



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

Case reference : **LON/00BH/HML/2021/0003
V:CVP**

Property : **59 Hove Avenue, London E17 7NG**

Applicant : **Teresa Ahara**

Representative : **In person**

Respondent : **(1) London Borough of Waltham
Forest
(2) Betul Cunninghame
(leaseholder)**

Representative : **(1) Julia Morris, Head of PSH
Reference: WAL-152181-1
(2) In person**

Type of application : **Appeal in respect of selective
licensing - Sections 87-94 & Part 3 of
Schedule 5 to the Housing Act 2004**

Tribunal : **Judge Sheftel
Mr S Wheeler MCIEH, CEnvH**

Venue : **Remote**

Date : **7 December 2021**

DECISION

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties each provided a bundle of documents for the hearing. The order made is described at the end of these reasons.

Background

1. This is an application made pursuant to sections 87-94 & Part 3 of Schedule 5 to the Housing Act 2004 (the “2004 Act”) against the grant by the Local Housing Authority (“LHA”) of a selective HMO licence.
2. The licence in question was granted by the LHA on 3 February 2021. The licence relates to 59 Hove Avenue, London E17 7NG.
3. The basis of the Appeal is that it is said that the Second Respondent, Betul Cunninghame, is not a fit and proper person to be granted a licence. That assertion appears to be founded on the previous history of dispute between the Appellant and Mrs Cunninghame as regards service charges, leading to previous litigation between them in this Tribunal.
4. On 3 June 2021, the Tribunal received a letter from the LHA notifying that it intended not to take an active part in proceedings and would abide by any decision made by the Tribunal.
5. On 17 June 2021, Mrs Cunninghame confirmed that she wished to be joined as a Respondent in the proceedings and the tribunal made an order confirming this on 26 July 2021.
6. The hearing of this application took place on 17 November 2021. The Appellant and Mrs Cunninghame, the Second Respondent, appeared in person. Mr John Fine was present on behalf of the local authority, although did not play an active part in the hearing. The tribunal is grateful to the parties for their assistance and the way in which the hearing was conducted.
7. The issue raised by this appeal is confined to the question of whether the Second Respondent is a fit and proper person to be a licence holder. In accordance with paragraph 34(2) of Schedule 5 to the Housing Act 2004, the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the LHA were unaware.
8. Both parties had provided a bundle of documents in advance of the hearing. On the evening before the hearing, the Appellant sought to introduce further evidence in support of her appeal. This was, in essence,

a further submission responding to Ms Cunninghame’s own submission. Although it was late – the Directions allowed for an Appellant’s reply by 29 October 2021 – Mrs Cunninghame confirmed that she had had chance to read it and the documents referred to were ones she had seen. In the circumstances, the tribunal gave permission for the evidence to be adduced and has taken it into account.

The appeal

9. Unusually, this appeal has not been brought by the person applying for a licence. The Appellant is the freeholder of 59 Hove Avenue, London E17 7NG. The Second Respondent is the long leaseholder of the Property. The Property is a flat, situated above the Appellant’s own flat at 57 Hove Avenue.
10. There was no dispute that Mrs Ahara was entitled to bring the present appeal. Paragraph 31 of Schedule 5 to the 2004 Act provides that an appeal may be brought by the Applicant “or any relevant person”. Paragraph 36 provides that:

“...
(2) In this Part of this Schedule “*relevant person*”, in relation to a licence under Part 2 or 3 of this Act, means any person (other than a person excluded by sub-paragraph (3))–
(a) who is–
(i) a person having an estate or interest in the HMO or Part 3 house concerned, or
(ii) a person managing or having control of that HMO or Part 3 house (and not falling within sub-paragraph (i)), or
(b) on whom any restriction or obligation is or is to be imposed by the licence in accordance with section 67(5) or 90(6).
(3) The persons excluded by this sub-paragraph are–
(a) the applicant for the licence and (if different) the licence holder, and
(b) any tenant under a lease with an unexpired term of 3 years or less.”
11. The exclusions in paragraph 36(3) do not apply in the present case and accordingly Mrs Ahara, as a person having an interest in the Property, is a relevant person and can bring the present appeal.

12. As noted above, the basis of the appeal is that she considers the Second Respondent not to be a fit and proper person. The Appellant asserts that:
 - (1) Over the years, the Second Respondent had refused to pay her share of the building insurance, which led to the hiring of a solicitor in order to recuperate monies due;
 - (2) The Second Respondent made an application to the tribunal in proceedings LON/00BH/LSC/2019/0457. The proceedings included unsubstantiated allegations of fraudulent behaviour against the Appellant and questioning of medical evidence supplied by the Appellant relating to her cancer treatment.
13. At the hearing, the Appellant expanded on the above submissions. Ultimately, she questioned the Second Respondent's honesty and thereby whether she was a fit and proper person to be granted a licence.

The law

14. Part 3 of the 2004 Act provides for a scheme whereby a Local Housing Authority may designate an area to be subject to Selective Licensing. In deciding whether or not to grant a licence, section 88(3) of the 2004 Act provides that one of the matters as to which the local authority must be satisfied, is that the proposed licence holder is "*a fit and proper person to be the licence holder*".
15. So far as is relevant, the test for whether someone is a fit and proper person is set out in section 89 of the 2004 Act:
 - “(1) In deciding for the purposes of section 88(3)(a) or (c) whether a person (“P”) is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).
 - (2) Evidence is within this subsection if it shows that P has—
 - (a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
 - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or

(c) contravened any provision of the law relating to housing or of landlord and tenant law.

(3) Evidence is within this subsection if–

(a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (c), and

(b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.

...

(3C) A person is not a fit and proper person for the purposes of section 88(3)(a) or (c) if a banning order under section 16 of the Housing and Planning Act 2016 is in force against the person,

16. At the outset, it must be stressed that none of the matters listed in section 89 of the 2004 Act apply in the present case. However, that is not the end of the matter. As a result of the inclusion of the words “among other things” in subsection (1), we take the view that the matters set out in section 89 of the 2004 Act are not an exhaustive list – albeit they are matters which must be taken into account and are clearly the primary focus of the legislation. The issue is therefore whether the additional allegations raised by the Appellant should nevertheless give rise to a conclusion that the Second Respondent is not a fit and proper person.
17. It is clear that there has been a complete breakdown of trust between the parties. Mrs Cunninghame’s evidence appeared to be that this state of affairs arose out of the dispute between the parties as to her contributions to the cost of insurance of the building. Mrs Cunninghame made various assertions around the fact that she had not been able to understand the amount she was properly required to pay and how this had come about. According to her evidence, this included the following:
 - (1) she received multiple versions of the policy with 5 different premiums and 3 different policy numbers – although it was accepted that they had not all been provided by Mrs Ahara but rather by Mrs Ahara’s then solicitors and the insurance broker. Mrs Cunninghame also appeared to cast doubt on the authenticity of certain documents, citing that in certain cases some letters appeared blurred;

- (2) The premiums had apparently been increased as a result of a substantial insurance claim relating to an escape of water from Mrs Cunninghame's flat, of which she was apparently unaware;
- (3) Uncertainty as to whether the insurance coverage was appropriate – for example the policy apparently included rental protection insurance.

The confusion was exacerbated by the fact that the Second Respondent was unable to correspond directly with the insurer because the policy was said to be in the name of the Appellant – although Mrs Ahara maintained that the Second Respondent could contact the broker who had arranged the insurance.

18. Mrs Cunninghame also alleged that Mrs Ahara had made a demand against her for alleged loss of rent arising from the escape of water incident which Mrs Cunninghame contended could not be sustained.
19. Accordingly, Mrs Cunninghame's evidence was that as a result of the various matters above, it seemed to her that something was not right, and she no longer trusted anything - which explained her suspicion regarding documents that had been provided. In relation to the insurance in particular, her position was that she just wanted to be sure that she was paying the correct amount.
20. In response, Mrs Ahara's evidence was that the refusal to pay insurance service charges had continued notwithstanding the conclusion of the previous tribunal proceedings, which she had hoped would have resolved matters. She also questioned why Mrs Cunninghame had sought to investigate the details of the Appellant setting up a property management company when it did not relate to her. In her view, all the actions and in particular the allegations that had been made against her, cast doubt on whether the Second Respondent was a fit and proper person.
21. For the avoidance of doubt, the tribunal makes no finding in respect of any allegations of fraud made against the Appellant. Similarly, we make no finding as to whether service charge monies are owed to the Appellant

as contended. What we are concerned with is only the conduct of Ms Cunninghame insofar as it relates to the allegation that Ms Cunninghame is not a fit and proper person in accordance with the test set out in section 89 of the 2004 Act. The allegations against Mrs Ahara are not determinative of this.

22. The tribunal notes the frustrations experienced by Mrs Ahara in the present case – particularly in relation to the questioning of her medical evidence in the previous tribunal proceedings. However, notwithstanding this, there does appear to have been some genuine confusion and uncertainty as to the insurance.
23. Overall, we do not consider that the matters raised go so far as to lead to a conclusion that the Second Respondent is not a fit and proper person. In this regard, we repeat that none of the matters specified in section 89 of the 2004 Act are present in this case. While this is not an exhaustive list, they are of significant weight, being matters which must be taken into account as noted above. Further, we are conscious that the purpose of the legislation is the protection of tenants and we do not consider that the evidence indicates an increased risk for tenants of the Respondent.

Conclusion

24. For the reasons set out above, we do not consider that there is evidence to reach a finding that Mrs Cunninghame is not a fit and proper person for the purposes of sections 88 and 89 of the Housing Act 2004.
25. Accordingly, the Appellant's appeal is dismissed.

Name: Judge Sheftel

Date: 7 December 2021

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 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).