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

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| **Case Reference** | : | **LON/00BB/HNA/2017/0007** |
| **Property** | : | **96 Leytonstone Road, Stratford E15** |
| **Appellant** | : | **Your London Rooms Ltd** |
| **Representative** | : | **Mr M Talati and Mr W Tailor** |
| **Respondents** | : | **The London Borough of Newham** |
| **Representative** | : | **Ms Clara Zang (counsel)** |
| **Type of Application** | : | **Appeal under s.249A and schedule 13A of the Housing Act 2004** |
| **Tribunal Members** | : | **Judge S McGrath**<br>**Judge Sonya O'Sullivan**<br>**Mr M Cairns MCIEH** |
| **Date of Decision** | : | **9th February 2018** |

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**DECISION**

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*Decision*

1. **The appeal by Your London Rooms Limited against the imposition of a financial penalty on 22nd September 2017 by the London Borough of Newham under section 249A and schedule 13A of the Housing Act 2004 is dismissed**
2. **The decision by the London Borough of Newham to impose a penalty in the sum of £22,500 is confirmed.**

*Introduction*

1. This is an appeal by Your London Rooms Limited (YLR) against the imposition of a financial penalty by the London Borough of Newham under section 249A and schedule 13A of the Housing Act 2004. The Final Penalty Notice from the council is dated 22nd September 2017 and is in the sum of £22,500.

2. The appeal was set down for hearing on 30th January 2018 when Newham were represented by Ms Clara Zang of counsel and YLR were represented by Mr M Talati, who is an accounts manager for the appellant and by Mr W Tailor who is a shareholder and director.

*Background*

3. The background to the imposition of the penalty is primarily set out in a witness statement of Mr Paul Mishkin MSc dated 23rd November 2017, who is a Principal Environmental Health Officer with the respondent. Mr Mishkin has been employed in the Environmental Health team at Newham since 2009. He has worked in Environmental Health for over 16 years, specialising in the regulation of private rented housing.

4. Mr Mishkin was unable to attend the hearing but the evidence of events leading up to the imposition of the penalty was largely uncontested. In June 2017 a complaint was received from a Newham councillor relating to 96 Leytonstone Road, London E15 1TQ regarding allegations of overcrowding, dampness and anti-social behaviour. It stated "I met a young woman yesterday at the Magpie Project, which helps women with children under 5 living in overcrowded or temporary accommodation. She lives at the above address which she says has 14 people in occupation. She also says that the place is so dirty she has been unable to toilet train her daughter, there are also allegations of ASB and drug taking in the house." In June a letter was also received from a health visitor expressing serous concern at the housing

conditions at the property including overcrowding, dampness and mould growth. On 5th July 2017, Mr Mishkin visited the property.

5. He described the house as a two storey mid terrace building built in about 1890. The ground floor has two bedrooms, a shared kitchen and a back addition bathroom and wc. The first floor has three bedrooms and a bathroom. In July 2017 the ground floor front room was occupied by a 2 year old girl and her parents. The first floor middle room was occupied by a couple, their 10 year old daughter and 10 month old daughter. It was belived that altogether there were 14 occupiers living at the property . Mr Mishkin determined, and it is not disputed, that the property was a house in multiple occupation within the standard test set out in section 254(2) of the Housing Act 2004.

6. It was agreed by the parties that it would not assist the Tribunal to carry out an inspection since the condition of the property had changed since the summer of 2017 and it was no longer under the management of YLR.

7. As an HMO the property was subject to the Management of Houses in Multiple Occupation (England) Regulations 2006. Mr Mishkin noted the following breaches of those regulations:

   (a) No functioning fire alarm system, no fire door or fire blanket to the shared kitchen, contrary to regulation 4(4);

   (b) Missing spindles to the banisters, contrary to regulation 7(2)(a);

   (c) The shared kitchen had worn lino with holes in it and worn kitchen unit door and drawer fronts, contrary to regulation 7(2)(f)

   (d) There was a missing lock to the first floor shared bathroom, contrary to regulation 7(2)(f)

   (e) There was an accumulation of rubbish in the rear flank yard, contrary to regulation 7(4)(a).

8. Mr Mishkin took a number of photographs of the condition of the property which are annexed to this decision. He also photographed a number of documents including a "house-share licence agreement" for the ground floor front tenant issued by YLR dated 2nd August 2015, a notice seeking possession signed by a director of YLR dated 3rd April 2017 and an "Emergency Contact Details" sheet pinned up in the hallway from YLR. Mr Mishkin therefore concluded that YLR was the "person managing" the property as defined under section 263(3) of the 2004 Act.

9. On 11th July, Mr Mishkin sent a letter to YLR with a list of breaches noted and works required to rectify those breaches which he said should be achieved within 14 days. That letter also informed YLR that the council intended to take one of two courses of action either to issue with a Financial Penalty Notice or to bring a prosecution.

10. On 14th July, he received an email from Ideal Homes stating that they had been approached by the landlord with a request for vacant possession of the property and hence a "one month notice" was served by YLR who was managing the property; that the tenants were moving out except one couple who required a formal eviction and that they had received a letter from the licencing team at Newham council saying that an incorrect license type was held for the property. Ideal Homes also stated that it was intended to return the property back to a single dwelling, that it did not make financial sense to have a fire alarm installed for a property which would only be occupied by one family for a few months and asking for further time to carry out the required works in particular because of the safety of the children if contractors were on site. On 19th July, Mr Mishkin replied that the Management Regulations are ongoing requirements and because of concerns about the safety of the children and other occupants at the property, the works could not be delayed.

11. On 25th July, Mr Mishkin made another visit to the property. By then some of the works had been completed and the ground floor front room tenant and her family were the only remaining occupants. A mains linked smoke alarm system had been installed along with a fire door to the rear kitchen and a fire blanket. Spindles had been replaced to the banisters, a lino floor had been laid in the kitchen and a barrel bolt lock fitted to the bathroom door.

12. On 27th July, Mr Mishkin prepared a notice of intention to issue a financial penalty. Following a peer review he made some corrections then sent the notice by post and email to YLR. In the covering letter Mr Mishkin said:

> "I was disappointed to note that the HMO Management Regulations(s) had been breached, with some breaches outstanding at my return inspection, despite the opportunity to rectify the breaches. Consequently an offence has been committed and the council have now decided to impose a Financial Penalty in respect of this offence"

13. The notice stated that the reasons for proposing to impose a financial penalty was that YLR, being the person managing the property, was in breach of the Management Regulations and had therefore committed an offence. The amount of the proposed penalty was set at £22,500. At paragraph 5 of the notice the factors taken into account are listed and paragraph 6 states as follows:

> "6. In particular, the Authority has considered:
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> A number of vulnerable occupants were exposed to these breaches with a letter from a Health Visitor seen expressing

concerns. When the list of breaches was notified to the agents some items were rectified, others not. Specifically breach of Regulations 4(4), 7(2)(a) and 7(2)(f) were rectified with Regulation 6(3)(c) partially met (an electrical test certificate was submitted but no gas safety certificate) and Regulation 7(4)(a) not met. Nevertheless the conditions found at the initial inspection were exceptionally poor with little consideration given to the health, safety and welfare of the occupants. The managing agents have been found to breach these Regulations in other properties previously and have had legal action initiated against them with successful prosecution outcomes. The business model followed by the managing agents appears to be designed to maximise rental income and therefore profit. The fine is consequently high, although a reduction of 10% from £25,000 to £22,500, has been applied to reflect that some remedial works were carried out, although only after prompting."

14. Annexed to the notice was a "Financial Penalty Matrix" setting out the factors taken into account when deciding the level of the proposed fine together with a score against each factor and a justification. We deal with this further below. As to the references to prior offences Mr Mishkin explained that during the process he had received information relating to at least seven other properties within Newham where YLR had been convicted of a range of housing offences.

15. An hour after the notice was sent, Mr Mishkin was telephoned by Mr Waseem Tailor who is a Director of YLR, to discuss the notice. Mr Mishkin explained how the notice works and the right of representation. There was also a discussion about the level of the proposed fine and why it was so high. Mr Mishkin then explained his view that the conditions found during his inspection were woeful; having children exposed to serious hazards, there being little evidence of any pro-active management in the professional sense of the term, that misleading paperwork was issued to tenants in place of actual tenancy agreements undermining their sense of security and further compounding this offence. He said that the poor management standards were one of the main reasons for the level of fine proposed.

16. On 16th August, Mr Mishkin received a message to contact YLR. He telephoned and spoke to a Mr Iqbal who said he was a solicitor and shareholder of YLR. He said that the proposed fine was excessive and would cause the company to become bankrupt resulting in homeless families and lost jobs. Regarding the property he said that only one family remained in occupation and that they intended to hand the property back to the owner.

17. On 22nd August, Mr Tahir Talati, the accounts manager for YLR sent an email to Mr Mishkin with a letter from Mr Mohsin Kothia, detailing the company's representations. Firstly, Mr Kothia said that on receipt of the instruction to carry out works, YLR was in touch with Ideal Homes to ensure they were carried out and was continuing to press for their completion. He invited Mr Mishkin to carry out another inspection. He said that there was only one family remaining at the property and that they were likely to vacate within the next few days. He said that YLR had not allowed any of the tenants to move into the property with children and that circumstance was beyond YLR's control. He re-iterated that the landlord did not provide them with the funds or the authority to proceed with the works. Therefore, he said, it was unfair for YLR to be penalised for a matter solely within Ideal Homes' control.

18. Finally Mr Kothia said that YLR was not able to afford the financial penalty and continue in business. He said if the penalty was enforced, they would have no option but to close down the company, resulting in hundreds of tenants being forced to find alternative accommodation and 8 employees having to find new employment. He finished by asking for the penalty to be waived.

19. In response to the representations, Mr Mishkin asked for further financial records. Following a number of reminders on 7th September 2017 Mr Mishkin received an email with an attachment showing the company accounts. He re-visited the property on the same day and was granted access by the remaining tenant. The rear garden had been tidied up and it appeared that all items had been dealt with.

20. On 21st September 2017, Mr Mishkin sent a draft of the Final Penalty Notice to a senior colleague to review and she responded with comments stating that she agreed with the content. On 22nd September 2017, the Final Notice of Financial Penalty was served on YLR. In the covering letter Mr Mishkin stated:

    "The council has received representations to the Notice of Intention, dated 22nd August 2017 and 6th September 2017, and considered their contents. The reasoning in the representation is not accepted because the Council considers this to be a serious offence and wishes the fine to act as a serious deterrent against any similar future breaches. The Council is aware of numerous previous enforcement actions against you and does not consider that waiving the penalty would be an appropriate sanction…"

21. The Final Penalty Notice also set out the matters taken into account at paragraph 5 being: the severity and seriousness of the offence/s; the culpability and past history of the offender; the harm caused to the tenant/s; that the penalty should act as a deterrent to repeating the

offence; that the penalty should remove any financial benefit obtained as a result of committing the offence. At paragraph 6 it is stated that in particular the authority considered:

"…. The severity of the offence, being a serious lack of management in an overcrowded HMO with reports of drug taking and other anti-social behaviour. Children were residing in the property further exacerbating the impact of the offence.

The past compliance history of YLR Ltd indicates a number of successful prosecution cases and numerous interventions by the Council over inadequate management standards and dubious practices such as issuing 'licences' to occupants who are in fact assured shorthold tenants, as well as practices such as giving inadequate notice to quit to those tenants.

The Council have also considered the impact on the occupants' health arising from the offence, with a letter from a Health Visitor expressing the detriment to the health of the occupants of the ground floor front room in particular. Additionally a tenant discussed concerns over how the property is affecting their health. The inspecting officer also concluded that the conditions could give rise to a number of other health issues including stress and mental health issues, gastro-intestinal problems arising from poor maintenance of the shared kitchen and the possibility of accidents due to gaps to the banisters.

The Council also considers that it is necessary for the penalty to act as a realistic deterrent to future breaches, which a lower level fine would not be able to achieve. Similarly the high level of penalty clearly removes the financial benefit of ignoring management responsibilities".

*The Appeal*

22. On 11th October 2017, YLR submitted an appeal against the Final Penalty Notice. The grounds of appeal were: over onerous penalty charge; incompliant landlord; lack of resources and funds from landlord; past history taken into account without considering mitigating circumstances; lack of consideration given to the solvency of YLR Ltd; improper investigation with regards to who was final beneficiary of the funds collected; procedural misapplication.

23. In a letter dated 1st January 2018, those grounds were elaborated as follows:

    (a) Newham Council were pursuing the wrong party despite having been given evidence that the company responsible for carrying out works was Ideal Homes and despite there being correspondence between Mr Mishkin and Ideal Homes;

(b) YLR Ltd had never been found guilty or asked to pay a fine to the amount demanded by the Council on this occasion;

(c) Mr Mishkin had informed YLR that the financial details of the company would be considered before deciding the amount of the fine. Despite a letter from its accountant showing that the company is not in a position to afford the fine and remain solvent, the information was disregarded.

24. At the hearing, it was agreed with the parties that Newham would start first. As indicated Mr Mishkin was not available to give evidence but the facts in his statement were largely uncontested. Supplementary evidence was given on behalf of Newham by Dawn Davis. Unfortunately Mr Talati and Mr Tailor were not provided with a copy of her written statement until the morning of the hearing and they objected to the admission of paragraphs four to eleven. The Tribunal agreed and therefore took no account of that part of her evidence.

25. Ms Davis has been employed by the London Borough of Newham as an Environmental Health Officer in the Private Housing and Environmental Health Team since she qualified with a BSc in Environmental Health in 2006. She has been registered as an Environmental Health Officer with the Chartered Institute of Environmental Health since 2011. She specialises in the regulation of private rented housing.

26. In the remainder of her statement Ms Davis gave further details of YLR's previous convictions. They were as follows:

(a) On 17th March 2017, YLR was given a £1,500 fine for failing to licence 117 Osborne Road, London E7 as an HMO. They were also fined a total of £150 for breaches of the Management Regulations;

(b) On an unspecified date YLR was given a £1,500 fine for failing to licence 36 Osborne Road, London E7 as an HMO;

(c) On 17th March 2017, YLR was given a £1,500 fine for failing to licence 4 Dunbar Road, E7 as an HMO;

(d) On 17th March 2017, YLR was given a £1,500 fine for failing to licence 4, Carlton Road, London E12 as an HMO;

(e) On 11th April 2016, YLR was given a fine of £2,000 for Management Regulation breaches at 296 Strone Road, London E12;

(f) On 6th April 2016, it was said, Mr Rodrigo Chenkel, a Director of YLR pleaded guilty to licencing offences and the charges were dropped against YLR in respect of 358 Central Park Road, London E6 (this was disputed by Mr Tailor who said that in fact it was YLR that had pleaded guilty).

(g) On 6th October 2017, YLR was given a fine of £3,000 for failing to licence 142 Plashet Road, London E13 as an HMO.

In her evidence to the Tribunal, Ms Davis explained that this information was held on a computer record and also on a prosecution spreadsheet updated and maintained by Newham.

27. Mrs Davis went on to give an explanation of the matrix mentioned in paragraph 14 above. She said that the matrix had been developed in response to the introduction of the option for the council to consider imposing financial penalties for housing offences instead of prosecution. When an officer was satisfied that it was appropriate to seek to impose a financial penalty, the matrix operated to assist in the decision as to the level of a proposed fine. The matrix is divided into four sets of criteria: 1. Deterrence and Prevention; 2. Removal of Financial Incentive; 3. Offence and History; 4. Harm to Tenant(s). These criteria are based on and are intended to encompass the factors which local authorities should take into account when deciding the level of a civil penalty set out in paragraph 3.5 of the Guidance on Civil penalties under the Housing and Planning Act 2016 issued by the Department for Communities and Local Government in April 2017.

28. Against each criterion is a range of scores being 1, 5, 10, 15 and 20. The EHO considering the matter must decide, by reference to the offence under consideration, what score should be attributed to each criterion with 1 being the least serious and 20 the most serious. The matrix gives descriptors of the type of relevant factors that should be taken into account by the officer in deciding a particular score. The score for the criterion "Harm to Tenants" is automatically doubled to reflect the weighting attributed to this consideration in the DCLG guidance as "a very important factor." The sum of those scores is then entered into a computer programme which calculates a monetary value up to £30,000. Ms Davis was unable to assist the Tribunal with the way in which the calculation was done by the computer.

29. Ms Davis said that one of the benefits of the matrix was that it provided objectivity. An officer would not start from a preconceived idea about a particular landlord or manager. Instead the matrix required a systematic approach to the underlying facts and background to an offence. It helped to ensure a consistency in approach and afforded transparency. At the end of the process Ms Davis said that it was open to an officer to change the final amount to take into account mitigating circumstances and, where appropriate, the financial standing of the offender. In this case Mr Mishkin had reduced the figure produced by the matrix of £25,000 by 10% to reflect the work that was done to the property following his visits.

30. Evidence for the appellant was given first by Mr M Talati. He is an accounts manager for YLR and an employee. He has no other interest in the company. Mr Talati explained that the responsibility for repairs and maintenance of the property lay with Ideal Homes and not with YLR. Although YLR encouraged Ideal Homes to carry out the required works to the property they were slow about doing so and YLR had no control over this. He considered that Newham were in error in pursuing YLR. He accepted that most of the concerns about the property highlighted by Mr Mishkin were valid but that Newham acted too quickly. He said that YLR has properties in a number of London boroughs but that it had never been served with a notice elsewhere. Altogether YLR has responsibility for 90 properties. He said that in other areas of London the company was approached by councils and works were discussed so that formal action was not required. He felt that Newham had not taken all of the facts into account.

31. So far as the finances of the company were concerned he made two points. Firstly, he said that he had expected Mr Mishkin to take into account the financial situation of the company following his representations. He said this did not occur and the financial penalty remained the same despite the provision of accounts. Secondly, he said that there had been a significant reduction in the performance of the company which was apparent from the accounts. At the hearing Mr Talati handed up more comprehensive accounts than had been provided to Mr Mishkin.

32. In cross examination Mr Talati accepted that the company has had convictions for housing offences and that fines had been imposed and he acknowledged that some related to the Management Regulations and YLR should have been aware of its obligations. He accepted that after 15th July 2017 he realised that there were serious allegations in respect of the subject property but said that once he became involved the issues were resolved and were sorted out by 6th September 2017.

33. Evidence for the appellant was also given by Mr W Tailor who has been a director of the company for the last three months. Prior to that he had been in freelance property procurement for both YLR and other companies including the homelessness department of Newham council. He has been a shareholder of YLR since 2011 so that he benefits from dividends and also is paid a consultancy fee. He said that he also has experience in property management.

34. As to the subject property he accepted that it fell under the selective licencing scheme and that there was permission for only one household to be in occupation. He said that originally the house was let to a Bulgarian family who had brought in sub-tenants. When YLR took over management of the property in 2014-15 they simply continued with the situation. He accepted that this was a mistake but said it was not YLR's fault.

35. He said that it was not possible to deal with overcrowding as it was too expensive to evict the tenants and not something that the company could afford. When asked whether this was because eviction would result in voids, he said that re-letting was not a problem. YLR did not intend to have so many people living there. In July 2017 YLR was accepting rent for five rooms. The arrangement was that YLR would keep the rents and pay a fixed sum either to another intermediate agent or to the landlord in a back to back agreement.

36. He said that the "licence agreement" that Mr Mishkin had seen had been approved by counsel and accepted that a month's notice to quit was not compliant with a notice seeking possession.

37. Although Mr Tailor accepted that there was some bad management at the property, he did not accept that it was as bad as the pictures seemed to show. He said that regular monthly inspections of the property were carried out by YLR employees who had been trained in good management practices. He suggested that many of the problems were down to the tenants and said for example that the property had been fitted with fire alarms on multiple occasions but that these had been removed by the tenants. However there was no evidence in the photographs to show that fire alarms had ever been in place. In cross examination he accepted that the company had been convicted quite regularly in the period of about 12 months but said that its management of properties was improving and would be more closely monitored.

38. Mr Tailor also explained how the financial standing of the company had gone down. He said that at this time last year the company had 130 properties and this had reduced to 90 properties. He had already said that letting was not a problem but estimated that the rental income had reduced by about 10%.

*Submissions*

39. On behalf of Newham Ms Zang referred to the evidence recited above and asked the Tribunal to uphold Newham's decision. Mr Talati submitted that Newham's approach is over-zealous. His understanding of the role of the Tribunal was to apply their understanding of the day to day reality of dealing with property. He accepted that YLR had made procedural mistakes but said that systems were now in place to ensure that they did not happen again. As an example of Newham's zeal he cited an incident earlier this year where the electricity to a property with five occupants was cut off by the provider because of the non-payment of bills by YLR's predecessor managers. Newham had required the electricity to be restored within three days which Mr Talati said simply wasn't possible and was over-zealous.

40. He said that in this case YLR had done their best to remedy the mistakes and the level of the penalty charge was not justified. He submitted that it was wrong for Newham to rely on the matrix which they had created themselves. Mr Tailor suggested that 50% of the final amount would have been an appropriate sum.

41. At the hearing Newham made it clear that they would be willing to accept payment of the Final Penalty Notice by instalments.

*Decision and Reasons*

42. For the following reasons the Tribunal upholds the Final Penalty Notice in the sum of £22,500.

43. Firstly, the Tribunal is satisfied that the property at 96 Leytonstone Road, London E15 1TQ was occupied as a House in Multiple Occupation to which the Management of Houses in Multiple Occupation (England) Regulations 2006 applied. It is also satisfied beyond reasonable doubt that YLR was in breach of those regulations and was guilty of an offence under section 234(3) of the Housing Act 2004. This was not disputed by YLR.

44. So far as the level of the financial penalty is concerned the Tribunal decides the following:

    (a) Contrary to Mr Talati's submission, Mr Mishkin did take into account the representations made by YLR. This is clear in his letter of 22nd September 2017 when he rejected YLR's reasoning. The Tribunal considers that he was entitled to do so. Although the Tribunal has been provided with more comprehensive accounts, they do not displace the considerations set out in the Final notice. By themselves the accounts did not support the submissions made by YLR and furthermore the Tribunal had difficulty in accepting the accuracy of the accounts which are not independently audited or certified;

    (b) The matrix used by Mr Mishkin is properly based on the DCLG guidance and the Tribunal considered that it worked effectively to distribute the weight of the allocated criteria across the range of possible fines up to £30,000.

    (c) In deciding on the scores for each of the individual criterion, the officer concerned is required to apply their expertise to the circumstances and background to the offence to allocate appropriately. Furthermore they must then justify the score and seek comments from their peers and in this case we note comments were sought from a senior Environmental Health Officer. At the end

of the exercise the officer has a discretion to reduce the award to reflect mitigating factors or take into account financial standing.

(d) Having regard to the following the Tribunal is satisfied that a penalty of £22,500 is appropriate:

1. The conditions found during the inspection and resulting breaches were serious and were a clear indication that very little active management took place at the property. The evidence was sufficient to infer that the condition of the property had pertained for some time;

2. Although Mr Tailor demonstrated an understanding of the need for on-going management, Mr Talati seemed to be under the misapprehension that works were only required when notified by Newham. Although he sought to justify the position of YLR by reference to Ideal Homes and felt that more time should have been given to carry out works, this fails to address the real issue here, namely that there had been a serious failure to manage.

3. Furthermore YLR manage 90 properties and on its own case is responsible for hundreds of tenants. Since 2016 they have been convicted at least 7 times of housing offences. A financial penalty at this level is justified as a deterrent and as a punishment.

4. Finally there was a real danger of harm to both the physical and mental health of the 14 occupiers at the property including a number of children.

45. Accordingly the appeal is dismissed.

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