



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

Case Reference : CHI/00HA/HNA/2021/0010 & 0019

Property : 173 Bradford Road, Combe Down, Bath
BA2 5BT

Applicant : Mr Garry Jones & Mrs Yanfei Jones

Representative :

Respondent : Bath and North Somerset Council

Representative :

Type of Application : Appeal against a financial penalty

Tribunal Member(s) : Judge D R Whitney
Mr P Turner-Powell FRICS
Mr P Gammon MBE

Date of hearing : 22nd July 2021

Date of Determination : 17th August 2021

DETERMINATION

Background

1. On 5th April 2021 the Tribunal received an application from Mr Jones seeking to appeal a civil financial penalty in the sum of £2,250. Directions were issued on 26th May 2021.
2. It appeared Mr Jones believed he was appealing also a notice received by his wife Mrs Jones against a penalty in the sum of £2,750. Subsequently a further application to appeal this notice was received. The Respondent council consented to such application being made out of time and that that appeal should be heard with Mr Jones'. The Tribunal issued directions on 14th July 2021 confirming that Mrs Jones' appeal could be accepted out of time and would be determined at the same time as that of her husband.
3. The Council had served final penalty notices upon the Applicants both dated 29th March 2021 on the basis that the Applicants had committed a breach of section 72 of the Housing Act 2004 in that they had operated an HMO without a licence when such licence was required.
4. The Council produced a hearing bundle in accordance with the directions. Within this decision references in brackets [] are to pages within the hearing bundle.
5. The Tribunal records that it was also aware of the decision in claim reference CHI/00HA/HMF/2021/0004 being proceedings for a rent repayment order against Mrs Jones.

Hearing

6. The below sets out the salient and important parts of the hearing of this matter. It is not a transcript of the hearing but focusses on those matters which the Tribunal has determined have been most relevant in reaching its determination.
7. The hearing took place by video CVP. All parties were able to see and hear and were advised at the start that the proceedings were being recorded.
8. The hearing was attended by Mr and Mrs Jones and Mr Toprowski and Mr Carroll for the Respondent.
9. At the start of the hearing the Tribunal checked with Mrs Jones that she would be able to follow the proceedings given it was apparent from the introductions and the previous proceedings that English was not her first language. She was present in the same room as her husband and she confirmed that she did not require an interpreter and would be able to follow all that was said.
10. The Tribunal warned Mr and Mrs Jones given that the Tribunal would be looking to make findings as to a criminal offence they were not

obliged to give any evidence or say anything. Mr and Mrs Jones confirmed they understood. They were aware they could have taken advice but had chosen not to.

11. The Tribunal reminded all parties that this was a rehearing and as a result all options were open to the Tribunal including increasing the penalty amount.
12. Mr and Mrs Jones confirmed that they agree that at all material times the Property was occupied as an HMO without the licence which was required under the Respondent's additional licensing scheme. Mr Jones explained he and his wife believed they had a reasonable explanation as to why this was the case.
13. The Tribunal confirmed they would consider whether or not the Applicants had a reasonable excuse defence to the alleged offence.
14. Mr Toporowski presented the case for the Respondents.
15. He had produced a witness statement [144-147] which confirmed he was employed as a Senior Environmental Health Officer for the Respondent. He confirmed that he had made the statement and was satisfied it was true.
16. Mr Toporowski then talked the Tribunal through his statement.
17. He explained that on being made aware of the offence he considered whether or not the Council should prosecute or seek a civil financial penalty. He had determined the latter and then assessed the penalty in accordance with the Council policy [177-187].
18. He assessed the Applicants as having high culpability as at first they had suggested the property was occupied by their son and friends and no rent was paid. This assertion was made by Mrs Jones in emails and subsequently he obtained evidence from the tenant occupiers that this was not true. Further he took account of the fact that letting property in this way is a business and landlords should keep themselves aware of all legal requirements.
19. The property was assessed as a high harm risk due to issues relating to fire safety. These included the fact that although an alarm was present it was not working and fire separation in the Property was poor. There was also a room in the basement which had no windows or ventilation, yet it appeared it had been let as a bedroom.
20. He explained he then considered what aggravating and mitigating factors existed to come up with an interim penalty. It was determined that this penalty would then be split between Mr and Mrs Jones given they owned the Property jointly. Mr Toporowski felt this was fair given he believed the financial circumstances of the Applicants were limited.

21. The penalty initially proposed was a total of £6,500 divided equally. The notice sent to Mr Jones with reasoning is at [148-153]. A similar notice was sent to Mrs Jones.
22. Representations were received and Mr Toporowski made adjustments to take account of these representations. He also determined that Mrs Jones should pay a higher amount given she had dealt with the day to day management. Copies of the final notices with reasons are at [160-175]. A penalty of £2,250 was imposed on Mr Jones and £2,750 on Mrs Jones.
23. Mr and Mrs Jones were invited by the Tribunal to ask any questions they had of Mr Toporowski. They said they had none at this stage.
24. The Tribunal then asked questions.
25. Mr Toporowski stated the Council's additional licensing scheme came into force in January 2019. It required all properties within the City of Bath to have a licence if they were occupied by 3 or more people consisting of 2 or more households. Prior to the scheme coming into force there had been a consultation period and the Council had arranged for a postcard advertising the scheme to be delivered to every house in Bath. The implementation of the scheme had been advertised in the Bath Chronicle. He confirmed he had visited property agents in the City and there was a council newsletter sent to those landlords of whom the council was aware. He confirmed the licence fee was £795.
26. Mr Jones then asked a question concerning Council Tax for the property but Mr Toporowski was not able to answer the same.
27. Mr Toporowski then called Mr Carroll. Mr Carroll had given a witness statement [25-29]. He confirmed that the same was true and accurate. Again he took the Tribunal through the same.
28. He explained he had been contacted by a tenant at the Property who was concerned over the lack of Gas Safe and Electricity Safety Certificates. He had a couple of email conversations with Mrs Jones and by the time he actually inspected the Property was empty.
29. Again Mr and Mrs Jones declined to ask any questions.
30. On questioning by the Tribunal Mr Carroll explained the layout of the Property. Mr Jones on behalf of the Applicants confirmed he agreed this.
31. After questioning by the Tribunal again Mr and Mrs Jones were given a chance to ask any questions but they had no questions to ask.
32. Mr Toporowski in closing explained that they applied the Council policy and in his opinion the penalty is fair. He believes if let the Property could generate a rental income of £2,000 per calendar month.

33. He confirmed that the licence application was received on 19th August 2020 and validated as complete on 1st September 2020. A licence was granted allowing the Property to be occupied by a maximum of 4 people from 4 households on 19th January 2021.
34. At the close of the Respondent's case the Tribunal adjourned for 15 minutes to give all parties a short break.
35. On resumption Mr and Mrs Jones presented their case.
36. Mr Jones explained he did not know of the scheme. He suggested he would not have known until he was told. He stated the house was not a dump and had previously been his family home until he and his wife moved out leaving their son living there.
37. He explained every room had a battery operated smoke alarm, there was a carbon monoxide alarm in the kitchen and the boiler was only two years old. In his opinion the house was not dangerous.
38. Mrs Jones apologised for the situation arising. She explained she had no job and no income. She explained after her son moved out she had let the Property. When her son moved out her nephew moved in and she let to 3 other students so not receiving 4 lots of income.
39. Mrs Jones explained she told the story of her son and his friends living at the Property as she was scared of references to a £30,000 fine. She accepted this was a mistake.
40. Mrs Jones suggested she doesn't have the money to pay a penalty. She referred to spending all her savings undertaking the works the council required for a licence and the Property was still not let.
41. On questioning by Mr Toporowski the Jones' confirmed Soniya was the girl in the basement but she did not stay very long. She did not charge her nephew as family had helped her out in the past.
42. On questioning by the Tribunal the Jones' confirmed they bought the Property in 2013 as a family home and moved out in 2016. Their son remained living there and his girlfriend moved in with him. In September 2019 their son moved out. He in fact handed the keys over to the tenants.
43. Mr Jones explained the alarm in the Property was very old and not working when they purchased the Property. He confirmed they thought it had been let previously.
44. Mrs Jones explained the Property was still unlet due to Covid. She had put an ad in the Student pack. She was asked if she had approached any letting agents but she said Agents charge too much.

45. Mr Jones explained that their bank account (for which a statement was in the bundle [19-20]) continued to contain similar sums of money. He explained he worked as a self-employed seller and fitter of blinds and needed this money as working capital for his business to purchase stock.
46. Mrs Jones confirmed she had not worked since they left Lincolnshire in 2016.
47. The Jones' confirmed that this Property and their home address are both owned free of any mortgages. They do not own any other property and have no other income save for Mr Jones' small income from blinds as set out in the statement of their financial circumstances [24].
48. Mrs Jones explained she tried to apply as soon as she was made aware. It took her a couple of weeks as she struggled with making the application and it then took her sometime to arrange contractors to undertake the certificates. She once again apologised.
49. This concluded the case for the Applicants.
50. Prior to concluding the proceedings the Tribunal asked each and every participant individually whether they had anything to add. All 4 participants confirmed they had said everything they wished.

Decision

51. The Tribunal considered everything within the bundle, that was said at the hearing and the decision made in respect of a rent repayment order under reference CHI/00HA/HMF/2021/0004. Whilst we note the latter is not binding upon this Tribunal it is persuasive as to matters we must determine.
52. Firstly we must be satisfied that a criminal offence has been committed. We must be satisfied to the criminal standard of proof that this is the case.
53. We record that Mr and Mrs Jones at the start of the hearing accepted they did not have a licence during the period contended and they should have had an additional licence. Notwithstanding this admission we have considered carefully the documents and evidence.
54. Mrs Jones confirmed the Property was occupied by 3 people and her nephew. The Respondent produced tenancy agreements [93-112] from 4 people. It was accepted in the Rent Repayment Proceedings that the offence of operating an HMO without a licence contrary to section 72(1) of the Housing Act 2004.
55. We have also considered whether or not Mr and Mrs Jones may rely upon the statutory defence of having a reasonable excuse pursuant to section 72(5) of the Housing Act 2002. We heard the evidence from Mr

Toporowski as to what efforts the Respondent made to make landlords aware. We accept that landlords operating houses in multiple occupation (whether requiring a licence or not) are operating a business and as such are expected to keep themselves apprised of their statutory obligations.

56. On the evidence of Mr and Mrs Jones they had no knowledge. However it appears they had no knowledge of any obligations as a landlord given they did not even have a Gas Safe certificate and it appears deposits taken from tenants were not registered in an approved scheme. It seems to this Tribunal that Mr and Mrs Jones took no steps to make themselves aware of their obligations as a landlord. We note they themselves reside in the City of Bath and chose to let the Property without use of an agent.
57. This Tribunal is satisfied beyond reasonable doubt that Mr and Mrs Jones committed the offence of operating an HMO without a licence from when the additional scheme commenced in January 2019 until all of the tenants vacated. Further we are satisfied that there was no reasonable excuse for non-compliance over such a long period by Mr and Mrs Jones. We find it was a conscious decision by Mr and Mrs Jones to not familiarise themselves with any of the legal requirements for letting property.
58. We turn now to the penalty. It is for this Tribunal to assess what penalty should be applied. We have considered the Respondent's policy and particularly [185-186]. We are satisfied that it is reasonable to apply this policy in making our determination.
59. We find that there is a high degree of culpability. The breach was ongoing for a period of about 20 months. It was accepted by Mr and Mrs Jones that they did not have Gas Safe or Electrical Safety certificates in place being a basic requirement for letting any dwelling in England.
60. We comment that we did consider whether or not Mrs Jones fell within the category of Very High Culpability given her attempts to mislead the Respondent as to the nature of the occupation of the Property including trying to persuade others to lie on her behalf to the Respondent as referred to in the previous Tribunal proceedings. Matters were finely balanced but we determine given the Respondent has accepted that it is high culpability that we will not increase the harm category.
61. We must comment that Mrs Jones in her emails was not open and candid and lied to Mr Carroll as to occupation of the Property. She knew her son was not living there. It is notable that in the rent repayment proceedings she further admitted trying to encourage the tenants to tell lies to the Respondent. Whilst we note she apologised in these proceedings she would do well to note that such actions may have consequences and if such action happened again it may be far more serious than even has occurred here.

62. Mr and Mrs Jones did not seem to understand the seriousness of the fire safety issues identified by Mr Carroll when he inspected. We note that they had been letting a room without even the most basic of natural light and ventilation. We agree with Mr Carroll's assessment that this produces a High Harm rating on the Respondents matrix. This would provide a starting point for the penalty of £6,500 to which aggravating and mitigating factors are applied [186].
63. We have looked carefully at those factors applied in the final notices [160-175]. We are satisfied that these are the aggravating and mitigating factors account of which should be taken. The mitigating factors encompass all the points raised by Mr and Mrs Jones.
64. We did consider whether or not we might adjust these factors. We note there is no suggestion now made that either Mr or Mrs Jones lost a job due to the pandemic. Mrs Jones ceased working when she moved to Bath in 2013 on her evidence. We accept they may have been affected by Covid and the fact the Property has not been let. We do not understand why the Property has not been let. The Jones' were free to do so once a validated application had been made to the Council on 1st September 2020 (prior to the start of the University term). We do not accept Mrs Jones' argument over letting agents since in our experience they only charge a fee once tenants are found and some income must be better than none.
65. We accept the evidence of the Respondent that the Applicants did do the required works within a timely manner and that the Applicants have no previous convictions or financial penalties.
66. We took account of the financial circumstances but believe the mitigation allowed by the council is adequate. Mr and Mrs Jones own two mortgage free properties in Bath. We are not told the value but using our own knowledge the capital available must be considerable. Further we note the financial disclosure made is limited. A very brief statement of income and expenditure with no supporting documents save for a bank statement which records that the monthly average balance is approximately always 45% of Mr Jones' annual net income. We are not satisfied that they would be unable to raise funds to settle any penalty issued. Mr and Mrs Jones may be financially affected by any penalty levied but these are meant to be penalties and that was the intention of Parliament.
67. We have considered the fact the Council has chosen to award only one penalty and divide it between the two joint owners. We are told this is the Respondent's policy in such circumstances. We did consider whether each of Mr and Mrs Jones should be treated individually and the penalty calculated on that basis. We accept this is not the Respondent's policy which they have determined, and we consider we should adopt the same approach.

68. As a result we are satisfied that Mrs Jones is liable for a penalty of £2,750 and Mr Jones a penalty of £2,250 and so the appeal is dismissed.
69. We hope that Mr and Mrs Jones will ensure full compliance in the future. We remind them if they are to continue managing the Property themselves, they must ensure they remain aware of any and all statutory requirements for letting Property. This is a complicated area of law and the penalties can be considerable and any further instances of breach may not be looked at so leniently.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.