



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

Case Reference : **MAN/32UD/HNA/2022/0064**
MAN/32UD/HNA/2022/0065

Property : **16 Eastbourne Street, Lincoln**

Applicants : **(1) Spericle Ltd t/a Properties on the Market**
(2) Sathavahana Reddy Vaddaram

Respondent : **City of Lincoln Council**

Type of Application : **Appeal against financial penalty: section 249A, Housing Act 2004**

Tribunal Members : **Tribunal Judge A M Davies**
Tribunal Member P Mountain

Date of Decision : **9 October 2023**

DECISION

The Final Notices Imposing a Financial Penalty issued by the Respondent to each of the Applicants on 30 June 2022 in relation to the Property are cancelled.

REASONS

1. Mr and Mrs Benjamin Burns own 16 Eastbourne Street, Lincoln. On 29 March 2017 the Respondent granted Mr Burns a licence to operate the property as an HMO occupied by 5 households. The licence was to expire on 28 March 2022 and was subject to conditions involving work to be carried out at the property. It was a further condition of the licence at paragraph 4 of Schedule 2 that "*The licence holder shall*

notify the City Council in writing as soon as reasonably practicable of any change in the details of the person having control of the HMO, or managing the HMO....”

2. The licence imposes a number of obligations on the licence holder relating to management of the property. Nothing in the licence prohibits the licence holder from carrying out those obligations through a property manager or agent.
3. On 17 July 2020 Mr and Mrs Burns entered into a number of formal agreements with the Applicants. These were drawn up by Mr and Mrs Burns' solicitor and can be summarised as follows:
 - (a) Option Agreement: in consideration of monthly payments of £650 starting from the date of the Option Agreement they granted Spericle Ltd (“Spericle”) an option to buy the property at any time within the following 5 years for a pre-agreed price;
 - (b) Management Agreement: they appointed Spericle as manager of the property with power to let the accommodation units in it, to keep the non-structural parts in good repair, to ensure compliance with landlord's regulatory and contractual obligations and to collect the rents;
 - (c) Indemnity and Guarantee: they obtained a personal guarantee from Mr Vaddaram to secure Spericle's obligations under the Option Agreement and Management Agreement; and
 - (d) Power of Attorney: they appointed Mr Vaddaram as their attorney to undertake all their rights and obligations in relation to the letting of the property as an HMO.
4. Either party to the Option Agreement and Management Agreement could terminate the agreements in the event that the other party was in breach of their terms and failed to remedy the breach, or became insolvent. Additionally, Spericle could terminate the Option Agreement on giving Mr and Mrs Burns at least 3 months written notice. Clause 10.3 also provided that on lawful termination of the Option Agreement “*the Assured Shorthold Tenancy shall be deemed to be terminated simultaneously*”. This is an error, as an Assured Shorthold Tenancy is neither referred to nor defined elsewhere in the Agreement. It was a requirement of the Option Agreement that the property continued to be used as an HMO under the terms of the Management Agreement.

5. On 3 December 2020 the Respondent wrote to Mr Burns by email to find out whether the work required by the HMO licence had been carried out at the property. Mr Burns replied that he had “*leased the property to another company. Spericle Ltd took responsibility for the property in July 2020*”. The Respondent asked for a copy of the lease and referred to the fact that the licence might be revoked as it was non-transferable. Mr Burns replied “*I will dig out the lease...I confirm that [Spericle] receive all rental income and deal with all expenses with the exception of mortgage and building insurance....it would be worth you having a conversation with them.*”
6. It seems that the Respondent did not contact the Applicants. The next activity of which the Tribunal has notice occurred on 14 April 2021 when the Respondent wrote to Mr Burns by email to ask for the gas safety certificate for the property. Mr Burns replied on the same day “*As of last year Spericle Ltd is responsible for the house as I entered into a contract for them to lease the property. Anna [Cyktor, employed by the First Applicant] is on copy and will be able to assist.*” It is unclear whether the Respondent contacted Spericle for the gas safety certificate or for further information following this exchange.
7. On 28 April 2021 Hannah Cann, the Respondent’s Housing Standards and Enforcement Officer, decided to revoke Mr Burns’ licence and signed a Notice of Revocation. There are two copies of the notice in the bundle, one stating that the recipient was Mr Burns and the other giving the recipient as Spericle. The grounds for revocation are stated to be
“*by agreement with the licence holder;*
the licence holder has notified [the Respondent] that the HMO has been leased to a third party, the licence holder no longer receives the rack rent and is no longer the person having control of the HMO;
a new HMO licence application is required from the leaseholder.”
This notice was not sent to either recipient by email. Both Mr Burns and Spericle deny having received it. The Respondent says that the notices were sent by Hannah Cann via IQpostme, an independent service which receives documents electronically, prints and posts them. There is no witness statement from Hannah Cann. The Tribunal has not seen evidence that the notices were sent to (or by) IQpostme, and no accompanying letters have been produced.

8. The matter seems to have lain dormant until 30 November 2021 when the Respondent's Housing Enforcement Officer Mr King inspected the property and ascertained that it was being occupied as an HMO. The occupiers were asked to provide the Respondent with copies of their tenancy agreements, and by 4 February 2022 they had all done so. The tenancy agreements state that the landlord is the First Applicant. There is no indication of any communication between the Respondent and the Applicants in relation to the property during this time.
9. On 7 February 2022 the First Applicant applied for an HMO licence for the property. Mr Vaddaram says that the application was made because the existing licence was due to expire on 28 March 2022.
10. In the bundle there is also a copy of an application dated 20 April 2021 by Spericle for an HMO licence for the property. It is incomplete, and Mr Vaddaram (having denied any knowledge of the intended revocation of the HMO licence on 28 April 2021) says "*The Applicant hopes that the Tribunal will understand the approach followed by the Respondent (by stating the communication were sent although they were not) by looking at the HMO application in exhibit SP4 from the Applicant dated 20 April 2021. The Applicant can confirm that this application was sent via Royal Mail, and it is acceptable way of service. If the Tribunal accepts the validity of the Notices allegedly served by the Respondent, the Tribunal should also accept the application made by the Applicant.*" As the Respondent confirms that no HMO licence application for the property was received from Spericle prior to February 2022, the Tribunal takes the view that this document has been prepared and included by Mr Vaddaram simply to make the point that he could claim to have sent in such an application by post whether or not he had done so, just as (he says) the Respondent has claimed to have posted the Notices of Revocation and Notices of Intent to impose a financial penalty.
11. On 9 February 2022 Mr King served section 235 and section 16 notices requiring each of the Applicants to provide a comprehensive bundle of documents relating to the property, its occupation, ownership and management, and also requiring the Applicants to explain the nature of their interest in the property and the names and addresses of all others having an interest in it. Mr King says that these notices were complied with and confirms that he was provided with a copy of the Management

Agreement dated 17 June 2020. It is not clear whether he saw any or all of the other three documents made on that date between Mr and Mrs Burn and the Applicants. The Respondent did not communicate with the Applicants regarding the documents they had supplied, and did not request an interview under caution.

12. The Tribunal has seen copies of the Respondent's Notice of Intention to impose a financial penalty addressed to each of the Applicants and dated 18 May 2022. The Applicants deny having received them. No response having been received from either of the Applicants, on 30 June 2022 the Respondent issued a Final Notice imposing a fine of £7,975.25 to each of them.
13. The Applicants have applied to this Tribunal to determine whether the financial penalties have been properly imposed and if so what the amount of the penalty should be. With the agreement of the parties the Tribunal has determined the matter without a hearing but on the basis of written statements and supporting documents supplied by each party.

THE LAW

14. Section 95(1) of the Housing Act 2004 ("the Act") creates an offence where a person has control of or manages without a licence a house which is required to be licensed. On summary conviction the offender is liable to a fine. Section 249A of the Act provides an alternative to prosecution as follows:
"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." An offence under section 95(1) is a relevant housing offence.

15. Schedule 13A to the Act sets out the procedure for imposition of financial penalties.

Paragraph 1 states

"Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

Paragraph 3 of the schedule provides

"The notice of intent must set out –

- (a) *The amount of the proposed financial penalty,*
- (b) *The reasons for proposing to impose the financial penalty, and*
- (c) *Information about the right to make representations under paragraph 4”.*

16. It is for the landlord to show on a balance of probabilities that he had a reasonable excuse for failing to apply for a licence. If he does so, no offence has been committed and no financial penalty can be imposed. The local housing authority is therefore required firstly to ascertain beyond reasonable doubt whether a licence should have been applied for but was not applied for, and secondly whether the landlord has shown that were he to be prosecuted he would be able, on a balance of probabilities, to establish the statutory defence. If the answer to the second point is yes, no financial penalty may be imposed. In any event the statutory procedure must be followed.
17. On an appeal against a financial penalty, this tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into account matters which were unknown to the council when the Final Notice of Penalty was issued. The tribunal must make its decision in accordance with the Respondent's published policy unless there are compelling reasons to depart from it.

18. Section 263(3) of the Act defines the person managing premises as follows:

“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 licencees of parts of the premises;or*
- (b) would so receive those rents or other payment but for having entered into an arrangement.....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.”

19. Section 68 of the Act provides so far as relevant:

“(3) *A licence –*

(a) comes into force at the time that is specified in or determined under the licence for this purpose, and

(b) unless previously terminated by subsection (7) or revoked under section 70, continues in force for the period that is so specified or determined.....

(6) A licence may not be transferred to another person.

(Subsection (7) applies where a licence holder dies.)

20. Section 70 of the Act gives the local housing authority power to revoke licences

“(1)(a) if they do so with the agreement of the licence holder;.... or

(2)(a) where the authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;

(b) where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and

(c) where the authority no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management.”

21. Paragraphs 22 - 24 of Schedule 5 to the Act set out the procedure for revocation in those cases where the licence is revoked otherwise than by agreement with the licence holder. Under those paragraphs, before revoking a licence the local housing authority must serve a notice on the licence holder and any other person having an estate or interest in the HMO or managing or having control of the HMO. The notice must state the reasons for the proposed revocation and provide a date by which representations may be made. Having considered any such representations and made a decision to revoke the licence the authority must within 7 days serve on the same people a copy of the decision and the reasons for it, along with an explanation of the right to appeal.

THE RESPONDENT'S CASE ON LIABILITY TO PAY A FINANCIAL PENALTY

22. Mr King says that when Mr Burns informed them that the property had been leased

to Spericle on 17 July 2020 and had since that date been managed by that company, the Respondent was required by regulations to revoke the licence. This was not done when the information was first supplied by Mr Burns in December 2020, but when on 4 April 2021 Mr Burns repeated the claim that he had granted a lease a decision was made to revoke the licence. Mr King says that Mr Burns told the Respondent that he wished to revoke the licence. The Tribunal has not been told when, how or to whom this statement was made by Mr Burns.

23. The Respondent does not claim that notice of intended revocation was sent to Mr Burns or to the Applicants pursuant to paragraphs 22 – 24 of Schedule 5 to the Act.
24. Mr King says that Notices of Revocation were sent via IQpostme to Mr Burns and Spericle on 28 April 2021.
25. No application for a licence having been received from Spericle between 28 April 2021 and 7 February 2022, the Respondent took the view that Spericle managed the property as an HMO during that period without a licence. Consequently Spericle and Mr Vaddaram as its director were both liable to pay a financial penalty.
26. The Respondent says that Notice of Intention to impose a financial penalty was posted to each of the Applicants on 18 May 2022. No representations having been received, a Final Notice was posted to each of them on 30 June 2022.

THE APPLICANTS' CASE ON LIABILITY TO PAY A FINANCIAL PENALTY

27. The Applicants' representations to the Tribunal are identical to each other.
28. They say that after entering into the Management Agreement on 17 July 2020 Mr Burns was entitled to continue holding the HMO licence for the property. Mr Burns also says that "*it was agreed between myself and Spericle Ltd that the HMO licence would be kept in my name until the HMO licence expired on 28 March 2022 and, thereafter, Spericle Ltd would apply for the new HMO licence in their name*".
29. The Applicants and Mr Burns deny that they received Notice of Revocation of the licence. Mr Burns does not expressly deny having agreed to revocation of the licence, but he says that the licence "*was valid until 28 March 2022*". The Tribunal notes that

the Respondent chose not to rely solely on an agreement with the licence holder when setting out the reasons for revocation in the notice.

30. The Applicants say that they complied with the Respondent's requests for information but were not asked to attend any meeting or interview. They say that they received no Notice of Intention to impose a financial penalty, and on receipt of the Final Notices they immediately asked the Respondent for a copy of the Notices of Intention. No copies were forthcoming until they appeared in the hearing bundle.

FINDINGS ON LIABILITY

31. The Management Agreement is not a lease. Mr Burns was in error when he referred to it as such. It does not create a term of years or periodic tenancy. By the Agreement Mr and Mrs Burns transferred HMO management functions to Spericle in return for a fixed monthly payment. The monthly payments are not reserved as rent. The appointment was part of a larger arrangement whereby Mr and Mrs Burns granted Spericle an option to purchase the property and authorised them to let rooms in the HMO.

32. Mr Burns notified the Respondent of the "*change of the person or business having control of, or managing the HMO*" on 3 December 2020.

33. Spericle was at all relevant times a fit and proper person to manage an HMO, being accredited under the Lincoln Trusted Landlord scheme and the holder of a number of other HMO licences in the City of Lincoln.

34. Spericle did not apply for an HMO licence on 20 April 2021.

35. Although invited to do so by Mr Burns, the Respondent made no enquiries of Spericle about the so-called lease between 3 December 2020 and 28 April 2021, and did not see a copy of the Management Agreement before deciding to revoke the licence.

36. Mr Burns did not consent to revocation of the licence. There is no evidence of consent from him in the papers before the Tribunal other than an unsubstantiated statement from Mr King, who does not claim to have received Mr Burns' consent himself.

37. The Respondent failed to comply with paragraphs 22 – 24 of Schedule 5 to the Act in

that no Notice of Intention to Revoke was sent to Mr Burns or Spericle.

38. The Respondent was not required by regulation, as claimed by Mr King, to revoke the licence. Throughout, Mr and Mrs Burns were persons managing the property as defined at section 263(3) of the Act.
39. Notice of Revocation was not served on Mr and Mrs Burns, or on either of the Applicants either by post or by email.
40. There is no evidence to support the Respondent's claim that it posted Notices of Intent to impose financial penalties to either of the Applicants in May 2022, and no notices were sent by email.
41. The HMO licence dated 29 March 2017 was valid until 28 March 2022. The Applicants did not commit a housing offence rendering them liable to pay financial penalties.
42. In view of this finding, it is not necessary to consider the validity of the Final Notices to issue a financial penalty, or the amount of the financial penalties claimed from the Applicants. However the Tribunal finds that the Final Notices of Financial Penalty would have been ineffective because they were not preceded by the issue of Notices of Intent.