



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

Case Reference : **CHI/00MR/HNA/2022/0022**

Property : **10 Rampart Gardens, Portsmouth
PO3 5LR**

Applicants : **J & K Asset Management Limited**

Representative : **Mr Desmond Taylor, of Landlords
Defence Limited**

Respondent : **Portsmouth City Council**

Representative : **Mr Edward Hurley, Counsel**

Type of Application : **Appeal against a financial penalty under
Section 249A of the Housing Act 2004**

Tribunal Members : **Judge Paul Letman MBE
Mr Colin Davies FRICS
Ms T Wong**

Date and venue of : **28 March 2023
Hearing On line**

Date of Decision : **20 April 2023**

DECISION WITH REASONS

Introduction

1. By Application Notice in form HO4 dated 26 October 2022 the Applicant appeals against a financial penalty under section 249A of the Housing Act 2004 in respect of premises known as and situate at 10 Rampart Gardens, Portsmouth PO3 5LR ('the Property'). As detailed below, the financial penalty imposed by the Respondent was in the sum of £15,000.

Summary of Decision

2. For the reasons set out below, the Tribunal determines that the Applicant was in breach of section 72 of the Housing Act 2004. The Tribunal further determines that the fine properly to be imposed is £15,000.
3. In the premises, the Applicant's appeal against the said financial penalty imposed under section 249A of the Housing Act 2004 is dismissed.

Background

4. On 29 June 2022 the Respondent served a Notice of Intent to Issue a Financial Penalty notice on J & K Asset Management at Mount House, Joelsfield, Partridge Green, West Sussex RH13 8JT. The Notice pursuant to section 249A (as amended) of the Housing Act 2004, specified the property affected as the Property and alleged an ongoing offence under section 72 relating to the licensing of houses in multiple occupation (HMO's).
5. More specifically, the Notice alleged breach of section 72(1), '...control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.' The financial penalty proposed to be imposed in relation to the said offence was in the sum of £27,000. The Notice stated that any representations against the proposal should be sent to the Respondent by 26 July 2022.
6. In response representations were submitted on behalf of the Applicant by Hampshire Property Consultants Ltd. These stated, amongst other things, that Mrs Mellor, the sole director of the Applicant, did not believe that the Property had been operating as a 5-bedroom HMO. That the Property had originally been let in 2016 to 3 occupants, a Mr Cristian Aldescu, Stefan Vranceanu and Andrei-Dan Vranceanu. That the latter 2 tenants had left and at the time of the representations in 2022 there were 4 occupants; Mr Cristian Aldescu, a Mr Bogdam Banescu (alleged to be the new partner of Mr Aldescu, replacing Mr Vlaicui), Mr Bogdam Radulescu and Dragos Neagu (said to be the step brother of Mr Radulescu). Further, the representations explained that the second bed observed in Bedroom 3 was for visiting family members only. The representations also noted that without any admission of liability, the Applicant had on 11 July 2022 submitted a precautionary HMO licence application.

7. On 29 September 2022, unpersuaded by the said representations, at least so far as liability was concerned, the Respondent issued a Final Notice to J & K Asset Management, sole director Mrs K Mellor. The Respondent's case is that between November 2021 until at least July 2022, some 8 different males had been using the Property as their main residence. In particular, the Respondent alleged that at the time of an inspection of the Property in February 2022, all 5 bedrooms at the Property were being used by at least one person who was residing there.
8. However, as regards the level of fine, in the light of various mitigating circumstances the financial penalty imposed was reduced to £15,000. The fine is explained in the schedule to the Notice, the maximum penalty of £30,000 being discounted by 50% in accordance with the Respondent's Private Sector Enforcement Policy; 20% for cooperation, 20% for recently (at that stage) making a licence application and 10% because this was a first offence.
9. By directions dated the Tribunal noted that this appeal is to be by way of a re-hearing of the Respondent's decision to impose the penalty and the amount of the penalty, albeit this may be determined having regard to the matters of which the Respondent was previously unaware.
10. Further, directions were made for, amongst other things, the Applicant to provide a signed and dated statement of case by 10 February 2023, the Respondent to provide its statement of case by 3 March 2023, followed by a Reply by 17 March 2023. With any witness statements to be filed and served with the said statements of case. The trial bundle was to be filed at least 3 clear days before the hearing listed for 28 March 2023, and although this did not happen, no point was taken at the hearing in this regard and the Tribunal directed that in so far as necessary time should be extended and proceeded with the substantive hearing accordingly.

The Applicant's Grounds of Appeal

11. Under section 9 of the Application the Applicant specifies various grounds of appeal against the financial penalty which may be summarised as follows:
 - (1) The Notice is made out to a non-entity and is incorrect; the Notice provides multiple names for the imposition of the fine and none are correct and the names are not the owners as claimed.
 - (2) The Property is not an HMO; the Respondent relies on unrelated taxi licence applications which bear no relevance to the Property's occupation. The occupants of the Property maintain they are related and they retain beds for their visitors. The offence is not proved beyond reasonable doubt.

The Hearing

12. At the hearing, the Respondent was invited to present its case first, followed by the Applicant, and this course was agreed to by the parties.

The Witnesses

13. Each of the witnesses who had provided witness statements for the Respondent was called and affirmed the contents of their witness statement, before expanding briefly upon the same orally before the Tribunal. Each witness was in our judgement plainly honest and gave a truthful account of relevant facts and matters within their knowledge. Indeed, there was no challenge to the veracity of their evidence by the Applicant, the issue was whether it suffices to prove the offence.
14. We do not lengthen this decision unnecessarily by recounting every detail of the evidence contained in the statements for the Respondent or of the oral evidence received, but summarise the gist of the same for the purposes of exposition only and our decision below.
15. Mrs Claire Green, Housing Regulation Officer for the Respondent, was the first to give evidence. She referred to a first unannounced visit to the Property on 19 August 2021, when no entry was obtained and which led to no action being taken. She then provided details of a second unannounced visit which took place at 10am on 02 February 2022, when she was able to inspect accompanied by Sarah Curtis, Senior Housing Regulation Officer.
16. Mrs Green described her inspection of each of the 5 bedrooms in the Property, aided by the photographs taken at the time. Mr Cristian Aldescu showed her around. Bedroom 1 was said by him to be unoccupied, but there was (she said) clear evidence of its being occupied. As shown in the photos, the bed was unmade and there were ample personal effects in the room; a mobile charger, empty coffee cups and a pile of post. She described also that there was the aroma of a recently slept-in bedroom.
17. Bedroom 2, was identified by Mr Aldescu as his own. Bedroom 3, was said to be occupied by Mr Bogdan Radulescu, occasionally visited by his wife and child. Bedroom 4 was the room of Mr Andrei Vlaicui, who Mrs Green also met at the Property. Whilst Bedroom 5 was occupied by another man, who was present in the house at the time of the inspection but whom Mr Aldescu explained was only a visitor.
18. In addition, Mrs Green described (and took the Tribunal to photos of) the numerous sets of toiletries in the bathroom, the multiple razors lying next to the bath (12 shown in one photo) and the prodigious amounts of trainers and shoes amassed in the entrance hall. Coupled with the evidence of occupation of the 5 bedrooms, she alleged that the Property was plainly being occupied as an unlicensed HMO.
19. By way of further substantiation Mrs Green referred the Tribunal to an online advertisement for the Property from 2016 which stated 'Ideal for sharers as this property does have a House of Multiple Occupancy licence [sic] (HMO), but would also suit a large family ...'. She also referred to investigations she had made with

the Portsmouth City Council and Wolverhampton City Council taxi licence issuing authorities.

20. Portsmouth City Council informed her that the following 5 individuals had submitted taxi licence applications giving the Property as their residential address on the dates indicated: Mr Nicolae Badea, 16/12/19, Cristian Aldescu 12/2/20, Dragos George Neagu 9/3/20, Bogdan Radulescu 8/1/21 (until 8 August 2022) and Mihaita Merlan 15/10/21. Wolverhampton City Council identified the following as living at the Property from like applications; Andrei Vlaicui 7/3/22 (and since 7/6/21, his driving licence was also registered to the Property since 14/11/20), Tiberiu Harsan 9/11/21, Catalin Banescu 24/3/22 and Mihaita Merlan 3/12/21.
21. A tracing service confirmed all 8 names mentioned by the taxi licence information to be linked to the Property. Mrs Green also detailed that requests under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 to produce documentation issued on 3 March 2022 and sent to the Property were returned listing 4 tenants as residing at the Property, namely, Dragos Neagu, Bogdan Radulescu, Nicolae Badea and Cristian Aldescu. Whereas the last tenancy agreement for the Property dated 23 March 2020 named Cristian Aldescu, Bogdan Radulescu and George Neagu as the tenants.
22. Mrs Green was questioned by Mr Taylor for the Applicant. He suggested to Mrs Green that some of the persons present in the Property in 2022 were in a homosexual relationship, whilst the others were members of the same family. Mrs Green was clear that no information had been provided on her inspection regarding any such relationships. Otherwise, Mr Taylor sought to challenge Mrs Green regarding her conclusion that this was an HMO, but she did not accept that her view was mistaken or that there was no evidence to support the conclusion reached by the Respondent. When criticised for her reliance on taxi licence applications, she restated the importance of such information being correct for compliance and safeguarding reasons.
23. The Respondent also called Ms Sarah Curtis, who gave evidence of the inspection detailed already above. She added only that the occupants had been asked if anyone was related, but they had not suggested that this was the case. She was also questioned by Mr Taylor, again to little if any effect. She confirmed that although Mr Aldescu had sought to assert that Bedroom 1 was not occupied, it clearly was being lived in and it was plain to her also that there were at least 5 occupants residing in the Property, which was accordingly an unlicensed HMO.
24. Finally, Mr Edward Leigh, Senior Planning Officer and former Planning Enforcement Officer, was called by the Respondent. In addition to the contents of his witness statement, which cover the retrospective planning application made by the Applicant to regularise HMO use, which was then withdrawn, he confirmed that no evidence had ever been provided to him that the occupants of the Property were related.

25. The only witness called on behalf of the Applicant was Mrs Karen Mellor, its sole director. She confirmed her very brief witness statement dated 10 February 2023 (bundle pages 41 and 42). She maintained that the Property was always let on a single tenancy to one family. Further, notwithstanding her assertion in her witness statement that all the tenants were related and step-brothers (her paragraph 13 refers), Mrs Mellor asserted in her oral evidence that Mr Aldescu was in a same sex relationship with one or other of those living at the Property, though she was unclear whether he had told her at any stage that this was the case.
26. As for the 2016 advertisement Mrs Mellor was adamant that she had never had any dealings with the agency concerned and that the advert was 'false.' When asked why she had not called any of the tenants or occupiers to support her case, she explained that she was 'trying to protect [Mr Aldescu] a bit', conscious of the abuse to which he might be subject if he was obliged to tell the Court of the matters above. She also suggested that there had been a reluctance on the part of the occupiers to come forward, conscious that they may be entitled to a rebate on their rent if the Property was held to be an unlicensed HMO.

Closing Submissions

27. In closing on behalf of the Respondent, Mr Hurley urged that the evidence adduced was sufficient to establish beyond reasonable doubt that the Applicant had committed an offence under section 72(1). There was no issue, he noted, that the Property was controlled or managed by the Applicant. Whilst it was submitted that the evidence showed the Property was occupied by a minimum of 5 persons who did not form a single household.
28. Primarily, the Respondent relied upon the evidence from the (February 2022) inspection, but it also relied by way of corroboration upon the taxi licence information and upon the 'complete' lack of evidence in opposition indicating any relationship between the various occupants of the Property or otherwise supporting the allegation that the occupants formed a single household.
29. Accordingly, the Respondent maintained the standard test under section 254 of the Housing Act 2004 (one or more units of living accommodation occupied by persons who do not form one household (see the Appendix hereto)) was satisfied and the Property was a prescribed HMO in accordance with The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 and for the purposes of sections 55(2)(a) and 61(1) of the Housing Act 2004.
30. In response the Applicant submitted that the offence was not made out, that there was no sufficient evidence that the Property was occupied by more than 4 persons. Mr Taylor was critical of any reliance on the taxi licence information, submitting that this proved nothing about actual occupation, the address could simply have been used by others and it was not necessarily the case that this information was always updated as it should have been. Without prejudice to these submissions, however, it was accepted that the Applicant controlled and managed the Property

and was at all material times in receipt of some £1,500 pcm in rent (albeit noting this was below the prevailing market rent).

31. As for compliance with the formal notice requirements, Mr Taylor confirmed (rightly in the Tribunal's view, in the light of the decision in *Mannai*) that no issue was pursued in relation to service upon the Applicant. Accordingly, that there was no dispute proper Notice of Intention and Final Notice had been given. Further, although critical of the Respondent's 'top down' Enforcement Policy, starting at the maximum fine and discounting the same, he (again rightly in our view) accepted that any attack on the Policy would require a Judicial Review and that for present purposes the Respondent had properly applied the relevant discounts in accordance with its subsisting Policy.

Determination

32. Having carefully considered the evidence, the Tribunal is entirely satisfied that the offence under section 71(1) has been proved beyond any reasonable doubt. Thus, the Tribunal finds that 5 persons, if not more, were residing at the Property at the time of the February 2022 inspection and that this was a continuing state of affairs. The evidence that each of the 5 bedrooms at the Property was being occupied at the time of the inspection was in our view clear and compelling. The beds were plainly in use and the personal effects in the bedrooms and bathrooms and elsewhere in the Property establish in our view that at least 5 people were living at the Property.
33. As to the identity of the residents (if it were necessary for us to determine this), it was clearly the case at the time of the inspection that Cristian Aldescu, Bogdan Radulescu and Mr Vlaicui were living there with at least two others. Whilst the admission that as of 22 March 2022, Messrs Aldescu and Radulescu, plus Dragos Neagu (the 3 tenants under the 2020 agreement) and Nicolae Badea were all living at the Property betrays the fact that the latter two were also resident, given that there was no suggestion any of these were new to the Property after the inspection. Further, the fact both Mr Vlaicui and Mr Badea, and very likely also Mr Merlan, were living at the Property over this period is also proved in our view by the taxi licence records.
34. Furthermore, there is an obvious dearth of evidence on behalf of the Applicant to explain the apparent multiple occupation of the Property. The Applicant has failed to adduce any actual evidence that any of the occupants were related in any way or were in any kind of relationship. There is nothing at all from the occupiers themselves, save the attempt by Mr Aldescu to deny the use of Bedroom 1 in the face of the obvious evidence to the contrary. In short, there is in our view nothing of any substance to support the Applicant's case that the occupants were occupying as a single household or so as to give us, the Tribunal, any reason to think that this was the case and doubt the Respondent's case.
35. Turning then to the level of financial penalty, making our own assessment having regard to the Respondent's Enforcement Policy, we would make the same

allowances for cooperation (20%) and for a first offence (10%). We would not, however, make the added 20% allowance for making a licence application, given that this was only short lived, having been withdrawn by the Applicant in order to contest the case.

36. Nor do we consider that there are any sufficient grounds in relation to the Applicant's means to justify any reduction in the amount charged. Nonetheless, in accordance with section paragraph 10(5) of Schedule 13A to the 2004 Act, we cannot increase the financial penalty and accordingly confirm the penalty imposed by the Respondent in the sum of £15,000.

37. The Tribunal decides accordingly, that the Applicant is liable for the offence alleged and re-imposes the penalty in the sum of £15,000. In the premises, the Applicant's appeal against the said financial penalty imposed under section 249A of the Housing Act 2004 is dismissed.

Dated as above.

Right to Appeal

Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') the parties are duly notified that they have a right of appeal against the decision herein.

That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application:

(a) written reasons for the decision or (b) notification of amended reasons for, or correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.

APPENDIX: Relevant Statutory Provisions

Housing Act 2004

55. Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

61. Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

72. Offences in relation to licensing of HMOs

(1) 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 (see section 61(1)) but is not so licensed.

254. Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”); ...

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

Application

2. This Order applies in relation to an HMO in England(2).

Interpretation

3. In this Order “the Act” means the Housing Act 2004.

Description of HMOs prescribed by the Secretary of State

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.