



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY) &  
IN THE COUNTY COURT AT  
CENTRAL LONDON, sitting at 10  
Alfred Place, London WC1E7LR**

<b>Case Reference</b>	:	<b>CAM/00KG/HNA/2019/0013</b>
<b>Property</b>	:	<b>440 London Road, Grays, Essex, RM204AR</b>
<b>Applicant</b>	:	<b>Kkalid Daoudi (“the Applicant”)</b>
<b>Representative</b>	:	
<b>Respondents</b>	:	<b>Thurrock Council (“the Respondent”)</b>
<b>Representative</b>	:	<b>Ryan Thompson</b>
<b>Type of Application</b>	:	<b>Appeal against a financial penalty - Section 249A &amp; Schedule 13A of Housing Act 2004</b>
<b>Tribunal Members</b>	:	<b>Jim Shepherd Evelyn Flint DMS FRICS IRRV</b>

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**DECISION**

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The Final Notice dated 7th June 2019 is cancelled.

**Introduction**

1. The Applicant Khalid Daoudi seeks to appeal against a financial penalty imposed by the Respondent, Thurrock Council. The penalty imposed is £10,000. The penalty was imposed because the Applicant was operating a House in Multiple Occupation (HMO) without a license.

**Background**

2. Mr Daoudi is the owner of premises at 440 London Road, Grays, Essex, RM20 4AR ("The premises"). He and his family originally lived in the premises. They moved to Kent and let the premises out via an agent. Subsequently Mr Daoudi let the premises out himself and there is no dispute that at the date when the Respondents took action, the premises were an HMO as there were a number of different households in occupation.

3. On 17th December 2018 the Respondents received an allegation that the premises were being operated as an HMO with up to 11 tenants. ( Page 19 of the hearing bundle).

4. On 18th December 2018 Neil Haycock and a colleague visited the premises and found 6 bedrooms were being let at a rate of £150 per week. There were 10 tenants and the premises consisted of 3 storeys. The house was therefore an HMO which ought to have been licensed under s.61 of the Housing Act 2004.

5. A section 16 Requisition for information and a letter detailing contraventions under the Management of Houses in Multiple Occupation (England) Regulations 2006 was sent to the Applicant on 3rd January 2019 (page 65). The Applicant responded to the request immediately (Page 70).He gave the names of the people in occupation of the premises.

6. On 9th January 2019 Neil Haycock revisited the premises with a colleague and took witness statements from the occupants. There are witness statements from Kaysea Gibbons and Dean Delahunty (Page 73 onwards) Gabriela Zabierowska, Beata Pazdziar and Jacob Koszarski ( Page 34 onwards) and Ivan Alanasov and Simeon Sotirov ( Page 59 onwards). As a result of this information it was suspected that that the premises had been operating as an unlicensed HMO since 2nd June 2018.

7. On 9th January 2019 Mr Daoudi acknowledged receipt of the initial letter and on 18th January 2019 he made a license application (Page 79). The application has still not been dealt with by the Respondents.

8. On 21st February 2019 the Applicant was interviewed under caution by the Respondents (Page 93 and transcript).

9. On 1st March 2019 Neil Haycock and Christopher Cooper for the Respondents carried out a checklist to determine the amount of a Financial Penalty to be imposed. *Inter alia* the checklist acknowledges that the Applicant was unaware of the legislation but made no effort to keep himself updated/informed of the legislation. The checklist concluded that the appropriate financial penalty was £10000.

10. On 6th March 2019 a revisit was made to the premises by the Respondent's officers. Mr Haycock confirmed during the hearing that the Applicant had carried out all of the works required by the schedule of contraventions (Page 29 onwards).

11. On 19th March 2019 Adam Rulewski an in-house barrister for the Respondents carried out a Civil Penalty Notice Review. He concluded that the evidential and public interest tests of the Code for Crown Prosecutors had been made out and that the evidence demonstrated beyond all reasonable doubt that the offending had taken place and recommended the imposition of a CPN. Mr Rulewski made it clear that the final decision on whether to pursue a penalty lay with his instructing officers.

12. On 22nd March 2019 the Respondents served the Applicant with a Notice of Intent to Impose a Financial Penalty pursuant to Section 126 and Sched 9 of the Housing and Planning Act 2016. The offence was in relation to licensing of Houses in Multiple Occupation pursuant to Section 72 Housing Act 2004. The premises were required to be licensed under s.61 (1) of the Housing Act 2004 but were not so licensed. The premises contained an inadequate number of facilities for the number of tenants and there was an absence of fire detection and fire protection in the premises.

13. On 8th April 2019 the Applicant made written representations in response to the Notice of Intent dated 22nd March 2019. He said he was unaware of the need for a license or indeed the term HMO. If he had been aware of the need for a license he would not have let the house out and would not have issued tenants with a s.21 notice. He said he could not afford the £10000 penalty. He had already spent £ 6500 since January on the works required to the premises. His wife had cancer which was causing considerable stress to the family.

14. On 7th June 2019 the Respondents issued a Final Notice requiring a financial penalty of £10000.

15. On 4th July 2019 the Appellant issued this appeal.

### **The hearing**

16. The appeal was heard on Friday 18th October 2019

17. The Applicant represented himself. The Respondents were represented by Ryan Thompson of Counsel. Mr Haycock gave evidence on behalf of the Respondents.

18. The Applicant opened his case saying that he was appealing the financial penalty. By way of background he said that he was trying to sell the premises but the council's action had made things uncertain.

19. He said he was traumatised by the experience. The premises had been his family home since 1997. He and his family had previously lived there. He has four children. They moved to Maidstone and let the premises through an agency called Let It for about ten years. He was content as long as the rent covered the mortgage. They were supposed to fully manage the premises and insure against loss of rent. They didn't take out the insurance and he lost 6 months rent. The Applicant terminated his contract with Let it. His wife got cancer in 2018. He got someone to value the premises.

20. The Applicant stated that he offered the premises to the council for use. He had previously been a foster carer and looked after children until the age of 16. He had not been advised about the HMO regime at this stage.

21. The Applicant stated that he let the premises to a family. He did the letting himself without any tenancy agreement. The family were from the Czech Republic. There were three brothers each with a girlfriend. They turned out not to be a family.

22. Mr Thompson for the Respondents said that they had introduced additional licensing in October 2018. The premises were already caught under mandatory licensing pursuant to the Housing Act 2004 because there were three storeys. As a result of this additional licensing the Respondents had sought to advertise the fact in 2018. Some evidence of this was provided to the Tribunal (Press releases dated 10th July 2018 and 21st August 2018). It was not clear

whether the Respondent's press release had reached the local newspaper, The Thurrock Gazette. Prior to the introduction of additional licensing the information about the requirement for an HMO license was contained on the council's website. The Applicant said that the council's website was difficult to navigate.

23. The Applicant stated that when Neil Haycock first came to the premises he had told him that there were no fire warning systems. In fact the tenants had removed the batteries from the smoke alarm.

24. The Applicant continued with his account of the letting of the premises. He said he started to let the rooms separately in June 2018. He collected the rent. Some paid in cash and some by bank transfer.

25. He said that when Neil Haycock sent the list of improvements required at the premises he had carried out the works. Within 4 weeks all of the works had been done. He had submitted his application for a license on 15th and the fee was cleared on 18<sup>th</sup> January 2019. He said that after Mr Haycock had visited the tenants had stopped paying the rent. He had served a s.21 notice on two of the tenants. He did not realise that this was invalid because he didn't have a license. There were three individuals: two men and the sister of one of the male tenants living at the premises at the moment.

26. In his submissions Mr Thompson went through the relevant law (which is detailed below). He said that when Mr Haycock had inspected he had found 3 floors in the premises and six bedrooms. He has seen 10 people. There was a lack of a proper fire detection system.

27. He said that there was a defence of reasonable excuse under s.72(5) of the Housing Act 2004. This was an objective test. He said the fact that the Applicant didn't know he needed a license was not sufficient. He was obliged to make enquiries as a prudent landlord. It was accepted by the Respondents that this was medium level offence.

28. Mr Thompson said that a decision had been taken to prosecute based on the structure and design of the building . There were 10 people found at the address. The premises would only be licensed for 5. It was overcrowded. There were deficiencies in fire safety. Although the Applicant had dealt with the requisite works quickly there was a trajectory of compliance. He

was still culpable for the period before he became aware of the intentions of the council. The representations made by the Applicant did not shift the needle. The council had discretion as to whether to impose a penalty and chose to do so. The decision was reasonable.

29. The Tribunal asked Mr Haycock why the license application had not proceeded. He said the council needed to do a Part 1 Inspection. He accepted that this inspection could have been carried out by now.

30. Mr Thompson said it was for the Tribunal to decide whether to confirm, quash or vary the penalty. He urged the Tribunal to confirm it.

31. The Applicant said the penalty was too high. He had complied with everything he was asked to do. He planned to sell the property and pay off the mortgages. His marriage was over. His wife had cancer and he was still looking after her. He believed that he had made the premises fire safe by having battery smoke alarms. The tenants had removed the batteries and put towels around the alarms. Once he had been made aware of the fact that the premises were an HMO he had taken action in accordance with the councils requests.

### **The law**

32. Section 72 (1) of the Housing Act 2004 states the following:

*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.*

33. Section 249A of the Act states the following:

*(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 :*

*....*

*(b) section 72 (licensing of HMOs).*

.....

*(4) The amount of the a financial penalty imposed under this section is to be determined by the local authority, but must not be more than £30000*

34. Schedule 13A, para 10 states that:

*(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.*

.....

*(3) An appeal under this paragraph -*

*(a) is to be a rehearing 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.*

35. There is Guidance issued to Local Authorities on Civil Penalties under the Housing and Planning Act 2016 ( the Act that amended the HA 2004). This contains at para 3.5 a list of factors that may guide the appropriate level of the civil penalty including: the severity of the offence; the culpability and track record of the offender; the harm caused to the tenant; the punishment of the offender; deterring the offender from repeating the offence; deterring others and removing any financial benefit obtained from committing the offence

### **Application to the present case**

36. The Tribunal do not consider that it was reasonable or appropriate for the Respondents to impose any financial penalty in the present case. This is for the following reasons:

- a) The Applicant took all steps requested of him by the Respondents in good time.
- b) In particular the Tribunal notes that according to Mr Haycock at the re-inspection of the premises on 6th March the Applicant had carried out all of the works required at the premises.
- c) In addition the Applicant made an application for a license at the first possible opportunity.
- d) The Applicant provided all possible assistance and cooperation to the council when they were seeking information prior to the imposition of a financial penalty.
- e) The Tribunal accepts the Applicant's evidence that he was unaware of the need for an HMO license before the council became involved. This appeared to be accepted by the Respondents who were proceeding on the basis that he was nonetheless responsible for failing to make enquiries that a prudent landlord would make. Balanced against this is the Respondents' own responsibility to ensure that it takes all reasonable steps necessary to secure applications are made for HMO licenses ( see particularly s.61(4) of the Act). It was not clear whether the press releases relied upon by the council had been reproduced in the local paper. Neither was the evidence of the information contained on the website produced for the consideration of the Tribunal. In any event it is clear that the Applicant did not know he had to have a license. As soon as he did know he applied for one and took steps to comply with local authority requests.
- f) Whilst ignorance of the law is no defence it can go to mitigation. The Tribunal considers that the Applicant was genuinely unaware of the requirement to license and if he had been aware he would have obtained a license.



g) The Tribunal is surprised that the Respondents decided to pursue a penalty despite the Applicant's compliance. The Tribunal is of the view that the threat of prosecution or penalty served its purpose. The Applicant complied. The penalty charge was unnecessary and unreasonable. The Applicant had suffered sufficient punishment as a result of the obvious distress he had suffered and was still suffering in consequence of the action brought.

h) Finally as an aside the Tribunal was unimpressed that the Respondents had yet not taken steps to properly progress the Applicant's application for a license.

**Judge Jim Shepherd**

**1st November 2019**