



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References : MAN/OOBW/HNA/2024/0027
MAN/OOBW/HNA/2024/0028

Properties : 1 Castle Grove, Leigh, WN7 2UJ
153 Hope Street, Leigh, WN7 1NP

Applicant : Ndumbe Achile Ndumb

Respondent : Wigan Council

Representative : Lucie Wood, Counsel

Type of Application : appeal against a financial penalty – s.249A &
Schedule 13A to the Housing Act 2004

Tribunal Members : Judge P Forster
Jessica O'Hare FRICS

DECISION

Decision

- (1) The Tribunal is satisfied beyond reasonable doubt that the Appellant committed an offence under s.72(1) of the Housing Act 2004 in respect of 1 Castle Grove, Leigh, WN7 2UJ for which he is liable to pay a financial penalty of £12,243.00 under s.249A of the Act.
- (2) The Tribunal is satisfied beyond reasonable doubt that the Appellant committed an offence under s.72(1) of the Housing Act 2004 in respect of 153 Hope Street, Leigh, WN7 1NP for which he is liable to pay a financial penalty of £14,243.00 under s.249A of the Act.

Introduction

1. The Appellant, Ndumbe Achile Ndumbe, appeals pursuant to s.249A of the Housing Act 2004 ("the Act") against the imposition of civil penalties imposed by the Respondent, Wigan Council, in respect of two properties: 1 Castle Grove, Leigh, WN7 2UJ and 153 Hope Street, Leigh, WN7 1NP ('the Properties'). The penalties were imposed for offences under s.72(1) of the Act for not having the required HMO licenses.
2. On 12 January 2024, the Respondent served notices of intent in respect of each of the properties. The Appellant made written submissions. Final notices were served on 14 and 15 March 2024.
3. The hearing was conducted remotely by video on 17 July 2025. The Appellant represented himself and the Respondent was represented by Lucie Wood, Counsel.
4. Although this is the Appellant's appeal, it makes sense to set out the Respondent's case first and then the Appellant's response to it.

The Respondent's case

5. The Respondent maintains that the Appellant was the person having control of or managing the Properties which were HMOs and required to be licensed but were not licensed. The Appellant thereby committed the alleged offences and he is liable to pay financial penalties as determined by the Respondent in accordance with relevant legislation, policy and guidance.

The Appellant's case

6. The Appellant denies that the properties were HMOs and asserts that the Respondent acted unlawfully by imposing penalties without sufficient evidence, relying on unsubstantiated claims and failing to follow proper procedures.
7. Specifically, the Appellant says that neither 1 Castle Grove nor 153 Hope Street had 5 occupants and therefore did not meet the definition of an HMO.

Issues in dispute

8. The issues to be determined by the Tribunal are (1) whether 1 Castle Grove and 153 Hope Street were HMOs on the date of the Respondent's inspection on 19 October 2023, (2) whether the Appellant committed offences under s.72(1) of the Act and (3) the amount of the penalties.

The Law

9. The law relevant to the commission of offences and to the amount of the penalties is set out in the annex to the decision.

Reasons for the Decision

10. The appeal is a re-hearing and the Tribunal will make its own decision as to whether (1) the Appellant has committed an offence under s.72(1) and (2) the conditions for imposing a penalty were satisfied, and if so, (3) what the amount of any penalty should be. These decisions are to be reached upon the facts as found by the Tribunal notwithstanding that some of those facts might not have been known to the Respondent at the time that it made its decisions.
11. The appeal principally turns on the number of occupiers in each of the properties on 19 October 2023.
12. The Appellant was registered at HM Land Registry as the freehold owner of both properties. The rent was paid into a bank account in the Appellant's name. The Tribunal rejects the Appellant's claim that he did not have control of the account and that it was operated by others. The Appellant exchanged emails with the Respondent in respect of both properties addressing the issue of the number of occupants demonstrating a detailed knowledge. The emails end with the Appellant's name sent from an email address in the name of Matthew Achile. The Tribunal rejected the Appellant's suggestion that someone else sent the emails in his name.
13. The Tribunal finds there is conclusive evidence to establish that the Appellant was the person having control or managing the properties.

1 Castle Grove

14. The evidence of Helen Baskett and Natalie Elvy is that when they inspected 1 Castle Grove on 19 October 2023 the premises was occupied by Jamie Hock who shared a room with Shannon Myers, and by Daniel Pemberton, Matthew Marsh and Lisa Groves. This adds up to five occupants.
15. In a letter dated 13 November 2023, the Appellant named all but Jamie Hock as occupying the premises. The Appellant's evidence is that Jamie Hock vacated the premises before October 2023. He relies on a new agreement signed by Shannon Myers dated 6 July 2023 as evidence that Jamie Hock had left the premises.

16. The agreement dated 27 June 2022 under which Mr Hock and Ms Myers occupied the premises is with someone called Consolée Mukeshimana who is described as the landlord. It was established that she has no legal interest in the property and was or is the Appellant's partner. The term was said to be for a minimum of three months. The rent is said to be £698 per month but Ms Myers and Mr Hock say they paid £850.
17. Ms Myers's evidence is that when the Council inspected the premises on 19 October 2023 there were five tenants including herself, Mr Hock, Lisa, Matthew and Daniel. They were not related to each other and they shared bathroom and kitchen facilities. This is confirmed by Mr Hock. He says that he shared a room with his partner, Ms Myers, and that he had lived at the property since 27 June 2022. He identifies the Appellant as his landlord into whose account the rent was paid.
18. The Appellant does not dispute the fact that Mr Hock was present on 19 October 2023 but he says, 'he was till (sic) sleeping and he panic and he decided to show the old tenancy agreement dated 27/06/22'. The Appellant suggests that Mr Hock was just visiting the premises not living there.
19. In her witness statement dated 8 January 2025, Ms Myers stated that after the Council had become involved the Appellant had asked Mr Hock to move out which he did.
20. The Appellant relies on a new agreement dated 6 July 2023 between himself and Ms Myers in her own name. She denies that she signed this agreement. She states that she did not get a new agreement in her own name until 19 August 2024.
21. Ms Myers in a second statement dated 20 February 2025, states she cannot remember when Mr Hock was told to leave but believes it was around November 2023 and that it was after the Council inspected the premises.
22. Mr Hock states in his witness statement that 'it was a few weeks after the inspection by the council' that the Appellant told him to move out.
23. There is overwhelming evidence that Mr Hock was living at 1 Castle Grove with Ms Myers and three others on 19 October 2023.

153 Hope Street

24. The evidence of Helen Baskett and Natalie Elvy is that when they inspected 153 Hope Street on 19 October 2023 the premises was occupied by Lavendar Villarrel, Hannah Foster, Dhanya Wilson who shared a room with Tintu Thomas and a fifth person who was later identified as Naveen Ramadass. By 27 October, Dhanya Wilson and Tintu Thomas had moved out to be replaced by Sarita Devale and Dipika Zarekar. This evidence is supported by witness statements from the occupiers and copies of their agreements with the Appellant.
25. The Appellant's case is that Dhanya Wilson and Tintu Thomas had a fixed term agreement

that expired on 20 September 2023 and should not have been in the property. The Appellant points to Dhanya Wilson telling the Council that he was planning to move out. The fact remains that they were living at the property when the Council inspected.

26. The Appellant does not dispute the fact that there were 5 occupants on 19 October 2023 but asserts that two of them should not have been there. This does not assist the Appellant.
27. The agreement dated 20 February 2023 with Dhanya Wilson and Tintu Thomas was for a minimum term of six months not a fixed term as stated by the Appellant. The Appellant's financial records that show he received the monthly rent of £800.00 from these occupants on 21 September 2023 and that their deposit was not returned until 31 October 2023.
28. Dhanya Wilson and Tintu Thomas were replaced by Sarita Devale and Dipika Zarekar's as shown by their agreement dated 20 October 2023.
29. There is overwhelming evidence that on 19 October 2023, 153 Hope Street was occupied by five people.

The offences

30. The Tribunal must be satisfied beyond reasonable doubt that the Appellant's conduct amounted to offences under s.72(1) of the Act.
31. The Appellant is the owner of the properties and the person who at the relevant time on 19 October 2023 was the person having control or managing the properties.
32. At the date of the Respondent's inspection on 19 October 2023 each property was occupied by five people.
33. The properties fall within the remit of 'prescribed description of an HMO' as provided for by Article 4 of the 2018 Order. The properties were occupied by five occupants, living in two or more separate households. The properties meet the standard test under section 254(2) of the 2004 Act.
34. The Tribunal is satisfied beyond reasonable doubt that the Appellant's conduct amounted to offences under s.72(1) of the Act.

Reasonable excuse

35. The Appellant who has denied that offences were committed has not sought to put forward a defence of reasonable excuse under s.30(4) of the Act.

The penalties

36. The Appellant argues that the Respondent 'acted unlawfully by imposing penalties without sufficient evidence, relying on unsubstantiated claims, and failing to follow proper procedures'. The Tribunal has rejected the Appellant's assertions. It has accepted the cogent

and compelling evidence put forward by the Respondent which establishes beyond reasonable doubt that the Appellant has committed the relevant offences.

37. The appeal is a rehearing of the Respondent's decision and the Tribunal makes its own decisions having regard to the Respondent's policy on the making of civil penalties. The Tribunal adopted the approach in respect of the penalties as set out in Waltham Forest LBC v Allan Marshall and Waltham Forest LBC v Huseyn Ustek [2020] UKUT 0035 (LC).

The amount of the penalties

38. When considering the amount of the penalties is the Respondent's Private Sector Housing Enforcement: Housing Standards Policy incorporating at Appendix A the Policy on Civil Penalties which implements the guidance published by the Secretary of State in April 2018. In common with many other local housing authorities, the policy provides that the level of civil penalty is determined in three stages, (1) an assessment of the seriousness of the offence by reference to the culpability of the offender and the level of harm (or potential harm) to the occupiers. (2) the making of adjustments to the initial figure to take account of mitigating or aggravating factors. (3) considering whether any final adjustments should be made.
39. It is for the Tribunal to make its own assessment applying the Respondent's policy.

1 Castle Grove

Culpability

40. When determining culpability, the Respondent's Policy provides that the Council will have regard to (1) whether the offender had the intention to cause harm and/or was reckless as to whether harm was caused and (2) has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results and/or is negligent in their actions.
41. The Appellant is an experienced landlord who had several properties in his portfolio. This is an important consideration because he should have known his responsibility as a landlord to ensure that the properties needed to be licensed as HMOs. The Tribunal finds that the Appellant, despite his denials, knew that each property had five occupants but ignored the need to get licenses. The Appellant compounded matters by producing false documents and calling into question the honesty of the occupiers who provided witness statements.
42. There is evidence that the Appellant had previously been offered advice and warnings in relation to the requirements of a license.
43. On the evidence, the Tribunal assesses the Appellant to fall within the highest level of culpability. He intentionally or recklessly disregarded the law and did not exercise reasonable care in regard to his legal obligations. He did not make sufficient efforts to comply with his obligations.

Harm

44. The Respondent's policy provides that when considering the level of harm regard will be had to (1) the potential for physical injury, damage to health and psychological distress, (2) to the community – economic loss, harm to public health and (3) other types of harm – public concern/feeling over the impact of poor housing condition on the local neighbourhood.
45. The nature of the harm depends on the personal characteristics and circumstances of the occupants. The policy provides that where no actual harm has resulted, the Council will consider the relative danger that persons exposed to it and the likelihood and gravity of harm that could have resulted.
46. The Tribunal adopts the Respondent's assessment of the level of harm. The risk to the occupants is low. The occupants did not raise any disrepair concerns to the Respondent during its investigation.

Aggravating factors

47. The Respondent has adduced evidence that the Appellant had previously offered advice and received verbal and written warnings in relation to the requirements of a license. Despite this the Appellant allowed 5 occupants to live in the property without applying for a license. The Respondent added £1,000 to the penalty. The Tribunal's view is that this amounts to 'double counting' this factor already having been taken into account when assessing the Appellant's culpability. The Tribunal makes no adjustment for aggravating factors.

Mitigating factors

48. The Appellant sought to suggest that he was suffering from mental health problems and from Asthma and he has referred to his son's ill health. The only medical evidence produced relates to an asthma attack in May 2025 which led to the postponement of the hearing. The Appellant spoke about the effects of the proceedings on his health rather than it affecting his conduct and failure to obtain HMO licenses. The Respondent has adjusted the penalty to allow as mitigation the fact that the Appellant has no history of any previous penalty notices. This is generous but the Tribunal adopts this position.
49. The Respondent increased the penalty by adding the cost of applying for a license, £743.00. This is an identifiable economic benefit to the Appellant and is within the Respondent's civil penalty policy. The Tribunal adopts the same approach.
50. Applying the civil penalty matrix as provided in the Respondent's policy document, the Tribunal calculates the penalty to be imposed on the Appellant as follows:

Culpability	high	
Harm	low	
Starting point (midpoint band 3)		£12,500.00
Plus aggravating factors		£0.00

Less mitigating factors	£1,000.00
Plus economic benefit	£743.00
<u>Penalty</u>	<u>£12,243.00</u>

153 Hope Street

51. The Tribunal's findings in respect of 1 Castle Street are applied in respect of 153 Hope Street subject to the following points:
52. Respondent assessed the level of harm as medium. This level is described in the policy document as being appropriate where there is a 'housing defect giving rise to the offence poses a serious risk of harm to the occupants...'.
 53. The Respondent relies on evidence that there was a leak in bathroom which was dripping into the light fitting downstairs. There was also a report that the heating was faulty in two of the bedrooms and evidence that the fire/smoke detection system was inadequate. The Appellant countered that there was evidence that the light was operational and supports this with an electrical condition report. The Tribunal did not hear evidence on this repair issues and finds the available documentary evidence to be inconclusive. Of greater concern is the issue of the fire detection system within the property. The Appellant provided evidence that wireless smoke detection alarms had been ordered but when the Council inspected on 6 March 2024 they had not been installed. Smoke detectors should be hard wired and sufficient in number.
 54. The evidence suggests that the deficiencies highlighted fall below the standards expected in accordance with HHSRS operating guidance and could amount to breaches under the Management of House in Multiple Occupation (England) 2006. However, the relevant offence in the present proceedings is the lack of an HMO license. The deficiencies identified do not in the Tribunal's view give rise to the material offence.
 55. The Tribunal assesses the level of harm as low.
 56. The Respondent makes the point that the Appellant had previously offered advice and been warned in relation to the requirements of a license. £1,000 was added in the Respondent's calculation. The Tribunal adopts the position as taken in respect of 1 Castle Street.
 57. Additional aggravating factors are added by the Respondent in respect of the bathroom leak and the adequacy of the fire/smoke detection system. These do have relevance in respect of the HMO licensing system because they are issues that would have come to light during the inspection as part of the licensing process. The Tribunal finds that it is appropriate to allow £2,000 to reflect the aggravation of the offence.
 58. Applying the civil penalty matrix as provided in the Respondent's policy document, the Tribunal calculates the penalty to be imposed on the Appellant as follows:

Culpability	high
Harm	low
Strating point (midpoint band 3)	£12,500.00
Plus aggravating factors	£2,000.00
Less mitigating factors	£1,000.00
Plus economic benefit	£743.00
<u>Penalty</u>	<u>£14,243.00</u>

Conclusions

59. Following the Respondent's civil penalty policy and applying the Tribunal's findings, the penalty in respect of 1 Castle Street is £12,243.00 and in respect of 153 Hope Street is £14,243.00

Dated 6 September 2025

Judge P Forster

ANNEX

The Law – Commission of Relevant Offences

A 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 (s. 249A(1) HA 2004).

An appeal against the imposition of a financial penalty is to be a re-hearing of the local authority's decision (para 10, Schedule 13A, HA 2004). The Tribunal must therefore similarly be satisfied, beyond reasonable doubt, that such an offence has been committed.

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The Law – Amount of Penalties

The Tribunal should pay great attention to the Respondent's policy on financial penalties and should be slow to depart from it. The burden is on the Appellant to persuade the Tribunal to do so. Where the Tribunal departs from the Respondent's policy, it should give reasons for doing so (Waltham Forest LBC v Marshall [2020] UKUT 35 (LC)).

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.