



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

Case Reference : **BIR/00CQ/HMV/2019/0001**

Property : **75 Broomfield Road, Coventry, CV5 6JY**

Applicant : **Mrs Caroline Murray**

Interested Party : **Mr John Murray**

Respondent : **Coventry City Council**

Type of Application : **An appeal against the revocation of a HMO licence under paragraph 32 of Schedule 5 to the Housing Act 2004**

Tribunal Members : **Judge M K Gandham
Mr P J Wilson BSc (Hons) LLB MCIEH MRICS**

Date and venue of Hearing : **27th January 2020
Coventry Magistrates Court, 60 Little Park Street, Coventry, CV1 2SQ**

Date of Decision : **4 March 2020**

DECISION

© CROWN COPYRIGHT 2020

Decision

1. The Tribunal hereby **reverses** the decision, made by Coventry City Council on 6th September 2019, to revoke the licence in relation to the house in multiple occupation known as 75 Broomfield Road, Coventry, CV5 6JY.

Reasons for Decision

Introduction

2. On 3rd October 2019, the First-tier Tribunal (Property Chamber) received an application from Mrs Caroline Murray ('the Applicant') for an appeal under Paragraph 32 of Schedule 5 to the Housing Act 2004 ('the Act'). Mr John Murray, her husband, was detailed in the application as an interested party.
3. The appeal related to a Notice of Decision to revoke a licence for a house in multiple occupation ('the Notice'), dated 6th September 2019, served upon her by Coventry City Council ('the Respondent') relating to the property known as 75 Broomfield Road, Coventry, CV5 6JY ('the Property'), of which the Applicant is the freeholder.
4. On 20th March 2011, the Applicant was granted a licence for the Property for a period of five years. The licence was renewed on 20th March 2016 for a further five years ('the Licence').
5. On 7th March 2019, Ms Claire Taylor, a Senior Environmental Enforcement Officer employed by the Respondent, carried out an inspection of the Property. The inspection identified a number of contraventions of the Management of Houses in Multiple Occupation (England) Regulations 2006 ('the Regulations') and both the Applicant and Mr Murray were interviewed under caution.
6. On 7th June 2019, the Respondent served upon the Applicant a Notice of Intention to Revoke a Licence ('the Notice of Intention'). The Notice of Intention confirmed that the reasons for the proposed revocation of the Licence were that the Respondent no longer considered the licence holder to be a fit and proper person to be a licence holder and that the Respondent no longer considered that the management of the house was being carried out by persons who were fit and proper to be involved in the management. After receiving and responding to representations, the Respondent revoked the Licence on 6th September 2019.
7. In accordance with the Tribunal's Directions, issued on 11th October 2019, both parties provided a Statement of Case and bundle of documents setting out their respective cases.

The Law

8. Section 70 of the Act (as amended) details the provisions relating to a local authority's powers to revoke a licence and provides:

70 Power to revoke licences

- (1) *The local housing authority may revoke a licence—*
- (a) *if they do so with the agreement of the licence holder;*
 - (b) *in any of the cases mentioned in subsection (2) (circumstances relating to licence holder or other person);*
 - (c) *in any of the cases mentioned in subsection (3) (circumstances relating to HMO concerned); or*
 - (d) *any other circumstances prescribed by regulations made by the appropriate national authority.*
- (2) *The cases referred to in subsection (1)(b) are as follows—*
- (a) *where the authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;*
 - (b) *where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and*
 - (c) *where the authority no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management.*

Section 66(1) applies in relation to paragraph (b) or (c) above as it applies in relation to section 64(3)(b) or (d).

...

9. Section 66 of the Act (as amended) details the test for deciding whether a person is a fit and proper person to be a licence holder or manager and provides:

66 Tests for fitness etc. and satisfactory management arrangements

(1) *In deciding for the purposes of section 64(3)(b) or (d) whether a person ("P") is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).*

- (2) *Evidence is within this subsection if it shows that P has—*
- (a) *committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);*
 - (b) *practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;*
 - (c) *contravened any provision of the law relating to housing or of landlord and tenant law; or*

(d) acted otherwise than in accordance with any applicable code of practice approved under section 233.

(3) Evidence is within this subsection if—

(a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and

(b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.

...

10. The licence holder, or any relevant person, may appeal to the First-tier Tribunal (Property Chamber) against a decision by the local housing authority to vary or revoke a licence, under Part 3 of Schedule 5 to the Act. The Tribunal may confirm, reverse or vary the decision of the local housing authority.

Inspection

11. The Tribunal inspected the Property on 27th January 2020 in the presence of Mr Murray and, on behalf of the Respondent, Ms Taylor accompanied by Mr Adrian Chowns (a Property Licencing Manager employed by the Respondent).
12. The Property is a three storey centre terrace house, built, probably, in the latter part of the nineteenth century. The main building has attic rooms and there is a single storey rear wing. There are solid walls under pitched roofs with artificial slate roof coverings to the main and single storey wing.
13. To the front of the Property, there was a short fore garden with a path (the Tribunal noted some loose/missing pavements) and to the rear was a communal garden, in an unkempt condition, with a gate opening onto a shared rear access.
14. The Property was occupied as a house in multiple occupation (HMO) with five bedsit rooms, four of which were being let at the time of inspection. To the ground floor there was one bedsit room to the front, a middle room allocated to communal use and a rear communal kitchen with utility area off. There were two bedsits to each of the upper storeys with a communal bathroom containing a shower, WC and wash hand basin to the first floor. No other WC or wash hand basin was present.
15. There was gas fired central heating to the Property, with tenants having a degree of control of the radiators in individual bedsits using thermostatic radiator valves.
16. The quality of the accommodation was consistent with the standard of HMO accommodation at the lower end of the market. During the inspection by the Tribunal, it was noted that the items which the Respondent stated amounted to breaches of the Regulations, found during

an inspection on 7th March 2019, had largely been attended to, although manager contact details were not displayed. In addition, some unrelated disrepair was noted, which could, of itself, amount to breaches of the Regulations.

Hearing

17. Following the Inspection, a public hearing was held at Coventry Magistrates Court, 60 Little Park Street, Coventry, CV1 2SQ. The Hearing was attended by the Applicant and Mr Murray, whilst Ms Taylor and Mr Chowns appeared for the Respondent.

The Applicant's submissions

18. The Applicant had provided, with her Statement of Case, a copy of Representations made on her behalf to the Respondent in response to the Notice of Intention, which included copies of email correspondence and photographs detailing works that had been carried out to the Property.
19. The Applicant stated that, when the Property was first inspected in September 2017, the inspection raised a number of minor issues. She confirmed that she received a Schedule of Works a year after the inspection but that this appeared to be of a standard nature, did not clearly state what work was required and failed to provide any date by which any works were required to be carried out.
20. The Applicant stated that she was not given any prior notice of Ms Taylor's inspection in March 2019, as the email address used by the Respondent was an old email address and that, although a message was left on a landline, she had not listened to the same until after the inspection had taken place.
21. She stated that much of the remedial work outlined by the inspection had been, subsequently, carried out in a prompt manner and that some of the issues raised in the inspection had not been raised by the Respondent previously when either granting the licence or upon its renewal, such as the boarding to the under stairs cupboard and the space between the landing spindles.
22. She stated that, after the interview with the Respondent, she was not forwarded a transcript of the interview for many months. She also stated that, in between the inspection and the decision to revoke, she had contacted the Respondent on a number of occasions, by email, indicating a willingness to work with the Respondent and also proposing to instruct an agent to manage the property on her behalf, but no response was received.
23. She stated that she had also requested an extension for time to produce representations in relation to the Notice of Intention so that she could obtain legal advice. She stated that these Representations were rejected

and that both she and Mr Murray were found not to be fit and proper persons.

24. In her Representations, solicitors instructed on behalf of the Applicant noted that the Applicant had not herself breached the regulations and that, where any breaches were admitted, these were not so serious that the Applicant should not have been deemed to be a fit and proper person.
25. In relation to the specific breaches raised, the Applicant stated that the contact information for the manager was displayed in writing on the notice board in the hallway and had always been so. She stated this was clearly visible on one of the photographs that had been shown to the Applicant during her interview with the Respondent.
26. In relation to the pieces of the wood in the hallway, the Applicant stated that these were only at the Property for a matter of days and was evidence of the fact that she was complying with the Schedule of Works as they had been placed there so that the spindles on the landing stairs could be boxed in.
27. In relation to the kitchen cupboards being dirty, the Applicant submitted that this was the responsibility of the tenants under their tenancy agreements, and that it was also the tenants' items in the cupboard under the stairs. She stated that these items had now been removed and a Notice had been placed on the door informing tenants not to store any items there.
28. In relation to the garden, the Applicant stated that the tenants had placed the items of furniture in the garden and that these had since been removed. She stated that heavy winds had damaged a fence panel to the rear garden and that it had now been replaced. She also stated that one of the tenants had moved debris in the garden and laid down plastic sheeting, to make room for vegetable patch and that none of the other tenants had objected to the same so she had not considered this to be a problem.
29. In relation to that the fact that plastering work had not been painted, the Applicant stated that there are been a water leak and that the ceiling had been repaired but needed to dry out prior to being repainted. In relation to the damaged carpet, the Applicant stated that the damage was to the rear of the step and could not have been considered a trip hazard; however, she had, in any event, replaced the same.
30. In relation to the boarding under the stairs, the Applicant stated that this had not been raised by the Respondent when the Property was viewed for the granting of a licence, that the breach was not intentional and that any boarding and plastering works had since been completed and the faulty window had been repaired.
31. The Applicant had provided, with the Representations, a copy invoice relating to the building work and removal of debris, various photographs

detailing the works which had been completed and a statement from a tenant confirming that any issues with the property had been “fixed” and that Mr Murray’s contact details had been on the hall noticeboard prior to March 2019. At the hearing, the Applicant stated that her builder had also informed her that the boarding to the kitchen ceiling was 30 minutes’ fire resistant, although she had no written evidence confirming this statement.

32. The Applicant referred to the Government’s Housing Health and Safety Rating System (Guidance for Landlords and Property Related Professionals) and stated that a local authority has a duty to consider the most practical solution and appropriate action to take and, quoting from the Guidance, stated:

“Local authorities and landlords are encouraged to work together to maintain property in good repair, and enforcement is seen as a last resort.”

33. The Applicant stated that she had forwarded several emails to the Respondent and had demonstrated a willingness to engage and carry out any repairs required, which had all been carried out prior to the Licence being revoked.
34. The Applicant submitted that, based on the Respondent’s own submissions, the breaches discovered on Ms Taylor’s inspection were not significant enough to warrant an improvement notice, which she believed would have been a more appropriate action. She further submitted that the Respondent’s own submissions had shown that they considered the breaches not of sufficient gravity to warrant either prosecution or the levying of a financial penalty. She stated that the Respondent, instead, chose to revoke the Licence which had a substantially higher impact on her and her husband and also the occupying tenants.
35. She stated that she was not sure why the Respondent considered that revoking the licence was a more appropriate action because it did not incur a charge (as opposed to the service of an improvement notice), as challenging the decision to revoke the Licence had already cost her thousands of pounds.
36. The Applicant stated that the Respondent had a discretion when dealing with compliance and submitted that the action taken by the Respondent, in revoking the License, was disproportionate.

The Respondent’s submissions

37. The Respondent confirmed that the Applicant had been granted a licence for the Property on 20th March 2011, which had subsequently been renewed on 20th March 2016. The Respondent stated that the initial application for the licence had stated that the Applicant would be the licence holder and manager of the Property and that no alterations to this information had been requested upon renewal.

38. The Respondent stated that an inspection of the Property had been carried out, on 29th November 2017, which led to a Schedule of Works being issued to the Applicant on 5th September 2018.
39. The Respondent stated that Ms Taylor carried out a further inspection, on 7th March 2019, which identified a number of contraventions of the Regulations, namely:

Regulation 3 – Duty of manager to provide information to occupier:

- there was no notice displayed in a prominent position detailing the contact details for the manager

Regulation 4 – Duty of manager to take safety measures

- the means of escape was compromised on the ground floor due to wooden panels having been placed in the passageway;
- there was a missing door closer to the lounge door;
- the gaps in the spindles on the landing were in excess of 100 mm;
- there was a hole to the first water tank cupboard;
- there was a hole to the ceiling of the under stairs cupboard; and
- the boarding to the ceiling of the lounge did not appear to be 30 minutes' fire resistant

Regulation 7 – Duty of manager to maintain common parts, fixtures, fittings and appliances:

- the lounge wall was water stained;
- the carpet to the stairs was thread worn;
- there was waste, old furniture and overgrown vegetation in the garden; and
- there was a missing boundary fence to the rear

Regulation 8 – Duty to manager to maintain living accommodation:

- there was a hole in the wall of the second floor front bedroom; and
- the window to the first floor front bedroom was gapping and draughty

The Respondent provided a copy of photographs taken during the inspection.

40. The Respondent stated that the failure to comply with the Regulations was an offence under section 234(3) of the Act. In such cases, the Respondent confirmed that they used an enforcement matrix formulated to determine the appropriate course of action to be taken. Two matrices were included within the Respondent's bundle and Ms Taylor confirmed that the first matrix calculated the appropriate action using information post

inspection of the Property and, the second matrix, the appropriate action post investigation of the offence by the Respondent.

41. The enforcement matrix awarded a numerical score to various breaches of the management regulations. The breaches included items such as whether a property was licenced, the number of occupants, whether the breach related to fire safety, any prior informal interventions or convictions and whether there had been effective communication with the landlord. Each of the breaches scored points (fire safety breaches scored - 5 points, other management breaches -1 point and prior informal interventions scored -10 points) and, once a final score had been calculated, the breaches were placed within a Band (ranging from 1 to 4), and appropriate action taken depending on which Band the final score fell within.
42. The Respondent's first matrix detailed that breaches in this matter were five fire safety breaches, seven other breaches and one prior informal intervention, which resulted in a score of -46, which placed the appropriate action to be taken within Band 4. Band 4 detailed that the appropriate action for the Respondent was either a financial penalty or formal action. The second matrix re-calculated the score as -40, as the breach relating to the failure to display a notice was removed and the Applicant was awarded 5 points for appropriate communication. This placed the breaches within Band 3, for which the appropriate actions included revoking the licence or a financial penalty.
43. Both the Applicant and Mr Murray were invited separately to PACE interviews, in which the Applicant confirmed that she was the owner of the Property and a company, in which she was a joint director with her husband, managed the Property. She also confirmed that her husband carried out the management duties.
44. The Respondent stated that, based on their investigations, Mr Murray had contravened provisions of the law relating to housing, namely the Regulations, and was, therefore, by virtue of section 66(2)(c) of the Act deemed not to be fit and proper person to hold a HMO licence or manage a HMO. Furthermore, by virtue of section 66(3), the Applicant was also deemed not to be a fit and proper person to hold a HMO licence as she was associated with Mr Murray, as his wife and business partner, and they were both involved in the licensing and management of the Property. As such, on 7th June 2019, the Notice of Intention was served on the Applicant informing her of the Respondent's intention to revoke the licence, under section 70 (2) of the Act.
45. The Respondent confirmed that the matters identified in the March 2019 inspection were low scoring category 2 hazards and were not significant enough to warrant enforcement action under Part 1 of the Act. The Respondent stated that, had they considered serving an improvement notice, they would also have charged a fee of £368.90 and that by sending out an informal letter, setting out the works required, this reduced the

financial burden on the licence holder. The Respondent confirmed that this approach was consistent with Housing Health and Safety Rating System Enforcement guidance provided by the Government. The Respondent also stated that they had the power to seek prosecution or issue civil penalties and that the revocation of the licence was, on balance, seen to be fair and proportional.

46. After the issuing of the Notice of Intention, the Respondent confirmed that they received Representations from the Applicant. In response, the Respondent confirmed that the Schedule of Works had been sent in 2018 and that these works had still not been carried out by the time of the inspection in March 2019, which suggested that the Property was not managed effectively. The Respondent further stated that the Applicant had been provided with photographic evidence of the breaches after the PACE interview and that they would not expect the Applicant to evict any tenants as the Applicant could have appointed a competent agent who could manage the Property and hold a licence.
47. In relation to whether the Applicant was given any notice of the 2019 inspection, Ms Taylor confirmed that she had emailed the Applicant on 4th March 2019 at the email address provided to the Respondent and that she had also left a telephone message. The Respondent stated that, although notice was given, when an inspection was being carried out for the purposes of investigating whether a property was being managed effectively, prior notice was not required.
48. On questioning by the Tribunal, Mr Chowns stated that he did not know what the reference to a “*Minded To*” Notice’, referred to in the Schedule of Work sent in September 2018, related to, as this was prior to his involvement at the local housing authority. He conceded, as identified by the Tribunal, that this appeared to refer to an intention to undertake a formal hazard rating assessment inspection at a future date and that, clearly, this further assessment inspection had not been carried out. He also acknowledged that a great deal of time had elapsed between the first inspection in 2017 (carried out by a former employee), the Schedule of Works sent in 2018 and the 2019 inspection, in which the defects identified still did not warrant an improvement notice being served. Mr Chowns also agreed that the inspection by Ms Taylor in 2019, was the starting point of investigations in relation to the management of the Property.
49. Mr Chowns confirmed that he did not believe that the Applicant or Mr Murray had committed any breach of the licence conditions and that the Respondent did not appear to have taken any prior investigation or action other than the inspection in 2017, with the service of the subsequent Schedule of Works. He did, however, emphasise that the breach of the Regulations was a matter that must be considered when deciding whether a person was fit and proper for either holding a licence or managing a HMO and that the Applicant and Mr Murray had clearly breached the same. He also pointed to the fact that, although the original breaches may

have been rectified, further breaches were evident during the Tribunal's Inspection.

The Tribunal's Deliberations

50. The Tribunal considered all of the evidence submitted by the parties, both written and oral and summarised above.
51. The Tribunal notes that under section 70(2) of the Act a local authority can revoke a licence where they consider that either the licence holder has committed a serious breach of the conditions of the licence or repeated breaches or where the licence holder or management of the house is being carried out by persons who are no longer considered fit and proper fit and proper. In this case, the Respondent confirmed that, as far as they were aware, the Applicant had not committed any breach of the licence conditions.
52. Under section 66 of the Act, in determining whether a person is a '*fit and proper person*', the legislation details the evidence which a local authority must have regard to – these include matters such as whether a licence holder has committed any offences involving fraud, dishonesty, violence, drugs, certain sexual offences and unlawful discrimination. As such, the Tribunal considers that, when deciding whether a person is a fit and proper person, the seriousness of the offence appears to be set at a very high level. In addition, the Tribunal notes that these are still only matters that the local authority "*must have regard (amongst other things) to*" and, therefore, evidence of any offence does not mean the licence is automatically revoked and a local authority's power is discretionary.
53. In this matter, the Respondent has submitted that Mr Murray's breach of the Regulations is a contravention of housing law, accordingly both Mr Murray, and the Applicant by association, cannot be deemed fit and proper persons under section 66(3) of the Act. It does not appear to be disputed that almost all of the items revealed on the inspection dated 7th March 2019 had been rectified by the Applicant prior to the revocation of the Licence on 6th September 2019, as evidenced by the photographs that accompanied the Applicant's Representations.
54. Although the Respondent stated that any breach of the Regulations clearly allowed them to consider that the Applicant and Mr Murray were not fit and proper persons, the Respondent is plainly aware of the discretionary nature of such an action, as evidenced by their use of an enforcement matrix. Their matrix allocates differing points to different breaches, depending on the severity of the breach, and takes in to account other circumstances that may be relevant. The banding system also details separate outcomes depending on the final points tally.
55. Having regard to the matrix, the Tribunal does not consider that the first inspection carried out in September 2017 as a prior intervention. It was completely unrelated to the inspection in 2019 and no action, other than

sending a Schedule of Works (which appeared very standard in nature) followed. In addition, the Respondent had not provided any evidence of any other formal or informal action or communications with the Applicant or Mr Murray.

56. The Tribunal notes that the Applicant had, by the date of the Notice, carried out all of the works referred to in the March 2019 inspection and that the Applicant had stated, at the hearing, that she had been informed that the boarding to the living room ceiling was thirty minutes' fire resistant. The Tribunal notes that the Respondent's submissions to the contrary appear to be founded on an assumption rather than fact. The Tribunal also notes that the wood panels in the hallway (to board in the landing) had only remained there for approximately 48 hours.
57. Taking these matters in to account, and based on the Respondent's own enforcement matrix, the points attributable should have amounted to between -20 and -30 points, placing the matter within Band 2 for which the appropriate action should have been an informal letter.
58. In addition, the Tribunal notes that the Applicant did forward a number of emails to the Respondent confirming her willingness to cooperate and work with the Respondent to achieve compliance and had confirmed that she was willing to consider employing a manager and requested the Respondent's view on the same. It was clear, at the hearing, that the Respondent had not seen this email or offered any reply to this suggestion. Indeed, Mr Chowns had stated that, given their volume of work, they could not be expected to reply to every email.
59. Although this was not a matter in which the Respondent was carrying out a hazard awareness investigation, so the Government's Housing Health and Safety Rating System (Guidance for Landlords and Property Related Professionals) was not strictly applicable, the Regulators Code 2014 confirms that:

"In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent."
60. Having considered all of the evidence submitted, the Tribunal does not consider that there was sufficient evidence to determine that either the Applicant or Mr Murray, as the manager of the Property, were not fit and proper persons. This appeared to be their first intervention regarding the management of the Property, they rectified all of the breaches identified and showed that they were willing to co-operate with the Respondent. Accordingly, the Tribunal does not consider that the action taken by the

Respondent was either reasonable or proportionate and reverses the decision of the Respondent to revoke the licence.

Appeal

61. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
.....
Judge M. K. Gandham