



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

**Case Reference** : **MAN/00EJ/HST/2023/0053**

**Property** : **18 GILBERT ROAD, PETERLEE, DURHAM**

**Applicant** : **NIGEL DAY**

**Respondent** : **DURHAM COUNTY COUNCIL**

**Type of Application** : **Appeal against decision not to grant a Temporary Exemption Notice, section 86 Housing Act 2004**

**Tribunal Members** : **Tribunal Judge A M Davies  
Tribunal Member N Swain FRICS**

**Date of Decision** : **16 November 2023**

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**DECISION**

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The Respondent's decision to refuse a Temporary Exemption Notice is reversed. The Respondent is directed to issue a Temporary Exemption Notice to the Applicant with effect from 19 April 2023.

### **REASONS**

1. The Applicant was the owner of 18 Gilbert Road, Peterlee until he completed the sale of the property on 29 June 2023. The property was let to his tenant Hayley Evans.
2. On 1 April 2022 the Respondent designated the area including the property as an area in which rented properties had to be licensed under the selective licensing provisions of Part 3 of the Housing Act 2004. The new scheme was extensively advertised in the Durham area, but the Applicant remained unaware of his obligation to apply for a licence.
3. The Respondent undertook a programme of writing to known landlords who had not made an application. They wrote to the Applicant on 8 March 2023 advising him of his obligation to apply either for a licence or for a temporary exemption notice. The Applicant applied for an exemption notice, which was refused on 19 April 2023. He applies to this Tribunal for a review of that refusal.

### **THE LAW**

4. Section 86 (1) of the Housing Act 2004 ("the Act") provides:  
"This section applies where a person having control of or managing a Part 3 house which is required to be licensed under this Part...but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed."
5. Section 86(7) provides that a person who has been refused a temporary exemption notice may appeal to this Tribunal against the decision. Such appeal is to be by way of re-hearing but may be determined having regard to matters of which the authority were unaware when their decision was made.

## THE HEARING

6. The application is dated 10 May 2023. It was heard by video link on 16 November 2023. The Applicant appeared in person. The Respondent was represented by its in-house solicitor Ms Swift. Mr Edmund Murphy, the Respondent's Housing Manager for the Selective Licensing Team, also attended to support his written statement dated 31 August 2023.

## THE APPLICANT'S CASE

7. Mr Day's evidence was not challenged. He explained that on receipt of the Respondent's letter dated 8 March 2023 he had carried out extensive research into the Respondent's selective licensing procedure. He had noted the terms of section 86(1) of the Act and reviewed the Respondent's website and the websites of other local authorities. On the Respondent's website he read the following advice: "EXEMPTIONS.... include:..... temporary exemption notices for up to three months if you decide to sell the property or live in it (you should apply for the temporary exemption notice through the same portal as applications at [[link to Apply for a temporary exemption notice](#)]".
8. At the time, he had agreed to sell the property to his son, who was the boyfriend of his tenant Ms Evans. As his son worked away from home a good deal their plans had not progressed quickly but once Mr Day had the Respondent's letter he told his son that they must proceed with the sale without delay. Mr Day junior already had funding for the purchase agreed in principle.
9. To make sure that he was doing the right thing, Mr Day telephoned the Respondent's Selective Licensing Team and was told to make either one application or the other as soon as possible. He explained that he did not have written evidence of the proposed sale, and was told that on receipt of his application the Respondent would write to him explaining what evidence was required. On 19 March he applied for a temporary exemption.
10. On 4 April the Respondent emailed Mr Day asking for more information; specifically (a) had notice been served on the tenant, and (b) had he received any documentation regarding the sale. The Respondent asked for copies of these documents if they were available. Mr Day replied on the same day that he had not served notice on the tenant but that she was aware of the sale and had indicated

verbally that she wished to terminate her tenancy agreement. He sent a copy of a letter from his solicitor confirming instructions to deal with a sale of the property and acknowledging receipt of costs on account. This letter did not contain any details of the proposed transaction.

11. On 19 April the application for temporary exemption was refused on the ground that “Evidence submitted does not demonstrate that the property has been sold or is pending completion. A selective licensing application is required.”
12. In his written application to the Tribunal, the Applicant outlined some of the above facts, but did not explain that the proposed sale was to his son or that the tenant was his son’s girlfriend. He also failed to mention that the arrangement he made with his son included a substantial financial gift from himself to facilitate the purchase. At the hearing, Mr Murphy told the Tribunal that if these facts had been known in April 2023, the Respondent might have made a different decision regarding the temporary extension.

#### THE RESPONDENT’S CASE

13. The Respondent accepted that between 2 May and 1 July 2023 the guidance provided on its website had been changed. The temporary exemption requirement quoted at paragraph 7 above was amended to read: “EXEMPTIONS...include: .....temporary exemption notices for up to three months if the property is in the process of being sold and there are signed contracts for exchange (within the next three months), or the landlord has given the tenant notice to quit and the end date is within the next three months and after this time the landlord will no longer let the property as a rented property....”. Ms Swift said that this change was for clarity only and did not alter the content of the guidance. The Tribunal does not accept this. Mr Murphy said that the website gave guidance only and the May 2023 version could not be relied upon by applicants, who had to provide the evidence requested from them once their applications had been received. The Tribunal does not accept this either: it would mean that an applicant must apply for a temporary exemption without having any idea what evidence would be demanded of him or whether he could provide it.

14. There was a discussion regarding a telephone conversation recorded by Mr Murphy's department when it was said that the Respondent's officer had telephoned Mr Day to provide advice about obtaining possession of the property from Ms Evans. Mr Murphy could not give any further detail, or provide a copy of the note his colleague was said to have made at the time. Mr Day denied seeking advice as to how to obtain possession of the property, but explained that he and Ms Evans had signed an agreed "Notice to Quit" in order to satisfy the requirements of his son's mortgage provider. In any event, these events post-dated 19 April, and Mr Murphy confirmed that they would have had no effect on the decision to refuse a temporary exemption.
15. The Respondent's case remained that on the basis of the knowledge it had at the time, a temporary exemption notice was inappropriate, because Mr Day could not provide written evidence that within 3 months the property would no longer be licensable.

## CONCLUSION

16. With the benefit of evidence provided in the hearing bundle and at the hearing, the Tribunal finds that when he applied for a temporary exemption notice the Applicant had a fixed intention to sell the property as soon as possible to his son, and that that intention satisfied both section 86(1) and the published requirements of the Respondent at the time. The Applicant was entitled to rely on the requirements as set out in the guidance for landlords on the Respondent's website. The Applicant is to be granted a temporary exemption notice taking effect from the date of the Respondent's decision, 19 April 2023.

**Tribunal Judge A M Davies**

**16 November 2023**