



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

Case Reference : **LON/OOAS/HNA/2019/0111**

Property : **7 Brickfield Road Hayes Middlesex
UB3 5DY**

Appellant/applicant : **Station Property Services Limited**

Representative : **James Harris of Counsel**

Respondents : **London Borough of Hillingdon**

Representative : **Alexandra Sidossis of Counsel**

Type of Application : **Appeal against a financial penalty
under s.249A and schedule 13A of
the Housing Act 2004**

Tribunal Members : **Judge Professor Robert Abbey and
Ms Sue Coughlin MCIEH**

**Venue and Date of
Hearing** : **10 Alfred Place, London WC1E 7LR
4 December 2019**

Date of Decision : **18 December 2019**

DECISION

Decision

1. The appeal by the appellant against the imposition of a financial penalty by the London Borough of Hillingdon under section 249A and schedule 13A of the Housing Act 2004 is upheld. The decision by the London Borough of Hillingdon to impose a financial penalty is denied to the intent that there shall be no financial penalty levied against the appellant.

Introduction

2. This is an appeal by Station Property Services Limited against the imposition of a financial penalty made by the London Borough of Hillingdon under section 249A and schedule 13A of the Housing Act 2004. The Financial Penalty Notice from the local authority was dated 8 August 2019 and is in the sum of £9,666.67.

The Hearing

3. The appeal was set down for hearing on 9 December 2019 when Hillingdon was represented by Ms Sidossis of Counsel. Mr Harris of Counsel appeared on behalf of the applicant company.

Background

4. Relevant legislation is set out in the appendix to this decision.
5. The background to the imposition of the penalty was primarily set out in two witness statements of Mr Kevin Nwaefulu dated 9 October 2019 and 3 December 2019, who is an EHRB registered Environmental Health Officer and who is in the employ of Hillingdon Council as a Housing Standards Officer in the Private Sector Housing Team and who gave oral evidence at the hearing.
6. He confirmed that on 7 May 2019 he visited the property to see if the property was operating as an unlicensed HMO. Having so inspected he was of the view that the property meets requirements of a licensable HMO under section 254 of the Housing Act 2004. He considered that the applicant was to be held jointly liable for managing an unlicensed HMO which is an offence under section 72(1) of the Housing Act 2004 and for Management Regulation breaches.
7. On 6 June 2019 the respondent issued a "Declaration of a House in Multiple Occupation pursuant to section 255 of the Housing Act 2004. On 10 June 2019 a Notice of Intention to impose a financial penalty was served for failure to licence a licensable HMO and breach of Management Regulations. On 8 August 2019 A Notice of Decision to impose a financial penalty was served.

8. The respondent asserted that on 7 May 2019 the property was not licenced as an HMO and the property was occupied by 3 or more unrelated tenants who shared kitchen and bathroom facilities. The applicant confirmed that there was no HMO licence and none had been applied for and that there was never any intention to create an HMO at the property.

The Appeal and the law

9. At the core of this dispute is the fact that on 6 June 2019 the respondent issued a “Declaration of a House in Multiple Occupation pursuant to section 255 of the Housing Act 2004. To understand the concerns raised by this it is first important to appreciate what section 255 states, (with bold emphasis applied by the Tribunal) –

255 HMO declarations

(1) If a local housing authority are satisfied that subsection (2) applies to a building or part of a building in their area, they may serve a notice under this section (an “HMO declaration”) declaring the building or part to be a house in multiple occupation.

(2) This subsection applies to a building or part of a building if the building or part meets any of the following tests (as it applies without the sole use condition)–

(a) the standard test (see section 254(2)),

(b) the self-contained flat test (see section 254(3)), or

(c) the converted building test (see section 254(4)),

and the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in question constitutes a significant use of that accommodation or flat.

(3) In subsection (2) “the sole use condition” means the condition contained in–

(a) section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or

(b) section 254(4)(e),

as the case may be.

(4) The notice must–

(a) state the date of the authority’s decision to serve the notice,

(b) be served on each relevant person within the period of seven days beginning with the date of that decision,

(c) state the day on which it will come into force if no appeal is made under subsection (9) against the authority’s decision, and

(d) set out the right to appeal against the decision under subsection (9) and the period within which an appeal may be made.

(5)The day stated in the notice under subsection (4)(c) must be not less than 28 days after the date of the authority’s decision to serve the notice.

(6)If no appeal is made under subsection (9) before the end of that period of 28 days, the notice comes into force on the day stated in the notice.

(7)If such an appeal is made before the end of that period of 28 days, the notice does not come into force unless and until a decision is given on the appeal which confirms the notice and either—

(a)the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, or

(b)if an appeal to the Upper Tribunal is brought, a decision is given on the appeal which confirms the notice.

(8)For the purposes of subsection (7), the withdrawal of an appeal has the same effect as a decision which confirms the notice appealed against.

(9)Any relevant person may appeal to the appropriate tribunal against a decision of the local housing authority to serve an HMO declaration.

The appeal must be made within the period of 28 days beginning with the date of the authority’s decision.

(10)Such an appeal—

(a)is to be by way of a re-hearing, but

(b)may be determined having regard to matters of which the authority were unaware.

(11)The tribunal may—

(a)confirm or reverse the decision of the authority, and

(b)if it reverses the decision, revoke the HMO declaration.

(12)In this section and section 256 “relevant person”, in relation to an HMO declaration, means any person who, to the knowledge of the local housing authority, is—

(a)a person having an estate or interest in the building or part of the building concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or

(b)a person managing or having control of that building or part (and not falling within paragraph (a)).

(13)For the purposes of this section and section 256, “appropriate tribunal” means—

(a)in relation to a building in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b)in relation to a building in Wales, a residential property tribunal.

10. On 5 September 2019 the applicant submitted an appeal to the Tribunal against the Final Penalty Notice.

Decision and Reasons

11. On considering all the evidence, the Tribunal immediately identified a problem with the chronology of events leading up to the imposition of the financial penalty. The problem relates to the timing of the various statutory events.
12. The Declaration served by the respondent stated that (with bold applied by the Tribunal) *“The property....is declared a house in multiple occupation. On 06 June 2019 the London Borough of Hillingdon, the local housing authority declared that this building.... Is a house in multiple occupation and that this notice of declaration is served. If no appeal is made against this notice **then this declaration shall become operative on 04 July 2019**, being not less than 28 days after the decision to serve this notice was made.”* The effect of this was to say that the respondent considered the property to be an HMO and that the notice gives the recipients 28 days to appeal against the Declaration failing which the property will conclusively become an HMO after that notice period.
13. The problem that the Tribunal identified is that on 10 June 2019 a Notice of Intention to impose a financial penalty was served for failure to licence a licensable HMO and breach of Management Regulations; the 10 June being well within the 28 day period stipulated in the Declaration. (The 28 day period would not expire until 4 July 2019.) This was then followed on 8 August 2019 by a Notice of Decision to impose a financial penalty, (served on that date). As is contemplated by statute the financial penalty follows the notice of intention.
14. Unfortunately for the respondent the Tribunal takes the view that the serving of the Notice of Intention was premature. The Declaration period of 28 days had not elapsed. Because it had not elapsed the property simply could not have been an HMO until the 28 day period had elapsed. Otherwise what was the purpose of the making of the Declaration? It was to put the property owner on notice that the Council believed it to be an HMO and that there was a period of 28 days to accept or reject this declaration. However, to take steps before the expiry of the 28 days on the assumption that the property was an HMO was not proper given that the possible HMO might still be challenged. Therefore to serve the Notice of Intention was wrong and anything flowing from it had to be wrong too. A financial penalty was wrong as until the 28 day period had expired there was no HMO and therefore no possible unlicensed HMO could be identified.
15. Finally to confirm this the Tribunal quotes from the explanatory notes to the Act, (with bold applied by the Tribunal) –

Section 255 provides that where an LHA is satisfied that although not exclusively occupied by people as their main or only home, a building is occupied to a significant degree by such persons (and otherwise the

*occupation and building satisfies the HMO tests) it may issue a declaration that the building is an HMO. This could be used, for example, where it is not entirely clear that a building was being predominantly used as a hotel catering for short term guests or as a hostel accommodating permanent residents. An HMO declaration puts beyond doubt that such a building is to be regarded as an HMO. It must serve the declaration on the relevant persons as defined in the section and they have a right of appeal against the making of a declaration. **The declaration does not come into force until the appeal process is finished, if on appeal the decision to make it is confirmed.***

16. Accordingly the process must finish for there to be an HMO. In this case the Tribunal are of the view that the process had clearly not finished when the respondent took the next step of issuing a Notice of Intention.
17. Therefore the Tribunal has decided not to uphold the Final Penalty Notice. Consequently, the appeal by the appellant against the imposition of a financial penalty by the London Borough of Hillingdon under section 249A and schedule 13A of the Housing Act 2004 is upheld. The decision by the London Borough of Hillingdon to impose a financial penalty is therefore dismissed.
18. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 18 December 2019

Annex
Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix
Housing Act 2004

249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section “relevant housing offence” means an offence under—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

Schedule 13A

Notice of intent

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2(1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

Right to make representations

4(1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

Final notice

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8 The final notice must set out—

- (a) the amount of the financial penalty,
- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1) A local housing authority may at any time—

- (a) withdraw a notice of intent or final notice, or
- (b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

10(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

- (a) is to be a re-hearing of the local housing authority's decision, but
- (b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5)The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Recovery of financial penalty

11(1)This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2)The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3)In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a)signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b)states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4)A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5)In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

12A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A