



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

Case Reference : **LON/00BC/HNA/2019/0160, 0161,
0162 & 0163**

Property : **14 Hamilton Road, Ilford IG1 2EU**

Applicant : **Woodlands Property Management
Ltd.**

Representative : **Mr. Gavin Hamilton counsel
instructed by Whitmore Law**

Respondent : **London Borough of Redbridge**

Representative : **Mr. McNally counsel**

Types of Application : **Financial penalty**

Tribunal Members : **Judge Tagliavini
Mr. Mel Cairns MCIEH**

**Date and venue of
hearing** : **4 March 2020
10 Alfred Place, London WC1E 7LR**

Date of Decision : **1 April 2020**

DECISION

The tribunal's summary decision

- I. **The tribunal finds the imposition of financial penalties in the sums of £10,000 (the HMO issue); £2,500 (the manger's details issue); £10,000 (the fire safety issue) and £1,000 (the waste disposal issue) to be payable by the applicant.**
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The application

1. This is an application made under section 249A and schedule 13A of the Housing Act 2004 ("the 2004 Act") seeking to appeal the imposition of four financial penalties in the sums of £10,000, £2,500, £10,000 and £1,000 for offences occurring under that Act and under The Management of Houses in Multiple Occupation (England) Regulations 2006.

Background

2. The subject premises comprise a two storey mid terraced house. The applicant entered into an agreement dated 20 February 2018 with the freehold owner of the property Mr. Nazir Ahmad which granted a lease of the property to the applicant for a fixed term of 6 months with effect from that date at a rent of £1,600 per month.
3. Subsequently, the applicant entered into an assured shorthold tenancy of the subject property with effect from 1 March 2018 for a fixed term of 12 months at a rent of £1,700 per month with Miss Denisa-Ionela Jiroveanu and Mr. Costel Ilie. This agreement stated that Mr. Nazir Ahmed is the landlord and the applicant his agent. A further agreement dated ____ specified that Miss Denisa-Ionela Jiroveanu and Mr. Costel Ilie were each separately liable to pay £850 per month rent.
4. On 19 June 2019 the respondent visited the premises and determined that it was being used as a House in Multiple Occupation (HMO). Subsequently, the respondent issued Notices of Intention to Issue Financial Penalties dated 16 September 2019 followed by Final Notices to Issue a Financial Penalty for the following offences:
 - (i) Section 72: Control of an unlicensed HMO - £10,000 penalty imposed. Date of offence 19 June 2019. Date of Final Notice 30 October 2019 (**the HMO issue**).
 - (ii) Section 234: Failure to display a notice with details of a manager in a prominent place - £2,500 penalty imposed. Date of offence 19 June 2019. Date of Final Notice 30 October 2019 (**the manager's details issue**).
 - (iii) Section 234: Failure to provide the HMO with the required fire detection system; fire doors were not fitted with self-closing

devices, cold smoke seals; bedroom and final exit doors were not operated with thumb turn screws - £10,000 penalty imposed. Date of offence 19 June 2019. Date of Final Notice 30 October 2019 **(the fire safety issue)**.

- (iv) Section 234: Failure to provide waste disposal facilities - £1,000 fine imposed. Date of offence 19 June 2019. Date of Final Notice 30 October 2019 **(the waste disposal issue)**.
5. The oral hearing of the four linked appeals were held as a re-hearing. The tribunal was provided with indexed and paginated bundles from each of the parties. The tribunal also heard oral evidence of Mr. Abdul Azim and Mr. Anand Punj for the respondent and Mr. Chotti, Mr. Mahmood and Mr. Young for the respondents in addition to submissions from each of the parties' legal representatives.

The issues

6. As the applicant conceded that as at the 19 June 2019 the subject property was properly designated by the respondent as an HMO, the issues remaining in dispute were identified as:
- (i) Was the notice declaring the subject property to be an HMO dated 21 June 2019 received by the applicant?
 - (ii) Did the applicant have on the balance of probabilities, a "reasonable excuse" for the subject property being used as an HMO?
 - (iii) Did the applicant have on the balance of probabilities, a "reasonable excuse" for its failure to exhibit the manager's details; its failure to provide safety measures and its failure to provide waste disposal bins?
 - (iv) If the answer to (ii) and (iii) is "no" has the respondent correctly assessed the financial penalty to be payable in respect of each offence?
 - (v) If the answer to (iv) is "yes" the tribunal should undertake that exercise afresh?

The respondent's case

The HMO issue

7. In a written summary and in the Respondent's Reply the respondent set out the background history of this property and provided detailed reasoning for the imposition of financial penalties.
8. The respondent stated, that after a complaint of anti-social behaviour was received on 31 May 2018, an investigation into the subject property

was carried out. Council tax records recorded Mr. Costel Illie and Ms Denisa Lonela Jiroveanu as responsible for the payment of council tax and Land Registry documents recorded the freeholder as Mr. Nazir Ahmed. After a visit to the subject property on 13 August 201 by the respondents' officers who were accompanied by police officers, no further action was taken by the respondent in respect of this property despite it having been found to be in use as an HMO by its Senior Housing Standards Enforcement Officer, Mr. Wayne Jackson.

9. Mr. Jackson made a section 9 witness statement* dated 13 August 2018 in which he detailed the complaints received by the metropolitan police in respect of the use of the subject property by multiple occupiers. Mr. Jackson stated that as result of the police referral, a warrant was obtained and a search of the subject property was carried out on 13 August 2018 in which, the occupiers detailed at paragraph 21 below were found in occupation. Mr. Jackson concluded from his inspection that the premises were clean and tidy but were being used as an HMO. On 4 April 2019 an application for a selective licence suitable for single household occupation was made by the freeholder.

** Section 9 of the Criminal Procedure Rules 2010; Criminal Justice Act 1967 and Magistrates Courts Act 1980*

10. On 19 June 2019 a further inspection of the property was carried out after service of a section 239 notice as required by the 2004 Act. Entry to the premises was permitted by Mr. Iuvenale Harabagiu who stated he had been occupying a ground floor room for the past year with his wife Ms Mocanu Adina-Florina at a rent of £600 per month which was paid to Chad of Woodlands Property Management Ltd. This was confirmed by Ms Mocanu Adina-Florina who was also present at the property.
11. A Mr. George-Florin Balan was also spoken to at the time of the inspection who stated he occupied a first-floor room with his wife Ms Dorina Caldarar for the last two months at a rent of £600 per month, which was paid to Woodlands Property Management Ltd. Ms Caldarar was also present at the property and confirmed her occupancy.
12. Ms Denisa-Ilonela Jiroveanu was also present at the property who confirmed she occupied a room on the first-floor and had paid rent of £300 per month to Woodlands Property Management Ltd for the past year.
13. During the inspection the property was found to contain 4 lettable rooms which were occupied by 5 residents forming three households with shared the use of a kitchen and bathroom.
14. The respondent asserted that the occupants each confirmed that they were not related to one another and that complaints in respect of repairs were made to Woodlands Property Management Ltd.

15. Consequently, the respondent declared the property to be a HMO and served on the applicant a notice on 21 June 2019 requiring the provision of information, to which no response was made. The tribunal was provided with a copy of a lease made between the freeholder and Woodlands Property Management Ltd which commenced on 28 February 2018 at a monthly rent of £1,600. The lease stated, “The Lessor has agreed with the lessee for the grant to the lessee of a lease of the property so that the lessee may use the property for temporary housing accommodation...” and specified at clause 3 “The Lessee shall use the property only for the purpose of providing temporary housing accommodation” and at clause 5.9 “To permit occupation of the property only by a person or persons nominated by any council or housing association and requiring temporary housing accommodation.”
16. On 17 September 2019 the respondent provided the applicant with a copy of an assured shorthold tenancy agreement identifying the landlord as Mr. Nazir Ahmed, Woodlands Property Management Ltd as the agent and the tenants as Miss Denisa-Ionela Jiroveanu and Mr. Costa Illie which commenced on 1 March 2018 for a term of 12 months. A subsequent email from the applicant stated that in addition to the named tenants other (unnamed) members of the tenants’ family were in occupation and therefore the property was not occupied as an HMO. However, as only one of these persons was found to be in occupation at the date of the inspection alongside the other identified individuals, the respondent deemed the subject property to be a HMO of which the applicant had control and was responsible for managing, under section 263 of the 2004 Act.
17. The tribunal was also provided with photographs of the interior and exterior of the premises taken on the inspection on 19 June 2019 and said to depict the lack of a manager’s notice, the fire safety measure and the waste bins.

The manager’s details issue

18. The respondent asserted that despite a thorough search of the subject property on the date of inspection no details of the manager were found to be displayed in a prominent position contrary to regulation 3 of The Management of Houses in Multiple Occupation (England) Regulations 2006 (“the 2006 regulations”).

The fire safety issue

19. On inspection of the subject property the respondent found the fire detection system to be inadequate based on the LACOR’s fire safety guidance, a nationally recognised document developed by local housing authorities and fire rescue authorities. The respondent found a lack of fire protection on the staircase and an absence of safety features on the bedroom doors, an absence of a mains hard-wired inter-linked smoke detectors in each separate room as well as the absence of thumb turn

locks on the doors including the front entrance door in breach of regulation 4 of the 2006 regulations.

The waste disposal issue

20. During the inspection of the subject property the respondent found that there were no bins present for the disposal of communal rubbish and waste in black bags had been deposited in the rear garden. This was said to be in breach of regulation 9 of the 2006 regulations.
21. The respondent stated that having concluded these four offences were being committed by the applicant the appropriate notice under section 255 of the 2004 Act declaring the subject property to be an HMO was served on the applicant dated 21 June 2019 by first class post. As no response was received from the applicant the declaration came into force on 19 June 2019.

The financial penalties

22. The respondent told the tribunal that in fixing the amount of financial penalty in respect of each offence it had regard to the local authority Financial Penalty Matrix* and The respondent and the Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities published by the Ministry of Housing, Communities and Local Government (updated April 2018) which provided guidance in respect of the offences committed under the 2004 Act. The respondent had considered whether any alternative penalty was appropriate in respect of each offence. In concluding that the imposition of financial penalties was appropriate, the respondent considered separately in respect of each offence the appropriate amount that should be imposed having regard to (i) the severity of the offence; (ii) the culpability and track record of the offender; (iii) the harm caused to the tenant; (iv) the punishment of the offender; (v) the deterrence to the offender and (iv) the deprivation of a financial benefit obtained by the offender.

**A new Matrix had been produced by the respondent but this was not relied upon or provided to the tribunal or the applicant.*

23. Mr. Punj gave oral evidence to the tribunal on the methodology behind the calculation of the amount of the financial penalties, although he had not provided a witness statement. He referred the tribunal to the calculations of the penalties in the respondent's bundle of documents, which ascribed a score of 1 in respect of a technical infringement; 5 for a minor offence; 10 for a moderate offence; 15 for a serious offence or 20 for a very serious offence. The amounts of the penalty varied between £250 to £30,000 depending on the score achieved for each offence.
24. In this matter, the four offences had been scored by attributing points under (i) to (vi) above, resulting in 55 points (the HMO issue); 33

points (the manager's details issue); 60 points (the fire safety issue and 27 points (the waste disposal issue) and the financial penalties of £10,000; £2,500; £10,000 and £1,000 respectively

25. Mr. Punj told the tribunal that the respondent had revised its Matrix although was not able to produce a copy of this. Mr. Punj stated that although the applicant had not previously incurred financial penalties in respect of the subject property it had received financial penalties in respect of other properties it managed in its large portfolio. The respondent determined that the financial penalties detailed at paragraph 2(i) to (iv) above were appropriate.
26. In further support of its case, the respondent provided witness statements dated 16/12/19 from Mr. Abdul Azim and Mr. Tarkan Bolukbais both Housing Standards Enforcement Officers for the London Borough of Redbridge, confirming the ownership of the subject property and their findings on the 19 June 2019 inspection. The respondent also provided the tribunal with identification documents of the occupiers and section 9 witness statements by Iuvenale Harabagiu; George-Florin Balan; Denisa-Ilonela Jiroveanu and Dorina Calderar all dated 19 June 2019.
27. Further section 9 statements were provided by the respondent in respect of its visit to the subject property on 13 August 2018. These were made by Mihaela Ermazai dated 13 August 2018 confirming occupation of a front room from July 2018 at a rent of £400 per month paid to "Alex." A statement dated 13 August 2019 from Hans Marius Ermali who occupied a front room and paid rent of £400 per month to his friend "Alex." A statement from Iuvenale Harabagiu dated 13 August 2017 (sic) confirming occupation of a ground floor front room for 4 months at a rent of £400 paid to a friend "Alex." A witness statement dated 13 August 2018 from Raluca-Alina Mares confirmed occupation of first floor room at £400 per month payable to "Alex." A witness statement also dated 13 August 2018 from Alina Nicoleta Trifan confirmed occupation for 4 months of a rear room at £400 per month payable to "Alex." In addition, a witness statement dated 13 August from Georgina Beatrice Sanaploina was obtained who stated she staying a ground floor room while was there on holiday visiting Mr. Harabagiu and paid no rent.

The applicant's case

28. In the grounds of appeal included in the application to the tribunal the applicant stated that a tenancy agreement had been entered into with 2 couples and all members of the same family who formed one household and therefore no offences were committed by the applicant although it was accepted that the subject property was correctly designated an HMO from 19 June 2019. It was also asserted that the notice requiring the provision of information ("section 255 notice) dated 21 June 2019 was not received until 16 September 2019.

29. Section 72(1) and (5) of the 2004 Act states:
- (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.
- (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.
30. In its evidence to the applicant's relied upon its central challenge to the designation of subject property as an HMO with effect from 19 June 2019 and relied on the defence of "reasonable excuse" under section 72(4) of the 2004 Act. The applicant also relied on this defence in respect of the breach of regulation offences as provided by section 234(4) of the 2004 Act.
31. Further, the applicant asserted that the penalty matrix has been misapplied in some respect and the tribunal should undertake that exercise afresh.
32. In support of its case the applicant relied upon the witness statement dated 20/02/2020 of Mr. Vic Chott, the manager of the applicant company. In his statement, Mr. Chott denied that the company had received notification of the respondent's interest in the subject property as he did not receive the Notice dated 21 June 2019 until 16 September 2019 stating *"That they were not received by me and I have reason to believe that they were not received at my office as I see all mail in and out of the premises and I am adamant that they were not received."*
33. In oral evidence to the tribunal Mr. Chott told the tribunal that no deposit had been taken from the named tenants as they had been "transferred" from another property for which a deposit had already been taken.
34. The applicant also relied on a witness statement dated 25 February 2020 of Mr. Sufian ("Chad") Mahmood an employee at the applicant company as well as his oral evidence to the tribunal. Mr. Mahmood stated he had carried out an inspection of the subject property on 21 September 2019 having received a complaint that the property was being used as an HMO. Mr. Sufian stated he met a male and female on the premises and assumed these were the tenants although he had not

been previously been acquainted with them. Mr. Mahmood stated he took photographs and asserted that the property did not resemble a HMO.

35. In his witness statement dated 25 February 2020 and in the oral evidence to the tribunal given by Mr. Muhammed Younnis a Property Inspector for the applicant, it was stated that he had carried out pre-arranged inspections of the subject property for dampness and mould and in respect of the general condition of the property. Mr. Young stated he had created reports for these inspections dated 18/09/18; 10/12/18; 12/03/19; 13/6/19 and 21/09/19 which record “the property is in good condition” and countersigned by the tenant with either the signature “C Ilie” or “?”.
36. The applicant produced a copy of the letting agreement dated 22 February 2018 which purported to let the subject property for a term of 12 months a rent of £1,700 per month with effect from 1 March 2018. The agreement named the applicant as agents and the landlord’s ID was given as No. 2077. A share of rent of £850 per month was allocated to Miss Denisa Lonela Jiroveanu and a similar share of rent to Mr. Costel Ilie. Receipts for the payment of rent for the period 1 March 2018 to 2 October 2019 were provided by the applicant with payments in full being received from C Ilie until January 2019 and thereafter by a person with the initials “FF” or “JJ” with the exception of June 2019 when the rent was paid by “? (indecipherable signature)”
37. It was submitted that the applicant is a respectable company which has been in business since 2005 and has contracts with several local authorities and has considerable experience of managing HMO’s. As the agent, it did not have day to day control of the subject property which had been let on an AST to two individuals on the basis it would be shared by them with three other family members. On regular inspections by the applicant there were no individual numbers found on the internal doors and only locks on the doors with no visible key. Therefore, there was little to alert the applicant to the property’s use as an HMO.
38. The applicant also challenged the basis on which the amount of the financial penalties had been reached and asserted that these should be reduced to £5,000 (HMO issue); £1,000 (notice issue); £10,000 (fire safety issue) and £1,000 (bins issue) as the offences had been inappropriately classified and awarded points that did not accurately reflect the circumstances in which these alleged offences had been committed.
39. It was asserted in respect of a four offences that the applicant has a good ‘track record’, there was no actual harm caused to the tenants, that deterrence would be achieved equally well by the imposition of a lower financial penalty and that there had been little financial benefit to the applicant, as this was confined to the £100 difference in rent

paid by the tenants and the £1,600 paid per month to the freeholder by the applicant.

40. Mr. Hamilton referred the tribunal to the case of *John Polychronakis v Richards and Jerome Limited CO/1840/97* in respect of the issue of which party had the burden of proof and submitted that it was for the respondent to establish on the criminal standard of proof that an offence had been committed.

The tribunal's decision and reasons

41. The tribunal makes the following findings:
- (i) The applicant let 14 Hamilton Road to Miss Denise-Ionela Jiroveanu and Mr. Costel Ilie with effect from 1 March 2018 for the fixed term of 12 months at a rent of £1,700 per month.
 - (ii) The tribunal finds this agreement was made between the applicant as landlord and Miss Denise-Ionela Jiroveanu and Mr. Costel Ilie as tenants although each tenant was only separately liable for 50% of the rent.
 - (iii) The tribunal finds that no deposit was taken from the tenants in respect of this property at the commencement of the tenancy.
 - (iv) The tribunal finds that the applicant made no attempt to comply with the terms of the lease and let this property as temporary accommodation to persons nominated by a local housing authority or housing association.
 - (v) The agreement between the applicant and the freeholder of 14 Hamilton Road made express provision for the sub-letting of the subject property.
 - (vi) At all material times the applicant had control and management of the subject property including at the date of the offences on 19 June 2019.
 - (vii) The applicant is an experienced manager of a large portfolio of properties including a number of HMOs and is aware of the legislation governing HMOs and its requirements.
 - (viii) The applicant received the Notices dated 21 June 2019 shortly after having been posted by the respondent using first class post.
 - (ix) The inspections carried out by the applicant in 2018 and 2019 of the subject property were pre-arranged with the occupiers and did not include a pre-letting inspection for this “new” property.

- (x) The respondent's inspections in 2018 and 2019 revealed a change in occupiers which would have been noticeable to the applicant on its own inspections.
 - (xi) The applicant failed to seek or to establish the identity of the persons it found in occupation of the property on its inspections.
 - (xii) The applicant made assumptions as to the identity of the persons in occupation of the subject premises without any basis for doing so.
 - (xiii) The applicant failed to carry out any meaningful checks to establish that the subject property was not being used as an HMO.
42. In reaching its findings, the tribunal is satisfied so that it is sure that the applicant knew or had chosen to turn a 'blind eye' to the number of occupants in the subject premises throughout 2019.
43. The tribunal prefers the evidence of the respondent to that of the applicant and does not accept Mr. Chotti's evidence that the Notices dated 21 June 2019 were not received by the applicant within two days of having been posted by first class post. The tribunal finds that no, or no plausible reason was given by Mr. Chotti as to why these Notices should not have been received as he reported no other difficulties with the Royal Mail or other postal deliveries to the applicant's office
44. The tribunal found the inspections carried out by Mr. Younis lacked any element of "surprise" as they were notified to the tenants in advance. The tribunal finds that these inspections were solely for the purpose of checking the condition of the property with no attempt made to check the identity of the occupants and finds that these inspections were far from thorough in their execution or detailed in the subsequent report.
45. The tribunal finds that the applicant has not established on the balance of probabilities that it had a reasonable excuse in allowing the subject property to be used as an HMO. The tribunal is satisfied that as on 19 June 2019 the applicant committed the four offences against which it now appeals.
46. In considering the appropriate financial penalties to be imposed, the tribunal was not assisted by the lack of a witness statement for Mr. Amand Punj or the non-production of the new Financial Penalty Matrix. However, the tribunal finds that the respondent has approached the imposition of the financial penalties in a considered and appropriate manner having regard to the objectives of its policy as set out in its Financial Penalty Matrix applicable at the date of the offences; *London Borough of Waltham Forest v Marshal and London Borough of Waltham Forest v Huseyn Ustek* [2020] UKUT 0035(LC) 31 January 2020. Further, the tribunal finds that the applicant has

provided the tribunal with no substantive evidence to show that at the date of the imposition of the financial penalties in misapplied the appropriate. policy.

47. In conclusion, the tribunal dismisses the applicant's four applications against the imposition of a financial penalty.

Signed: Judge Tagliavini

Dated: 1 April 2020

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 might 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, such application must include a request for an extension of time and the reasons 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 these time limits.

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).