



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

**Case Reference** : **BIR/00FY/HMV/2022/0001**

**Property** : **69 Manifold Gardens, Nottingham. NG2  
2HU**

**Applicant** : **Mr Tom Owugha**

**Respondent** : **Nottingham City Council**

**Type of Application** : **Appeal against the revocation of a  
selective licence under Housing Act 2004**

**Tribunal Members** : **Judge C Kelly  
Mr D Lavender**

**Date of Decision** : **8 July 2022**

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**DECISION**

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## DECISION

1. The Tribunal determines that the licence granted to City Lettings (UK) Limited may be revoked by Nottingham City Council.

## REASONS FOR DECISION

### **General Background**

2. This is the Tribunal's determination in the application by Mr Owugha ("the Applicant") to appeal the decision of Nottingham City Council ("the Respondent") to revoke a selective licence pursuant to s.93 (1) (a) of the Housing Act 2004 ("the Act") on 20 January 2022 in respect of the property known as 69 Manifold Gardens, Nottingham, NG2 2HU ("the Property").
3. The Property is a two story, three bedroom detached house. The owner is the Applicant, the Respondent is the local authority.
4. The Property was managed by City Lettings (UK) Limited ("City Lettings") for the period of at least 30 December 2020 until mid-May 2021.
5. The Property is situated in an area to which the selective licensing regime under Part 3 of the 2004 applies. A licence is required to let properties in such areas and, in this case, a licence was granted by the Respondent on 30 November 2020, effective until 31 October 2023.
6. The licence was applied for, and granted, in the name of City Lettings, and was treated as received by the Respondent on 15 November 2019.
7. On 26 November 2019, the Respondent emailed a draft of the licence proposed to be issued to the Applicant. The draft licence identified, on its face, that the intended licence holder would be City Lettings and further, it identified that the licence would not be transferrable. No representations were received from the Applicant and the licence was subsequently granted.
8. Further, the licence, in the form granted, almost 12 months later, was served upon the Applicant on 30 November 2020. No communication or appeal was received by the Respondent following service of the issued licence.
9. Difficulties thereafter arose between City Lettings and the Applicant, such that the relationship was terminated in mid-May 2021 by the Applicant.
10. In an email sent on 26 May 2021, City Lettings informed the Respondent that it was no longer involved in the management of the Property and that it therefore

wished to be disassociated with the licence granted, which the Respondent, quite properly, construed as an application for revocation.

11. Having received that notification, the Respondent then purported to revoke the licence by email to the Applicant on 9 November 2021. However, the Respondent's position is that, upon a subsequent review following the Applicant's appeal to the First Tier Tribunal, it was identified that there may have been an issue with the notice such that it could not properly be said that the licence had been revoked. The specific defect was due to the revocation notice not having been served upon the Applicant when the initial email was sent on 9 November 2021. As a consequence, the Respondent accepted that the licence was not revoked at that time.
12. The service defect was identified by the Respondent with the Applicant in a telephone call on 23 December 2021. The Respondent identified that there were two possible routes forward: (a) that the licence be maintained in its current state with City Lettings as the licence holder (which would require it to be managing the Property), thus avoiding the need for a new licence to be applied for, or (b) that the licence would be revoked because it was not possible to transfer it.
13. A further letter was served by the Respondent on 20 January 2022 to revoke the licence. Reasons accompanied the decision to revoke, limited essentially to a request having been made to revoke by the licence holder.

### **The Parties' Positions**

14. The Applicant's arguments are essentially as follows (there being different arguments advanced in the Application Notice to those in the Statement of Grounds of Law and Facts Relied Upon dated 7 April 2022). The Tribunal is obliged only to address those grounds of challenge set out in the Application Notice, as this is the only document upon which the Respondent has had the opportunity to address, and this is especially important given that the parties have requested the Tribunal to deal with this matter on paper. Nevertheless, the Tribunal is able to fairly comment on the additional grounds submitted by the Respondent and will do so briefly.
15. As to the grounds set out in the Application Notice.
16. Firstly, that City Lettings did not advise him properly on the implications of it acting as licence holders. He accepts he saw a copy of the licence granted but makes no mention of seeing the draft document.
17. Secondly, that City Lettings could not have been licence holders as they were neither landlord nor a managing agent with full management control. The Applicant cites s.89(4) of the 2004 Act which requires, unless the contrary is shown, that: "*For the purposes of section 88(3)(a) [of the 2004 Act] the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it.*" He says he had full control and City Lettings were simply his agents.

18. Thirdly, having regard to all of the circumstances of the case, it would amount to an injustice for the Respondent to require a new licence application to be made with further fees being paid and to engage the licensing process again afresh.
19. As to the grounds set out in the Statements of Grounds of Law and Facts Relied Upon, the Applicant stated:
20. Firstly, that the Respondent acted “*ultra vires*”, in appointing City Lettings as the initial holder of the licence as issued on 30 November 2020.
21. The Applicant says that, by s.89 (4) of the 2004 Act, the Respondent was obliged to assume, unless the contrary was shown, that the person having control of the house is a more appropriate person to be the licence holder, than a person not having control of it. The Applicant says that he was the owner and had full control over the Property at all times, City Lettings were his agents and thus, a licence should have been granted in his name.
22. Secondly, that the decision to revoke the licence on 9 November 2020 and subsequently on 20 January 2022 was “*Wednesbury unreasonable*” and “*perverse*”.
23. Thirdly, the Respondent alleges that the decision to revoke the licence was “*illegal*” on 9 November 2021. Further, the Applicant contends that the “*offers*” (reference being made the Respondent’s potential routes forward conveyed in the discussion of 23 December 2021) advanced by the Respondent, given the revocation of the licence for a second time on 20 January 2022, following reinstatement of the 9 November 2021 revocation, amounted to an abuse of administrative power of the Respondent.
24. Fourthly, the Applicant argues it would be an injustice for the Respondent to be required to make a fresh application, pay a further fee and go through the licensing application process afresh.
25. The Applicant asks the Tribunal to overturn the Respondent’s decision to revoke the licence relating to the Property, and subsequently, to direct that the Respondent be substituted as the licence holder.
26. Responding to the Grounds as set out in the Application Notice, the Respondent’s position is essentially as follows.
27. Firstly, that the Respondent is not answerable to the Applicant for the advice that it was given by City Lettings and any ignorance that might exist by reason of that on the part of the Applicant as to the consequences of disengaging the services of City Lettings.
28. The Respondent says that it could, and would, have considered a potential change of licence holder at any point within the 12 month period between the application being made and the licence being issued.

29. Secondly, the Respondent says that it received the application from City Lettings which indicated it was “*a person having control of the house*”. No representations were made contesting the application being made on this basis.
30. Thirdly, the Respondent refers to s.91(6) of the Act, which states: “*A licence may not be transferred to another person*” as being sufficient as a matter of law, but additionally, identifies a policy consideration that applications should be made with fees being paid to ensure that the licensing scheme is properly self-funding.
31. The Respondent has not specifically responded, in its representations made on 3 March 2022, as to the additional grounds cited in the Applicant’s Statement of Grounds of Law and Facts Relied Upon dated 7 April 2022.

### **The Relevant Law**

32. Insofar as relevant, s.93 of the 2004 Act permits a local housing authority to revoke a licence. It states:

*“(1) The local housing authority may revoke a licence—*  
*(a) if they do so with the agreement of the licence holder,*  
*(b) in any of the cases mentioned in subsection (2) (circumstances relating to licence holder or other person),*  
*(c) in any of the cases mentioned in subsection (3) (circumstances relating to house concerned), or*  
*(d) in any other circumstances prescribed by regulations made by the appropriate national authority.”*

33. Hence, the use of the word “*may*” in s.93(1), makes plain that a local housing authority has the discretion as to whether to exercise a specific power or not. Further, a public body, whether it be the Respondent in this case, or indeed this Tribunal, cannot reach an irrational or unreasonable decision (*Associated Provision Picture House- v- Wednesbury Corporation [1948] 1 KB 223*). Any decision taken must be proportionate (*R -v- Secretary of State for the Home Department, ex parte Brind [1991] 1 AC 696*). Any decision must be adequately reasoned. These are principles that this Tribunal applies in reaching its decision in this appeal.

34. The Tribunal has jurisdiction to entertain an application for an appeal against the revocation of a selective license by the Respondent by paragraph 31(1) of Schedule 5 of the 2004 Act which states of follows:

*“The Applicant’s or any relevant person may appeal to the First Tier Tribunal (Property Chamber) 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.”*

35. The time limit for appeals is set out at paragraph 33(1) of Schedule 5 of the Act, essentially 28 days beginning with the date specified in the notice of revocation. The Tribunal may, however, allow an appeal to be made after the end of that period,

if it is satisfied there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time) (paragraph 33(3), Schedule 5).

36. The Application was submitted to the Tribunal and received on 9 February 2022. The date in the revocation notice was 20 January 2022, it being recognised that the revocation intended by letter dated 9 November 2021 did not effectively revoke the licence. The Tribunal is therefore satisfied that the application was received within the statutory time limit.
37. Any appeal dealt with by the Tribunal is, by paragraph 34 of Schedule 5 of the 2004 Act, to be dealt with by way of a re-hearing.
38. Accordingly, it is neither necessary nor appropriate for the Tribunal to seek to review the Respondent's decision. The Tribunal carries out its own assessment afresh. Accordingly, the Tribunal does not seek to determine those grounds which seek to rely upon principles of public law concerning *ultra vires*, illegality or abuse of process, although it does take account of the facts and circumstances behind the allegations made and considers them fully in the context of reaching a decision.
39. In light of the above observations, the Tribunal approaches the matter with a view to determining, looking at all materials provided, whether it should confirm, reverse or vary the decision of the Respondent to revoke the licence.

### **Tribunals Deliberation and Conclusion on Disputed Grounds**

40. The Tribunal takes account of the factual position set out above and the parties' positions.
41. Turning then specifically to the grounds set out in the Applicant's Application Notice.
42. There can be no doubt that the Respondent is not answerable for any advice given by City Lettings as to the appropriateness or otherwise of any licence being held in its name. This is a matter solely for the Respondent to take up with the Applicant. That said, the effect of this fact (if accepted) is something that can be taken account of in the exercise of any discretion whether under s.93 (by the housing authority) or the provisions of Schedule 5.
43. The Applicant's primary position appears to be, that it was unreasonable for City Lettings to have sought the licence in its name, as it would have been apparent that the licence would be terminated if it no longer had a lettings role with the Property. That may or may not be so, but what is clear, is that City Lettings, as the licence holder, was entitled to make the request of the Respondent to be removed from the licence, in other words revoke it, by reason of the fact that it was no longer engaged in the management of the Property. The real issue, therefore, is whether it was reasonable of the Respondent to revoke in the circumstances of the facts of this case.
44. The licence application made by City Lettings referred to it being in control of the Property. No representations were made otherwise and the Respondent was fully

entitled to rely on this fact and there can be no proper criticism of the Respondent's action in doing so.

45. As to the requirement to make a further application and pay additional fees, the Respondent makes a forceful policy point that the system for determining such applications is intended to be self-funding. What is clear, is that s.91(6) of the 2004 Act makes clear that a licence may not be transferred to another licence holder.
46. This is a case concerning a request by a person that was in control and was the licence holder, to be disassociated with the licence of the Property. The only way to achieve that disassociation would be revocation given the statutory prohibition on transfer.
47. An important consideration for this Tribunal, not raised by either of the parties, is the fact that a licence holder is at risk of committing an offence in the event that any of the licence conditions that apply to the licence is breached (s.95(2) of the 2004 Act). A number of the licence conditions are continuous, in the sense that they are not "implement and leave" – they must be adhered to at all times. Examples of these type of obligations attached to the licence in this case would be:
  - (a) the obligation to ensure all gas installations and appliances are in a safe condition at all times and that an annual gas safety check is carried out each year (condition 1);
  - (b) the obligation to produce copies of the gas inspection certificates within 7 days of being requested to do so by the Respondent (condition 2);
  - (c) the obligation to ensure electrical appliances and furniture in the house is kept in safe condition and proper working order at all times (condition 3);
  - (d) to install and keep at all times smoke alarms in proper working order (condition 6); and
  - (e) to ensure that all reasonable and practical steps are taken to respond to repair and maintenance issues at the Property (condition 12).

A failure on the part of the Applicant to address these issues could well, if the licence remained in situ, lead the licence holder, City Lettings, to commit an offence. That cannot be correct. Although the other issues identified would be factors that a public body would take account of, and this Tribunal does take account of. This one factor alone is of such significance that in reality, where conditions such as these exist and a licence holder no longer retains control, it must be right that a local housing authority proceeds to revoke the licence upon request to do so.

48. In light of this compelling factor, it is difficult to see how the decision to revoke by the Respondent could fairly be characterised as unreasonable, illegal or perverse.
49. All matters considered, therefore, the Tribunal concludes that the Respondent was right to revoke the licence in this case and its decision in that regard is confirmed.

