



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/21UD/HML/2019/0017**

Property : **10 Warrior Gardens,
St. Leonards-on-Sea,
East Sussex,
TN37 6EB**

Applicant : **Linda Turner**

Respondent : **Hastings Borough Council**

Application : **Appeal against grant of House in Multiple
Occupation (“HMO”) licence (Part 3,
Schedule 5 of the Housing Act
2004 (“the 2004 Act”))**

Application date : **8th August 2019 (rec’d 13th)**

Tribunal : **Judge Edgington
Richard Athow FRICS MIRPM
Peter Gammon MBE BA**

DECISION

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1. The appeal against the granting of this particular HMO licence succeeds and Respondent’s decision to grant the existing licence, assuming that it has been renewed, is reversed in accordance with paragraph 34(3) of Schedule 5 to the 2004 Act.

Reasons

Introduction

2. The Applicant is the long leaseholder of and lives in the ground floor flat at the property which is a terraced house in central St. Leonards-on-Sea. She also has a share of the freehold title.
3. The Applicant has appealed against the decision of the Respondent to grant an HMO licence for the property. As one of the grounds for appeal was that the property was not an HMO, it was decided to have that matter determined as a preliminary issue. Judge Edgington determined that the property was not an HMO.

4. Following an appeal to the Upper Tribunal, that decision was set aside which had the effect of reinstating the HMO licence pending a determination on the other grounds of appeal against the Respondent's decision to grant the licence. The Upper Tribunal did not say that Judge Edgington should be excluded from this determination and, as can be seen, this Tribunal now consists of 3 members. Judge Edgington continues to be involved as it is generally accepted that continuity of judiciary is good practice.
5. In her initial application, the Applicant says that she has had many problems with Ian Lawson who applied for the licence on behalf of what appears to be his company, Indigo Properties UK Ltd. ("Indigo"). Mr. Lawson is the long leasehold owner of flat 1 and Indigo is the long leasehold owner of flat 2. Flat 1 is immediately above the Applicant's flat.
6. For the avoidance of doubt, the Register of HMO Licences, being exhibit DW10 in the bundle with 'page 465' endorsed in the top right hand corner, states that the licence was issued on the 16th July 2019 and the licence holders are Indigo, Anne Barrett, Ralph Black and Lewis Brown. The manager is said to be Indigo.
7. The Applicant asked for a determination on the papers and the Respondent agreed. The appeal is against the granting of the licence and sets out 5 pages of single spaced writing and printing which, apart from saying that the property is not an HMO, says that the licence has been wrongly granted and the whole situation is unjust.
8. The Tribunal has considered all of the papers filed including those filed originally, those submitted to the Upper Tribunal and statements from Deborah Jane Watts, an EHO employed by the Respondent dated 27th July 2020, and Christine Barkshire-Jones, chief legal officer of the Respondent dated 28th July 2020. The Applicant has also filed an 8 page statement which is undated but is said to be filed in response to Judge Edgington's directions order of 9th July 2020. All exhibits to those statements have also been considered.

The Applicant's case

9. In essence, the Applicant points out that
 - (a) all the licensees live at or trade from premises far from the property and are therefore unsuitable to be licence holders or managers
 - (b) that none of the licensees have 'control' of the building
 - (c) Mr. Lawson has historically had tenants who caused a continuous nuisance by having loud music playing and, presently, having 2 dogs who bark all the time
 - (d) there was a water leak from Mr. Lawson's flat which she had asked him to deal with but he did not. As a result she suffered an electric shock one night when she got up to see what was happening and turned her light on to see that water had leaked on to her floor. She had to get a plumber out.
 - (e) works organised by Mr. Lawson were often over charged or not done at all e.g. to repair a roof.
 - (f) the classification of the property as an HMO may affect her mortgage and the value of her property

The Respondent's case

10. The Respondent says that all the licensees are responsible people and the only reasons that people away from the property have been appointed is because the

applicant, as the only freehold owner living at the property, refused to be involved. There are no indications of any of the offences or conduct set out in section 66 of the 2004 Act, as amended.

The Law

11. The matters to be considered by a local authority in granting or refusing to grant a licence are set out in sections 64 and 66 of the 2004 Act as amended.
12. A licence holder has to be a fit and proper person and “*is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder*”.
13. The manager has to be either “*the person having control of the house, or a person who is an agent or employee of the person having control of the house*”.
14. It is also provided that “*the proposed management arrangements for the house are otherwise satisfactory*”.
15. Section 66 sets out a list of offences which licensees or managers cannot have committed and as there is clear evidence that none of those involved in this case have committed or been associated with anyone who has committed such offences, this point is irrelevant. However section 66 also says that people involved in the management of the building must have “*a sufficient level of competence to be so involved*” and the local authority must consider “*whether any proposed management structures and funding arrangements are suitable*”.

Discussion

16. It has been said before that the approach of the Respondent has been unfortunate, to say the least. Its first letter to the Applicant was aggressive in tone and clearly caused a great deal of distress to the Applicant. Judge Edgington raised issues as *obiter* matters at the end of his decision and Judge Cooke said at the end of her decision that she acknowledged that the Applicant had been caused so much distress. She went on to say “*I hope that the parties may be able to discuss matters in a way that will offer some reassurance to the respondent about the many concerns that she has raised*”.
17. These requests and suggestions appear to have been ignored. They were intended to give the Respondent as clear a message as possible that the Applicant has raised concerns which, even if the Respondent disagrees with them, should, even as a matter of reasonable public relations by a public authority, be addressed and dealt with.
18. The Respondent’s witness, Deborah Watts, in paragraph 17 of her recent statement has even, as the Applicant suggests, raised quite unnecessary issues such as the refusal of the Applicant to allow Mr. Lawson or his company to be freehold owners. Apart from situations such as compulsory purchase, it is an absolute right of the owner of a freehold title to transfer or refuse to transfer title to anyone.
19. However, at the end of the day, this Tribunal’s duty is to determine whether there are any grounds for saying that this local authority has made an incorrect decision when considering the provisions of sections 64 and 66 of the 2004 Act. According to the Upper Tribunal, the property is an HMO and there must be a licence holder.

20. The Respondent tried to get the Applicant involved as a licence holder but she refused. None of the other freeholders or long lessees appear to live at or near the property which made appointing a licence holder near the property an impossibility.
21. There is no evidence to suggest that the licence holders or the manager have any convictions or involvement with persons with such convictions. As to anyone having control of the building, it does seem clear that Mr. Lawson has actually arranged for works to be undertaken to the building over the years and therefore does appear to have sufficient control to undertake management of the common parts.
22. The Respondent's approach seems to be encapsulated in paragraph 37 of the statement of Christine Barkshire-Jones wherein she says that "*the Respondent has taken a pragmatic approach in granting the licence to*" Indigo and the other freehold owners apart from the Applicant.

The Respondent's approach

23. Whilst proportionality demands that pragmatism is appropriate on occasions, this is a case where the Applicant objects strongly to the licence being granted and there is therefore an obligation on the Respondent to carefully consider the law and explain its conclusions in detail to the Applicant.
24. In Judge Edgington's directions, he orders the Respondent to file a statement setting out its reasons for saying that Indigo is a suitable licence holder, pointing out that its address is some 40 miles away from the property. In paragraph 6 of the statement of Deborah Jane Watts, she records that "*it was decided that as there was no management company in place all the freeholders would be named as licence holders in addition to*" Indigo.
25. The Respondent's response to the direction in Ms. Barkshire-Jones' statement starts with the comment that "*the phrase 'suitable licence holder' is not a phrase used in the Housing Act 2004*". Sub-sections 66(5) and (6) of the 2004 Act say that a local authority must consider whether any proposed management structures and funding arrangements are "*suitable*".
26. Indigo is named as both a licence holder and manager. It is agreed by the Respondent that it was not the manager when the application for a licence was made. The Respondent can only say that there is no evidence to suggest that Indigo is not a fit and proper person. The evidence is that Indigo is owned by Mr. Lawson. There is clear evidence that Mr. Lawson's management qualities are not acceptable which may or may not be true, but has simply not been investigated. Assumptions have been made which, according to the evidence submitted, did not involve any such investigation.
27. As Judge Edgington said, *obiter*, in his original judgment at paragraph 21 there have been serious allegations about incompetent management on the part of Mr. Lawson and historic facts about the selective licences need to be explained. Both the Applicant and the Tribunal needed to know what investigations have been undertaken by the Respondent into these allegations and facts.

28. The requirement in section 64 of the 2004 Act that the licence holder must be “*out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder*” does not appear, on the evidence submitted, to have been considered by the Respondent, particularly with Indigo which was neither a freehold owner nor the manager when the application was made.
29. The Tribunal did consider whether it should adjourn this application to enable the Respondent to deal with these matters. However, it was considered, on balance, that the Respondent has been given more than sufficient warning that these were matters which the Tribunal wanted answers to and it was decided not to adjourn.

Conclusions

30. The Tribunal concludes that as the property is an HMO, the Respondent should have considered whether there were suitable management structures and funding arrangements in place and, in addition, whether the proposed management arrangements were satisfactory. Those considerations should have involved an investigation into the Applicant’s allegations. It is understood that the other freehold owners did not object but they do not live at the property and may have been completely unaware of the problems faced by the Applicant.
31. It is also necessary to deal with the other concern expressed by the Applicant namely that she is an owner occupier and this whole procedure is against her human rights. The problem she may not appreciate is that whilst most HMOs can apply to a building or part of a building, i.e. her flat could be excluded, this is an application which relies on section 257 of the 2004 Act. That section and section 254 say that where a building consists of a converted block of flats and satisfies the definition set out in section 257, which according to the Upper Tribunal this does, then it is the building which is the HMO. An HMO must have a licence holder.
32. Further, the Applicant should know that the position of her mortgage or the effect on the value of her ownership, are not matters which have to be considered by the local authority, although the Tribunal obviously has some sympathy for these concerns.
33. Thus, on the evidence produced by the parties, the Tribunal is satisfied that whilst a licence could be issued to the 3 other freehold owners, assuming that the Applicant still does not want to be a licensee, it is not satisfied either that there are suitable management structures and/or funding arrangements in place, or that either Indigo or Mr. Lawson are either fit and proper or ‘satisfactory’ persons or managers. This appeal succeeds.



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Judge Edgington
7th September 2020

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.