



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

Case Reference : BIR/47UE/HNB/2023/0004

Property : 14 Chestnut Street, Worcester, WR1 1PA

Applicant : Zabina Khan

Representative : None

Respondent : Worcester City Council

Representative : Catherine Ravenscroft of Counsel

Type of Application : Appeal against Worcester City Council financial penalty of £6,000 under section 249A and Schedule 13A para.6 to the Housing Act 2004.

Tribunal Members : I.D. Humphries
A. McMurdo

Date and Venue of Hearing : On line video Hearing 18 December 2023

Date of Decision : 31 January 2024

DECISION

DECISION

- 1 The Tribunal confirms the Financial Penalty of £6,000 on the Applicant in respect of breaches of the Housing Act 2004.

REASONS

Introduction

- 2 The case relates to a House in Multiple Occupation ('HMO') at 14 Chestnut Street, Worcester, WR1 1PA, where Worcester City Council imposed a financial penalty of £6,000 on the Applicant for two offences on 7.8.23 (Bundle C17):
 - a) under section 72(3) Housing Act 2004, one offence of failure to comply with licence conditions in relation to occupation of the basement and over-occupation of the HMO and
 - b) under section 234 Housing Act 2004, one offence of failure to comply with the Management Regulations in respect of failure to maintain smoke alarms.
- 3 The Applicant considered the penalty unreasonable and appealed to the Tribunal on 1.9.23.
- 4 The Tribunal re-heard the case on 18.12.23 based on the Respondent's policy for financial penalties taking account of oral and written submissions by the parties and finds as follows.
- 5 References in brackets relate to pages in the parties' bundles. References pre-fixed 'p' relate to pages in the Applicant's bundle and pre-fix capital letters to the Respondent's bundle.

The Law

- 6 The relevant law is contained in The Housing Act 2004 ('the Act') and the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 ('the Regulations'). There are extensive provisions relating to houses in multiple occupation ('HMOs') but the key provisions are:
 - 7 Section 72(2)
A person commits an offence if he is a person having control of or managing a licensed HMO and knowingly permits another person to occupy the house and that person's occupation results in the house being occupied by more households or persons than authorised by the licence.
 - 8 Section 72(3)
A person commits an offence if he is a licence holder subject to conditions and fails to comply with the conditions.
 - 9 Section 72(7)
A person who commits an offence under s72(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
 - 10 Section 234 Management regulations in respect of HMOs
The appropriate national authority may make regulations imposing a duty on the person managing a HMO in respect of repair, maintenance, cleanliness and good order of a house and its facilities.

- 11 Section 234(4)
S.234(4) provides a defence if a person managing a HMO can show they had a reasonable excuse for non-compliance with the regulations.
- 12 Section 249A Financial Penalties for certain housing offences in England
As an alternative to criminal proceedings, a local authority can impose a financial penalty on a party for various offences under the Act. By s.249A(2)(e) this includes breaches of s.234 and the 2007 Regulations for HMOs. This is the procedure applied by the Respondent in this case.
- 13 Section 263 Meaning of 'person having control' and 'person managing'
A 'person having control' is defined by s.263(1) as either a managing agent or owner since it covers a party receiving rent for the premises, in this case, the Applicant.
- 14 Schedule 13A to the Act
This contains procedure to be followed when applying a financial penalty.
- 15 Licence Conditions
The property was licensed as a mandatory HMO on 19 June 2019 to licence holder Zabina Khan. The licence included two conditions:
- 16 Condition 2 (p15)
The licence holder must ensure the maximum number of occupants in each room does not exceed those specified below:
- | | |
|-----------------------------------|----------------------------------|
| <i>Ground Floor bedroom</i> | <i>2 occupants (child/adult)</i> |
| <i>First floor front bedroom</i> | <i>2 occupants (child/adult)</i> |
| <i>First floor middle bedroom</i> | <i>2 occupants (child/adult)</i> |
| <i>First floor rear bedroom</i> | <i>1 occupant (child/adult)</i> |
| <i>Second floor bedroom</i> | <i>1 occupant (child/adult)</i> |
- subject to a maximum of 5 occupants at any one time.
- 17 Condition 3 (p15)
The property must meet the appropriate standards and be managed in accordance with the Worcester City Council Standards, Conditions and Management Regulations at all times.
- 18 Schedule 13A to the Act, paragraph 10
Para.10 provides that a party served with a penalty Notice may appeal to the First-tier Tribunal against either the decision to apply a penalty, or the amount. An appeal is to be by way of re-hearing of the local authority decision.
- Tribunal Inspection**
- 19 The Tribunal inspected the property on 18 December 2023 with representatives of the parties:
For the Applicant: Zabina Khan, Sajid Bhatt and Humaira Khan
For the Respondent: Mandy Furlong, Lucy Robson-Cropper
- 20 The property was a typical Victorian two storey, mid-terraced brick and tile house in the Arboretum area of Worcester near the city centre.
- 21 The former cellar was accessed via carpeted stairs from the ground floor hall It had been converted to useable space with laminate flooring, a painted plasterboard ceiling, lined walls, radiator heating, power points and electric lighting. There was a meter cupboard in

the front corner. The former coal shoot had been sealed by a window which provided the only means of natural light. The headroom was 5'10". The only means of escape in the event of fire would have been via the coal shoot or cellar steps. The room contained boxes, beds and mattresses at the date of the Tribunal's inspection.

- 22 The ground floor had been converted to provide a bedsit room at the front, a communal living room / kitchen and bathroom.
- 23 The first floor had a landing, bathroom and three letting rooms. The rear room which was the smallest bedroom known as 'Room 5', had previously been let to Isatou Camara.
- 24 The attic had been converted to a room which was also available for letting.
- 25 The Tribunal was unable to inspect all the rooms because some had been let but inspected Room 5 and were shown fire and smoke alarms in the hall and kitchen by the Applicant as they were relevant to the appeal.

Timetable of Events

- 26 Key dates:
 - 19.6.19 HMO Licence issued.
 - Jan.2020 Room 5 let to Isatou Camara who occupies with her daughter aged 3 (E1).
 - 2020/21 Exact date unknown, Isatou Camara and daughter move from Room 5 to the basement. (E1)
 - 29.4.21 NHS write to parent / guardian of daughter Tida Camara at 14 Chestnut Street, Worcester (B6)
 - 26.9.22 Exact date unconfirmed, Respondent becomes aware of occupation of the basement of 14 Chestnut St. by Isatou Camara and her son and daughter, which is not permitted by the licence. (B7-11)
 - 1.10.22 Applicant contacts electrician to replace damaged smoke alarm. (p71)
 - 5.10.22 Basement inspected by Worcester City Council Officer Mrs M.Furlong who reports occupation by three parties; Isatou Camara, daughter aged 3 and son aged 18 in contravention of the licence. (B2)
 - 7.10.22 Isatou Camara, son and daughter rehoused in temporary accommodation by Worcester City Council. (B3)
 - 10.10.22 Applicant's electrician replaces smoke alarm. (p71)
 - 1.12.22 Worcester City Council issues Notice of Intent to issue Civil Penalty. (B35)
 - 19.12.22 Applicant submits representations. (B46-8)
 - 7.8.23 Worcester City Council issues Final Notice for Issue of Civil Penalty. (C16)
 - 1.9.23 First-tier Tribunal acknowledge receipt of Applicant's application to appeal. (p1)
 - 9.9.23 Due to technical issue, Applicant re-submits application to appeal. (p2-6)
 - 18.12.23 First-tier Tribunal inspects property and holds on-line Hearing.

Preliminary Issue

- 27 The Respondent submits that the Appeal may be out of time (A3) and asks the Tribunal to dismiss the case. An appeal would need to have been lodged by 5 September 2023 but the Application Form in the bundle has a typed date of '09/09/23' which if correct would make it out of time.
- 28 However, there seems to have been a technical issue of some sort when the appeal was lodged and although the dates are not clear, the Tribunal email dated 1.9.23 record the application having been received on 1.9.23. The Tribunal therefore finds the Application made within the time limit.

Submissions

- 29 Written Submissions made by both parties were read by the Tribunal prior to the Hearing with the key points amplified by the parties in oral evidence.

Applicant

- 30 The Applicant's case runs to 50 pages of narrative and 76 pages of photographs and other evidence, a total of 126 pages. The Tribunal does not intend to recite the bundle in entirety as the parties will be familiar with the issues and so there is no necessity to do that but the main points are distilled below. The application relates to separate issues regarding occupation of the HMO and compliance with management regulations.

Occupation Issues

- 31 The Applicant says Room 5 was let to Isatou Camara ('the tenant') for single occupation and by way of emphasis produced a copy Tenancy Agreement effective 2.4.22 headed in bold manuscript 'Sole Occupancy'. The agreement recorded the rent at £280 pcm. (p104)
- 32 The Applicant says she was unaware of any allegations that more than one party were resident in Room 5 and certainly not the basement at any time. (p17)
- 33 She had met the tenant by chance in Worcester city centre who at the time had a small child with her and asked her where the child was living, emphasising that Room 5 was only licenced for single occupation, and the tenant replied that the child was living with an Uncle elsewhere. (p47)
- 34 The Applicant made frequent visits to the property to collect rent and carry out inspections. She, or her brother-in-law acting on her behalf, had collected the rent weekly which was sometimes taken from tenants in their individual rooms and sometimes from the tenants in communal areas such as the kitchen or lounge. She had carried out 3 monthly full inspections before covid but reduced this to 6 monthly after the start of covid and was unaware of any other parties resident in the house. (p24)
- 35 Although she sometimes visited tenants' rooms, whenever she inspected the basement it was only used for storage and she was aware it was not licenced for occupation. (p24/30)
- 36 At the Hearing, the Applicant produced letters from other tenants in the building, saying they were unaware of any unauthorised parties in the house and they were aware the basement was for storage use only. (p82-9)
- 37 The Applicant said the basement had been converted to useable accommodation with flooring, lined walls, radiators and lighting because it had been her family's home before becoming a HMO and had been used as a childrens' playroom.
- 38 The basement was used for storage. The only parties with keys were the Applicant and the tenant of Room 5, Isatou Camara, to use for storing bags and household items because her room was the smallest in the house and congested. The tenant paid no extra rent for the room, it was just offered to her as storage space. (p17)
- 39 The Applicant said the tenant wanted a Council house and suggested she had 'staged' occupation of the basement to give her priority with the City Council. (p19/21) All the furnishings, household items, clothes and bedding had she said, been put in the basement as part of a plan to obtain a Council house when the Council housing officer inspected.

Smoke Alarm Issues

- 40 At the Hearing, the Applicant acknowledged that the smoke alarms in the kitchen and hall were faulty when Council Officer Mrs Furlong inspected on 5.10.22. However, the kitchen alarm had been damaged by tenants in the house removing it while cooking and the Applicant was unable to monitor its condition at all times. The hall alarm was acknowledged to be faulty and she had contacted a nephew, Mr Khan, an electrician, to replace it on 1.10.22 but the earliest date he could attend to change it had been 10.10.22 so admittedly there was a 10 day window when it was faulty. (p71)
- 41 A photograph taken by the Respondent's Officer on 5.10.22 showed part of an alarm was missing (B33) but Mrs Khan advised that although the cover was missing, it did not alter its function as an alarm and worked perfectly well. There were other alarms in the house and the faulty units had been replaced.
- 42 In summary, the Applicant advised that she was unaware of any breaches and had an otherwise good record as a landlord in the Worcester since 2015.

Respondent

- 43 The main points of the Respondent's case were:

44 Occupation Issues

- The Respondent produced a written statement by the tenant (who did not appear as a witness) explaining that she had arrived in England in 2019 with her daughter aged 3. She moved to 14 Chestnut Street, Worcester, in January 2020 and paid £75 pw every Saturday to a man called 'Kas' who had rented the first floor rear room to her. The room was cramped with no room for a table and she and her daughter had to sit and eat on the floor. She applied for a Council house. About a year later, still at Chestnut Street, there was a fault with the electrics and she went with Kas to the basement to see how to turn on the electrics. Upon seeing the basement, she expressed interest in occupying the basement which was larger than Room 5 and Kas agreed to allow her to move in with her daughter, paying an extra £5 pw to make the weekly rent £80. Her 18 year old son then came to join them living in the basement. (E1)
- 45 The Respondent produced a copy letter from an NHS Health Visitor addressed to the parent or guardian of Tida Isatou at 14 Chestnut Street, dated 29.4.21. The Respondent claimed this as evidence of occupation by Isatou Camara and her daughter. (B6)
- 46 On 19.8.22, the Respondent was advised that parties were in the basement and so on 5.10.22 an Officer in their Housing Team, Mrs Furlong, carried out an inspection. She found Isatou Camara, Tida Camara and the son in the basement and was advised by Isatou Camara that they were all living there. There was a double bed with bedding that Isatou said she shared with her daughter, a single air bed on its side, a table, chairs, cooking facilities, food including pasta, cereal, tins and groceries, personal belongings, clothes and school uniform. She took a photograph which was in evidence but said she was unable to take more photographs as there were children in the room and safeguarding issues to consider. (B2)
- 47 Isatou said she previously rented a room upstairs but moved to the basement for more space. She paid £80 pw to the Applicant's brother but did not have a tenancy agreement. (E1)
- 48 The Respondent also noted that according to their information, there were 7 residents (there would be 8 when a vacant room had been let) in a building licenced for 5 which was a breach of conditions. (B3)

- 49 Mrs Furlong also said that she had attended a meeting on 5.10.22 with Ms Martin, (the Safeguarding Lead at Isatou Camara's school), where Ms Martin had expressed concerns for Isatou's 5 year old daughter's wellbeing due to her housing situation. (B2 para.3).
- 50 As the room was unsuitable for occupation and unlicensed, the Respondent relocated the family to temporary accommodation elsewhere two days later.
- 51 The Respondent drew attention to inconsistencies in the Applicant's rent records. Isatou Camara's evidence was that she had paid £75 pw in cash which increased to £80 pw after moving to the basement. However, her Rent Book (B75) showed initialled receipts for £360 pcm (£83 pw from June 2022 to March 2023) and the Applicant's spreadsheet (B69) showed £270 pcm (£62.30 pw) increasing to £280 pcm (£64.61 pw) in May 2022 after a void period of two months. This indicated inaccuracies in the Applicant's evidence. (A6-7)
- 52 The Respondent pointed out that some of the statements by other tenants advising that no other parties lived at the property or in the basement did not contain statements of truth, they were written in identical terms, undated and the tenants were not called to the Hearing to appear as witnesses.

Smoke Alarm Issues

- 53 The Respondent pointed out that there was a gap of at least 10 days (1-10 Oct 2022) when the hall alarm was admitted to be not working and this was a clear breach of regulations.

Decision

Occupation Issues

- 54 There was no evidence of the tenant having a tenancy agreement giving benefit of the use of the basement but the Applicant admitted giving her keys. The Applicant said only she and Isatou Camara had keys and it was only for storage, but that would have meant that Isatou would have been given more space than the other tenants for, on Isatou Camara's evidence, an extra £5 per week which the Tribunal is unable to accept.
- 55 The Tribunal noted that none of the tenants in the building who signed statements were present to give oral evidence or be cross examined at the Hearing, including Isatou Camara. The statements by other tenants were given little credence as they were in the same terms, two were neither signed nor dated, without statements of truth and in one case, Adrian Bulgaru, of no assistance as according to his tenancy agreement, Mr Bulgaru's tenancy commenced 1.12.22 by which time Isatou Camara had already left.
- 56 The NHS letter of 29.4.21 was not disputed by the Applicant and is regarded as strong evidence. The Applicant said in written submissions that her daughter had been living elsewhere with her Uncle but this is implausible bearing in mind Isatou Camara's own statement, the NHS letter and Housing Officer Mrs Furlong's evidence all indicating residence at the property by the daughter.
- 57 The Tribunal note Mrs Furlong's comments regarding a meeting with Ms Martin, the Safeguarding Lead at Isabel Camara's daughter's school, but apply no weight to the evidence as it is hearsay and Ms Martin was not present at the Hearing.
- 58 The Tribunal are unable to accept that occupation of the basement by the tenant had been 'staged'. Mrs Furlong's photograph was in evidence but after the Hearing the Tribunal requested a better copy since the original had been printed on paper and was grainy, but the pdf clearly showed bedding, an air bed on its side complete with elasticated sheet cover, a table with what appeared to be a cereal box, food, chairs and clothing including

coats hanging from chairs and furnishings. To have staged this would have been a major exercise and as Room 5 was small, it would have had to be brought in from elsewhere purely to indicate occupation.

- 59 Furthermore, if the tenant had wished to impress Worcester City Council with the need for Council accommodation because her daughter was living with her, it could have been achieved by showing their staff Room 5 rather than going to all the trouble of staging residence in the basement. The Tribunal considers it likely that the Respondent would have found the room was overcrowded which is likely to have altered priority for council housing in equal measure when considered against occupation of the basement.
- 60 The Tribunal considered whether the Applicant had a reasonable excuse based on s.72(5) of the Act on the ground that as claimed, she was unaware of any occupation of the basement or house by more than the licenced number of tenants.
- 61 However, in oral evidence at the Hearing, the Applicant advised that she or her brother-in-law visited the house at least weekly and it is implausible that she cannot have been aware of a) a child living at the property or b) occupation of the basement. The Applicant said she only inspected the basement occasionally when calling at the property, but there are meters in the basement and Isatou Camara's evidence was that 'Kas' showed her how to re-set the electric supply in the basement meter cupboard. It is implausible that the meters would not have been read between April 2021 and October 2022 when the tenant vacated.
- 62 The brother-in-law was acting as agent to the Applicant collecting rent, and under s.263 of the Act, the Applicant remains the person having control and is therefore liable for both offences under s.72 and s.234.

Smoke Alarm Issues

- 63 The Applicant admitted the cover was missing from the hall and kitchen smoke alarms which were non-compliant (albeit claimed due to tampering by the tenants). From the photographic evidence supplied, the Tribunal finds that it was not simply an issue relating to a missing cover, rather the detector head itself was absent, rendering the alarm useless. The Tribunal rejects that Applicant's assertion that the alarm would operate without this component of the alarm.

Summary

- 64 The evidence presented by Worcester City Council is strong and based on this, the Tribunal finds beyond reasonable doubt that breaches of the licence occurred:
- 1) by breaching the number of licenced residents;
 - 2) by occupation of the basement and
 - 3) by breaching the required standard for smoke alarms in the property.
- 65 The Tribunal is required to consider whether the penalty imposed is in line with Worcester City Council policy and fair and proportionate. The Tribunal is aware that the Applicant had operated HMOs in Worcester for several years with no history of infringement. In this case, the Respondent had initially imposed a penalty of £16,000 that had been reduced on review to £6,000 comprising £5,000 for breach of occupation requirements and £1,000 for breach of fire regulations which the Tribunal finds accords with Worcester City Council policy. No submissions were made by the Applicant relating to the quantum of the fine.

66 Accordingly, the Tribunal find the cases proven and confirms the imposed penalty.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.