



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

Case Reference : **AB/LON/OOAU/HNA/2019/0072**

Property : **Upper Flat 536 Holloway Road
London N7 6JP**

Appellant : **Iqbal Ahmad**

Representative : **In person**

Respondents : **The London Borough of Islington**

Representative : **Ms Vivienne Sedgley of Counsel**

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

Tribunal Members : **Judge Professor Robert M Abbey
Richard Shaw FRICS**

Date of Hearing : **16 October 2019**

Date of Decision : **18 October 2019**

DECISION

Decision

1. The appeal by the appellant against the imposition of a financial penalty by the London Borough of Islington under section 249A and schedule 13A of the Housing Act 2004 is dismissed. The decision by the London Borough of Islington to impose a financial penalty is upheld in the sum of £10,000.

Introduction

2. This is an appeal by Mr Ahmad against the imposition of a financial penalty by the London Borough of Islington under section 249A and schedule 13A of the Housing Act 2004. The Financial Penalty Notice from the local authority is dated 29 May 2019 and is in the sum of £10,000.

The Hearing

3. The appeal was set down for hearing on 16 October 2019 when Islington was represented by Ms Sedgley of Counsel. Mr Ahmad appeared in person.

Background

4. Relevant legislation is set out in the appendix to this decision.
5. The background to the imposition of the penalty was primarily set out in a witness statement of Ms Jacqueline Day dated 13th August 2019, who holds the Certificate of the Environmental Health Officers Registration Board and who is in the employ of Islington Council and who gave oral evidence at the hearing.
6. Mr Iqbal purchased the leasehold interest in the building in May 2016. On 17 November 2016 he applied for an HMO, (House in Multiple Occupation), licence. On 20 April 2018 an HMO licence is issued and the licence is expressed to be subject to conditions. After another inspection of the property by the Council on 24 April 2019 a notice of intention to impose a financial penalty is issued by the Council.
7. The reasons for the proposed penalty were *inter alia* the non-compliance with conditions 2 to 5 of the HMO licence and in particular the failure to install the necessary fire safety equipment. On 29 May 2019 a final notice imposing a financial penalty is issued because the breaches/non-compliance still subsisted. A penalty of £10,000 was stipulated which was calculated by the Council in accordance with their Financial Penalty Charging Policy issued in August 2018. On 16 August 2019 the HMO licence is at the request of Mr Iqbal revoked.

The Appeal

8. On 25 June 2019 Mr Ahmad submitted an appeal to the Tribunal against the Final Penalty Notice. The grounds of appeal were that the property should not have been subjected to an HMO licence and that the fire regulations were set too high for the size of the property. Mr Iqbal also thought it unfair that he be concerned with an HMO when the number of occupants was set by the tenant who invited in parties to be in occupation of the property thereby increasing the numbers to levels involving an HMO. He also said he did have a gas certificate but just submitted it late. For all these reasons the appellant thought the penalty should be £7000.
9. Mr Iqbal confirmed to the Tribunal that he does not dispute the facts of the case but thought that the penalty should not be so high. He said in his evidence to the Tribunal, "I was always aware I was at fault" and as such the Tribunal accepted that there was a clear and admitted breach of the conditions of the HMO licence giving rise to the imposition of the financial penalty. This just left the Tribunal with the requirement to review the level of the penalty.

Decision and Reasons

10. The Tribunal has decided to uphold the Final Penalty Notice.
11. The Tribunal has decided the Financial Penalty in the sum of £10,000 is proportionate and that the appropriate penalty is therefore £10,000.00
12. So far as the level of the financial penalty is concerned the Tribunal decides the following:
 - (a) The Financial Penalty Charging Policy used by the Council is properly based on at least seven factors that might affect the level of the penalty including severity of the offence and any harm caused. There are six bands of offence by severity and the fines stretch up to £30,000. The Tribunal considered that the Policy worked effectively to distribute the weight of the allocated criteria across the range of possible fines up to £30,000. However, the Tribunal has noted that there was considerable discretion exercised in the assessment of the aggravating and mitigating factors which determined the level of the fine.
 - (b) The Tribunal noted that The Council took the view that the severity of the offence was determined to be serious and as such would fall within Band 3 of the Policy as a serious offence. The Tribunal agreed with this assessment of the evidence before it which confirmed that the offence was serious. For example fire safety works had not been carried out nor indeed planned. This meant that each breach could incur a penalty of £10,000 meaning the Council

could have adopted a figure of £50,000 rather than the £10,000 actually charged. The Council said they set the penalty of £10,000 in view of the nature and circumstances of the offence and its ramifications.

- (c) The Tribunal noted that this property had been licensed and that as such the Respondent knew that as an HMO it needed to be licensed and that he had complied with the requirement to licence. The problem was he had not complied with the conditions of the licence and that this put occupants at risk especially as a result of the missing fire safety equipment. Mr Iqbal had plenty of time to carry out the works required. Unfortunately, he chose a different solution. He decided to seek to revoke the HMO licence and to reduce the number of occupants in the property. This did not address the issues that were already in play. The works were necessary and would not go away because of his decision.
- (d) Mr Iqbal bought the property subject to the occupancies in existence at the time of purchase. His argument that he should not be responsible for the occupants brought in by the tenant does not assist him. The Council will simply and rightly note the number of persons in occupation and take that into account when considering an HMO. (So this means that the head count will not be limited to just named tenants). Indeed, Mr Iqbal did not object to or appeal the HMO licence and/or the conditions attached to it. Mr Iqbal cannot escape liability by saying the fault lay with the tenant. Furthermore, the fire regulations were applied appropriately by the Council and Mr Iqbal should have dealt with them speedily and properly. Instead he did nothing for almost a year.
- (e) In deciding on the level of the penalty, the Council Officer involved in the case is required to apply his or her expertise to the circumstances and background of the offence and to allocate a penalty appropriately, after due consideration of the Policy. Mr Iqbal felt his concerns had not been reflected in the level while the Council asserted that the amount actually set took into account moderation of the level of the penalty as the figure was well below that possible under the Policy. The Tribunal prefers the Council's view as the Tribunal could see the basis of the calculation of the fine based upon the Policy.
- (f) Having regard to the fact that the appellant admitted fault, the Tribunal is satisfied that a penalty ought to be assessed under the Policy as a band 3 offence and that the sum of £10,000 is the appropriate and proportionate penalty bearing in mind that:
 - 1. The landlord controls five or less dwellings;

2. The amount of the penalty was appropriate and proportionate given it related to serious fire safety concerns and the absence of necessary equipment.
 3. That all relevant mitigating elements had been taken into account when setting the level of the penalty and that the financial penalty notice Justification form issued by the Council 28 May 2019 clearly set out aggravating factors that were considered including the making of a Prohibition Order on the attic room at the property.
 4. The financial penalty was made up of five different breaches of the five relevant Licence conditions imposed by the Council also set out in the Financial Penalty Notice Justification form issued by them.
13. Therefore the appeal by the appellant against the imposition of a financial penalty by the London Borough of Islington under section 249A and schedule 13A of the Housing Act 2004 is dismissed. The decision by the London Borough of Islington to impose a financial penalty is upheld in the sum of £10,000
14. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 18 October 2019

Annex
Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix
Housing Act 2004

249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section “relevant housing offence” means an offence under—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

Schedule 13A

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 first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

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 reasons 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 in 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 housing 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 the 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

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

