



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

Case Reference : **BIR/41UC/HNA/2019/0041**

Property : **5 All Saints Croft, Burton upon Trent,
DE14 3EA**

Applicant : **Mr. Norman Smurthwaite**

**Applicant's
Representative** : **None**

Respondent : **East Staffordshire Borough Council**

Type of Application : **Appeal against financial penalties.
S249 & Schedule 13A Housing Act 2004**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member
Mr Robert Chumley Roberts JP. MCIEH
CEnvH
Tribunal Judge Mrs D Barlow**

Date of Hearing : **9 March 2020**

Date of Decision : **20 March 2020**

DECISION

- a. The Tribunal has conducted the appeal by way of rehearing in accordance with paragraph 10 (3) Schedule 13A Housing Act 2004 and confirms the final notice served by the Respondent on 22 November 2019.***
- b. The Respondent took all action necessary to bring to the attention of the Applicant that the Property was in an area designated as subject to selective licensing.***
- c. The Applicant failed to amend his registered address for service of notices.***
- d. The Respondent served the Applicant with the requisite notices imposing a financial penalty at the registered address of the Applicant.***
- e. The Applicant at the time of the imposition of a financial penalty had not applied for a licence in accordance with s85 Housing Act 2004.***
- f. There is no reason to vary or cancel the notice imposing a financial penalty.***
- g. The appeal is dismissed.***

1. This is an appeal by way of rehearing against a decision dated 25 November 2019 by East Staffordshire Borough Council (the Respondent) that Mr Norman Smurthwaite (the Applicant) care of 13 Glenworth Crescent Skegness had committed an offence under s95 Housing Act 2004 (the Act) in relation to the property, 5 All Saints Croft Burton upon Trent DE14 3EA (the Property), being a property owned by the Applicant within the selective licensing area designated by the Respondent but which was not licenced under Part 3 of the Act.
2. The Applicant is the owner of the Property jointly with his wife Lorraine Smurthwaite who is not a party to these proceedings. According to the Applicant the Property has been in his ownership since 30 September 2008. It is one of a large portfolio of properties owned by the Applicant and his wife. It is let to Mr Stephen Dunning. He has been the tenant since 1 August 2010. He is retired and in receipt of housing benefit.

3. On or about 21 February 2019 a large tree on a neighbouring property fell onto the roof of the Property causing substantial damage. The Applicant arranged for a temporary repair. The Applicant decided to pursue the owner of the neighbouring property for the cost of repairs without success. The Applicant asserts that he advised Mr Dunning to approach the Respondent's environmental services to report the damage caused by the tree falling from the neighbouring property.
4. On 26 March 2019 Mr Dunning approached the Respondent. However, the evidence of the Respondent recorded in its Housing Standards Complaints and Enquiries document is that Mr Dunning reported the tree had fallen on the roof over six months earlier. The document records "*Landlord said he is waiting for insurance but none has visited. Water now leaking into bungalow. Landlord-Norman Smurthwaite, The Old Rectory, 54 Main Street Cossington Leicestershire LE7 4UU, 07971436433*". The nature of the enquiry was noted by the Respondent's officer as 'Housing Disrepair'.
5. Enquiries made by the Respondent with the council tax office and land registry confirmed the address given by the Applicant was that stated in the original report by Mr Dunning. On 28 March 2019 the Respondent sent two letters to the Applicant at the Cossington address. The first required repair work to ensure there were no hazards that could affect the health of the occupiers of the Property. The second letter notified the Applicant the Property is in an area where a selective licensing scheme is in operation and that a valid application for a licence must be made within 14 days otherwise the Respondent would consider taking action under s95(1) of the Act (offences relating to housing). An application form for completion by the Applicant was attached.
6. On 8 April 2019 the Respondent wrote to the Applicant at the Cossington address notifying him of the intention to inspect the Property on 18 April 2019. A similar letter went to Mr Dunning. On 10 April 2019 Mr James Turner, an environmental health officer employed by the Respondent sent an email to the Applicant recording a telephone conversation with the Applicant in which Mr

Smurthwaite confirmed he would carry out the works necessary. Mr Turner informed the Applicant of the date of the proposed inspection.

7. The Applicant's evidence confirms the telephone conversation. It is not clear who initiated the conversation but it is common ground it took place.
8. On 11 April 2019 Mr Ian Welby sent another email to the Applicant notifying him of the need for a licence under the selective licensing scheme in effect. Both emails went to the Applicant at "*nsmurthwaite@aol.com*". On 18 April 2019 Mr Turner asked for a progress report on the repairs. The mail went on to refer to information sent to the Applicant about how to apply for a selective licence. He received a response from the Applicant five minutes later by email in which he said he had not received the mail relating to the selective licensing scheme. He did not give an alternative address for correspondence in that email. Mr Welby sent a further copy of the application form by email to the "*aol*" address that afternoon.
9. It is apparent that necessary works were carried out at the Property but the Applicant did not submit an application for a licence. The Respondent wrote on several occasions to the Applicant referring to the need for a licence. Letters were sent to the Cossington address on 26 June, 8 August, 2 September and 11 October 2019 all in connection with the licence requirement. A copy of each letter was sent to the Applicant by email at the "*aol*" address.
10. The Applicant did not respond to any of the letters or emails. The letter of 11 October 2019 enclosed the Notice of Intent to issue a Financial Penalty and the Landlord Representation form. It is the Applicant's case that he did not receive any of the letters because he was not resident at Cossington having lived permanently in France since 2012. Although he had set up a mail redirect arrangement in June 2019 it did not cover any mail sent by recorded delivery. Also he asserts he did not receive the email copies because of failings with the "*aol*" system which did not redirect emails with attachments to his new email address *nsmurthwaite@gmail.com*

11. On 15 October 2019 the Applicant telephoned an officer of the Respondent. He informed the officer that his correspondence address had changed to 13 Glenworth Crescent Skegness PE25 2TG.
12. On 16 October 2019 the Respondent sent a copy of the letter of 11 October 2019 and accompanying Notices to the Applicant who admits he received that letter. The Respondent also advised the Applicant to notify the council tax department of his change of address. It was not until 11 November 2019 that the Applicant notified the council tax office by email of his new address. The Respondent carried out a further search of the HM Land Registry on 20 November 2019 which revealed the address of the proprietor of the Property was still the Cossington address.
13. On 22 November 2019 the Respondent sent a Financial Penalty Final Notice to the Applicant at the Skegness address. Both letter and Notice gave the Applicant's address as 13 Glenworth Close Skegness. The Applicant denies that he received it. A copy of the Notice was also sent to the Cossington address by recorded delivery post as that address was still shown at HM Land Registry as the Applicant's address. On 25 November 2019 a copy of the Final Notice was sent by email to the Applicant at the "aol" address.
14. The letter which went to the Cossington address eventually reached the Applicant on 18 December 2019. He then lodged his appeal against the Penalty on 19 December 2019. Also, he telephoned Rachel Liddle Environmental Health Manager with the Respondent and arranged to meet her on 3 January 2020 to discuss the Financial Penalty. Ms Liddle advised him that as he had lodged an appeal the Penalty is suspended pending its determination.
15. The grounds of the appeal are that the Applicant and his wife have not lived in the UK since 20 November 2012. They are now resident in France. The Applicant asserts that he and his wife have a large portfolio of properties which they manage as responsible landlords. Further all appropriate local housing authorities have been updated with their contact details.

16. Secondly the Applicant asserts he was not served with the Notice of Intent to Issue a Financial Penalty nor the Landlord Representation Form because it was sent to the incorrect address.
17. At his meeting with the Respondent on 3 January 2020 he also denied that he was aware of the selective licensing scheme or that it affected the Property because it was not specifically identified within the scheme.
18. The Respondent's submission is that all notices and relevant correspondence was sent to the correct address for the owner of the Property as confirmed by the council tax register and the information held at HM Land Registry.

The Statutory Framework

19. Part 3 of the Housing Act 2004 (ss 79-100) provides for a scheme of selective licensing of residential accommodation and imposes on every local housing authority a duty "*to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part;*" (s79(5)(a).

Once an area is designated as an area of selective licensing s83 (2) requires the authority to "*must publish in the prescribed manner a notice stating—*

(a) that the designation has been made,

(b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 82 applied to it (giving details of the approval in question),

(c) the date on which the designation is to come into force, and

(d) any other information which may be prescribed.

20. The prescribed manner of publication is set out in paragraph 9 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006:

“(1) A local housing authority that is required under section 59(2) or 83(2) of the Act to publish a notice of a designation of an area for the purpose of Part 2 or 3 of the Act must do so in the manner prescribed by paragraph (2).

(2) Within 7 days after the date on which the designation was confirmed or made the local housing authority must –

(a) place the notice on a public notice board at one or more municipal buildings within the designated area, or if there are no such buildings within the designated area, at the closest of such buildings situated outside the designated area;

(b) publish the notice on the authority’s internet site; and

(c) arrange for its publication in at least two local newspapers circulating in or around the designated area—

(i) in the next edition of those newspapers; and

(ii) five times in the editions of those newspapers following the edition in which it is first published, with the interval between each publication being no less than two weeks and no more than three weeks.

21. By s95(1) of the Act:

A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

And by subsection (4)

In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1),

22. Further by s249A

(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—

(a).....

(b).....

(c) section 95 (licensing of houses under Part 3),

(d).....

(e).....

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

And by subsection 6

Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

And at subsection(9)

For the purposes of this section a person's conduct includes a failure to act.

23. Schedule 13A sets out the procedure to be followed by a local housing authority before imposing a financial penalty. Paragraph 1 of the schedule imposes an obligation to give notice of the authority's proposal to do so.

24. By paragraph 10 of Schedule 13A a person may appeal against the decision to impose a financial penalty and also the amount of the penalty. By subsections 3 & 4:

“An appeal under this paragraph—

(a) 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.”

The Designation of an area of Selective licensing and the Calculation of the Financial Penalty

25. The Respondent designated an area known as Anglesey Ward for Selective Licensing on 12 September 2017. The designation included the street known as All Saints Croft. The Respondent's evidence was that a public notice containing a map of the area and the list of streets subject to selective licensing was published and letters were sent to all properties within the area explaining the scheme and the need for landlords to apply for a licence.

26. A copy of the letter which went to the Property was produced. It was not addressed to the Applicant but the “Owner/Occupier.
27. On 1 October 2018 the Respondent produced its Civil Penalties Procedure the purpose of which was “*to provide a framework for enforcement officers to follow in order to achieve a consistent approach to civil penalties*”. Appendix 1 to the Procedure is a guide to calculating civil penalties. It identifies four stages which are intended to identify the penalty calculation and the financial benefit derived by the landlord obtained from committing the offence.
28. Each stage contains comprehensive guidance on how to determine the outcome required. Stage 1 determines the penalty band for the offence. Stage 2 determines how much will be added as a result of the landlords income and track record. Stage 3 involves adding stages 1 & 2 to ensure the penalty does not exceed the statutory maximum of £30,000.00. Stage 4 considers the financial benefit derived by the landlord from committing the offence.
29. The Respondent applied the procedure in determining the level of civil penalty it imposed on the Applicant. The calculation sheet for stage 1 produced by the Respondent determined that the culpability of the offender was high. However the seriousness of the harm risked by the offence was determined at level C. The combination of the two decisions was a penalty band starting at £3000.00 rising to £6000.00.
30. The stage 2 calculation noted the weekly rental income was £112.50 which was multiplied by 150% in accordance with the level of penalty determined under stage 1. The calculation deduced £168.75 as the amount to be added to the penalty calculation.
31. The stage 3 review of the Applicant’s track record determined that no amount was to be added to the penalty calculation.
32. However, the stage 4 benefit was identified as being the sum saved by not applying for a licence in the sum of £466.00 being the fee not paid.
33. In total the sum deduced applying each stage was £3,634.75

The Decision

34. By operation of the statutory framework regulating this matter the Tribunal is conducting a rehearing of the decision to impose a financial penalty.

Therefore, it must be satisfied beyond reasonable doubt that an offence has been committed to which there is no defence including complying with procedural obligations.

35. Having decided the first issue it then has powers to vary or confirm the decision of the Respondent regarding the penalty imposed.
36. The Tribunal is satisfied in accordance with the burden of proof required that the Property is in an area designated as an area of selective licensing. It is also satisfied that the Applicant is not the holder of a license as required. The Applicant's grounds of appeal and his witness statement make no claim that he is the holder of a licence. Rather his case is that the various notices were not served upon him at the correct address. The Tribunal treats this assertion as his submission that he had a reasonable excuse for not holding a licence in accordance with s95(4).
37. The Respondent submits that at the time of service of notices it relied upon the address for the Applicant as appeared in both the council tax register and that held by HM Land Registry.
38. In *Oldham Metropolitan Borough Council v Tanna* [2017]1WLR 1970 and *EWCA Civ 50* the Court of Appeal held "*unless there was a statutory requirement to the contrary, where a person wished to serve notice relating to a property which was registered at HM Land Registry on the owner of that property, that person's obligation to take reasonable steps to find out what the owner's current address was went no further than to search the proprietorship register to ascertain the address of the registered proprietor of the property*".
39. The Applicant asserted that he and his wife have a large portfolio of properties and they are responsible landlords. However, they failed to notify HM Land Registry and the Respondent housing authority of their change of address until November 2019.

40. The Tribunal is satisfied that the Respondent took appropriate steps to bring to the attention of the Applicant its intention to impose a financial penalty by relying on the address given by the Applicant to HM Land Registry.
41. Further the Applicant admits that he received an email from the Respondent in April 2019 referring to selective licensing but apart from claiming he had not received the earlier mail with information about selective licensing he took no action to inform himself about the obligations he was under in respect of this property. As the owner of tenanted property, the Respondent has an obligation to take all necessary steps to ensure he is aware of correspondence and notices affecting the property including notifying the local authority and HM Land Registry of his address in a timely manner. He fell short of these obligations.
42. As the Tribunal determined that the Applicant has committed the offence of having control of a property which should be licenced but was not so licenced and that the Respondent had properly served the Applicant with notice of its intention to impose a financial penalty, the Tribunal then considered the penalty decided by the Respondent.
43. The Tribunal reviewed the Respondent's policy and was satisfied it complied with the duty imposed on it to give notice of the designation of All Saints Croft as an area of selective licensing. It was also satisfied the Respondent had produced then applied a method for determining civil penalties.
44. The appeal is by way of rehearing. Having considered the submissions by both sides the Tribunal is satisfied the penalty imposed was appropriate. The Applicant asserts he and his wife are responsible landlords but they had not notified either HM Land Registry or the Respondent council tax office of the change of address. Landlords have a responsibility to inform themselves about all relevant regulations affecting their properties. The Applicant had not made any arrangements to receive necessary and relevant communications from the local housing authority for the area covering their property.
45. The Tribunal therefore confirms the final notice served by the Respondent on 22 November 2019 and dismisses the appeal.

46. The Respondent had taken all action necessary to bring to the attention of the Applicant that the Property was in an area designated as subject to selective licensing.

The Applicant failed to amend his registered address for service of notices.

The Respondent served the Applicant with the requisite notices imposing a financial penalty at the registered address of the Applicant.

The Applicant at the time of the imposition of a financial penalty had not applied for a licence in accordance with s85 Housing Act 2004.

Appeal

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

Tribunal Judge PJ Ellis