



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

Case Reference	: CHI/24UB/HMV/2023/0002/AW
Property	: 4 Freemantle Close, Oakridge, Basingstoke, Hampshire, RG21 4JH
Applicant	: Ms Jean Fisher
Representative	:
Respondent	: Basingstoke and Dean Borough Council
Representative	: Mr Lindsay Johnson of counsel
Type of Application	: Appeal against the Revocation of a Licence for a House in Multiple Occupation - Housing Act 2004
Tribunal members	: D Banfield FRICS (Chairman) Ms P Gravell K Ridgeway MRICS
Date and place of Hearing	: 14 November 2023 at Havant Justice Centre and remotely by Cloud Video Platform (CVP)
Date of Decision	: 20 November 2023

DECISION

The Revocation Notice dated 31 May 2023 is hereby revoked.

The Tribunal Orders the Respondent to reimburse the Applicant with the Tribunal fees totalling £300 within 28 days from the date of this Decision.

Background

1. The Applicant seeks to appeal against the Revocation of a Licence for a House in Multiple Occupation. The Notice is dated 31 May 2023. The Tribunal received the appeal on 26 June 2023.
2. The HMO Licence referred to was granted on 21 April 2022.
3. The Applicant set out comprehensive grounds of appeal in section 15 of the application form.
4. A copy of an 'acceptable behaviour contract' signed by the Landlord on 5 April 2023 has also been provided.
5. The Tribunal's directions of 19 September 2023 indicated that it considered that an oral hearing was necessary and this took place on 14 November 2023. The parties, their witnesses and representatives attended in person together with the Tribunal chairman. Ms Gravell and Mr Ridgeway attended remotely.
6. The Applicant had prepared a paginated main hearing bundle together with a separate bundle containing Mr Williams' evidence. Skeleton argument prepared by Mr Riccardo Calzavara of counsel on behalf of the Respondent had also been received.

The Hearing

7. The hearing was attended by the Applicant Mrs Jean Fisher together with her witness Mr Roger Charman. For the Respondent was Mr Lindsay Johnson of counsel, together with his instructing solicitor Ms Louise Misselbrook, Ms Zena Gallyer, Senior Housing Officer and Mr Chris Williams, Housing Standards team leader. Also present were Mr Steven Moroncini and Mr Glyn Watmore.
8. The Tribunal indicated that it would hear submissions on a preliminary issue helpfully identified in Mr Calzavara's skeleton argument. The issue raised was that the Council had not served a notice as required by the Housing Act 2004 Part 2 S.22 (a) stating that the authority were proposing to revoke the licence and seeking representations.
9. Mr Calzavara had referred to case law where a failure to comply with notice requirements had not proved fatal to the application and

concluded that the absence of any notice of the Council's intent to revoke the licence ought not to invalidate the said revocation.

10. Mr Johnson referred to the concerns communicated to the Applicant following Mr Williams visit to the property on 4 April 2023 and said that her meeting with the Council on 28 April 2023 had alerted her of the issues that were of concern which, in effect, was the purpose of the notice required by S.22(a). As such he considered that the case law referred to which mainly involved incomplete, rather than missing notices was relevant and the Tribunal should waive the requirement.

The Law

11. Housing Act 2004 Schedule 5, Part 2
 22. Before revoking a licence, the local housing authority must—
 - (a) serve a notice on the licence holder under this paragraph and each relevant person, and
 - (b) consider any representations made in accordance with the notice and not withdrawn
 23. The notice under paragraph 22 must state that the authority are proposing to revoke the licence and set out—
 - (a) the reasons for the revocation, and
 - (b) the end of the consultation period.

Decision

12. The Tribunal applauds Mr Calzavara for identifying the procedural error of failing to serve a notice. It has considered the various cases referred to carefully all of which are in respect of inadequate notices rather than where no notice whatsoever has been served and finds them of little assistance.
13. It considers that the reference to “must” referred to in S.22 above indicates the importance of providing a notice setting out in detail the authority's concerns. The hand written note following the visit on 4 April 2023 and the meeting on 28 April 2023 do not provide an adequate substitute.
14. **The Tribunal therefore determines that due to the Respondent's failure to serve a Notice in accordance with the Housing Act 2004 Part 2 S.22 (a) the Revocation Notice dated 31 May 2023 is hereby revoked.**

Costs

15. With regard to the reimbursement of the Tribunal's fees Mr Johnson opposes such an order on the grounds that the Respondent would be double penalised and that Tribunal proceedings should remain a cost free environment.
16. Ms Fisher said that she would welcome reimbursement on the grounds that, given the likelihood that the Council would serve another notice, she would have to pay further Tribunal fees in order to make a challenge.
17. If the Respondent had complied with the procedural requirement to serve a S.22 (a) notice both parties would have had the opportunity of arguing their respective cases before the Tribunal so that a reasoned decision could have been made. That opportunity has been lost due to the Respondent's omission and it may well be likely that the Applicant will be put to further expense. Whilst it may be more equitable for any future Tribunal fees to be met by the Respondent this Tribunal is not in a position to bind its successors.
18. **The Tribunal therefore Orders the Respondent to reimburse the Applicant with the Tribunal fees totalling £300 within 28 days from the date of this Decision.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.