



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

Case Reference : **BIR/OOFY/HNA/2019/0019**

Property : **53 Kimbolton Avenue
Lenton
Nottingham
NG7 1PS**

Applicant : **Mr Donald Roy Lowe**

Representative : **Miss Ella- Louise Lowe**

Respondent : **Nottingham City Council**

Representative : **Mrs S Mills (Senior Solicitor)
Mr D Dott (Regulatory Compliance Officer)
Mrs R Brooker (Principal Environmental
Health Officer)**

Type of Application : **An appeal under paragraph 10 of Schedule 13A
to the Housing Act 2004 against a decision by
the Local Housing Authority to impose a
Financial Penalty.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr R Chumley-Roberts MCIEH, J.P
Mrs K Bentley**

Date of Decision : **11th February 2020**

DECISION

BACKGROUND AND INTRODUCTION

1. The Tribunal received an appeal from the Applicant, Mr Donald Roy Lowe against a Financial Penalty in the amount of £9,167.75 under section 249A and Schedule 13A, paragraph 6 of the Housing Act 2004.
2. The appeal was received on 31st July 2019 against the Financial Penalty notice dated 17th April 2019 issued by the Respondent, Nottingham City Council.
3. As no time limit is prescribed for making an appeal, the default provisions of Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 apply:

27.-(1) This rule applies where no time limit for starting proceedings is prescribed by or under another enactment.

(2) where the notice of application relates to a right to appeal from any decision (including any notice, order or licence), the Applicant must provide the notice of application to the Tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the Applicant.

4. This application was therefore out of time. However, Rule 6(3)(a) of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states:

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may-

(a) Extend or shorten the time for complying with any rule, practice direction or direction, even if the application for an extension is not made until after the time limit has expired;

5. The Preliminary matter was heard by the Tribunal at a hearing on 15th October 2019 following which a Decision dated 22nd October 2019 was issued allowing the appeal under Rule 6(3)(a).
6. At the same time the Tribunal issued Further Directions following which both parties made submissions.
7. This hearing is therefore held to consider the Substantive Issue, being the Appeal under paragraph 10 of Schedule 13A to the Housing Act 2004 against a decision by the Local Housing Authority to impose a Financial Penalty.
8. This is the Tribunal's determination on an appeal made by Mr Donald Roy Lowe ("the Applicant") against the decision of Nottingham City Council ("the Respondent") to impose a Financial Penalty under section 249A of the Housing act 2004 ("the Act") relating to 53 Kimbolton Avenue, Lenton, Nottingham, NG7 1PS ("the Property").
9. The Applicant is the owner of the Property.

10. On 26th February 2019 the Respondent served a Notice of Intention to Issue a Financial Penalty on the Applicant under paragraph 1 of schedule 13A to the Act. The notice was issued as the Respondent was satisfied beyond reasonable doubt that the Applicant had committed an offence as he was the person having control of the property and he had failed to licence it under Part 3 of the Act (Selective Licensing) which is an offence under section 95 (1) of the Act.
11. On 18th April 2019 the Respondent served a Final Notice of Decision to Impose a Financial Penalty on the Applicant.
12. In determining the value of the financial penalty, the Respondent used its 'Flare' computer package with its initial judgement that the lack of a licence provided a serious risk of harm which it assessed at 'Level C' and this combined with the very High Culpability resulted in a 'Band 4' penalty. The Respondent confirmed that a 'Band 4' penalty has a starting amount of £6,000.00 and an upper limit of £15,000.00.
13. In addition to this the Respondent imposed a further penalty based on 250% of its assessment of one weeks rent which in this case the Respondent calculated to be £343.75.
14. The Respondent further calculated that the rental income as stated on the tenancy agreement was £550.00 per month. Therefore, from the date of introduction of Selective Licensing on 1st August 2018 until the date of the visit on 31st December 2018 there was a five-month period which gave a calculated rental income of £2750.00.
15. In addition to this the Applicant had received a further financial benefit by not paying the cost of the licence fee at £780.00 giving a total of £3530.00 (£2,750.00 + £780.00) to be added to the civil penalty. In exercise of the Council's discretion and in order to be proportionate to the offence it was considered that only 80% of the financial benefit should be added which amounted to £2824.00.
16. The total amount of the Financial Penalty Notice in the sum of £9167.95 was therefore made up as follows:

Band 4 Penalty	6,000.00
250% of one weeks rent	343.75
<u>Financial Benefit</u>	<u>2,824.00</u>
Total Penalty	£9,167.75

17. On 31st July 2019 the Tribunal received an application from the Applicant. As detailed above the Application was out of time and on 22nd October 2019 the Tribunal issued its Decision on the Preliminary Issue together with Directions for dealing with the Application itself.

INSPECTION

18. The Tribunal inspected the Property on 29th January 2020 in the presence of the Applicant, The Applicant's Representative, Mrs E Lowe, Mr D Dott (Regulatory Compliance Officer for the Respondent and Mrs R Brooker (Principal Environmental Health Officer for the Respondent) together with Mr R W Taylor (the Tenant).
19. The Property was found to be a mid-terraced villa style house situated in an area of predominantly similar style properties in a popular area for student housing.
20. Briefly the accommodation comprises on the ground floor of entrance porch leading to a hallway with stairs off. There are doors to the lounge and dining room although the Tribunal was only able to access the front lounge via a doorway between the two rooms. There was no working light in the front lounge which was in complete darkness and this prevented a meaningful inspection.
21. A door from the dining room leads to the kitchen fitted with a slightly dated range of base and wall units incorporating a built-in oven, hob and double drainer stainless steel sink. The kitchen leads to a rear lobby with door to the rear and access to the bathroom with three-piece sanitary suite having a shower mixer over the bath.
22. On the first floor the landing leads to two double bedrooms, one single bedroom and W.C. A staircase from the landing leads to attic bedroom four.
23. The Property has gas fired central heating and upvc double glazing throughout. To the front is a small forecourt and to the rear is a small yard area.
24. The property is poorly occupied.

THE HEARING

25. A hearing was held later that same day at Nottingham Justice Centre. The same people who attended the inspection also attended the hearing (with the exception of the tenant) together with Mrs S Mills (Senior Solicitor for the Respondent) and Mrs A Pinder (an observer on behalf of the Respondent).
26. The submissions made on behalf of the parties in writing and in person at the hearing were briefly as follows.

THE RESPONDENT'S SUBMISSIONS

27. The Respondent submitted that in August 2018 it extended its licensing regime to include properties that fall outside the scope of the HMO mandatory and additional licensing schemes implementing a Selective Licensing Scheme in exercise of its powers under section 80 of the Act. Therefore, from 1st August 2018 all privately rented properties that were located within the Selective Licensing Designated Area were required to be licensed unless it is exempt in accordance with the provisions of section 85 (1) (a), (b) or (c) of the act.

28. The subject property was located within the designated area and on 20th August 2018, a Council Tax search indicated that the property was privately rented as it stated the liable party to be Mr R W Taylor and that the responsible party was the Applicant.
29. On the same date a Housing Benefit search indicated that there was an active claim in place starting on 5th September 2011 at £550.00 per month. This confirmed that the claimant was Mr R W Taylor and that the rent was being paid to the landlord Mr D Lowe.
30. On 24th September 2018 a Land Registry search was carried out which identified the registered proprietor as being the Applicant and on the same date a check was completed on the Respondents' website to ascertain if the property was within the Selective Licensing designated area. This confirmed that the property was within the Selective Licensing area and enquiries showed that no application for a Selective Licence or temporary exemption notice had been received.
31. The Respondent further submitted that on 24th September 2018 a Requisition for Information Notice under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and a Notice to Produce Documents to request the most recent tenancy agreements for the property served under Section 235 of the Housing Act 2004 were served on the Applicant at the property and at his home address. Correspondence was also sent with the Notices which clearly stated that the property required a Licence under the Selective Licensing Scheme and that a licence application must be submitted within 10 days.
32. It was further submitted that on 25th September 2018 a telephone call was logged from the Applicant to a Licensing Support Officer. This was transferred to Mr D Dott, the Regulatory Compliance Officer. In this telephone call the Applicant stated that he was in receipt of the letter dated 24th September 2018 informing him of the requirement to licence the property within 10 days. The Applicant further stated that the property was occupied by one tenant and that this tenants' rent was paid by Nottingham City Council. He went on to confirm that the property was initially purchased when his daughter was at University and that she had lived there. When his daughter moved out, the property was unoccupied for some time and squatters had moved in. The Applicant further stated that he had allowed the tenant to stay there, despite the fact that the rent he was paying did not cover the full amount of his mortgage. The Respondent further submitted that the Applicant stated that he would not apply for a Licence but would give the tenants two weeks' notice to vacate the premises according to the tenancy agreement that had been signed.
33. The Respondent submitted that he advised the Applicant that he would need to apply for a Licence and that any Notice to Quit seeking possession which he served on the tenant would be invalid as a Licence was required. At the same time, the Applicant informed the Respondent, that he would not be completing the Local Government (Miscellaneous Provisions) Act 1976 Section 16 Notice sent to him as he did not see the need for a Licence and stated that the Safer Housing Team should obtain the tenancy agreement from the Authority as they paid the rent. The Respondent advised the Applicant to seek independent legal advice.

34. The Respondent further submitted that on 26th September 2018 it received a telephone call from the tenant informing it that the Applicant had called to tell him that the Council required that the property be licenced and that he was now going to serve the tenant with two months' notice to vacate. On 3rd October 2018 the Respondent wrote to the Applicant advising him that there was an absolute legal requirement that must be followed when serving and enforcing an eviction notice and that failure to follow this procedure would run the risk of a criminal prosecution under the Protection from Eviction Act 1977. On the same date a letter was also sent to the tenant advising him of his rights.
35. It was further submitted that on 24th October 2018 the tenant telephoned the Respondent to confirm that he, (the tenant) had received a letter from the Applicant giving him notice. An inspection of the property was arranged and Mr D Dott and Mr A Crookes (both Regulatory Compliance Officers), attended at the property. On 26th November 2018 copies of the tenancy agreement were obtained from the Housing Benefit Team confirming that £550.00 was paid over four months. This totalled £2200.00 since the Selective Licensing Scheme came into force on 1st August 2018.
36. The Respondent submitted that on 30th January 2019 a 'Decision to Take Further Enforcement Action Document' was completed and the review of evidence confirmed that the criminal standard of proof had been met and concluded that the most appropriate course of action would be to serve a Civil Penalty Notice on the Applicant for the offence of failure to licence. On the same date the calculation of the amount of civil penalty was carried out in line with Nottingham City Council's Civil Penalties Enforcement Policy and Guidance – Housing and Planning Act 2016.
37. The Respondent further submitted that it calculated the culpability of the Applicant to be 'Very High'. In reaching this decision it considered the following matters:
- a) That the requirement to licence the property under the Selective Licensing Scheme was brought to the attention of the Applicant in correspondence and in a telephone call in September 2018.
 - b) That during a telephone conversation the Applicant stated that he would not apply for a licence but would instead evict the tenant.
 - c) That the requirement to licence the property was again brought to the attention of the Applicant in correspondence sent on 3rd October 2018.
 - d) That at the time the penalty was calculated no application for a Selective Licence or Temporary Exemption Notice had been submitted.
38. The Respondent submitted that it considered the seriousness of harm risked (by the failure to licence) was at 'Level C' and this combined with the very High Culpability resulted in a 'Band 4' Penalty. The Respondent confirmed that a 'Band 4' penalty has a starting amount of £6,000.00 and an upper limit of £15,000.00.
39. The Respondent further submitted that the enforcement policy states that 250% of the relevant income is added to the starting amount. By referring to the signed tenancy

agreement it was identified that the rent was charged at £550.00 per month which was calculated to be £137.50 per week. 250% of this was calculated to be £343.75 which was added to the starting amount of £6000.00 to bring the subtotal to £6343.75.

40. It was further submitted that the financial benefit obtained as a result of the offence was calculated from the rental income as stated on the tenancy agreement. The offence started with the introduction of selective licensing on 1st August 2018 and was calculated until the date of the visit on 31st December 2018. This gave a five-month period which was calculated at £2,750.00 rental income. In addition to this, financial benefit had been obtained by not paying the cost of the licence fee of £780.00. This gave a total of £3,530.00 to be added to the civil penalty. This resulted in a final figure for the civil penalty of £9,873.75.
41. The Respondent submitted that on 26th February 2019 a Notice of Intent to Impose a Financial Penalty was served on the Applicant under Section 13A, paragraph 1 of the Housing Act 2004 as the Respondent was satisfied beyond reasonable doubt that the Applicant was the person having control of the property and failed to licence it under Part 3 of the Act (Selective Licensing), which is an offence under Section 95(1) of the Act. At the date of service of the Notice of Intent to Impose a Financial Penalty no application for a Selective Licence or Temporary Exemption had been received.
42. The Respondent further submitted that following a telephone call on 1st March 2019 from the Applicant it advised the Applicant to make any representations in writing. The Notice of Intent has a 28-day period for representations but non-were received. On 26th March 2019 a Selective Licence Application was submitted by the Applicants' Representative detailing her as the licence holder. It was submitted that due to an IT issue the Respondent had no record of this prior to imposing the Final Notice on 18th April 2019. On 29th April 2019 the Respondent rejected the Selective Licence Application which was returned as it required some amendments. This was subsequently re-submitted and accepted as duly made on 16th May 2019.
43. In exercise of its discretion the Respondent considered that only 80% of the financial benefit should be added to the penalty. This amounted to £2,824.00 which when added to the previous subtotal of £6,343.75 gave a final figure for the civil penalty of £9,167.75. The Respondent submitted various witness statements in its evidence.

THE APPLICANT'S SUBMISSIONS

44. The Applicant submitted that the property was currently occupied by a single tenant, Mr Robert Taylor who occupied one room. It was submitted that Mr Taylors' rent was paid by Nottingham City Council by way of housing benefit in the amount of £363.00 per month which did not cover the monthly mortgage payments of £756.00.
45. The Applicant further submitted that the tenant was initially one of a group of illegal squatters. The Applicant understands that Mr Taylor asked the other squatters to leave so that he could remain in the property on his own. When the Applicant discovered that Mr Taylor was squatting at the property, he was asked to leave but refused to do so. Following ongoing discussions and negotiations Mr Taylor was allowed to stay on the

assurance that he would take care of the property. However, Mr Taylor was actually storing items in the untenanted rooms and making the house uninhabitable for anyone else.

46. The Applicant submitted that in his opinion the living room was a fire hazard as the tenant had a sheet covering the ceilings and walls. (There was a similar arrangement to the dining room as seen by the Tribunal at the inspection). The Applicant stated that he allowed Mr Taylor to remain in occupation temporarily only if he could pay the rent of £550.00 per month and on the assurance that he would keep the house tidy. The Applicant understands that when Mr Taylor applied to Nottingham City Council they only agreed to pay the current amount of rent being £363.00 per month but the Applicant was very patient and allowed him to remain in occupation, the idea being that it would give the Applicant the opportunity to save some money so the house could be refurbished before being sold.
47. The Applicant confirmed that it was never his intention for this to be a long-term rental and it was always intended that the property would be sold.
48. The Applicant further submitted that Mr Taylor had now been in the property since 2011 and in 2018 he, the Applicant, was in a financial position to sell. At that time, he wrote to Nottingham City Council and to the tenant providing them with 30 days' notice following which the Applicant intended to carry out refurbishment works and place the house on the market. It was following this notice that the Applicant received initial correspondence from Mr D Dodd at Nottingham City Council confirming that the new Selective Licensing Scheme had come into operation and that he needed to apply for a licence. The Applicant understood at that time that in accordance with section 79 (2) of the Housing Act 2004 a licence (for the property) was only required if the whole house was occupied under a single tenancy or licence, or under two or more tenancies or licences in respect of different dwellings contained within it.
49. The Applicant therefore submitted that as he was renting one room and not the whole house to one tenant, he did not think a licence was required. He also informed Mr Dodd that he was planning to evict the tenant and sell the property at which time he was told that a licence would be required before he could even issue a Section 21 eviction notice. Following ongoing discussions, the Applicant agreed to apply for a licence although he still questioned whether or not a licence was actually required.
50. On 26th March 2019 the Applicant submitted that, through his daughter, he applied for the Selective Licence. This was later than expected due to financial constraints and scheduling but the Applicant further submitted that his daughter had been regularly in contact with Nottingham City Council regarding the status of the licence although to date it has not been issued. The Applicant understands that the licence application is still being processed due to a major backlog at Nottingham City Council. The Respondent had confirmed with the Applicant's daughter that they are still processing applications that had been submitted in 2018.
51. Having submitted the application for a Selective Licence in March 2019 the Applicant had received the Final Notice letter dated 17th April 2019 from Mr Dodd regarding the

imposition of a financial penalty. The letter stated '*to date an application for a licence has not been made for the property*'. The Applicant submitted that it was unclear why this Final Notice was sent having regard to the fact that the Selective Licence had already been applied for.

52. Following receipt of the Final Notice and covering letter dated 17th April 2019 the Applicant submitted that his daughter contacted the Licence Team at Nottingham City Council when they confirmed that they were processing the application but that there was a backlog of applications. At that time, they also confirmed to the Applicant that as an application had been made, they did not need to worry about the Final Notice that had been received. Therefore, at this point, the Applicant assumed the notice had been automatically generated by Nottingham City Council for all landlords that required a Selective Licence but did not have one in place and that it was sent erroneously as the Applicant had, at the date of the Final Notice already applied for a Selective Licence.
53. In the opinion of the Applicant had Mr Dodd checked the licence application status he would not have sent out the Final Notice and he questioned whether, even if it had been sent, it would have been for such a large amount.
54. The Applicant further submitted that on 24th July 2019 he received a letter from Nottingham City Council requiring payment of £9167.75 as a Financial Penalty with the payment needing to be made by 31st July 2019. This Financial Penalty was a surprise to the Applicant as he had already been advised by Nottingham City Council not to worry about the Final Notice.
55. In conclusion the Applicant submitted that he understood he did not require a Licence as he was only letting one room in the property. However, on being questioned by the Tribunal he subsequently conceded that the Tenancy Agreements between himself and the Tenant referred to the tenancy as being '*of the property*' rather than '*of one room*'.
56. Following the Hearing the Tribunal received from the Applicant, a letter with a report from his Accountant confirming that he had paid no tax for the Tax Year 2018/2019.
57. The Tribunal does not generally accept submissions from parties following the conclusion of a hearing unless the parties have been directed to so by the Tribunal or unless the other party has been given the opportunity to comment on the submission. In this case, the late submission merely confirms the submission made by the Applicant at the Hearing and has had no bearing on the Tribunal's decision.

THE LAW

58. Paragraphs 1 to 10 of Schedule 13A to the Housing Act 2004 state as follows:

Notice of intent

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

The notice of intent must set out—

*(a) the amount of the proposed financial penalty,
the reasons for proposing to impose the financial penalty, and*

information about the right to make representations under paragraph 4.

Right to make representations

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

The final notice must set out—

(a) the amount of the financial penalty,

the reasons for imposing the penalty,

information about how to pay the penalty,

the period for payment of the penalty,

*information about rights of appeal, and
the consequences of failure to comply with the notice.*

Withdrawal or amendment of notice

*(1) A local housing authority may at any time—
withdraw a notice of intent or final notice, or
reduce the amount specified in a notice of intent or final notice.*

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

*the decision to impose the penalty, or
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—

is to be a re-hearing of the local housing 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 financial penalty of more than the local housing authority could have imposed.

Section 263 of the Act states

263 Meaning of “person having control” and “person managing” etc.

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

THE TRIBUNAL'S DETERMINATION

59. The Tribunal then considered the appeal in three parts:

- 1) Whether the Tribunal was satisfied, beyond reasonable doubt, that the Applicant's conduct amounted to a "relevant housing offence" in respect of premises in England (see sections 249A (1) and (2) of the Housing Act 2004);
- 2) Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act); and/or
- 3) Whether the financial penalty was set at an appropriate level, having regard to any relevant factors, including:
 - i. the offender's means;
 - ii. the severity of the offence;
 - iii. the culpability and track record of the offender;
 - iv. the harm (if any) caused to a tenant of the premises;
 - v. the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
 - vi. the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

60. Did the Applicant's conduct amount to a relevant housing offence?

61. It was not contested by the Applicant that he owned the Property. It was initially contested by the Applicant as whether or not a Selective Licence was required.

However, at the hearing it was ultimately admitted and accepted by the Applicant that a Selective Licence was required for the property.

62. On the evidence provided the Tribunal is satisfied beyond reasonable doubt that the alleged offence was committed and that the Applicant was the “person in control”. The Tribunal accepts the evidence of the Respondent that the Applicant was informed that a Licence was required in correspondence of 24th September 2018 and in a telephone conversation of the following day.
63. Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty?
64. There was no challenge by the Applicant in this element of the appeal and the Tribunal determines that the procedural requirements for the imposition of the Financial Penalty were satisfied.
65. Whether the financial penalty was set at an appropriate level?
66. The methodology by which the penalty amount was calculated was by the Respondent Council’s Civil Penalties Policy. This is a lengthy document extending to some 33 pages covering varying classes of harm and culpability. This sets out the penalty amount for each type of offence and adjustments for particular circumstances some of which are not relevant to this matter. The Tribunal considers this policy simplistic. For instance, the penalty for ‘Band 4’ (as used by the Respondent in this case) starts at £6,000.00 but rises to a potential penalty of £15,000.00. In addition to this the penalty is increased based on the ‘*perceived benefit*’ which the Applicant has received by not applying for the Licence. In this case the ‘*perceived benefit*’ was based on the Respondent’s assessment of the rent being paid rather than the actual rent received by the Applicant.
67. On questioning by the Tribunal, the Respondent confirmed that the Council’s Civil Penalties Policy was currently under review. At the same time the Applicant confirmed that he assumed that by applying for the licence within 28 days from receipt of the Notice of Intent this would be taken as a representation by him to the Notice. However, this was not the case.
68. On further questioning by the Tribunal, the Respondent confirmed that it had widely advertised its intention to introduce Selective Licensing but could not confirm that it had written to the Applicant at his home address prior to the commencement date on 1st August 2018. However, it was of the opinion that it was the responsibility of a landlord to keep updated on the situation regarding rented properties in an area where such were owned.
69. The Applicant confirmed the he knew nothing about Selective Licensing until he received a letter from the Respondent dated 24th September 2018. The Applicant also submitted that as he received a confirmation from Nottingham City Council every month in respect of the housing benefit payment, the Respondent had every opportunity to notify him in good time.

70. The Tribunal questioned Mr Dott regarding the starting figure (£6,000.00 in this case) of the Financial Penalty. The Tribunal understands that this is a starting figure and that the calculation is purely arithmetical. If further factors, such as previous Improvement Notice or ownership of multiple properties was found then that figure could be increased. However, it appears to the Tribunal that although the starting figure of £6,000.00 can be increased there is no mechanism for reducing it, for example, as in this case, to reflect the fact that the Applicant had never had an Improvement Notice served on him and only owned this one rented property.
71. The Tribunal is of the opinion that the starting point at £6,000.00 appears very high. The way in which the assessment is carried out appears arbitrary. Although it can be argued that the Applicant's 'Culpability' is High as he was clearly told that a Licence was required in September 2018 and did not make an application until March 2019 the Tribunal does not accept that the 'Seriousness of Harm' can be considered as significant.
72. The Tribunal entirely accepts that part of the purpose in imposing Financial Penalties is punitive; they should punish the offender to deter repetition and remove any financial benefit from failure to comply with statutory requirements whilst also protecting the tenant of the premises. It is an alternative to prosecution. It would however, seem wholly inappropriate if the level of financial penalties levied were substantially greater than the level of fine(s) that might reasonably be expected had the local housing authority opted for the alternative of prosecution. The Tribunal recognises that in putting in place the legislation permitting local housing authorities to levy civil penalties the Government was no doubt seeking to make those responsible for committing breaches of statutory housing requirements contribute towards the cost of enforcement. However, the Tribunal would also express the view that local housing authority civil penalty notices should be carefully drafted and sufficiently flexible to allow penalties levied to properly reflect all the circumstances of a particular case. They have a proper place in the overall legislative framework aimed at dealing with unsatisfactory housing conditions and in drafting and reviewing them local housing authorities most certainly should avoid any temptation to regard them as a steady income stream.
73. There is also the question of the Applicants' financial position to be taken into account. The Applicant submitted at the hearing that he paid a mortgage in respect of the property of £756.00 per month against an income of £363.00 per month. With regard to his personal financial situation it was confirmed that he was a semi-retired electrical engineer and that his income for the tax year 2018/2019 did not result in him having any tax liability. In addition, he and his wife owned the property they lived in but this was still subject to a mortgage of some £11,000.00.
74. The Tribunal also determines that as the Final Notice was issued after the Applicant had submitted the Application for a Selective Licence, even though this was initially rejected and returned for further clarification, the fact that the Licence had been applied for should have been taken into account. The Tribunal accepts that the financial penalty is sought for the period 1st August 2018 – 31st December 2018, a period of five months and that this was well before the application for a Licence was made. However, the Respondent did submit that had it been aware of all the facts and mitigating circumstances prior to the Financial Penalty Notice being sent then a reduced Penalty

of £4,182.99 could possibly have been issued. A worked copy of this figure was included in the Respondents' written submission.

75. All these matters are relevant considerations which, in the Tribunal's view, the Local Authority should have taken into account in the exercise of its discretion in determining the amount of any Financial Penalty rather than slavishly following its Civil Enforcement Policy without giving any consideration to the circumstances surrounding the offence.
76. It is not for the Tribunal to indicate the specific starting point for any offence but it is noted that some other City Authorities do have a significantly lower starting point.
77. We have considered the matters listed above and for the First Offence of Failing to Apply for a Selective Licence (Section 30) we reduce the amount of the Financial Penalty to the sum of £3,000.00. We further reduce this by 25% to reflect the fact that the Applicant had applied for the Selective Licence before the Final Notice was issued.
78. The Tribunal acknowledges that although the Applicant did not obtain a benefit from the rent obtained as the outgoings were considerably more there was a benefit to the Applicant by not paying the licence application fee. However, the amount of the application fee at £780.00 is still a significant amount when the monthly deficit of mortgage payments against rent received is taken into account.
79. The same is true of the element of 250% of one weeks rent and the imposition of five months' rent as a further penalty (even had the amounts been calculated correctly).
80. The Tribunal therefore strikes out these elements of the Financial Penalty in their entirety.

DECISION

81. The Tribunal varies the Financial Penalty under paragraph 10(4) of Schedule 13A Housing Act 2004 to £2,250.00 (Two Thousand Two Hundred and Fifty Pounds).

APPEAL

82. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Graham Freckelton FRICS (Chairman)
First-tier Tribunal (Property Chamber) (Residential Property)