



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

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| <b>Case reference</b>                | <b>:</b> | <b>LON/00AK/HNA/2022/0064</b>   |
| <b>Property</b>                      | <b>:</b> | <b>40 Bursland Road, Enfield,<br/>Middx EN3 7EX</b>   |
| <b>Applicant</b>                     | <b>:</b> | <b>Sithirawathany Jeyaseelan</b>  |
| <b>Respondent</b>                    | <b>:</b> | <b>London Borough of Enfield</b>  |
| <b>Type of application</b>           | <b>:</b> | <b>Appeal against a financial penalty -<br/>Section 249A &amp; Schedule 13A to the Housing<br/>Act 2004</b> |
| <b>Tribunal members</b>              | <b>:</b> | <b>Judge Nicol<br/>Mrs L Crane MCIEH</b>  |
| <b>Date and venue of<br/>hearing</b> | <b>:</b> | <b>20<sup>th</sup> February 2024<br/>10 Alfred Place, London WC1E 7LR</b>                                   |
| <b>Date of decision</b>              | <b>:</b> | <b>21<sup>st</sup> February 2024</b>  |

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**DECISION**

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**The Tribunal has decided to cancel the penalty notices issued by the Respondent to the Applicant on 17<sup>th</sup> August 2022.**

Relevant legislation is set out in the Appendix to this decision.

**Reasons**

1. The Applicant is the freeholder of the subject property. The local authority Respondent has sought to impose the following financial penalties on the Applicant:
  - £2,500 for being a person in control of or managing a house in multiple occupation (“HMO”) that is required to be licensed and is not so licensed, contrary to section 72(1) of the Housing Act 2004 (“the 2004 Act”);

- £500 for failing to comply with reg.3 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the HMO Regulations”) because there was no sign or notice with the landlord’s details displayed in a prominent position;
  - £1,500 for failing to comply with reg.4(1) of the HMO Regulations by ensuring that all means of escape from fire are kept free from obstruction;
  - £500 for failing to comply with reg.4(3) of the HMO Regulations by ensuring that notices indicating the means of escape from fire are visibly displayed; and
  - £5,000 for failing to comply with reg.4(4) of the HMO Regulations by providing fire doors and installing additional cooking and cleaning facilities.
2. The final penalty notices were served on 17<sup>th</sup> August 2022. The Applicant appealed to this Tribunal on 29<sup>th</sup> November 2022.
  3. The Applicant’s appeal was heard by the Tribunal on 20<sup>th</sup> February 2024. The attendees were:
    - The Applicant, represented by her daughter, Ms Praveena Jeyaseelan; and
    - Mr Stephen Foster, Licensing Inspection Team Manager.
  4. The Tribunal had the following documents, filed and served in accordance with the Tribunal’s directions issued on 28<sup>th</sup> October 2022:
    - Applicant’s Bundle, 76 pages; and
    - Respondent’s Bundle (in 5 parts), 506 pages.
  5. Ms Humera Yasin, the Compliance and Enforcement Officer who had inspected the property twice and made the decision to issue the penalty notice no longer works for the Respondent. The Respondent decided not to call her as a witness but to rely on the documentary evidence to establish their case. Fortunately, the facts were not really in dispute but her absence still denied the Tribunal and the Applicant the opportunity to ask pertinent questions and risked undermining the Respondent’s case.
  6. The property is a 4-bedroom terraced house. It was the Applicant’s family home for 20 years from 2000 to 2020. On 27<sup>th</sup> November 2020, the Applicant let the property on an assured shorthold tenancy to Mr Zahirul Islam and his wife, Mrs Farzana Ferdouse.
  7. Since that time, subject to the sub-letting referred to below, the Applicant has been very pleased with her tenants. They have always paid their rent on time, there have been no complaints from the neighbours and the property is kept in good condition.
  8. The Applicant’s daughter, Praveena, has taken the lead in managing the property. She aims to inspect the property around every 6 months. On

one of those inspections, in around December 2021, she and the Applicant met a woman and her daughter who they did not recognise. Mr Islam said that the woman and her family were friends who were just visiting. Neither the Applicant nor her daughter had any reason to disbelieve him. The written tenancy agreement had an express covenant against sub-letting and, given his compliance with all other covenants, they believed that he was complying with this one too. Therefore, they did not make any arrangements to come back and check. Their consistent intention had been to let to a single family, not to create a HMO.

9. However, it later turned out that Mr Islam had agreed to accommodate the family when they were homeless. They paid him a rent and so were sub-tenants. The Applicant took no part of their rent and did not benefit from their occupation.
10. When the Applicant let the property to Mr Islam, it became subject to the Respondent's selective licensing scheme. On 5<sup>th</sup> November 2021 the Applicant applied to the Respondent for a selective licence. The Respondent alleges that the application was incomplete and not accompanied by the relevant fee. When the Applicant did not respond to an email about this, Ms Yasin arranged to inspect the property on 24<sup>th</sup> February 2022.
11. On inspection, Ms Yasin found 7 people in occupation in two separate households, namely the two families of the tenant, Mr Islam, and his sub-tenants. This satisfied the definition of a HMO under section 254(2) of the Housing Act 2004. As an HMO, she noted a number of deficiencies, including no fire doors, interlinked smoke alarms or thumb locks on the front and rear exits. The kitchen facilities were also inadequate for the number of occupiers.
12. Ms Yasin's next step was to refer the case to the Respondent's Civil Penalty Panel to hear evidence of the Applicant's offence of failing to licence the HMO contrary to section 72(1) of the 2004 Act. On 23<sup>rd</sup> March 2022 the Panel considered the matter and asked for confirmation that the Applicant knew that the property was occupied as an HMO. The Tribunal is surprised that Ms Yasin had not thought to do this herself, or indeed to contact the Applicant to discuss the matter before considering imposing penalties, but, of course, she could not be questioned about this because she was not at the hearing.
13. Ms Yasin spoke by phone firstly to Mr Islam and then to the Applicant. Mr Islam explained that his sub-tenants were friends paying him rent and they had no agreement with the Applicant. He also said that he had told the Applicant they were living with him, which presumably is a reference to the above-mentioned meeting in December 2021.
14. Ms Yasin apparently told the Applicant in a phone call on Friday 1<sup>st</sup> April 2022 that the property was being occupied as an HMO and an application for an HMO licence would need to be submitted by Tuesday 5<sup>th</sup> April 2022, just one clear working day later. Again, the Tribunal is

extremely surprised by such a short time limit but was unable to question Ms Yasin about it.

15. Ms Yasin again referred the matter to the Panel which, on 6<sup>th</sup> April 2022, sensibly suggested that her verbal communication to the Applicant be put in writing. This was done by email dated 7<sup>th</sup> April 2022. Unfortunately, the Applicant was away and did not comply with another short deadline, 14<sup>th</sup> April 2022, to submit an HMO licence application and to carry out works to bring the property up to minimum HMO standards.
16. On 20<sup>th</sup> April 2022 the Panel this time agreed to the imposition of financial penalties as at 15<sup>th</sup> April 2022. However, before taking the next step, Ms Yasin sought by email dated 6<sup>th</sup> May 2022 to arrange a reinspection of the property to see if the requested works had been carried out.
17. The Applicant responded by email dated 17<sup>th</sup> May 2022,

I apologise for the delay in responding to your previous email. I was not in the country at the time. I would like to inform you that I rented the property out to a single family. When carrying out an inspection 6 months ago there was another family there and when questioned the tenant informed me that they were visiting him at the time. I was not aware that he sub-rented the property out. I will follow this up and take action accordingly. In the meantime, could you advise me on if I should take the licence. I would like to highlight that I do not intend to sub-rent.

18. Although the appeal is a rehearing and the Tribunal needs to reach its own conclusion on each issue, the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)). The Respondent's Private Rented Sector Housing Enforcement Policy contains the following:

#### 4.1 The Council's approach to enforcement

The Council wants to work with responsible landlords to help them to raise housing standards, reduce the factors that make deprivation worse and deal with anti-social behaviour in their properties. The Council expects landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation. It is the Council's preference that landlords are first given the opportunity, wherever possible, to investigate any reported problems at their properties.

... Officers will seek compliance with legislation through a combination of informal and formal actions, but these are not

prescriptive and will be subject to the individual circumstances presenting at the time. ...

## 5 Staged Approach to Enforcement

### 5.1 Stage 1: Informal action

Advice and guidance may be given to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing both information and the opportunity for face-to-face contact to discuss and help resolve potential problems.

#### 5.1.2 28 day letter requiring action

We endeavour to work with landlords and their tenants to encourage that they resolve disputes informally and without the need for Council intervention. When we receive a complaint from a tenant, we will assess the nature of the disrepairs.<sup>1</sup> If it appears that there is a category 1 hazard, we will commence an investigation. Where there appears to be less serious hazards, we ask that the landlord, if they have not already done so, liaises with their tenant to resolve the matters informally within 28 days.

#### 5.2.11 Licencing Enforcement Actions

Failure to meet one or more of the licensing requirements will be individually assessed but may result in one, or a combination of two or more, enforcement outcomes including:

- A written warning or simple caution
- The service of formal notices
- Refusal or revocation of a licence and/or the granting of a shorter licence period through a consequent failure to meet fit and proper person criteria
- The imposition of a civil penalty
- Prosecution
- Rent Repayment Order

### 5.3 Stage 3: Formal action following non-compliance

Where there is a failure to comply with a formal notice without reasonable excuse, or reasonable progress is not being made within the specified timescale or there is a significant breach of statutory requirements.

Enforcement will normally progress from stage 1 (advice and guidance) to stage 2 (formal enforcement) except where emergency action is required.

The following formal actions will be considered:

#### 5.3.1 Formal warning

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<sup>1</sup> It is worth noting that, in this case, there was no complaint from the tenant nor any disrepair.

Formal Warnings are generally given with a timescale for compliance prior to prosecution or carrying out works in default.

#### 5.3.2 Simple Caution

A simple caution may be considered for less serious breaches of formal notices and statutory requirements. Simple Cautions will be kept on file for three years. ...

#### 5.3.7 Financial Penalty (Civil Penalty)

A civil penalty will be considered where there is a failure to comply with a notice within the specified time period or reasonable progress is not being made within the specified timescale.

19. The Applicant had been renting out her former family home for less than two years. This is the only property she rents out or has ever rented out. Her tenant had sub-let in breach of the tenancy agreement and without her knowledge or consent, albeit with the admirable motive of providing a homeless family with somewhere to live, at least in the short-term. While the cynical might suggest that other landlords might paint a similar picture in order to try to cover up their defaults, even the short experience the Tribunal had of the Applicant and her daughter suggests genuine and honest people doing their best – the undisputed facts were consistent with this impression.
20. Against that background, it appears that Ms Yasin made no effort to follow her organisation's stated policy. She did not make any attempt to contact the Applicant until the Panel told her to and then only minimally and for limited purposes. When the Applicant made it clear that she had not intended to create an HMO and did not want one, Ms Yasin made no effort to co-operate with and advise her on how to resolve the situation accordingly. Instead, her very first step on discovering the HMO was to send the matter straight to the Respondent's Civil Penalty Panel without any thought or reference to informal stages, warnings, cautions or formal notices. If those options, expressly set out in the Respondent's policy, were not open for consideration in this case, it is difficult for the Tribunal to see when they possibly could be. Again, Ms Yasin was not available to answer any questions about her approach.
21. Mr Foster submitted that the Applicant had not raised her excuse about the sub-letting happening without her knowledge before she made representations in response to the Respondent's Notice of Intent to issue the penalty notices. In fact, that is not true. As already noted, Ms Yasin gave the Applicant short timescales in April 2022 which gave her hardly any time to respond, let alone obtain legal or other professional advice. The Applicant then set out her position clearly and succinctly in her email of 17<sup>th</sup> May 2022. In that email, she clearly asked the Respondent to help her but Ms Yasin appears not even to have considered providing any advice or guidance as suggested in section 5.1 of the Respondent's policy. The Notices of Intent were not sent out until 5<sup>th</sup> July 2022.

22. Praveena was away in India during June so it was not until 13<sup>th</sup> July 2022 that the Applicant formally wrote to Mr Islam threatening that, unless he stops sub-letting, possession proceedings would be taken. It is notable that the Applicant believed that obtaining an HMO licence would have indicated her consent to the sub-letting, so precluding this remedy. Ms Yasin did not advise her of the option of seeking a Temporary Exemption Notice while she pursued her remedy, instead at all times insisting that an application for an HMO licence was the only route forward.
23. It is not clear precisely when Mr Islam's sub-tenants left the property but he later told Mr Foster that they had left not long after Ms Yasin's last inspection in June 2022. Mr Foster inspected the property on 18<sup>th</sup> October 2023 and found only Mr Islam and his family in residence.
24. When Ms Yasin found the HMO in February 2022, action was clearly required. The situation was unsustainable. The Applicant should have already had a selective licence but the property was now an HMO and not compliant with HMO regulations. However, the situation was not so urgent as to skip the various stages of the Respondent's policy and leap straight to a substantial penalty. It was only the Panel's caution that prevented the penalties being imposed before the Applicant was even aware of what was happening, let alone having time to find a solution. In the circumstances of this particular case, Ms Yasin was over-hasty. She could and should have found time to speak to the Applicant and help her to reach the solution which did eventually prevail to the benefit of everyone.
25. For these reasons, the Tribunal has decided to cancel the Penalty Notices. Mr Foster confirmed that the Applicant has now properly applied for a selective licence and the Tribunal hopes that this is the basis for a good and co-operative relationship between the parties in future.

**Name:** Judge Nicol

**Date:** 21<sup>st</sup> February 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).



## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
  - (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (a) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (b) The conditions are–
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (c) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

### **234 Management regulations in respect of HMOs**

- (1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations–
- (a) there are in place satisfactory management arrangements; and
  - (b) satisfactory standards of management are observed.
- (2) The regulations may, in particular–
- (a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;
  - (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.
- (3) A person commits an offence if he fails to comply with a regulation under this section.
- (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.
- (5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

### **249A Financial penalties for certain housing offences in England**

- (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–
- (a) section 30 (failure to comply with improvement notice),
  - (b) section 72 (licensing of HMOs),

- (c) section 95 (licensing of houses under Part 3),
  - (d) section 139(7) (failure to comply with overcrowding notice), or
  - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (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.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
- (a) the person has been convicted of the offence in respect of that conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with—
- (a) the procedure for imposing financial penalties,
  - (b) appeals against financial penalties,
  - (c) enforcement of financial penalties, and
  - (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person's conduct includes a failure to act.

**SCHEDULE 13A**  
**FINANCIAL PENALTIES UNDER SECTION 249A**

**6**

If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

**10**

- (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.

## **Management of Houses in Multiple Occupation (England) Regulations 2006**

### **3.— Duty of manager to provide information to occupier**

- (1) The manager must ensure that—
  - (a) his name, address and any telephone contact number are made available to each household in the HMO; and
  - (b) such details are clearly displayed in a prominent position in the HMO.

### **4.— Duty of manager to take safety measures**

- (1) The manager must ensure that all means of escape from fire in the HMO are—
  - (c) kept free from obstruction; and
  - (d) maintained in good order and repair.
- (2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.
- (3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.
- (4) 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 in the HMO; and
  - (c) the number of occupiers in the HMO.
- (5) In performing the duty imposed by paragraph (4) the manager must in particular—
  - (a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
  - (b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.
- (6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.