



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

Case reference : **LON/00AG/HNA/2022/0051**

Property : **25 Minster Road London NW2 3SG**

Appellant : **Mr B Joshi**

Representative : **In person**

Respondent : **London Borough of Camden**

Representative : **Mr D Mold of counsel**

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

Tribunal : **Judge Pittaway
Mr A Parkinson MRICS**

Date of hearing : **10 May 2023**

Date of decision : **15 May 2023**

Decision

1. The tribunal find that the appellant committed an offence under s72(3) (b) of the 2004 Act (the '**2004 Act**') and that the appellant did not have a reasonable excuse under s72(5).
2. The tribunal finds, having regard to the Council's policy and the evidence before it, that the appropriate financial penalty to impose on the appellant in respect of the property is £7,000.
3. The reasons for the tribunal's decision are set out below.

Application

4. By an application dated 21 July 2022 the appellant seeks to challenge the imposition by the Council of a financial penalty of £7,000 in respect of the property.

The hearing

5. The appellant appeared in person at the hearing. The respondent was represented by Mr Mold of counsel.
6. Before the hearing the tribunal had before it a bundle of 92 pages from the appellant a bundle of 484 pages from the respondent and a supplementary reply by the respondent of 17 pages. Immediately before the start of the hearing Mr Mold provided a skeleton argument to the appellant and the tribunal. At the start of the hearing it became apparent that Mr Joshi had sent in a supplementary bundle, which the respondent had but which was not before the tribunal. Arrangements were made for this to be provided to the tribunal during the hearing, and before it was necessary to refer to it.
7. The tribunal heard evidence from Mr Ian Pringle, an Environmental Health Officer in the Private Sector Housing Team at the London Borough of Camden, and from Mr Joshi.
8. The tribunal heard submissions from Mr Mold and Mr Joshi.
9. Mr Joshi drew the tribunal's attention to the fact that Mr Pringle's witness statement was not signed and invited the tribunal to ignore its contents and the respondent to withdraw the financial penalty notice. The respondent was not prepared to withdraw the notice on this ground. The tribunal accepted Mr Mold's suggestion that Mr Pringle be invited to confirm the truth of and adopt his witness statement and his supplemental witness statement, which he did.

Background

10. The property is described in the application as a two storey house converted into three flats in around 2003, with the ground floor then converted into two units in 2012, the rear ground floor flat being described as Flat 1B.
11. Ms Suarez witness statement describes Flat 1B as consisting of three rooms, a kitchen and a bathroom, and that it was occupied by two unrelated tenants Mr David Lloyd and Mr Joao Miguel. This description was not challenged by the appellant.
12. The application relates to the breach of two conditions of the HMO licence relating to the rear ground floor flat, Flat 1B.

Issues

13. The issues for the tribunal to determine were
 - Had Mr Joshi committed the offence under section 72(3)(b) of the 2004 Act (failing to comply with a condition of an HMO Licence)? Was whether Flat 1B required an HMO licence relevant?
 - If Mr Joshi had committed an offence did he have a reasonable excuse? Was whether Flat 1B required an HMO licence relevant?
 - If Mr Joshi had committed an offence and did not have a reasonable excuse what was the appropriate level of penalty?

Reasons for the tribunal's decision

14. The tribunal makes the determinations in this decision on the basis of the documents in the bundles before it at the hearing, the evidence before it and the submissions made. As appropriate these are referred to below. The relevant sections of the 2004 Act to which the tribunal has had regard are also set out below.

Had Mr Joshi committed an offence under section 72(3) of the 2004 Act?

15. S249A(1) and (2) of the 2004 Act provide,

(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),

(b)section 72 (licensing of HMOs),

(c)section 95 (licensing of houses under Part 3),

(d)section 139(7) (failure to comply with overcrowding notice), or

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

16. s72(3) of the 2004 Act provides that,

*‘A person commits an offence if—
(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
(b)he fails to comply with any condition of the licence’.*

17. As stated in the directions of 4 November 2022 the appeal is by way of a re-hearing. The allegation is that the appellant has committed a criminal offence, and it is for the respondent to prove this beyond reasonable doubt.
18. It was accepted by both parties that on 24 September 2021 the respondent had granted the appellant a HMO licence under section 64 of the 2004 Act for a term of one year to 23 September 2022, in respect of the common parts and ground floor front and rear flats and first floor rear flat at 25 Minster Road London NW2 3SG. The licence had a Schedule of Licence Conditions relevant to the parts of the property under the licence holder’s control. Condition 6 required the licence holder to ensure that the property complied with the London Borough of Camden’s HMO standards set out in a schedule of works attached to the Licence. Condition 7 required the licence holder to ensure that the property is maintained in reasonable repair.
19. The schedule of works provided that certain works had to be carried out within two months, the remainder completed within one year. The works to be completed within two months included those listed at Schedule item 10. Schedule item 10, relating to Flat 1B, required the appellant to, *‘Provide a half hour fire door fitted with intumescent strips and clod smoke seals and a self closing device capable of closing the door fully onto the stops, to the door between the kitchen living room and the internal hallway’.*
20. The Final Notice to Impose a Financial Penalty, dated 5 July 2022, gave as reasons for imposing the penalty
 - failure to comply with licence condition 6 (failing to provide a half-hour fire door between the kitchen and the internal hallway within two months of the licence issue date), and
 - failure to keep the property in repair in compliance with condition 7, with specific reference to failure to repair a broken boiler resulting in no mains heating or hot water, and other disrepair.
21. Mr Joshi submitted that the original door, which had been changed to one which complied with item 10 of the schedule of works by 21 January 2022, was a half-hour fire door compliant with Building Regulations, and that it was unnecessary for it to have been changed. He had changed it in a panic-reaction, following the respondent’s inspection on 11 January 2021.
22. The tribunal heard evidence that one of the tenants, Mr Lloyd, had reported that there was a problem with the boiler in September 2021, that appellant had given the tenant his plumber’s number in October and the number of an alternative plumber on 10 January 2022. In cross-examination Mr Joshi

stated that having heard nothing he had assumed that the matter had been fixed until he learnt otherwise in or around the end of December/beginning of January. Mr Joshi denied that he did not pro-actively manage the property. Because he has a number of properties he had left the matter with the tenant whom he assumed was dealing with the problem.

23. Mr Pringle gave evidence that when he inspected the property on 11 January 2022 there was hot water but no heating. He understood that the hot water had only been reinstated that day. That there was no heating on that day has not been disputed by Mr Joshi.
24. The tribunal were referred to the photographs of the kitchen door contained in the bundle as evidence that on 11 January 2022, when Mr Pringle inspected the property, the door did not comply with item 10 of the schedule of works referred to in condition 6 of the HMO licence. Mr Joshi submitted that the original door, which had been changed to one which complied with item 10 of the schedule of works by 21 January 2022, was a half-hour fire door compliant with Building Regulations, and that it was unnecessary for it to have been changed. He had changed it in a panic-reaction, following the respondent's inspection on 11 January 2021.
25. On the evidence before it the tribunal is satisfied to the requisite standard of proof that when Mr Pringle inspected the rear ground floor flat on 11 January 2022 there was no working central heating and the kitchen door did not have intumescent strips and cold smoke seals and a self-closing device capable of closing the door fully onto the stops.
26. Mr Mold submitted that an offence is committed under section 72(3) of the 2004 Act if a person fails to comply with the terms of the licence and the respondent had only to show that there was a licence and that there were conditions and that the appellant had not complied with them. Mr Mold submitted that it was not a precondition to the offence that a HMO licence is actually required.
27. Mr Joshi submitted that the property was not one which required an HMO Licence and that it was inappropriate to issue a financial penalty notice. Mr Joshi gave evidence that he had made his application for the HMO licence before reviewing whether a licence was required for the property and that he had subsequently instructed Mr S Ahmed, who Mr Joshi stated is a chartered building surveyor, to review the property to ascertain whether it complied with building regulations. Mr Joshi submitted that Mr Ahmed's report dated August 2021 confirmed that the building complied with Building Regulations and was therefore outside the jurisdiction of HMO Licensing. Mr Joshi submitted that applying for a HMO licence is not evidence that one is required.
28. The tribunal accept Mr Mold's submission that it is not a pre-condition to an offence under section 72(3) of the 2004 Act that the property require a HMO Licence. If the property has a licence an offence is committed if a person fails to comply with a condition attached to it. Accordingly the tribunal is not

required to consider whether Flat 1B required an HMO licence nor the status of the report prepared by Mr Sharif Ahmed in August 2021.

Did Mr Joshi have a reasonable excuse for committing the offence?

29. S73(5) of the 2004 Act provides that

*'In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
(b) for permitting the person to occupy the house, or
(c) for failing to comply with the condition, as the case may be.'*

30. Mr Mold, in his skeleton argument, referred the tribunal to the decision in *IR Management v Salford City Council* [2020] HLR 24 (2020) at §25-27 where it was held that where the defence of reasonable excuse is identified in a separate subsection it is for the defendant to prove that they had a reasonable excuse.

31. The tribunal has reviewed the evidence before it and Mr Joshi's submissions as to whether Mr Joshi has a reasonable excuse.

32. The tribunal heard evidence that one of the tenants, Mr Lloyd, had reported that there was a problem with the boiler in September 2021, that appellant had given the tenant his plumber's number in October and the number of an alternative plumber on 10 January 2022. In cross-examination Mr Joshi stated that having heard nothing he had assumed that the matter had been fixed until he learnt otherwise in or around the end of December/beginning of January. Mr Joshi denied that he did not pro-actively manage the property. Because he has a number of properties he had left the matter with the tenant whom he assumed was dealing with the problem.

33. Mr Joshi submitted that the original door, which had been changed to one which complied with item 10 of the schedule of works by 21 January 2022, was a half-hour fire door compliant with the Building Regulations, and that it was unnecessary for it to have been changed. He had changed it in a panic-reaction, following the respondent's inspection on 11 January 2021.

34. Mr Mold submitted that Mr Joshi had no reasonable excuse for having not complied with the conditions to the HMO licence. Mr Joshi had had the opportunity to appeal the conditions attached to the HMO licence but had not done so.

35. The Notice of Intent to Impose a Financial Penalty dated 12 May 2022 asked that any representations with regard to it should be made within 28 days. Mr Joshi did not make any such representations in relation to conditions 6 or 7.

36. The tribunal find that Mr Joshi did not have a reasonable excuse for not complying with the conditions attached to the HMO licence.

The amount of the financial penalty

37. Section 249A(3) and (4) of the 2004 Act provide as follows,

‘(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.’

38. Mr Mold submitted that the amount of the penalty awarded was appropriate in the circumstances of the case, referring the tribunal to §90-107 of Mr Pringle’s witness statement, and submitting that he had correctly applied the council’s policy.

39. Mr Mold submitted that in ascertaining the level of penalty to be charged the tribunal should have regard to the council’s policy. Mr Mold accepted that the tribunal should give weight to the council’s policy but may vary the penalty if it disagrees with the council’s conclusion. If the tribunal departs from the council’s policy it should give proper consideration to argument as to such departure and that it is the appellant who has the burden of persuading it to do so. Mr Mold referred the tribunal to paragraphs §54 and 62 of the Upper Tribunal decision in *Waltham Forest LBC v Marshall* [2020] 1 UKUT 35 (*‘Marshall’*).

40. Mr Pringle’s witness statement set out the guidance from The Ministry of Housing, Communities & Local Government to Local Housing Authorities on civil penalties under the Housing and Planning Act 2016. It also confirmed that the London Borough of Camden had produced an enforcement policy (in the bundle), the guidance covering the breach of licence conditions set out in §12.7 This policy provides guidance on the offences for which Civil Penalty Notices may be issued and the level of the fine having regard to the severity of offences. The severity of each offence is taken into account along with the property portfolio of the landlord/agent and any other relevant factors. The guidance contains a table that officers must have regard to when determining the quantum of a civil penalty, which depends upon whether the offence is moderate, serious or severe.

Mr Pringle stated that the financial penalty was calculated by the respondent with reference to the MHCLG guidance and council policy. In his statement Mr Pringle stated that the council considers the number and nature of the licence condition breaches and the nature and extent of deficiencies within each specified licence condition.

41. The London Borough of Camden - Penalty Charge Referral Form in the bundle relating to the property recites the offences, that Mr Joshi is a portfolio landlord, that it is not Mr Joshi's first offence, and that there had been non-compliance notwithstanding that the period of the HMO had been reduced from five years to one. It states that a financial penalty was required as a deterrent to encourage pro-active compliance with HMO licence conditions. It specifically considers the severity of the offence, Mr Joshi's culpability/record, harm to tenants, economic impact on the landlord, and deterrent effect to landlord and others and information on income. The Form acknowledged that by 21 January the fire door to the kitchen had been replaced and the central heating was working.

Having regard to the policy it was determined that the level of penalty should be regarded as moderate. The penalty for failing to comply with condition 6 was set at £2,000 and for failing to comply with licence condition 7 set at £5,000.

Mr Pringle stated that Mr Joshi's positive and timely response after the initial inspection was taken into account as a mitigating factor in fixing the level of penalty.

42. Mr Joshi confirmed that he owned a number of properties. Mr Joshi did not challenge the quantum of the penalty.

43. On the evidence before it and with regard to the submissions made the tribunal find no reason to vary the penalty from that fixed by the council.

Name: Judge Pittaway

Date: 15 May 2023

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).