



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

Case Reference : **CHI/45UH/HNA/2023/0013**

Property : **66a Teville Road Worthing BN11 1UY**

Applicant : **Yusuf Khan**

Respondent : **Adur & Worthing Councils**

Type of Application : **Appeal against a financial penalty under s.249A of the Housing Act 2004**

Tribunal Members : **Judge H Lumby
Mr C Davies FRICS
Ms J Dalal**

Venue : **Havant Justice Centre, Elmleigh Road,
Havant, Hampshire PO9 2AL**

Date of Hearing : **28 November 2023**

Date of Decision : **21 December 2023**

DECISION

Decision of the Tribunal

1. The decision by the Respondent to impose a financial penalty is upheld. The total of the penalty originally amounted to a sum of £21,000. For the reasons set out below the Tribunal has determined that the financial penalty should be £9,000.
2. In the light of the above, the appeal made by the Applicant against the imposition of a financial penalty imposed by the Respondent against him, under section 249A and schedule 13A of the Housing Act 2004, is therefore allowed to the extent of the amount of the financial penalty being reduced to £9,000 but is otherwise dismissed.

Introduction

3. The Applicant appeals against the imposition of a financial penalty imposed by the Respondent pursuant to s. 249A of the Housing and Planning Act 2016. The Tribunal has previously determined that the appeal was lodged by the Applicant on 2 June 2023. The matter was heard by the Tribunal on 28 November 2023.
4. The civil penalty of £21,000 was imposed on the Applicant as owner of the Property by reason of the Applicant's breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006.
5. The Property comprises a ground floor food and beverage outlet with rooms above which the Applicant lets out. The ground floor food and beverage outlet is operated by the Applicant and his wife as a tea room. The first floor contains a small kitchen, a WC, a shower room with wash hand basin, and two letting rooms. The second floor comprised two letting rooms and the top floor comprised a further letting room.
6. An Emergency Prohibition Order had previously been served on the Applicant in relation to the Property on 23 July 2009.
7. The Respondent carried out an unannounced inspection of the Property on 6 January 2023 and a formal HHSRS inspection on 9 January 2023. An Improvement Notice and an Emergency Prohibition Notice in relation to the use of the top floor were served on the Applicant that day. The Applicant complied with the prohibition notice, requiring the tenant who occupied the room on that floor to leave on the same day. An Improvement Notice was served on 12 January 2023.
8. The Respondent served notice of an intention to impose a financial penalty on 15 March 2023 and subsequently imposed that penalty on 5 May 2023.

9. The financial penalty was imposed by the Respondent on the Applicant due to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 and not due to non-compliance with the Improvement Notice.
10. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Respondent enabled the Tribunal to proceed with this determination.
11. This has been a determination following a hearing on 28 November 2023. The documents that the Tribunal were referred to are in a bundle of 245 pages, the contents of which included details of the issues found on inspection by the Respondent, copies of notices served and details of the methodology used to calculate the financial penalty. It also included witness statements from the Applicant, Mrs Taslima Jhumu and from Mr Bruce Reynolds. A second witness statement had been added from Mr Reynolds, to which the Applicant had no objection. The Respondent objected to a witness statement on behalf of the Applicant from Mr Morelowski on the grounds the witness was not present to be cross-examined; the Tribunal accepted the statement but on the basis that appropriate weight would be given to it given his absence. Financial information had also been provided by the Applicant pursuant to directions from the Tribunal. In addition, a 283 page guidance and policies bundle was provided by the Respondent. The contents of all these have been noted by the Tribunal.
12. The Tribunal heard from the Applicant and from Mrs Taslima Jhumu, the Applicant's wife. We also heard from Mrs Shelley-Ann Flanigan and Mr Bruce Reynolds from the Respondent. Mrs Flanigan is an in-house legal representative and Mr Reynolds is a private sector housing manager. Ms Jo Vickery of the Respondent was also in attendance but did not contribute.
13. The Tribunal noted that the layout of the bundle provided and that the Respondent's presentation of its case was unhelpful, causing obvious confusion to the Applicant as to what the case was about and to which allegations he was responding. This was compounded by the approach taken in the hearing by Mr Reynolds.
14. Having considered all of the documents provided and heard the submissions of the parties, the Tribunal has made determinations on the issue as follows.

The Law

15. In order to impose a financial penalty, there must be a "relevant housing offence" committed by the person served with the notice.
16. Section 249A of the 2004 Act provides:

"249A Financial penalties for certain housing offences in England

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.

(a) *In this section “relevant housing offence” means an offence under—
section 30 (failure to comply with improvement notice),*

...
*(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.*

...
*(6) Schedule 13A deals with—
the procedure for imposing financial penalties, appeals against financial penalties, enforcement of financial penalties, and guidance in respect of financial penalties...”*

17. The “relevant offence” relied upon in this case is breach of the Management of Houses in Multiple Occupation (England) Regulations 2006.

18. The questions the Tribunal must consider are:

- a) Whether the Tribunal is satisfied beyond reasonable doubt that the offence has been committed.
- b) If an offence is found to have been committed, the question then arises as to whether, on the balance of probabilities the Applicant has a defence.
- c) There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.
- d) The final consideration is whether the penalty imposed is for an appropriate sum.

The Applicant’s Case

19. The Applicant was confused as to the reason for the financial penalty and the offence that led to this. He accepted that the Improvement Notice had not been fully complied with and focused on the difficulties in getting the work done. He explained that he was interviewed under caution by the Respondent on 1 February 2023 (under the Police and Criminal Act 1984) and had been asked to do works to the kitchen as a priority. His mother had died around then and he had to spend time in Bangladesh as a result. He had sorted the works to the kitchen promptly upon his return. He had difficulties getting builders but had since done 90% of the work required by the Improvement Notice; he was going as fast as he could. He argued that he had complied with the prohibition notice in relation to the top floor promptly and that much of the damage to the Property complained about by the Respondent had been caused by a single tenant, Mr Luis Soares. The Applicant wished to evict this tenant but the cost of court proceedings and the non-attendances by Mr

Soares meant that he was still resident; a hearing was scheduled for January 2024. In September 2023, the Applicant had suffered from abdominal pain and had an operation; cancer was suspected but fortunately this was not the cause. All works required by the 2009 prohibition order had been carried out. Finally, the Applicant argued that the Respondent's initial inspection had been perfunctory, taking only 15 minutes.

20. Mrs Jhumu also explained to the Tribunal that they looked after the Property well and dealt with issues, for example a recent blocked toilet. The damage was caused by Mr Soares who for example blocked exits and had threatened her with a rod when confronted.
21. It was clear to the Tribunal and the Respondent that the Applicant did not appreciate that the offence in question in this case was in respect of the breach of the HMO regulations rather than the failure to comply with the Improvement Notice. He did not accept that there was a breach of these regulations.

The Respondent's Case

22. The Respondent set out why it considered the Applicant was in breach of the HMO regulations and cross-examined him in relation to these. Numerous breaches of the regulations were raised including (i) Regulation 3, failure to display his name (this was accepted by the Applicant) (ii) Regulation 4, tears in the carpet made the fire escape unsafe (the Applicant claims this was torn shortly before the inspection by Mr Soares) (iii) Regulation 4, non-compliant fire doors (this was accepted by the Applicant) (iv) Regulation 4(2), a failure to maintain fire equipment to good working order (the Applicant claimed Mr Soares had removed it) (v) a failure to maintain fire alarms (the Applicant said they were maintained but the paper work was missing) (vi) a cap was missing from a fire alarm, meaning it could not be tested; in addition a fire panel was disconnected (the Applicant maintained nonetheless they were working) (vii) Regulation 4(2) a failure to take measures to protect occupiers from injury, the Respondent relying on items listed in the Improvement Notice (the Applicant says these were subsequently addressed) (viii) Regulation 4(4), a failure to have bars or other safeguards for windows (the Applicant accepted this but said the required work was subsequently addressed) (ix) Regulation 4(5), a failure to inspect electrical installations every five years and provide the certificate to the local authority within seven days of inspection (the Applicant said that was done on 13 August 2009, the subsequent test had been lost, an up to date was provided on 14 March 2023 which he accepted was outside the required seven days) (x) Regulation 7(1) a failure to keep in good decorative repair, as shown by the service of the emergency prohibition notice and the improvement notice (the Applicant disputed elements of this) (xi) Regulation 7(2) a failure to maintain handrails in good repair as they failed to reach the top floor (the Applicant argued that these complied with the 2009 notice).
23. The Respondent argued that there was no reasonable excuse for the breaches, all procedures had been complied with and the penalty was appropriate.

24. The Respondent submitted that the penalty had been calculated by reference to its policy, utilising the charging table for determining Financial Penalties under the 2004 Act that had been adopted by it.
25. It argued that the Applicant's culpability was high based on the previous 2009 notice, the failure to carry out all works required from then before allowing the top floor to be occupied, the lack of evidence of checks and the obvious breaches on the staircase, the kitchen and the bathroom. In addition, the Applicant's fire risk assessment lists obvious hazards as high or significant.
26. It also justified setting the level of harm as significant by reason of the fire safety issues, the risk of falling on the stairs, the need to prohibit access to one room, the lack of management control and the risk of death or injury in the event of fire.
27. Taken together, this would lead to a score of 12 on their financial penalty matrix, which would trigger a fine of £18,000. There were in addition aggravating factors which the Respondent argued should be taken into account. These included blaming Mr Soares for causing damage when he should have been evicted, the alleged loss of documents which the Respondent blamed on deliberate concealment and the purported backdating of a fire assessment. As a result, it raised the level of the financial penalty to £21,000.

Consideration

28. As there is a criminal offence at the heart of the jurisdiction to impose a financial penalty, the Tribunal must be satisfied beyond reasonable doubt of the commission of the offence.
29. The Tribunal is therefore satisfied beyond reasonable doubt, based on the evidence provided by the Respondent and the Applicant's admissions, that there have been breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006. These included the failure to display his name, various breaches of requirements relating to fire alarms and fire escapes, a failure to provide a certificate in relation to electrical installations and a failure to provide opening restrictions on windows.
30. The question then arises as to whether the Applicant has a defence to the commission of the offence, which it needs to establish only on the basis of a balance of probability. The Applicant argued that some of the breaches were caused by Mr Soares. This does not explain all of the breaches. As such, no reasonable excuse was established for the breaches.
31. There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section. 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act. Dealing with those requirements in Schedule 13A:
 - a) Paragraph 1 – this requires a local housing authority to give notice of its intention to impose a financial penalty upon a person under s.249A,

and in this case, this was done as noted above, on 15 March 2023;

- b) Paragraph 2 – the notice of intention must be given before the end of six months beginning with the day on which the authority has sufficient evidence of conduct to which the penalty relates and, given that the notice of intention was issued on 14 March 2023 and the inspection at which the evidence was gathered took place on 9 January 2023, this is within the required period;
- c) Paragraph 3 – the notice must set out the amount of the penalty, the reasons for imposing it and the right to make representations – all of this detail was included within the notice as produced before the Tribunal and which it is accepted by the Applicant was served upon her;
- d) Paragraph 4 – there is a right to make representations regarding the intended imposition of the penalty within 28 days after the notice of intention is served and in this case, such right was given and duly exercised by the Applicant;
- e) Paragraph 5 – the Respondent is required to decide, having considered the representations, whether to proceed to impose the penalty and, if so, in what amount – again, in this case, this was done;
- f) Paragraph 6 - if imposing a penalty, the authority must issue a final notice, which was done in this case on 5 May 2023;
- g) Paragraph 7 - the final notice must require payment within 28 days after the day on which it was given – in this case, that requirement was imposed and set out in the notice;
- h) Paragraph 8 - the final notice must set out (a) the amount of the 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 (which it did) (f) the consequences of a failure to comply with the notice. All these requirements were complied with.

32. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the offence under s.30 of the 2004 Act has been committed and that the procedural requirements of s.249A and Schedule 13A of the 2004 Act have been complied with. Further, it is satisfied that no defence is made out,

whether on the balance of probability or otherwise. Accordingly, the Respondent was entitled to impose a financial penalty and that the Tribunal should support that decision, which it does.

33. The Respondent argued that there is a high level of culpability and a significant level of harm. The Tribunal agrees with this assessment, finding that the Applicant's culpability should be assessed as high due to the prior order in 2009 and the failure to complete all required works before the top floor was occupied. Likewise it finds that the risk of harm should be rated as significant due to the fire risks within the Property which could place occupiers in potential danger of death or serious harm.
34. The Tribunal has considered the Respondent's Financial Penalties Policy, including the matrix table, which takes into account a number of factors. The Respondent argues that the correct assessment where there is a high degree of culpability and a significant degree of harm is a starting point of 12 points, equating to £18,000. The Tribunal agrees with these assessments as to culpability and harm and the resulting starting point.
35. The Tribunal also agrees that in theory the penalty can be increased to take account of aggravating factors and reduced again by mitigating factors.
36. The Respondent argued that aggravating factors were blaming Mr Soares for causing damage who should have been evicted. Other factors claimed were the alleged loss of documents which the Respondent blamed on deliberate concealment and the purported backdating of a fire assessment. The Tribunal finds, on balance of probabilities, that Mr Soares was responsible for damage to the Property and had committed threatening behaviour towards the Applicant's wife. It also finds that the Applicant had taken reasonable steps to remove him from the Property. Furthermore his continual presence in the property and aggressive behaviour meant that it was difficult to enter the premises to carry out reasonable works. Accordingly, the Applicant's blame of Mr Soares and failure to evict him should not be an aggravating factor. The Tribunal also finds no evidence to support the Respondent's contentions of deliberate concealment or backdating fire assessments. It considers that the penalty should not be increased as a result of mere assumptions.
37. As a result, the Tribunal finds that there are no aggravating factors to increase the financial penalty.
38. The Tribunal then considered whether there were any mitigating factors that should result in the financial penalty being reduced. The Respondent did not consider that there were any mitigating factors.
39. Having considered the evidence and the submissions made by the parties, the Tribunal finds that there were four mitigating factors, each of which should reduce the score by one point, giving a total of a four point reduction.

40. The first mitigating factor was the steps taken by the Applicant to rectify the breaches notified to him and referred to in the Improvement Notice. He is not a professional landlord but has taken steps to comply with the notice. It is accepted that the penalty relates to breaches of the HMO regulations and not a failure to comply with the Improvement Notice but it is also noted that the Respondent considers this as a factor in assessing the level of the penalty. There is clearly a link between the two, in that the Improvement Notice seeks to rectify the breaches referred to in the financial penalty. The Tribunal considers that the Applicant's efforts should be taken into account.
41. The second mitigating factor is the heavy handed approach taken by the Respondent. The Tribunal finds that its approach was over-zealous and confusing, serving numerous notices on the Applicant without engaging with him or ensuring that he understands what he is being accused of and the steps required. Rather than making an attempt to engage constructively with the Applicant, he was interviewed under caution. This was particularly the case when English is not the Applicant's first language and he was experiencing personal issues such as the death of his mother. The confusion this caused the Applicant and the over-zealous approach from the Respondent were both clear at the hearing. A clear desire to punish the Applicant was apparent when a more measured approach based on active and constructive engagement might have yielded better results. It is hoped that in future the Respondent will consider a more measured approach.
42. The third mitigating factor is the behaviour of Mr Soares. The damage caused by him and his threatening behaviour contributed to the condition of the Property and the issues faced in returning it to the required condition.
43. The final mitigating factor is the health issues faced by the Applicant which impacted on his ability to deal with issues with the Property.
44. The effect of this four point reduction is to lower the assessed level from 12 points to eight points on the Respondent's Financial Penalties Policy. This would lead to a penalty of £9,000.
45. The Tribunal next considered whether this was an appropriate level given the Applicant's ability to pay. It was noted that the Property was worth around £350,000 with a small mortgage outstanding. It was the Applicant's only significant asset and he also had a small income from the tea room on the ground floor and the tenants who still paid rent (Mr Soares did not pay). Given these facts, the Tribunal considered that the penalty was affordable for the Applicant.
46. Overall, the Tribunal considers a financial penalty of £9,000 a fair and appropriate level under the circumstances, including when taking into account the Applicant's ability to pay.
47. Accordingly, the Tribunal determines that the financial penalty imposed on the Applicant by the Respondent should be £9,000.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.