



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

Case reference: MAN/00CG/HNA/2019/0040

Property: 350A Abbeydale Road Sheffield S7 1FP

Applicant: Mr M Yasin

Representative: Mr N Khan

Respondent: Sheffield City Council

Type of Application: Appeal against financial penalty-
Section 249A and Schedule 13A to
the Housing Act 2004

Tribunal Members: Judge J M Going
P E Mountain FRICS

**Date of
Deliberations:** 14 October 2019

Date of Decision: 23 October 2019

DECISION

The Decision and Order

The Final Notice is to be varied by amending the financial penalty to £1,000, to be paid within the period of 28 days beginning with the day after that on which this Decision is posted to the parties.

Preliminary

1. The Applicant appealed on 25 July 2019 to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under paragraph 10 of Schedule 13A of the Housing Act 2004 (“the Act”) against the Respondent’s issue on 5th February 2019 of a Penalty Charge Notice (“the Final Notice”) requiring the Applicant to pay a penalty charge of £2500, the Respondent having been satisfied that the Applicant had failed to apply for a licence for the property within what had been designated as a Selective Licensing Area.
2. The Tribunal gave Directions.
3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other.
4. The Tribunal made its deliberations on 14 October 2019.

The Property

5. The Tribunal did not inspect the property but understands it is to be a residential flat above commercial premises.

Facts and Submissions

6. None of the following matters have been disputed, except where specifically referred to.
7. According to the Land Registry the Applicant became the joint owner of the property on 22 December 1986.
8. The Respondent in June 2018, in exercise of its powers under the 2004 Act designated parts of London Road, Abbeydale Road and Chesterfield Road Sheffield as a Selective Licence area with effect from 1 November 2018. To better advertise the new designation and the consequent need for relevant persons to apply for a licence, the Respondent placed notices in the press, posted notifications on its website, informed various letting agents, and sent out various letters to known landlords.
9. The Respondent has provided copies of 4 letters sent to the Applicant’s home address in November 2017, January, August, and September 2018 regarding the introduction of the new licensing scheme.
10. The Applicant stated that he has no record of receiving those letters.

11. The Respondent's Senior Private Housing Standards Officer James Tomlinson visited the property on 12 November 2018, met with the tenants and photographed parts of their tenancy agreement. Mr Tomlinson telephoned Nadeem Khan who was named on the tenancy agreement as the Applicant's agent on the same day and avers that Mr Khan was aware of the scheme, but said that he did not know that it had come into force. Mr Tomlinson stated that he informed Mr Khan that the Council was still accepting applications even though the deadline had passed, the matter was urgent, and thereafter emailed him with an application form, guidance notes and the link to the Council's website.

12. Mr Tomlinson's statement then refers to receiving a telephone call from the Applicant on 26 November 2018 confirming that the application form would be submitted by the end of the week i.e. 30 of November 2018. Mr Tomlinson stated that he again explained the urgency of the matter.

13. On 3 December 2018 the Respondent made the decision to issue a financial penalty of £4,500, and on 4 December 2018 sent a formal Notice of Intent to the Applicant at his home address stating that any representations that he might wish to make must be made in writing and received on or before 4 January 2019.

14. The Applicant's application for the licence was received by the Respondent on 11 December 2018 and Mr Tomlinson avers that he spoke to the Applicant on the same day regarding the property, the notice that been served, and how to make representations.

15. Mr Tomlinson stated that on 8 January 2019 he telephoned Mr Khan to confirm that no representations had been received within the timescale set by the legislation. Mr Khan explained that he was intending to speak to a councillor that day and would then be submitting representations. It was agreed that the final date for receipt of such representations could be extended to 18 January 2019.

16. Representations were received from Mohammed Maroof, a Sheffield City Councillor, on behalf of the Applicant on 17 of January 2019, stating that the Applicant had not known that selective licensing applied to the property until 12 November, apologising for the delay in the submission of the application, due in part to difficulties in obtaining a floor plan, and asking for the financial penalty to be dropped.

17. Mr Tomlinson with 2 other officers of Respondent thereafter considered those representations before deciding to reduce the fine to £2500.

18. The Final Notice was issued and dated 5 February 2019 and contained advice as to the Applicant's right to appeal to the Tribunal.

19. The Applicant's application to the Tribunal was late, but referred to the matters mentioned above and his belief that the imposition of a financial penalty was unreasonable.

20. The Respondent in its statement of case argued that it has been reasonable in its actions, referring to having written to the Applicant 4 times at his home address, that it had allowed sufficient time for compliance, that the Applicant's delays were not reasonable, and that a fine was an appropriate alternative to prosecution in respect of an offence which had been admitted.

21. The Applicant did not properly comply with the Tribunal's Directions, but Mr Khan on his behalf sent an email to the Tribunal on 2 October 2019 referring to the Applicant having spent a lot of time in Pakistan, recently got married, his tenants moving out in February 2019, the property remaining empty until August 2019, and moving into the property in September 2019 on a long term basis with his spouse who now has a visa. It was also stated that the Applicant "does not have the funds to pay as he is... struggling financially".

The Statutory Framework and Guidance

22. Section 249A(1) of the 2004 Act (inserted by the Housing and Planning Act 2016) states that a "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..."

23. A list of relevant housing offences is set out in Section 249A(2), which includes the offence, under section 95(1) of 2004 Act, of a person having control or managing a house which is required to be licensed under part 3 of the 2004 Act that is not licensed. Section 95(4) states that "it is a defence that he had a reasonable excuse".

24. Section 249A(3) confirms only one financial penalty may be imposed in respect of the same conduct and subsection (4) confirms that whilst the penalty is to be determined by the housing authority it must not exceed £30,000. Subsection (5) makes it clear that the imposition of a financial penalty is an alternative to instituting criminal proceedings.

25. The procedural requirements are set out in Schedule 13A of the 2004 Act.

26. Before imposing a penalty the local housing authority must issue a "Notice of Intent" which must set out

- the amount of the proposed financial penalty,
- reasons for proposing to impose it, and
- information about the right to make representations. (Paras 1 and 3)

27. Unless the conduct which the penalty relates (which can include a failure to act) is continuing the notice of intent must be given before the end of the period of 6 months beginning on the first day on which the authority has sufficient evidence of that conduct. (Para 2)

28. A person given notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the notice was given. (Para 4)

29. If the housing authority then decides to impose a financial penalty it must give a “Final Notice” imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the final notice was given. (Paras 6 and 7)

30. The final notice must set out: –

- the amount of the financial penalty,
- the reasons for imposing it,
- information about how to pay it,
- the period for payment,
- information about rights to appeal; and
- the consequences of failure to comply with the notice. (Para 8)

31. The local housing authority in exercising its functions under Schedule 13A or section 249A of the 2004 Act must have regard to any guidance given by the Secretary of State.(Para 12)

32. Such guidance (“the Guidance”) was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled “Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.

33. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

34. The Guidance states “Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending. Local housing authorities should consider the following factors to help ensure that the... penalty is set at an appropriate level:

- severity of the offence,...
- culpability and track record of the offender,...
- the harm caused to the tenant,...
- punishment of the offender,...
- deter the offender from repeating the offence,....

- deter others from committing similar offences,....
- remove any financial benefit the offender may have obtained as a result of committing the offence...

35. The Respondent has documented its own “Private Housing Standards-Intervention and Enforcement Policy” (“the Respondent’s policy”) and included a copy of that in the papers. The Tribunal makes further reference to the Respondent’s policy later in these reasons.

36. A person receiving a Final Notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the 2004 Act).

37. The Final Notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

38. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

39. The Tribunal may confirm, vary or cancel the Final Notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

The Tribunal’s Reasons and Conclusions

40. There are three substantive issues for the Tribunal to address: –

- whether the Tribunal is satisfied beyond reasonable doubt that the Applicant has committed a “relevant housing offence” in respect of the property,
- whether the authority has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
- whether a financial penalty is appropriate and if so has been set at the appropriate level.

Dealing with each of these issues in turn:-

41. The Applicant readily admitted that he did not have a licence for the property at times when it should have been licensed and the Tribunal finds that he did not have a reasonable excuse for this failure. The Respondent advertised the scheme widely, notified local agents, and has provided evidence of 4 separate correctly addressed letters specifically warning the Applicant of the scheme before its implementation, despite that not being a statutory requirement. Even if the Applicant was still ignorant of the need for a licence (which in the circumstances is hardly credible) that is not a reasonable excuse. The Applicant as a landlord has a responsibility to ensure that relevant legislation is complied with. The Applicant was clearly late in applying for the

necessary licence. The Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to an offence under section 95(1).

42. The Tribunal carefully reviewed the actions taken by the Respondent and the timing and information set out in its different notices and concluded that it has satisfied the necessary procedural requirements to be able to impose a financial penalty.

43. The Tribunal then considered the appropriateness and amount of a penalty, reminding itself when so doing that it is not simply reviewing whether the Respondent's decisions were reasonable but conducting a re-hearing and making its own determination.

44. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence. It considered whether rather than impose a financial penalty a caution would be sufficient, but decided that such a sanction would be inadequate in terms of its likely punitive and deterrent effect.

45. The Tribunal then went on to consider the amount of that penalty. In so doing it has had particular regard to the 7 factors specified in the Guidance referred to in paragraph 34 above.

46. Although not bound by it, the Tribunal has reviewed the Respondent's policy and found that it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. As such the Tribunal is content to use it as a tool to assist its own decision making.

47. The Respondent's policy is itself based on factors specified in the Guidance. In assessing culpability and harm it concluded that there was a low harm rating and a medium culpability rating, and applied that to the following table set out in that policy as to the initial level of fine determination: –

Determination of civil penalty level			
Level of culpability	Level of Harm/Effect		
	High	Medium	Low
High	£25,000	£15,000	£7,500
Medium	£15,000	£10,000	£5,000
Low	£7,500	£5,000	£2,500

48. Taking into account that this was a first offence, that the Applicant had an agent/manager and that there may have been miscommunication the Respondent decided when issuing 4 December 2018 Notice of Intent to reduce the figure of £5000 referred to in the table/matrix to £4,500.

49. After receiving the representations in response to the Notice of Intent the Respondent reviewed its calculation and applied a further reduction to £2,500 referred to in the Final Notice.

50. The Tribunal in making its own decision and applying the criteria in the Guidance previously referred to above agrees with the assessment of harm as low. There is no suggestion of any harm caused to a tenant.

51. The Tribunal agrees with the Respondents assessment that the Applicant did or should have had clear knowledge of the licensing scheme. However it was a first offence and acknowledged that because the Applicant has an agent or manager of the property there was a possibility of miscommunication not least because of his poor language/written skills. It is also noted that, no doubt mostly because of the prompting by the Respondent, that the Applicant did in the event apply for the necessary licence, albeit approximately 6 weeks after the deadline date. The Tribunal has assessed both the severity of the offence and culpability and track record of the Applicant as low.

52. The importance of a failure to obtain a licence should not however be understated. An unlicensed property undermines the Respondents regulatory role and poses a potential for harm. As referred to in the Guidance there is the need to consider deterring an offender from repeating the offence and deterring others from committing similar offences.

53. The Tribunal has made its own calculation of the appropriate amount of the penalty as follows:

54. Adopting the matrix in the Respondent's policy, and having found the harm, the severity of the offence, and the Applicant's culpability and track record all to be low, the Tribunal's starting point was £2,500. It then went on to consider any aggravating or mitigating factors. An aggravating factor has been the Applicant's consistent disregard for deadlines, but in mitigation this was a first offence, readily admitted and the licence applied and paid for. The offence does not appear to have had any direct impact on housing standards, adversely affected a tenant, or contributed to any direct gain for the Applicant. The Tribunal has also had regard to the representations as to the Applicant's present financial circumstances and the lack of any rental income from the property after the tenants vacated. Factors which were of course unknown at the time of the issue of the Final Notice. The mitigating factors outweigh the aggravating factor and the Tribunal has decided that there should be a net reduction of £1500 from its starting figure.

55. By these calculations, the Tribunal has concluded that the appropriate financial penalty should be £1,000 and that this is just and proportionate in all the circumstances.

Judge J M Going
23 October 2019

