



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

Case reference : **LON/OOBH/HML/2024/0056**

Property : **12 Ashville Road, London, E11 4DT**

Applicant : **Munir Ismail**

Representative : **Huw Shepherd**

Respondent : **London Borough of Waltham Forest**

Representative : **Alex Williams**

Type of application : **An appeal against a refusal to grant a license.**

Tribunal : **Judge Shepherd**
Louise Crane MCIEH

Date of Decision : **20th January 2025**

DECISION

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1. The Applicant owns the premises at 12 Ashville Road, London E11 4DT (“ The premises”) . The premises is a terraced house that has been divided into two flats: a ground floor flat (Flat A) and a first floor flat (Flat B). The premises falls within an area where the Respondent authority have chosen to impose a

selective license regime. The Applicant is appealing the Respondents' decisions not to issue a licence to either flat A or Flat B in the premises.

2. On 4 September 2020, the Applicant submitted a planning permission application to the Respondent in relation to Flat A. However, the Respondent refused this application on 2 February 2021. The Applicant subsequently appealed the refusal under section 78 of the Town and Country Planning Act 1990. A site visit was conducted on 13 September 2021, and the Planning Inspector dismissed the appeal on 4 October 2021.
3. On 8 November 2021, the Respondent issued an enforcement notice pursuant to the Town and Country Planning Act 1990. The enforcement notice was issued because the Respondent identified a breach of planning control under Section 171A(1)(a) of the Act at the land. They considered it necessary to issue this notice, taking into account the provisions of the development plan and other relevant planning considerations. The breach of planning concerned unauthorised works constructing an extension and raised garden at the premises.
4. On 1st September 2020 the Applicant made an application for planning permission in relation to Flat B concerning the construction of an L Shaped dormer roof extension. This was rejected by the Respondents on 6th November 2020. The Respondents served an enforcement notice on 8th November 2021. This was appealed and the appeal was dismissed on 19th May 2023.
5. The Applicant was previously granted a selective licence under the Housing Act 2004, Part 3, Section 88, for Selective Licensing of Other Residential Accommodation for the Property. The Respondent approved the Applicant's licence application for both flats for a limited period of one year in May 2022. The reason the license was limited was in order to enable the Applicant to vacate the premises by means of possession proceedings if necessary and to address the works required by the Enforcement notices.
6. Instead of doing either of these things the Applicant continued to pursue an appeal against the enforcement notices. The appeal was lodged but dismissed the appeal on 15 May 2023 (Flat A) and 19th May 2023 (Flat B).

7. It was only after receiving the decisions on the planning appeals that the Applicant turned his mind to vacating the premises. Possession was obtained against the tenant of Flat A but the other tenant remains in situ. We were told that a possession hearing is due to take place at the end of next month. It seems inevitable that the possession proceedings will be dismissed because the Applicant served the s.21 notice he relies on in those proceedings at a time when he did not have a license (s.98 Housing Act 2004). The tenancy of Flat B had been renewed following discussions with the Respondents' homelessness team who offered a financial incentive to the Applicant to extend the occupation.
8. On 29 April 2024, the Applicant received a Notice of Proposal to Refuse a Licence for a property situated in an area designated for Selective Licensing. The Applicant provided further representations and accompanying documents to the Respondent. On 11 June 2024, the Respondent declined to issue a licence for the Property due to the breach of planning regulations. This is the decision appealed.
9. In his appeal the Applicant essentially argued that the Respondents decision to refuse the license was unreasonable because they failed to take into account his reasonable efforts to vacate the premises and comply with the enforcement notices. The Respondent countered by stating that the Applicant had not taken reasonable steps at all in fact he had failed to pursue the possession proceedings until he had exhausted the planning appeals. He took a risk in doing this which was not a responsible thing to do. He also extended the occupation of Flat B following receipt of an incentive to do so and this was contrary to the ultimate goal of gaining vacant possession.

Determination

10. The Respondents told the Applicant why they were offering a reduced term license for 12 months on 23rd May 2022. They stated:

In determining this licence application, the Council has given due consideration to the fact that a breach of planning regulation has occurred regarding the First Floor Flat, 12 Ashville Road E11 4DT.

The building containing the above address has been constructed without planning permission, with the following works being undertaken:-

The installation of a rear L-shaped dormer extension, has occurred within the last 4 years and was erected without planning permission. In light of this breach of planning regulations, the Council considers that the licence relating to the above property should be granted for a reduced term.

In the event that it is decided to grant a licence for a reduced duration of one year, this will allow the landlord to legally rent the property whilst taking steps to regularise the use of the address – this will include, if necessary, the landlord being able to obtain possession of the property through the service of a s21 notice [Housing Act 1988] in order to bring about necessary changes in occupation or physical changes to the building.

In determining the length of any subsequent licence issued, the Council will take account of the extent to which the landlord complies with their legal obligations, including those related to the resolution of the identified planning breach that resulted in a reduced term property licence. In the event that the landlord was not able to demonstrate that they had taken all possible steps to comply, then it is unlikely that the Council would grant a new licence upon expiry of any granted shorter term licence.

11. This was an entirely reasonable stance to take in circumstances where there were clear planning breaches. Indeed it was an approach which complied with the Respondents' own policy and the guidance given by Martin Rodger KC in the case of *Waltham Forest v Khan* [2017] UKUT 153. Instead of taking practical steps to address the breaches by firstly obtaining possession of the premises and secondly carrying out the works required by the enforcement notices the Applicant chose to pursue the appeals against enforcement. Some criticism can be levelled at the Respondents' homelessness department for offering an incentive to maintain the occupation of the tenant of Flat B but this is perhaps understandable when there is a homelessness crisis and they may not have been aware of the action of other departments. In any event it was for the Applicant to reject the incentive offer and get on with seeking to legalise the premises in the planning sense. The Applicant's failure to act during the window offered by the short license period has meant that he is now in a "Catch 22" where he can't get possession of Flat B without a license.
12. The Applicant's failure to act when he was given an opportunity to do so by the Respondent displays a level of arrogance which was in the context of his failure to obtain planning permission before carrying out extensive works. We reject the proposition that the Applicant behaved reasonably and therefore we also reject the argument that the Respondents failed to take this reasonable conduct into account.
13. In summary the appeal is dismissed. It is ultimately for the Respondents to decide if they want to assist the Applicant in extrapolating himself from the "Catch 22" position he is currently in. We canvassed the idea of a Temporary Exemption Notice. Apparently, this had already been considered and it had

been decided not to pursue that route. In the circumstances we can't criticise the Respondent in this regard.

Judge Shepherd

20th January 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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.

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 for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).