



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

Case Reference	: LON/00BK/HNA/2023/0002
HMCTS code (paper, video, audio)	: Flat 99 Dudley Court, Upper Berkeley Street, London W1H 5QB
Property	: Alekarya Limited
Appellant/applicant	: Hisham Ali
Representative	: City of Westminster
Respondents	: Natasha Davies (Ref: EH/22/00685/HPCPN2)
Representative	: Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004
Type of Application	: Judge Professor Robert Abbey
Tribunal Members	: Tribunal Member Mr. Steve Wheeler. MCIEH, CEnvH, (Professional Member)
Date of Hearing	: By a face-to-face hearing on 19 May 2023
Date of Decision	: 22 May 2023

DECISION

- This has been a face-to-face live hearing at Alfred Place London. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded, and which were accessible by all the parties. Therefore, the tribunal had before it a pair of non-paper-

based digital trial bundles of documents prepared by the applicant and the respondent.

Decision

1. The decision by the respondent to impose a financial penalty is upheld. The total of the penalty originally amounted to a sum of £15,000. For the reasons set out below the Tribunal has determined that the financial penalty of £15,000 should be confirmed.
2. In the light of the above, the appeal made by the appellant against the imposition of a financial penalty imposed by the respondent under section 249A and schedule 13A of the Housing Act 2004 is therefore dismissed and not allowed.

Introduction

3. This is the hearing of the applicant's application regarding **Flat 99 Dudley Court, Upper Berkeley Street, London W1H 5QB** ("the Property"), pursuant to Schedule 13A of the Housing Act 2004 ("the 2004 Act"), to appeal against a financial penalty imposed by the respondent under s249A of the 2004 Act. The property is located in an area of Westminster that is covered by an additional licensing scheme requiring properties/houses in multiple occupation (HMO) to be licenced by the local authority.
4. The applicant was the managing agent for the leaseholder of the property and the respondent is the local authority responsible for the locality in which the property is situate. An inspection was undertaken of the property on the 17 June 2022, where the respondent says it was observed that the flat was being occupied by three persons, forming two or more households, with shared facilities i.e. a kitchen and a bathroom. At the time of the inspection, there was no valid House in Multiple Occupation (HMO) licence in place.
5. The reason for imposing the financial penalty is because an offence has been committed by the person managing and person having control of the flat i.e., Alekarya Limited, in accordance with section 72(1) of the Housing Act 2004, in that the property was operating as an unlicensed HMO but was not so licensed.
6. In accordance with the Housing and Planning Act 2016, a Notice of Intent was served on the 14 October 2022 and Final Civil Penalty Notice served on the 5th of December 2022.
7. A financial penalty of £15,000 has been imposed on the applicant by the respondent in a Final Notice dated 5 December 2022. The applicant by section 263 of the Housing Act 2004 was said to be the person managing or having control of the property and as the person

managing or having control, they were in receipt of rent payments from the occupying tenants of the house. Therefore, the respondent considered that the applicant was in breach of its duty under section 61 of the Housing Act 2004 to obtain an HMO licence for the property which was required to be licenced. This amounted to an offence under section 72 of the Act. Accordingly, the alleged offence concerns a breach or breaches of the requirement for a necessary Licence.

The Hearing

8. The appeal was set down for hearing on 19 May 2023 when the applicant was self-represented but assisted by Mr S Ayad. Ms Natasha Davies an Employee of the respondent working in their Public Protection and Licensing Section appeared for the respondent but assisted by Mr G Maddocks. This hearing is a re-hearing of the local authority decision, see paragraph 10(3)(a) of Schedule 13A to the 2004 Act. The Tribunal is therefore to consider whether to impose a financial penalty afresh and is not limited to a review of the decision made by the respondent.
9. The imposition of the financial penalty was imposed on the basis that that the applicant committed an offence under s.72 of the 2004 Act by not being a licence holder in that it had failed to obtain a licence for this property as it was said to be an HMO.
10. In 2021, the City of Westminster introduced an Additional Licensing scheme, cited as the Westminster City Council Designation Area for Additional Licensing of Houses in Multiple Occupation, with the designation covering the whole borough. The scheme applied to section 254 Housing Act 2004 Houses in Multiple Occupation (HMO), with three or more persons, two or more households and shared facilities, as requiring an HMO licence. The designation was made on the 21st of April 2021 and came into force on the 30th August 2021. No licence was on record with the local authority for the property. The applicant confirmed that none had been obtained.
11. The applicant confirmed to the tribunal that there were three tenants in the property with three separate letting agreements. These were produced to the Tribunal. The applicant also confirmed to the Tribunal that two tenants were related but a third was a mere friend. In the light of this evidence, it was clear to the Tribunal that this was an HMO, with three or more persons, two or more households and shared facilities, and as such required an HMO licence.
12. The applicant was a person having control of or managing the Property because it received the rack rent of the premises (s.263(1) of the 2004 Act) and/or as owner of the premises it received (whether directly or through an agent or trustee) rent or other payments from persons who

are in occupation as tenants or licensees of parts of the premises (s.263(3)(a) of the 2004 Act).

13. The respondent says that as a result of the above an offence was committed under s.72 of the 2004 Act. The offence is one of strict liability: *R. (Mohamed) v Waltham Forest LBC* [2020] EWHC 1083 (Admin).
14. At the hearing the applicant maintained that the level of the financial penalty was too high given the circumstances of the tenancies, the consequences of the COVID-19 pandemic and the willingness of the applicant to comply with the requirements of the Council. Mr Ali also advised the Tribunal that he had had health issues during the time in question and produced letters to confirm this. The Tribunal accepted this evidence. On the other hand, the respondent considers that the financial penalty should remain as imposed. As the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.)

Decision and Reasons

15. From the evidence before it the Tribunal was satisfied that the applicant was in breach of the requirements of the HMO licencing scheme. The applicant did say it had not received any notice of intent dated 14th. October 2022 which was mentioned in the claim neither by post nor by email. In reply the respondent asserted that the notice of intent was posted to the applicant on the 14 October 2022, with proof of posting obtained. The proof of posting was produced to the Tribunal. The Tribunal therefore accepted the evidence from the respondent and could find no merit in the assertions made by the applicant in this regard.
16. Finally, the Tribunal considered the level of the penalty. The applicant says the level of the penalty is excessive as he tried at all times to co-operate with the respondent. The respondent says it has a policy and a fee matrix that dictates how and why a financial penalty might be imposed and at what level. As has been noted previously as the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.).
17. The Council produced to the Tribunal a copy of the respondent's detailed enforcement policy. The Tribunal noted that this was based upon a scoring system that was at the core of the policy. The Tribunal found it straight forward to follow and to apply the matrix calculation table supplied by the respondent so that in many ways it seemed to the

Tribunal that the scores would have been set depending on the view taken of the helpful guidance set out in the matrix.

18. In assessing the most appropriate level of fine, the Council's policy matrix was applied, where several factors were taken into consideration. This included Factor One, Culpability. The respondent asserts that the applicant failed to licence the property despite requests from two officers in the Council. This was considered a deliberate breach and a score of 5 was therefore applied. The next Factor is Factor Two, Track record & deterrent from committing further offences. A score of 1 was given because the applicant did not have any other known offences.
19. There then followed Factor Three-Removal of financial incentive. Companies House records for 2021 stated that the company had no net assets. There were also tenancy agreements between the applicant and the three tenants in occupation, where the rental payments totalled between £800 and £1050 per month. The company portfolio was unknown, resulting in a score of 1. Factor Four-Weight of harm was given a medium score of 6 because the flat lacked a linked, fire alarm system and was occupied by three persons. The alarm in the hallway was broken, there was black mould growth in the bathroom and the flat had a cockroach infestation. Finally, Factor Five-exposure to risk had a medium score of 2, because the flat was in multiple occupation with three persons. The sum of all factors resulted in a total score of 15 and a fine of £15,000.
20. We consider that the amount set by the respondent in the sum of £15,000 to be a reasonable amount for an offence of this type, since the local authority scored the matrix with care and took into consideration the requirements of their explicit scheme. Of course, the failure of the applicant to submit any evidence of compliance with the licensing scheme clearly hindered his case.
21. Finally, mitigating circumstances usually result in a percentage reduction but the Tribunal really could not find any convincing mitigating circumstances that might allow it to make changes to the fine imposed by the local authority. The Tribunal accepted that Mr Ali had suffered from medical concerns but felt that this was not sufficient to have any effect on the matrix calculation made by the respondent. Therefore, the Tribunal thought that the penalty set by the respondent was appropriate and proportionate.
22. In conclusion, an offence has been committed under section 72(1) of the Housing Act 2004. The property was a licensable HMO in accordance with the Westminster City Council's Additional Licensing Scheme. At the time of the inspection on the 17th of June 2022, there was no valid licence. The property was occupied by three persons, forming three households with shared facilities.

23. Consequently, in the light of the above, the appeal by the appellant/applicant against the imposition of the financial penalty levied by the respondent under section 249A and schedule 13A of the Housing Act 2004 is not allowed and is dismissed.

24. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 22 May 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).

Appendix

249A Financial penalties for certain housing offences in England

(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).

(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.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

Schedule 13A

Notice of intent

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2(1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

Right to make representations

4(1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

Final notice

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8The final notice must set out—

- (a)the amount of the financial penalty,
- (b)the reasons for imposing the penalty,
- (c)information about how to pay the penalty,
- (d)the period for payment of the penalty,
- (e)information about rights of appeal, and
- (f)the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1)A local housing authority may at any time—

- (a)withdraw a notice of intent or final notice, or
- (b)reduce the amount specified in a notice of intent or final notice.

(2)The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

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.

Recovery of financial penalty

11(1)This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2)The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3)In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a)signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b)states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4)A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5)In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

12A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A