



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

Case Reference : **BIR/00CQ/HMV/2020/0001-11
BIR/00CQ/HML/2020/0002-11**

**HMCTS code
(paper, video, audio)** : **V:SKYPEREMOTE**

Properties : **As set out in Part 1 and Part 2 of the Schedule**

Applicant : **Atwal Property Investments Limited (1)
Kirin Atwal (2)
Daljit Atwal (3)
Atwal Property Investments Limited t/a
Nicholas Humphreys Estate and Letting Agents (4)**

**Applicants
Representative** : **Royds Withy King**

Respondent : **Coventry City Council**

Type of Application : **HMO Licensing Appeals under Housing Act 2004
Schedule 5 Part 3 paras. 31 and 32.**

Tribunal Members : **Judge D. Barlow
Robert Chumley-Roberts MCIEH, J.P**

Date of Decision : **12 August 2020**

DECISION

DECISION

- (1) The Tribunal reverses the decision of Coventry City Council, made on 17 January 2020, to revoke the licences of the houses in multiple occupation listed in Part 2 of the Schedule.
- (2) The Tribunal reverses the decision of Coventry City Council made on 17 January 2020, to refuse to grant licences for the houses in multiple occupation listed in Part 1 of the Schedule and directs the local housing authority to reconsider the applications (insofar as not already withdrawn or granted), on the basis that in applying the tests set out in s.66 of the 2004 Act, no finding has been made by this Tribunal, on the facts and evidence before it, that Kirin Atwal is not a fit and proper person to be a licence holder or a manager of a house in multiple occupation.

REASONS FOR THE DECISION

1. This is the Tribunal's determination on an appeal by the Applicants under paragraphs 31(1) and 32(1) of Schedule 5 to the Housing Act 2004 ("the 2004 Act"), against the Respondent local authority's decisions to:
 - refuse HMO licences in respect of the properties listed in Part 1 of the Schedule below; and
 - to revoke HMO licences, in respect of the properties listed in Part 2 of the Schedule below

Background

2. The 3rd Applicant Daljit Atwal ("Mr Atwal") is the managing director and controlling shareholder of the 1st Applicant, Atwal Property Investments Limited ("APIL"), a family company that owns and manages residential property, including the properties set out in the Schedule. Mr Atwal is the father of the 2nd Applicant Kirin Atwal ("Ms Atwal") who is employed by APIL. The majority of properties owned and managed by APIL are student accommodation HMO's. The 4th Respondent is a trading name of APIL and not a legal entity.
3. On 27 March 2018, APIL made an application to the Respondent local authority ("the Local Authority") for an HMO licence for 105 Walsgrave Road, Coventry ("the Property"). Ms Atwal was named in the application as the proposed manager of the HMO.
4. Following an inspection of the Property on 27 February 2019, a case officer from the Local Authority noted multiple contraventions of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the 2006 Regulations"), namely:

Regulation 4 – Duty of Manager to take safety measure:

- The means of escape was compromised on the 2nd floor due to a chair having been placed on the landing – Regulation 4 (1) (a)
- The means of escape was not kept in good order as there was a hole in the wall near the front door - Regulation 4 (1) (b)
- Trailing cables below the television in the living area of the kitchen – Regulation 4 (4) (a)
- No fire blanket in the kitchen – Regulation 4 (4) (a)

- There was no closer on the fire door to the cupboard under the stairs – Regulation 4 (4) (a)
- There were holes in the ceiling of the under stairs cupboard where wires go through – Regulation 4 (4) (b)

Regulation 7 - Duty of manager to maintain common parts, fixtures, fittings and appliances:

- Dirty, un-swept hallway and dirt on the doors – Regulation 7 (1) (a)
 - Corroded downpipe to the front of the property – Regulation 7 (1) (b)
 - Disconnected downpipe to the guttering to the rear – Regulation 7 (1) (b)
 - An attachment to the water tank was hanging off - Regulation 7 (1) (b)
 - Refuse in the under stairs cupboard – Regulation 7 (1) (c)
 - A good number of the lights were not functioning in the kitchen – Regulation 7 (2) (e)
 - The low-maintenance garden to the front was full of weeds and unkempt - Regulation 7 (4) (b)
 - Refuse in the rear garden - Regulation 7 (4) (b)
5. On 28 May 2019, the Local Authority issued a Notice of Intention to refuse to grant an HMO licence for 105 Walsgrave Road on the grounds that it was not satisfied with the proposed arrangements for the management of the Property.
 6. APIL had 9 other outstanding applications for HMO licences in respect of the properties listed in Part 1 of the Schedule. Notices of Intention to refuse to grant licences for those properties were sent on 26 July 2019 and 18 October 2019, on the grounds that under s.64 (3)(b) or(d) of the 2004 Act, the proposed manager (Ms Atwal) was not a fit and proper person and/or that by association with Ms Atwal, the proposed licence holder was deemed not to be a fit and proper person under s.66(3) of the 2004 Act.
 7. APIL, Mr Atwal and Ms Atwal are also HMO licence holders and/or the named manager of the 11 properties listed in Part 2 of the Schedule. Notices of Intention to revoke those licences were sent by the Local Authority to the licence holders on 24 July 2019 and 26 July 2019. The grounds relied on were that under s. 70(2)(b) or (c) of the 2004 Act the licence holder and/or manager of the HMO was no longer considered to be a fit and proper person or that by close association with such a person, deemed to be not a fit and proper person under s.66(3)(a) of the 2004 Act.
 8. A PACE interview took place on 7 August 2019 with Ms Atwal, following which, on 13 November 2019, representations were made to the Notices of Intent by the Applicant's representatives.
 9. The Local Authority responded to the representations but having concluded that Ms Atwal was not a fit and proper person to hold an HMO licence or manage an HMO property, on 17 January 2020, issued final Notices of its Decision to refuse all licence applications and revoke all licences where Ms Atwal was the licence holder or an HMO manager, or a proposed licence holder or manager.
 10. On 21 February 2020 the Applicants made applications appealing those decisions.
 11. There is no challenge to the procedural requirements of Schedule 5 in relation to the service and content of the notices. The grounds on which all the Local Authority decisions rest, raise two issues for the Tribunal, namely:

- (i) Whether Ms Atwal is a fit and proper person to hold an HMO licence; or manage an HMO property; and if not
- (ii) Whether by close association, APIL and/or Mr Atwal are also deemed not to be fit and proper persons.

The Law

12. Section 64 of the 2004 Act deals with the power to grant or refuse an HMO licence. The relevant sections are:
- s. 64 (1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—*
- (a) *grant a licence in accordance with subsection (2), or*
 - (b) *refuse to grant a licence.*
- (2) If the authority are satisfied as to the matters mentioned in subsection (3) they may grant a licence.....*
- (a)
 - (b)
- (3) The matters are—*
- (a) *that the house is reasonably suitable for occupation*
 - (b) *that the proposed licence holder—*
 - (i) *is a fit and proper person to be the licence holder,*
 - (ii).....;
 - (c).....
 - (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.*
13. Section 66 of the Act (as amended) details the test for deciding whether a person is a fit and proper person to be a licence holder or manager and provides:
- s. 66 Tests for fitness etc. and satisfactory management arrangements.*
- (1) 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 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).....;
 - (b).....;
 - (c) *contravened any provision of the law relating to housing or of landlord and tenant law; or*
 - (d).....
- (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.

14. Section 70 of the Act (as amended) details the provisions relating to a local authorities power to revoke licences.

s. 70 Power to revoke licences

(1) The local housing authority may revoke a licence—

(a) if they do so with the agreement of the licence holder;

(b) in any of the cases mentioned in subsection (2) (circumstances relating to licence holder or other person);

(c) in any of the cases mentioned in subsection (3) (circumstances relating to HMO concerned); or

(d) any other circumstances prescribed by regulations made by the appropriate national authority.

(2) The cases referred to in subsection (1)(b) are as follows—

(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.

Section 66(1) applies in relation to paragraph (b) or (c) above as it applies in relation to section 64(3)(b) or (d).

15. The licence holder, or any relevant person, may appeal to the First-tier Tribunal (Property Chamber) against a decision by the local housing authority to vary or revoke a licence, under Part 3 of Schedule 5 to the Act.

- On an appeal against a refusal to grant a licence, the Tribunal has power under paragraph 34(3) and (4) of Schedule 5 to confirm, reverse, or vary the decision; or to direct the local authority to grant the licence to the applicant on such terms as the Tribunal may direct.
- On an appeal against a revocation of a licence, the Tribunal has power under paragraph 34(3) of Schedule 5 to confirm, reverse, or vary the decision.

Hearing

16. A remote hearing using the UK Court Skype account was held on the 23 June 2020. Mr Thomas Talbot-Ponsonby of Counsel appeared for the Applicants. Ms Atwal attended and gave evidence. The Local Authority was represented by Mr Adrian Chowns, the Local Authority Enforcement Team Manager, Ms Claire Taylor, Senior Housing Enforcement Officer also attended and gave evidence.

The Respondent's submissions.

17. The Local Authority provided a bundle of evidence [A101-193] including a written response to the appeal which exhibited (inter-alia) a Statement in response to the appeal, a transcript of the PACE interview, the Local Authority's enforcement policy, the enforcement matrix, completed pre and post interview, the Local Authority's response to the Applicants' representations, photographic evidence of the Property, and some external photographs of 3 of the licensed properties in part 2 of the Schedule.
18. The Local Authority's evidence predominantly concerns the HMO licence application for 105 Walsgrave Road.
19. Mr Chowns confirmed that there had been some delay in processing the application for 105 Walsgrave Road (made on 27 March 2018) due to staff turnover and a backlog of cases. The council operate a staged approach which requires an inspection of the Property before compliance issues are considered. In this case there was a partial inspection on 29 January 2019, the case officer being unable to gain access to all parts of the interior of the Property, followed by a full inspection on the 27 February 2019 which identified breaches of the 2006 Regulation as set out in paragraph 4 above.
20. In May 2019 the case officer, Ms Claire Taylor, completed the council's enforcement matrix and this was used to inform a case conference discussion with others, about what action the council should take. Mr Chowns explained at the hearing that the regulatory offences scored a total of -41 points placing the offence into Band 3, meaning the enforcement actions the council could consider included revocation of the licence. Mr Chowns confirmed in evidence that although not shown on the matrix, revocation was deemed to include refusal to grant a licence.
21. The Local Authority's statement confirms that Ms Atwal was deemed to have contravened a provision of the law relating to housing, namely breaches of the 2006 Regulations and is therefore, by virtue of section 66(2)(c) of the Housing Act 2004, deemed to be not a fit and proper person to hold an HMO license or manage a licensable HMO [A107-108]. As s.66 requires the council to do one of two things that is to grant or refuse to grant a licence and nothing else, the decision was made to refuse to grant the licence. On 28 May 2019, a Notice of Intent to refuse the licence for 105 Walsgrave Road was sent to APIL and Ms Atwal.
22. Ms Atwal called the Local Authority on 7 June 2019 and was advised of "a couple of the issues" at the Property and told that full details would be given at a PACE interview [A108]. The interview was arranged for the 7 August 2019.
23. On the 24 and 26 July 2019 the Local Authority issued Notices of Intent to refuse/revoke licences for the other Atwal properties listed in the Schedule on the grounds that Ms Atwal was not a fit and proper person to hold a licence and/or manage an HMO and that by virtue of section 66(3) of the 2004 Act, Mr Atwal and APIL were also deemed to be not fit and proper persons to hold an HMO licence due to their close family connection to Ms Atwal [A108].
24. Ms Atwal attended the PACE interview on the 7 August 2019, with her legal representative, following which the enforcement matrix was again completed – showing a total score of -36, still within Band 3.
25. The Applicants made a number of written representations on 13 November 2019 [A44-47] which the Local Authority responded to [A243-249].
26. The Local Authority's statement mentions that periodic inspections of 5 other HMO properties owned/managed by the Applicants were arranged [A111]. These inspections do not appear to have played any part in the Local Authority's decision to

revoke the licences. In cross examination Mr Chowns conceded that no material concerns were identified by the periodic inspections of these properties or on the compliance inspections of 7 Clara Street, 136 Gulson Road and 163 Gulson Road which took place in 2019.

Response to grounds of appeal [A113- 114]

27. The Local Authority statement confirms that it was satisfied Ms Atwal had breached the 2006 Regulations and that some breaches were serious in their nature, specifically failure in her duty to take safety measures. The council take a staged approach to enforcement in line with its enforcement policy and concluded that the proportionate response to lack of effective management was to refuse/revoke the licences. Any other sanction available to the council, including prosecution, would have been a greater sanction that would still have resulted in the refusal/revocation of the licences.

28. The options available to the council were set out in a tabular/matrix format in the Statement as follows [A114]:

Action	Sanction	Not Fit and Proper
Do Nothing	None	No
Refuse/Revoke Licence	None	Yes
Caution	None (admission of guilt)	Yes
Prosecution	Fine/Criminal Record	Yes
Civil Penalty	Fine	Yes

29. The option of Do Nothing was not considered appropriate because the council had established that there were offences under the 2004 Act. The proposed refusal/revocation of the licences was considered to be proportionate in the circumstances.

30. In cross examination Mr Chowns confirmed that the table on page A114 did not form part of the council's policy. He had included it in the council's response simply to summarise the council's approach under the policy, although accepting it was not set out in that format anywhere in the policy. He said that the table assisted in explaining the hierarchy of options available and to show that the council had adopted the action that was one up from Do Nothing.

31. Mr Chowns accepted there were no Category 1 or serious Category 2 hazards in 105 Walsgrave Road that would have triggered a full inspection under the Housing Health and Safety Rating System (HHSRS) leading to service of an improvement notice. The issues for the council, he said, were about how the property was being managed. As there were no Category 1 or serious Category 2 hazards requiring immediate action by the council, they just proceeded with the licensing procedure. The Matrix being used to inform the council's discretion on the application.

32. Mr Chowns was asked to explain the Local Authorities policy on determining whether a proposed licence holder or manager was a fit and proper person. Mr Chowns explained that the Local Authority has a new HMO Licensing policy which came into force in May 2020. The new policy specifically addresses the fit and proper person test. When asked about the policy that pre-dated this, Mr Chowns was

unsure if there was a policy or not. To summarise, his response was:- I can't tell you off the top of my head if we had an earlier policy, or what it said.

33. When asked specifically what the Local Authority did take into account when assessing who is a fit and proper person, Mr Chowns confirmed that although there was no formal checklist or documented policy the case officers adopt their own procedures for checking applicants on databases and internet platforms, such as the council's own database of prior HMO offences in Coventry, the Rogue Landlord database, Google; and national press court and crime reports. Mainly however they rely on s.66 (2) and (3). In this case Ms Atwal had contravened s. 66(2)(c) by breaching regulations 4 and 7 of the 2006 Regulations. On that basis alone she is not, Mr Chowns contended, a fit and proper person to hold an HMO licence or manage an HMO.

The Applicants submissions

Grounds of appeal in the Application

34. The Local Authority decisions all arise from an inspection of 105 Walsgrave Road in connection with an application for an HMO licence. As a consequence of the inspection the Local Authority determined that Ms Atwal was not a fit and proper person to be a manager of an HMO and refused to grant a licence for this and the other properties listed in part 1 of the Schedule; it also revoked all licences in respect of the properties listed in part 2 of the Schedule. This, the Applicants' say is capricious unreasonable and disproportionate.
35. APIL bought the Property in December 2016 and refurbished it for student accommodation. A licence application was made on 27 March 2018. The Local Authority inspected the Property in January and February 2019. No issues were raised with the Applicants concerning the visits.
36. On 25 May 2019 a Notice of Intent to refuse the licence was given on grounds that the proposed management arrangements were unsatisfactory. No other information was provided. Ms Atwal contacted the Local Authority to ascertain what the concerns were but was told the details would be provided at a PACE interview.
37. The interview was held on 7 August 2019, when for the first time Ms Atwal was told what the concerns were and shown photographs. These were:
- (a) A tenant had placed a chair on the top floor landing that was said to potentially obstruct an escape route.
 - (b) In the lounge, there were cables plugged into an extension cable that were said to be trailing on the floor.
 - (c) In the hall, the front door handle had damaged the plasterboard making a small hole.
 - (d) There was inadequate finishing to a hole in a wall through which cables passed and the cables were not boxed in.
 - (e) There was dirt/dust on the hall floor.
 - (f) The under-stairs cupboard had been used to store a few items.
 - (g) The fire blanket was missing from the kitchen.
 - (h) An exterior downpipe from a drain had become disconnected and a soil down pipe was corroded.
38. Within three days Ms Atwal had remedied those items that had not already been attended to. Photographs demonstrating this were provided to the council with the Applicants' representations on 13 November 2019.

39. The Applicants' say that to deem Ms Atwal unfit on the basis of the findings of this inspection is capricious, unreasonable and disproportionate because:
- (a) There were no Category 1 hazards, only minor Category 2 hazards.
 - (b) The council took over 6 months to inform the Applicants of their concerns and had not considered prosecution, both of which demonstrate the perceived lack of seriousness.
 - (c) The complaints fall into two categories; those one-off issues/actions by tenants which cannot be foreseen or prevented such as those at (a), (e) and (g); and those which are minor snagging issues, bearing in mind this was a newly refurbished property.
 - (d) Mr Atwal has over 30 years experience of managing property, Ms Atwal has over 6 years. During this time the council have had no cause to raise any concerns about the Applicants' properties or management of them. On the few, rare, occasions when any issue has been identified the Applicants have resolved them quickly to the council's satisfaction.
 - (e) Since the issue of the Notices of Intent the council have inspected several of the Applicants properties and has not complained of any issues.
40. Ms Atwal was deemed unfit on the basis of an inspection of one property and the Local Authority failed to take any account of:
- (a) The Applicants' good record of successfully managing HMO's over many years.
 - (b) Its failure to give the Applicants any opportunity to remedy the alleged breaches.
 - (c) The minor nature of the breaches identified.
 - (d) The fact that no further breaches were found on subsequent inspections of the Applicants' properties.
41. The Applicants say all this could have been dealt with by means of an informal letter, a notice under the 2004 Act, or a condition on the licence requiring the items to be remedied within a period of time. The decision to refuse and revoke all licences was disproportionate and will have a serious detrimental effect of the Applicants' business and their livelihood. The council's suggestion that they appoint alternative agents is not appropriate because the costs involved would affect the viability of their business model and in any event the issues complained of were of a minor and temporary nature, likely to affect any agents appointed at any time.

Reply

42. In reply to the Local Authority's response to the grounds of appeal the Applicants made a number of points:

- (a) The response does not address the grounds of appeal in detail it largely repeats the council's response to the Applicant's representations.
- (b) A number of the breaches of regulations relied on were never raised with the Applicant either before or during the PACE interview. In particular, the state of the garden; complaints about the number of residents; the water tank attachment hanging off; refuse in the rear garden.
- (c) Ms Atwal responded at the time to the allegations of residents allowing others to stay in their rooms and provided copy emails evidencing the

actions taken. Furthermore, on her visits Ms Taylor found no evidence of overcrowding.

- (d) Under s.66 (1) when deciding whether a person is a fit and proper person the council must have regard (among other things) to any evidence within subsection (2) and (3). The Local Authority have not considered any matters other than the breaches of the 2006 Regulations.
- (e) The Local Authority have made reference to inspections of other properties without clarifying why.
- (f) The council's policy explains the legislative framework and the enforcement options available to it. It is principally the council's policy for imposing financial penalties. The main part of the enforcement matrix is about assessing the level of the penalty. The council's response to the Applicant's representations and Statement of case make no reference to the enforcement matrix – it relies instead on a table which sets out 5 options (*replicated at paragraph 28 above*) and suggests that for options 2-4 the relevant person is automatically not a fit and proper person, rather than taking this into account “among other things”.
- (g) The council's Matrix has not been correctly applied. Several items were the responsibility of the tenants. If these were removed or credited with 5 points each rather than 5 points in total it would improve the score to -26 or Band 2 where the suggested actions include an advisory letter and other lesser sanctions, but not refusal/revocation of the licence.
- (h) In summary the decision is not in accordance with the council's policy, it hasn't applied its policy correctly and it has failed consider the full range of options available to it. It has failed to take account of any anything under s.66(1) of the 2004 Act, other than the breaches of the 2006 Regulations, including the Applicants' good record and it is disproportionate given the low scoring hazards identified.

Evidence at the hearing

- 43. Ms Atwal gave evidence concerning her experience and qualifications to manage HMO's. She confirmed that she had been a manager for 6-7 years and although not formally qualified had practical experience from doing the job within a family that had over 30 experience of letting properties. She confirmed that there had not been any prior issues with the council concerning the properties she manages, other than a letter concerning 5 Clara Street last year, which identified some works that were then carried out in a timely manner.
- 44. Ms Atwal confirmed that at the time the new licence applications were submitted, her practice was to visit her properties every 3 months, but with viewings this was often more frequent. When issues arise, if they are general repairs and maintenance they are dealt with in a reasonable time. Emergency repairs are addressed without delay. When asked if the specific issues concerning 105 Walsgrave Road were dealt with before she was made aware of them, she said that majority had been dealt with before the PACE interview, some when the tenants vacated in June 2019, the few remaining items, within 3 days of the interview when she was first made aware of them.

45. Ms Atwal confirmed that since the interview she has modified her procedures. Inspections are more regular, every 4-6 weeks internal and external on a block by block basis. She keeps in regular contact with her tenants making appointments with them to inspect the properties between 9.00 am and 5.00 pm and logs all issues which are followed up with their contractors to ensure that any works are carried out to a good standard. Ms Atwal confirmed that no issues had been raised with her by the council either before or since this application and that she had filed 5 further HMO applications in October 2019 none of which had yet been inspected.
46. When asked about the impact of the refusal and revocations on the family business Ms Atwal confirmed that it would have a vast impact. They would have to cease operating the management business and transfer all the managed properties to a third party.
47. On cross examination Ms Atwal confirmed that most of the issues photographed in January and February 2019 had been attended to by the date of the PACE interview. The exposed wiring under the stairs was dealt with in August 2019 within 3 days of the interview.
48. Mr Chowns was cross examined at some length by Mr Talbot-Ponsonby. He explained that had the inspection revealed any Category 1 hazards the council would have had to take action. As there were no Category 1 hazards the enforcement matrix was completed and used to inform the council's discretion on the licence application. The council hadn't communicated the findings of the inspection to Ms Atwal because it is not the council's function to manage the HMO, it doesn't provide a management service. Where the council finds breaches of the 2006 Regulations it considers its enforcement options.
49. When asked in connection with s.66(1) of the 2004 Act what "other things" the council had taken into account, other than subsections (2) and (3), Mr Chowns response was that the council did not need to take into account anything else because the decision had been made under s64(3)(b) and (d). Mr Talbot-Ponsonby then took Mr Chowns through s66(1) which refers specifically to decisions made for the purposes of s64(3)(b) or(d) and returned to his question. Mr Chowns then confirmed the council look at competence. He didn't think qualifications were an indicator of competence but experience was a factor the council might take into account. When pressed as to how this was assessed Mr Chowns said the council looked at its systems, although conceding they would just indicate lack of competence. When asked to confirm that the checks the council makes could not pick up successful management over a period of years, his response was that the issues at 105 Walsgrave Road indicated it was not being managed well. Mr Chowns confirmed that the council liked to promote active management of its HMO's and the fact that Ms Atwal acknowledged that she was not aware of the issues until brought to her attention demonstrate that she was not taking her management obligations seriously.
50. When pressed about the application of the Matrix Mr Chowns said that where some of the breaches were caused by tenants a single adjustment of +5 points was made regardless of the number of such breaches. He conceded that an alternative might have been to disregard them for the purposes of scoring the Matrix. When Mr Talbot-Ponsonby pointed out that would have brought the score down to -21 which would not trigger refusal/revocation, Mr Chowns said that the Matrix was not a decision making tool, it just provided guidance to the case officers.

The Tribunal's Deliberations

51. The Tribunal considered all the evidence submitted by the parties, both written and oral and summarised above.
52. Under section 70(2) of the Act a local authority can revoke a licence where they consider that either the licence holder has committed a serious breach of the conditions of the licence or repeated breaches, or where the licence holder or management of the house is being carried out by persons who are no longer considered fit and proper fit and proper. In this case, the Local Authority confirmed that, so far as they were aware, the Applicants had not committed any breach of the licence conditions of the properties listed in part 2 of the Schedule.
53. Under the 2004 Act a local housing authority may not grant a licence for a house in multiple occupation under Part 2 unless it is satisfied inter alia that “the proposed licence holder” is “a fit and proper person to be the licence holder” (ss.64(3)(b)(i)).
54. The authority must also be satisfied that the proposed manager of the licensed house would be a fit and proper person for that role (ss. 64(3)(d)). Similarly, the authority has the power to revoke a licence where it considers that either the licence holder or the manager is no longer a fit and proper person (ss. 70(2)(b)(c)).
55. Under s.66(1) the authority must have regard (among other things) to any evidence falling within s. 66(2)-(3) when deciding whether someone is a fit and proper person to be either the licence holder or the manager of a licensed house. These include serious offences such as whether a licence holder has committed any offences involving fraud, dishonesty, violence, drugs, certain sexual offences and unlawful discrimination. S66(2)(c) includes contraventions of any provision of the law relating to housing law.
56. Under s.66(3), the assessment of a person’s “fitness” should also have regard to relevant conduct of the kind described in subsection (2) attributed to another person associated (or formerly associated) with that first person, where relevant to the question of the first person’s fitness. In this case the relevant conduct of Ms Atwal (the first person) may, if relevant, be attributed to an assessment of APIL’s and Mr Atwal’s fitness.
57. It is important to note that that subparagraph (c) does not depend upon whether an offence has been committed or a conviction obtained. It applies to facts which were capable of amounting to an offence, but where the authority decided not to prosecute. The focus of ss.66(2)(c) is upon the conduct there described, not upon criminality.
58. In *R v Crown Court at Warrington ex parte RBNB [2002] 1 WLR 1954*, Lord Bingham, giving the leading judgment in the House of Lords, referred to “fit and proper person” as a “portmanteau expression, widely used in many contexts” and continued:-

“It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do.”

Although given in relation to a justices licence, the statement applies equally to the fit and proper person test in Parts 2 and 3 of the 2004 Act. A licence holder (or manager of a house) must have the personal qualities and qualifications reasonably required of a person seeking to have the responsibilities of holding a licence under that

legislation, including his or her ability and willingness to comply with relevant requirements of housing law comprised within the licensing regime itself, such as the 2006 Regulations.

59. In this case the sole issue that determined the Local Authority's decision to refuse and revoke 21 licences applications/licences, was the fitness of Ms Atwell to hold a Part 2 licence or manage an HMO, as assessed by the case workers processing the HMO licence application for 105 Walsgrave Road.
60. The evidence shows that Ms Atwal who is employed by APIL, her fathers company, has been working in the family business for 6-7 years. In that time she has been a licence holder and manager of numerous HMO properties. The business itself has owned and managed houses used as student accommodation in the city for over 30 years. The Local Authority confirmed that as far as they were aware there had been no breaches of licence conditions or any issues of any significance relating to the Applicants or the HMO properties they have owned and managed. Indeed, Mr Chowns confirmed that when considering the fitness of a manager or licence holder the case workers routinely check their own database and other on-line platforms to see if there have been any prior issues.
61. So, we come to APIL's licence application for 105 Walsgrave Road, made on 27 March 2018. After some delay due to staffing and other issues, the application was considered by Ms Taylor in January 2019. She made two visits to the Property in January and February 2019 to assess its suitability as an HMO and in response to an unsubstantiated complaint of overcrowding. On the second visit, wearing her enforcement hat, she noted a number of breaches of the 2006 Regulations. From Mr Chowns evidence it appears that the licence application was effectively stayed while the Local Authority considered what action it should take on the regulatory breaches. They were not serious enough to warrant a full HHSRS inspection with a view to prosecution, service of an improvement notice, or financial penalty notice. Several were temporary issues caused by the tenants' lack of care, such as the chair left on the first-floor landing, untidy cabling and the un-swept hall. No steps were taken to notify the Applicants of the issues, that is not Mr Chowns made clear, the responsibility of the Local Authority.
62. On 21 May 2019 Ms Taylor completed the council's enforcement Matrix which put the offence in Band 3. One of the enforcement options for a Band 3 offence is revocation of the licence. The licence application was then considered by the casework team with the aid of the enforcement Matrix. In this case no licence had yet been granted but Mr Chowns confirmed that revoke was taken to include refusal and on 25 May 2019 a Notice of Intent to refuse the licence for 105 Walsgrave was issued, on the single ground that the management arrangements were not satisfactory. Ms Atwal did not discover what the Local Authority's specific concerns were until the PACE interview on 7 August 2019.
63. A determination then appears to have been made about Ms Atwal's lack of fitness which shortly afterwards led to the revocation of all current HMO licences held by the Applicants and the refusal of all their outstanding HMO applications.
64. It became clear during the evidence that the Local Authority did not, prior to May 2020, have any written policy on its approach to assessing fitness. Background checks are made which in this case revealed nothing untoward about Ms Atwal. The Local Authorities statement indicates that the sole determinative factor in this case was the breach of the 2006 Regulations identified by Ms Taylor during the visit on 27 February 2019. Mr Chowns position appeared to be that if a breach of housing law

under s.66(2)(c) was established, there was no requirement for a Local Authority to consider any other matter.

65. Although described as a decision making tool, the enforcement Matrix for the 105 Walsgrave Road appears to have been the single factor informing the council's determination of Ms Atwal's fitness. Although clearly designed for use in assessing enforcement options following breaches of housing and landlord and tenant law, it underpinned the council's decision to refuse and revoke the other licences without any broader consideration of Ms Atwal's fitness. As any determination of Ms Atwal's lack of fitness would also prove to be determinative of all the other decisions, the Local Authority should have carried out an objective assessment of her fitness taking account of all relevant factors, not just the Matrix. The lack of a well formulated policy, or in fact any policy for making such an assessment, has clearly hampered the Local Authority in this case.
66. In relation to 105 Walsgrave Road, the Local Authority should have communicated its concerns about the breaches of the 2006 Regulations to the Applicants soon after the inspection on the 27 February 2019. As a first intervention the Local Authority should have allowed the Applicants an opportunity to redress matters and explain the issues it found, none of which were sufficiently serious to warrant a full HHSRS inspection. Furthermore, the Local Authority were highly critical of Ms Atwal for her lack of preparedness at the PACE interview having failed to provide her with any detail of the matters they wished to raise with her. The approach was procedurally unfair and led to decisions about her management capability that she could not have anticipated or taken informed steps to influence.
67. In relation to the Matrix, Mr Chowns conceded that an adjustment to remove the temporary items caused by tenants' mis-use could have reduced the score to -21 which would not have required the Local Authority to consider refusal/revocation of the licence as an option, but then said that the Matrix was just a guide to decision making. The Tribunal does not find, even applying the second revision of the Matrix, that the breaches of the 2006 Regulations were sufficiently serious to justify a refusal of the licence for 105 Walsgrave Road.
68. So far as Ms Atwal's fitness is concerned, there appears to have been no objective assessment of this. The Local Authority were entitled to have concerns following the visit to 105 Walsgrave Road in February 2019, but the breaches of management regulations were not sufficiently serious for this to be sole determining factor. No account was taken of Ms Atwal's previous good record as a manager and neither was she afforded any timely opportunity to redress the issues found at 105 Walsgrave Road or reassure the Local Authority of her competence. No account has been taken of the (undisputed) evidence that the issues were in any event largely resolved before the PACE interview and the few remaining items rectified within 3 days of the interview.
69. In evidence Ms Atwal came across as a professional young woman who took her responsibilities seriously. She offered no criticism of the Local Authority's handling of the case but was at pains to explain how she had modified her own management procedures following the PACE interview to better anticipate and deal with ongoing issues.
70. The Tribunal finds for all the above reasons that there is insufficient evidence to determine that Ms Atwal lacked either the personal qualities or qualifications to hold a licence or manage an HMO, or was otherwise not a fit and proper person to hold an HMO licence or manage an HMO property.

71. It follows that the Tribunal does not need to consider whether by association with Ms Atwal, either APIL or Mr Atwal are fit and proper persons to hold an HMO licence or manage an HMO property.

Name: D Barlow
Deputy Regional Judge

Date: 12 August 2020

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).

SCHEDULE

Revocation of a Licence

63 Barras Lane Coventry CV1 4AQ
5 Clara Street Coventry CV2 4ET
7 Clara Street Coventry CV2 4ET
12 Gloucester Street Coventry CV1 3BZ
41 Gulson Road Coventry CV1 2JH
136 Gulson Road Coventry CV1 2 JF
163 Gulson Road Coventry CV1 2HZ
109 Marlborough Road Coventry CV2 4EQ
15 Clara Street Coventry CV2 4ET
42 Beechwood Avenue Coventry
46 Gulson Road Coventry

Refusal to Grant a Licence

1 Gerard Avenue Coventry CV4 8FZ
7 Grantham Street Coventry CV2 4FP
79 John Rous Avenue Coventry CV4 8EU
29 Kingsway Coventry CV2 4FF
75 Lower Ford Street Coventry CV1 5PS
118 Terry Road Coventry CV1 2BA
105 Walsgrave Road Coventry CV2 4HG
109 Walsgrave Road Coventry CV2 4HG
31 Gresham Street Coventry CV2 4EU
24 Harley Street Coventry CV2 4EY