



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

Case reference : **LON/00BB/HNA/2021/0048**

Property : **4 Fernhill Street, London E16 2HZ**

Applicant : **Syed Maqbool Hussain Shah**

Representative : **In person**

Respondent : **London Borough of Newham**

Representative : **In House Legal Services
Julie Cannard (Ref:
20/41273/HOLIN)**

Type of application : **Appeal against financial penalty
under section 249A and schedule 13A
of the Housing Act 2004**

Tribunal : **Judge Amran Vance
Ms S Coughlin MCIEH**

Date and venue of hearing : **3 August 2022**

Date of decision : **22 August 2022**

DECISION

Description of hearing

The hearing of this matter took place on 3 August 2022 by remote video conferencing (HMCTS code: Remote: CVP). Both the Applicant and the Respondent provided hearing bundles in PDF format. References in square brackets and in bold below are to page numbers in the hearing bundle supplied by the Council, except where preceded by the letter “A”, where they refer to the Applicant’s bundle.

Decision

1. The decision of the London Borough of Newham (‘the Council’) to impose a financial penalty in the sum of **£5,000** against the Applicant is confirmed. Mr Shah should pay this sum to the Council within 28 days of the date of issue of this decision.

Background

2. This is Mr Shah’s appeal against the decision of the Respondent Council, made on 25 August 2021, to impose upon him a civil penalty, under s.249A Housing Act 2004 (“the Act”), in the sum of £5,000. The penalty was imposed on grounds that as at 29 December 2020, Mr Shah had failed to comply with licence conditions imposed by the Council in respect of 4 Fernhill Street, London E16 2HZ (“the Property”), thereby committing an offence under s.95(2) of the Act.
3. The freehold owners of the Property are Mr Shah and his wife, Sobia Maqbool Shah. They were registered as such at the Land Registry on 3 January 2018, having purchased the Property on 21 December 2017 **[320]**. The Council operates a borough wide property licensing scheme **[75]** which requires all privately rented properties to be licensed under either Part 2 or Part 3 of the Act, unless they are located in the E20 area. On 28 May 2018, Mr Shah applied for a selective license for the Property under Part 3 of the Act **[94]**. His application was successful, and on 6 December 2018 the Council granted him a licence commencing on 1 March 2018, expiring on 28 February 2023 **[190]**. The grant of that license was subject to the Council’s standard selective licensing conditions. These number 49 in total, and are specified in a list attached to the license. At the start of that list is the following warning which is capitalised in in red ink:

“PLEASE TAKE THE TIME TO READ THESE LICENCE CONDITIONS. FAILURE TO COMPLY WITH THESE CONDITIONS IS A CRIMINAL OFFENCE”.

4. The following conditions of Mr Shah’s licence are relevant to this appeal:

Condition 6

“The Licence Holder shall supply the occupiers of the property with a written statement of the terms on which they occupy the property, details of the arrangements in place to deal with repair issues and emergency issues and a copy of this licence and its conditions. Copies of the written statement of terms must be provided to the Council within 7 days upon demand”.

Condition 9

“The Licence Holder shall obtain references from persons who wish to occupy the property, or a part of the property, before entering into any tenancy or licence or other agreement with them to occupy the property. No new occupiers shall be allowed to occupy the property if they are unable to provide suitable references. (References should be as a minimum, checks to ensure the tenants identity, whether they have the right to rent a property [see <https://www.gov.uk/check-tenant-right-to-rentdocuments/> who-to-check], their ability to pay rent and their past tenant history.) The Licence Holder must retain all references obtained for occupiers for the duration of this licence and provide copies to the Council within 28 days on demand.”.

Condition 10

“The Licence Holder shall carry out adequate checks and obtain satisfactory proof that occupiers belong to a single household. Evidence of this must be retained for the duration of licence. This evidence must be provided to the Council within 28 days on demand”.

Condition 11

“The Licence Holder shall protect any deposit taken under an assured shorthold tenancy by placing it in an authorised tenancy deposit scheme. The tenant must be given the prescribed information about the scheme. The Licence Holder must comply with the requirements of the scheme and the operation of Part 6 in Chapter 4, Housing Act 2004 within the statutory time limit (currently 30 days). A copy of the prescribed information given must be provided to the Council within 28 days on demand”.

Condition 12

“The Licence Holder must provide to the Council, in writing, details of the tenancy management arrangements that have been, or are to be, made to prevent or reduce anti social behaviour by persons occupying or visiting the property. Evidence of these must be provided to the Council within 28 days on demand and amongst other things shall include the following :a) Notification of an emergency 24hr contact number (including out of hours response arrangements) b) Notification of arrangements for the disposal of rubbish and bulky waste c) Written records of property inspections for management and repair issues”.

Condition 13:

“The Licence Holder shall ensure that inspections of the property are carried out at least every six (6) months to identify any problems relating to the condition and management of the property. The Council may increase the frequency of such inspections if it has good reason to be concerned about the condition or management of the property. The records of such inspections shall be kept for the duration of this licence. As a minimum requirement the records must contain a log of who carried out the inspection, date and time of inspection and issues found and action(s) taken. Copies of these must be provided to the Council within 28 days on demand. Sample inspection template forms are available online at ww.newham.gov.uk/propertylicensing.”

Condition 23

“If gas is supplied at the property, the Licence Holder shall take all reasonably practicable steps to ensure that all gas installations and appliances are in a safe condition. The Licence Holder must keep a current valid gas safety certificate obtained within the last 12 months by a Gas Safe registered Engineer or, if the boiler was installed less than 12 months ago, a Gas Safe Installation Certificate. A copy must be provided to the Council within 28 days on demand. Copies of this certificate must also be provided to all occupiers at the start of their occupation”.

Condition 24

“The Licence Holder shall take all reasonably practicable steps to ensure that all electrical appliances provided at the property are in a safe condition. The Licence Holder must obtain an electrical appliance test report in respect of all electrical

appliances that are provided by the landlord and provide a copy to the Council within 28 days of demand.”

Condition 32

“The Licence Holder shall carry out regular checks and ensure that the property is free from pest infestation. Where the Licence Holder becomes aware of a pest problem or infestation at the property they shall, within 7 days, take steps to ensure that a treatment program is carried out to eradicate the pest infestation. Records shall be kept of such treatment programs and copies of these must be provided to the Council within 28 days on demand”.

Condition 34

“The Licence Holder shall ensure each smoke alarm installed in the property shall be kept in proper working order and shall submit to the Council, on demand, a declaration by him as to the condition and positioning of any such smoke alarm”.

Condition 47

“The Licence Holder shall provide the Council, within 28 days of receiving a written notice, with such of the following particulars as may be specified in the notice with respect to the occupancy of the property: a) The names and numbers of individuals and households in occupation specifying the rooms they occupy within the property. b) The names and number of individuals in each household.”.

5. By a tenancy agreement dated 15 June 2018 **[16]** Mr Shah let the Property to Gelu-Alin Martis for a fixed term of 12 months. The Property is described in that tenancy agreement as being a three-bedroom house. Mr Shah’s position is that it was let to Gelu-Alin Martis for use by her in accommodating a single household.
6. Ms Julie Cannard, a Team Leader in the Council’s Private Sector Housing Standards team has provided a witness statement in response to Mr Shah’s appeal **[4]**. She also presented the case on behalf of the Council at the hearing of the application and gave oral evidence as to the contents of her statement. She explained that on 16 November 2020, the Council received a complaint **[200]** alleging that the Property was occupied by 16-20 people, that it was being let as an unlicensed house in multiple occupation (“HMO”), and that the occupiers were engaging in antisocial behaviour.

7. That complaint resulted in an email being sent, on 19 November 2020, by Lisa Watts in the Council’s HMO licensing team to Mr Shah [202] in which he was asked to take prompt action to address the reported problems of antisocial behaviour. In that email Ms Watts notified Mr Shah that he “must now take one of the following actions within 28 days of this email” namely:
- (a) provide copies of written warnings sent to the occupiers regarding antisocial behaviour;
 - (b) submit a new application for a HMO Additional License so that the Property can continue to be occupied as a HMO;
 - (c) take immediate steps to return the Property back to a single family dwelling; and
 - (d) provide written confirmation of occupancy, if it is believed that the Property is occupied by one family.
8. It is not at all clear to us why Ms Watts stated in her email that Mr Shah should take “one” of these four options. The options are not mutually exclusive, and it may well have been appropriate for Mr Shah to have pursued more than one of the suggested options. We suggest that the Council considers re-drafting what appears to be a standard form of wording used in such situations.
9. Ms Watt’s email then reads as follows:

“FURTHER DOCUMENTS REQUIRED:

The property has also been selected for an audit of the conditions contained within your license. Therefore please provide Newham Council with the documents listed below.

The licence holder is still the person responsible for complying with the conditions of the licence, even if the incorrect licence type is held (Housing Act 2004, sections 68(5) and 91(5)). A checklist and detailed descriptions of the documents can be found within this letter.

o Written Statement of terms of Occupancy (Tenancy Agreement)

o Gas Safety Certificate

- o Fire Alarm / Emergency Lighting Test Certificate (including manual tests of battery powered smoke detectors and CO2 alarms)
- o Property Inspection Records
- o Tenancy Deposit Scheme Paperwork
- o Tenancy Management Arrangements
- o Electrical Appliance Test certificate/PAT test
- o Pest Control Treatment Records
- o Copies of References for Occupants
- o Name and Details of Occupant and the rooms in which they occupy

Please provide the council with all of the above documents and information within 28 days of the date of this email. You can send them via email: Propertylicensing@newham.gov.uk and include your licence reference number and licensed property address in the email. If you are unable to provide a certain piece of documentation or information due to the current COVID19 outbreak please just provide written confirmation. Please note we will also require your written assurance that once government rulings have been lifted these items outstanding will be provided to us.”

10. There then follows a warning that the Council is able to issue a Civil Penalty of up to £30,000 as an alternative to prosecution for licensing offences. Ms Watts’ email ends with a checklist of the documents that Mr Shah was being asked to provide, with the documents required described in greater detail.
11. On 20 November 2020, the day after Ms Watts sent her email, Mr Shah telephoned the Council and said that he had no knowledge of the Property being used as a HMO, nor of any antisocial behaviour. He spoke to Angela Jones who made a computer file note of their conversation **[205]**. According to that note, Mr Shah told her that he had concerns about visiting the property because of the Covid-19 pandemic, and that his solicitor had advised him that he would, in any event, not be able to obtain possession of the Property from the tenant until March 2021.

12. Ms Watt's email of 19 November 2020 was followed by a letter from the Council's Property Licensing team to Mr Shah dated 26th November 2020. At the top of the first page of that letter, capitalised and in a large font, were the following words:

**“NOTIFICATION OF INCORRECT LICENCE
TYPE Action Required”.**

13. It was said in the letter that it has come to light that the Property may be occupied by more than one household, and that Mr Shah may therefore hold the wrong type of property licence. Mr Shah was informed that, by 24 December 2020, he needed to either submit an application for a HMO licence or take immediate steps to return the Property back to a single family dwelling. He was then, once again, asked to provide the documents that Ms Watt requested in her email. The description of the documents differs slightly but the categories of documents are the same. The letter reads as follows:

“FURTHER DOCUMENTS REQUIRED:

The property has also been selected for an audit of the conditions contained within your license.

Therefore please provide Newham Council with the documents listed below.

The licence holder is still the person responsible for complying with the conditions of the licence, even if the incorrect licence type is held (Housing Act 2004, sections 68(5) and 91(5)). A checklist and detailed descriptions of the documents can be found within this letter.

- Written Statement of terms of Occupancy
- Gas Safety Certificate
- Fire Alarm / Emergency Lighting Test Certificate
- Property Inspection Records
- Tenancy Deposit Scheme Paperwork
- Tenancy Management Arrangements

- Electrical Appliance Test certificate
- Energy Performance Certificate
- Pest Control Treatment Records
- Copies of References for Occupants
- Name and Details of Occupant

Please provide the council with all of the above documents and information within 28 days of the date of this letter, by 24/12/2020. You can send them via email: Propertylicensing@newham.gov.uk and include your licence reference number and licensed property address in the email.

14. As with Ms Watt's email, the letter then said that the Council had the power to issue a Civil Penalty of up to £30,000 for licensing offences as an alternative to prosecution.
15. Ms Cannard's evidence was that Mr Shah did not respond to the Council's letter 26th November, and a reminder letter was therefore sent to him on 14 January 2021, giving him a further seven days to supply the documents the Council had requested [222]. According to Ms Canard, Mr Shah failed to respond and, on 21 June 2021, she prepared a draft Notice of Intention to serve a Financial Penalty Notice in the sum of £5,000. This was approved by her manager, Paul Mishkin on 22 June 2021, and sent to Mr Shah by post [256] and email [257] on 22 June 2021.
16. The reasons stated in the Notice for the proposed imposition of a Financial Penalty are that on or about 29 December 2020 Mr Shah had failed to comply with the licensing conditions for the Property. At paragraph 6(g) of the Notice it is stated that the Council believed that Mr Shah had breached 11 conditions of his selective licence, thereby committing an offence under s.95(2) of the Act, namely.
 - "i. Condition 6: Licence holder failed to supply copy of written statement of terms of occupancy.
 - ii. Condition 9: Licence holder failed to supply copies of references obtained for occupants.
 - iii. Condition 10: licence holder failed to supply evidence or proof that the occupiers belong to one household.

- iv. Condition 11: Licence holder failed to supply copy of tenancy deposit scheme paperwork.
 - v. Condition 12: Licence holder failed to supply details of tenancy management arrangements.
 - vi. Condition 13: Licence holder failed to supply copies of property inspection records.
 - vii. Condition 23: Licence holder failed to supply copy of valid gas safety certificate.
 - viii. Condition 24: Licence holder failed to supply a copy of electrical appliance test certificate.
 - ix. Condition 32: Licence holder failed to supply copies of pest control treatment records.
 - x. Condition 34: Licence holder failed to supply a copy fire alarm/ emergency lighting test certificate.
 - xi. Condition 47: Licence holder failed to supply details of occupants.”
17. Mr Shah made written representations in response to the Notice of Intention by letter dated 8 July 2021 **[264]**. In that letter he acknowledged receipt of the Notice of Intention on 22 June 2021, but objected to the imposition of a financial penalty. He stated that he had “complied with the previous letters”, that he had “successfully managed to remove the tenants and squatters from the property”, and that he had been “unaware that there were 16-20 people living in that property as [he was] was unable to visit and check the property due to COVID”. He said that after receiving notice of the complaints he removed the tenants as soon as possible, in December 2020, and then spent £17,000 renovating the Property before entering into a new tenancy agreement with a single family on 16 February 2021 **[265]**. He enclosed a copy of that tenancy agreement, entered into between 786 Consultants Limited, a company for which he is the sole Director **[251]**, and Thaira Mubeen Mohammed and Chaudry Asghar Ali.
18. Ms Cannard replied to Mr Shah in a letter dated 19 July 2021 **[284]** in which she said that apart from the tenancy agreement provided with his letter of 8 July 2021, the Council had no record of receiving any of the documents that it had asked him to provide in its letters of 26 November 2020 and 14 January 2020. He was asked to provide evidence that he had done so. In her letter, Ms

Canard informed Mr Shah that the offence that the Council believed he had committed concerned his failure to provide the requested documents, and that it did not concern the number of occupants living at the Property.

19. Mr Shah responded to Ms Canard, by email, on 26 July 2021 **[286]** in which he stated that he sent documentation “to the enforcement officer on 2/2/21”. He mentioned that his mortgage payments for the Property amounted to £1,441.86 per month, and that the rent received was £1,650. He also provided a screenshot of an email that he appears to have sent on 2 February 2021, attached to which were copies of an Electrical Installation Condition Report (“EICR”) for the Property dated 15 January 2021 **[290]**, and a Gas Safety Certificate dated 21 January 2021 **[300]**. In the email Mr Shah stated that he would send a copy tenancy agreement when the new tenants had moved into the Property, and that he had tried to call the Council many times and had left messages because he was told that many of the Council’s officers were working from home due to COVID.
20. The Council’s position is that it did not receive Mr Shah’s email of 2 February 2021. We accept Ms Cannard’s evidence to that effect and find, on the balance of probabilities, that the email was not received. This is very likely to be because it was incorrectly addressed to lisa.watts@newham.gov.com rather than her correct email address of lisa.watts@newham.gov.uk. Ms Cannard’s evidence was that Mr Shah should have realised his mistake because he would have received a bounce-back message saying that his incorrectly addressed email had not been delivered. She confirmed that she had received a bounce-back message when she tested sending an email to lisa.watts@newham.gov.com on 24 August 2021 **[302]**.
21. On 18 August 2021, Amanda Bucknor, an officer from the Council’s property licensing team visited the Property and verified that it was being occupied by a single family **[301]**.
22. The Council issued a Final Penalty Notice in the sum of £5,000 on 25 August 2021 **[307]** in which it identified the same 11 alleged breaches of Mr Shah’s licence that appeared in the Initial Notice, and which it believed gave rise to the s.95(2) offence, on or about 29 December 2020. At paragraph 6 m) of the Final Notice the Council recognised that Mr Shah had now provided copies of an EICR, Gas Safety Record, and copy tenancy agreement, but said that these were all obtained after the date of the alleged offence, and were therefore not relevant to its decision to impose a financial penalty.

The Legal Framework

23. Section 249A of the Act permits a local housing authority to impose a financial penalty on a person if it is satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England. This includes offences in relation to the selective licensing of houses under Part 3 of the Act. s.95(2) of the Act provides that:

“A person commits an offence if -

- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
- (b) he fails to comply with any condition of the licence

24. However, in any proceedings against a person for an offence under subsection (2) it is a defence if they had a reasonable excuse for failing to comply with the condition: ss. 95(4)(b).

25. Under section 249A(1) a 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. A relevant housing offence included an offence under s.95: ss. 249(2)(c).

26. Only one financial penalty may be imposed on a person in respect of the same conduct. That penalty is to be determined by the housing authority but must not exceed £30,000 (section 249A(3) – (4)).

27. Schedule 13A of the Act deals with the procedure for imposing financial penalties and appeals against financial penalties Paragraph 10 of that Schedule states:

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

- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(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.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.”

28. A local authority is required by paragraph 12 of Schedule 13A to have regard to any guidance given by the Secretary of State about the exercise of its functions in relation to financial penalties. Such guidance was issued by the Ministry of Housing, Communities and Local Government in April 2018, entitled *Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities* [55] (the Guidance”).

29. Paragraph 3.5 of the MHCLG Guidance identifies specific factors that local housing authorities should consider to help it ensure that a civil penalty is set at an appropriate level, namely:

(a) the severity of the offence

(b) the culpability and track record of the offender

(c) the harm caused to the tenant (elsewhere it is explained that harm includes the potential for harm)

(d) punishment of the offender

(e) deterrence of the offender from repeating the offence

(f) deterrence of others from committing similar offences

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

30. To accord with paragraph 3.3 of the Guidance, the Council formulated its “Enforcement Policy” [35] (‘the Council’s Policy’) which, at para. 3.17 states that financial penalties will normally be used as the primary enforcement tool to address housing offences. At Appendix 1 [44], financial penalties are identified as being

appropriate in cases of breaches of conditions attached to a property licence.

31. At Appendix 2, the Council's Policy sets out a Civil Penalty Matrix to be used as a guide when assessing the amount of a civil penalty[47]. The Matrix is said to have been created having specific regard to the Guidance. Each of the four rows of the Matrix produces a score dependent on the assessed severity of the issue, being a score of either 1, 5, 10, 15 or 20. At the end of every row the officer is required to justify the most appropriate score chosen based on evidence in the case.
32. The four rows of the Matrix are:
 - (1) Deterrence & Prevention
 - (2) Removal of Financial Incentive
 - (3) Offence & History
 - (4) Harm to Tenant(s)
33. Under the Matrix, the score awarded for Harm to Tenants is doubled when calculating the final score. This is stated to be "In line with Statutory Guidance".
34. The total of all the scores is then compared against the following score range which determines the amount of the penalty (described as a "fee").

Score Range	Fee
1 – 5	£1,000
6 – 10	£2,500
11 – 15	£5,000
16 - 20	£7,500
21 – 30	£10,000
31 – 40	£15,000

41 – 60	£20,000
61 – 80	£25,000
81 – 100	£30,000

The Hearing

35. The hearing on 3 August 2022 took place by video conferencing. Mr Shah had difficulties accessing the hearing using his laptop as although his audio connection worked well, his laptop camera did not, meaning that the tribunal could not see him on screen, and nor could he see anybody other than himself on his laptop screen. Despite receiving considerable assistance from the tribunal’s case officer, this issue could not be resolved, and Mr Shah joined the hearing using his Ipad. Although his internet connection dropped a few times during the course of the hearing, at which point the hearing was paused until he reconnected, we are satisfied that he had a full opportunity to participate in the hearing and that no procedural unfairness was caused by these technical difficulties. Ms Canard experienced no technical problems.

Mr Shah’s Case

36. In his witness statement dated 18 April 2022 [A2] Mr Shah states that he is a qualified lawyer in Pakistan and that he is registered to provide Immigration and Asylum advice by the Office of Immigration Service Commissioner. He also mentioned that he has been a member of the National Residential Landlord Association (“NRLA”) from 5 October 2017.
37. Mr Shah’s evidence was that after receiving the Council’s email of 19 November 2020 and its letter of 26 November 2021, he tried telephoning the Council on several occasions, each time asking to speak to somebody in the Licensing Team, He was, he said, told that he could not speak to an officer as staff were working from home due to Covid lockdown.
38. At the hearing he said that Gelu-Ann Martis moved out of the Property in October 2020, and that he then visited it in December 2020, and established that there were no squatters living there. He said that after Gelu-Ann Martis moved out of the Property it was empty until February 2021, when the new tenants moved in, and that during the intervening period he carried out substantial refurbishment work.

39. When asked by the tribunal why he did not email the documents the Council had asked him to provide in December 2020, he said that he wanted to hand over the documents personally. He acknowledged that this was an error, and accepted also that he had overlooked the importance of providing the documents in question. He said he had been under the impression that the issue the Council had been concerned about was that the Property was being used as an HMO. That, he said, was why he had been keen for the Council to inspect it in order to satisfy itself that this was not the case. He also argued that he had now provided all of the documents requested by the Council, where relevant, and that the relevant date for considering whether he had committed any offence was the date of the hearing of his appeal before the tribunal.
40. Mr Shah stated that he was a responsible landlord who has owned and managed properties since November 2013. As well as being the sole director of 786 Consultants Limited he said that he is also a director of a dormant company, 786 Real Estate Ltd. He told us that he personally manages 13 properties owned by 786 Consultants Limited, all of which are let to tenants, except for one which is currently empty. He said that six of those 13 properties are licensed by other local housing authorities and that no issues have arisen in respect of those property licenses. In his submission, the Council was wrong to impose a financial penalty at all and that the amount of £5,000 was excessive given the amount of profit he makes from rental of the Property.

The Council's Case

41. The Council's position is that by not providing it with the documents within the timescales set out in the license conditions for the Property Mr Shah had breached those conditions and committed an offence.
42. When applying the Council's Matrix, Ms Cannard allocated the lowest possible score of one point for all four rows of the Matrix, apart from the second row, Removal of Financial Incentive, where she allocated a score of 10 points. In the justification column for that entry she said as follows:

“SYED MAQBOOL HUSSAIN SHAH and SOBIA MAQBOOL SHAH are the joint owners for 4 Fernhill Street, E16 2HZ and also 195 Wood Lane, Dagenham RM8 3LH. SYED MAQBOOL HUSSAIN SHAH also owns 181 Lodge Avenue, Dagenham (RM8 2JL) and is the only Director of 786 CONSULTANTS LTD (Co. Regn. No. 09227223) which owns 24 Southwold Drive, Barking (IG11 9AU). This means that he is a

small portfolio landlord as although he owns 4 properties, 195 Wood Lane, Dagenham RM8 3LH appears to be the landlord's residence.”

43. This resulted in a final score under the Matrix of 14 points (with the score for row four doubled) and a Financial Penalty of £5,000. The council's position is that Mr Shah had no reasonable excuse for his failure to provide the documents requested of him, and that the imposition of the Financial Penalty was appropriate.

Decision and Reasons

44. We are satisfied, beyond reasonable doubt, that Mr Shah's failed to comply with certain of the conditions of his licence for the Property resulting in him, as at 29 December 2020, committing an offence under s.95(2) of the Act.
45. We find that Mr Shah breached the following conditions of his licence by failing to provide documents requested by the Council in its letter of 26 November 2020 within the 28 day deadline set by the Council:
- (a) Condition 6 – Mr Shah was asked to provide a copy of the written statement of terms of occupancy. The licence condition obliged him to provide a copy of the written statement of terms to the Council within 7 days upon demand. He did not do so;
 - (b) Condition 9 - he was asked to provide copies of the references obtained for the occupants. The licence condition obliged him to do so within 28 days of demand. None were provided;
 - (c) Condition 10 - he was asked to supply evidence or proof that the occupiers belonged to one household. He did not provide this information within 28 days of demand as specified in the condition;
 - (d) Condition 11 - he was asked to supply a copy of any tenancy deposit scheme paperwork. The licence condition required a copy of the prescribed information to be provided to the Council within 28 days of demand. It was not provided within that timescale;
 - (e) Condition 12 - he was asked to supply details of the tenancy management arrangements in place at the Property. The licence condition required evidence of this to be provided to

the Council within 28 days on demand. It was not provided within that timescale;

- (f) Condition 13 - he was asked to provide copies of the property inspection records for the Property. The licence condition required him to do so within 28 days on demand. No such copies were provided within 28 days;
- (g) Condition 23 – Mr Shah was asked to supply a copy of valid gas safety certificate. The licence condition required him to provide a copy to the Council within 28 days of demand. He did not do so;
- (h) Condition 24 – he was asked to supply a copy of a portable appliance test certificate for all electrical appliances supplied by the landlord. It appears from the tenancy agreement that he has provided that some electrical appliances were included in the letting. The licence condition required him to provide copy certificates within 28 days on demand. No copies were provided within that timescale.
- (i) Condition 34 - Mr Shah was asked to supply a copy of a fire alarm/ emergency lighting test certificate for the Property. The licence condition required him to.
- (j) Condition 47 - Mr Shah was asked to supply details of the occupants of the Property. The licence condition required him to do so within 28 days of receiving written notice. The information was not provided within that timescale.

46. On his own evidence, Mr Shah does not suggest that he provided any of the documentation requested by the Council in its letter of 26 November 2020 within the 28 day period specified in the letter. It is therefore beyond reasonable doubt that the licence conditions identified in the previous paragraph were breached, and that the offence under s.95(2) was committed once the 28-day period had expired. Because, the 28-day period ended on Christmas Eve, the Council's Notice of Intention and Final Notice both stated an offence date of 29 December 2020. None of the documents requested were provided by that date and it is therefore appropriate to treat that date as the date of the offence. The relevant date is not, as Mr Shah suggested, the date of the hearing before the tribunal.

47. We do not consider, on the balance of probabilities, that Mr Shah had, on that date, a reasonable excuse for committing the offence. The difficulties that he suggested he had experienced in contacting the Council by telephone do not, in our determination,

excuse his failure to comply with the conditions of his licence. He could have posted the required documentation to the Council, or emailed it to the email address specified in the Council's letter. He did not do so.

48. Mr Shah's asserted belief that the Council's concern was that the Property was being let as a HMO is an understandable one. Both the Council's email of 19 November 2021, and its letter of 26 November conflated the suggestion that he needed to apply for a HMO licence with a request for him to provide documents on grounds that the Property selected for an audit of compliance with his license conditions. Such belief, does not, in our view establish a reasonable excuse defence. Mr Shah is a professional landlord and he should, in our view, have recognised the need to comply with the request for documents irrespective of the suggestion that he might need to apply for a HMO license.

49. We accept that on 2 February 2021, Mr Shah attempted to email copies of an EICR and Gas Safety Certificate to the Council but this was attempted after the date of the offence and is therefore irrelevant to the question of whether he had a reasonable excuse for committing the offence. In any event he used an incorrect email address and we have found that as a result of that error the Council did not receive his email.

50. If, as Mr Shah said at the hearing, the Property was unoccupied between October 2020 and February 2021 then we would have expected him to inform the Council of this once he received its letter of 26 November, and to explain why he was unable to supply any of the documents requested, or why its request was irrelevant. He did not do so.

51. Nor are we satisfied, on the evidence, that the Property was, in fact, vacant throughout that period. Mr Shah said at the hearing that Gelu-Ann Martis moved out of the Property in October 2020. However, he makes no mention of this in his witness statement and, according to the Council's computer file note, when he telephoned the Council on 20 November 2020, he said that his solicitor had advised him that he would not be able to obtain possession of the Property from the current tenant until March 2021. We see no reason to doubt the accuracy of that file note and nor did Mr Shah seek to do so in his cross-examination of Ms Cannard. We find that the Property was still being let by Mr Shah in October 2020.

52. In our determination, Mr Shah did not breach condition 32 of his licence. That condition only requires the licence holder to carry out pest control treatment where they become aware of a problem or infestation at the Property, with records shall of such

treatment to be provided to the Council within 28 days of demand. Mr Shah's evidence was that there were no problems with pests or infestation, and the Council does not suggest otherwise. In the absence of any such problems, no works were required, the condition was not engaged, and there was nothing for Mr Shah to provide.

53. Turning to the question of whether the imposition of a financial penalty is appropriate, we remind ourselves that paragraph 10(1) of Schedule 13A, to the Act states that an appeal to this tribunal is to take the form of a re-hearing of the local housing authority's decision, but may be determined having regard to matters of which the authority was unaware. Our task is not to consider whether the Council's decision was justified or reasonable. We have to determine for ourselves whether a financial penalty should be imposed at all and, if so, how much the penalty should be.
54. We have considered whether a warning to Mr Shah is a more proportionate response to the offence he committed, rather than the imposition of a financial penalty but are satisfied that in all the circumstances of this case, the imposition of a financial penalty is correct. When examining that question, and the amount of the penalty, we take the Council's Policy as our starting point. In *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC), Judge Cooke held that when considering an appeal against the amount of a financial penalty imposed by a local authority under the Housing Act 2004, this tribunal should pay great attention to the authority's policy and should be slow to depart from it. The burden is on an appellant to persuade the tribunal to do so.
55. We have some sympathy for Mr Shah's position. He is a landlord with a fairly substantial property portfolio and there is no evidence to suggest that he is anything other than a good landlord who provides decent and properly-maintained accommodation to his tenants. As was stated by the Deputy President, Martin Rodger QC in *Ekweozoh v London Borough of Redbridge* [2021] UKUT 180 (LC) (29 July 2021) [50] "the objective of the financial penalty regime, as explained in the MHCLG Guidance, is to support and crack down on a small number of rogue or criminal landlords knowingly letting out unsafe and substandard accommodation". We are satisfied, on the evidence before us, that Mr Shah is not a criminal or rogue landlord.
56. We also note that that paragraph 3.3 of its Policy the Council states that one of the key principles it applies to its enforcement activity is that action taken must be proportionate

“to the risks and severity of the breach of the law involved and to deter offenders from repeating the offence and discourage others from committing similar offences”.

57. The offence committed by Mr Shah is not as serious as many of the offences that this tribunal has to consider when dealing with appeals against financial penalties. However, in our view, his breach of the conditions of his selective licence were sufficiently serious to justify the imposition of such a penalty, rather than a warning or other informal action. There was a clear warning to him, at the start of the list of his licence conditions that he needed to take time to read the conditions, and that failure to comply could amount to a criminal offence that could result in the imposition of a financial penalty of up to £30,000, or prosecution. Some of the licence conditions he breached, such as the production of a gas safety certificate, are mandatory conditions, and have to be attached to every licence by reason of Schedule 4 of the Act.
58. Selective licence conditions serve an important purpose. They are imposed with a view to improving management standards in the private rented sector in areas of the country where standards are in need of improvement. They are imposed not only for the benefit and safety of occupiers of the property, but also for the benefit of the wider community.
59. No reasonable explanation has been provided for Mr Shah’s failure to provide the documentation requested by the Council and, on balance, whilst recognising that his offence is at the lower end of the scale in terms of seriousness, the imposition of a financial penalty was, in our determination, a proportionate response to the offence committed.
60. As to the amount of penalty, we take as our starting point the Council’s Policy. We note that at paragraph 1.5 of the Policy it is stated that the overall aim of enforcement action is to protect health and improve housing standards by: “changing the behaviour and seeking legal punishment of those who flout the law; eliminating financial gain or benefit from non-compliance; providing transparent and consistent regulation within a private market; promoting professionalism and resilience within the private rented sector; and providing a ‘light touch’ for compliant landlords....”.
61. Mr Shah made no representations regarding the Council’s Matrix. However, as this is a re-hearing of the Council’s decision we have applied our own mind as to whether the application of the Matrix was appropriate in the circumstances of this case.

62. Ms Cannard's Matrix assessment can be summaries as follows:

Factor	Assessment	Score
1- Deterrence & Prevention	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence.	1
2- Removal of Financial Incentive	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.	10
3- Offence & History	No previous enforcement history. Single low level offence.	1
4 - Harm to Tenant(s) (Weighting x 2)	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	1

63. We agree with Ms Cannard's decision to award the lowest possible scores for rows 1, 3 and 4. She was, in our view correct to have high confidence that the imposition of financial penalty would deter Mr Shah from repeat offending given the lack of any previous offending by him, and given that there is no suggestion of any previous enforcement action taken against him in respect of housing management.

64. We gave careful scrutiny to the award of 10 points for row 2. At the time of her assessment, Ms Cannard was only aware of Mr Shah owning three properties. She then became aware of two other properties, which under the Matrix, would have led to his categorisation as a medium portfolio landlord (with between 4-5 properties), and which have resulted in a score of 15 points under row 2. Mr Shah's evidence at the hearing that he in fact owns 13 properties through 786 Consultants Limited, which would, according to the Matrix, lead to his categorisation as a large portfolio landlord (over 5 properties), and a score for row 2 of 20

points. A 20 point award for row 2 would have resulted in a final score of 24 points, and a financial penalty of £10,000.

65. Row 2 of the Matrix is entitled Removal of Financial Incentive. This would appear to be an attempt to apply paragraph 3.5(g) of the MHCLG Guidance which refers to the removal of “any financial benefit the offender may have obtained as a result of committing the offence”, and which states that the “guiding principle here should be to ensure that the offender does not benefit as a result of committing the offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.”
66. In our view, the reference in paragraph 3.5(g) to the removal of financial benefit refers to a financial benefit obtained as a result of the particular behaviour that gave rise to the offence. It is therefore difficult to see why the size of Mr Shah’s property portfolio is relevant to this question, as there is no suggestion that he has benefited financially from his breach of his licence conditions.
67. We asked Ms Cannard what was meant the removal of financial incentive in row 2 of the Matrix. Her response was that if a landlord was making a lot of money from renting out properties, the amount of the financial penalty should be higher, so that it meant more to him. She agreed that row 2 was really about punishing an offender as opposed to removing a financial benefit that they may have secured.
68. It appears to us that row 2 of the Matrix is actually targeted towards implementation of paragraph 3.5(d) of the MHCLG Guidance, which refers to the punishment of an offender, and which reads as follows:
- “A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.”
69. In our view the Council would do well to review its Matrix, with a view to a more careful application of the MHLGC Guidance. We also consider its Policy would benefit from more comprehensive guidance to its officers as to how the Matrix is to be applied. No such guidance appears in the main body of the

Policy and there is scant detail in its Appendices. Unlike other local authority policies, there is no scope for an assessing officer to have regard to aggravating or mitigating factors.

70. Despite those criticisms, we are satisfied that a financial penalty of £5,000 is appropriate in this case. We reach that conclusion having specific regard to the factors set out at paragraph 3.5 of the MHCLG Guidance. The offence, whilst serious, was of low severity, with no evidence of any harm caused to tenants. With regard to culpability and the track record of the offender, we note that there is no history of any previous failure by Mr Shah to comply with his obligations. As a landlord with a substantial property portfolio, run as a business, several of which are licensed with other local authorities, he should be expected to be aware of his legal obligations and the seriousness of compliance with licence conditions.
71. Also relevant, in our assessment, are paragraphs 3.5 d), e) and f) of the MHCKG Guidance, namely punishment of the offender, deterring the offender from repeating the offence, and deterring others from committing similar offences. We agree with Ms Cannard that the amount of the penalty in this case has to be set at a sufficiently high level to be meaningful to Mr Shah. As stated at paragraph 3.5 d), it needs to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. It also needs to be set at a high enough level that it is likely to deter Mr Shah from any repeat offending. As to deterrence of others, paragraph 3.5 f) states that an important part of deterrence is the realisation that a local housing authority is proactive in levying civil penalties where the need to do so exists, and that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
72. Having regard to those factors, we confirm the financial penalty in the sum of £5,000. It was open to Ms Cannard to argue before us, that knowing what we now know about the size of Mr Shah's property portfolio, that we should impose a penalty in a higher sum. She did not do so. In our view, she was correct not to do so. Although Mr Shah's breach of his license conditions was serious, he has no previous history of offending and, as stated above, there is nothing to suggest that, aside from those breaches, he has been anything other than a good landlord. Mr Shah recognised at the hearing that he had made a mistake in not paying sufficient regard to the Council's requests for documentation. The imposition of a penalty in the sum of £5,000 is, in our view, sufficiently high to both punish him and to deter him from any further breaches and that it is, in all the circumstances of the case, proportionate in amount.

Name: Amran Vance

Date: 22 August 2022

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).