



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

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

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

**Applicant** : **Apple Property Services Limited (1)**

**Representative** : **David Pollock Director of Apple  
Property Services**

**Respondent** : **London Borough of Havering**

**Representative** : **Mr Nicholas Ham of Counsel**

**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** : **7<sup>th</sup> February 2025**

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**DECISION**

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## **Decision of the tribunal**

- (1) The tribunal determines to quash the financial penalty against the Applicant company.
- (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 17<sup>th</sup> May 2022 at paragraphs 1 – 5.
2. Subsequent to that preliminary decision
  - (i) The Applicant company was restored to the register on 9<sup>th</sup> July 2023
  - (ii) Mr Ryan Ferguson of Rockstone Care Services Limited withdrew his appeal against the financial penalty on 26<sup>th</sup> July 2024.
  - (iii) The appeal was heard on and a determination reached. However that decision was reached in the absence of the Respondent. Following representations from the Respondent the determination was set aside and the matter relisted for hearing.

## **The hearing**

3. Mr Pollack attended on behalf of Apple Property Services Limited and represented the company.
4. Mr Paul Oatt attended the hearing on behalf of the London Borough of Havering. LB Havering was represented by Mr Nicholas Ham of Counsel.

## **The background**

5. 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 17<sup>th</sup> May 2022 in paragraphs

### **The issues**

6. The issues before the tribunal at this hearing are:
  - (a) Whether the Respondent has failed to prove beyond reasonable doubt that an offence had been committed
  - (b) Whether the Applicant has a reasonable excuse defence
  - (c) Whether the amount of the fixed penalty is appropriate

### **The determination**

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

7. The 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**

8. 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**

9. 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.

10. 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 the Applicant have a reasonable excuse defence?**

11. The Applicant referred the tribunal to paragraphs 15 – 18 of its statement of case dated 12 February 2020.
12. 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 2<sup>nd</sup> appellant. Once it became aware it took the necessary action.
13. The Respondent says that the Applicant does not have a reasonable excuse defence. It was aware of the need for a licence from early July 2019 and whilst the Respondent agreed that Mr Pollock and the Applicant cooperated fully with the authority it considers that the Applicant should have done far more to ensure that the property was properly managed.
14. It considers that the Applicant should have inspected the property between July and September and taken other steps to put the licensing position of the property in order.
15. The Respondent considers that the Applicant should have known the law in this area as it holds a large portfolio of properties and should have ensured that the correct licence was in place.
16. The Applicant says that it did everything that it could do. It could not apply for a licence as the freeholder's mortgage contained a clause that prevented him from obtaining a licence. Mr Pollock was very

concerned that the Respondent failed to tell the Applicant that it could apply for a temporary exemption notice, for instance by a guidance note in its warning letters. That would have solved the problem and enabled the Applicant to reduce the number of occupiers lawfully. It also relied on the fact that the placements in the property were from other Local Authorities so the Applicant assumed that there was reasonable professional oversight.

17. Mr Pollock says that when he attempted to reduce the number of occupiers, which he says he did after discussing the matter with the residents' social workers, the Respondent threatened with him with a financial penalty of £5000.
18. Mr Oatt from the Respondent says that the Respondent takes its responsibilities to occupiers seriously and cannot allow them to be unlawfully evicted. He also says that he was dubious as to whether the Applicant had talked to the social workers about moving residents from the property, and further, that there was plenty of advice available to the Applicant from the landlord licensing team.
19. Mr Oatt made it clear to the tribunal that he was concerned about premises housing vulnerable young people being properly regulated.
20. Mr Pollock told the tribunal that he had attempted to talk to the landlord licensing team who referred him to Mr Oatt, and that he was unable to get help from Mr Oatt.

### **The decision of the tribunal**

21. The tribunal determines that the Applicant has a reasonable excuse defence.

### **The reasons for the decision of the tribunal**

22. 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.

23. It considers that in these very particular circumstances, and considering the complexity of the relevant legislative provisions, that the Appellant had a reasonable excuse defence available to it.
24. As in the Upper Tribunal case the Appellant was not failing to cooperate with the Respondent. Rather its initial failure to understand that the property required licensing was understandable because at the time there was a lack of clarity about whether this type of accommodation was covered by HMO licencing. The tribunal notes that it was addressed in a long and complex hearing by counsel for both sides at the hearing of the preliminary issue.
25. There is a second element to the reasonable excuse defence which the tribunal considers is relevant. Once the Applicant realised that licensing was required it did its best to comply by trying to arrange to reduce the number of occupiers in the property. The Respondent would have preferred the Applicant to obtain a licence. However the Applicant did not consider that it could do this, because the freeholder could not do so as a result of mortgage conditions. If the Respondent had advised the Applicant to obtain a temporary exemption notice whilst it worked out how to reduce the occupiers from two to three, then no action would have been required from the local authority.

### **The appropriateness of the quantum of the financial penalty**

26. Although in the light of the tribunal's decision as to reasonable excuse defence, there is no need for the tribunal to determine the appropriateness of the quantum of the financial penalty, the tribunal has decided to consider the matter, in case it is wrong on the reasonable excuse defence.
27. The Respondent explained how the level of financial penalty had been reached using its matrix which had been developed using central government guidance.
28. The Respondent considered that it had low confidence in the deterrence value of the financial penalty. It noted that the Applicant had failed to respond to warning letters and had failed to inspect the property subsequently.

29. The Respondent considered that the Applicant had a large portfolio of properties and the score for this was 20.
30. The Respondent considered that following the placement of a very vulnerable young woman in the property the level of harm was high and scored this as 10 which is then increased to 20 as harm is the most important factor in establishing the severity of the offence.
31. The Applicant said that it was not appropriate to say that it was a large portfolio managing agent.

### **The decision of the tribunal**

32. The tribunal determines that the appropriate financial penalty, if the reasonable excuse defence finding is overturned, is £5000.

### **The reasons for the decision of the tribunal**

33. The tribunal is aware that the Upper Tribunal considered how tribunals should give due respect to a local authority's financial penalty matrix in a number of cases. However in these particular circumstances the calculation of the penalty did not sit well with the tribunal.
34. It appeared to the tribunal that some of the rating choices made were overscored and further that the matrix document, while a commendable attempt at providing consistency and consideration to assessments, was still a somewhat blunt tool which did not encourage finessing of bespoke ratings. For example scores moved a full 5 points under each column rating of the 4 headings recommended in the DCLG guidance whereas a range such as 1 -5, 5-10 etc could better indicate how far the item rated.
35. Similarly, it appeared clumsy to define all landlords with 5 or more properties as 'Large' against the 'Removal of Financial incentive' test. Clearly the sector includes major landlords with hundreds or even thousands of properties and with matching financial resilience. The tribunal also had other reservations about the brevity of some notes in the assessment columns.'

36. That said the Tribunal decided it was not for it to commence a full redrafting and the comments below are based on the matrix as provided.
37. The tribunal considers that the Respondent overrated the deterrence risk. It considers that there was nothing to suggest that the Applicant would not be deterred by a lower financial penalty, and indeed the record of the Applicant since that date bears this out. It therefore determines that the deterrent value should be ranked at 5
38. The tribunal considered that the portfolio element was also very high. It was not satisfied with the Respondent's system of averaging all rents in the borough to decide whether the rent was above market rent. It considers that it would be more appropriate to calculate the average rent paid for the type of property that is the subject matter of the financial penalty, otherwise landlords of larger properties are disadvantaged. It also thinks that to rate all landlords with a portfolio of more than 5 properties as high is a very crude measure of size of landlords. It determined that the portfolio value should be 15.
39. The tribunal also thought that the level of harm was not appropriately calculated. The matrix is not designed for the niche of the property market that is being considered in this application, housing provided for vulnerable young people who are housed by local authorities. In such circumstances the vulnerability of the individuals housed should in the opinion of the tribunal be given limited weight. What is significant is the harm that is suffered because of the failure to licence. That harm, the tribunal agrees, will be amplified where the occupiers are vulnerable, but the tribunal considers that there has to be a demonstration of harm resulting from the condition of the property.
40. Mr Oatt pointed out that there was an urgent need to regulate this type of provision as it falls outside of Ofsted's regulatory purview. The tribunal agrees, but does not think that HMO licensing can be adapted to do a job that has arisen because of other regulatory failures. There was nothing to suggest problems in the condition of the property or the standard of management.
41. Mr Oatt was concerned that there had been reports of anti-social behaviour from occupiers of the property and argued that the prevention of anti-social behaviour was an important driver of HMO

licensing. The tribunal agrees that one reason for HMO licensing is the minimisation of anti-social behaviour. However the occupiers in this instance were all troubled young people. There was nothing in the evidence to suggest that failure to manage those young people had caused or exacerbated anti-social behaviour. It also notes that the local authorities making placements of this nature have responsibilities to ensure that the management of the occupiers is appropriate. Although the Respondent was not able to provide a copy of its standard licensing conditions, the tribunal, drawing on its experience, considers that the conditions about the prevention of anti-social behaviour in HMO licences is very lightly drawn and there is no evidence that there was any failure to properly respond to it.

42. Taking all these points into account, the tribunal determined that the harm value should be 5, which in the Respondent's system gets doubled to 10.
43. In total the appropriate level is 31 which gives rise to a fine of £5000.

**Name:** Judge H Carr

**Date:** 7<sup>th</sup> 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 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).