



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

Case Reference : **MAN/36UG/HSE/2019/0007**

Property : **8 Globe Street, Scarborough, North
Yorkshire, YO11 1QH**

Applicant : **Scarborough Borough Council**

Respondent : **Anita Westwood**

**Type of
Application** : **Application for a rent repayment order by a
Local Housing Authority under
Section 41 of the Housing and Planning Act
2016**

Tribunal Member : **Martin Simpson
Jeff Platt**

**Date of
Determination** : **29 January 2020**

Date of Decision : **05 February 2020**

DECISION

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Determination;

That there be a Rent Repayment Order requiring Mrs A Westwood to repay to Scarborough District Council the sum of £5200.

Background and Statutory framework

1. Scarborough Borough Council (SBC) applies, under Section 41 of the Housing and Planning Act 2016, for a rent repayment order against Mrs Anita Westwood.
2. She, along with her husband George Westwood, is the joint owner of 8 Globe Street, which is a flat.
3. Mrs Westwood was, at the relevant time, the named Landlord of the property which was let to Maisie Thompson, to whom SBC provided Housing Benefit at the rate of £100 per week.
4. With effect from 1 July 2017 the property became subject to a Selective Licensing Scheme made in accordance with Housing Act 2004, under which privately renting landlords were required to obtain a licence from SBC.
5. On 22nd January 2019 Mrs Westwood was convicted, on her Plea of Guilty, of, on or about the 21st June 2018, managing 8 Globe Street without a licence, contrary to section 95(1) and (5) of the Housing Act 2004. She was fined £120 plus £30 Statutory Surcharge, there was no Order as to costs. (Recorded as being “Due to lack of response from Council”)
6. Upon that conviction SBC has a duty, under section 48 of Housing and Planning Act 2016, to consider applying for a rent repayment order. They have so applied.
7. Chapter 4 of the Housing and Planning Act 2016 sets out the powers and obligations of the Tribunal.
8. The offence of which Mrs Westwood was convicted is included in the table in Section 40(3)
9. Section 41 gives the Local authority the right to apply for a rent repayment order.
10. Section 42 sets out the pre- application requirements of informing the landlord of the intention to apply, stating the amount sought to be recovered, and considering the landlords representations.

11. Section 43 says that the Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the landlord has committed an offence. The standard of proof is the same as in the Magistrates Court. Section 46 requires the Tribunal to make a repayment order in the maximum sum allowed by section 45. That is because of the conviction. That means that the amount must be the repayment of Housing benefit for a period of 12 months, during which the landlord was committing the offence. The requirement for the Tribunal, in section 45(4) to consider the conduct of the landlord and her financial circumstances is abrogated by section 46(1). The only residual discretion vested in the Tribunal is in Section 46(5), upon the tribunal considering that exceptional circumstances made it unreasonable to require the landlord to pay.

The evidence and the hearing.

12. The hearing was held at the Law Courts, Northway, Scarborough on Wednesday 29th January 2020. Mrs Westwood was represented by her Husband, a former Building Control Officer; a member, or former member of several professional institutions and one who has studied building Law and the interpretation of Statutes. SBC were represented by Mr Adams of Counsel
13. As a preliminary we dealt with Mr Westwood's objection to the use of the bundle provided by SBC two days before the hearing. Whilst SBC had not assiduously followed the Tribunal's Directions concerning the provision of copy documents as the case progressed, we are satisfied that all documents were eventually provided (often by the Tribunal office) in time for Mr and Mrs Westwood to consider them, and the bundle did not contain any new material. It added the Government Guidance and helpfully set out the relevant statutory provisions. Use of the bundle was not an ambush. It was helpful and did not prejudice the Respondent or her representative. It was used at the hearing.
14. We heard at some length from Mr Westwood. At his request we took his evidence/representations first and heard his witnesses. Not all of the evidence and representations were relevant to the issues before us, but we recognised the limits of someone who is in effect a litigant in person and we took a lenient approach, doing our best to assist him to remain relevant by occasional questions and clarification.
15. We heard the oral evidence (to confirm and supplement their written statements) of Councillors Randerson and Chatt and Mrs Thompson, the tenant's grandmother.

16. Mr Reynolds, Residential Regulation Manager of SBC gave evidence for the Applicant to confirm, modify and supplement his written statements.

17. Mrs Westwood's case.

1. The Selective Licensing Order is invalid.
2. An application was made on her behalf by Mr Westwood in his letter of 12 April 2017 for an exemption under Section 79(3) (4) Housing Act 2004.
3. The officers of SBC are corrupt and/or perjurous.
4. She offered to obtain a licence prior to the court hearing.
5. The conviction in the magistrate's court is unjust and should not be relied upon.

Our determination in respect of the above.

18. The Secretary of State has not been persuaded to set the Order aside. We have no jurisdiction to consider doing so. We must treat it as valid. Any challenge would have to be via Judicial Review or similar process. To a large degree it is the inability of Mr Westwood, acting for himself and as co-owner with, and agent for, his wife, to accept the validity of the Selective Licensing Order that marks the commencement of the Respondent's difficulties.

19. Mr Westwood did write to say "I hereby apply for an exemption under Housing Act; Section 79(3) (4) until such time as the legality of the procedure can be determined by the Secretary of State". There was no substantive response. He did not further it, nor did he complete any formalities. Section 87 Housing Act 2004 makes provision for such formalities. In any event, and more importantly than mere form, neither Section 79, nor section 86, (which also makes provision for temporary exemption on very limited terms) make provision for an exemption on the basis that the applicant wished to challenge the legality of the Order with the Secretary of State. Even if the application for exemption had been processed it was doomed to failure.

20. We have no evidence that the SBC officers are corrupt or perjurous. Even if, (about which we make no finding) the statement in support of the prosecution in the Magistrates Court could be said to be misleading, that was openly accepted and corrected by Counsel at the hearing. That led to a refusal of costs, but not to a refusal by the Court to accept a Guilty Plea. Nor did the Court grant an Absolute Discharge.

21. The offer to buy a licence was just that - an offer. It was conditional upon the Magistrates court proceedings being withdrawn. It was not unequivocal. It was intended to go 'hand in glove' with the withdrawal of the prosecution. A licence could have been obtained without further discussion with SBC or Ward Councillors. On the evidence before us we do not accept that there was a refusal to allow Mrs Westwood to apply for a licence (unconditionally). SBC were in no position to stop her, or to stop Mr Westwood processing an application for her. She successfully applied for a Licence in January 2019.
22. The conviction is a matter of record. The only way to expunge that would have been to apply to vacate the Plea, have a trial and if convicted appeal to the Crown Court or the High Court by way of Case Stated, as the defendant may be advised. We have no jurisdiction to disregard it. We accept that requests for interview and a notice of Intended Prosecution and details of the amount claimed were sent to Mrs Westwood by post, rather than by email to her husband who had been dealing with matters on her (and his own) behalf. It is unfortunate, but not fatal to the prosecution, that the arrangements that Mr & Mrs Westwood had put in place to deal with post mail during their extended absence abroad did not function well enough to draw these important communications to their attention.

Determination.

1. The tribunal has power [section 40 Housing & Planning Act 2016] to make a rent repayment Order where a landlord has committed an offence under section 91(5) of Housing Act 2004. The existence of the conviction after due judicial process amounts to an existing judicial finding. We cannot be other than satisfied beyond reasonable doubt that the conviction is evidence of the commission of an offence.
2. SBC has followed the pre application requirements in Section 42.
3. In accordance with section 43(3)(c) the amount falls to be considered under section 46. In this case, that is the amount of Housing benefit paid in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. That is the period for which Mrs Westwood was a person having control of or managing 8 Globe Street without a licence.
4. The only 2 issues therefore are (i) During what period did the landlord commit the offence? (ii) Are there any exceptional circumstances which make it unreasonable to require the landlord to pay.

5. We are satisfied, so that we are sure, that Mrs Westwood did commit the Offence under Section 95(1). She and her husband, for himself and as her agent, were aware of the Selective Licensing Order. They had been complaining about it from the outset and made extensive representations about it. The property was tenanted with Mrs Westwood as the named landlord, from around October 2017 and the rent has been punctually paid by the tenant with the assistance of housing benefit.
6. Having regard to the fact of a conviction, section 45 and 46 of the Housing and Planning act 2016 and the Department for Communities and Local government Guidance we are satisfied that we should make a rent repayment Order.
7. There are no exceptional circumstances which we can take into account having regard to section 46(1).
8. Although £5400 was actually paid in Housing Benefit during the 12 months preceding the conviction (the period chosen by SBC), we prefer an interpretation which acknowledges that the Housing Benefit was attributable to, and hence paid to Mrs Westwood by the tenant, a 52-week year. The amount is accordingly £5200.
9. We accordingly make a rent repayment Order in that sum.

Tribunal Judge Simpson.
29th January 2020.