FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/43UE/HNA/2021/0016** **Remote VFH. VIDEO**
Property	**:**	**1 Royston Close Crawley West Sussex RH10 8TN**
Appellant	**:**	**Gatwick & Crawley Rooms Ltd (1)** **Carolyne Hunt (2)**
Representative	**:**	**Ms K Richmond of Counsel**
Respondent	**:**	**Crawley Borough Council**
Representative	**:**	**Mr D Underwood of Counsel**
Type of Application	**:**	**Appeal against financial penalty**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mr C Davies FRICS** **Mr T Sennett MA FCIEH**
Date of video hearing	**:**	**06 December 2021** **The Tribunal members met in chambers on 04 January 2022**
Date of Decision	**:**	**06 January 2022**

DECISION

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The Tribunal varies the Financial Penalty imposed by the Respondent on the Appellants as follows:
The sum of £5,000 is to be paid by the First Appellant Gatwick & Crawley Rooms Limited Ltd.
The sum of £15,000 is to be paid by the Second Appellant Carolyne Hunt personally.
All other provisions of the penalty notice are unaltered and remain in effect.

REASONS

1 The First Appellant is the leasehold owner of the property situated and known as 1 Royston Close Crawley West Sussex RH10 8TN (the property). The Second Appellant, Carolyne Hunt, was at the material time the sole Director of the First Appellant company and the person named at Companies House as having significant control of the company. The Appellants filed an application with the Tribunal on 08 June 2021 appealing against the financial penalty notice served on them by the Respondent under s 249A Housing Act 2004 following the Appellants' failure to comply with s72(1) of the same Act (a person commits an offence if (s)he is a person having control of or managing an HMO which is required to be licensed under Part 2 of the Act but is not so licensed).

2 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered that the matter was capable of determination without a physical inspection of the property. The Tribunal had the benefit of an exterior view of the property from Google maps and was assisted by an historic floor plan of the premises supplied by one of the Respondent's witnesses.

3 The hearing took place by way of a VFH video hearing (to which neither party had objected) on 06 December 2021 at which the Appellants were represented by Ms K Richmond of Counsel. The Respondent was represented by Mr D Underwood of Counsel. An earlier video hearing on 04 November 2021 had been abandoned before any evidence had been heard on account of technical difficulties. The Tribunal met in chambers on 04 January 2022 to discuss its decision.

4 An application to admit further documents had been made by the Respondent three days before the reconvened oral hearing. The additional documents comprised an exchange of correspondence between the parties' representatives and an historic floor plan of the property. The Tribunal had agreed to allow these documents on the basis that they contained only a discussion of the applicable law and proposed timetable for the hearing none of which would affect the evidence in the case, and that the plan would be helpful to the Tribunal who had not been able to make a physical inspection the property.

5 An electronic hearing bundle comprising 499 pages had been supplied to and read by the Tribunal; pages from that bundle are referred to below.

6 Both Counsel provided the Tribunal with written closing submissions following the end of the oral hearing and these were read and taken into account by the Tribunal in making its decision.

7 The Second Appellant gave evidence on behalf of herself and the First Appellant. Mr Modder, an employee of the Respondent gave evidence on their behalf. Mr Kouratos and Mr Chinalia, former tenants, also gave evidence for the Respondent as did Mr S Patel and Mr M Patel, the freehold owner and his son.

8 It is, understood that the property is a modern detached four-bedroom property with garage and garden situated in a residential area of Crawley. As constructed the property had four bedrooms (one en suite) and a bathroom on the upper floor with a kitchen, cloakroom, small study and a through lounge/dining area on the ground floor. When the Patel family (who still own the freehold) used the property as a family home the lounge/dining room were arranged so that a person could pass from one to the other through a square archway. In her evidence, the Second Appellant said that her workmen had partitioned off the dining room area thus creating two separate rooms by blocking off the archway.

9 The Respondent authority had been unable to carry out a full inspection of the property but had observed when they visited that a number of fire protection measures had been lacking. These missing measures would be an essential requirement where a property is classified as an HMO and their omission put the residents' lives at risk although it was accepted that no harm had come to any residents in this case.

10 The Appellants hold the property under a 'let-to-let' lease agreement (Exhibit SMP1) granted by Mr Patel senior and his wife in return for which Mr & Mrs Patel were to receive a guaranteed rental of £1,650 per month with an annual 3% increase. Mr & Mrs Patel had nothing to do with the letting or management of the property.

11 As constructed the property had four bedrooms. At the material time, and in part due to unauthorised alterations to the property made by the Appellants, the property had at least six and possibly seven lettable rooms each of which had lockable doors and which were let out on short term tenancy agreements. There was only one small kitchen and inadequate bathroom facilities for the potential number of occupants. The tenants frequently complained about faults in the electricity supply (page 410) and broken locks (page 416).

12 In October 2018 a change in the Regulations applicable to HMO's brought the property within the scope of a licensable HMO. The Respondent had written to the Appellants to advise them of this and the Second Appellant said she had forwarded the letter and accompanying information to Mr & Mrs Patel. This demonstrates that as from at least that date she was aware of the fact that the property should have been licenced and her assertion to the contrary made in evidence before the Tribunal is patently untrue.

13 Following an investigation in June 2020 the Respondent became aware that the property was being used as an unlicensed HMO.

14 The Appellants do not now dispute that the property is subject to the licensing provisions in the Respondent borough and that it did not have a licence at the relevant time. This establishes beyond reasonable doubt that an offence had been committed under s72 Housing Act 2004. The grounds of appeal as stated in the application to the Tribunal and set out below are, in summary, that the Respondent had not discharged the burden of proof in relation to the alleged offence, the amount of the penalty imposed and the assertion that the Appellants had a reasonable excuse defence.

15 The appeal hearing before the Tribunal is a re-hearing of the Respondent's decision to impose the penalty. For that reason, the Tribunal commenced the proceedings by hearing evidence from Mr Modder who is employed by the Respondent as Private Sector Housing Manager.

16 Mr Modder annexed to his witness statement a bundle of documents (Exhibit CM1) which included the investigation file, details of interviews with tenants residing at the property, copies of tenancy agreements and details of an interview with the property owner and with the second Appellant.

17 The Property was let by its owners Mr & Mrs Patel through a "Contract to Rent" to a company called Gatwick and Crawley Rooms Limited Ltd, company number 10330275 (the First Applicant) (**CM1 pp.63–66**). At the time of the investigation, Carolyne Hunt, the Second Appellant, was a director of the First Appellant (**CM1 p.75**). Companies House records show that she resigned as a director on 20 June 2021 but she remains registered as the person having significant control of the company.

18 The investigation carried out by Mr Modder's team and verified by him demonstrated that between 19 October 2019 and 28 February 2020 the property was occupied by 5 or more persons forming 5 separate households and sharing basic amenities and was therefore a house in multiple occupation (HMO) within the meaning of section 254(2) of the Housing Act 2004 (the Act). The Property ought therefore to have been licensed under Part 2 of the Act (sections 55(2)(a) and 61(1), and the Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, but there was no record of it having a licence, having a temporary exemption from licencing or having applied for a licence.

19 Having reviewed the evidence Mr Modder was satisfied that the First Appellant had committed an offence contrary to section 72(1) of the Act and that the Company's offence had been committed with the "consent or connivance of, or to be attributable to any neglect" of Carolyne Hunt, and so was also satisfied that she had committed the offence pursuant to s.251 of the Act. The Tribunal agrees with this analysis.

20 Mr Modder decided to obtain approval for the case to be dealt with by a civil penalty rather than by prosecution, and made a report to the relevant officer (**CM1 pp. 113-116**) who having regard to the government guidelines and the Council's policy in respect of

financial penalties under the Act (**CM1 pp.117–122)** made the decision to issue a section 249A Housing Act 2004 notice of intent to impose a financial penalty against both Appellants.

21 Notices were served on both Appellants on 20 December 2020 (**CM1 pp.123–124** and **CM1 pp.125–126**). A document setting out the Respondent's reasons for the decision was attached to each notice (**CM1 pp.127–131**).

22 Following consideration of the Appellants' responses (CM1 132-138) made through their solicitor, the Respondent decided to serve a Final Notice under section 249A/Schedule 13A paragraphs 5–8 of the Act on both Appellants imposing a financial penalty of £10,000 on each of them for the offence of operating and/or managing an HMO between 19 October 2019 and 30 June 2020, contrary to section 72 of the Act (**pp.139–142**, and **pp.151-154**). Each notice included an appendix setting out the Respondent's reasons for their decision (**CM1 pp.163–170**).

23 In accordance with 3.2 of the Respondent's Civil Penalties policy (**CM1 p.119**), a number of factors were taken into account by them in setting the amount of the financial penalty. Those factors are:

(a) Severity of the offence

(b) Culpability and track record of the person

(c) Whether any harm had been caused to any occupants

(d) Punishment of the offender and deterrent from repeating the offence

(e) Deterring others from committing similar offences

(f) Removing any financial benefit the offender may have obtained as a result of the offence

(g) The information known about the financial position of the Applicants.

24 The Respondent's policy on Civil Penalties (**CM1 pp.117–122**) considers that the failure to licence a mandatory HMO by a person or body which controls 6 or more properties is a "severe" matter representing a minimum Band 5 offence in the Respondent's Scoring Matrix and attracting a civil penalty with an initial starting point of £20,000 (**CM1 p.121**). As the First Appellant was known to control 6 or more properties, the offence fell into this category of offence. At no point has either Appellant challenged the Respondent's conclusion that she/it had control of more than 6 properties.

25 The following factors were listed by the Respondent as having been taken into account by them when considering the severity of the penalty to be imposed when setting the level of civil penalty at £20,000:

(a) The condition of the property at the time of inspection in November 2019.

(b) Evidence that the person was (or should have been) familiar with the need to obtain a licence

(c) Whether there was any previous history of non-compliance.

26 The Appellants objected to the inclusion of (c) being listed as an aggravating factor but the Tribunal accepts the Respondent's explanation that this item (to which the answer is 'none') was listed in order to show that it had been not been omitted from the discussion or erroneously overlooked by the decision maker.

27 The condition of the property was generally good although some fire protection equipment was missing. As an experienced landlord with a large portfolio of rental property it was considered that Mrs Hunt should have been familiar with the need to obtain a licence. She accepted that she had received a notice from the Respondent in 2018 reminding her of the change in licensing regulations and she accepted that she had an email/text discussion with Mr Patel about the need to licence the property.

28 Mitigating factors which were taken into account in the decision relating to the amount of the penalty were listed as follows:

(a) The presence of some fire safety measures that would have been sufficient to meet CBC HMO standards for a 2 storey HMO prior to October 2018.

(b) There was no evidence of disrepair in the property at the time of inspection in November 2019.

(c) There was no record of any previous formal action being taken against either of the Appellants.

29 The Respondent decided that the aggravating factors and mitigating factors balanced each other out. Since neither Appellant had previously been subject to formal enforcement action and the property was considered to be in reasonable condition at the time of inspection, they decided that an increase of the penalty above the minimum could not be justified in this case.

30 The Respondent had reached the decision to apportion liability evenly between the First and Second Applicants after having regard to the the Court of Appeal decision and subsequent guidance in Norwich CC v Sutton [2021] EWCA Civ 20. The Tribunal agrees that they were entitled to do that.

31 Having reviewed the Respondent's procedures as outlined above the Tribunal is fully satisfied that the procedures were both reasonable in themselves and were properly followed and reasonably applied in the circumstances of the present case.

32 For the Respondent the Tribunal also heard evidence from Mr Kouratos and Mr Chinalia who together occupied a ground floor room at the property. Mr Chinalia had initiated the viewing of the property on behalf of himself and Mr Kouratos and they had together visited the Appellants' premises to sign the tenancy agreement. On that visit they had seen one of the two persons (both named Shannon, one of whom was the Second Appellant's daughter in law) employed by the First Appellant, and had expected to sign the tenancy agreement jointly but were told that it was the company's practice only to have one name on the agreement. Mr Chinalia's name was not therefore on the tenancy agreement but it must have been clear to the First Appellant's employee (and thus imputed to the First Appellant) that the two tenants intended to share the room. If not, there would have been no need for the First Appellant to take copies of Mr Chinalia's identity documents. There is further evidence that the First Appellant knew of Mr Chinalia's residence from his communications with them about repairs (e.g. p416) and the fact that they signed off his wages (he worked for them as a cleaner) as a credit against his rent on the shared room at Royston Close (p395).

33 Mr S Patel, who jointly with his wife owns the freehold of the property, confirmed that he had entered a let-to-let agreement with the Appellants under which the Appellants were permitted to sub-let the property in return for a monthly payment of £1,650 which sum was to be increased annually by 3% (page 428). He said that he did not have time to manage the property himself and his principal concern was to receive income. He had never received the promised 3% increase in rent and had not received any rent at all since June 2020. He was seeking termination of the agreement and repossession of the property but had been unable to gain access because the locks had been changed. He confirmed that when let to the Appellants the property had no locks on the internal doors and had a single living room/dining room partially divided by an archway.

34 The Tribunal notes that Mr S Patel and his co-owner had been co-Respondents in a successful rent repayment order application brought earlier in 2021 by Mr Chinalia and Mr Kouratos. The Tribunal decision which has not been appealed found as a fact that the property was an unlicensed HMO. This Tribunal is entitled to accept that finding.

35 Mr M Patel gave evidence that he had grown up in the house and that it did not have a divided ground floor living room when he had lived there.

36 The Second Appellant, Mrs Carolyne Hunt, gave evidence on behalf of herself and the First Appellant. She had lodged her appeal on nine separate grounds which are discussed below.

37 'Ground 1. The Applicants have had no prior experience of the statutory requirements for HMO licences.'

38 'Ground 2. The Applicants have had no prior experience of Crawley Borough Council's policy with respect to HMO licences.'

39 'Ground 3. Further to the above, the Applicants were of the understanding that because 1 Royston Close was only 2 storeys tall, a HMO licence was not required.'

40 It is convenient to discuss the three above grounds together. Despite the fact that Mrs Hunt sought to convince the Tribunal that she 'did not do licensing' and was ignorant of the law relating to licensing, her knowledge of the subject, as revealed by her evidence to the Tribunal, appeared to be both accurate and extensive. She acknowledged having received from the Respondent a letter informing her of changes which were to be made to the Regulations in 2018 and page 421 reports an email message between Mrs Hunt and Mr M Patel when she discusses the option of obtaining a licence for the property. She said she always tried to keep the number of her occupants down to four which she described as 'a small HMO'. Following the Respondent's inspection of the property in November 2019 Mrs Hunt must have been on notice that the property was potentially a licensable HMO but appears not to have taken any steps to inform herself of the precise requirements nor to apply for a licence or exemption. She is an experienced landlord with many years' experience of letting property and of working in the property profession and admits to having around 20 properties in her current portfolio of rental property. With close family connections in the property business she was ideally placed to inform herself of the necessary requirements for a licenced HMO but either chose not to do so or having that information chose not to remedy the lack of licence at the subject property.

41 'Ground 4. The Applicants had only ever intended and/or authorised a maximum of 4 occupiers in 1 Royston Close. When it became apparent to the Applicants that there was an issue of over-occupation and that the occupiers were acting in breach of their tenancy agreement, the Applicants took steps to rectify the situation by seeking to evict the occupiers which were regrettably inhibited by the various eviction bans in place'.

42 In relation to Ground 4 , Mrs Hunt's evidence that she had only ever intended/ authorised four persons to occupy the property is barely credible when taken together with her admission that her workmen had constructed a dividing wall across the ground floor living room to make an extra room. This extra room would make a total of six lettable rooms in the property, not counting the small study which Mr Kouratos said had also been occupied by a tenant. On inspection the Respondent had found six occupied bedsit rooms (page 101). In any event, Mrs Hunt's knowledge and intentions are not relevant to her defence since the offence is one of strict liability. Mrs Hunt says that after the inspection she took steps to reduce the number of occupants but produced no evidence to substantiate this statement other than saying she locked up vacant rooms from time to time. This latter statement sits uneasily with her assertion that she was unable to take steps to evict tenants because of the Covid lockdown.

43 'Ground 5. Neither of the Applicants have been the subject of any previous enforcement action by CBC in respect of privately rented accommodation.'

44 Ground 5 is not a ground of appeal in itself. It is a mitigating factor which is capable of reducing the severity of any penalty imposed. In this case it is clear that the Appellants prior clean record was taken

into account and this was a factor which influenced the Respondent's decision to impose the minimum financial penalty in compliance with CBC's enforcement policy. The Appellants do not give credit to the Respondent for their decision to proceed by way of a civil remedy rather than a criminal prosecution.

45 'Ground 6. There is no evidence of any correspondence from the Respondent between an inspection of 1 Royston Close which took place in November 2019, the Respondent being in possession of "sufficient evidence of the conduct" on 6th July 2020 and the service of a notice in December 2020.'

46 Similarly, ground 6 does not appear to constitute a valid ground of appeal. It is unclear what the Appellants intend to assert in this ground other than stating that there was a delay between the Respondent's inspection of the property and their subsequent action. This delay, part of which was during the first Covid lockdown, would have given the Appellants time to remedy any problems with the property such as missing fire prevention equipment and to correct the legal status of the property by making an application for a licence. They do not appear to have availed themselves of this opportunity.

47 'Ground 7. The Applicants have confirmed that, were 1 Royston Close to be let in the same manner in the future, a HMO licence would be obtained (if so required).'

48 As above, the pleaded Ground 7 is not a ground of appeal in itself. As above, the Appellants had several months between the Respondent's inspection and service of the notice in which to apply for a licence and similarly, until the final notice with penalty was served but no attempt appears to have been made to make an application during that time. Mrs Hunt insisted that she was unable to make an application as she was not the owner of the property. She also failed to accept that as a landlord in direct receipt of rent her company is 'a person in control' of the property.

49 'Ground 8. The impecunious position of Gatwick and Crawley Rooms Limited Ltd should not be used as a justification for imposing a greater penalty on Carolyne Hunt personally'.

50 The Tribunal does not accept that this ground of appeal has been demonstrated by the Appellants. No evidence of impecuniosity was brought before the Tribunal. The Respondents relied on the decision in Sutton v Norwich CC [2021] EWCA Civ 20 to split the penalty between the two Appellants. The Tribunal accepts the Respondent's reasoning for the division of the penalty between the two Appellants.

51 'Ground 9. Notwithstanding all of the points above, the Applicants have provided suitable and affordable housing for the benefit of the Respondent's tenants throughout a period of many years.'

52 Ground 9 is not a valid ground of appeal and its veracity is disputed by the Respondents. Mr Modder said he had been dealing with housing at the Respondent council for 13 years and had had frequent dealings with Mrs Hunt in her role as part of her husband's estate agency and letting business but had never used her services or premises to house council tenants. The Tribunal notes that the First Appellant company shares both premises and a telephone number

with the First Appellant's husband's estate agency business. Mrs Hunt said that the two businesses were separate and that she merely rented a desk in the office.

53 The Second Appellant, Mrs Hunt, pleads that she is not 'a person managing or in control' of the property within s263 of the Act. She appears to base this assertion on the fact that she leases the property from Mr & Mrs Patel and they were the named Respondents in a recent unappealed Tribunal decision relating to a Rent Repayment Order. Mrs Hunt denied that she was managing property and described herself as a landlord. This is a contradictory statement since a landlord's duty is to manage his/her property. Equally, a landlord may delegate management to a manager who collects rent on his /her behalf which in essence is exactly what Mrs Hunt does for Mr and Mrs Patel as evidenced by numerous rent receipts and bank statements (e.g. pages 353, 363, 368) and in pre-hearing correspondence between the parties (page 12). Mrs Hunt also overlooks the fact that that the wording of the statute is 'a person' not 'the person' i.e. parliament recognises that more than one person may be managing or in control simultaneously (see Urban Lettings (London) Ltd v Haringey LBC [2015] UKUT 104 (LC)).

54 It is averred by her representative in written submissions to the Tribunal that Mrs Hunt was not in control of the day to day running of the business, and thus the offence was not committed with her consent or connivance. If that is so, she must have been in neglect of her duties as a Director and person in significant control of the company as listed at the relevant time at Companies House. This would suggest that she must have left the running of the business to two inexperienced and unqualified staff. Whichever version of these two explanations is correct, either one brings Mrs Hunt directly under the ambit of s251 of the 2004 Act. This part of her defence is not tenable. It was also submitted on her behalf that the Respondent had not discharged the burden of proof with regard to this offence but no evidence was adduced to support this.

55 The Appellants sought to exonerate themselves by pleading the defence of having a reasonable excuse. Since the offence under discussion is one of strict liability the Appellants knowledge of the law or intention that there should be no more than four occupants in the property are not relevant. Mrs Hunt's plea is demolished by her own evidence that she had known the property to be occupied by five people in December 2018. Further, before that date she had erected a partition in the main ground floor room which immediately gave the property 5 or 6 lettable rooms; and it is clear that she received rent from more than four occupants at any one time. She had received notice from the Respondent in 2018 that the property would fall within new licensing provisions and sent this information together with an application for a licence to Mr & Mrs Patel. There would have been no need for her to do this if the property had not been an HMO. Her response to the Respondent's request under s 16 Local Government (Miscellaneous Provisions) Act 1976 appears to be knowingly untrue (page 171). She is also on her own admission an experienced landlord (page 231, 259-262) with, at the time of the

hearing, about 17 properties within Crawley Borough Council being listed for which she or her company was responsible for the payment of council tax (pages 90-91). Her knowledge of the licensing system is clearly set out in her letter to Mr Patel (pages 469-472).

56 In summary, none of the Appellants' grounds of appeal have any substance and her plea of reasonable excuse lacks credibility. It is clear from the evidence before the Tribunal which included the recent unappealed decision made by a differently constituted Tribunal relating to a rent repayment order in favour of the tenants, that the property was at the material time an HMO within the then current selective licensing provisions and should therefore have had a licence which it patently did not have. The Tribunal is entitled to rely on that finding of fact. An offence was therefore committed by the First Appellant and by virtue of s251 of the Act also by the Second Appellant.

57 The Tribunal has examined in some detail the procedures which the Respondent undertook to investigate this matter and ultimately to issue a penalty notice to the Appellants. This procedure was carried out over a lengthy period of time during which the Appellants made no attempt to apply for a licence. As stated above, the Tribunal is entirely satisfied that the Respondent's procedures were carried out properly and fairly and in the face of a blatant and continuous breach of the regulations considers that the Respondent's decision to impose only the minimum financial penalty was generous.

58 In the light of the evidence which emerged at the hearing and in particular the lack of veracity demonstrated by Mrs Hunt the Respondent asked the Tribunal to consider increasing the penalty to be imposed on the Appellants. Further aggravating factors to be taken into consideration are that it emerged in evidence that the offence for which the Appellants were penalised had been continuing since at least November 2018 which is for a much longer period than had initially been realised by the Respondent and secondly, that the Appellants had failed to pay any rent to Mr & Mrs Patel since June 2020.

59 Taking those facts into account and on the basis that the person in control of the First Appellant company was the main instigator of the offence, the Tribunal considers that it would be just and equitable to vary the penalty order so that the main liability falls not on the company but on its then director Mrs Hunt.

60 Mrs Hunt indicated to the Tribunal that her gross income was only £12,500 pa. However, this statement was not supported by accountancy or HMRC documentation. At the time of the offence she was listed as having council tax liability for at least 17 HMO properties within the Crawley Borough Council area and admitted to having further property both in Crawley and in other areas. This suggests that she had control of a significant rental property portfolio from which it is likely that she would have derived an income considerably higher than the below poverty line figure which she claims and would not be prejudicially affected by an increase in the amount of the penalty imposed on her.

61 The Tribunal thus varies the order made by the Respondent and orders a fine of £5,000 to be imposed on the First Appellant and a fine of £15,000 to be imposed on the Second Appellant personally. All other provision of the penalty notice remain extant.

62 The Law:
Section 95 Housing Act 2004

Offences in relation to licensing of houses under this Part

(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2)A person commits an offence if—

(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

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

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

(a)a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b)an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

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

(b)for failing to comply with the condition,

as the case may be.

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

(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

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

(b)if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

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

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

(9) In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Section 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.

Judge F J Silverman as Chairman
06 January 2022.

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rpsouthern@justice.gov.uk.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.