



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

Case reference : **LON/00AG/HML/2019/0050**
HMCTS code : **V: REMOTE**
(video)

Property : **129 Kentish Town Road, London NW1
8PB**

Applicant : **Mr Leo Kaufman**

Representative : **Mr Kramer, solicitor**

Respondent : **The London Borough of Camden**

Representative : **Ms Alison Pruden**

Type of application : **Appeal against refuse to revoke a licence**

Tribunal members : **Judge Tagliavini
Ms F Macleod**

**Venue & date of
hearing.** : **10 Alfred Place, London WC1E 7LR
(Video: Remote)
22 January 2021**

Date of decision : **10 February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in an applicants' bundle pages 1 to 89 and a respondent's bundle pages 1 to 140 the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The applicant's appeal against the respondent's refusal to revoke a licence dated 8 August 2019 is refused and the respondent's decision is confirmed.**
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Preliminary matters

1. At the start of the hearing Ms Macleod disclosed that she knew Ms Pruden having both previously worked for the London Borough of Wandsworth over 13 years previously. However, neither party objected to Ms Macleod's continuing to hear the application. Mr Kramer objected to Ms Pruden acting both as a representative and witness for the respondent due to the unexpected absence of Mr Sarkis due to work commitments elsewhere in, their intended representative. However, the tribunal considered that it was appropriate to allow Ms Pruden to act as a representative for the respondent and to give evidence on its behalf. The tribunal considered that details of the process followed in granting the licence to Mr Kaufman and the reasons for this, as well as the objections to the appeal had already been detailed in the witness statements provided to the applicant and that it was likely that there would be little 'new' in any representations made by Ms Pruden as a representative.

The application

2. This is an appeal dated 15 November 2019 made under the provisions of Part 3, Schedule 5, para 32(1)(b) of the Housing Act 2004. The applicant asserts that the HMO licence dated 8 August 2019 granted by the respondent has named him incorrectly as the licence holder and that his name should be removed and seeks to appeal the respondent's refusal to remove his name from the HMO licence.
3. The subject property at 129 Kentish Town Road, London NW1 8PB is building on three floors comprising common parts and two self-contained flats situated above commercial ground floor premises currently being used as a restaurant/take-away.

4. The applicant asserted that:
- (i) The HMO licence in respect of the subject property at 129 Kentish Town Road has been issued to the wrong person;
 - (ii) The correct name of the licence holder is Mr Mustapha Mouflih as he was granted a ‘full repair lease’ for three years from 1 April 2019;
 - (iii) Mr Mouflih has the responsibility of carrying out and complying with all statutory obligations and the conditions imposed by the licence’
 - (iv) The licence issues for a period of 5 years by the respondent could have been issued for a period similar to that granted to Mr Mouflih.

The respondent’s case

5. As this appeal is by way of a rehearing, the tribunal required the respondent to establish its reasons for granting the HMO licence to the applicant and the reasons for its opposition to Mr Kaufman’s appeal. In support of its case the respondent relied upon a bundle of documents and heard the oral evidence of Ms Pruden , a Chartered Environmental Health Officer and Operations Manager who spoke to her witness statements dated 10 February 2020 and 30 October 2020 and Ms Michelle Ojo an HMO Licensing Manager who spoke to her witness statement dated 10 February 2020.
6. Ms Pruden told the tribunal that the subject property is a HMO under section 257 of the Housing Act 2004 which states:

(1)For the purposes of this section a “converted block of flats” means a building or part of a building which—

(a)has been converted into, and

(b)consists of, self-contained flats.

(2)This section applies to a converted block of flats if—

(a)building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and

(b)less than two-thirds of the self-contained flats are owner-occupied.

(3)In subsection (2) “appropriate building standards” means—

(a)in the case of a converted block of flats—

(i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and

(ii) which would not have been exempt under those Regulations,

building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and

(b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

(4) For the purposes of subsection (2) a flat is “owner-occupied” if it is occupied—

(a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,

(b) by a person who has the freehold estate in the converted block of flats, or

(c) by a member of the household of a person within paragraph (a) or (b).

(5) The fact that this section applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.

(6) In this section “self-contained flat” has the same meaning as in section 254.

7. Ms Pruden stated that the respondent considered that Mr Kaufman was a person having control of the property in accordance with regulation 3 of The Houses in Multiple Occupation (Certain Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs) (England) Regulations 2007 as his company was receiving a rack-rent for the subject property under a three year lease granted to Mr Mouflih. Further, Ms Pruden stated that as an HMO the subject property required a licence under the Respondent’s Additional Licensing Scheme covering the whole of the Borough with effect from 8 December 2015.
8. The tribunal were informed that an online application for a licence was made on 22 December 2017 by Redcourt Limited the registered freeholder company of the subject property of which the applicant is the owner and director. Subsequently in a Declaration of Consent by Proposed Manager dated 25 May

2018, Mr Kaufman agreed to the imposition of the restrictions or obligations of the HMO licence on himself as director of the freeholder company.

9. Following an inspection of the subject property on 28 February 2019 by Mr Umelo on behalf of the respondent and in the company of Mr Kaufman, the respondent on 11 June 2019 notified Mr Kaufman and Redcourt Limited that it proposed to grant a licence in the name of Mr Leo Kaufman (sic) as the nominated person as the registered freehold owner Redcourt Ltd is a company based overseas. The draft licence included the respondent's standard conditions and an attached Schedule of Works which required certain fire safety measures in the common parts of the residential parts and inside the flats to be implemented. Despite having attempted to correspond with Mr Mouflih no response was received from him in answer to the respondent's enquiries.
10. In response to the notification of the proposed form of the (draft) licence the applicant notified the respondent by email on 2 July 2019 that he had let the whole of the premises to Mr M Mouflih for a period of three years with effect from 1 April 2019 and that Mr Mouflih and his staff would be occupying the premises as a single household and therefore the premises would no longer be a licensable HMO. Therefore, Mr Kaufman did not want the licence to be granted in his name. However, Ms Pruden told the tribunal that the respondent did not accept these reasons and an HMO licence was duly granted in the name of the applicant for a period of five years with effect from 8 August 2019 as the respondent was satisfied that he is a fit and proper person to hold a licence and the most appropriate person to do so; *section 64(3)(b) Housing Act 2004*.
11. Subsequently, the respondent received a request from the applicant seeking a revocation of the licence on the grounds that (i) the building had ceased to be a licensable HMO due to Mr Mouflih's lease and it being in single occupation and (ii) Mr Kaufman was not the person managing the subject property or having control of it. This application was refused and the decision to grant the HMO licence in the name of the applicant was confirmed.
12. Ms Pruden asserted that as a sub-lessee Mr Mouflih was a tenant for a three year period only at a rent of £4,300 per calendar month and was not an owner occupier with the definition of section 257 HA 2004. Further, the respondent was satisfied under the 2007 Modification Regulations that Mr Kaufman remained the correct licence holder. Having refused to revoke the licence the respondent subsequently followed the correct notification procedures and issuance of formal notices refusing to revoke the licence.
13. Ms Ojo also spoke to her witness statement dated 10 February 2020 and informed the tribunal that an email dated 9 July 2019 was received from Mr Mouflih stating that he occupied one flat and his employee the other. However, the respondent determined that Mr Kaufman retained 'control' over the subject property despite the lease granted to Mr Mouflih and the inspection had revealed that both flats had been rented out but in any event

even if occupied by an employee of Mr Mouflih. Therefore the respondent asserted that the licence had been correctly granted to the applicant.

The applicant's case

13. The applicant also provided the tribunal with a bundle of documents on which he sought to rely an Expanded Reason for Appeal together with the applicant's witness statement dated 24 January 2020. In his appeal, Mr Kaufman did not take any issue with the procedural process followed by the respondent in the grant of the HMO licence or its refusal to revoke it but asserted that the licence had been granted in his name incorrectly as he had let the whole of the property to Mr Mouflih from 1 April 2019 for a period of three years in accordance with the copy of the lease provided to the tribunal.
14. In his evidence Mr Kaufman repeated that he no longer had 'control' of the building as this had been passed to Mr Mouflih in the three year lease made between Redcourt Ltd and Mustapha Mouflih. On questioning by the tribunal, Mr Kaufman accepted that he had not in fact read the lease in question or the tenant's and landlord's various obligations under the lease. However, Mr Kaufman continued to assert that he believed Mr Mouflih occupied and though that his employee might occupy the other and therefore the subject property was not an HMO. Mr Kaufman did not provide to the tribunal any substantive documentary evidence in support of these assertions in the form of tenancy/licence agreements or witness statements from Mr Mouflih or his employees and relied on emails purporting to have been sent by Mr Mouflih as evidence of the latter's occupation.

The tribunal's decision and reasons

15. The tribunal is satisfied that the subject premises is an HMO within the definition of section 257 of the Housing Act 2004 and therefore requires a licence under the respondent's additional licensing scheme. The tribunal did not accept Mr Kaufman's evidence as to the identity of the persons occupying the subject premises as the tribunal found this vague and unsupported by any witness statement or oral evidence from Mr Mouflih
16. The tribunal is satisfied that Mr Kaufman is the person who retains 'control' of the subject premises on behalf of Redcourt Limited within the meaning of regulation 3 of The Houses in Multiple Occupation (Certain Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs) (England) Regulations 2007, as a rack rent in respect of the subject premises is received by Redcourt Ltd. The tribunal finds that Mr Kaufman expressly agreed to be the nominated person on behalf of Redcourt Limited for the purpose of a HMO licence.
17. Therefore, the tribunal refuses Mr Kaufman's appeal against the respondent's refusal to revoke a HMO licence granted for the subject property and confirms the respondent's decision.

Name: Judge Tagliavini

Date: 10 February 2021

Rights of appeal from the decision of the tribunal

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 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).