



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

**Case Reference** : **MAN/00CE/HNA/2022/0052**

**Property** : **Nether Hall, Doncaster**

**Applicant** : **Atwell Martin Property Limited**

**Respondent** : **City of Doncaster Council**

**Type of Application** : **Appeal against financial penalty: section 249A, Housing Act 2004**

**Tribunal Members** : **A M Davies, LLB  
P Mountain**

**Date of Decision** : **19 May 2023**

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**DECISION**

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## **DECISION**

The Final Notice Imposing a Financial Penalty issued by the Respondent to the Applicant on 17 June 2022 in relation to Nether Hall Doncaster is cancelled.

## **REASONS**

### **Background**

1. Nether Hall (“the Property”) is a large building in Doncaster, formerly Council offices. In July 2019 the Respondent purported to licence the Property as a House in Multiple Occupation containing 5 self-contained residential units. Three of these units were licensed to house a maximum of 18 people, one was licensed to house 6 people (comprising up to 5 households) and one was licensed to house 8 people (comprising up to 4 households). There was no provision for a common living space in the Property outside these units. At about the same time the Respondent’s planning department granted permission for conversion of the Property into 5 residential apartments and 7 individual HMOs.
2. Lotus Sanctuary CIC (“Lotus”) entered into a 20 year lease of the Property in October 2020 with the intention of converting it to a refuge for vulnerable women and children who had no secure accommodation. By late 2021 this plan had not been implemented, and parts of the Property were occupied by tenants who held Assured Shorthold Tenancies. In November 2021 Lotus approached the Applicant’s Mr Paul Atwell with a view to the Applicant becoming the rent collection agency for Lotus’ entire property portfolio. This was agreed in principle.
3. The Applicant’s staff visited the Property around mid-January 2022 to carry out their standard assessment and to gain information about the rents they were to collect. They established that there were then, as provided for in the planning permission, 12 self-contained units in the property, consisting of 5 apartments and 7 HMOs. Each of the HMOs contained bedrooms with ensuite bathrooms and communal kitchen and living areas. There was no report of any general communal living area in the Property.
4. The Applicant found that a number of trespassers were staying in the Property, and immediately evicted some 13 people. The Applicant reported to Lotus that conditions in the Property were poor and that it was not feasible to collect rents from the remaining 16 or so people who remained in residence. This was because most of the residents could not or did not produce tenancy agreements, it proved impossible to establish their identities with any certainty, and they occupied different parts of the Property at different times. Mr Atwell told the Tribunal that these occupiers included people who professed not to speak English, as well as convicted criminals and prostitutes.

5. Lotus engaged the Applicant's sister company Veritas Property Management Limited to secure the Property against further unauthorised entry. The Applicant was engaged to recover possession from all remaining occupiers.
6. On 2 February 2022 in response to a report from someone living in the Property David Swann of the South Yorkshire Fire and Rescue (SYF) visited it with Ms Gower, a Senior Environmental Health Practitioner employed by the Respondent. During the visit Mr Swann and Ms Gower were protected by Veritas security guards from the aggressive behaviour of some of the residents. They were unable to gain access to every part of the Property but saw enough to come to the conclusion that there was a serious risk of fire and that both the alarm systems and the escape routes were compromised. They agreed that SYF would issue a Prohibition Notice, which had the advantage of taking effect immediately. The Notice was issued on the same day. It was addressed to Lotus as the formal occupier of the Property, and copies were given to the people living there.
7. The Prohibition Notice gave details of the dangers at the Property and stated "The premises must not be used for the purpose of sleeping or resting at any time by any person." Access was permitted only for the purpose of storage, or for undertaking the remedial work set out in the schedule to the Notice, ie to provide for fire detection and fire warning in the building, and suitable means of escape. These restrictions were to remain in place until the remedial work had been carried out and SYF had withdrawn the Notice. The document also stated "The works or actions specified in the Notice are only intended to reduce the excessive risk to a more acceptable level. The Notice is issued without prejudice to any other enforcement action that may be taken by this or any other enforcement authority."
8. On 12 April 2022 Ms Gower and the Housing Enforcement Team Manager Ms Lee held a meeting to discuss the fact that some 16 people remained in residence at the Property and continued to be at risk. On the same day they issued a Notice of Intent to impose a financial penalty addressed to the Applicant. Perhaps because of the intervening Easter break, the Notice of Intent seems to have been received by the Applicant towards the end of April, and was immediately forwarded to Lotus, who on 3 May 2022 made written representations to the Respondent. These representations were disregarded by the Respondent because they did not come directly from the Applicant. On 17 June 2022 a Final Notice was issued. Both Notice of Intent and the Final Notice ("the Notices") applied a financial penalty of £28,500.
9. At no point in the procedure was a representative of the Applicant requested to attend for an interview under caution – or indeed any interview – with the Respondent. The Respondent's staff did not visit the Property after the initial visit with SYF on 2 February 2022.
10. The Applicant appealed to this Tribunal against the Final Notice. The appeal was heard on 19 May 2023 at Doncaster Justice Centre, where the Applicant was represented by Ms O'Leary of counsel and the Respondent was represented by its Principal Legal Officer Ms Potts.

## Were the Notice of Intent and Final Notice valid?

11. The Applicant claims that the Notices are invalid because they do not comply with paragraphs 3 and 8 of Schedule 13A to the Housing Act 2004. These paragraphs require both Notices to specify the local housing authority's reasons for imposing the financial penalty. The reason given in both Notices reads: "Breach of Management Regulations in respect of a House in Multiple Occupation", which is a reference to the offence under section 234 of the Act in relation to which the penalty was imposed.
12. Ms O'Leary for the Applicant claimed that by failing to explain what regulations had been breached, between which dates and in what manner, the Respondent had not given the Applicant an opportunity to make appropriate representations on receipt of the Notice of Intent. Ms Potts argued that in view of correspondence between the parties in March 2022 and the information given by SYF in the Prohibition Notice, Mr Atwell was well aware of the Applicant's failure to manage the Property in accordance with the Management of Houses in Multiple Occupation (England) Regulations 2006. Following issue of the Final Notice, at the request of the Applicant's solicitor the Respondent explained that the breaches referred to were breaches of Regulation 4: duty to take safety measures with specific reference to fire fighting equipment, alarms and means of escape; Regulation 7: duty to maintain common parts, fixtures, fittings and appliances; and Regulation 8: duty to maintain living accommodation.
13. The imposition of a financial penalty is an alternative to prosecution in the Magistrates Court. In the interests of justice the statutory procedure should be robustly applied to enable a landlord to make appropriate representations prior to the issue of a Final Notice. The Criminal Procedure Rules 2020 at parts 7 and 8 and the Pre-Action Protocols in civil cases are designed to ensure that a person on whom a sanction may be imposed has full details of the charge against him to enable him to answer it effectively. The Notices did not identify the Management Regulation breaches of which the Applicant was accused. Neither Notice referred to other documents and neither was accompanied by any witness statement or other explanation. The letter accompanying the Notice of Intent included the sentence: "If you do require any further information or have any other questions relating to the notice please do not hesitate to contact this office directly". This did not amount to giving reasons in the Notice as required by the Act.
14. In *Waltham Forest v Younis* [2019] UKUT 0362(LC) the Deputy President of the Upper Tribunal ruled that failure to provide reasons for the local housing authority's decision will not necessarily invalidate a Notice of Intent, particularly if the recipient landlord was not prejudiced by the failure. In that case the landlord did not complain about the lack of reasons until he was before the First-tier Tribunal. He was able to respond to the Notice of Intent, which was accompanied by witness statements giving details of the alleged breaches. The present case is different. The Notices do not set out which offence(s) the Appellant is said to have committed, the time it is said to have committed any offence and in what way it is said to have been in breach of the 2006 Regulations. To expect the Notices to contain this information is not an

“excessively technical approach to procedural compliance” which the Upper Tribunal cautioned against in *Younis*. The Applicant’s solicitors promptly requested further information about the breaches once the Applicant became aware that Lotus’ representations had not prevented the issue of a Final Notice. Even following receipt of more information from the Respondent, the Applicant had no means of knowing which, if any, of the HMOs in the Property was the subject of the Notices, nor when the management failure(s) were said to have taken place, nor exactly what management failures were being taken into account by the Respondent in assessing the amount of the financial penalty. The Notices did not meet the criteria set out in the Act and were therefore invalid.

### **Was the Property an HMO?**

15. The Applicant denies that the Respondent has proved beyond reasonable doubt that the property identified in the Notices was occupied as an HMO at any relevant date. The address in respect of which breaches of the Management Regulations is said to have occurred is given in the Notices as Nether Hall, Nether Hall Road, Doncaster. The Notices do not suggest that they apply to any specific unit in the Property, and the question is therefore whether Nether Hall itself was, at any relevant time, an HMO.
16. Ms Gower gave evidence for the Respondent. She confirmed that the Property had been visited once, on 2 February 2022, when it “seemed chaotic”. The inspection had not included any of the units that were occupied at the time, she said. With 72 rooms, the Property was too large for her to have undertaken normal HMO inspections on that day. Ms Gower acknowledged that the residents were moving round the Property, swapping rooms, and that she did not know which of the kitchens or other facilities in the any of the 7 self-contained HMOs they might have been sharing. She confirmed that the security guards had established that 16 people were living in the property at that time including 3 identified couples, but it was unclear whether (or when) any of these people occupied one or more of the individual HMO units, or the self-contained flats. There was no evidence as to whether any of the residents were related to each other.
17. The Respondent was unable to provide any evidence to the Tribunal that there were shared facilities such as kitchens or living rooms in the Property other than those contained in the HMO units within it. There is no proof that Nether Hall as a whole was being occupied as an HMO from January to September 2022 when the last of the residents left. The Respondent’s Notices do not identify any HMO within the Property in which the offences are said to have been committed.

### **Was the Applicant a Manager?**

18. A financial penalty may be imposed on a person managing an HMO. Section 263(3) of the Act provides that the definition of “person managing” is anyone who receives rent either for himself or on behalf of the person entitled to it. Mr Atwell denies that the Applicant was managing the Property in accordance with this definition, and says that the Notice of Intent and Final Notice were

incorrectly addressed to it. He told the Tribunal that the Applicant offered 3 separate services: rent collection, lettings, and the management of privately let properties. He said that the Applicant never involved itself in block management. He explained that as soon as it became clear that rents could not realistically be collected at the Property Lotus had engaged the Applicant solely to evict all the occupants as soon as possible, and that the Applicant had neither received nor demanded rents on behalf of Lotus.

19. Ms Gower told the Tribunal that she had understood from the Applicant's website that it offered block management services, but she was unable to produce any documentary evidence to support this belief. She said that having seen a notice at the Property referring enquiries to the Applicant she had assumed that the Applicant was engaged as by Lotus as managing agent, especially as the company was referred to as Lotus' managing agents several times in emails and correspondence. A conscientious and honest witness, she confirmed that she had no evidence that the Applicant had received (or at any time expected to receive) any rent on behalf of Lotus. It follows that the Respondent has not been able to show that the Applicant met the statutory definition of "Manager".
- 20 The Tribunal finds that the Applicant was not engaged to receive rents on behalf of Lotus at any relevant time, and did not demand or actually receive rents. The Notice of Intent and Final Notice were incorrectly served on the Applicant.

## **Conclusion**

21. In view of these findings, the Tribunal has not found it necessary to consider whether the Respondent had proved that there were any breaches of the Management Regulations. A financial penalty was incorrectly claimed from the Applicant for the reasons given above, and the Notice of Intent and Final Notice were invalid because they did not meet the statutory requirement to provide reasons.