



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

Case Reference : CAM/00KG/HNA/2022/0022

Property : 12 Feryby Road, Chadwell St Mary, Grays, Essex RM16 4SS

Applicant : Fahmida Rahman

Represented by : Khaysur Rahman

Respondents : Thurrock Borough Council

Represented by : Nick Ham (barrister)

Application : Appeal against financial penalties pursuant to section 149A of & Schedule 13A to the Housing Act 2004

Tribunal Members : Judge Stephen Reeder
Sarah Redmond BSc ECON MRICS

Date of hearing : 5 April 2023
Remotely by CVP platform

Date of Decision : 5 April 2023

Date Written : 5 April 2023

DECISION

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DECISION

1. The tribunal strikes out this application pursuant to Rules 8(2), 9(3)(a) & 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the applicant's failure to comply with the case management and directions order made by Judge Wyatt on 20 December 2022 and later March 2023 directions of the tribunal.
2. Any party wishing to make an application in respect of costs and/or the reimbursement of fees shall do so by filing at the tribunal office and serving on the other party a written application (limited to 2 pages), such application to be filed and served no later than 7 days after the issue of this Decision. The tribunal will determine any such applications on the papers and by application of section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rules 13(1)(b), 13(3) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules, and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*.

REASONS

The parties, the financial penalty and the grounds for appeal

3. The application is an appeal brought pursuant to paragraph 10 of Schedule 13A to the Housing Act 2004 ('the 2004 Act') against a financial penalty imposed by Thurrock Borough Council ('the Respondent') pursuant to section 249A of the 2004 Act by a final penalty notice dated 21 September 2022.
4. That notice sought to impose a penalty of £8,672 for alleged offences pursuant to sections 72(2),(3) of the Act of permitting more persons to occupy the house than is authorised by the HMO licence and/or failure to comply with the conditions of the HMO licence.
5. The relevant property is 12 Feryby Road, Chadwell St Mary, Grays, Essex RM16 4SS which is described as a three-storey house providing 4 or 5 bedrooms. The applicant is the freehold owner of that property as recorded in a HM Land Registry office copy register of title provided to the Tribunal.
6. The relevant HMO licence was granted on 9 September 2019 and limited occupation to a maximum of 3 households and 5 occupants. Schedule 2 to that notice specified works which were required to be completed within 4 months of the issue of the licence.
7. The letter of alleged offence served on the Applicant is dated 7 July 2022. The Applicant completed a PACE interview by letter dated 15 July 2022.
8. The Respondent completed a matrix form to determine the proposed financial penalty. That included and took account of the representations then made by the Applicant. It was completed within the scope of the Respondent's 'private housing statement of principles' and by reference to the Secretary of State's "Guidance for Local Authorities: Civil Penalties under the Housing and Planning Act 2016 (April 2018).
9. Notice of intention to impose the penalty was given on 18 August 2022. The Applicant made representations in response on 31 August 2022 and the Respondent took account of these in reducing

the proposed financial penalty. The Respondent served a final notice to impose the financial penalty which is dated 21 September 2022.

10. This application by way of appeal against the financial penalty was received by the tribunal on 27 October 2022, and so beyond the 28 day time limit. By a case management and directions order dated 20 December 2022 Judge Wyatt extended the deadline and permitted the appeal to proceed. The Applicant's grounds for appeal are set out in the pro forma application.

The hearing

11. The tribunal has convened a remote video hearing by CVP (cloud video platform) on 5 April 2023. Neither party has requested an in-person hearing in response to the directions order. Having regard to the issues raised and evidence and information filed on the application, and to the current ongoing Covid-19 related public health concerns, the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings.
12. The Applicant, Mrs Fahmida Rahman, has not attended the hearing. She has been represented by her husband, Mr Kaysur Rahman. She had notified his appointment as representative in the application.
13. The Respondent has been represented Nick Ham (barrister) assisted by Christopher Cooper Principal Environmental Health Officer.
14. The tribunal has been provided with an indexed documents bundle by the Respondent as directed by the case management and directions order made on 22 December 2022. The tribunal has not been provided with a documents bundle from or for the Applicant as also directed by that order.

The applicant's failure to comply with the tribunal's directions order

15. The application was received by the tribunal on 22 October 2022. Judge Wyatt made a case management and directions order on 20 December 2022.
16. That order included directions (numbered 9-11) requiring the Applicant to file and serve by 15 February 2023 a documents bundle including any expanded reasons for the appeal, any additional grounds, all witness statement of fact relied upon, any expert evidence relied upon (subject to permission), and all relevant documents and correspondence relied upon.
17. The Applicant did not comply with those directions by 15 February 2023. No explanation for default or request for an extension of time was received.
18. By letter from the tribunal case officer dated 1 March 2023 the Applicant was notified of that default and of the resulting order of the procedural judge directing that the Applicant must comply with the 20 December 2022 order by 8 March 2023.
19. The Applicant did not comply with that direction by 8 March 2023. No explanation for default or request for an extension of time was received.
20. By letter from the tribunal case officer dated 14 March 2023 the tribunal confirmed the continuing default and stated in terms "at the hearing by video on 5 April 2023 the tribunal may strike out these proceedings and/or determine relevant matters against the applicant at the hearing based on the documents in the respondent's bundle (which will include the original appeal application form with

enclosures from the applicant”. No explanation for default or request for an extension of time was received.

21. In fact, neither the Applicant nor her representative contacted the tribunal office at all in response to the directions order of 22 December 2022, the letter of 1 March 2023 or the letter of 14 March 2023.
22. Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that if a party has failed to comply with.....a direction, the tribunal may take such action as the Tribunal considers just, which may include –
 - (a) waving the requirement ;
 - (b) requiring the failure to be remedied ;
 - (c) exercising its power under rule 9 (striking out a party’s case) ;
 - (d) exercising its power under paragraph (5) [reference to the Upper Tribunal] ; or
 - (e) barring or restricting a party’s participation in the proceedings.
23. Rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that the tribunal may strike out the whole or part of the proceedings or case if the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it.
24. Rules 3(1),(2),(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provide that the overriding objective of the Rules is to enable the tribunal to deal with cases fairly and justly and requires that the tribunal must seek to give effect to it when it exercises any power under the Rules. Rule 3(4) provides that parties must help the tribunal to further the overriding objective and co-operate with the tribunal generally.
25. The Applicant did not attend the hearing. Mr Rahman as her representative stated that this was because he has had conduct of the proceedings throughout and so knows more about them than the Applicant. The Applicant has made no apology for the failure to comply with the directions or failure to respond to the letters from the tribunal.
26. Mr Rahman confirmed during the hearing that both he and the Applicant had received and together read the directions order of 22 December 2022, the tribunal letter of 1 March 2023 and the tribunal the letter of 14 March 2023. He accepted that the content of the same, and so what was required of the applicant, was clear and unambiguous and was understood by them. He did not seek to explain the default other than as some form of misunderstanding due to his lack of knowledge.
27. Mr Rahman stated during the hearing that he finds it easier to deal with such official business by speaking rather than writing. He accepted that neither he nor the Applicant made any attempt to speak to the tribunal office or to the Respondent authority whether by telephone or otherwise.
28. Mr Rahman stated that the Applicant was content to rely only upon the Applicant’s evidence and information as included in the Respondent’s bundle. However, such materials are limited to the grounds for appeal within the application itself. That is the same application and grounds which gave rise to the case management and directions order made by Judge Wyatt on 22 December 2022. The tribunal has been assiduous to identify in the Respondent’s bundle any evidence, documents and correspondence from the Applicant which might arguably comply with the 22 December 2022 order (albeit by providing the same only to the Respondent and not to the tribunal). There is no such evidence, documents or correspondence. It follows that the Applicant’s case rests on the grounds for appeal and the earlier information and argument put to the Respondent as part of the process and procedure leading up to the final notice to impose the financial penalty which is dated 21 September 2022.

29. In the circumstances the tribunal does not consider that it is just to waive the requirements made by direction in the order made on 22 December 2022. It is the substantive case management and directions order necessary for the tribunal to deal with the appeal which is to be considered by way of a rehearing considering the evidence and information filed in response to that order.
30. In the circumstances the tribunal does not consider that it is just to require the failure to be remedied. Such a requirement has already been notified by the tribunal letter of 1 March 2023 and the tribunal the letter of 14 March 2023. Neither led to any attempt to remedy or explain the default. Both were effectively ignored.
31. In the circumstances the tribunal does not consider that it is just to bar or restrict the Applicant's participation in the application. Mr Rahman stated that the Applicant was content to rely only upon the Applicant's evidence and information as included in the Respondent's bundle. Such materials are limited to the grounds for appeal within the application itself. That is the same application and grounds which gave rise to the case management and directions order made by Judge Wyatt on 22 December 2022 which the Applicant has failed to comply with. It follows that a such a bar or restriction would not act as a sanction at all. It would place the onus solely on the tribunal to conduct a rehearing without any evidence, documents or correspondence adduced to be relied upon by the Applicant. That would not further the overriding objective.
32. It follows that the tribunal must therefore consider carefully whether it is just to strike out the application. For the reasons set out earlier this does appear to be the just order to proportionately reflect the Applicant's failure to comply with the December 2022 and March 2023 directions of the tribunal. In order to determine whether it is in fact the just order the tribunal, mindful that an appeal is a rehearing, has summarily considered whether there is a persuasive case on the application.
33. The Tribunal has reminded itself of the relevant law on the substantive application before it. Section 249A (1) of the 2004 Act provides that 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. Section 249A (2) provides that "relevant housing offence" includes an offence under section 72 (licensing of HMOs).
34. Section 72(2) provides that a person commits an offence if –
- (a) she is a person having control of or managing an HMO which is licenced under Part 2 of the Act,
 - (b) she knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
35. There is compelling evidence before the tribunal that this offence is established.
36. Section 72(3) provides that a person commits an offence if –
- (a) she is a licence holder or a person on whom restrictions and obligations under a licence are imposed in accordance with s67(5), and
 - (b) she fails to comply with any condition of the licence.
37. Section 249A (9) provides that for the purposes of the section a person's conduct includes a failure to act.
38. There is compelling evidence before the tribunal that this offence is established.

39. Sections 249A (3), (4) provides that only one financial penalty may be imposed on a person in respect of the same conduct, and that the amount of the penalty imposed is to be determined by the local housing authority but must not be more than £3,000. Section 249A (5) provides that the imposition of a financial penalty is an alternative to criminal prosecution for the relevant housing offence. Section 249A (6) provides that Schedule 13A to the 2004 Act deals with the procedure for imposing financial penalties, appeals against such penalties, enforcement of such penalties and guidance in respect of such penalties. Paragraph 10 (12) of Schedule 13A provides that a local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions with regard to financial penalties. The Secretary of State has issued “Guidance for Local Authorities: Civil Penalties under the Housing and Planning Act 2016 (April 2018) (‘the Guidance’). Paragraphs 3-5 of the Guidance sets out a list of factors to be taken into account when assessing the level of the penalty:

- Severity of the Offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the Offender from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

40. There is compelling evidence before the tribunal that the Respondent has applied a rigorous decision-making procedure by application of the statutory scheme and guidance

41. The tribunal has reminded itself of the Upper Tribunal decision in *London Borough of Waltham Forest v Allan Marshall and London Borough of Waltham Forest v Huseyin Ustek [2020] UKUT 35 (LC)* which provides guidance on the tribunal’s powers on appeal and the weight to be placed on the local housing authority’s policy and decision on the financial penalty. Judge Cooke provided the following guidance –

- a. The First-tier Tribunal is not the place to challenge the Council’s policy about financial penalties. The remedy, if it is alleged that a policy has been unlawfully established, is an application to the Administrative Court for judicial review.
- b. The tribunal can and should depart from the policy that lies behind an administrative decision, but only in certain circumstances. The tribunal 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.
- c. The tribunal has the ability to set aside a decision that is inconsistent with the decision-maker’s own policy and or the ability on appeal to substitute its own decision for the appealed decision but without departing from the policy.
- d. If the tribunal on appeal finds, for example, that there are 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.
- e. The tribunal is not simply carrying out a review; it is to afford considerable weight to the local authority's decision but could vary it if it disagreed with it particularly if the decision engaged the tribunal’s specialism.

42. Considering the evidence and information before it within the rubric of a rehearing the tribunal cannot find a persuasive case from or for the Applicant.
43. The tribunal determines that it is just to strike out this application pursuant to Rules 8(2), 9(3)(a) & 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Applicant's failure to comply with the case management and directions order made by Judge Wyatt on 20 December 2022 and later March 2023 directions of the tribunal.
44. Any party wishing to make an application in respect of costs and/or the reimbursement of fees shall do so by filing at the tribunal office and serving on the other party a written application (limited to 2 pages), such application to be filed and served no later than 7 days after the issue of this Decision. The tribunal will determine any such applications on the papers and by application of section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rules 13(1)(b), 13(3) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules, and the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd* [2016] UKUT 0290 (LC).



Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

5 April 2023

ANNEX - 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).