FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00BN/HNA/2019/0125**
Property	**:**	**372, Cheetham Hill Road, Manchester M8 9LS**
Applicant	**:**	**Altaf Ahmed (represented by Mr Khan, Solicitor)**
Respondent	**:**	**Manchester City Council (represented by Mr Whatley of counsel)**
Type of Application	**:**	**Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**J. R. Rimmer** **P E Mountain**
Date of Decision	**:**	**01 September 2023**

Decision : For the reasons set out herein the tribunal imposes a financial penalty upon the Applicant in an amount of £17,500.00

A. Application

1 The Tribunal has received an application under paragraph 10 of Schedule 13A to the Housing Act 2004 ("the Act") against a decision of Manchester City Council (the "local housing authority") to impose a financial penalty against the Applicant under section 249A of the Act. It relates to a property at 372, Cheetham Hill Road, Manchester which is a house in multiple occupation ("HMO").

2 This penalty relates to an offence that the Council determined had been committed by the Applicant arising out of a failure to comply with an improvement notice served by the Respondent which identified a number of hazards found at the property during an inspection carried out by the Respondent's officers. These were subsequently verified and confirmed by a fire officer from Greater Manchester Fire and Rescue Service ("GMFRS"). The Allegation brought against the Applicant was not in relation to failure to comply with the notice but that the failure to comply with the notice and the continuing existence of a number of identified hazards amounted to a breach of Regulation 4(4) Management of Houses in Multiple Occupation Regulations 2006 (set out at paragraph 9, below) The Council had therefore considered it appropriate to invoke the civil penalty procedures provided by the Act. The Respondent has not sought to seek a penalty directly in respect of failure to comply with the notice.

3 The Tribunal provided a copy of the application to the Respondents which indicated that it opposed any such application against the penalty it had imposed.

4 Directions were given by the Deputy Regional Judge of the Tribunal and thereafter by this Tribunal, for the further conduct of this matter.

5 Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

6 It has taken some time for the matter to proceed to a hearing as a number of matters arose that prevented any earlier progress to a final hearing before 27th July 2023.

B Background

7 The history of this matter can be set out in a quite straightforward way. An inspection of 372, Cheetham Hill Road, was carried out by Katarzina Ingham, a neighbourhood compliance officer employed by the Respondent, on 2nd August 2018. Such were her concerns in respect of fire safety matters and the number of hazards identified at the property that an improvement notice was served, dated 22nd August 2018. Her concerns on the day had been sufficient for her to seek the immediate assistance of GMFRS and the Tribunal notes that the evidence as to what was found is not subject to challenge. Matters concerning the service of that notice and its receipt by the Applicant are addressed below.

8 Despite unsuccessful attempts to inspect the premises in November 2018 and April 2019 no further substantive steps were taken by the Respondent in respect of the notice until 10th June 2019, after Mrs Ingham returned to work following maternity leave. At that time there was a further inspection and a considerable number of works, identified in the improvement notice, had not been carried out. Further hazards were identified at this inspection and a further improvement notice, dated 17th June 2019 was served, requiring the relevant works to be carried out by 8th August 2019. A further inspection on 15th August confirmed most of the required work had now been carried out.

9 The Applicant was interviewed under caution on 23rd July 2019 and admitted that he was responsible for operating the property as an HMO. A decision was then made by the Respondent to impose a financial penalty for failure to comply with Regulation 4(4). This provides:
The manager must take all such measures as are reasonably required to protect the occupants of the HMO from injury, having regard to
(a) The design of the HMO;
(b) The structural conditions in the HMO; and
(c) The number of occupiers in the HMO.

10 The Respondent gave notice on 4th September 2019 that it intended to impose a financial penalty of £22,500.00, but after receiving representations from the Applicant the final notice dated 19th November 2019 imposed a reduced penalty of £20.000.00.

11 This amount was considered appropriate according to the policy, as it then existed, determined by the Respondent for the imposition of such penalties as the culpability of the Applicant was determined to be high. There had been limited effort made to embark upon the work required. Further, the risk of harm from the failure to remedy the hazards found to be at a medium level. Although fire safety is a particularly important issue and failure to have due regard to it can have tragic consequences, there was always a battery alarm system working within the property, albeit one

not considered in any way adequate, together with current gas and electrical safety certificates.

12 The Respondent believed that it had given the maximum credit allowable under the policy for eventually completing the works after the inspection in June 2019.

13 There was no inspection of the premises by the Tribunal in relation to these proceedings as there is no issue raised in respect of the state and condition of the premises as being any other than what was found on the inspection and the work has in any event now been carried out .

The Law

14 It is appropriate at this stage to set out the various statutory and regulatory provisions, in addition to Regulation 4(4), that the Tribunal needs to take into account in coming to its decision.,

<u>In relation to the commission of a relevant offence and imposition of a financial penalty</u>

15 Section 249A of the Act provides;

(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-

(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.

16 Section 234(3) provides that a person commits an offence if he fails to comply with a regulation under section 234, (of which regulation 4(4) is one).

Section 234(4) provides that in proceedings against person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

17 Paragraph 10 of Schedule 13A of the Act provides

(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 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 penalty of more than the local housing authority could have imposed.

D The evidence

18 The Respondent's case is relatively simple and is put clearly in the statement of reasons for opposing the application which are to be found at pages 9-11 of the Respondent's bundle of documents. The principal support for that came from the evidence of the witness statement of Mrs Ingham, upon which she was cross examined by Mr Khan on behalf of the Applicant.

19 The Tribunal found her to be a very reliable witness, particularly in the way in which she was able to recall events that occurred some 4 or more years ago. Her evidence in respect of her initial engagement with the Applicant on 2nd August was clear and consistent. Her unchallenged evidence as to what was found at the inspection and thereafter as to how the improvement notice was dealt with formed the basis of the Respondent's case.

20 The content of the notice provided details of four identified hazards: fire door deficiencies, key operated door locks on escape routes, gas installation certification failure and electrical deficiencies. Five improvements were required by the notice: -

- Provision of 30 minute retardant fire doors, where required.
- Thumb turn door locks, where appropriate.
- A full hard wired fire detection system.
- A gas safety check and certificate,
- An electrical inspection to identify required works.

21 Those defects and the lack of progress with the works provide the basis of the allegation that the manager has not taken all such steps as are reasonable to protect the occupiers of the HMO from injury, as required by Regulation 4(4).

22 The evidence of Mrs Ingham, supported by the email correspondence with the head landlord of the premises, was suggested to clearly establish the Applicant as the manager of the HMO.

23 The evidence of the Applicant was, by contrast, confusing and contradictory.

- Mr Ahmed suggested that he did not receive the improvement notice yet, he referred to it in his witness statement and was clearly aware, in his evidence to the Tribunal, that he was required to do 5 things in relation to the property.
- He suggests that particularly in relation to the alarm system he is unsure of what is required as there is an alarm system in place.
- He suggested he was not aware of what was required following the service of an improvement notice, yet he had commenced some of the work before the service of the second notice in 2019.
- His conduct at the time of his meeting with Mrs Ingham in August 2018 was such as to try to introduce other characters into the management of the building so as to try to avoid responsibility for issues that he sought later to suggest he was not aware of.
- He sought to advise the Tribunal that he was a landlord of limited means by exhibiting tenancy agreements in respect of lettings at unrealistically low rents; at least one purporting to be granted by him sometime before he became the owner of the property.

E Determination

24 The Tribunal reminds itself that these proceedings are being conducted by way of a rehearing. It notes that the Respondent is seeking to establish a criminal offence under Section 234(3) in relation to non-compliance with regulation 4(4). Compliance, or otherwise, with the improvement notice served in August 2018 is merely evidence that may, or may not, support the view that not all measures have been taken that are reasonably required to protect occupants from injury.

25 In order to establish a criminal offence, the Tribunal must be satisfied to the extent that it is sure that not all such measures have been taken. The absence of compliance with the requirements of the improvement notice for some 10 months after it was issued is, so far as the Tribunal is concerned, more than sufficiently clear evidence of this failure. This is the snapshot seen by the Tribunal in relation to June 2019 when the decision is taken by the Respondent to impose a financial penalty in lieu of prosecution.

26 The Applicant cannot, in the view of the Tribunal, avail himself of the defence provided by section 234(4). He is clearly aware, according to the weight of the evidence, of what is required of him and it is not reasonable to fail to comply with that regulation for the length of time that he did. He accepted at his interview under caution, and eventually confirmed to the Tribunal through his solicitor, that he had received the improvement notice. It clearly spells out what is required and why. From that point he does not d0 all that is required by regulation 4(4). He does not do all that he reasonably can to protect the occupiers from injury.

27 It is then necessary to determine the appropriate sanction. Under the financial penalty regime, the Respondent, in the event of an offence having been committed, has available an amount of up to £30,000.00 that it can impose as a penalty. It has provided and explained a matrix and methodology to support its finding that an amount of £20,000.00 is appropriate. This is based upon the policy in relation to financial penalties adopted by the Respondent Council, and which was in place at the time of the offence, although it has since been modified. That policy is one that should be respected by the Tribunal as determined by the democratic processes of local government, unless there are legitimate reasons to depart from it.

28 The Policy itself is sound and the Respondent's officers appear to have applied it in a reasonable way in this case. It has determined that the level of culpability on the part of the Applicant is high. The Tribunal would agree that almost total inaction, on the part of the Applicant in a 10-month period in dealing with identified fire safety issues would be unacceptable. It would be nothing less than reckless in its approach to the safety of occupants in the building.

29 However, Paragraph 4.2.1 of the financial penalty policy suggests to the Tribunal that those steps that were taken by the Applicant might be sufficient to reduce culpability to a medium level. It finds it hard to reconcile the relative inaction in respect of some items in the schedule of required works with action taken in respect of other requirements and consequently how that sits with two possible categories of culpability as displayed in the matrix.

30 It takes the view that where this has occurred it is appropriate to give the benefit of any doubt to the Applicant and determine that medium culpability is a more accurate reflection of the Applicant's wrongdoing.

31 The Tribunal then notes that had the officers determined the likely harm that might arise from the breach of Regulation 4(4) as medium, the Tribunal might have taken a different view as to what potential threat a fire might have had, but it accepts the logic behind the observation that the harm was reduced by the battery detection system in place and the appropriate certification in respect of gas and electrical installations. Those certificates were only produced after the second inspection in June 2019 but were obtained in November 2018.

32 Medium culpability and medium harm would place the offence in band 4 of the matrix, with a starting point of £17.500.00. From that starting point it is necessary to remove the mitigation found by the Respondent and

which reduced the original amount of £22,500.00 in its own calculation. Those elements are essentially taken into account already if paragraph 4.2.1. of the policy is followed.

33 In the above circumstances the appropriate penalty, according to the policy matrix is one of £17,500.00 and for the reasons stated that is the penalty determined by this Tribunal.

Tribunal Judge: J R Rimmer
01 September 2023.