FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**P/LON/00BC/HNA/2019/0177 0178 0179 and 0180 [PAPERREMOTE]**
Property	:	**22 Mayfair Avenue Ilford Essex IG1 3DL (The Property)**
Appellant	:	**Shaista Habib**
Representative	:	**In person**
Respondents	:	**The London Borough of Redbridge**
Representative	:	**Norma Pink; Consumer Protection and Licensing Section, The London Borough of Redbridge**
Type of Application	:	**Appeals under s.249A and schedule 13A of the Housing Act 2004**
Tribunal Members		**Judge Professor Robert Abbey**
Date of Determination on the Papers	:	**17 July 2020**
Date of Decision	:	**20 July 2020**

DECISION

Decision

1. The appeals by the appellant against the imposition of four financial penalties by the London Borough of Redbridge under section 249A and schedule 13A of the Housing Act 2004 are dismissed. The decision by the London Borough of Redbridge to impose four financial penalties is upheld in the sums of £5000 (s.72 failure to licence a House in multiple Occupation (HMO)), £500 (s.234 failure to comply with management regulations in respect of an HMO), £5000 (s.234 duty of a manger of an HMO to take safety measures) and £750 (s234 duty of a manager to provide waste disposal facilities). In support the respondent also referred to the Management of houses in Multiple Occupation (England) Regulation 2006 and these regulations are referred to below in further detail.

Introduction

2. This is an appeal by Shaista Habib against the imposition of four financial penalties made by the London Borough of Redbridge under section 249A and schedule 13A of the Housing Act 2004. The Financial Penalty Notices from the local authority are dated 5 November 2019 and are in the four amounts set out in the previous paragraph of this determination.

3. The property is a two storey house consisting of seven bedrooms one bathroom one kitchen and cellar, although the appellant asserts that there are four bedrooms. The property has been extended to the rear and this extension was in the final stages of construction when the property was inspected by officers for the respondent on 15 and 22 May 2019.

The Hearing

4. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (PaperRemote). A face to face hearing was not held because it was not practicable given the Covid-19 pandemic (and the need for social distancing) and no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in an electronic bundle supplied by both parties.

Background

5. Relevant legislation is set out in the appendix to this decision.

6. The background to the imposition of the penalties was primarily set out in two witness statements of Ms Norma Pink dated 11 February 2020 and of Anand Punj also dated 11 February 2020. Ms Pink is a Housing Standards Enforcement Officer with the respondent and is qualified as

a practitioner to undertake Housing Health and Safety Rating System assessments. Mr Anand Punj is a Senior Housing Standards Enforcement Office with the respondent and has the same qualification as Ms Pink.

7. The respondent on 22 May 2019 identified the breaches that gave rise to the four notices. The four breaches are more particularly mentioned in the first paragraph of this determination.

8. The reasons for the proposed penalties were *inter alia* the fact that the property fell within the definition of an HMO but was not licensed, standard information details relating to the HMO were not displayed at the property, necessary and appropriate safety measures had not been put in place by the appellant and there were no proper or necessary waste disposal facilities required for an HMO.

The Appeal

9. On 13 December 2019 the appellant submitted four appeals for the notices affecting the property to the Tribunal against the Final Penalty Notices. The grounds of appeal were set out in the appellant's letter dated 1 June 2020 also submitted to the Tribunal. In essence the appellant asserts that the property is a four bedroom family house that was let out "via management to Clark and Lloyds Consultants Limited" by way of an assured shorthold tenancy agreement dated 1 September 2018 at a monthly rent of £2200 (£26,400 p.a.).

10. The appellant further asserted that this company were also "the managing agents "for the property. The appellant says that the property was rented as a single dwelling. The appellant also says that as the property was not an HMO the refuse bins provided were for a single dwelling. The appellant believes that the appellant is a victim of a rogue agent that did not manage the property properly. (The appellant also produced a second such letting agreement this time to Gatis Construction Limited and which purported to commence on 1 May 2019. The comments in this decision about the effect of the previous agreement also apply to this subsequent document).

11. The appellant considers the level of the penalty to be disproportionate given the appellant believes the property to be well maintained and in good condition and is in fact a house for a single occupancy with four bedrooms. The appellant's view is that the property was and is "in a good state of repair".

Decision and Reasons

12. The Tribunal has decided to uphold the Final Penalty Notices.

13. Dealing first with the assured shorthold tenancy agreement completed in 2018. The Tribunal took the view that this was a sham or bogus

agreement. It is an odd document in that the parties appear to be the same on both sides of the legal relationship apparently made by the "agreement" in that Clarke and Lloyds Property Consultants are expressed to be the "landlord(s)/Managing agent" as well as the "Tenant(s)". Clearly this causes problems in itself as to the legal validity of the purported agreement.

14. Furthermore the terms of the "agreement" include a restriction on alienation by stating that the tenant (presumably the managing agents as named on the document) were not to assign or sublet or part with possession of the property or let any other person live at the property and to use it as a single private dwelling. Clearly it would seem impossible for this to apply to managing agents who were presumably employed by the appellant to let the property and yet they entered into an agreement that stated that only they could occupy the property as a single private dwelling. The Tribunal therefore took the view that this agreement was issued to try to give the impression that the property was a single family home whilst in fact it was to be let out to multiple occupants. This is what was found to be the case when the respondent carried out its inspections mentioned above.

15. The land registry records show that the property is registered in the name of the appellant. Therefore in the light of the determination of the Tribunal that the letting agreement was a sham the appellant is deemed to be the person managing the property as she is the person who being and owner or the premises receives (whether directly or through an agent or trustee) rents and other payments from persons who are in occupation as tenants or licensees of various parts of the property.

16. Looking at each offence, the first is managing an HMO without a licence. The respondents provided detailed evidence of the number of occupants and the nature of the multiple occupancies. This was set out in the details of the offences within the respondent's Summary of Case filed and served by the respondent. In the light of that evidence the Tribunal was satisfied that the property was occupied by at least seven individuals forming six households sharing a single kitchen and bathroom facility.

17. Therefore the Tribunal considers the property to be an HMO and that the property consequently met the standard test under s.254 of the housing Act 2004 for a property to be considered an HMO. It therefore needed a licence but none had been issued by the respondent in relation to the appellant's property. (The Tribunal noted that mandatory HMO Licensing is Borough wide in the London Borough of Redbridge).

18. The second offence related to management regulations in that the respondent searched the whole house but was unable to find the details

of the managers name address and contact number. This was required to be displayed in a prominent position in the HMO and its absence is a breach of regulation 3 of the Management of Houses in Multiple Occupation (England) Regulations 2006 No. 372. (The Regulations impose duties on a person managing an HMO in respect of providing information to occupiers *(regulation 3)*; taking safety measures, including fire safety measures *(regulation 4)*; and providing waste disposal facilities *(regulation 9)*.)

19. In view of regulation 9 mentioned in the preceding paragraph, the Tribunal was also able to determine that there had been a breach with regard to the provision of refuse bins. The respondent confirmed the existence of just one bin for the use by seven individuals and that this was plainly insufficient for an HMO. (The appellant said as this was a single family home the bin provided was appropriate). The Tribunal preferred the evidence from the respondent and as such confirms the existence of the offence and the level of the penalty.

20. Finally the last breach related to the requirement of the manager to take account of all necessary safety measures. This includes fire safety measures as described in the 2006 Regulations mentioned above. The respondent provided evidence that set out several serious deficiencies in regard to safety measures. For example, there were no smoke detectors in any of the rooms accessed on the ground floor. Neither of the bedrooms accessed on the first floor had smoke detectors although there was a battery operated detector in the hall on the first floor. The doors were not appropriate fire doors to the necessary standard and the bedroom doors were not self-closing. Locks were fitted that were inappropriate for fire safety purposes and there were other issues and concerns including the provision of just one small red fire extinguisher attached to the wall of the property. For all these reasons the Tribunal was satisfied that there were several significant breaches of Regulation 4 concerning safety measures.

21. In the light of the above findings the Tribunal has decided the Financial Penalties set out above are proportionate and that the appropriate penalties are therefore as set by the respondent and listed in the first paragraph of this decision.

22. So far as the level of the four financial penalties are concerned and how they were quantified the Tribunal decides the following:

    (a) The Financial Penalty Matrix or charging policy used by the Council is properly based on at several factors that might affect the level of the penalties including severity of the offence and any harm caused. There are several bands of offence by severity and the fines stretch up to £30,000. The Tribunal considered that the Matrix or policy worked effectively to distribute the weight of the allocated criteria across the range of possible fines up to £30,000. The Tribunal has

noted that there was scope for some discretion to be exercised in the assessment of the aggravating and mitigating factors which determined the level of the fines.

(b) The Tribunal also noted that The Council took the view that the severity of the offence was determined to be serious with regard to the unlicensed HMO under s.72 especially as there were no adequate fire precautions in place. The Tribunal agreed with this assessment that the evidence before it confirmed that the offence was serious. The local authority said they set the penalty of £5,000 in view of the nature and circumstances of the offence and its ramifications.

(c) The Tribunal noted that this property came with in a licensing area and as such the penalty charge is proportionate given the failure to apply for an HMO licence for the property. Punishment of the offender came into consideration along with a deterrence factor.

(d) 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 Matrix or policy. 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 accepts the Councils view as the Tribunal could see the basis of the calculation of the fine based upon the Council Policy which itself was based upon the relevant legislation.

(e) The same approach was adopted by the respondent is assessing the other three offences. This being so it was clear to the Tribunal that the application of the Matrix or charging policy was being applied consistently and appropriately and proportionately by the local authority when dealing with all four breaches. Looking at the other larger penalty, namely regarding the breach relating to safety measures the Tribunal noted the careful approach of the respondent when compiling the Matrix. Indeed the notice clearly highlighted the deficiencies such as the absence of smoke alarms and that there was no self-closer to the kitchen door which would allow fire to spread through the property and that there was no interlinked heat detector in the kitchen which would alert residents of a potential fire in the kitchen. The Matrix included consideration of the severity of the offence, the culpability and track record of the offender, the harm caused to the occupants, the need for punishment of the offender and the consideration of the need for a deterrence effect. The respondent also took into account any”financial benefits” accruing from the breaches.

(f) The approach outlined above was adopted in each of the four notices and was considered by the Tribunal as being a fair and proportionate methodology for the application of the law to the circumstances of the four breaches. Therefore the Tribunal was able to confirm all four as being proportionate and appropriate in the light of the terms of the Financial Penalty Matrix.

23. Therefore the appeals by the appellant against the imposition of four financial penalties by the London Borough of Redbridge under section 249A and schedule 13A of the Housing Act 2004 are dismissed. The decision by the London Borough of Redbridge to impose four financial penalties is upheld in the amounts fixed by them.

24. Rights of appeal are set out in the annex to this decision.

Name:	Judge Professor Robert Abbey	**Date:**	20 July 2020

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.

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 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).

(4)A building or a part of a building meets the converted building test if—

(a)it is a converted building;

(b)it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c)the living accommodation is occupied by persons who do not form a single household (see section 258);

(d)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);

(e)their occupation of the living accommodation constitutes the only use of that accommodation; and

(f)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5)But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6)The appropriate national authority may by regulations—

(a)make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b)provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c)make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7)Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8)In this section—

“basic amenities” means—

(a)a toilet,

(b)personal washing facilities, or

(c)cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

(a)which forms part of a building;

(b)either the whole or a material part of which lies above or below some other part of the building; and

(c)in which all three basic amenities are available for the exclusive use of its occupants.

Schedule 13A

Notice of intent

1Before 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.

3The 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

5After 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.

6If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7The 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.

8The 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