



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

Case Reference : **MAN/30UD/HMV/2018/0030**

Property : **14 Dall Street, Burnley, BB11 3LB**

Applicant : **Mr. Geoffrey Berg**

Respondent : **Burnley Borough Council**

Type of Application : **Schedule 5 paragraph 31(1) Housing Act 2004**

Tribunal Members : **Mr. John Murray LLB
Ms. Aisling Ramshaw MRICS**

Date of hearing : **16 May 2019**

Date of determination : **20 May 2019**

Date of decision : **28 May 2019**

Order

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1. The conditions of the Selective Licence granted by the Respondent to the Applicant in relation to 14 Dall Street Burnley BB11 3LB shall be varied in accordance with the Schedule attached to this Order.

APPLICATION

2. The Applicant issued an appeal to the Tribunal dated 7 November 2018 in response to the conditions attached to a Licence granted by the Respondent on 12 October 2018 under Part 3 of the Housing Act 2004 under a selective licensing scheme and in particular the following conditions:

(a) Condition 5:

- (a) If any person allowed by the Licence Holder to occupy the Property shall have been a tenant under a tenancy of any other property then, prior to that person being allowed to occupy the Property, the Licence Holder shall have obtained from that person formal identification and shall have taken reasonable steps to obtain a satisfactory written reference (or at least two satisfactory references in a case where such person has previously been a tenant of more than one other property). In requesting references from previous landlords, the licence holder or their nominated agent should request details of how that person conducted any such tenancy (or tenancies) in terms of causing nuisance, anti-social behaviour, payment of rent and any breaches of the tenancy agreement(s).
- (b) The reference(s) referred to in 5(a) above shall be in relation to the tenancy or, where the said person has previously been a tenant of more than one property, the two tenancies immediately preceding their occupation of the Property.
- (c) A copy of the said reference(s) must be provided to the Authority within 14 days of receiving a request to do so in writing by the Authority.

(b) Condition 6: The Licence Holder must ensure that there are management procedures in place to ensure the Property is free from disrepair.

(c) Condition 9: (Removed by the Respondent following the application being made)

(d) Condition 11: (Removed by the Respondent following the application being made)

(e) Condition 13: The Licence Holder (and their agent where an agent has been appointed) must attend one Landlord Development Day covering how to manage tenancies which the licence is in force and must undertake any additional Property management training

courses that the Authority from time to time requires to be undertaken. Alternatively demonstrate to the Local Authority that similar, relevant training has been undertaken within the preceding 12 months.

- (f) Condition 15: The Licence Holder and/or their Manager are required to visit the Property within three to six months of the commencement of the tenancy and thereafter annually. A record of these visits must be made available to the Authority on request.
- (g) Condition 18: The Licence Holder must not unreasonably cause or permit the water supply or drainage systems that is used by the occupiers of the Property to be interrupted.
- (h) Condition 19: The Licence Holder must not unreasonably cause or permit the gas or electricity supply that is used by the occupiers of the Property to be interrupted.
- (i) Condition 21: Where window locks are fitted, the Licence Holder must ensure that keys are provided to the occupant.
- (j) Condition 22: Where previous occupiers have not surrendered keys, the Licence Holder must arrange for a lock change to be undertaken, prior to new occupants moving in.
- (k) Condition 23: Where a burglar alarm is fitted to the Property, the Licence Holder will ensure the code is changed at the beginning of each new tenancy and that the occupant is informed of the new code.
- (l) Condition 29: (Removed by the Respondent following the application being made)
- (m) Condition 31: The Licence Holder must follow the correct legal process to end a tenancy ensuring that the required notice period is given.
- (n) Condition 32: The Licence Holder must provide to the Authority on demand a copy of any notices served by the Licence Holder and or their nominated representative ending a tenancy at the Property, and/or a copy of any notice given by the tenant ending a tenancy at the Property.

BACKGROUND

3. The Applicant is a landlord of a property at 14 Dall Street Burnley BB11 3LB (“the Property”).
4. The Respondent Local Authority has designated the area where the Property is situated a selective licensing area under s80 of the Housing Act 2004, and granted a licence to the Applicant with conditions attached.
5. Directions were made by a Judge of the First Tier Tribunal (Property Chamber) on 15 March 2019.
6. The Applicant was directed to provide a bundle of specified documentation and a statement in support of his appeal by 5 April 2019.
7. The Respondents were directed to provide documentation and a statement in response within 21 days of receipt of the Applicant’s documentation.
8. Directions were made as to the provision of bundles, and a date time and venue was to be notified to the parties in due course. No inspection of the Property by the Tribunal was considered necessary.

THE PROPERTY AND THE SELECTIVE LICENSING AREA

9. The Application stated that the Property is a two-bedroomed mid terraced house with lounge dining kitchen two bedrooms and fitted bathroom.
10. The Tribunal were told by the Respondent that the area in where the Property was situated, known as Burnley Wood and Healey Wood had been designated a selective licensing area by the Secretary of State, the designation coming into force on the 14th November 2016 for a five year period ending on 14th November 2021. The area covers 1421 properties, of which 33 percent are privately rented. It had satisfied the statutory designation criteria by being an area of low demand.
11. There was a higher level of empty properties, higher anti-social behaviour and crime, and higher turnover of tenants. The Respondent was endeavouring to reverse low demand by improving management practices in the area, using Compulsory Purchase Orders to reduce empty homes, and offering £20,000 interest free loan for accredited landlords to bring properties back into use. The Respondent sought to reduce anti-social behaviour and environmental crime in the area. Overall there are 6.5% empty properties in the Borough, within the ward 7.9%, and in the designated area where the Property is situated, 13.2%. The Tribunal were told that there was no challenge when the scheme was introduced in 2016.

THE LEGISLATION

11. The relevant legislation is contained in Part 3 of the Housing Act 2004 (“the Act”).

12. s90 Licence conditions

- (1) A licence may include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned.
- (2) Those conditions may, in particular, include (so far as appropriate in the circumstances)—
 - (a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
 - (b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house.
- (3) A licence may also include—
 - (a) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed for the purposes of this section by regulations made by the appropriate national authority;
 - (b) conditions requiring such facilities and equipment to be kept in repair and proper working order;
 - (c) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence.
- (4) A licence must include the conditions required by Schedule 4.
- (5) As regards the relationship between the authority’s power to impose conditions under this section and functions exercisable by them under or for the purposes of Part 1 (“Part 1 functions”)—
 - (a) the authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;

- (b) this does not, however, prevent the authority from imposing (in accordance with subsection (3)) licence conditions relating to the installation or maintenance of facilities or equipment within subsection (3)(a) above, even if the same result could be achieved by the exercise of Part 1 functions;
- (c) the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can be subsequently exercised by the authority.

(6) A licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person has consented to the imposition of the restrictions or obligations.

(7) A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any tenancy or licence under which any person occupies the house.

Appeals

13. Appeals are permitted by Schedule 5 of the Act, and by paragraph 31(1) the applicant may appeal to the Tribunal against a decision by the local housing authority on an application for a licence (a) to refuse to grant the licence, or (b) to grant the licence; an appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

CASE LAW REFERRED TO

14. Both parties referred to the Court of Appeal determination in *Brown v Hyndburn BC* [2018] EWCA Civ 242 wherein the Appeal Court had considered in detail the extent of the powers conferred on local housing authorities under Part 3 of the Housing Act 2004, and the interpretation of the statute. Within the decision the Court of Appeal provides authoritative guidance on the scope of the powers and how they should be exercised, analysing the distinctions between powers in relation to selective licensing regimes (s90) and the licensing of Houses in Multiple Occupation (HMOs) (s67).

THE HEARING

15. A Tribunal was convened and a hearing arranged at the SSCS Burnley Hearing Centre.
16. The Applicant, appeared in person, with witness Mr. Paul Brown, his letting agent. Mr Brown had also been the lead applicant in the case of *Brown v Hyndburn*. An observer Mr. Terefenko, an interested landlord, was also in attendance.

17. Mr. David Talbot, Senior Solicitor appeared for the Respondent Local Authority, along with the Respondent's witness, Ms. Claire Jackson, Private Sector Manager for the Council, and Ms. Lauren Dickens employee of the Respondent as an observer.

THE EVIDENCE AND SUBMISSIONS

18. In relation to each specific condition appealed, the submissions and evidence of each party, and the Tribunal determination were as follows:

19. Condition 5: References

(a) Applicant: The Applicant submitted that it was not normal or even common, but completely abnormal, to seek references from two landlords, and would in practice be difficult, if for example time had elapsed, or a landlord was untraceable, living overseas or knew little English. It would lead to delays in letting, leaving non-licensed areas at an even greater advantage, and detract from the benefits the Respondent was trying to achieve. He agreed with the Respondent's suggestion that Landlords may give false references, but did not think historical references were likely to improve that situation. He said he would not rely upon the Respondent to be "reasonable" and a time limit of at most two years should be imposed as to any past references sought. Relying on *Brown v Hyndburn* he further asserted that the conditions were not reasonable or practicable, contravening s90(2)(a).

The Applicant questioned how many tenants would be able to remember their previous tenancies.

Mr. Brown, as agent for the Applicant expressed his concern that breach of the conditions would render a landlord liable to criminal sanction, and if the scheme was too bureaucratic, and had too many "grey" areas, this would lead to uncertainty for both landlord and local authority officer. He said that in his experience, references were less important than property visits to applicant tenant's current homes, or careful personal vetting of applicants.

He said that he would not go beyond three years for a reference, and, would never seek two references.

He pointed out that houses in the selective licensing area are houses with no gardens, no parking, and will always be in low demand compared to other houses in the Borough, but there was a need for all manner of houses to be available to let in any market.

The Applicant produced a copy of the case report of R (Joint Council for the Welfare of Immigrants) and Secretary of State for the Home Department [2019] EWHC 452 Admin, whereby the Right to Rent scheme introduced in

the private rented sector under sections 20 - 37 were found to be discriminatory and incompatible with Article 14 of the European Convention for Human Rights, pursuant to Section 4 of the Human Rights Act 1998.

He wished to draw a parallel with that case, suggesting that the scheme was inherently discriminatory, would result in landlords not wanting to take tenants who had previously lived overseas or their landlords were overseas, and this would result in such tenants being discriminated against.

There would in reality be very little opportunity to ask for two references, and definitely not going back over two years, because a tenant would move on to another property, probably outside of the selective licensing area.

Some people would not respond to emails or have language barriers.

Mr. Talbot asked if Mr. Brown was aware of false references being given. Mr. Brown said that was not aware of it in the Burnley area, but had experienced it twice recently, receiving false references from Landlords who had then sought to withdraw them after he had granted tenancies. Despite this, he thought that references should be for limited time periods, such as twelve months. It was highly unlikely a landlord would give a poor reference for a tenant from several months or years ago, if they responded at all.

- (b) Respondent: The Respondent did not accept the Applicants' proposition that it was not normal for landlords to seek two references from previous landlords. The Respondent suggested that it would mitigate the risk of a false positive reference from a landlord keen to see his tenant move on to an alternative tenancy, and it was good management practice to secure a reference from a previous landlord with no vested interest in encouraging a tenant to vacate a property. They asserted that it was reasonable and practical and that the objections referred to by the Applicant (overseas, untraceable, language barriers) would be caught by the provision that it was necessary to take "reasonable steps". Ms. Jackson stated that the Council have a referencing service, enabling Landlords to check tenants at no charge, with ASB officers and police neighborhood officer. This service was not mandatory.

The Council conceded that if a period was to be imposed, two years would be an appropriate period.

- (c) Tribunal's Determination: In the experience of the Tribunal, it is not normal to seek two references, and there would certainly be practical difficulties. The mandatory conditions in Schedule 4 contain a condition that references must be obtained (although not necessarily from a landlord at all). A landlord is free to obtain two references if he wishes, or if he does not trust the first reference he

obtains, but in reality, a landlord needs to reduce void periods, and waiting for a reference from a previous landlord with no vested interest will inevitably delay matters, and lead to empty properties, which is not ideal in an area of low demand. Whilst the Respondent asserted they only expected a Landlord to take “reasonable steps”, this was considered too risky to make noncompliance a criminal offence; where would the guidance lie on what was reasonable? This might be considered to be a two week wait by one officer, a two month wait by another. The request for a reference carries no weight, and unlike in the social housing sector there is no obligation or expectation on a private sector landlord to provide one.

The Tribunal determined to remove this condition given the standard condition to obtain a reference in Schedule 4 of the Act, and did not consider the suggestion of obtaining two references either reasonable or practicable.

20. Condition 6 Keep in repair

(a) Applicant : The Applicant stated that apart from being vague, this condition conflicted with the essence of *Brown v Hyndburn*, where the judgement contrasted the rationale of s67 of the 2004 Act, which deliberately makes provisions for conditions relating to the conditions of contents of Houses in Multiple Occupation, and s90 of the 2004 Act, which does not make similar provision in respect of selective licensing. The Respondent was seeking to introduce higher standards, and as Mr. Justice Hilyard said at paragraph 32, the conditions for imposing a selective licensing area in section 80 “give nonsupport for any contention that it is a legitimate basis for selective licensing that the authority wishes to improve the general fabric of the housing stock in the area by requiring private landlords to improve their properties or introduce new facilities or equipment”.

(b) Respondent: The Respondent had proposed an amendment to the condition in their response to the application as follows:

The Licence Holder must ensure that there are management procedures in place and effectively utilise such procedures, to ensure the Property

a. is in good repair, and safe to live in before a tenancy is granted; and

b. remains free from disrepair during the tenancy, and that once the licence holder is made aware of any disrepair, repairs are made within a reasonable time period.

The Respondent considers the condition appropriate for a designated selective licensing area, as it sought to reduce levels of disrepair due to lack of appropriate management procedures. They denied that there was duplication with Part 1 functions, as the condition focused on the management procedures required to prevent hazards arising.

Mr. Talbot distinguished disrepair from the *Brown v Hyndburn* case, maintaining that the issue of tackling disrepair in selective licensing was not completely put to bed. LJ Underhill at Paragraph 85 (obiter) supports that routine nonstructural maintenance of that kind is indeed an aspect of “management” though it may come close to the boundary with “condition” but that is not something we need to decide in this appeal”.

The Respondent did however accept that the condition could be considered ambiguous and proposed further amended wording of the condition as follows:

6.1 Subject to contain 6.2, the Licence Holder must ensure that there are management procedures in place, and effectively utilise the said procedures to ensure the property:

- a. is free from category 1 and bands D to F category 2 hazards (as defined by the Housing Act 2004) at the time a tenancy is granted, and*
- b. remains free from any such disrepair that the Licence Holder is or becomes aware of during the tenancy (and the Licence Holder shall carry out any such repair as is necessary within a reasonable time of becoming aware of the same)*

6.2 condition 6.1 above shall not apply where any repairs would require the licence holder to carry out improvements, alterations or adaptations to the Property.

The Applicant in response to this suggestion stated that he would prefer the references to Category 1 and 2 hazards to refer to the Fitness for Human Habitation Act 2018 standards.

- (c) Tribunal’s Determination: The Tribunal was mindful that the objective of Part 3 of the Act is to address problems of low housing demand and/or anti-social behaviour in the designated area, and conditions should have that objective, rather than general upgrading. The statutory purpose of the designation of the selective licensing area must be taken into account when the local authority is exercising discretion (paragraph 56, *Brown v Hyndburn*)*

The Tribunal recognised that driving up standards of housing in the area might include improving landlord's procedures in keeping properties in repair in accordance with their obligations. Landlord's obligations to repair are drawn from a number of statutory sources however and it seemed unnecessary to restrict obligations to the Housing Act 2004 or the Fitness for Human Habitation Act 2018 (which is not fully in force for all tenancies until March 2020). The Tribunal determined therefore that condition 6 should be replaced so that it reads as follows

The Licence Holder must ensure that there are management procedures in place to comply with their statutory and contractual repairing obligations

21. Condition 13: Training

- (a) Applicant: The Applicant stated that this condition was contrary to the principle of *Brown v Hyndburn* concerning the explicit and deliberate differences between s67 and s90 of the Housing Act 2004. S67 makes reference to training courses, whereas s90 does not. He asserted that the Court in *Brown v Hyndburn* had noted that such omission was intentional by Parliament when interpreting the statutory distinctions between the two schemes. He noted the complexity (and financial benefit) to running an HMO, particularly a licensable one as contrasted to letting a single flat or house. Making the process of renting property more onerous would deter people from letting in selective licensing areas, and add to the homelessness/housing crisis. He commented further that it would be irrational for a landlord who has appointed an Agent, and may not have any involvement with managing the property, and may live some distance away, to attend training courses. He said that the Respondent did not provide landlord training days or events.
- (b) Respondent: The Respondent submitted that whilst training courses were notably absent from section 90, the provisions in section 90 were not an exhaustive list of conditions. The "development days" in question (which they did deliver, and Mr. Brown confirmed he had attended one and found it useful) covered all aspects of property management and the Respondent asserted that it was appropriate to include the condition as it directly related to regulating management of properties. The engagement of a third party to manage a property did not in their view absolve a landlord of his/her legal obligations, and landlords needed to be confident that managers employed were acting lawfully and correctly. Attendance on such training days was in line with the aim of improving the management of private rented properties which would in

turn help improve the demand for houses within the licensing areas as tenants would want to live in well managed houses, which in turn would not have a negative effect on neighbouring owner occupiers.

The Council maintained that the condition in relation to training is about management, use and occupation. It does not fall foul of principle established.

- (c) Tribunal's Determination: The Tribunal determined that it is not always practical or reasonable to insist that landlords attend a training course; it would deter a landlord who might be elderly, or living abroad from letting via an agent. Ownership does not always equate with management if it is delegated. An example would be 95-year-old owner of a property who might choose to delegate to a competent, ARLA registered lettings agent. There would be no sensible reason to effectively double up such training if a landlord is paying for an agent's expertise. The Tribunal determined that the condition should be amended so that it reads as follows:

The Licence Holder (and/or their agent where an agent has been appointed to manage the Property) must attend one Landlord Development Day covering how to manage tenancies which the licence is in force and must undertake any additional Property management training courses that the Authority from time to time requires to be undertaken. Alternatively demonstrate to the Local Authority that similar, relevant training has been undertaken with in the preceding 12 months.

22. Condition 15: Property visits

- (a) Applicant: The Applicant suggested that this was not necessary nor useful to fulfil the express purposes of selective licensing as it would do nothing to address low demand. He said in his view it may in fact cause landlord/tenant tensions or problems leading to shorter tenancies and less occupancy, and would do nothing to reduce anti-social behaviour as visiting tenants occasionally would not control them. He said that it was not a reasonable step because it was either irrelevant or ineffective and just a management expense. Once a tenant has been resident for two or three years he would likely be a good tenant and entitled to "quiet and peaceable enjoyment" of his home. He pointed out that the current tenant of the property in question at Dall Street has been resident for around seven years, near pension age, and it would be insulting to him to suggest that he is in need of "supervision". Mortgage pro-

viders, and many social landlords would not visit tenants periodically to vet them, and the provision was in his view useless, at least if extended beyond two years into the tenancy, an unnecessary burden on the landlord, and an insulting imposition upon tenants.

He said that he would not object to the first three to six months, or the first couple of years but after that it becomes irrelevant. It was either inconvenient or at worst, negative to the relationship.

(b) Respondent: in response, the Respondent submitted that regular monitoring and inspections of a property are key points of property management, particularly for new tenants; and for long term tenants, appropriate to tackle disrepair/other issues proactively, as well as to identify any change in circumstances with regard to the tenant which may require closer management. The Respondent's experience was that issues of anti-social behaviour were more likely to occur where absentee landlords rarely, if ever visited their tenants, so it was felt to be in line with the aim of selective licensing, and not above and beyond normal property management procedures. It ought not to interfere with quiet enjoyment if procedures were followed and appropriate notice given. The largest Registered Provider in Burnley, Calico Homes, employed Neighborhood Workers who visit their tenants.

The Respondent pointed out that a property might be (unlawfully) sublet, or have a dog residing without permission, or there may be properties with slipped slates or other routine maintenance items that the tenant had not noticed. The burden on the landlord of the visits would become less as time went on and s/he would be able to confirm position much more quickly.

(c) Tribunal's Determination: The Tribunal considered that this was a reasonable condition to make in a selective licensing area, to ensure properties are well managed. It is good practice to have an annual visit, to ensure that all is well with the tenant and the property remains in good condition.

23. Condition 18: Water supply/drainage: non- interruption

(a) Applicant: This provision duplicates existing legislation (the Protection from Eviction Act 1977) which was contrary to *Brown v Hyndburn* (paragraph 63). It would further be a duplication of a category 1 hazard in Part 1 of the Act.

(b) Respondent: The Respondent did not agree there was duplication. They maintained it was difficult to secure a conviction in an unlawful eviction case, due to finding it difficult to find the connection between the act and the mens rea behind the act.

- (c) Tribunal's Determination: there was perhaps an element of duplication in this condition; however, it would cost nothing for a landlord to comply with it, and no landlord could object to compliance. The condition might remain.

24. Condition 19: Gas/electricity supply: non- interruption

- (a) Applicant: This provision duplicates existing legislation (the Protection from Eviction Act 1977) which was contrary to *Brown v Hyndburn* (paragraph 63).
- (b) Respondent: The Respondent did not agree there was duplication.
- (c) Tribunal's Determination; for the same reasons as condition 18, the Tribunal was satisfied that this condition might remain.

25. Condition 21: Window lock key provision

- (a) Applicant: The Applicant submitted that closing a window without locking it would constitute as much security as locking it, the condition would do nothing to address either low demand or anti-social behaviour and was therefore not relevant to the purpose of the licensing scheme, as enunciated in paragraphs 55 to 57 of *Brown v Hyndburn BC*.

Mr. Brown said that in his experience, tenants were not concerned in viewing properties if the windows locked or not. He said that less than 5% would object, a very low percentage. He said that in a burglary, plastic windows are more often forced than smashed. He pointed out that the risks from being unable to escape a fire increased if a window was locked, and in reality, a locked window provided no greater security.

- (b) Respondent: The Respondent asserted that there is an increased risk of unauthorised access to a property by means of breaking glass and then using an unlocked handle to open a window. There would be an increased fire risk (health and safety risk) if windows are locked shut and the tenant has no keys and therefore means of opening them. The Respondent accepted that the condition should fall under an amended heading to make it clear that it was intended for "Safety and Security". Reduced break ins and feeling safe in a home would contribute to making an area a more attractive place to live. The Respondent stated that conditions 21 22 and 23 directly relate to the management of properties in an area where levels of crime such as burglary and criminal damage are directly impacting on demand for housing, and are therefore entirely appropriate under s90 of the Act, whilst also being consistent with the aims of selective licensing. In evidence Ms. Jackson stated that the selective licensing area is the 5th worst area for crime, and the Police advised that windows and doors are locked.

- (c) Tribunal's Determination: The Tribunal did not consider this a reasonable condition. It would provide no deterrent for break ins, given that the presence of a lock cannot generally be seen from outside. If someone locks a window and loses the keys it can be an expensive management issue to replace. It can actually be a serious fire risk if a window is locked and someone cannot egress the window if the key can't be located in an emergency. In the Tribunals' view it was not likely to have any impact on ASB of low demand and it was considered highly unlikely a prospective tenant would ask about window lock keys being available. This condition is removed.

26. Condition 22: Lock changes

- (a) Applicant: The Applicant submitted that in over 36 years as a landlord he had never had an instance where a previous tenant with a key to the premises had re-entered those premises, nor had his agent Mr. Brown who manages over 600 properties. The Applicant also stated that tenants who did handover keys could potentially retain keys, so would hypothetically pose as much of a security risk as tenants who handed in no keys. Changing locks would therefore achieve nothing, and would not prevent anti-social behaviour, or address low demand and was not relevant to the purpose of the licensing scheme, and would be an unnecessary expense with a potential negative economic impact on the area.
- (b) Respondent: The Respondent maintained that effective management of a property would ensure that a tenant can properly secure a property and their belongings contained therein. The Respondent did not have any evidence it's an issue, but tenants had been known to break in and steal boilers after they have left.
- (c) Tribunal's Determination: The Tribunal did not accept that this was a reasonable or practical condition in the absence of evidence it was a genuine problem. An incoming tenant would not know if the previous tenant had returned the keys or not, and a landlord could never be sure that keys had not been duplicated. A landlord with concerns his property was at risk may well want to change the locks but this should be at his discretion. This condition is removed.

27. Condition 23: Burglar alarm code changes

- (a) Applicant: the Respondent stated that neighbours would often ignore alarms because of false alarms, and that an alarm would not be activated until after an intruder had entered, if the system had

not previously been disabled. In his submission, former tenants did not burgle their former homes. In practice therefore, he stated changing alarm codes would do nothing to address anti-social behaviour or low demand. It was an inconvenience and unnecessary step, and not proportionate. Some alarms would take engineers to change them; and in any event people tend to have CCTV rather than alarms these days.

- (b) Respondent: The Respondent asserted that effective management of a property would include ensuring the tenant can properly secure and protect the property. The condition took account of instances when previous tenants with knowledge of the alarm code might be able to gain access. The Respondent would agree to a condition that the Landlord permit the tenant to change the alarm code if they so wished.
- (c) Tribunal's Determination: The Tribunal agreed that the Respondent's concession to change the condition to one of the Landlord permitting the tenant to change the alarm code if they so wished as achieving the same aim more proportionately. The condition will read: *Where a burglar alarm is fitted to the Property, the Licence Holder will permit a tenant to change the code if they so wish.*

28. Condition 31: Ending tenancy; following correct legal process

- (a) Applicant: The Applicant submitted that this was simply a duplication of other legislation, considered by the Court of Appeal in *Brown v Hyndburn* (paragraph 63) as being inappropriate and not permissible as a selective licensing condition. Furthermore he stated that it did nothing to address either low demand or anti-social behaviour and was contrary to the principle of relevance to the purpose of the selective licensing scheme.
- (b) Respondent: The Respondent proposed an amendment of the wording of the condition to

“The Licence Holder must ensure there are management procedures in place to legally end a tenancy in relation to the Property and must implement said procedure”

By including this condition, the Respondent was confident that it ensured landlords would follow lawful procedures when ending the tenancy.

Tribunal's Determination: The Tribunal allowed this condition to stand; there could be no reasonable objection to it.

29. Condition 32: Provide copies of Notices Seeking Possession or notices given by tenants ending the tenancy.

- (a) Applicant: The Applicant submitted that this condition potentially breached the Data Protection Act and infringed tenant's privacy. A tenant may have given personal reasons for leaving which should remain confidential, tenancies being essentially a matter of private contract between the landlord and tenant. The condition would do nothing to address low demand or anti-social behaviour and would be contrary to the principle of relevance to the legal purpose of the licensing scheme.
- (b) Respondent: The Respondent did not accept that the condition breaches data protection legislation. The Respondent suggested that if a licence holder did not wish to share personal details of a notice due to potential data protection breaches, he could redact such information. The Respondent was only interested in the fact that written notice had been given, the date on which it was served, and not the content of the reason for the notice. The purpose of the condition was to improve the stability of tenancies in areas of high tenant turnover, to build more stable communities and tackle low demand. Schedule 2 Paragraph 3 of the Data Protection Act 2018 - provided an exclusion of the provision of the Act if the data sharing was for the investigation of crime so the Respondent did not agree that there would be a data protection breach.
- (c) Tribunal's Determination: The Tribunal did not agree that this was a reasonable condition. If there was any concern that an offence had been committed under the Protection From Eviction Act 1977 the Council would have statutory powers to obtain documentation. This condition would be removed.

TRIBUNAL FEES

30. The Applicant requested that if he were successful in having some of his objections met, he should have a contribution towards the Tribunal fee, of £300 he had paid. Mr. Talbot for the Respondent indicated that they would not object to such an order being made. In light of the amount removals and alterations made by the Respondent and the Tribunal as a result of the application, the Tribunal orders the Respondent to pay the Applicant £150 towards the application fee within 28 days of this order.

Signed: Jude John Murray

Dated: 20 May 2019

Schedule: Varied Order

14 Dall Street Burnley BB11 3LB

- (a) Condition 5: (removed)
- (b) Condition 6: The Licence Holder must ensure that there are management procedures in place to comply with their statutory and contractual repairing obligations
- (e) Condition 13: The Licence Holder (and/or their agent where an agent has been appointed to manage the property) must attend one Landlord Development Day covering how to manage tenancies which the licence is in force and must undertake any additional Property management training courses that the Authority from time to time requires to be undertaken. Alternatively demonstrate to the Local Authority that similar, relevant training has been undertaken within the preceding 12 months.
- (f) Condition 15: The Licence Holder and/or their Manager are required to visit the Property within three to six months of the commencement of the tenancy and thereafter annually. A record of these visits must be made available to the Authority on request.
- (g) Condition 18: The Licence Holder must not unreasonably cause or permit the water supply or drainage systems that is used by the occupiers of the Property to be interrupted.
- (h) Condition 19: The Licence Holder must not unreasonably cause or permit the gas or electricity supply that is used by the occupiers of the Property to be interrupted.
- (i) Condition 21: (removed)
- (j) Condition 22: (removed)
- (k) Condition 23: Where a burglar alarm is fitted to the Property, the Licence Holder will permit a tenant to change the code if they so wish.

- (l) Condition 29: (Removed by the Respondent following the application being made)
- (m) Condition 31: The Licence Holder must ensure there are management procedures in place to legally end a tenancy in relation to the Property and must implement said procedure
- (n) Condition 32: (removed)