



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

Case Reference : **MAN/00BR/HNA/2020/0057 &
MAN/00BR/HNA/0068**

Property : **12 Mount Street, Eccles, M30 7EX**

Applicants : **Mr Matthew Sixsmith &
Mr Benjamin Hardman**

Respondent : **Salford City Council**

Type of Application : **Appeal against a financial penalty - Section 249A
& Schedule 13A to the Housing Act 2004**

Tribunal Members : **Judge, Katherine Southby
Valuer Member, John Faulkner**

Date of Decision : **21 May 2021**

**Date of
Determination** : **14 June 2021**

DECISION

The Respondent's Final Notice to the Applicant dated 27 July 2020 is confirmed and therefore we approve the Respondent's decision that the appropriate penalty is as set out in their final notice, being £7500.

REASONS

THE FACTS

1. Mr Sixsmith was previously the owner of the Property and continued to manage the Property together with Mr Hardman once the ownership of the Property changed to the current owner, Ms Nosheen Akhtar.
2. On 17th December 2019 the Respondent's Private Sector Housing team carried out an inspection of the property 12 Mount Street after receiving information from the police. The information indicated that there were 5 individual bedsit rooms, and that the property may be operating as an HMO without appropriate regard to fire safety. During the inspection the property was found to be operating as a 5 bedroom "bedsit style" HMO, i.e., the persons renting each bedroom did not know each other and were on individual tenancy agreements.
3. At the time of the inspection the property was operating without a mandatory HMO licence which is an offence under The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) order 2006.
4. The Respondent also identified breaches of the Breach of the Management of Houses in Multiple Occupation (England) Regulations 2006, Regulation 4, namely that the manager must ensure that all means of escape from fire in the HMO are maintained in good order and repair, and that the manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury having regard to the design of the HMO.
5. The Respondent has not proceeded with the offence relating to failure to licence the Property.
6. Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property.
7. The hearing took place by way of FVH Video conference on 5 May 2021 at which the Applicants appeared in person and Mr Whatley of Counsel represented the Respondent. Ms Eden, Mr Gleave and Ms Mann appeared as witnesses for the Respondent. All parties confirmed that they could see and hear and participate fully in proceedings.
8. Three bundles of documents of 236 pages, 343 pages and 25 pages had been placed before the Tribunal for their consideration and these had been read by the Tribunal before the commencement of the hearing and were referred to during the hearing. The Applicants confirmed that they had received the documents in advance and had had the opportunity to consider the contents in order to make any representations they wished to.
9. We carefully considered all the written evidence submitted to the Tribunal in advance and the oral evidence given to us at the hearing even if we do not mention it. We used

the hearing to amplify and update parts of the written evidence and only record such of the oral evidence as is necessary to explain our decision.

THE STATUTORY POWERS

1. The Respondent's powers are contained in Schedule 13A to the Housing Act 2004. An offence having been committed, the Respondent must issue a Notice of Intent before the end of 6 months beginning on the date when the Respondent has evidence of the offence, or at any time when the offence is continuing. In this case the Notice was dated 2 June 2020 and the penalty proposed by the Respondent was £15,000 for each of the Applicants.
2. The party on whom a Notice of Intent is served may make representations within 28 days, and the Respondent must then decide whether to impose a financial penalty, and if so, make a final decision as to the amount.
3. A local housing authority has some discretion as to how to calculate financial penalties but must consider whether the landlord's culpability is "high", "medium" or "low" and whether the harm (as defined) caused by the failure to obtain a licence is "high", "medium" or "low". A chart published by the housing authority sets out in bands the resulting figures for the highest and lowest penalties appropriate to the level of blame and harm.
4. On receipt of a landlord's representations, the amount of penalty indicated in the Notice of Intent may be varied as seems appropriate to the housing authority. If dissatisfied, the landlord may apply to this tribunal for a review.

CALCULATION OF THE PENALTY

5. The Respondent assessed the culpability of the Applicant as "medium", and the harm as "medium". According to the Respondent's published penalty chart, this gave rise to a penalty of £16,500 which was reduced to £15,000 taking into account mitigating factors including the steps taken to resolve the issues once they were drawn to the Applicants' attention and the fact that the property no longer operates as an HMO.
6. After considering the Applicant's written submissions, the Respondent concluded that a lower figure of £7500 per Applicant, giving £15,000 in total between the two Applicants, was appropriate.

THE DECISION

7. It is clear from the contents of the PACE interviews given by the Applicants that both Applicants were involved in the management of the Property with Mr. Sixsmith running the letting side of the business. Mr. Hardman gave oral evidence that they had found the property difficult to manage because the new Landlord Ms Akhtar had not wanted to spend any money on it but that they had been led to believe by their electrician that the fuse box was fully compliant, and they had cleaners going in fortnightly who should report any damage or defects in the property.
8. The Tribunal was told by Mr. Hardman that they were making limited profits and that the matter could and should have been dealt with by way of an improvement notice, as soon as they found out about the defects they were immediately sorted out. The HMO has since been closed down and in his view the problems were minor, and the penalty is disproportionate.

9. Mr. Sixsmith gave oral evidence that they have learned from the mistakes made at the Property and have been through other properties to ensure there were not similar issues. He stated that they were in financial difficulty following the Covid pandemic and had empty properties and had had to take out loans. In his view these were minor defects which had been rectified and this enforcement action should not have been taken so far.
10. The Tribunal notes that the purpose of the legislation is to ensure compliance and good management practices in high risk properties such as Houses in Multiple Occupation. We note that there is no evidence in the bundles provided to us of a robust regime of regular inspection. We note the oral evidence from the Applicants that their cleaners would have inspected and reported defects but there is no record of any such inspections and therefore no clear route for the Applicants to demonstrate their compliance with the management regulations. We note that despite the assurances of the Applicants to the Respondent that the Property was never occupied by more than 5 people, this was happening at the time of the Respondent's inspection without a licence being in place. We note that the Respondent did not pursue the issue of the absence of an HMO licence, but we do not find these circumstances to be suggestive of a well managed property.
11. We find the policy to have been correctly applied by the Respondent and we agree that medium culpability is the correct assessment in the circumstances of this matter.
12. We considered whether or not it was appropriate for the Tribunal to consider the financial hardship of the Applicants when assessing the appropriateness of the penalty. We note that no information has been provided to the Tribunal about the Applicants' means to pay any such penalty other than reference to other properties being empty and things being financially difficult due to the pandemic. We therefore have no information about the Applicants' asset base or the level of income which the Applicants received from the Property when it was let.
13. We have considered the representations, both written and oral, from the Applicants that the defects at the property were relatively small, but we conclude that having chosen to manage a property in this particular HMP market, any fire hazard is a high risk, due to the nature of the rooms being let on an individual tenancy basis, and the persons renting each bedroom not necessarily knowing one another. We note that the LA made a concession to reduce the scoring to medium risk. We are not persuaded on the information before us that it would be appropriate to reduce this classification further.
14. The Tribunal notes that having accepted the LA's assessment of medium harm and medium culpability the banding is a penalty of £15,000 to £17,999 with the starting point being the midpoint of £16,500. We note that the Respondent took into account the rapid rectification by the Applicants to reduce this to £15,000 and also divided the global penalty by two to apply the totality principle in a situation where there were joint and several actors. We find this to be appropriate and therefore we approve the Respondent's decision that the appropriate penalty is as set out in their final notice, being £7500.

Tribunal Judge K Southby
21 May 2021