



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

**Case reference** : **LON/00AB/HNA/2021/0015**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **43a East Street, Barking, Essex. IG11  
8EJ**

**Applicant** : **Susan Perry**

**Representative** : **David Freifeld (Stock Page Stock)**

**Respondent** : **London Borough of Barking and  
Dagenham**

**Representative** : **Mr Alex Donald**

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

**Tribunal  
member(s)** : **Judge Daley  
Mr C Gowman – Professional Member**

**Venue and Hearing  
Date** : **Heard Remotely on 7 October 2021**

**Date of decision** : **15 October 2021**

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**DECISION**

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

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote hearing/on paper]. The documents that the Tribunal were referred to are in a

bundle of documents provided by the Applicant and Respondent, the contents of which have been noted.

## **Decision**

- I. The Tribunal has determined that the Appeal against the financial penalty notice served on the 23 December 2020 is dismissed.**
- II. The penalty imposed in the sum of £1000.00 (One Thousand Pounds) is payable by the Applicant within 28 days**
- III. That there be, no order for cost.**

## **The Hearing**

### **Background**

1. The Tribunal received an appeal from the Applicant against a financial penalty made under section 249A of the Housing Act 2004. The Tribunal sent a copy of the appeal to the Respondent/Local Housing Authority.
2. The penalties relate to the failure by the Applicant to obtain a selective licence for the property, following the adoption of a selective licensing scheme by the London Borough of Barking and Dagenham, (the Local authority and Respondent in this matter) from 1<sup>st</sup> September 2019.
3. The Final Notice is dated 23 December 2020 and the amount of the Financial Penalty is £1,000.00
4. On 24 May 2021, directions were given for the hearing of this matter. The Directions stated at paragraph (3) stated-: “The appeal is to be by way of a re-hearing of the Respondent’s decision to impose the penalty and/or the amount of the penalty, but it may be determined having regard to matters of which the Respondent was previously unaware. Further details are contained in the Annex on the last page of these directions.”
5. The Application was set down for hearing on 7 October 2021, as a remote video hearing.

#### **Attendance**

6. The Applicant was represented at the hearing by Mr David Freifeld, Managing agent. He attended by telephone. The Respondent was represented by Mr Alex Donald, a compliance officer for the Respondent borough. Also in attendance was Mr Mohammed Haque, who was the current case holder
7. All the parties save for Mr Freifeld attended by Video Link.
8. The Tribunal had been provided with medical evidence as part of the bundle, concerning details of the Applicant’s on-going medical condition, which was submitted as evidence.
9. Ms Perry was not present at the hearing.

### **The Respondent's Case**

10. The Tribunal heard from Mr Donald; Mr Donald is a compliance officer employed by the Respondent. In the statement of case and in his evidence, he told the Tribunal that the local authority currently operates a selective licensing scheme. This current scheme has been in place since September 2019. The selective licensing scheme, requires all privately rented properties containing at least one household to be licensed
11. He referred to Section 95(1) of the Housing Act, which provides that a person commits an offence, if they have control of or manage a house which requires a licence without obtaining a licence.
12. Mr Donald informed the Tribunal that the Respondent was aware that the Applicant was the owner of two properties No 43A and 43B East Street, and that these properties were possibly rented. As Ms Perry had previously applied for a selective licence for both properties under the previous licensing scheme in 2017. A copy of the licence application which is dated 30.10.2017 was included within the bundle.
13. As the properties had not been licensed under the 2019 scheme, Mr Donald carried out the following checks, he checked the land registry the council tax database, and Civica, "ThreeSixty" (credit trace) and Anite (housing benefit). As a result of his checks, he confirmed that the properties were owned by Ms Perry, that they were privately rented and were unlicensed.
14. He wrote to Ms Perry concerning 43A, on 2.10.2020, 20.10.2020 and 6 .11.2020. In respect of 43B, he wrote to Ms Perry on 15.10.2020,5.11.2020, and 6.11.2020
15. His letter on 2 October 2020, stated "... I am writing with reference to the above property that we believe is being used as private rented accommodation. If this is not the case then I would be grateful if you could advise me as soon as possible...If you are the owner and/or have a management interest in the above property we would ask that you contact us within 14 days as our records indicate that you have not yet applied for a licence as required, nor have you submitted an application for temporary exemption from licensing..." The letter warned of the possibility of legal proceedings within 14 days. The letter on 6 November 2020 in respect of 43A, which was headed as a final demand, informed Ms Perry that unless a response was received legal action would be taken.
16. No response was received in respect of either of the properties to the letters sent by Mr Donald.
17. On 25 November 2020, he reviewed the files, a licence application had been received for No43B; this had been completed by Stock Page Stock Limited. However, no licence was received for No.43A.
18. On 25 November 2020, Mr Donald sent a Notice of Intention to impose a financial penalty in the sum of £1000.00, under cover of a letter, of the same date. This letter offered the Applicant the right to make representations, and also a 20% reduction if the breach was remedied and payment made within 28 days.

19. Mr Donald had included the scoring matrix which had been used to arrive at the penalty. The factors were *Deterrence and Prevention, Removal of financial incentive, Offence history and Harm to tenants*.
20. The scoring ranged from 1 to 20, and after 1, the scoring increased in increments of 5, with the maximum score leading to a fine of £30,000.
21. He stated that under *Deterrence and Prevention*, as the landlord knew about the licensing scheme and had not licensed the property. He had low confidence that a penalty would deter repeated offending. Given this he used a score of 10.
22. At the time he carried out this exercise he believed the Applicant to have a property portfolio of 2 to 3 properties, which within the matrix produced a score of 10. As there was no history of previous offending this produced a score of 1, and as he had no knowledge of any complaints by the tenants, he determined that there had been very little if any harm, this produced a score of 1, for harm. The score under the matrix was 22. This provided for a fine at the level of £1000.00.
23. As a licence had been applied for, for 43B on 24 November 2021, Mr Donald cancelled any further action.
24. He stated that the letters had all been sent to the same address, which was confirmed by Mr Freifeld as the Applicant's home address.
25. The final notice was served on 23 December 2020.

#### **The Applicant's case**

26. The Tribunal heard from Mr Freifeld, he was the managing agent for the property. Mr Freifeld told the Tribunal about the Applicant's medical condition which was caused by an accident, and how he had taken over the management of a freehold property that she had and gradually some other rented properties.
27. He explained that the Applicant had a property portfolio of 10 to 15 properties that comprised some commercial shop type properties and some residential, due to her health she was less "hands on" than she used to be, and as a result he had taken over the management of some of the properties which were residential. 43A and 43B were above a ground floor shop and were currently privately rented under shorthold assured tenancies one to two girls and the other a couple. He had previously applied for licensing for other properties which he managed; however, he had taken over management of the subject properties in 2019, and had not previously been involved in licensing them.
28. He stated that Ms Perry had provided him with the letters in respect of 43B, and he had immediately applied for a licence. He was unaware that letters and a notice of intent had been sent in relation to 43A. His case which was set out in his email of 8 July 2021. In it he stated that his client had not received any of the letters or notices with regard to the Housing Act section 249A until she received the penalty notice. He stated that had the notice been received it would have been forwarded to him and he would have taken the same steps that he took in respect of No 43B.
29. He referred to his response in applying for a licence as evidence of this.
30. He accepted that he had been unaware that the properties required a licence until he had received the notice in respect of No43B, and that he had not made enquiries on receipt of the letters in relation to No43B as to whether 43A, required a licence.

31. In respect of the scoring of the penalty notice, he did not accept that there was evidence that the Applicant was unlikely to be deterred by a penalty notice. He referred to the action that had been taken as a result of Ms Perry becoming aware of the possible action of the Respondent in respect of No.43B.
32. Mr David was asked to address this. He accepted that the score for deterrence at 10 had been too high. He would now on the information before him reduce this to a score of 5. However, if he was re-visiting the scores, he noted that the property portfolio of the Applicant's was larger than he had known and that this would now make the score under this head a 15. Given this there would be no difference to the actual final scoring and the level of the fine.
33. Both parties repeated their main points in their closing submissions, Mr David expressed some sympathy for the Applications condition, however he referred to the fact that she continued to deal with some of the management and that once the application for 43B had been applied for the action had been discontinued.
34. Mr Freifeld acknowledged that the properties had not been licensed, he stated that either as a result of her health this had been overlooked or not served by the Respondent. He asked the Tribunal to take this into account in making the decision. Given that Ms Perry had not acted in a manner which displayed an attempt to avoid licensing the property.

### **The Decision of the Tribunal**

35. The Tribunal reminded itself that this was an Appeal by way of rehearing, however the Tribunal had to be satisfied that on the evidence before the Tribunal, that the Applicant had committed the offence under section 95, beyond a reasonable doubt.
36. The Tribunal heard that the property was within the selective licensing area; Mr Freifeld accepted that the property was privately rented and as such required a licence, and that it was unlicensed at the time the notice was served.
37. The Tribunal accepted that the offence was proved beyond a reasonable doubt, both on the acceptance of Mr Freifeld, but also on the evidence that was before it.
38. The Tribunal was also satisfied that the notice was served on Ms Perry; it noted that the Respondent had used her home address, and that correspondence concerning 43B had come to her attention. The Tribunal considers it wholly unlikely that all correspondence for No43A save for the penalty notice, and the correspondence in respect of No43B would have gone astray. The Tribunal finds that the correspondence was sent as set out in the evidence of Mr Donald.
39. The Tribunal noted that on behalf of the Applicant it was accepted that Ms Perry has had some difficulties in managing her affairs, and, that this may have contributed to the documentation not being responded to.
40. However, the Tribunal noted that although the Applicant accepts and acknowledges this, she still retained management of some of her property portfolio. The Tribunal consider that there is no information before it which suggests that there is a degree of difficulty that the

Applicant has which means that she is incapable of managing her affairs.

41. The Tribunal noted that having received the threat of the Penalty Notice, in respect of No43B, the managing agent were aware that 43B was one of two properties, accordingly the managing agent could have addressed with the Applicant whether the subject premises also required a licence. The managing agent did not address this, with the Applicant, and did not address with the Respondent whether No43A, also required a licence at the same time. Accordingly, we are satisfied that there are no new grounds upon which the Penalty Notice ought to be set aside.
42. The Tribunal next considered the amount of the notice; the Tribunal agreed with Mr Freifeld that the assessment on deterrence was incorrect in that the previous licence in 2017, and the application for a licence for No.43B, should have been assessed as moderating the risk of subsequent offending.
43. However, the Tribunal accepted Mr Donald's calculations, and accepted that even if he recalculated, as Ms Perry had a larger portfolio than previously known about this would have resulted in the financial deterrence part of the matrix being recalculated, arriving at the same penalty.
44. According the Tribunal finds that the assessment carried out by the Respondent is reasonable and accordingly the Tribunal declines to interfere with penalty charge in the sum of £1000.00.

#### **Order**

- I. The Applicants appeal against the Penalty Notice 23 December 2020 is dismissed
- II. The fine in the sum of £1000.00 is payable within 28 days.

#### **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. 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).***

***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.***

***Signed: Judge Daley***

***Date: 15 October 2021***

## ***The Law***

### ***249A Housing Act 2004***

#### ***Financial penalties for certain housing offences in England***

(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) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

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

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

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

#### ***Schedule 13 A***

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.

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) 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
- (b) 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.

8 The final notice must set out—

- (a) the amount of the financial penalty,
- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice