



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **NS/LON/00BH/HMV/2021/0004**

HMCTS code (paper, video, audio) : **V: CVP REMOTE**

Property : **34 Newport Road, Leyton London E10 6PJ**

Appellant/applicant : **Balmick Seegolam**

Representative : **Maureen Ogbu of Reen Anderson Solicitors**

Respondents : **London Borough of Waltham Forest**

Representative : **Tara O’Leary of Counsel**

Type of Application : **Appeal against a revocation of a selective licence – Schedule 5 Paragraph 32(1) of the Housing Act 2004**

Tribunal Members : **Judge Professor Robert Abbey and Mr O N Miller BSc (Lay Member) and Mr S Wheeler MCIEH CEnvH (Professional Member)**

Date of Hearing : **21 June 2022**

Date of Decision : **23 June 2022**

DECISION

- This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of non-paper-based digital trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The decision by the respondent to revoke a licence is upheld for the reasons set out below.
2. In the light of the above, the appeal by the appellant against the revocation by the respondent under paragraph 32(1) of schedule 5 of the Housing Act 2004 is therefore refused.

Introduction

3. This is the hearing of the applicant's application regarding **34 Newport Road, Leyton London E10 6PJ** ("the Property"), pursuant to paragraph 32(1) of schedule 5 of the Housing Act 2004 ("the 2004 Act"), to appeal against the respondent's revocation of the selective licence for the use of the property as a property subject to a letting or licence. The applicant is the long leaseholder of the property and the respondent is the local authority responsible for the locality in which the property is situated. The lease of the property is dated 9 June 2016 and is for a term of 189 years from 31 July 1975. The applicant is the registered proprietor along with his wife and his friend Indurdeo Lollbearree

The Hearing

4. The appeal was set down for hearing on 21st June 2022 when the applicant was represented by Ms Ogbu. Ms O'Leary of Counsel appeared for the respondent. The Property is a two-bedroom flat. It is on the first floor of a terraced property. It has been in the Applicant's ownership for over a decade.

5. Since 2015, the Respondent has had a selective licensing designation over some or all of its Borough, to the effect that anyone privately renting out a property is required to hold a licence under Part 3 of the Housing Act 2004 in order to lawfully rent their property out. The most recent selective licensing designation came into force on 1 May 2020 and covers all wards in the Respondent's Borough excluding the Endlebury and Hatch Lane Wards. The Property is located in the Grove Green Ward.
6. Furthermore, anyone operating a statutory House in Multiple Occupation (HMO) in Waltham Forest has also been subject to a statutory requirement to obtain an HMO licence under Part 2 of the Housing Act 2004 in order to lawfully rent such a property out. In addition to this, since 1 April 2020 the Respondent has also designated the entirety of its Borough for Additional Licensing. The effect of this designation is that normally any property occupied by 2 or more households who share any basic amenities (i.e., a toilet, bathroom/washroom, or a kitchen/cooking facilities) will also require an HMO licence under Part 2 of the Housing Act 2004.
7. The Respondent has in place a Housing and Licensing Team Enforcement Policy and this was exhibited to the Tribunal in the respondent's trial bundle. At paragraph 7.5 thereof, the Respondent sets out its policy for determining licence applications. At paragraph 7.5.2 it states that in order to secure a property licence any applicant will be assessed against 'Fit and Proper Person' criteria. At paragraph 7.5.3, the Respondent's policy sets out that having, "convictions relating to ... running an unlicensed HMO ... are likely to be relevant to determining 'fit and proper'."
8. Furthermore, the Respondent's policy provides that having "More than one contravention or conviction will normally carry more weight than isolated or one-off incidents". Paragraph 7.5.5 of the policy states that, "Where there is a failure of a licence holder ... to meet the Fit and Proper test, a licence application will be refused ... an any existing licence revoked". Paragraph 7.5.6 of the policy states that, "where the Council identifies concerns relating to ... the licence holder/manager [but not such that the Fit and Proper Person test is failed outright] then a shorter licence term may be granted".
9. The Applicant, either solely or in part, has interests in at least seven properties within the borough of Waltham Forest, including the Property. A selective licence under Part 3 of the Housing Act 2004 was granted to the Applicant in respect of the Property on 17 August 2020, but then revoked on 21 October 2021, which is the subject of this appeal.

10. The Tribunal heard that on 8 April 2020, the Applicant and his wife were issued with notices of intention to impose financial penalties pursuant to section 249A and Schedule 13A of the Housing Act 2004 due to their failure to ensure that the Property was licenced under Part 3 of the Housing Act 2004. These fines were both paid in full within the initial 28-day period, reducing the financial penalties from £14,400 to £10,800 for each party. These financial penalties were imposed as an alternative to prosecution, in accordance with the Respondent's enforcement policy.
11. Thereafter, on 28 July 2020, a summons was issued against the Applicant for three housing related offences: failing to licence the property at 42 North Birkbeck Road, E11 4JG as an HMO on 28 January 2020; on the same date, failing to ensure that the common parts of the property at 42 North Birkbeck Road were maintained in good and clean decorative repair in that the kitchen of the property had defective flooring, cracks around the filing and damp, and that the stairway between the first and second floor of the property had cracks to the walls and skirting boards; and, failing to licence the property at 210 Canterbury Road, E10 6EH under Part 3 of the Housing Act 2004, again on 28 January 2020. The Defendant was initially summonsed to appear at Court on 8 October 2020, and then at a subsequent hearing of the case on 1 February 2021, the Defendant pleaded guilty to all offences and was convicted of the same.
12. As a result of the financial penalties imposed on 8 April 2020 and the convictions of 1 February 2021, the Respondent said it no longer considered the Applicant to be a fit and proper person to hold property licences in its Borough. As such, on 8 September 2021, the Respondent wrote to the Applicant to provide notice of its proposal to revoke the Licence. This notice made it clear that a new application for a property licence would be required from an alternative third-party manager not associated with the Applicant.
13. The Applicant emailed the Respondent to make representations against this proposal on 29 September 2021, but these representations were not upheld and this was communicated to the Applicant by a return email on 13 October 2021. On 20 October 2021, the Respondent wrote to the Applicant to give formal notice of the revocation of the Licence. Again, this notice made it clear that any new application for a property licence would be required from an alternative third-party manager not associated (i.e., not connected) with the Applicant.
14. This current appeal against the refusal to grant an HMO licence was made by the applicant in an application to the Tribunal dated 15 November 2021

Decision and Reasons

15. In accordance with paragraph 34(2) of Schedule 5 to the Housing Act 2004, the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the respondents were unaware. The issues that the Tribunal will need to consider when deciding whether to confirm, vary or reverse the decision of the respondent include (1). has the respondent gone through the necessary steps prior to the revocation of the licence and (2) given that the respondent has granted licences to the applicant on other properties, is he a fit and proper person?
16. From the evidence before it the Tribunal was satisfied that this appeal should be dismissed. Dealing first with the necessary steps the Tribunal was satisfied that these had all been properly taken throughout the revocation process. Certainly, the applicant did not raise any objections in this regard during the hearing but sought to advance his appeal on other grounds. Those grounds were that the Respondent erred in finding that the Applicant was no longer a fit and proper person to hold a selective property licence due to his convictions, as it had granted licences to him for other properties since that conviction; and that the revocation of the Applicant's licence will cause him undue hardship, as his rental properties are his only source of income now that he has retired due to ill health.
17. Dealing first with the question of hardship to the applicant, Counsel for the respondent referred the Tribunal to the case of *Cherwell District Council v Anwar* [2011] EWHC 2943 which she said was authority for the view that there should be no consideration of personal circumstances in cases such as this one. Although the case was about the licensing of a Hackney carriage the Tribunal accepted that the approach was similar to this licensing dispute. In *Cherwell* the Judge quoted from *Leeds v Hussain* [2003] RTR 13 by stating that "This does not require any consideration of the personal circumstances which are irrelevant, except perhaps in very rare cases ..." Consequently, the Tribunal was satisfied that concerns about personal hardship were to be ignored and as such this ground for appeal must fail.
18. The Tribunal therefore needed to consider if the applicant was a fit and proper person as required by s64 (3) (b). The statutory test is designed to weed any bad landlords out of the system and to improve the standards in the private rented sector generally. This should give tenants protection from bad or rogue landlords. The test is to ensure that those responsible for operating a licence and managing the premises such as the applicant are of sufficient integrity and good character to be involved in the management of the particular

residential premises to which the application relates and as such they do not pose a risk to the health, safety or welfare of persons occupying and visiting the premises. When considering whether a person is ‘fit and proper’ the respondent will have regard to any ‘wrong doings’ of the applicant. This can be judged from evidence that the person has among other things contravened any provision of housing or landlord and tenant law.

19. The Upper Tribunal case of *Hastings Borough Council v Linda Turner* [2021] UKUT 258 (LC) at paragraphs 55 and 56 makes it clear that the burden of proof rests with the applicant to show he is a fit and proper person. He has not been able to do this to the satisfaction of this Tribunal. Ultimately, the applicant has been convicted in the Magistrates Court of Housing Act offences and been fined many thousands of pounds as a result. Additionally, he and his wife have paid civil penalty notices fees of £21600 in total. Therefore, the Tribunal was satisfied that consequently he could not be considered a fit and proper person for licensing purposes.
20. The applicant thought he should be allowed a licence for the property because a five-year licence had previously been granted on another of his properties, almost contemporaneously. The respondent maintained that the five-year licence granted to the Applicant in respect of the property at 2a St Georges Road was granted in error, because a licensing assistant had allowed the licence without having appreciated that there was a file note on the computer system flagging up the convictions and fines and requiring applications to be referred to a line manager. As such the error was that this application should have been refused. This Tribunal accepts that the granting of this licence was an error and as such the granting of the licence cannot be taken to support the applicant’s contention that he should be allowed a licence for the property.
21. The respondents confirmed that in accordance with its adopted enforcement policy, and following the initial financial penalties imposed on the Applicant and his wife in April 2020, the Respondent did at that stage feel it appropriate to grant shorter one-year licences to the Applicant in respect of the properties at 70 Malvern Road, E11 3DL and 42 North Birkbeck Road, E11 4JG. However, after the Applicant’s conviction on 1 February 2021, the respondent thought it appropriate for the Respondent to then determine that the Applicant was no longer a fit and proper person to hold property licences in its Borough by reason of his convictions and contraventions and the conduct underlying them, all of which demonstrate contraventions of “provision[s] of the law relating to housing or of landlord and tenant law”. Accordingly, it was appropriate, and in accordance with the

Respondent's adopted enforcement policy, for the Respondent to have revoked the Licence.

22. With regard to shorter one-year licences the Tribunal considered the case of *Waltham Forest LBC v Khan* [2017] UKUT 153 (LC). In that case the Deputy Chamber President Martin Roger QC stated that, (underlining by this Tribunal): -

“It is therefore unnecessary and unrealistic, in my judgment, to regard planning control and Part 3 licensing as unconnected policy spheres in which local authorities should exercise their powers in blinkers. I am satisfied that it is legitimate for a local housing authority to have regard to the planning status of a house when deciding whether or not to grant a licence and when considering the terms of a licence. It would be permissible for an authority to refuse to determine an application until it was satisfied that planning permission had been granted or could no longer be required. It would be equally permissible, where an authority was satisfied that enforcement action was appropriate, for it to refuse to grant a Part 3 licence, but as Waltham Forest points out that would make it difficult for a landlord to recover possession of the house and would expose him to prosecution for an offence which he would be unable to avoid by his own actions. The solution adopted by Waltham Forest of granting a licence for a short period to allow the planning status of the house to be resolved was, in those circumstances, a rational and pragmatic course which I accept was well within its powers.

Nor would it be satisfactory to place the onus on the local authority to establish a breach of planning control in costly and time-consuming enforcement proceedings when the landlord's requirement of a Part 3 licence provides an opportunity to require that he take the initiative of demonstrating that he does not need, or alternatively is entitled to, planning permission. The authority has a discretion over the duration of each licence it grants, and there is no automatic entitlement to a period of five years. Where there are grounds to believe that the applicant requires but does not have planning permission the grant of a shorter period is a legitimate means of procuring that an unlawful use (which itself may exacerbate anti-social behaviour) is discontinued or regularised.”

23. In the light of the above the Tribunal accepted that it was entirely appropriate that one-year licences were utilised in this case.

24. Consequently, in the light of the above, the appeal by the appellant/applicant against the respondent's revocation of a selective licence for the property refused.

25. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 23 June 2022

Annex**Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Housing Act 2004

SCHEDULE 5

Licences under Parts 2 and 3: procedure and appeals

Appeals against licence decisions

Right to appeal against refusal or grant of licence

31(1) The applicant or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority on an application for a licence—

(a) to refuse to grant the licence, or

(b) to grant the licence.

(2) An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

Right to appeal against decision or refusal to vary or revoke licence

32(1) The licence holder or any relevant person may appeal to [F4the appropriate tribunal] against a decision by the local housing authority—

(a) to vary or revoke a licence, or

(b) to refuse to vary or revoke a licence.

(2) But this does not apply to the licence holder in a case where the decision to vary or revoke the licence was made with his agreement.