



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

Case Reference : BIR/47UF/HNA/2020/0010
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Property : 56 Waterside, Evesham, Worcestershire, WR11 1JZ

Applicant : Hassan Elaaoudi

Respondent : Wychavon District Council

Type of Application : Two applications against financial penalties imposed under section 249A and Schedule 13A, Housing Act 2004

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
R. Bryant-Pearson FRICS
A. Lavender B.Sc.(Hons.), Dip.Law, Dip.Surv.

Type of Decision : Paper Decision based on written representations

Date of Decision : 4 August 2020

DECISION

- 1 The Tribunal finds the grounds of financial penalty proven by the Local Authority beyond reasonable doubt and determines a penalty of £500 for breach of regulations requiring the Manager to maintain common areas in good repair under section 7, and £500 for breach of a condition requiring the Manager to provide sufficient waste disposal facilities under section 9 of the Management of HMOs (England) Regulations 2006.

REASONS

Introduction

- 2 These two applications have been consolidated as they relate to a single property. The property is known as 56 Waterside, Evesham, WR11 1JZ which is a former hotel converted to provide accommodation for 28 persons occupied as a House in Multiple Occupation (HMO).

The HMO Licence was issued 3rd December 2019 and following inspection by local authority staff and complaints by local residents, the Authority issued Notices of Intent to issue penalties on 18th December 2019. Having followed the statutory procedures, the Authority issued final Financial Penalty Notices on 2nd March 2020 on two separate counts:

- 1 that the Manager had failed to keep the common areas in good repair and
 - 2 that the Manager had failed to provide sufficient waste disposal facilities at the site.
- 3 The applicant appealed to the First-tier Tribunal on 6th April 2020 and Directions were issued.
 - 4 The parties both made Submissions that have been considered by the Tribunal and determined below.

The Law

- 5 The law relating to financial penalties is contained in section 249A and Schedule 13A to the Housing Act 2004.
- 6 The Tribunal has jurisdiction under Schedule 13A.10(3)(a) to re-hear a local housing authority decision to impose a penalty and may determine the amount. The Tribunal is able to confirm, vary or cancel the penalty.
- 7 The Freehold interest in the property is owned by a company, Valefresco Limited. The HMO Licence was issued to its managing agent, Elaaoudi Property Care Limited, a company represented by Mr Hassan Elaaoudi who was served with the financial penalty notice as the person responsible for managing the house under section 234(2)(a) of the Act.
- 8 The Authority claims there have been breaches of the The Management of Houses in Multiple Occupation (England) Regulations 2006, sections 7(4) and 7(9) which provide:

Section 7(4):

The manager must ensure that—

- (a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;*
- (b) any garden belonging to the HMO is kept in a safe and tidy condition; and ...*

Section 7(9):

The manager must—

- (a) ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and*
- (b) make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.*

Facts Found

- 9 The Tribunal has considered the parties' submissions and finds the property comprises a former hotel in Evesham, converted to provide a HMO for 28 persons.
- 10 The property fronts a road known as Waterside located in a primarily residential area of the town with a large car park to the rear. Behind the car park are several modern low rise blocks of flats in a development known as Fountain Court which directly overlook the car park close to the site boundary.

Submissions

11 Respondent's Submission

The Respondent, Wychavon District Council, is the local housing authority. It was not independently represented and the Submission was prepared by in-house member of staff Emily Jones who is a Private Sector Technical Officer. The Submission helpfully sets out a timetable of events leading to the point at which the Authority issued the penalty notices, summarised below:

- | | |
|------------|--|
| March 2019 | The local authority received an application for a HMO Licence. |
| 13.6.19 | Visit to the property by local authority officers at which the applicant, Mr Elaaoudi, was verbally told about the state of the car park and bins. |
| 5.7.19 | The authority was sent a chain of emails between FCC, (a waste management contractor) and Mr Elaaoudi regarding the number of bins supplied to the property. |
| 17.10.19 | An anonymous letter was sent to the local authority complaining about the state of the car park. |
| 21.10.19 | Site visit by the local authority's staff at which it was found that bins were overflowing and there was waste and litter around the site. |
| 3.12.19 | The HMO Licence was issued. |
| 18.12.19 | The Authority completed the Financial Penalty Decision Record and issued separate Notices of Intent to issue penalty notices relating to the state of the car park and bins. |
| 16.1.20 | Mr Elaaoudi submitted representations to the local authority. |
| 23.1.20 | Local authority staff re-inspected site and found some work had been carried out to the car park and a new waste bin had been installed. |
| 27.1.20 | The Local authority wrote to Mr Elaaoudi to request further information. |
| 30.1.20 | Mr Elaaoudi replied to the authority. |

- 18.2.20 The Local authority completed Representations for Financial Penalty Decision Records on each ground.
- 28.2.20 The Local authority completed Final Notices for Financial Penalty Decision Records on each ground.
- 2.3.20 The Local Authority issued two Final Civil Penalty Notices under section 234 Housing Act 2004 which referred to the Management of HMOs (England) Regulations 2006, sections 7 and 9.
- 12 The local authority's case has been supported by photographs of the site taken on 21st October 2019 showing cracks in large concrete slabs forming the surface of the car park and raised edges where some slabs had settled relative to others, which the authority contend to be trip hazards in breach of section 7(4). They also show a small table, two barbeques, some car seating and an accumulation of litter around the sides of the car park and adjoining landscaping as evidence of a breach of section 7(9).
- 13 The authority issued Final Notices in the sum of £1,000 for each offence in line with Wychavon District Council's Civil Penalties Policy, a copy of which was included in the Submission.
- 14 The Submission noted that the Officers dealing with the cases had recommended that the penalties should be reduced to £500 for each offence in view of measures taken by Mr Elaaoudi to deal with the issues and bring them in line with other cases.
- 15 The Applicant's Submission

1 in relation to breach of section 7(4) (the car park):

Mr Elaaoudi advised that the authority had issued draft HMO licences on 4th November 2019 listing work required to be carried out at the property but he had been given insufficient time to comply, bearing in mind that the road outside the property had flooded in November 2019. It would have been impossible to have complied with all the Authority's requirements in the timescale.

He said he had been operating a successful business for over 15 years with no previous record of penalties and was fulfilling a valuable service in the local area by providing affordable accommodation for agricultural workers and workers in local food industries.

2 in relation to breach of section 7(9) (waste management)

Mr Elaaoudi initially wrote to the tribunal on 23rd March 2020 (before Directions had been issued), in which he pointed out that he had asked Wychavon to provide more bins but they had refused to do so, even though council tax was being paid for five properties on the site and it was a residential, not commercial property. Other premises in the area had been provided with extra bins by the Authority. This was unfair treatment but he had attended to the problem by arranging for a commercial waste company to supply more bins.

In the submission prepared in response to Directions, he again emphasised he felt he was already paying heavily for a waste disposal service and to force him to pay additional charges for commercial waste bins was totally unjustifiable.

Decision

16 The key questions for the Tribunal to consider are:

- 1 whether the local housing authority had followed the correct procedures before imposing penalties;
- 2 whether the offences (section 234, Management regulations in respect of HMOs) had been proven to the required standard, i.e. 'beyond reasonable doubt', that there was no defence of reasonable excuse (based on a balance of probabilities) and
- 3 whether the amounts of penalty were appropriate in the circumstances.

17 procedures

In relation to the first point, the timetable of events is summarised in paragraph x above and having seen documents prepared by the local authority, the Tribunal is satisfied that correct procedures had been followed.

18 'beyond reasonable doubt'

1 car park safety

The car park is shown in the photographs. It is a large area constructed of in-situ concrete slabs that appear to have been there for many years and it is inevitable that the slabs will have cracked and settled over time.

Nevertheless, the photographs taken by the authority on 21st October show raised edges that were construed as trip hazards by Authority staff and the Tribunal agrees that this demonstrates that the forecourt of the HMO had not been kept in repair and good order.

Mr Elaaoudi has not disputed the point but advises that maintenance has since been carried out and the car park is now far tidier.

In addition, there were accumulated food wrappers, plastics and other consumables in the hedges surrounding the property.

On a strict interpretation of sections 7 (4)(a) and (b) of the Regulations, the Tribunal has no alternative but to find beyond reasonable doubt that the car park was not in repair and good order and the garden not in a safe and tidy condition at the relevant date, the date of the Authority's Notice of Intent, and an offence had been committed.

2 On-Site Waste

Photographs taken by the Authority on 21st October clearly show waste around the car park periphery and bins. It was mainly food and drink wrappers, the barbecues and some car seats comprising mainly small items but nevertheless they were there at the time and noted by the Authority.

The test in section 9 of the 2006 Regulations is whether the manager had provided sufficient bins or other receptacles for the requirements of each household occupying the HMO, and by virtue of the fact that there was waste around the site, the number of bins was clearly insufficient.

Mr Elaaoudi has not denied that more bins were needed and made arrangements to provide them by employing commercial contractors and tidying the site.

However, the Tribunal finds that the offences had been proven 'beyond reasonable doubt' at the relevant date which was the date of service of the Notice of Intent.

- 19 *whether the amounts of the penalty were appropriate*
The Tribunal has considered the local authority's published Civil Penalties Policy in respect of failure to comply with management regulations under section 234 of the Act, and notes the penalties of £1,000 for each first offence.

However, it also notes that two members of the local authority housing team dealing with the cases proposed reductions to £500 on each count to reflect work carried out by Mr Elaouidi and that such an approach has been taken by the authority in previous cases.

The Tribunal has power to vary the amount and in view of the above, finds the appropriate level of penalty in these cases to be £500 for each offence, i.e. £1,000 in total for the two consolidated cases.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).