



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

Case Reference : **MAN/00BY/HNA/2018/0038**

Property : **74, Southdale Road, Wavertree, Liverpool
L15 4HX**

Applicants : **Graham Furniss**

Respondent : **Liverpool City Council**

**Type of
Application** : **Appeal against a financial penalty imposed
under Section 249A & Schedule 13A Housing
Act 2004**

Tribunal Member : **Mr J R Rimmer
Mr J Faulkner**

**Date of
Determination** : **01 April 2019**

Date of decision : **05 April 2019**

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Order : **The decision to impose a financial penalty notice in respect of 74, Southdale Road, Wavertree, Liverpool is upheld. The amount of that penalty shall be £3,150.00.**

A. Application

1. The Tribunal has received an application under paragraph 10 of Schedule 13A to the Housing Act 2004 (“the Act”) against a decision of Liverpool City Council (the “local housing authority”) to impose a financial penalty against the Applicant under section 249A of the Act.
2. This penalty relates to an offence that the Council determined had been committed by the Applicant in relation to operating an unlicensed dwelling house in an area of selective licencing under the regime established by the Act. The Council had designated the whole of the city as an area of selective licensing in 2015.
3. The Tribunal has sent a copy of the application to the Respondents.
4. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
5. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

B Background

6. The Applicant is the owner of 74, Southdale Road, Wavertree, Liverpool that is within the area designated by the Council, as the local housing authority, under its powers to impose selective licencing requirements in furtherance of its duty to ensure the maintenance and improvement of housing standards within the city.
7. It came to the Council’s attention in or about December 2017 that the property at 74, Southdale Road was subject to a relevant residential tenancy, but a licence had neither been applied for, nor obtained. Subsequent enquiries had identified the landlord and correspondence upon the licensing issue addressed to him there.
8. The Applicant accepts that he had made no attempt to obtain a licence, indeed he advises that he was unaware of the need to do so, until he became aware of communications from the Respondent advising firstly of the need to obtain a licence and thereafter the consideration of a financial penalty for

not doing so. The Applicant indicates that there has been some correspondence to his address of which he has not been aware.

9. The local housing authority indicated by letter dated 18th September 2018 that it had formed an intention to impose a financial penalty which was then confirmed by a final notice dated 14th November 2018. The amount of the penalty is £3,375.00. This is a reduced amount following consideration of representations from the Applicant made after receipt of the notice of intention. on 18th July 2018 and notified to the Applicant thereafter.
10. It may well be the case that if the Applicant had been aware of the need for a licence, or, indeed, had responded to initial correspondence from the Council the penalty might have been avoided. The reasons for this are considered more fully below.

C The Law

- 10 It is appropriate at this stage to set out the various statutory and regulatory provisions that the Tribunal needed to take into account in coming to its decision.

In relation to the commission of a relevant offence and imposition of a financial penalty

- 11 Section 249A of the Act provides;
 - (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England
 - (2) In this section "relevant housing offence" means an offence under-
 - (c) Section 95 (licencing of houses...)
 - (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- 12 Section 95 of the Act provides:
 - (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced
 - (2) ...
 - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
 - (a)...
 - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
 - (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse-
 - (a) For having control or managing the house in the circumstances mentioned in subsection (1)

- (7) For the purposes of subsection (3) an...application is effective at a particular time if at that time it has not been withdrawn and either-
- (a) The authority have not decided whether or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
 - (b) (if a license is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful)
- 13 Section 87 of the Act sets out the requirements to be met in any application, those being-
- (1) ...made to a local housing authority
 - (2) ...made in accordance with such requirements as the authority may specify
 - (3) ...be accompanied by any fee required by the authority
 - (4) ... comply with any requirements specified by the authority subject to any regulations made under subsection (5)
 - (5) The appropriate national authority may by regulations make provision about the making of applications under this section
 - (6) Such regulations may, in particular, specify the information, or evidence, which is to be supplied in connection with applications.
- 14 Regulation 7 and Schedule 2 of the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 (“the 2006 Regulations”) provide a whole raft of requirements to be satisfied in an application, but the Tribunal is not concerned on this occasion with these. The Applicant did satisfy them within an application that was in due course made for an appropriate licence.
- 15 Paragraph 10 of Schedule 13A of the Act provides
- (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against-
 - (a) The decision to impose the penalty, or
 - (b) The amount of the penalty
 - (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn
 - (3) An appeal under this paragraph-
 - (a) Is to be a re-hearing of the local authority’s decision, but
 - (b) May be determined having regard to matters of which the authority was unaware
 - (4) On an appeal under this paragraph the First-tier Tribunal, may confirm, vary, or cancel the final notice
 - (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a penalty of more than the local housing authority could have imposed.

D The evidence

- 16 The Applicant's case is quite simple and is put clearly in the application form he submitted to the Tribunal dated 13th December 2018, together with an expanded statement dated 15th February 2019. A further email was received from the Applicant by the Tribunal via the Respondent. It has been considered as part of these proceedings as the respondent has had time to make comment upon it. He makes the following points:
- (1) He was unaware of the need to comply with the licensing requirements imposed by the Respondent.
 - (2) He accepts that this is a reason and neither a legal defence or a full excuse. He believes that there were, however, extenuating personal circumstances.
 - (3) Initial correspondence from the Respondent appears not to have been received.
 - (4) He has acted to remedy the position as soon as he became of the situation, but has failed to conclude the licensing process after submitting an initial application and having yet to provide a gas safety certificate.
 - (5) His portfolio as a landlord comprises only the property at Southdale Road and he is financially embarrassed by the penalty. It is an investment for his retirement from employment.
- 17 The Respondent provided an extremely comprehensive bundle of documents and statements from two significant witnesses, Geoff Blundell, a Senior Compliance Officer, and Jennifer Driscoll, a Licensing Compliance Co-ordinator, together with a further statement from Andrew Parsons, a fellow Licensing Compliance Co-ordinator who reviewed the initial proposed penalty. The thrust of these statements, together with the cross-examination of the Applicant, the only party from which direct oral evidence was required at the hearing, was to establish:
- (1) That an offence of operating an unlicensed dwelling had been established
 - (2) That the Respondent had in place, and operated, appropriate procedures to establish this, attempts to make contact with the Applicant and seeks to implement the financial penalty regime when neither an application nor appropriate contact from the Applicant had been forthcoming.
 - (3) The duty imposed upon the Respondent in relation to its obligations to improve housing standards, which it had chosen to do by imposing a licensing scheme over the whole city justified the imposition of a financial penalty
 - (4) The policy that was in place and the manner in which it had implemented it, also justified the level of the penalty that had been decided upon.
- 18 The Tribunal accepts that it should not seek to interfere unnecessarily with the due process that had taken place and there was nothing to

suggest that any of the Respondents actions, or decisions, in this case are fundamentally flawed or incorrect.

E Determination

- 19 The Tribunal reminds itself, however, that these proceedings being conducted by way of a rehearing. It takes on board the observations that the Tribunal should consider carefully that the Respondent had taken considerable care to put in place both a licensing policy and a policy for the imposition of financial penalties where appropriate and had provided clear documentary evidence of how they had been applied to reach the conclusion that it had in relation to the Applicant.
- 20 Indeed, the Tribunal accepts that the policies are the direct result of the democratic process whereby the Respondent seeks to fulfil its statutory duty by seeking from its officers a clear and rational process for doing so.
- 21 The Tribunal also has a duty: to re-hear the case against the Applicant. It has done so with the policies of the Respondent always within its mind. It offers no criticism of the thorough manner in which the Respondent has approached this case and the documented procedures it has followed.
- 22 Has an offence been committed?
The first question the Tribunal must ask itself is whether an offence has been committed. The clear answer is yes. There is, apparently, no licence yet in place in respect of 74, Southdale Road. The Tribunal suspects that such a situation has only continued up to this time by reason of some lack of expedition by the Applicant. The Tribunal accepts what he says about subsequent difficulties he has encountered, but also believes that in his position progress could have been speedier. There was a clear breach of Section 95(1) Housing Act 2004.
- 23 Nothing that the Tribunal saw, or heard, suggests that the Applicant would be able to rely on any of the defences to criminal liability outlined in Section 95(3) and (4). The excuses put forward for the failure to licence are not reasonable. They are not reasonable either from the point of view of what might be expected to have been done by any reasonable person, nor from the point of view of what a reasonable person might have expected the Applicant to have done.
- 24 The Tribunal is so satisfied that it is sure that the offence has been committed.

25 What sanction is appropriate to mark the commission of the offence

Under the financial penalty regime, the Respondent, in the event of an offence having been committed, has available to it an amount of up to £30,00.00 that it can impose as a penalty. It has provided and explained its matrix and methodology to support its finding that an amount of £3,375.00 is appropriate.

26 The Tribunal would, limit its observations in relation to the application of the penalty policy to the following matters.

- (1) Whether the Applicant gave any admission of guilt during or after the investigation, or thereafter? The Tribunal takes the view that he has done so and put forward mitigation. If the Respondent is basing its assessment of a penalty in terms of a matrix that has many similarities in its form to that applied in criminal proceedings within the criminal justice system credit for an early admission of guilt is important. The Tribunal believe that the Applicant is entitled to some credit. That credit in the criminal justice process would be a 30% discount from the amount that would be imposed on a person of previous good character (such as the Applicant) who had not admitted guilt.
- (2) The determination of the offence falling within the bands of medium culpability and low harm, as reviewed by Mr Parsons, are, to the Tribunal's view, correct. The Tribunal would therefore accept the basic determination that a starting point of £4,500.00 is correct. The Applicant has not wilfully chosen to ignore the licensing process. He has however been lax in pursuing it.
- (3) There was some information provided at the time the penalty was finally imposed relating to the financial circumstances of the Applicant. This has not changed to such an extent that the Tribunal now has significantly different information to consider
- (4) Part four of the Respondent's checklist (at page 8) refers to a review of the overall penalty to ensure that it deals adequately with a number of factors:
 - Severity of the offence
 - Culpability and track record of the offender
 - Harm caused to the tenant
 - Punishment of the offender
 - Deterring the offender from repeating the offence
 - Deterring others from committing offences
 - Removing financial benefits gained from committing the offenceand the Tribunal considers that it is appropriate to determine these in the same manner as was used by the Respondent.

27 The effect of the above is to reduce the amount of the penalty by a small amount, by applying a deduction of 30%, rather than 25%. This makes the final penalty £3,150.00. The Tribunal did consider whether it should

interfere to this limited extent. In view of its reasoning it considers it appropriate to do so.

Judge J R RIMMER

Date: 01 April 2019

