



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

Case References : **BIR/00FY/HML/2023/0002-0004**

Subject Properties : **Apartments 1, 2, 3
1A Bulwer Road
Nottingham NG7 3HL**

Applicant : **Housing 35 Plus Limited**

Respondent : **Nottingham City Council
(Hazel Raynor)**

Type of Application : **Applications under paragraph 31(1) of
Schedule 5 to the Housing Act 2004 to
appeal against the terms of selective
licences**

Tribunal members : **Deputy Regional Judge Nigel Gravells
Mr Robert Chumley-Roberts MCIEH, JP**

Date of decision : **12 June 2024**

DECISION

Introduction

- 1 This is the decision of the Tribunal on appeals by the Appellant against conditions imposed in selective licences granted by the Respondent in relation to three properties owned/managed by the Applicant – Apartments 1, 2 and 3, 1A Bulwer Road, Nottingham NG7 3HL ('the subject properties').

Background

- 2 Housing 35 Plus Limited ('Housing 35') is a Co-operative Society registered under the Co-operative and Community Benefit Society Act 2014. It prioritises providing housing for single persons over the age of 35 who might otherwise be homeless. With no requirement of a deposit and, where prospective occupiers are in receipt of benefits, no rental payment in advance, Housing 35 provides accommodation for persons who might have difficulty in securing rented accommodation in the traditional private sector.
- 3 Housing 35 owns or manages a portfolio of more than 50 properties, which comprise a mixture of studios and bedsits with communal kitchens and bathrooms.
- 4 The subject properties are located in an area of Nottingham subject to a selective licensing scheme under Part 3 of the Housing Act 2004 ('the 2004 Act').
- 5 On 12 November 2021 the Applicant applied for selective licences for the subject properties. On 16 November 2021 the Respondent issued draft licences with its standard conditions and invited representations. However, in the light of some concerns raised internally in relation to the fit and proper person status of the Applicant, the applications were put on hold pending further investigation. On 5 July 2023 the applications were taken off hold.
- 6 In the meantime, the Applicant had questioned various conditions in licences for other properties owned/managed by the Applicant. The Respondent reviewed its standard conditions and decided to modify the conditions in the licences for those properties and the subject properties.
- 7 However, on 1 August 2023 the Applicant applied to the First-tier Tribunal to appeal against the conditions in the modified licences for the subject properties.
- 8 An oral hearing was scheduled for 7 May 2024. However, following discussion between the parties, there remained just one outstanding condition on which the parties failed to reach agreement; and, at the parties' request, the Tribunal agreed to determine the application on the papers and without an oral hearing.
- 9 In accordance with paragraphs 31(1)(b) 34(1) of Schedule 5 to the 2004 Act, the appeals are by way of a re-hearing and may be determined having regard to matters of which the Respondent was unaware.

Statutory regime

- 10 Part 3 of the 2004 Act sets out the framework for licensing private rented properties in a local housing authority area. Under section 80 a local housing authority can designate the whole or any part or parts of its area as subject to selective licensing. Where a selective licensing designation is made, it applies to privately rented housing in the area. Subject to certain exemptions, all properties in the private rented sector which are let or occupied under a licence, are required to be licensed by the local housing authority, unless the property is a HMO and is required to be licensed under Part 2 of the 2004 Act.

- 11 Where a property owner applies for a licence under Part 3, the local housing authority must be satisfied (i) that the proposed licence holder is a fit and proper person (and the most appropriate person) to be the licence holder, (ii) that the proposed manager of the property is a fit and proper person to be manager and (iii) that the proposed management arrangements are otherwise satisfactory.
- 12 The licence may include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the property concerned.

The licence condition in dispute

- 13 As indicated above there is only one outstanding matter that remains in dispute between the parties. That matter relates to condition 10 of the licences for each of the subject properties.
- 14 Condition 10 provides –
The Licence Holder shall have in place a maintenance and repair process that ensures that service requests for repair and maintenance can be raised by Tenants. Any such requests should be addressed as soon as is reasonably practicable with Tenants being kept informed of the status of their service requests and timescales for completion. The Licence Holder shall produce to the Council, records relating to repair and maintenance service requests on demand within 28 days of a request.

Representations of the parties

- 15 The Applicant's representations are set out in paragraphs 3-4 of its Statement of Case, which state –
'(3) The Applicant challenges the Respondent's construction of Condition 10 as set out in paragraphs 42-44 of the Respondent's Statement of Case. The Respondent appears to adopt a generic interpretation of the expression 'as soon as reasonably practicable.' However, on objective analysis of the standard prescribed by this condition, it becomes apparent that the repair obligations imposed upon the Applicant exceed the reasonable expectations for a landlord of similar standing. The use of the phrase 'as soon as reasonably practicable' implies an inherent urgency, resulting in an unduly onerous and unreasonable repair obligation. This acknowledgment by the Respondent in Condition 3, emphasises the disproportionate nature of the repair obligation. The current construction of the condition mandates the Applicant to address non-disruptive and non-hazardous faults with the same urgency as the removal of potentially hazardous equipment, which is both impractical and unreasonable.
(4) The Applicant reiterates the necessity for an amendment to Condition 10. Such amendment is essential to establish a standard that affords the Applicant the discretion to address repairs on a case-by-case basis, in line with the Respondent's own standards that differentiate between urgent and non-urgent repairs. The Applicant seeks a standard that allows for reasonable discretion and obliges the Applicant to act within a realistic timescale appropriate with the individual requirements of each reported repair.'
- 16 The Respondent's representations are set out in paragraphs 5-7 of its reply to the Applicant's Statement of Case, which state –

(5) The Applicant has stated that the expression, ‘as soon as reasonably practicable’ implies that there is an inherent urgency, resulting in an unduly onerous and unreasonable repair obligation. The Applicant’s interpretation of this wording is not accepted and our view on this is provided in our statement of case.

(6) The term ‘as soon reasonably practicably’ is used to not be prescriptive as it is intended to allow the Applicant to balance the risk, time and cost and allocate a proportionate timeframe for completing repairs. This does not require the Applicant to address all disrepairs with the same level of urgency.

(7) The Applicant has asked the Respondent to detail a standard that allows for reasonable discretion and to act in realistic timescale appropriate with the individual requirements of each reported repair. If the Respondent amended the Condition to detail timeframes for repairs, then the Condition will be prescriptive, more onerous, and not allow for the Applicant to assess each risk and outline a suitable and proportionate timeframe for each repair, which should be done in accordance with their own policy or procedures. Furthermore, the Applicant has not suggested their preferred wording to replace ‘as soon as reasonably practicable’.

Determination of the Tribunal

- 17 Since the Applicant referred (in paragraph (4) of its Statement of Case) to the Respondent’s own standards that differentiate between urgent and non-urgent repairs, the Tribunal directed the Respondent to provide a copy of its policy document setting out the timescales in which it, or its associated Registered Social Landlord, will carry out different types of repair to its own, or the associated Registered Social Landlord's, properties.
- 18 In response, the Respondent provided a copy of its policy document *Nottingham City Homes NCHP145 Responsive Repairs Procedure*.
- 19 The Respondent did so with some apparent reluctance since, in its view, the repairs policy for its housing stock as a registered social landlord has no bearing on licensing conditions that are imposed on landlords within the private rented sector.
- 20 It is not necessary for the Tribunal to express a view on that argument. The reason for referring to the policy document is that it sets out timescales (in paragraph 4.4.2) for carrying out different categories of repairs (defined in paragraphs 4.5 and 4.7), which, in the view of the Tribunal, would be no less appropriate in the private rented sector.
- 21 The Respondent argued that the inclusion of such timescales would render Condition 10 more prescriptive – and potentially more onerous for the Applicant – but the Applicant clearly expressed a preference for prescription over what it perceives as the indiscriminating formulation of Condition 10 proposed by the Respondent.
- 22 In the view of the Tribunal, there is no good reason for denying the Applicant its preference for a formulation that would in no way undermine or compromise the Respondent’s statutory function of ensuring effective regulation of the management, use and occupation of the Applicant’s properties.

- 23 Moreover, the more detailed formulation may be seen to reduce uncertainty in assessing potential offences of failure to comply with licence conditions, contrary to section 95(2)(b) of the 2004 Act.
- 24 The Tribunal therefore directs that the licences granted to the Applicant in respect of the subject properties be amended by deleting Condition 10 as originally imposed by the Respondent and substituting the following Condition 10 –
- 10.1 The Licence Holder shall have in place a maintenance and repair process that ensures that service requests for repair and maintenance can be raised by Tenants.*
- 10.2 Any such requests should be addressed as soon as is reasonably practicable with Tenants being kept informed of the status of their service requests and timescales for completion.*
- 10.3 By way of guidance for the Licence Holder, target timescales for responding to and completing categories of repairs are as follows –*
- 10.3.1 Emergency repairs (repairs which need to be carried out to avoid serious danger to health and safety or where a failure to carry out the repair could cause extensive damage to buildings and property): attend and make safe within four hours and complete within three working days.*
- 10.3.2 Priority repairs (repairs which are non-urgent repairs, although they may cause inconvenience to Tenants and lawful visitors): attend and complete within 30 working days.*
- 10.4 The Licence Holder shall, within 28 days of a request, produce to the Council records relating to repair and maintenance service requests raised by Tenants.*

Appeal

- 25 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 26 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 27 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 28 The application for permission to appeal must state the grounds of appeal and the result the party making the application is seeking.

12 June 2024

Professor Nigel P Gravells
Deputy Regional Judge