



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

Case reference : **LON/00AG/HNA/2021/0005 and 0006**

Property : **Flat 9, 20 Belsize Park Gardens, London
NW3 4LH.**

Applicant : **Hamptons International t/as
Countrywide Estate Agents.**

Representative : **K. Varnous – Countrywide Legal**

Respondent : **London Borough of Camden**

Representative : **Paul Bernard In house solicitor**

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

Tribunal members : **Judge H Carr
Ms. S. Coughlin MCIEH**

Date : **9th July 2021**

Date of decision : **6th September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held it was not practicable and all issues could be determined in a remote hearing. The tribunal were provided with an electronic bundle prepared by the appellant comprising 83 pages, and electronic bundle prepared by the respondent comprising 319 pages. Further documents were submitted by both parties together with skeleton arguments prior to the hearing. The determination below takes account all the documentation received from the parties.

Decisions of the tribunal

- (1) The tribunal determines to quash the order and the associated costs.
- (2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant is appealing against the imposition of financial penalties by the respondent, the London Borough of Camden.
2. The respondent says that the applicant committed an offence by failing to licence the property under S.72(1) of the Housing Act 2004, and also committed an offence for breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006.
3. The offence took place on or about 28th January 2020.
4. The penalties amount to £5,000 (S.72(1)) and £4,000 (S.234(3))

The hearing

5. The appellant was represented by Mr Matthew McNiff of Counsel. Also in attendance was Mr Khosrow Varnous In house solicitor with the appellant and Mr Simon Wood Letting and Management Services Director with the appellant.
6. The respondent was represented by Mr Paul Bernard lawyer with the respondent. Also in attendance for the respondent were Mr Jack Kane (Operations Manager) and Ms Ifrah Abdirahman (Graduate Environmental Health Officer)

The background

7. The London Borough of Camden requires all HMOs in the borough to be licensed. The scheme came into force on 8th December 2015 ,and was renewed on 8th December 2020 for a further 5 years.
8. Flat 9, 20 Belsize Park Gardens, NW3 4LH (“the property”) is a self-contained flat located on the 4th floor of a mid-terraced property converted into self-contained flats. The flat has an exclusive use front door which is accessed via a shared communal staircase and front access door.
9. The flat was originally 3 bedrooms but was modified by the insertion of an internal partition to the dining room to create a further bedroom.
10. The leasehold owners of the property are Rachid Izzar and Narjisse El Haimer. The freehold owners are 20 Belsize Park Gardens Management Company Limited. The leasehold owners entered into a tenancy agreement with Kensington Property Investment Group on 31st January 2018 and a management agreement with Hamptons International on which made Hamptons International responsible for the day to day management of the property. The agreement with Kensington Property Investment Group was negotiated by Hamptons International and is on a Hamptons template for a company let.
11. Kensington Property Investment Group sublet the property granting licences to the occupiers. It received £2991 rental income from the occupiers of the property, £2600 pcm was then paid to Hamptons International. The whole of that rent was passed to the leaseholders by Hamptons International.
12. The respondent became aware that the property might be an HMO which required licencing under the additional licencing scheme. No licence application had been submitted for the property. It therefore commenced investigations.

13. Mr Kane, together with Angelique Chevelleau and Ifrah Abdirahman first inspected the property on 12th November 2019
14. Mr Kane says that on that date there were 3 tenants present who confirmed that they paid rent, shared bathroom and kitchen amenities and confirmed that this was their only or main residence. The property consisted of 4 rooms which were being used as bedrooms along with a shared bathroom, kitchen and dining room. The 3 tenants on 12th November 2019 were Mr Ian Moore. Ms. Yu Moon Hye and Ms Bogner.
15. Mr Kane was extremely concerned by the fire risks in the property caused in part by the layout and the additional bedroom.
16. A further inspection was carried out by Angelique Chevelleau and Ifrah Abdirahman on 28 January 2020. Ms Abdirahman provided a witness statement and gave evidence that the property continued to be occupied by three tenants. Whilst Mr Moore had moved out, Ms Yu Moon Hye and Ms Bogner were still in occupation. Another tenant was also in the property - Basrie Beren Rashit.
17. Hamptons International say that they were approached by the leasehold owners to obtain a licence in November 2019 and again in May 2020.

The issues

18. The issues that the tribunal must determine are;
 - (i) Is the tribunal satisfied beyond reasonable doubt that the appellant committed the alleged offence?
 - (ii) Whether the local housing authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act);
 - (iii) Does the appellant have a defence of a reasonable excuse?
 - (iv) Whether the financial penalty is set at an appropriate level, having regard to any relevant factors, which may include, for example:

- (a) the offender's means;
- (b) the severity of the offence;
- (c) the culpability and track record of the offender;
- (d) the harm (if any) caused to a tenant of the premises;
- (e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
- (f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

The determination

Is the tribunal satisfied beyond reasonable doubt that the applicants have committed the alleged offence?

- 19. The respondents say that it has evidence that the property was occupied by three or more occupiers as their only or principal home.
- 20. The appellant says that it did not receive rent on the property. It simply managed the property on behalf of the leaseholders. The rent paid to Kensington Property Investment Group by the occupiers was simply channelled through the appellant and passed onto the leaseholder.
- 21. It had no knowledge of the way in which the property was occupied.
- 22. The appellant also raised issues of procedure. Counsel referred to the Code for Crown Prosecutors and argued that there was no evidence that the respondent had paid attention to the Code. He pointed in particular to the failure of the respondent to pursue all reasonable lines of enquiry and noted that the respondent did not invite the appellant to an interview. He also pointed to the lack of statements from the occupiers. He argued that therefore it was not beyond reasonable doubt that the property was occupied as an HMO.
- 23. Counsel further argued that no account had been taken by the respondent that the appellant might have a reasonable excuse defence.

Indeed it was impossible for the respondent to have taken this into account as it had failed to interview the appellant.

24. Counsel also pointed to the issue of the erection of the partition in the dining room, saying that there was no evidence that the appellant had any knowledge of this.
25. Ms Abdirahman stated that although she had taken notes at the time of the inspection this would not have included the details of the tenants since those would have been in the tenants' witness statements. She was however unable to provide her notes as she had destroyed them at the time she left the Respondent's employment.
26. Mr Bernard for the respondent said that the statements were not available because of a change of personnel and because of the pandemic. He argued that the tribunal should rely on the other evidence that was available from Kensington Property Investment Group . He argued that there was sufficient evidence of mismanagement by the appellant.
27. He also argued that attention had been paid to the Code and that the evidence was reviewed by the legal team before decisions to impose financial penalties were made.

The decision of the tribunal

28. The tribunal determines that the evidence provided by the Respondent was not sufficient to prove that an offence had been committed by the appellant to the criminal standard of proof.

The reasons for the decision of the tribunal

29. The respondent was not able to produce statements signed with a statement of truth from the occupiers of the property that confirmed the necessary elements of the offence. When asked by the tribunal the respondent said that those statements had been lost. There was some evidence that those attending had taken notes, but those notes were not available to the tribunal.
30. In the absence of these statements the tribunal does not consider that the respondents have proof beyond reasonable doubt that the offence has been committed.
31. As the offence has not been proved beyond reasonable doubt there is no need for the tribunal to make further determinations.

Name: Judge H Carr

Date: 6th September 2021

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).