FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CX/HNA/2019/0049**
Property	**:**	**41 Hampden Place, Bradford BD5 0JZ**
Applicant	**:**	**Mr Saleem Raza**
Respondent	**:**	**Bradford Metropolitan City Council**
Representative	**:**	**Bradford Litigation Team**
Type of Application	**:**	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	**:**	**Phillip Barber (Tribunal Judge)** **Aisling Ramshaw MRICS**

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty under section 249A of the Housing Act 2004 for number 41 Hampden Place should be £25,000 for contraventions of section 234 of that Act.

Reasons

Introduction

1. This Decision and Reasons relates to 1 appeal against the imposition by the respondent of a financial penalty under section 249A of the Housing Act 2004 ("the Act") in relation to 1 property owned by the Applicant, Mr Raza.

2. The appeal was originally listed for an inspection and hearing at the request of the Respondent. However, in the week prior to the hearing, the Respondent asked for the hearing to be vacated and for the appeal to proceed on the papers. The Applicant had already asked for the appeal to be heard on the papers and did not object to the appeal proceeding on the papers.

3. Accordingly, we were satisfied that each party to the proceedings had consented to a decision without a hearing pursuant to rule 31 of the Tribunal Procedure Rules (First-tier Tribunal)(Property Chamber) Rules 2013 and that it was appropriate to proceed and make a decision on the basis of the papers. We decided that an inspection of the property was unnecessary and that we had all of the necessary evidence within which to make a decision included in the papers. It follows that adjourning for a hearing or to obtain additional evidence was not appropriate.

The issues we had to decide

4. By section 249A of the Act:

> (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 234 (management regulations in respect of HMOs),
> .....

5. By subsection (4) the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

6. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

7. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

8. A "house in multiple occupation" (HMO) is defined in section 254 of the Act as "a converted block of flats to which section 257 applies and section 257 applies to "a building or part of a building which (a) has been converted into, and (b) consists of, self-contained flats" and "building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and less than two-thirds of the self-contained flats are owner occupied". The appropriate building standards are defined in subsection (3) as:

> (a) in the case of a converted block of flats–
> (i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and
> (ii) which would not have been exempt under those Regulations,
> building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992;

9. The appropriate regulations made under section 234 of the Act are the Licencing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007 which provide for the following requirements in relation to a HMO coming within the definition in section 254 of the Act. The relevant requirements for the purposes of this appeal are as follows:

> 4. Duty of manager to provide information to occupier
>
> The manager must ensure that his name, address and any telephone contact number are clearly displayed in a prominent position in the common parts of the HMO so that they may be seen by all occupiers.
>
> 5.— Duty of manager to take safety measures

(1) The manager must ensure that all means of escape from fire in the HMO are—
(a) kept free from obstruction; and
(b) maintained in good order and repair.
(2) The manager must ensure that any firefighting equipment and fire alarms are maintained in good working order.
(3) The manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the common parts of the HMO that enable them to be clearly visible to all the occupiers.
(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—
(a) the design of the HMO;
(b) the structural conditions in the HMO; and
(c) the number of flats or occupiers in the HMO.
(5) In performing the duty imposed by paragraph (4) the manager must in particular—
(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

8.— Duty of manager to maintain common parts, fixtures, fittings and appliances

(1) The manager must ensure that all common parts of the HMO are—
(a) maintained in good and clean decorative repair;
(b) maintained in a safe and working condition; and
(c) kept reasonably clear from obstruction.
(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—
(a) all handrails and banisters are at all times kept in good repair;
(b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;
(c) any stair coverings are safely fixed and kept in good repair;
(d) all windows and other means of ventilation within the common parts are kept in good repair;

(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and

(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

9.— Duty of manager to maintain living accommodation

(1) Subject to paragraph (4), the manager must ensure that each unit of living accommodation within the HMO and any furniture supplied with it are in clean condition at the beginning of a person's occupation of it.

(2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each part of the HMO that is used as living accommodation, that—

(a) the internal structure is maintained in good repair;

(b) any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and

(c) every window and other means of ventilation are kept in good repair.

(3) The duties imposed under paragraph (2) do not require the manager to carry out any repair the need for which arises in consequence of use by the occupier of his living accommodation otherwise than in a tenant-like manner.

(4) The duties imposed under paragraphs (1) and (2) do not apply in relation to furniture, fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(5) For the purpose of this regulation a person shall be regarded as using his living accommodation otherwise than in a tenant-like manner where he fails to treat the property in accordance with the covenants or conditions contained in his lease or licence or otherwise fails to conduct himself as a reasonable tenant or licensee would do.

Findings of Fact

10. Mr Saleem Raza is the freehold owner of the property at 41 Hampden Place, Bradford BD5 0JZ. The property is a 4 storey (including basement) Victorian stone built terrace house split in to two self-contained flats and one bedsit with shared toilet facilities. At the time the Respondent served the relevant notices, the property also had a commercial shop premises on the ground floor but this was used for residential purposes with the occupier sharing the toilet with the occupier of the bedsit. No-one occupies the basement but it houses the utility meters. In the papers the flats are

described as “Flat A” on the first floor; “Flat B” on the second floor; “Let C” the bedsit on the first floor and the commercial premises on the ground floor. There is one communal entrance to the property which also formed the means of fire escape and the commercial premises also had a shop door.

11. The property was converted into the above units prior to the Building Regulations 1991 and accordingly, section 257(3) applies. The property is a HMO within the meaning of section 254 of the Act and accordingly section 234 of the Act applies and it is subject to the requirements and standards laid out in the 2007 Regulations, set out above.

12. Notice of inspection was served by the Respondent on the 22 May 2018 and the property was inspected on the 11 June 2018 and on the 18 June 2018, the Respondent served an Emergency Prohibition Order under section 43 of the 2004 Act, identifying a number of category 1 hazards in relation to the occupation of the commercial premises on the ground floor as living accommodation: risk of fire; problems with personal hygiene, sanitation and drainage; food safety, lighting and falls, as set out in that notice. In relation to the risk of fire, the Notice indicated that the ground floor premises were commercial and not designed for residential purposes and there was no structural horizontal fire separation and poor vertical separation; there was no fire detection mechanism and escape for occupiers was restricted by the window shutters. Additionally, the management of the house as a HMO was found, at the time of inspection to be “extremely negligent”.

13. At the same time, West Yorkshire Fire and rescue Service wrote to the Respondent following their inspection of the property to indicate that they found the property to lack a working fire system; there was no emergency lighting; incorrect locks were fitted to the doors and the doors were not appropriate fire doors. There was no basement separation; the bedrooms were inner rooms off high-risk rooms and there were no working escape windows.

14. On the 11 July 2018, the Respondent wrote to the occupier of the commercial premises (as living accommodation) advising that the Prohibition Notice prevented the commercial premises from being used as living accommodation and that he must vacate immediately and seek emergency accommodation with Housing Options at Bradford Council. It is most unfortunate that the effect of the Respondent having to serve this notice resulted in at least one occupier losing his accommodation through no fault of his own, and through no fault of the Local Authority.

15. On the 03 August 2018, the Respondent served a number of improvement notice under sections 11 and 12 of the 2004 Act setting out how Mr Raza, the Applicant, must remedy the hazards at the property. In relation to the common parts, the category 1 hazard identified a fall on level surfaces – i.e. the vegetation and damaged flagstones which had accumulated around the property. The category 2 hazards included problems with domestic hygiene, in the form of pests and refuse; problems with the lack of

sanitation and drainage; problems with structural collapse and falling elements; fire, electrical and damp issues. The Applicant was given until the 16 October 2018 to remedy the defects and remove the hazards. There were also improvement notices served in relation to each of the flats and the bedsit at the property on the same date which identified excess cold as a category 1 hazard and damp and mould growth; falls between levels, a risk of fire and a risk of structural collapse and falling elements as category 2 hazards. These risks were repeated across each living unit, but in relation to flat B, the fire hazard was a category 1 hazard.

16. On the 18 September 2018, the Applicant was formally cautioned and interviewed pursuant to the Police and Criminal Evidence Act 1984 Code of Conduct by the Respondent authority in relation to his alleged breach of his failure to comply with his duties under the HMO Management Regulations. He was asked about the various lettings at the property and the status of the tenants. He was asked about his knowledge of the law affecting the control and management of HMOs and whether he obtained planning permission at the point the property was converted in to flats. On the whole, it is not easy to understand most of what the Applicant states in this interview as his answers are often muddled and unclear. The general thrust appears to be, however, that he has tried to do as much as is possible to remedy the issues at the property but due to vandalism and a problem with the tenants, he has been unable to comply with the legal requirements.

17. On the 14 November 2018, the Respondent decided to impose a civil penalty on Mr Raza for breach of his obligations in respect to the management of the property as a HMO with the date of the offence identified as the 11 June 2018 – i.e. the date the property was inspected and the HMO management issues identified. Pages 205 through to 215 of the Respondent's bundle includes a print out of the calculation. The level of culpability was assessed as "high" in that "the risk of fire is extremely high due to dangerous layouts, lack of fire precautions, high fire loading and non-serviced and inadequate fire alarm system" noting that Mr Raza is an experienced landlord who owns two other properties. The level of harm was assessed as "high" as a result of "gross breaches of the regs. Lack of services fire alarm…lack of heating"; that the use of commercial premises for occupation by a tenant with mental health difficulties resulted in harm to vulnerable tenants and that as a result of the imminent risk of fire, an Emergency Prohibition Order had to be served on the landlord. Aggravating factors included the fact that four parts of the HMO Management Regulations had been breached and one tenant had been paying rent in cash to the landlord who attended the property on a monthly basis to collect it. In mitigation it was recorded that Mr Raza had cooperated with the investigation and had answered calls and attended for interview.

18. The assessment on page 215 of the bundle notes that the cost of complying would be £10,270.91 and the rent paid by tenants during the period amounted to £6858.00 and a civil penalty of £25,000 was set.

19. On the 26 November 2018, the Respondent served a Notice of Intention inviting Mr Raza to make representations on the level of fine, which he did by letter dated the 17 December 2018. The letter is at pages 229 through to 232 of the bundle and we took careful note of what was stated in that letter in arriving at our decision on the appeal. The letter on the whole seems to attempt to blame one of the tenants for the problems with complying with the HMO management standards and that that tenant himself was responsible for some of the problems identified in the improvement notice. However, little in that letter addresses the point in issue – i.e. the breach of the HMO management standards.

20. The Respondent final notice is dated 11 March 2019 and sets the level of the fine at £25,000. It is against this notice that Mr Raza appeals. His grounds of appeal are set out on pages 349 through to 357 of the bundle. They are that most of the residents vacated the property once the problems had been identified, and only one tenant remained. He complains that an employee of the Local Authority (and the main investigative officer in the case) had acted "maliciously" in giving this resident a copy of the notice (a claim which has no reasonable or factual basis – as far as we could see, that particular officer was carrying out an important function). He continues to seem to blame one particular tenant for the problems at the property and he generally appears to try to blame the manner in which Bradford Council have dealt with the problems at the property and that the Council itself should provide alternative accommodation for his tenant.

Our Assessment of the Appeal

21. This is a re-hearing of the decision to impose a financial penalty for breach of Mr Raza's obligations under section 234 of the Housing Act 2004.

22. As required by section 249A of the Act and for the reasons given above, we are satisfied, beyond reasonable doubt, that Mr Raza's conduct amounts to a relevant housing offence under section 234 of the Act. Mr Raza was letting out a property which was a HMO as defined in section 254 of the Act and which breached a number of the requirements set out in the Licencing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007 as set out in paragraph 9 above. These are his failure to provide information to occupiers; his failure to take appropriate safety measures both at the start of the lettings and throughout the occupation of his tenants. He has failed to keep the property free from obstruction; he did not maintain the property in good order and repair; there was no fire-fighting equipment and no fire alarms. Mr Raza failed to take appropriate measures to protect the occupiers from injury and he failed to maintain the common parts, fixtures and fittings within the property. On top of this he failed to maintain the living accommodation of his tenants as found by the Respondent when the property was inspected.

23. We find as fact that the notices were properly served and that they contained the proper statutory information. There were no procedural irregularities.

24. Accordingly, and given our findings of fact; that there is a breach and that Mr Raza is culpable the only remaining issue is the level of the penalty.

The Amount of the Penalty

25. There is no guidance in the legislation (other than setting maximum amounts) as to the amount of any penalty. As already mentioned, the Tribunal has power to vary the final notice, and this includes a power to increase the penalty.

26. Pages 327 through to 309 of the Respondent's bundle reproduce the Respondent's policy on housing enforcement, and pages 311 through to 330 reproduce the Ministry of Housing, Communities & Local Government "Guidance to Local Authorities on Civil Penalties under the Housing and Planning Act 2016", both of which we have taken into account in arriving at our determination as to the appropriate amount of the penalty for the Applicants' failure to comply with section 234 of the Act. In particular, however, the Guidance gives a number of factors which the Local Authority (and the Tribunal) might have regard to in determining an appropriate financial penalty under which we make the following findings.

Severity of the Offence

27. We view the Applicants' failure to comply with the terms HMO management standards as a very serious offence. We note that throughout the tenancies, the tenants were at serious risk of injury from fire and that in a number of respects the property and dwelling units within it were serious detrimental to health. We note that the Applicant is a professional landlord with a number of properties and it seems to us that he ought to have known about his responsibilities under the HMO regulations and complied with them without question.

Culpability and track record of the offender

28. We note that this property has been let for some time and it must follow that a breach of the regulations has been ongoing for some considerable time. We also note that Mr Raza has had enforcement action taken against him for his failure to ensure that the property, and the dwelling units within it, are free from hazard to health and that category 1 hazards existed at the property. Mr Raza has other properties and as a professional landlord ought to have known about his responsibilities. We take into account that throughout Mr Raza has cooperated with the investigations and actions of the Respondent but we think his inappropriately antagonistic approach to the way one officer of the Respondent has gone about her job to be inappropriate and his attempts to blame others for his inaction only increases the level of culpability.

Punishment of the Offender

29. Given our findings in relation to the severity of the offences and the culpability of the offender we are satisfied that the Applicants should be

appropriately punished and we are satisfied that the level of fine which we have set is an appropriate level of punishment.

Deter the Offender from Repeating the Offence

30. We note that Mr Raza has other properties and that he continues to let the subject property to one tenant (that we are aware of). The level of the fine we have set will appropriately deter him from committing any future offence in relation to his responsibilities as a professional landlord.

Deter others from Committing Similar Offences

31. We note that the property is situated in an area with a high level of private rented accommodation and it is necessary to ensure that any other landlord who may be breaching his or her responsibilities as a professional landlord are deterred from doing so. We consider that the level of fine we have considered appropriate for the breach in relation to this property will help deter other landlords from failing to comply with their responsibilities.

Remove any Financial Benefit the Offender may have Obtained as a result of Committing the Offence

32. We note that the cost of carrying out works is not excessive and that Mr Raza has continued to receive rent throughout the subsistence of the breach. It strikes us that the level of the fine appropriate removes any financial benefit he has received in letting this property out and failing to comply with the HMO management regulations.

General Considerations

33. We also place weight on the Respondent's enforcement policy in relation to the Private Sector in its geographical remit. The Respondent has followed that policy and utilising its expertise and judgment it has appropriate set a level of fine which it justifies by reference to the calculation on pages 205 to 215 of the bundle.

Conclusion

34. Taking all of the above aboard and in accordance with our findings of fact we have decided that an appropriate level of fine for the breach is £25,000.

Judge P Barber
13 March 2020