



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

Case reference : **LON/00AP/HNA/2023/0037**

Property : **69 North Grove, London N15 5QS**

Applicants : **(1) Next Location Company Ltd
(2) ~~Come to London Ltd~~**

Representative : **(1) Mr Emil Dashdamirov**

Respondents : **London Borough of Haringey**

Representative : **Ms Camelia Filipescu and Mrs Glayne Russell**

Type of application : **Appeal against a Financial Penalty made under s.249a of the Housing #Act 2004**

Tribunal members : **Judge Tagliavini
Mr S Mason BSc FRICS**

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

Date of decision : **3 February 2025**

DECISION

Decisions of the tribunal

- (1) The tribunal refuses the appeal and confirms the Financial Penalty Notice in the sum of £10,000.
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The application

1. The Tribunal has received an appeal from the applicant against a financial penalty made under s.249A of the Housing Act 2004 ('the 2004 Act')

The hearing

2. The applicant was represented by Mr Emil Dashdamirov at the hearing and Ms Camelia Filipescu and Mrs Glayne Russell represented the respondent.
3. The applicant relied on a hearing bundle of 70 electronic pages. The respondent relied on an electronic bundle of 214 electronic pages.

The background

4. The subject premises at 69 North Grove, London N15 5QS ('the property') a two-storey mid-terrace house. During an unannounced visit made by Ms Filipescu on 1 March 2023 the property was found to be in occupation by 5 tenants in 2 or more households with exclusive use of one room and shared use of kitchen and bathroom. Three tenants were present on that visit and Ms Filipescu was informed by them that there were two other persons in occupation as recorded in her witness statement dated 4/10/2024.
5. Although Ms Filipescu told the tribunal she did not see a copy of any of the occupiers tenancy agreements, she was informed by them they paid monthly rent to Come to London Ltd as their landlord.
6. Subsequently, the property was identified by the respondent as a HMO as defined by the 2004 Act that was required to be licensed under the Mandatory Licensing Scheme. In the absence of a licence having been applied for by the landlord or managing agent, the respondent served a notice under s.16 of the Local (Government (Miscellaneous Provisions) Act 1976 requiring further information from (i) the freeholders Dov and Pearl Vogiel (ii) Come to London Ltd and (iii) Next Location Co Ltd as to their interests in the Property.

7. Replies received from the freeholders identified the applicant as their managing agent and stated that they have '*A rent guarantee scheme with a managing agent who have tenants in the property and take care of all the needs relating to the property.*' In its s.16 reply, Come to London Ltd stated that the freeholder's agent was Next Location Ltd and named itself also as a managing agent. No response was received from Next Location Co Ltd. On 17 March 2023, an application for a Mandatory HMO licence was submitted by Come to London Ltd and later granted to it.
8. The respondent decided that both Come to London Ltd and Next Location Ltd were managing the property and on 21/03/2023 served a Notice of Intention to Impose a Financial Penalty of £10,000 and followed by a Final Notice dated 20/04/2023. The respondent asserted it had concluded that Come to London Ltd could be defined as persons managing the HMO because they were in receipt of rental income directly from the occupying tenants. When determining the level of the financial penalty the respondent applied its Financial Penalty Matrix and decided that both Come to London Ltd and the respondent were large managing agents controlling a significant property portfolio and determined £10,000 was an appropriate penalty in respect of each of them.
9. In the Final Financial Penalty Notices dated 20/04/2023 the respondent alleged that both Come to London Ltd and the applicant were managing the subject property and concluded that both had committed an offence pursuant to s.72(1) of the 2004 Act. Neither of the two Final Notices served by the respondent asserted that either Come to London Ltd or Next Location Co Ltd had the control of the subject property. No Financial Penalty was imposed on the freeholders as the respondent took the view they were not managing the property.
10. In its defence the applicant asserted it was not managing the property at the relevant time as it had entered into a Company Let Agreement with Come to London Ltd ('the Agreement') dated 03/08/2022. This Agreement granted a Non-Assured Tenancy of the Property at a rent of £2,000 per month for a 12-months term with the rent guaranteed to be paid to the applicant in any event even if sub-let. In email correspondence dated 9 September 2023 with the respondent, the applicant asserted that Come to London Ltd was the current management company although did not provide any evidence that its agreement with the freeholders had come to an end.
11. The applicant relied on this Agreement and asserted it could not be liable for an offence under s.72(1) of the 2004 Act, as it stated at clause 13 that any cost or licences required are the tenant's (Come to London Ltd) obligation. This Agreement did not provide any name for the landlord other than Next Location who was given as the landlord's agent and the monthly rent of £2,000 that was to be paid to Next

Location Ltd Co Ltd(sic) although the Agreement defined 'landlord' includes anyone entitled to possession of the Property under this Agreement and at Section C stated:

We let the Property together with the Contents ...You are permitted to allow one or more of you directors or employees (and their household if applicable) to occupy the Property as your licensee...provided you continue to be responsible for the Rent and any charges...

And at clause 1.3

Tenant obligation to arrange and cost for HMO if needed. Any internal repair except new boiler.

Clause 1.10 required the tenant to

Not assign, take a lodger, sublet or part with or give up to another person possession of the Property or any part of it without our written permission (which will not be unreasonably withheld).

Clause 1.36 required the tenant to

Notify us as soon as reasonably possible having regard to the urgency of the matter any defect in the Property which comes to your attention.

The issues

12. Whether the applicant was managing the subject property at the relevant time, thereby committing an offence under s.72(1) of the 2004 Act and whether the amount of the Financial Penalty is appropriate.

The hearing

13. The appeal was by way of a re-hearing which required the respondent to establish that it has been satisfied beyond reasonable doubt the respondent was managing the Property and committing an offence under s.72(1) at the relevant time. Further, the respondent was required to show in applying a £10,000 financial penalty it had followed the correct steps in choosing that level of penalty.
14. As well as the documents relied upon by both parties the tribunal heard evidence from their representatives. However, the tribunal was not provided with a copy of the agreement made between the applicant and the freeholders of the Property and Ms Filipescu accepted she had not

spoken with the freeholders and had accepted what they wrote in their s.16 Reply as being accurate without making any further enquiries. Nor was the tribunal provided with copies of any tenancy agreements from the tenants found to be in occupation by Ms Filipescu in March 2023 and she accepted in evidence she had not seen any when she visited the Property or at any time afterwards.

15. Mr Dashdamirov told the tribunal the respondent had been shown the relevant documents granting a tenancy by Come to London Ltd to Maybe Luz Ovando Roman and Fausto Eloy Bonifaz Ormaza. However, after that initial sub-tenancy and a visit in August/September 2022 to investigate a water leak, the respondent had not visited the Property and was said to be unaware who was in occupation. However, Mr Dashdamirov did not challenge Ms Filipescu's evidence as to the number of occupants she had found to be tenants of the Property in March 2023 or that she had subsequently spoken to Ms Maybe Roman on the telephone who had told her she was not living at the property but that her sister was.
16. The respondent submitted that the amount of the financial penalty should be 'nil' or alternatively reduced to reflect the fact it had not received the s.16 request and that it had at all other times been responsive to the respondent's requests for information and had made written representations.

The tribunal's decisions and reasons

17. The tribunal determines that as 1 March 2023 the Property was being occupied as an HMO and required a licence under the Mandatory Licensing Scheme.
18. The tribunal finds that the respondent at all times was a managing agent for the property on behalf of the freeholders and entered into the Agreement with Come to London Ltd on their behalf.
19. The tribunal finds that the Agreement required the applicant to obtain or give permission for any sub-letting and it gave this permission in respect of the Assured Shorthold Tenancy Agreement granted by Come to London Ltd as the landlord to Maybe Luz Ovando Roman and Fausto Eloy Bonifaz Ormaza dated 5 August 2022 at a rent of £2,600 per month.
20. The tribunal finds that early in this assured shorthold tenancy the applicant investigated and undertook a repair to remedy a water leak. Thereafter, the applicant could have carried out regular inspections to ensure Come to London Ltd was abiding by the terms of the Agreement but failed to do so. The applicant also failed to ensure the change in

tenants was approved by it or the freeholders and that Come to London Ltd had applied for the relevant HMO licence.

21. The tribunal finds that the applicant had no contract with the tenants found in occupation by Ms Filipescu and was not their landlord. However, the tribunal finds that the applicant remained the managing agents for both the freeholders and Come to London Ltd as reflected in their s.16 replies. The respondent benefitted from its collection of rent from Come to London Ltd, as only part of which had to be passed onto the freeholder in order to meet its guaranteed rent obligation to the freeholders, the remainder being kept by the applicant as payment for its management services.

22. Section 249A of the Housing Act 2004 states:

(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—

...

(b)section 72 (licensing of HMOs)

23. Section 72(1) of the 2004 Act states:

(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.20.

24. The tribunal finds the applicant was managing the subject Property from the date of its guaranteed rent agreement with the freeholders and therefore committed an offence pursuant to s.72(1) of 2004 Act when it became an unlicensed HMO. The tribunal finds the respondent was satisfied beyond reasonable doubt that the applicant had committed this offence and was liable to a financial penalty. The tribunal also finds that the respondent followed the procedure set out in Schedule 13A of the 2004 Act in imposing a financial penalty on the applicant.

25. The tribunal also considered the level of the financial penalty imposed and the respondent's reasons in imposing £10,000. The tribunal finds the respondent was sent and did receive the s.16 request as well as all of the other required documentation as set out in Schedule 13A of the 2004 Act in imposing a financial penalty on the applicant.

The tribunal is also satisfied that the respondent followed its Financial Penalty Matrix and applied the appropriate penalty.

26. No other representations were made by the applicant as to why the sum of £10,000 should be reduced and provided no evidence of the applicant's financial health or otherwise and accepted it managed a large portfolio of properties.
27. Therefore, the tribunal refuses the appeal and confirms the Financial Penalty Notice in the sum of £10,000.

Name: Judge Tagliavini

Date: 3 February 2025

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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. **Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.**

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