FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/HNB/2019/0021**
Property	**:**	**72/72A, Abbeydale Road, Sheffield S7 1FD**
Applicant	**:**	**Paolo Allegrini**
Applicant's Representative	**:**	**Lupton Fawcett llp**
Respondent	**:**	**Sheffield City Council**
Type of Application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004, ("the Act")**
Tribunal Members	**:**	**Tribunal Judge C Wood** **Ms S Latham**
Date of Determination	**:**	**1 April 2020**
Date of Decision	**:**	**17 April 2020**

DECISION

Order

1. In accordance with paragraph 10(4) of Schedule 13A to the Housing Act 2004, ("the Act"), the Tribunal confirms the final notice dated 2 September 2019 imposing a financial penalty of £5000.

Application

2. By an application dated 25 September 2019, ("the Application"), the Applicant appealed against a financial penalty imposed on him by the Respondent under section 249(a) of the Act.

3. Directions dated 11 October 2019 provided that the Application was to be determined on the papers provided by the parties without holding a hearing. Both parties submitted written representations.

4. The Tribunal considered the matter on 31 January 2020.

Law and Guidance - Power to impose financial penalties

5. New provisions were inserted into the Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to 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.

6. Relevant housing offences are listed in section 249A(2). They include the offence, under section 95(1) of the Act, of having control of or managing a house which is required to be licensed under Part 3 of that Act but is not so licensed.

7. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

Procedural requirements

8. Schedule 13A to the Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:

   - the amount of the proposed financial penalty;
   - the reasons for proposing to impose it; and
   - information about the right to make representations.

9. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.

10. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.

11. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:

- the amount of the financial penalty;
- the reasons for imposing it;
- 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.

Relevant guidance

12. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state: "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."

13. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:

a. Severity of the offence.

b. Culpability and track record of the offender.

c. The harm caused to the tenant.

d. Punishment of the offender.

e. Deterrence of the offender from repeating the offence.

f. Deterrence of others from committing similar offences.

g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.

14. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, Sheffield City Council has adopted the Sheffield City Council Private Housing Standards – Intervention and Enforcement Policy, including Appendix 1 Civil Penalties,), ("the Policy"), (copies of which are attached at Exhibits RS14 and 15 to the statement of Richard Stork for the Respondent). We make further reference to the Policy later in these reasons.

Appeals

15. A final notice given under Schedule 13A to the Act 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. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).

16. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.

17. The appeal is by way of a re-hearing of the local housing authority's decision, but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Evidence

18. The background to this matter is set out in detail in Richard Stork's statement for the Respondent dated 29 October 2019, including the chronology to the notification and introduction of the Selective Licensing Scheme affecting the area in which the Property is located effective from 1 November 2018, and the correspondence and other communications with the Applicant. The Respondent also provides information relating to its application of the Policy and the determination of the financial penalty in the form of its Civil Penalties Determination Record dated 7 June 2019 (prior to the issue of the Notice of intent to impose a financial penalty dated 7 June 2019), and its Civil Penalties Determination Record dated 27 August 2019 (prior to the issue of the Final Notice dated 2 September 2019).

19. In his statement dated 28 November 2019, the Applicant raises the following issues:

19.1 the validity of the Notice of intent to impose a financial penalty by reason of the Respondent's failure to send correspondence to the Applicant to his known residential address regarding the introduction of the Selective Licensing Scheme in the area in which the Property is located;

19.2 his initial misunderstanding in June 2019 as to the Respondent's requirements for the Property;

19.3 an explanation for the delay in submission between June and September 2019 of the licence application;

19.4 his previous good track record;

19.5 his financial circumstances including, without limitation, that the income from the Property (before deductions for costs, repairs, maintenance and insurance) is £300 per month;

19.6 his proactive response when first becoming aware of an issue with the Property in June 2019;

19.7 the Respondent's failure to fully take into account the Applicant's financial circumstances, including the rental income from the Property and liabilities to HMRC;

19.8 whether, in view of the information provided to the Respondent, a financial penalty should have been imposed at all; or, if it is determined that a financial penalty is appropriate, that it should have been determined, in accordance with the Policy, at "£2500 based on the low level of harm and low level of culpability".

Reasons

20. The Tribunal was satisfied that the Applicant's failure to obtain a licence was conduct amounting to an offence under s95(1) of the Act, which constituted a "relevant housing offence" for the purposes of s249A of the Act, permitting the imposition of a financial penalty.

21. The Tribunal was satisfied that, in respect of the Notice of intent and the Final Notice, the Respondent had complied with the following procedural requirements as required under Schedule 13A to the Act:

21.1 the offence under s95(1) of the Act was continuing as at the date of the Notice of intent, namely, 7 June 2019;

21.2 the Notice of intent and the Final Notice contained the information as required under paragraphs 3 and 8 of Schedule 13A to the Act; and,

21.3 the Notice of intent contained information about the right to make representations (to which the Applicant had responded by making representations in an email dated 12 June 2019).

22. The Final Notice stated that these representations had been considered by the Respondent but had not altered its determination to impose the financial penalty of £5000.

23. The Tribunal considered that, in accordance with paragraph 10(3)(b) of Schedule 13A to the Act, it could have regard to the information provided by the Applicant regarding his financial position, which was not information of which the Respondent was aware at the time of making its determination whether the imposition of a financial penalty was an appropriate course of action in this case.

24. In this respect, the Tribunal refers to paragraph 3 of the Policy, and, in particular, to the following:

24.1 paragraph 3.1: "In setting a financial penalty, we may conclude that the landlord is able to pay any financial penalty imposed – unless they have supplied us with any evidence to the contrary";

24.2 paragraph 3.2: "It is up to the landlord to disclose to us any information which is relevant to his financial position…";

24.3 paragraph 3.3: "If we do not receive sufficient reliable information, we may make reasonable assumptions about what the landlord can afford from the information and evidence we may have…"

25. The financial information provided by the Applicant comprised: a copy of a letter dated 16 September 2019 from HMRC attaching a statement of liabilities as at that date showing an outstanding balance of £15721.85; statements in the grounds of appeal attached to the Application: that the Applicant owns a commercial property (which he had sought to sell in April 2019); that he had been experiencing "cash flow difficulties" which had prevented him paying the licence fee of £500 until September 2019; and, that the rental income from the Property was £300 per calendar month.

26. The Tribunal noted the following:

26.1 that the financial information provided by the Applicant was very limited. In particular, whilst the Applicant had provided information regarding his tax liabilities, he had not provided any information regarding his assets, (save for the reference in the grounds of appeal to a commercial property in his ownership);

26.2 the reference to "cash flow difficulties" suggested to the Tribunal temporary difficulties which it notes the Applicant stated had been resolved in part to enable him to make payment of the licence fee. Further, in making the licence application for the Property, the Applicant will have made assurances regarding his financial resources during the period of the licence; and,

26.3 the information available to the Tribunal regarding the rental income achieved/achievable from the Property. This matter is discussed in more detail in paragraph 30 of this Order.

27. The Tribunal is satisfied that the obligation is upon the Applicant to provide sufficient independent/verifiable information regarding his financial position in order to displace the reasonable assumption that he is able to pay a financial penalty. The Tribunal is also satisfied that, in this case, the Applicant has not discharged that obligation. On the basis of the available information, it is therefore a reasonable assumption that the Applicant is able to pay a financial penalty.

28. Having regard to the Policy, the Tribunal agreed with the Respondent's determinations as follows:

28.1 that the Applicant's culpability was medium: the Tribunal was satisfied that, whilst this was a first offence by the Applicant, the Respondent had discharged all of its statutory obligations to publicise, inform and notify landlords of relevant properties of the introduction of the Selective Licensing Scheme with effect from 1 November 2018. These actions are detailed in paragraphs 4 and 5 of Richard Stork's witness statement. In view of the length of time during which the Applicant has been a landlord, the Tribunal considered that his failure to ensure that he would have become aware of such a scheme, and his legal responsibilities arising from its introduction indicated to the Tribunal a lack of reasonable care in that role. In this respect, the Tribunal had regard to the HCLG guidance where it states: "Landlords are running a business and should be expected to be aware of their legal obligations";

28.2 the Tribunal agrees that the Respondent's decision to also send letters to landlords (amongst others) notifying them of the introduction of the Selective Licensing Scheme was not a legal obligation. Further it accepts that it was reasonable for the Respondent to use the address for the Applicant provided for council tax purposes in respect of the Property. It also accepts that an address provided to one department of the Respondent may not be made widely available to all other departments;

28.3 it is impossible for the Tribunal to determine why the letter of 14 December 2018 sent to his residential address was not received by the Applicant. However, for the reason set out in paragraph 28.2, its receipt (or otherwise) is irrelevant as it does not constitute any procedural irregularity on the Respondent's part. It is noted that the Notice of intent and the Final Notice were sent to the same address and were received by the Applicant;

28.4 the harm and severity of the offence: no evidence was presented to the Tribunal regarding any specific harm caused to tenants/occupants of the Property by reason of the Applicant's failure to obtain a licence. On that basis, the Tribunal accepts the Respondent's determination that harm and severity of offence should be considered to be low;

28.5 the Tribunal therefore agrees with the Respondent's determination that, on the basis of the table in paragraph 10.2.3 of the Policy, the initial level of the financial penalty to be applied in this case is £5000.

29. The Tribunal then considered whether there are any aggravating or mitigating factors to be taken into consideration which would increase or reduce this initial determination and concluded as follows:

29.1 the Tribunal was satisfied that there were no aggravating factors which justified an increase to the initial determination of the financial penalty at £5000;

29.2 the Tribunal was not satisfied that there were any mitigating factors which justified a reduction in the amount of the financial penalty. In particular:

(1) whilst the Tribunal noted that the Applicant had initially responded positively on receipt of the Notice of intent to impose a financial penalty in June 2019, this was negated to a large degree by the delay of almost 3 months before a licence application was finally made in September 2019. This delay was caused by the Applicant's misunderstanding of the legal issue, and then his "cash flow difficulties" which resulted in the licence application being delayed until September 2019;

(2) neither the Applicant's misunderstanding of the law nor his "cash flow difficulties" discharged the legal obligation to obtain a licence. By June 2019, the Property had been unlicensed for 7 months since the introduction of the Selective Licensing Scheme.

30. With regard to the financial benefit to the Applicant, the Tribunal notes as follows:

30.1 the Applicant's witness statement contained copies of various tenancy agreements relating to the Property, (Tab 4). Tab 6 is a letter dated 29 November 2016 from the Applicant to the Respondent explaining that the Property is divided into 2 self-contained flats, 72 and Flat A 72, Abbeydale Road. The Applicant has not informed the Respondent or the Tribunal that there has been any change to this arrangement since 2016;

30.2 the Applicant states that the rental income from the Property is £300 per calendar month. This appears to be based on the terms of the tenancy agreement dated 15 April 2017 for 72, Abbeydale Road. On the basis of the information provided by the Applicant, 72, Abbeydale Road is the ground floor flat;

30.3 the most recent tenancy agreement provided for Flat A, 72, Abbeydale Road (the 1st floor flat) is dated 9 November 2016 and provides for a rental of £325 per calendar month. It appears surprising to the Tribunal that, if the Property has since been re-converted into a single dwelling, the rent is only £300 per calendar month;

30.4 if the Property remains sub-divided into 2 flats, then it appears that the Applicant has omitted to provide any information regarding the total rental income achieved (or achievable) from the Property.

31. The Tribunal considered that no adjustment should be made to the financial penalty of £5000 having regard to the financial benefit to the Applicant, as the penalty did not appear unfair or disproportionate in the circumstances.

32. The Tribunal therefore confirms the financial penalty of £5000, in accordance with paragraph 10(4) of Schedule 13A to the Act.

C Wood
Tribunal Judge
17 April 2020