



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

Case Reference : **LON/00BK/HNA/2022/0022**

HMCTS Code : **V: CVP REMOTE**

Property : **70 Biddulph Mansions, Elgin
Avenue, London W9 1HT**

Applicant : **Ms Vera Reis**

Representative : **In person**

Respondent : **Westminster City Council**

Representative : **Mr Trevor Withams
(Environmental Health
Enforcement Officer)**

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

Tribunal Members : **Judge Donegan
Ms R Kershaw (Professional
Member)**

Date of Hearing : **14 October 2022**

Date of Decision : **10 November 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has not been objected to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because all issues could be determined at a remote hearing. The Tribunal was referred to a 129-page bundle of documents from the respondent and a 5-page response from the applicant, the contents of which were noted.

Decision of the Tribunal

- (a) The Tribunal is satisfied beyond reasonable doubt that on 26 January 2022 the applicant committed an offence under section 72(1) of the Housing Act 2004 ('the 2004 Act') being the control of or management of a house of multiple occupation ('HMO') which was required to be licensed under Part 2 of the 2004 Act but not so licensed. There was no reasonable excuse for this offence.**
- (b) The Tribunal varies the financial penalty notice ('FPN') dated 07 April 2022 by substituting a penalty of £9,000 (Nine Thousand Pounds) for the original penalty of £11,000 (Eleven Thousand Pounds).**

The background

1. This appeal concerns a FPN for 70 Biddulph Mansions, Elgin Avenue, London W9 1HT ('the Property'), dated 07 April 2021. The Property is a ground floor flat in a purpose-built block with four rooms (one with ensuite bathroom), a separate main bathroom and kitchen. The applicant is the long leaseholder of the Property, which is within the district of Westminster City Council.
2. The Property is in a designated area for additional licensing of HMOs. The designation was made by the respondent on 21 April 2021, came into force on 30 August 2021 and will cease to have effect on 30 August 2026 (unless revoked earlier). The designated area is the whole of the district of Westminster City Council.
3. Paragraphs 5 and 6 of the designation provide:
"APPLICATION OF THE DESIGNATION
 5. *This designation applies to all HMOs as defined by section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households, and HMOs as defined in section 257 of the Act where less than two-thirds of the self-contained flats are owner-occupied within the area described in paragraph 4 unless–*

- (a) *the building is of a description specified in Schedule 14 of the Housing Act 2004 (Buildings which are not HMOs for the purpose of the Act—excluding Part 1);*
- (b) *the HMO is subject to an Interim or Final Management Order under Part 4 of the Act;*
- (c) *the HMO is subject to a temporary exemption under section 62 of the Act;*
- (d) *the HMO is required to be licensed under section 55(2)(a) of the Act (mandatory licensing), or*
- (e) *the HMO is specifically excluded from the scheme as it is either:*
 - (i) *a section 257 HMO consisting solely of two flats where neither of the flats is situated above or below commercial premises; or*
 - (ii) *a section 257 HMO where the flats share no internal or external common parts and which are no more than two storeys high.*

EFFECT OF THE DESIGNATION

6. *Subject to sub paragraphs 5(a) to (e) above, every HMO of the description specified in that paragraph in the area specified in paragraph 4 shall be required to be licensed under section 61 of the Act.”*
4. The applicant let the four rooms at the Property as separate bedrooms. The tenants all had shared use of the kitchen and three of the rooms had shared use of the main bathroom. Once the additional licensing designation came into force, the applicant was required to obtain an HMO licence. She did not apply for a licence or temporary exemption notice for the Property.
 5. Following an enquiry from one of the tenants and two inspections of the Property, the respondent served a notice of intent on 01 March 2022, pursuant to paragraph 1 of Schedule 13A to the 2004 Act. The amount of the proposed penalty was £11,000 and the notice was sent to the applicant at three different addresses: the Property, Suite 301F Winchester House, 259-269 Old Marylebone Road, London NW1 5RA and Basement Flat, 144 Shirland Road, London W9 2BT, as well as by email.
 6. The applicant made written representations to the respondent in an email dated 09 March 2022. On 07 April 2022 the respondent issued the FPN to the pursuant to s.249A of the 2004 Act. This was sent to the applicant at the same three addresses, as well as by email. It alleged a breach of duty under s.61, being a failure to obtain a HMO licence for the Property and an offence under s.72. The FPN required the applicant to pay a penalty of £11,000, with a 20% early payment reduction if full payment was made within 28 days of service.

7. The relevant legal provisions are set out in the appendix to this decision.

The appeal and procedural history

8. The applicant submitted her appeal to the Tribunal on 25 April 2022. In the appeal form (H04), she gave the Property as her address. Her grounds of appeal (panel 9) are recited below:

“1-THE DECISION TO IMPOSE A MONETARY PENALTY WAS BASED ON AN ERROR OF FACT

2-THE AMOUNT OF THE MONETARY PENALTY IS UNREASONABLE”

9. The Tribunal issued directions on 24 May 2022 and the case was listed for a face-to-face hearing on 14 October 2022. At the applicant’s request, this was converted to a video hearing.
10. On 09 October 2022 the applicant wrote to the Tribunal requesting a postponement of the hearing, as she wished to accompany her 12-year-old daughter on a flight (to attend a funeral). At my request, the case officer requested additional information in a letter dated 11 October. The applicant provided this later that day but explained she had made alternative arrangements and no longer required a postponement.

The hearing

11. The hearing took place by remote video conferencing on 14 October 2022. The applicant appeared in person and Mr Trevor Withams appeared for the respondent. Both parties filed digital bundles in accordance with the directions.
12. At the start of the hearing, I clarified the issues and explained the appeal would be a re-hearing of the respondent’s decision to issue the FPN. The issues for the Tribunal are whether an offence had been committed under s.72(1) and, if so, whether the applicant had a reasonable excuse. If the offence is proved beyond reasonable doubt and there was no reasonable excuse, then the Tribunal must then decide the level of the penalty.

Evidence and submissions

13. Given this was a re-hearing, the respondent went first. Mr Withams spoke to an undated response to the appeal and a witness statement dated 28 June 2022. He is employed as an Environmental Health Enforcement Officer with the respondent’s Public Protection and Licensing Enforcement Team. He holds Bachelor of Science degrees in Environmental Health and Building Surveying and has over 35 years relevant experience.

14. Mr Withams' statement runs to five pages with 26 exhibits. It includes details of the Additional Licensing designation and the initial contact from one of the tenants, Mr Jordan Lamb, who queried if the Property had an HMO licence. Mr Withams ascertained there was no licence and inspected the Property on 03 November 2021, in the presence of Mr Lamb and his partner, Nathalia Mautoni de Souza. All four rooms were being used as bedrooms and they shared one of these rooms.
15. Following the inspection Mr Withams obtained Land Registry entries, which showed the applicant as the registered leaseholder of the Property. He then wrote to her stating the respondent believed the Property was operating as an HMO that required a licence. He included details of how to apply for a licence and a warning that it was an offence to operate an HMO without a licence that could result in prosecution or a Civil Penalty Notice. In his statement, Mr Withams said he wrote to the applicant on 03 November 2021 and the letter was sent to CP301F Winchester House, 259-269 Old Marylebone Road, London NW1 5RA with copies to the Property and by email to myvera@hotmail.co.uk. The copy letter exhibited to his statement is undated. In his oral evidence, Mr Withams said the original was also undated but reiterated it had been sent on 03 November 2021 and had been copied to the Property and the applicant's email address.
16. The applicant did not respond to this letter or apply for a licence. Mr Withams reinspected the Property on 26 January 2022 in the presence of four tenants, Mr Lamb, Ms de Souza, Sean Paul Gillbride and Anas Dakkoune. Mr Lamb and Ms de Souza shared the middle room, Mr Gillbride occupied the rear bedroom and Mr Dakkoune occupied the front right-hand bedroom. They said the remaining bedroom (front left side) was occupied by Shrey Kathuria who was away. Mr Withams took photographs and handwritten notes which are exhibited to his statement.
17. The four tenants completed brief, hand-written witness statements during this inspection and subsequently supplied Mr Withams with electronic copies of their tenancy agreements. Copies of these agreements are also exhibited to his statement. The agreements for Mr Lamb and Ms de Souza and Mr Gillbride are headed "*HOUSE/FLAT SHARE TENANCY AGREEMENT (For a Room in a Furnished House or Flat on an Assured Shorthold Tenancy)*" and give the respondent's address as CP 301F, Winchester House, 259-269 Old Marylebone Road, London NW1 5RA. The agreement for Mr Dakkoune is headed "*LICENCE TO OCCUPY*" and does not include any address for the respondent.
18. The tenancy details are summarised below:
Furnished Ensuite Bedroom
Landlord: Vera O Reis
Tenant: Jordan Lamb and Nahtalia Mautoni de Souza
Term : 15 March 2021 to 14 September 2021
Rent : £1,000 per calendar month inclusive of Council Tax, Water, Electricity, Gas and Internet

Furnished Bedroom 1

Landlord: Vera O Reis

Tenant: Sean Paul Gillbride

Term : 29 October 2021 to 28 April 2022

Rent : £7,000 per calendar month inclusive of Council Tax, Water, Electricity, Gas and Internet

Double Room

Landlord: Vera O Reis

Tenant: Anas Dakkoune

Term : 16 April 2021 to 15 April 2022

Rent : £850 per month including utility bills

19. Based on his inspections and the information provided by the tenants, Mr Withams was satisfied the Property met the description of an HMO at s.254(1)(b) of the 2004 Act in that it is a self-contained flat occupied by three or more persons who are living in two or more separate households.
20. Mr Withams checked the respondent's database on 04 February 2022 and ascertained that no HMO licence had been issued for the Property and no Temporary Exemption Notice had been issued or applied for under s.62 of the 2004 Act. He then used the respondent's civil penalties matrix to calculate the appropriate level of penalty. This forms part of their 'Private Sector Housing and Lettings Enforcement Policy' ('the Policy') which came into force on 04 November 2021. The Policy, including the matrix took account of the Department for Communities and Local Government ('DCLG') guidance 'Civil penalties under the Housing and Planning Act 2016'.
21. A copy of the Policy is also exhibited to Mr Withams' statement. Section 5.2 identifies seven factors that are broadly considered to ensure the penalty is set at an appropriate level:
 - severity of the breach/offence
 - culpability and track record
 - the harm caused to the tenant
 - punishment of the offender
 - deterring the offender from repeating the breach/offence
 - deterring others from committing the breach/offence
 - removing any financial benefit the offender may have obtained from committing the breach/offence.

These factors are condensed into five scoring factors in the matrix: culpability, track record and deterrence, removal of financial incentive, weight of harm and exposure to risk. A copy of the completed matrix for the Property is exhibited to Mr Withams' statement and annexed to this decision. As can be seen, the respective scores were 5, 0, 2, 2 and 2. The total score of 11 equates to a penalty of £11,000.

22. During his investigations, Mr Withams discovered two other properties owned by the applicant, being the Basement Flat at 144 Shirland Road, London W9 2BT and Flat 3, 98 Maida Vale, London W9 1PS.
23. Mr Withams sent the notice of intent to the applicant on 01 March 2022, and she made representations in an email dated 09 March. Following a review, he sent the FPN to her on 07 April 2022, which included the following details of breach:
- “The house, Flat 70, Biddulph Mansions, Elgin Avenue, London W9 1HT is a House in Multiple Occupation (HMO) as defined in Section 254 of the Housing Act 2004.*
- The HMO is a type which falls within the designation for Additional Licensing made by Westminster City Council on 21st April 2021.*
- You VERA LUCIA OLIVEIRA REIS are the owner or the house and are the person having control of the house as defined in Section 263 housing (sic) Act 2004. You are in receipt of rent payments from the occupying tenants of the house.*
- On the date of inspection, 26th January 2022, the council considers that you were in breach of your duty under section 61 of the Housing Act 2004 to obtain an HMO licence for the HMO, which is required to be licenced. This amounts to an offence under section 72 of the Act. On the date of inspection, no valid application for an HMO licence had been received and no Temporary Exemption Notice under section 62 had been applied for or was in force. No interim or final management order was in force in respect of the property.”*
24. The FPN also explains the matrix scores used to calculate the penalty. There was a high culpability score of 5, as the applicant had been sent a warning letter notifying her of the need for an HMO licence and inviting her to apply. No such application was submitted. There was a low score (0) for track record and deterrence, as the respondent was not aware of previous offences. Removal of financial incentive attracted a low score of 2, as the respondent was aware of one other rental property owned and let by the applicant (144A Shirland Road). Weight of harm also attracted a low score of 2. The failure to apply for a licence could have resulted in the Property remaining uninspected. There was inadequate fire detection and no fire door to the kitchen. Had the correct application been made, fire safety measures would have been required as a condition of the licence and the applicant would have been required to submit a current Gas Safety Certificate and Electrical Installation Condition Report. Exposure to risk attracted a medium score of 2, as the Property was occupied by five tenants in four rooms.
25. Mr Witham also wrote to the applicant on 08 April 2022, responding to her representations. The representations and responses are summarised below:
- (a) The applicant ran a small business letting rooms in shared properties. She was managing six flats until Brexit and Covid-19 made it

impossible to continue her business. *The applicant owns two of these flats, the Property and Basement Flat, 144 Shirland Road, as well as Flat 3, 98 Maida Vale. Whilst the pandemic had an impact on the London rental market, there appears to have been a strong recovery.*

- (b) The rooms were sublet individually on a bills-inclusive basis. The pandemic gave the several tenants an excuse to stop paying their rent, but the applicant still had to pay rent to her landlords, as well as all utility bills. She survived for six months before bankruptcy prompted her to close business. *The applicant owns two of the let properties and there is no evidence of bankruptcy.*
- (c) The applicant gave notice to all tenants, as she was shutting her business. *Any section 21 notice (Housing Act 1988) is invalid where the premises are an unlicensed HMO, and she might not obtain vacant possession of the Flat.*
- (d) Mr Withams informed the applicant she still needed a licence, but the managing agents will no longer authorise HMOs in the building. *The legal requirement to obtain a licence is unaffected by the lease terms or any refusal from the freeholder.*
- (e) Notice has been given and the tenants had agreed to vacate by 14 April 2022. The Property will cease being an HMO at that time. The applicant requested the respondent's understanding in the intervening period. *The tenants may not move out and an HMO licence will be required to legally gain vacant possession. The licence requirement has been in place since 30 August 2021 and Mr Withams informed the applicant of the need for a licence on 03 November 2021.*
- (f) The applicant was in a difficult position, being out of work and a single mother. She might have to move back to Brazil, but this was problematic as her daughter's father is English. She sought the respondent's forbearance until 14 April 2022. *The applicant's personal difficulties do not alter the requirement to obtain an HMO licence.*

26. In response to my questioning, Mr Withams stated:

- (a) During the January 2022 inspection, Mr Gillbride said he was about to move out and the others said they had been given notice to leave in April 2022. Their proposed vacation of the Property was not relevant when scoring culpability in the matrix. Any section 21 notice served by the applicant would be invalid as there was no HMO licence and there was no guarantee the Property would be vacated in April 2022.
- (b) On average it takes the respondent a couple of months to issue an HMO licence (from application).
- (c) During the January inspection he observed a ceiling mounted heat detector within the Property which is part of the communal fire safety system for the common ways at Biddulph Mansions. There

was also a battery-operated smoke detector sitting on a cupboard, rather than ceiling mounted, rendering it less effective.

- (d) The conditions in the Property were generally good.
27. In cross-examination, Mr Withams could not recall any other smoke alarm in the Property. He had not asked the tenants whether there were other alarms but had discussed the vacation of the Property. They said the applicant had given them notice to leave in April in 2022, via WhatsApp.
28. The applicant queried why Mr Withams had not asked her to attend his inspections of the Property, as he had done for another of her flats (144A Shirland Road). He explained that he liked to talk to tenants on their own before contacting the landlord. In his experience, they talk more openly if the landlord is not present.
29. The respondent's bundle included copies of the tenants' witness statements. They each confirmed their rent was paid to the applicant and gave the following start dates for their occupation:
- | | |
|--------------|-----------------|
| Mr Lamb | March 2021 |
| Ms de Souza | June 2021 |
| Mr Gillbride | 29 October 2021 |
| Mr Dakkoun | 04 April 2020 |
30. The applicant's bundle comprised an undated statement with four exhibits. In her statement she explained she moved to London, from Brazil, approximately 12 years ago. She subsequently purchased 144A Shirland Road and lived there with her ex-partner, who is the father of her daughter. When they split, she sublet a room in the flat to help pay the mortgage. This proved successful and she rented other flats and ran a business subletting rooms on an individual, bills-inclusive basis. This was successful for approximately 10 years but recently she has encountered financial difficulties, which she attributes to Brexit and the Covid-19 pandemic. Some tenants stopped paying their rent and she struggled to pay the mortgages and outgoings. She decided to dissolve the business and gave notice to all her tenants.
31. The respondent initially contacted the applicant regarding 144A Shirland Road. They wrote to her 12 January 2022, and she met Mr Withams at this flat on 20 January, by which time only one tenant remained. She explained she was no longer using the flat as an HMO, having given notice to the tenants. It appears no further action was taken by respondent.
32. The respondent took a different approach for the Property. The applicant was not invited to the inspection on 26 January 2022 and was unaware of the licence enquiries from Mr Lamb, which had not been raised with her. She believes Mr Lamb was upset by the notice to vacate and was looking to stay in the Property without paying his rent and, potentially, seek a Rent

Repayment Order. She contends that an HMO licence was unnecessary, as she had given notice to the tenants and Mr Gillbride and Mr Kathuria both agreed to move out on 30 January. The exhibits to her statement included an email from Mr Kathuria dated 22 December 2021 indicating he might vacate by the end of December or early January but would need additional time to move his belongings. They also included an email from Mr Gillbride dated 31 January, confirming he had moved out that morning.

33. The applicant was shocked to receive the FPN and believed Mr Withams wrongly assumed she was letting the rooms long term and intended to keep the tenants. This was incorrect. In the applicant's words "*The decision from the council to fine me was based on a new law that had just started but my business was already in the process of closing down, therefore I needed no licence as there was no more business.*"
34. The applicant's primary case is that no licence was required as the HMO ceased at the end of January. She also disputes the level of the penalty. She should not be penalised for owning two of the flats operated by the business, given there was only remaining tenant in the other flat (144A Shirland Road) and the tenants at the Property were moving out. Further, Mr Withams wrongly believed there was no smoke alarm in the Property. There were two smoke alarms, one connected to the mains, as well as the communal heat detector near the front door. This was corroborated by a text from the applicant's cleaner, Ms Marcia Lima, exhibited to the statement. Photographs of these alarms were also exhibited.
35. In her oral evidence the applicant said she decided to close her business in November 2021. She gave notice to all her tenants. Mr Gillbride agreed to move out at the end of January. Mr Kathuria moved out in December 2021 but kept his belongings at the Property until January. He continued to pay rent until the end of January. The applicant did not apply for an HMO licence when she received the notice of intent, as Mr Gillbride and Mr Kathuria had already moved out and there were only two households remaining at the Property (Mr Lamb/Ms de Souza and Mr Dakkoune). Further, Mr Dakkoune had offered to move out before April. The applicant understood, from other landlords, that applying for a licence would take six months by which time the Property would be empty.
36. In response to my questioning, the applicant said she sent the WhatsApp message to the tenants 08 December 2021 but had previously given notice by email. There was no bankruptcy order against her, but her decision to close the business was financial as she could no longer pay the bills. The freeholder did not take any action against her, arising from her use of the Property as an HMO.
37. The applicant said she received the notice of intent dated 01 March 2022 but not the original warning letter. The address used on the tenancy agreements, Suite 301F Winchester House, was a friend's office address. The applicant had intended to run her business from there and started to

use this on her agreements. This did not transpire but she did not update her template agreement. She confirmed that her friend was still operating from this address.

38. In cross-examination, the applicant said the front left bedroom was not re-let once Mr Kathuria moved out.
39. In response to Ms Kershaw's questioning, the applicant explained that Mr Lamb originally moved into the ensuite bedroom on his own. He then asked if his partner, Ms de Souza, could join him and they both lived in this room from March 2021.

Findings

40. The Property is a self-contained flat. Between June 2021 and January 2002, it was occupied by five tenants and four different households, who all paid rent to the applicant. All four households had shared use of the kitchen and three households shared the communal bathroom.
41. The applicant says Ms de Souza moved into the ensuite bedroom in March 2021. This conflicts with Ms de Souza's statement, which says she occupied the Property from June 2021. The Tribunal prefers the applicant's oral evidence, which is corroborated by the tenancy agreement for this room. The applicant says Mr Kathuria moved out in December 2021 but kept his belongings at the Property until January. He paid the rent until the end of January and the Tribunal finds he was still in occupation on 26 January, being the date of Mr Withams' reinspection. During that inspection the other tenants said the fourth bedroom was occupied by Mr Kathuria, who was away. They did not say he had vacated.
42. There are two smoke alarms in the Property as well as the heat detector that forms part of the communal system, as evidenced by Ms Lima's text and photographs in the applicant's bundle.
43. The Property is within the district of Westminster City Council, being the area covered by the respondent's additional licensing designation. The applicant was obliged to apply for an HMO licence from 30 August 2021 but failed to do so. There was no licence, application or temporary exemption notice for the Property as at 26 January 2022. The Tribunal is satisfied beyond reasonable doubt that on this date the applicant committed an offence under s.72(1) of the 2004 Act, namely the control of or managing an HMO required to be licensed under Part 2, but not so licensed.
44. The Tribunal finds that the respondent's undated, warning letter was sent to the applicant on 03 November 2021 and was received by her. The letter was sent to three different addresses, by post, and by email. It is inconceivable she did not receive any of these letters. Further, she gave

notice to her tenants in November 2021, and it is likely this was prompted by the respondent's letter. Suite 301F Winchester House was a valid address for service of this letter, the notice of intent and the FPN, given it was stated to be her address on the tenancy agreements. The email address used, myvera@hotmail.co.uk, is correct and was used by the applicant in these proceedings.

45. There was no reasonable excuse for the applicant's failure to licence the Property. The additional licensing designation had been in force since 30 August 2021. The applicant was running a business letting rooms in six different properties, some on a 'rent to rent' basis. As a professional landlord she should have been well aware of the designation and the need for a licence. Further, she failed to heed the respondent's warning letter. The fact that Mr Kathuria and Mr Gillbride were due to vacate in late January is no excuse. A licence, or temporary exemption notice, was still required. Further, there would still be three tenants (Mr Lamb, Ms de Souza and Mr Dakkoune) and two households after Mr Gillbride and Mr Kathuria vacated. The Property would remain an HMO requiring a licence pursuant to s.254(1)(b) of the 2005 Act and paragraph 5 of the designation. Whilst the remaining tenants had been given notice to vacate in April 2022 there was no guarantee they would leave.
46. The notice of intent and FPN were validly served and complied with the requirements at paragraphs 3 and 8 of Schedule 13A to the 2004 Act.
47. Having found an offence under s.72(1), with no reasonable excuse under s.72(5), the Tribunal then considered the level of the penalty. This was calculated using the respondent's matrix, which forms part of their Policy. There was no challenge to the contents of the Policy, which is based on DCLG guidance. However, the Tribunal must come to its own decision on the application of the matrix. At paragraph 55 of ***London Borough of Waltham Forest v (1) Marshall and (2) Ustek UKUT 0035 (LC)***, Upper Tribunal Judge Cooke said, "*It goes without saying that if a court or tribunal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis.*"
48. Turning to the matrix itself, there is no reason to depart from the respondent's scores for culpability, track record and deterrence and removal of financial incentive. These are consistent with the criteria in their matrix and there are no aggravating or mitigating circumstances. A high score of 5 was appropriate for culpability, given the applicant's failure to heed the warning letter sent on 03 November 2022. A low score of 0 was appropriate for track record and deterrence as this was a first offence. Arguably, the removal of financial incentive score should have been higher, in the medium category, as the applicant was managing six properties. However, she did not own them all and her business ceased to be profitable. The Tribunal adopts the respondent's score of 2.

49. There were mitigating circumstances for the final two factors, which justify a departure from the respondent's scores. The weight of harm score (2) was based, in part, on inadequate fire detection at the Property. This was overstated. The Tribunal has found there were two smoke alarms as well as the heat detector. On this basis it substitutes a score of 1, being the lowest possible score for this category. The exposure to risk score of 2 was based on five tenants in four bedrooms. This was correct as at 26 January 2022 but two of these tenants moved out within a few days and Mr Withams was aware of Mr Gillbride's imminent departure. From 01 February 2022 onwards there were only three tenants in two bedrooms. The Property was still an HMO but the exposure to risk was lower. Further, the conditions in the Property were generally good as stated by Mr Withams. Having regard to these circumstances the appropriate category was low and the Tribunal substitutes a score of 1.

Conclusion

50. The Tribunal's scores are:

Culpability	5
Track record and deterrence	0
Removal of financial incentive	2
Weight of harm	1
Exposure to risk	1
Total	9

Applying the matrix, the total points score of 9 equates to a fixed penalty of £9,000 (Nine Thousand Pounds). The Tribunal varies the FPN by substituting £9,000 for the original £11,000 penalty.

Name: Tribunal Judge Donegan **Date:** 10 November 2022

APPENDIX – COMPLETED MATRIX FOR 70 BIDDULPH MANSIONS

City of Westminster Civil Penalty Matrix (DRAFT)					
Notice Ref:	Case officer: Trevor Withams		Address:		Landlord/Agent: VERA LUCIA OLIVEIRA REIS
Factor	Score = 1-2	Score = 3-4	Score 5	Total	Justification
Culpability	<p>Low</p> <p>Significant efforts were made to address offences/breaches/risk</p> <p>A reasonable defence for non-compliance provides a level of mitigation</p> <p>Failing to comply with recently introduced requirements</p>	<p>Medium</p> <p>Offender fell far short of the appropriate standard;</p> <p>for example:</p> <p>failing to put in place measures that are recognised standards / legal requirements</p> <p>Failing to apply for a HMO licence</p> <p>Partial compliance that falls short expected standard</p> <p>Less serious breach of licence conditions</p>	<p>High</p> <p>Deliberate breach & flagrant disregard for the law; for example:</p> <p>Failing to comply with Housing Act Notice</p> <p>Failing to rectify management breaches after warning</p> <p>Failing to apply for HMO licence following warning or prior knowledge</p> <p>Breach of banning order</p> <p>Significant and wilful failure to comply with licence conditions</p> <p>Offender likely to be aware their actions were unlawful</p>	5	A warning letter was sent stating that we believed that the property required an HMO Licence and inviting the landlord to apply. Despite this no application has been submitted. The landlord would clearly have been aware that a licence was required for the property.
Track record & deterrent from committing further offences	<p>Low</p> <p>No known previous offences</p> <p>High confidence that penalty will deter from committing further offences</p>	<p>Medium</p> <p>Previous history of non compliance</p> <p>Track record of poor management</p> <p>Housing related convictions</p> <p>Medium confidence that a financial penalty will deter further offences</p>	<p>High</p> <p>Repeated history of serious housing related offences and non compliance</p> <p>Low confidence financial penalty will deter from further offences</p>	0	no known history of offences
Removal of financial incentive	<p>Low</p> <p>No significant assets / turnover</p> <p>Single property landlord</p> <p>limited financial gain</p>	<p>Medium</p> <p>Small portfolio landlord (up to 5 properties)</p> <p>Managing agents (less than 100k turnover)</p> <p>Some financial gain from committing offence</p>	<p>High</p> <p>Professional portfolio landlord (5+ properties)</p> <p>Professional Agents with significant portfolio (100k turnover)</p> <p>Significant financial gain from committing the offence</p>	2	We are aware of one other rental property owned and let by this landlord.
Weight of Harm	<p>Low</p> <p>low level harm or inconvenience caused</p>	<p>Medium</p> <p>Risk posed to tenants from multiple hazards</p> <p>Multiple category 2 hazards</p> <p>Less serious Class III & IV harm outcomes</p> <p>Significant distress</p> <p>medium impact</p> <p>Vulnerable group(s) affected</p>	<p>High</p> <p>One of more category 1 hazards</p> <p>Risk of significant Class I & II harm outcomes</p> <p>High impact</p> <p>Vulnerable group(s) affected</p>		The failure to apply for a licence could have resulted in the FMO remaining uninspected. There is inadequate fire detection and no fire door to the kitchen placing the tenants at some risk. Had the correct application been made fire safety measures would have been required as a condition of the licence. As part of the application process the landlord is required to submit a current Gas Safety certificate and an Electrical Installation Condition Report. Without these documents we cannot be sure that the 2 electrical and gas installations are safe.
Exposure to risk	<p>Low</p> <p>Single family dwelling or Limited duration and exposure to risk as a result of offence</p>	<p>Medium</p> <p>HMO 3-5 people</p> <p>Small block of flats/S257 (6+ flats)</p> <p>Moderate duration and exposure</p>	<p>High</p> <p>Large HMO 5+ people</p> <p>Large block of flats/S257 (8+ flats)</p> <p>prolonged duration and exposure</p> <p>Unreasonable exposure to risk / prolonged duration</p>	2	This is a flat in multiple occupation with 5 tenants in 4 bedrooms
Total Points				11	
Financial Penalty Amount				£11,000.00	

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Housing Act 2004

PART 2

LICENSING OF HOUSES OF MULTIPLE OCCUPATION

55 Licensing of HMOs to which this Part applies

- (1) This Part provides for HMOs to be licensed by local housing authorities where –
 - (a) they are HMOs to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority -
 - (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
 - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in that designation.
- (3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection 2(a).

...

56 Designation of areas subject to additional licensing

- (1) A local housing authority may designate, either -
 - (a) the area of their district, or
 - (b) an area in their district,as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

...

61 Requirement for HMOs to be licensed

- (1) Every HMO to which this Part applies must be licensed under this part unless -
 - (a) a temporary exemption notice is in force in relation to it under section 62, or
 - (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

...

62 Temporary exemption from licensing requirement

- (1) This section applies where a person having control or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.
- (2) The authority may, if they think fit, serve on that person a notice under this section (“a temporary exemption notice”) in respect of the house.
- (3) If a temporary exemption notice is served under this section, the house is (in accordance with section 61(1) and 85(1)) not required to be licensed under this Part during the period for which the notice is in force.

...

72 Offences in relation to licensing of HMOs

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

...

- (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.

...

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 224 (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 regulation 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.

254 Meaning of “house in multiple occupation”

- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if
 - (a) it meets the conditions in subsection (2) (“the standard test”);
 - (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
 - (c) it meets the condition in subsection (4) (“the converted building test”);
 - (d) an HMO declaration is in force in respect of it under section 255; or
 - (e) it is a converted block of flats to which section 257 applies.
- (2) A building or a part of a building meets the standard test if –
 - (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);

- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
- (3) A part of a building meets the self-contained flat test if –
- (a) it consists of a self-contained flat; and
 - (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned or references to the flat).

...

258 HMOs: persons not forming a single household

- (1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.
- (2) Persons are to be regarded as not forming a single household unless –
 - (a) they are all members of the same family, or
 - (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purposes of subsection 2(a) a person is a member of the same family as another if –
 - (a) those persons are married to, or civil partners of, each other or live together as if they were a married couple or civil partners;
 - (b) one of them is a relative of the other; or
 - (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For these purposes –
 - (a) a “couple” means two persons who fall within subsection (3)(a);
 - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
 - (c) a relationship of the half-blood shall be treated as a relationship of the whole blood, and

- (d) the stepchild of a person shall be treated as his child.

...

259 HMOs: persons treated as occupying premises as only or main residence

- (1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.
- (2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person –
 - (a) as the person’s residence for the purpose of undertaking a full-time course of further or higher education,
 - (b) as a refuge, or
 - (c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

...

SCHEDULE 13A

FINANCIAL PENALTIES UNDER SECTION 249A

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 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 reason 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 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 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 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

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