



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

Case reference : **LON/00AT/HNA/2022/0004
V:CVP**

Property : **3 Walnut Tree Road, London TW5
0LP**

Applicant : **JASWANT SINGH BHARJ**

Representative : **In person**

Respondent : **THE MAYOR & BURGESSES OF
THE LONDON BOROUGH OF
HOUNSLOW**

Representative : **Jeff Smyth**

Type of application : **Appeal against a financial penalty -
Section 249A & Schedule 13A to the
Housing Act 2004**

Tribunal : **Judge Sheftel
Ms R Kershaw MCIEH**

Venue : **Remote**

Date : **14 July 2022**

DECISION

Decision of the tribunal

The tribunal confirms the civil penalty imposed upon the Applicant by the Respondent.

Background

1. The Applicant appeals against the imposition of a financial penalty by the Respondent, the London Borough of Hounslow on 6 December 2021.

2. 3 Walnut Tree Road (the “Property”) is a brick built semi-detached building with loft conversion, single storey rear addition and double storey side addition. It has UPVC windows and doors throughout.
3. The Property is licensed with the local authority as an HMO. The Applicant is the licence holder.
4. The licence was originally granted for 7 persons and 6 households. However, on 12 September 2019 this was varied to allow for 9 persons and 7 households.

The hearing

5. The hearing of this application took place on 13 June 2022 by remote video. The Appellant appeared in person, together with an interpreter. His daughter was also present. Each party had provided a bundle of documents in advance of the hearing. The tribunal heard evidence from the Applicant and Mr Jeff Smyth on behalf of the Respondent. The tribunal is grateful to the parties for their assistance and the way in which the hearing was conducted.
6. It should be noted briefly that one of the issues raised by the Applicant in the papers was that the witness statement of Mr Smyth made reference to matters not contained in the Final Notice. However, pursuant to paragraph 10(3) of Schedule 13A to the Housing Act 2004 an appeal to the tribunal:
 - (a) is to be a re-hearing of the local authority’s decision, but
 - (b) may be determined having regard to matters of which the authority was unaware.

The appeal

7. The financial penalty was imposed for offences under section 72 of the Housing Act 2004 i.e. breaches of an HMO licence. Specifically, it was asserted that the Applicant had: placed tenants in rooms which exceeded the level of occupation permitted by the licence; failed to maintain smoke/heat detection units within the premises; failed to maintain the

common parts with multiple areas of disrepair; and the infestation of cockroaches.

8. A Notice of Intent was served by the local authority on 3 November 2021. This followed an inspection of the property being carried out by Mr Smyth on 18 October 2021. Subsequently, Mr Smyth and Mr Bharj met at the property on 3 December 2021, when it appeared that much of the works identified in the Notice of Intent had been carried out.
9. A Final Notice was issued by the local authority on 6 December 2021. This reduced the amount of the Financial Penalty from £12,500, the figure stipulated in the Notice of Intent, to £10,000. This 20% reduction was granted on the basis that the Applicant had complied with the identified breaches.
10. The Applicant appeals the imposition of the penalty on various grounds as set out below. In particular, he maintains that he has done everything that the local authority has asked of him and, in the circumstances, considers it unfair that any penalty has been imposed.

The issues

11. The issues that the tribunal must determine are;
 - (i) Whether the local housing authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty as set out in section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act).
 - (ii) Is the tribunal satisfied beyond reasonable doubt that the Applicant committed the alleged offence?
 - (iii) Does the Applicant have a defence of a reasonable excuse?
 - (iv) Whether the financial penalty is set at an appropriate level.

Has the local authority followed the correct procedure?

12. Mr Smyth's evidence detailed the Respondent's actions in complying with the necessary requirements and procedures relating to the imposition of the financial penalty in accordance with schedule 13A to the 2004 Act. The Applicant did not challenge the evidence of the Respondent in relation to the procedure followed. Indeed, Mr Bharj's evidence was that following the issuing of the Notice of Intent he had promptly carried out the works identified.
13. In the circumstances, the tribunal is satisfied that the correct procedure was followed.

Is the tribunal satisfied beyond reasonable doubt that the Applicant has committed the alleged offence?

14. Mr Smyth's evidence set out in detail the various breaches of the Applicant's licence conditions – although it should be noted that Mr Smyth's evidence was that the local authority treated them as a single offence of failure to comply with the licence conditions.
15. According to the Respondent, it was said that on 18 October 2021, the following breaches had been committed:
 - (1) Overcrowding:
 - (a) 2nd floor loft conversion: on his first visit on 18 October 2021, there found to be 3 persons in occupation when the licence only allowed for two. However, on his second visit on 3 December 2021, the occupant stated that only two people were living there;
 - (b) 1st floor rear right room: found to be 2 persons in occupation when the licence only allowed for one.
 - (2) Fire safety: there were holes in ceilings and walls, broken and missing smoke detectors and no fire door to the kitchen;
 - (3) Electrical safety: the live and neutral cable connecting the consumer head and fuse box was not covered;

(4) Evidence of cockroach infestation.

16. Mr Smyth's evidence was that on his visit to the property on 18 October 2021, he also noted that the first-floor rear middle room was occupied by an individual even though the licence did not allow for this. However, due to an oversight, this was not included in the Notice of Intent and therefore was not relied on for the purposes of the Final Notice. On this issue, Mr Bharj's position was that he had not let the room to anybody. On discovering that it was occupied, he initially contacted the police and then initiated possession proceedings. However, he discovered 2-3 days later that the individual had left.
17. According to Mr Smyth, as there initially was no response to the Notice of Intent from the Applicant. However, Mr Smyth telephoned him on 3 December 2021 – the two of them then attended the site later the same day. Subsequently, on 6 December 2021, the Applicant emailed the Respondent attaching documents to show that he had complied with the matters listed in the Notice of Intent.
18. In relation to the fire and electrical safety issues and cockroach infestation, Mr Smyth provided various photographs to demonstrate the breaches. The Applicant's position did not seem to be that the breaches had not occurred. Rather, his central submission was that as set out in his email to Mr Smyth dated 6 December 2021, the various problems had been rectified prior to the Final Notice being issued, and that he had provided evidence of this. In the circumstances and for the avoidance of doubt, the tribunal determines that these aspects of the offence have been committed.
19. The position regarding the alleged overcrowding gave rise to greater dispute as set out below. However, even on the Applicant's case, it appears to have been accepted that there were two people in occupation of the 1st floor rear right room, notwithstanding that the licence had only allowed for one person.

Does the Applicant have a defence of a reasonable excuse?

20. As noted above, save in relation to the allegations of overcrowding, the Applicant did not appear to dispute that the offences had been committed. Rather, his primary position was that the financial penalty was unfair because all the items brought to his attention were then rectified. While this might go to quantum it does not provide a defence of reasonable excuse.
21. Separately, there were also assertions that the Applicant had not received rent for two years and it was suggested at the hearing that it had been difficult to access the property during the pandemic – although no detailed evidence was given on this point and it is also noted that on Mr Smyth’s evidence, he had been able to carry out property inspections throughout the pandemic save for the initial period of lockdown in 2020. In the tribunal’s determination, there was not sufficient evidence to suggest that either could found a defence of reasonable excuse. In particular, on the Applicant’s own case, the matters were able to be resolved relatively quickly – albeit once they had been brought to his attention by the local authority. The tribunal also notes that the section 235 Notice requiring disclosure of documents, served at the same time as the Notice of Intent, sought a copy of the Applicant’s “accounts with the amount of rental income from the occupying tenants”. However, no response to this Notice, which might have substantiated the assertion with regard to receipt of rent, has been provided to the tribunal.
22. Returning to the issue of overcrowding, there was some confusion arising from the parties’ witness evidence. Mr Bharj’s position in response to the local authority’s statement of case was that the property was overcrowded due to two tenants of two separate rooms allowing others to stay with them without Mr Bharj’s consent, and as such he started possession proceedings in February 2021. Possession orders were issued in August and November 2021 and both persons left the Property towards the end of 2021 after the Applicant had first had to apply for a bailiff appointment. It was further contended that the Applicant started court proceedings as soon as he became aware of the overcrowding and

also that the local authority had been kept up to date. While the above evidence was not contested, Mr Smyth's position was that the two sets of possession proceedings referred to in Mr Bharj's statement did not in fact relate to any of the occupants that he met in the over-occupied rooms at his first or second inspection of the premises.

23. In relation to the two rooms that were the subject of Mr Smyth's evidence, Mr Bharj's evidence at the hearing was as follows:

(1) 2nd floor loft conversion: Mr Bharj maintained that at all material times there had never been more than two occupants (Mrs Kaur and her child). As noted above, on Mr Smyth's second visit on 3 December, the occupant stated that only two people were living there;

(2) 1st floor rear right room: Mr Bharj contended that the room had only ever been let to one person (the sister of Mrs Kaur who lived in the 2nd floor loft conversion, also named Mrs Kaur). Mr Bharj's evidence was that once he became aware that the room was over-occupied (along with the fact that he had not received rent), he took steps to obtain possession. Possession was also sought in relation to the 2nd floor loft conversion due to the non-payment of rent.

Mr Bharj stated that the relevant notices were served on the occupants prior to service of the local authority's Notice of Intent.

24. In response, Mr Smyth stated that notwithstanding the confusion as to which rooms were in issue, the local authority nevertheless took Mr Bharj's actions at face value and gave Mr Bharj full credit for attempting to remedy the problem.

25. Mr Bharj's position effectively amounted to an argument that he had a reasonable excuse because the rooms were only let in accordance with the licence conditions and upon discovering that there were a greater number of occupants, he took steps to remedy the problem - albeit no documentary evidence had been provided to substantiate the actions that had been taken. However, the greater difficulty is that even the tribunal accepts the Applicant's evidence in this regard there was little dispute

that other elements of the offence were established, i.e. fire and electrical safety issues and cockroach infestation.

26. In the circumstances the tribunal finds that the local authority was entitled to issue a financial penalty in any event.

Should the tribunal confirm or vary the Financial Penalty?

27. Mr Smyth explained how the Respondent had calculated the level of the financial penalty and provided a copy of the local authority's policy.

28. The policy includes a matrix to determine the appropriate level of penalty having regard, in particular, to the deemed level of culpability and level of harm. The policy also stipulates that local authority will take into consideration paragraph 3.5 of the government's Guidance for Local Housing Authorities when deciding on the level of civil penalty to impose. These include:

- (a) the severity of the offence;
- (b) the culpability and track record of the offender;
- (c) the harm (if any) caused to a tenant of the premises;
- (d) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
- (e) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

29. As noted above, Mr Smyth's evidence was that the local authority treated the various breaches of licence conditions as a single offence. According to the Notice of Intent, the offence was determined to be Band 4, which provides a range of £10,000 - £14,000 and an assumed starting point of £12,500. In determining that the case was Band 4, the culpability of the Applicant was assessed as 'Medium' and the severity of the offence and harm was also assessed as 'Medium'.

30. Paragraph 3.5 of the policy sets out the factors to be considered for level of culpability:

- 1) The degree of wilfulness and or negligence. The extent to which the actions or offence were deliberate.*
- 2) The extent to which the actions or offence were concealed.*
- 3) Knowledge of legal requirements. landlords who have a significant portfolio of properties and where renting properties is their main occupation they would be expected to know their legal responsibilities.*
- 4) How much control did the person have over the event or circumstances.*
- 5) Did they take reasonable precautions.*

31. Paragraph 3.6 of the policy sets out the factors to be considered for level of harm and severity:

- 1) Was more than one tenant affected?*
- 2) Was the actual or potential physical or psychological impact on victim(s) particularly serious?*
- 3) Was the actual or potential physical or psychological impact on the victim(s) long-term, life-altering or potentially fatal?*
- 4) Was the victim(s) vulnerable, as per the guidance on CPS (a family with children, a vulnerable adult, someone with language issues)?*
- 5) Was there actual or potential harm caused for the surrounding area or community?*

32. Paragraph 3.7 sets out aggravating and mitigating factors:

- 1) Where the offence was carried out by portfolio landlords or letting agents who are expected to know requirements the penalty may be adjusted upwards.*
- 2) Where an offender has a history of non-compliance the penalty may be adjusted upwards.*
- 3) Where the offender has gained financially the penalty may be adjusted upwards.*
- 4) Where there are links to other crimes the penalty may be adjusted upwards*
- 5) Where the offence impacts adversely on the council's priorities the penalty may be adjusted upwards*
- 6) Where there has been no action taken to remedy the offence or cooperation in the investigation of the offence the penalty may be adjusted upwards.*
- 7) Where there has been a degree of cooperation in remedying the offence or cooperation in the investigation of the offence the penalty may be adjusted downwards*
- 8) The burden to demonstrate inability to pay as with the burden on demonstrating mitigating circumstances rests on the offender.*

33. Further, paragraph 4.3 deals with offences for non-compliance with licence conditions:

Culpability

- 1) Where the offender tried to conceal the offence by obstructing access or providing false information on occupancy the level of culpability may be high.*
- 2) Where multiple warning letters had been sent on the licensing requirements and the offender had knowledge of offence but failed to act in a timely manner the level of culpability may be medium.*
- 3) Where the offender did not have complete control or responsibility for ensuring compliance or had taken reasonable precautions the level of culpability may be low.*

Harm

- 4) Failure to display the licence or address relatively minor property or tenancy management issues may have a lower level of harm.*
- 5) Failure to address property management issues that have a significant harm impact on the tenants such as overcrowding, failing to maintain fire safety precautions, failing to maintain amenities and common parts in a safe condition and working order may have a higher level of harm.*
- 6) Failure to address property and or tenancy management issues which causes substantial harm and disturbance to neighbours from ASB, noise and other nuisance may have a higher level of harm.*

Aggravating and mitigating circumstances

- 7) Where the landlord has gained financially due to lack of management arrangements in place, cost of required works and increased rental income from overcrowded conditions the civil penalty may be adjusted upwards.*
- 8) See Generic aggravating features/factors set out in 3.7 above.*

34. On culpability, the local authority took into account the fact that the Applicant has one other licensed HMO property – although accepted that this is not a significant portfolio. They also noted that he had been instructed in 2019 that the property was overcrowded and took action to evict a family of four from the 2nd floor.
35. In relation to the seriousness of the offence, Mr Smyth commented that the fact that the hazards included fire safety matters meant that the level would normally be deemed ‘High’. However, he stated that the local authority was trying to work with Mr Bharj and so had brought it down to ‘medium’.
36. In response to the suggestion that the local authority ought not to have imposed *any* penalty, Mr Smyth commented that it was not the authority’s job to manage the property and when faced with finding a property in the state that it was (in particular, fire and electrical safety breaches and the infestation of cockroaches), it behoves the local authority to take action.

37. In any event, the penalty was subsequently reduced to £10,000 as a result of the Applicant taking steps to remedy problems identified in the Notice of Intent. According to Mr Smyth, although not everything had been fully remedied when Mr Smyth had re-visited the property on 3 December 2021, the local authority nevertheless gave Mr Bharj maximum credit for doing so. Mr Smyth's evidence is that 20% is the maximum discount that will be applied. In this regard, paragraph 6.8 of the local authority's policy provides that:

“In the event that the offender complied with the identified breach [for example by making an application to licence a previously unlicensed property] within the representation period at the ‘Notice of Intent’ stage, the Council would reduce the level of any imposed civil penalty by 20%.”

38. Having considered the parties' evidence and submissions, the tribunal agrees that the present case can be justified as Band 4 in accordance with the terms of the local authority's policy matrix.

39. Having regard to the particular provisions of the local authority's matrix, it could perhaps be argued that the Applicant's culpability might have been assessed as 'Low', in light of his evidence that he had only ever let rooms to occupiers as in accordance with the terms of his licence and sought to take steps to obtain possession as soon as he had discovered additional persons were in occupation – notwithstanding Mr Smyth's evidence on this point. However, this can be balanced against the arguably stronger suggestion that the level of seriousness would more properly be classed as 'High', particularly in light of the fact that the offence involved numerous fire safety breaches. As noted above, Mr Smyth's evidence was that breaches of fire safety precautions would normally be considered 'High' and paragraph 4.3(6) of the local authority's policy provides that:

“Failure to address property management issues that have a significant harm impact on the tenants such as failing to maintain fire safety precautions, failing to maintain essential services, failing to maintain common parts and amenities in a safe condition and working order may have a higher level of harm”.

As such, if both adjustments were made this would still produce a result of Band 4 on the local authority's matrix.

40. In considering the level of penalty and the factors which must be taken into account, the tribunal is also conscious of the Applicant's assertion that he had not received rent for two years and had difficulty accessing the property during the pandemic – although as set out above, there was little evidence to substantiate these contentions and we also note that many of the matters were resolved relatively quickly following service of the Notice of Intent.
41. For the avoidance of doubt, it is considered that, in accordance with the local authority's policy, the fact that remedial works were undertaken goes to mitigation and the subsequent 20% reduction, rather than reducing the initial seriousness of the offence. In the circumstances, we also uphold the 20% reduction in accordance with paragraph 6.8 of the policy, giving Mr Bharj full credit for the remedial works undertaken.

Conclusion

42. For the reasons set out above, we uphold the financial penalty issued by the local authority.
43. Accordingly, the Appellant's appeal is dismissed.

Name: Judge Sheftel

Date: 14 July 2022

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).