



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

Case Reference : **LON/00AT/HNA/2020/0068,
LON/00AT/HNA/2020/0069 &
LON/00AT/HNA/2020/0070**

**HMCTS code (paper,
video, audio)** : **V: FVH REMOTE**

Property : **51 Bulstrode Road, 49 Bulstrode
Road & 31 Bulstrode Avenue (“the
Properties”)**

Appellant : **Anilkumar Jacob Enokaren**

Representative : **Mr A Madden of Counsel**

Respondents : **London Borough of Hounslow**

Representative : **Ms Tara O’Leary of Counsel**

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

Tribunal Members : **Judge Professor Robert Abbey and
Mr T. Sennett (Professional
Member)**

Date of Hearing : **16 November 2020**

Date of Decision : **23 November 2020**

DECISION

This has been a remote video hearing. The form of remote hearing was V: FVH REMOTE. A face-to-face hearing was not held because or it was not practicable due to the covid-19 pandemic, and all issues could be determined in a remote hearing.

Decision

1. The Tribunal resolves the preliminary issue in the appellant's favour, and therefore allows Ground 1 of the appeal. The appellant having succeeded the Tribunal will not therefore list the matter for a full hearing.

Introduction

2. This is an appeal by Mr Anilkumar Jacob Enokaren against the imposition of three financial penalties made by the London Borough of Hounslow under section 249A and schedule 13A of the Housing Act 2004. The respondent served three civil penalty notices ('CPNs') on the Appellant pursuant to s.249A of the Housing Act 2004 ('the Act'). Each CPN relates to a different property, namely 51 Bulstrode Road, 49 Bulstrode Road and 31 Bulstrode Avenue ('the Properties').
3. Each CPN imposes a single fine of £24,000 (thus the fines amount to £72,000 in total). In each case the penalty is intended to encompass a number of alleged criminal offences at each property that relate to the failing to licence a House in Multiple Occupation ('HMO') contrary to s.72 of the Act; and four separate charges of failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006/372 contrary to s.234 of the Act. On 30 July 2019 the respondent served the Appellant with Prohibition Orders in respect of each of the Properties. The Appellant did not appeal those Orders which became operative on 27 August 2019.
4. On 15 January 2020 the respondent served the Appellant with three Notices of Intention to Impose a Financial Penalty. The Appellant's written representations dated 28 February 2020 alleged that the Notices of Intent were out of time because a six-month period beginning on 15 July 2019 ended on 14 January 2020, so the notices were one day late.
5. The Council replied by way of a letter dated 7 April 2020 and stated:

"As you are aware, the notices relate to failure to licence a HMO and failure to comply with the Management Regulations, both of which were ongoing offences. As you have mentioned the Council visited the above Properties on 15 June 2019. We are instructed that these offences continued beyond the end of that day. The Properties continued to be used as unlicensed HMOs and in breach of the Management Regulations on 16 June 2019. We are instructed that the occupants remained at the property on the day following the visit and at least for a further 3-4 weeks."

6. Thus, you have the basis for this hearing and the consideration of the preliminary issue. Are the Notices of 15 January 2020 out of time being one

day late? Can the respondent rely upon continuing conduct notwithstanding the content of the Notices?

The Hearing

7. The appeal was set down for hearing on 16 November 2020 when Hounslow was represented by Ms O’Leary of Counsel and the appellant was represented by Mr Madden also of Counsel.
8. Previously in this case Directions dated 14th August 2020 and made by Judge Carr ordered at paragraph 9 that the Appellant was to file and serve an expanded statement of reasons limited to the preliminary issue identified by the Tribunal. The preliminary issue identified by the Tribunal in its order was:

“The Preliminary Issue to be determined is whether, having determined that the date at which it had sufficient evidence of the conduct to which the penalty relates as the 15 July 2019 in accordance with the Act, the Notice of Intent served on 15 January 2020 was out of time for the purposes of the Act and therefore no Final Notice is permissible or effective.”

9. The Tribunal explained its decision to address this issue as a preliminary one in these terms:

“It seems to me that the validity of the Notices, raised by the Appellant as the first ground of his Appeal, is suited best to a preliminary hearing. Determination of the particular matter may result in time and costs savings to both parties and to the tribunal, depending on the outcome of the issue.”

10. In the Appellant’s Grounds of Appeal, dated May 2020, the first ground is stated thus:

“a. The notices of intent were served out of time and the proposed penalties are time- barred. The notices of intent, dated 15 January 2020, refer to alleged offences said to be committed on 15 July 2019. The notices of intent were ‘given’ after the period of six months beginning with the day the Respondent became aware of the conduct to which those notices related.”

11. The requirement to serve a Notice of Intent prior to imposition of a final CPN is prescribed by paras. 1- 3 of Schedule 13A of the Act:

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.

12. The appellant relies upon Para 2(1) to say that the Notices were defective because the date mentioned in them was over six months ago, namely six months and one day. The respondent relies upon para 2(2) to say that the notices can be made valid by a variation approved by the Tribunal or by deeming that the offence is ongoing and therefore covered by this second limb of the statutory provision set out above.

Decision and Reasons

13. The Tribunal has decided to find in favour of the appellant with regard to ground one of his appeal for the reasons set out below.
14. The respondent's notices of intention were specific and identified an offence date of 15th July 2019, accordingly the period for service of a notice of intention was six months from that date; a period that expired on 14th January 2020. The notice of intention does not state that the alleged conduct occurred on any date apart from that specified on the face of the notice. The respondent elected to specify an offence date when the Appellant had been present at the subject properties. No additional documents were served by the respondent to support the notices of intention.
15. So, for example the notice regarding 31 Bulstrode Avenue stated “

“Reasons for proposing to impose the Financial Penalty

1. The Council is satisfied, beyond reasonable doubt, that on the 15th July 2019 you were the person having control of or managing a House in Multiple Occupation (“HMO”) known as **31 Bulstrode Avenue, Hounslow, TW3 3AA** (the “Premises”) and

2. did fail to licence the Premises as a HMO which was required to be licensed contrary to Part 2, section 72(1) of the Housing Act

2004. [see attached schedule]

2. did fail to comply with the requirements of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234(3) of the Housing Act 2004”

16. In the Schedule to the Notice the details of the offence all related to those arising on 15 July 2019.
17. Both parties cited the case of *Waltham Forest LBC v Younis* [2019] UKUT 362 (LC) to support their case. However, that case was different in that it was about a failure to control anti-social behaviour and that it was not required to give a specific date for the alleged conduct or offence as it was on-going for a lengthy period of time.
18. The appellant says that the respondent seeks to rely upon the second limb of the statute at paragraph 2 (2) (b). It was said that that the alleged section 72 and 234 offences were continuing offences and that the respondent’s solicitors were in receipt of instructions that the use of the properties as houses in multiple occupation continued after the date specified on the face of the notices of intention. Counsel for the appellant observed that the effect of this was “to seek to change the alleged conduct from occurring on the date specified in the notices (and thereby falling under paragraph 2(1)) to being continuing conduct (thereby falling under paragraph 2(2)). The purpose of this shift is obvious; it attempts to correct the failure by the respondents to serve their notices of intention within the required six-month period. The respondent’s solicitors are attempting to recategorize the nature of the alleged conduct/offences.”
19. Counsel goes on to assert that “If the respondent authority wished to assert that the alleged conduct was continuing then it should have stated so on the face of the notices of intention and not have chosen to specify a date without also stating the conduct to be continuing. The Upper Tribunal’s findings in *Waltham Forest LBC v Younis* were based upon a finding that the recipient of the notices in that case could not have been in doubt about the nature of the allegations. In the present case the opposite is true. The respondent specified a date and made no mention of any continuing conduct. The notices were not served with additional statements or documents providing additional information or clarification. The respondent’s lawyers stated in April 2020 that they were in receipt of instructions or evidence showing the conduct to be continuing. This material has never been provided to the Appellant despite requests for disclosure.”
20. The appellant sought to rely upon *R (Islington LBC) v Arun Bajaj* [2020] EWCA Crim 1111 to show the importance of correctly identifying dates and periods of conduct in HMO cases. Consequently, Counsel for the appellant went on to observe and assert that “In the present case the respondent authority also chose to stipulate a single offence date and they should comply with the consequential effects of such a decision. A notice of intention is

similar to a summons in that it must fairly and accurately inform a recipient of certain information relevant to criminal or quasi-criminal proceedings with serious sanctions. The dates and scope of any alleged conduct are a crucial element of the information contained in originating documents of this type. In the absence of any other supporting documents, such as in *Waltham Forest LBC v Younis*, it is not appropriate to expect recipients to surmise information that is not present on the face of the document; a recipient must be entitled to rely upon the information given and not have to expect to engage in solicitors' correspondence to ascertain that an authority has changed its mind about the dates of alleged conduct. In the present case the Respondent either changed its mind or made a mistake about the nature of the alleged offences; as a matter of principle the Appellant should not have to bear the effects of the respondent's errors or indecision."

21. What is clear to the Tribunal from the notices is that they did not identify any conduct after 15th July 2019 in regard of which the notices were served. If the respondent had served the Notices based on conduct arising after 15th July 2019 the notices themselves would have indicated this, they did not do so.
22. The appellant takes the position that since the respondent now seeks to rely upon alleged conduct after 15th July 2019 the notices are clearly deficient for failing to identify this fact. Counsel for the appellant asserts that "The dates of alleged conduct are obviously material in cases where the continued occupation of premises is determinative of the HMO status that is an essential element of any offences under HA 2004 sections 72 or 234. This may be contrasted with the dates discussed in *Younis* which were not determinative of offences." The Tribunal agrees with this position. The Tribunal will not step in to remedy the situation in the way suggested by the respondent to enable it to rely upon the second limb of the statute to correct an error.
23. Counsel for the respondent observed that "there is no statutory obligation to specify the date of the alleged offence in a Notice of Intent. Para. 3 of Schedule 13A, which prescribes the mandatory information which must be included within all such Notices, is silent on this point. The LHA must only provide "reasons for proposing to impose the financial penalty". The Tribunal agrees with this but because a date was inserted in the notice it then places an obligation upon the respondent to comply with paragraph 2(1) and to observe the six-month time limit.
24. Counsel for the respondent also referred to paragraph 74 on the decision in *Younis*" to suggest that the Tribunal need not be prescriptive about the contents of the notice. The start of this paragraph 74 states "Those characteristics of the statutory scheme suggest that the reasons given in a notice of intent should be clear enough to enable the recipient to respond, but they also suggest that if those reasons are unclear or ambiguous, Parliament would not have intended that the notice of intent should invariably be treated as a nullity...." The difference in the case before the Tribunal is that the reasons in the notices were both clear and were in no way ambiguous. Indeed, a specific date was stipulated as to the timing of the offence. Accordingly,

there was nothing in the notices to make the Tribunal consider them unclear or ambiguous and thus needing of correction by the Tribunal.

25. The wording of Schedule 13 paragraph 2(2) is very telling. It makes it clear that if the respondent is continuing to engage in the conduct on the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates, and the conduct continues beyond the end of that day, the notice of intent may be given at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs. This presupposes that the notice relying on continuing conduct will be served and made by reference to the period of the continuing conduct and not by reference to the six-month period set out in 2(1).
26. Therefore, the appeal by the appellant against the imposition of three financial penalties by the London Borough of Hounslow under section 249A and schedule 13A of the Housing Act 2004 is allowed
27. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 23 November 2020

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).