



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

**Case Reference** : **BIR/47UG/HNA/2019/0024**

**Property** : **Collingdale Hotel, 197 Comberton Road,  
Kidderminster DY10 1UE**

**Applicant** : **Amonbir Mander**

**Respondent** : **Wyre Forest District Council**

**Type of Application** : **Appeal against a Financial Penalty**

**Hearing** : **21<sup>st</sup> November 2019  
Kidderminster Magistrates Court**

**Members of Tribunal** : **Judge D Jackson  
Mr P Wilson BSc (Hons) LLB MRICS  
MCIEH CEnvH**

**Date of Decision** : **11 December 2019**

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**DECISION**

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## **Background**

1. On 19<sup>th</sup> July 2019 the Local Authority issued a Final Notice imposing a Financial Penalty under section 249A of the Housing Act 2004 (“the 2004 Act”) in the amount of £4,000.
2. The Final Notice relates to an offence under section 234(3) of the 2004 Act (breach of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the 2006 Regulations”).
3. By application dated 15<sup>th</sup> August 2019 the Applicant appeal against the Financial Penalty under paragraph 10 of Schedule 13A to the 2004 Act.
4. On 28<sup>th</sup> August 2019 the Tribunal issued Directions.
5. The Tribunal has considered Statement for the reasons of Appeal prepared by the Applicant. The Tribunal has also considered Local Authority Response to Grounds of Appeal dated 2<sup>nd</sup> October 2019 together with Witness Statements of Richard Osborne (Principal Environmental Health Officer (Housing)) and Kate Bailey (Head of Strategic Growth) both dated 30<sup>th</sup> September 2019. The Tribunal has also considered Document Bundle (pages 1- 217) prepared by the Local Authority. Page references in this Decision are references to page numbers within the Local Authority Bundle.
6. This appeal was heard at Kidderminster on 21st November 2019. The Applicant attended and gave evidence. The Local Authority was represented by Ms Nina Dorrell (Legal Services). Kate Bailey and Richard Osborne all attended at the hearing.

## **Inspection**

7. The Tribunal inspected the Property on the morning of 21st November 2019 in the presence of the Applicant and Ms Dorrell, Kate Bailey and Richard Osborne of the Local Authority. The Tribunal was not able to inspect every room due to the presence of the occupiers.
8. The Property is a 2 storey double fronted building dating probably from the mid nineteenth century and used in part as a bed and breakfast establishment and in part as a house in multiple occupation (“HMO”). There are 10 rooms let in total with 5 rooms in bed and breakfast use and 5 rooms in HMO use. The bed and breakfast use is understood to be primarily providing temporary accommodation for persons to whom local authorities owe a duty under homelessness legislation, including the Respondent authority.
9. The layout of the Property is shown on the Plan submitted by the Respondent [17-19]. To the ground floor there are two kitchens (one for each use), a communal dining room, two HMO bedsit rooms and one room used for temporary accommodation, along with private areas. To the first floor there are 3 rooms in HMO use and 4 rooms used for temporary accommodation and a shared WC with wash hand basin for use of rooms 1 & 2. All other rooms have en suite washing and sanitary facilities.
10. No emergency contact details were on display in the entrance hall. The Applicant stated that this had again been removed by residents.
11. The kitchen for the permanent residents is separate from the private kitchen for residents in temporary accommodation. The permanent residents’ kitchen is located on the ground floor. It contains fridge freezer and two other fridges as well as an oven and two electric cooking plates. The tiling had been repaired. A heat detector had been fitted. The fire alarm panel was located in the private kitchen.

12. We also inspected room 9 on the ground floor. This room contains a separate bathroom with basin, toilet and shower. The light fitting had been replaced and the leak from upstairs repaired.
13. The cellar is used solely for storage. The ceiling has now been underdrawn. There is a new distribution board in the cellar. The cellar also has a smoke detector linked to the automatic fire detection system.
14. On the first floor we inspected rooms 1 and 2 which each has a wash hand basin and shower unit. Both rooms were fitted with smoke detectors. The Tribunal noted an 8-10mm gap between the frame and the fire door to room 2. All rooms at the Property have en suite washing and sanitary facilities with the exception of rooms 1 and 2 which share a communal WC compartment on the first floor. The Tribunal noted that although tiles to this WC compartment had been repaired and the wash hand basin had been refitted, having been dislodged, further sealant was required to complete the job.
15. The general condition and decorative order of the Property was consistent with its use both providing temporary accommodation for homeless referrals from the Local Authority and as HMO accommodation.
16. The Property has emergency lighting which appeared to be in working order. It also has an automatic fire detection system with Grade A panel and detector heads in all risk rooms and communal parts. Fire resisting doors were present between the kitchens/bedsit rooms and the common parts forming the protected route.

## **Deliberation**

17. Collingdale Hotel has been used as bed and breakfast accommodation and temporary accommodation for local councils. In recent years it has had residents staying as their sole residence. The Applicant stated that management of the Property is challenging as many of the residents have been extremely vulnerable including people coming from backgrounds of recent prison release, hospital discharge, care and with a history of drug/alcohol problems. Some residents have had ongoing physical and mental health conditions.
18. The Applicant acquired the freehold of the Property (HW121764 [134-135]) on 16<sup>th</sup> August 2005. The Property was run by the Applicant's father until 2018. The Applicant, at one point, left his job to try to run the Property but it was not financially viable to do so. Accordingly, since 2018 the Applicant has employed a full time manager who lives in a flat at the Property.
19. The Local Authority visited the Property on 25<sup>th</sup> July 2016 and raised a number of matters which amounted to breaches of the 2006 Regulations with the Applicant [217]. A further visit took place on 10<sup>th</sup> January 2017 at which time the Local Authority was satisfied that appropriate remedial action had been taken. It is the Local Authority's case that the Applicant has been reactive rather than proactive in relation to issues arising at the Property and that the Local Authority has worked with him on an informal basis to get him "up to speed".
20. On 27<sup>th</sup> April 2018 the Local Authority declared the Property to be a House in Multiple Occupation ("HMO") under section 255 of the 2004 Act [14-15].
21. The Local Authority carried out a further inspection on 23<sup>rd</sup> October 2018 [7 and 20-47]. The purpose of that visit was to discuss HMO licensing. Ultimately an application for an HMO Licence was made. A Licence was granted on 16<sup>th</sup> July 2019 [116-119] subject to conditions. The maximum number of persons specified was 5 (to occupy rooms 1-3, 9 and 10). Rooms 4-8 were for temporary accommodation only.

22. On 6<sup>th</sup> February 2019 a further inspection took place. Mr Osborne subsequently prepared an Inspection Report [49], list of issues apparent at time of inspection [50-51 and a schedule of breaches of the 2006 Regulations [52].
23. On 28<sup>th</sup> February 2019 the Local Authority issued a Notice of Intent proposing a penalty of £8,500 [125-128].
24. On 19<sup>th</sup> July 2019 the Local Authority issued a Final Notice imposing a Financial Penalty of £4000 [202 -203]. The penalty was imposed in relation to 17 breaches of the 2006 Regulations:
  - Regulation 3(b)
  - Regulation 4(1)(b) – 4 breaches
  - Regulation 4(2)
  - Regulations 7(1)(a) and (b) – 3 breaches
  - Regulation 8(2) – 8 breaches
25. A further inspection was carried out after the issue of the Final Notice by which time most, if not all, of the breaches had been remedied.
26. In order to impose a financial penalty under section 249A of the 2004 Act the Tribunal must be satisfied beyond reasonable doubt that the conduct of the Applicant amounts to a relevant housing offence. In the present appeal the relevant housing offence (section 249A(e)) is an offence under section 234 (management regulations in respect of HMO's). Additionally, this requires the Tribunal to be satisfied beyond reasonable doubt that the Applicant, as person managing the Property, has failed to comply with the 2006 Regulations. The Tribunal sets out below its findings in relation to each of the 17 alleged breaches. We are satisfied, beyond reasonable doubt, in relation to all 17 allegations that the Applicant has failed to comply with 2006 Regulations and that his conduct amounts to an offence under section 234(3) of the 2004 Act.
27. Guidance on determining the amount of the Financial Penalty is set out in the MHCLG Guidance of April 2018 [168- 187]. In addition the Local Authority has prepared its own Policy [189- 200]. As in common practice, this uses a matrix format and the Local Authority states the policy was developed in consultation with the West Midlands Housing Enforcement Officers Group and a common format adopted. The Tribunal has regard to both the Guidance and the Policy but is not bound by either.
28. The starting point for failure to comply with the 2006 Regulations under section 234 is £1000 per offence [197]. Accordingly, the Local Authority's starting point for all 17 breaches is £17,000. In the Notice of Intent [126] the Local Authority takes into account partial compliance and the fact that some of the rooms were unoccupied and has reduced the penalty by 50% to £8,500.
29. At paragraph 11 of her Witness Statement Kate Bailey states [122]:

“I determined; by having regard to the Council Housing Enforcement Policy, the Government Guidance, the evidence submitted to me, the fact that Mr Mander appeared to be working towards compliance and was undergoing licensing of the property and the desire for the council to potentially work with Mr Mander in future to ensure good quality accommodation that could provide some temporary accommodation for WFDC and other councils, that the civil penalty should be reduced to £4000 ....”

30. In general, we agree with the approach of the Local Authority. It has recognised that some of the rooms were unoccupied and that Mr Mander has remedied many of the breaches. It also takes into account of the fact that a HMO Licence has been applied for and granted.
31. At the hearing Ms Dorrell explained that the Local Authority wishes to encourage the Applicant to be proactive rather than reactive. Ms Dorrell submitted that any Financial Penalty must provide a deterrent whilst at the same time ensuring that the Local authority can still work with the Applicant to provide temporary accommodation for homeless persons. The present breaches are more serious than previous failings and the penalty amounts to approximately £235 per offence. Ms Dorrell submits that the penalty imposed is a sufficient deterrent but not so high as to be unaffordable. The Local Authority wishes in part to encourage rather than to punish the Applicant to the extent that his business would no longer be viable.
32. The Tribunal has approached the matter by looking at the appropriate penalty for each of the 17 breaches and then has stood back to look at the totality of the penalty as a whole. In doing so the Tribunal finds that a number of the breaches are “de minimis” and do not justify any separate penalty. Clearly the gravamen of the failings relates to fire safety which the Tribunal takes extremely seriously. Had the Local Authority approached the matter in this way it might have concluded that no purpose would be served by pursuing a large number of considerably less serious failings.
33. We set out below our findings in relation the 17 breaches and have indicated in bold type the penalty for each. Before we do so, however, we deal with the Applicant’s means. The Applicant is 42 years old and has two children. He works for an Insurance Company as a Financial Accountant earning £55,000 p.a. The Property if full generates £6-7000 per month but the average is nearer £5,000 per month. The Applicant pays a mortgage of £3000 per month and pays the manager £400 per week. The Applicant also owns (subject to mortgage) the adjoining property at 196 Comberton Road as well as two properties in Dudley which were gifted to him by his father. The Applicant candidly told the Tribunal that he could afford to pay the penalty imposed by the Local Authority but felt that the money would be better spend on improving the Property. The business is not lucrative and the Applicant stated that he and his family have made “many sacrifices”. The Applicant told us that since taking over from his father he has found management of the Property to be very challenging and he has been badly burned by those he gave a chance to”.

### **Regulation 3(b)**

34. These details were not on display as required. The Applicant explained that he had put up a paper copy of the required information on the wall of the entrance hallway but that residents had on several occasions removed the copy provided. No details were displayed at the time of the Tribunal’s inspection. The Applicant told us that he would remedy this defect. **[no separate penalty]**.

### **Regulation 4(1)(b)**

35. The rear exit door is not fully openable. Photograph [64] shows that a rug prevents the door from opening fully. Accepted by the Applicant. Rug now removed. **[£250]**
36. The fire door in the first floor corridor does not close properly. Photograph [66]. Applicant accepted that door had moved over time and that a minor adjustment to

the tension of the door closer was required. Local Authority confirmed that defect rectified. **[£250]**

37. A number of fire doors were missing sections of intumescent heat and smoke seals. Rooms 1,2 and 3. Photographs [68, 70 and 72]. Accepted by Applicant. The tenants had not made him aware and he was not allowed access to some of the rooms. Now rectified. **[£250]**
38. The fire door to room 8 did not close properly. No photographic evidence but listed at item 14 of “Issues apparent at time of inspection” [50]. Door did not close fully – adjustment of closer and possibly door itself required. Room 8 not in use at time of Local Authority inspection (see paragraph 14 of Statement of Richard Osborne [10]). The Applicant explained that there had been a fight in that room and a fire extinguisher was used as a battering ram. Tenant required to leave and room not occupied until repaired. Local Authority confirmed that defect rectified. **[£250]**

### **Regulation 4(2)**

39. The two water extinguishers on the first floor were both indicating low pressure and the last inspection date on them was 08/17. Photographs at [74] and [76] show needle between green and red suggesting low pressure. Accepted by Applicant. Local Authority confirm now rectified. **[£250]**

### **Regulation 7(1)(a) and (b)**

40. Dirty light switches in the hall. Photograph [80]. Two switches in Hallway dirty. Local authority accepts now cleaned. **[no separate penalty]**
41. First floor shared toilet wash hand basin dropped left side, not readily cleansable due to gap between wash hand basin and tiled splashback. Photograph [80]. Applicant accepts and explained basin pulled off by a tenant. Partly repaired by date of Tribunal’s inspection but some further sealant is required. **[£200]**
42. The front entrance path paving slabs are cracked and lifting presenting a trip hazard. Photograph [84]. Cracked paving slab in pathway across foregarden to front door. Applicant accepts and now rectified. **[no separate penalty]**

### **Regulation 8(2)**

43. Room 9 had mould growth to bathroom ceiling, apparent water leak, missing light cover. Photographs [86 and 88]. Applicant accepts and explains that resident in flat above had been washing clothes in the shower and had left shower on whilst went out. Light fitting filled with water and removed; cracked when refitted by manager. Local Authority confirms rectified. **[£200]**
44. Room 1 extract fan filthy condition and cold tap does not turn off. Photograph [90]. Accepted by Applicant and now rectified. **[£50]**
45. Room 2 seal missing from sink splashback. Photograph [92]. Accepted by Applicant and now rectified. **[no separate penalty]**
46. Room 3 carpet in bathroom not cleansable, needs replacing with an impervious and easy to clean floor covering. Main room carpet filthy from previous tenant. Photographs [94 and 96]. The Applicant has now had the carpet cleaned. Tenant resistant to having it changed. Applicant accepts will have to replace with cleansable

carpet but the tenant is resisting this. Local Authority indicate that carpet not ideal in shower room and will get wet again quickly. Mr Osborne happy to speak to tenant to see if new cleansable carpet can be fitted. **[no separate penalty]**

47. Room 7 laminate flooring breaking up at joints. Bathroom door missing glazed section. Shower case holed. Photographs [98 – floor, 100 – bathroom door and 102 shower fitting]. The Applicant has replaced the pane of glass in the door. However, this room no longer in use and is empty pending renovation. Shower not yet repaired. Flooring will be replaced once renovation (which includes installing a kitchen) completed. **[£100]**
48. Room 8 mould to exterior rear wall under window. Laminate flooring breaking up. Photographs [104 and 106]. This room is now empty pending renovation. Photograph shows minor condensation only. **[no separate penalty]**
49. Room 10 bathroom window has a large gap to the top not sealed properly. Photograph [112]. Accepted by Applicant. Tenant broke vent at top of UPVC window and covered gap with masking tape. Vent not properly fitted to inside profile properly by installer/manufacturer and consequently vent not capable of adjustment as poorly fitted. Room continues to be occupied by same tenant. Vent not capable of repair and new window needs to be fitted. Work outstanding. **[£50]**
50. Room 4 has water leak ongoing in the bathroom Photograph [114]. Applicant accepts. Tenant in room 6 directly above dislodged toilet causing dislocation of cold water feed pipe joints resulting in a leak. Now rectified. **[£150]**

51. The totality of the penalty determined by the Tribunal is:

- Regulation 3(b) – no separate penalty
- Regulation 4(1)(b) – £1000
- Regulation 4(2) – £250
- Regulations 7(1)(a) and (b) – £200
- Regulation 8(2) – £550

Total = £2000

## Decision

52. Under Paragraph 10(4) of Schedule 13A of the Housing Act 2004 the Tribunal varies the amount of the Financial Penalty imposed by the Final Notice in relation to an offence contrary to section 234(3) of the 2004 Act to £2000.

D Jackson  
Judge of the First-tier Tribunal

Either party may appeal this Order to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.