



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

Case reference : **BIR/00CN/HMT/2024/0001**

Property : **104 College Road, Moseley, Birmingham
B13 9LP**

Applicant : **Mohammed Dhan Ali**

Representative : **None**

Respondent : **Birmingham City Council**

Representative : **Legal & Governance Dept, Birmingham
City Council**

Type of application : **Appeal against refusal to grant a
temporary exemption notice under
section 86 Housing Act 2004**

Tribunal member : **Judge C Goodall
Mr W Jones FRICS**

**Date and place of
hearing** : **Paper determination**

Date of decision : **21 June 2024**

DECISION

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Background

1. The Applicant is the owner of 104 College St in Birmingham (“the Property”). According to the latest information available to the Tribunal, it is currently tenanted.
2. On 1 March 2023, Birmingham City Council (“the Council”) made a selective licensing designation under section 84 Housing Act 2004 (“the Act”) the effect of which was that any house which was let under a tenancy or a licence (unless exempt) required to be licensed. The designation came into effect on 5 June 2023. The Property is in the area affected by this designation.
3. The Applicant did not apply for a licence. Failure to do so without reasonable excuse is an offence under section 95 of the Act.
4. The Applicant eventually became aware of the need to licence the Property (see below) because he had decided to sell it. He therefore applied to the Council for a Temporary Exemption Notice (“TEN”) on 22 February 2024.
5. The Council refused to grant a TEN on 29 February 2024.
6. The Applicant appealed that refusal on 7 March 2024, within the statutory time limit.
7. Both parties were directed to provide statements of case with supporting documents. The Tribunal directed that the application should be determined without an inspection and on the basis of the written documents provided unless either party asked for a hearing. Neither did so.
8. This decision is the Tribunal’s determination on the application with our reasons.

Law

9. TEN’s are governed by section 86 of the Act. If a person having control of or managing a house which is required to be licensed but is not so licensed notifies the local authority of his intention “to take particular steps with a view to securing that the house is no longer required to be licensed”, the Council have a discretion to grant a TEN. The house will then not be required to be licensed for the period for which the TEN is granted.
10. A TEN lasts for 3 months. A second application for a further 3 months can be made.
11. There is a right of appeal against a decision not to grant a TEN. This is provided in subsections (7), (8), and (9) of section 86, which provide:

- (7) The person concerned may appeal to the appropriate tribunal against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made.
- (8) Such an appeal—
 - (a) is to be by way of a re-hearing, but
 - (b) may be determined having regard to matters of which the authority were unaware.
- (9) The tribunal—
 - (a) may confirm or reverse the decision of the authority, and
 - (b) if it reverses the decision, must direct the authority to issue a temporary exemption notice with effect from such date as the tribunal directs.
- 12. Under the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2019, a notice under section 21 of the Housing Act 1988 to terminate a residential tenancy cannot be given if a property requires a licence but is unlicensed,

The Applicant's case

- 13. There are two important components of the Applicant's case, being (a) the reason why he did not apply for a licence, and (b) his decision to sell the Property and the obstacles he encountered.

No application for a licence

- 14. The Applicant says that he was aware of the existence of the selective licensing scheme, but did not become aware of it until September – October 2023. At that point he checked the Council's website and noted (correctly) that Moseley was not a designated ward affected by the selective licensing designation. He therefore did not believe the Property was affected by the designation.
- 15. Documents submitted with his statement of case included a statement from his mortgage provider and an EPC prepared in June 2016. Both of these documents gave the property address as "104 College Road, Moseley".
- 16. The Tribunal has noted that the Royal Mail website appears to identify the correct postal address of the Property as 104 College Rd, Moseley , Birmingham B13 9LP.

The decision to sell

- 17. The timing of the Applicant's decision to sell has not been made entirely clear, but it would appear to have been in late 2023 or early 2024. The decision was prompted by changes in mortgage interest rates and the cost

of living pressures. The evidence before us is that the Applicant's mortgage payments on the Property increased from £383.42 per month in January 2023, to £1,217.86 per month in December of that year.

18. The Applicant explained that he arranged for his tenants to be served with notice to quit (in the form of a section 21 notice under the Housing Act 1988) so that he could sell the Property. The tenants took advice and were informed that the section 21 notice served upon them was invalid as the Property required a licence and was unlicensed.

The application for a TEN

19. The Applicant then consulted the Council's website and noted that an application for a TEN could be made if the owner wished to sell a property. He noted that applying for a licence (which normally lasts for a 5 year period) would cost £700.00 which he considered was a lot of money and was unnecessary as the Property was to be sold.

The Council's case

20. The Council's case is essentially that the Property should already have been licensed as from June 2023, and there is no proper basis for granting a TEN when the Applicant has been committing an offence under section 95 for a period of eight months prior to applying for the TEN.
21. The Council argue that a significant factor in support of their decision not to grant a TEN is that the Property was not even on the market at the time of the application.
22. They also make the point that the Act only provides for the possibility of two TENs being granted, which would not last for longer than six months, and it was doubtful that the Property would have been sold within that time period.
23. As to the Applicant's assertion that he thought the Property was in Moseley, the Council have provided ward maps showing that it is in the Sparkhill ward, and previously was in the Springhill ward, but had never been in Moseley ward. The Applicant was simply wrong in his belief.
24. On publication of the Selective Licensing Designation, the Council provided evidence to show there had been consultation events, press releases, direct email to landlord's associations, and leaflet drops in November 2021 (125,000 leaflets) and further advertising after the launch of the scheme including a 475,000 leaflet drop in November 2023.
25. There is also evidence of the existence of a postcode checker facility on the Council's website which can be used to ascertain whether a property is within the designated selective licensing area.
26. The Council seeks to persuade the Tribunal to uphold its decision.

Discussion

27. The Tribunal has to decide afresh whether a TEN should be granted in the circumstances of this appeal. It should give weight to the Council's decision but is not bound by it.
28. A crucial factor, in our view, is our assessment of the Applicant's reasons for failure to apply for a selective licence on or after 5 June 2023. Our experience (which we are entitled to take into account) is that there are always some landlords who are not aware of the existence of schemes from the date they are brought into effect, for a whole variety of reasons, some of which are good and some of which are bad.
29. The Council do not have direct access to every landlord and by definition have to rely on passive communication for the scheme to become well known. Indeed, we consider that the Council must have accepted this, as otherwise it would not have considered it necessary or useful to carry out awareness campaigns after June 2023. We accept as likely, on the balance of probabilities, that the Applicant did not become aware of the scheme until September or October 2023, as he said.
30. At that point, he checked the scheme and realised that it did not apply in Moseley. He is correct in that assertion: it doesn't. However, on the basis of the ward boundary evidence provided by the Council, the Property is in fact in Sparkhill, not Moseley.
31. There are substantial grounds for accepting the Applicant's belief that he thought the Property was in Moseley. We noted above the addresses that were used in correspondence provided by the Applicant which confirmed that the property address used was "Moseley".
32. Respectfully, we do not accept that a reasonable landlord would know, or realise the importance of finding out, the exact ward boundary line affecting his or her property. We note that Moseley adjoins Sparkhill to the west, and the distance to the Moseley ward boundary from the Property is fairly short. We see that Moseley School is to the south east of the Property and even further in to Sparkhill than the Property.
33. Even the Council, though no doubt inadvertently, has used the Moseley address for the Property in its Statement of Case.
34. These facts are important because they cast doubt on whether the Applicant has in fact committed an offence under section 95 of the Act. It is not beyond the bounds of possibility that the Applicant's belief that the Property was in Moseley, if it were accepted by a court or a Tribunal as being a reasonable belief, might be accepted as a defence to a section 95 charge.
35. On an appeal against a refusal to grant a TEN, the Tribunal is not required to determine whether an offence has been committed. Our view is that we cannot accept the Council's submission that we should work on the basis

that an offence is made out. It may have been, or it may not. The question is not before us. We therefore approach our task in this case on the basis that it is not established that the Applicant committed any offence prior to his application for a TEN.

36. That being the case, we need to turn to the question of whether the Applicant made out a good case for the grant of a TEN in any event. We note that intention to sell is a specific example of a circumstance in which a TEN might be granted. Prima facie therefore, this would be a good example of the proper use of a TEN.
37. What should we make of the Applicant's failure to market the Property prior to the application for a TEN, which the Council submitted was relevant to its decision.
38. It seems to us that the Council have not fully comprehended that the barrier to marketing the Property is lack of vacant possession. There are no grounds in section 8 of the Housing Act 1988 allowing a landlord to regain possession if he wishes to sell. The only available procedure is to serve a section 21 notice, but the Applicant was unable to do that as there was no licence.
39. Our view is that in this circumstance the Applicant did exactly the right thing in applying for a TEN. We consider that requiring him to apply for a five year licence instead where his whole aim is to **cease** the need for a licence is too heavy handed.
40. We should say that it is not open to the Council or the Tribunal to criticise or challenge the Applicant's decision to sell the Property. The only way to sell without imposing a large and unnecessary additional cost upon the Applicant is to grant a TEN. This will then allow a valid section 21 notice to be issued, and vacant possession then to be obtained.
41. The potential time it will take to sell the Property, and whether that can be achieved within six months, is irrelevant to the grant of a TEN. It is the securing of vacant possession that needs to be achieved, not the completion of a sale.

Decision

42. Taking the above into account, our determination is that a TEN should be granted to the Applicant as requested in his application dated 22 February 2024. We direct the Council to issue the TEN with effect from the date of this decision.

Appeal

43. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days

of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)