



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

Case reference: MAN/00EJ/HSE/2019/0008

Property: 30 Hawthorn Street, Easington Colliery,
County Durham SR8 3LY

Applicant: Durham County Council

Respondent: Mr Anthony Bellingham

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 Members: Judge J.M. Going
I.R. Harris MBE FRICS

**Date of
Deliberations:** 17th September 2020

Date of Decision: 18th September 2020

DECISION

The Decision and Order

Mr Bellingham is ordered to repay Housing Benefit of £4588.57 to the Council.

Background

1. By an Application (“the Application”) dated 30th October 2019 the Applicant (“the Council”) applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order against the Respondent (“Mr Bellingham”) as the landlord of the property.
2. The Tribunal on 17th December 2019 issued Directions to the parties stating that the matter would be dealt with on the basis of the written submissions and documentary evidence without the need for an oral hearing, unless either party requested the opportunity to make oral representations. Neither party requested an oral hearing.
3. Despite allowing various extensions of the time, and warnings to the possible adverse consequences of non-compliance with the Directions, there has been no engagement whatsoever by Mr Bellingham with the Tribunal.
4. The documentation provided by the Council included a Witness Statement by its housing team leader and copies of the order designating the area containing the property as a selective licensing area, Land Registry entries, the tenancy agreement, court summons, memorandum of conviction, notice of the proceedings and a schedule of Housing Benefit payments.
5. The Tribunal convened on 17th September 2020 to consider the Application.
6. It did not inspect the property, but understands that it is a mid terraced property that has been in tenanted residential occupation.

Facts

7. By an Order of the Council dated 4th April 2014 (“the Designation Order”) the area known as Wembley, Easington was designated for selective licensing under section 80 of the Housing Act 2004 (“the 2004 Act”) which designation came into force on 7th July 2014 to be effective until 6th July 2019.
8. On 24th April 2019 at the Newton Aycliffe Magistrates Court, Mr Bellingham was, in his absence, found guilty of the offence, under Sections 95 (1) and (5) of the 2004 Act of having control or management of a house which was required to be licensed under part 3 of the 2004 Act but which was not so licensed (“the offence”). Mr Bellingham was fined £1500 and ordered to pay costs of £350, and a surcharge to fund victim services of £150.
9. The Council issued a Notice of intended proceedings dated 31st July 2019 informing Mr Bellingham that it was proposing to make the Application.

10. The Council has applied to recover the sum of £4588.57 paid to Mr Bellingham in respect of Housing Benefit payments for the 12 month period from 15th January 2018 to 14th January 2019.

Submissions by the Council

11. Caroline Siddall, as Housing Team Leader in the Housing Solutions, Regeneration and Local Services department of the Council, provided a witness statement dated 6th January 2020.

12. Ms Siddall confirmed that the property falls within the selective licensing area established under the Designation Order.

13. She also stated that, after being made aware in May 2018 that Mr Bellingham was the owner of the property, a number of letters and emails were sent encouraging him to make an application to license the property. Ms Siddall stated that he replied to the Council's initial letter, by telephone, saying that he was out of the country until August 2018. Over the next two months emails and letters were sent reminding him of his obligations, but no application was received.

14. Land Registry entries refer to Mr Bellingham having purchased the property on 26th June 2014.

15. Ms Siddall's statement confirms that "the Council are aware that the property has been rented out under a tenancy agreement since 26th November 2017", and a copy of the tenancy agreement signed on that date has been exhibited with the papers.

16. The Council made the decision to prosecute Mr Bellingham for not having the appropriate licence for the property and he was subsequently convicted.

17. "Following the successful prosecution, the Council felt a period of three months was suitable to allow (Mr Bellingham) time to submit an appeal, or make an application to have the prosecution reopened. Following this period, a decision was taken... to apply for a rent repayment order".

18. The Council provided confirmation from its Finance Department of Housing Benefit being paid for the tenant of the property to Mr Bellingham as the landlord at a rate of £88 per week from 15th January 2018 to 24th April 2019.

The Law

19. Section 40(3) of the 2016 Act lists those offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

20. The list, repeated in the Directions, includes the offence under Section 95(1) of the 2004 Act of controlling or managing a house which was required to be licensed under part 3 of the 2004 Act but which is not so licensed.

21. Where the offence was committed on or after 6th April 2018, the relevant law concerning rent repayment orders is to be found in Sections 40 – 52 of the 2016 Act.

22. Section 42 confirms that before applying for a rent repayment order a local Housing Authority must give the landlord a Notice of intended proceedings which must (a) inform the landlord that the Authority is proposing to apply for a rent repayment order and explain why, (b) state the amount that the Authority seeks to recover, and (c) invite the landlord to make representations within the period specified in the Notice of not less than 28 days (“the Notice period”) and the Authority must consider any representations made during the Notice period. The Authority must wait until the Notice period has ended before applying for a rent repayment order and a Notice of intended proceedings may not be given more than 12 months after the day on which the landlord committed the offence to which it relates.

23. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

24. When the Tribunal decides to make a rent repayment order in favour of a local Housing Authority, it must go on to determine the amount of that order in accordance with Section 45. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed house the amount must relate to Universal Credit (which Section 51 confirms includes Housing Benefit) paid in respect of a period not exceeding 12 months during which the landlord was committing the offence. Section 45(3) confirms that the amount that the landlord may be required to repay... must not exceed the amount of Universal Credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

25. Section 46 confirms that the amount of an order made in favour of a local Housing Authority, where the landlord has been convicted of the offence, “is to be the maximum that the Tribunal has power to order in accordance with Section... 45” but with it provided in subsection (5) that “nothing in this Section requires the payment of any amount that, by reason of exceptional circumstances, the Tribunal considers it would be unreasonable to require the landlord to pay”.

The Tribunal’s Reasons and Conclusions

26. The Tribunal began with a general review of the papers in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal’s procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

27. Neither of the parties requested an oral hearing, and having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. The issues to be decided have been clearly identified in the

papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.

28. The first issue for the Tribunal to address is whether it is satisfied, beyond reasonable doubt, that Mr Bellingham has committed an offence mentioned in Section 40(3) of the 2016 Act.

29. The sole evidence has been provided by the Council. However, the documentation is persuasive in that it is clear and obvious evidence of its contents. It has not been challenged and the Tribunal finds no reason to doubt the detail contained.

30. The Tribunal is satisfied, beyond reasonable doubt, from the evidence provided by the Council, and the copies of the court records, both that Mr Bellingham committed, and has been convicted of the offence referred to in row 6 of section 40(3) of the 2016 Act i.e. control or management an unlicensed house, and that Mr Bellingham continued to let the property without the necessary licence between at least 27th November 2017 and 24th April 2019.

31. The Tribunal is also satisfied that the Council complied with all the necessary procedural requirements relating to the Notice of intended proceedings and the making of the Application.

32. Because the Council gave the Notice of intended proceedings to Mr Bellingham within 12 months of the commission of the offence, the Tribunal is clear that it has jurisdiction to make an order.

33. Mr Bellingham has not acknowledged the Application, nor offered any evidence in mitigation, but clearly profited from the Council's payment of Housing Benefit. The selective licensing designation began on 7th July 2014, very shortly after Mr Bellingham became the owner of the property and yet he has made no attempt to comply with the licensing regulations.

34. The Tribunal (particularly having regard to the objectives behind the statutory provisions i.e. to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed house, and to help prevent a landlord from profiting from renting properties illegally) is satisfied that it is appropriate to make a rent repayment order in the circumstances of this case.

35. As the Upper Tribunal confirmed in the case of London Borough of Newham v Harris 2017 UKUT 0264 LC "it will be a very rare case where the Tribunal does decide to exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of so doing include the obligation to repay rent or housing benefit the Tribunal should be reluctant to refuse to make an order".

36. Having readily decided that an order should be made, the Tribunal then went on to consider carefully the amount of rent which had to be repaid.

37. As a consequence of Section 46 of the 2016 Act the Tribunal must order the maximum amount potentially repayable unless it is satisfied that, by reason of exceptional circumstances, it would be unreasonable to require repayment of some or all of the relevant sum. These statutory provisions (in contrast to those which apply where there has not been a conviction) confirm that it is only in exceptional circumstances that the Tribunal can order anything other than the full amount paid by the Local Authority in rent during the relevant 12 month period whilst the offence was being committed. Parliament has clearly decreed as a matter of public policy that Housing Benefit should be repaid where a landlord has failed to gain the necessary licence.

38. The Tribunal has carefully considered all of the evidence, and has readily concluded that the circumstances of the case do not amount to an instance of exceptional circumstances which would allow it to make an order of anything other than the maximum amount.

39. Sections 45(2) of the 2016 Act limits the amounts of Housing Benefit to be repaid to a period not exceeding 12 months during which the landlord was committing the offence.

40. The Tribunal is satisfied, on the evidence before it, that Mr Bellingham was committing the offence throughout the whole of the 12 month period ending on 14th January 2019.

41. The Tribunal is also satisfied that all of the Housing Benefit referred to in the Notice of intended proceedings (i.e.£4588.57) was paid to Mr Bellingham in respect of that 12 months, and must therefore be repaid in full.