



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

Case Reference : **CAM/22UN/HNA/2019/0021-0026**

Property : **7 & 9 Hayes Road, Clacton-on-Sea, Essex CO15
1TX**

Applicant : **Lystra Dorval**

Representative : **Mr Kennedy of Counsel**

Respondent : **Tendring District Council**

Representative : **Mr Grant Fenton-Jones, Environmental
Health Team Leader**

Type of Application : **Appeal against the imposition of a financial
penalty, pursuant to s.249A and Schedule 13A
of the Housing Act 2004**

Tribunal Members : **Tribunal Judge S Evans
Mr Gerard Smith MRICS FAAV REV**

Date and venue : **9 October 2020, Novotel Hotel, Ipswich**

Date of Decision : **5 November 2020**

DECISION

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DECISION

The Tribunal determines that the Appeal by the Applicant is partly successful, in that the Tribunal varies the financial penalties, by reducing the amount imposed in respect of (a) 7 Hayes Rd to £43,000, and (b) 9 Hayes Rd to £27,500.

INTRODUCTION

1. By applications filed on 4th November 2019, made under section 249A and Schedule 13A of the Housing Act 2004 (“the 2004 Act”), the Applicant appeals the imposition of financial penalties totalling £90,000 imposed by the Respondent Council, the latter having been satisfied that the Applicant had committed offences pursuant to section 234 of the 2004 Act, in that she was alleged to have breached various regulations contained in the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Management Regulations”), arising from her management of 7 & 9 Hayes Road, Clacton-on-Sea, Essex CO5 7TX (“the Property”), on 6th August 2019.

BACKGROUND

2. On 9th July 2007 the Applicant was registered with joint freehold title to 7 Hayes Rd along with her husband.
3. On 5th December 2016, Daniel Dorval was registered with freehold title to 9 Hayes Rd.
4. On 27th June 2017 the Applicant applied for a HMO licence for 9 Hayes Rd.
5. On 4th September 2017 the Applicant made an application to licence 7 Hayes Rd as a house in multiple occupation.
6. On 5th October 2017, a HMO licence was issued to the Applicant for 9 Hayes Rd. This included conditions, none of which were contested.
7. On 19th January 2018 a HMO licence was granted to the Applicant in respect of 7 Hayes Rd. Again, there were conditions placed on the licence, which were not contested by the Applicant.
8. In late January 2018 there was a meeting between the Respondent’s Grant Fenton-Jones and Robert Goswell, and the Applicant. She agreed she would appoint a managing agent from the Property. This occurred on 9th February 2018 when E-Zy Properties Ltd took over management.
9. On 26th February 2018 the Applicant’s licences were varied to show E-Zy Properties Ltd as the managing agents.

10. On 9th April 2019 there was an inspection of the Property by Grant Fenton-Jones and Mr Goswell, who (it is claimed) found structural defects in the building. Certain advice was given.
11. On 1st May 2019 the Respondent wrote a letter to the Applicant regarding works which the Respondent required to be executed to the Property.
12. On 13th May 2019 and 16th May 2019 PC Southgate had recourse to visit the Property in relation to allegations of anti-social behaviour.
13. On 27th May 2019 there was another inspection by Grant Fenton-Jones, Mr Goswell, and the Police (PC Southgate), accompanied this time by a Mr Phipps from the Fire Service. The Respondent's case is that there were hazards outstanding from the visit on 9th April 2019, including the fire alarm system not working, and insufficient compartmentation / separation in relation to fire safety in various areas.
14. On 30th May 2019 the Respondent wrote to the Applicant with a further schedule of works, which it required to be completed by 6th June 2019.
15. On 12th July 2019 Mr Glenn Clark and Mr Goswell of the Respondent were called out to 7 Hayes Rd by the tenants. They alleged that they had been subjected to unlawful eviction on the part of the Applicant or her agents. It was during this visit that faults in the fire alarm system were again pointed out to the Applicant, as well as compromised fire doors and poorly fitting windows.
16. On 6th August 2019 there was a further inspection by Grant Fenton-Jones and Glenn Clark. This is the date of the alleged offences in this matter. In short, the Respondent alleges that remedial works were not completed; indeed, it is said that additional works were required on account of further damage. The Applicant was advised by the Respondent that as a bare minimum the automatic fire detection system required immediate work.
17. On 8th August 2019 there was a yet further inspection by Grant Fenton-Jones and Glenn Clark. Again, the automatic fire detection system was still displaying a fault. Therefore, the Respondent made a decision to serve Emergency Prohibition Orders on the 12th August 2019, given the serious deterioration which had allegedly taken place in the space of only two days.
18. On 9th August 2019 E-Zy Properties Ltd made a decision to terminate its management agreement with the Applicant.
19. On 12th August 2019 the Respondent wrote to the Applicant imposing Emergency Prohibition Orders. On the same day both addresses were closed in accordance with those orders. When the council turned up at the Property, they were informed that a person called Emma Christmas was the new managing agent. The EPOs were served on her, as well as by recorded delivery and 1st class post to the Applicant. Both 7 and 9 Hayes Rd were then secured by the Respondent against entry by any third party, because the Applicant would not do it herself.
20. On 13th August 2019 Grant Fenton-Jones and Mr Clark made a further inspection of the Property, when they found that there was evidence of a break-in. Moreover, the

gas supply was found not to be capped off, despite the Applicant's pleas to the contrary.

21. On 26th August 2019 the council served Notices of Intent to impose a financial penalty on the Applicant, by email, first class post, recorded delivery, and by hand.
22. On 2nd September 2019, the Applicant made representations in writing in relation to the Notices of Intent.
23. On 4th September 2019 there was a further site visit to the property, during the course of which the Health and Safety Executive attended.
24. On 26th September 2019 the Respondent took 2 steps. The first was to serve Final Notices to impose a financial in penalty on the Applicant. The second was to prepare a further schedule of works in relation to the Property.
25. On 4th November 2019, the Applicant filed 6 applications pursuant to section 249A of the Housing Act 2004, appealing the Respondent's decisions to serve Final Notices upon her.
26. On 25th November 2019 the Tribunal gave directions in relation to these proceedings, including a direction for a joint settlement meeting.
27. On 6th December 2019 the parties met with a view to reach in settlement. Regrettably no compromise was reached.
28. Between mid-December 2019 and early January 2020, the Respondent prepared its witness evidence.
29. On 16th March 2020 the Applicant prepared her witness statement.

RELEVANT LAW

30. The statute law applicable to this matter is set out in the Appendix attached.
31. The Tribunal is mindful of the recent cases of *Sutton v Norwich CC* [2020] UKUT 90 (LC) and *London Borough of Waltham Forest v Marshall* [2020] UKUT 0035 (LC), in which the Upper Tribunal emphasised that the First Tier Tribunal should give due deference to the Council's decision, and not depart from a local authority's policy in determining the amount of a financial penalty, except in certain circumstances (e.g. where the policy was applied too rigidly), albeit that the Tribunal's task is not simply a matter of reviewing whether a penalty imposed was reasonable: it must make its own determination as to the appropriate amount of the penalty, having regard to all the available evidence.
32. The Tribunal also bears in mind *Opara v Olasemo* [2020] UKUT 0096 (LC) at paragraph 46, in which the Upper Tribunal warned that, when applying the criminal standard to their fact finding, Tribunals should avoid being overcautious about making inferences from evidence. It observed that, for a matter to be proved to the

criminal standard, it must be proved beyond all reasonable doubt; it does not have to be proved beyond all doubt at all.

33. The Tribunal also bears in mind *IR Management Services v Salford City Council* [2020] UKUT 0081 (LC) where on appeal, the Upper Tribunal confirmed that, whilst a Tribunal must be satisfied beyond reasonable doubt that each element of the relevant offence had been established on the facts, an appellant who pleads a statutory defence must then prove on the balance of probabilities that the defence applies.

ISSUES

34. The issues are:

- (1) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property;
- (2) Whether the financial penalties are set at an appropriate level having regard to all relevant factors.

HEARING

35. No inspection took place before the hearing, and the Tribunal considers none was necessary in the circumstances of this case, which concerns the state of the Property over a year ago.
36. At the commencement of the hearing we reminded the Applicant that whilst she could not be prosecuted for any offences for which a financial penalty had been imposed, she could be prosecuted for other matters admitted by her or in respect of which we made findings of fact. She was reminded that she did not have to answer any question or make any statement which might tend to incriminate her, although the Tribunal might draw an adverse inference from her failure to answer. She indicated that she wished to proceed.
37. With the agreement of the parties, we heard the Respondent's evidence first, this being a rehearing of its decision to impose a financial penalty.
38. The Tribunal was not clear from the papers what was the precise nature and degree of the alleged breaches in relation to each of the 2 addresses at the Property. The Respondent's evidence of breaches was, regrettably, not cross-referenced with the extensive photographic evidence. Accordingly, at the commencement of the hearing, we invited the Respondent to set out its case, in relation to each address, cross-referenced with the extensive photographic evidence in the bundles, in order to show what the alleged breaches of the Management Regulations were.
39. In relation to 7 Hayes Road on 6th August 2019 (references in square brackets are to pages in the Respondent's bundle), these were the points made:

Regulation	General description	Respondent's further remarks
4(2)	Fire alarm etc	Not maintained. [135] Red light (zone) fault
6(1), (3)	Gas safety certificate & electrical certificate	May 2019 schedule of works requested certificates within 7 days [83]. Applicant did not supply.
7(1)	Common parts and outside maintenance	[141] Means of escape compromised by rubbish, ground floor alcove. [199] First floor bedroom landing blocked partially by mattress
7(2)	Common parts and outside maintenance	[187] Staircase access to top floor with severely damaged tread and ripped carpet
7(4)	Common parts and outside maintenance	[91, 127] Front tarmac'd areas full of refuse [101, 381, 383, 385, 387] Alley manholes rusted through. [105 to 107] Rear garden with appliances, refuse [111, 121, 123] Dilapidated outbuilding [113] Disused washing machine in outbuilding [125] Concrete fire escape from first floor obstructed by refuse
8(1)	Maintenance of internal parts	[163]. Flat 4 on first floor. Ceiling and walls at very poor state from water penetration. [201] Flat 4 in state of redecoration [203] Dilapidated ceiling of room. [205] Ceiling: damaged plaster and paper
8(2)	Maintenance of internal parts	Same defects, Flat 4
9	Refuse collection facilities	[91, 99, 101, 103, 105, 109, 113, 125, 127, 129] (a) Refuse at front and rear in large quantities (b) Bin collection company not paid

40. In relation to 9 Hayes Road on 6th August 2019 (references in square brackets are to pages in the Respondent's bundle) these were the points made:

Regulation	General description	Respondent's further remarks
4(2)	Fire alarm etc	Not maintained. Same panel for both 7 & 9 Hayes Rd. [135] Red light (zone) fault
6(1), (3)	Gas safety certificate & electrical certificate	May 2019 schedule of works requested certificates within 7 days [75-79]. Applicant did not supply.
7(1)	Common parts and outside maintenance	<p>[259] Top floor landing obstructed by broken shelving unit</p> <p>[269] Broken glazing on staircase window, 2nd floor. Not on in a good and safe working condition.</p> <p>[277] Shared kitchen. Doors to balcony do not lock.</p> <p>[285] Bath leaking onto floor below. Fibre glass patches in bath.</p> <p>[287] Balusters missing, staircase from first floor to second floor</p> <p>[289] Common WC seat broken. Patch repair</p> <p>[293] Missing fire door in hall</p> <p>[297] Shared kitchen on ground floor. Breach of sub-para. (a)</p> <p>[299] Ground floor rear exit. Obstructions- bicycles, sack barrow</p> <p>[301, 303]. Broken tiling in ground floor shower room</p> <p>[305] Individual flat WC cluttered with items</p>
7(2)	Common parts and outside maintenance	<p>[287] Balusters missing, staircase from first floor to second floor</p> <p>[287] Carpets loose on same staircase</p> <p>[269] Window skylight leaking</p>

		[301, 303] Shower tiling defects
7(4)	Common parts and outside maintenance	<p>[93, 211] Refuse</p> <p>[213, 215, 217] Glass on drive</p> <p>[221, 251, 253] 3 missing balusters to outside balcony</p> <p>[227] Refuse from fire lit against wall</p> <p>[231] Rear garden pile of rubble/refuse</p> <p>[241, 243] Refuse</p> <p>[245] Fence broken</p> <p>[249] Food waste in black bags</p>
8(1)	Maintenance of internal parts	Conceded by Respondent (no breach)
8(2)	Maintenance of internal parts	<p>[309] Sash window on top floor propped open by can</p> <p>[311] Sash cord failure</p> <p>[313, 315, 317] Same window, rotten areas</p> <p>[327] Non operable vent in private WC</p> <p>[261, 265] Second floor flat, bedroom door, broken keep</p> <p>[263] Same door, missing perko closer</p> <p>[267] First floor, gap at top of fire door</p> <p>[271, 273] Bedroom. Lock & door frame insecure</p> <p>[281] Missing perko, middle room first floor</p> <p>[283] Same door, missing intumescent strips. Not in good and safe working condition.</p>
9	Refuse collection facilities	Same photographs and points as for 7 Hayes Road

41. The Respondent then called each of the following who confirmed their written statements and gave evidence by way of amplification:

- (1) Mr A. Phipps;
- (2) Mr R Goswell;
- (3) PC N Southgate;
- (4) Mr G Clark;
- (5) Mr T Clarke;
- (6) Mr G Fenton-Jones.

42. Each were cross-examined by Mr Kennedy, and asked questions by the Tribunal.

43. The Tribunal then heard evidence from the Applicant herself, who confirmed her written statement and answered some questions from the Tribunal.

FINDINGS

Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property

44. We remind ourselves that we must be satisfied to the criminal standard of proof of the matters required to be proven, i.e. that a relevant housing offence had been committed on 6th August 2019.

45. All of the offences are alleged under section 234 of the Housing Act 2004 and the Management Regulations, as set out above.

46. Firstly, we decide the Applicant was a manager of a HMO for the purposes of s.263(3) of the 2004 Act and regulation 2(c) of the Management Regulations. She was in receipt of the rents, whether directly or indirectly.

47. Secondly, we find beyond reasonable doubt that there were breaches of the Management Regulations on 6th August 2019, for which there was no reasonable excuse, as follows:

7 Hayes Road

Regulation	Respondent's further remarks	Tribunal Finding
4(2)	Fire alarm not maintained. [135] Red light (zone) fault	Fire alarm not in good working order. Fault displayed. Proven by oral and photographic evidence.
6(1), (3)	May 2019 schedule of works requested certificates within 7 days [83]. Applicant did not supply.	Breaches proven by failure to supply gas and electrical certificates only. Gas was not sealed off as Applicant alleges.

7(1)	<p>[141] Means of escape compromised by rubbish, ground floor alcove.</p> <p>[199] First floor bedroom landing blocked partially by mattress</p>	<p>Common parts not kept reasonably clear from obstruction.</p> <p>Proven by oral and photographic evidence.</p>
7(2)	[187] Staircase access to top floor with severely damaged tread and ripped carpet	<p>Staircase not in good and safe working condition.</p> <p>Stair covering not fixed.</p> <p>Proven by oral and photographic evidence.</p>
7(4)	<p>[91, 127] Front tarmac'd areas full of refuse</p> <p>[101, 381, 383, 385, 387] Alley manholes rusted through.</p> <p>[105 to 107] Rear garden with appliances, refuse</p> <p>[111, 121, 123] Dilapidated outbuilding</p> <p>[113] Disused washing machine in outbuilding</p> <p>[125] Concrete fire escape from first floor obstructed by refuse</p> <p>[129, 131] Balcony above front door dilapidated</p>	<p>Yard and forecourts not in clean condition.</p> <p>Outbuilding not in repair.</p> <p>Garden not in safe and tidy condition.</p> <p>Staircase not reasonably clean or free from refuse and litter.</p> <p>Proven by oral and photographic evidence.</p>
8 (1) & (2)	<p>[163]. Flat 4 on first floor. Ceiling and walls at very poor state from water penetration.</p> <p>[201] Flat 4</p> <p>[203] Dilapidated ceiling of room.</p> <p>[205] Ceiling: damaged plaster and paper</p>	<p>Living accommodation not in good and clean decorative repair.</p> <p>Proven by oral and photographic evidence.</p>
9	[91, 99, 101, 103, 105, 109, 113, 125, 127, 129] Refuse at front and rear in large quantities	Refuse receptacles clearly insufficient to store refuse pending disposal.

		<p>Inadequate arrangements for disposal of refuse and litter by Applicant. Only 1 'Biffa' bin.</p> <p>Proven by oral and photographic evidence.</p>
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9 Hayes Road

Regulation	Respondent's further remarks	Tribunal Finding
4(2)	Not maintained. Same panel for both 7 & 9 Hayes Rd. [135] Red light (zone) fault	<p>Fire alarm not in good working order. Fault displayed.</p> <p>Proven by oral and photographic evidence.</p>
6(1), (3)	May 2019 schedule of works requested certificates within 7 days [75-79]. Applicant did not supply.	Breaches proven by failure to supply gas and electrical certificates only. Gas was not sealed off as Applicant alleges.
7(1)	<p>[259] Top floor landing obstruction by broken shelving unit</p> <p>[269] Broken glazing on staircase window, 2nd floor. Not on in a good and safe working condition.</p> <p>[277] Shared kitchen. Doors to balcony do not lock.</p> <p>[285] Bath leaking onto floor below. Fibre glass patches in bath.</p> <p>[287] Balusters missing, staircase from first floor to second floor</p> <p>[289] Common WC seat broken. Patch repair</p>	<p>Common parts not kept reasonably clear from obstruction. Proven by oral/ photographic evidence.</p> <p>Common parts not maintained in good and safe working condition. Proven by oral/ photographic evidence.</p> <p>Common parts not maintained in good and safe working condition. Proven by oral/ photographic evidence.</p> <p>Common part not maintained in good repair. Proven by oral/ photographic evidence.</p> <p>Banisters not in good repair. Proven by oral/ photographic evidence.</p> <p>Common part not maintained in good repair. Proven by oral/ photographic evidence.</p>

	<p>[293] Missing fire door in hall</p> <p>[297] Shared kitchen on ground floor. Breach of sub-para. (a) by presence of flypaper.</p> <p>[299] Ground floor rear exit. Obstructions- bicycles, sack barrow</p> <p>[301, 303]. Broken tiling in ground floor shower room</p> <p>[305] Individual flat WC cluttered with items</p>	<p><u>Not proven. Possible poor installation. Not disrepair or breach of condition.</u></p> <p><u>Not proven beyond reasonable doubt. Not disrepair or breach of condition.</u></p> <p>Common parts not kept reasonably clear from obstruction. Proven by oral/ photographic evidence.</p> <p>Common part not maintained in good repair. Proven by oral/ photographic evidence.</p> <p><u>Not proven. Not a common part</u></p>
7(2)	<p>[287] Balusters missing, staircase from first floor to second floor</p> <p>[287] Carpets loose on same staircase</p> <p>[269] Window skylight leaking</p> <p>[301, 303] Shower tiling defects</p>	<p>Staircase not in good and safe working condition. Banisters not in good repair. Proven by oral/ photographic evidence.</p> <p>Staircase covering not safely fixed. Proven by oral/ photographic evidence.</p> <p><u>Not proven beyond reasonable doubt. No clear leakage.</u></p> <p>Common part not maintained in good repair. Proven by oral/ photographic evidence.</p>
7(4)	<p>[93, 211] Refuse</p> <p>[213, 215, 217] Glass on drive</p> <p>[221, 251, 253] 3 missing balusters to outside balcony</p> <p>[227] Refuse from fire lit against wall</p> <p>[231] Rear garden pile of rubble/refuse</p>	<p>Yard and forecourts not in clean condition. Proven by oral/ photographic evidence.</p> <p>Railings not in good repair so as to be danger to occupiers. Proven by oral/ photographic evidence.</p> <p>Garden not in safe and tidy condition. Proven by oral/ photographic evidence.</p> <p>Ditto</p>

	<p>[241, 243] Refuse</p> <p>[245] Fence broken</p> <p>[249] Food waste in black bags</p>	<p>Ditto</p> <p>Boundary fence not in good repair, so as to be danger to occupiers. Proven.</p>
8(2)	<p>[309] Sash window on top floor propped open by can</p> <p>[311] Sash cord failure</p> <p>[313, 315, 317] Same window, rotten areas</p> <p>[327] Non operable vent in private WC</p> <p>[261, 265] Second floor flat, bedroom door, broken keep</p> <p>[263] Same door, missing perko closer.</p> <p>[267] First floor, gap at top of fire door</p> <p>[281] Missing perko, middle room first floor</p> <p>[283] Same door, missing intumescent strips. Not in good and safe working condition.</p> <p>[271, 273] Bedroom. Door frame insecure</p>	<p>Part of living accommodation not in good and safe working condition. Proven by oral/ photographic evidence.</p> <p>Part of living accommodation not in good repair. Proven by oral/ photographic evidence.</p> <p>Part of living accommodation not in good repair. Proven by oral/ photographic evidence.</p> <p>Part of living accommodation not in good repair. Proven by oral/ photographic evidence.</p> <p><u>Not proven beyond reasonable doubt. Regulation is concerned with repair and condition, not fire safety per se.</u></p> <p>Part of living accommodation not in good repair. Existing repair undertaken is inadequate, 3 nails insufficient. Proven by oral/ photographic evidence.</p>
9	<p>[91, 99, 101, 103, 105, 109, 113, 125, 127, 129] Refuse at front and rear in large quantities</p>	<p>Refuse receptacles clearly insufficient to store refuse pending disposal.</p> <p>In adequate arrangements for disposal of refuse and litter by Applicant. Only 1 'Biffa' bin.</p> <p>Proven by oral and photographic evidence.</p>

48. The Tribunal does not find that the Applicant had a reasonable excuse, on balance of probability, that she had executed works in relation to parts which occupiers later damaged. The Applicant could not point the Tribunal to any document evidencing execution of works at any time before the inspection on 6th August 2019. Moreover, whilst several of the legal duties do not require a manager to carry out any repair the need for which arises because an occupier of living accommodation has used it otherwise than in a tenant-like manner, the uncorroborated evidence of the Applicant was not, without more, such as to satisfy us this was the case. The Applicant's plea, that she was a victim of the occupiers, rather falls away when one considers she a direct hand in signing -up some of those occupants who are said to be dysfunctional and even criminal.
49. Similarly, whilst the Applicant engaged Managing Agents from time to time, that does not amount to a reasonable excuse, in the Tribunal's view. The management agreement between E-Zy properties and the Applicant was not before us. The Tribunal nevertheless notes that there is a conflict between what those agents allege and the Applicant, as to who was responsible for arranging repairs. It is not in contention that Applicant was the principal in this relationship. Even (accepting in her favour) that her agent failed to arrange repairs, the Applicant was still primarily culpable under the Management Regulations, the requirements of which she was fully aware, given they were incorporated into her licence conditions back in 2018.
50. Finally, the Applicant took the point that the Notices of Intent and Final Notices gave insufficient information or reasons as to why offences had been committed. We disagree. Given the previous interventions of the Council, the Applicant had sufficient information on which to make representations, as she did. In any event, any procedural prejudice she alleges she may have suffered was remedied by the fact these appeals against the Respondent's decisions were heard by way of re-hearing.
51. The Tribunal therefore confirms the Respondent Council's decision to impose a penalty in the final notice. Multiple offences had been committed, and it was in the public interest to impose such a financial penalty.

Whether the financial penalties are set at an appropriate level having regard to all relevant factors.

52. However, we consider some of the financial penalties should be varied and reduced. In so doing, we have had regard to the DCLG Guidance for Local Authorities issued under paragraph 12 of Schedule 13A to the 2004 Act. DCLG Guidance encourages each Local Authority to develop their own policy for determining the appropriate level of penalty. The maximum amount (£30,000) should be reserved for the worse offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending, if any. Relevant factors include:
- Punishment of the offender
 - Deter the offender from repeating the offence
 - Deter others from committing similar offences

- Remove any financial benefit the offender may have obtained as a result of committing the offence
 - Severity of the offence
 - Culpability and track record of the offender
 - The harm caused to the tenant
53. The Respondent's policy contains a "severity/culpability" table, whereby each breach can be judged to fall within one of 5 categories, ranging from low to very high.
54. There follows a "harm" factors table, whereby the effect of each breach is assessed as being either category 1, 2 or 3.
55. A combined culpability and harm table then gives the decision-maker a numerical score ranging between 1 and 6, each of which relates to a fine based on the standard scale under the Criminal Justice Act 1982.
56. By way of illustration, a very high severity/culpability score, when combined with a Category 1 harm score, will result in a numerical score of 6, leading to a penalty range of £17001-£30,000.
57. The Policy does not give guidance as to where on the range of fines the Respondent should settle. The decision-maker has a discretion in that regard.
58. The decision-maker's assessment of the "initial" level of the fine should then be adjusted, according to the Policy, to reflect both aggravating and mitigating factors, in order to reach a "final" penalty.
59. Whilst the Respondent's own Policy is to be given due deference, the Tribunal has cause for concern as to the *application* of the Policy in this case. The Respondent, in breach of its own policy terms at para. 3.6, kept no notes of the decision-making process in relation to its assessment of culpability and harm for each of the breaches. Whilst Mr Fenton-Jones did his best in opening this aspect of the Respondent's case to explain the figures arrived at, the Tribunal cannot be confident that the process has been rigorous enough.
60. In addition, the Tribunal is concerned by certain emails written by Mr Fenton-Jones in August 2019 which would suggest the Respondent was seeking to impose fines at a level which were aimed to force the Applicant out of business. Mr Tim Clarke rightly conceded that such an approach would be inconsistent with a lawful application of its Policy, which says only that the level of fine should be set at a high enough level to deter repeat offending.
61. Counsel for the Applicant urged us to allow the appeal on that basis alone. The Tribunal does not accede to that submission, although we agree it is a strong indicator that we should make our own determination of culpability, harm and final financial penalty, particularly given that we have not found each and every breach proven.

62. We have taken into account the overlap between the circumstances of certain offences, as was the case in *Sutton v Norwich CC* [2020] UKUT 90 (LC) at [302].

7 Hayes Road

Regulation	R's assessment	Tribunal Finding
4(2)	Severity High Harm Category 1 Numerical score 5 Range £7001 to £17000 Penalty of £12,000 as mid-range offence	Severity High Harm Category 1 Numerical score 5 Range £7001 to £17000 Penalty of £12,000 justified as mid-range offence
6(1), (3)	Severity Very High Harm Category 1 Numerical score 6 Range £17001 to £30,000 Penalty of £20,000 as concerns both gas and electrical safety	Severity Very High Harm Category 1 Numerical score 6 Range £17001 to £30,000 Penalty of £20,000 justified as concerns both gas and electrical safety
7(1) (2) (4)	Severity High Harm Category 1 Numerical score 5 Range £7001 to £17000 Penalty of £7000 as several breaches, but they fall at lowest end of range	Severity High Harm Category 1 Numerical score 5 Range £7001 to £17000 Penalty of £7000 justified as high risk of trip and fall hazards, although Tribunal notes some repetition between sub-paragraphs, and also with other regulations relied on.
8 (1) & (2)	Severity Medium Harm Category 1 Numerical score 4 Range £2501 to £7000 Penalty of £5000 as mid-range offences	Severity Medium Harm Category 1 Numerical score 4 Range £2501 to £7000 Penalty of £3000, as Tribunal notes room was in process of being redecorated.
9	Severity Medium Harm Category 3 Numerical score 2 Range £501 to £1000 Penalty of £1000. Sheer amount	Severity Medium Harm Category 3 Numerical score 2 Range £501 to £1000 Penalty of £1000. Volume of

	of refuse justifies award at highest end.	refuse excessive. No attempts to obtain another 'Biffa' bin and apparent non-payment of waste disposal company
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9 Hayes Road

Regulation	R's assessment	Tribunal Finding
4(2)	Severity High Harm Category 1 Numerical score 5 Range £7001 to £17000 Penalty of £12,000, as mid-range offence	No separate penalty. Breach identical to, and based on the same facts, as 7 Hayes Road (a single fire alarm fault covering both properties).
6(1), (3)	Severity Very High Harm Category 1 Numerical score 6 Range £17001 to £30,000 Penalty of £20,000 as concerns both gas and electrical safety	Severity Very High Harm Category 1 Numerical score 6 Range £17001 to £30,000 Penalty of £20,000 justified as concerns both gas and electrical safety, in a separate address.
7(1) (2) (4)	Severity High Harm Category 1 Numerical score 5 Range £7001 to £17000 Penalty of £7000 as several breaches, but they fall at lowest end of range	Severity Medium Harm Category 1 Numerical score 4 Range £7001 to £17000 Penalty of £4000. Some repetition between subparagraphs, and also with other regulations relied on.
8 (2)	Severity High Harm Category 2 Numerical score 4 Range £2501 to £7000 Penalty of £5000 as mid-range offences	Severity Medium Harm Category 2 Numerical score 3 Range £1001 to £2500 Penalty of £2500, as highest end of scale is justified
9	Severity Medium Harm Category 3 Numerical score 2 Range £501 to £1000 Penalty of £1000. Sheer amount of refuse justifies award at highest end.	Severity Medium Harm Category 3 Numerical score 2 Range £501 to £1000 Penalty of £1000 justified. Volume of refuse excessive, inadequate collection facilities and apparent non-payment to waste disposal company.

63. Looking at the aggravating and mitigating factors listed in the Policy, the Tribunal considers that, where applicable to the instant facts, these balance each other out. We agree that there was some element of obstruction of justice by the Applicant (lack of co-operation) and some anecdotal evidence of her providing sub-standard accommodation. However, by way of mitigation, the Applicant has no previous or relevant convictions.
64. The Tribunal has not therefore adjusted the figures as assessed by it in the Table above.
65. We have no documentary evidence of the means of the Applicant. Whilst there was some oral evidence as to this, and some late testimony as to the financial benefit the Applicant might or might not have made from running the Property, this was inconclusive and was uncorroborated by documents.
66. In all the circumstances the Tribunal considers the financial penalties should be varied to £43,000 in respect of 7 Hayes Road and £27,500 in respect of 9 Hayes Road.

Judge:

S J Evans

Date:

5/11/20

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 (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.

APPENDIX

Housing Act 2004

S. 234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

- (a) there are in place satisfactory management arrangements; and
- (b) satisfactory standards of management are observed.

(2) The regulations may, in particular—

- (a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;
- (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

S.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.

S.263 Meaning of “person having control” and “person managing” etc.

(1) In this Act “*person having control*”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “*rack-rent*” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “*person managing*” means, in relation to premises, the person who, being an owner or lessee of the premises—

- (a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Schedule 13A

1 Before 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.

3 The 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.

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”).

5 After 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.

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

7 The 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.

8 The 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.

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.

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.

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](#).

12 A 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](#).

Management of Houses in Multiple Occupation (England) Regulations 2006

4.— Duty of manager to take safety measures

(1) The manager must ensure that all means of escape from fire in the HMO are— (a) kept free from obstruction; and (b) maintained in good order and repair.

(2) The manager must ensure that any firefighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to— (a) the design of the HMO; (b) the structural conditions in the HMO; and (c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—
(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

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

(1) The manager must ensure that all common parts of the HMO are—
(a) maintained in good and clean decorative repair; (b) maintained in a safe and working condition; and (c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

(a) all handrails and banisters are at all times kept in good repair; (b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided; (c) any stair coverings are safely fixed and kept in good repair; (d) all windows and other means of ventilation within the common parts are kept in good repair; (e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and (f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that— (a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order; (b) any garden belonging to the HMO is kept in a safe and tidy condition; and (c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(7) In this regulation— (a) “common parts” means— (i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO; (ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and (iii) any other part of an

HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

8.— Duty of manager to maintain living accommodation

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

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

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

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

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

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

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

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

9. Duty to provide waste disposal facilities

The manager must—

(a) ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and

(b) make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.