



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER**

**Case Reference** : **BIR/00FY/HNA/2018/0003**

**Property** : **546 Berridge Road, Nottingham, NG7 5JU**

**Applicant** : **Huntingdon Properties Limited.**

**Representative** : **Mr Tarjinder Kamba**

**Respondent** : **Nottingham City Council**

**Representative** : **Ms S Mills, Solicitor Nottingham City Council.**

**Type of Application** : **Appeal against a financial penalty under S249A of the Housing Act 2004**

**Tribunal** : **Tribunal Judge P. J. Ellis  
Deputy Regional Valuer Mr V Ward FRICS  
Tribunal Member Mr R.Chumley-Roberts  
MCIEH JP.**

**Date of Hearing** : **15 November 2018**

**Date of Decision** : **26 November 2018**

---

**DECISION**

---

Crown Copyright © 2018.

***The Tribunal confirms the financial penalty payable by the Applicant is £3000.00***

**Introduction**

1. This is an appeal by Huntingdon Properties Limited of 31 Llanberis Grove Nottingham NG8 5DP ('the Applicant') against the decision of Nottingham City Council ('the Respondent') to impose a financial penalty under section 249A of the Housing Act 2004 ('the 2004 Act') in respect of 546 Berridge Road West Nottingham NG7 5JU (the Property) for breach of a condition of an HMO licence.
2. The Respondent granted the Applicant a licence of a house in multiple occupation (HMO licence) on 12 January 2017 in respect of the Property. The HMO licence identified the Applicant as the person with responsibility for management of the Property.
3. The HMO licence was subject to a schedule of conditions attached to the licence. Paragraph 39 of the schedule provided

*“Fire Safety*

*The only exit from bedroom one (ground for front bedroom) is through the communal living and kitchen area. There must be an alternative escape route for the occupant of this room. Install an emergency escape window to the front bedroom window that has an unobstructed openable area that is at the least 0.33m<sup>2</sup> and a minimum 450mm height and 450mm width. The bottom of the openable area should not be more than 1,100 mm above the floor. Any works carried out to replace windows must be done so in accordance with current Building Regulations.*

***The above work must be carried out within four (4) months of the date that the licence comes into force.”***

The emphasis to the words in the final paragraph of condition 39 was added by the Respondent.

4. On 5 March 2018, the Respondent issued a notice of intent to the Applicant to impose a financial penalty in the exercise of its powers under section 249 A and paragraph 1 of Schedule 13A to the Act. The notice stated:
  - (i) that the Respondent was satisfied beyond reasonable doubt that the Applicant's conduct amounted to a relevant offence in respect of premises in England in that as the holder of an HMO licence in respect of the property it failed to comply with condition 39 of the licence as the Applicant had not installed an emergency escape window which was an offence under section 72(3) of the Act.
  - (ii) that the Respondent proposed to impose a financial penalty of £3000.00 in accordance with the summary of the penalty calculation attached to the notice;
  - (iii) that the Applicant was entitled to make representations about the proposed financial penalty within the period of 28 days.
5. On 1 April 2018 the Applicant wrote to the Respondent with representations. In summary the Applicant asserted:
  - i) it was not the person managing or having control of the property at the time of the breach of the HMO condition
  - ii) in any event condition 39 should not have been imposed
  - iii) that the penalty was too high
  - iv) that the Respondent did not have sufficient evidence is satisfied the burden of proof
  - v) it had complaints about members of staff of the Respondent
6. On 17 April 2018 the Respondent responded to those representations, rebutting the assertions and confirming the decision to impose the financial penalty.
7. On 26 April 2018 the Respondent served on the Applicant a final notice to impose the financial penalty as proposed in the notice of intent.

8. On 22 May 2018 the Applicant appealed against the financial penalty to the First-tier Tribunal.
9. On 24 May 2018 the Tribunal issued Directions.

### **The Property**

10. The Tribunal inspected the Property on 15 November 2018 in the presence of Mr Alex Pridmore of Nottingham Homeless Housing, Mr Ed Caswell Enforcement Officer and Mr Stephen Matthews of Nottingham City Council.
11. The Inspection was confined to the ground floor bedroom and combined living room and kitchen.
12. There have been changes to the area inspected since the date of the alleged offence. The Property is a semi-detached two storey house constructed probably in the late 19<sup>th</sup> or early 20<sup>th</sup> century of brick and tile with a rear extension of more recent construction.
13. Entrance is by a side door. The relevant bedroom is on the left immediately upon entry. The living room and kitchen is on the right upon entry. The changes to the Property included the construction of a new wall and fire door between the entrance area and the living room. Also the owners of the Property had replaced the window to the bedroom as required by condition 39 with a bottom opening of required dimension. The window could be opened wide enough to allow escape from the Property in the event other means of escape through the doors was prevented by fire.

### **Statutory framework**

14. The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017. Section 249A of the 2004 Act, inserted by section 126 of, and paragraphs 1 and 7 of Schedule 9 to, the Housing and Planning Act 2016 ('the 2016 Act') provides –

*(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.*

15. S72(3) of the Act provides

*“a person commits an offence if –*

*(a) He is the 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.*

16. Paragraphs 1 to 10 of Schedule 13A to the 2004 Act, inserted by section 126 of, and paragraphs 1 and 8 of Schedule 9 to, the 2016 Act provide –

*Notice of intent*

*1 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').*

*2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.*

*(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—*

*(a) at any time when the conduct is continuing, or*

*(b) within the period of 6 months beginning with the last day on which the conduct occurs.*

*(3) For the purposes of this paragraph a person's conduct includes a failure to act.*

*3 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.*

*Right to make representations*

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ('the period for representations').

*Final notice*

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

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.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8 The final notice must set out—

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

(f) the consequences of failure to comply with the notice.

*Withdrawal or amendment of notice*

9 (1) A local housing authority may at any time—

(a) withdraw a notice of intent or final notice, or

(b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

### *Appeals*

*10 (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.*

### **The Hearing**

17. A hearing was held later that same day as the inspection at Nottingham Justice Centre, Carrington Street, Nottingham. The Respondent was represented by Ms Sarah Mills Solicitor with Nottingham City legal services department. Mr. Caswell and Mr. Matthews who were present at the inspection also attended the hearing. Also with Ms. Mills was Mr. M Gilmour the Regulatory Compliance officer.

18. The Applicant was represented by Mr. Tarjinder Kamba who is a director of the Applicant. He was accompanied by Mr. Warjinder Kamba another director, Mr. Layton Barnes of East Midlands Shelter for Homeless (EMSH), Mr. Alex Pridmore who was at the inspection and Mr. M. Galloway and administrator of the Applicant.



19. Both parties had complied with the Directions and produced helpful and comprehensive bundles including statements of their case, witness statements and relevant documents which were considered by the Tribunal.
20. The Tribunal considered the Respondent's case before reviewing the calculation of the penalty. There was no dispute that the penalty notice itself was valid.
21. Mrs Mills for the Respondent argued –
- (i) That it was established beyond reasonable doubt that at the relevant time the Applicant was the person in control of the subject property and that, since the subject property was required to be licenced as a HMO but was not so licenced, the Applicant had committed an offence under section 72(3) of the 2004 Act, which is a 'relevant housing offence' within the meaning of section 249A of the 2004 Act.
  - (ii) That the Respondent had complied with the procedural requirements relating to the imposition of a financial penalty, set out in paragraphs 1-8 of Schedule 13A to the 2004 Act.
  - (iii) That the financial penalty imposed was determined in accordance with the principles set out in the Government Guidance and the Nottingham Guidance; and that it was set at a reasonable and appropriate level.
22. As far as the facts of the case were concerned the issues which were identified by the Respondent in its letter to the Applicant on 1 April 2018 and set out in paragraph 5 of this decision were considered by the Tribunal.
23. Mrs Mills referred to condition 39 of the HMO Licence conditions. Mr Caswell gave evidence on behalf of the Respondent that he attended the Property on 22 November 2017 to carry out a compliance visit. He observed that the window in the front bedroom was not an escape window. It was common ground that Mr Warjinder Kamba a director of the Applicant was present at the inspection and that Mr Caswell told him condition 39 was not satisfied by the window.

24. There was a further inspection by Mr Caswell in February 2018 when he observed that the condition was satisfied following installation of the window seen by the Tribunal at its inspection. He also observed the new wall and fire door between the living room and entry lobby.
25. Having satisfied himself that condition 39 was unsatisfied in November 2017 and that Huntingdon Properties was the licence holder he then consulted with his line manager and reviewed the Respondent's guidelines and penalty options. In view of the prompt attention to the work after the meeting of 22 November he rated the culpability level as low. He assessed the harm level as level A due to the serious risk of harm to an occupier seeking an exit from the building by the door next to the living room/kitchen. Accordingly he assessed the penalty level to be at band 3. The penalty deduced was £3000.00 with no increase due to the Applicant's track record or financial circumstances.
26. Mr Tarjinder Kamba asserted the Applicant had not been in control of the building since or about 8 May 2017 having leased the Property to EMSH. Prior to seeking a licence the Property was let to Right Choice Housing Association which had failed to pay rent. Possession was obtained from the Association in 2016. The Applicant did not wish to evict the occupants and obtained the HMO licence.
27. However, having then let the Property to another organisation it was the primary submission of Mr Kamba that as the Applicant was not in control of the building it was no longer bound by the licence conditions.
28. He further asserted that in any event the Respondent knew that the Applicant was no longer in control of the building because he had written to the Respondent on 16 June 2017 notifying the Respondent of the change in control. Also at the meeting on 22 November 2017 Mr Warjinder Kamba informed the Respondent that EMSH had taken over control of the Property

29. Mr Kamba called Mr Warjinder Kamba and Mr Leyton Barnes a volunteer director with EMSH to give evidence to support the assertion that the Respondent knew of the transfer of control from the Applicant to EMSH.
30. Neither witness was convincing. Mr Warjinder Kamba admitted he had little to do with the management of properties as his duties related to financial matters. He was unfamiliar with the express term of the licence that it is not transferable. He left housing management matters to his brother Mr Tarjinder Kamba. He agreed that the Applicant replaced the window after November 2017 and that it had installed the additional wall and fireproof door. He said the reason for attending the inspection and doing the work was because the Respondent had invited an attendance by the Applicant and that the company did not want to create any 'aggro' with the council.
31. Mr Barnes was unable to recall detail of the conversation with Mr Caswell although he recalled telling Mr Caswell his organisation was managing the property.
32. Mr Tarjinder Kamba submitted that once the Applicant ceased to have control of the building it had ceased to be bound by the conditions of the licence. He contended that the letter of 16 June 2017 seeking to transfer the licence and the presence of Mr Barnes at the inspection of 22 November was sufficient to put the Respondent on notice of the change in control of the Property. He further contended that the notice of change in control passed responsibility for revocation or variation of the licence to the Respondent. The meaning and effect of the letter of 16 June 2017 was the subject of other decisions of this Tribunal (*BIR/00FY/HMV/2018/0002 & 3*) which determined the Applicant had not given notice of its intention to revoke the HMO licence until February 2018.
33. In so far as the condition itself was concerned Mr Kamba submitted that it was not necessary because there was a means of immediate escape through the front door and that the occupier was in no worse position than the occupiers of the upper floor who had to use the same means of escape.

34. It was his further contention that the penalty was too high because too much weight had been given to the risk of harm having regard to the probability of time for escape through the front door.
35. His criticisms of staff of the Respondent arose from allegations of unanswered correspondence and an alleged failure by Mr Caswell to properly understand the layout of the upper floor and the means of escape for the occupiers.
36. In all he was of the opinion that the Respondent had not satisfied the burden of proof to the required standard.

## **Decision**

37. An appeal under this legislation is to be a re-hearing of the local housing authority's decision (Sched 13A para 10(3)(a) of the Act).
38. Accordingly the Tribunal considered the substantive element of the appeal in three parts:
- (i) Whether the Tribunal was satisfied, beyond reasonable doubt, that the applicant's conduct amounted to a "relevant housing offence" in respect of premises in England (see sections 249A(1) and (2) of the Housing Act 2004);
  - (ii) Whether the local housing authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act); and/or
  - (iii) Whether the financial penalty was set at an appropriate level, having regard to any relevant factors, including:
    - (i) the offender's means;
    - (ii) the severity of the offence;

- (iii) the culpability and track record of the offender;
- (iv) the harm (if any) caused to a tenant of the premises;
- (v) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
- (vi) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

39. The Tribunal is satisfied beyond reasonable doubt that the Applicant has committed an offence contrary to section 72(3) of the act. The Applicant did not challenge the factual basis upon which the Respondent relied in determining a financial penalty. The Applicant was the holder of an HMO licence in November 2017. The licence was subject to a condition which required improved fire safety work by the replacement of a window to a ground floor bedroom. The work should have been completed within four months of 12 January 2017, the date of the licence. The work was not carried out until after the inspection on 22 November 2017. The Tribunal can conclude the offence was committed with effect from the expiration of four months from 12 January 2017.

40. The Applicant's answer was that it was no longer responsible for the condition of the property once it transfer to control of the property to a third party under the terms of the lease. It put forward no other reason for failure to comply with the condition.

41. The Tribunal is not satisfied with the Applicant's explanation for non-compliance. The Applicant's directors did not pay sufficient attention to the obligations a holder of an HMO licence undertakes. In particular they did not read the terms of the licence which state the licence is not transferable. In the course of evidence it became apparent the Applicant or its directors own or manage a portfolio of properties. As experienced property managers it should have been apparent that they have responsibilities and they must inform themselves of what is required of them. To assert the Applicant was no longer in control is not enough to relieve it of its obligation to seek revocation of the licence. The Tribunal finds that the Applicant did not comply with its obligation to procure the revocation of the HMO licence at any time before February 2018.

Accordingly the Applicant remained responsible for complying with condition 39 and by failing to do so well beyond the four months allowed by condition 39 it committed the offence described by section 72(3) of the Act.

42. Moreover and in any event by its own admission the Applicant was the holder of an HMO licence from the dates of issuance of the licence until the grounds of the tenancy to EMSH in May 2018, that is over four months from the date of the date the licence during which the offence was committed.
43. There was no dispute that the notice was properly prepared. The Applicant confirmed that it took no issue with the form of the notice. The Tribunal reviewed the notice and agreed it was properly drawn.
44. The financial penalty imposed was reasonable. No penalty was imposed for culpability. Indeed, the narrative of the Respondent provides that the change to the window was made promptly after the inspection of 22 November 2017.
45. The Tribunal is satisfied that the harm level was correctly identified as level A producing penalty band three. The risk to the occupant of the bedroom was that upon realising that there was a fire in the ground floor living and kitchen area safe exit by the front door would not be possible and with an inadequate escape window the occupant would have been a substantial risk. The Tribunal does not interfere with the amount of penalty imposed. Consequently, the Tribunal determines the final penalty amount payable by the Applicant is £3000.00.

### **Appeal**

46. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis