



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

Case Reference : **LON/ooAY/HML/2020/0023
FVHREMOTE**

Property : **41 Valley Road, London SW16 2XL**

Appellant : **Kevin Cadogan**

Representative : **In person**

Respondents : **London Borough of Lambeth**

Representative : **Richard Davies of Counsel**

Type of Application : **Appeal in respect of an HMO
licence - Section 64 & Part 3 of
Schedule 5 to the Housing Act 2004**

Tribunal Members : **Judge Professor Robert Abbey
Mr M Cairns MCIEH**

Date of Video Hearing : **18 May 2021**

Date of Decision : **20 May 2021**

DECISION

Decision

1. The appeal dated 31 January 2021 and made by the above-named applicant in respect of a House in Multiple Occupation (HMO) licence pursuant to Sections 64, 71 and Part 3 of Schedule 5 to the Housing Act 2004 is dismissed.

Introduction

2. This is an appeal by the applicant against the granting of an HMO Licence by the Local Housing Authority, namely the respondent. The basis of the appeal is that the licence has been granted to a tenant (TLK Property & Investments Limited) who the applicant alleges has been responsible for Anti-Social behaviour. The applicant says the Council was aware of this and further that the tenancy determined on 5th December 2020, but notwithstanding this an HMO licence has been granted for a period of one year expiring on 1 September 2021, i.e., in roughly three and a half months time.
3. The Tribunal by Judge Dutton had issued Directions dated 2 February 2021 that included the following: -

The issues that the Tribunal will need to consider when deciding whether to confirm, vary or reverse the decision of the LHA include:

- a. *Has the LHA gone through the necessary steps prior to the granting of the HMO licence?*
- b. *Should a licence have been granted without allegedly consulting the applicant and on the allegations set out in the application?*

The Hearing

1. The appeal was set down for hearing on 18 May 2021. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as FVHREMOTE - use for a hearing that is held entirely on the MoJ Full Video Hearing 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 a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties
2. In the context of the Covid 19 pandemic and the government social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed

their determination including photographic evidence of the property. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

3. The Tribunal had before it an electronic bundle of papers prepared by the applicant and the respondent in the form of PDF files. These contained copies of documentation and title copies and photographs of the property as well as copy correspondence.
4. Relevant legislation is set out in the appendix to this decision. The Tribunal noted that in 2017 the applicant granted a three year letting agreement to TLK Property and Investments Limited from 5 December 2017 expiring on 5 December 2020. TLK's agreement was subject to sub-tenancies of sub-tenants in actual occupation of the property. The Tribunal was advised that when the respondents inspected the property prior to the making of the licence there were ten occupants living at the property. Clearly the circumstances that prevailed at that time meant that a mandatory HMO licence was something the local authority was obliged to consider. The applicant is in dispute with TLK as he says they have not given up possession and that he also has a money claim against that company. There are proceedings on going in that regard in the County Court.

The Appeal

5. The applicant advanced the appeal because he says "*I oppose the granting of A Licence of a House in Multiple Occupancy granted in direct contravention to the Housing Act 2004 without consultation with me, the sub-tenants, or anyone affected by the Licensee's persistent Anti Social Behaviour throughout the tenancy that has now expired.*"
6. In his evidence the applicant produced photos of evidence of anti social behaviour including the dumping of soiled mattresses in the front garden of the property. He asserted that complaints had been made to the Local Authority about this anti-social behaviour. It was his case that in failing to consult with him as the owner or with the sub-tenants they were all unaware of the application or granting of the licence in question and by doing so Lambeth Council denied the parties an opportunity to object. Ultimately the applicant was of the view that "*The Council is encouraging an unfit commercial tenant to enjoy a licence beyond the time that the tenancy agreement has expired.*"
7. In reply the respondent says that they the circumstances that prevailed at the time of the making of the licence were such that an HMO existed and that it should be subject to a mandatory licence. Furthermore, they asserted that they took all reasonable steps to inform the relevant parties of their intention to issue the HMO licence. The respondent also

said that it had only received one anonymous complaint about the problems at the property.

Decision and Reasons

8. The Tribunal has decided to dismiss the appeal for the following reasons.
9. The Tribunal needs to consider the two relevant issues (1). Has the respondent gone through the necessary steps prior to the granting of the HMO licence? (2) Should a licence have been granted without allegedly consulting the applicant and on the allegations set out in the application?
10. Dealing with the necessary steps the Tribunal needed to be satisfied that the respondent took all necessary steps to inform the applicant of the licence proposal. The respondent produced copy documentation confirming that they did indeed write to the applicant to inform him of their intentions. They also produced a copy of the envelope used for this correspondence. In cross examination the applicant confirmed that the envelope had been addressed to him at his address but he said he had not received it. He did confirm that other letters had been received at the same address.
11. Additionally, the applicant said that neither neighbours nor the sub-tenants in the property had received anything from the respondent. In reply the respondent said they were not required to inform neighbours and sub-tenants under the terms of the Housing Act and referred to Schedule 5 paragraph 13 to confirm this. This part of the Act requires notice to be given to “relevant persons”. The Schedule defines a “relevant person”, in relation to a licence and means any person (other than a person excluded) (a) who, to the knowledge of the local housing authority concerned, is (i) a person having an estate or interest in the HMO or Part 3 house in question, or (ii) a person managing or having control of that HMO or (b) on whom any restriction or obligation is or is to be imposed by the licence in accordance with section 67(5) or 90(6). The persons excluded by this sub-paragraph are (a) the applicant for the licence and (if different) the licence holder, and (b) any tenant under a lease with an unexpired term of 3 years or less.
12. Consequently, it was apparent to the Tribunal that the effect of the Act was to confirm the respondent’s assertion i.e. that they were not required to advise neighbours and were not required to advise the sub-tenants as they were on leases with terms of 3 years or less.
13. In the light of the evidence before it the Tribunal was satisfied that the respondent had taken all reasonable steps to advise the applicant of their intentions regarding the licence and the Tribunal is therefore satisfied that the respondent had gone through the necessary steps prior to the granting of the HMO licence.

14. As a result, the Tribunal is satisfied that a licence should have been granted and that appropriate steps were taken to allow the applicant time to respond. In issuing an HMO licence for the Property, the Council is fulfilling its statutory duty under section 61 of the Housing Act 2004, (this section covers the requirement for HMOs to be licensed).
 15. Finally, the Tribunal did note that in its evidence the respondent confirmed that "*We have made clear repeatedly that as soon as the Appellant gains possession of the Property, the Council will revoke the licence as the current licence holder will no longer be in control of the Property.*"

Application for costs

16. Counsel for the respondent confirmed that an application for costs will be considered by the respondent once this decision was issued and therefore there was nothing for the Tribunal to consider in regard to costs at the time of the hearing. If a cost application is made it must be filed and served within 21 days of the receipt of this decision
 17. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey **Date:** 20 May 2021

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

64 Grant or refusal of licence

(1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—

- (a) grant a licence in accordance with subsection (2), or
- (b) refuse to grant a licence.

(2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either—

- (a) to the applicant, or
- (b) to some other person, if both he and the applicant agree.

(3) The matters are—

(a) that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;

(aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who—

- (i) owns an estate or interest in the house or part of it, and
- (ii) is a lessor or licensor of the house or part;

(b) that the proposed licence holder—

(i) is a fit and proper person to be the licence holder, and

(ii) 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;

(c) that the proposed manager of the house is either—

(i) the person having control of the house, or

(ii) a person who is an agent or employee of the person having control of the house;

(d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and

(e) that the proposed management arrangements for the house are otherwise satisfactory.

(4)The maximum number of households or persons referred to in subsection (3)(a) is—

- (a)the maximum number specified in the application, or
- (b)some other maximum number decided by the authority.

(5)Sections 65 and 66 apply for the purposes of this section.

71Procedural requirements and appeals against licence decisions

Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.

SCHEDULE 5

Part 3 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