



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

**Case References : MAN/32UH/HNA/2022/0054
MAN/32UH/HNA/2022/0055**

Property : 76 South Park, Lincoln, LN5 8ES

**Applicants : (1) C Student Services Ltd.
(2) Roberto Raffaele Russo**

Respondent : City of Lincoln Council

**Type of Application : appeal against financial penalties imposed und
s.249A of the Housing Act 2004**

**Tribunal Members : Judge P Forster
Mr C R Snowball MRICS**

Date of Decision : 04 August 2023

Decision

The Tribunal is not satisfied beyond reasonable doubt that the Appellants committed offences under s.72(3) of the Housing Act 2004 and therefore the appeals are allowed.

Introduction

1. The 1st Appellant, C Student Services Ltd. and the 2nd Appellant, Mr Roberto Raffaele Russo, appeal against the imposition of civil penalties by the Respondent, City of Lincoln Council, under s.249A of the Housing Act 2004 (“the Act”) in respect of 76 South Park, Lincoln, LN5 8ES (“the Premises”). The penalties were imposed for offences under s.72(3) of the Housing Act 2004 (“the 2004 Act”) relating to the licencing of houses in multiple occupation.
2. The Respondent served the Appellants with civil penalty notices dated 22 June 2022 imposing penalties on each of them in the sum of £11,897.29. The Appellants submitted appeals against the notices on 18 July 2022. The Tribunal issued directions on 2 November 2022 that provided for the Respondent to address the issues raised by the appeals and to provide a bundle of relevant documents for use at the hearing. The Appellant was also directed to provide a bundle of relevant documents, to include an expanded statement of the reasons for the appeals. The parties complied with these directions. The Respondent was given the opportunity to file a supplementary reply dealing with any issues raised by the Appellants but did not do so.
3. The hearing of the appeals was held remotely by video on 4 August 2023 without an inspection of the Premises. The Appellants were represented by Mr Chris Hopkins, Counsel, and the Respondent by Mr Michael McCabe, Solicitor.

Preliminary Issues

4. Two preliminary issues were identified at the start of the hearing: (1) the 1st Applicant was not named as the licence holder on the HMO licence dated 14 August 2017 and therefore can it be found to have committed offences under s.72(3) of the Act and by extension can the 2nd Appellant have committed such offences? and (2) was the 1st Appellant served with a notice of intent as required by s.249A of the Act?

The HMO Licence

5. On the application of the 1st Appellant, the Respondent issued a licence dated 14 August 2017 under s.64 of the Act to C Student Properties Ltd. This company did not exist. It was evidently a mistake on the part of the Council. The licence was signed by Mr David King who is a Housing Standards and Enforcement Officer employed by the Respondent.
6. The Appellants submit that it is fundamental to any prosecution or civil penalty imposed

for breach of s.72(3) that the alleged offender is (1) the licence holder or (2) a person on whom restrictions and obligations under an HMO licence are imposed. It is said that given the licence for the Premises is not in the 1st Appellant's name there would be no realistic prospect of conviction because the 1st Appellant was not under any restrictions or obligations under the licence.

7. In response to this , the Respondent submits that the mistake on the face of the licence was simply a typographical error. The Tribunal does not accept that the error can be properly described in this way. It was not a clerical mistake in the sense that it was an incorrect spelling or an omission or momentary lapse of concentration. It was an error of substance that affects the intention of the document.
8. The Respondent relies on the “doctrine of the reasonable recipient” and cites the case of Mannai Investment Co. Ltd. v Eagle Star Life Assurance Co. Ltd [1997] AC 749. This concerned the exercise of break clauses in two leases by the service of notices by a specified date where the notices were stated to determine the leases on 12 January 1995 when the operative date was 13 January 1995. The House of Lords held that on the construction of the notices the question was how a reasonable recipient would have understood them in the context that the purpose of the notices was to inform the landlord of the tenant's decision to determine the leases. It was said that the landlord would have been left in no doubt of the tenant's intentions and accordingly the notices were effective.
9. The present case concerns a statutory licence and not a notice which is a fundamentally different thing. A licence gives lawful authority to do something and is not addressed to an individual but to the whole world whereas a notice conveys information to an individual. The licence issued by the Respondent clearly does not authorise the 1st Appellant to operate an HMO. The Tribunal finds that the doctrine of the reasonable recipient does not apply in this case to remedy the defective licence.
10. The civil penalty notice was served on the 1st Appellant as the person “who owns the property and hold the licence for the property” and as such has committed an offence under s.72(3) of the Act. The notice was served on the 2nd Appellant as “sole director of C Student Services Ltd. who own the property and hold the licence for the property” and as a “director of the company, he has a duty to ensure the licence conditions are implemented and adhered to...”. The 1st Appellant is not the licence holder and is not under any restrictions or obligations under the licence and by extension neither is the 2nd Appellant.
11. This being the case, the Tribunal cannot be satisfied that the Appellants have committed offences under s.72(3) of the Act and must allow the appeals.
12. There is no reason to go further to consider whether the 1st Appellant was served with a notice of intent as required by s.249A of the Act.

Judge P Forster

Dated 4 August 2023

RIGHT OF APPEAL

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