First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**LON/00AH/HNA/2021/0037**
Properties	**:**	**39A and 39B Woodcote Valley Road, Purley, Surrey CR8 3AN**
Applicant	**:**	**Govinder Singh**
Respondent **Represented by**	**:**	**London Borough of Croydon** **Alex Radley of counsel**
Application	**:**	**Appeal against a Financial Penalty Order (section 249A and paragraph 10 of Schedule 13A of the Housing Act 2004 ("the 2004 Act"))**
Applications dated	**:**	**5th July 2021**
Tribunal	**:**	**Judge Bruce Edgington** **Marina Krisko BSc (Est Man), FRICS**
Date & place of hearing:		**9th June 2022 at 10 Alfred Place, London WC1E 7LR**

DECISION

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1. The financial penalties in the total sum of £12,000.00 dated 15th June 2021 imposed by the Respondent on the Applicant are hereby cancelled.

2. The Respondent is ordered to reimburse the Applicant for the fees of £400.00 paid to the Tribunal on or before the 8th July 2022.

Reasons

Introduction

3. The Respondent has provided the Tribunal with an e-bundle with page numbers. As both parties have a copy of the bundle, any reference to a page number in this decision will be from that bundle. The Tribunal has also considered the Application forms and the Applicant's bundle.

4. The Applicant has owned the freehold interest in 39 Woodcote Valley Road, Purley, Surrey CR8 3AN since 9th October 2008 (page 246) and there is no mortgage registered against the freehold title according to the Land Registry entries seen by the Tribunal. The evidence of the Environmental Health Officer,

Vincent Murray, which does not appear to be challenged is that the property is an Edwardian double fronted semi-detached house with a basement and 2 storeys above. There is a single storey red brick annex that extends from the main house with 3 self contained flats. The Applicant occupies the ground floor and basement. There are 2 'flats' on the first floor.

5. On the 12th July 2016, the Applicant granted himself and Parmjit Kaur a long lease of Flat 1 on the first floor for a term of 125 years from 24th June 2002 (page 256).

6. These applications relate to Flat 1 on the first floor where the Applicant has the freehold title and part of the long leasehold title plus Flat 3 in the annex where the Applicant owns the freehold title. It is also relevant to say that the freehold title documents show that a long lease of the ground floor and basement flat and garage has been granted by the Applicant which would appear to be the title at page 260. The tenant is the Applicant.

7. The Respondent borough, following a consultation exercise, decided to impose the Croydon Private Rented Property Licensing scheme (CPRPL) which came into effect on the 1st October 2015. Subject to certain exceptions, this required private landlords of all houses in the borough which have people in them occupying under licences or tenancies to have a licence. The purpose of this was to try to identify rogue landlords and improve living conditions for tenants.

8. The Respondent satisfied itself that the 2 properties had been occupied by tenants or licencees and that the Applicant was in control or management of the flats. It was explained to the Applicant that in the Respondent's view, he was committing an offence by not having licences for each of the 2 flats which are the subject of this application. He still failed to make any application for such licences.

9. Efforts were made to try to obtain copies of gas safety certificates, electric inspection reports, an energy performance certificate, evidence of tenancy deposit protection and any evidence of management. No such evidence was provided by the Applicant.

10. On the 10th February 2021 notices of intention to issue a financial penalty in the sum of £6,000.00 were sent to the Applicant for each of the 2 flats (page 46). No response was received which caused the Respondent to change its mind and on the 15th June 2021, Financial Penalty Notices were sent to the Applicant demanding £6,000.00 for each flat.

Inspection

11. As the Tribunal was supplied with some photographic evidence and plans of the property, and no indication of any desire for an inspection has been received, there has been no such inspection.

The Law

12. The only relevant law at the moment is contained in Section 249A of the 2004 Act which was inserted by the **Housing and Planning Act 2016**. This states that one of the options available to a local housing authority when there has been

a breach of section 95 of the 2004 Act i.e. an offence by a person having the management or control of a property which must be licenced, fails to obtain such a licence, is that a financial penalty can be imposed up to a maximum of £30,000.00 for each offence.

13. There are set procedures to be followed and the Applicant does not raise any specific technical issue relating to compliance with the procedures adopted by the Respondent or the technicalities as to how the penalty was calculated. His application says that (a) the penalty is not in accordance with reality, (b) he and Parmjit Kaur are the owners and occupiers of the property, (c) the Respondent's evidence is false and hearsay, (d) the Respondent has trespassed during lockdown, (e) the Respondent failed in its duty to inspect the whole property and (f) correct professional procedures were not followed.

14. Section 85 of the 2004 Act says that a local authority must require a house to be licensed with such licence "*authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b)*".

15. Section 79(2) says that houses can be so licensed where "*the whole of it is occupied either (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4)*". None of the exemptions referred to apply to the building containing the subject flats.

16. Section 85 also says that a House in Multiple Occupation ("HMO") as required by part 2 of the 2004 Act is specifically excluded from the licensing requirements of the sort of CPRPL scheme, presumably because such properties require a licence in themselves. Some local authorities such as the London Borough of Hackney have included in their special licensing scheme a reduction in the number of occupants needed for an HMO from 5 to 3. There is no indication in the evidence that Croydon has done the same.

The Hearing

17. Those attending the hearing were the Applicant in person and then Alex Radley of counsel for the Respondent together with the witnesses Nick Gracie Langrick, Vincent Murray, Mohammed Ali and Glynis Edwards. As what happened at the hearing was unusual, it will be necessary for a full description of what happened to be given.

18. The Tribunal chair introduced himself and the other Tribunal member. He then said that he had some questions to raise on the papers filed. He would do that and then ask the parties to put their cases and, finally, he would ask the other Tribunal member to ask any questions she had.

19. The first thing to be said related to an e-mail communication sent by the Applicant to the Tribunal office 3 minutes before close of business on the day before the hearing. He said that he had not received an electronic copy of the hearing bundle from the Respondent which meant that he could not proceed with the hearing. They had delivered a paper bundle of well over about 800 pages which was too heavy to carry. The Tribunal chair had noted that the Applicant

had come into the hearing with a bag and he was asked specifically whether he wanted an adjournment so that the bundle issue could be sorted out. He said that he wanted to proceed with the hearing there and then.

20. The Tribunal chair then asked the Applicant about the people who stayed in the property i.e. in both the flats in the main building and the annex. He said that they were all lodgers. They had sole possession of their bedrooms but other things such as kitchens and bathrooms could be used by other lodgers and, indeed, he and his family could use them as well. He was referred to the witness statement of Karel Srejbr produced by the Respondent at page 551. She occupied Flat 1, 39A Woodcote Valley Road. He agreed that this witness was correct when she said that she had a 'lodger's' contract and she shared the kitchen and bathroom with the 2 other lodgers in that flat.

21. When asked how many lodgers were usually in the main house, he said that sometimes there were 3 people and sometimes 4. In the annex there was usually 1 lodger in each flat. He said that the witness statement of Mr. June Makil at page 547 is also correct when it says that Mr. Makil only has use of the sitting room, kitchen and shower room. Mr. Singh said that he needed lodgers to help him pay for the gas and electricity for the building and produced evidence that the monthly payments were in the region of £500.00 although this did not say whether such figure was for either gas or electricity or both.

22. He also said that he was very angry with the Respondent for continually saying that there were tenants at the property. He said that he had never had a tenant in the property and seemed to be directing his remarks at Mr. Gracie-Langrick, the Private Sector Housing manager. Questions were asked of the Respondent and Mr. Gracie-Langrick dealt with some of the answers. Mr. Singh kept interrupting and had to be warned by the Tribunal chair.

23. The Tribunal chair then asked Mr. Radley of counsel about the legal position. If the occupiers were licencees rather than tenants, it would not really make any difference but if the property was in fact an HMO then the council's CPRPL scheme did not apply and these penalties would have to be cancelled. There were also problems about the definition of a 'house' because only a house could be licensed.

24. After some discussion on the issues raised, Mr. Radley agreed that these needed clarification and asked if he could suspend the hearing for a short time to take instructions, which is what happened. When the Respondent's representative and witnesses had left the hearing room, Mr. Singh was also asked to leave as there was no 'chambers' into which the Tribunal members could retire. He told the Tribunal chair that he was very confused and wished that he had consulted a solicitor. He did go into the waiting area at about 10.30 am. He said that he had a headache and a Tribunal member of staff went with him to a local chemist where he bought some medication to deal with this which he took on his return.

25. At about 11.10 am Mr. Radley indicated he was ready to come back to discuss matters with the Tribunal. Mr. Singh had previously told the Tribunal in an e-mail that he had prostrate cancer and would bring 10 incontinence pads to the hearing to cope. He would need to go to the toilet every hour (which would

obviously have been allowed). The Tribunal chair went out to the Tribunal waiting area to speak to him. He said that he was not in the best of health at that moment and had double vision. He was asked whether he would have any problem with the Respondent coming back into the hearing room to inform the Tribunal as to his instructions. He said specifically that he was happy for this to happen and he would stay out.

26. At about 11.20 am, after Mr. Radley told the Tribunal that his instructions had not changed and he had been trying to find out if there were any helpful decided cases, a security guard came in and asked to collect Mr. Singh's bag. He was asked why and said that Mr. Singh had decided to leave the hearing without giving a reason or, more relevantly, asking for an adjournment.

27. There was then a lengthy discussion about what should happen next. The Tribunal chair indicated to Mr. Radley that as Mr. Singh had not asked for an adjournment and as the issues were really matters of law, the hearing could be finalised after submissions. Mr. Radley did not oppose this and he and one of his witnesses, Mr. Gracie-Langrick, proceeded with submissions. Mr. Radley said that he had been instructed that there was a relevant reported case report of a decision by magistrates of **A A Homes Ltd. v London Borough of Croydon** and that an appeal to the Upper Tribunal had not been determined by Judge Cooke. It was said to be reported on Bailee but the Tribunal could not find it even if a magistrates' decision would assist it in any event.

28. The hearing finished at just after 12.30 pm. Just before this, at 12.13 pm, Mr. Singh had sent an e-mail to the Tribunal office to say that he was at the Imperial College Accident and Emergency unit and was waiting to see a doctor because his health had 'deteriorated'. This information was e-mailed to the Tribunal members at 12.25 pm but as they did not read their e-mails during the hearing, they were unaware of this information until after the hearing had ended and after the Respondent and it's representatives had left. He had not asked anyone at the Tribunal building to send for an ambulance but appears to have travelled to the A & E Unit in Hammersmith himself. This is some way from the Tribunal building.

29. This left the Tribunal in an extremely difficult situation. However, it decided that as the issues in this case were almost entirely legal points and as Mr. Singh had (a) made his points strongly in the papers and at the hearing and (b) told the Tribunal chair that he was confused about the legal points and felt he should have taken legal advice, then the Tribunal should reach its decision and send that to the parties with its reasons.

Discussion

30. It seems clear to this Tribunal that the Applicant is the person having the management or control of the house known as 39 Woodcote Valley Road, Purley CR8 3AN. He does not deny this and all of the evidence presented which refers to conversations with occupiers all says that if such occupier wanted to raise any question relating to such matters as the building's heating system or the supply of electricity, then they would speak to Mr. Singh who would attend to all the management tasks.

31. It is also clear to this Tribunal that there is something going on in the background which indicates prejudice to the occupiers. Although 2 have made written statements which are in the bundle at pages 547 and 551, the initial attempts by officers of the Respondent to speak to occupiers were almost all met with reluctance to speak or allow entry to 'flats'.

32. When one considers the wording of one document described as a tenancy agreement of Flat 3 in the annex (page 549), one can begin to see an indication of the problem. It is not a tenancy agreement at all. It is a "*formal and binding undertaking*" dated 24th May 2020 in which the occupier agrees not to communicate with any 3rd party apart from guests and will never allow "*any third party to enter my room without the express wishes and authorisation of the landlords or on behalf of the landlords*". A breach of these requirements is said to result in the occupier being locked out of their room with the locks being changed.

33. The Respondent's evidence is that on the 2nd April 2020 Mr. Murray spoke to Mr. Veedur Hans Soopal (page 44) who said that he had been a tenant of Flat 3 in the annex since September 2019 and that he was paying the Applicant £700 per month. On the 8th June 2020, Mr. Murray visited again and was able to speak to the then tenants of both Flat 3 in the annex (Mr. June Makil) and Flat 1 on the 1st floor of the main building (Mr. Karel Srejbr), both of whom have made witness statements dated 14th August 2020 as mentioned above.

34. Copy agreements with the Applicant are at pages 528 and 534 respectively. It is concerning to note that the agreement for the Flat in the annex does not set out the property or the rent. On page 529 is a receipt for rent paid. The agreement for Flat 1 on the 1st floor of the main building is described as a lodging agreement and says that rent is being paid.

35. The Applicant's documentation consists of a copy letter of complaint to the Chief Executive of the Respondent dated 22nd March 2021 which appears to have been written by the Applicant and alleges "*racial bias amounting to hate crime, harassment*". It also alleges bullying, trespassing and colluding with a neighbour. He says that there are no tenants in the flats but they are let out to 'lodgers' from time to time on a short term basis. The bundle then consists of a number of photographs with descriptions which do not really assist the Tribunal.

36. The Tribunal makes it absolutely clear that it has not investigated any accusation of racial bias, bullying or trespass. It has simply looked at the basic facts and the law relating to the licences in question.

Is the Property an HMO under Part 2 of the 2004 Act?

37. This is crucially important because if it is, then the CPRPL does not apply and these penalties must be cancelled. This property was built as a semi-detached home and has been altered and extended. The basement and ground floor are let on long leases to the Applicant. There are then 5 'flats', 2 of which are in the main house and the other 3 of which are in the part of the adjoining building called 'the annex'.

38. 'Flat 1' in the main house has 3 bedrooms according to the sketch plan on page 537. The occupier, states, at page 551, that there are 2 other lodgers living in that 'flat' i.e. there are 3 occupiers. The occupation agreement at page 534 makes it clear that only the bedroom can be occupied as of right but there is shared use of the kitchen and bathroom.

39. There is no labelled plan of the other flat on the 1st floor although there is a plan of the 1st floor on page 539 which is a different shape to page 537 and has 2 bedrooms. This seemed to accord with other evidence seen and heard by the Tribunal i.e. that 2 lodgers have stayed in 'flat' 2.

40. The definition of an HMO is contained in section 254 of the 2004 Act. The 'standard test' conditions are that a building or part of a building is an HMO if –

"*(a) it consists of one or more units of living accommodation not consisting of a self contained flat or flats;*
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities"

41. The Tribunal considers that these 5 conditions are met for the following reasons:

(a) It is clear that neither flat 1 nor flat 2 on the first floor of the main building are actually intended to be self contained flats. Each bedroom is intended to be occupied by a lodger and the remaining space is shared.
(b) The evidence provided by the Respondent is that flat 1 at least is not a single household. The Applicant's evidence is that the flat 2 is or is intended to be occupied by lodgers in the same way. The Respondent is unable to produce any evidence to contradict that position.
(c) The Respondent's evidence is that some of the lodgers have been in occupation for some time. For example, the statement from Karel Srejbr at page 551 says that this occupier has been there for almost a year which provides evidence, in the Tribunal's view, that the lodgers are treating their stay as being their only or main residence.
(d) The only use of those flats is as living accommodation.
(e) There does not seem to be any dispute that rents are being paid by all the lodgers.
(f) As is also clear from the evidence, the kitchens and bathrooms of those two 'flats' and of the 'flats' in the annex are being and/or are intended to be shared.

42. **The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018** then provides additional conditions i.e. that the property –

"*(a) is occupied by five or more persons;*
(b) is occupied by persons living in two or more separate households

43. The evidence showed that the 2 'flats' in the main house have 5 bedrooms between them. In any event, there is no provision that the 5 occupiers have to occupy the part of the building which is not the self contained flats used to comply with the standard test condition. The Respondent's evidence is that there have been 3 people in flat 1 on the first floor of the main building plus at least 1 person in flat 2. There is 1 person in flat 3 of the annex which means that the Respondent's own evidence shows 5 lodgers plus, of course, the Applicant and his family in the house.

44. The definition of a 'house' is set out in section 99 of the 2004 Act and it means "*a building or part of a building consisting of one or more dwellings*". The section makes it clear that a 'house' includes "*any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it)"*. In other words, the annex of this building may not have an internal door leading from the main building into the annex, but it is still part of the house because it is attached to the house and is clearly an outhouse.

45. A 'dwelling' is defined as "*a building or part of a building occupied or intended to be occupied as a separate dwelling*". In other words it is not only actual occupiers which are to be considered, but also the intentions of the owner as to occupation. It was clearly the Applicant's intention to continue to have at least 5 lodgers i.e. occupiers in the building as a whole.

The Amount of the Financial Penalty

46. The Tribunal's determination is that there appears to be evidence on the facts produced by the Respondent that the house known as 39 Woodcote Valley Road, Purley is an HMO and the amount of the penalty becomes irrelevant. However, the Tribunal was concerned to note that the Respondent wanted 2 CPRPL licences to be applied for. Mr. Gracie-Langrick said on several occasions at the hearing that it was 'acceptable' for licences to be required for each part of a building which was let out by a private landlord.

47. No particular reason was given for this. Such a method of dealing with licences in this way would clearly be acceptable to the Respondent as it would then be receiving 2 fees of £750 (page 38) and is seeking 2 penalties of £6,000.00 rather than 1. As to the latter situation, the Upper Tribunal has determined in **Thurrock Council v Khalid Daoudi** [2020] UKUT 209 (LC) that the starting point for a penalty for failing to apply for an HMO licence for a whole building should, in that case, be £6,000.00 before one then comes to deal with the conduct of the parties etc. In other words there is no suggestion that failure to apply for a licence for a building should be £12,000.00 which is what is being sought.

Conclusions

48. Taking all the evidence and submissions into account, the Tribunal determines that this building as a whole is an HMO as defined in Part 2 of the 2004 Act. As a result, it cannot conclude, on the particular facts of this case, that an offence has been committed as alleged, beyond a reasonable doubt, and the 2 penalties are cancelled. For this reason, the Respondent should reimburse the Applicant for the fees he has paid to the Tribunal as set out in the decision.

49. Whilst this appeal has been successful, the Applicant, Mr. Singh, should take careful note of the fact that whether this house comes under the CPRPL scheme or is an HMO, it needs a licence. The Tribunal is concerned about the pressure the occupiers are being put under with undertakings being signed. If, as is inferred, every occupier is being put under the same sort of pressure, then the whole house has to be licensed if the sole purpose of all this licensing is to protect occupiers. Mr. Singh should also note that occupiers includes both tenants and licencees and he should seek legal advice if he considers that his lodgers are not occupiers for the purposes of the licensing regime.

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Judge Edgington
13th June 2022

ANNEX - RIGHTS OF APPEAL

i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to London.RAP@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. 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.

iii. 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.

iv. 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.