FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HNA/2020/0079**
HMCTS code (paper, video, audio)	**:**	**V: VIDEO**
Property	**:**	**21 Queen Alexandra Mansions, Judd Street, London WC1H 9DQ**
Applicant	**:**	**Triplerose Ltd**
Representative	**:**	**Avon Estates (London) Ltd**
Respondent	**:**	**London Borough of Camden**
Type of application	**:**	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal members	**:**	**Judge Nicol** **Mrs S Redmond MRICS BSc (Econ)**
Date of decision	**:**	**18th January 2021**

DECISION

The Tribunal determines that the Applicant shall pay a penalty of £2,500.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The subject property is a 2-bedroom flat on the second floor of a purpose-built mansion block. The Applicant is the leasehold owner who sub-let the entire flat to McQueen Apartments Ltd and Andreea Mihaescu on 23rd November 2016, the tenancy being renewed on the same date in the two subsequent years. Despite clauses in the tenancy agreement prohibiting sub-letting, in the period around July to

September 2019 the tenants sub-let the flat to 3 individuals who lived as separate households so that it became a house in multiple occupation. At that point, it became subject to the Respondent's Additional Licensing Scheme but no licence was obtained.

2. The Respondent inspected the property on 28th November 2019 and confirmed its status as an unlicensed HMO. They decided to impose financial penalties:

- McQueen Apartments Ltd
  - £5,000 for managing an HMO that should have been licensed but was not, contrary to section 72(1) of the Housing Act 2004; and
  - Two penalties, of £5,000 and £2,500, for breaches of the management regulations.
- The Applicant – £5,000 for the same offence under section 72(1).

3. The Applicant made representations, as a result of which the Respondent reduced the penalty sum to £2,500. The final penalty notice was served on 24th June 2020. The Applicant has appealed.

4. The Applicant's appeal was heard by the Tribunal by video conference on 18th January 2021. In accordance with the Tribunal's directions issued on 7th October 2020, both parties produced a bundle of documents.

5. The attendees at the hearing were:

For the Applicant:

- Mr Jack Ost, property manager at Avon Estates (London) Ltd, the Applicant's agents;

For the Respondent:

- Mr Paul Bernard;
- Ms Ifrah Abdirahman – Ms Abdirahman no longer works for the Respondent but was the officer responsible for dealing with this property at the relevant times.

6. Mr Ost's submissions on behalf of the Applicant were simple. The Applicant is a reputable company with a substantial portfolio of rented properties and is fully aware of the licensing system and their obligations under it. The property is inspected when gas safety and repairs require it. There was no problem at the last inspection in April 2019. The Applicant was simply unaware of their tenant's breaches of the tenancy agreement by which they sub-let the property. As soon as they learned of the true situation, in November 2019 when the tenants informed them about the Respondent's inspection, they applied for a licence accordingly. They accept that an offence was committed under section 72(1) but insist that they should not be penalised in the circumstances.

7. The Tribunal understands that the Respondent reduced the amount of the penalty as a result of these points but Ms Abdirahman explained in her witness statement why they were insufficient in the Respondent's view to allow the Applicant to escape liability:

> 42. As the persons in control or managing the HMO, the company should have ensured they were aware of the arrangements at the property. … Although the company did appoint a management company this does not absolve them of all responsibilities as the owner and person in control of or managing the property. I would expect a reasonable owner of such a property to carry out some research as to how the property is being occupied and the legal requirements which the letting of the property places on them as the owner. …

8. Ignorance of the existence of an HMO is not, by or of itself, a defence to a charge that an offence has been committed under section 72(1). If it were, landlords would be able to avoid liability by using arms-length arrangements and deliberately avoiding any knowledge of the situation.

9. Further, it is not a defence that someone else has already been penalised for the same offence – two or more persons may be liable for financial penalties for the same offence, subject to the principle that the totality of the penalty sums should not exceed what is appropriate for that offence (*Sutton v Norwich CC* [2021] EWCA Civ 20).

10. It may well be that, if a landlord has implemented a rigorous system for checking on whether the tenant is complying with a prohibition on sub-letting, this could form part of a defence of reasonable excuse under section 72(5). However, the Applicant had no such system here. The agents had inspected on each previous renewal of the fixed-term tenancy but had no plans to do so unless and until the tenants asked for the tenancy to be renewed, despite the fact that the most recent term expired on 23rd November 2019, 5 days before the Respondent inspected the property.

11. The Applicant clearly regards it as unfair or inappropriate to be fined when they were ignorant of the relevant circumstances and would have acted differently if they had known. However, the current system of licensing is deliberately set up to be relatively harsh in order to try to encourage property owners to ensure that any properties they let are managed in accordance with that system, for the safety and well-being of any occupants. The Tribunal is satisfied that the financial penalty imposed on the Applicant by the Respondent is appropriate in the circumstances.

Name: Judge Nicol **Date:** 18th January 2021

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).

Appendix of relevant legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

249A Financial penalties for certain housing offences in England

(1) 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.

(2) In this section "relevant housing offence" means an offence under—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

263 Meaning of "person having control" and "person managing" etc.

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) 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 licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) 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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

SCHEDULE 13A
FINANCIAL PENALTIES UNDER SECTION 249A

6

If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

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(1) A person to whom a final notice is given may appeal to the First tier Tribunal against—

(a) the decision to impose the penalty, or

(b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.