FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**AB/LON/00BH/HML/2020/0005**
HMCTS code (paper, video, audio)	**:**	**V: CVP REMOTE**
Property	**:**	**40 Eldon Road, London E17 7BZ ("the Property")**
Appellant/applicant	**:**	**Noreen Kosur Malik**
Representative	**:**	**In person**
Respondents	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Riccardo Calzavara of Counsel**
Type of Application	**:**	**Appeal against a refusal to grant a mandatory HMO licence** – Schedule 5 Paragraph 31(1) of the Housing Act 2004
Tribunal Members		**Judge Professor Robert Abbey and Mrs Sarah Redmond MRICS**
Date of Hearing	**:**	**10 March 2022**
Date of Decision	**:**	**14 March 2022**

DECISION

- This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of non-paper-based digital trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The decision by the respondent to refuse to grant a licence is upheld for the reasons set out below.
2. In the light of the above, the appeal by the appellant against the refusal by the respondent under paragraph 31(1) of schedule 5 of the Housing Act 2004 is therefore refused.

Introduction

3. This is the hearing of the applicant's application regarding **40 Eldon Road, London E17 7BZ (**"the Property"), pursuant to paragraph 31(1) of schedule 5 of the Housing Act 2004 ("the 2004 Act"), to appeal against the respondent's refusal to grant a mandatory licence for the use of the property as a house in multiple occupation (HMO). The applicant is the freeholder of the property and the respondent is the local authority responsible for the locality in which the property is situated.

The Hearing

4. The appeal was set down for hearing on 10th March 2022 when the applicant was not represented and so appeared in person. Mr Riccardo Calzavara of Counsel appeared for the respondent. The Property was built as a three-bed two-storey terraced house. It is now a six-bedroom HMO with loft conversion. It has been in the Applicant's ownership since 3 August 1999.
5. On 3 June 2015 the Applicant applied for a selective licence in respect of the Property and described it as a "house in single occupation". That licence was granted for a five-year period on 13 October 2015. On 28 April 2016 the Respondent revoked that licence on the basis of an inspection that established that the Property was an HMO that required licensing under Part 2 of the Housing Act. On 30 March 2017

the Applicant applied for a mandatory HMO licence in respect of the Property. The Applicant acknowledged that she did not have planning permission for use of the Property as an HMO, but asserted that it had been used as an HMO since 22 July 2010. That licence was granted for a one-year period on 1 February 2018. In its decision letter the Respondent stated that an abbreviated licence had been granted "In the light of this breach of planning regulations, namely, the change of use of the Property into an HMO, the Respondent considers that the licence relating to the above property should be granted for a reduced term of one year."

6. On 14th September 2014 an Article 4 Direction under the Town and Country Planning Act came into force that removed permitted development rights for Class C4 (houses in multiple occupation) and required planning permission for change of use from Class C3 (use as a dwelling house as a single household) to Class C4.

7. The one-year licence expired on 31 January 2019. The Applicant applied for a further HMO licence on 4 March 2019. The Property was inspected by the respondent in May 2019 whereupon it was confirmed that it was occupied as an HMO. On 10 December 2019 the applicant was informed that the Respondent did not propose to grant her a licence, which proposal was confirmed by decision dated 14 January 2020. The decision letter made it clear that the reason the application was refused was that "There is no planning approval for the property to be used as a house in multiple occupation".

8. On 15 January 2020 the Applicant applied for planning permission for "Retention of use as a House in Multiple Occupation (HMO) comprising 6 bedrooms, for up to 6 people". In the application form it is said that the change of use had not yet started, and that the current use was "Dwellinghouse". The statement accompanying the application said that it was a retrospective application, but did not say when the development had been carried out. That application was refused on 6 April 2020 because the respondent said that it resulted in "a cramped and unsatisfactory form of living environment". The time for appealing against such decision expired on 6 October 2020 without any such appeal having been made by the applicant.

9. This current appeal against the refusal to grant an HMO licence was made by the applicant on 6 February 2020.

10. To support her application the applicant said she should be granted the licence as there are no issues with the property and she has good tenants at the property and that there are no complaints from them about the property or its use. She was concerned about the several fees she had had to pay to the local authority both for licence applications as well as planning applications. She also said she had completed all

works to the property required by the local authority and that she had obtained retrospective planning permission for the loft extension.

Decision and Reasons

11. From the evidence before it the Tribunal was satisfied that this appeal should be dismissed. At the hearing the applicant confirmed to the Tribunal that she did not have a planning consent for the use of the property as an HMO. The Tribunal concluded that there was no planning approval for the property to be used as an HMO.

12. Every HMO falling within Part 2 of the 2004 Act must be licensed (s.61(1) HA 2004). The property has and is occupied by 6 separate individuals and as such constitutes an HMO. This is because it consists of one or more units of living accommodation not consisting of self-contained flats, the living accommodation is occupied only by persons who do not form a single household, as their only/main residence, rents are payable in respect of the said occupation, and two or more of the households share basic amenities (s.254(2) HA 2004).

13. An application for a licence must be made to the local housing authority, in this case the respondent, (s.63(1) HA 2004). The authority must either grant or refuse to grant a licence (s.64(1) HA 2004). On such application the authority must consider the reasonable suitability of the house for occupation by not more than the maximum number of permitted households (s.64(3)(a) HA 2004) The authority is permitted to have regard to the planning status of a property when considering an application for a licence (*Waltham Forest LBC v Khan* [2017] UKUT 153 (LC) at [2], [44]-[47]).

14. In that case the Deputy Chamber President Martin Roger QC stated that, (underlining by this Tribunal): -

> *"It is therefore unnecessary and unrealistic, in my judgment, to regard planning control and Part 3 licensing as unconnected policy spheres in which local authorities should exercise their powers in blinkers. I am satisfied that it is legitimate for a local housing authority to have regard to the planning status of a house when deciding whether or not to grant a licence and when considering the terms of a licence. It would be permissible for an authority to refuse to determine an application until it was satisfied that planning permission had been granted or could no longer be required. It would be equally permissible, where an authority was satisfied that enforcement action was appropriate, for it to refuse to grant a Part 3 licence, but as Waltham Forest points out that would make it difficult for a landlord to recover possession of the house and would expose him to prosecution for an offence which he would be unable to avoid by his own actions. The solution adopted by Waltham*

> *Forest of granting a licence for a short period to allow the planning status of the house to be resolved was, in those circumstances, a rational and pragmatic course which I accept was well within its powers.*
>
> *Nor would it be satisfactory to place the onus on the local authority to establish a breach of planning control in costly and time-consuming enforcement proceedings when the landlord's requirement of a Part 3 licence provides an opportunity to require that he take the initiative of demonstrating that he does not need, or alternatively is entitled to, planning permission. The authority has a discretion over the duration of each licence it grants, and there is no automatic entitlement to a period of five years. Where there are grounds to believe that the applicant requires but does not have planning permission the grant of a shorter period is a legitimate means of procuring that an unlawful use (which itself may exacerbate anti-social behaviour) is discontinued or regularised."*

This case was about a part 3 licence but it seems to this Tribunal that it must also apply to a part 2 licence. Accordingly, the Tribunal noted that the application for a licence was refused because there was no planning consent allowing the property to be used as an HMO and that the legal authority for this was the case of *Khan*, set out above.

15. The applicant does not have planning permission to use the Property as an HMO, it has not been established by certificate of lawful development that she has such right, nor does she by this appeal assert that she ought properly to be considered to have such right. That is no doubt because as the respondent's Counsel stated "the Council excluded the development of any right as long ago as 13 September 2013, and the Appellant cannot hope to establish ten years' use as an HMO prior to that time".

16. The applicant has twice sought a licence for use of the Property in a manner for which she does not have planning permission. The first time the Council granted her a one-year licence, explicitly to give her an opportunity to regularise the position. The second time it decided that it was not appropriate to do so. The Council was entitled to take into account the absence of planning permission in refusing to grant a licence in respect of the Property.

17. Consequently, in the light of the above, the appeal by the appellant/applicant against the respondent's refusal to grant a mandatory licence for the use of the property as a house in multiple occupation is refused.

18. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert Abbey **Date:** 14 March 2022

Annex

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).

Appendix

Housing Act 2004

SCHEDULE 5

Licences under Parts 2 and 3: procedure and appeals

Appeals against licence decisions

Right to appeal against refusal or grant of licence

31(1) The applicant or any relevant person may appeal to the appropriate 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.

(2) An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.