FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CX/HNA/2022/0073**
Date of Hearing	:	**26 October 2023**
Property	:	**59 Ashgrove Bradford BD7 1BL**
Appellant	:	**Mr Hasan Kazi**
Respondent	:	**Bradford Metropolitan City Council**
Type of Application	:	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	:	**Mr Phillip Barber (Tribunal Judge)** **Mr Aaron Davis (MRICS)**

DECISION AND REASONS

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Decision

We have decided that the Final Penalty Notice under section 249A of the Housing Act 2004 should be cancelled under paragraph 10(4) of Schedule 13A to the same Act.

Reasons

Introduction

1. This Decision and Reasons relates to 1 appeal against the imposition by the Respondent of 1 financial penalty under section 249A of the Housing Act 2004 ("the Act") in relation to 1 property owned by the Appellant, Mr Hasan Kazi. The property is 59 Ashgrove, Bradford BD7 1BL ("the property").

2. We held an oral hearing of this appeal. The Appellant appeared and was represented by Mr Peterken of NP Legal Service. The Respondent was represented by Mr Ryatt, solicitor in the employment of Bradford Metropolitan District Council. We heard evidence from the Appellant, and Miss D Ayre, and Mr W. Gray, Environmental Health Officers, for the Respondent.

3. There was no inspection of the property by the Tribunal, but we had a bundle of documents comprising of over 200 pages from the Respondent and a number of documents from the Appellant. These included various photographs of the subject property, from which we were able to gain an understanding of its location, size, and layout.

Findings of Fact

4. Mr Kazi, the Appellant, is the registered owner of the property, a large terrace house which has been converted into 6 self-contained flats. The ground floor entrance to the property gives access to an inner lobby and access to four of the flats. There is a separate entrance to the lower floor of the property which provides access to two further flats in the basement. The first floor of the property is part of a neighbouring property, number 61, also owned by the Appellant but not part of this appeal.

5. There is no dispute that the property falls within the definition of a house in multiple occupation (HMO) under section 257 of the Housing Act 2004 and accordingly the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply to the property ("the HMO Regulations"). These regulations refer to various duties by a "manager" of a regulated property and there is no dispute that the Appellant comes within the definition of a manager for the purposes of the regulations as the person managing the HMO.

6. Following an email from a neighbourhood warden to the Housing Standard's Team on the 15 November 2021, Miss Ayre drove by the property and noted it to be a poor state. She served, on the Appellant, a

notice of intended entry under section 239 of the Housing Act 2004 and visited the property pursuant to that notice on the 24 November 2021 in the company of Mr Kazi and his colleague, who is referred to in the documents as, Albert.

7. Set out in her witness statement, Miss Ayre provides an account of what she considered contraventions of the HMO Regulations and, which cumulatively can be described as issues or disrepair, poor decorative order, and collection of rubbish at the property. We accept Miss Ayre's account of the condition of the property, the items she raises in the Final Notice can be seen from the photographs, for example, but as will be apparent from the decision in this appeal, we disagree with her as to how those conditions fit into the HMO regulations and whether, in any event, the Appellant has a defence to the action.

8. On the 25 January 2022, the Appellant was invited to an interview under caution in order to discuss potential offences under the Housing Act 2004 and that interview was conducted on the 3 February 2022 with the Appellant in the company of Mr Peterken, his legal adviser. The transcript of that interview is contained within the bundle, but little turns on it. The Appellant confirmed that he owned the property; that it had generally been converted into flats before he purchased it but that he added the two basement flats and during that process, may have put in the new, lower ceilings.

9. On the 21 April 2022, the Respondent served a "Notice of Intention to Impose a Civil Penalty" on the Appellant advising him that it was intended to fine him for breaches of Regulations 4, 5, 8, 9 and 10 of the HMO Regulations. On the 23 June 2022, the Respondent served a Final Notice setting the civil penalty at £13,250.00. The Final Notice refers to 7 contraventions of the HMO Regulations as also set out in the Notice of Intention.

10. The Appellant appeals the Civil Penalty in its entirety and in his Statement of Reasons for appealing, he makes the following arguments (paraphrased): (a) mitigation of 5% was inadequate to deal with the fact that contraventions were in fact tenant failure; (b) the cost of remedying the breaches was around £2000 and the fine is therefore disproportionate; (c) the waste at the property was not put there by the Appellant; (d) the Respondent had not applied its own policy correctly; and (e) totality had not been applied properly.

11. Those grounds of appeal during the hearing were confirmed and elaborated upon by the Appellant and Mr Peterken.

12. We also found as fact, and this was not in dispute, that the Appellant had had previous notices under the Housing Act 2004 served on him for various housing management and property condition breaches and that he had had a number of previous prosecutions. He is therefore, in our view, well aware of the housing standards scheme and the requirements for compliance with notices served by the Respondent. He is also aware of the

seriousness of any breach and should be aware of the level of any resultant fine.

13. Shortly after the hearing, and therefore it was not possible to refer to it at the hearing, a decision in a previous appeal by the Appellant was promulgated by the Upper Tribunal, *Kazi v Bradford MBC* [2023] UKUT 263 (LC). Having subsequently considered that decision, and notwithstanding some of the issues are similar, involving the same parties, nothing appears to turn on it for the purposes of this hearing.

The Legal Framework

14. By section 249A of the Housing Act 2004:

> (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)

15. By subsection (4) of section 249A the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

16. By section 234(3) of the Act, a "person commits an offence if he fails to comply with a regulation under this section" and by subsection (4) in "proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation."

17. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

18. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

19. Paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

> (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.

20. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; it has jurisdiction over the amount of the penalty, and we can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted at the hearing.

21. We have to be satisfied beyond reasonable doubt that the conduct of the Appellant amounts to a "relevant housing offence" under section 234(3) of the Act – i.e. that the Appellant had failed to comply with the HMO Regulations and that he has no reasonable excuse for doing so.

Our Assessment of the Appeal

22. This is a re-hearing of the decision to impose a financial penalty for the offences committed by the Appellant under section 234(3) of the Housing Act 2004.

23. As mentioned above, the Respondent maintains that there were 7 breaches of the HMO Regulations as set out in the final notice dated 23 June 2022. We will consider each of these in turn insofar as they relate to each of the regulations.

HMO Regulation 4

24. This provides that the manager must ensure that "his name, address and any telephone contact number are clearly displayed in a prominent position in the common parts of the HMO…". The Appellant provided a photograph of a handwritten notice of his name and telephone number underneath the alarm at the entrance door to the property which he says complies with regulation 4. The Respondent maintained that that was not there at the inspection.

25. Whether it was there or not, and we tend to prefer the Respondent's view on this, the notice does not meet the requirements of the regulation. Firstly, it is not clear whose name this is – it could be anyone as it does not say Mr Kazi is the manager of the property; secondly and in any event, it does not provide an address and thirdly, what appears to be something handwritten on the wall in biro is hardly, "clearly displayed".

26. We find that there has been a breach of regulation 4 of the HMO Regulations and that this has been proven beyond reasonable doubt.

Regulation 5(1)(b)

27. This regulation provides that the "manager must ensure that all means of escape from fire in the HMO are – maintained in good order and repair.

28. The Respondent maintains that the "self-closing device fitted to the doors of several of the flats were ineffective, the door frame to Flat 3 was damaged and the ceiling to the ground floor lobby was damaged".

29. We had some difficulty in deciding whether this was a breach of regulation 5(1)(b). "Means of escape" from fire using its ordinary language would be an internal or external staircase, an appropriate window and includes fire doors, for example. Whilst undoubtedly the occupants of the flats would open and exit the doors to their flats, we had some difficulty in determining that these doors were in themselves "means of escape" as they are normal everyday doors and even if they were, the fact that the self-closing mechanism not working came within the scope of that regulation. On balance, however, it seems to us that self-closing doors should be considered as part of the overall fire safety requirements in the property and passing through these doors would be part of the means of escape.

30. That said, the other difficulty we had with the condition of the doors is that although the self-closing mechanisms were not operative, the doors still opened and closed and so the fact that the mechanisms did not work would not, in itself, cause the doors to be an ineffective means of escape. The same considerations also apply in relation to the damaged door frame to Flat 3,

the door still opened and closed and the damage, in itself, did not hinder the means of escape. It seems to us that what this regulation is getting at is effective escape from a building and is not concerned with the general state of repair of doors and such-like. The fact that the self-closing mechanism was not working and that the door frame was defective did not mean that the “means of escape” was not in a good state of repair.

31. Finally, we could not see how defective plaster to the ceiling in the ground floor lobby came within regulation 5(1)(b). Whilst we accept that anyone escaping the property in the event of fire would probably pass through the lobby, the fact that the ceiling plaster is damaged does not relate to the issue which this regulation is seeking to address – i.e. obstruction and delay in leaving a property in the event of fire.

32. For the above reasons we cannot be satisfied beyond reasonable doubt that there has been a contravention of this regulation and we find that it is not proven.

Regulation 5(4)

33. This regulation provides that the “manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to (a) the design of the HMO; (b) the structural conditions of the HMO; and (c) the number of flats or occupiers in the HMO.” This regulation is obviously designed to ensure that a manager keeps a property free from existing or falling into a condition in which an occupier might be injured.

34. The Respondent maintains that this has been breached in the following ways: (a) the ceiling in the ground floor lobby was in a poor condition; (b) there was broken stonework and missing pointing to the external walls; and (c) there was perished mastic to several of the single glazed windows.

35. As to (a) this is shown in the photograph on page 21 of the Respondent’s bundle. It shows loose and flaky ceiling plaster and whilst we accept this is unsightly and in a state of disrepair, we do not think that it is likely to give rise to any injury to the occupants of the property. The Respondent has not spelled out what injury might be sustained from flaking ceiling plaster.

36. As to (b) whilst there are no specific photographs which relate to this item, the photographs on pages 40, 41 and 42 of the Respondent’s bundle show the exterior stonework and condition of the pointing. It is hard to make out any broken stonework although the age and general neglect of the property makes the existence of broken stonework likely and so we accept that there is broken stonework. We also accept, and in parts we can see from the photographs, that the pointing is defective. However, where we disagree with the Respondent it is hard to see how either of these constitutes a danger to the occupants such that they are at any risk of injury. The Respondent has given no explanation for these items coming within the scope of the regulation.

37. As to (c) we again accept that mastic is perished to several single glazed windows, but again no explanation has been provided as to why this constitutes a risk of injury to the occupiers. We accept that it may be possible for a window to fall out, but we must be satisfied beyond reasonable doubt that at the very least this is likely to occur. There are no photographs of the missing mastic and no explanation as to why this constitutes a breach of regulation 5(4).

38. It follows that we are not satisfied beyond reasonable doubt that the Appellant has breached this regulation.

Regulation 8(1)

39. This regulation provides that the "manager must ensure that all common parts of the HMO are – (a) maintained in good and clean decorative repair…"

40. The Respondent maintains that the walls and ceilings in the common parts "were not particularly clean and in need of re-decorating".

41. The Appellant contends that whilst the decoration might well need updating, it could not be described as "dirty" and in any event due to a particularly difficult tenant in occupation of the property at the relevant time, having been placed there by Bradford Social Services, he was unable to properly manage the property until he had left (as it happens this tenant has since died). Since then, the Appellant contends that he has started visiting again and carrying out repair works.

42. From what we can see from the various photographs it is the case that the common lobby is in poor decorative repair, and we think it can properly be described as "shabby". However, we also take into account the fact that this property is in reality a lower, if not, bottom end of the property rental market. Whilst we accept that this is no general excuse for maintaining a property in a poor decorative state, we do not think that "shabby" decoration in the communal area of this property brings the Appellant within the scope of committing a criminal offence. We also note that regulation 8(1) has to be read in light of regulation 8(2) which seems to place the stress on things like handrails, stair coverings and proper functioning windows – things which might enhance the safety aspects of living in such a HMO rather than on how it looks.

43. It follows that, whilst we accept that the decorative condition of the common parts is poor, we do not think that we can be satisfied beyond reasonable doubt that the Appellant has committed an offence because of this fact, and we find the breach not proven.

Regulation 8(4)(b)

44. This regulation provides that any garden at the property is "kept in a safe and tidy condition".

45. The Respondent maintains that at the time of the visit there was discarded furniture at the property and "general household waste littered throughout the garden".

46. The Appellant states that he provides large waste bins for the use of the tenants and that these have been organised with and provided by Bradford Council. To this end he provided a photograph of said bins at the hearing. He also maintains that the tenants are responsible for the condition of the garden. The Appellant also told us that the discarded sofa underneath the external stairs was stored there by a tenant pending removal by the Local Authority using the bulk waste service and that the bed base in the photograph on page 16 has been discarded by a tenant. He told us that he had organised for it to be removed by the waste disposal service of Bradford Council. The Appellant told us that he tries to keep the garden litter free and will help tenants dispose of bulky items when necessary but that "there is only so much he can do".

47. We accept that the garden is not in a tidy condition, but we also accept that the Appellant has a reasonable excuse for any failure to keep the garden in a tidy condition. We accept that he has provided large bins for the use of the tenants and that it is generally up to individual tenants to use these bins. There is no evidence that the Appellant is personally responsible for throwing the rubbish in the garden and we think this is more likely due to fly tippers and things discarded by tenants and neighbours. We accept that the Appellant helps remove bulky items and that the sofa and bed base, which were placed there by the tenants, were awaiting removal by Bradford Council.

48. In those circumstances we cannot be satisfied beyond reasonable doubt that an offence has been committed under this regulation by the Appellant and even if it has, the Appellant has a reasonable excuse for any breach. The rubbish, it seems to us, is entirely due to occupiers and visitors to the property and persons in the neighbourhood as we were told by the Appellant. We find that this offence has not been proven.

Regulation 9(2)

49. This regulation provides as follows:

> (2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each part of the HMO that is used as living accommodation, that—
> (a)the internal structure is maintained in good repair;
> (b)any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and
> (c)every window and other means of ventilation are kept in good repair.
> (3) The duties imposed under paragraph (2) do not require the manager to carry out any repair the need for which arises in consequence of use by the occupier of his living accommodation otherwise than in a tenant-like manner.

(4) The duties imposed under paragraphs (1) and (2) do not apply in relation to furniture, fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.
(5) For the purpose of this regulation a person shall be regarded as using his living accommodation otherwise than in a tenant-like manner where he fails to treat the property in accordance with the covenants or conditions contained in his lease or licence or otherwise fails to conduct himself as a reasonable tenant or licensee would do.

50. The Respondent maintains that this regulation has been breached in two respects: (a) "damaged walls and ceilings in flats 1, 3, 4, 5 and 6" and "the majority of the kitchens were dated with mismatched and ill-fitting units".

51. A large part of the hearing was taken up with looking at various photographs taken of the internal state of a number of flats at the property, which the Respondent maintains are contraventions of regulation 9(2). We must therefore deal with each of the photographs as follows.

52. We can see the following: photograph on page 22 shows a loft hatch and an Artex ceiling, however this photograph does not show a breach of regulation 9(2): the internal structure does not appear to be damaged and neither does this photograph show a fixture or fitting. There is mention in Miss Ayre's witness statement that there may be some compartmentation issue with this being a false roof, and that the Artex may incorporate asbestos, but at the hearing the Appellant told us that he is responsible for the Artex and that it was done within the past 10 years and so is unlikely to contain asbestos and the compartmentation issue is not really addressed in the regulation. Accordingly, we did not think that either of these brought the condition of the lobby ceiling within regulation 9(2).

53. The photographs on pages 26 and 29 show cracked and bulging plaster to the ceiling of the living room in flat 3 and bulging plaster to flat 4. We can also see that the condition of these ceilings is unsightly, although this might be as a result of the lighting conditions when the photographs were taken. In any event, the condition of both of these ceilings has to be considered in light of the fact that this is an old property and that bulging and cracking is to be expected in a property of this age. The only effective remedy would be for the Appellant to pull the ceiling down and reinstall it, which would be neither proportionate nor necessary. We cannot see any risk of falling plaster as is suggested in Miss Ayre's witness statement and accordingly, we cannot say that this constitutes a breach of the Appellant's responsibility to keep in good repair the internal structure. Even if it is, the Appellant has a reasonable excuse for the bulging and cracking of the plasterwork – it is due to the age of the building and not through any lack of proper maintenance.

54. Additionally, in relation to flat 3, the Respondent contends that kitchen tiles are missing grouting which prevents their effective cleaning. The condition of the tiles can be seen in the photographs on pages 27 and 28

and whilst the grout does appear to be grimy, we could not make out whether it was missing or not. In any event, the tenant could quite easily spend time cleaning the grout and tiles so that their condition is improved, and we cannot be satisfied beyond reasonable doubt that the condition is the tiles is due to manager neglect.

55. In relation to flat 4, the Respondent contends that the walls here are "rough finished" and "poorly finished" as shown on photographs on pages 30 and 31. The tiles appear to have been painted over in this kitchen and whilst we can see that decoratively it looks unsightly, we cannot see how this constitutes a breach of the Appellant's duty to keep internal structure or internal fixtures and fittings in good repair and clean working order.

56. In relation to flat 5, again the Respondent is concerned that the ceiling is Artex with asbestos in, but again we found that asbestos is unlikely in view of what the Appellant told us about having carried out the works himself recently.

57. In relation to flat 6, photographs on pages 37 and 38 show a hole in the ceiling of the kitchen and gaps between the ceiling panels. The Appellant told us that these are due to a leak from the flat above, but he gave no explanation as to why the hole had not been filled in or the gaps repaired. We accept that on a straightforward reading of the regulation, the condition of the ceiling in flat 6 is a failure to maintain the internal structure of the property and it follows that we are satisfied that this breach is made out.

58. No other allegations of damaged or defective walls and ceilings are given.

59. In relation to flat 3, the Respondent contends that the "kitchen was dated, with mismatched units and poor condition cupboard fronts" as shown on photograph on page 27. We do not think the fact that the kitchen is dated or mismatched constitutes a breach of regulation 9(2)(b). Whilst we accept that the kitchen units are part of the fixtures and fittings, the requirement is to keep them in good repair and clean working order, not to ensure that they are modern and matching. We can see that the cupboard fronts are in poor condition, but we think that the Appellant has a reasonable excuse for this. As mentioned above, these properties are at the bottom end of the rental market and whilst it is unfortunate that this point is made, dated drawers and cupboard doors are to be expected. In any event, from what we can make out of the drawers and cupboard doors, the kitchen units are serviceable and could as necessary be kept clean by the individual tenants.

60. In relation to flat 4, the Respondent contends that the kitchen is cramped that some of the work surfaces are bare wood and that there is no front to the sink unit. The Respondent also contends that the cooker is missing and that the fridge freezer is in the main living area. The Appellant told us that the kitchen was in a serviceable condition when the tenant moved in and that the cooker is missing as it was moved to another flat by the tenants themselves. He also points out that the front of the sink unit may never have had a door and has a piece of cloth there instead.

61. Whilst we accept that the kitchens are dated and mismatched, we did not think that any of these items constituted a breach of regulation 9(2)(b). The size of the kitchen and location of the fridge freezer clearly do not constitute a breach and again the fact that the units may be missing a door or have aged surfaces is not, in our view, within the scope of the regulation to the extent that we are satisfied beyond reasonable doubt that there has been a breach of the regulation.

62. Likewise, in relation to flat 5, whilst we accept that the kitchen is old and dated with a missing front to one of the drawers, we are not satisfied beyond reasonable doubt that this constitutes a breach of regulation 9(2)(b) as set out above and for the reasons given above.

Regulation 10(b)

63. This regulation provides that the manager must "make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority".

64. In relation to this regulation, the Respondent returns to the issue of the state of the garden and the "discarded furniture in both the front and rear gardens and general litter strewn about the front garden". However, we have already dealt with this issue in relation to regulation 8(4)(b) and for the same reasons as set out in relation to the purported breach of that regulation we are not satisfied beyond reasonable doubt that there has been a failure on the part of the Appellant to manage the litter and refuge removal at the property so that this regulation has been breached. Accordingly, we find that this has not been proven. If anything, in paying for and providing the large bins, he has tried to make appropriate arrangements for the disposal of refuse and litter from the HMO.

Conclusion on the various offences

65. From the various allegations we find the following proven: (a) a failure to display name and address in breach of regulation 4; (b) the hole in the kitchen ceiling and gaps in the ceiling panels in flat 6 in breach of regulation 9(2). Otherwise, we do not find that any other reason for imposing a financial penalty as set out in the Final Notice of the 23 June 2022 is satisfied beyond reasonable doubt.

The Outcome of the Appeal

66. The caselaw demonstrates that the starting point is the Respondent's policy in relation to civil penalties, the relevant parts of which have been provided in the Respondent's bundle. On page 27 of the bundle under the heading "What is the burden of proof for a civil penalty?" the policy states that the Respondent "must satisfy itself that it can show beyond reasonable doubt that the landlord has committed the offence... and there would be a realistic prospect of conviction." The policy then indicates that the

Respondent will consider whether "it has sufficient evidence to prove beyond reasonable doubt that an offence has been committed by the landlord", whether "there is a public interest in imposing a Civil Penalty on the landlord in respect of the offence" and whether the Respondent has taken into account "its own Enforcement Policy when deciding to impose the civil penalty…".

67. Paragraph 2.0 of the policy under the heading, "Enforcement Action" provides that (paragraph 2.1) "informal action will be considered appropriate in the following circumstances: - a) the act or omission is not serious enough to warrant formal action…. c) the consequences of non-compliance will not pose a significant risk to the health and safety of the public [i.e. in relation to this appeal, the non-compliance with the HMO Regulations] d) in instances where action is deemed necessary to remedy breaches of housing legislation "Notification of Works Required" will normally be given to individuals/companies prior to any formal action being taken. The use of information action in these circumstances will be related to risk to health/safety/welfare."

68. It seems to this Tribunal therefore, when the Respondent's enforcement policy is considered in detail, and arising out of our findings of fact, that the Respondent never had sufficient evidence to prove beyond reasonable doubt, in relation to the majority of the allegations in the penalty notice, that an offence had been committed. It also seems to us, given that the two offences proven are relatively minor and could have been dealt with otherwise than through a civil penalty, that there was at the relevant time, no public interest in imposing a civil penalty for breaches of the HMO regulations. It follows, therefore, that we are also of the view that the Respondent did not follow its own Enforcement Policy as set out in paragraph 67 above in deciding to impose a civil penalty on the Appellant. For that reason, we have cancelled the civil penalty.

69. Further, what this appeal demonstrates, in the judgement of this Tribunal, and in the circumstances of this appeal, is that the HMO Regulations are an ineffective tool for remedying poor housing standards other than in clearly defined circumstances and do not and should not replace the much more effective mechanism in Part 1, Chapter 2 of the Housing Act 2004. It seems to us that if the Respondent had approached the condition of the property from a HHSRS perspective, then it is likely the Appellant would have been notified in advance of necessary works under sections 11 and 12 of the 2004 Act and given an opportunity to remedy any hazards extant at the property.

70. In that way there would have been an additional step in the process of enforcing housing standards by way of initial informal action – i.e. step d of the policy mentioned in paragraph 67 above. In utilising the HMO Regulations, rather than the HHSRS, the Appellant was effectively denied the opportunity to carry out works informally before any penalty was imposed, and that cannot be fair.

Conclusion

71. In those circumstances, and for the above reasons, we decided to cancel the Final Penalty Notice.

72. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.

Signed Dated 20 November 2023

Phillip Barber, Judge of the First-tier Tribunal