



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

**Case Reference** : **BIR/OOFY/HNB/2023/0002 and 0003**

**Properties** : **29 Eland Street, Nottingham NG7 7DY (1)  
27 Palin Street, Nottingham NG7 5AD (2)**

**Applicant** : **Housing 35 Plus Limited**

**Representative** : **Jonathan Manning of counsel  
instructed by Anthony Collins Solicitors LLP**

**Respondent** : **Nottingham City Council**

**Representative** : **Andrew Lane of counsel  
instructed by Sabina Bashir, Solicitor,  
Legal Services, Nottingham City Council**

**Type of Application** : **Financial Penalties – Housing Act 2004**

**Hearing** : **26<sup>th</sup> January 2024 at Centre City Tower,  
Birmingham**

**Tribunal** : **Judge D Jackson  
Mr A McMurdo**

**Date of Decision** : **8 February 2024**

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**DECISION**

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## **Background**

1. On 22<sup>nd</sup> March 2023 the Local Housing Authority Respondent issued a Final Notice under section 249A and Schedule 13A of the Housing Act 2004 (“the Act”) imposing a financial penalty of £15,000 in respect of an offence of having control of or managing an unlicensed house in multiple occupation (“HMO”), namely 29 Eland Street, Nottingham NG7 7DY (“Eland Street”), contrary to section 72(1) of the Act.
2. Also, on 22<sup>nd</sup> March 2023 the Local Housing Authority Respondent issued a Final Notice under section 249A and Schedule 13A of the Housing Act 2004 imposing a financial penalty of £15,000 in respect of an offence of having control of or managing an unlicensed HMO, namely 27 Palin Street, Nottingham NG7 5AD (“Palin Street”) contrary to section 72(1) of the Act.
3. On 19<sup>th</sup> April 2023 the Applicant appealed to the Tribunal against both financial penalties.
4. Both appeals were consolidated and heard together at the Tribunal hearing centre in Birmingham on 26<sup>th</sup> January 2024. The Applicant was represented by Mr Manning and the Respondent by Mr Lane.
5. The parties identified the following issues for determination:
  - (i) No offence committed
  - (ii) Reasonable excuse
  - (iii) Abuse of process and breaches of procedural requirements
  - (iv) Culpability wrongly assessed
  - (v) Wrong assessment of harm
  - (vi) Wrong penalty band
  - (vii) Wrong treatment of mitigation and aggravation
  - (viii) Wrong application of financial benefit
6. Having heard evidence from James Tristram (Tristram’s Property Services Limited) by way of telephone/remote video platform and from Alex Pridmore (Chief Executive, Housing 35 Plus Limited) the Tribunal indicated that the outcome of issue (i) was potentially determinative of both appeals. Both counsel helpfully agreed that Issue (i) was suitable for determination as a Preliminary Issue under Rule 6(3)(g) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
7. The Preliminary issue is that no offence has been committed in respect of either property because neither is an HMO.

## **Meaning of HMO**

8. The meaning of “house in multiple occupation” is contained in section 254 of the Act. For present purposes subsection (5) applies:

*“But for the purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14”.*

9. It is common ground that determination of the Preliminary Issue turns on Paragraph 2B of Schedule 14:

***Buildings controlled or managed by a co-operative society.***

*2B(1) A building where—*

*(a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out in sub-paragraph (2) is met, and*

*(b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy.*

*(2) The conditions are—*

*(a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,*

*(b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,*

*(c) that each member has equal voting rights at such a meeting, and*

*(d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.*

*(3) For the purposes of sub-paragraph (1) “co-operative society” means a body that—*

*(a) is registered as a co-operative society under the 2014 Act or is a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(i) of that Act, and*

*(b) is neither—*

*(i) a non-profit registered provider of social housing, nor*

*(ii) registered as a social landlord under Part 1 of the Housing Act 1996.*

*(4) In this paragraph—*

*“the 2014 Act” means the Co-operative and Community Benefit Societies Act 2014;*

*“assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988;*

*“protected tenancy” has the same meaning as in the Rent Act 1977;*

*“secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985.*

10. Paragraph 2B was inserted by the Localism Act 2011. The Paragraph was further amended by the Cooperative and Community Benefit Society Act 2014 which replaced references to “the 1965 Act” (i.e. Industrial and Provident Societies Act 1965).
11. It may be helpful at this stage to consider the concept of “a fully mutual housing co-operative”. A fully mutual housing cooperative has three distinguishing features:
  - (i) it is managed by its Members; and
  - (ii) only tenants or prospective tenants are allowed to be Members; and
  - (iii) it is registered with the Financial Conduct Authority.
12. The Supreme Court considered housing cooperatives, albeit in a different context, in **Berrisford v Mexfield Housing Cooperative Limited** [2011] UKSC 52. At paragraph 1 Lord Neuberger observed:

*“Mexfield Housing Co-Operative Ltd (“Mexfield”) is a fully mutual housing co-operative association, which was founded by a bank as part of a mortgage rescue scheme, ie with a view to buying mortgaged properties from individual borrowers who are in difficulty, and then letting the properties back to them. In that capacity, it acquired a number of residential properties, which it then let out to the former owner-mortgagors, who, in the normal way for tenants of a fully mutual housing co-operative, were required by its rules to be members of Mexfield.”*

At paragraph 72 Lord Hope makes further observations in the context of Scots law:

*“The first difference relates to the status of Mexfield as compared with the status that a similar body has in Scotland. It is a fully mutual housing association within the meaning of section 1(2) of the Housing Associations Act 1985 and section 5(2) of the Housing Act 1985. It cannot create an assured tenancy in England: section 1(2) of and paragraph 12(1)(d) of Schedule 1 to the Housing Act 1988. Nor can it create a secure tenancy there, because it is registered under the Industrial and Provident Societies Act 1965. A housing association is not a landlord for the purpose of creating a protected or statutory tenancy: Rent Act 1977, sections 15(1) and 15(3). So its members have no statutory protection except that which is given to them by the Protection from Eviction Act 1977.”*

13. It can therefore be seen that Paragraph 2B(1)(b) follows the position in relation to fully mutual housing associations that occupancy under an assured, secure or protected tenancy is not permitted. Paragraph 2B(2) requires a co-operative society to be “fully mutual” i.e. membership restricted to occupiers/prospective occupiers who manage the co-operative in general meeting based on equal voting rights. Paragraph 2B(3) requires registration with the Financial Conduct Authority.
14. The starting point for deliberation is that the Applicant is registered as a cooperative society under the Co-operative and Community Benefit Societies Act 2014. The Applicant is registered by the Financial Conduct Authority under Registration number 4504.

15. We next turn to the question as to whether the Applicant's Rules are such as to secure that each of the conditions set out in sub-paragraph (2) is met. We are grateful to Mr Lane for the concession on behalf of the Respondent that the only condition in dispute is (2)(b) – *“that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend”*.

## **The Rules**

16. It is convenient at this stage to set out the following extracts from the Rules of Housing 35 Plus Limited [Registered by FCA 24<sup>th</sup> September 2019 see A 82-105]:

### **NAME AND STATUS**

*2. The Co-operative is registered under the provisions of the Co-operative and Community Benefit Societies Act [“the Act”] and is a “co-operative housing association” as defined by Section 5(2) of the Housing Act 1985 because these rules:*

*(a) Restrict membership to persons who are occupiers or prospective occupiers of the Co-operative’s properties:*

### **OBJECTS**

*3. The objects of the Co-operative shall be:*

*(a) the provision, construction, conversion, improvement, or management on not for profit Co-operative Principles as set out in the appendix 1 to these rules [the “Cooperative Principles”] of housing exclusively for occupation by members of the Co-operative under the terms of a licence granted to them by the Co-operative solely or jointly with another member or members which shall:*

*(iii) require the member to surrender the licence to the Co-operative or, at the Co-operative's direction, to a member or prospective member of the Cooperative on ceasing to be a member,*

### **PROVISIONS APPLICABLE TO ORDINARY GENERAL MEETINGS**

*30. The functions of ordinary general meetings shall be to discuss all management decisions of the Co-operative that have arisen since the last general meeting.*

### **VOTING AT GENERAL MEETINGS**

*44. Every member present in person at a general meeting shall have one vote. Except where otherwise specified in these rules or by the Act, resolutions at general meetings shall be decided by a majority vote of members present and voting or voting by proxy. At any general meeting no member may act as a proxy voter for more than two other members.*

## **MANAGEMENT COMMITTEE**

*48. The Co-operative shall have a management committee [called "the committee"] which shall control and direct the management of the day to day business of the Cooperative in accordance with its objects and these rules...*

## **POWERS OF THE COMMITTEE**

*69. The business of the Co-operative shall be conducted by the committee which may exercise all such powers as may be exercised by the Co-operative in accordance with its objects and these rules and are not by these rules or by statute required to be exercised by the Co-operative in general meeting. The committee shall in all things act for and in the name of the Co-operative. Without prejudice to the general powers conferred on the committee by these rules, the committee may exercise the following powers to:*

- (a) purchase, sell, build upon, lease, mortgage or exchange any property or land and to enter into any contracts and settle the terms of such contracts;*
- (b) compromise, settle, conduct, enforce or resist either in a Court of Law or by arbitration any suit, debt, liability or claim by or against the Co-operative;*
- (c) determine from time to time the terms and conditions upon which the property of the Cooperative is to be let, leased or sold, and to make, revoke, and alter and at all times enforce as it thinks fit, such terms and conditions;*
- (d) appoint and remove all solicitors, architects, surveyors and employees;*
- (e) appoint and remove managing agents and to determine from time to time their remuneration and the terms and conditions upon which the managing agents are to act on behalf of the Co-operative;*
- (f) pay all such expenses, including travelling expenses, as are properly incurred by any committee members in the execution of his or her duties;*
- (g) take up corporate membership of any secondary co-operative from which the Cooperative purchases services;*
- (h) become a member, affiliate or subscribe to the International Co-operative Alliance, Cooperatives UK, the Confederation of Co-operative Housing, the Wales Co-operative Centre, Community Housing Cymru, and/or the National Housing Federation; or*
- (i) affiliate or subscribe to any other organisation that will assist the Co-operative achieve its objects in such manner as the members voting at a general meeting of the Co-operative may from time to time determine.*

17. In our judgement the structure of the Applicant is clear from its Rules. It is governed by its Members in General Meeting. Day to day running of the business is undertaken by the Management Committee. There is nothing unusual in this arrangement. Most organisations have a decision making board which delegates the running of the organisation to its appointed managers.
18. Rule 30 specifically provides that General Meetings shall “discuss all management decisions”. This is entirely consistent with the wording of Paragraph 2B(2)(b) which refers to “all management decisions”. Rule 44 provides for equal voting rights at General Meetings. We find that this satisfies the requirement for “all management decisions” to be made by Members in General Meeting on the basis of equal voting rights at such a meeting as required by Paragraph 2B(2)(c).

19. The powers of the Members in General meeting to take “all management decisions” can be contrasted with the duties of the Management Committee under Rule 48 to “control and direct the management of the day to day business”. Rule 69 provides that “the business of the Co-operative shall be conducted by the committee”. Put simply the Members make all the decisions and the Committee conducts the day to day business. This ensures the primacy is accorded to the Members in General Meeting.
20. We find that on a plain reading the effect of the Rules is to secure that all management decisions are made by Members in General Meeting. That finding would be sufficient to dispose of the Preliminary Issue in the Applicant’s favour. However, for completeness we set out our findings as to how the Rules are applied in practice.

### **The Rules in Practice**

21. We have had the advantage of hearing the oral evidence of Alex Pridmore – Chief Executive of Housing 35 Plus. Mr Pridmore confirmed the contents of his Statement made on 8<sup>th</sup> September 2023 [A69-80]. Mr Pridmore explained that the Committee was elected at AGM. The Committee consists of 6 individuals. The Committee elect a Chief Executive who acts as primary point of contact for solicitors and the Local Authority. The Committee actions decisions made in General Meeting. The Committee makes operational and not management decisions. Mr Pridmore stressed that the Committee’s authority derives from General Meeting. The Committee has no power to make management decisions.
22. Mr Pridmore referred to an FCA Rule Amendment Form [A 106-111] and statutory declaration dated 10<sup>th</sup> September 2019. Paragraph 3A.4 confirms:  
  
*“The members will be invited to all general meetings where all management decisions will be decided. The committee shall run the day to day operations. The committee will be elected at every Annual General Meeting.”*
23. Mr Pridmore told the Tribunal that General Meetings can take place as often as 3 times each week. 7 days’ notice is required under Rule 22. Notice is given by way of a notice placed on the communal noticeboard in each property. More recently notice has also been given by way of email. Copies of Meeting Invitations [A 217-222] demonstrate the frequency of General Meetings – 29<sup>th</sup> and 31<sup>st</sup> August and 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> September 2023. A flavour of the wide ranging discussions and decisions can be seen in the Minutes [A 205 – 217]. A further selection of Minutes gathered by the Respondent during the course of its investigation are to be found at [B 306-365]
24. A wide variety of matters are discussed in General Meeting from minor repairs to approval of new Members. Following discussion decisions are reached. Voting is on the basis of one vote per Member. Unfortunately, attendance at General Meeting has dwindled. Sometimes only 7 or 8 Members attend and in order to obtain a quorum it has been necessary to provide transport and allow remote attendance. As Mr Pridmore rightly pints out in paragraph 28 of his written evidence [A 77] Members have other priorities and may not wish to engage. The Applicant cannot force its members to attend.

25. The Applicant started with just one property but expanded significantly having acquired properties from Nottingham Homeless Housing Limited in 2020. As at the date of the hearing it has 75-80 properties with 500 bed spaces.
26. The primary focus of the Applicant is to provide housing for those who are homeless. In 2020 the Applicant has moved into the student market to increase cash flow to keep supported services running. The Applicant works with Tristram's Property Services Limited. As explained by Mr Tristram in his evidence his arrangement with the Applicant was different from that with other landlords. Tristram deal with marketing and checking references/ guarantors ("Vouch" system). Thereafter the Applicant deals with all paperwork.
27. Mr Pridmore explained that the forms received from Tristram's are treated as a membership application. Membership is approved in General Meeting whereupon a Licence agreement is issued.
28. Minutes of General Meeting on 22<sup>nd</sup> October 2020 [A 118-119] confirm the approval by Members of the decision to move into the student market. Those minutes are also a useful illustration of the decisions made in General Meeting. There were 21 Members present (including the 6 Committee Members). The meeting discussed applications for membership. It also discussed maintenance and repairs – even minor matters such as replacement of a shower curtain as well as payment of utilities.
29. Mr Pridmore has exhibited to his statement [A 167] a sample of Request for Membership. All Members occupy under the terms of a Licence ( see example at A 168-177). Both Membership application and Licence (including copy House Rules) are signed prior to a new Member moving into their property.
30. As Members occupy under the terms of a Licence the Applicant can require a member to move to a different room. Examples of this occurring are exhibited at [ A 178-191].
31. The Respondent's case is based on a number of Witness Statements (Alisa Balabanova [B52-54]; Temitope Sodiya [B56-57]; Trinity Yaweh [B60-61]; Ruth Okechuwku [B146-147]; Joshua Osayande [B147]; Priscilla Dadzie [B240-244 – Property 2]; Priscilla Afolabi [B250-254 – Property 2]; Arerosuoghene Akpowowo [B260-263 – Property 2]; Charmaine Parkinson [B471-472]; Aliya Durant [B474-476]; Michelle Bvukumbwe [B478-480]; Anthony Thorpe [B482-484]; Jason Rowley [B486-488] and Karthik Raya Jayapal [B490-492]) which suggest lack of knowledge of General Meetings and even the very existence of a cooperative.
32. We prefer the evidence of Mr Pridmore. We do so because his evidence is supported by detailed documentation by way of Meeting Invitations and Minutes. We also prefer Mr Pridmore's evidence because it has been given orally and tested by Mr Lane in cross examination.
33. To the extent that it is necessary for us to do so in light of findings as to the plain meaning and effect of the Rules we find as fact that *in practice* the Rules secure that all management decisions are made by Members in General Meeting.



34. Accordingly, our determination on the Preliminary Issue is that neither Eland Street nor Palin street is a house in multiple occupation for the purposes of section 254 of the Act. It therefore follows that no offence under section 72(1) of Act has been committed and that both Final notices must be cancelled.

### **Decision**

35. Pursuant to Paragraph 10 (4) of Schedule 13A to the Housing Act 2004:

- (i) The Final Notice dated 22nd March 2023 imposing a financial penalty of £15,000 in respect of 29 Eland Street, Nottingham NG7 7DY is cancelled.
- (ii) The Final Notice dated 22nd March 2023 imposing a financial penalty of £15,000 in respect of 27 Palin Street, Nottingham NG7 5AD is cancelled.

D Jackson  
Judge of the First-tier Tribunal

Either party may appeal this Decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.