



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

**Case reference** : **BIR/00FY/HNA/2020/0009**

**HMCTS code (paper, video, audio)** : **P:PAPERREMOTE**

**Property** : **150 Bobbers Mill Road, Nottingham.  
NG7 5JT**

**Applicant** : **Shehnaz Perveen Ali**

**Representative** : **Aasia Ali**

**Respondent** : **Nottingham City Council**

**Type of application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A to the  
Housing Act 2004**

**Tribunal members** : **Tribunal Judge D. Barlow  
Tribunal Judge V. Ward  
R Chumley - Roberts MCIEH, J.P.**

**Date of decision** : **9 June 2020**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE, V: A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a hearing on paper. No physical property inspection was undertaken, although publicly available online street view information was included in the Respondent's bundle.

NB: Page references in square brackets and in bold below refer to the hearing bundle provided by the Respondent.

## **DECISION**

- I. The Tribunal is satisfied on the balance of probabilities that the Applicant did not have a reasonable excuse for having control of or managing a house which is required to be licensed and failing to so licence the house, in contravention of section 95(1) of the Housing Act 2004 ("the 2004 Act").
- II. The Tribunal is satisfied beyond reasonable doubt that the Applicant committed the offence of having control of or managing a house which was required to be licensed under section 85(1) of the 2004 Act which she failed to licence, in contravention of section 95(1) of the 2004 Act.
- III. The Tribunal decides that an amount of £5,903.24 is an appropriate financial penalty for the offence to be paid within 28 days.
- IV. The Tribunal, therefore, varies the final notice by reducing the penalty to **£5,903.24**

## **BACKGROUND**

1. By Notice dated 23 January 2020 [**161**] the Respondent, Nottingham City Council ("the Council") decided to impose a financial penalty on the Applicant in the sum of £7,240.00. The reason for imposing the penalty, as stated in the Notice, is that she had committed an offence under section 95(1) of the 2004 Act, namely, failure to licence a house, 150 Bobbers Mill Road Nottingham ("the Property") pursuant to the requirement in section 85(1) of the 2004 Act. This is an appeal, by way of rehearing, against that decision.
2. The Property is a three-bedroom semi-detached house which has been owned by the Applicant jointly with her husband Liaqat Ali since 1988 [**31**]. They also own and reside in the adjoining property 148 Bobbers Mill Road. The properties appear to be joined by a door at first floor level.
3. On 1 January 2017 the Applicant granted a one-year shorthold tenancy of the Property to Abu Naser and Taslima Akter ("the tenants"), who remained in occupation following expiry of the fixed term and throughout the period specified in the Notice of Intent to impose a financial penalty [**63-65**].
4. On 1 August 2018, the ward containing Bobbers Mill Road was designated an area of Selective Licensing under the 2004 Act.

## THE LAW

5. The matter under Appeal is a financial penalty imposed on a person under section 249A of the 2004 Act for having control of or managing a house which is required to be licensed and failing to licence the house in contravention of section 95(1) of the Housing Act 2004.
6. 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).
7. Once an area is designated as an area of selective licensing s83 (2) requires that the authority *“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.*
8. 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.

*“(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.”*
9. By s95(1) of the Act:

*“(1) 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)*

10. Prior to imposing a financial penalty, the Council must give an Initial Notice of intent and a Final Notice. Schedule 13A to the 2004 Act contains the requirements for these notices.
11. The Council can only 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.
12. Section 249A(2) defines relevant housing offence, which includes a failure to licence a house, section 95 (licensing of houses under Part 3).
13. Only one financial penalty may be imposed on a person in respect of the same conduct. The maximum penalty is £30,000. The imposition of the penalty is an alternative to prosecution for a “relevant housing offence”
14. Paragraph 12 of schedule 13A to the 2004 Act provides that a Council must have regard to any guidance given by the Secretary of State about the exercise of its functions to impose financial penalties. In this regard the Secretary of State has issued “Guidance for Local Authorities: Civil Penalties under the Housing and Planning Act 2016 (April 2018) (“The Guidance”).
15. Paragraph 3.5 of “The Guidance” sets out a list of factors to be taken into account when assessing the level of the penalty:
  - 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 committing similar offences
  - Deter others from committing similar offences
  - Remove any financial benefit the offender may have obtained as a result of committing the offence.
16. The person on whom the penalty is imposed may appeal to the Tribunal. An appeal is by way of re-hearing. The Tribunal can confirm, vary or cancel the final notice.

## **EVIDENCE AND THE PARTIES SUBMISSIONS**

**The Tribunal considered the submissions of the parties.**

### **Council’s submissions.**

17. The Councils evidence comprises a Statement of Reasons, Part 1 and Part 11, with exhibits.
18. Part 1 of the statement of reasons, at paragraphs 1- 43 is a chronology of the background and events leading to the issue of the Final Notice [4-14]. The statement is supported by:

- Witness statement of Abu Naser dated 3/10 June 2019 [60-62]
  - Witness statement of Lesley Khan (regulatory compliance officer) dated 29 August 2019 [78-80].
  - Witness statement of Rebecca Brooker (principal environmental health officer) dated 19 September 2019 [81].
  - Witness Statement of Sarah May (environmental health officer) dated 27 March 2020 [82-84].
19. In August 2018 the Council exercised powers given to it under s.56 of the 2004 Act to designate certain wards within the city as an area for Selective Licensing [20]. The designation included the street known as Bobbers Mill Road. Any privately rented property within a designated area, falling within the definition of a house which is occupied under a single tenancy, which is not an exempt tenancy, requires a licence under Part 3, s79 of the 2004 Act, unless a temporary exemption notice is in force in relation to it. The designation for Bobbers Mill Road came into force on 1 August 2018 [3-4].
  20. On 25 October 2018 the Council received a complaint from the tenants about disrepair at the Property. Lesley Khan, a regulatory compliance officer of the Council investigated the complaint. She discovered that the Property fell within the selective licensing designated area and that it was privately rented to the tenants [5, 46-47].
  21. On 26 October 2018, Lesley Khan inspected the Property to carry out a Housing Health and Safety Rating System assessment and identified two category 1 and two category 2 hazards [34-41].
  22. On 1 November 2018, Lesley Khan wrote to the Applicant at 148 Bobbers Mill Road, setting out the deficiencies at the Property and warned that failure to comply with the schedule of works could result in service of an improvement notice. At the end of the letter, she also mentioned that the Property was within the selective licensing designated area, which required owners of privately rented properties in certain areas to apply for a licence and gave details of the Council's website for further details [42-45].
  23. On 6 November 2019, the Respondent's statement records a call taken by Lesley Khan from the Applicant's daughter Khatija Mirza to say that she was representing her parents and that a section 21 notice had been served on the tenants because repairs were needed to the Property. Lesley Khan advised her to seek legal advice about the validity of the notice given that the Property was unlicensed.
  24. On 17 January 2019, a section 16 request for information was sent to the Applicant by post together with a letter advising that the Property required a licence under one of the three licensing schemes for houses in the city. The letter stated that action was required to submit a licence application within 10 days of the date of the letter.
  25. On 7 February 2019 Rebecca Brooker, a principal environmental health officer visited the Property with David Dott, a regulatory compliance officer to ascertain if it was licensable under the selective licensing scheme. Mrs Aktar, one of the tenants confirmed her family occupied the Property and that the Landlord lived next door.
  26. On 25 January 2019, the Respondent's statement records that a call was logged from Khajita Mirza with Charlotte Cockerton to say that she had

- been trying to evict the tenants but they wouldn't leave. Also, that she didn't understand the letter she had received. The statement records that an explanation was given to Ms Mirza and also confirmation of what she needed to provide. The statement confirms this was followed by an email attaching a temporary exemption notice application with explanatory guidance. However, no copy of the email was exhibited to the statement.
27. On 16 April 2019 Lesley Khan visited the Property to check compliance. Khajita Mirza was present. She apparently advised Ms Mirza that the s21 Notice was not valid and that she needed to apply for a temporary exemption notice or licence the Property [7]. She followed this with an email on the 17 April 2019 asking Ms Mirza to complete and return a temporary exemption notice application urgently [59].
  28. On 31 May 2019 a letter was sent to Liaqat Ali concerning the disrepair and the selective licensing scheme. Lesley Khan notes however, in page 3 of her witness statement, that the letter was incorrectly addressed to 150 Bobbers Mill Road.
  29. On 3 June 2019 Sarah May, an environmental health officer, and Sarah Taylor an enforcement officer attended on the tenants at the Property, with a translator, to obtain a witness statement and a copy of the tenancy agreement [60-65]. They were aware that the tenants did not have English as a first language.
  30. On 10 June 2019, Lesley Khan re-visited the Property and met with Ms Mirza to discuss the outstanding repairs and the licensing scheme. This was followed by an email on the 12 June 2019 to Ms Mirza concerning the outstanding items of repair and possible enforcement. She also attached a copy of the incorrectly addressed letter to Liaqat Ali dated 31 May 2019 concerning licensing [67]. Lesley Khan confirms on page 3 of her statement that on a follow up visit on 12 August 2019, all outstanding repairs had been completed.
  31. The statement confirms that on 5 August 2019 Jonathan Cain provided information to Ms Mirza by email, on selective licensing and how to apply for a temporary exemption. Calls were logged on 12 and 13 August 2019 between Jonathan Cain and Ms Mirza concerning difficulties she was having gathering the necessary information to make the application. However, no copy of the email of 5 August 2019, attaching the information and forms was exhibited to the statement.
  32. On 19 September 2019 the Council considered its decision matrix for enforcement, it was noted that written documents had been sent to the Applicant and Ms Mirza on 5 occasions concerning selective licensing. Following the review, a decision was made to serve a civil penalty notice.
  33. On 21 October 2019 a calculation of the appropriate amount of penalty was made by Jonathan Cain in line with the Council's Civil Penalties Enforcement Policy & Guidance - Housing and Planning Act 2016 [87-119] ("the Council's Enforcement Policy"). This required the officer to undertake a stepped procedure. First to determine culpability (between low and very high). Secondly to determine the level of harm between A(high) and C (low/not relevant). Thirdly to apply these findings to a matrix to determine the correct penalty band (ranging from 1-5/5+). Fourthly to identify the starting point of the penalty level from the Penalty Bands. Level 1 indicating a penalty of £600-£1,200.00; rising to Level 5/5+ indicating a penalty of £15,000 - £30,000.00.

34. Jonathan Cain determined the culpability level as High based on Mrs Ali's failure to licence the Property over an extended period despite being made aware of her legal duties. The level of harm was determined as level C, because failure to licence does not of itself cause harm. Once applied to the matrix this gave a penalty level band 3 starting point and upper limit (£3000 - £6000.00).
35. An overview was then made to determine whether additional penalties should be added, to reflect (1) the landlord's income and (2) the landlord's track record. This was a first offence and the landlord has no history of failing to comply with obligations, so no track record to consider. For this band, the only landlord's income considered was the rental income from the property. Penalty level band 3 indicates that a multiplier of 150% of weekly income is added to the penalty - i.e. £115.38 x 150% = additional penalty of £173.07 – added to the starting point of £3000.00 producing a subtotal of **£3173.07**.
36. Any financial benefit obtained as a result of the offence was then considered. The guidance gives some examples of 'potential benefit' for failure to licence a house as; the rental income whilst operating unlicensed, the costs of complying with conditions of the licence and the costs of the application fee. In this case, the rental income for the period of the offence was deemed a financial benefit, but only considered for 52 weeks of the offence giving a gross benefit of £5,999.76 to which the application fee of £780.00 was added giving a gross additional penalty of £6,779.76. However, when considering if this was proportionate to the severity of the offence (band 3) it was reduced to 60% of the financial benefit giving a net total of **£4,067.86**. Once added to the figure determined at stage 3, a total financial penalty of **£7,240.93** was arrived at.
37. A Civil Penalties Decision Document was then completed which explains the steps taken to calculate the penalty [140-141].
38. On 24 October 2019 a Notice of Intent to impose a financial penalty of £7,240.93 was served on the Applicant under s13A Paragraph 1 of the 2004 Act [142-147].
39. On 19 November 2019 representations on behalf of the Applicant were made by Invictus Lawyers [148-151]. The representations were substantially the same as the Applicant's grounds of appeal referred to in paragraph 42 below. Following a review, the Council issued a written response to the representations on 23 January 2020 [152-154], refuting them for substantially the same reasons as the Council's response to the appeal grounds, referred to in paragraphs 60-66 below, but also adding that ignorance of the law is not a defence and it was the Applicant's responsibility to check and ensure they remained compliant with the law.
40. On 23 January a Final Notice to impose a financial penalty of £7,240.93 was served on the Applicant. An appeal against the financial penalty was received by the Tribunal on 21 February 2020.
41. The witness statement of Abu Naser confirms that he has lived in the Property with his wife and three children since January 2017, under a tenancy agreement dated 1 January 2017 granted by the Applicant, paying £500.00 per month rent. A copy of the tenancy agreement is exhibited to his statement.

## **Applicant's Submissions**

42. The Applicant has appealed the penalty on the grounds set out in her application, which can be summarised as follows:
- Ground 1. The tenants were asked to vacate the Property in May 2018 before the designation of Bobber Mill Road for selective licensing was made.
  - Ground 2. The Applicant and her husband live next door and were not aware of the licensing legislation when they rented the property
  - Ground 3. The notice of intent was not served nor received within the statutory time limits
  - Ground 4. The Council officer never contacted or communicated with the applicant (owner). The Applicant and her husband do not speak English, no appropriate provision was made to accommodate this.
  - Ground 5. The penalty is excessive and no payment plan has been provided.
  - Ground 6. No letter[s] [from the] - Authority have been received at the present owners [address]. Note: the words in square brackets are inserted to make sense of this ground (which also appears in the letter from Invictus Lawyers **[149]**).
  - Ground 7. There was delay in submitting the licence due to the amount of compulsory documentation, checks and assessments required by the Council, some of which is no longer compulsory.
43. Also that:
- (i) the Applicant has been assisted throughout, in so far as possible, by her pregnant daughter Aasia Ali.
  - (ii) The Applicant and her husband are pensioners with no savings, the rental income is used by them for day-to-day basics and as there are still many unlicensed properties, the level of penalty feels discriminatory.
44. On 7 May 2020 Aasia Ali filed an expanded Witness Statement on behalf of the Applicant. It is supported by copies of the documentation collated to support her parents licence application, evidence of the on-line application submitted 19 February 2020, a statement of financial circumstances for Mr and Mrs Ali and a witness statement from Sanah Tanzeela Shafique dated 5 May 2020.
45. The statement is quite difficult to follow, it appears to substantially follow the representations made by Invictus Lawyers to the Notice of Intent, on 17 November 2019 and relies heavily on extracts from those representations.
46. Ms Ali states that no correspondence (verbally or in writing) was received by her parents. The evidence provided by the Council states that contact has been with Khatija Mirza, another daughter, who due to a family feud, has never communicated to her parents the requirement of submitting a licence application.
47. She appears to say that although the Council assert that letters dated 1 November 2018, 17 January, 31 May, and 5 August 2019 concerning the



- licensing requirement were sent, there is no evidence the letters were addressed to her parents.
48. Ms Ali also says that although the Council may have visited the Property on four occasions, it is unclear why they visited and that no notice of the visits was given to her parents. She asks why, given that her parents lived next door, no steps were taken by the Council to see them and/or investigate the reasons for the licence not having been applied for.
  49. Ms Ali confirms that the Applicant rented the Property to the tenants on 1 January 2017, at 30% below rental value, as a favour through a mutual friend to help them with temporary accommodation until a suitable long term letting became available. In January 2018 her parents wanted to move back to the Property, but the tenants asked for respite until they could find a suitable property. Her parents assisted in the search and were patient with the tenants because they have a vulnerable child with autism.
  50. The only correspondence Ms Ali acknowledges that her parents received was the letter of 24 October 2019 (which appears to refer to the Notice of Intent). As they had no knowledge of the licensing scheme they instructed Invictus Law to deal with the issue and have paid fees of £1,710.00 inclusive of £460.00 licensing fee to submit an application in line with the 2004 Act. There were delays in obtaining a DBS check and an Electrical conditioning report and she notes that this requirement has now been removed.
  51. Her parents asked the tenants if they had received any post/letters for them. They confirmed not.
  52. Ms Ali refers to s 85(4) of the 2004 Act and contends that the Council has taken little or no steps to procure a licence despite visiting the Property on 4 occasions. She confirms that her parents have not received any correspondence confirming the need for a licence and questions whether in such circumstances it is reasonable to impose a penalty.
  53. Ms Ali goes on to raise an issue concerning whether the Notice of Intent should have been served within the six month period commencing either on 1 August 2018, or October 2018 which she states is the first day on which the Council had sufficient evidence of the conduct to which the penalty relates.
  54. Ms Ali confirms that English is not her parent's primary language and questions whether the Council complied with making the Applicant aware of the changes required with her tenancy, or, despite having made four visits to the Property whether any reasonable attempts were made to contact her parents next door. Had they done so and communicated with her parents in a suitable manner, Ms Ali believes that the Applicant would have submitted the online application in a timely manner
  55. She confirms that her parents are pensioners with bare minimum savings – and concludes that they had a genuine and reasonable excuse for being unable to licence the Property.
  56. The witness statement of Sanah Tanzeela Shafique confirms her full address and contact numbers. It states that she is a family friend of Mr and Mrs Ali, who has on several occasions helped interpret for them and provided moral and emotional support with minor concerns.
  57. She states that she has personally witnessed issues concerning the Property and can confirm that Mr and Mrs Ali rented the Property to the tenants in January 2017 as a goodwill gesture to help them out on a

temporary basis. As time went by Mrs Ali told her that she had asked the tenants to leave because she wanted to move back in and it was only supposed to be temporary. Ms Shafique herself asked the tenants on several occasions if they had found accommodation and they always said “no, they cannot find anything affordable and as cheap therefor will not leave until they do so”.

58. Ms Shafique witnessed Mrs Ali trying to help them look for alternative accommodation. She states that the tenant’s failure to comply with the May 2020 date has now caused other issues and negatively affected Mr and Mrs Ali with all the stress caused.

### **Council’s comments on Applicant’s submissions.**

59. The Council’s comments are set out in Part 11 of the Statement of Reasons paragraphs 1-19 [15-19] and can be summarised as follows:
60. Ground 1. No evidence has been provided to support this claim and as the Property was in fact let to the tenants for the relevant period, it is not relevant.
61. Ground 2. The Council set out an extensive list of actions taken to publicise implementation of the scheme commencing on 1 August 2018, which included the matters referred to in paragraph 9 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, (referred to in paragraph 8 above). In addition, the Council state that the information was sent directly to the Applicant on 1 November 2018, 17 January 2019, 31 May 2019 and 5 August 2019. The Council also point to the contact they had with Khajita Mirza, the Applicant’s daughter and as none of the correspondence was returned undelivered do not accept that the Applicant was unaware of the requirement to licence.
62. Ground 3. The offence under s85(1) of the 2004 Act is a ‘continuing’ offence that began on the 1 August 2018 and continued until the date on which the Property was licensed. The evidence shows that the offence continued for the period referred to in the Notice of Intent being the 1 August 2018 until the 5 August 2019. However, as the licence application was not made until 19 February 2020 the offence actually continued to that date. Therefore, the Notice of Intent and the Final Notice were served within the time limits prescribed by the 2004 Act.
63. Ground 4. Numerous communications were made with the Applicant and Mr Ali to inform them of their duty to licence the Property and at no point was the Council informed the Applicant couldn’t read the correspondence and needed a translator. Furthermore, the Applicant’s daughter corresponded with the Respondent and attended inspections on behalf of the Applicant throughout the investigation.
64. Ground 5. The penalty has been calculated in accordance with the Council’s civil penalty guidance. The Applicant hasn’t contacted the Council about payment of the penalty.
65. Ground 6. The Council does not know what this is about and seeks clarification.

66. Ground 7. The Council accepts the requirement to submit some documentation has altered. However, the first correspondence was sent to the Applicant in November 2018 concerning the requirement to licence. So, notwithstanding alterations to the process it should not have taken 15 months to gather the required information.

## **CONSIDERATION**

67. The Tribunal considers first whether the procedural requirements of Schedule 13A of the 2004 Act have been met. On 24 October 2019 the Council sent the notice of intent to issue a financial penalty to the Applicant. Representations were received from Invictus Lawyers on 19 November 2019 challenging the validity of the notice on the grounds that it was not served within a period of 6 months from the Council having sufficient notice of the offence (Schedule 13A s2(1)); this is also one of the Applicant's grounds of appeal. The Council responded to the representations on 23 January 2020. It is clear from the evidence that the offence commenced on the 1 August 2018, being the date on which the designation came into force; and continued until the licence application was made on 19 February 2020. Schedule 13 paragraph s2(2)(a) provides that where a person continues to engage in conduct which is an offence, the Notice of Intent may be given at any time the conduct is continuing.
68. On 23 January 2020 a final notice to issue a financial penalty was sent to the Applicant.
69. The Tribunal is satisfied that the procedural requirements of schedule 13A have been met.

## **HAS THE APPLICANT COMMITTED AN OFFENCE?**

70. We are satisfied, beyond all reasonable doubt, that an offence was committed by the Applicant in that for the period from 1 August 2018, until the 23 January 2020, she was a person having control of or managing a privately rented house which was required to be licensed under the Act but was not so licensed.
71. It does not appear to be in dispute that she was a person having control and management of the Property. A "person having control" is defined in s.263 of the 2004 Act as the person in receipt of not less than two-thirds of the full net annual value of the premises or who would be in receipt of the rack-rent were the premises let (referred to as the "rack rent"). The "person managing" is the owner or lessee of the Property who receives, whether directly or through an agent, rents or other payments from persons who are tenants of parts of the premises or who are lodgers. We are satisfied from the witness statement of Abu Naser that, as the tenancy agreement stipulated that rental payments were to be paid directly to the Applicant; and that this is how the tenants paid their rent to her, that the Applicant was a person having both control and management of the Property.
72. We are also satisfied that between the dates specified the Property was in an area designated for Selective Licensing under the 2004 Act.

73. The Applicant contends that she had a reasonable excuse for not applying for the licence. Her grounds are that:

- (i) She was unaware of the statutory requirements and the Council failed to take steps to secure a licence.
- (ii) With the exception of the Notice of Intent, no letters from the Council concerning the licence were received at her address.
- (iii) The tenants were asked to vacate the property before the requirement was in force.
- (iv) Mr and Mrs Ali do not speak English and the Council failed to make adequate provision to accommodate this.
- (v) The delay in submitting the licence application was due in part to difficulty obtaining some mandatory information that is no longer required.

74. (i) and (ii) The Tribunal find it likely that the Applicant's lack of English is a barrier to accessing public information. It is therefore more likely than not that the steps taken by the Council to advertise the inclusion of Bobbers Mill Lane in the designated area did not come to her attention. However, the Tribunal is satisfied that the Council complied with its statutory duty to publish the required information as referred in in paragraph 8 above. The Tribunal is also satisfied that some letters were sent to the Applicant at her address, prior to the decision to take enforcement proceedings, which informed her of the need to urgently apply for either a licence, or a temporary exemption notice. The Tribunal also finds that, at the relevant time, the Applicants daughter, Khajita Mirza who appears to speak English, was assisting her with the letter from the Council dated 1 November 2018. Landlords are expected to inform themselves of their duties and liabilities under the law in respect of the properties they let, regardless of their facility with the language of the relevant laws. The defence of reasonable grounds is not available where the failing is based on ignorance of the regulatory and legal requirements of the business they are running, whatever the cause.

75. (iii) The Tribunal sympathises with the Applicant concerning the trap that designation of an area can set for unwary landlords wishing to serve s21 termination notices. However, the fact remains that the tenancy continued after 1 August 2018 and the Property should therefore have been licensed.

76. (iv) The Council say that they were not made aware of the Applicant's lack of English or any requirement for a translator. They do not say what steps would have been taken, had the Council been aware. The Tribunal finds that the absence of any direct contact with the Applicant or her husband should have alerted the Council to that possibility. Furthermore, no steps appear to have been taken to verify that Khajita Mirza had been appointed by the Applicant to represent her. Given that the Council visited the tenants next door on four occasions, once with a translator, the Tribunal finds the Council's lack of enquiry concerning the Applicant's ability to access and understand written English, surprising. However, as the failing is based on ignorance of the relevant legislation, then despite the Council's shortcomings in fully engaging with the Applicant, a defence of reasonable excuse is not available.

77. (v) While there may have been some issues with obtaining the mandatory information, the Tribunal finds that this cannot justify a delay of some 14 months in making the licence application.
78. The Tribunal is therefore satisfied that, on the balance of probabilities, the Applicant did not have a reasonable excuse for failing to apply for a licence for the Property.

#### 79. **ASSESSMENT OF PENALTY**

80. Under paragraph 10 of schedule 14, the Appeal to the Tribunal is by way of a rehearing of the Council's decision and the Tribunal may have regard to matters of which the Council was unaware. On Appeal the Tribunal may confirm, vary or cancel the final notice. The Tribunal makes its findings of fact on the factors identified at 3.5 of the Guidance and having due regard to the Council's Enforcement Policy.

81. The Tribunal finds as follows:

82. Severity of the Offence. Although failing to licence a house is a serious offence, this is a single residence, let by a non-commercial landlord to one family, that became subject to the licensing regime shortly after expiry of the fixed term of the tenancy. This left the landlord, who was hoping to regain possession, in some difficulty with service of any valid notice. The Council only appear to rate this factor under the seriousness of harm outcomes in the HHS Rating System. This offence does not meet any of the outcomes and the Council have therefore rated it a level C offence. As this is the lowest category, the Tribunal agrees.

83. Culpability and Track Record. The Tribunal is satisfied that the Applicant had no previous convictions, and that this was the first time that the Council had dealt with the Applicant under the 2004 Act. In assessing culpability paragraph 2.4 of the Council's Enforcement Policy sets out a number of aggravating factors and mitigating factors that should be considered. None of the aggravating factors are relevant to this offence. Three of the mitigating factors are relevant. Namely: good character, no previous convictions; voluntary steps taken to apply for the licence (not promptly, but see below); vulnerable individual, the Tribunal finds that the owners lack of English was a barrier to addressing the issues promptly. The Tribunal's findings in respect of the Applicant's defence of reasonable excuse are relevant to the question of culpability. The Tribunal finds that the Applicant's lack of English, her estrangement with Khatija Mirza and the Council's lack of direct engagement with the Applicant at any stage, will all have contributed to the delay in applying for the licence. For these reasons the Tribunal finds that the Applicant's level of culpability should have been assessed as Medium, not High. When applied to the Council's matrix this puts the offence in penalty band 2 which has a starting amount of **£1,200.00**.

84. The Harm Caused to the Tenant. The Tribunal finds that no harm was caused to the tenants by the Applicants failure to licence. The tenants benefitted from section 98 of the 2004 Act which prevented the landlord from serving a valid s21 notice to quit.

85. Punishment of the Offender. This factor is directed at ensuring the penalty is set at a high enough level to ensure that it has real economic impact upon the Applicant and demonstrates the consequences of not complying with her responsibilities. The Tribunal considers that this factor brings into play the Applicant's financial circumstances. The Applicant has provided a statement of her financial circumstances. It shows that apart from the rental income, she receives a basic state pension and has outgoings that slightly exceed her income. She has modest savings that will not cover the penalty. Mr Ali has also provided a financial statement. He also receives a state pension, some income as a self-employed green grocer and also working tax credit. However, the stated self-employed income figure is inconsistent with tax credits and the Tribunal finds therefore that it cannot take account of Mr Ali's income details as there appears to be a mistake on the form. He also has very modest savings which, even if combined with the Applicants, will not cover the financial penalty. Overall, on the evidence provided, the Tribunal finds it likely that the Applicant is of modest means and would struggle to pay a high penalty.

The Councils Enforcement Policy only considers whether a landlord's income is relevant to increasing the penalty. No account appears to have been taken of the Applicant's income and assets, or her ability to pay. A multiplier of 150% of the weekly rental income has been added purely based on the relevant penalty band 3. The Tribunal has adjusted this to 100% to reflect lower penalty band 2 (assessed above) giving an additional penalty of **£115.38.**

The Tribunal finds it likely that the Applicant can pay the adjusted financial penalty, just; and that it is at a level that will have real economic impact on the Applicant and her family.

86. Deter the Offender and others. The Tribunal considers the question of deterrence overlaps with the factor of punishment, in that it is designed to ensure that the level of the penalty is at a high enough level such that it is likely to deter the offender from repeating the offence and deter others from committing the offence. The Tribunal considers that the factor of deterrence did not require specific attention in this case. The Tribunal gives weight to the witness statement of Sanah Tanzeela Shafique and finds that the Applicant is not a commercial landlord and was letting the Property on a short-term basis to assist a family in difficult circumstances. Provided the Applicant receives a financial penalty for the offence, this will in itself, act as a deterrent.

87. Remove any Financial Benefit the Applicant may receive. The guiding principle is that the penalty should remove any financial benefit the landlord obtained as a result of committing the offence. The Council's

Enforcement Policy sets out some examples on assessing potential financial benefit on offences of failure to licence. Two of those examples, the rental income whilst the Property was unlicensed (£4,067.86 net) and the costs of the licence fee (£780.00) were applied by Jonathan Cain in calculating the penalty. Rent received by a landlord from a property that is either un-licensable or licensable only at the cost of complying with conditions, can clearly be regarded as a financial benefit obtained as a result of failing to licence the property. In this case, as a five-year licence was granted without costly conditions, it is difficult to see that the Applicant derived any financial benefit as a result of failing to licence the Property at the correct time, other than a 1/3 reduction in the licence fee as a result of operating for some 20 months without a licence.

However, the Council's Enforcement Policy appears to allow them to take account of rental income while the property is unlicensed, without any real consideration of the actual financial benefit. The Council has made a reduction to 60% of the gross rental to reflect the lack of harm in this case, the Tribunal therefore finds the penalty of **£4,067.86** in respect of rent to be appropriate. However, the Tribunal has regard to the fact that the licence fee was paid in February 2020 and reduces the penalty of £780.00 by 1/3 to **£520.00**.

#### **EVALUATION OF FINANCIAL PENALTY**

88. The final act of the Tribunal is to stand back and decide whether an amount of £7,240.93 is just and proportionate to the offence. For the above reasons the Tribunal finds that it is not, but that an amount of **£5,903.24** is an appropriate financial penalty for the offence to be paid within 28 days.

**Name: D. Barlow**

**Date: 9 June 2020**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).