



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

Case Reference : **MAN/30UK/HML/2019/0004**

Properties : **21 St Ignatius Square, 9 Pedder Street, 11 Regent Street, 19 Ribblesdale Place, 4 Starkie Street, 43 & 68 Brackenbury Road, Preston**

Applicant : **Mr Michael Gibbons**

Respondent : **Preston City Council**

Type of Application : **Housing Act 2004 – Schedule 5, Paragraph 31(1)**

Tribunal Members : **Mr S Moorhouse LLB
Mr IR Harris BSc FRICS**

Date of Paper Determination : **9 April 2021**

DECISION

DECISION

- (i) The tribunal confirms the Notice of Refusal issued by the Respondent in relation to the Properties on 2 August 2019.
- (ii) The tribunal makes no order for costs.

REASONS

The Application

1. By an application dated 27 August 2019 ('the Application') the Applicant appeals a Notice of Refusal issued by the Respondent on 2 August 2019. The Notice states that the Respondent refuses to grant a licence for a House in Multiple Occupation ('HMO') in respect of each of the Properties, all of which are situated within the City of Preston.
2. The reason given for the refusal is that the Applicant has failed to meet the criteria set out in the Housing Act 2004 ('the Act'), Part 2, Section 66 relating to the test for a fit and proper person. Detailed reasons are given for this, both generally and in relation to each of the Properties.

Submissions

3. Grounds for the Application are given in the application form. Pursuant to Directions the Applicant issued a statement of case with supporting documents. A statement of case in response, and supporting documents were submitted by the Respondent. A submission in reply, including a witness statement from the Applicant and further supporting documents, was made on the Applicant's behalf by JMW Solicitors. JMW have stated that they assisted with the submission in reply, but are not representing the Applicant in the proceedings.
4. The submission by JMW raised a new issue, namely whether licences were deemed to have been granted prior to the Notice of Refusal in relation to the Properties at Ribblesdale Place and Starkie Street. The tribunal allowed the Respondent the opportunity to submit comments on this new issue and the Respondent did so.
5. The key issues raised by or on behalf of the Applicant in the application form, his statement of case and in the reply prepared by JMW Solicitors are as follows:
 - In serving Notice of Intent to refuse the licensing applications on 27 June 2019, the Respondent failed to serve a separate notice for each of the Properties.
 - The reasons given in the two Notices of Intent served by the Respondent were very brief, in contrast to the detailed reasons given in the final Notice of Refusal.
 - In relation to 19 Ribblesdale Place, the Applicant has on file a copy licence, signed and dated 30 September 2015, for a period expiring on 28 August 2020.
 - In relation to the Properties at Ribblesdale Place and Starkie Street, the Applicant had suggested to the Respondent that shorter licences be granted to allow time for planning applications for change of use to be submitted, and if unsuccessful, for the occupancy limits to be lowered.

- In relation to these same two Properties, HMO licences were deemed to have been granted prior to the Notice of Refusal being issued pursuant to the Provision of Services Regulations 2009.
 - The Applicant is a fit and proper person to hold HMO Licences, with various supporting arguments concerning the degree of seriousness of the issues referred to by the Respondent, changes in the situation (e.g. grants of planning permission), appropriate management practices observed by the Applicant, and unfair treatment.
 - If the tribunal considers the Applicant not to be a fit and proper person to hold licences, the grant of a licence with reasonable conditions attached should give sufficient comfort that the Properties will be appropriately managed.
6. The tribunal is content in this case to determine the issues on the papers supplied. The Applicant indicated in his application form that he would be content for a paper determination if the tribunal considered it appropriate. The Respondent was agreeable to a paper determination. Having considered the various submissions the tribunal is satisfied that the matter is suitable for determination without a hearing: although the Applicant is not legally represented he has had some assistance from his Solicitor and the issues to be decided have been clearly identified in the submissions, which also set out the competing arguments sufficiently clearly to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.
 7. The tribunal considers it unnecessary to conduct an inspection of the Properties in view of the matters in issue and the time that has elapsed.

The Law

8. The relevant statutory provisions concerning the grant or refusal of a licence, in relation to mandatory licensing, are set out at sections 64 and 66 of the Act. The statutory provisions concerning the service by an authority of a Notice of Intent to refuse to grant a licence are set out at paragraphs 5 and 6 of Schedule 5 to the Act. The statutory provisions concerning the right to appeal to a First-tier Tribunal, and the tribunal's remit are set out at paragraphs 31 and 34 of the same Schedule. Extracts from these various provisions are set out in the Appendix.
9. Cases cited in the parties' submissions include *Waltham Forest LBC v Khan [2017] UKUT 153 (LC)* and *Hussain v Waltham Forest LBC [2019] UKUT 339 (LC)*. Copies of both were included within the Respondent's submission.
10. The decision in the *Khan* case concerning selective licensing included the following statement by Martin Rodger QC:

'It is therefore unnecessary and unrealistic, in my judgment, to regard planning control and Part 3 licensing as unconnected policy spheres in which local authorities should exercise their powers in blinkers. I am satisfied that it is legitimate for a local housing authority to have regard to the planning status of a house in deciding whether or not to grant a licence and when considering the terms of a licence. It would be permissible for an authority to refuse to determine an application until it was satisfied that planning permission had been granted or could no longer be required. It would equally be permissible, where an authority was satisfied that

enforcement action was appropriate, for it to refuse to grant a Part 3 licence, but as Waltham Forest points out that would make it difficult for a landlord to recover possession of a house and would expose him to prosecution for an offence which he would be unable to avoid by his own actions. The solution adopted by Waltham Forest of granting a licence for a short period to allow the planning status of the house to be resolved was, in those circumstances, a rational and pragmatic course which I accept was well within its powers.'

11. In the Upper Tribunal's decision in the *Hussain* case the UT, having quoted the House of Lords case of *R v Crown Court at Warrington ex parte RBNB* [2002] 1 W.L.R. 1954, state the following in relation to the 'fit and proper person' test:

'The licence holder (or manager of a house) must have the personal qualities and qualifications reasonably required of a person seeking to have the responsibilities of holding a licence under the legislation for the premises in question, including his or her ability and willingness to comply with relevant requirements of housing law and landlord and tenant law which comprise those of the licensing regime itself, such as the proper provision of information in a licence application.'

Findings of fact and reasons for decision

Notices of Intent – procedural matters

12. The Applicant requested in his application form that the tribunal address, as preliminary matters, two alleged procedural errors. In its directions the tribunal stated that it did not consider it appropriate to address the procedural matters prior to the preparation of statements of case. The tribunal referred the Applicant to paragraph 34 of Schedule 5 to the Act and stated that if the Applicant wanted the matters to be addressed as part of the tribunal's substantive determination the Applicant should include in his statement of case any reasons why he considered the matters to fall within the tribunal's jurisdiction. The Applicant has not referred to the matters within his statement of case, nor are they referred to in the reply prepared by JMW Solicitors.
13. The first procedural matter referred to an alleged failure by the Respondent to issue a separate Notice of Intent to refuse a licence in relation to each of the Properties – 2 notices had been issued, one for the Properties in Starkie Street and Ribblesdale Place and one for the remainder. The Applicant quoted no authority for his contention, identified no prejudice suffered by him as a consequence of the alleged procedural irregularity and offered no reason why the issue would be relevant to the exercise by the tribunal of its jurisdiction in this case.
14. In these circumstances, and given that the Act does not specify that individual notices are required, the tribunal determines that there is no procedural irregularity.
15. The second alleged procedural irregularity related to the reasons given in the Notices of Intent. It is alleged that the reasons given for the intended licensing refusals were insufficiently detailed – more detailed reasons were given in the final notice.
16. The tribunal finds that both Notices of Intent refer to a failure by the Applicant to meet the criteria in section 66 of the Act relating to the test for a 'fit and proper person'. Both notices then go on to give reasons for this.

17. The Notice of Intent relating to 5 of the Properties referred to recent actions under the Act related to improvements, and failure to comply with formal notices served under the Act, including failure to comply with an Improvement Notice and failure to respond to previous formal requests for safety documents. For Ribblesdale Place and Starkie Street the Notice of Intent makes reference to the wider formal interventions for the Preston portfolio and specific issues relating to those 2 Properties (including failures to obtain planning permission and building regulation consents for their conversion to large HMO's and issues concerning physical condition).
18. In the tribunal's view, the matters that must be observed in giving reasons for an intended licensing refusal are relatively straightforward. The reasons must be set out sufficiently clearly that they could be understood and responded to. Provided the notices state why the authority proposes to refuse the licences, it has met the requirement of the Act. A Notice of Intent is not invalidated by the inclusion of additional detail in a final notice. The tribunal considers that the Notices of Intent adequately gave the Respondent's reasons for its intended refusals and were compliant with the Act.
19. Having rejected the arguments concerning procedural irregularity set out in the application form, it was unnecessary for the tribunal to go on to consider the relevance or the consequences of any such irregularity.

Ribblesdale Place – licence granted

20. The Applicant has submitted a copy licence relating to 19 Ribblesdale Place, signed and dated 30 September 2015, for a period expiring on 28 August 2020.
21. Within his witness statement, the Respondent's Housing Standards Team Leader, Mr Crosbie, states the following.

'I note that at Page 3 of his bundle the Applicant has submitted a document purporting to be a 'Copy of Licence'. I firmly state that such a document does not exist within our records, although the version submitted by the Applicant does resemble a document supplied to the Applicant during the initial stage of license proposal in 2015, attached as Exhibit LC31.

The Tribunal will note that the Applicant's version of the original document no longer contains the word 'Proposed'. For clarity, I confirm that when the Council grants a HMO Licence following the initial stage of licence proposal, it does not annotate the face of the licence document with the words 'copy of licence' – as of course it would not be a copy, but the actual licence.

In this respect I bring the the Tribunal's attention the Applicant's conduct in appeals MAN/30UK/HNA/2019/0123 & 0124 where it was noted that certain documents submitted by the Applicant in support of his appeal differed from those in our possession.'

22. In the First-tier Tribunal ('FtT') case referred to by Mr Crosbie the FtT (with the same composition as the present tribunal) had commented as follows on copies of a tenancy agreement supplied by the parties: *'Of the two copy final pages the tribunal prefers the Respondent's copy, the Applicant's copy clearly being truncated and incomplete'* (the 'Applicant' and 'Respondent' being the same as in the present case).

23. In the present case the document submitted on behalf of the Applicant appears to be a reduced black and white photocopy of the same document Mr Crosbie has supplied, but whereas the Respondent's version has the words 'copy of proposed licence' printed across it in red ink, the version supplied on the Applicant's behalf has the words 'copy of licence' printed across it.
24. The tribunal considers the explanation in Mr Crosbie's statement to be credible, and finds on the balance of probabilities that the Respondent had not issued an HMO licence for 19 Ribblesdale Place in 2015.

Shorter licences pending planning permission

25. The Applicant states in his Application form that one reason for refusing the licences for the Ribblesdale Place and Starkie Street Properties was that planning applications had not been submitted for change of use. The Applicant states that he had suggested that the Respondent deal with this by way of a shorter licence to allow time for planning applications to be submitted and, if unsuccessful, for the occupancy limits to be lowered, but they declined.
26. The Respondent relies on the *Khan* case referred to earlier as authority that conversion to residential use without planning permission is a relevant consideration when deciding whether to grant a licence. It is clear to the tribunal, from the extract reproduced earlier, that the Upper Tribunal in *Khan* considered it permissible to refuse to determine a licensing application until the authority is satisfied that planning permission has been granted. The tribunal finds therefore that the Respondent was not obliged to grant a short-term HMO licence for the use of the Ribblesdale Place and Starkie Street Properties pending the outcome of planning applications.

Ribblesdale Place & Starkie Street – deemed grant of licences

27. It is submitted for the Applicant that having made licensing applications for the Ribblesdale Place and Starkie Street Properties on 31 July 2015 and 8 October 2015 respectively, the Applicant heard nothing further (other than the document he believed to be a licence for 19 Ribblesdale Place) until the licences were refused in June 2019. It is submitted that the licence applications for both of these Properties should be considered as having been deemed granted by the Respondent due to the excessive time they had been before the Respondent. It is submitted that the Provision of Services Regulations 2009 come into play. These give effect to Directive 2006/123/EC of the European Parliament and Council of 12 December 2006. Notwithstanding the Upper Tribunal decision in *Waltham Forest v Khan*, it is submitted that under the 2009 Regulations authorisation was deemed to have been granted.
28. In its comments on this issue the Respondent denies the suggestion that there was minimal or no contact with the Applicant in relation to these two licensing applications until 2019. The Respondent provided a further witness statement by Mr Crosbie in which he lists all of the steps taken to progress the applications between 2015 and 2019. These include numerous actions in October, November and December 2015, January, February, March and April 2016, January, February, October and November 2017, February, April, October, November and December 2018 and May & June 2019. Actions include correspondence with the Applicant, site visits and inspections. Mr Crosbie further states that the Respondent aims to process licence applications within

8 weeks, and points out that even if the licences were deemed to have been granted they would have expired in 2020 and no further applications or contact have been made.

29. The tribunal is being asked to determine that licences for two of the Properties are deemed to have been granted under the Provision of Service Regulations 2009. There is no indication that a declaration has been sought from the appropriate court that as a matter of administrative law licence was deemed to have been granted. It is not clear that the tribunal would have the jurisdiction to make this determination.
30. The reference by JMW Solicitors to the 2009 regulations is made in the context of a statement that whilst the Applicant made licensing applications for two of the Properties in 2015 he heard nothing at all regarding the Starkie Street property and, save for the document believed to be a licence, nothing regarding the Ribblesdale Place property, until his applications were refused in 2019. The tribunal finds that this statement is incorrect. The actions referred to in Mr Crosbie's further statement related to both of these Properties and evidence efforts to resolve matters relevant to the two applications.
31. The tribunal considers that the applications for licences submitted in 2015 were ongoing and the Applicant was fully aware of the issues. It was not a case of the Respondent failing to meet its responsibilities, but of the Applicant failing to meet the Respondent's requirements and being given the opportunity to do so, for example by achieving licensing standards and obtaining the requisite planning and building regulation consents.
32. Even if the tribunal had the jurisdiction to make a determination under the European Directive and related UK regulations, in the tribunal's view local housing authorities are not prevented from allowing time for an applicant to fulfil the necessary requirements so that a licensing application is complete. Mr Crosbie's further statement shows that the Applicant was aware of the issues concerning these two applications, the reasons for the delay in deciding them and the actions he needed to take. The further statement also evidences interactions between the Respondent and the Applicant over timescales. It is clear from the case of *Waltham Forest v Khan* that absence of the necessary planning permission in itself is an appropriate reason to delay the grant of an HMO licence.
33. For these reasons, the tribunal is not satisfied that licences for the Ribblesdale Place and Starkie Street Properties were deemed to have been granted.

Fit and Proper Person

34. The tribunal is required to consider the Applicant's appeal by way of a rehearing. It is not the tribunal's remit to conduct a review of the Respondent's decision-making process. The tribunal may determine the appeal having regard to matters of which the local authority were unaware.
35. The Respondent makes reference to a number of FtT decisions concerning the Applicant, copies of which were included within the Respondent's submission. The decisions post-date the Respondent's Notice of Refusal, however the offences referred to in the decisions pre-date the Notice of Refusal. The tribunal considers it permissible for the Respondent to place reliance upon the FtT decisions and the tribunal is

prepared to take these into consideration in its rehearing of the Respondent's licensing decision.

36. The FtT decisions referred to are as follows:

9 Pedder Street – case reference MAN/30UK/HNA/2019/0123 & 0124

In this case Mr Gibbons appealed against two Final Notices imposing financial penalties issued by Preston City Council to the Applicant on 27 November 2019, each in the sum of £12,375. The first related to the letting of the property without the necessary HMO licence for the period 1 October 2018 to 17 June 2019 and the second related to a failure to comply with an Improvement Notice dated 17 December 2018.

The FtT determined on 7 October 2020 that Mr Gibbons had committed an offence contrary to section 72(1) of the Act by being in control of an HMO required to be licensed which was not so licensed. It was not disputed by Mr Gibbons that he had committed an offence by failing to comply with the Improvement Notice without reasonable excuse contrary to section 30(1) of the Act. The Final Notices were confirmed.

11 Regent Street – case reference MAN/30UK/HMF/2019/0070

In this case the FtT made a Rent Repayment Order on 18 March 2020 in the sum of £3144.63 in favour of a former tenant of Mr Gibbons. In so doing the FtT determined that Mr Gibbons had committed an offence under section 72(1) of the Act throughout the period 1 October 2018 to 17 June 2019.

68 Brackenbury Road – case reference MAN/30UK/HMF/2019/0053/0056, 0057 & 0059

In this case the FtT made a Rent Repayment Order on 11 December 2019 in the sum of £4,326.76 in favour of each of four former tenants of Mr Gibbons. In so doing the FtT determined that Mr Gibbons had committed an offence under section 72(1) of the Act throughout the period 1 October 2018 to 31 July 2019. The applicants made reference also to an alleged failure by Mr Gibbons to comply with an Improvement Notice served on him on 19 June 2019 in relation to the property however in the absence of evidence on the issue of compliance the FtT was not satisfied beyond reasonable doubt that that an offence under section 30(1) of the Act had been committed.

43 Brackenbury Road – case reference MAN/30UK/HMC/2019/0002-0007

The FtT in this case made a Rent Repayment Order on 22 May 2020 against Mr Gibbons in favour of 6 former tenants in the sum of £3,564.30 each. The FtT barred Mr Gibbons from participating in the proceedings as a consequence of failures to comply with the FtT's directions. The FtT determined that Mr Gibbons had committed an offence under section 72(1) of the Act throughout the period 1 October 2018 to 17 June 2019, and that he had committed an offence under section 30(1) of the Act.

The latter offence related to an Improvement Notice served on Mr Gibbons in relation to the property on 17 April 2019. The FtT found that the notice specified 25 separate 'category 2' hazards and required remedial action by 12 June 2019. At a further inspection by Preston City Council on 28 August 2019 the notice was varied in order

to describe the extent of the works still to be undertaken. The FtT was satisfied beyond reasonable doubt that Mr Gibbons committed the offence under section 30(1) throughout the period from 13 June to 31 July 2019.

21 St. Ignatius Square – case reference MAN/30UK/HMF/2019/0037 & 0038

The FtT made Rent Repayment Orders on 9 January 2020 in favour of two former tenants of Mr Gibbons in the sum of £2,535.54 each. In so doing the FtT determined that Mr Gibbons had committed an offence under section 72(1) of the Act throughout the period 1 October 2018 to 18 June 2019.

37. The various offences determined by the FtT's in the above cases to have been committed by Mr Gibbons are hereinafter referred to in this decision document as 'the Offences'. The following findings of the relevant FtT's in relation to the Offences are considered by the tribunal to be of particular relevance to the present case (extracts from the FtT decisions being shown in italics).

9 Pedder Street – *'Overall, having considered all of the submissions and evidence before it, the tribunal considers the amounts of the financial penalties arrived at by the Respondent to be very reasonable. The tribunal is particularly concerned about the risks to the safety of the 5 students living in the conditions evidenced by the Improvement Notice – in a property that had been owned by the Applicant for over 10 years at that time.'*

11 Regent Street – the FtT noted that a professional landlord should be fully aware of the requirements of letting properties, found Mr Gibbons to be a professional landlord and stated the following:

'Whilst Mr Gibbons has submitted he tried to ensure the Property was in a decent condition, there is strong evidence to show he let a property that was beset with problems. The exchange of emails between him, or his lettings agency, and the tenants supports this. This is also confirmed by the service of an Improvement Notice issued by the Council that sets out a number of Category 2 hazards.'

43 Brackenbury Road – *'Taking all of the above into account, we consider it appropriate to make a rent repayment order for the maximum amount in favour of each Applicant. Mr Gibbons has committed two serious housing offences in respect of the Property and has let in a sub-standard condition. By doing so, he has shown a disregard for his responsibilities as a landlord and for the safety and well-being of his tenants.'*

21 St. Ignatius Square – *'Taking all of the above into account, we consider it appropriate to make a rent repayment order for the maximum amount in favour of each Applicant. Not only did Mr Gibbons commit a serious housing offence, but he appears to have let the Property in a sub-standard condition. Moreover, his actions in re-letting rooms to CF and RS appear to be a fundamental breach of the tenancy he had granted to the Applicants. He had no right to do so.'*

38. A number of the Offences involve a failure to respond to changes in licensing requirements introduced on 1 October 2018. The papers in the present case include evidence that the Applicant was warned of these changes, more specifically: (1) in his further statement Mr Crosbie states that on 11 October 2018 Senior Housing Standards

Officer Mr Cryer issued a strong warning to the Applicant in an email regarding the 1 October 2018 HMO licensing law change and his need to apply for licences at any HMO he operates that contains 5 occupiers; and (2) the Respondent's submission in response includes an email dated 21 December 2018 to the Applicant in which he states 'I remind you that any HMO property with 5 or more occupiers is subject to mandatory HMO licensing since 1 October 2018'. The tribunal finds that the Applicant was warned of the changes in mandatory HMO licensing requirements.

39. Section 66 (1) of the Act requires a local housing authority to have regard (among other things) to any evidence within subsections (2) and (3). Subsection (2)(c) relates to evidence that the Applicant has 'contravened any provision of the law relating to housing or of landlord and tenant law'.
40. The Upper Tribunal in the *Hussain* case made specific reference to the need for a licence holder to be able and willing to comply with the relevant requirements of housing and of landlord and tenant law which comprise those of the licensing regime itself.
41. In addition to the Offences, the Respondent raises numerous other matters in support of its case. These other matters ('the Other Matters') include:
 - operating HMO's at the Ribblesdale Place and Starkie Street Properties in contravention of planning and building control requirements;
 - the issue by the Respondent of numerous formal notices (in addition to those relating to the Offences) including notices to produce documents, a suspended prohibition order and Building Act notices;
 - investigations into a serious fire affecting a small HMO at 12 Robinson Street, Preston; and
 - various complaints received from tenants of the Applicant.
42. It is submitted on the Applicant's behalf that the matters being complained of by the Respondent (i.e. the Offences and the Other Matters) are nowhere near the same level of seriousness as those illustrated in the *Hussain* case. It is submitted that they are at best a series of largely unconnected events showing relatively minor issues in the overall lifecycle of managing a portfolio let to students. It is submitted that there are almost no events to speak of between 2015 and 2019.
43. It is further submitted that the Applicant has accepted the need to improve his skills and standards and has been accredited by the NRLA and Unipol, demonstrating his commitment to improvement. In his statement of case the Applicant claims that he had been unfairly pursued by the Respondent, relying in this respect on a quote from his surveyor.
44. The tribunal finds that the Applicant has not substantiated his claim to have been unfairly pursued by the Respondent. There is no material evidence of this before the tribunal.
45. In conducting its 're-hearing' and determining whether the Applicant is a fit and proper person to hold a licence, the tribunal is required to have regard to any evidence that the Applicant has contravened the law relating to housing (section 66(2)(c)). It has already been determined by FtT's that the Applicant has contravened the law

relating to housing on numerous occasions by committing the Offences. The tribunal takes these FtT decisions into consideration. The tribunal considers that the Offences are not 'minor issues' as is suggested on the Applicant's behalf. They are serious in nature. The seriousness of the Offences is reflected in some of the extracts from the FtT decisions included earlier, also taken into consideration by the tribunal.

46. The Applicant has been operating a student letting business for many years, managing a significant portfolio of properties to let in the Preston area. Whilst the Applicant submits that he has taken steps to improve his standards and skills, the tribunal considers that the FtT decisions concerning the Offences demonstrate a disregard for housing law requirements, and a failure to conduct business in a manner that ensures compliance with such requirements. The tribunal further considers that the FtT findings and decisions evidence a disregard by the Applicant for his responsibilities as a landlord and for the safety and well-being of students in occupation of the relevant Properties.
47. The tribunal determines therefore that the Applicant is not a fit and proper person to hold a licence. It is unnecessary for the tribunal to go on to reach findings in relation to the Other Matters relied upon by the Respondent in its statement of case.

Conditional Licence option

48. It is submitted on the Applicant's behalf that if the tribunal considered the Applicant not to be a fit and proper person to hold a licence, a conditional licence should be considered. The tribunal considers that this would be inappropriate in this case in view of the reasons given above for the tribunal's findings on the 'fit and proper person' test.

Determination

49. Having determined that the Applicant is not a fit and proper person to hold a licence, the tribunal confirms the Respondent's Notice of Refusal in relation to each of the Properties.

Costs application

50. JMW Solicitors included in the reply submitted on the Applicant's behalf, an application for costs.
51. It is submitted that the Respondent has acted unreasonably by misunderstanding the tribunal's directions regarding formal mediation, rejecting a mediation offer from the Applicant, and deceptively alleging that the Applicant had rejected mediation. Additionally it is submitted that the Respondent has sat on licence applications for four years, sought to unlawfully refuse them as part of a wider campaign of harassment of the Applicant and has 'sought to use the reasons that it uses to justify that unlawful refusal as a further justification to refuse other licences'.
52. The tribunal's power to award costs arises under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 13(1) provides that the tribunal may make an order for costs only in the circumstances set out at paragraphs (a), (b) and (c). Paragraph (a) relates to wasted costs orders against representatives and (c) applies to land registration cases. Paragraph (b) is relevant in the present case and provides that an order in respect of costs may be made 'if a person has acted

unreasonably in bringing, defending or conducting proceedings'. It goes on to provide that this is applicable to certain cases only, but includes 'a residential property case'.

53. The issues raised for the Applicant above concerning the alleged failure of the Respondent to deal with licence applications, unlawful refusal and a wider campaign of harassment are not related to the Respondent's actions in 'defending or conducting the proceedings'. Even if the tribunal accepted these allegations (which it does not), the tribunal would not have the power to make an order for costs.
54. The tribunal also finds that the submission that the Respondent has 'sought to use the reasons that it uses to justify that unlawful refusal as a further justification to refuse other licences' does not clearly relate to the Respondent's actions in defending or conducting the proceedings. Any intended suggestion that the Respondent has acted unreasonably in defending or conducting the proceedings has not been clearly explained or established to the tribunal's satisfaction.
55. The costs submission mostly concerns the Respondent's alleged actions in misunderstanding the tribunal's directions regarding formal mediation, rejecting a mediation offer from the Applicant, and deceptively alleging that the Applicant had rejected mediation.
56. In this case a mediation session had been proposed by HMCTS and both parties agreed to this, the Respondent on 7 February 2020 and the Applicant on 17 March 2020. HMCTS administration was then adversely affected by the COVID pandemic. On 5 October 2020 HMCTS contacted the Respondent by email, confirming that there had been a signed statement from the Applicant confirming his agreement to mediation, requesting confirmation that the Respondent was prepared to mediate and requesting any update regarding the case.
57. Mr Crosbie, Housing Standards Team Leader for the Respondent, replied the same day. Mr Crosbie stated that despite the best efforts of the Council, their attempts to mediate a satisfactory solution to this case and linked matters in the financial penalties appeal for 9 Pedder Street were unsuccessful. Mr Crosbie went on to summarise the reasons for the failed mediation in the two cases:
58. First matters had come to light from the Applicant's submission bundle (for 9 Pedder Street financial penalties) reinforcing the Respondent's view that the Applicant, failed to meet the fit and proper person test, in particular the Respondent held strong concerns that it would appear the Applicant had wilfully altered documents which he had submitted to the tribunal in order to attempt to support his case. The second reason concerned the financial penalties for 9 Pedder Street, an offer from the Applicant to settle being extremely low and it being clear that the parties' views of the underlying offences were vastly different.
59. Having received the email from Mr Crosbie, the tribunal issued directions to progress the present case to a tribunal determination, and refused a subsequent request by JMW Solicitors, submitted on behalf of the Applicant, to re-direct that formal mediation be arranged.
60. The tribunal accepts the point raised on the Applicant's behalf in seeking costs, that the Respondent's email of 5 October 2020 failed to distinguish between formal mediation, and negotiations between the parties. There is no evidence to suggest that

the parties ever engaged in a formal mediation session facilitated by a third party, and where the word 'mediate' appears in the Respondent's email the word 'negotiate' would have been more appropriate.

61. The tribunal does not consider however that the Respondent's loose use of language was intended to deceive the tribunal. It was clear to the tribunal from the content of the email, both at the time of receipt and considering this in retrospect, what was intended.
62. The tribunal goes on therefore to consider whether the Respondent acted unreasonably because at 5 October 2020, it no longer supported there being a formal mediation session, despite having agreed to this in February of that year.
63. It is well established that a person has 'acted unreasonably' in the context of Rule 13(1) if their conduct has been vexatious, or designed to harass the other side rather than advance the resolution of the case. It is relevant to consider whether the conduct permits of a reasonable explanation.
64. The Respondent gave reasons in its email of 5 October 2020 for wishing to proceed to a tribunal determination, going on to confirm that the Respondent had originally agreed to the matter being dealt with by a paper determination and confirming that the Respondent was still content to do so, but would also be content to proceed with a hearing if the tribunal considered this to be necessary.
65. The tribunal considers that the Respondent was not acting vexatiously, or engaging in conduct designed to harass the Applicant. The Respondent's conduct permitted of a reasonable explanation, namely that the Respondent did not consider that an agreement could be reached that would be satisfactory to both parties, and the Respondent wished to proceed to a tribunal determination. The tribunal considers that the Respondent was trying to advance the resolution of the case by proceeding to tribunal determination instead of engaging in a mediation exercise that the Respondent considered would be unsuccessful for the reasons given in the email.
66. For these reasons the tribunal makes no order for costs.

S Moorhouse
Tribunal Judge

Appendix

Statutory Provisions

Section 64 of the Act

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
 - (aa) that....
 - (b) that the proposed licence holder –
 - (i) is a fit and proper person to be the licence holder
 - (ii) is.....

Section 66 of the Act

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.....the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).
 - (1A)
 - (2) Evidence is within this subsection if it shows that P has –
 - (a) committed any offence involving fraud or any other dishonesty.....
 - (b) practiced unlawful discrimination.....
 - (c) contravened any provision of the law relating to housing or of landlord and tenant law (including Part 3 of the Immigration Act 2014); or
 - (d) acted otherwise than in accordance with any applicable code of practice approved under section 233.
 - (3)
- [(3A) – (7) not reproduced here]

Paragraph 5, Schedule 5 to the Act

Before refusing to grant a licence, the local authority must –

- (a) serve a notice under this paragraph on the applicant for the licence and each relevant person, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

Paragraph 6, Schedule 5 to the Act

The notice under paragraph 5 must state that the local housing authority are proposing to refuse to grant the licence and set out –

- (a) the reasons for refusing to grant the licence, and
- (b) the end of the consultation period.

Paragraph 31, Schedule 5 to the Act

- (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.

Paragraph 34, Schedule 5 to the Act

- (1) This paragraph applies to appeals to the appropriate tribunal under paragraph 31 or 32.
- (2) An appeal –
 - (a) is to be by way of a re-hearing, but
 - (b) may be determined having regard to matters of which the authority were unaware.
- (3) The tribunal may confirm, reverse or vary the decision of the local housing authority.
- (4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant on such terms as the tribunal may direct.