

## In brief: Landlords' licences—regularisation of planning permission (London Borough of Waltham Forest v Khan)

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**Local Government analysis:** Adam Heppinstall, barrister at Henderson Chambers, considers the case of London Borough of Waltham Forest v Khan. The Upper Tribunal (UT) decided that a local authority can issue a short duration licence—one year in this case—to a landlord under Part 3 of the Housing Act 2004 (selective private sector housing licensing) in order to permit the lack of planning permission to use the property for residential purposes to be regularised. The First-tier Tribunal (FTT) had decided that the local authority could not take lack of planning permission into account.

### Original news

*London Borough of Waltham Forest v Khan* [\[2017\] UKUT 153 \(LC\)](#)

### What should Local Government lawyers take note of?

The UT has confirmed the wide range of matters which can be taken into account when considering the grant or duration of a landlord's licence under [Part 3](#) of the Housing Act 2004. The UT made it clear that an application could be refused for lack of planning permission or the decision to grant an application delayed while the planning permission situation is regularised. The Tribunal approved Waltham Forest's practice of issuing a one year licence to allow the landlord time to regularise the situation.

There is an important statement of principle at paragraph 46 of the judgment:

'Inappropriate or over-intensive uses of land, especially in a densely populated urban area, are an obvious manifestation of anti-social behaviour in themselves and create conditions in which antisocial behaviour is liable to be a significant problem. Planning control is directed in large measure at ensuring that new or additional uses of land do not have an unacceptably adverse impact on existing users. Where consideration of the impact which the occupation of a new house will have on its neighbours has been by-passed, because the house has been built or converted without planning consent, important safeguards against anti-social behaviour will have been evaded. To that extent the concerns of planning control and the concerns of licensing under Part 3 of the 2004 Act overlap'.

The UT also acknowledged the deference to be paid by tribunals to the expertise of local authorities in relation to such private sector housing issues, a statement from the Deputy Chamber President which might be useful to cite in future cases.

### What was this case about?

Mr Khan, a property professional with a significant portfolio of properties held around the country, appealed the grant to him of landlord's licences for two properties (flats in a converted warehouse and flats in a converted house) in Waltham Forest which had been limited to one year instead of the usual five-year duration to allow him to regularise the lack of planning permission.

He had applied for certificates of lawfulness and the Council had issued planning enforcement notices which were on appeal to a planning inspector.

The one year licence was granted under Waltham Forest's policy:

'The grant of a shorter licence ... will in all cases reflect concern that the Council has regarding a 'person' and/or a property to the extent that a full-term licence is not appropriate. The shorter licence period will penalise the landlord since a new licence application will need to be made at its expiry after one year. However, the grant of a licence will enable the address to be legally rented, allowing the landlord to remedy the issue that gave rise to the reduced-term licence...'

His appeals succeeded at the FTT who granted him five-year licences for the properties finding that planning permission was not a relevant matter under the licensing regime.

The FTT also found that the licences could be revoked if planning permission was not obtained or regularised, although the UT found that the revocation power could not be used for this purpose.

## What did the court decide?

The UT fully endorsed Waltham Forest's policy of taking account of planning issues when considering a Part 3 licence. It also recognised the problem of refusing a licence for lack of planning permission. Without a licence the landlord cannot obtain possession of the premises from the tenants and therefore the landlord cannot bring the letting to an end so as to abate the planning breach. Counterintuitively, the landlord needs the licence in order to bring the letting to an end so as to comply with the lack of planning permission. Having said that it is equally odd for a local authority to licence an activity which is unlawful as a breach of planning control. The grant of a one year licence appeared to the UT to be a sensible compromise struck by Waltham Forest, given the tension between the two regulatory regimes.

The Tribunal found that the FTT had been in error in finding that a five-year licence could be granted but revoked during its term should the planning permission position not be regularised because the revocation power could only be used under Housing Act, s 93 if there had been a breach of condition or if the licensing regime no longer applied.

The UT also confirmed that the licence could not be issued conditional on obtaining planning permission as the conditions have to be '*appropriate for regulating the management, use or occupation of the house concerned*'.

The UT also found that the FTT had erred in deciding that the local authority was using the Part 3 licensing regime to penalise Mr Khan for his lack of planning permission.

The judgment is also a useful statement of the role of the FTT as standing in the shoes of the local authority when hearing these appeals, which are by re-hearing—although the FTT can also take into account matters which were not before the local authority.

The UT also effectively elected not to decide the issue itself nor to remit the appeals back to the FTT but to remit the issue back to Waltham Forest by way of ordering that the licences were to be extended for a short further period to force Mr Khan to apply for fresh licences from Waltham Forest so that they could re-assess the planning permission issues. The Judge did this on the basis that local authorities are the experts in deciding such applications when compared to the UT and the FTT, although the UT Judge acknowledged the expertise of the FTT in such areas.

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