

## **Unifi Case Study 4**

### The Background Facts

Miss A purchased a flat in a Georgian tenement in central Edinburgh in early 2007. Within weeks of moving into the flat after its refurbishment, Miss A experienced a number of problems, most notably noise disturbance as a result of the use of a flat immediately above her flat. All the problems were the direct result of the 2 bedroom upstairs flat being let out as a holiday flat and often rented by hen parties of up to 10 people – a purpose not of itself objectionable and perfectly legal. Miss A's solicitor confirmed that there was nothing in the title deeds of the property to prevent the use of the flat for holiday lets and that the matter was therefore regulated by the common law of nuisance. Miss A was referred to Edinburgh City Council.

The Council were very sympathetic to Miss A's predicament but confirmed that the regular letting of the upstairs flat (every weekend and also frequently mid week) did not fall within any regulation, and more specifically, did not amount to the property falling within the definition of a House in Multiple Occupation. Even if the property were let for 60 continuous days, the longest period available from the company, it is still classed as a short term let.

A landlord requires a Houses in Multiple Occupation ("HMO") licence if the property is let to three or more unrelated people and is the 'only or main residence' of the tenant. All remaining private landlords are required to register with the local authority(s) in which they let property under the landlord registration provisions contained in Part 8 the Antisocial Behaviour etc. (Scotland) Act 2004 ("the Act"). The Act provides for exemptions from registration in particular circumstances, including holiday lets. Where a landlord is operating a short term let which is not a holiday let, the landlord is required to register with the local authority. In addition, Part 7 of the Act also allows local authorities to take action against landlords who have failed to deal with the antisocial behaviour of their tenants.

Miss A was advised that there was no intention to extend the HMO licensing requirements to holiday lets as that would have an impact on the tourism industry and local authorities generally. Her local MSP also confirmed that this had been considered at the stage of the Bill's drafting and it was seen as too complicated to add into the Bill. While this may well be the case, it does not make Miss A's everyday life any easier – especially as the proprietor of the upstairs flat is also refusing to pay his share of common repairs and other common costs relative to the common parts of the tenement. He also refused to deal promptly with a water leak from the flat which resulted in considerable damage to the flats downstairs.

## **The Solution**

In the absence of any form of effective regulation of such a use of a flat in an otherwise exclusively private residential building, Miss A's remedy is essentially based on the law of nuisance. Part 5 of the Act provides local authorities with powers to tackle noise nuisance. Miss A was encouraged to contact the Edinburgh Antisocial Behaviour Domestic Noise Hotline should further disturbance arise. This is a 24-hour service. This puts the complainant through to the Lothian & Borders Police communication centre who will determine who is best to deal with the complaint. If the complainant advises of violence occurring or where there is any criminal or known history relating to the alleged offending property, the police will deal with the issue. If not, the complaint is referred to the Council's noise team, who have a target to respond within 30 minutes. A £100 Fixed Penalty Notice can be served on the occupants of the property if they fail to comply with a 10 minute Warning Notice. Noise-making equipment can also be seized if appropriate. If the offence also contains drunkenness and/or violence the Noise Team will call in the police for assistance. The police can also take action under common law powers, such as breach of the peace. Noise relating to laminate flooring can also be addressed using powers under the Environmental Protection Act 1990. Although, the Council's Noise Team have these powers, Miss A is not able to have an ASBO placed against the property because the occupiers of the property change so regularly that a chain of bad behaviour cannot be established.

Miss A's other remedies as regards the failure of her neighbour to pay for common repairs and the like are regulated by her title deeds failing which the terms of the Tenements (Scotland) Act 2004. In each case, however, Miss A and her neighbours will have to take action at their cost in order to recover the share due by the upstairs proprietor. Alternatively, she might have to claim that there has been a material change of use and refer the matter to the Lands Court? See:

- <http://www.scotcourts.gov.uk/opinions/csih21.html>
- [http://www.theherald.co.uk/news/news/display.var.2093232.0.Judges\\_tell\\_couple\\_to\\_stop\\_celebrity\\_party\\_nights\\_at\\_home.php](http://www.theherald.co.uk/news/news/display.var.2093232.0.Judges_tell_couple_to_stop_celebrity_party_nights_at_home.php)
- <http://news.scotsman.com/latestnews/39139ve-a-2m-house-but.3857601.jp>

## **How could this have been avoided?**

There is clearly a loophole in the Antisocial Behaviour Etc (Scotland) Act 2004 which is being taken advantage of by the upstairs proprietor. In the absence of a statutory amendment to the legislation, the loophole remains and no amount of searching in the Property Register or the relevant local authority registers prior to purchase of the flat would have provided Miss A with information as to the use to which the upstairs flat was being put. This could be avoided quite simply however by it being a requirement that all information relative to the registered owner for the time being of a flat or other property be registered in a single Register of Use of any property be it used for single or multi occupancy purposes. This information is already held by local authorities in the Valuation Roll but it is not routinely searched as part of the conveyancing process. This could be done quite easily however if the Valuation Roll were linked to other local authority information. Such a search would not necessarily have helped Miss A however. It might, however, have provided a clue and would have given her the option of doing some more research prior to purchasing her flat. The information is all currently held in separate silos which, unless specifically checked, will not be disclosed in a traditional local authority search carried out by either a local authority or a private searching company. In this modern technological age, why should this be the case? As a minimum, it should be a requirement that a Property Questionnaire in a Home Report completed for a flatted property should contain details of the other registered proprietors of the flats in the tenement and the use to which each flat is presently being put. There is no reason why this important information should be recorded manually however. It is all a matter of public record which, if linked and searched intelligently by a search system, would provide the relevant information.

The Government's desire to provide more information to prospective purchasers is entirely laudable but does not go far enough. Equally while it is trite to say that the private sector can be enabled to provide solutions, surely it is a more effective use of public expenditure to facilitate a more joined-up solution?