



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 92(2) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”)

Chamber Ref: FTS/HPC/GL/21/1610

Parties:

Clarkston Developments Ltd, 224 Helen Street, Glasgow, G51 3JG (“the Applicant”)

Glasgow City Council, DRS, Private Housing Team, 231 George Street, Glasgow, G1 1RX (“the Respondent”)

Tribunal Members:

Maurice O'Carroll (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants the application and makes an Order that requires the local authority to enter the Applicant in the register maintained by it under Section 82(1) of the 2004 Act. The Tribunal further specifies that the entry is deemed to be made under subsection (3) of Section 84 of the 2004 Act.

Background

1. The Applicant submitted an application on 3 June 2021, under reference GLA-0871445-21 for registration in respect of the properties at:

Number	Address
1.	1/2, 2 Broomhill Drive, Glasgow G11 7AA
2.	1/1, 1 Clutha Street, Glasgow G51 1BL
3.	0/1, 17 Craigie Street, Glasgow G42 8NG
4.	0/2, 17 Craigie Street, Glasgow G42 8NG
5.	1/1, 122 Darnley Street, Glasgow G41 2SX
6.	1/2, 15 Exeter Drive, Glasgow G11 7UY
7.	0/1, 35 Norham Street, Glasgow G41 3XS
8.	Flat 4, 1610 Paisley Road West, Glasgow G52 3QN
9.	1/1, 1 Thornwood Drive, Glasgow G11 7TS

10. 2/1, 1 Thornwood Drive, Glasgow G11 7TS
11. 2/2, 1 Thornwood Drive, Glasgow G11 7TS
12. 3/2, 1 Thornwood Drive, Glasgow G11 7TS

Any reference to a property by number throughout this decision is a reference to the corresponding property as detailed above.

2. The Application was rejected in its entirety by the Respondent on 16 June 2021 on account of alleged inaccuracies regarding ownership of certain of the properties forming part of the overall application.
3. The Applicant appealed against that refusal on 6 July 2021 in terms of section 92(1)(a) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the Act”).
4. A hearing was convened by means of a telephone conference call on 30 August 2021 to consider the appeal. The Applicant was represented by Mr Richard Thorburn, Company Secretary of Clarkston Developments Ltd. The Respondent was represented by Miss Ikra Bhatti, one of the Respondent’s in-house Solicitors.

The hearing – preliminary issue

5. Miss Bhatti raised a preliminary issue regarding the competency of the appeal. In terms of section 92(2) of the Act, the Tribunal may grant an Order where the local authority refuses to enter a person onto the register it maintains under section 84(2)(b), (7) or (8) of the Act or where it removes a person from the register under section 88(8) or 89(1), (3A) or (4) of the Act.
6. Since the Applicant’s existing registration had been removed after 3 years in terms of section 84(6) of the Act, it was argued that neither of the situations for considering an appeal existed and therefore the Appeal was incompetent.
7. The argument was developed further to the effect that even if the appeal was against what was in substance a refusal to register, section 84 did not apply because the original application was rejected due to inaccuracies in the Application in terms of the preceding section 83. In other words, the Applicants did not get to the registration stage in terms of section 84 because the application for registration in terms of section 83 was deficient. As a result, section 92 of the Act was not engaged and the appeal was incompetent.
8. The Tribunal adjourned briefly to consider the preliminary issue. On resumption, the Tribunal rejected the preliminary argument and proceeded to hear submissions on the substantive issues which arose.
9. In the Tribunal’s view, although the existing registrations were due to expire on 7 June 2021 by operation of section 84(6), the Application was in effect a fresh registration in terms of section 92(1)(a) of the Act as contended by Mr Thorburn. Whether appeal was competent hinged on the question as to whether the Application was indeed deficient in terms of section 83 of the Act.

10. The sole reason provided for the alleged deficiency centred on the pivotal question of ownership of the properties. That issue went to the substance of the appeal under discussion. Accordingly, the Tribunal declined to uphold the preliminary submission as to competency.

Discussion of substantive issues

11. It was common ground that there were no difficulties with the registration of properties 1, 6, 9, 10, 11 and 12. The Applicant was invited to re-register prior to the expiry date with a fresh application in relation to those properties only. Mr Thorburn did not do so. He considered that he had submitted a valid application in respect of all of the properties and he wished to have them all registered so that they could be leased.
12. The sole issue in relation to the remaining properties (2, 3, 4, 5, 7 and 8) was in relation to ownership.
13. Miss Bhatti conceded that in relation to properties 3 and 4, the confusion in relation to those properties was as a result of error in an earlier conveyance where the owner was stated as being Clarkston Properties Ltd (which does not exist) rather than the Applicant. Since the correct Company number had been cited, the Respondent could have accepted the applications in relation to properties 3 and 4. During the hearing, Mr Thorburn informed the Tribunal that he had just received confirmation of rectification by Registers of Scotland (“RoS”) in relation to those properties. He was asked to provide a copy of this to the Tribunal and undertook to do so.
14. That leaves the controversial properties as 2, 5, 7 and 8. In relation to those, the Applicant had acquired the properties but had not by the time of registration had the dispositions in its favour registered with RoS. The Applicants were thereby owners of those subjects, using common parlance, but not infert proprietors by having registered title.
15. The reason for refusal of the application for registration by the Respondents was that in terms of section 83(1)(b) of the Act, the Applicant was required to provide ““the address of each house (if any) within the area of the authority which the relevant person **owns** and which is subject to: (i) a lease; or (ii) an occupancy arrangement.” (emphasis added)
16. The Respondent was not satisfied as to ownership. In its view, an unregistered personal right to land did not qualify. Section 50 of the Land Registration (Scotland) Act 2012 states:
‘Transfer by disposition
(1) A disposition of land may be registered.
(2) Registration of a valid disposition transfers ownership.
(3) An unregistered disposition does not transfer ownership.’
17. Accordingly, the Respondent was of the view that in the absence of a registered disposition in terms of section 50 of the 2012 Act, the Applicant did not own the properties as required by section 83 of the Act cited above.

Reasons for Tribunal's Decision

18. Whilst it is absolutely correct to state that an unregistered disposition does not transfer ownership in the full sense, that provision requires to be seen in the context of the purpose and scheme of the 2012 Act. Registration of Title is the means by which real rights in property are established and by which proprietors become infest in land. The 2012 Act establishes that.
19. Similarly, the terms of the 2004 Act require to be read in context having regard to the scheme and purpose of that Act. As its name suggests, the 2004 Act is aimed at protecting members of the public, in this instance against unscrupulous landlords. The central provisions of Part 8 are aimed at ensuring that only "fit and proper persons" are entitled to be registered as landlords and thereby able to rent properties for gain.
20. Section 92(2) of the Act requires the Tribunal to deem an application as having been made under either of subsections (3) or (4) of section 84 of the Act if it decides to make an Order. Those provisions provide a cross-reference to the applicant being a fit and proper person. Other matters are mentioned such as the name and address of the applicant having been supplied and a house specified. Neither sub-section provides a cross-check on ownership.
21. The Tribunal was therefore of the view that where the word "owns" is used in section 83(1) of the Act, it does not necessarily refer to ownership in the absolute sense used in the 2012 Act. If nothing less than fully registered ownership were required in order to obtain landlord registration, it would mean that landlords having purchased properties for rent by means of a valid disposition would require to wait until title registration was complete before they could rent the properties bought for that purpose.
22. It is a matter of common knowledge that RoS may take many months to finally register a disposition, especially (as here) where any complication arises delaying the registration process, which may be through no fault of the registering party. Administrative processes have inevitably been delayed since the advent of Covid-19. Therefore, to require full registration in the Land Register prior to granting registration for letting purposes in the local authority register would mean that prospective landlords in the scenario raised above would be at the mercy of the efficiency or otherwise of RoS in carrying out its land registration process.
23. The above interpretation is supported by the fact that apart from there being no cross-check on the issue of ownership (1) the Act does not define ownership and (2) does not actually require the local authority considering the application to check and verify ownership. In the same way, it does not require a local authority to check the validity of a lease or occupancy arrangement, the existence of which is also a pre-requisite of registration. Doing either would place an enormous and unnecessary burden on the local authority.

24. The practice of checking registration of title by the Respondents was conceded by Miss Bhatti as being a matter of good practice when it was aware of information which might cast doubt on ownership (as was the case here) but not one arising as a result of any statutory duty on the Respondent's part.
25. Since there was no dispute as to the "fit and proper" status of the Applicant and it being conceded that aside from the issue of ownership, there was nothing in the application for registration which would prevent it from being granted, the Tribunal was of the view that the Order sought should be made.
26. A subsidiary point arose during the course of discussion: The Respondents apply a practice whereby applications for registration are either accepted in full or are rejected entirely. Again, no authority was provided by the Respondents to support this approach. It is just the way the relevant department operates.
27. In the Tribunal's view, the consequences to the Applicant in terms of losing its registered landlord status in respect of properties previously registered could have been greatly reduced if a decision had been taken to grant the application in respect of the parts of it that were uncontroversial and only to refuse those parts where it had an objection.

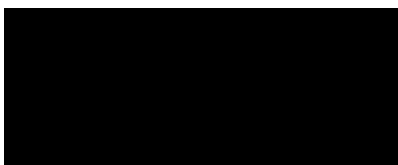
Decision

28. The Tribunal has therefore for the reasons set out above decided to allow the appeal and to issue an Order in terms of section 92(2) of the Act requiring the Respondent to enter the Applicant in the register of landlords. A separate Order is issued with the present decision.

Right of Appeal

In terms of Section 92(5) of the 2004 Act, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland. The appeal must be made within the period of 21 days beginning with the day on which the decision appealed against was made.

Section 92(6) of the 2004 Act provides that the decision of the Upper Tribunal on an appeal is final.



Legal Member/Chair

30 August 2021

Date