FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BS/HNA/2020/0004**
Property	**:**	**17 Bloom Street, Stockport, SK3 9LA**
Applicant and Appellant	**:**	**Mr Mark Thompson**
Assisted by		**Mr Joe Thompson (son of the Applicant)**
Respondent	**:**	**Stockport Metropolitan District Council**
Represented by		**Mr Islam, Council Legal Department and Mr Peter Marcus, Barrister.**
Type of Application	**:**	**Appeal Against a Financial Penalty, section 249 A, section 95(1) and Paragraph 10 of Schedule 13 A of The Housing Act 2004.**
Tribunal Members	**:**	**Judge C. P. Tonge, LLB, BA.** **Mr J. Faulkner FRICS.**
Date of Decision	**:**	**23 November 2020**

DECISION

Application and Background

1. Mr Mark Thompson "the Appellant", has been at all times relevant to this case, the joint owner, with his wife Denise Thompson, of 17 Bloom Street, Stockport, SK3 9LA "the property". By an application, dated 8 January 2020 and received by the tribunal office 13 January 2020, the Appellant appeals against the issue of a financial and penalty of £40,000 imposed by Stockport Metropolitan District Council "the Respondent", under sections 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004, "the Act".

2. The appeal is raised on the grounds that the Appellant submits that the property, although being a House in Multiple Occupation, an " HMO", does not require a licence because the basement flat is self contained and its residents should not be included in calculating the number of persons resident in the HMO. Secondly, that the hazards in the property have been exaggerated and were not in any event so serious as to justify the making of a prohibition order. The issues of harm and culpability have been exaggerated and the Appellant's representations sent in reply to the notices of intent to impose a civil penalty were not read , only the documents accompanying the representations being read. That as a result of all these factors, too high a penalty has been decided upon. Mitigating circumstances are raised, relating to health and finances.

3. The alleged offences are that on 5 June 2019 the Appellant managed the property which was, a "H M O" in breach of regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (duty of manager to take safety measures) made under section 234 of the Act. The penalty for this offence being £27,500. The notices as issued by the Respondent also point out that Regulations 3, 6 and 7 were also breached but no additional penalty has been imposed in relation to those breaches. Also, that on the same date the HMO was required to be licensed and was not so licensed contrary to section 72 of the Act. The penalty for this offence being £12,500. The overall penalty being £40,000 (Respondent's Bundle, SMBC 34 and 56).

4. The Appellant has served a hearing bundle that does not include a witness statement from the Appellant, but does include a document entitled, "Case and Supporting Documentation". This document is 58 pages in length and contains a summary of the Appellant's case, refers to his exhibits and provides a conclusion to the submissions within. The bundle has an additional thirty sections, MT01 to MT30. Each section has its own pagination. The Respondent has served a hearing bundle that has 83 sections, SMBC 1 to SMBC 83 and an additional "Statement of Response". Some of these sections have remained as attachments to be accessed via a

computer when required. Each sections is separately paginated. The absence of an overall pagination in either bundle makes it more difficult for the Tribunal to refer to documentary evidence.

The Law

The Housing Act 2004

Section 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.

Section 72 Offences in relation to licensing of HMOs

(1)A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(5)In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

(6)A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B)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.

Section 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.

Section 254 Meaning of "house in multiple occupation"

(1)For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a)it meets the conditions in subsection (2) ("the standard test");

(b)it meets the conditions in subsection (3) ("the self-contained flat test");

(c)it meets the conditions in subsection (4) ("the converted building test");

(d)an HMO declaration is in force in respect of it under section 255; or

(e)it is a converted block of flats to which section 257 applies.

(2)A building or a part of a building meets the standard test if—

(a)it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

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

(c)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

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

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

(f)two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3)A part of a building meets the self-contained flat test if—

(a)it consists of a self-contained flat; and

(b)paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

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

(a)it is a converted building;

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

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

(d)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

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

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

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

(6)The appropriate national authority may by regulations—

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

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

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

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

(8)In this section—

“basic amenities” means—(a) a toilet, (b) personal washing facilities, or (c)cooking facilities;

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

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

“self-contained flat” means a separate set of premises (whether or not on the same floor)—(a)which forms part of a building;(b)either the whole or a material part of which lies above or below some other part of the building; and(c)in which all three basic amenities are available for the exclusive use of its occupants.

The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

Description of HMOs prescribed by the Secretary of State

3.—(1) An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act where it satisfies the conditions described in paragraph (2).

(2) The conditions referred to in paragraph (1) are that—

(a)the HMO or any part of it comprises three storeys or more;

(b)it is occupied by five or more persons; and

(c)it is occupied by persons living in two or more single households.

(3) The following storeys shall be taken into account when calculating whether the HMO or any part of it comprises three storeys or more—

(b)any attic if—

(i)it is used wholly or partly as living accommodation;

(ii)it has been constructed, converted or adapted for use wholly or partly as living accommodation, or

(iii)it is being used in connection with, and as an integral part of, the HMO. Description of HMOs prescribed by the Secretary of State

The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018
Description of HMOs prescribed by the Secretary of State

In force from 1 October 2018 and replacing the 2006 Order

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a)is occupied by five or more persons;

(b)is occupied by persons living in two or more separate households; and

(c)meets—

(i)the standard test under section 254(2) of the Act;

(ii)the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the Act.

Management of Houses in Multiple Occupation (England) Order 2006

Duty of manager to provide information to occupier

3. The manager must ensure that—

(a)his name, address and any telephone contact number are made available to each household in the HMO; and

(b)such details are clearly displayed in a prominent position in the HMO.

Duty of manager to take safety measures

4.—(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 fire fighting 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. Duty of manager to supply and maintain gas and electricity

Duty of manager to supply and maintain gas and electricity

6.—(1) The manager must supply to the local housing authority within 7 days of receiving a request in writing from that authority the latest gas appliance test certificate it has received in relation to the testing of any gas appliance at the HMO by a recognised engineer.

(2) In paragraph (1), "recognised engineer" means an engineer recognised by the Council of Registered Gas Installers as being competent to undertake such testing.

(3) The manager must—

(a)ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing;

(b)obtain a certificate from the person conducting that test, specifying the results of the test; and

(c)supply that certificate to the local housing authority within 7 days of receiving a request in writing for it from that authority.

(4) The manager must not unreasonably cause the gas or electricity supply that is used by any occupier within the HMO to be interrupted.

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

7.—(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.

(6) 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.

Paragraph 10 of schedule 13A

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.

The hearing

5. Directions were issued on 16 March 2020 and provide direction as to how the parties should prepare their cases for the final hearing, but is silent about whether or not an inspection of the property is necessary.
6. A Case Management Conference was held on 19 June 2020 and further Directions issued. The Directions indicate that the final hearing will be held by video. Again there is no reference to an inspection of the property.
7. In so far as the public hearing of this case is concerned it commenced at 10.30am Tuesday 20 October 2020 by full video hearing. However, the members of the Tribunal had met in private session at 9.30am that morning by telephone meeting to decide whether or not the Tribunal thought an inspection of the property is necessary.
8. The Tribunal notes that there are two sets of photographs being relied upon by the Respondent, the first having 148 photographs taken during the local authority inspection. The second, taken by Councillor Wynne has

9 photographs. These include exterior photographs to the front and rear of the property.

9. The Tribunal also notes that the Appellant has served two sets of photographs. MT05 contains 69 photographs of the property after repairs have been carried out by the Appellant. These show external views of the rear of the property. MT06 reprints 9 of the Respondents photographs, assembled for the purpose of comment upon electrical issues.

10. The written evidence includes a detailed description of the property. As such the Tribunal decides that it would not be assisted in any way by an inspection of the property.

11. The property is a mid terraced house with a small garden to front and an area to the rear that includes a garden, with pitched slate roof and brick walls. The building has four levels all of which are accessed through the front door. The ground floor entrance hall gives off to a bedroom (occupied on 5 June 2019 by Mr Vasilev) and a shared basic amenity, the living room. The living room leads to an area that gives access in one direction to the shared basic amenity of the kitchen and in a second direction to a flight of stairs going down to the basement flat. The kitchen has a rear exterior door leading out to the external rear area of the property. Stairs lead from the entrance hall up to the first floor, this having shared basic amenities of a shower room and a bathroom, both having a toilet within the room. There is a second bedroom (occupied by Zhivka Dobreva) on this floor having a wash basin inside it. There is another bedroom on this floor, but it is accepted that this has been used as a store room only. Stairs lead up to the second storey which has bedroom three (occupied by Piotr Tchorzewski) and four (occupied by Irena Surivoka), both rooms having wash basins.

12. The Tribunal adds that it is clear from the 69 photographs produced by the Appellant (Appellant's exhibit MT05) and the accompanying explanation of work done by the Applicant since 5 June 2019 that the property is now in a very much better condition than it was on 5 June 2019. The Tribunal will take this into account as showing co-operation with the local authority after that inspection took place.

13. To gain access to the basement flat it is necessary to enter the building through the front door, walk along the entrance hall, walk through the shared basic amenity of the living room, to the area that gives off to the stairs that then lead down to the basement level. On the basement level there is a store room and the door that gives access to the flat. This flat has accommodation for a family of two adults and a child with private basic amenities of bathroom and cooking facilities. It has a fire escape window. The only shared basic amenity that the occupiers have to use in common with the rest of the occupiers of the property is the shared basic amenity of the living room that is situated along the route from the front door to the basement flat.

Written Submissions

14. The documentary evidence is so large in quantity that it is not an efficient use of the Tribunal's time to refer to it in any great detail here. The Tribunal will refer to documentary evidence when necessary in the remainder of the Decision.

The Hearing

15. The full video hearing commenced at 10.30am on Tuesday 20 October 2020. Persons present on that day were, on behalf of the Applicant, Mark Thompson and his son Joe Thompson. On behalf of the Respondent, Mr Mathew Woods, Environmental Health Officer, Ms Samantha McNichol, Operations Manager in the Environmental Health Team, Ward Councillor Matthew Wynne, David Mee and Loui Saul Brown , Fire Safety Enforcement Officers with the Manchester Fire and Rescue Service and Vasil Vasilev a tenant at the property. Legal representation being provided by Mr Islam from the local authority legal department and Mr Peter Marcus, Barrister.

16. The Tribunal sat again on 23 November 2020. Persons present on that day for the Applicant were as on the first day of the hearing. For the Respondent, Mr Mathew Woods, Environmental Health Officer, Ms Samantha McNichol, Operations Manager in the Environmental Health Team and the same legal representation.

17. The Tribunal made it clear that it took the view that there is no need for an inspection in this case and the Parties agreed.

18. Witnesses for the Respondent were called during the first day of the hearing for the purpose of permitting them to be cross examined by the Appellant and his assistant. The Tribunal (altering the order in which witnesses were called to put them into chronological order) provides a brief summary of some of the significant areas that each witness statement covers (all witness statements being accepted as the evidence in chief of the witness) and any significant concessions in cross examination.

19. Vasil Vasilev (SMBC 83). He was a tenant at the property from 14 November 2017 to 5 June 2019, paying a rent of £80 per week. He had shared the property with 5 other adult tenants, including the couple in the basement Bryn and Amor Ruy (there is no mention of the child of this family). On or about 21 December 2017 the Appellant had personally started intensive building work at the property, but little progress was made after the initial work was commenced. This left serious issues with the kitchen, bathroom, security of the kitchen exterior door and the living

room that was used by the Appellant as a work store. After the local authority and fire service inspection of the property he and his mother ended up in a homeless shelter.

20. In cross examination he agreed that the Appellant had, on occasion, provided lifts to the witness and that they had eaten dinner together on one occasion. There was agreement about a friend of the witness being housed by the Appellant for about 6 weeks and that the witness's mother had become a tenant. The witness agreed that after being moved from the property (as a result of the prohibition order) he had written a letter to the Appellant seeking to return to the property. He had been given a copy of the prohibition order. The Tribunal accepts the point that the Appellant was approachable and friendly towards this tenant and will take that into account in due course.

21. Stockport Metropolitan Borough Councillor, Matt Wynne (SMBC47). He became involved as a result of a complaint made to him by Vasil Vasilev, attending at the property on Sunday 1 June 2019. Councillor Wynne took photographs MW1 to MW9. He was extremely concerned for the welfare of the tenants and reported the matter to the Environmental Health Team of his council. In cross examination he said he had 3 years experience as a neighbourhood officer in South Manchester and had seen some bad cases, but none as bad as this.

22. Mathew Woods, Environmental Health Officer and officer in charge of the case (SMBC 25). He had dealings with the Appellant and the property in 2011. Concerns had been referred to him by the fire department and he had investigated, inspecting the whole four floors of the property on 22 August 2011. He had given oral and written advice to the Appellant (MWZ2, SMBC 67 and SMBC 68) indicating that the property, although being an HMO, was not licensable at that time because it had 4 tenants, but that if any more tenants were permitted to live at the property it would then need to be licensed for use an HMO. The Appellant was asked to give a written undertaking that occupancy would not be increased to five without first applying for such a licence, but that undertaking was never given.

23. Mr Woods next became involved with the property after the referral from Councillor Wynne. He visited the property with Ms Samantha McNichol, Operations Manager in the Environmental Health Team on 5 June 2019. He inspected the property and spoke with tenants and drew the conclusion that the property was now being occupied by six adult tenants comprised of four separate households allowing for the fact that Vasil Vasilev and Zhivka Dodreva, although resident in separate rooms are son and mother and that the residents of the basement flat are also one family. As such it is his view that an offence of operating an HMO that needs a licence but that was not so licensed was being committed.

24. In addition, the property was in Mr Woods opinion, unsafe to be occupied because of the fire safety hazards present in the property. David Mee and Loui Saul Brown , Fire Safety Enforcement Officers with the Manchester Fire and Rescue Service were summoned to attend and take part in a further inspection that day. These officers were in agreement with Mr Woods. The Appellant attended at the property to be informed of the findings of the inspections and in his presence an inspection was carried out of the basement flat. It was noted that there was no fire detection equipment in the bedroom or kitchen of the basement flat.

25. A discussion took place as to how the risk to tenants from lack of fire detection throughout the four storey building and other hazards in relation to fire safety could be reduced so that it would be safe for the tenants to remain in the property that night, but no agreement was reached with the Appellant who stated that he could not fit an appropriate fire detection system that day. As a result, Mr Woods decided that he had no option but to issue an emergency prohibition order that day, prohibiting the property from being occupied. During these inspections 148 photographs were taken of the property showing a great many hazards, far too many to list here.

26. Mr Woods returned to the property later that day and served prohibition orders on the Appellant and all tenants, except those in the basement flat, it being agreed that the Appellant would hand that notice to the residents of the basement flat for Mr Woods (MWZ4). Mr Woods also dealt with interviews under caution with the Appellant and his wife Denise Thompson. Mrs Thompson is not subsequently involved in this matter.

27. Under cross examination Mr Woods agreed that on 5 June 2019 there had been a conversation about the possibility of the Appellant installing a radio linked fire detection system that day. Mr Woods refused to accept that the Appellant had agreed to do so, recalling that in fact the Appellant had said that this would not be possible. As a result of that Mr Woods made the decision to go back to his office to issue the prohibition order and then return to serve it with the problems that would then cause as to re-housing tenants. He denied that the Appellant was fitting the fire detection system when he returned to serve the order. He stated that this work was being undertaken when Mr Wood returned on 7 June 2019. (It later transpired that there was an allegation that the order had not been served on the Appellant, this had not been put to Mr Wood.)

28. The notice of intent to impose a civil penalty (SMBC 34) is dated 27 September 2019. The Appellant referred the witness to the Appellant's reply to that notice, contained within exhibit MT24. That email was sent by Joey Thompson to Mr Woods and Ms McNichol on 11 November 2019. The

reply was still within time because the local authority had granted 2 extensions of the time limit imposed for the service of that reply.

29. The email in reply states, "Please find attached my representations regarding Bloom Street along with relevant supporting documents." The email then refers to 5 attachments. It was put to the witness that the first in the list of attachments contained the representations that should have been considered by the local authority before imposing the final penalty. The attachment is called, Bloom Street.pages. Mr Woods agreed that he had opened the four pdf's that were attached. He could not open anything else and had assumed that he had all the information provided.

30. The Tribunal asked to see the content of Bloom Street.pages. It had not been included in the bundle by the Appellant. Subsequently, this was emailed to the tribunal office, but the office staff could not open it, nor could the Tribunal members. The Appellant had to re send the attachment in a different format and then a document containing 5 pages of representations could be seen. The Environmental Health Officers had not seen this document prior to it being produced to them by email during the adjournment between the first and second days of the hearing.

31. Ms Samantha McNichol, Operations Manager in the Environmental Health Team (SMBC 27), adds little to the statement of Mr Woods. Cross examination of this witness added little to the case except that she stated that she did not recognise .pages as a form of attachment to an email.

32. David Mee, Fire Safety Enforcement Officer with the Manchester Fire and Rescue Service (SMBC 60). He describes the hazards present in the property from the view of a fire safety approach. In cross examination it was put to him that the biggest risk was the absence of an interlinked fire detection system. The officer said that this was not the greatest hazard, but it was one risk amongst many and went on to list some of the most serious risks.

33. Loui Saul Brown , Fire Safety Enforcement Officers with the Manchester Fire and Rescue Service (SMBC61). His statement adds corroboration to the observations of fire officer Mee. Cross examination added nothing.

34. The Appellant gave evidence. He had not provided a witness statement but had provided a summary of facts. The Appellant stated that the level of fine was too high and that the level of harm as described was exaggerated. He had purchased the radio linked fire detection system on 5 June 2019, the day of Mr Woods visit and produced a receipt, dated that day (MT04). He had started to fit the fire detection system that same day. He was not fitting it on 7 June 2019 as suggested by Mr Woods, it had been fitted on 5 June 2019. Further, he said that he had reached an agreement with Mr Woods that if he, the Appellant, did this on 5 June 2019 the prohibition

order would not be served, but Mr Woods breached that agreement, serving the order anyway. The Applicant stated that he had not been served with his own copy of the order.

35. The Appellant stated that he is not in breach of section 72 of the Act, operating an HMO that requires a license, whilst not having such a licence, because the basement flat is a self contained flat and separate from the remainder of the building. It is two different properties not one property.

36. The Appellant seeks to rely upon the Queen's Bench Division Court decision of Jan McColl v Listing Officer [2001] EWHC Admin 712. This case deals with council tax and held that a flat was a self contained unit within the meaning of the Council Tax (Chargeable Dwellings) Order 1992, for the purposes of the payment of council tax. Access to the flat in that case was through the main common exterior door to the building, along an entrance hall, up stairs to a landing, giving off to the door of the flat and to two other flats. The flat being considered was agreed to be self contained. The Appellant contends that since the flat in the McColl case was a self contained flat, then his basement flat is also self contained, hence not part of the HMO, hence no licence required.

37. The Appellant stated that he had not failed to display his name and address in the property and went into detail about this. The Tribunal does not address this further because the local authority accept that this might be the case and do not proceed with this part of the allegation. Although the breach of this regulation is endorsed upon the notices of intent and final notice, no penalty was issued in relation to this offence.

38. The Tribunal adjourned to 23 November 2020, with the Appellant part heard as a witness. In the intervening period, the Appellant prepared a witness statement dated 9 November 2020 and purported to serve it. This was dealt with as a preliminary issue on the second day of the hearing. The Respondent objected to the admission of the witness statement in evidence on the grounds that it was served far too late in the proceeding, in breach of Directions and went beyond the evidence given in chief already. However, where the statement went into areas of mitigation of the offences, rather than dealing with the offences themselves, the Respondent was willing to admit that part of the statement. The Tribunal agreed with the Respondent and decided to admit only the parts of the statement that go toward mitigation of the financial penalty.

39. The Appellant was referred to the letter (MWZ 2 and SMBC 56, referring to 2011) it was put to him that he had been clearly informed at that stage that if he let the building to more than four tenants that he would be committing an offence if he did not first obtain a licence to do so. The Appellant indicated that this had happened years before he let out the basement and that he could not be expected to remember that advice. He

had accessed a government web site and had concluded from what he there saw that the occupants of the basement flat could not be included in the number of persons resident in the HMO. The Applicant was taken through a selection of the photographs showing hazards in the property. He explained that many of the photographs showed ongoing work and that some of the hazards had been caused by tenants removing smoke alarms, bedroom door thumb nail locks, intumescent strips or seals and door closers.

40. The Appellant has also served 3 tenancy agreements in relation to 3 of the 5 tenancies that were ongoing on 5 June 2019.

41. The Appellant has served statements from four of the tenants in residence on 5 June 2019 and a report from a Mr David Wilson, a retired electrician. That report indicating that in his opinion, from the point of view of an electrician the nine photographs that he has been shown (as taken by the local authority during their inspection) show wires that are generally safe. However, in relation to wires visible because the kitchen ceiling was missing he stated that "once the ceiling is re-installed perfectly safe". In relation to a photograph of wires visible in the corner of a room where plaster has been chopped away, he indicated that this posed no risk once the area had been plastered again.

42. The four statements from the tenants are all unchallenged by the Respondent and are generally supportive of the Appellant as being a good landlord. However, Irena Surikova (MT10) added that because of the ongoing work she could not use the kitchen and did not cook whilst she lived there. She closed her eyes to the disrepair because the house was very cheap. She also said that the new alarm system had been installed the day that Mr Woods had come to the house. The Tribunal notes that Mr Woods attended at the property on 5 June 2019 and 7 June 2019. The witness statement from Piotr Tchorzewski, which does not mention tampering with fittings that contribute to fire safety in his room is supplemented by a letter that does admit this (MT26).

The Deliberations

43. The Tribunal first considers whether it has been established, beyond all reasonable doubt, that "the property" is an HMO as required for the offence under section 234 of "the Act" and whether it required a licence as required for the offence under section 72 of "the Act".

44. The Tribunal notes that although the Management of Houses in Multiple Occupation (England) Order 2006 applies generally to all HMO's whether licensable or not, that Regulation 4 (to which the local authority has imposed a financial penalty of £27,500) has a sub regulation (3) (fire

escape notices) and that does not apply if the number of residents in the HMO is 4 or less.

45. The Tribunal notes that Section 254 of the Act provides "the meaning of HMO's". The property is said to be an HMO because it meets the standard test set out in section 254 (2). The Tribunal determines that this test is met, even if the Appellant is correct in his submission that this is not a licensable HMO, pursuant to section 72 of the Act. In that event the standard test is still met because there would still be 4 adult tenants, in 3 separate households, sharing basic amenities of kitchen, living room and bathrooms and paying rent (excluding the tenants of the basement flat).

46. The standard test excludes a self contained flat from being part of an HMO and this is the point that the Applicant makes, if the basement flat is excluded from being part of the HMO, then the property did not and does not need to have a licence authorising it to be operated as an HMO.

47. There is some guidance in section 254 as to what can amount to a self contained flat, but applying that guidance to this case does not provide an answer that is not favourable to the Appellant. Such a flat is said to "mean a separate set of premises" (section 254 (8)). The Tribunal does not think that the basement flat can be such a separate set of premises when access can only be reached to it by walking through the HMO and in particular by walking through one of the shared basic amenities in the HMO, namely the living room. It is partly because the property has this shared basic amenity (along with kitchen and bathrooms) that it is defined as a HMO in the first place. Residents and visitors to the basement flat can walk through this shared basic amenity at any time, no matter what the other residents of the HMO are doing in the living room, eating a meal, playing a game etc.

48. The Appellant seeks to rely upon the case of the Queen's Bench Division Court decision of Jan McColl v Listing Officer [2001] EWHC Admin 712 (see above, paragraph 36). This is a case that this Tribunal would be required to follow, if it applies to the facts in this case, but the Tribunal determines that it does not. The case relates to entirely different legislation in which the court was concerned with deciding whether or not a flat was a separate entity for council tax purposes. That is not the case here. In any event access to the flat in the McColl case did not go through the living room provided for the residents of the building.

49. Taking all the above factors into account the Tribunal determines that the basement flat in this building is not a self contained flat for the purposes of this legislation and as such the residents of that flat must be taken into account when deciding if the property needs to be licensed. The Tribunal notes that the offence is alleged to be committed on 5 June 2019 and at that date the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 had commenced to be in force and that as such the property did require a licence so that it could be run as an HMO. The Tribunal is satisfied beyond any reasonable doubt that the Appellant is guilty of committing this offence.

50. The Tribunal also notes that the advice as given by Mr Woods in 2011, that increasing the number of tenants from the then 4 to 5 (or more), although given pursuant to the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2006 was correct when given and remains correct today. As such the Tribunal determines that this offence has been committed in the face of oral and written advice that increasing the number of tenants would result in the offence being committed. The Tribunal determines that this is an aggravating feature. It is not mitigated by the Appellant's evidence that because of the passage of time the warning was no longer in his mind.

51. The Tribunal moves to consider the allegation that the Appellant has committed the offence under section 234 of the Act of failure to comply with management regulations in respect of an HMO, Regulation 4, duty of the manager to take safety measures.

52. The regulations clearly apply to the property. The Appellant is clearly the manager of the property. The photographs taken during the inspections of Councillor Wynne and Mr Woods speak for themselves. The evidence of the Environmental Health Officers, supported by the Fire Safety Enforcement Officers is clear in the hazards that were seen on 5 June 2019.

53. The Appellant attempts the rely on the evidence of David Wilson, retired electrician, with regard to the electrical hazards (paragraph 41, above). This witness can only give evidence from his point of view as an electrician, he is not an expert in environmental health or fire safety, but even then his evidence is qualified by his statements to the effect that the wiring would be safe when the work is completed.

54. The Appellant seeks to contend that having purchased the wireless fire detection system on 5 June 2019 he set about installing it the same day and that it was being installed when Mr Woods returned with the prohibition order. This is supported to some extent by one of the tenants, Irena Surikova. However, the Tribunal accepts the evidence given by Mr Woods that in the conversation earlier that day the Appellant had said that he could not do this work that day. This had caused the Environmental Health Officers to decide that a prohibition order had to be made. There was then a return to the office, preparation of the order, a return to the property and service of copies of the order on all concerned, including the Appellant. This would not have happened if the Appellant had agreed to do the work that day. The Tribunal also determines that it is highly unlikely that if Mr Woods had seen that the Appellant had changed his mind and was now attending to the work during his return visit, that Mr Woods would still have served the order. Further, if the work had been done that

day then surely the Appellant would have brought this to the attention of Mr Wood, objecting to the order being served.

55. The Appellant seeks to challenge the prohibition order as not needed and not served properly, because it was not served on him. The Tribunal determines that the appeal procedure against the prohibition order has not been followed by the Appellant and that it is far too late to appeal against that order in a case challenging a financial penalty, guilt or innocence in relation to which will not be determined by whether or not the prohibition order was valid. In any event the Tribunal determines that the order was required and was served properly.

56. The Appellant seeks to criticise the local authority evidence as being exaggerated. The Tribunal does not agree. It is clear from the evidence relied upon by the Respondent that the alleged offences have been committed in the manner as both described by the witnesses and depicted in 148 photographs. The Appellant seeks to mitigate the harm caused and his culpability regarding the offences, but he does not seek to persuade the Tribunal that he is not guilty of the majority of the management offences.

57. The Tribunal has been through the particulars of the offence pursuant to Regulation 4, duty of the manager to take safety measures, as they are alleged (SMBS 56, page 4). The Tribunal has considered all the written and oral evidence presented to it, including the photographic evidence and the Tribunal is satisfied beyond any reasonable doubt that the following hazards were present in the property on 5 June 2019:
    - No notices were displayed indicating the location or means of escape in the event of fire.
    - The ground floor living room was cluttered with the landlord's possessions (kitchen units and a number of internal doors).
    - There are several deficiencies in the fire stopping and compartmention between levels and along the escape route.
    - Several fire doors which protect the escape route were either not working or could not work efficiently because they were missing self-closers, intumescent strips or cold smoke seals.
    - There were some automatic fire detectors fitted, but they were not appropriate or suitable to the property.
    - Some fire detectors heads were missing in common areas of the property.
    - Conditions within the property were deficient due to the landlord having commenced but not completed works throughout the property, particularly in the kitchen, bathrooms and communal areas.
    - Some bedroom doors did not have thumb turn locks, blocking escape without the use of a key.

- A second floor window in one bedroom has a low sill height (below 1000 millimetres) and was not restricted in its opening with a fall onto hard standing outside the window.
- The HMO had not been created/converted in line with current building regulations.

Please note that the Tribunal has deleted the word "structural" from the seventh bullet point. The Appellant made the point that although some works done by him significantly alter the interior of the property, they do not alter the structure of the property. Even in the case of a removed ceiling, the Tribunal agrees with the Appellant, this creates a fire safety hazard, it does not weaken the structure of the building.

58. In summary the tenants were being required to live in a building that should have been vacated before the Appellant commenced the building works. The property had inadequate fire detection in circumstances where building works (for example removing the kitchen ceiling) could encourage the spread of fire and adulteration of the air by the spread of smoke, throughout the building. The fire escape route was made even more dangerous by the fact that fire doors were not properly fitted or maintained. If a tenant were aware of the existence of a fire, that tenant's escape route would have been compromised.

59. The Tribunal is satisfied beyond any reasonable doubt that the Appellant is guilty of having committed the offence, on 5 June 2019,under section 234 of the Act, of failure to comply with management regulations in respect of an HMO, Regulation 4, duty of the manager to take safety measures.

60. The Respondent, during the hearing in this case, indicated that it no longer resists the appeal in relation to the allegation that the Appellant committed the offence on 5 June 2019, under section 234 of the Act, of failure to comply with management regulations in respect of an HMO, Regulation 3, duty to provide information to the occupier. The Tribunal determines that it finds the Appellant to be not guilty of this offence and will vary the final notice accordingly. Although no penalty was imposed in relation to this alleged breach, the local authority did take it into account adding it to the evidence before the Tribunal, to the notice if intent and final notice. As such the Tribunal determines that the Appellant being found to be not guilty of this offence is a mitigating feature.

61. In addition the Respondent alleges that the Appellant has committed an offence under section 234 of the Act, of failure to comply with management regulations in respect of an HMO, Regulation 6(3), duty to supply and maintain gas and electricity. Although no penalty was imposed in relation to this alleged breach, the local authority did take it into account adding it to the evidence before the Tribunal, to the notice if intent and final notice. As such it forms an aggravating feature.

62.The Tribunal accepts the evidence of David Wilson, the electrician who's statement is adduced on behalf of the Appellant (MT06). From the point of view of an electrician and not of an environmental health expert, some, but not all (paragraph 41 and 53, above) of the alleged hazards presented no level of harm or risk. The Tribunal determines that it is satisfied beyond any reasonable doubt that the Appellant is guilty of the offence, but to a lesser degree than first thought by the local authority.

63.In addition the Respondent alleges that the Appellant has committed an offence, on 5 June 2019, under section 234 of the Act, of failure to comply with management regulations in respect of an HMO, Regulation 7 (1) and (2), duty to maintain common parts, fixtures, fitting and appliances. Although no penalty was imposed in relation to this alleged breach, the local authority did take it into account adding it to the evidence before the Tribunal, the notice if intent and final notice. As such it forms an aggravating feature.

64.The Tribunal determines that it clear from all of the evidence relied upon by the Respondent in relation to this offence that the offence has been committed by the Appellant. In relation to the kitchen, this is added to by the evidence contained within the statement of Irena Surikova (MT10), the Appellant's own witness who states that she could not use the kitchen to cook and then generally that because of the condition of the property she found it difficult to live at the property (paragraph 42, above).

65.The Tribunal determines that it is satisfied beyond any reasonable doubt that the Appellant has committed the offence, on 5 June 2019, under section 234 of the Act, of failure to comply with management regulations in respect of an HMO, Regulation 7 (1) and (2), duty to maintain common parts, fixtures, fitting and appliances. This remains an aggravating feature.

66.Having decided that the Appellant is guilty of the offences as discussed above, the Tribunal now turns to the level of the financial penalty imposed.

67.The starting point for the Tribunal is to note that representations that were sent to the local authority by email on 11 November 2019, by email during the extended period allowed for response to the preliminary notice, were not read. The legislation does not impose any sanction for failing to read these representations, but it is a matter that this Tribunal might take into account, in appropriate circumstances. In fact, because of the way that the representations were attached to the email, had they been sent to the office of this tribunal, it would not have been possible to open them. The local authority cannot be criticised for opening the pdf's attached to the email but not opening the .pages attachment. Indeed, the local authority cannot be criticised for failing to realise that there was anything at all attached to the email at that position. The Appellant is at fault for choosing

to send his representations in a form that is not widely used, not widely recognised and not easily opened. That said, the Tribunal is now able to read the representations and notes that the overall effect of the representations is to seek to reduce the total financial penalty from £40,000 to £30,000.

68. The Tribunal also accepts the letter from Piotr Tchorzewski to the effect that he tampered with fire safety installations in his room as a mitigating factor.

69. The Tribunal notes that the property has now been put into a good state of repair so that the Tribunal concludes that the Appellant has cooperated with the aims of the local authority to have this property in a good and safe condition. The Tribunal further accepts that the condition of the property as now depicted in photographs and description (MT05) must have cost a good deal of money to accomplish at a time when rental income was much reduced due to four rooms at the property being vacant. The Tribunal accepts that this has resulted in the Appellant going into debt.

70. The Tribunal accepts that in so far as the majority of the Appellant's tenants are concerned, (and the past tenant, Kerry, MT23) the Appellant is a kind person and notwithstanding the condition of the property, otherwise a good landlord. This is supported in part by the email from Ms Gillian Ollerenshaw.

71. The Tribunal notes the medical evidence from Dr Stamp and the National Health Service. The Tribunal further notes the death certificates of the Appellant's close family members and extends a note of sympathy, whilst on the other hand, deciding that the Appellant should have instructed professional trades-people to continue the works if he felt unable to carry them out himself.

72. The Tribunal accepts the evidence in MT13, MT14, MT15, MT17, MT18, MT19, and MT20. These paint a very recent picture of the Appellant being in financial difficulty. However, the Tribunal tempers this with the fact that with the rents being paid on 5 June 2019, the property was able to return £1,884 per month. There has been significant income from the property that is not shown in the exhibits because the financial information provided is so recent. Further, the property appears from the current photographs to be in a good condition and capable of returning that kind of profit, or more, in the near future when the property is licensed and let. Alternatively, the property is a saleable as a potentially profitable HMO.

73. The Tribunal notes the content of SMBC 63, providing the Respondents policy and matrix for deciding whether to impose a financial penalty and if so the level of that penalty. The Tribunal agrees with the Respondent that

this case is such that a financial penalty rather than prosecution was the correct approach. The Tribunal does not take issue with the categorisation of harm and culpability for each offence save to determine that the penalty should have been at the lowest amount possible in the relevant bands.

74. The Environmental Health Officers were not aware of any of the above mitigating features when the financial penalty was decided upon, but the Tribunal takes them into account now. As a result the Tribunal will vary the financial penalties as imposed by the final notice to £10,000 in respect of the offence that 0n 5 June 2019 the HMO was required to be licensed and was not so licensed contrary to section 72 of "the Act" and £20,000 in respect of the offence, on 5 June 2019, under section 234 of the Act, the Appellant failed to comply with management regulations in respect of an HMO, Regulation 4, duty of the manager to take safety measures. Total financial penalty £30,000.

75. This case has been conducted whilst our society is dealing with the effects of the Covid 19 pandemic and as a result there have been procedural changes. The first such change has been that in some instances evidence has been served by email instead of by post. The second is that had an inspection of the property been thought necessary, it could not have extended to the interior of the property. Neither change has had any detrimental effect on the case. Due to the huge number of photographs and thorough description provided in the evidential bundles it would not have been necessary to inspect this property in any event. The Tribunal has considered the possible effects of Covid 19 restrictions to this case and is satisfied that the case has been dealt with in a fair and just manner.

The Decision

76. The Tribunal is satisfied beyond any reasonable doubt that on 5 June 2019 the property was an HMO that required a licence and that the Appellant let out the property without such a licence and has therefore committed the offence as detailed on the final notice to issue a civil penalty, pursuant to section 72 of the Act. The Tribunal is also satisfied beyond any reasonable doubt that on 5 June 2019 the property was an HMO and was being managed in breach of regulation 4, 6 and 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006 the Appellant committing an offence contrary to section 234 of the Act. The Tribunal decides to confirm the final notice in this regard, but to vary the particulars of the second offence by deleting the word "structural" from the seventh bullet point (paragraph 57, above).

77. The Tribunal is not satisfied that on 5 June 2019 the property was being managed in breach of regulation 3 of the Management of Houses in Multiple Occupation (England) Regulations 2006, the Appellant did not

commit a further offence contrary to section 234 of the Act in relation to this regulation. The final notice will be varied to delete this allegation.

78. The Tribunal decides that the civil financial penalty imposed in relation to these offences must be varied to; (a) £10,000 in respect of the offence that on 5 June 2019 the HMO was required to be licensed and was not so licensed contrary to section 72 of the Act and (b) £20,000 in respect of the offence, on 5 June 2019, under section 234 of the Act, the Appellant failed to comply with management regulations in respect of an HMO, Regulation 4, duty of the manager to take safety measures. Total financial penalty £30,000.The Appellant is required to pay this penalty within 28 days of this Decision being sent to him, to the Respondent.

79. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal against this Decision has 28 days from the date that the Decision is sent to the parties in which to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds for the appeal, the paragraph numbers of the Decision appealed against, the particulars of such grounds and the result that the appellant seeks as a result of raising the appeal.

Judge C. P. Tonge

16 December 2020