FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AL/HNB/2021/0001** **Remote CVP. VIDEO**
Property	**:**	**68 Conway Road London SE18 1AR**
Appellant	**:**	**Mr J S Gill** **Mr G Gill**
Representative	**:**	**In person**
Respondent	**:**	**The Royal Borough of Greenwich**
Representative	**:**	**Mr Ali Dewji of Counsel**
Type of Application	**:**	**Appeal against financial penalty**
Tribunal Members	**:**	**Mrs F J Silverman MA LLM** **Mrs L Crane MCIEH**
Date of video hearing	**:**	**17 May 2021**
Date of Decision	**:**	**25 May 2021**

DECISION

The Tribunal confirms the Financial Penalties imposed by the Respondent on both Appellants.

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The Appellants' request for the return of their application and hearing fees is refused.

REASONS

1. The Appellants are the freehold owners of the property situated and known as 68 Conway Road London SE18 1AR (the property). They filed an application with the Tribunal on 21 January 2021 appealing against the financial penalty notice served on them by the Respondent under s 249A Housing Act 2004 following the Appellants' failure to comply with s72 of the same Act (failure to licence an HMO).
2. Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered however that the matter was capable of determination without a physical inspection of the property.
3. The hearing took place by way of a CVP video hearing (to which neither party had objected) on 17 May 2021 at which the Appellants represented themselves and the Respondent was represented by Mr Ali Dewji of Counsel. Mr J Gill appeared only by telephone connection, Mr G Gill was present by video connection.
4. The Tribunal had the benefit of photographs of the property supplied by the parties and an exterior view from Google maps. The property comprises a small mid-terrace house situate on a residential road in south London. Five rooms in the property are occupied by a number of vulnerable tenants from separate households who share kitchen and bathroom facilities. The present use of the property is as an HMO for which at the time when the penalty was imposed it did not have an HMO licence. The property became subject to the licensing provisions on 1 October 2017 and had never had a licence since that date. Photographs of the exterior and interior of the property contained in the hearing bundles illustrate the poor condition of the property (eg pages 2/18- 2/26).
5. The Appellants do not dispute that the property is an HMO, is subject to the licensing provisions in the Respondent borough and did not have a licence at the relevant time. The grounds of their appeal are based on the assertion that the Appellants were not persons in control of an HMO, that there was no breach of s234 of the Act , that the Respondent should not have come to a conclusion beyond reasonable doubt and also against the amount of the penalty imposed.
6. The appeal hearing before the Tribunal is a re-hearing of the Respondent's decision to impose the penalty. For that reason the Tribunal commenced the proceedings by hearing evidence from Ms V McLean who is employed as an Intelligence Officer within the HMO Regulation Team within the Directorate of Community Safety and Environment for the Royal Borough of Greenwich (pages 1/1 – 1/23). Ms McLean had inspected the property twice and had been involved in the decision to impose the financial penalty.

7 The Tribunal heard the Respondent's evidence (cross examined by Mr G Gill on behalf of both Appellants) which established that the property was an unlicensed HMO occupied by five separate households who paid their rent as lodgers monthly to a Mr Ishor Pradhan who in turn held a lease from the Appellants and paid a monthly rent to them. Mr J Gill usually collected the head rent from Mr Pradhan either at the property or sometimes at the branch of a local bank.

8 The identity of the occupiers had been confirmed by the Respondent's records of housing benefit registered to the named occupiers at the address of the property. These details showed that five separate and unrelated households occupied the house. The individual bedrooms had locks on the doors, some contained stored food, microwaves and fridges providing factual evidence which indicated the presence of the five separate families.

9 The Appellants are the registered co-proprietors of the property which they had inherited in March 2017 from their mother after their father's death. They were aware that Mr Pradhan did not live at the property himself and from Mr J Gill's visits to the property cannot have been unaware that a number of sub-tenants/lodgers were in occupation of it. The sub-letting was in breach of the head tenancy agreement but there was no evidence that the Appellants had sought to require Mr Pradhan to remedy the breach.

10 In cross examination Mr G Gill conceded that the Respondent had made the Appellants aware that the property appeared to be an HMO by letter dated 11 January 2017 (page 2/312) some months before the additional licencing order which affected the property came into force in October 2017. There was no evidence that the Appellants had at any stage sought to investigate whether the property either needed a licence or had one.

11 The Appellants contended that they were not 'a person in control' of the property because the occupiers had tenancy or lodger agreements Mr Pradhan and paid their rent directly to him. The Appellants received rent under the head lease from Mr Pradhan and not directly from the sub-tenants.

12 The Respondent said that the Appellants had misunderstood the definition of 'person in control' in the Act which was widely drafted and intended to encompass landlords who were higher up the chain as well as the immediate landlord of the occupiers.

13 The Act applied to a person who was in receipt of at least 70% of the rack rent of the property. The rent reserved under both the head and sub-leases was a rack rent (ie market as opposed to ground or nominal rent). Mr Pradhan received £1,800 each month from the sub-tenants and he handed over £1,400 of that sum, without any further deductions eg for outgoings, to the Appellants. This latter sum which derives directly from that paid by the sub-tenants represents 77.7% of the total rent (£1,800) and thus exceeds the 70% minimum set by the legislation. This sum is payable by Mr Pradhan irrespective of voids in which situation, contrary to Mr G Gill's assertion, the percentage of rent received by the Appellants would increase not decrease. On that basis the Tribunal agrees with the

Respondent's conclusion that both the Appellants satisfy the definition of a 'person in control' under the Act.

14 Mr G Gill's argument that he was at all times a silent partner in this arrangement and therefore not culpable was raised by him in evidence before the Tribunal. This assertion had not been pleaded nor mentioned previously. Mr G Gill said all the communications relating to this property were through his brother and he had nothing to do with it. The Tribunal does not accept this as a 'reasonable excuse' defence. The Appellant brothers were the co-owners of a number of similar properties and it is inconceivable that they would not have discussed together the issues concerning them. Mr G Gill was in receipt of a share of the rent and as co-owner was in a position to visit the property and ask for information about it if he wished.

15 The Appellants' only remaining ground of appeal related to the amount of the penalty imposed. One argument put forward by them was that s234(7) only allowed one penalty to be imposed for each offence and that as a penalty for this licensing offence had been imposed on Mr Pradhan who had paid his fine, the Appellants could not now be asked to pay. Regrettably, this too is a misconstruction of the legislation by the Appellants. The legislation follows the conventional principle that the same person cannot be penalised more than once for the same offence but does not prohibit separate fines being imposed on multiple defendants who are each guilty of the same offence arising out of the same facts. To hold otherwise would produce an unfair situation where one offender was penalised for an offence allowing his or her co-offenders to avoid any punishment.

16 In considering the quantum of the financial penalty to be imposed on the Appellants the Respondent followed its own policy including the application of a matrix (page 2-390) which allocates a points value to various factors resulting in a suggested penalty figure. Ms McLean's procedure from initial investigation to imposition of the penalty was reviewed by Mr Nyant and later by Ms Smallcombe to ensure a fair process. Both Mr Nyant and Ms Smallcome spoke to their witness statements at the hearing. It was stressed by the Respondent that in any given situation they were always required to select the matrix option which yielded the lowest number of points.

17 In considering the amount of the fine the Respondent had regard to all the circumstances including the length of time during which the property had been unlicensed and the harm to the occupiers. In the present case the property had been unlicensed for over three years and the living conditions in the property were unsavoury and unsafe eg lack of working smoke alarms. A number of defects had however since been remedied by the Applicants. It was also noted that the Appellants had made no investigations or enquiries of their own to ensure that the property was being used in accordance with current legal requirements.

18 The Appellants own circumstances had also been investigated by the Respondent who had found that the Appellants were co-owners of nine separate properties. They would therefore be classified as

professional landlords who would be expected to operate their business to a professional standard. The Tribunal does not accept the Appellants' argument that the Respondent should have attributed only 4.5 properties to each Appellant because they were registered as co-owners. They were in receipt of a substantial amount of monthly rent from this property alone and records revealed they had negligible debt. On this basis it considered that the Appellants had not satisfied the Tribunal that they had a reasonable excuse for the offence and that the penalty sum of £10,000 each was reasonable.

19 Therefore, having considered the written evidence placed before it, including photographs of the property taken by the Respondent during their inspections and taking into account the parties' observations during the present hearing, the Tribunal determines that it will confirm the Respondent's financial penalty notices imposing a fine of £10,000 on each Appellant, all provisions of which remain extant and in full effect. The Appellants' request for the return of their application and hearing fees is refused.

20 The Law:

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1)A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2)A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part,

(b)he knowingly permits another person to occupy the house, and

(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b)he fails to comply with any condition of the licence.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a)a notification had been duly given in respect of the house under section 62(1), or

(b)an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5)In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

(6)A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Section 234 Management regulations in respect of HMOs
(1)The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

(a)there are in place satisfactory management arrangements; and

(b)satisfactory standards of management are observed.

(2)The regulations may, in particular—

(a)impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b)impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3)A person commits an offence if he fails to comply with a regulation under this section.

(4)In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Section 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.

Judge F J Silverman as Chairman
25 May 2021.

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rplondon@justice.gov.uk.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.