



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

**Case Reference** : LON/00BH/HML/2022/0017

**Property** : First Floor Flat, 100 Pearcroft Road,  
London, E11 4DR

**Applicant** : Michael Anderson

**Respondent** : London Borough of Waltham Forest

**Interested Party** : Mr Sajid Abbas

**Type of Application** : Challenging the granting of a license

**Tribunal Members** : Judge Shepherd  
Sue Coughlin MCIEH

**Date of Determination** : 4th October 2023

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**Determination** amended under the slip rule on 12/10/23

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1. In this case the Applicant, Michael Anderson (“The Applicant”) is challenging the decision of London Borough of Waltham Forest (“the Respondent”) dated 28<sup>th</sup> September 2022 to grant a license for five years to the interested party Mr Sajid Abbas. The license was granted pursuant to s.88 Housing Act 2004 The

Applicant says that Mr Abbas is not a fit and proper person to be the license holder on various bases which will be explained in this decision.

2. The Applicant is the joint freeholder of premises at 100 Pearcroft Road, London E11 4DR (The premises). He is also the leaseholder of the ground floor flat which he has occupied for over 25 years. He has partly owned the freehold since 2009. The former owner of the first floor flat Aidan McCarthy is the other freeholder. He sold his leaseholder interest to Mr Abbas who has sublet the flat. To do so he required a license from the Respondents as the premises lie within an area where the Respondents operate a selective license scheme.
3. The Applicant says that Mr Abbas is not a fit and proper person because he has failed to properly manage the premises, there has been a lack of regular maintenance of the first floor flat and leaks have occurred, appliances and other things have been fly tipped by the tenants of the first floor flat in the common areas. The most significant complaint as far as the Applicant is concerned is the fact that he has suffered noise nuisance from the tenants of the first floor flat with regular disturbances. The tenant Mr Kibria has had a number of people staying with him and the sound transfer to the Applicant's flat is excessive. The Applicant also complained that he has been threatened by a man who appears to manage the premises on behalf of Mr Abbas. He said that he had never seen Mr Abbas before the hearing.
4. The Respondents chose not to attend the Tribunal hearing but made written representations. Three hearings were required to resolve the matter. At the first hearing it became clear that Mr Abbas should have been joined as an interested party and had not been so joined. At the second hearing Mr Abbas attended the Tribunal offices when the hearing was online. He also asked for the opportunity to get legal assistance. The matter was finally heard on 24<sup>th</sup> August 2023 online when Mr Zulfiqr Ranjah attended as Mr Abbas's Mackenzie Friend. The Tribunal is grateful to the Applicant for the patience that he has shown throughout this process.

## **The hearing**

5. Mr Anderson outlined the reasons for his application. As indicated above he said that he had suffered noise nuisance causing him to sleep in the lounge; there was a problem of disrepair and rubbish being left in the common areas. He said that Mr Abbas had previously been fined for a failure to comply with his previous license. He said that Mr Abbas was subletting without his consent or the consent of Mr McCarthy. He said Mr Abbas doesn't inspect. On New Years' Eve 2021 he had been threatened by a bald headed man in a hat.
6. Mr Anderson said that there had been three leaks into his flat. He had to cut a hole in his ceiling to release the water. He was recently verbally abused by one of the visitors to the flat above.
7. Mr Abbas said that the first floor flat was occupied by Mr Kibria who was joined by his wife once or twice a year. He said he inspected every month or six weeks. He said he had put insulation down in January 2022 after the council asked him to. The work had taken four days. He had paid in cash. He had been given an oral quote. He produced an invoice. It was put to him that the company A & G Traders did not appear to exist. Mr Anderson denied that he had seen or heard any work going on to fit the insulation in January 2022. Mr Abbas said that the council had visited in February 2022 to inspect repair works he had carried out. There was no mention of the insulation being carried out in letters from the council.
8. Mr Abbas said that Mr Anderson had been racially abusive to his tenants. This was vehemently denied by Mr Anderson. Mr Abbas said Mr Anderson played loud music. He said he was not made aware of the rubbish problem. He said that his brother had been managing the property when he was away in 2022. His brother was the bald person identified by Mr Anderson. He accepted that he had not obtained permission to let the flat from Mr Anderson.
9. In their written submissions and evidence the Respondents defended their decision to issue Mr Abbas with a license. There had been a selective licensing

designation on 22<sup>nd</sup> January 2020. Prior to that there had been a previous selective license designation. Mr Abbas had a license dated 10<sup>th</sup> December 2018. There had been complaints about noise and anti-social behaviour from Mr Abbas's tenants which led to an inspection on 30<sup>th</sup> July 2019. No further action was taken regarding the noise nuisance. At the inspection deficiencies were identified in the fire safety equipment and smoke alarms. Following further inspections and a failure to supply the equipment Mr Abbas was served with a Civil Penalty Notice and a fine of £8000 on 17 March 2020. He did not appeal the notice. He applied for a selective license under the new designation on 31<sup>st</sup> October 2020.

10. The council carried out an inspection on 22<sup>nd</sup> February 2022 which identified various items of disrepair. These were referred on to Mr Abbas in a letter dated 22 February 2022. An email was sent to Mr Abbas on 3 March 2022 in which the council also asked if he would consider installing sound proofing. There was no response to this request.
11. On 26<sup>th</sup> May 2022 a draft license was sent to all occupiers in the building. Mr Anderson made representations which were not responded to. Although the council claims, in its statement of case, that it did consider these representations the witness statement of Jon Fine, Team Manager, states that he advised the licensing team to write to Mr Anderson requesting further details relating to his complaint of breach of licence conditions. He states that on receipt of those details 'we may consider issuing a licence for a shorter term, insisting that those issues are resolved before extending the licence'. He further states that his advice was overlooked and that a response was not sent to the Applicant. The selective license was issued on 28<sup>th</sup> September 2022 for a period of five years. There is no witness statement or written evidence confirming that the original representation was further considered before the licence was issued.
12. The council say that they were entitled to grant Mr Abbas a license as Mr Abbas was a fit and proper person. They don't appear to have been told about Mr Abbas's brother managing the premises in his absence. They accuse Mr

Anderson of harassment in recording visitors, opening post and alleging benefit fraud. They accept that a shorter license could have been granted in light of the previous fine imposed on Mr Abbas in accordance with their policy.

## **The Law**

13. Under Part 3 of the Housing Act 2004 local housing authorities can adopt a selective licensing designation within their district if certain statutory criteria are fulfilled: s.80. Once a designation is in force, every Part 3 house must be licensed unless it is an HMO or a temporary exemption notice or management order is in force: s.85(1).
  
14. Where a selective licence application is submitted, LHAs must either grant the licence or refuse to grant it: s.88(1). By s.88(2)-(3) LHAs may grant a licence to the applicant but only if satisfied of matters including, that:
  - a. The proposed licence holder and the proposed manager are both “fit and proper persons” to hold those roles;
  - b. The proposed licence holder is, out of all persons reasonably available to be the licence holder for that premises, the most appropriate person to hold this role;
  - c. The proposed management arrangements for the house are otherwise satisfactory.
  
15. Section 89(1)-(3C) prescribes matters to which LHAs must have regard when considering if a person is a “fit and proper” person to be a licence holder or manager. They include, inter alia:
  - a. Whether the person has committed any offence involving fraud or violence;
  - b. Whether the person has “contravened any provision of the law relating to housing or of landlord and tenant law”; or
  - c. Whether any person “associated with” the licence holder or manager has done either of those things.

16. Any “relevant person” aggrieved by the grant of a selective licence has a right of appeal to the FTT: s.94 and Schedule 5, para. 31(1)(b). “Relevant persons” include anyone with an interest in the Part 3 house concerned: Schedule 5, para. 36(2)(a)(i).

17. The appeal may relate to the terms of the licence, including its duration or licence conditions. The FTT has power to confirm, reverse or vary the LHA’s decision and may direct the LHA to grant a licence on such terms as the Tribunal may direct: Schedule 5, para. 34(3)-(4).

### **Determination**

18. Having heard his evidence on three occasions the Tribunal found Mr Anderson to be an honest and reliable witness. He has clearly suffered continual nuisance from the occupiers of the flat above him. All of his complaints appear valid. He has suffered noise nuisance, leaks into his home, threats from persons, one of whom seems likely to be Mr Abbas’s brother who was managing the premises in his absence. He has had difficulty contacting Mr Abbas and any responses through solicitors have been unsympathetic and accusatory. As the freeholder of the premises Mr Anderson would have expected to have been consulted about the subletting. Mr Abbas was directed to provide a copy of his lease. He did not do so.

19. The Respondents did not attend the hearing as is their prerogative. In effect they passed their decision onto the Tribunal satisfied that it was sound. We are required to afford “special weight” and “great respect” to their decision: *Marshall v Waltham Forest LBC* [2020] 1 WLR 3187 [61-62]. However, this does not mean that we are not entitled to identify errors in their procedure or to arrive at a different conclusion on the facts.

20. The Respondents accept that they did not respond to Mr Anderson’s representations due to an “administrative error”. In the Tribunal’s view this was a serious error. The Respondents may have considered Mr Anderson’s objections *did not identify matters which were within the remit in the context of a license*

*application, in particular allegations of property fraud and the possibility of re-possession the flat* (their statement of case) but even if this were the case which seems doubtful particularly in relation to the property fraud allegation, Mr Anderson deserved to hear the response. He had a number of complaints most of which were within the said *remit* – in particular his complaints about noise nuisance and disrepair.

21. The Respondents also appear to have given little weight to the fact that they had already imposed a significant penalty on Mr Abbas for fundamental failures in the provision of fire safety equipment in 2020. Under their policy the granting of a shorter license would seem to have been a ready option in these circumstances – see in particular paras 2.29 c).

22. The Respondent's acknowledge that a shorter license term was an option (para 46(d) of their statement of case) but state that because the premises were fire safe in February 2022 there was no problem with issuing a full five year license. The visit in February 2022 identified further deficiencies though and the Respondents did not follow up the issue of sound proofing even though it was plainly important as regards Mr Anderson's complaints of noise nuisance.

23. The Tribunal is pleased that it was finally able to receive evidence from Mr Abbas. In our view his evidence was thoroughly unreliable. At the abortive hearing when he had asked for time to get legal - representation he was asked to provide evidence of the sound proofing he said he had carried out in January/February 2022. He produced a purported invoice from A & G Traders, 127 Blake Avenue, IG119SB for £17500 dated January 2022. There was no evidence that the invoice had been paid although Mr Abbas said he paid in cash in instalments. There was no evidence that A&G Traders actually existed and the invoice suggested that the sum was payable to Mr Abbas himself. The invoice appeared bogus. Added to this was the fact that there was simply no reference to the sound proofing works in correspondence between Mr Abbas and the council. The council asked Mr Abbas if he would soundproof in February 2022- he did not reply. This is perplexing in view of his submission that he had just done the works. Finally, Mr Anderson said he didn't notice any works being carried out. The alleged works would have been substantial and noticeable by an

immediate neighbour even if he was at work at the time. It's very unlikely that there would have been no cross over between Mr Anderson and the workmen carrying out work that he wanted.

24. We also consider that Mr Abbas has been failing in his fundamental duties as a landlord. He has failed to follow up complaints made by Mr Anderson in a sympathetic manner. He failed to properly monitor what has been going on at the premises but preferred to communicate with solicitors letters rather than simply meeting Mr Anderson. We don't believe Mr Abbas inspected every six weeks indeed we find that he was absent for much of the tenancy he granted. He used his brother to manage the premises and his brother was aggressive to Mr Anderson. This was in breach of his license conditions not least because his brother had not been tested as being a fit and proper person. Finally, Mr Abbas had already been given a significant financial penalty by the Respondents.

25. Were it proven definitively that the invoice produced by Mr Abbas was fraudulent we would have no hesitation in finding that he is not a fit and proper person. Unfortunately, there remains a fraction of doubt. We consider the best resolution is to vary the existing license to a 12-month license with additional conditions. The Respondents will need to assess whether the varied license has been complied with after 12 months. This will include consulting Mr Anderson.

26. The additional conditions that need to be incorporated are:

1. There shall be no more than two people in occupation of the upstairs flat.
2. The license holder must respond fully to complaints about his tenants following an objective investigation including communicating with the complaining party himself or through his properly appointed agent – see para 27 below.

27. Before the license is issued Mr Abbas needs to decide if he is going to manage the upstairs flat or if he wants to appoint a bona fide agent who is fit and proper. He needs to notify the Local Authority of his decision in this regard within 28 days so



that they can carry out fit and proper person inquiries in relation to the proposed agent.

28. The Tribunal requires to see the varied license once it is drafted. In the interim Mr Abbas in particular should be aware that he is bound by the existing license conditions.

**Judge Shepherd**

**~~11<sup>th</sup> October 2023~~**

**12<sup>th</sup> October 2023**

#### ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.