



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

Case reference : **LON/00BA/HMV/2025/0003.**

Property : **43 Elm Court, Armfield Crescent,
Mitcham, CR4 2JU**

Applicant : **Mark Dawson.**

Representative : **In person.**

Respondent/Council : **London Borough of Merton.**

Representative : **Ms Camille Richards (Counsel)**

Type of application : **Appeal against the refusal by the respondent
local authority to vary a selective licence under
Schedule 5 Paragraph 32(1) Housing Act 2004.**

Tribunal : **Tribunal Judge N O'Brien
Tribunal Member F Macleod MCIEH**

**Date of
Determination** : **3 November 2025**

DECISION

- (1) The tribunal having no jurisdiction to hear this appeal, the appeal is struck out pursuant to Rule 9(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
- (2) The Respondent must reimburse the Appellant in respect of the hearing fee of £227
- (3) The above sum must be paid within 28 days of today.

BACKGROUND

1. Mr Dawson is the leasehold owner of the subject property which is located in an area which the Respondent has designated a selective licencing area pursuant to s.80 of the Housing Act 2004. This requires all privately let accommodation within that area to be licenced pursuant to the Respondent's selective licencing scheme.
2. Mr Dawson applied for a licence under the Respondent's selective licencing scheme. On 27 January 2025 the Respondent sent the Applicant a notice of intention to grant him a licence which included a draft licence with a number of conditions attached. Mr Dawson objected to a number of the proposed conditions, and on 31 January the Respondent indicated that the proposed conditions would not be revised as they accorded with the guidelines which had been adopted by the Respondent. On 31 January 2025 Mr Dawson wrote to the Respondent indicating that he was dissatisfied with the council's response and stated '*I reserve my right to appeal to the First-tier Tribunal (Property Chamber)*'. On 3 February 2025 a Mr Gregory Allen, team leader of the Respondent's Licencing Team emailed Mr Dawson confirming again that the Respondent would not alter any of the terms of the draft licence. He stated '*should you wish to still escalate your concerns with the First-tier Tribunal, please inform us so that we can make of note of this on your respective case file and await the outcome*'. To date the Respondent has not issued any licence.
3. On 10 February 2025 the tribunal received an appeal from Mr Dawson brought pursuant to paragraph 32 of Part 3 of Schedule 5 to the Housing Act 2004 against the refusal by the Respondent to vary the conditions attached to the draft Selective Licence in respect of the subject property.
4. On 15 April 2025 the tribunal notified the Respondent of the appeal and sent the Respondent a copy of Mr Dawson's application. Directions were issued on 23 May 2025 and the matter was set down for a final hearing on 3 November 2025.
5. Pursuant to the directions the Respondent filed a statement of case dated 8 August 2025 in which it asserted that the Tribunal had no jurisdiction to consider the appeal due to the fact that it had been issued prematurely and no licence had yet been issued.

The Hearing

6. Mr Dawson attended the hearing in person. The Respondent was represented by Ms Camille Richards of counsel.
7. At the start of the hearing we notified Mr Dawson that Ms Macleod knew the Respondent's witness, a Ms Bhamini Patel, because they had worked

together in the London Borough of Wandsworth in the 90's. Mr Dawson indicated that he had no objection to Ms Macleod sitting as a panel member.

8. At the start of the hearing we indicated that we would first consider the issue raised by the Respondent regarding the tribunal's jurisdiction to hear this appeal.

Legal Framework

9. Paragraph 31 of Schedule 5 to the Housing Act 2004 provides that an applicant or any relevant person may appeal to the First-Tier Tribunal against a decision by the local housing authority to either refuse to grant a licence or to grant the licence. Paragraph 32 of Schedule 5 to the Housing Act 2005 provides that a licence holder or any relevant person may apply to the FTT against the decision of the local authority to refuse to vary or vary a licence it has granted.

The Parties Submissions

10. Mr Dawson considered that the fact that the Respondent had written to him to say that it would not consider varying the terms of the conditions it intended to impose on the licence meant that the decision to apply the conditions had already been taken and thus could be appealed under paragraph 32 of Schedule 5. He drew our attention to the fact that Mr Allen had informed him that he would await the outcome of this appeal before further processing his licence application and thus he could not appeal the conditions to be attached to a granted licence until this matter is resolved. Ms Richards argued that the application was premature. The licence has not been granted and so does not yet exist and furthermore Mr Dawson is not yet a licence holder and so is not a person who can bring an appeal under para 32 of Schedule 5. She drew our attention to the fact that there is no provision for appeal to be brought against the content of a notice of intention to grant a licence which the Respondent was required to send to the Appellant by virtue of paragraphs 1 to 4 of Schedule 5.

Our Decision

11. We consider that the Respondent is correct and that this appeal has been brought prematurely. Appeals under Schedule 5 can only be brought in respect of a local housing authority's decision to issue, or not issue, a licence or to apply conditions to a licence that it has granted. It is unfortunate that Mr Allen did not inform the Appellant at a much earlier stage that any appeal brought against the proposed draft licence conditions would be premature and even more unfortunate that Mr Allen informed Mr Dawson that it would await the outcome of his appeal before processing his application notwithstanding the fact that he knew, or ought to have known that an appeal can only be brought to the First-

tier Tribunal in relation to conditions attached to a licence which has been issued.

12. It follows that the tribunal does not have jurisdiction to consider the appeal and that it must be struck out pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
13. In his reply to the Respondent's statement of case Mr Dawson has made an application for the reimbursement of the fees he paid in respect of these proceedings, being the initial fee of £110 and the hearing fee of £227 which he paid on 5 July 2025.
14. We acknowledge that it would be unusual for a Respondent to be ordered to pay fees in circumstances where an appeal has been struck out for want of jurisdiction. However it should have been clear to the Respondent from the date that it received the application that this appeal had been brought prematurely. It is difficult to understand why they proceeded to prepare for a full hearing rather than raise the jurisdiction issue at an earlier stage. It is also difficult to understand why the Respondent effectively stayed Mr Dawson's application for a licence pending the determination of an appeal which they knew or ought to have known was brought prematurely.
15. Rule 3(3) of the Tribunal Procedure Rules requires the tribunal to have regard to the overriding objective, which includes the need to deal with cases in ways which are proportionate. Rule 3(4)(a) of the Tribunal Procedure Rules 2013 provides that the parties have a duty to help the tribunal to further the overriding objective. In our view the Respondent ought to have attempted to bring the jurisdiction issue to the attention of both the tribunal and the Applicant earlier than it did. Had they done so it might have avoided the need for this hearing. Consequently we will make an order for the reimbursement of fees, but in respect of the hearing fee only.

Name: Judge O'Brien

Date 3 November 2025

RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.