FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AN/HNA/2022/0020.**
Property	:	**223 North End Road, London W14 9NP.**
Applicant	:	**Mr. Michael John Stockford.**
Representative	:	**In person.**
Respondent	:	**London Borough of Hammersmith and Fulham.**
Representative	:	**Name – Ms Carol Thompson – Senior Private Housing Standards Officer.** (Ref:)
Type of application	:	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal	:	**Tribunal Judge Mullin** **Tribunal Member Kershaw**
Date of Hearing	:	**6th October 2022 by CVP**

DECISION

COVID-19 ARRANGEMENTS

- For the tribunal's current procedures, please see the Guidance for Users at: https://www.judiciary.uk/wp-content/uploads/2021/02/Guidance-for-Users-February-2021-final.pdf

- Unless directed otherwise, all communications to the tribunal, including the filing of documents and bundles, should be by **email ONLY**, attaching a letter in Word format. Emails must be sent to London.RAP@justice.gov.uk. The attachment size limit is 36MB. If your attachments are larger than 36MB they must be split over several emails.

- **If a party does not have email, access to the Internet and/or cannot prepare digital documents, they should contact the case officer about alternative arrangements**.

BACKGROUND

(1) The Tribunal received an appeal from the Applicant against a financial penalty made under section 249A of the Housing Act 2004. The applicant appeals against the financial penalty of £7,000 dated 14 March 2022 and has supplied a statement of reasons.

(2) The appeal was heard by way of a re-hearing on 6th October 2022 by CVP. Both parties were represented by counsel. The Tribunal is grateful to both counsel for their assistance and the hearing and the high quality of their written and oral submissions.

DECISION & REASONS

1. As the tribunal informed the parties at the hearing, the financial penalty is cancelled. These reasons supplement and elaborate upon the reasons given orally at the hearing.

2. The tribunal could not be satisfied, to the criminal standard, that the Appellant had committed the offence specified in the notices given regarding the financial penalty.

3. It also considered that there were also deficiencies with the Notice of Intent to serve a financial penalty, the statement of reasons and the Final notice to impose a financial penalty.

4. The statement of reasons is referred to in this decision in the singular because although two statements were given, one along with the notice of intent and one with the final notice, they are in all material respects identical.

5. The Notices identified the relevant offence as being under s.72 of the Housing Act 2004. Firstly, that section creates, 3 separate offences and the notices and statement of reasons do not, at least clearly, specify which offence the Appellant is said to have committed.

6. Secondly, it is with respect unclear when or over what period of time it is said that offence was committed. No dates are set out in the notices.

7. This is unsatisfactory. A person who is being accused of committing a criminal offence as a minimum should be on notice of what precise offence

he is said to have committed, at what time he is said to have committed it and how he is said to have committed it.

8. This tribunal is bound by the decision in *Waltham Forest v Younis* [2019] UKUT 0362 (LC), which we were entirely properly referred to by counsel for the Respondent. In that case the president of the Upper Tribunal found as follows:

"*Those characteristics of the statutory scheme suggest that the reasons given in a notice of intent should be clear enough to enable the recipient to respond, but they also suggest that if those reasons are unclear or ambiguous, Parliament would not have intended that the notice of intent should invariably be treated as a nullity.*" [57]

9. In the tribunal's view, the Upper Tribunal was not saying in that case that the notice of intent will always be valid regardless of its deficiencies. On the contrary, it found that notices of intent could survive those deficiencies in certain cases. In particular, in that case the Upper Tribunal found that the details of the alleged offence were adequately set out (indeed they were supported by lengthy witness statements) and that the Appellant was not prejudiced by the deficiencies in the notice of intent given that he had made full representations and had the right to appeal.

10. The situation in this case is somewhat different. As set out above, the notices and statement of reasons do not set out clearly which precise offence the Appellant is said to have committed, the time he is said to have committed it and how he is said to have committed it. To expect the notices to contain this information as minimum is not an "excessively technical approach to procedural compliance" which the Upper Tribunal cautioned against in *Younis*. In our judgement the reasons were not "clear enough to enable the recipient to respond" and the Appellant was prejudiced in responding to the notice.

11. It is right that the Appellant in this case did make representations. However, those representations, understandably in light of the deficiencies in the notices, did not address what offence was said to have been committed. Instead, they addressed what in the Appellant's view were factual inaccuracies.

12. To add to the confusion, it appears that prior to the service of the notice of intent, the Respondent was writing to the Appellant on the basis that the individual flats which make up the property needed to be licensed under Part 3 of the Housing Act 2004 (see for example the email dated 5th October 2021 and the letter dated 18th October 2021). Failing to licence such a property would be an offence under s.95 of the Housing Act 2004 as opposed to s.72.

13. The statement of reasons, which is predicated on "an" offence having been committed under s.72, begins by saying: "*The Council has information*

that the property consists of 4 flats and our records indicate we have not received a license application for it to be used as such.".

14. The 'it' in that statement must be a reference to the whole of the building and the suggestion is 'a' licence *singular* should have been applied for. So it appears at first blush that the Respondent was now of the view that a single licence was required for the whole building under Part 2 of the Housing Act 2004.

15. However, further down the statement of reasons when considering the quantum of the proposed penalty, it seems that is calculated on the basis that there is a separate sum for each flat. i.e that there were four offences committed, one in relation to each flat.

16. The statement of reasons does not set out why, by the time of the notice of intent, the Respondent now took the view that the whole building (as opposed to the individual flats) required licencing under Part 2 of the Housing Act 2004 as opposed to part 3. Indeed, there is insufficient evidence in this application as to the when the Respondent designated part of its area as subject to additional licensing. Counsel for the Respondent sets out some information in that regard in her skeleton but that is not the same thing as evidence.

17. Even reading the notice of intent and statement of reasons charitably, it is hopelessly unclear as to whether the Respondent took the view that the whole building required a licence or the individual flats required individual licences and whether the Appellant was accused of committing one offence or four offences. It also does not clearly explain why the Respondent had departed from its previous view that the flats required licences under Part 3. It does not explain the basis for the view that either the building as a whole or the individual flats were licensable HMOs or which of the various species of HMOs they were said to be.

18. In this appeal the Respondent's view appears to have crystallised so that now it is suggested that the individual flats, of which the property is comprised, each require an additional licence (see paragraph 35 of the Respondent's skeleton argument).

19. In the tribunal's view this is such a case in which it is appropriate for the tribunal to treat the notice of intent, read alongside the statement of reasons, as a nullity. For all the reasons set out above, it was not clear enough to respond to properly and the Appellant was prejudiced in his ability to respond by that lack of clarity in that all he could do at that stage was raise challenges to the Respondent's factual narrative. Thus, we allow the appeal under ground 2 and cancel the financial penalty.

20. If we are wrong about that we would also have allowed the appeal under ground 1.

21. In order to be satisfied that the Appellant had committed an offence under s.72(1) of the Housing Act 2004 the tribunal would have had to have been

satisfied that the Appellant was a person managing or having control of the premises (within the meaning of s.263 of the Housing Act 2004) and that the premises required a licence at the time the offence is said to have been committed.

22. As set out above it is not possible to pin down from the notices or statement of reasons precisely when the offence(s) are said to have been committed, or over what period.

23. Further, as it is set out above, it is not clear whether the 'premises' for the purpose of the offence(s), an thus what it is alleged the Appellant was said to be managing or in control of, is said to be the building as a whole or the individual flats.

24. In any event, a common thread in terms of meeting the s.263 definition is the receipt (or potential receipt) of rent or other payments.

25. There is no evidence of rent or other payments being received by the Appellant from anyone other than Real Properties Ltd, who the Appellant granted a lease of the building on 1st September 2021 for a rent of £8,150 per calendar month.

26. There is no evidence as to whether that is a 'rack rent' within the meaning of s.263 of the Housing Act 2004.

27. Therefore, the only limb of s.263 the Appellant could potentially be proved to have satisfied is the second part of s.263(1) if he is a person "*who would so receive it [i.e. rack-rent] if the premises were let at a rack-rent*".

28. The statement of reasons, again given a charitable reading, seems to proceed on the basis that the Appellant was committing the offence at the time the notice of intent and the final notice were issued. The tribunal notes the use of the present tense at various times in that statement of reasons, for example:

"I am satisfied that all searches made throughout my investigations that started on the 7th May a street survey followed by database searches of the Councils internal systems and external public records concluded in October 2021 all confirm the flats are occupied and you <u>are</u> the named person responsible for collecting the rent and for managing the tenant(s)"

"Premises <u>is</u> solely managed by Michael John Stockford and expected to know the law and to make relevant checks and enquires as to the need to license and apply for a licenses without delay."

29. It would appear therefore that the Respondent proceeded on the basis that the offence was being committed at the time of the notices.

30. The Tribunal could not be satisfied to the criminal standard that an offence was committed on that basis because as at the date of the notices the Appellant had leased the property to Real Properties ltd. He would

therefore not have been entitled to receive the rent from any of those subleases; rack rent or otherwise.

31. To the extent the tribunal is invited to consider that an offence was being committed at an earlier undefined date, we decline to do so. It is not for the tribunal to try and cobble together facts across a range of disparate documents that amount to an offence.

32. Even if we were to engage in such an exercise, the lack of evidence about an additional licensing designation, the paucity of evidence of who occupied what flat, for what period, at what rent, would necessitate the same conclusion. That there is no offence made out to the requisite standard.

33. In light of our conclusions on grounds 1 and 2 the remaining grounds fall away.

Tribunal Judge Mullin

22nd November 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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.

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

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).