FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CX/HNA/2022/0016, 0017, 0018**
Property	:	**2 Laisteridge Lane, Bradford BD7 1RD**
Appellant	:	**Mr Hasan Kazi**
Respondent	:	**Bradford Metropolitan City Council**
Type of Application	:	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	:	**Mr P Barber (Tribunal Judge)** **Mr A Hossain (MRICS)**
Date of Hearing	:	**5 December 2022**
Date of Decision	:	**19 January 2023**

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty under section 249A of the Housing Act 2004 for the following offences is as follows:

1. For the offence of failure to comply with an improvement notice (section 30) in relation to Flat 1, 2 Laisteridge Lane, Bradford BD7 1RD - £14,250;

2. For the offence of failure to comply with an improvement notice (section 30) in relation to Flat 4, 2 Laisteridge Lane, Bradford BD7 1RD - £14,250;

3. For the offence of failure to comply with regulations 5, 8 and 9 of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007 (section 234(3)) - £18,790.31.

Reasons

Introduction

1. This Decision and Reasons relates to 3 appeals against the imposition by the Respondent of 3 financial penalties under section 249A of the Housing Act 2004 ("the Act") in relation to 1 property owned by the Appellant, Mr Hasan Kazi. The property is 2 Laisteridge Lane, Bradford BD7 1RD ("the property").

2. We held an oral hearing of this appeal. The Appellant appeared and represented by Mr Peterken of NP Legal Service. The Respondent was represented by Mr Blake-Barnard, of Counsel. We heard evidence from the Appellant, and Mr W. Gray, Environmental Health Officer, for the Respondent.

3. There was no inspection of the property by the Tribunal, but we had a bundle of documents comprising of over 200 pages from the Respondent and a number of documents from the Appellant. These included various photographs of the subject property, from which we were able to gain an understanding of its location, size and layout.

Findings of Fact

4. Mr Kazi is the registered owner of the property, a large four storey house which has been converted into 8 self-contained flats, 7 of which are accessible from the main entrance door and the 8th (a basement flat) accessed from a doorway below the main entrance. There has been no grant of planning permission to covert the property and in any event the property falls within the definition of a house in multiple occupation under section 257 of the Housing Act 2004 and accordingly the Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007 apply to the property ("the HMO Regulations").

5. Following a complaint by a tenant to Bradford Housing Standards on the 21 June 2021, an informal reactive inspection of the property was carried out by Mr Gray, during which it was established that the conditions therein were generally poor. A proactive investigation was commenced and during the course of two formal inspections a number of defects were identified. Appendix 8 of the Respondent's bundle reproduces the inspection notes and suffice it to say a number of identifiable category 1 and 2 hazards were noted, including damp and mould, excess cold, domestic hygiene and food safety, falls between levels and electrical hazards.

6. On the 06 August 2021, the Respondent served on the Appellant a number of improvement notices under sections 11 and 12 of the Housing Act 2004 in relation to various flats in the property including, of particular relevance to these appeals, an improvement notice under section 12 (category 2 hazards) in relation to the common parts; an improvement notice under sections 11 (category 1 hazards) and 12 in relation to Flat 1 and an improvement notice under sections 11 and 12 in relation to Flat 4. All three notices required works to be started by the 08 September 2021 and completed in accordance with a timescale set out in a schedule to each of the notices, which was in all cases, the 20 September 2021. No appeal was made against the improvement notices.

7. At the same inspection a number of breaches of the HMO regulations were noted, including a breach of regulation 5 – the requirement to take safety measures; regulation 8 – maintenance of the common parts and regulation 9 – maintenance of the living accommodation. Paragraphs 48 through to 51 of the witness statement of Mr Gray sets out the reasons why each of these regulations were breached by the Appellant. No direct challenge was made to any of these breaches and we find as fact that each of them are made out.

8. In relation to regulation 5 the inspection noted that the fire escapes from the basement flat and flat 1 were impeded by an accumulation of waste and building materials in the front yard; and that the broken doors to flats 2, 4 and 5 would not provide the minimum 30 minutes of fire separation and that the compartmentation was comprised in flat 6 due to a hole in the ceiling. The Appellant sought to challenge the question of the fire escape by reference to the existence of some other route, but we thought that the regulation had been breached as the window in question was the proper fire escape.

9. The breach of regulation 8 was that the floor coverings, which were unfinished and loose, and spindles in the entrance lobby were dirty; that the entrance door to the property was in a poor condition and could allow intruders to enter; that the doors to 5 of the flats were in a poor condition and some could not be locked and that there was a large accumulation of waste at the right-hand front side of the property.

10. In relation to the breach of regulation 9, the inspection found that there were cracks in the brickwork in flat 5 and plasterwork in flat 9 caused by water penetration from the roof; and that the kitchens within all of the flats were in a poor condition and that in two of the flats the windows were either damaged or could not be opened.

11. On the 11 October 2021, the Respondent visited the property to check on compliance with the improvement notices and found that Flats 2, 3 and 5 were unoccupied; access could not be gained to Flat 6 and works had been completed to Flat 7. No further action was taken in relation to these flats. It was found, however, that works remained outstanding for Flats 1 and 4. Appendix 4 of the Respondent's bundle includes photographs of the outstanding works.

12. The outstanding works in relation to Flat 1 were as follows: item 1.1, the electric panel heater had not been replaced or upgraded and 3.1, the kitchen had not been replaced. In relation to Flat 4, the outstanding works were item 2.1, the flat had no fixed controllable heating and item 3.1, the kitchen had not been replaced. The Respondent decided to interview the Appellant under the PACE provisions in relation to potential offences under section 249A of the Act.

13. Following two postponement requests, an interview under caution was arranged for the 10 November 2021 but the Appellant did not attend. No statement in relation to the offences was received from the Appellant and on the 10 December 2021, the Respondent decided to issue three Notices of Intention to issue a Financial Penalty, pursuant to paragraph 1 of schedule 13A to the Housing Act 2004 in relation to the two breaches of improvement notices in relation to Flats 1 and 4 and the further breach of three regulations in the HMO regulations. The proposed penalty in relation to Flat 1 and Flat 4 was £14,250 each; and in relation to the HMO regulations £18,790.31.

14. The Appellant made representations via his legal adviser, NP Legal Services by letter dated 13 January 2022. Those representations are at Appendix 23 of the Respondent's bundle and paraphrased, include the following points: (a) as he has been fined in relation to the two flats, he cannot be fined in relation to the HMO breaches and in any event the HMO breaches cannot be complied with because they are "vague"; (b) the tenants are "problem" tenants, do not allow access and have little regard for the condition of their properties; (c) the heating system and kitchen in both flats have been approved by a different section of Bradford Council (i.e. that section who refer tenants) and are therefore good enough; finally (d) it is argued that the level of fine (nearly £50,000) is disproportionate.

15. The Respondent responded to those points in a letter dated 25 January 2022 and reproduced at Appendix 24 of the Respondent's bundle. On the 17 February 2022 the Respondent issued a final notice under paragraph 6 of Schedule 13A in relation to each of the offences, confirming the amounts set out in the three notices of intent. The Respondent's calculations are set out in Appendix 31 of their bundle in the form of a matrix applying the terms of their Private Sector Housing Enforcement Policy. In relation to the breaches of the improvement notice, the culpability/harm matrix has been utilised whereas in relation to the HMO breaches, a sort of costs/benefit has been applied as this is higher than the culpability/harm matrix.

16. The Appellant appealed those decisions to this Tribunal on the 10 March 2022. We heard that appeal on the 05 December 2022. His grounds of appeal in relation to the breach of the HMO regulations are that this represents "double jeopardy" as he has already been fined in relation to the two flats; that the facts are denied;

that the penalty is excessive, and no weight has been given to the default of the occupiers. In relation to the flats the grounds are the same – that the hazards do not represent category 1 type hazards; that no account has been taken of the damage caused by occupiers and the problems with access and that the Appellant is placing "troubled tenants" in the property at the request of Bradford MBC.

17. Those grounds of appeal were confirmed and elaborated upon at the hearing.

18. We also found as fact, and this was not in dispute, that Mr Kazi, the Appellant had had previous improvement notices served on him and that he had had a number of previous prosecutions. He is therefore, in our view, well aware of the housing standards scheme and the requirements for compliance with notices served by the Respondent. He is also aware of the seriousness of any breach and should be aware of the level of any resultant fine.

The Legal Framework

19. By section 249A of the Housing Act 2004:

(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),

…….

(e) section 234 (management regulations in respect of HMOs)

20. By subsection (4) of section 249A the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

21. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

22. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

23. Paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

(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.

24. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; it has jurisdiction over the amount of the penalty, and we can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted at the hearing.

25. We had to be satisfied beyond reasonable doubt that the conduct of the Appellant amounts to a "relevant housing offence" under sections 30 and 234(3) of the Act – i.e. that the Appellant had failed to comply with the terms of an improvement notice and the HMO management regulations.

Our Assessment of the Appeals

26. This is a re-hearing of the decision to impose a financial penalty for the offences committed by the Appellant under section 30 and section 234(3) of the Housing Act 2004.

Flats 1 and 4

27. As these offences are almost identical in nature, they can be dealt with together.

28. On the basis of our findings of fact as set out above, we are satisfied beyond reasonable doubt that the Appellant has committed an offence under section 30 of the Housing Act 2004 in relation to Flat 1 and Flat 4. The terms of the improvement notice in relation to each flat were clear and there was no appeal against either of them. The Appellant was required to improve the heating system and kitchen facilities in each of the flats by 20 September 2021 and he failed to do so. In fact, rather than attempt to comply he has continued to refuse to accept that any of the hazards exist and that there is, in fact, no requirement for more hygienic kitchen facilities or improved space heating in either of the flats.

29. We find as fact that the Notice of Intent and Final Notice were properly served in relation to both offences and that they contained the proper statutory information. There were no procedural irregularities and in fact no procedural irregularities were raised in the appeal by the Appellant.

30. Accordingly, and given our findings of fact, that the breach is made out and that the Appellant is culpable the only remaining issue is the level of the financial penalty for the breach which we will address below.

The breach of the HMO Regulations

31. In relation to the HMO Regulations, we are also satisfied beyond reasonable doubt that the Appellant has breached the three regulations identified in the notice. The Appellant is a professional landlord and is or ought to be well aware of the requirements of the HMO Regulations in relation to converted properties. We are satisfied that the issues identified by the Respondent properly amount to breaches of these regulations and that the property, as a converted house which does not comply with planning or modern day construction requirements is properly defined as a section 257 HMO.

The Amount of the Penalty

32. The starting point is the Respondent's policy in relation to civil penalties, the relevant parts of which has been provided in the Respondent's bundle. There are three levels of culpability ranging from high (intentional or reckless) through to medium (negligence) down to low (no fault) and likewise, three levels of harm, high (serious effect/vulnerability), medium (adverse effect that is not high) and low (low risk of harm or potential harm). The policy defines a vulnerable tenant as including those persons with health needs both physical and mental health needs.

33. The policy thereafter sets out a harm/culpability matrix in which the level of harm is assessed in line with the level of culpability so as to provide a starting point banding with a starting point within which a range of financial penalties might be expected. That starting point can then be increased or reduced within that range by reference to aggravating and mitigating factors by a total of 5% for each mitigating factor.

34. The Respondent has set out in the documents its reasons and conclusions in respect to the policy and the factors leading up to the assessment of the level of harm.

35. Whilst the bulk of the policy sets out and refers to this culpability/harm matrix, set out at the end of the policy is a section headed "Final determinant of the level of any civil penalty" and the principle that the "civil penalty should be fair and proportionate but, in all instances, should act as a deterrent and remove any gain as a result of the offence". The policy then sets out, in rather brief terms, how the Respondent will calculate "gain" by reference to the cost of the works, the cost of licence fee, rental income, the cost to the Respondent and "any other factor resulting in financial gain". Thereafter the policy requires the Respondent to

determine that the civil penalty is not less than the financial gain up to the £30,000 statutory maximum.

The Offences
Section 30

36. Taking account of the Respondent's Civil Penalty Policy (the "policy"), and assessing the issues anew, we agree with the Respondent that the level of culpability is high. In the policy, a high degree of culpability is one where one or more of the factors on page 30 apply. The Appellant is an experienced landlord with a large number of properties who has not complied in the past with enforcement action and to some extent the Appellant has either intentionally or recklessly breached the requirements of the improvement notices by refusing to accept the need to undertake the necessary works. It follows that quite properly this breach comes within the category of high culpability.

37. In relation to harm, we again agree with the Respondent that this is properly determined to be medium harm because the outstanding hazards were a category 1 and category 2 hazard which did not give rise to an imminent risk to either tenant and whilst we noted that the tenant may be classed as a vulnerable tenant, we did not think this took the level of harm into the "high" bracket. Neither was the level of harm "low" as there was not a "little risk of harm" but a medium risk of harm.

38. It follows that as the level of culpability is medium and the level of harm is medium, the appropriate starting point is £15,000 in relation to each flat.

Aggravating/Mitigating Factors

39. We agree with the Respondent that there is only really one mitigating factor in relation to each of these breaches in that generally the Appellant has been willing to discuss issues with the Respondent and has carried out some works, albeit faltering at the ones identified above. For this we reduce the penalty by 5% (£75) to give a final figure of £14,250 in relation to each of the offences under section 30 of the Act.

40. The Appellant raised other factors which he thought should be included as mitigating factors. These are that the referral of the tenants is made by the Local Authority and that a section of the same Local Authority has inspected the flats and decided that they were suitable for such referrals; and also, that the tenants themselves have contributed to the problems.

41. We did not accept that either of these amount to mitigation. The fact that another section of the Local Authority had referred tenants does not absolve the Appellant from his responsibilities under general housing legislation to maintain the standard of his properties. It is obviously a sad state of affairs that such accommodation was deemed suitable for referral but we are satisfied that the person who inspected and passed these properties for that purpose was not a trained, experienced environmental health officer inspecting for the purposes of compliance with housing standards. Secondly, the breaches of section 30 relate to matters which are not in the control of the tenants – it cannot properly be said

that the tenants might in any way be to blame for the type of heating provided or the quality of the kitchen. In any event, as was acknowledged at the hearing, many of the Appellant's tenants could properly be described as vulnerable and so, if anything, a higher degree of compliance with relevant housing standards might have reasonably been expected of an experienced, professional landlord.

Section 234 HMO Regulations

42. Again, in relation to the breach of the HMO regulations, the degree of culpability for the same reasons as set out above is high. These were significant breaches by a professional and experienced landlord who has been the subject of enforcement action in the past. He should have been fully aware of his requirements under the regulations and how to properly comply with them. Culpability is medium – the issues relating to general cleanliness, compartmentation, lack of 30-minute fire protection generally did not constitute an imminent risk of harm to the occupiers.

43. In terms of mitigation, again 5% is reasonable for the Appellant's willingness to meet and talk about the issues and to commence work as necessary to try to drive up standards and, although some aspects of the MHMO regulations breach were not within the control of the tenants (the doors, frayed carpet, for example) others were – generally cleanliness. For this a further 5% is appropriate giving a harm culpability matrix figure of £13,500.

44. However, tucked away at the back of the enforcement policy is a requirement that any financial penalty is not less than the costs of compliance with the breach. To this extent, Annex 36 of the bundle includes a schedule setting out the costs of carrying out the necessary works to bring the property up to the standard necessary to comply with the HMO regulations. When this part of the policy is read in line with the first paragraph on page 29, the result seems to be that the level of financial gain will be set as the penalty (i.e. in this instance the cost of carrying out the works) together with an additional £2000 or 10% of that amount (whichever is the greater). The policy could reasonably be clearer in relation to this aspect. "Financial gain" is not necessarily synonymous with the costs of the works and rent receipts, for example, and neither is it necessarily the case that these factors demonstrate that the level of the civil penalty might be "less than what it would have cost the landlord to comply with the legislation in the first place".

45. That said, in a relatively straightforward calculation as presented by the Respondent at Annex 36, we feel obliged to utilise this aspect of the policy in our determination. Accordingly, and utilising our expertise we agree with the Respondent that the costs of the works are as set out in the schedule and in some respects, for example the refit of the kitchen, is towards the lower end of what might be expected. The total cost of works is therefore £16790.31 together with the additional £2000 (which is more than 10%) gives a fine in the sum of £18,790.31.

Totality

46. Finally, and considering the issue of the totality principle, set out in the policy and raised by the Appellant, we are satisfied that there is no "double counting" and that each offence is a separate offence which gives rise to a separate breach and a separate financial penalty. We are also satisfied, taking account of the factors set out above that the total penalties cumulatively are just and proportionate. Whilst they all arise out of the same property and concern the same landlord, given the nature of the offences and by reference to the aggravating and mitigating factors set out above, we saw no reason why they might be reduced. If anything, in relation to the HMO regulations breaches, these in themselves might have given rise to separate penalties and so it is right that they are included together.

Conclusion

47. The result is that in relation to the two offences for breach of the improvement notice the level of fine is £14,250 each and for the breach of the HMO Regulations the level of fine is £18,790.31.

48. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.

P Barber
Judge of the First-tier Tribunal
19 January 2023