



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

Case Reference : **LON/00AB/HNA/2022/0106**

**HMCTS code
(paper, video,
audio)** : **Face to Face Hearing**

Property : **17 Horace Avenue Rush Green Romford
Essex RM7 0XA**

Appellant/applicant : **Iqbal Developments Limited**

Representative : **Mr Iqbal**

Respondents : **London Borough of Barking and
Dagenham**

Representative : **Nick Ham of Counsel**

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

Tribunal Members : **Judge Professor Robert Abbey
Tribunal Member Mrs. Louise Crane
MCIEH, (Professional Member)**

Date of Hearing : **By a face-to-face hearing on 26 May
2023**

Date of Decision : **30 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 rejected for the reasons set out below. The Tribunal has determined that the financial penalty should not 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 allowed.

Introduction

3. This is the hearing of the applicant's application regarding **17 Horace Avenue Rush Green Romford Essex RM7 0XA** ("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 Barking and Dagenham that is covered by a residential licensing scheme requiring properties/houses in multiple occupation (HMO) to be licenced by the local authority.
4. The applicant was the freeholder of the property, and the respondent is the local authority responsible for the locality in which the property is situate. On 24 October 2022 the respondent wrote to the applicant with a notice to impose a financial penalty. The relevant housing offences alleged were first, failure to comply with management regulations in respect of an HMO (Housing Act 2004 Section 234 - SI: 2007/1903 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations. Regulations 4. 5. & 8. Secondly, breach of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (Housing & Planning Act 2016 Section 123) Regulation (3)(c) and thirdly, failure to have a carbon monoxide alarm in place, in an HMO The Smoke & Carbon Monoxide Alarm (England) Regulations 2015 section 8(1)(2).

5. A financial penalty was set at £10,000. Subsequently on 7 December 2022 the applicant submitted an appeal to the Tribunal against this financial penalty. In January 2023 the hearing date was fixed for 26 May 2023. Accordingly, the respondents had somewhere in the region of four months to prepare their case and to ensure that witnesses be ready to give evidence.

The Hearing

6. The appeal was set down for hearing on 26 May 2023 when the applicant was self-represented. Mr N Ham of Counsel appeared for the respondent. 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 consequently not limited to a review of the decision made by the respondent.
7. The imposition of the financial penalty was made on the basis of the alleged relevant housing offences. By amendments to the Housing Act 2004, effected by Schedule 9 to the Housing and Planning Act 2016, if a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to a relevant housing offence, that person may not be convicted of an offence under the relevant section in respect of that conduct. Nevertheless, as an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution for another offence. In the light of the above the burden of proof is beyond a reasonable doubt.

Decision and Reasons

8. At the start of the hearing the Tribunal referred Counsel for the respondent to an email that the Tribunal had received at 3.32pm in the afternoon of the day before the hearing, from his client asking for an adjournment. The reason for this very late application was said to be that their sole witness would be unavailable for the hearing “as she is contracted to another local authority for urgent works”. This Tribunal express some considerable disquiet at this late application. This was particularly so when it was apparent that the respondent would have known about the hearing date many weeks previously and should have made sure that the witness was available.
9. Counsel could not really assist much further other than to say the witness had left the employ of the respondent and that this may have contributed to the problem. The Tribunal was very unhappy with this late application and in the absence of any persuasive reasons to support it, decided to refuse the application and to proceed with the hearing.

There was no reasonable excuse for the failure of the respondent to be ready for the hearing. The Tribunal was ready to hear the case and the applicant was ready to proceed with his appeal.

10. All that the respondent could do by way of the submission of evidence was to refer to the Tribunal the written statement of Ms Mykia Angus who was the sole witness who failed to attend the hearing on behalf of the respondent. The Tribunal explained that because the witness was not in attendance and therefore could not be cross examined that it could only give such weight to the statement as it felt appropriate given the non-attendance. In this regard the Tribunal had significant misgivings regarding the contents of the statement and would most certainly have needed to hear the witness amplify, explain and justify many of the assertions made in the statement formulated in support of the allegations set out by the local authority.
11. Mr Iqbal for the applicant confirmed to the Tribunal that he most certainly had wanted to cross examine the witness as he had several points he wished to put to her to challenge her evidence. These challenges were not just about the physical circumstances of the property, but also related to the law and the interpretation of it as it was applied to the property by the witness and the circumstances of the alleged breaches. Not least he failed to understand why there was an apparent need for an HMO licence when previously the local authority had advised him that he needed selective licenses. He could not see why the HMO licence approach had been adopted when he said the premises had formed two self-contained units since 2007 and had been accepted as such by the local authority.
12. In the absence of any other evidence from the respondent the Tribunal was not satisfied that the respondent had properly made out its case. The Tribunal was not satisfied that the evidential burden and threshold had been met and as such the local authority had failed to prove the offences had occurred.
13. In the light of the above and in conclusion, an offence or offences have not been proved to the satisfaction of the Tribunal. Consequently, and again 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 allowed.
14. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 30 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