FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/HNA/2021/0023**
Type of hearing	**:**	**V:CVP – Video Hearing Services**
Property	**:**	**1 Turneville Road, London W14 9PS**
Applicant	**:**	**Mr Amal Abeyawardene**
Representative	**:**	**Mr Barry Cawsey of Counsel**
Respondent	**:**	**London Borough of Hammersmith & Fulham**
Representative	**:**	**Mr Armel Collard, in-house Public Protection and Safety Officer**
Type of Application	**:**	**Appeal against a financial penalty – Section 249A of, and Schedule 13A to, the Housing Act 2004**
Tribunal Members	**:**	**Judge P Korn** **Mr S Mason FRICS**
Date of Hearing	**:**	**9th November 2021**
Date of Decision	**:**	**2nd December 2021**

DECISION

Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V:CVP** VHS. A face-to-face hearing was not held because it was not practicable in the circumstances of the ongoing pandemic and all issues could be determined in a remote hearing. The documents to which we have been referred are in a series of electronic bundles, the contents of which we have noted. The decision made is set out below under the heading "Decision of the tribunal".

Decision of the tribunal

The financial penalty imposed on the Applicant is confirmed at £15,000.

Introduction

1. The Applicant has appealed against a financial penalty of £15,000 imposed on him by the Respondent under section 249A of the Housing Act 2004 ("**the 2004 Act**").

2. The financial penalty was imposed for a failure to license a House in Multiple Occupation ("**HMO**") in breach of section 72(1) of the 2004 Act.

3. Both parties have made lengthy written submissions. The summaries of their respective cases below only highlight those points considered to be the most salient ones.

Applicant's case

4. In written submissions the Applicant states that he has a complete defence under section 72(4) of the 2004 Act as he had applied for an HMO licence prior to the date of the alleged commission of the offence. He states that the Respondent asserts in its final notice to impose a financial penalty that the Property was an unlicensed HMO between 4th September and 18th November 2020 and that he applied for a licence on 3rd September 2020. The Applicant makes various points in support of this contention which will be referred to in the section below headed "Tribunal's analysis" just so as to avoid repetition.

5. The Applicant also states that when attending the Property on 4th September 2020 the Respondent's officers were allowed unhindered access to all areas and to speak to the tenants in private and then they had a meeting with him. He explained to the Respondent's officers that he had already begun the HMO licence application, and on being asked by him for advice regarding works that needed to be carried out they made certain suggestions.

6. In relation to the HMO application process itself, the Applicant states that it is not a transparent process as it is exclusively online and therefore it is not possible to see the document as a whole during the process of completing it. Also, the form seems to anticipate that people might already be in occupation and at no stage does it suggest that a landlord might be subject to a financial penalty if during the application process the premises are being operated as an HMO. He also expresses the view that there is nothing in the 2004 Act to indicate that an application has only been "duly made" for the purposes of section 72(4) when the fee has been paid. He then goes on to state that he was only able to complete the application on 18th November 2020.

7. Specifically on the issue of delays in the application process, the Applicant states that there were discussions with the Respondent's staff to gain their insight and expertise during the application process, as a result of which he carried out certain works. Progress in carrying out those works was slower than it might otherwise have been as the works were being carried out in the autumn and winter months and the pandemic had become more virulent.

8. At the hearing, Mr Cawsey said that the Applicant's licence application was in continuous and uninterrupted progress between 4th September and 18th November 2020. The Applicant's position was that this meant that he had a complete defence under section 72(4), but in the alternative the work done in relation to the licence application should be treated as a mitigating factor which should reduce the amount of the fine.

9. Also at the hearing the quantum of the fine was challenged on the ground that the Respondent's enforcement policy was felt to be irrational. Mr Cawsey noted that the setting of the fine under the enforcement policy involved a two-stage process to establish first the level of seriousness of the offence and then the level of severity. He said that the level of seriousness was not based on the degree of anticipated harm but instead was based simply on the number of occupiers within the relevant premises. In relation to the level of severity, the minimum score for each sub-category was "1", not zero, and this meant that – where the level of seriousness was in Band 3 – even if the landlord was as blameless as it was possible to be in all sub-categories that landlord would still score "6" and would therefore still be subject to a fine of £12,500 which seemed excessive in the circumstances. The policy was therefore flawed.

10. By way of general mitigation, Mr Cawsey said that the Applicant only had one property, he experienced access problems with the online HMO licence application process, he facilitated the Respondent's inspection of the Property on 4th September 2020, no concerns have been expressed by his then tenants, he was offered an extension to 5th October 2020 which makes the period of any offence shorter, and he

believed that he needed to carry out works to make the Property fit for an HMO licence before completing his application for the licence.

Respondent's case

11. The Respondent states that the financial penalty was imposed for failure to license an HMO in breach of section 72(1) of the 2004 Act and that the offence was committed continuously over a long period which, at least, includes all of the dates between 15th June 2020 and 17th November 2020.

12. The Respondent's evidence includes documentary evidence showing that the Applicant owned the Property at the relevant time and includes witness evidence in relation to the occupation of the Property.

13. The Respondent states that, whilst the final notice specifically asserts that the Property was an unlicensed HMO between 4th September and 18th November 2020, it was an unlicensed HMO prior to 4th September 2020 and the Respondent emphasised this point when imposing the financial penalty. In particular, in its Statement of Reasons it twice stated that it is *"reasonable for us to assume that the premises was a HMO for some time prior to 4th September 2020"*.

14. The Respondent further states that when its officers inspected the Property on 4th September 2020 they found it to be occupied by six persons, specifically: Sarah Menzel & David Walters (a couple), Paul Leitao & Ilona Lazareva (another couple), Antonio Tiraldo (an individual) and Volkan Ceylan (an individual). The officers spoke to these people and noted their names and the dates that they moved into the Property. In every case these tenants told the Respondent's officers that they moved into the Property on a date prior to 3rd September 2020. Sarah Menzel and David Walters told them that they moved into the Property in early August 2020, Paul Leitao and Ilona Lazareva said that they moved into the Property in March 2019, Antonio Tiraldo said that he had moved into the Property in June 2019 and Volkan Ceylan said that he had moved into the Property in July 2020.

15. In addition, in the Applicant's application for an HMO licence he gave the names of his tenants and the dates that their tenancies began. The application states that Sarah Menzel and David Walters' tenancy began on 17th July 2020, that Paul Leitao and Ilona Lazareva's tenancy began on 15th June 2020, that Antonio Tiraldo's tenancy began on 29th June 2019 and that Volkan Ceylan's tenancy began on 5th July 2020. Whilst there are some discrepancies between the dates that the tenants gave to the Respondent and the dates that the Applicant gave in the HMO licence application, even on the interpretation most favourable to the Applicant's case and even on the assumption that no other persons were living at the Property, as a minimum Paul Leitao, Ilona Lazareva and Antonio Tiraldo were all occupying the Property on 15th June 2020,

at which time the Property would have been subject to additional licensing requirements under the Respondent's Additional Licensing Scheme. Therefore, the offence under section 72(1) of the 2004 Act would have been committed from 15th June 2020 and then continuously thereafter, and all six tenants would have been living in the Property by early August 2020.

16. The Respondent accepts that it has no direct evidence that the Property was an HMO prior to 15th June 2020 but invites the tribunal to make a reasonable inference that it was an HMO from an earlier date based on the hearsay evidence referred to in the Respondent's bundle.

17. The Respondent adds that in the course of investigating the question of when the tenants began their occupation it served a formal notice requiring the Applicant to produce the original tenancy agreements for all of his current tenants. It states that he failed to comply with this notice and so committed another offence.

18. The Respondent denies that the Applicant has a valid defence under section 72(4) of the 2004 Act, and at the hearing Mr Collard said that the defence was not available to the Applicant as he did not complete the HMO licence application before 4th September 2020. Mr Collard referred the tribunal to a previous First-tier Tribunal decision on this point in the case of *Mrs Elanga Longane and others v Mr Frank Mukahanana and another (LON/00AH/HMG/2018/0002)*.

19. As regards any advice given to the Applicant about works needing to be carried out, at the hearing Mr Collard drew the tribunal's attention to an email from him to the Applicant dated 24th September 2020 making it clear that he needed to submit his HMO licence application.

20. In relation to the Applicant's challenge to the Respondent's enforcement policy, Mr Collard submitted that any such challenge needed to be dealt with by way of judicial review and was not a matter for the tribunal. In any event, he denied that the policy was irrational.

Cross-examination of Applicant

21. The Applicant accepted in cross-examination that the Property was an unlicensed HMO as from 4th September 2020 (subject to any statutory defence) and he said that it was converted to an HMO in the middle of 2020. Mr Collard put it to him that it had been occupied as an HMO since the middle of 2019, but the Applicant said that it was not used as an HMO then as it was principally used by members of his own family as a single residence.

22. The Applicant accepted that a Mr Leiter was living at the Property with his partner in March 2019 and that a Mr Tirado had moved in later.

The Applicant said that Mr Tirado's occupation began much later but Mr Collard referred to an inspection note that he had made on 4th September 2020 which stated that Mr Tirado had been in the Property since June 2019, and this was consistent with information supplied in the Applicant's own HMO licence application. Mr Collard put it to him that therefore the Property had been an unlicensed HMO since June 2019, to which the Applicant replied that Mr Tirado had only signed a tenancy agreement in 2020 and that prior to the signing of the tenancy agreement Mr Tirado had been living at the Property rent-free as a friend.

23. The Applicant was also asked about other tenants moving in and appeared to concede that other tenants moved in during May/June 2020 and also during August 2020. He accepted that Mr Collard had first come to inspect the Property on 2nd September 2020 and that he (the Applicant) then began his HMO licence application on 3rd September 2020, but he did not fully accept that his decision to make the application was prompted by that visit. He also accepted that there was only one set of cooking facilities for all occupiers and that there was no full fire alarm system.

24. The Applicant accepted that Mr Collard had handed him notices at the meeting on 4th September 2020 requiring him to provide documents by a certain date and that he did not provide those documents. However, he said that he did not consider the documents to have been necessary. As regards the email from Mr Collard to the Applicant dated 24th September 2020, the Applicant said that he had not received it, but Mr Collard said that this was a new suggestion which he did not regard as credible.

25. In relation to the HMO application process, the Applicant said that the online system froze at one point and that he spoke to someone at the Council about this.

Cross-examination of Mr Collard

26. Mr Collard accepted that none of the tenants had complained about the Property, and he agreed that it was in good condition.

27. As regards the risk of harm arising out of the failure to license the Property, Mr Collard said that the risk was higher than for an ordinary domestic property, there being a greater risk of fire and of stress arising from too many separate occupiers sharing the facilities.

28. Mr Collard accepted that the process for setting the level of penalty did not include a separate stage where proportionality was considered.

Tribunal's analysis

29. Under Schedule 13A to the 2004 Act, this appeal is a re-hearing of the Respondent's decision but may be determined having regard to matters of which the Respondent was unaware.

Statutory defence under section 72(4)

30. The Applicant submits that he has a complete defence under section 72(4) of the 2004 Act, i.e. that on and from 4th September 2020 *"an application for a [HMO] licence had been duly made"*.

31. He argues that the clear objective of section 72(4) is to ensure that the period from when an application for an HMO licence commences up until it is completed the applicant will not be liable to pay a fine provided that the process of applying for a licence is continuing. He adds that the use of the past perfect tense in section 72(4) is to show that the 'application had to be duly made' before 'the relevant time', in this case the relevant time being between 4th September and 18th November 2020 (which is the relevant period asserted by the Respondent in its Final Notice). In his submission his application 'had been duly made' on 3rd September (i.e. before the relevant time in question). If the 2004 Act had meant that the application needed to be finished before the relevant time in order for the statutory defence to be available then it would have used a word such as 'completed', 'finished' or 'concluded'. He states that having made his HMO application on 3rd September 2020 he continued with the process of his application on a continuing basis until it was completed on 18th November 2020.

32. The Applicant also notes that under section 72(8) of the 2004 Act for the purposes of section 72(4) an application is 'effective' at a particular time if at that time it has not been withdrawn, and asserts that his application remained 'effective' under section 72(8) because he had not withdrawn it.

33. We do not accept the Applicant's arguments on section 72(4) or on section 72(8). On the facts of this case it is clear that the application had not been completed and the fee had not been paid on 4th September 2020 or indeed until 18th November 2020, nearly 2½ months later. The Applicant claims that the application was in continuous progress between 4th September and 18th November 2020 but the facts do not support this claim, and in any event there is a difference between a person being in the course of making an application and the application having *"been duly made"*. The Applicant tries to make a distinction between an application being "made" and an application being "completed", seemingly arguing that an application can be said to have been duly "made" even if it has only just been started as long as it is continuing. As already stated, we are not persuaded that the application was continuing to be made in any active sense for the entire

2½ months between 4th September and 18th November 2020, but in any event the Applicant's reading of the word "made" is very forced and in our view is clearly wrong. If Parliament had wanted to make it a complete defence merely to begin an application it would have used a word such as "begun" or "commenced" and if it had wanted to make it a complete defence to begin and continue with the making of an application but not complete it then again section 72(4) would have been worded accordingly.

34. As regards the Applicant's submission that he was prevented from completing the claim because of problems with the online system, whilst we accept that there could have been some problems it is not credible that the problems persisted for 2½ months in the absence of any proper supporting evidence. As to whether the Applicant was somehow misled by Mr Collard into not completing the licence application because of comments made by Mr Collard as to works that needed to be carried out, this assertion is not remotely credible and the oral and written evidence indicates firmly that the Applicant had no proper reason to believe that he should refrain from applying – and completing the application – for a licence. We also do not accept that the Applicant's other criticisms of the Respondent's online application process have any particular merit, and in particular we do not accept that they justify his lengthy delay in obtaining an HMO licence.

35. Specifically as regards section 72(8), the question of whether an application has been withdrawn is meaningless in relation to an application which has not "been duly made".

36. In conclusion, therefore, we do not accept that the Applicant has a valid defence under section 72(4) of the 2004 Act.

Length of commission of offence

37. Subject to the section 72(4) defence, which we have rejected, the Applicant seems to accept that the offence under section 72(1) was being committed at least from 4th September 2020. However, on the basis of the evidence before us we are satisfied beyond reasonable doubt that the offence was in fact being committed since at least 15th June 2020. The Respondent has provided credible, strong evidence on this point based in large part on information obtained from tenants. The Applicant's position is not persuasive and is also somewhat undermined by the information contained in his HMO licence application and by his failure to provide the documentation requested by the Respondent, which failure would seem to constitute another offence (albeit that this other offence is not the direct subject matter of these proceedings). The Applicant's stated reason for not supplying this information, that he did not consider the documents to have been necessary, is not a justification and does not reflect well on him.

38. As to whether the section 72(1) offence was being committed even earlier than 15th June 2020, there is some evidence to suggest that it was but we do not consider this point to have been proved beyond reasonable doubt.

39. Regarding the submission made in mitigation on the Applicant's behalf that he was offered an extension for compliance and therefore that the period of the offence was shorter, this in our view is actually an aggravating factor – not a mitigating factor – as he was given a further chance to comply and yet he still failed to do so.

The level of penalty and the Respondent's enforcement policy

40. In relation to the Respondent's enforcement policy, the logical starting point – as referred to by the Respondent in submissions – is the decision of the Upper Tribunal in *Waltham Forest LBC v Marshall and Waltham Forest LBC v Ustek (2020) UKUT 35*. In that case, Judge Cooke noted that the Secretary of State published guidance on enforcement in 2016 (re-issued in 2018) and that this guidance states (amongst other things) that local housing authorities should develop and document their own policy on determining the appropriate level of civil penalty in a particular case. Judge Cooke went on to note that the First-tier Tribunal (FTT) is not the place to challenge the local housing authority's policy itself. Judge Cooke also added that the local authority is an elected body and its decisions deserve respect for that reason. Whilst the FTT can depart from the local housing authority's policy it must start with the policy and only depart from it if persuaded that it should do so, the burden being on the appellant to persuade the FTT that it should.

41. In the present case, the Applicant is in part seeking to use these proceedings to challenge the validity of the Respondent's policy itself. In our view the FTT is not the appropriate forum at which to conduct what would amount to a judicial review of the policy itself. If a person affected by a policy developed by a public body such as a local authority wishes to challenge the reasonableness of that policy, the appropriate remedy is to seek judicial review of that policy in the correct forum on the *Wednesbury* basis that no reasonable equivalent body would have formulated such a policy.

42. There is, though, a role for the FTT to play if it considers that a local housing authority has misapplied its own policy (for example by not giving sufficient weight to relevant factors or taking into account irrelevant factors or misinterpreting the facts of the case) or if the policy seems incomprehensible in whole or in part. In the latter case, intervention would be appropriate because it could not be said with any certainty whether or not the policy was in fact being applied. In addition, as the hearing before the FTT is expressly stated to be a re-hearing which may be determined having regard to matters of which

the local housing authority was unaware, it is open to the FTT to reach a conclusion which is different from that of the local housing authority due to the availability of new factual information. Judge Cooke does also state that it is possible in appropriate circumstances for the FTT to depart from the local housing authority's policy, but (a) on the facts of, and/or because of the FTT's reasoning in, *Waltham Forest* it was not right to do so in that case, (b) no specific guidance was given in *Waltham Forest* as to when the FTT could depart from the local housing authority's policy, save possibly where the FTT considered that the policy was being applied too rigidly and (c) Judge Cooke emphasised that the FTT must start with the policy and only depart from it if persuaded that it should do so, the burden being on the appellant to persuade the FTT that it should.

43. Under the Respondent's Private Sector Housing Enforcement Policy, a copy of which is in the hearing bundle, Section 4 of Appendix 2 sets out details of the policy in relation to the imposition of civil penalties under section 249A of the 2004 Act. The Enforcement Policy sets out a two-step approach. Step 1 is to determine the **seriousness** of the offence, and the relevant officer is required to decide which 'seriousness band' the offence sits within according to the chart which forms part of the Enforcement Policy.

44. Step 2 is then to determine the level of **severity** of the offence, which is to be determined by following the process in Appendix 3 of the Enforcement Policy which allocates points for each of 6 categories, namely: (a) culpability, (b) offence history, (c) harm to tenants, (d) mitigating factors, (e) proportionality and (f) financial impact on landlord.

45. Turning first to the assessment of the seriousness of the offence, the Respondent categorised this as being within Band 3 on the chart. A failure to obtain an HMO licence in breach of section 72 of the 2004 Act falls within Band 3 on the chart if 6 or 7 persons reside at the HMO at the time of the offence. As noted above, the evidence in our view clearly indicates that there were 6 people residing in the Property on 4th September 2020 and indeed this point does not seem to be disputed by the Applicant. Furthermore, again as noted above, we are satisfied beyond reasonable doubt that the offence was being committed at least from 15th June 2020 and we also accept the Respondent's evidence that at least 6 people were residing in the Property since at least early August 2020. In conclusion, therefore, our finding is that there were 6 people residing at the Property at the time of the offence and therefore that Band 3 was the correct band to use.

46. Turning next to the assessment of the severity of the offence, as stated above there are 6 categories that the Enforcement Policy requires the assessor to consider. In relation to 'culpability', we agree with the Respondent that the facts of the case indicate that there was a

deliberate failure to act by a sole person who was or should have been aware of his legal obligations. The Applicant should have applied for an HMO licence well before 3rd September 2020, and even when warned by the Respondent about the need for an HMO licence he pursued the application in an extremely casual and fitful manner despite being aware that he was committing a criminal offence in not having a licence. His claim that he was led to believe that he could not make a full licence application until he had carried out various works is not credible in our view. The appropriate score for culpability in our view is therefore "4".

47. In relation to 'offence history', there is no previous history of offending relating to housing or landlord and tenant law and therefore the appropriate score is "1". In relation to 'harm to tenants', we agree with the Respondent that there will have been some harm by virtue of the inconvenience and stress of sharing a property with so many others with limited facilities. The appropriate score for harm to tenants in our view is "2" as this score applies to circumstances where the effect on occupiers is primarily inconvenience, stress or anxiety.

48. In relation to 'mitigating factors', the only partially relevant mitigation offered by the Applicant is that he co-operated to some extent with the Respondent by allowing access and by discussing the issues with the Respondent's officers at the Property. However, the mitigation is very limited because he then failed to take proper steps to obtain a licence even when warned by the Respondent that he was committing a criminal offence and he also failed to provide written information requested by the Respondent, thereby committing another offence. We therefore agree with the Respondent that the appropriate score for mitigating factors is "3" as this score is for where there is a little mitigation.

49. As regards 'proportionality', this category relates to how many properties the offender has. There is very little evidence before us on this point but it has been asserted by the Applicant that he only has one rented property. On the basis of the thin evidence before us we accept his contention and therefore the appropriate score for proportionality is "1" which applies where the subject only has one rented property.

50. Finally, as regards 'financial impact on landlord' it seems to be common ground between the parties that there was very little evidence before the tribunal on this point. If evidence of significant financial impact on the landlord had in fact existed it would have been open to the Applicant to provide that evidence and therefore it is reasonable to infer that there is no such evidence. A score of "3" for financial impact equates to 'some' impact and is described as the default score in the absence of evidence to the contrary. In the circumstances we consider it to be the appropriate score.

51. Adding the scores together gives an aggregate score of "14", which places the severity of the offence in the "Medium" category. The financial penalty under the Enforcement Policy for an offence which is in Band 3 for seriousness and is of "Medium" severity is £15,000, which is the same amount as the penalty levied by the Respondent.

Are there grounds for departing from the Respondent's enforcement policy?

52. We agree with the Respondent that on the facts of the case a penalty of £15,000 is justifiable and appropriate on applying the Respondent's Enforcement Policy. Also, as noted above, it is not for the First-tier Tribunal to conduct a judicial review of the Respondent's policy. But are there any other grounds for not applying the Enforcement Policy or for not doing so rigidly (if indeed the application of the Enforcement Policy can be said to have been too 'rigid')?

53. In relation to the above question, one possible approach is to argue that a particular application of a local housing authority's policy defeats the stated purpose of that policy. However, in this case the Applicant has not sought in any meaningful sense to identify the purpose, let alone to argue that the purpose has not been satisfied in this case. Furthermore, there is nothing in the stated purpose to suggest to us that such purpose would be frustrated by reaching the conclusion which was reached by the Respondent in this case.

54. The Applicant has sought to argue that the level of penalty is disproportionate in a general sense, but this is just an assertion. Indeed, proportionality is one of the factors that the Respondent was obliged to – and did – consider when looking at severity, but proportionality under the Respondent's Enforcement Policy has been given a very limited and specific meaning. There is no scope within the Enforcement Policy to consider proportionality in its widest sense as a separate exercise, save for a general comment in the introductory sections of the Enforcement Policy, and nor is it clear what criteria one would use to assess that general type of proportionality. In any event we are not persuaded that the Respondent's approach was disproportionate on the facts of the case.

55. One point which we do consider noteworthy is that a failure to obtain an HMO licence in breach of section 72 of the 2004 Act will fall into Band 3 simply by virtue of there being 6 or 7 residents and that this will necessarily lead to a minimum penalty of £12,500. People will have different views as to whether level of occupancy should be the sole criterion when determining what Band an offence should be placed in, but the Enforcement Policy will have been debated at length and then formally adopted, and again any challenge to the fairness of the Enforcement Policy would need to be by way of an application for judicial review and not by way of an appeal to the First-tier Tribunal under Schedule 13A to the 2004 Act. In any event, we are not

persuaded that using the number of residents as the first stage of the process is irrational; there are other possible approaches for which good arguments could be made, but it is clear that the number of residents is relevant to the risk of harm where an HMO licence has not been obtained. There may be serious non-compliance with housing standards which have not come to the attention of the local housing authority because no licence application has been made, and the level of occupation will increase the risk of any harm arising out of such non-compliance.

56. In conclusion, we do not consider that there is any proper basis in this case to depart from the Respondent's enforcement policy.

57. Pursuant to paragraph 10(4) of Schedule 13A to the 2004 Act we therefore hereby confirm the final notice, thereby retaining the original financial penalty of £15,000.

Cost applications

58. There have been no cost applications.

Name: Judge P Korn **Date:** 2nd December 2021

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.

Appendix

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 … but is not so licensed.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time … an application for a licence had been duly made in respect of the house under section 63, and that … application was still effective … .

(8) For the purposes of subsection (4) a … application is "effective" at a particular time if at that time it has not been withdrawn …

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.

SCHEDULE 13A

FINANCIAL PENALTIES UNDER SECTION 249A

Appeals

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

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.

(3) An appeal under this paragraph – (a) is to be a re-hearing of the local 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.