



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/26/0746

Re: Property at No. 2 Balsillie Farm Cottage, Leslie, Glenrothes, KY6 3HB (“the Property”)

Parties:

SGH Investments Ltd, Bowldown Farm, Westonbirt, Gloucestershire, GL8 8UD (“the Applicant”)

Mr Gordon Galloway, No. 2 Balsillie Farm Cottage, Leslie, Glenrothes, KY6 3HB (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made on the basis of paragraph 6 of schedule 3 of the 2016 Act

1. Background

1.1 This is an application under rule 109 of the Chamber rules whereby the Applicant sought an eviction order on the basis of paragraph 6 of schedule 3 of the 2016 Act, namely, that the let property was to be used for a non-residential purpose. The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave given to the Respondent, planning permission granted by Fife Council and notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003.

1.2 No written representations had been received from the Respondent in advance of the Case Management Discussion.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 12 August 2026 by teleconference. Ms Van Hof and Mr Hume of the Applicant attended. The Applicant was also represented by Mr Mullen, solicitor. The Respondent attended personally.
- 2.2 The Tribunal heard from Mr Mullen and, where appropriate, directly from Ms Van Hof and Mr Hume. The Applicant was seeking an eviction order in respect of the Property let on a private residential tenancy agreement. The said agreement commenced on 1 October 2024. Notice to leave dated 19 November 2025 had been given to the Respondent, who remained in occupation of the Property. The Applicant owned both the Property and the neighbouring Lomond Quarry. Planning permission had been granted by the local authority for an expansion of the quarry. As a result of this development, the Property would require to be demolished. Phase 1 of the development could not go ahead without this. Furthermore, there were bats nesting in the Property which the planning permission required certain steps to be taken in respect of no later than the end of October 2026.
- 2.3 The Tribunal raised the issue of the notice to leave apparently being posted to the Respondent on 20 November 2025 and, therefore, having an error in the date entered at part 4 as a consequence in terms of being a day short. It was confirmed that a hard copy of the notice to leave was also hand delivered to the Respondent on 19 November 2026. The Respondent had been given sufficient notice in terms of the 2016 Act.
- 2.4 The Applicant's position was that demolition of the Property and it forming part of the quarry development fell within paragraph 6 of schedule 3 of the 2016 Act. Although the building was to be demolished, the remaining land would no longer be used for residential purposes. The Respondent had previously been resident in another property owned by the Applicant where he had not paid any rent. Due to the condition of that property, he had been moved to the Property and charged a low rent to ease the transition. The Respondent was aware of the planning permission granted at the time of taking up occupation. There were serious financial implications for the Applicant if an eviction order were not granted. If the issue of the bats was not addressed by the end of October this year, given the protections they enjoy, phase 1 of the development would not be able to commence until April 2027. The Applicants did not have sufficient financial reserves to wait that long and there was a reasonable prospect the quarry development would be mothballed. There were twenty three direct employees of the Applicant whose work depended on the quarry development and a further nine contractors. A further required survey of the bats could take place with the Respondent in situ and was scheduled for the next fortnight however, it was anticipated that their nesting site would require to be destroyed which involved demolition of the property and that could not be done without an eviction order. The demolition of the Property was prescribed within the planning permission. The quarry development would involve blasting rock and the proximity of the Property was far within the acceptable distances set out in guidance of the local authority.

2.5 The Tribunal heard from Mr Galloway. He was 85 years of age. He resided at the Property alone. He was a widower and retired. He was undergoing treatment for cancer. This necessitated attendance at hospital in Edinburgh but, more regularly, the Victoria Hospital in Kirkcaldy which was around eight miles away. Upon receiving the notice to leave he had contacted the local authority. They had taken a housing application from him and he understood that he had been awarded 110 points in connection with this. There had not been any accommodation offered to date. He was not aware of any alternative private accommodation in the area which was relatively rural. There were two villages nearby which did have some new social housing but he had not been made an offer. He had not been aware of the need to demolish the Property when taking up occupation. He disputed whether it required to be demolished. He had a dedicated housing officer at the local authority but did not understand a homeless application to have been taken as yet. He was dealing with them without assistance from any external organisation. There was no housing association accommodation in the local area nor any available private accommodation. His only income was from state pension, widower's pension and a small workplace pension but he did not have figures for the sums received.

2.6 The Tribunal indicated that the Case Management Discussion would be adjourned to allow for consideration of the written application and all that was said by the parties. A written outcome would be provided to them as soon as possible.

3. Findings In Fact

3.1 The parties entered into a private residential tenancy agreement which commenced on 1 October 2024. The Respondent is in occupation of the Property.

3.2 The Applicant is the owner and proprietor of the Property. The Applicant is also the owner of the Lomond Quarry.

3.3 By way of decision dated 10 February 2023 (Planning Reference: 21/00287/EIA), Fife Council granted planning permission for the development of Lomond Quarry.

3.4 The said development of Lomond Quarry includes quarrying of land adjacent to the Property. As a condition of that planning permission, the Property is to be demolished.

3.5 There are bats nesting within the Property. Due to restrictions on their disturbance, the Applicant requires to carry out a further survey relating to their removal. This can be done with the tenant in situ however, the demolition of the Property will likely be needed to secure their removal. Any demolition must take place before the end of October 2026 otherwise a further licence will be required which could not be obtained before April 2027.

- 3.6 The Lomond Quarry development cannot proceed without the demolition of the Property. The Applicant has insufficient financial reserves to continue operating until April 2027 without the development proceeding.
- 3.7 The Applicant employs twenty three people directly in connection with the Lomond Quarry development and an additional nine contractors are providing services in connection with it.
- 3.8 Notice to leave was hand delivered to the Respondent on 19 November 2026 and posted to him on 20 November 2026. Said notice specified that the Applicant would not become entitled to make the present application until 14 February 2026 and was in force when the present application was made.
- 3.9 The Respondent is 85 years of age and resides at the Property alone.
- 3.10 The Respondent is retired. His income comprises of state pension, widower's pension and a workplace pension.
- 3.11 The Respondent is undergoing medical treatment for cancer. This necessitates hospital attendance, primarily at the Victoria Hospital in Kirkcaldy.
- 3.12 The Respondent contacted Fife Council upon receiving the notice to leave. They have taken a housing application from him and he has been awarded 110 points in connection with this. A homeless application has not been made.
- 3.13 The Respondent has not applied to any other social housing providers as they do not have available accommodation in the local area, where he wishes to remain.
- 3.14 The Respondent has been unable to identify any other suitable private accommodation in the local area.

4. Reasons For Decision

- 4.1 The Tribunal considered that valid notice to leave had been given to the Respondent by the Applicant. The notice to leave specified 14 February 2026 as the date on or after which the Applicant would be entitled to make the present application. The notice was hand delivered to the Respondent on 19 November 2025 and posted the following day. If only posted, it ought to have specified 15 February 2026 to comply with the requirements of section 62 of the 2016 Act. Given that it was hand delivered to the Respondent on 19 November 2025, the 48 hour period for receipt as per section 62(5) was unnecessary and the date which required to be specified only required to be 13 February 2026. The Respondent had therefore been allowed one extra day's notice. The Tribunal was prepared to overlook this

as a minor error in the document in terms of section 73 of the 2016 Act and treat it as valid.

- 4.2 The Applicant sought an eviction order on the basis of paragraph 6 of schedule 3 of the 2016 Act. Paragraph 3 is in the following terms:-

6(1) It is an eviction ground that the landlord intends to use the let property for a purpose other than housing.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to use the let property for a purpose other than providing a person with a home, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) any planning permission which would be required if the let property is to be used for the intended purpose.

In the present case, the Applicant had provided copies of the planning permission granted by the local authority. The Tribunal was satisfied that the intended demolition of the house and use of the remaining land for quarrying constituted use for a purpose other than housing. The Tribunal considered that the requirements of paragraph 6(1)(a) of schedule 3 of the 2016 Act was met and that no further evidence was required relating to this. Whilst the Respondent had questioned whether the demolition of the Property was necessary, it was clear from the planning permission provided that it had been granted on the basis that it was carried out exactly as proposed, which included the demolition of the Property.

- 4.3 The Tribunal thereafter required to consider the issue of reasonableness and whether any further evidence and procedure were to required to enable a determination to be made. The Tribunal considered that this was not required. There was no material factual dispute between the parties. The Respondent's position was that he was unaware when taking occupation of the Property that planning permission had already been granted to include its demolition. The Tribunal was prepared to accept his position and make a determination based on everything that was said at the Case Management Discussion and contained with the parties' written representations.
- 4.4 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal considered the following factors to carry significant weight in determining it to be reasonable to grant an eviction order:-

- The planning permission had been granted by the local authority for the Lomond quarry development;

- Due to the issue of the nesting bats, the demolition of the Property had to take place by the end of October to avoid significant delay with the development with any delay potentially seeing the development mothballed;
- There were a significant number of employees involved in the development who may be adversely affected should it not go ahead this year;
- The Respondent ought to be owed duties in terms of rehousing by the local authority whom he was in direct contact with.

4.5 The Tribunal considered whether a delay in enforcement of the order was appropriate, as permitted by rule 16A of the Chamber rules, given the Respondent's personal circumstances. The Tribunal was mindful that any significant delay would undermine the purpose of the eviction order being maintained. It was also within the Tribunal's knowledge that, given this situation was not of the Respondent's making, there ought to be a reasonable prospect of the Respondent being treated as unintentionally threatened with homelessness in terms of section 32 of the Housing (Scotland) Act 1987. Given that a person is to be treated as such if they are likely to become homeless within the next two months, the Tribunal considered it appropriate to delay enforcement of the eviction order until 28 September 2026. Allowing for the service of a charge for removal would see the Respondent having to leave the Property two months after the Case Management Discussion whilst allowing the Applicant an opportunity to begin the development within the window available.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Alastair Houston

Legal Member/Chair

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12 August 2026

Date