



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

**Case reference** : **LON/00AR/HNA/2020/0093**

**HMCTS code  
(Video)** : **V:VIDEOREMOTE**

**Property** : **8 Barberry Close, Romford RM3 8BJ**

**Applicant** : **Hills Consortium Ltd**

**Representative** : **Mr Zuber Patel**

**Respondent** : **London Borough of Havering**

**Representative** : **Mr D Mold, counsel**

**Type of application** : **Appeal against a decision to impose a financial penalty**

**Tribunal members** : **Judge Tagliavini  
Mr M Cairns MCIEH**

**Venue & date  
of hearing** : **10 Alfred Place, London WC1E 7LR  
V: VIDEOREMOTE  
4 February 2021**

**Date of decision** : **1 March 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **C: VIDEOREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote/paper hearing.. The tribunal was referred to the applicant's bundles containing pages 1 to 69 and the respondent's bundle numbered 1 to 232 and a supplemental bundle containing pages 1 to 120 on which the parties relied. The order made is described at the end of these reasons.

## **Summary of decisions of the first-tier residential property tribunal**

- 1. The tribunal confirms the respondent's decision dated 19 June 2020 to impose a financial penalty in the sum of £12,000, for the breach of the occupancy condition of the HMO licence granted in respect of property situate at 8 Barberry Close, Romford RM3 8BJ.**
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Most important - para 23 - £12000 not 312000 !

## **The application**

1. This is an appeal made pursuant to section 249 and Schedule 13A of the Housing Act 2004 ('the 2004 Act') against the respondent's decision to impose a financial penalty in the sum of £12,000 in respect of property at 8 Barberry Close, Romford RM3 8BJ ('the subject property'). The financial penalty was imposed as an alternative to prosecution for the respondent's failing to comply with the conditions of an HMO licence required under the respondent's additional licensing scheme and thereby in breach of section 72(2) of the 2004 Act.
- 2, The applicant sought to appeal the respondent's decision on the basis that:
  - (i) A HMO licence was granted when it should not have been due to the respondent's own planning requirements regarding an HMO.
  - (ii) There was no breach of the HMO licence conditions.
  - (iii) The applicant did not have the control or management of the subject property as it was in the control of Ready Homes.
  - (iv) The application for a HMO licence was made without the knowledge of Mr Zuber Patel by the landlord (freeholder) of the subject property Mr Sobel Patel

- (v) Mr Zuber Patel (Hills Consortium) is only the managing agent and should not be liable to a financial penalty.
3. The appeal was by way of a re-hearing and the respondent was required to establish to the tribunal the steps that it had taken in order to reach its decision to impose the financial penalty. At the oral hearing held by way of video conferencing means Mr Mold of counsel represented the respondent and Mr Zuber Patel represented the applicant/appellant.

### **The respondent's case**

4. On 19 June 2018 Mr Zuber Patel, a director of Hills Consortium Ltd applied for a HMO licence for the subject property for a HMO licence under the respondent's additional licensing scheme. The licence was subsequently granted dated 30 July 2018 after a draft licence had been issued on 9 July 2018 specifying the maximum number of persons permitted in occupation is 5; the maximum number of households permitted is 4 with the maximum number of persons in a room is 2 . The licence holder was named as Zuber Patel (Hills Consortium) and the Managing Agent as Zuber Patel (Hills consortium). On 28 February 2020 a visit authorised but unannounced under section 239(6) & (7) of the 2004 Act took place to the subject property and inspected by Frankie Leith, Public Protection Officer for the London Borough of Havering who found 9 people in occupation which included 5 persons in one room and a new-born baby. A number of witness statements were taken from the asylum seekers found to be in occupation under r.16.2 of the Criminal Procedure Rules and section 9 of the Criminal Justice Act 1967.
5. Subsequently, on 29 April 2020 the respondent sent a Notice of Intention to serve a financial penalty to the respondent to which no response was received. A final notice imposing the financial penalty of £12,000 was sent to the respondent dated 19 June 2020.
6. Further enquiries conducted by the respondent revealed that the subject property was being used by the managing agent Ready Homes to house asylum seekers. However, this change of managing agent had not been previously been notified to the respondent. An email dated 6 March 2020 from Louise Garside at ReadyHomes to the respondent stated, 'We are the non-occupying tenant at this property, its (sic) is occupied with asylum seekers as part of our contract with the Home Office.'
7. In support of its decision to impose a financial penalty the tribunal heard the oral evidence of Mr Frankie Leith who spoke to his witness statement dated 19 November 2020. On questioning by the tribunal Mr Leith accepted that in applying the respondent's Private Sector Financial Penalty Matrix it had calculated a total of 56 points under the headings of (1) Deterrence and Prevention; Removal of Financial Incentives; Offence & History and Harm

to Tenants under which the applicant was scored 15, 20, 1 and 10 respectively with the last score of 10 being doubled, thereby providing a total of 56 and a financial penalty of £12,000. Mr Leith accepted he had incorrectly assessed the financial position of the respondent as he had taken into account not only the financial position of the respondent company but also of other similarly named but separate companies. Mr Leith however, maintained that the other calculations and scores in the matrix were correct.

8. Mr Mold submitted in his closing submissions that the applicant was correctly named in the Financial Penalty Notice as the applicant received ‘rack rent’ from ReadyHomes or acted as an agent for the freeholder. Mr Mold stated that the applicant had the control and/or management of the subject property and knowingly permitted it to become overcrowded. Mr Mold invited the tribunal to apply the respondent’s Matrix and confirm the appropriate amount of the financial penalty to be paid by the applicant.

### **The applicant’s case**

9. Mr Patel provided to the tribunal a copy of the tenancy agreement made between Mr Sohail Patel (freeholder) and Hills Consortium Ltd dated 4 May 2017 for a term of 5 years expiring on 10 May 2022 at a rent of £1750 per month. This agreement allowed the applicant to use the premises for the purposes of providing temporary, short-term housing accommodation via a local authority/Central Government.
10. Mr Patel also provided the tribunal with extensive correspondence addressed to him from the respondent in respect of the application that had been made in respect of the subject property in which Zuber Patel (Hills Consortium) was the proposed licence holder and managing agent.
11. In email correspondence dated 1 November 2019 to the respondent, Mr Patel asserted that ‘As from June 2019 Ready Homes-Clear Springs (sub-contractor with the home office) are the ones who have taken on full control of the property and management.’ A letter dated 30 November 202 from Mr N Couchman of Clearsprings Group to the applicant stated ‘Clearsprings Ready Homes have acquired for rental through yourselves as landlord, to house asylum seeker occupants under a Home Office contact....’ And listed the names of 7 persons in occupation at that date.
12. In email correspondence dated 30 April 2020 from the applicant to David Colwill and Frankie Leith at Havering Borough Council stated, ‘I can assure you that there has always been a maximum of 6 occupants in the property until a new-born baby was born in Room 1.’ Subsequently an email dated 31 July 2020 to the applicant from Mr D Colwill confirmed that the subject

property was no longer being used as an HMO and use is only permitted for a single family under the local authorities planning laws.

13. In his oral evidence to the tribunal Mr Patel stated that he believed it was unfair for the respondent to have granted an HMO licence although its planning department refused to provide permission for use as an HMO. Mr Patel stated that he believed it was unfair for the respondent to have imposed a financial penalty and although he disagreed with the amount he was unable to suggest an alternative sum that he believed was more appropriate.
14. In his oral evidence Mr Patel repeatedly stated that up to 8 persons were allowed to occupy the subject property as the HMO licence provided for 2 persons per room and did not accept that the maximum of persons permitted to occupy the premises was 5. Mr Patel also stated that Hills Consortium Ltd had a contract with ReadyHomes since 2005 to provide temporary accommodation and that the applicant had 25 properties. Charges of £11.25 per person per night (regardless of age) were made.
15. In his oral evidence Mr Patel denied having applied for a licence and stated that the signature on the HMO licence application form did not belong to him.

### **The tribunal's findings and decision**

16. The tribunal finds that the application for an HMO licence was made by or with the full knowledge of Mr Zuber Patel. The tribunal also finds that Mr Zuber Patel identified himself as the correct person to be the named individual on the HMO licence.
17. The tribunal finds that the subject property was required to be licensed under the additional licensing scheme and the issue of an HMO licence is not relevant to the planning status of the subject property and are therefore, not relevant to this appeal.
18. The tribunal finds that in accordance with the terms of the licence conditions the maximum number of persons permitted to occupy the subject premises was 5. The tribunal does not accept that Mr Zuber Patel genuinely believed that the conditions of the licence allowed either 5 persons in total or alternative 2 persons in each of the four rooms provided a total occupancy of 8.
19. The tribunal finds that at the date of the unannounced inspection by the respondent on 28 February 2020 there were 10 persons in occupation. The tribunal therefore finds that the applicant breached the conditions of the licence by allowing more than 5 persons to occupy the subject premises.
20. The tribunal finds that the applicant retained the management and control of the premises as at the date of the offence and had allowed the premises to be used to house asylum seekers through the agency of ReadyHomes. The tribunal finds that the applicant failed to notify the respondent of any change to the identity of the person(s) having the management or control of the property.

21. The tribunal finds that the respondent correctly conceded that the financial circumstances of the applicant had been incorrectly calculated due to other he assets of other limited companies associated with the applicant being taken into account. However, the tribunal finds that in any event the applicant can be classified in the respondent's financial penalty matrix as a 'large landlord' due to having the management or control of at least 25 properties in its portfolio.
22. The tribunal finds, therefore that the applicant committed an offence for which the respondent was entitled and chose to issue a financial penalty.
23. In considering the amount of the financial penalty, the tribunal took into account the parties' evidence and the matrix that had been used by the respondent to reach the sum of '312,000. In its own calculations the tribunal agreed with the figures used by the applicant albeit substituting the financial assets of the applicant and associated limited companies with the evidence from the applicant of being a 'large' landlord. Therefore. The tribunal finds that the figure of £12,000 remains unchanged.
24. The applicant did not seek to dispute the amount of the financial penalty only the liability to pay it and offered no evidence on the issue.
25. Therefore the tribunals confirms the decision of the respondent dated 19 June 2020 to impose a financial penalty on the applicant in the sum of £12,000,

**Name: Judge Tagliavini**

**Date: 1 March 2021**

### **Rights of appeal from the decision of the tribunal**

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).