FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/HNA/2019/0013**
Property	:	**Flat B, 26 Burrard Road, London, NW6 1DB**
Applicant	:	**Nurit Sharon**
Respondent	:	**London Borough of Camden**
Type of application	:	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	:	**(1) Judge Amran Vance** **(2) Mr A Harris, LLM, FRICS**
Date and venue of hearing	:	**31 May 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**7 June 2019**

DECISION

NB: Page references in square brackets and in bold below refer to the hearing bundle provided by London Borough of Camden

Decision

1. The decision of London Borough of Camden ("the Council") to impose a financial a financial penalty of £3,000 against the appellant is confirmed.

Background

2. By Notice dated 3 January 2019 **[302]** the Council decided to impose a financial penalty on Ms Sharon in the sum of £3,000. The reason for imposing the penalty is stated in the Notice as being that she had committed an offence under section 72 of the Housing Act 2004 ("the 2004 Act"), namely, failure to license Flat B, 26 Burrard Road, London, NW6 1DB ("the Property") as a House in Multiple Occupation ("HMO").

3. The Council has exercised powers given to it under s.56 of the 2004 Act and designated the whole of its borough as an area for Additional Licensing of HMOs. The designation includes all HMOs, as defined by s.254 of the 2004 Act, that are occupied by three or more persons, comprising two or more households.

4. The Property is situated on the first and second floors of a converted terraced house. It comprises: a kitchen, bedroom, bathroom/WC and living room on the first floor; two bedrooms on the second floor; and a third bedroom in the loft space, accessed by stairs leading from the second-floor landing.

5. Ms Sharon is the long leasehold owner of the Property **[47]**. She also holds the leasehold interest in the ground floor flat, purchased for the sum of £695,000 on 15 August 2018 **[44]** and over which there is no mortgage. In addition, she is one of three individuals who hold the freehold interest of the house in which the Property is located [**41]**.

6. By an agreement dated 19 August 2018 **[54]**, Ms Sharon, as landlord, entered into a tenancy agreement of the Property, commencing 1 August 2018, for a term of 12 months. The tenants under the agreement are: Mr Adrian Brauge; Mr Benjamin Bryce-Gosden; Ms Jessica Higgs and Ms Monique Collette Dingley. The rent payable is £2,512 per month which is to be paid directly into Ms Sharon's bank account, details of which are specified in the agreement.

7. Following an apparent complaint about noise nuisance, the Council inspected the Property on 19 September 2018. Present during the inspection was Ms Aniqa Islam, a graduate environmental health officer with the Council and her colleague, David Page, an environmental health officer. Both have provided witness statements to the tribunal **[2]** and **[408].**

8. Mr Page states that on inspection, he and Ms Islam were met by a male tenant who informed them that he occupied the property as one of two couples. However, he and Ms Islam were of the view that this was incorrect. They formed the view that the Property contained four single bedrooms, used exclusively by each of the four tenants and the Property was an unlicensed House in Multiple Occupation ("HMO") for the purposes of the Housing Act 2004 and the Housing and Planning Act 2016 ("the 2016 Act").

9. Mr Page also records in his statement that he identified several issues in the Property that constituted hazards under the Housing Health and Safety Rating System as set out in Part 1 Housing Act 2004, including inadequate heating to the bathroom and inoperative fire alarms.

10. Very shortly after the inspection, Ms Sharon's made an application for a HMO licence **[267]**. It is also clear that she also took quick steps to address the issues that Mr Page considered to be hazards, because although the Council sent her two Notices of Intent to impose Financial Penalties on 15 November 2018, one for £2,000 in respect of the hazards, **[286]** and one for £3,000 in respect of the failure to license the Property as an HMO **[280]**, it subsequently withdrew the Notice regarding the hazards on 19 December 2018 **[298]**. The reason stated for the withdrawal was because the necessary works had been carried out.

11. On 3 January 2019, the council issued the Final Notice to Impose a Financial Penalty in the sum of £3,000 for failure to license the Property as an HMO. On 29 January 2019, Ms Sharon lodged this appeal with the tribunal.

12. In her application notice she states that she has been renting the Property out for some time, and that because she now lives abroad she employs a professional property manager to manage it for her. She asserts that it was always her understanding that the tenants were couples and that she was unaware of the legal requirement to license the house as an HMO. It is her case that as soon as she became aware of the requirement, following the Council's inspection, she completed and lodged the necessary application for a license. She asserts that Camden could have, and should have, notified her in Israel, where she lives, that the law changed in 2015, but did not do so.

13. The Council's case is the statutory test in s.254 of the 2004 Act had been met and that the Property was a HMO that required licensing on the date that it inspected. There was, it submits, no doubt that Ms Sharon was a person having control of or management an HMO and that by failing to licence the Property she had committed an offence under s.72 for which the Council were entitled to impose a financial penalty. As to the amount of the penalty, it stresses that this is an offence that the Council regards as serious and that a penalty must sufficiently high to act as a deterrent to landlords.

The hearing

14. Ms Sharon did not attend the hearing of the application. She courteously notified the tribunal in advance that she might not be able to attend, and asked us to consider her written representations, which we have done. The Council was represented by an in-house lawyer, Mr Sarkis. Ms Islam was also present.

The Law

15. Section 72 of the 2004 Act provides as follows:

> (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) - (3) .....
>
> (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.

16. In the case of a HMO, section 263 defines the "person managing" `as the owner or lessee of the property who receives, directly or through an agent or trustee, rents or other payments from persons who are tenants or licensees of parts of the property, or who are lodgers.

17. By virtue of section 55 of the 2004 Act, any HMO in a local authority's district is required to be licensed by the authority for the purposes of Part 2 if it falls within any prescribed description of HMO or if it is in an area designated by the authority as subject to additional licensing.

18. Under section 61, every HMO to which Part 2 of the Act applies must be licensed under this unless either: a temporary exemption notice is in force in relation to it under section 62; or an interim or final management order is in force in relation to it under Chapter 1 of Part 4. Neither situation is relevant to this appeal.

19. The meaning of “house in multiple occupation” is defined in s.254 to s.259 of the 2004 Act. S.254 provides as follows:

(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 conditions 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 as references to the flat)

[subsection (4) defines the "converted building test", which is not relevant to this appeal; nor are the provisions of sub-sections (5), (6), (7) and (8)]

20. Section 258 sets out when persons are to be regarded as not forming a single household for the purposes of section 254 and provides as follows:

(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 person if—

(a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);

(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 those purposes—

(a) a "couple" means two persons who are married to each other or otherwise 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.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least

one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

21. Section 249A of the 2004 Act allows a local authority to impose financial penalties for certain housing offences and provides as follows:

(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) .....

(b) section 72 (licensing of HMOs),

(c) - (e) .....

(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) – (9) .....

22. Schedule 13A of the Act deals with the procedure for imposing financial penalties and appeals against financial penalties Paragraph 10 of that Schedule states:

(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 housing authority could have imposed.

Decision and Reasons

Was an offence was committed by Ms Sharon?

23. We are satisfied, beyond all reasonable doubt, that an offence was committed by Ms Sharon in that on 19 September 2018, when the Council inspected the Property, she was a person having control of or managing an HMO which was required to be licensed under the Act but was not so licensed.

24. It does not appear to be in dispute that she was a person having control and management of the Property. A "person having control" is defined in s.263 of the 2004 Act as the person in receipt of not less than two-thirds of the full net annual value of the premises or who would be in receipt of the rack-rent were the premises let (referred to as the "rack rent"). The "person managing" is the owner or lessee of the Property who receives, whether directly or through an agent, rents or other payments from persons who are tenants of parts of the premises or who are lodgers. We are satisfied that as the tenancy agreement stipulated that rental payments were to be paid directly to Ms Sharon, and as three of the tenants' state, in witness statements provided to the Council, that this is how they paid their rent to her **[476-7]** that Ms Sharon was a person having both control and management of the Property.

25. We also have no doubt that the Property, on the date of the inspection, met the statutory definition of a HMO as it met the self-contained flat test in s.254(3) because:

(a) it is a self-contained flat;

(b) it was occupied by persons who do not form a single household. Persons do not form a single household unless they are either all members of the same family, or they fall within prescribed circumstances, which are not relevant here. As such, it does not matter if Ms Sharon's understanding was correct and the Property was occupied by two couples. Even if this was correct, they did not form a single household;

(c) the tenants appear to have occupied the living accommodation as their only or main residence. Three of them confirm this in their witness statements;

(d) occupation of the living accommodation constituted the only use of the Property (there is no evidence to the contrary); and

(e) at least two households who occupied the living accommodation shared one or more basic amenities, namely the bathroom, kitchen and WC facilities.

26. We are also satisfied that as at 19 September 2018, the Property fell within an area for Additional Licensing of HMOs, following the Council's designation of the whole of the borough as such an area until 8 December 2020. This designation is not disputed by Ms Sharon.

27. Nor do we consider there is a reasonable excuse for Ms Sharon controlling and/or managing the Property without holding a HMO license. We do not doubt that she is telling the truth when she says that she was unaware of the need to license the Property. However, licensing in respect of HMOs has been in place since the introduction of the 2004 Act and the Council's additional licensing scheme has been in place since December 2015. Ms Sharon acknowledges that she has rented the Property out for some time, and it was her responsibility as a landlord to check, and keep up to date with licensing requirements.

28. All the requirements for the offence are therefore met and the Council were entitled to impose a financial penalty under s.249A of the 2004 Act

The amount of the penalty

29. The amount of the penalty imposed by the Council is one-tenth of the statutory maximum of £30,000. In reaching that figure the Council has used a matrix of factors derived from the relevant Government guidance, *Civil penalties under the Housing and Planning Act 2016*.

30. Mr Sarkis stated that the Council's usual starting point for a failure to license a Property as a HMO would be £10,000. However, Ms Islam stated that the decision was taken to impose a much lower penalty of £3,000 because it was recognised that Ms Sharon had been very prompt in both applying for a license and in carrying out remedial works to remedy the hazards that were identified.

31. We are sympathetic to Ms Sharon's position. It appears to us that she is a responsible landlord. There is no evidence to suggest that she has been subject to previous enforcement action in respect of housing management requirements or licensing. As stated, we accept that she was unaware of the need to license the Property as an HMO. However, this was a mandatory requirement and the Council are right to consider failure to do so as a serious offence. Ms Islam suggested to us that a

penalty has to be sufficiently high to act as a deterrent and that it was her view that a sum a little higher than one month's rent was an appropriate penalty having regard to the length of time the offence was being committed. We agree. We very much doubt that Ms Sharon will make the same mistake again, but the need for a penalty to act as a deterrent to others is also an important factor when considering the amount of the penalty.

32. Weighing all the circumstances of the case, we consider a financial penalty of £3,000 to be proportionate and confirm the penalty.

Name: Amran Vance **Date:** 7 June 2019

APPENDIX - 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.