



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

Case Reference	:	LON/00BE/HML/2019/0025
Property	:	246 Lucey Way, London, SE16 3UG
Applicant	:	Big London Lettings Company Limited
Representative	:	Richard Norman
Respondent	:	London Borough of Southwark
Representative	:	Michael Paget (Counsel)
Type of Application	:	Appeal in respect of an HMO licence – Section 71 and Schedule 5 of the Housing Act 2004
Tribunal Members	:	Judge Robert Latham Marina Krisko FRICS
Date and venue of Hearing	:	30 October 2019 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	13 November 2019

DECISION

The Tribunal confirms the decision, dated 24 May 2019, revoking the HMO licence which had been issued by the Respondent on 16 April 2018.

Summary of the Decision

1. On 16 April 2018, the Respondent issued an HMO Licence in respect of 246 Lucey Way, London, SE16 3UG (“the property”) to “Big London Lettings Ltd” pursuant to section 64 of the Housing Act 2004 (“the Act”).
2. On 16 April 2019, the Respondent served a Notice of Proposed Revocation on the Applicant at 69 Carteret Way, London, SE8 3QB, pursuant to paragraph 22 of Schedule 5 of the Act. The stated reason for the proposed revocation was that the Applicant had been convicted in June 2018 (a date which seems to be wrong) and found guilty of a number of offences and was therefore not considered to be a “fit and proper person” as defined by Section 66 of the Act.
3. On 2 February 2018, the Applicant had pleaded guilty to a total of 9 offences in respect of a property which it was managing at 238 Lucey Way, London SE16 3UG and was fined a total of £5,000. The offences consisted of failing to licence the HMO contrary to Section 72(1) of the Act and eight offences under the Management of Houses in Multiple Occupation (England) Regulations 2006. It was further ordered to pay costs of £2,000 and a victim surcharge of £300.
4. The Applicant did not make any representations in response to the Notice of Proposed Revocation. On 24 May 2019, the Respondent served a Notice of Decision to Revoke the Licence on the Applicant at 69 Carteret Way pursuant to paragraph 24 of Schedule 5 of the Act. It is against this decision that the Applicant seeks to appeal.
5. The property is owned by Miss Patricia Davis. On 28 September 2018, Ludlowthompson SLM Limited, acting as managing agents for Miss Davis, granted an assured shorthold tenancy of the property for a term 36 months to three tenants.
6. The Tribunal confirms the Respondent’s decision to revoke the licence. We are satisfied that on this date, the Applicant was no longer a fit and proper person to be the licence holder as it is no longer the “person having control” of the property. We are further satisfied that the Applicant has no standing to bring this appeal as it is no longer has a sufficient involvement in the property.

The Application

7. On 26 June 2019, Mr Vinicius Varejao Cardoso issued an application seeking to appeal against the revocation of Additional HMO Licences in

respect of nine properties, namely (i) 246 Lucey Way; (ii) 109 Marden Square, SE16 2JA; (iii) 57 Millender Walk, SE16 2BN; (iv) 42 Millender Walk, SE16 2BN; (v) 6 Jarman House, SE16 2PW; (vi) 120 New Place Square, SE16 2HR; (vii) 24 Donkin House, SE16 3PQ; (viii) 22 Abbey Gardens, SE16 3RQ; and (ix) 26 Dighton Court, SE5 0PR. Big Company Letting Company Limited was named as Mr Cardoso's representative. Mr Richard Norman was identified as an interested party. It stated that Mr Cardoso would require an interpreter "Portuguese (Brazil)". Grounds of Appeal were attached which had been drafted by Anthony Gold, Solicitors. The substance of the appeal is that there has been a change in the ownership and control of the Applicant Company. At the time of the conviction, the sole owner and director was Deoclides Jandir Pian. Since 2 October 2018, Mr Cardoso has been the sole owner and director. The address given for the Applicant Company was Charan House, 18 Union Road, SE4 6JP.

8. The application attached two notices in respect of 246 Lucey Way: (i) the HMO Licence, dated 16 April 2018, issued to the Applicant Company; and (ii) a Notice of Decision to Revoke a Licence, dated 24 May 2019, issued to Patricia Davis (sic). The application did not include two relevant documents required by the Tribunal's Practice Direction, namely the Notice of Proposed Revocation or the Notice of Decision to Revoke which the Respondent had served on the Respondent Company.
9. The Tribunal has treated the application as an appeal by the Applicant Company in respect of the revocation of the licence of the subject property at 246 Lucey Way. On 2 July, the Tribunal notified the Applicant Company and Mr Norman that any application in respect of any of the other eight properties required completed application forms and the requisite fee of £100 for each appeal. The Applicant Company failed to comply. On 26 July, a Procedural Judge issued a Notice of Intention to Strike out these eight applications. On 16 August, a Procedural Judge struck out these applications. In respect of one application (26 Dighton Court), there is an application to reinstate the appeal in respect of which Directions have now been issued.
10. On 16 August 2019, a Procedural Judge issued Directions for this appeal.
 - (i) By 30 August, the Applicant was directed to inform the Tribunal of any occupants/tenants at the property the Tribunal could notify them of the application. The Applicant failed to comply with this Direction.
 - (ii) Two Bundles of Documents have been filed on behalf of the Applicant, one by Mr Cardoso and a second by Mr Norman.
 - (iii) The Respondent has filed an extensive bundle extending to more than 250 pages. Most of the material relates to the unlicensed property at 238

Lucey Way. The Respondent state that Mr Cardoso did not inform them of the change of control of the Applicant Company or of any change of address for the Company. They further raise the procedural issue that the Applicant made no response to the Notice of the Proposed Revocation. On 29 August 2019, Ms Luisa Villar, an environmental health officer, inspected the property and identified a number of management defects. The Respondent do not address the circumstances in which the HMO licence was issued on 16 April 2018 or the circumstances in which the licence was issued despite the conviction in respect of 238 Lucey Way.

The Hearing

11. Mr Richard Norman appeared to represent the Applicant. Mr Norman has no interest in the property. However, he is the freeholder of 238 Lucey Way. He was accompanied by Mr Cardoso and Miss Patricia Davis. The Tribunal arranged for an interpreter to attend to assist Mr Cardoso whose first language is Portuguese.
12. Mr Michael Paget (Counsel) appeared on behalf of the Respondent. He was accompanied by Ms Luisa Villar.
13. The hearing was far from satisfactory:
 - (i) No party had provided the Tribunal with a copy of the Notice of the Decision to Revoke the Licence which had been served on the Applicant and which was subject to the appeal. Mr Cardoso stated that he had not received a copy as it had been served on 69 Carteret Way, an address no longer used by the Applicant Company. Mr Paget responded that the Applicant had not notified Southwark of either the change of ownership of the Respondent Company or any change of address. After an adjournment, Mr Paget was able to show the Tribunal an electronic copy of the Notice and has subsequently provided a hard copy of this.
 - (ii) Mr Norman did not have a copy of the Respondent's Bundle. He explained that he had a broken arm and was unable to convey a copy to the hearing. He was provided with the Tribunal's copy.
 - (iii) The Respondent had not received a copy of Mr Norman's bundle. The hearing was adjourned so that he could be provided with a copy.
 - (iv) Mr Norman stated that he had not been provided with a copy of Mr Cardoso's Bundle. The Tribunal provided him with a copy. When the Tribunal resumed the hearing, it became apparent that the bundle which Mr Cardoso had provided to the Respondent was more extensive than that provided to the Tribunal. In particular, it had a full copy of a tenancy

agreement, dated 28 September 2018, which is the critical document in the appeal.

14. Mr Cardoso and Mr Norman seem to have proceeded on the basis that the change in ownership in the Applicant Company from Mr Pian to Mr Cardoso was a critical change of circumstances and that it was for the Respondent to satisfy the Tribunal that Mr Cardoso is not a fit and proper person to hold the HMO licence. They fail to recognise that the Respondent is a separate legal entity from either Mr Pian and Mr Cardoso. It has been convicted of a number of offences relating to the management of the HMO at 238 Lucey Way. It is for the Applicant to establish that, despite this conviction, it is a “fit and proper person to be the licence holder” in respect of this property.
15. The Respondent produced two print-outs from Companies House dated 26 June 2019 and 10 October 2019. Mr Cardoso was appointed as a director on 2 October 2018. He is described as an Italian national. In recent years, there have been eight appointments and resignations. The June print-out records Mr Cardoso’s address as 69 Carteret Way; in October this was changed to Charan House, 18 Union Road, SW4 6JP.
16. Mr Cardoso stated that he purchased the Applicant Company from Mr Pian for £45,000 plus costs. He acquired two employees and an office at 6 Hayes Lane, SE1 2HB. He stated that Charon House is currently the registered address for the Applicant and that he had changed this address some six months previously.

The Statutory Framework

17. The appeal is brought pursuant to Part 3 of Schedule 5 of the Act. Paragraph 34 provides for the powers of this tribunal:
 - (i) The appeal is to be by way of a re-hearing;
 - (ii) The appeal may be determined having regard to matters of which the authority were unaware.
 - (iii) The tribunal may confirm, reverse or vary the decision of the local housing authority.
 - (iv) On an appeal, the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.
18. This is an appeal against an HMO licence issued pursuant to Section 64 of the Act. An authority has a discretion to a licence to the applicant or some

other person, or to refuse to grant a licence. If an authority are satisfied as to the matters mentioned in section 64(3), it may grant a licence either to (a) the applicant; or (b) to some other person, if both he and the applicant agree.

19. An authority may only grant a licence if satisfied on the following matters mentioned in in Section 64(3), namely that:

(a) the house is reasonably suitable for occupation by not more than a specified number of persons;

(aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force

“(b) that the proposed licence holder (i) is a fit and proper person to be the licence holder, and (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder”;

(c) that the proposed manager of the house is either (i) the person having control of the house, or (ii) a person who is an agent or employee of the person having control of the house;

(d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and

(e) that the proposed management arrangements for the house are otherwise satisfactory.

20. Section 66(1) provides that in deciding for the purposes of section 64(3)(b) or (d) 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 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;

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

(d) acted otherwise than in accordance with any applicable code of practice approved under section 233.”

(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 (d), 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”.

21. Section 66(4) provides that “for the purposes of section 64(3)(b) the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it”.

22. Section 263 defines the following terms:

(i) “person having control” means “(unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.”

(ii) “rack-rent” means “a rent which is not less than two-thirds of the full net annual value of the premises.”

(iii) “person managing” means “the person who, being an owner or lessee of the premises:

“(a) receives (whether directly or through an agent or trustee) rents or other payments from (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises.....; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments

are received through another person as agent or trustee, that other person.”

(iv) References in the Act to any person involved in the management of a HMO include references to the person managing it.

23. Section 70 permits an authority to revoke a licence in specified circumstances “relating to the licence holder or other person”, namely:

“(a) where the authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;

(b) where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and

(c) where the authority no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management.”

The Tribunal’s Determination

24. The critical document in the determination of this appeal is the assured shorthold tenancy agreement dated 28 September 2018. The landlord is “Miss Patricia Davis”. The landlord’s agent is “Ludlowthompson SLM Limited”. It is the address of this agent which is provided for the purposes of Section 48 of the Landlord and Tenant Act 1987, namely the service of any notices. The rent is to be paid to the agent. The property at 246 Lucey Way is let to three tenants at a monthly rent of £,2000 for a fixed term of 36 months from 28 September 2018.

25. The Respondent was not aware of this tenancy agreement when it revoked the licence on 24 May 2019. Indeed, the significance of this tenancy agreement only became apparent during the course of the hearing.

26. In its Grounds of Appeal (at paragraph 15(b)), the Applicant asserts: “The Applicant is managing the Properties well and the current management arrangements are satisfactory”. This was not true in respect of the subject property either at the date of the revocation of the licence (24 May 2019), the date of the issue of the application (26 June 2019) or at the date of the hearing. On these dates, the Applicant was not managing the subject property.

27. Mr Norman conceded that the Applicant is no longer receiving the rent in respect of the property. He suggested that the Applicant retained some

residual responsibility for repairs. However, the tenancy agreement makes no reference to this.

28. The Tribunal is satisfied that there are only two persons who are fit and proper persons to be the holder of the HMO licence of the subject property, namely (i) Miss Davis, as freeholder who is entitled to receive the “rack rent”; or (ii) Ludlowthompson. The Applicant no longer has any sufficient involvement in the management of the property to hold the licence.
29. Mr Norman did not seek to argue against this. He rather stated that Ludlowthompson are not willing to be the licence holder. In such circumstances, Miss Davis must either apply for a licence or find a managing agent who is willing to hold the licence.
30. It is apparent that the Applicant Company has sought to pursue this appeal in the belief that a finding by this Tribunal that it is a fit and proper person to hold a licence would extend to the other properties that it manages. That is not correct. Any HMO licence relates to a single property. Any prospective licence holder must establish that they meet the statutory criteria in respect of that property.
31. The Tribunal confirms the Respondent’s decision, dated 24 May 2019 to revoke the HMO licence. We are entitled to have regard to matters of which the authority was unaware. We are satisfied that on this date, the Applicant was no longer a fit and proper person to be the licence holder as it was no longer the “person having control” or the “person managing” the property. It had no sufficient involvement in the management of the house. Indeed, we have no sufficient evidence of the current management arrangements in respect of the property. We are further satisfied that the Applicant has no standing to bring this appeal as it is no longer has a sufficient involvement in the property.
32. The Applicant has paid tribunal fees of £300. In the light of our determination, we are satisfied that it would not be appropriate to make an order for the refund of the fees by the Respondent.
33. The parties confirmed that the relevant addresses for service are:
 - (i) The Applicant’s representative is Mr Richard Norman, 4 The Meadows, Guildford, Surrey, GU2 4DT.
 - (ii) The Respondent’s address is: London Borough of Southwark, PO Box 64529, London SE1P 5LX. Any correspondence should be marked for the attention of Debora Allday.

Judge Robert Latham

13 November 2019

Postscript

Subsequent to drafting this decision, the Tribunal has seen the undated letter sent to the Tribunal on 8 November in which Mr Norman seeks to make further submissions. The Tribunal is satisfied that Miss Davis is the “person managing” the property, as she is the owner who receives the rent through her agent. Ludlowthompson is the “person having control”, as it is the person who receives the rent from the tenants. Having regard to Sections 63(b) and 66(4), the Tribunal is satisfied that the Applicant Company is not “the most appropriate person to be the licence holder”. Indeed, it has no sufficient involvement in the management of the property to hold the licence.

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.