



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 41(1)(a) of the Housing (Scotland) Act 2014 (“the 2014 Act”)

Chamber Ref: FTS/HPC/GA/20/2506

Parties:

David Love Property Ltd, 85 Easter Road, Edinburgh, EH7 5PW (“the Applicant”)

The Scottish Ministers, Scottish Government, St Andrew's House, Regent Road, Edinburgh, EH1 3DG (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants the application and makes an order requiring the Respondents to enter the Applicant in the register maintained by it under Section 29 of the 2014 Act.

Background

1. On 3 December 2020, the Applicant submitted an application to the Tribunal in terms of Section 41 of the 2014 Act and Rule 94 of the Procedure Rules. The application states, “I am appealing the decision of the Scottish Ministers. I am a professional landlord and businessman. I have a clean criminal record. There is no legal reason for this decision. I have not committed any crimes. I have been accused of a crime, but the accusations are false. I doubt this case will even call at court as when my solicitor asked for the crowns evidence, they couldn't produce any. The decision was given to me on 20 November 2020.” A copy of a letter dated 20 November 2020 from the Scottish Government Letting Agent Registration Team was submitted with the application. This letter states that the Scottish Ministers have refused the Applicant's application to the Scottish Letting Agent Register (“the Register”). The basis of the refusal is that the Scottish Ministers “do not consider that David Love Property Ltd is a fit and proper person to carry out letting agency work and they do not consider that

David Love (a person required to be identified in the business's application under section 30(2)(d) of the 2014 Act) is a fit and proper person in relation to letting agency work. In deciding whether an Applicant is a fit and proper person under Section 32(2)(a) of the 2014 Act, the Scottish Ministers must have regard to all the circumstances of the case. The Scottish Ministers do not consider David Love Property Ltd to be a fit and proper person because there is a pending prosecution against Mr David Love, a person with control and influence over David Love Property Ltd, under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010. Mr Love failed to appear when the case called at Edinburgh Sheriff Court on 27 August 2020."

2. On 21 January 2021, a copy of the application was served on the Respondent. Both parties were advised that a case management discussion ("CMD") would take place by telephone conference call on 25 February 2021 at 10am. They were provided with a telephone number and passcode. On 12 February 2021, the Respondent lodged detailed written submissions, documents, and a copy of the relevant legislation and legal authorities. In the submissions the Respondent asked the Tribunal to allow the Respondents to issue a supplementary decision letter and thereafter consider the appeal on the basis of that letter. If the Tribunal was not minded to do this, they asked that the appeal be allowed, the decision reduced and matter remitted back to the Scottish Ministers for reconsideration. The Respondent stated that these proposed disposals of the appeal were being suggested because the Respondents were "of the view that the Decision gives insufficient reasons to demonstrate the factors relied upon by the Respondents, the weight attached thereto and the relevance to the fit and proper person test applicable to Mr Love as the most senior person within the management structure of the Appellant".
3. The application called for a CMD on 25 February 2021. The Applicant was represented by Mr Love. Ms Wilson attended on behalf of the Respondent and was represented by Mr Newlands, solicitor. Following discussion with the parties, the Tribunal determined that the case should proceed to a further CMD to allow the Applicant the opportunity to consider the submissions lodged by the Respondent and take legal advice. The Tribunal noted that it would require to be addressed by the Respondent on their submissions as it did not appear that the Tribunal had the discretion to deal with the appeal in the manner suggested.
4. Parties were advised that a further CMD would take place by telephone conference call on 30 March 2021 at 10am. Prior to the CMD the Respondents submitted the supplementary decision letter, referred to in their previous submissions. They confirmed that they were asking the Tribunal to consider this letter in connection with the appeal. The Applicant lodged a response to the letter confirming that he objected to it being considered and addressing some of the matters raised in the letter.
5. On 29 March 2021, the Respondents sent an email to the Tribunal which stated that they accepted that the "underlying decision giving rise to the appeal is defective in that it does not provide the appellant with adequate reasons as to why the decision was taken". They stated that "the Scottish Ministers no longer

seek to defend this appeal”, that they “withdraw their written submissions”, “do not rely upon the supplementary decision letter” and did not intend to make any further submissions in relation to the appeal. The email concludes by saying that “any further procedure on this appeal (including how and when it is determined) is a matter for the Tribunal and the Appellant”. A further email was submitted to the Tribunal which confirmed that the Respondents had withdrawn from the appeal, did not intend to advance any submissions and would not participate in the CMD.

6. The CMD took place by telephone conference call on 30 March 2021 at 10am. The Applicant participated. The Respondent did not participate and was not represented.

Case Management Discussion

7. Mr Love advised the Tribunal that he had received copies of the emails sent by the Respondent’s solicitor. He confirmed that he was asking the Tribunal to grant his application and order the Respondents to enter the Applicant in the Register.

Reasons for Decision

8. Section 41 of the 2014 Act states: -
 - (1) A person may appeal to the First-tier Tribunal against a decision by the Scottish Ministers –
 - (a) Under Section 32 to refuse to enter that person in the register or to renew that person’s existing entry in the register,
 - (2) An appeal must be made before the end of the period of 21 days beginning with the date of notification of the decision,
 - (3) In determining an appeal, the Tribunal may make an order requiring the Scottish Ministers to enter the person in the register.
9. The Tribunal is satisfied that the application relates to an appeal by the Applicant against a decision made under section 32 of the 2014 Act and that it is timeous.
10. Section 32(8) of the 2014 Act states that, “The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of –
 - (a) Their decision,
 - (b) In the case of a decision to enter the applicant in the register, the date of entry in the register,

- (c) In the case of a decision to renew an existing entry, the date of renewal, and
 - (d) In the case of a refusal to enter the applicant in the register or to renew an existing entry, their reasons for the refusal and the date of that refusal.
11. On 20 November 2020, the Respondents issued a letter to the Applicant which notified him of their decision to refuse to register the Applicant and provided reasons for this decision. The reasons given are brief and refer only to a pending criminal prosecution and a failure to attend court.
 12. The Tribunal notes that the dictum of Lord President Emslie in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345 at 348 is generally understood to provide authoritative guidance as to what is required in order to comply with the statutory duty of a decision maker, namely to “give proper and adequate reasons...which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader and the court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it”.
 13. The Respondents concede that their refusal letter is defective and fails to provide adequate reasons for the decision. In their (withdrawn) submissions they mentioned the failure of the letter to demonstrate the factors relied upon, the weight attached thereto and the relevance to the fit and proper test applicable. Beyond this concession, no arguments are made in relation to the appeal, as the Respondents withdrew their submissions and withdrew from the appeal. The Applicant’s written submissions only address the proposed supplementary decision letter and are therefore irrelevant, as this has also been withdrawn. Although not expressly stated, it appears that the Respondents are effectively conceding the appeal. They certainly state that they no longer oppose it.
 14. The Tribunal is satisfied that the obligation to provide reasons for the refusal to register an applicant in terms of section 32(8)(d) of the 2014 Act, requires the Respondent to give “proper and adequate reasons” which explain what “material considerations” were taken into account. The Respondent concedes that they have not done so in the letter which was issued on 20 November 2020. The Tribunal therefore concludes that the Respondents have failed to comply with Section 32(8)(d) of the 2014 Act.
 15. The Tribunal is therefore satisfied that the Applicant’s appeal should be granted. In the circumstances (and in the absence of any arguments to the contrary), the Tribunal is also satisfied that an order should be made in terms of section 41(3) of the 2014 Act, requiring the Respondent to enter the Applicant in the register.

Decision

16. The Tribunal determines that the application should be granted and that an order should be issued which requires the Respondents to enter the Applicant in the register.

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.

Josephine Bonnar, Legal Member/Chair

30 March 2021