



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

Case Reference : **MAN/OOCG/HNA/2018/0034**

Property : **92 Robey Street, Sheffield S4 8JF**

Applicant : **Sakib Bashir**

Respondent : **Sheffield City Council**

Representative : **Ms Ellie Staniforth, Lawyer, Sheffield
City Council**

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

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member S.A Kendall-Valuer**

**Date of
Determination** : **3 July 2019**

Date of Decision : **26 July 2019**

DECISION

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Decision

1. The Final Notice of a Financial Penalty dated 15th November 2018 in respect of 92 Robey Street Sheffield is confirmed. The penalty is payable within 28 days of the receipt of this decision by the parties.
2. No order is made for costs.

Background

3. This is an application by Sakib Bashir (“Mr Bashir”) against a financial penalty in the sum of £4000 issued by Sheffield City Council (“the Council”) pursuant to section 249A of the Housing Act 2004 (“the Act”) in respect of 92 Robey Street, Sheffield (“the Property”). The Final Notice, dated the 15th November 2018, imposed a financial penalty for the Property, in the sum of £4000, for Mr Bashir’s failure to apply for a licence.
4. Mr Bashir’s submitted his appeal application and the Tribunal issued directions providing for the filing of statements and a bundle of documents to be filed in preparation of the determination of the application.
5. The Tribunal ordered the application be dealt with by way of hearing on 3rd July 2019.
6. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.

Chronology

7. In April 2014 the Council introduced Selective Licensing for a number of streets in the Page Hall area of Sheffield, of which Robey Street forms part. Selective Licensing for this area ended in March 2019, after which time it was not possible to obtain a licence retrospectively and pay the fee of £1200.
8. On 10th July 2018 the Council wrote to Mr Bashir advising him of his need to apply for a licence, since it was its belief the Property was now let. The Council stated that on 12th July, Jacqueline Bull, a Senior Private Housing Standards Officer, met Mr Bashir on Page Hall Road.
9. On 7th August the Council wrote again to Mr Bashir to advise that since he had not applied for a licence it would now begin an investigation.
10. On 3rd October the Council carried an unannounced inspection at the Property, found it to be occupied and obtained a copy of the tenancy agreement naming Mr Bashir as the Landlord. The Council provided copies of two tenancy agreements for the Property, with the same tenants, the first being dated 1st May 2017 and the second, 2nd January 2018.
11. The Council, satisfied a housing offence had been committed, namely a failure to obtain a licence, determined a financial penalty should be paid by Mr Bashir. The Civil Penalties Determination Record showed the Council assessed Mr Bashir’s culpability and harm as low, giving rise to a penalty of £2500. It had then added an additional penalty for

aggravating factors increasing the penalty to £4000. The aggravating factors were listed as:

- Written to twice informing him of need to apply for a licence
- Evidence to suggest that he has required a licence since May 2017
- S/L scheme has been in place since 2014
- Resides in the S/L area. Close family members reside within the S/L area and have been prosecuted for failing to apply for licences. This highlights prior knowledge of the scheme and a deliberate attempt to avoid licensing
- Conversation in street with Ms Bull. He said that he would not licence and we should prosecute him.

12. A Notice of Intent to Impose a Financial Penalty of £4000 was sent by post to Mr Bashir's residential address on 10th October 2018
13. Mr Bashir made no representations to the Council.
14. On 15th November 2018 the Council issued and served the Final Notice of a Financial Penalty for the sum of £4000 sent this by post, on the same date to Mr Bashir's personal address.
15. Mr Bashir subsequently lodged his appeal application. Whilst his application was undated, it was received on or before the 28th November 2018.
16. The Tribunal issued directions in respect of the application providing for the filing of statements and thereafter for the matter to be listed for a hearing on 3rd July 2019.
17. On 24th June 2019 the Tribunal received an application from the Council seeking to strike out Mr Bashir's appeal. The application also included an application for costs in the sum of £482.90.
18. On 1st July 2019 the Council sent submissions in readiness for the hearing, summarising the Council's position and sending an updated costs schedule in the sum of £2130.60.

The Law

19. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been "a relevant housing offence".
20. Section 249 (2) sets out what amounts to a housing offence and includes at s 249(b) an offence under section 72 of the Act, namely a failure to licence a property. Section 249 (3)-(4) further provides that only one financial penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.

Procedural requirements

21. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.

22. A Notice of Intent must be given within 6 months of the local authority becoming aware of the offence to which the penalty relates, unless the conduct of the offence is continuing, when other time limits are then relevant.
23. The Notice of Intent must set out:
- the amount of the proposed financial penalty
 - the reasons for imposing the penalty
 - Information about the right to make representations regarding the penalty
24. If representations are to be made they must be made within 28 days from the date the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
25. The Final Notice must set out:
- the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for the payment of the penalty
 - information about rights of appeal
 - the consequences of failure to comply with the notice

Guidance

26. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance (“the HCLG Guidance) in April 2018 : *Civil penalties under the Housing and Planning Act 2016- Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
27. Sheffield City Council has developed its own guidance (“the Sheffield Guidance”) that follows the HCLG Guidance in setting out the criteria to be taken into account when determining any penalty:
- severity of the offence
 - culpability and track record of the offender
 - the harm caused to the tenant
 - punishment of the offender
 - deterrence of the offender from repeating the offence
 - deterrence of others from committing similar offences
 - removal of any financial benefit the offender may have obtained as a result of committing the offence
28. The Sheffield Guidance further sets out how they determine the level of any financial penalty. This is done in 3 steps:
- Step 1**
Assess the culpability and track record of the offender and the level of harm, or potential harm, to the occupiers.
- Step 2**
Adjust any penalty after considering any aggravating or mitigating circumstances

Step 3

Make any final adjustments to ensure the level is fair and proportionate but in all instances as punishment, a deterrent and removes any benefit of the offence.

29. The Sheffield Guidance provides examples of culpability on three levels being high, medium and low:

High level of culpability

- they have a history of non-compliance
- despite a number of opportunities to comply they have failed to comply
- have been obstructive as part of the investigation
- are an experienced landlord/agent with a portfolio of properties who would be expected to have known their responsibilities
- serious and systematic failure to comply with their legal duties

Medium level of culpability

- it is a first offence-with no high level of culpability criteria being met
- the landlord/agent had systems in place to manage risk or comply with their legal duties but they weren't sufficient or complied with on this particular occasion

Low level of culpability

- no or minimal warning given to offender
- the breaches are minor
- the offence is an isolated occurrence
- a significant effort has been made to comply but was inadequate in achieving compliance

30. The same categories apply to harm and the following are given as examples:

High

- actual harm to an individual
- high risk of harm to an individual
- serious risk of overcrowding
- serious effect on individual(s) or widespread impact

Medium

- adverse effect on an individual
- moderate risk of harm to an individual(s) or broader impact

Low

- minimal adverse effect on individual(s)
- low risk of harm to an individual
- limited impact or effect on occupiers

31. Once the appropriate levels have been determined a schedule is given to fix the level of penalty. The Sheffield Guidance then goes onto to give examples of aggravating factors and mitigating factors from which the Council may choose to deviate from the prescribed level of penalty.
32. The aggravating factors are given as follows:
- Previous convictions having regard to the offence to which it relates and the time elapsed since that offence
 - Landlord motivated by financial gain
 - Obstruction of the investigation
 - Deliberate concealment of the activity/evidence
 - Number of items of non-compliance-greater the number the greater the potential aggravating factor
 - A record of letting substandard accommodation
 - A poor management/inadequate management provision
 - Lack of a tenancy agreement/paid in cash.
33. The mitigating factors are exemplified as follows:
- Co-operation with the investigation e.g. attends the PACE interview
 - Any voluntary steps taken to address issues e.g. submits a licence application
 - Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
 - Willingness to undertake training
 - Health reasons preventing reasonable compliance-mental health, unforeseen health issues, emergency health concerns
 - has no previous convictions
 - Vulnerable individual(s) where their vulnerability is linked to the commission of the offence
 - Previous good character and/or exemplary conduct

Submissions and Hearing

Strike out application

34. The Council's written application for the matter to be struck was considered by the Tribunal as preliminary matter. The Council argued the application showed no valid grounds for appeal and there was no reasonable prospect of the appeal succeeding. The only reasons Mr Bashir had given for his appeal was his wish to pay the licence fee in instalments and that he should not pay anything after March 2019 when the scheme ended.
35. Mr Bashir confirmed he had received the application, contained in a letter dated the 21st June but could not recall the date upon which it was received.

Substantive application

36. Mr Bashir did not deny he had failed to licence the Property. At the time Selective Licensing was introduced he was living at the Property. The Tribunal had copies of the Council Tax records confirming that Mr Bashir lived there until 1st May 2017. The records further showed the tenants had left the Property on 27th October 2018 but the Property had then been re-let on 4th November 2018. Mr Bashir confirmed that was the position.
37. Mr Bashir accepted he should have applied for a licence when his first tenants moved into the Property. However, at that time, he was out of work, had moved back to live at his parents' home and could not afford the fee of £1200.
38. The Council argued Mr Bashir had obtained a taxi licence from Rossendale Borough Council from 21st September 2016 to 19th September 2018 and was therefore working at the time he required the licence. Further, the Council produced further evidence to show Mr Bashir was the owner of other properties and consequently his submissions of affordability were unsustainable
39. In response Mr Bashir confirmed that although he had a taxi licence he had been unable to use it in Sheffield after February 2017, due to his employer requiring a local taxi licence. He was unable to obtain a licence from Sheffield Council until December 2018. Mr Bashir confirmed he owned two other properties in Sheffield but that his father had bought one of them and received the rental income from it. He collected the rent from the other property but it was subject to a mortgage.
40. Mr Bashir confirmed that after losing his job his income was supplemented by his wife. At the hearing he produced bank statements showing his current account to be overdrawn. The Council referred to an earlier summary statement produced by Mr Bashir, for January 2019, showing total credits to the account in excess of £3000. Mr Bashir maintained that when informed of the need to licence the Property he could not afford the fee and wanted to pay by instalments.
41. The Council referred to a conversation between Mr Bashir and Jacqueline Bull on 12th July 2018 and referred to in a record of the conversation put by Ms Bull on the Council's "Flare Action Diary of Events". This stated that when speaking with Mr Bashir he had stated he could not afford the licensing fee and wanted to pay "in 2 parts". Ms Bull had advised Mr Bashir this was not possible and that should he fail to pay then he would face a fine of up to £30,000 or prosecution. Mr Bashir had stated he would prefer to go to court and then he could pay by instalments. Ms Bull told Mr Bashir the decision to prosecute rested with the Council and not with the Landlord.
42. In evidence, Mr Bashir said he had understood from the conversation that he would be taken to Court and could then pay the licensing fee by instalments. He denied being told he could face a penalty of £30,000. When he received the first letter from the Council, he had thought this was only a threat and he could still pay the fee by instalments. He stated he had spoken twice to someone in the Council's offices and "advised he would go to court and we won't prosecute you". The

- Council denied these conversations had taken place. They only had a record of one telephone call with their offices; all calls were recorded.
43. Mr Bashir confirmed that he had applied for licences for his other properties and was therefore aware of the need to acquire one for the Property.
 44. The Council submitted the penalty of £4000 was fair when taking into account the circumstances when arriving at it as referred to in paragraph 11 above. It could not give a break down as to how much of the £1500 had been attributed to each of the factors, but stated that one person, Mr Ramsay, dealt with all such decisions in order to achieve consistency in its approach.
 45. The Council further argued it had had no contact from Mr Bashir after their letter of 7th August suggesting his conversation with Ms Bull was as stated by her. Further, the Council had no discretion to allow payments of the licence fee by instalments.
 46. Mr Bashir stated whilst he would agree to pay the original fee of £1200, he did not agree with the sum of £4000, stating that he had always been willing to pay, but by instalments. He was aware of another local authority, namely Peterborough Council that allowed instalments.

Costs

47. The Council confirmed they sought an order for costs against Mr Bashir upon the basis there was no merit in his application. He had not given any grounds for an appeal, other than the refusal by the Council to allow him to pay the licence fee by instalments. It therefore followed he should incur a financial penalty and had shown no reason for this not to happen.
48. Mr Bashir argued he should not pay any costs; he had applied to the Tribunal since he could not deal with the matter any other way. He acknowledged that he had received the costs application sent to him by the Council and did not wish to make any further representations, other than the oral submissions made at the hearing.

Determination

Strike out application

49. The Tribunal firstly considered whether it would allow the Council's application for the matter to be struck out. It determined that such an application would not be granted and the parties were notified of this at the hearing.
50. In making this determination, the Tribunal considered Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") that provides for an application to be struck out if it has no reasonable prospect of success, or, as submitted by the Council, there is no valid ground for an appeal. Rule 9 (4) further states the Tribunal may not strike out an application without the parties having an opportunity to make representations.
51. In this matter, the strike out application was received in the Tribunal's office on 24th June 2019. Mr Bashir confirmed he had received the

application, but could not recall the date upon which it was received. It was not unreasonable for the Tribunal to assume it was also received, by post, on 24th June. The hearing was held on 3rd July, giving Mr Bashir just over 1 week's notice of the matter. The Tribunal did not consider this to be sufficient time for Mr Bashir to make representations, especially by an unrepresented party and accordingly refused the application.

Substantive application

52. The Tribunal noted there was no dispute Mr Bashir had committed a housing offence by failing to apply for the relevant licence as required by the Selective Licensing Scheme effective for the Page Hall area from April 2014.
53. The Tribunal considered the evidence given by Mr Bashir, namely that he had not applied for a licence due to financial hardship. He had relied upon his conversation with Ms Bull as his understanding that he would be prosecuted and would then be allowed to pay the licence fee by instalments. This was a complete misunderstanding of the position and was not an adequate defence for his failure to apply for a licence. Mr Bashir knew of the licensing requirements; he had other properties and had applied for licences for those properties in 2014. He was therefore fully aware that when he first let the Property in May 2017, a licence was required. The Tribunal took note of Mr Bashir's financial position at the time he needed to apply for a licence, but considered that as a professional landlord who had other properties, he either owned or managed, he should have given priority to the licence application. He had had from May 2017 to save the fee from his rental income; the Council had not approached him until July 2018, more than a year after the Property was let.
54. The Tribunal considered the note of the conversation made by Ms Bull was a fair representation of the discussions that had taken place on 17th August 2018.
55. The issue for determination was therefore the amount of the financial penalty. It noted the original penalty had been calculated by putting both culpability and harm as low, giving rise to the lowest penalty of £2500 on the Council's scale. This was then increased by a further £1500 due to the aggravating factors outlined in paragraph 11 above.
56. The Tribunal accepted Mr Bashir had been aware of his need to acquire a licence. However, his failure to pay had resulted in him avoiding the fee, due to the Selective Licensing Scheme for the area having ended in March 2019. When considering the aggravating factors the Tribunal accepted they applied save for the allegation that close family members had been prosecuted; this was not relevant in determining Mr Bashir's culpability. However, given the fact Mr Bashir had let his property for almost two years, without the benefit of a licence and had gained financially from that, justified the additional penalty. The Tribunal therefore determined Mr Bashir should pay the penalty imposed by the Council of £4000.

Costs

57. The Tribunal thereafter considered the application for costs. Rule 13 (1)(b) of the Tribunal Rules provides that an order for costs may be made if a person has acted “unreasonably” in bringing, defending or conducting proceedings before the Tribunal. The Council argued Mr Bashir should pay their costs as a result of “improper”, “unreasonable” or “negligent” acts, pursuant to section 294 of the Tribunals, Courts and Enforcement Act 2007. This Act does not cover the issue for costs before this Tribunal and it therefore only needed to consider the matter of unreasonableness as required by Rule 13.
58. The Tribunal considered the conversation between Mr Bashir and Ms Bull on 17th August 2108 that appeared to be the basis of Mr Bashir’s stance within the application. Whilst the Tribunal determined his belief he would be prosecuted and could then pay the licence fee by instalments to be no defence to the financial penalty, it considered there was scope for misunderstanding. Ms Bull had recorded Mr Bashir saying he would rather go to Court so he could pay by instalments. This demonstrated the apparent lack of understanding by Mr Bashir of the penalty system. It did not show that in bringing the application, albeit unsuccessfully, that he behaved unreasonably.
59. The Tribunal considered *Willow Court Management Company Limited v Alexander & Others [2016] UKUT 290 (LC)* where the Upper Tribunal considered what amounted to unreasonable. There it was said

“ Unreasonable” also means what it has been understood to mean this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment, but it is not unreasonable.”

60. Here, the Tribunal considered that although Mr Bashir’s application had no prospect of success and had certainly put the Council to the cost of defending the appeal application, it did not find Mr Bashir’s conduct to be unreasonable. There was a reasonable explanation for the appeal. Accordingly, it determined no order for costs would be made.

Signed: Judge J Oliver

Dated: 26 July 2019