



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

**Case Reference** : **BIR/00CQ/HMV/2022/0002**

**HMCTS code  
(paper, video,  
audio)** : **Remote Video Hearing**

**Property** : **139 Charter Avenue, Coventry, CV4 8EP**

**Applicant** : **Mr Muhammed Hussain**

**Representative** : **Mr Samir Amin, Counsel**

**Respondent** : **Coventry City Council**

**Representative** : **Ms Dagmara Kwiatkowska**

**Type of  
Application** : **Application to appeal against a decision  
to revoke or vary a licence under  
paragraph 32(1), Schedule 5, Part3,  
Housing Act 2004**

**Tribunal Members** : **Judge C Payne  
Mr A McMurdo MCIEH**

**Date of Hearing** : **4 December 2023**

**Date of Decision** : **22 August 2024**

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**DECISION**

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## **Decision of the Tribunal**

1. The Application is dismissed. The Respondent's decision to grant a Licence for a period of 18 months from 1 October 2021 to 31 March 2023 is upheld.

## **Introduction**

1. The Applicant, Mr Hussain, submitted an appeal under paragraph 32(1) of Schedule 5, Part 3 of the Housing Act 2004 ("the Act") against the Respondent's decision to issue a Licence for 139 Charter Avenue, Coventry on 7 November 2022 for 18 months, rather than the maximum 5 years requested. The Tribunal determined on 12 May 2023 that this application was made in good time. Directions were given to prepare for a virtual hearing of the case, which took place on 4 December 2023.

## **Parties Submissions**

2. The Applicant has been a professional landlord since 2009. He advised the Tribunal that he is a portfolio landlord owning and managing different asset classes across the country, including shops, multi-unit buildings, self-contained flats and a portfolio of HMO properties in Coventry that are used for student accommodation, which range from 5-8 bedrooms. He worked in the Banking and Buy-to-let industry for several years before becoming a landlord and has a qualification in Residential Letting and Property Management from the Association of Residential Letting Agents.
3. The Applicant objects to his Accreditation under the Coventry Landlord Accreditation Scheme (CLAS) being revoked and the HMO licences he is now being granted on this Property and others being for terms less than the maximum 5-year period.
4. In the summer of 2019, the Property was let to five students. One of the students dropped out and four moved in during September 2019. The Applicant advised the Tribunal that over Christmas 2019, the students returned home and, because of the Covid 19 Pandemic, only one returned to occupy the property between January and March 2020. The property then sat vacant until September 2020.
5. The Property was inspected on 5 February 2020. The Respondent was informed the Property was let to 5 students during that inspection and informed the Applicant of the need to obtain a licence.
6. In May 2020 the Applicant, having not applied for a licence, advised the Respondent that the Property was empty. In an email dated 18 May

2020, the Applicant was clearly advised by the Respondent that he would require a licence before letting the Property out again.

7. In September 2020 the Property was let to a second group of 5 students, without a licence having been obtained. The Applicant submitted that there was a dispute as to whether one of the students was moving in or not, which was resolved on 10 October 2020.
8. On 1 November 2020 the Applicant made an application for an HMO licence for the Property. There were some issues with the application submission as the payment was received but not the application form and documentation. The Applicant emailed the Respondent upon making the application to say he had not received a confirmation email. The Respondent called him the same day to confirm the fee had been received but not the application documentation and asked for it to be resubmitted. At the time he received the call, the Applicant was at the airport embarking on a trip abroad and was unable to immediately resend the paperwork.
9. The Applicant attended training to become CLAS accredited on 16 November 2020. His CLAS certificate was issued on 18 November 2020. This training included a module on the licencing process and criteria for 1-, 2- and 5-year licences to be granted.
10. On 26 December 2020 the Applicant submitted an application form with some of the necessary evidence appended. On 12 January 2021 the Respondent asked the Applicant to provide the missing Gas Certificate, EICR and Fire Safety Certificate for the Property, which had not been appended to the application form.
11. On 10 February 2021, the Applicant provided the Respondent with an up-to-date Gas Certificate and an out-of-date EICR, which had expired on 26 August 2018.
12. In March 2021 the students vacated the Property because of the ongoing Covid 19 Pandemic. The Property was then unoccupied until September 2021, when it was let to a third group of 5 students.
13. Towards the end of September 2021, the Applicant provided the remaining certificates for the Property and on 1 October 2021, the Respondent was able to check and mark the application as complete. The Respondent wrote to the Applicant advising him that an inspection would be required to complete the licencing process and that the proposed licence would be for a period of 1-year.
14. Upon receiving the notification on 1 October 2021, the Applicant immediately made a formal complaint to the Respondent regarding the proposed 1-year licence period. Stages 1 and 2 of the Respondent's

complaints procedure were completed. The complaint was not upheld. The Applicant was advised he could escalate his complaint to the Housing Ombudsman, which he did.

15. An inspection of the property took place on 6 April 2022, with the Respondent unable to access the first-floor rooms. The Respondent emailed the Applicant on 11 April 2022 requesting a further inspection. The Applicant expressed frustration at the need for a further inspection and requested that case be escalated, to which he received no response.
16. On 13 April 2022 the Applicant received a response from the Housing Ombudsman. His complaint was not upheld. He was advised he could appeal to the Tribunal regarding the terms of the Licence being granted.
17. On 19 April 2022 the Respondent unsuccessfully attempted to inspect the Property again.
18. On 7 July 2022 the Applicant's membership of the CLAS scheme was revoked. The reason given by the Respondent was that the Applicant no longer met the criteria to be CLAS accredited as a landlord. The Applicant had operated an unlicensed HMO and delayed in providing up to date safety certificates for a property he was letting.
19. On 31 August 2022 the Property was finally inspected by the Respondent's officers.
20. In September 2022 the fourth group of 5 students took up residence in the Property.
21. On 12 October 2022 the Notice of Intention to Grant a Licence was issued to the Applicant, proposing a licence period from 1 October 2021, when the application was completed, to 31 March 2023. The Notice invited representations from the Applicant in response by 2 November 2022. No representations were submitted by the Applicant.
22. On 7 November 2022 a Licence, along with a Notice of Decision to Grant a Licence, was issued to cover the period from 1 October 2021 to 31 March 2023. While the Respondent's policy stipulated a 1-year licence would be appropriate, the Licence was issued for 18 months to take into account the delay between the application for the Licence being completed and it being granted. The Notice advised the Applicant of the right to appeal to the First Tier Tribunal.
23. The Applicant made an application to the Tribunal on 30 November 2022 on the following basis:

- 23.1. It is unreasonable for the Respondent to sanction landlords for delays in providing information when there are delays in the administration of applications.
- 23.2. The application system is inadequate, does not make it clear what information is needed, and does not allow attachments to be uploaded and stored.
- 23.3. The guidance issued by the Respondent does not set out a specific time frame by which documents must be provided after an application has been made.
- 23.4. The Respondent does not process applications in the order received.
- 23.5. The Respondent's communication is unclear.
- 23.6. There have been unparticularised acts of discrimination, harassment and bullying by the Respondent against the Applicant and his tenants.
- 23.7. Access to the Property by the Respondent's representatives was forced and the notes of officers' visits are inaccurate.
- 23.8. The Respondent's complaints procedure is not independent.
- 23.9. The Respondent should have referred the Applicant to the Tribunal, rather than the Housing Ombudsman in their final response to the complaint.
24. The Respondent's submissions in response to these allegations are summarised as follows:
  - 24.1. The Applicant is a professional landlord and has received training on the Respondent's licencing process. He should be aware of the requirements for HMO licencing. The Applicant submitted the application form and some of the supporting documentation on 26 December 2020. It then took nine months for the up-to-date safety documentation to be provided. The EICR provided in February 2021 had expired in August 2018.
  - 24.2. The Applicant was able to submit an application form on 26 December 2020 and append some supporting documentation demonstrating that the system works. He was advised promptly in January 2021 that he still needed to provide a copy of a Gas Safety Certificate, EICR and Fire Safety Certificate. These should all have been

up to date and available at that time. He had no issues eventually emailing these documents to the Respondent's officer.

- 24.3. The supporting documents should be submitted with the application form. The application is not complete until all supporting documents are provided. Where they are not provided with the form, the Respondent requests any documents that are missing. A response to a request for missing documents should be attended to within a reasonable period, without the need for repeated reminders. Nine months is beyond what would be considered a reasonable period. The criteria for the granting of 1-, 2- and 5-year licence includes criteria concerning the prompt and proactive provision of documentation. The Applicant was made aware of these criteria in November 2020 when he undertook the CLAS training.
- 24.4. There is no obligation for the Respondent to process applications in the order received. It is not possible to book in an inspection with the next available officer until the completed application, including all necessary supporting documentation, has been received.
- 24.5. The Applicant was expressly told he required a licence for the Property in February 2020. He was given information about applying. He received training through the CLAS Scheme on the process in November 2020. After making his submission, the Applicant was told which 3 certificates were needed to complete his application in January 2021. The Ombudsman is the correct independent body to whom a complaint can be escalated where there is dissatisfaction with the findings of the internal complaints handling process. The Council's notice granting the licence clearly advised the Applicant of his right to appeal to the Tribunal.
- 24.6. The purported acts of discrimination, harassment or bullying by the Respondent against the Applicant or his tenants has not been particularised or evidenced.
- 24.7. The Respondent's representatives were let into the Property by the tenants and did not use force to gain entry for inspection. The Respondent has clear rights to inspect the Property. There is no evidence to suggest any of the officers' notes are inaccurate.
- 24.8. The Respondent followed the two stage internal complaints procedure, which is based on best practice, and correctly informed the Applicant of the right to escalate the complaint to the independent Housing Ombudsman.
- 24.9. In the Notice of Decision to Grant a Licence dated 7 November 2022, the Applicant was appropriately advised of the right to appeal

under Part 3, Schedule 5 of the Housing Act 2004 to the First Tier Tribunal, which he has subsequently done.

25. The Respondent drew the Tribunal's attention to Section 68(4) of the Act which states that the licence period may not exceed 5 years. The Respondent noted the case of *Waltham v Khan* [2017] UKUT 153 and submitted that the term of each licence granted is at the discretion of the Respondent, with the maximum period being 5 years, and acknowledged that the exercise of that discretion should be reasonable.
26. The Respondent provided the Tribunal with a copy of their HMO Licencing Policy, which sets out the criteria against which they exercise their discretion to grant landlords a 1-, 2- or 5-year licence.

## **The Law**

### **27. Housing Act 2004**

#### **Section 55 Licensing of HMOs to which this Part applies**

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO ...

#### **Section 61 Requirement for HMOs to be licensed**

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

#### **Section 68 Licences: General Requirements and Duration**

(1) A licence may not relate to more than one HMO.

(2) A licence may be granted before the time when it is required by virtue of this Part but, if so, the licence cannot come into force until that time.

(3) A licence—

(a) comes into force at the time that is specified in or determined under the licence for this purpose, and

(b) unless previously terminated by subsection (7) or revoked under section 70 or 70A, continues in force for the period that is so specified or determined.

(4) That period must not end more than 5 years after—

(a) the date on which the licence was granted, or

(b) if the licence was granted as mentioned in subsection (2), the date when the licence comes into force.

### **Section 72 Offences in relation to licensing of HMOs**

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

### **Paragraph 32(1), Schedule 5, Part 3 Right to appeal against decision or refusal to vary or revoke licence**

32(1) The licence holder or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority—

(a) to vary or revoke a licence, or

(b) to refuse to vary or revoke a licence.

### **Determination**

28. The Tribunal made the following findings of fact:

28.1. An application for a licence should have been made by the Applicant in the summer of 2019 when the intention to let the Property to 5 students first arose. Prior to granting a tenancy to 5 students, the Applicant should have ensured the appropriate licence was in place. The Applicant was advised of the need to apply for the licence in February 2020 and May 2020 he was told that he would need a licence before letting it to another group. The Applicant then failed to make an application again before the Property was let to the second group of students in September 2020. The Applicant did not complete an application for an HMO licence until the outstanding documentation was provided in September 2021. Up to that point he was committing an offence under Section 723 Housing Act 2004 when letting the property to groups of students.



- 28.2. The Applicant did not provide the necessary documentation with his application and was advised that he needed to provide up to date copies of the Gas Safety Certificate, EICR and Fire Safety Certificate in January 2021. These were not provided until September 2021. These documents should have been provided along with the application or promptly after the initial reminder. A nine-month delay is unreasonable. The property was without an up-to-date EICR certificate between August 2018 and September 2021, a delay which cannot fully be attributed to delays in securing contractors during the pandemic.
- 28.3. The Applicant was able to submit an application form on 26 December 2020, with some supporting documentation attached, demonstrating that the Respondent's system works, and it is possible to upload documents. The outstanding documents were sent by email. There was no issue with the Respondent's system that prevented the Applicant from making submissions. If there was any doubt in the Applicant's mind as to what was required from him to complete his application, this was clarified by the Respondent in January 2021 when an email was sent listing the 3 outstanding certificates that the Applicant needed to supply.
- 28.4. There is no time frame specified for providing the documentation as it should have been submitted with the application form. A professional landlord who had undertaken the CLAS training should have had all safety certificates for a property up to date and available to accompany the application form.
- 28.5. The Respondent's officers processed the application documents submitted on 26 December 2020 and contacted the Applicant regarding the missing certificates on 12 January 2021, which is not an unreasonable timeframe. The application process was started by the Applicant on 1 November 2020 but could not be marked complete and processed until 1 October 2021, the final piece of paperwork having been provided by the Applicant on 30 September 2021. Further delays then appear to be predominantly caused by the Applicant's refusal to cooperate with inspection requests.
- 28.6. From October 2021 to August 2022 attempts are made by the Respondent to arrange inspections. An inspection finally took place on 30 August 2022. There was then a delay of over a month in the Respondent issuing their decision until 12 October 2022. The Respondent could have been more proactive in moving on the Application process, but the predominant delay has been caused by the Applicant's actions. Any delay on the part of the Respondent, does not excuse the Applicant operating an HMO without a licence for a period of time, failing to provide safety certificates until nine months after making an application or failing to cooperate in facilitating inspection of the Property. At the point the Applicant started the application process he was already committing an offence and the defence under

Section 72(4) of the Housing Act 2004 was not available to him until he completed his application at the end of September 2021.

- 28.7. The Tribunal finds that the Applicant was clearly informed which documents were outstanding and of the right to make an appeal of the Licence terms to the Tribunal.
- 28.8. Having been provided with no detail of any particular act of discrimination, harassment or bullying by the Respondent against the Applicant or his tenants, this claim is dismissed.
- 28.9. The Applicant has not provided any details or supporting evidence to suggest that the Respondent's Officer forced entry to the Property or that they intimidated or caused any distress to the tenants. On the balance of probability, the Tribunal accepts the Respondent's evidence that they were invited into the Property by the tenants and permitted to complete their inspection without incident.
- 28.10. It is good practice for any complaint to be dealt with using a two-stage internal process, overseen by an independent staff member, with the officers concerned by the complaint involved in the investigation of and response to that complaint. The Housing Ombudsman is an independent body. The complaint was not upheld by the Ombudsman, who correctly noted that the Applicant still had the right to appeal to the Tribunal regarding the terms of the Licence.
- 28.11. The Respondent correctly referred the Applicant to the Ombudsman in respect of his complaint about their conduct and provided a clear notice advising the Applicant of his right to appeal to the Tribunal about the terms of the Licence when it was issued.
29. The Tribunal notes that the Respondent's policy allows for a wide range of reasons for which a licence may be limited to a 1-year term. These range from an applicant being 10 minutes late for an appointment to serious health and safety breaches. On the face of it, having these issues treated with equal weight could lead to disproportionate responses by the Respondent if too rigidly applied. More minor issues might be better dealt with by way of a warning or condition. The fact that an 18-month licence was granted, despite the application clearly meeting the criteria of a 1-year licence demonstrates that the policy is being administered with a degree of reasonable discretion and common sense being applied.
30. The Respondent has a discretion to award a licence of up to a maximum of 5 years. The question for the Tribunal is whether that discretion has been reasonably exercised. In this case, the Applicant delayed making the application for a licence, leaving the Property unlicensed for a period when it was operating as an HMO. He then failed to provide the necessary documentation with the application and required nine months

of reminders before it was finally provided. While some short delay during the pandemic may have been acceptable, the period of nine months constitutes an unreasonable delay. The EICR for the Property initially provided expired in 2018, which is well before the pandemic had any impact on the availability of contractors or ability to access properties. The Applicant also did not facilitate inspection of the Property promptly. These factors, when considered together, warrant the Respondent's decision to review the licence after 1-year, not least to ensure that the annual safety checks have been carried out in a timely manner. The Respondent made a decision consistent with the reasonable application of their published policy.

31. For the Applicant to meet the criteria for a 2-year licence, an application would need to have been made promptly Documents would have had to be provided either with the application or promptly after only the initial reminder and the Applicant would have had to cooperate promptly in facilitating the Respondent's inspection. The Applicant's actions do not meet these criteria.
32. For a 5-year licence to be granted the Applicant must meet more extensive criteria and be a current member of the CLAS scheme. The Applicant did not meet those criteria and was not a member of the CLAS Scheme at the time the Licence was granted. The CLAS Scheme requires landlord to follow best practice, proactively ensuring their properties are appropriately licenced and ensure that all relevant certification is up to date. The Applicant has been found to have been operating an HMO for a period without a licence and did not have up to date certification for the Property. As such the Respondent's decision to revoke his accreditation under the CLAS Scheme was reasonable as he was clearly not adhering the published criteria for membership.
33. Having considered the evidence and submissions, the Tribunal determines to uphold the Respondent's decision.

### **Rights of Appeal**

34. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
35. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
36. If the application is not made within the 28-day time limit, such application must include a request for extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look

at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

37. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Judge C Payne

Chairman

First-tier Tribunal (Property Chamber) (Residential Property)