



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

Case reference : **LON/00AT/HPO/2020/0020**

**HMCTS code
(paper, video,
audio)** : **V: CVP REMOTE**

Property : **154 Grove Road, Hounslow TW3 3PZ**

Applicant : **Mr Ali Khan**

Representative :

Respondent : **London Borough of Hounslow**

Representative : **Mr M Baumohl (Counsel)**
Instructed by Ms Lina Amin (Solicitor)

Type of application : **Appeal in respect of a Prohibition Order**
- Section 20-21 & Part 3 of Schedule 2 to the
Housing Act 2004

Tribunal members : **Deputy Regional Judge N Carr**
Mr T Sennett (Professional Member)

Date of hearing : **29 September 2020**

DECISION

DECISION

- (1) The tribunal has no jurisdiction to consider the appeal in case number LON/00AT/HPO/2020/0020. The case is therefore closed and the papers will be placed in archive.

REASONS

The application

1. This has been a remote video hearing. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because or it was not practicable due to the covid-19 pandemic, and all issues could be determined in a remote hearing.
2. There were numerous irresolvable issues with the CVP platform, which may or may not have been related to the mass-outage of Microsoft systems overnight on the 28-29 September 2020. After concerted efforts, Ms Stewart, the Digital Case Officer for the hearing, managed to admit all attendees by telephone, and therefore the hearing took place by that medium. The tribunal thanks the parties for their forbearance.
3. On 3 March 2020 the tribunal received an appeal under section 20 - 21 & Part 3 of Schedule 2 to the Housing Act 2004 ('the Act') against the imposition of prohibition order in respect of the Property by the Local Housing Authority (LHA) on 3 February 2020. It was acknowledged and issued by the Tribunal on 10 March 2020.
4. The basis of the appeal is that the Appellant believes that (1) there is no necessity for the property to be vacated for the works required to be carried out, and (2) that the outbuildings, as separate buildings, should not form part of the order.
5. In the application form, the Appellant describes himself as "Agent", and names "M J Khan" as the landlord.
6. On 17 March 2020 directions were made to bring this matter to a hearing. On 19 March 2020 the Regional Judge postponed all hearings and stayed all directions due to the covid-19 pandemic. On 24 March 2020, the tribunal premises were closed, and remain so at the date of writing to all bar a skeleton staff and a single face-to-face hearing a day in an appropriate case. Therefore, no steps were taken by either party in accordance with the directions.
7. On 27 May 2020 the tribunal asked the parties to provide an update on the progress of their case, anticipating either amended or new directions to bring it to a remote hearing or paper determination.
8. On 28 July 2020 the Respondent made an application to strike out the Appellant's appeal on the basis that the Appellant was not entitled to bring the appeal because he does not fall into the category of a 'relevant person' for the purposes of paragraph 16 of part 3 of Schedule 2 of the Housing Act 2004 ('the Act'), and that the legal owner of the property, Mr Farhan Malik, supported the Prohibition Order.
9. In reply, on 30 July 2020 the Appellant emailed the tribunal to assert that he does have the right to bring the application on the basis that he acts as the agent

of the beneficial owner of the property with 'direct authority'. He notified the that there were ongoing proceedings in the Land Registration chamber ('LR') of the tribunal. Absent from his email was any reference to a named individual who was the purported beneficial owner in those proceedings.

10. I made some enquiries of my colleagues in LR. An application to LR had indeed been received naming Mr Agha Zamanzeb (also spelt as Zamazeb) Khan as the Applicant, and Mr Farhan Bedar Malik as the Respondent. What was being asserted was beneficial ownership.
11. It appears that Mr Agha Zamanzeb Khan is purportedly acting on behalf of Mr Malik Javaid Khan in those proceedings pursuant to a disputed power of attorney. However, Mr Malik Javaid Khan had died in Lahore, Pakistan on 4 April 2020. The proceedings had been stayed for Mr Agha Zamanzeb Khan to approach Mr Malik Javaid Khan's executors.
12. On 11 August 2020 I indicated that the proceedings in LR did not themselves seem to be a bar to the present proceedings, as a key question was whether, even if that application was successful, a beneficial owner (and thus an agent thereof) would have standing under the Act to make the Application. I also directed that Mr Ali Khan would have to establish from whom he derived his authority to act as an Agent, and directed that a number of questions be answered in that regard.
13. I directed that there be a preliminary hearing on two issues, which I identified as follows:
 - (a) For whom is the Appellant the purported agent, and under what agency agreement? and;
 - (b) Even if the purported beneficial owner succeeds in his case in the Land Registration Chamber, is or was a purported beneficial owner (as opposed to legal owner) entitled, as per section 262(7) of the Act, to dispose of the fee simple of the Property (whether in possession or reversion)?
14. I gave detailed case management directions in order to assist the parties to identify the information they would need to provide in advance of the hearing. I also strongly recommended that the Appellant seek legal advice.
15. On 28 August 2020, I permitted the Appellant an extension of time to file his bundle in accordance with the directions by 11 September 2020, and extended the Respondent's time for compliance with the directions for a corresponding period.
16. In accordance with the extended date for filing of its bundle, the Respondent has filed with the tribunal a 369 page .pdf bundle in two parts. We have had the benefit of reading that bundle in advance of today's hearing.

17. The Appellant has filed no evidence nor bundle. At the hearing, neither Mr Ali Khan nor anyone acting on his behalf attended.
18. Mr Mark Maumohl of Counsel appeared for the Respondent, accompanied by Ms Lina Amir (Solicitor). Mr Jeff Smyth, a Council Officer, attended as a witness for the Respondent. Ms Laporte, Mr Smyth's line manager, also attended to observe.
19. No-one else attended as an observer.

Background

20. The property which is the subject of this application is an extended single-storey 1940s-built bungalow, with a loft space (that appears to have had stairs added to permit access to it, presumably with the intention of turning it into a further living space). It has been divided into approximately 6 residential units, though there are a number of factual interlinks between 'units'. At least one of the units (room 4) has no independent access to kitchen facilities, and rooms 6 and 6a are, in reality, a single unit since room 6 alone has no independent access to kitchen or bathroom facilities. The dimensions of the vast majority of the rooms are insufficient to lawfully house more than a single adult living alone. There is also an outbuilding at the property, part of which is used as storage and the other part as further accommodation. The Respondent has helpfully included a plan of the premises at page D19 of the bundle.
21. We are particularly grateful to the Respondent for the 'Family Tree' document at page B16 of the bundle, which has enabled us to untangle, insofar as necessary, the *dramatis personae* in what appears to be a particularly hostile extended familial dispute, and to clarify that it was my misunderstanding of the extended family dispute that led me to question the source of Mr Farhan Bedar Malik's post-4 April 2020 correspondence in the preamble to my previous directions.
22. In short, sometime prior to 1998, Mr Malik Javaid Khan is said to have purchased the property and put it into the name of his nephew Mr Agha Jahanzeb (his brother, Mr Agha Parvez Khan's, son), for ease of its management whilst Mr Malik Javaid Khan's business pursuits took him frequently abroad. Mr Malik Javaid Khan remained the owner.
23. In December 1998, the property was conveyed by Mr Agha Jahanzeb at Mr Malik Javaid Khan's behest to Mr Malik Javaid Khan's sister, Mrs Shanaz Bedar Malik as purchaser for the sum £58,000. The TR1 and official copies have been provided. Her name appears on the Title Register and no beneficial interest is recorded as subsisting.
24. In July 2018, Mrs Shanaz Bedar Malik transferred the legal interest in the property to her son, Mr Farhan Bedar Malik. Again, the TR1 and official copies have been provided and no beneficial interest is recorded as subsisting.

25. In 2019, Mr Agha Zamanzeb Khan, the brother of Mr Agha Jahanzeb (and therefore also the nephew of Mr Malik Javaid Khan), made an application to the tribunal to enter a restriction on the Land Registry title (REF/ 2019/0605), asserting Mr Malik Javaid Khan retained a beneficial interest in the property. That application was purportedly made on Mr Malik Javaid Khan's behalf, under the purported authority of a disputed Power of Attorney.
26. In the (no doubt disputed) case statements provided by the Respondent, at pages C128 – 138 of the bundle we read the witness statement provided by Mr Malik Javaid Khan on 24 January 2020 that he purportedly vehemently denied providing to Mr Agha Zamanzeb Khan any power of attorney, nor instructions to claim a beneficial interest in the property. Mr Malik Javaid Khan's statement seems to make abundantly clear that he considered that the conveyance of the property to his sister Mrs Shanaz Bedar Malik was absolute and without reservation. What is said in effect is that his brother Mr Agha Parvez Khan, nephews Mr Agha Zamanzeb Khan and Mr Agha Jahanzeb, and Mr Agha Zamanzeb's wife Ms Kavita Khatani (purportedly a solicitor) have joined forces to defraud him, amongst other serious allegations.
27. It is against this background that on 3 March 2020, when he made this application to the tribunal, Mr Ali Khan asserted he was the Agent of 'M J Khan'. It was also asserted that Mr Ali Khan's registered address is the property address. M J Khan's address is also, according to the application, purportedly the property address.
28. On 4 April 2020, Mr Malik Javaid Khan died in Lahore, Pakistan. The case management hearing in REF/2019/0605 regarding the application for a restriction was, on 16 July 2020, adjourned in order that it could be established by the Applicant, Mr Agha Zamanzeb Khan, who the executors of the late Mr Malik Javaid Khan's estate are.
29. On 30 July 2020 in response to the Respondent's application to strike out the Appeal, the Appellant wrote to the tribunal as follows:

As the council is aware, the FTT was instigated by the beneficial owner against the legal owner. This has yet to be determined by the FTT Regarding the possession proceedings, Farhan Malik is misleading the Council. Currently there are no live possession proceedings, pending or otherwise. At the hearing in November Mr Malik failed to provide any instructions as a result of which proceedings were adjourned with 'leave to reinstate'. The Council can verify this directly with Mr Malik and perhaps ask why he has chosen to mislead to the Council.

On the direct authority of the beneficial owner, I had been responsible for paying the bills, e.g gas/electric, council tax, HMO licence, general maintenance etc.

It is incorrect to say the property has further deteriorated, it is in the same condition as before and the evidence presented does not show

increased dilapidation. The Fire Safety Report states the only element that was dangerous was the obstruction of the common area, which has now been cleared. The fire alarm has always been in operation with the only fault being 'battery being low', which has been replaced. The council and their legal team are again using bombastic language to over emphasise the situation, when in fact nothing could be further from the truth. The council has been aware of this property for many years, yet not said anything before and only now are they raising concerns, which would lead me to believe for there to be an ulterior motive

It is an untruth to suggest the appellant profits from administrative delays. The tenants are residing at the property rent free since January, and they have attested to this as the council is fully aware, mainly due to the impact of Covid 19. The tenants have been asked by the council, and indeed myself, to vacate the property. They are happy and content living there of their own free will.

Maintenance is ongoing, we have recently replaced the gas boiler, been clearing out the rubbish, the photos show that and we will continue to further improve the property.

To reiterate, the safety and the wellbeing of the tenants remains the priority, and the tenants are happy as they have not been affected by the conditions, which is why they are unwilling and reluctant to vacate.

[Emphasis added]

30. It remains unclear where Mr Ali Khan fits into the above family structure (if at all). In my directions, I asked Mr Ali Khan to explain who M J Khan was and evidence his authority from that individual, but Mr Ali Khan declined to do so. In asserting that he is the Agent of M J Khan we deduce that he purports to be the Agent of Mr Malik Javaid Khan. No letter of authority nor proof of that agency agreement has been provided.
31. On 4 April 2020, Mr Malik Javaid Khan died in Lahore, Pakistan. The case management hearing in REF/2019/0605 regarding the application for a restriction was, on 16 July 2020, adjourned in order that it could be established by the Applicant, Mr Agha Zamanzeb Khan, who the executors of the late Mr Malik Javaid Khan's estate are.
32. On 25 August 2020, in response to the tribunal's directions, the Appellant forwarded to the tribunal an email in which he stated the following:

"I am afraid I am finding much of the details of the correspondence confusing and complicated and don't understand the procedures. I am unaware what bundles are etc and don't not have any such bundles or paperwork. It is fair to say I am out of my depth in dealing with the courts and council.

I have had no contact from the beneficial owner Mr M J Khan nor the legal owner Mr F Malik. In fact I am surprised and

bewildered that the legal owner has never been to the property, never seen the property and never contacted me, nor attempted to contact me nor the tenants to take charge of the property, as one may expect an owner to do.

I have perhaps misunderstood that I was supposed to start improvements on the property, my understanding was that the court would advise me upon inspection to start the works. I have, however, now started work on the premises at my own cost.

The council appears to be conflating two separate issues with regards to the required improvements and possession. I would like there to be no confusion in that I have at all times been in agreement the improvements need to be made. The only issue I had being that the property having to be vacant prior to the works carried out.

As you are aware that since the council's initial prohibition order and the appeal submitted by me, the circumstances have somewhat changed, also noted by the FTT judge. The FTT preliminary direction dated 11 August 2020 have stated facts that I had not been aware of. What is clear is that neither the beneficial owner nor the legal owner are in a position to finance the improvements to the property, But as I have stated before the condition is not as bad as the council makes out and I am in the process now to commence work, the roof, garden annexe etc.

*As I understand the council is in regular contact with tenants and have been since February. At no time has the council or any authority been denied access either to the property or the tenants. The council initially offered the tenants emergency accommodation, but the tenants have refused for the simple reason they are happy here and in an effort to stay are willing to help undertake work to bring the property up to standard. They pay no rent due to their circumstances, have not done so for a considerable time, and will continue living here rent free for the foreseeable future. **Most of the tenants have been there prior to me becoming the agent at the behest of Mr M J Khan.***

There is also the confusion that the council's prohibition order states the property has to be vacant, yet evictions are suspended. And as I again reiterate, the tenants are the priority. I have explained the situation many a times to them, told them to leave, but they insist on staying put because they are content at the property, and the council will vouch for that as they have told the council themselves. As sympathetic as I am to the plight of the tenants, it is not my obligation to rehouse them.

As the agent for the property, I can confirm that if the council rehouse the tenants, I will have the property sealed until the FTT determines the rightful owner of the property, but unfortunately that seems a long way off. I would implore the council to work with me rather than exaggerate the condition of the property and be hell bent on closing the property down, and keep the priorities of the tenants at the fore."

[Emphasis added]

33. In an email of the next day, the Appellant asserted that the above email had not been meant for the tribunal.

Evidence

34. Mr Jeff Smyth, Housing Regulatory Officer provided two section 9 statements, which appear at pages C1 and D1 of the bundle. Mr Smyth also provided brief live evidence.
35. Mr Smyth first made contact with the Appellant in October of 2019. He endeavoured to arrange an inspection of the property, but the Appellant stated that he was too busy and would contact Mr Smyth back to arrange an inspection at a convenient time.
36. The Appellant did not do so. Mr Smyth therefore called him again on 17 January 2020. In that conversation the Appellant stated that he no longer controlled the property nor any aspect of the premises due to a change in ownership. He asserted he would send to Mr Smyth the address and contact details of the new owner.
37. The Appellant did not do so. Mr Smyth therefore undertook a Land Registry search, revealing Mr Farhan Bedar Malik as the legal owner.
38. At an unannounced inspection on 23 January 2020, Mr Smyth found a number of Category 1 and Category 2 hazards and overcrowding. He met Mrs Sushma Naique and her husband Mr Avdhoot Naik.
39. In the separate outbuilding at the property, Mr Smyth met with Mrs Creguta Balan, Danut Gheorghe Balan and Ionut Marginila, together with a 3 year old child. They stated that they paid £50 per person in rent per week to a man named Mr Baznic Cortigi who worked at a local carwash with Mrs Balan's husband, Mr Cornel Balan.
40. Mr Smyth visited the property again on 4 February 2020 to serve the Prohibition Order. He once again met Mrs Naique and Mr Naik. Mrs Naique confirmed that they paid £500 per month to Mr Ali Khan, but she did not have an address for him. She provided the Appellant's telephone contact number. Mr Smyth also met with Mr Rajesh Bandorcar, who informed him that he paid £500 per month in cash to Mr Ali Khan, but did not have a tenancy agreement nor receive receipts for the cash payments.
41. On 26 February 2020, the Appellant phoned Mr Smyth to ask how to appeal the Prohibition Notice. The Appellant insisted that he lived at the property. When Mr Smyth told him that he was well aware that the Appellant did not live at the

property, the Appellant asserted he would be moving in at the weekend. The Appellant refused to give an address at which he had been living or from which he had been managing the property up to that point. The Appellant also asked Mr Smyth for advice on how to evict the tenants at the property, and that although he would be appealing the Prohibition Order he had not been involved at the property since the previous summer. He asserted that Mr Malik placed all the tenants in the property, though it is not clear to which Mr Malik he was at that date referring.

42. On 2 March 2020, Mr Smyth received a telephone call from Mr Rana, solicitor for Mr Farhan Bedar Malik, asserting that he was not in control of the premises and that it had been illegally taken over by Mr Agha Zamanzeb Khan, who was currently bringing a case in the tribunal seeking a declaration that he had beneficial ownership of the property. Mr Rana stated during the conversation, as recorded in Mr Smyth's email of 2 March 2020 at page C104 of the bundle, that he was not aware who Mr Ali Khan was.

43. Mr Rana subsequently sent to Mr Smyth a number of documents (including those in the land registration proceedings), amongst which is a signed authority and a letter on behalf of Mr Farhan Bedar Malik at page C105 of the bundle in which is stated as follows:

"1. ...Please note that our client never instructed Mr Ali Khan or any other letting agent to run the premises..."

3. Our client instructs us that his mother Mrs Shahnaz Bedar Malik never applied for a licence in respect of 'the premises' for multiple occupations. We submit that whoever applied for the licence (in the name of our client's mother, Mrs Shahnaz Bedar Malik) has done [so] fraudulently..."

44. Mr Smyth noted that the telephone number on the license application purportedly made by Mrs Shahnaz Bedar Malik in 2017 was that of Mr Ali Khan, and remarked the similarity of the handwriting to Mr Ali Khan's. He concluded that the Appellant had no legal standing to control the premises, despite collecting rents, and that an application for an HMO license application made in Mrs Shahnaz Bedar Malik's name in June 2017 was made by Mr Ali Khan without that lady's permission or consent. Given further Mr Ali Khan's refusal to give his residential or business address, Mr Smyth formed the view that Mr Ali Khan had no authority to appeal against the Prohibition Order.

45. At page F4 of the bundle is included a letter from Mr Rana (who had by then moved solicitor's firms) to Ms Amin on 25 June 2020, in which is stated as follows:

"4. Our client submits that he is in agreement with the safety findings of the Council and is willing to comply with the Council orders. However, you will appreciate the fact that at present this is beyond our client's control to carry out with the orders, simply because his cousin has occupied his property"

unlawfully and rented to the people unknown to our client without his permission and authority.”

46. On 28 August 2020, Mr Smyth made a further section 9 witness statement, which appears at page D1 of the bundle. He had attended at the property again on 27 July 2020, in light of the attendance the London Fire Brigade (‘LFB’) and Mr Zaheer Kadri (Local Authority Liaison Officer) at the property on 25 July 2020. LFB had indicated a serious concern about the fire safety on site and that they would have issued their own Prohibition Order, had the Respondent not already done so. Mr Smyth made arrangements with all of the tenants for access to their rooms by an engineer on 5 August 2020, so that faulty fire detection system could be replaced or measures put in place to ensure the tenants’ safety pending its replacement pursuant to an Emergency Remedial Action Notice.
47. Mr Smyth documented further hazards that had developed at the property since his previous visit, and some temporary but insufficient works had been undertaken. Mr Smyth recorded further significant overcrowding, and a rat infestation. The LFB had recorded 16 people living in the six units at the property (12 adults and 4 children), none of which was, as per Mr Smyth’s measurements, suitable for the occupation of more than a single adult, and some of which accommodation was unsuitable for occupation due to a lack of light and ventilation. Mr Smyth was also able to confirm that Mr Ali Khan was not in occupation at the property.
48. Mr Smyth confirmed that he had never seen Mr Ali Khan at the property when he visited it. The tenants had told him when he had seen them all on 5 August 2020 that they did not know where he lived and had no address for him. They paid cash-in-hand every week, and had no tenancy agreements. Every room had been occupied by a tenant, and therefore it was not possible that Mr Ali Khan lived at the property. On investigation the council tax liability remained in the name of Mrs Shahnaz Bedar Malik. No documents had ever been provided to him by Mr Ali Khan evidencing rental payments, council tax payments or onwards transmission of rental income that might establish an agency relationship. In fact, Mr Ali Khan had sent to him no documentation at all, despite promises to do so. The only document that could be ascribed to Mr Ali Khan was the HMO licensing application brought in the name of Mrs Shahnaz Bedar Malik in 2017, which he considered to be false.

The issues

49. The relevant issues for determination are as follows:
 - (a) For whom is the Appellant the purported agent, and under what agency agreement? Is the Appellant the purported Agent of the alleged beneficial owner? and;
 - (b) Even if the purported beneficial owner succeeds in his case in the Land Registration Chamber, is a purported beneficial owner (as opposed to legal owner) entitled, as per section 262(7) of the Act, to dispose of the fee simple of the Property (whether in possession or reversion)?

Law

50. Sections 20 – 24 of the Housing Act 2004 (‘the Act’) set out the relevant requirements as to the form and contents of a Prohibition Order.
51. Paragraph 7 of Part 3 of Schedule 2 of the Act sets out that a ‘relevant person’ may appeal to the tribunal against a Prohibition Order. Paragraph 16 states that a ‘relevant person’ for the purposes of the appeal is:
- a. an owner or occupier of the whole or part of the specified premises;
 - or
 - b. a person who is authorised to permit persons to occupy the whole or part of those premises...
52. An “owner” is defined in section 262(7) of the Act as:
- (a) a person ...who is for the time being entitled to dispose of the fee simple of the premises whether in possession or reversion, and
 - (b) includes also a person holding or entitled to the rents and profits under a lease of which the unexpired term exceeds three years...
53. An “occupier” is defined in section 262(6) as a person who:
- (a) occupies the premises as a residence, and
 - (b) (subject to the context) so occupies them whether as a tenant or other person having an estate or interest in the premises or as a licensee...
54. At paragraph 3.11 of Chapter 3 Part 2 Section 1 of **Megarry & Wade: The Law of Real Property** (9th Edition: Sweet & Maxwell 2020) it states as follows regarding the estate in fee simple:
- “The fee simple is the most substantial estate which can exist in land. Although strictly speaking it is still held in tenure and therefore falls short of absolute ownership, in practice it is absolute ownership, because nearly all traces of the old feudal burdens have disappeared. “A tenant in fee simple enjoys all the advantages of absolute ownership, except the form”... Pre-eminent among a fee simple owner’s rights are the right of alienation (the right to transfer to another the whole or any part of his or her interest in the land) and the right to everything in, on, or over the land.”*
55. At paragraphs 4.040 *et seq* of Chapter 4 Part 3 Section 2 of **Megarry & Wade** is set out that anything less than the fee simple absolute takes effect only in equity, as a trust of the estate:
- “Absolute” is used in its accustomed sense to distinguish a fee simple which will continue for ever from a modified fee, such as a determinable fee or a base fee. The policy of the Act requires that any such interest, being less than a fee simple absolute, should take effect only in equity, under a trust of the legal estate.*
- ...

The legal fee simple is often referred to as the legal estate because of its paramount importance. Legal leases, mortgages, rentcharges, easements and the like are regarded as incumbrances upon it.

56. In the Land Registration Act 2002, section 23 an owner's powers are set out as follows:

- (1) Owner's powers in relation to a registered estate consist of—
 - (a) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a mortgage by demise or sub-demise, and
 - (b) power to charge the estate at law with the payment of money.

57. By section 24 of the Land Registration Act 2002, only a person who is the registered proprietor, or the person entitled to be registered as the proprietor of the registered estate is entitled to exercise the owner's powers.

58. An equitable or beneficial interest in land is one that is governed by the Trusts of Land and Appointment of Trustees Act 1996 ('TLATA'). At paragraph 11.02 of Chapter 11 Section 1, **Megarry & Wade** this is explained as follows:

"The trust of land in general follows the model of the trust for sale. Both the legal estate in the land and all the powers of disposition and management are vested in the trustees of land. Where, as will usually be the case, the title to the land is registered, it will be registered in the names of the trustees. As a consequence of such registration, the trustees have full owner's powers and may deal with the land as if they were absolute owners, unless the contrary is stipulated in the register. Without such a limitation, properly entered on the register, a disponee is not to be concerned with any limitation on the trustees powers contained in the trust instrument (unless the limitation is imposed by the LRA 2002 itself). Consequently, a disponee can deal safely with the trustees without having to investigate the trust instrument or be concerned that it might contain something which would otherwise invalidate the disposition."

And at paragraph 11.24:

Where property is held on a trust of land, all powers and other functions in relation to a trust of land are vested in the trustees. However, they are given authority to delegate for any period or indefinitely any of their functions as trustees which relate to the land. This power can only be exercised by a power of attorney given by all the trustees jointly in favour of one or more beneficiaries who are beneficially entitled to an interest in possession in land subject to the trust...

59. A beneficiary under such a trust has no entitlement to be registered as the proprietor of the land unless each of the beneficiaries in the land is a person of full age and capacity who is absolutely entitled to the land (section 6(2) TLATA).

60. In *Halsbury's Laws* Volume 1 Agency (2017 LexisNexis), paragraph 1 the following is said about agency:

The relation of agency typically arises whenever one person, called the 'agent', has authority to act on behalf of another, called the 'principal', and consents so to act. Whether that relation exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent. If an agreement in substance contemplates the alleged agent acting on his own behalf, and not on behalf of a principal, then, although he may be described in the agreement as an agent, the relation of agency will not have arisen...

The essence of the agent's position is that he is only an intermediary between two other parties, and it is therefore essential to an agency in this sense that a third party should be in existence or contemplated. If a person who is employed as an agent to buy or sell property for another seeks to sell his own property to his principal or to buy the property of his principal, he violates the first condition of his employment, and changes the intrinsic nature of the contract between them.

At paragraph 29:

... the authority of the agent may be derived expressly from an instrument, either a deed or simply in writing, or may be conferred orally. Authority may also be implied from the conduct of the parties or from the nature of the employment. It may in certain cases be due to the necessity of circumstances, and in others be conferred by a valid ratification subsequent to the actual performance. In addition, a person may appear to have given authority to another, and acts within such apparent authority may effectively bind him to the third party. There would also, in certain circumstances, appear to be the possibility that the court will imply an equitable agency where no agency exists at common law.

An agent cannot be said to have authority solely on the basis that he holds himself out as having it.

And at paragraph 171:

Agency may be terminated either by the act of the parties or by operation of law. The act of the parties may be an agreement between them or acts amounting to a revocation by the principal or a renunciation by the agent [1](#).

The law terminates the agency:

- (1) *on the expiration of the time, if any, agreed upon;*
- (2) *on complete performance of the undertaking;*

(3) on frustration of the contract or the happening of an event rendering the continuance of the agency unlawful; or

(4) where either party becomes incapable of continuing the contract by reason of death, bankruptcy or unsoundness of mind.

The termination of agency by these various events is, however, subject to qualifications either defined by law, or due to the facts of the particular case.

Decision and reasons

61. Having considered the documents provided, and the evidence and representations, we have made determinations on the various issues as follows.

(a) For whom is the Appellant the purported Agent? Under what Agency Agreement? Is that individual the alleged Beneficial Owner?

62. Mr Ali Khan appears to purport to be the Agent of the late Mr Malik Javaid Khan. We deduce that to be the case as, although Mr Ali Khan has never provided the name of the 'beneficial owner' on whose part he purports to act, 'M J Khan' is the name on the Appeal form and that individual is the only one of the family tree whose initials and surname match.

63. Mr Ali Khan has provided no documentation to support the existence of that agency relationship. For example, given that the late Mr Malik Javaid Khan was residing in Lahore until his death due to having experienced a debilitating stroke, one might expect some kind of email instructions, or at least proof of payments of the rent collected by Mr Ali Khan from the property being passed back to the purported beneficial owner (or indeed an explanation of why such material was not available). Mr Smyth's investigations revealed that council tax remains (or did at the date of Mr Smyth's first statement) in the name of Mrs Shahnaz Bedar Malik. There is no existing HMO license.

64. We note that Mr Malik Javaid Khan has had no protected interest in the property since 1998, and that even at that date the conveyance of the property was from Mr Agha Jahanzeb to Mrs Shahnaz Bedar Malik, it being said that legal title was vested in the former individual for the convenience of the management of the property.

65. We need not decide on the ins-and-outs of the claim for a beneficial interest, but we do take into account the supporting document said to emanate from Mr Malik Javaid Khan himself in January 2020 of this year, in which he states in terms that he asserts no beneficial interest. While that is a matter for LR to resolve, it appears to us unlikely that in the context of that document Mr Malik Javaid Khan would have authorised Mr Ali Khan to be his agent, and in particular to act as his Agent in this appeal brought two months later.

66. We note that Mr Ali Khan has been evasive with his details and responses to Mr Smyth's enquiries. We note that he also claimed in a discussion with Mr Smyth on 17 January 2020 that he no longer had control or management of the property and would forward the 'new owner's details', but on 26 February 2020 and in response to the Prohibition Order asserted not only that he was in control as agent but also that he lived at or was about to live at the property. We note that assertion was made no more than a month after Mr Malik Javaid Khan's witness statement of 24 January 2020 that in plain terms he asserted no beneficial interest.
67. We further note that Mr Ali Khan continued to purport to act on the direct authority of Mr Malik Javaid Khan in his email of 30 July 2020 (nearly two months after Mr Malik Javaid Khan's death), and in his email of 25 August 2020 (three months after Mr Malik Javaid Khan's death) purports to have had no contact from Mr Malik Javaid Khan. No explanation is given of the reasons for such a lack of contact, no endeavours made to prove the agency relationship. It appears to us that Mr Ali Khan was either unaware of Mr Malik Javaid Khan's death, or deliberately trying to obfuscate the issue. Even on the more generous interpretation, he assertion of his agency is inconsistent with the facts.
68. It is also quite clear that, in 2017, Mr Ali Khan was amply aware that the legal owner was Mrs Shanaz Bedar Malik, as otherwise why would he complete the HMO application form naming her as the Landlord? We need not make a finding as to the truth or falsity of that document nor whether he completed it with Mrs Shanaz Bedar Malik's authority, as the fact that he completed it is borne out by the inclusion of his telephone contact details in the form. It is plain from that document that Mr Ali Khan was aware at least at that date that he did not at that time derive authority from Mr Malik Javaid Khan.
69. Mr Ali Khan's email of the 25 August 2020 also makes it amply clear that that he is aware that the legal owner of the property is Mr Farhan Bedar Malik.
70. We find that none of the available evidence supports a finding of an agency relationship between Mr Malik Javaid Khan and Mr Ali Khan. Mr Ali Khan was given the opportunity to provide such evidence in directions given in August and extended in September. Instead he has failed to file a bundle of evidence or a witness statement. The emails he provided to the tribunal are, in our view, supportive of a lack of agency agreement.
71. Even if, however, such had existed, then it would have terminated on the death of Mr Malik Javaid Khan, such that Mr Ali Khan's assertions on 30 July 2020 and 25 August 2020 that he acts with Mr Malik Javaid Khan's direct authority are without foundation.
72. On the first issue, then, we find that we lack jurisdiction on the substantive appeal, as there is no relationship of agency between Mr Ali Khan and the purported Landlord (according to the Appeal form) Mr Malik Javaid Khan.

73. Technically then, there is no reason for us to go on to the second question. Nevertheless, we do so for the sake of completeness, and on the hypothetical basis that we had come to the opposite conclusion on the first question.

(b) Is a purported beneficial owner entitled, as per section 262(7) of the Act, to dispose of the fee simple of the Property (whether in possession or reversion)?

74. Mr Ali Khan makes very clear that the person on whose behalf he purportedly acts as agent, found above as likely to be Mr Malik Javaid Khan, has a beneficial interest in the property. He refers to the proceedings brought by Mr Agha Zamanzeb Khan in the LR, purportedly in pursuance of a power of attorney over his affairs given to Mr Agha Zamanzeb Khan by Mr Malik Javaid Khan. Again, that is clearly a disputed document, and allegations have been made that it has been falsified.

75. Once again, this tribunal need not come to a conclusion on those matters, and we proceed on the hypothetical basis that Mr Agha Zamanzeb Khan convinces LR that Mr Malik Javaid Khan's estate does indeed have a beneficial interest in respect of which a restriction should be entered.

76. As set out in the legal section above, the ability to bring an appeal against a prohibition order is restricted by paragraph 7(1) of Part 3 of Schedule 2 of the Act to a 'relevant person'.

77. In order to be a 'relevant person' for the purposes of this appeal, the Appellant needs to fall into one of three relevant categories as set out in section 262 of the Act:

- (i) An owner of the premises;
- (ii) An occupier of the premises;
- (iii) a person who is authorised to permit persons to occupy the whole or part of those premises.

78. An owner, for the purposes of the Act, is a person who is for the time being entitled to dispose of the fee simple of the premises (whether in possession or reversion), or a person who would be entitled to the rents and profits under a lease with an unexpired term of at least 3 years.

79. It is clear from the land registry documents that Mr Ali Khan is not the legal owner of the premises. There is no evidence on the land registry documents that a lease from the freehold title has been created, and Mr Ali Khan at no point asserts he is a lessee, and so we conclude that he cannot take the benefit of that part of the definition either.

80. Is Mr Ali Khan an occupier of the premises? On 26 February 2020 he told Mr Smyth, once he had asserted that he was once again in charge of the premises, that he lived there. Mr Smyth pressed him on this, and Mr Ali Khan asserted that he would be living at the premises from the weekend coming. At none of the subsequent attendances at the property by either Mr Smyth, the LHA or the

London Fire Brigade was Mr Ali Khan present, however, and we believe Mr Smyth when he says that on his visit on 5 August 2020 when he met all of the tenants at the property, not only was there no space in which Mr Ali Khan could be living, but all of the tenants told him that they did not know where he lived as he had provided only his telephone number. On the balance of probabilities then we are satisfied that Mr Ali Khan did not fall within the category of occupier.

81. The third class of 'relevant person' seems to us to be the definition on which Mr Ali Khan asserts his case, in that he claims to be the authorised agent for Mr Malik Javaid Khan with authority to place tenants in the property.
82. Unfortunately for Mr Ali Khan, that also does not seem to be a workable argument. In order to be such a relevant person, we consider that the authority must derive from one of the 'ownership' categories. In essence, an owner or his lawful agent can take advantage of the 'a person who is authorised to permit persons to occupy' category of relevant person.
83. This does not work for Mr Ali Khan in a number of ways.
84. Firstly, we do not find that he has the authority of Mr Malik Javaid Khan as asserted.
85. Secondly, Mr Malik Javaid Khan, via his purported power of attorney Mr Agha Zamanzab Khan, is on Mr Ali Khan's own case asserting a beneficial interest in the property. This point is key to the question of standing to bring the Appeal.
86. The beneficial interest is distinct from that of the legal owner. The legal owner is entitled to the estate absolute in fee simple – and therefore entitled to do as he will with the property, including dispose of the interest. Only a person who is the registered proprietor, or the person entitled to be registered as the proprietor of the registered estate is entitled to exercise the owner's powers (section 24 of the Land Registration Act 2002).
87. On the other hand, the beneficial interest operates in equity, and is dealt with by the formation of a trust of land pursuant to TLATA. A beneficiary under such a trust has no entitlement to be registered as the proprietor of the land unless each of the beneficiaries in the land is a person of full age and capacity who is absolutely entitled to the land (section 6(2) TLATA). Even if successful, therefore, Mr Malik Javaid Khan's alleged beneficial interest would be insufficient to meet the definition of an owner in section 262 of the Act.
88. Therefore, we find that Mr Malik Javaid Khan is not a person from whom Mr Ali Khan could derive standing to bring this appeal in any event.
89. Thirdly, Mr Farhan Bedar Malik, the registered owner on the title register and on the TR1 from 2018, is the owner for the purposes of the Act. He disavows any knowledge of Mr Ali Khan or his relationship to the property or the dispute in letters from his Solicitor, and himself supports the Prohibition Order. In those circumstances, if and to the extent that Mr Ali Khan asserted on 26 February 2020 that he had some form of authority from or relationship with Mr Farhan

Bedar Malik, it appears that because he has (1) since entered Mr Malik Javaid Khan's details as Landlord on the Appeal form and (2) failed to provide evidence of a relationship of any sort (let alone agency) with Mr Farhan Bedar Malik, neither can he avail himself of standing on this basis.

CONCLUSION

90. For all of those reasons, we find that we have no jurisdiction to entertain an Appeal brought by Mr Ali Khan, and that he has no standing to bring it.
91. At the end of the hearing Mr Baumohl made an application for unreasonable conduct costs pursuant to rule 13 Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013.
92. I invited the Respondent to consider the fact that it would need to go forward as a discrete application, first by the LHA addressing the test in *Willow Court Management (1985) Limited v Alexander* [2016] UKUT 290 (LC), followed by a response from Mr Ali Khan and a further reply from the LHA. Though the matter could potentially go ahead as a paper determination in due course (and thus at least a further hearing be avoided), given that Mr Ali Khan continues to have failed to provide an address, service and enforcement might pose a problem.
93. On taking instructions, Mr Baumohl indicated that the LHA had made the (sensible, in our view) decision not to pursue the application.

Name: Judge N Carr

Date: 29 September 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).