FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AL/HNA/2023/0079**
Property	**:**	**57 Miles Drive, Thamesmead, London, SE28 0NE**
Applicant	**:**	**Mamaka Bility**
Representative	**:**	**Timothy Becker, Counsel (directly instructed)**
Respondent	**:**	**Royal Borough of Greenwich**
Representative	**:**	**Salmaan Hassanally, Counsel**
Type of Application	**:**	**Appeal against a financial penalty –** Section 249A & Schedule 13A Housing Act 2004
Tribunal	**:**	**Judge Bernadette MacQueen** **Mrs Sarah Phillips, MRICS**
Date of Hearing	**:**	**20 January 2025**
Date of Decision	**:**	**6 February 2025**

DECISION

DECISION

1. The decision by the Respondent to impose a financial penalty is upheld in the sum of £10,000. For the reasons set out in this decision the Tribunal has determined that the financial penalty of £10,000 should not be subject to any reduction or increase.

2. In light of this decision, the appeal by the Applicant against the imposition of a financial penalty by the Respondent is refused.

3. The Tribunal makes no order for costs for the reasons set out in this decision.

Introduction

4. This is a decision on an appeal made by Mamaka Bility (the Applicant) against the decision of the Royal Borough of Greenwich (the Respondent) to impose a financial penalty under section 249A of the Housing Act 2004 (the 2004 Act) in respect of 57 Miles Drive, Thamesmead, London, SE28 0NE (the Property).

5. The Applicant was the freehold owner of the Property which was registered with HM Land Registry under Title Number TGL246453. The Property was described as spanning three floors and comprised of five bedrooms (two en-suites), two shared kitchens, a shared bathroom and a shared living space.

6. On 29 March 2023 the Respondent served a notice of intent to issue a financial penalty for housing offences on the Applicant. The notice stated that the reason for proposing to impose a financial penalty were:

> "On the 11th May 2022 you failed to licence a House in Multiple Occupation and therefore committed an offence under Section 72(1) of the Housing Act 2004. The offence continues to date".

7. The notice stated that the Respondent proposed to impose a financial penalty of £10,000. The notice stated that the Applicant was entitled to make representations about the proposed financial penalty within the period of 28 days from the date of service of the notice.

8. The Applicant through solicitors Toltops Solicitors wrote to the Respondent with representations and these representations were received by the Respondent on 27 April 2023. Following a review of the representations, Solomon Tanyi, Senior Environmental Health Officer for the Royal Borough of Greenwich, concluded that he remained satisfied that there were sufficient grounds to issue the financial penalty and that there was no reason why the penalty amount should be varied.

9. On 11 July 2023 the Respondent served a final notice on the Applicant imposing the financial penalty of £10,000 as proposed in the notice of intent.

10. On 8 September 2023 the Applicant appealed against the financial penalty to this Tribunal. The appeal was received after the 28-day time limit but following representations from both parties, the Tribunal exercised its power under rule 6(3)(a) of the First-tier Tribunal (Property Chamber) Rules 2013 and allowed the appeal to be made.

11. On 30 May 2024, as amended on 16 July 2024, the Tribunal issued directions requiring each party to produce a bundle of relevant documents. The Applicant produced a bundle consisting of 86 pages and the Respondent produced a bundle consisting of 358 pages. In addition, counsel for the Respondent produced a skeleton argument.

The Hearing

12. The hearing took place on 20 January 2025. The Applicant did not attend but was represented by Timothy Becker, counsel, who confirmed that he was instructed and able to deal with the matter in the Applicant's absence. The Respondent was represented by Salmaan Hassanally, counsel. Solomon Tanyi, Senior Environmental Health Officer on behalf of the Respondent, attended and gave evidence to the Tribunal.

Representations of the Parties

13. Counsel for the Applicant confirmed that the only issue that was in dispute was the level of the financial penalty. The Applicant accepted that the offence of failing to license a House in Multiple Occupation (HMO) had been committed under section 72(1) of the 2004 Act. Further the Applicant did not raise a reasonable excuse/statutory defence and did not argue that the Respondent had failed to comply with the statutory procedural requirements relating to the imposition of a financial penalty under the 2004 Act.

14. The Respondent set out their position as to the reasons why the final notice had been issued. In doing so the Respondent confirmed to the Tribunal that it had served an HMO Declaration Notice on 11 May 2022 pursuant to sections 254(2) and 255 of the 2004 Act on the Applicant. No appeal had been made and so the HMO Declaration had come into force on 9 June 2022 and remained in force. The Respondent further confirmed that on 11 May 2022 the Respondent had also served a letter on the Applicant requesting that an application for an HMO licence be made.

15. By way of letter dated 19 October 2022, the Applicant had been invited to attend an interview under caution on 26 October 2022 and had been

advised to seek independent legal advice. The letter had further confirmed that the Applicant had the right to legal representation during the interview. However, this interview had not taken place.

16. On 26 October 2022 the Applicant's agent (Montague and Delucter Ltd) had submitted an application for an HMO licence but this had been rejected by the Respondent as it was not complete. The Applicant had ended her agreement with the agent and had taken over the management of the Property herself on 6 December 2022.

17. By letter dated 16 November 2022 the Applicant had been invited to attend an interview under caution on 25 November 2022 and had been advised to seek independent legal advice. The letter had further confirmed that the Applicant had the right to legal representation during the interview. However, this interview had not taken place.

18. On 12 December 2022, the Applicant had written to the Respondent stating that she had moved back into the Property and requested a Temporary Exemption Notice (TEN). She had made an application for a TEN on 16 December 2022, but this had been refused by the Respondent on 5 July 2023. The decision not to grant a TEN had not been appealed.

19. The Respondent had relied on the decision made on 30 October 2023 by the First-tier (Property) Tribunal under case reference LON/00AL/HMK/2022/0007 which had related to the Property and the Applicant. In this case, a Rent Repayment Order had been made because the Property had been found to be an unlicensed HMO. In that case, the Tribunal had made a number of relevant findings which had not been appealed. In particular, the Tribunal had determined that the HMO declaration in respect of the Property had come into force on 9 June 2022 and had continued to remain in force. Further, prior to the HMO declaration coming into force, the Property had been an HMO as it had satisfied the standard definition as set out in section 254 of the

2004 Act. The Tribunal had determined that the Applicant had committed the offence of managing and/or having control of the Property without a licence and that the Applicant did not have a statutory defence. The Tribunal had determined that Montague and Delucter Ltd were the Applicant's agents and not a landlord to the residential tenants. Further, the Tribunal had determined that the Applicant had unlawfully evicted one of her tenants.

Tribunal Decision – Section 72(1) Offence

20. The Tribunal is satisfied beyond reasonable doubt that the Applicant was the person in control/managing the Property and that the Property was required to be licensed as an HMO and was not licensed. The Applicant therefore committed the offence under section 72(1) of the 2004 Act and this is a "relevant housing offence" within the meaning of section 249A of the 2004 Act. In reaching this decision, the Tribunal relies on the previous decision under case reference LON/00AL/HMK/2022/0007 and the findings made by that Tribunal and the HMO declaration that has not been appealed and remains in force. Further, the Tribunal notes that the Applicant did not dispute that the offence had been committed and accepted that no statutory defence applies.

21. Further the Tribunal is satisfied that the Respondent complied with the procedural requirements relating to interviews under the Police and Criminal Evidence Act 1984, and with the requirements relating to the imposition of financial penalties. The Tribunal notes that this was not disputed by the Applicant.

22. The issue in dispute is the level of the financial penalty.

Applicant's Representations – Imposition of Financial Penalty

23. Counsel for the Applicant submitted that the fine was disproportionate on the facts of the case and that the fine should be £5,000. Counsel for the Applicant questioned the matrix scores and particularly sought to challenge the following matrix areas:

i. Level of harm
ii. Financial benefit
iii. Deter the offender and others
iv. Mitigation

24. Further, the Applicant submitted that where a multiplier of 2 had been added to the matrix score this had resulted in a distortion of the true matrix score that should be applied. The Applicant stated that if the level of harm matrix score was reduced to 20 and the financial benefit score reduced to 10, in other words taking away the multiplier of 2 that exists within the matrix, that would mean that 30 points would be deducted from the score which would result in the matrix score falling within the £5,000 level.

Respondent's Representations – Imposition of Financial Penalty

25. Solomon Tanyi gave oral evidence to the Tribunal. He confirmed the content of his written evidence to the Tribunal and then answered questions put to him by Counsel for the Applicant.

26. Focusing on the matrix at page 234 of the Respondent's bundle, Solomon Tanyi confirmed that the score given was 115 and that this score fell within the score range of 101-120 which resulted in a fine of £10,000 (page 229 of the Respondent's bundle). The witness confirmed that the financial penalty imposed had been determined in accordance with the principles set out in the Government Guidance and the Royal Borough of Greenwich policy and that the score had been checked by two other council officers.

27. The Respondent told the Tribunal that the level of financial penalty had been set in accordance with guidelines and set at a reasonable and appropriate level.

Tribunal Decision – Imposition of Financial Penalty

28. The Tribunal reminded itself that an appeal against a financial penalty is by way of a rehearing and this Tribunal must make its own decision as to the level of financial penalty. Additionally, an appeal can be determined having regard to matters about which the local housing authority (Respondent) was unaware. The Tribunal can confirm, vary or cancel the final notice.

29. Turning firstly to whether a financial penalty is the appropriate course of action, the Tribunal notes that the Royal Borough of Greenwich could take a number of steps including taking no action, issuing a caution, imposing a financial penalty or bringing a prosecution.

30. The Tribunal is satisfied that it was not appropriate for no action to be taken by the Respondent with regards to the licensing offence and is also satisfied that a caution would also not have been appropriate. The Tribunal makes this finding because of the nature of the offence and the length of time the offence was committed for. The offence of failing to apply for an HMO licence is serious and means that the local housing authority was prevented from carrying out the relevant checks that would accompany any application for a licence.

31. The Tribunal is satisfied that the decision to impose a financial penalty was properly made on the basis of the Royal Borough of Greenwich enforcement policy and in particular Appendix 1 (page 221) of the policy. The Tribunal accepts that as the Applicant had no track record of non-compliance the imposition of a financial penalty was appropriate rather than prosecution action being taken.

32. The Tribunal is therefore satisfied that the imposition of a financial penalty is the correct approach under the Royal Borough of Greenwich policy and the Government Guidance. Further the Tribunal notes that at the hearing, the Applicant did not dispute that a financial penalty should be imposed but instead challenged the level of that financial penalty.

Tribunal Decision – Level of Penalty

33. Paragraph 3.5 of the guidance published by the Ministry of Housing, Communities and Local Government (MHCLG) entitled "Civil penalties under the Housing and Planning Act 2016" (Civil Penalties Guidance) sets out the factors that a local housing authority should take into account when deciding the level of civil penalty namely, the severity of the offence, culpability and track record of the offender, harm caused to the tenant, punishment of the offender, deter the offender from repeating the offence, deter others from committing similar offences, removing any financial benefit the offender may have obtained as a result of committing the offence.

34. Further, the Royal Borough of Greenwich's policy (Private Sector Housing Enforcement Policy Supplement 2017) (page 201 of the Respondent's bundle) sets out the enforcement policy. In particular, Appendix 1 sets out the statement of principles for issuing civil penalties (page 221 of the Respondent's bundle). Paragraph 3.1 sets out the Department of Communities and Local Government (DCLG) guidance on methodology for setting the level of civil penalty, which the Royal Borough of Greenwich has adopted.

35. The Tribunal accepts the evidence of Solomon Tanyi and the methodology he used. In particular, the Tribunal accepts the matrix that was completed by Solomon Tanyi (page 234 of the Respondent's bundle) and his justification in arriving at the score of 115 as well as the

explanation at paragraphs 39 to 41 of this statement (pages 9 and 10 of the Respondent's bundle). Further the Tribunal accepts that the completed matrix was checked by two other officers, all of whom were satisfied that the financial penalty was imposed at the correct level.

36. Turning to the specific objections made by the Applicant, the Tribunal does not accept these submissions. The Applicant stated that the weighting multiplier of 2 gave a distorted scored. However, the Tribunal is satisfied that this multiplier was determined by the Royal Borough of Greenwich's enforcement policy.

37. Regarding the Applicant's submissions that the level of harm score was too high, the Tribunal does not accept the Applicant's position. The level of harm score given by the Respondent was 40 (including a weighting multiplier of 2). The justification for this score was stated by the Respondent as there being five or more victims forming at least five households and that there were serious health risks. The Tribunal accepts the Respondent's evidence that this is the appropriate score given the facts of this case. The evidence before the Tribunal was that there were eight people in an unlicensed property. Health risks included excessive cold as a result of the heating going off on 21 October 2022 and no action being taken until the landlord distributed heaters on 9 November 2022. Further, the Tribunal accepts the Respondent's evidence that a pre-payment meter was installed at the Property which was entirely unsuitable for an HMO.

38. The score for financial benefit was 20 (including a multiplier of 2 – medium level of financial impact). The Respondent's justification for this score was that the Applicant received rents of approximately £2,500 per month. The Respondent's evaluation of this was that this was at the medium level. The Tribunal accepts the Respondent's evidence.

39. Further, the Applicant challenged the score of 20 given in the "deter the offender and others" category. The Tribunal does not accept the Applicant's contention that publicity was not inevitable but rather accepts the evidence of the Respondent. The Respondent's assessment was that publicity would be inevitable and would be sought, particularly because a two month old baby and another child under 10 were locked out of the Property at sub-zero temperatures. Multiple agencies had been involved in this including the police, children's services and the local housing authority. Additionally, the Respondent told the Tribunal that an entry would be made on the rogue landlord data base. Consequently, the Tribunal finds that publicity will be inevitable and therefore the matrix score of 20 is justified.

40. Finally, the Tribunal does not accept the Applicant's position that there were mitigating factors. The Tribunal finds that an application for an HMO licence was made by the Applicant's agent, Montague and Delucter Ltd, however when the Applicant took over the management she withdrew the application. Further, the Tribunal accepts the Respondent's evidence that the actions of the Applicant led to two people having to apply for injunctions to prevent them losing their homes and also that a Rent Repayment Order was made shows the seriousness of the offence. Further, the Respondent confirmed that no evidence of any health issues that could amount to mitigation were ever raised by the Applicant to the Respondent. The Tribunal accepts the Respondent's evidence that there are no relevant mitigating factors to take into account.

41. The Tribunal is satisfied that the figure of £10,000 meets the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence.

Decision

42. The decision by the Respondent to impose a financial penalty is upheld in the sum of £10,000. For the reasons set out in this decision the Tribunal has determined that the financial penalty of £10,000 should not be subject to any reduction or increase.

43. In light of this decision, the appeal by the Applicant against the imposition of a financial penalty by the Respondent is refused.

Application for Costs

44. The Respondent made an application for costs on the basis that prior to the hearing, the Applicant had not made it clear that the issue that the Applicant would be challenging at the hearing was the level of the financial penalty. The Respondent confirmed that a tenant had attended the hearing and was ready to give evidence should that be needed. Had the Respondent known sooner what the Applicant's position was, the tenant need not have attended.

45. Further the Respondent pointed out that the Applicant had not attended the hearing. The Respondent submitted that since a previous hearing had been vacated and relisted because the Respondent had been unable to attend, the presumption had been that the Applicant would be attending this hearing. Further, the Tribunal was not provided with an explanation as to why the Applicant did not attend the hearing. The Respondent therefore submitted that the hearing could have been completed by the Tribunal considering the written evidence without a need for an oral hearing.

46. Finally, the Respondent submitted that the Applicant's grounds of appeal were vexatious and frivolous. It was the Respondent's position that the Applicant had chosen to challenge the policy documents which set out the framework for the level of financial penalty. The Respondent submitted that this Tribunal was the wrong forum for that argument. Further, the Respondent submitted that the Applicant

would have had to persuade the Tribunal to reduce the Applicant's matrix score by 15 points in order to reduce the penalty, which was an unreasonable position to take when the score was reviewed against the matrix.

47. In reply Counsel for the Applicant submitted that he had been instructed directly by the Applicant to appear before this Tribunal and that the Applicant was unable to attend as she was receiving medical treatment abroad. Counsel submitted that the Applicant did not seek to undermine what the previous Tribunal had found and that the threshold for costs to be awarded was not met.

48. Rule 13 of the First-tier Tribunal (Property Chamber) Rules 2013 provides that the Tribunal may make an order in respect of wasted costs and if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case ("the Rule").

49. The Tribunal does not accept the Respondent's argument. The hearing before the Tribunal is a re-hearing and therefore the Respondent must produce evidence so that the Tribunal can properly consider whether a financial penalty should be imposed as well as the level of that penalty. Further, whilst the Tribunal notes that the Applicant did not attend, the Applicant did instruct counsel to attend the hearing and represent her. The Tribunal therefore does not find that the Applicant has acted unreasonably and consequently does not make an order for costs.

Judge Bernadette MacQueen **Date: 6 February 2025**

ANNEX – 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 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 to 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 (ie 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.