146.90	
15								
15	0	9.1				350	121.90	
16	0*	10.3		07 03 11	23	350	146.90	
17	0	8.4		19 04 09	46	350	67.23	
18	1	14 + 2.8 bathroom		13 10 08	52	385	255	
19	0	6.2 + 2.8 bathroom				0	0	
<b>TOTAL:</b>				occupation on 14 August 2013 = <b>18</b>			5680	2519.70

Where rooms 2, 3, 6, 10, 11 and 16 could accommodate 1 person if the shower was removed and rooms 4, 5, 8, 9, 12, 14, 15 and 17 were simply too small to be let.

Signed: ..... *M.A. Warren* .....

**WITNESS STATEMENT**

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**# Ms Bousetta moved out on 4 June 2014**

**3.3 “(d) the living accommodation is occupied by those persons as their only or main residence or they are treated as so occupying it”.** Most of the occupiers had occupied their room for many months and some had lived in the premises for years, albeit in different rooms – see Tables , 2 & 3 above. Each resident confirmed, during my interview with them that their room represented their only or main home in England & Wales.

**3.4 “(e) their occupation of the living accommodation constitutes the only use of that accommodation”.** Each room was furnished as living accommodation, and if it was occupied, it was used as such. I did not witness any alternative commercial use of the rented accommodation.

**3.5 “(f) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation”.** Each resident received Housing Benefit, which with the exception of two residents, was paid direct by the Council to [REDACTED]. Two residents received their Housing Benefit from the Council and would then have to pay it to [REDACTED]. See table 2 above. Since the service of the Interim Management Order all Housing Benefit payments have been paid in to an account administered by the Council team managing the property.

**3.6** (The spare rows in Table 2 above for rooms 2, 6, 10 and 15 indicate where there was double occupancy giving rise to statutory overcrowding in

Signed ..... [REDACTED]

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storeys or more – in the case of 21 Harrington Square, the property was 5 storeys high, including a basement. The basement was not separate.

- 4.3 In order to prove that a building is an HMO, Section 254 and Schedule 14, paragraph 7 of the Housing Act 2004 have to be taken into account. In this case we have to show that at least 3 people, in at least two households resided in the building. In previous prosecutions, relating to other properties, the Court has accepted that there has to be at least one person paying rent, or other consideration; at least 2 people living there as their only or main residence who do not form a single household and two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation lacks one or more basic amenities. Since October 2010 planning permission is automatically granted for changes between a small C3 single family house and small C4 HMO. However, 21 Harrington Square, as a five storey HMO occupied by around separate 17 households living there for long periods would need planning consent for change of use to sui generis HMO.
- 4.4 The building was divided into 16 let units, and during our visit on 3<sup>rd</sup> & 4<sup>th</sup> June 2014, we met most residents in order to issue them with new keys.. All received Housing benefit and had been in residence for months or years. See **(Tables 1 & 4 above)**
- 4.5 In the past, the Council has served a Housing Act section 235 notice on **██████████** requiring him to provide a copy of the various documents that a bone-fide hotel or bed and breakfast establishment catering for tourists or other short term residency, such as a register, but he has failed to provide

Signed: ..... **██████████** .....

**WITNESS STATEMENT**

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- 23 Provide documentary evidence on the Business Rates set by the Valuation Office Agency
- 24 Provide your current policy on smoking in public places within the building.
- 25 Supply documentary evidence comprising copies of consecutive pages of your guest book from April 2003 to present.

4.6 If the property was operating as a hotel or bed and breakfast establishment, short term residents would expect a breakfast to be provided by [REDACTED]. If the kitchen was used for catering it should have been registered under the Food Safety Act 1990, and be subject to periodic inspections under the food hygiene regulations. However, what used to be the commercial kitchen was used by some of the long-term residents to prepare their own meals, so it was never subject to inspections

4.7 The property provided 16 let rooms, comprising 2 front and 2 rear units in each of the basement, first, second and third floors, plus [REDACTED] occupied a unit to the rear of the ground floor. There was a communal kitchen in the ground floor back addition, and an adjacent communal lounge/dining room on the ground floor. It was not clear who, if anybody, was using the second locked kitchen in the basement. The 'hotel' had no reception area/desk. There was no receptionist, and no evidence of any register. Every resident that I met was living there as their only or main residence, and most had lived there for long periods. None were able to produce an Assured Short-hold tenancy contract. Because [REDACTED] lived in the property most were licensees, with reduced security of tenure. Some of the tenants that I spoke to were not in receipt of services, because they took their washing including bed linen to the launderette and

Signed: ..... [REDACTED] .....

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the IMO. At the time of submitting this application, the claim has not been heard

**7.0 Prosecutions**

7.1 Following inspections on 25 January 2011, and 23 March 2011, [REDACTED] was charged with 32 Housing Act offences relating to re-letting rooms in breach of the HMO licence, management offences, non-compliance with statutory notice and statutory overcrowding. He pleaded not guilty, but changed his plea at the start of his trial when the Council offered to withdraw some offences.

7.2 District Judge Henderson gave some credil for the 'late' pleas of guilty and took into account the allegedly limited means of Mr Gethin. Before sentencing he determined that the Happy Vale Hotel was a licensable house in multiple occupation.

There were 14 offences:

Offence	Fines	Costs
<b>Licensing offences</b>		
(1) Permitted various persons to occupy the property resulting in it being occupied by more persons than were authorised by the licence. The licence restricted the occupation to 8 because many of the rooms were undersized and one of the kitchens was too small. If residents moved out, then [REDACTED] could not replace them until the works to overcome the undersized accommodation had been undertaken, and the licence revised.	£350	

Signed: ..... [REDACTED] .....

**WITNESS STATEMENT**

*(Criminal Procedure Rules, r.27.2, Criminal Justice Act 1967, s.9, Magistrates' Courts Act 1980, s.5B)*

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required to protect the occupiers of the HMO from injury, having regard to the design and structural conditions of the HMO, because [REDACTED] failed to provide a protected fire escape route between rooms on the basement and ground floors and the front exit door, CONTRARY TO s234 (3) of the Housing Act 2004. This was because when the officers visited they found that all of the key fire doors were being held open, so that any fire could rapidly spread.	£850
(13) Failed to ensure that the drainage system serving the HMO was maintained in good working condition because of a holed soil pipe, broken waste pipe and missing gutter, CONTRARY TO s234 (3) of the Housing Act 2004	£150
(16) Failed to ensure that all the common parts, namely the carpet on the ground to second floor staircase was maintained in good and clean decorative repair, CONTRARY TO s234 (3) of the Housing Act 2004 because it was in a filthy, torn condition	£150
(25) Failed to ensure that fixtures, fittings or appliances within a unit of living accommodation, namely the basement right hand back room 18 bath, bath tap and surround were maintained in good repair, CONTRARY TO s234 (3) of the Housing Act 2004 because of disrepair to the mixer tap and cracked tiling	£150
(26) failed to ensure that fixtures, fittings or appliances within a unit of living accommodation, namely the third floor left hand back room 14 ceiling light and shaver light were maintained in good repair, CONTRARY TO s234 (3) of the Housing Act 2004 because the shaver light had been removed leaving live wires with taped over ends protruding from the wall above a basin in the tenant's room	£200
<b>Offences relating Part X of the Housing Act 1985</b>	

Signed: ..... [REDACTED] .....

**WITNESS STATEMENT**

*(Criminal Procedure Rules, r.27.2, Criminal Justice Act 1967, s.9, Magistrates' Courts Act 1980, s.5B)*

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- 7.4 On 8/9 April 2014, [REDACTED] pleaded not guilty to 16 further offences and represented himself. He was found guilty of 15 offences including breaches of the original licence conditions, management offences. An inspection in August 2013 at the behest of [REDACTED] lawyer revealed that the squalor was still present, with extensive disrepair, defective fire precautions, raw sewage lying in the rear just outside the windows of resident's rooms. [REDACTED] had ignored all of the HMO licence requirements and had moved three residents in, in breach of the licence. The property had non-fire-retardant furnishings. Tenant's accommodation was in disrepair with weak rotted floors, defective lights, dampness, fractured shower trays, broken basin and glazing. The key fire detection and alarm system was displaying red lights indicating a fire, and had been silenced so that it would not give warning of a fire, key fire doors were wedged open, or poorly fitting, or substandard. Many of the emergency lights were filthy or opaque so that they would not provide adequate illumination. Most of the lights along the staircase and landings forming the only fire escape route were out of action. [REDACTED] represented himself and told the court that he had 'managed' the property for over 25 years
- 7.5 District Judge Newton also determined that the Happy Vale Hotel was a licensable HMO and fined [REDACTED] a total of £13,000 plus £7542 costs plus £225 victim surcharge. He did not paid the costs and subsequently requested a re-trial at the Crown Court, due to be heard on 11 & 12 September 2014 in Southwark Crown Court.

Signed: ..... [REDACTED] .....

**WITNESS STATEMENT**

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a wrench and the flushing system to a shared toilet was inoperative. Some of the washing facilities in tenant's bedrooms were in disrepair. The flat roof above the ground floor back addition kitchen had developed a leak.

- 7.10 Following the service of the Interim Management Order, the Council changed all of the locks and will deal with the:
- Sewage in rear garden will be dealt with and drainage investigated
  - Pest control treatments for cockroaches, mice and rats
  - An electrical condition survey of all fixed wiring, in view of obvious faults. This may result in additional works to address electrical hazards found
  - Repairs to communal amenities
  - A gas safety test of all gas appliances. The Mexico gas boiler was found to have been previously inspected on 23 July 2012, but because the flue was more than 1m below the top of the lightwell and near an openable window, it was labelled at risk, but the customer [REDACTED] refused permission to turn appliance off. No gas safety certificate for large 6 burner gas range in kitchen, which had an insufficient supply pipe and was also condemned.
  - Repair defective lighting to communal fire escape route. Light fittings were found to have 'live' metal components, and had to be replaced.
  - Replace sub-standard emergency lighting
  - Repair holed kitchen roof
  - Deep clean
  - Repairs to tenant's washing facilities. Several of the showers situated in resident's rooms were leaking water into the structure.

Signed: ..... [REDACTED] .....



