



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

**Case Reference** : **LON/00AP/HNA/2021/0043**

**HMCTS code (paper, video, audio)** : **V: CVP VIDEO**

**Property** : **27 Boreham Road, London N22 6SL**

**Applicant** : **Mr Thompson Fatodu**

**Representative** : **In person**

**Respondent** : **London Borough of Haringey  
(Housing Improvement Team-  
Private Sector)**

**Representative** : **Ms Fiona Wilkinson, Private Sector  
Housing Enforcement Officer**

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

**Tribunal Members** : **Judge N Hawkes  
Mr T Sennett FCIEH**

**Venue and date of hearing** : **Remote video hearing on 28  
February 2022**

**Date of Decision** : **4 March 2022**

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**DECISION**

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## **Covid-19 pandemic: VIDEO HEARING**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are contained in two e-mails from the Applicant dated 14 February 2022 and in a Respondent's bundle of 170 pages (including index), the contents of which we have noted. The order made is described below.

### **Decision of the Tribunal**

The Tribunal confirms the final notice which is the subject of this appeal. The final notice is dated 16 July 2021 and it requires the Applicant to pay a financial penalty in the sum of £5,000.

### **The background**

1. By an application dated 17 July 2021, Mr Thompson Fatodu ("the Applicant") brought an appeal against a financial penalty made under section 249A of the Housing Act 2004 by the London Borough of Haringey ("the Respondent").
2. The Applicant appeals against the imposition by the Respondent of a financial penalty in the sum of £5,000 pursuant to a financial penalty notice dated 16 July 2021. The Respondent asserts that the Applicant has committed a relevant housing offence. The reasons given to the Applicant by the Respondent for imposing a financial penalty are as follows:  
  

*"On the 19<sup>th</sup> May 2021, being the freeholder of 27 Boreham Road, Wood Green, London N22 6SL, you did fail to licence a HMO and therefore committed an offence under section 72(1) of the Housing Act 2004."*
3. The Applicant is the freehold owner of 27 Boreham Road, London N22 6SL ("the Property").
4. On 21 September 2021, the Tribunal issued Directions ("the Directions") leading up to a final hearing which took place by CVP video on 28 February 2022.
5. The Applicant attended the hearing in person and the Respondent was represented by Ms Wilkinson, a Private Sector Housing Enforcement Officer. The hearing was also attended by the witnesses referred to below and by two observers who played no part in the proceedings.

6. The Applicant gave oral evidence in support of his case. The Tribunal also heard oral evidence from the following witnesses on behalf of the Respondent:
  - (i) Mr Ashvin Gukhool, a tenant of the Applicant at the Property;
  - (ii) Mr Abraao Vinha, a tenant of the Applicant at the Property;
  - (iii) Ms Roz Spencer, a Manager at Safer Renting (Cambridge House); and
  - (iv) Ms Fiona Wilkinson, a Private Sector Housing Enforcement Officer.
7. The Applicant took part in the hearing by using a smartphone and he confirmed that he did not have any available second device with which to access the hearing or the hearing bundles. Accordingly, all of the witness statements which were relied upon were read out in full to the Applicant and Ms Wilkinson shared her screen when referring to photographs and other documents.
8. At times the Applicant lost connection and the hearing was paused in order to enable the Tribunal case officer to assist him to reconnect. At the request of the Applicant, the Respondent called its evidence first. The Applicant's closing submissions followed the Respondent's closing submissions.

### **The Tribunal's determination**

9. Financial penalties were introduced by the Housing and Planning Act 2016 ("the 2016 Act"). The 2016 Act amended the Housing Act 2004 ("the 2004 Act") by inserting section 249A and Schedule 13A. These provisions enable local authorities to impose financial penalties of up to £30,000 in respect of a number of offences under the 2004 Act as an alternative to prosecution.
10. Subsection 249A(1) of the 2004 Act provides that a local authority may only impose a financial penalty if satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence. The Tribunal must also be satisfied to the criminal standard of proof that an offence has been committed. The relevant housing offences are set out in section 249A(2) of the 2004 Act and include "*section 72 (licensing of HMOs)*".

11. Schedule 13A to the 2004 Act sets out the procedure that must be followed by the local authority. DCLG Guidance for Local Authorities (“the Guidance”) has been issued under paragraph 12 of Schedule 13A.
12. The Guidance encourages each local authority to develop their own policy for determining the appropriate level of penalty. The maximum amount should be reserved for the worse offenders.
13. The Guidance includes provision that:

*“Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:*

*a) Severity of the offence. The more serious the offence, the higher the penalty should be.*

*b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.*

*c) The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.*

*d) Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.*

*e) Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.*

*f) Deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need*

*to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.*

*g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.”*

14. As regards the weight to be given to the local authority’s policy, in *Sheffield City Council v Hussain* [2020] UKUT 292 (LC)), the Upper Tribunal stated:

*44. In London Borough of Waltham Forest v Marshall [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) considered the weight to be given to a local housing authority’s policy on an appeal against a decision which had applied that policy. At [54] Judge Cooke explained the proper approach:*

*“The court can and should depart from the policy that lies behind an administrative decision, but only in certain circumstances. The court is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed.”*

*At [55] she recognised the power of a court or tribunal to set aside a decision which was inconsistent with the decision-maker’s own policy. Furthermore, having regard to the fact that an appeal under Sch.13, 2004 Act is a rehearing:*

*“It goes without saying that if a court or tribunal on appeal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis.”*

*45. The proper approach was also discussed by the Tribunal in Sutton v Norwich City Council [2020] UKUT 0090 (LC) , at [254], as follows:*

*“If a local authority has adopted a policy, the Tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision.”*

15. Paragraph 10 of Schedule 13A to the Housing Act 2004 provides:

*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.*

16. The Tribunal accepts the witness evidence of Ms Wilkinson that, since 27 May 2019, the whole of the London Borough of Haringey has been subject to an Additional Housing in Multiple Occupation Licensing Scheme under which a licence is required for any property occupied by three or four people who do not form a single household.

17. Ms Wilkinson's written evidence includes the following:

*"6) On 17th May 2021 I read the case file for the property. The case file contained the land registry document showing Mr Fatodu owns the property (FW5) and a copy of the initial warning letter sent to Mr Fatodu on 17th July 2020 (FW6). The file also contained an application for a Temporary Exemption from licensing, under Section 62 of the Housing Act 2004 (FW7), from Mr Fatodu, made on the council's online licensing system, Metastreet (FW8). This was submitted on 31st July 2020 and the application states there were four occupants forming four households at the time of application. The three-month Temporary Exemption Notice was awarded on 5th October 2020 (FW9) and ended on 4th January 2021.*

*7) On 19th May 2021 I carried out a joint inspection of the property with Yonas Yohannes which Mr Yohannes arranged with one of the tenants following a complaint about disrepair. During the inspection I*

*saw three occupants. I saw Mr Edward Peterson, a tenant of the first-floor rear left room, leaving the first-floor rear left room and locking the door, I asked him if he had time to speak to me and he said he needed to get to work. I took his telephone number and gave him my telephone number. I spoke to Mr Ashvin Gukhool, the tenant of the first-floor front left room, and Mr Abraah Vinoaah, a tenant of the second-floor right room. I took witness statements from Mr Ashvin Gukhool (FW10) and Mr Abraah Vinoaah (FW11). I gained entry to the first-floor front left room which Mr Gukhool told me he occupied, and I took a photograph of the room and his belongings (FW12). I gained entry to the second-floor right room which Mr Vinha told me he occupied with his female partner, and I took photographs of the room and their belongings (FW13) ... the property was in a poor condition with a condemned gas boiler, lack of fixed and controllable heating, inadequate cooking facilities, disrepair to the kitchen and bathroom, bulky waste and building materials in the kitchen and rear garden, disrepair to fire safety measures and damp and mould growth (FW15)*

*8) On 21st May 2021 I wrote and posted a warning letter to Mr Fatodu at the land registry address (FW16) and the address provided on the application for the Temporary Exemption (FW17), advising him to apply for the HMO licence within 14 days.*

*9) On the 25th May 2021 I received an email from Glayne Russell, Private Sector Housing Team Leader (FW19) following a phone call from Mr Fatodu. The email stated that Mr Fatodu said there were three tenants in occupation and one was due to vacate on the 31st May 2021.*

*10) On 27th May 2021 I received an email from Mr Fatodu, providing contact details for the agent he is using to sell the property. In the email he states that there are two tenants left living at the property, that two tenants had already moved out and another was moving out the following week on the 31st May 2021. I responded to the email outlining the limitations of evictions and requested the details of the tenants who had vacated and the details of the tenant due to vacate (FW20).*

*11) On 27th May 2021 I made the decision to issue a financial penalty in line with the Private Sector Housing Enforcement Policy (FW21) and used the financial penalty matrix to establish an appropriate fine. The fine was set at £5000 using the financial penalty matrix. The factors considered were; Mr Fatodu was aware of the legal requirement to licence the property and the potential consequences, and yet had continued to operate the property without the appropriate licence; the property has a high asset value due to its location in London so it could not be considered that Mr Fatodu had no significant assets; there was no previous formal enforcement history and it was a single offence; the property was a small HMO*

*with multiple occupants exposed, one of the tenants in particular was considered vulnerable due to his ongoing mental health difficulties, two of the tenants had been served with Section 21 notices, seeking possession of their rooms, from Mr Fatodu which they advised was causing them stress which was evidenced from Mr Gukhool's prescription medication. The matrix was checked and signed off by Glayne Russell, a Private Sector Housing Team Leader (FW22).*

*12) On 28th May 2021 I wrote and posted a letter to Mr Fatodu at 65 The Boulevard, Greenhithe, Kent, DA9 9GW outlining the local authority's intention to serve a financial penalty for failing to licence the property (FW23).*

*13) On 1st June 2021 I received an email from Mr Fatodu advising there were two remaining tenants both looking for alternative accommodation. The advert for the sale of the property was also provided. I responded reiterating the limitations of evictions and requested the information which I requested in my previous email (FW20) (FW24). Mr Fatodu replied confirming the remaining tenants were Mr Edward Peterson and Mr Ashvin Gukhool and that Mr Abraah Vinoah was meant to move out on 31st May 2021 (FW25). I responded requesting further information about whether Mr Abraah Vinoah had or hadn't moved out, to which Mr Fatodu advised he wasn't sure (FW26).*

...

*17) On 1st July 2021 I received an email from Mr Fatodu which contained an Energy Performance Certificate (EPC) for the property (FW32 and FW33). The same day I received another email from Mr Fatodu which confirmed that Mr Abraah Vinoah had not vacated the property. On 7th July 2021 I replied to Mr Fatodu advising him that the property remained an unlicensed HMO and therefore he could not legally serve Section 21 notices to evict the tenants. I advised Mr Fatodu to licence the property (FW34).*

*18) On 5th July 2021 I received an email from Mr Gukhool advising me that none of the repair work I had requested had been carried out, and a new tenant had moved in on 3rd July 2021 (FW35). Attached to the email was a photograph of an envelope affixed to his bedroom door and a copy of the letter which was a copy of the invalid Section 21 notice referenced in FW25 (FW36 and FW37).*

...

*22) On the 9th July 2021 I inspected the property with Rosalin Spencer, the Head of Service for Cambridge House's Safer Renting team. I saw four tenants in occupation during my visit; Mr Ashvin*



*Gukhool (of the first floor front left room), Mr Abraah Vinoah (of the second floor right room), Cecelia Osabutey (joint tenant of the first floor rear left room) and Mr Kwabena Asuo (new tenant of the second floor left room). I spoke to Ms Osabutey in the room she shares with her husband, Mr Peterson, the first-floor rear left room. I took a photo of the room (FW43), and I asked Ms Osabutey when she moved in and how much rent she pays, she told me that they moved in, in January 2020 and she pays £600 per month in rent for the whole room inclusive of bills to Mr Fatodu. I spoke to Mr Asuo in the second-floor left room. I took a photo of Mr Asuo's belongings in the room (FW44), and I asked Mr Asuo when he moved in and how much rent he pays, he told me he pays £650 per month in rent for the whole room inclusive of bills to Mr Fatodu, and that he moved in, on 1st July 2021. I asked if Mr Asuo had a tenancy agreement and he showed me a contract (FW45). I asked where he saw the room advertised and he said he saw it advertised in the front window of an off-licence shop in Turnpike Lane. I was granted access to four of the five bedrooms and all of the tenants confirmed the room with the locked door was vacant. None of the remedial works which had been required to be completed had been carried out.*

...

*28) On the 27th August 2021 a HMO licence application form for the property was submitted online, along with the initial fee of £500 (FW53). The electrical safety certificate provided with the application, which is a required document, is marked unsatisfactory (FW54)."*

18. Ms Wilkinson confirmed the truth of her witness statement to the Tribunal and we accept her evidence, which was supported by the evidence of the Respondent's other witnesses.
19. The Applicant informed the Tribunal that there were three tenants at the Property at the material time who were all "separate". The Applicant did not accept that any tenant's partner permanently resided at the property. However, if three people were in occupation who formed three separate households a licence would have been required whether or not there were any further people in occupation. The Applicant confirmed that he is the person who receives rent from the tenants and he complained that one of the tenants is £12,000 in arrears.
20. The Applicant also informed the Tribunal that he has been trying to sell the Property since 2018. His case appears to be that he was trying to sell the Property at the time of Ms Wilkinson's investigations and that he has had difficulty in selling the Property because the two tenants who gave evidence to the Tribunal are declining to leave on the advice of the Respondent.

21. A licence was required whether or not the Property was on the market. Accordingly, we are not satisfied on the balance of probabilities that the circumstances relied upon by the Applicant amount to a reasonable excuse for failing to apply for a licence. We also note that the tenants are entitled to remain at the Property unless ordered to leave by a Court.
22. On the basis of the evidence of Ms Wilkinson and that of that Applicant, the Tribunal is satisfied beyond reasonable doubt that the Applicant committed an offence under section 72 of the 2004 Act in May 2021. The Tribunal is sure that, in May 2021, the Applicant was managing a house in multiple occupation which was required to be licensed but which was not licensed.
23. Ms Wilkinson gave evidence that the Respondent has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty. We accept this evidence, which was not challenged by the Applicant.
24. The Applicant did not seek to challenge the Respondent's matrix (a copy of which was attached to Ms Wilkinson's witness statement) or the amount of the final penalty but we have in any event, considered whether the financial penalty was set at an appropriate level.
25. There are four factors identified in the Respondent's matrix which fall to be considered: deterrence and prevention; removal of financial incentive; offences and history; and harm to tenants.
26. Ms Wilkinson gave oral evidence confirming what is said at paragraph 11 of her witness statement, which is set out above. The Respondent has applied a double weighting in respect of "harm to tenants" and Ms Wilkinson explained, in giving oral evidence, that this reflects the poor condition of the Property.
27. Ms Wilkinson gave evidence that, at the time of her inspection:
  - (i) The gas was disconnected leaving the tenants without a gas cooker and reliant upon a portable electric hob.
  - (ii) The shared bathroom was in a poor state.
  - (iii) Two en-suite bathrooms on the second floor had no hot water to the wash and basins.
  - (iv) There was significant damp and mould in the kitchen due to the lack of central heating.

- (v) In the bedrooms, the tenants were reliant upon free-standing electrical heaters and there was no heating at all in the communal areas.
- (vi) There were smoke alarms in the communal areas but some of these had been tampered with or disconnected.
- (vii) There were no fire alarms in the bedrooms.
- (viii) There was an insufficient number of fire doors at the Property.
- (ix) There was no fire blanket in the kitchen.

28. We accept this evidence, which was not challenged by the Respondent, and, in all the circumstances, we find that the amount of the financial penalty has been set at the appropriate level.

29. It follows from the findings of the Tribunal which are set out above that we confirm the final notice which is the subject of this appeal

**Name:** Judge Hawkes

**Date:** 4 March 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).