



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

Case reference : **LON/00AR/HNB/2020/0005 (1)**
LON/00AR/HNA/2020/0036 (2)

Property : **20 Sussex Avenue, Romford, Essex.
RM3 0TA.**

Applicant : **Apple Property Services Limited (1)**
**Ryan Barrington Reid Ferguson of
Rockstone Care Services Limited (2)**

Representative : **Karl Hart of Counsel (1)**

Respondent : **London Borough of Havering**

Representative : **None**

Type of application : **Appeal against a financial penalty -
Section 249A & Schedule 13A to the Housing
Act 2004**

**Tribunal
member(s)** : **Judge H Carr**
Mr M. Cairns

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **26th July 2024**

DECISION

Decision of the tribunal

- (1) The tribunal determines to quash the financial penalty against the first defendant.
- (2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The background to the application is set out in the tribunal's preliminary decision dated 17th May 2022 at paragraphs 1 – 5.

The hearing

2. The tribunal reconvened on 26th July 2024 to determine the appeal against the financial penalty.
3. Mr Pollack attended on behalf of Apple Property Services Limited (Appellant 1) which was represented by Mr Karl Hunt of counsel. Mr Hunt confirmed that the company had been restored to the register on 9th July 2023.
4. Ryan Barrington Reid Ferguson of Rockstone Care Services Limited (Appellant 2) withdrew his appeal on the morning of the hearing. He did not attend the hearing, nor did he instruct a representative.
5. The Respondent did not attend the hearing. The tribunal contacted the Respondent who informed it that the officer responsible had left the authority in April 2024.

The background

6. The background to the issue of the financial penalty notice and the appeal are set out in the decision on the preliminary issue decided on 17th May 2022 in paragraphs

The issues

7. The issues before the tribunal at this hearing are:
 - (i) Does it accept the second applicant's withdrawal of his application?
 - (ii) Does it accept that

- (a) The Respondent has failed to prove beyond reasonable doubt that an offence had been committed
- (b) Applicant 1 has a reasonable excuse defence
- (c) The amount of the fixed penalty is appropriate

The determination

The withdrawal of applicant 2

- 8. The tribunal determines to consent to the second applicant withdrawing its appeal by an email dated 26th July 2024.
- 9. The first applicant consented to the withdrawal and the respondent was not present.

Has the respondent proved beyond reasonable doubt that the property was the main residence of the occupants?

- 10. The first appellant argues that the respondent has failed to prove beyond reasonable doubt that the occupiers were occupying the property as their main residence.

The decision of the tribunal

- 11. The tribunal determines that the respondent has proved beyond reasonable doubt that the property was the main residence of the occupants.

The reasons for the decision of the tribunal

- 12. The tribunal refers the parties to its preliminary decision where it decided as follows:

Whilst the first appellant has suggested that these young people were not occupying the property as their sole or main residence the tribunal is not persuaded by this. There is no evidence that the young people had any other residence and whilst the property may not have been destined to be the permanent residence of the young people, it was

clearly their sole residence, and the tribunal considers that there is sufficient evidence of continuity. Therefore the tribunal determines that the property was occupied by the three people as their only or main residence.

13. The tribunal determines on that basis that it is beyond reasonable doubt that the property was the sole or main residence of the occupiers

Does applicant 1 have a reasonable excuse defence?

14. Applicant 1 referred the tribunal to paragraphs 15 – 18 of its statement of case dated 12 February 2020.
15. This set out its argument that it did not directly place residents in the property and that it was not immediately informed about the number of people living there by the 2nd appellant. Once it became aware it took the necessary action.

The decision of the tribunal

16. The tribunal determines that applicant 1 has a reasonable excuse

The reasons for the decision of the tribunal

17. The tribunal draws on guidance from the Upper Tribunal in the recent decision, *Naila Tabassam v Manchester City Council* [2024] UKUT 93 (LC) determining in what circumstances ignorance of the law can constitute a reasonable excuse defence.
18. It considers that in these very particular circumstances, and considering the complexity of the relevant legislative provisions, appellant 1 had a reasonable excuse defence available to it.

The appropriateness of the quantum of the financial penalty

19. As the tribunal has accepted that appellant 1 has a reasonable excuse defence available to it, it does not need to determine the issue relating to the quantum of the financial penalty.

Name: Judge H Carr

Date: 31st July 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

