



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

Case Reference : **MAN/32UF/HNA/2020/0003**

Property : **16 King George V Avenue, Holbeach,
Spalding PE12 7PL**

Applicant : **Arabella Fox Garrett**
Representative : **In person**

Respondent : **South Holland District Council**

Type of Application : **Appeal against a financial penalty
Section 249A & Schedule 13A of the
Housing Act 2004**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

Date of Determination : **20th August 2020**

Date of Decision : **10th September 2020**

DECISION

Decision

1. The Financial Penalty Notice dated 19th December 2019 is confirmed.
2. The sum of £11,000 is to be paid within 28 days of the date of the service of this decision upon the parties.
3. No order is made for costs.

Background

1. This is an application by Arabella Fox Garrett (“Mrs Garrett”) against a financial penalty in the sum of £11,000 issued by South Holland District Council (“the Council”) pursuant to section 249A of the Housing Act 2004 (“the Act”) in respect of 16 King George V Avenue, Holbeach (“the Property”).
2. The Final Notice of the Issue of a Financial Penalty (“the Final Notice”), dated the 19th December 2019, imposed a penalty for Mrs Garrett’s failure to apply for a HMO licence.
3. Mrs Garrett submitted her appeal, dated 11th January 2020, against the penalty to the Tribunal and the Tribunal issued directions providing for the filing of statements and bundles of documents on 6th March 2020.
4. The Tribunal ordered the application to be dealt with by way of a paper determination in May 2020, with the agreement of the parties. However, due to the Covid 19 outbreak the determination could not take place at that time.
5. The documents referred to in this decision are those contained in the papers submitted by the parties to the Tribunal
6. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.

Chronology

7. Laura Major, a Private Sector Housing Officer, filed a statement on behalf of the Council. She advised the Council had written to Mrs Garrett on 7th November 2018, stating she required a HMO licence for the Property. It was said there was no response and the Council issued a Final Notice on 14th June 2019, stating it would consider a prosecution pursuant to Section 72 of the Act.
8. On 18th June 2019 Mrs Garrett attended the Council offices and confirmed there were 5 other people, plus herself, at the Property. It was confirmed a HMO licence was required. In a further telephone call Mrs Garrett advised 2 tenants would be vacating the Property and consequently a licence would not be necessary.

9. On 30th October 2019 Laura Major and a colleague, Luke Settle, a Private Sector Housing Officer, visited the Property. At that time Mrs Garrett was not there. However, the occupants of the house confirmed there were then 7 occupants of the Property, including Mrs Garrett.
10. On 11th November 2019 the Council served Mrs Garret with a Notice of Intent to Serve a Financial Penalty for the sum of £11,000.
11. On 15th November 2019 Mrs Garrett made written representations to the Council in response to the Notice. Jason King, the Housing Landlord Housing Officer, dealt with this application. He upheld the Notice and a Final Notice was issued on 19th December 2019.
12. On 25th February 2020 Luke Settle and Laura Major visited the Property and were told by Mrs Garrett it was not convenient for them to inspect the Property. It was agreed the inspection would be carried out on 2nd March 2020.
13. On 2nd March 2020 Luke Settle and Laura Major inspected the Property in the presence of Mrs Garrett.

The Law

14. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been “a relevant housing offence”.
15. Section 249 (2) sets out what amounts to a housing offence and includes at, section 249(b) an offence under section 72 of the Act, namely a failure to licence a property. Section 249 (3)-(4) further provides that only one financial penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.
16. Four recent decisions of the Upper Tribunal have established those questions that should be addressed when considering an appeal against a financial penalty. Those are ***London Borough of Waltham Forest v Younis [2019] UKUT 0362 (LC)***, ***London Borough of Waltham Forest v Marshall & Another [2020] UKUT 0035 (LC)***, ***IR Management Services Ltd v Salford City Council [2020] UKUT 0081 (LC)*** and ***Sutton & Another v Norwich City Council [2020] UKUT 0090 (LC)***.
17. The three questions are:
 1. Has the Housing Authority followed the correct procedure when imposing the financial penalty? The procedure is set out in paragraphs 18-22 below.

2. Has the relevant housing offence been proved to the correct standard? Here, the Upper Tribunal has confirmed a tribunal must be satisfied beyond reasonable doubt an offence has been committed.
3. Is the amount of penalty appropriate in the circumstances? This should be considered in the light of a local authority's policy, where one exists. In **Sutton** it was said:

“If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision”.

This is referred to in paragraphs 23-30 below.

Procedural requirements

18. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
19. A Notice of Intent must be given within 6 months of the local authority becoming aware of the offence to which the penalty relates, unless the conduct of the offence is continuing, when other time limits are then relevant.
20. The Notice of Intent must set out:
 - the amount of the proposed financial penalty
 - the reasons for imposing the penalty
 - Information about the right to make representations regarding the penalty
21. If representations are to be made they must be made within 28 days from the date the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
22. The Final Notice must set out:
 - the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for the payment of the penalty
 - information about rights of appeal
 - the consequences of failure to comply with the notice

Guidance

23. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance (“the HCLG Guidance) in April 2018 : *Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities*. This requires a local authority to develop its own policy regarding when or if to prosecute or issue a financial penalty.
24. South Holland District Council has developed its own policy (“the South Holland Policy”) that follows the HCLG Guidance in setting out the criteria to be taken into account when determining any penalty that states:

“If the Council decide the imposition of a civil penalty is the most appropriate course of action, then the Council will determine the level of penalty based on the cumulative sum, of penalties for each offence, plus the sum of penalties for any additional offences, plus a level of penalty determined by an impact scoring matrix, as shown at table 1”

The Guidance states the Council will determine the level of the penalty by using the culpability and harm factors set out.

25. The South Holland policy sets out a fixed penalty for the failure to obtain a licence pursuant to section 72 of the Act in the sum of £10,000. There then follows a further penalty calculated by using the Impacts Scoring Matrix. Scores from 60-110 give an additional penalty of £1000, 120-170 is £5,000, 180-230 is £10,000 and 240 is £20,000.
26. This matrix provides examples of a landlord’s culpability and harm on four levels, those being severe, high, moderate and low:

Severe level of culpability

- High level of health risk(s) to relevant persons.
- Previous /current occupant in vulnerable category.
- Multiple occupants at risk.
- Potential harm increase in HHSRS assessment.
- Occupants are severely and/or continually affected.
- Number of properties owned/ managed-8+
- Serial offender.
- Multiple enforcement notices served previously.
- Moderate to large severity.
- High income received.
- No confidence that penalty will deter repeat offender.

High level of culpability

- High level of health risk(s) to relevant persons.
- Potential harm increase in HHSRS assessment.
- Previous /current occupant in vulnerable category.

- Occupants affected frequently or by occasional high impact occurrences.
- Number of properties owned/ managed-5-8.
- 1 or more enforcement notice served previously.
- Moderate to large severity.
- Moderate income received.
- Low confidence that penalty will deter repeat offence.

Moderate level of culpability

- Moderate level of health risk(s) to relevant persons.
- Previous /current occupant in vulnerable category.
- Number of properties owned/ managed-3-4.
- 1 previous enforcement notice served previously.
- Moderate severity.
- Low income received.
- Medium confidence that penalty will deter repeat offence.

Low level of culpability

- No harm caused.
- Potential harm unchanged by HSSRS assessment.
- Previous /current occupant not in vulnerable category.
- Number of properties owned/ managed-1-2
- No previous enforcement history.
- Little or no income received.
- High confidence that penalty will deter repeat offence.

Submissions

27. Laura Major, Luke Settle and Jason King all filed statements on behalf of the Council, each setting out a similar history regarding their involvement with Mrs Garrett.
28. Laura Major confirmed that, on 18th June 2019, she had spoken with Mrs Garrett when she visited the Council offices. On that date, Ms Garrett had said there were “five sharers” at the Property. She had advised a licence would be necessary. Mrs Garrett had said she could not afford this and asked if it could be negotiated. Laura Major sent an e-mail to a colleague. In this e-mail, it was confirmed Mrs Garrett would be going to Australia for 1 month.
29. On 19th June 2019 Laura Major contacted Mrs Garrett to advise there could be no reduction to the application fee. Mrs Garrett then confirmed one couple would be leaving the Property and she no longer met the criteria requiring a licence.
30. In her statement, Laura Major confirmed the sequence of events as referred to in the Chronology above. She further stated that when she and Luke Settle visited the Property on 2nd March 2020, Mrs Garrett was present.

The entire Property was inspected. On the first floor there are four bedrooms and one bathroom. One bedroom appeared to be vacant; one male tenant, one female tenant and one couple occupied the remaining three bedrooms. On the second floor there are two further bedrooms and a bathroom. A couple occupied one bedroom and a female resident occupied the second bedroom. Mrs Garrett confirmed she lived on the ground floor and had a bedroom, with en-suite and a living room.

31. It was further confirmed that, as at the date of the statement of 25th March 2020, Mrs Garrett had not made an application for a licence.
32. Mrs Garrett filed two letters to the Tribunal. In her first letter, dated 13th November 2019, she confirmed she had spoken with Laura Major on 18th June 2019. On that date she had understood that because one couple were leaving the Property, no licence was necessary. She therefore took no further action, since her intention was to not take on any more tenants and the rooms would be for her personal use.
33. It was further said that Luke Settle telephoned Mrs Garrett to inspect the Property, but that was not possible since she had to go away. Upon her return on 11th November 2019, Mrs Garrett telephoned the Council, but was unable to speak with anyone and was told she would have to write.
34. The second letter, dated 13th March 2020, stated that when Laura Major and Luke Settle inspected the Property on 2nd March 2020, they were unsure whether the requirement for a licence was by the number of occupants or by the number of bedrooms. She had been told she could “rent” three rooms and that is what she does.
35. Mrs Garrett stated she could not afford the licence application fee. If a financial penalty is imposed she would have to sell the Property. Its purchase was funded by a loan from a family trust and this would not be repeated. It was also said all the tenants of the Property have “some sort of mental problems”. Mrs Garrett said she did not want, nor had she intended, to have a HMO.

Determination

36. The Tribunal firstly considered whether the Council had followed the correct procedure when imposing the financial penalty and found that it had.
37. Paragraph 2, Schedule 13A of the Act specifies a local authority must serve a Notice of Intent within 6 months of it “*having sufficient evidence of the conduct to which the financial penalty relates*” or, if the conduct is continuing then “*at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs*”.

38. Here, the Council became aware a HMO licence was required on 7th November 2018, when the Council first wrote to Mrs Garrett. It is unclear from the papers filed how the Council first became aware of issues at the Property. A Notice of Intent was not served until 11th November 2019, more than 12 months after the Council became aware of a breach of the HMO regulations. However, the Tribunal finds that, within that 12 month period, there is evidence the Property continued to be occupied by more than 5 people. This is evidenced from the observations made by Luke Settle and Laura Major when they visited the Property on 30th October 2019 and were told 7 people were living there. Mrs Garrett has not contradicted this in her statements to the Tribunal.
39. The Tribunal is therefore satisfied the Council has served the Notice of Intent within the periods required by Paragraph 2, Schedule 13A of the Act. It also finds the remainder of the procedure required by Schedule 13A has been carried out. The Council received Submissions from Mrs Garrett on 15th November 2019, this being within the 28 day period allowed and thereafter issued a Final Notice on 19th December 2019.
40. The Tribunal thereafter considered whether the offence of failing to have a HMO licence has been proved and again found that it had.
41. The Tribunal noted that Mrs Garrett did not dispute the Council's findings regarding the number of tenants living at the Property. It further noted that when Mrs Garrett and Laura Major met on 18th June 2019, Mrs Garrett knew she needed a licence since she asked if a reduced fee could be negotiated. At that time there were 5 people sharing the Property. On 19th June 2019, Mrs Garrett said 2 people would be leaving the Property and so a licence would not be necessary. The Tribunal therefore finds Mrs Garrett did understand the licensing requirements and that a licence would be needed for the Property if 5 or more people live there who do not form the same household.
42. When the Council re-visited the Property on 30th October 2019 there were 7 people living there. Mrs Garrett does not dispute this. In her letter of 13th March Mrs Garrett stated the officers from the Council appeared not to know whether a licence was required and further said she did not want a HMO. The Tribunal does not find this statement to be credible given the other evidence presented to it. The Tribunal is satisfied beyond reasonable doubt an offence has been committed.
43. The Tribunal then considered the financial penalty in the sum of £11,000. The Tribunal has considered the Council's policy and finds the penalty has been applied in accordance with it. There is no flexibility within the policy for the Council to impose anything other than a minimum penalty of £10,000 for the failure to obtain a licence. The policy thereafter allows for an additional penalty that can be moderated to reflect a person's conduct.
44. Here, the Tribunal noted the Council had imposed an additional penalty of £1000 from using its Impact Scoring Matrix. It scored Mrs Garrett low for severity of harm, number of properties owned or managed, no previous

enforcement history and deterrence and prevention. It scored high for the removal of financial incentive. Here it said a moderate income had been received. The Tribunal was not given any information regarding the level of income received, but noted that even had this been low, it would not have affected the level of penalty given. The score from the matrix brought the additional penalty within the minimum sum of £1000.

45. The Tribunal noted the comments made by Mrs Garrett regarding the financial hardship she would suffer, were the penalty to be confirmed. However, Mrs Garrett did not provide the Tribunal with any information regarding her financial circumstances to support this.
46. The Tribunal noted the Council had been involved with Mrs Garrett for a period of almost 2 years. During that time she had continued to require a licence even when saying the number of tenants had or would reduce. Whenever the Council had visited the Property the number of tenants had always brought the Property within the licensing requirements. Mrs Garrett knew a licence was required for the Property but never applied for one.
47. The Tribunal confirms the penalty of £11,000.

Costs

48. There was no application by either party for costs arising from the proceedings before the Tribunal. Accordingly no order for costs is made.

J Oliver
Tribunal Judge
10th September 2020