FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AQ/HNA/2019/0192**
HMCTS code (paper, video, audio)	**:**	**V : Video**
Property	**:**	**91, Merlin Crescent, Edgware, Middx HA8 6HY**
Applicant	**:**	**Lincoln Samuel Hamilton**
Representative	**:**	**Mr M Mukulu – Counsel instructed by Ricardian Bridges Solicitors**
Respondent	**:**	**London Borough of Harrow**
Representative	**:**	**Miss T O'Leary – Counsel**
Type of Application	**:**	**Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr T W Sennett MA FCIEH**
Date of Hearing And determination	**:**	**10th July 2020 and** **28th July 2020**
Date of Decision	**:**	**1st September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was Common Video Platform. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in bundles of some 300+ pages, the contents of which we have noted. The order made is described at the end of these reasons

DECISION

The Tribunal dismisses the appeal of Mr Hamilton the Applicant against the imposition of a civil penalty notice by the London Borough of Harrow (the Council) in the sum of £5,000 which said penalty is payable within 28 days of the date of this decision.

BACKGROUND

1. At the start of the hearing we were provided with two bundles of documents by Mr Hamilton and by the Council. Mr Hamilton's bundle ran to some 140 plus pages including statements and exhibits and the Council's bundle ran to 164 pages, including exhibits. Within the Council's bundle was a submission in response to the appeal and witness statements from Andrew Sedman and Mohammed Sheik.

2. The Applicant's bundle contained a statement of reasons and additional grounds, a witness statement of Mr Hamilton with a number of exhibits, a witness statement of Miss Yvonne Nelson and a witness statement from Ricardina Pederneira, Mr Hamilton's solicitor. This also had a number of exhibits attached.

3. We will not be going into any great detail in respect of the contents of the written witness statements as those are common to both parties. We have fully noted that which is said in those statements and submissions. The facts which are not in dispute are that on 13th November 2019 the Council by notice which had been the subject of a Notice of Intent in June 2019, imposed a civil penalty on Mr Hamilton pursuant to section 249A of the Housing Act 2004 (the Act). The civil penalty notice (CPN) was in the sum of £5,000 on the basis that Mr Hamilton was using a property, of which he is the freehold owner, 91 Merlin Crescent Edgware (the Property) that was a house in multiple occupancy, for which there was no relevant licence.

4. In an application to the Tribunal dated 10th December 2019, Mr Hamilton sought to appeal against the decision both to impose a penalty and in the alternative the amount of same. His appeal was on the grounds that he did not commit the offence as the Property was rented out by Haarts Estate Agents to a company, My Construction and Carpentry Limited (the Company), without his approval. He says that as soon as he became aware of the type of the tenant he took steps to cancel the agreement and seek vacation of the Property. The grounds in the application said that he sought to cancel the agreement but he could not do so through the estate agents and instead he served a notice on the tenant asking the Company to vacate, which they agreed to do and which he said actually took place before the CPN was issued. He said the rent was only paid by the Company not by multiple tenants and that all occupants were part of the single agreement. He expanded upon these matters in his statement and witness statement which we shall refer to as appropriate in due course.

5. In the Council's response to the appeal, which is in the bundle before us, it was said that the appeal was limited to the imposition of the CPN but appeared not to be an appeal against the level of the fine imposed. In fact, this did become an issue during the course of the hearing before us and we will address that in due course.

6. In their response the Council asks us to refuse the appeal on the basis that the Property was being operated as an HMO and his explanation of his unlawful action did not amount to a reasonable excuse as provided for under section 72 of the Act. The statement of case from the Council helpfully set out a chronology which we have noted and taken into account in reaching our decision. That chronology does not appear to be challenged by Mr Hamilton.

7. It is said on behalf of the Council that at the time the Property was inspected on or around 17th June 2019 it was a single dwelling containing five bedrooms and was not divided into self-contained flats. The Property was occupied by a number of individuals apparently eight of so who were co-workers and did not form a single household. It appeared from the Council's investigations that the individuals occupying the Property did so as their only or main residence and that this was the only use for the Property. Rent was paid in consideration of this occupancy and that the individuals occupying the Property shared the same basic amenities.

8. As to whether or not Mr Hamilton had a reasonable excuse it is said by the Council that he has offered no documentary evidence to support his contention that the agents (Haart) had acted in good faith. Further, that Haarts were Mr Hamilton's agents and required to follow his instructions. It is said that Haart presented a copy of a tenancy agreement signed by the Company to Mr Hamilton in advance of it being approved by him and that on the face of it the agreement was clearly unsuitable for ensuring that the Property was let lawfully as the licence he had at the time (a selective licence) related to lettings to a family or 3 people. There was it was said no clause limiting the number of people who could occupy the Property. It is said there is no evidence that Mr Hamilton instructed Haarts that they should not let the Property as a form of HMO and he produced no written instructions that he had given to Haarts on that basis. It is accepted that Mr Hamilton took prompt action to remedy the

letting of the Property but it is said that there was no evidence that the Council had been informed of the situation. We will return to that point. It is said in any event whether he did notify the Council or not it did not make the behaviour less unlawful.

9. It is said on behalf of the Council that a 28-day period required for Mr Hamilton to arrange for the Property to be vacated, or comply, was part of planning enforcement action and nothing to do with the action under the Act. Further the validity of a selective licence that Mr Hamilton had for the Property was again not relevant to this action. In response to this Mr Hamilton prepared a witness statement and also a statement of reasons for the appeal and additional grounds.

10. This latter document confirmed that he did not consider he had committed the offence and that he should not be penalised for the 'unreasonable and unethical' behaviour of Haart Estate Agents. Further, he said he did not rent the Property as an HMO but as a holder of a selective licence granted in 2017. He had received no notification that that selective licence had been revoked and he assumed it was therefore still valid. His statement went on to say that when asked by the Council to vacate the Property within 28 days he did so and had already served notice to quit before the Council became aware of the issue. It is said that the Property was rented unfurnished and he did not put beds into it but when he found out there were more than three people occupying he wrote to the Council to let them know there was a problem and that he was taking steps to rectify the situation. He confirmed that the tenancy agreement was signed by his agents and he thought it was a single tenancy for the sole use of the Company, with three people occupying and the rent he received was a single payment from the Company. He repeated that he did not convert the Property and did not put the beds into the Property nor affix an HMO licence in the common parts which was an allegation made by the Council.

HEARING

11. At the hearing of this matter we heard from Mr Sedman and Mr Sheik for the Council, Mr Hamilton and Miss Pederneira in respect his case. Miss Nelson had provided a witness statement and although present during the course of the video hearing, did not herself give evidence.

12. Miss O'Leary represented the Council and Mr Mukulu represented Mr Hamilton. Miss O'Leary said that the Council's position was set out in the submissions before us. She confirmed that it appeared not to be in dispute that Mr Hamilton had received rent from the tenants at the rate of £2,000 per month less commission. It also appears to be the case that it is accepted there were a number of people (8 or 9) in occupancy at the time of the inspection on 17th June 2019. In addition, there appears to be no challenge to the Notices including their service. It is also accepted that there is no pending HMO licence application nor an application for a temporary exemption notice. In addition, it does not appear to be in dispute that at the time of the inspection in June the Property was not licensed.

13. There does exist a selective licence which is dated 30th January 2017 running to 29th January 2022. However, this has its limits and it is accepted that it was not a suitable licence for the use of the Property at the time of the inspection by the Council.

14. An application for an HMO licence had been made and a draft licence was in the bundle commencing on 19th May 2017 licencing the Property for five occupants. However, this licence was revoked before the present difficulties.

15. Miss O'Leary put to us that the issues we need to decide was whether or not the Property was a licensable HMO in June 2019. The question was whether or not it met the standard test and the nature of the occupants, whether or not it was their principle or main residence, whether they shared amenities and whether rent was being paid. It was put to us that as long as rent was being paid it did not matter by whom. If we were satisfied that it was a Property that required a licence then we should find in the Council's favour and then needed to decide what the penalty might be.

16. Mr Mukulu in a brief response said that he took no issue with the opening by Miss O'Leary but Mr Hamilton had no intention of renting the Property as an HMO and therefore did not permit same. He did not, however, dispute that there were some eight people present at the time that the inspection took place.

17. For the Council we heard from Mr Sheik and from Mr Sedman. Mr Sheik is employed by the Council as a planning enforcement officer having had that role since March of 2014. He attended an early morning raid on the Property on 17th June 2019 with Mr Sedman and others. He records in his witness statement that there were five bedrooms containing some eight beds and apparently a mattress so that there could be nine people living in the Property. From his point of view this required planning permission for change of use and it is his letter requiring Mr Hamilton to either obtain planning or to cease usage of an HMO that the 28-day period arises. The witness statement had a number of photographs annexed showing the various bedrooms and the beds and mattress situated therein. There appears to be one kitchen, which is shared and the bathroom and toilet facilities are also shared. The letter from the Council requiring the position to be regularised as far as planning matters are concerned was dated 3rd July 2019.

18. In cross examination by Mr Mukulu he was asked whether visiting the Property he was aware beforehand as to the occupants' nationality. He confirmed he was visiting just on a planning issue and was satisfied that there were more than eight people occupying.

19. He confirmed he had revisited the Property on 23rd October 2019 and had satisfied himself that the unauthorised use had ceased. He confirmed also that at the time of this latter inspection that matters had changed and there were double beds, dining tables and other arrangements indicating a single-family usage.

20. His evidence was followed by that of Mr Sedman who had also provided a lengthy witness statement. He confirmed he was employed as an

environmental health residential licensing enforcement officer and had been employed with the Council since 2014.

21. He said that in February of 2017 he had inspected the Property as part of a selective licence application. That inspection was in the company of Mr Hamilton and his builder and he discovered that the Property was an unlicensed HMO at that time occupied by nine unrelated people. It appears that an application for an HMO was made by Mr Hamilton in May of 2017 but was not progressed as quickly as it might have been and in January of 2018, in response to a defect schedule he had sent, he received an email from Mr Hamilton's solicitor requesting that the licence be revoked and that the Property be licensed under the selective licensing scheme instead. We understood that this application for the HMO licence to be revoked was a result of Mr Hamilton's Building Society confirming they would not accept the Property as an HMO. In February of 2018 prior to the revocation of the HMO licence Mr Hamilton's solicitors were asked to provide details of the occupants but no response was received. On 20th March 2018 the HMO licence, which had reached a stage of notice of intention, was revoked.

22. There is some history with regard to the Property. It appears that in June of 2018 there were complaints of overcrowding, which resulted in Mr Sedman attending on an unannounced basis but was denied access by a woman claiming only one family lived there. Mr Sedman wrote to Mr Hamilton in July of 2018 asking for details but had no response. Later in July 2018 there was a further complaint of overcrowding but as a result of lack of resources the Council were unable to attend the Property at the time. Another complaint was received in August of 2018 but again could not be investigated.

23. In December of 2018 a reminder letter was sent to Mr Hamilton asking for the details sought in the July 2018 letter but that was not replied to.

24. It appears in January of 2019 further complaints of overcrowding were received and this prompted Mr Sedman to contact the agents he thought handled the Property at the time, Hunter & Hunter. He was told, however, that they did not and was advised, having phoned Mr Hamilton, that Haart Estate Agents had taken over the management. He mentioned to Mr Hamilton that there was overcrowding but there was no comment made and he also reminded Mr Hamilton that he had written to him on a couple of occasions in 2018 to which there had been no response.

25. He contacted Haart Estate Agents in January 2019 who confirmed that the Property had been rented out to a company but they did not know how it was occupied.

26. Mr Sedman revisited the Property in April of 2019 but his access was blocked by a young man who did not appear to speak English. Accordingly, on 17th June 2019 in the early morning the Property was raided and Mr Sedman found what he considered to be an unlicensed HMO with approximately nine unrelated people living at the Property. There were apparently seven male occupiers at the time of the raid all of whom he said were unrelated, were in the building trade and could not speak English. His witness statement goes on to deal with

the service of the notice of intention to impose the civil penalty, the notice of such civil penalty and confirms that Mr Hamilton was listed as the manager of the Property. The Council he said had never received any form of communication from managing agents. The statement exhibited a copy of the PACE notebook as well as the civil penalty.

27. In cross examination by Mr Mukulu, Mr Sedman confirmed that he was aware that the Property had apparently been used as a car wash with a number of people living in the past. At the time of his inspection in June he confirmed that there were a number of people living there who he took to be eastern European. There was a language barrier but he did not know if the parties were related. A draft HMO licence was pinned to the wall but he accepted that might have been put there by somebody else. It was, however, in his view evidence of poor management. He confirmed that he did not re-inspect the Property after the visit in June of 2019 but that those in occupancy at that time had left towards the end of July 2019. Asked whether he thought Mr Hamilton had responded with alacrity his reply was that he did not think Mr Hamilton was going out of his way to resolve the issue. He confirmed that in 2017 when he did inspect he was satisfied it was being used as an HMO at that time, although that visit was for the purposes of granting a selective licence. Asked what concerns he had he said that there was mismanagement in that there was no licence, he had no confidence in Mr Hamilton managing the Property and that he had only found out about the managing agents when he had attended the Property in 2019. Considering the issues that have arisen in 2017 he was of the view that he had tried to help Mr Hamilton as much as he could and had 'cut him as much slack' as was possible. He accepted that the past breaches had been rectified and that he had not relied on those when determining the penalty. He nonetheless considered that Mr Hamilton's inactions put a strain on the service and could have been dealt with earlier. He held Mr Hamilton responsible as he was the freeholder.

28. In re-examination he confirmed that in his experience he considered that some of the occupants may have been Romanian or indeed Hungarian. He was satisfied that they did not appear to be related.

29. Asked by the Tribunal whether being aware that there were non-English speakers in the Property it would have been appropriate to have taken an interpreter but his position was that as he not been able to get to the Property before the raid in June he had no idea what nationality they may have been. The photographs that had been taken were not in dispute and these confirmed that there were no separate food stores nor locks on the doors. His view was that the occupants were builders, all males and aged around 30s. The selective licence he confirmed was for a single-family occupancy.

30. At the conclusion of the Council's case we heard from Hamilton and he spoke to his witness statement. This statement was dated 28th February 2020. He confirmed that he was the freeholder of the Property and he told us that immediately upon receipt of the letter from the Council informing him that he was in breach of the Act he caused his solicitors to write to the Council although he says he received no response until 19th July 2019.

31. He confirmed the circumstances surrounding the granting of the selective licence and the fact that although he had made an application for an HMO licence that had to be revoked because his building society were not prepared to allow him to operate the Property as an HMO.

32. He said that on 15th January 2019 he signed a contract with Haart Estate Agents which contract was included within the bundle before us. He said that on 18th January he received a letter from Haart Estate Agents dated 16th informing they had found a suitable tenant, namely the Company. He said they negotiated the agreement without his involvement or approval. The tenancy was signed by a Haart Estate Agent member of staff. This is dated 21st January 2019. He said he called Haart to ask how many occupants were in the Property and was told there were only three and that they were co-workers. He then said that, as he always did, he attended the Property to meet the tenants and to his surprise realised that there were eight beds at the Property. As soon as he realised there were several co-workers he contacted the estate agents and told them that he was deceived and asked them for an explanation. The estate agents apparently refused to cancel the tenancy agreement arguing the Property was being used as a single tenancy for the sole use of the company. He said he was so upset he decided to terminate his contract with them. He then said he tried to explain that having several co-workers in occupation would be seen as using the Property as an HMO which he was not allowed to do. However, he was unable to cancel the tenancy agreement. To minimise the problem and to exercise a break clause in the agreement, he arranged for a notice to quit to be served by his solicitors effective at the end of the six-month period. He then referred to a letter dated 3rd July from Harrow Council asking him to make an HMO application or vacate the Property within 28 days. Having no intention of applying for an HMO, he arranged for the Property to be vacated. This was the letter from the planning department, not from Mr Sedman.

33. He says in his statement that he never intended to use the Property as an HMO and confirmed that the tenancy agreement was signed by Lynna Proctor from the estate agents. He said that during the tenancy agreement he only received one payment of rent per month from the Company and believed this was sufficient evidence to show that he did not or never intended to rent the Property as an HMO. He said the Property was rented unfurnished and he did not put any beds into it. There was only a washing machine, table and two chairs as he said is shown on an inventory which was attached. That inventory, however, was incomplete as it included no pages relating to the bedrooms or living room. He sought to maintain in his witness statement that although an HMO licence had been granted he had sought revocation and that in his view he continued the business of renting out his Property under the selective licence referred to above. He thought that that was sufficient as he had no intention of applying for an HMO.

34. He said he did not pay the CPN because he was disputing the Property was being used as an unlicensed HMO and that he was only paid one rental payment per month. His argument was that it was rented without his approval and he was unaware of the number of occupants and took all steps to remedy the situation.

35. At paragraph 21 of his witness he repeats that following the revocation of the HMO licence in 2018 he did not use the Property as an unlicensed HMO and never intended to do so. He maintained he had a valid selective licence and had instructed agents to rent the Property as a single-family dwelling house.

36. In answer to questions from Miss O'Leary, he confirmed that he had owned the Property since 2003 and had first rented it out in 2008. He accepted on the licence application he had put his own name down as the manager but confirmed that this was the only property that he rented. The current rental arrangement is to a family who pay the same amount as the Company did. Asked about the letting in 2017, he maintained he did not know that there were nine people living in the Property and he thought it had been let to a family. That letting came to an end and it was a couple of months before Haart became involved. He did appear to accept that he was aware there was a risk the Property could be used as an HMO given the number of bedrooms and that it had so been used in the past. There then followed questions concerning the supply of information to the Council and the requests made. He accepted he had not responded but appeared to indicate that he did not consider he had received the letters. He did, however, appear to accept that he had not responded to the letters from Mr Sedman although he thought he may have had a conversation with him or alternatively left a message on the voicemail. He also thought that the agents or his solicitors may have sent forms to the Council about the occupancy. However, much of 2018 and early 2019 was blighted by his father's illness and subsequent death. This caused him stress as he had to visit his father in Wolverhampton. He accepted he did not get in touch with Mr Sedman because the stress caused by this illness. He did, however, say that when he had attempted to contact Mr Sedman it had always gone to answer phone. He accepted, however, save for letters from his solicitors he had not himself written to the Council.

37. He accepted that he had visited the Property before his solicitors wrote to the Council probably within a week of the tenancy agreement. He did, it seems, inform Mr Sedman that he had inspected. Asked whether or not he had read the terms of the letting contract with Haarts, he said he could not remember. He could not recall what boxes that he had ticked but it was pointed out to him that he had not ticked the box relating to 'full management' but only 'rent collection'. He accepted, however, that Haarts would not be the property manager and that it would be his job to deal with any problems that arose during the terms of the letting. Asked about the cancellation of the letting contract with Haarts, he confirmed he had not read the small print and the same applied to the tenancy agreement itself. He said that he had received the letter from Haarts dated 16th January 2019 setting out the basis upon which the letting to the Company was to take place but there is no evidence of any response made by him to that letter. The tenancy agreement he accepted was signed on 25th January 2019 and that he had received the letter from Haarts on or about 18th January 2019.

38. He was then asked about the inventory and the missing pages but he could throw no light on that. It was put to him that Haarts had given him a full inventory and that he had edited it. He denied that was the case and said the Property was unfurnished. Asked whether he went to the Property after his

initial visit in January, he said he had not until June. However, he did go on to say that he had attempted to go back the week after he had spotted the beds going in but was not able to get access. He confirmed that he had not gone to Mr Sedman to discuss the problems with the possibility of applying for an HMO licence or Temporary Exemption Notice to at least give him some protection. He said he panicked. He did accept that when he went to the Property in June of 2019 that there were eight people there.

39. In re-examination he confirmed he had no solicitors when he signed the letting contract with Haarts nor was he advised to get legal advice. As to the inventory, he said the local authority had not asked for the missing pages. He also referred to the letter his solicitors had written on 7th February 2019 which was not addressed to Mr Sedman but to the Council generally and to which he was not aware there had been any response.

40. Annexed to his witness statement was a copy of a letter sent by email to Mr Sedman responding to the letter the Council sent on 24th June 2019 concerning the CPN. This refers to a letter sent on 7th February 2019 to which there had been no response. The letter went on to say that this was a situation brought about by the estate agents negligently renting out the Property without seeking their client's approval.

41. The confirmation of marketing agreement between Mr Hamilton and Mr Haart was also included within the papers before us. This confirmed that Haarts were instructed to deal with the tenancy set up, the rent collection and any extension set up. They were not instructed to carry out the full management. Also included was a copy of the letter of 16th January 2019, albeit not on headed notepaper, from Haarts telling Mr Hamilton that they had successfully negotiated the letting of the Property and giving the details in tabular form as My Construction and Carpentry Limited being the tenant, the tenancy type is referred to as company for a period of 12 months at £2,000 per month and is unfurnished. The letter goes on to say that they will begin their referencing procedure and should those references be satisfactory that he would be informed by email or letter and asked to confirm the instructions to proceed. The letter goes on to say on receipt of the instructions they would sign the tenancy agreement on his behalf. A copy of the tenancy agreement was attached to the letter. Mr Hamilton admits receiving this letter. The bundle also included a copy of a letter from Ricardina Bridges Solicitors of 7th February serving notice to quit on the Company requiring them to vacate by 23rd July 2019. It gives no other details other than serving the notice indicating possession is required and that the landlord will visit the Property thereafter.

42. In another appendix we were provided with a copy of an inventory by SRP Inventories. This was dated 21st January 2019. The pages are not in order and there is no page relating to any of the bedrooms or living room in the Property.

43. We then heard from Miss Ricardina Pederneira who had provided us with a witness statement dated 28th February 2019. In that statement she confirmed that she was a practising solicitor and had been since 2007 and was the owner and founder of Ricardina Bridges Solicitors. She said that she had been instructed by Mr Hamilton on 28th January 2019 initially to liaise with Haart

Estate Agents to try and convince them to cancel the tenancy agreement with the Company. She told them he also wanted to cancel his contract with them. Miss Lynna Proctor, on behalf of Haarts, said that it was not possible to cancel the contract and that if they did he would have to pay a fixed charge. She also said she could not cancel the tenancy agreement because it had been signed by both parties. Accordingly, Miss Pederneira arranged for a notice to quit to be served requiring the tenants to vacate the Property by 23rd July 2019. She confirmed also that she had written to the Council on 7th February 2019 explaining the difficulties he was in.

44. It then appears that on or around 4th June 2019 Mr Hamilton attended her offices to say that he had had a call from Harrow Council regarding the tenants and asked that she write to Mr Sedman and send him a copy of the notice to quit, which she did.

45. Annexed to her witness statement was the letter of 7th February 2019 which was sent to Harrow Council Community Safety Residential Licensing Team. Mr Sedman's name was not mentioned. It explains what Mr Hamilton's position was. It appears that Miss Pederneira's firm had acted for Mr Hamilton in 2018 but the involvement in February of 2019 was based on instructions at that time and the documents then available but not it seems the old file. It appears that she was not aware that there had been chasing letters from the Council in 2018.

46. She was asked by Miss O'Leary whether she was aware what a Temporary Exemption Notice (TEN) was. She said she was but had not thought it appropriate to deal with that at the time. She also accepted that her letter of 7th February to the Council did not mention an HMO nor the number of people who might be living in the Property. Her view was the letter in February had invited the Council to come back to Mr Hamilton. However, there was no evidence that the Council had responded, nor had there been any attempt by Mr Hamilton or Pederneira to chase the Council for a response.

47. The final piece of evidence that was available to us was a witness statement from Mr Hamilton's partner Yvonne Nelson. She said they had lived together for over 15 years and had a relationship akin to marriage. Her witness statement merely gives supportive evidence to the issues raised by Mr Hamilton. It is to a large extent hearsay. She did not give oral evidence to support her witness statement.

48. That concluded evidence of the Applicant. As it was late in the day we asked Counsel to lodge submissions giving a timetable for that which they have complied with. We are very grateful to both Miss O'Leary and Mr Mukulu for the submissions they have made, which are in written format. It does not seem necessary for us to go into those in any detail as we will address the issues raised in the findings section of this decision.

FINDINGS

49. Mr Mukulu in his closing submission said that there were a number of matters that we would have to determine.

a. Were the members of the household members of the same family on the date of inspection.
b. Can we be satisfied that at least three of the occupants occupied the Property as their only or main residence.
c. Was rent received by the Appellant.
d. Did the Defendant have a reasonable excuse should the Tribunal find there was a breach.
e. Was the appropriate fine imposed and was a warning considered by the Council.

50. In Miss O'Leary's submission she set out the grounds upon which she considered Mr Hamilton was advancing his reasons for non-payment of the CPN but also confirmed that he was not it seemed appealing against the service of the notice or the notice of intention nor that there was any statutory defence under the Act, for example that there was a pending HMO licence or a TEN. It was accepted that the onus rests with the Council to satisfy us beyond reasonable doubt that an offence had been committed. Miss O'Leary then went on to list the following questions that we had to answer. There were as follows:

a. Was the Property a licensable HMO on 17th June 2019.
b. If yes, was the Property licensed although she answered this question by indicating that it appears to be common ground that the answer is 'no'.
c. Did the Applicant have control of or was managing the Property and if so did he have a reasonable excuse under the provisions of section 72(5)(a). If he does, then the offence has not been committed.
d. If the answer to the above was that he did not have a reasonable excuse, then the offence has been committed and we should then decide whether or not to impose a penalty and what that appropriate level should be.

51. There does not seem to be any argument that at the time of the inspection in June of 2019 there were at least eight people living in the Property. Mr Mukulu on behalf of Mr Hamilton advances the question as to whether or not it was a family in occupation and whether it was their only or main residence. It is interesting to note that in the statement of reasons for the appeal and additional grounds Mr Hamilton does not raise the question that either the occupiers may be related or that it was questionable whether it was their only or main residence.

52. Miss O'Leary responds to this in her reply to Mr Mukulu's closing submissions. We heard from Mr Sedman that there had been issues with regard to this Property since 2017. These related to an inspection that took place in February of 2017 as part of the selective licence application and a subsequent HMO licence application made in May of 2017. During 2018 there were complaints made of overcrowding and attempts by Mr Sedman to gain access. We were told that on 23rd February 2019 Mr Sedman visited the Property but was unable to gain access, this being blocked by a young man who could not speak English. This then resulted in the raid on 17th June 2019.

53. It may be in an ideal world that further attempts would have been made to try and discover the identity of the occupants. However, Mr Hamilton had been asked on a number of occasions to provide that information and seems to have

made no attempt himself notwithstanding his discovery of the number of beds that were going into the Property in January of 2019, to determine who actually was living there and on what basis. Instead he has hidden behind what he says was the shortcomings of his agents.

54. From our point of view, we consider the letter that was written in January 2019 by Haarts setting out the details of the letting and attaching the tenancy agreement in draft form should have been enough to have caused Mr Hamilton to have investigated the position immediately and to not have entered into or at least not instructed his agents to enter into the tenancy agreement on his behalf. It is interesting to note that there is no correspondence with the agents nor has there been it seems any attempt to obtain a statement from the agents to explain their involvement. We cannot envisage a firm of agents acting in this manner unless it is on the instructions of their client.

55. We agree with Miss O'Leary's view that it is "beyond belief" that up to nine employees of a construction company from, it would seem different countries (although that seems of no moment) were all members of the same family and furthermore that at least six of them or maybe five were principally resident elsewhere. On this point we have had regard to the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006/373, regulation 5. These are matters which Mr Hamilton could have investigated very early on when he became aware that the Property was being let, he says, contrary to his instructions.

56. It is our finding that Mr Hamilton did not act with sufficient alacrity to prevent this problem arising. The letter to him by his agents was received on 18th January and he had ample time therefore to have visited their offices, to have checked the position and to have refused to enter into the tenancy agreement with the company. None of that happened. Instead he received the rent from January to July without demur. The only step he took, save for the letter to the Council in February, was to serve a notice to quit, which became effective six months after that notice. He took no steps to protect himself by applying for a further HMO licence which would have given him protection under the Act or indeed a TEN. It is not clear to us that his solicitor was aware that this was a step that could have been taken.

57. Accordingly, it is our finding, beyond reasonable doubt, that this Property was being occupied by at least eight possibly nine people who worked for the Company. We accept the evidence of Mr Sedman that this was the case as he visited the Property and saw the various items of building equipment and clothing. Mr Hamilton had due notice of this in January 2019 and had time to prevent the letting going ahead but did nothing. It is only after the tenancy agreement was in place that he took any steps to try to ameliorate the position but that we find was only half hearted. He has instead attempted to put the blame onto Haarts but has given them no opportunity to provide any evidence to support his position that this is in fact what happened. They were not contracted to manage the Property. In those circumstances, therefore, we find that the Property does meet the standard test. It consists of one or more units of living accommodation, which is not self-contained. The persons who occupy do not form a single household as we have indicated above, that the living

accommodation is their only or main residence or they are treated as occupying it as so, that the living accommodation constitutes the only use, that rent is being paid for the occupation and two or more of the households occupying the accommodation share one or more basic amenities.

58. Miss O'Leary did raise whether or not the Property was subject to the national mandatory scheme under the 2018 statutory instruments. We consider it is. There are more than five people living in there and we are satisfied beyond reasonable doubt that they live in two or more separate households. We do not think that the Property falls within the additional licensing designation because the Property does not conform with the licence that was granted. It clearly is not a letting to a family and is occupied by three or more people. We are also satisfied that it was Mr Hamilton who had control of or was managing the Property. The agreement he had with Haarts merely provided for them to set the tenancy up and receive the rent.

59. We then must consider whether Mr Hamilton had a reasonable excuse for the circumstances arising. This is to be found at section 72(5). We do not consider he did have a reasonable excuse. We are satisfied that he was aware from the letter from the agents that this Property was going to be rented by the Company. Given the history in 2018 concerning multiple occupancy situations which may or may not have been beyond his control, he should have been aware that this letting arrangement could cause problems and had ample opportunity to stop it going ahead. He did not do so and in those circumstances, we find that there can be no reasonable excuse. Furthermore, there is no defence of making an application for an HMO licence nor that he has applied for a TEN. Both of these he could have done. He was instructing solicitors at the time and it may well be that they should have advised him that these steps could have been taken.

60. The next matter we need to consider is whether or not the penalty is appropriate or whether indeed it should be imposed. We are aware of the circumstances leading to this legislation. It is designed together with other legislation under the Housing and Planning Act 2016 to penalise landlords who do not comply with the Housing Act and other housing legislation. We are aware of the authority Marshall v Waltham Forest LBC[2020]UKUT35. We accept we must refer to the guidance in that Act and the starting point is the local housing authority's enforcement policy. We are not satisfied that Mr Hamilton has persuaded us that we should not proceed with that policy. We have noted all that has been said by Mr Mukulu on behalf of Mr Hamilton. We do not think a warning would have been an appropriate way of dealing with this matter. The Act is there for a reason. It is to stop landlords breaching housing legislation. This is a case where in our findings Mr Hamilton, although not by any means the worst example of a landlord, nonetheless in our findings was aware of what was happening, received the rent for the Property and did nothing from the early part of February 2019 through to June of 2019 to resolve the matter.

61. We do accept that he may have found himself in a difficult position when he inspected the Property in January after the letting had been entered into. However, it is his inaction prior to the dating of the tenancy agreement that is the real cause of concern. He admits that he did not read the letting agreement with his agents nor did he pay any attention whatsoever to the terms of the

tenancy agreement. The letter written before the tenancy agreement was entered into quite clearly should have raised concerns that this was going to be a letting to a company which did not meet the requirements of the selective licence and he had no other licence available to him. At that point he should have stepped in and stopped the tenancy taking place. He did not do so. We appreciate that thereafter he may have had difficulties in resolving the issue. However, that is of his making. We do not accept that he can put the blame onto the agent. He has made no attempt to contact them or to involve them in these proceedings and we only have his word for what he says happened. That word does not seem to us to be consistent with the practicalities of the case as we have outlined above. In those circumstances, therefore, we find that he is liable to pay the penalty of £5,000 which is not an unreasonable sum, indeed the lowest penalty that the local authority can impose in these circumstances. This is the more so as he was given ample time between the time that he discovered the use of the Property and the Council attending in June to have taken proper instructions and protected himself with some form of application for an HMO licence or alternatively a TEN. That he did not is with respect to him his problem.

62. Accordingly, we dismiss Mr Hamilton's appeal and find that the penalty of £5,000 is reasonable and should be paid within 28 days.

Andrew Dutton

Judge: _____
A A Dutton

Date: 1st September 2020

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.