|  |  |  |
| --- | --- | --- |
| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER** **(RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **CAM/00MD/HNA/2024/0611** |
| **Property** | **:** | **96 Bath Road, Slough, SL1 3SY** |
| **Applicant** | **:** | **AMPM Estates Limited** |
| **Representative** | **:** | **Mr G Atkinson, Counsel** |
| **Respondent** | **:** | **Slough Borough Council** |
| **Representative** | **:** | **Ms O Davies, Counsel** |
| **Type of application** | **:** | **Appeal against financial penalties under section 249A & Schedule 13A to the Housing Act 2004** |
| **Tribunal members** | **:** | **First-tier Tribunal Judge K Neave****Mr G Smith MRICS** |
| **Venue** | **:** | **Remote hearing by CVP** |
| **Date of decision** | **:** | **17 June 2025** |

|  |
| --- |
| **DECISION** |

**Decisions of the tribunal**

1. The tribunal varies the Respondent’s notice imposing a financial penalty. The total financial penalty is varied to: £66,550.00.

**The application**

1. By an application dated 11 April 2024, the Appellant appeals a financial penalty issued by the Respondent on 10 April 2024 in the sum of £77,925 for offences under Regulations 4, 7 and 8 of The Management of Houses in Multiple Occupation (England) Regulations 2006.

**The background**

1. The subject property is a three-bedroom terraced house in Slough which has been converted into a six-bedroom HMO.
2. The background to this appeal is set out in the 549 page hearing bundle, which the representatives confirmed contained the relevant documents and which we have considered in detail. In summary, on 13 June 2023, 12 July 2023 and 15 August 2023, the Respondent Local Authority visited the property and found evidence of breach of the HMO management regulations, including fire safety breaches and issues relating to the cleanliness and repair of the property. On 8 January 2024, it gave the Appellant notice of its intention to impose a financial penalty, and, having considered the Appellant’s representations, on 10 April 2024 imposed a financial penalty of £77,925 in respect of the breaches of the regulations that it found to be made out.

**The hearing**

1. The Applicant was represented by Mr Atkinson and the Respondent by Ms Davies. We heard oral evidence from Ms Natalie Worley, a Housing Regulation Officer employed by the Respondent. She was briefly cross-examined by Mr Atkinson. No written or oral witness evidence was produced by or on behalf of the Appellant. Both representatives made helpful submissions for which we were grateful. We reserved our decision.

**The issues**

1. The representatives agreed at the outset of the hearing that the sole issue in dispute was the level of fine imposed by the Respondent.
2. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal makes the following findings and decisions.

**Decision and reasons**

1. The Appellant’s appeal in relation to the level of the penalty is advanced on the following bases:
	1. The Respondent failed to properly consider the Appellant’s culpability and the harm caused to the occupiers of the property when determining the amount of the penalty.
	2. The Respondent failed to properly consider:
		1. the Appellant’s cooperation with the Respondent when taking account mitigating factors; and
		2. the lack of aggravating factors.
	3. In relation to some of the particular offences committed, that the Respondent has failed to properly apply its own policy in coming to a decision on the level of the penalty.

Culpability

1. We bear in mind the decision in Waltham Forest LBC v Marshall [2020] UKUT 35 (LC) and give weight to the decision under appeal.
2. Mr Atkinson referred us to paragraph 4.3 II of the Respondent’s policy and procedure on civil penalties. He asserted that the Respondent has failed to properly consider the culpability factors set out in paragraph 4.3 II b, in particular that the property had been used by squatters, such that there was no premeditation or planning to the offending on the part of the Appellant, who had essentially lost control of the common parts of the property. Further, he asserted that the Appellant managing agent of the property had only derived around £8000 in revenue over the course of its management.
3. We note that paragraph 4.3 II of the Respondent’s policy is not directed to the level of sanction, but rather to whether the imposition of a civil penalty is justified in the public interest. There is no dispute in this case that the Respondent was justified in issuing a penalty – the issue is the level of the penalty imposed.
4. In any event, we do not find that the Appellant’s culpability is low as Mr Atkinson asserts. First, there was no sufficient evidence to support the assertion that the common parts of the property had been taken over by squatters such as to prevent the Appellant from managing the property or to lose control of it. As set out above, the Appellant provided no written or oral witness evidence in support of this appeal. Ms Worley’s evidence was that she was only aware of one individual in the property whom she believed to be a squatter. She said that she had only encountered him at the property on one occasion. She said clearly that the property was otherwise occupied by tenants and that it was not a house full of squatters. We found Ms Worley to be a compelling witness. Her evidence was given in a clear and straightforward manner and it was clear to us that she had detailed knowledge of this property and the circumstances that gave rise to the imposition of a financial penalty in this case. We accept her evidence and find that there was only one squatter in the property at the material times.
5. Further and in any event, there was no evidence before us relating to when the Appellant first became aware of the unlawful occupation of the property nor what it did about it. It would, for example, have been open to the Appellant to seek the assistance of the police or the county court in order to remove the squatter. There is no clear evidence that the Appellant took any such steps in a timely fashion. Indeed, Ms Worley’s clear evidence, which we accept for the reasons set out above, was that the police had been unable to reach the Appellant to discuss the issue and had been forced to ask Ms Worley for assistance in contacting the Appellant.
6. Secondly, we were not provided with any financial information from the Appellant to support its assertions about the revenue it says it received from its management of the property. As the Respondent noted in its decision form, the Appellant’s 2022 accounts state that it holds net assets of £1,039,012. Further, the Appellant accepted in an interview under caution conducted by the Respondent that it manages a large number of properties, including at least 8 HMOs. The Appellant ought in our judgment to have been aware of the regulations applicable to its business. It was for the Appellant to set an appropriate management fee in light of the work and risk involved in its management activities.
7. Furthermore, we are satisfied that the Respondent did indeed consider these factors and give them adequate weight. For example, when considering the Appellant’s representations following service of the Respondent’s notice of intention, the Respondent considered the Appellant’s assertions about the presence of squatters in the property but found that there was “*no evidence provided of their programme for inspecting properties. No evidence provided that details what policies they have in place for when they suspect a room is being squatted…* *No evidence provided of steps taken to removed squatters and prevent re-entry. No evidence provided of court application. No evidence provided by them of reports to the Police to request assistance in removal of squatters*”. For the reasons set out above, we agree with the Respondent’s assessment of this issue.
8. We are also satisfied that the Respondent considered and gave appropriate weight to the Appellant’s lack of previous convictions, lack of historic non-compliance, and likelihood of future offending. The Respondent addressed this point specifically in the first section of its decision form but considered that the Appellant had displayed a poor understanding of its responsibilities under the 2004 Act despite its management of a large portfolio of properties. We agree with this assessment of the Appellant’s conduct and culpability. Ms Worley was not asked any questions about this element of the Respondent’s decision during cross-examination. In our judgment, though the Appellant may not have deliberately breached the rules, it nevertheless ought to have been aware of its responsibilities as a professional managing agent in the business of letting property.

Harm

1. The Appellant asserts that the offending has not caused any serious risk to the occupiers of the property. Having considered the Respondent’s decision form, we are satisfied that the Respondent has properly assessed the harm caused to the occupants. It acknowledged in section 1 of its decision that “*no breaches were identified that posed an imminent or serious risk to the occupiers*”. The Respondent gave detailed reasons for finding in relation to each offence that the harm was either low or moderate.

Mitigating and aggravating factors

1. Mr Atkinson submitted that the Respondent had failed to give appropriate weight to what he said was the Appellant’s “high level of cooperation” with the Respondent’s investigation, which he says arises from the Appellant’s acceptance of its offending and responsibility at interview. We do not agree. Admitting offending at an early opportunity when an offence has clearly been committed does not in our judgment amount to a high level of cooperation. It is the minimum to be expected in the circumstances. We note that the Appellant did not provide documents requested by the Respondent on 14 June 2023 within the timescales set by the Respondent and that, at an inspection on 15 August 2023, the Respondent found that minimal work had been carried out to remedy the breaches identified in June and July. In the circumstances, we do not consider that the Appellant can be said to have cooperated with the Respondent to a high level.
2. It is clear from the decision form that the Respondent took account, as a mitigating factor, that the Appellant accepted responsibility for the offending.
3. Mr Atkinson accepted that the offending had caused a wider community impact as the property was being used as a base for anti-social behaviour. We do not agree, for the reasons set out above, that this was something that was outwith the control of the Appellant.
4. In the circumstances, we consider that the Respondent’s decision to impose a 10% increase in the penalty properly took into account the aggravating and mitigating factors present in this case.

Particular offences

1. Offence 1: Mr Atkinson accepts that the Respondent properly assessed the harm in relation to this offending at Level 2, but asserts that the Appellant’s culpability is low because the occupants of the property contributed to the breach by leaving a bicycle in the hallway between the bedrooms and the fire exit.
2. In our judgment, the Respondent has properly assessed this offence as medium culpability. Though the bicycle was the property of an occupier, there was no evidence that the Appellant had any system in place to inspect or manage the property in order to address the issue and remove obstructions, nor did it address the problem once it was raised by the Respondent. Indeed, the obstruction was present on each occasion that the Respondent inspected the property. We find that this was not an isolated incident and the Appellant failed to take adequate steps to remedy the problem despite the Respondent’s warnings.
3. Offence 2: Mr Atkinson accepts that the Respondent properly assessed the harm in relation to this offending at Level 2, but asserts that the Appellant’s culpability is low because the occupants of the property contributed to the breach by covering up the smoke detectors.
4. For similar reasons as set out immediately above, we consider that the Respondent has properly assessed this offence as medium culpability. There was no evidence of any system of inspection or management of the property which would have identified or did identify the issue with the smoke detectors being covered by the occupants. There was no evidence that the Appellant had taken any adequate steps to address the issue, even when the Respondent pointed it out to the Appellant. Smoke detectors were covered by some method or other on various inspections carried out by the Respondent. We find that this was not an isolated incident and the Appellant failed to take adequate steps to remedy the problem despite the Respondent’s warnings.
5. Offence 4: This offence relates to the dirty communal areas of the property, including marked doors and walls, and what Ms Worley considered might have been blood spatters to the floor and walls (but accepted that this assessment resulted only from her visual assessment and that no testing of the marks had been carried out).
6. Mr Atkinson accepts that the Respondent properly assessed the harm in relation to this offending at Level 2, but asserts that the Appellant’s culpability is low because the occupants of the property contributed to the breachby causing the marks and keeping the property in a dirty condition.
7. However, the Appellant is obliged by the regulations to ensure that the common parts of the property are maintained in good and clean decorative repair. As set out above, there was no evidence of any inspection regime which would have identified or did identify these issues, nor steps taken by the Appellant to identify the person responsible and take appropriate action against them. Further, no work was carried out by the Appellant to remedy the condition of the common parts after the problem was identified by the Respondent. The property was in the same condition when it was inspected again in August 2023. We find that the Appellant failed to make adequate efforts to address the risk, did not take adequate measures to prevent further breaches and failed to heed the warnings and advice given by the Respondent. We are satisfied that the Respondent has properly assessed the offence as medium culpability.
8. Offence 8: This offence relates to the cooker hobs in the kitchen which were not working. The Respondent assessed this offending at level 2 harm because (it said) the fact that the occupants were unable to cook food increased the risk of the spread of disease and foodborne illness. Mr Atkinson submitted that this assessment overstated the harm as there was no evidence that the lack of a working cooker hob would mean that the occupants would eat uncooked food leading to illness. Ms Davies did not press upon us any submission that level 2 harm was made out in relation to this offence. We agree with Mr Atkinson that this offending should properly have been assessed at level 3 harm. We think it unlikely that the occupants would be at potential risk from foodborne illness as a result of the broken cooker hobs. We think it more likely that they would eat food that did not need to be heated on a hob.
9. Accordingly, the offence is one of low harm and medium culpability. According to the Respondent’s policy document, this means that the offence falls into band 2, the starting point for which is £3750.00 which we adopt (not having been asked to do otherwise by the parties).
10. Accordingly, the penalty starting point total is now £55,000.00 (being £67,500 the original Stage 1 penalty, less £3750 for Offence 5 which the Respondent agreed to remove before this appeal, less £8750 for Offence 8).
11. For the reasons set out above, we agree with the Respondent’s decision to add a 10% increase in the penalty at stages 2 and 3. This brings the stage 2 penalty to £60,500 and the stage 3 (and final) penalty to £66,550.00.

Conclusions

1. It follows that we vary the Respondent’s notice imposing a financial penalty to reflect our findings in relation to the level of harm arising from offence 8. The total financial penalty is varied to: £66,550.00.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:** | First-tier Tribunal Judge Neave | **Date:** | 17 June 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).