



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

**Case Reference** : **MAN/00BY/HNA/2018/0031**

**Property** : **35, St Andrew Road, Liverpool L4 2RJ**

**Applicants** : **Arash Fadaei**

**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** : **07 May 2019**

**Date of Decision** : **14 May 2019**

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**Order** : **The decision to impose a financial penalty notice in respect of 35, St Andrew Road, Liverpool is confirmed. The amount of that penalty shall be £2,625.00.**

**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 35, St Andrew Road, Liverpool L4 2RJ 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 February 2018 that the property was subject to a relevant residential tenancy, but a licence had neither been applied for, nor obtained. Subsequent enquiries had identified the tenant and landlord for further steps to be taken in relation to the necessary licensing,
8. In February and May 2018 the council wrote to the Applicant indicating the need for there to be relevant application for a licence, but none was forthcoming by the time a notice of intention to impose a financial penalty was served, dated 29<sup>th</sup> August 2018.

9. The Applicant did provide the relevant application on 1<sup>st</sup> September 2018 and paid the fee. An application was therefore deemed to be duly made on that date.
10. The notice dated 29<sup>th</sup> August 2018 indicated the initial determination of the penalty was £6,787.00. The Applicant did however make written submissions by email on 31<sup>st</sup> August resulting in a reconsideration of the amount in question (as outlined in paragraph 9 of the statement on behalf of the Council made by Laura Heller). The amount was reduced to £5,250.00.
11. Following the receipt of the applicant's notice of appeal the penalty was reconsidered again (see paragraph 13 of the statement) and further reduced to an amount of £2,700.
12. The Applicant's case, put clearly in the application form, is that he did not receive the initial correspondence from the Respondent, being absent from the UK for family reasons and was being judged too harshly by the Council in its assessment of his liability. He does not, thereafter, address the issue of liability further in the light of the second reduction in the amount assessed, after the Council received the appeal.

### **C The Law**

- 13 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 1<sup>st</sup> November 2018 and precised at paragraph 12, above.
- (1) The Respondent provided an extremely comprehensive bundle of documents and the statement of Laura Heller referred to above. There are further statements of Gillian Wills, Jennifer Driscoll and Andrew Parsons, officers of the Respondent, outlining the policies and processes of the council in relation to enforcement of the licensing regime and the operation of the financial penalty regime within the City. They suggest:
  - (2) That an offence of operating an unlicensed dwelling had been established
  - (3) That the Respondent had in place, and operated, appropriate procedures to establish this.
  - (4) It attempted to make contact with the Applicant and sought to implement the financial penalty regime when neither an application nor appropriate contact from the Applicant had been forthcoming.
  - (5) 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
  - (6) 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.
  - (7) The operation of the policy in an appropriate manner is evidenced by the re-assessments of the amount of the penalty in the light of information coming from, and about, the Applicant.
- 17 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. Indeed, the way in which review took place suggests that the policy clearly operates with considerable discretion on the part of officers concerned.

## **E Determination**

- 18 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.

- 19 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.
- 20 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.
- 21 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 was no licence in place in respect of 35, St Andrew Road for the relevant time up to the application being made on 1<sup>st</sup> September 2018. The Tribunal must accept, in the absence of any other information, the explanation given by the Applicant for his failure to respond to the initial correspondence from the Respondent.
- 22 However, nothing that the Tribunal has seen 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. The Tribunal would expect a landlord to be familiar with well-advertised requirements being placed upon him and to have in place sufficiently robust procedures for receipt of mail during any absence from the country.
- 23 The Tribunal is so satisfied that it is sure that the offence has been committed.
- 24 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 final finding that an amount of £2,700.00 is appropriate.
- 25 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) There is, to the Tribunal's mind a difficulty with the nature of these proceedings when compared with other proceedings involving an assessment of criminal liability. The distinction between criminal liability and the commission of an offence resulting in the determination of a financial penalty may be a fine one, but these proceedings appear to envisage an Applicant raising issues as to both liability penalty at the same time.
- (3) 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 that the basic starting point of £4,500.00 would be correctly within the Respondent's policy. The Applicant does not, however, appear to have wilfully chosen to ignore the licensing process. He has however been lax in pursuing it, but it is understandable, if not excusable, in the circumstances he outlines. He also applies very quickly for the licence when he is advised of a penalty being imposed and it is clear from the dating of relevant inspection certificates he is able to react very quickly.
- (4) The Tribunal would therefore look to adjust the level of penalty within the band available to reflect the lower end of that band and an amount of £3,750.00 as an appropriate starting point.
- (5) 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. Many of these have very limited application, in the Tribunal's mind, to an applicant such as Mr Fadaei.
- (6) If the Tribunal equates its assessment within the bands of culpability and harm to those more generally applied in criminal proceedings it also

takes account of the fact that the starting point used should reflect an Applicant who appears to be of previous character with no history of criminal involvement, either generally, or in relation to housing matters.

(7) Within the parameters referred to in sub-paragraph (2) above, the Applicant should get credit for what it regards as a sufficient admission of liability amounting to a 30% discount so reducing the amount of the penalty by the amount of £1,125.00 to £2,625.00

26 If these proceedings were a review of the respondent's decision the Tribunal would probably not interfere with the penalty for the sake of £75.00. However, as it is a re-hearing and the decision reached by a slightly different means the reduction should take effect.

**Signed: J R RIMMER (CHAIRMAN)**

**Date: 14 May 2019**



