



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

**Case references** : CAM/22UH/HNA/2023/0009

**Property** : 90 Borders Lane, Loughton, Essex IG10 3 QX

**Applicant** : Kartal Cetin

**Applicant's Representative** : In person

**Respondent** : Epping Forest District Council

**Respondent's Representative** : Paula Black

**Type of application** : Appeal against a financial penalty imposed pursuant to s. 249A & Schedule 13A to the Housing Act 2004 ("the Act")

**Tribunal members** : Mr Max Thorowgood and Mr Roland Thomas FRICS, IRRV(Hons)

**Venue** : CVP

**Date of Decision** : 25 October 2024

---

**DECISION**

---

**1. The application**

- 1.1. The Applicant appeals, on behalf of himself and his company Direct Discover Residential Limited, against the financial penalty imposed by the Respondent local authority pursuant to s. 249A of the Act in respect of their being persons having control of or managing a House in Multiple Occupation which was required to be licensed but was not so licensed, contrary to s. 72 of the Act.
- 1.2. The offence is said to have been committed between 11<sup>th</sup> October 2021 and 10<sup>th</sup> February 2022 and 17<sup>th</sup> February 2022 and 6<sup>th</sup> April 2022 in respect of a property known as 90 Borders Lane, Loughton.

**2. Material facts**

- 2.1. These are our findings as to the material facts. For the most part they were not in dispute but insofar as there was a conflict between the Applicant's evidence and that of Ms Paula Black, who was the Council's investigating office, we have no hesitation in preferring the evidence of Ms Black who struck us as a competent professional who had no reason to seek to mislead us.
- 2.2. The Applicant arranged two lettings of rooms in the property, which was above the landlords' shop, on a 'let only' basis. On both occasions the negotiator was Mr Gurkan Oba who operated from the company's offices in Winchmore Hill.
- 2.3. The Applicant told us that he was asked by the landlords to find two tenants which he agreed to do on an informal basis because he knew the landlords. He was just trying to get his business off the ground at the time and, as a consequence, he said, he had no paperwork in relation to the arrangement.
- 2.4. At no material time was the property a licensed HMO and it was the evidence of the two tenants interviewed by Ms Black that they were each one of five occupants.

- 2.5. In addition to the Applicant, the Respondent issued financial penalties in respect of the unlawful letting contrary to s. 72 of the Act to the landlords which they immediately accepted and paid.
- 2.6. It was the Respondent's evidence that the two tenants whom the Applicant placed paid a holding deposit and a month's rent in advance to the Applicant. The Applicant did not dispute that he had received those payments as agent for the landlords and said that he had charged them £250.00 commission in respect of each letting.
- 2.7. The Applicant said that when he had inspected the property it had appeared to him that there were only two lettable rooms and that the rest were being used for the purposes of storage for the landlords' shop. In view of the fact that the premises had previously been known to the Council as being unlawfully let as an HMO, we find that unlikely, but in any event that one inspection seems to have been the extent of his due diligence. Thereafter, the matter was handled by Mr Oba.
- 2.8. It was the evidence of the tenants that they were shown the property by Mr Oba, who was named as the negotiator on the receipt issued by the Applicant to Ms Misha Weir Clarke. That receipt gave the property address as "90 Borders Lane, IG10 3QX, Room 5". The Applicant endeavoured to explain the reference to 'Room 5' away as a typographical error on the part of Mr Oba but we have no hesitation in rejecting the evidence. There were plainly 5 rooms in the property as Mr Oba knew and as the Applicant as the issuer of the receipt either knew or ought to have known.
- 2.9. The Applicant said that although he had closed his Winchmore Hill office Mr Oba still worked for him and accepted that he could have called him to give evidence had wished to do so but had not chosen not to. The Applicant was a stridently effective advocate in his cause and we have no doubt that he could and would have called Mr Oba to support his case had he considered it likely that it would have assisted him. We infer from his failure to do so that the Applicant knew that Mr Oba's evidence would not be of assistance to his case.

- 2.10. We therefore find that the property was being used as a licensable HMO and that it was not licensed. If Mr Cetin did not know that it was being so let, he ought, as a self-proclaimed experienced and qualified agent, to have been alert to that possibility and made proper enquiries of the landlords and Mr Oba in that regard. Mr Oba, we find, certainly did know that the property was being operated as an HMO and his knowledge is to be imputed to the company.

### **3. The applicable law**

- 3.1. S. 72 of the Act provides as follows:

#### **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.]

(8) 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.

(9) 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.

(10) 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).

- 3.2. Section 263 of the Act provides as follows as regards the definition of a ‘person having control’ and ‘person managing’ an HMO:

**263 Meaning of “person having control” and “person managing” etc**

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

**and includes, where those rents or other payments are received through another person as agent or trustee, that other person.**

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

- 3.3. As regards the question of Mr Cetin’s liability as distinct from his company’s, insofar as that question arises, s, 251 of the Act provides as follows:

## **251 Offences by bodies corporate**

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

- 3.4. For the avoidance of doubt, the conclusions as to the relevant facts which we have set out above reflect our conclusion that the offences of the company were committed with the consent, connivance or are attributable to the neglect of Mr Cetin.
- 3.5. The crucial aspect of this matter, as Ms Black explained very clearly in her correspondence with Mr Cetin, is that part of s. 263(3) which we have emphasised above. The Applicant does not dispute that he received payments of rent on behalf of the landlords in respect of the letting of the property. Because the property was being used as an HMO and was not licensed he committed an offence under s. 72 of the Act.
- 3.6. He/it would have a defence to that charge if he could show that he had a reasonable excuse for having allowed the facts constituting the offence to occur. It is clear from the facts stated above that he did not have a reasonable excuse. If he did not know, which we doubt, he ought to have known and would have known had he made proper enquiries of the landlords and Mr Oba which he either negligently or deliberately failed to do.

**4. The level of the fine**

- 4.1. The financial penalty imposed by the Respondent's final notice was £7,064.32 reduced by 50% for payment within 28 days to £3,532.16.
- 4.2. This is a re-hearing of the Respondent's decision and we have a discretion confirm, vary or cancel the notice but we are not entitled to increase the penalty.
- 4.3. In our view it is important in evaluation the level of the fine to have regard to the seriousness of the impact of the breach, the extent of the Applicant's culpability and the extent of the benefit to the Applicant. We also think that the way in which the Applicant conducted himself in relation the threatened imposition of the proposed penalty and in the proceedings.
- 4.4. In our view, the impact of the breach has not been substantial although it is relevant to say in this context that the property would not have been fit to be licensed had an application been made. It is also important of course that the licensing regime is enforced and upheld. Professional agents, who understand the requirements of the scheme of regulation and can and should explain it to their lay clients, are a vital element in that regime. It is accordingly important that they are strongly incentivised to fulfil their duties in this respect. On the other hand, it does also seem that the Applicant has received only a relatively nominal benefit in this case, the primary beneficiaries have been the landlords. Nevertheless, his attitude in response to the Respondent's enforcement action has been truculent and uncooperative throughout. He has persisted, despite the clear and patient explanations of Ms Black, in maintaining mistakenly that because this was a let only arrangement he could not be liable. As a professional agent his apparent lack of understanding and concern was troubling to us and indicative that a significant penalty was warranted.
- 4.5. Nevertheless, a penalty which was more than seven times the amount of the benefit to the Applicant does seem excessive to us and we would therefore propose to reduce that sum by half to £3,532.16.



## **APPENDIX 1- RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.