



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

- Case Reference** : CHI/00HG/HNA/2020/0009 & 0010
- Property** : 2 Glen Park Avenue, Plymouth PL4 6BA
and
71 North Road East, Plymouth PL4 6AW
- Applicant** : Lisa Elisseos and James Woodley
- Representative** : Toby Huggins instructed by Wolferstans
Solicitors
- Respondent** : Plymouth City Council
- Representative** : Helen Morris, solicitor Plymouth City
Council
- Type of Application** : Appeal against Civil Financial Penalty
- Tribunal Member(s)** : Judge D. R. Whitney
Mrs J Coupe FRICS
Mr D. Johnson
- Date of hearing** : 21st September 2020
- Date of Determination** : 21st October 2020

DETERMINATION

Background

1. The Applicants are husband and wife and the owners of 2 Glen Park Avenue Plymouth and 71 North Road East, Plymouth. The Applicants seek to appeal civil financial penalties issued to each of them in respect of the two Property's. The applications were dated 23rd June 2020 and directions were issued on 17th July 2020.
2. The Respondent is the council who issued the 4 notices all dated 1st June 2020. Each Applicant received a financial penalty in respect of each of the two Property's as a result of a failure to have a mandatory licence in respect of a House in Multiple Occupation.
3. The Applicants in their applications admitted that they had failed to renew the HMO Licence in respect of each Property as alleged by the Council. The Applicants suggested it was unreasonable for a penalty to be levied and challenged the quantum of such penalty.
4. In respect of 71 North Road East a penalty totalling £10,120 had been issued and for 2 Glenn Park Avenue £6,237. Each penalty was divided equally between the two Applicants.
5. The directions had been complied with by the parties and the tribunal was provided with an electronic bundle. References in [] are to pages within that bundle.
6. The hearing took place remotely via CVP video. The Applicants attended and were represented by Mr Huggins of counsel. Also in attendance was the Applicants witness Miss Bellwood. Ms Morris appeared for the Respondent council together with Mr Colrein Senior Community Connections Officer (Housing Improvement) Plymouth City Council.
7. Both parties representatives had provided to the Tribunal in advance a skeleton argument which the Tribunal had read and had regard to throughout the hearing.
8. At the hearing the First Applicant was referred to throughout as Mrs Woodley.

Hearing

9. This is a record of the most salient points of the hearing. It is not a verbatim record but a precis.
10. After some initial difficulties connecting, the Applicants, Ms Bellwood and all parties were able to connect and take full part in the video hearing.

11. Mr Huggins in opening confirmed that it was the Applicants position that they now accepted that some penalty should properly be levied against them, but the penalty contended by the local authority was too high. Mr Huggins accepted the Council's civil penalty policy [C252-C266] but he suggested the Tribunal was not bound to follow the same. It was his case that the Council had too rigidly applied their policy resulting in a fine higher than was merited by the offence. He submitted that undue weight was given to the rental level of the Property's in calculating the level of the penalty. He submitted the offence committed by the Applicants was of low culpability and that the Council had not given enough weight to the families' circumstances and the effect such a penalty would have upon their finances.
12. Mr Huggins called Mrs Woodley. She confirmed that she had signed both of the Applications made. [A8-A13] in respect of 2 Glen Park Avenue and [A33-A38] in respect of 71 North Road East. She confirmed that her statement and objections in respect of each Property were effectively the same.
13. The Tribunal allowed Mr Huggins to ask a number of supplementary questions.
14. Mrs Woodley explained that she placed all of the properties her and husband owned with agents to enable them to focus on their families' needs. She stated she paid fees to two agencies and felt they were looking after everything to do with the properties.
15. Mrs Woodley stated she did not ignore matters, she was not aware of issues and had focused on her family at this difficult personal time.
16. She explained her mother had her right eye removed and was left with only 40% vision in her other eye. She herself was diagnosed with PTSD and so placed the properties with agents. She explained Mr Woodley's mother was in a coma for two months before Mr Woodley's stroke.
17. She felt strongly that her family had been affected by so many issues that she had to challenge the civil financial penalties which had been imposed. She explained they had suffered significant financial hardship as a result of the pandemic and Ms Bellwood would be able to give evidence of this.
18. She explained many units of their accommodation had not been providing income. Further she had to place her son in a private school at a cost of £36,000 per annum. Her and her husband had taken out, over their various companies, Coronavirus loans of about £200,000 and had borrowed £80,000 from Mr Woodley's mother.

All to enable their business to carry on trading and to maintain their staff.

19. Ms Morris cross examined Mrs Woodley on behalf of the Council.
20. Mrs Woodley stated that Purple Letting Limited were appointed to handle the whole portfolio and were paid a fee for managing the same. She could not be specific as to when this took place.
21. Mrs Woodley did accept that 2 Glen Park Road at the relevant period was managed by Clever Students. She recalled on her contract with Clever Students there was a box in respect of the licence but she could not recall whether she had ticked requesting Clever Students to arrange the licences. She believed they would sort everything relating to the lettings but obviously in discussion with her as the landlord.
22. Mrs Woodley now accepted that the failure to renew the licences for both properties was an oversight.
23. Mrs Woodley was referred to the note of a conversation she had with Steve Price from the Council [C136]. Mrs Woodley stated she did not recall the call, she had conversations with a different Council Officer but could not recall this call.
24. On questioning by the Tribunal Mrs Woodley stated she did not have copies of the contracts with the agents. She explained she had initially started investing in residential property about 16 years ago using an agent. About 12 years ago she and her husband started managing the properties themselves.
25. Mrs Woodley explained she understood she and her husband had borrowings of about £3,500,000. She did not know how much the properties were worth.
26. She confirmed that during the period when the properties were not licenced an application for planning permission had been made to undertake works to her home address. She stated that an architect made the application on behalf of her and her husband.
27. The time line of events was that her husband's mother was in a coma during October, November and December 2017. In February 2018 Mr Woodley had his stroke. The issues in respect of her son referred to in the bundle were in the 2017/2018 school year.
28. She confirmed that all of the workers used by the family business' were self employed but many had worked for the business for a very long period of time.
29. At this point there was an adjournment of just over 15 minutes to provide all parties with a break.

30. On recommencement of the hearing Mr Huggins called Mr Woodley. He also confirmed that he had signed the statements (see [A8] and [A38]).
31. He confirmed he had a stroke in February 2018.
32. Prior to this he had a fantastic memory and was able to deal with all issues. But this and the issues particularly with his son made matters harder.
33. He explained he discovered he had the stroke after a visit to the opticians he made as he was having problems with the vision in his left eye. The optician sent him to his GP who then arranged a day of tests including an MRI scan.
34. Mr Woodley explained he did not really notice the significance of the stroke until later when small things alerted him. He gave the example of forgetting to MOT his works vans, something he said he would never normally do.
35. He accepted that everything fell on Lisa as this time. He explained typically Lisa would deal with admin issues and he dealt with the day to day construction. Lisa dealt with the bank and he just signed when required. He explained at the time of the stroke he was employing about 20 people but now due to the pandemic that was down to 3 people.
36. He stated that he feels fine now but his wife and GP said he was not the same. He explained his memory had been affected and he was anxious and depressed. His GP had given him anti-depressants but he stopped taking these on holiday last Summer.
37. He stated that he had no idea of the open market value of all his properties. They are re-valued annually but currently the student market is very weak.
38. Mr Woodley was referred to [C119] being Land Registry entries for 2 Glen Park Avenue. These show the property belongs to Mr and Mrs Woodley and is free of any legal charges. Mr Woodley stated that he believed there was a charge on the property.
39. Mr Woodley believed they had loans on all their properties with various banks. Mr Woodley stated he was not aware of exactly how many properties they owned.
40. His role was to convert to a good standard as a long-term investment and then they would be let. He did accept he had previously spoken to a council officer called Mark Chubb about HMO licencing issues and he had got on well with him.

41. He explained his wife told him when they got the letter about the penalties and he felt these were harsh. His view was that he and his wife had an unblemished record.
42. Mr Huggins then called Ms Bellwood. She confirmed that her statement was true [B88-89].
43. She stated that at that time of the statement there were 33 rooms not let but that figure had now risen to 36 rooms. She explained agents look after the collection and fine detail. These rooms are not booked for this current academic year and so are likely to remain unlet.
44. She explained she dealt with the day to day figures but did not do the annual accounts which an accountant handled. She stated she was aware that this was a worrying time for landlords and that there was a campaign by student tenants of “can’t stay won’t pay”. She said as a result some students were point blank refusing to pay.
45. Ms Bellwood was not sure if the Applicants had any insurance to cover the loss of rent.
46. On questioning by the Tribunal she stated she was aware that they had sought bounce-back loans. She was not aware of any mortgage holidays. The average rent was about £100 per week. She believed the properties could only be used as student lets.
47. She stated she did not know what the gross figures were for the lettings pre Covid.
48. It was agreed we would adjourn for lunch and over the luncheon adjournment Ms Bellwood was asked if she could find those figures. The Tribunal then adjourned for an hour.
49. After lunch Ms Bellwood confirmed to the Tribunal that the portfolio consisted of 67 rooms of which currently 39 were unlet. On top of this were the flats owned by the Applicant, 7 flats were filled and it was proposed that one of the HMOs would be let generally in the private sector.
50. Ms Bellwood said for the year ending 30th June 2019 the HMO’s had produced income of £101 465 and £118,663 for the flats. The arrears referred to in her letter of 15th June 2020 [91] of £53,000 were effectively a terms’ rent so over three terms the expected income from these flats would have totalled about £150,000.
51. Miss Morris then presented the case for the Respondent council. She had produced a skeleton argument upon which she sought to rely and which the Tribunal confirmed it had read and took account of prior to the hearing.

52. She acknowledged the concession made by the Applicants that they now accepted some penalty was appropriate.
53. She called Mr Colrein. He confirmed his statement was true [C92-C115].
54. Mr Colrein confirmed that he was not aware who had applied for the original licences. However, the test is who has control and on the basis of the information that he was able to obtain from Mrs Woodley and the agents it was the Applicants themselves who were responsible.
55. Mr Colrein explained that he believed the Applicants had been negligent in not renewing the licences particularly given reminders had been sent but took account of the fact that this was a first offence but the delay in renewing was a long period of time making this severe.
56. He explained consideration was given to the size of the Applicants portfolio and their experience and whether accredited. He confirmed that he did not believe the Applicants were on the rogue landlords database and he was not aware of any accreditations which they might hold.
57. Given the offences covered two properties Mr Colrein stated that it could be said the Applicants had been reckless. He stated that he took account of the mitigation and determined that the correct position was that they were negligent. He stated that in his opinion there was a potential for harm and so using the Councils policy an indicative penalty for each property was £5,000. Under the Councils policy one then had to look at the financial benefit.
58. The council policy required him to look at the rents over the last 12 months on the basis that rent would be paid for 50 weeks of the year. He said they would only look back 12 months even if the offences had been committed for a longer period of time. The Respondent then calculated the figure based on the number of rooms above the threshold for requiring a licence.
59. Mr Colrein stated that this policy was adopted as the Council did not know what the profit on the rent was. He stated that this was a reasonable method of calculation only taking account of those rooms above the HMO threshold.
60. Mr Colrein was cross examined by Mr Huggins.
61. He accepted there was no evidence that the Applicants owned property outside of Plymouth.
62. He explained he had looked at the freely available Companies House records.

63. Mr Colrein explained that [C252] was the Councils enforcement policy. This had been devised having regard to central Government Guidance but not by Mr Colrein.
64. He explained that he took account of the fact it took a significant period of time before the licences were applied for and that the Applicants were long term landlords with a significant portfolio.
65. Mr Colrein stated that he does have a discretion but have to follow the policy and have to consider the financial benefit as per that policy. He stated that the Applicants were given additional time to make representations.
66. Mr Colrein did explain that in respect of a couple of properties owned by the Applicants, although late in applying for renewal no action had been taken over.
67. Mr Colrein stated that although two properties since dealt with both at the same time effectively treated as one. This he felt was fair. He accepted the Applicants were good landlords and hence prosecution would not be fair in these circumstances.
68. Miss Morris invited the Tribunal to reject the application and confirm the penalties imposed. She stated that the Council's policy was fair and took account of information available to them.
69. There was at this point a brief adjournment of about 10 minutes to provide all parties with a break.
70. Mr Huggins confirmed he was seeking a penalty totalling £6,000.
71. He referred to his skeleton argument which the Tribunal had received and read in advance of the hearing.
72. He stated that there was nothing in the Government Guidance which said that financial benefit should be given more weight than the other factors.
73. He invited the Tribunal, given the mitigation offered, to reduce the culpability to low.
74. Mr Huggins suggested that the Tribunal should take account of the effects of the current pandemic which were devastating upon the Applicants business. He suggested even now no one knows the long-term implications.
75. Mr Huggins confirmed his clients accepted the penalty should be divided equally between them.

76. Both parties confirmed at the conclusion they had opportunity to present all evidence they wished to give.

Decision

77. In reaching its decision the Tribunal had regard to all evidence given at the hearing, the hearing bundle and the two skeleton arguments.
78. The Tribunal accepts the submission made by Mr Huggins that it should, in accordance with the case of Clark v. Manchester City Council [2015] UKUT 35 (LC), essentially make up its own mind. As Mr Huggins in his skeleton states we should start from the Council's own policy and afford respect to the same.
79. The Applicants have throughout admitted that the relevant offences had been committed:
- 2 Glen Park Avenue, no HMO licence for period 13 October 2019 and 30th March 2020;
 - 71 North Road East, no HMO licence for period 11th December 2018 and 20th February 2020;
80. Further it was conceded by Mr Huggins that the imposition of a penalty was correct.
81. We are satisfied given the admission made by the Applicants that an offence for which a civil financial penalty may be imposed had been committed by both of the Applicants who were the joint legal owners of the two properties (see Land Registry entries [C119-C120] and [C123-C124]). The offence had been committed for the periods as set out in paragraph 78 above.
82. Whilst a concession was made by the Applicants, the Tribunal did consider whether or not the imposition of a civil financial penalty was appropriate.
83. We had a large amount of evidence concerning the events which faced the Applicants from the Autumn of 2017 through to the Summer of 2018. The Tribunal expresses its sincere sympathy to the Applicants for what they faced in this period.
84. However, we note that by Summer 2018 matters appeared to be returning to an even keel. Whilst their son continued to have issues at school, ultimately leading to the Applicants sending him to a private school progress seems to have been made.
85. On the medical evidence produced whilst Mr Woodley suffered a minor stroke in February 2018 this thankfully did not involve any in-patient hospital admissions and Mr Woodley appears to have

substantially recovered including from the depression that affected him after the same.

86. Mrs Woodley stated that during this period she looked to instruct agents to take over management. It was apparent from her evidence that whilst this was the case the agents would routinely check and obtain instructions from her including for repairs and the like. Mrs Woodley did not produce any of the contracts and having regard to the documents within the bundle including for example [C147] it is clear that the responsibility for seeking licences was not transferred to the agents appointed and we are satisfied that the Applicants knew or ought to have known they remained responsible. The concessions made by them in presenting their case confirm this.
87. We are satisfied that by the later part of 2018 and during 2019 the Applicants were in a position that they could have attended to the licensing of the properties.
88. This Tribunal is satisfied that the imposition of a civil financial penalty is the correct approach. The failure to licence was over an extended period for both properties. Whilst Mrs Woodley tried to suggest she was not aware of attempts to make contact we are satisfied that the Council made repeated attempts to contact the Applicants and alert them to the need to renew the HMO licences. For these reasons, and as conceded by the Applicants, the imposition of a financial penalty is just and equitable in all the circumstances.
89. We have then considered the Councils enforcement policy [C252]. Whilst Mr Huggins challenges the weight given to the financial benefit, he did not seem to challenge the matrix used for determining the indicative fine save that he suggested that the score for culpability should be low and that the number of points given the properties were licenceable HMO's were too high.
90. Culpability is considered in the policy [C255]. Low culpability is said to be:

“The offence committed has some fault of the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access...”
91. Negligent culpability is:

“The failure of the landlord or property agent to take reasonable care to put in place proper systems for avoiding the offence...”
92. Whilst we have taken account of the clear evidence of the Applicants of the difficulties their family faced this must be

balanced against the fact that they are long term investment landlords who have managed their own portfolio for many years. The Applicants know, and had previously, licensed these properties. Mr Colrein in his statement [C116-C118] lists the various properties owned directly or via companies controlled by the Applicants. The portfolio is considerable as demonstrated by the rental income evidence given by Ms Bellwood.

93. This Tribunal is satisfied that on all the evidence a culpability score of negligence is appropriate. Further we are satisfied that there is no good reason to depart from the Councils policy.
94. This Tribunal finds that this produces a score of 37 points and an indicative penalty of £5,000.
95. The Councils policy then requires consideration to be given to the financial benefit. This calculation is included in the notices (see for example [C248]). Mr Huggins did not challenge the rental figures applied and chosen for each of the two properties. His challenge was that the Council applied too much weight to financial benefit and had not properly considered the real financial benefit and the impact of the current pandemic upon the Applicants.
96. We accept that the current pandemic will have an effect on the Applicants business of letting. Whilst we note it was suggested that the Applicants predominantly let to students no evidence was deduced to say they must or what attempts had been made to let the properties they own on the open market.
97. The financial evidence produced by the Applicants was far from clear. Whilst we heard how over half their HMO units were currently unlet and were provided with a figure for the losses for the last term in the academic year 2019/2020 this did not provide a complete picture.
98. The Council in their evidence produced details of what they believed were the assets of the Applicants. The Council contended that the property assets of the Applicants were worth about £5,000,000. Neither Mr or Mrs Woodley were able to provide a figure as to what the assets might be worth although Mrs Woodley could tell the Tribunal they had borrowings of £3,500,00.
99. The Tribunal does not accept that Mr and Mrs Woodley do not have some idea of the value of their assets. They are both experienced business people who have been engaged in property investment for many years. The Tribunal does not accept that they would have no idea of the values of their assets.
100. Looking at the income side it is clear that the flats owned by the Applicants produce a substantial income and those rooms which are let will also do so.

101. The Applicants did not look to challenge the rental calculations but the fact that this calculation does not take account of actual profits. Mr Colrein readily accepted this in his evidence and made the cogent point that the Council will not have this information. The policy provides that the calculation is effectively to work out the sums which the landlord will have actually received for renting those rooms above the threshold for a licensable HMO thereby depriving the landlord of this income. This is then considered against the indicative penalty and whichever the higher is applied subject to discretion of the officer.
102. This Tribunal is satisfied that this is a reasonable methodology and adopts the Councils enforcement policy in this regard. We note the policy provides for the rental calculation to be based on a maximum of one year, with a charge for only 50 weeks of the year. We have considered if we should apply our discretion to reduce the figures.
103. We decline to apply our discretion. We are not satisfied that the Applicants do not have the means to settle these amounts or that it would cause them undue hardship. This Tribunal was not satisfied that the financial disclosure of the Applicants was complete focussing entirely on the negative impacts. We also are mindful of the fact that the period for which the offences were committed was prior to the current pandemic.
104. For the above reasons the appeal is rejected and the Tribunal affirms the penalties imposed totalling £16,357 being £10,120 in respect of 71 North Road East (£5060 as to each of the Applicants) and £6,237 in respect of 2 Glen Park Avenue (£3,118.50 as to each of the Applicants).

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking