



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

Case Reference : **MAN/OOCG/HNA/2019/0009,
MAN/OOCG/HNA/2019/0028
MAN/OOCG/HNA/2019/0029
MAN/OOCG/HNA/2019/0030
MAN/OOCG/HNA/2019/0033
MAN/OOCG/HNA/2019/0036**

Property : **249 & 251 Pitsmoor Road,
Sheffield S3 9AQ**

Applicant : **Mr Naveed Hussain
(now known as Navid Shabir)**

Representative : **Alison Law, Solicitors
Mr Griffiths (Counsel)**

Respondent : **Sheffield City Council**

Representative : **Ms Ellie Staniforth, Lawyer,
Sheffield City Council**

Type of Application : **Appeal against a financial penalty –Section
249A & Schedule 13A- Housing Act 2004**

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member S.A Kendall-Valuer**

**Date of
Determination** : **14th August 2019**

Date of Decision : **18th September 2019**

DECISION

Decision

1. The Final Notices of a Financial Penalty dated 20th December 2018 in respect of 249 & 251 Pitsmoor Road, Sheffield are amended or confirmed as follows:
 - (1) 249 Pitsmoor Road Sheffield
 - breach of Management Regulation 4-£7500
 - breach of Management Regulation 5-£7500
 - breach of Regulation 8-£7500
 - (ii) 251 Pitsmoor Road Sheffield
 - breach of Management Regulation 4-£7500
 - breach of Management Regulation 7-£7500
 - breach of Management Regulation 8-£7500
2. The Applicant is to pay the penalties within 28 days of the receipt of this decision by the parties.

Background

3. This is an application by Naveed Hussain, now known as Navid Shabir (“Mr Shabir”) to appeal financial penalties in the total sum of £75000 issued by Sheffield City Council (“the Council”) pursuant to section 249A of the Housing Act 2004 (“the Act”) in respect of 249 & 251 Pitsmoor Road, Sheffield (“the Properties”).
4. The Council issued the financial penalties for housing offences arising from breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Regulations”).
5. The Final Notices, dated the 20th December 2018, imposed a financial penalty for the Properties, as follows:
 - (i) 249 Pitsmoor Road, Sheffield – breach of Management Regulation 4-£15000
 - (ii) 249 Pitsmoor Road, Sheffield - breach of Management Regulation 7-£15000
 - (iii) 249 Pitsmoor Road, Sheffield - breach of Management Regulation 8-£7500
 - (iv) 251 Pitsmoor Road, Sheffield - breach of Management Regulation 4-£15000
 - (v) 251 Pitsmoor Road, Sheffield - breach of Management Regulation 7-£15000
 - (vi) 251 Pitsmoor Road, Sheffield – breach of Management Regulation 8-£7500

6. Mr Shabir submitted his appeal application out of time, having filed it on 24th January 2019, the deadline being 17th January 2019, but the time for the filing of his appeal was extended.
7. The Tribunal gave directions providing for the filing of statements and bundles and for the matter to be listed for a hearing on 14th August 2019. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.

Chronology

8. The Applicant is the registered proprietor of the Properties, both of which are large 3-storey semi-detached properties in multiple occupation.
9. On 31st January 2018 the Council inspected the properties, suspecting there were breaches of the Regulations and found serious defects and deficiencies in the common parts.
10. On 15th February the Council affixed notices advising the occupiers of the Properties of a scheduled inspection on 7th March 2018. The Council stated these notices were hand delivered to the Applicant at 253 Pitsmoor Road, the Applicant's residential address as known to the Council at that time and the then freeholder of 251 Pitsmoor Road, Azhar Hussain.
11. On 7th March the Council carried out inspections at the Properties in the presence of Mr Mahzar Hussain ('Mr Hussain'), the brother of the Applicant.
12. On 16th March the Council served notices, pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 requesting further details of the ownership of the properties. The Council advised no response was received to this request.
13. On 2nd May the Council hand delivered informal schedules of work, also containing breaches of the Regulations, to the Properties and 253 Pitsmoor Road. It revisited them and found little work had been done.
14. On 14th October the Applicant notified the Council his residential address was 4 Club Street, Sheffield. The Applicant further advised his brother, Mr Hussain, was dealing with the Properties. He also stated he had not received any of the correspondence sent by the Council.
15. The Council carried out further inspections at the Properties on 11th October and on 25th October served the Improvement Notices.
16. On 8th November the Council served Notices of Intent to Impose Financial Penalties for breaches of the Regulations in respect of the Properties. These totalled six notices, for breaches of Regulations 4, 7 and 8. The Council stated these were all served by affixing them to the internal front door of the Properties, hand delivering a further copy to 253 Pitsmoor Road and 4 Club Street.

17. The Civil Penalties Determination Records (“the Records”) show the Council’s assessment of the Applicant’s culpability and harm. Culpability is assessed as high, with harm as medium for the breaches of Regulations 4 and 7 for both Properties, giving rise to a penalty of £15000 for each breach. For the breaches of Regulation 8, culpability is high and harm low, giving a further penalty of £7500 for each property. This totals £75000 for the Properties.
18. The Records show the reasons of high culpability are:
 - History of non-compliance
 - Failed to comply despite several opportunities and large amount of time;
 - Experienced landlord with large portfolio;
 - Systematic failure to comply with their duties.
19. The Records give the reasons for Harm being medium are:
 - Moderate risk of harm to all tenants through variety of hazards.
20. The Council considered both aggravating and mitigating factors but made no alteration to its original penalties.
21. At the hearing the Council stated the Record for breach of Regulation 4 for 429 Pitsmoor Road was incorrect but should have read the same as given for 251 Pitsmoor Road. Here, the aggravating factors, for all breaches are listed as:
 - Landlord motivated by financial gain
 - Large number of defects/items of disrepair;
 - Deliberate concealment of evidence (failure to respond to section 16 or Section 235 Notices);
 - Record of letting substandard accommodation;
 - Record of poor management/inadequate provision;
 - Failed to attend 2x opportunities for interview under caution

The mitigating factors are:

- Electrician on site 3/7/18 to carry out electrical testing/ repairs and also fire alarm overhaul and emergency lighting (but still no certification to evidence this);
 - Some contact following service of Improvement Notice with pledge to get the property up to standard and licenced
22. The Council calculates the Applicant’s financial gain equates to one year’s rent for each property, at between £40,000-£50,000 in respect of which the Council has paid £36,842.52 in housing benefits.

23. On 6th December 2018 the Council received written representations from the Applicant advising his brother Mr Hussain was managing the Properties and consequently he had no knowledge of the work required at the Properties.
24. On 20th December 2018 the Council issued and served the Final Notices of a Financial Penalty and them served in the same manner as the Notices of Intent.
25. The Council has confirmed that having inspected the Properties in February and March 2019, the Properties are now up to a satisfactory standard as required by the Council and that Mr Hussain has applied for the necessary licences.
26. On 15th May 2019 the Council received a signed declaration from the Applicant to state he will have no involvement with the management of any house where his brother is the licence holder.

The Law

27. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been “a relevant housing offence”.
28. Section 249 (2) sets out what amounts to a housing offence and includes at s 249(e) an offence under section 234 of the Act, namely a breach of management regulations in respect of HMOs.
29. Section 249 (3)-(4) further provides that only one financial penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.

Procedural requirements

30. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
31. A Notice of Intent must be given within 6 months of the local authority becoming aware of the offence to which the penalty relates, unless the conduct of the offence is continuing, when other time limits are then relevant.
32. The Notice of Intent must set out:
 - the amount of the proposed financial penalty
 - the reasons for imposing the penalty
 - Information about the right to make representations regarding the penalty

33. If representations are to be made they must be made within 28 days from the date the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
34. The Final Notice must set out:
- the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for the payment of the penalty
 - information about rights of appeal
 - the consequences of failure to comply with the notice

Guidance

35. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance (“the HCLG Guidance) in April 2018 : *Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
36. Sheffield City Council has developed its own guidance (“the Sheffield Guidance”) that follows the HCLG Guidance in setting out the criteria to be taken into account when determining any penalty:
- severity of the offence
 - culpability and track record of the offender
 - the harm caused to the tenant
 - punishment of the offender
 - deterrence of the offender from repeating the offence
 - deterrence of others from committing similar offences
 - removal of any financial benefit the offender may have obtained as a result of committing the offence
37. The Sheffield Guidance further sets out how they determine the level of any financial penalty. This is done in 3 steps:

Step 1

Assess the culpability and track record of the offender and the level of harm, or potential harm, to the occupiers.

Step 2

Adjust any penalty after considering any aggravating or mitigating circumstances

Step 3

Make any final adjustments to ensure the level is fair and proportionate but in all instances as punishment, a deterrent and removes any benefit of the offence.

38. The Sheffield Guidance provides examples of culpability on three levels being high, medium and low:

High level of culpability

- they have a history of non-compliance
- despite a number of opportunities to comply they have failed to comply
- have been obstructive as part of the investigation
- are an experienced landlord/agent with a portfolio of properties who would be expected to have known their responsibilities
- serious and systematic failure to comply with their legal duties

Medium level of culpability

- it is a first offence-with no high level of culpability criteria being met
- the landlord/agent had systems in place to manage risk or comply with their legal duties but they weren't sufficient or complied with on this particular occasion

Low level of culpability

- no or minimal warning given to offender
- the breaches are minor
- the offence is an isolated occurrence
- a significant effort has been made to comply but was inadequate in achieving compliance

39. The same categories apply to harm and the following are given as examples:

High

- actual harm to an individual
- high risk of harm to an individual
- serious risk of overcrowding
- serious effect on individual(s) or widespread impact

Medium

- adverse effect on an individual
- moderate risk of harm to an individual(s) or broader impact

Low

- minimal adverse effect on individual(s)
- low risk of harm to an individual
- limited impact or effect on occupiers

40. Once the appropriate levels have been determined a schedule is given to fix the level of penalty. The Sheffield Guidance then goes on to give examples of aggravating factors and mitigating factors from which the Council may choose to deviate from the prescribed level of penalty.

41. The aggravating factors are given as follows:

- Previous convictions having regard to the offence to which it relates and the time elapsed since that offence
- Landlord motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance-greater the number the greater the potential aggravating factor
- A record of letting substandard accommodation
- A poor management/inadequate management provision
- Lack of a tenancy agreement/paid in cash.

42. The mitigating factors are exemplified as follows:

- Co-operation with the investigation e.g. attends the PACE interview
- Any voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
- Willingness to undertake training
- Health reasons preventing reasonable compliance-mental health, unforeseen health issues, emergency health concerns
- has no previous convictions
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence
- Previous good character and/or exemplary conduct

Submissions and Hearing

43. At the hearing the Applicant was represented by Mr Griffiths, Counsel and the Respondent by Ms Ellie Staniforth of the Council.
44. In his written submissions the Applicant advised he did not receive any of the correspondence or notices sent by the Council; he had moved from 253 Pitsmoor Road to 4 Club Street Sheffield in January 2018. He only become aware of the issues relating to the Properties on 5th October 2018, when told of them by Mr Hussain. Further, he is not the manager of the Properties, having been told by the Council, in May 2017, he should not be involved with the management of properties.
45. In 2014 the Applicant was convicted of housing offences relating to the unlawful eviction of a tenant and for which he was sentenced to undertake community hours and ordered to pay costs and a victim surcharge. A further offence was committed in 2018, again for unlawful eviction, for which he received a suspended prison sentence, ordered to undertake 250 hours of unpaid work, pay costs and a victim surcharge.
46. On 24th May 2017 the Applicant had signed an agreement not to be involved in the management of properties where Mr Hussain is the licence holder.
47. The Applicant maintained his brother is the manager of the Properties and produced a statement from one tenant confirming he pays his rent to Mr Hussain
48. At the outset of the hearing, Mr Griffiths advised the Applicant now accepted he had received the Notices of Intent and the Final Notice and is the manager of the Properties for the purposes of the Notices. The issue is that of culpability when determining the level of penalties issued in respect of the offences.
49. Mr Wernham, a Senior Housing Standards Officer confirmed how the financial penalties had been calculated, using the Guidance issued by the Council.
50. When considering culpability the Council had taken into account the Applicant's previous non-compliance with housing matters, referring to the previous two prosecutions for unlawful eviction. The Council know from their own records the Applicant is an experienced landlord with a large portfolio of properties. On 2nd May 2018, he had been served with an informal schedule of necessary works and little action had been taken as a result of that. There had been a large amount of correspondence and several opportunities to remedy the situation. His culpability was therefore seen as high.
51. The Council had also considered the harm to the tenants to be high for the breaches of Regulations 4 and 7, but in fact the Determination Records are incorrect when stating it only to be medium. However, the Council accepted the Determination Record as it now stands. Mr Wernham advised the Tribunal the Determination Record for 249 Pitsmoor Road for breach of

Regulation 4 was incorrect with regard to the aggravating and mitigating factors and should be read as the same as the Determination Record for 251 Pitsmoor Road.

52. Mr Wernham confirmed the Council had determined the aggravating factors and mitigating factors to be equal and consequently did not affect the original penalties.
53. When considering that any financial penalty should remove any gain, Mr Wernham advised this had been problematical for the Council, since it had no information of the cost of bringing the Properties up to a required standard. The majority of the tenants are on Housing Benefit and, from its records, the Council calculated the rental income received from that source and the benefit to the Applicant if the rental income was not being spent on remedial works. This had been the case at the time of the calculations.
54. The Council confirmed all work required by the Improvement Notices had been completed to its satisfaction.
55. Mr Griffiths submitted the Applicant's culpability should not be high, but either medium or low, for several different reasons.
56. The Applicant gave evidence he had not received the correspondence from the Council and therefore had no knowledge of the work required at the Properties. He had moved to 4 Club Street in January 2018 and although his mail was redirected, this did not include the letters delivered by hand to his former address of 253 Pitsmoor Road. This was his father and brother's home, but there were family differences and so none of the mail left at that address by the Council had been passed onto him. Consequently, the allegation he had failed to respond to two invitations to attend an interview was wrong and should be removed as an aggravating factor.
57. The Applicant stated his brother, Mr Hussain, is the manager of the Properties. He had signed an agreement with the Council in 2017 that he would not be involved in the management of property. Due to his conviction in 2018 he had had to carry out 250 community hours and so had not had time to be involved in any management.
58. The Applicant confirmed he had given Mr Hussain a Power of Attorney to enable him to use his bank account for the collection of rent and Housing Benefit and from that he paid the mortgage for 249 Pitsmoor Road. He also funded the repairs required by the Improvement Notices from the same account. He had no involvement with any of the rental income.
59. The Applicant further confirmed that because Mr Hussain was the manager, he did not visit the Properties until October 2018. He was therefore unaware of the issues. He only spoke with his brother monthly, by telephone; they did not discuss the Properties. On 14th October 2018, when he contacted the Council, he had only done so at Mr Hussain's request.

60. The Applicant confirmed he had changed his name on May 2018 but had not informed the Council.
61. In evidence, Mr Hussain confirmed he is the manager of the Properties. When challenged by the Council why the Applicant signed a tenancy agreement, dated as recently as 19th July 2018, he explained the Applicant signs the agreements in blank, but are then completed by him. He further advised that he operates the Applicant's bank accounts, using the monies to pay for the mortgage and repairs. The Council challenged Mr Hussain upon the applications made for Housing Benefit. The Council produced copy applications for Housing Benefit that contained the Applicant's e-mail and telephone number. Mr Hussain explained the Council would only deal with the registered proprietor of the Properties and this was the reason why those details were included, rather than his own. Mr Hussain confirmed he had no knowledge of the two tenants for whom the claims had been made, advising they had not been tenants at the Properties. He explained the tenants could be homeless and spurious applications are sometimes made.
62. Mr Hussain confirmed he was there when the Council visited the Properties and had told them he was the manager. The Council disputed this stating Mr Hussain said he was at the Properties on behalf of the Applicant and never asserted he was the manager.
63. Mr Hussain advised the rental income from the Properties was dependent upon the number of tenants but averaged £2500 to £2800 per month. The necessary works at the Properties had taken 12 months to complete since they had to be funded out of rental income and also due to a lack of workmen.
64. With regard to the quantum of the penalties Mr Griffiths submitted the aggravating factors should be disregarded for the same reasons given for reducing culpability. The aggravating factors rely upon the Applicant having knowledge of the required work and should be disregarded. He referred to the evidence given by Mr Wernham that the Council had offset the aggravating factors with the mitigating factors.
- He submitted that if the aggravating factors are reduced, this should result in a lower penalty.
65. Mr Griffiths further stated that the harm for all the offences should be low.
66. The Council submitted all the issues raised by the Applicant in respect of culpability had never been raised prior to the hearing. The Applicant had said he was not the manager, but had admitted at the hearing he was. He had also conceded he had received the Notices, despite previously arguing he had not.
67. The Council argued the Applicant had full knowledge of all its dealings with the Properties, did not accept Mr Hussain was the manager and that he did not communicate with the Applicant when it had carried out inspections. The Applicant remained in control.

68. The evidence that Mr Hussain had a Power of Attorney to deal with the Applicant's bank accounts had not been produced. All the documentation relating to the tenancies, being either the tenancy agreements, or the application for Housing Benefit suggested the Applicant remained the manager.
69. The Council submitted the Applicant was an experienced landlord; he admitted he was the manager of the Properties. There was a systematic failure in his management for him not to know what was going on at properties owned by him. It was not credible for him to argue he had not received correspondence for the Council when some was sent by post and would have been redirected by Royal Mail as arranged by the Applicant. The Council's officers had visited the Properties on several occasions and on no occasion had Mr Hussain maintained he was the manager; he had stated he was there on behalf of the Applicant.

Determination

70. The Tribunal noted there was no dispute the Applicant had committed the housing offences by reason of the breaches of Regulations 4, 7 and 8. It was accepted the Applicant is the manager of the Properties and had received the relevant Notices relating to the housing offences. He did not dispute his culpability for the offences. Mr Griffiths had confirmed the only issue for determination was the amount of each of the Financial Penalties upon the issue of culpability, harm and both the aggravating and mitigating factors applied by the Council.
71. The Tribunal considered the evidence given by both the Applicant and Mr Hussain. It found this to be less than credible for a variety of reasons.
72. The Applicant's position was that he was unaware of the issues at the Properties due to him moving address, having to undertake his community hours and Mr Hussain being in control of the building work and all the finances.
73. The Tribunal noted from the evidence given by both the Applicant and Mr Hussain and not disputed by the Council, that Mr Hussain was involved in the remedial work at the Properties; he was mostly present when the Council attended. Mr Hussain maintained he told the Council he was the manager; Mr Wernham said this was not the case. In this, the Tribunal accepted Mr Wernham's evidence.
74. The Applicant and Mr Hussain's evidence had been the Applicant had given Mr Hussain Power of Attorney to manage his bank accounts and deal with all matters relating to the Property. The Power of Attorney was not produced to the Tribunal, nor had it ever been shown to the Council, despite reference being made to it in the Applicant's paperwork. All other references indicated the Applicant was effectively dealing with the Properties. He signed the tenancy agreements and seemingly made all the necessary applications for Housing Benefit. The explanation that the Housing Benefit claims disclosed by the Council were fraudulent is implausible. The Tribunal considered it

unlikely that of the two Housing Benefit claims produced by the Council, the Applicant and Mr Hussain had no knowledge of either tenant.

75. The Applicant gave evidence he relied upon Mr Hussain to deal with all matters relating to the Property because of his commitment to completing his community hours. He averred he and Mr Hussain spoke monthly by telephone and never discussed the Properties or the Council's notices, such that the Applicant had no knowledge of the problems. In their evidence, both the Applicant and Mr Hussain said they are involved in other properties together. Therefore, again, the Tribunal found it highly improbable they never discussed the Properties and the work Mr Hussain was carrying out on them.
76. The Applicant stated he had not received correspondence from the Council requiring him to attend for interview. He admitted he had not told the Council when he moved to 4 Club Street; however, from January 2018 his mail was redirected to that address. The Tribunal noted the letters inviting the Applicant for an interview under caution had been posted to 253 Pitsmoor Road in August 2018 and consequently would have been received by the Applicant under the Royal Mail redirection service. Once the Applicant notified the Council of his change of address they then used that address, along with the Properties and 253 Pitsmoor Road, for all correspondence.
77. When considering the matter of culpability, the Tribunal does not find the explanations given by the Applicant to be credible. The Applicant was aware of the problems existing at the Properties but chose not to co-operate with the Council. The Tribunal accepts Mr Hussain was undertaking the work at the Properties, but the Applicant was in control.
78. The Tribunal determines culpability for all the breaches remains high. When taking into account the Guidelines relied upon by the Council and the reasons given for culpability, the Applicant has not given any credible reasons why that should be lowered to either medium or low.
79. The Tribunal then considered the issue of Harm, given on the Records for the breaches of Regulations 4 and 7 as medium and for the breach of Regulation 8 as low. The Tribunal noted all the work required by the Improvement Notices has been completed.
80. Paragraph 10(3) of Schedule 13A of the Act provides any appeal to the First-tier Tribunal is by way of rehearing. The position regarding harm is therefore now different than at the time the Council made the original determinations. If the accommodation is now satisfactory any likelihood of harm to the tenants must now be reduced. Accordingly, the Tribunal finds harm for all of all breaches is now low.
81. The penalties, when taking culpability as high and harm low for the breaches of Regulations 4 and 7, reduces them to £7500 for each penalty. The penalties for the breaches of Regulation 8 remain as before, being based on high culpability and low harm.

82. The Tribunal thereafter considered both the aggravating and mitigating factors listed by the Council. It noted the Council had treated one as negating the other. Mr Griffiths for the Applicant argued that if the aggravating factors are less, the mitigating factors outweigh them and should reduce the overall penalty.
83. The Tribunal noted the aggravating factors and did not consider the Applicant had shown they did not apply. The Tribunal did not accept his submissions he had not received, or had no knowledge of the correspondence sent by the Council. Consequently, those factors relating to his failure to attend for interview or provide information were met. The Improvement Notices illustrate the significant amount of work required at the Properties and the Applicant's failure to maintain his rental properties to an adequate standard. The Applicant argued he did not know what was going on at the Properties and that, in itself, supported the Council's argument that there were significant management failures.
84. The Tribunal did not accept the mitigating factors outweigh the aggravating factors and consequently there should be no further adjustment to the Financial Penalties.

Tribunal Judge J Oliver
18th September 2019