FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BB/HNB/2022/0001**
HMCTS code (paper, video, audio)	**:**	**Face to face live hearing**
Property	**:**	**44 Geere Road, London, E15 3PN ("the Property")**
Appellant/applicant	**:**	**Jaraslaw Pioro**
Representative	**:**	**In person**
Respondents	**:**	**Newham Council**
Representative	**:**	**Vivienne Sedgley of Counsel**
Type of Application	**:**	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Members		**Judge Professor Robert Abbey and Mr Antony Parkinson MRICS**
Date of Hearing	**:**	**24 November 2022**
Date of Decision	**:**	**28 November 2022**

DECISION

- This has been a face-to-face live hearing at Alfred Place London. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded, and which were accessible by all the parties. Therefore, the tribunal had before it a pair of non-paper-based digital trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The decision by the respondent to impose a financial penalty is upheld. The total of the penalty originally amounted to a sum of £7500. For the reasons set out below the Tribunal has determined that the financial penalty of £7500 should be confirmed.

2. In the light of the above, the appeal made by the appellant against the imposition of a financial penalty imposed by the respondent under section 249A and schedule 13A of the Housing Act 2004 is therefore not allowed.

Introduction

3. This is the hearing of the applicant's application regarding **44 Geere Road, London, E15 3PN (**"the Property"), pursuant to Schedule 13A of the Housing Act 2004 ("the 2004 Act"), to appeal against a financial penalty imposed by the respondent under s249A of the 2004 Act. A financial penalty of £7,500 has been imposed on the applicant by the respondent in a Notice dated 9 June 2022. The penalty was imposed on the basis that the applicant committed an offence under s.95(2) of the 2004 Act by being a licence holder and failing to comply with a condition or conditions of the licence.

4. The applicant was the freeholder of the property and the respondent is the local authority responsible for the locality in which the property is situate. In 2018 a new selective licensing scheme began (for 5 years), applying to all houses let or occupied under a tenancy or licence within the Borough. The designated area for the licence covers all of the Borough save for the north west corner containing the Olympic Park, and includes the property (which is located in West Ham). On 8 November 2018 the respondent granted to the applicant a selective licence in respect of the property. The alleged offence concerns a breach or breaches of the selective Licence.

The Hearing

5. The appeal was set down for hearing on 24 November 2022 when the applicant was self-represented. Ms Vivienne Sedgley of Counsel appeared for the respondent. This hearing is a re-hearing of the local authority decision, see paragraph 10(3)(a) of Schedule 13A to the 2004 Act. The Tribunal is therefore to consider whether to impose a financial

penalty afresh, and is not limited to a review of the decision made by the respondent.

6. The imposition of the financial penalty was imposed on the basis that that the applicant committed an offence under s.95(2) of the 2004 Act by being a licence holder and that he had failed to comply with six conditions of the licence for this property.

7. At all material times the applicant held a selective licence (under Part 3 of the 2004 Act). The Property was not licenced as an HMO. That licence contained various conditions that the landlord/applicant needed to comply with. The respondent says that six of these conditions were not complied with by the applicant and as a consequence the financial penalty was imposed.

8. The Licence imposed various conditions with which the applicant failed to comply. The 6 conditions forming the subject of both the Notice of Intent and Final Notice are the following:

> Condition 6 – Written terms of occupancy. 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. The respondent says that no terms were provided within the requisite period.
>
> Condition 9 – References for occupants. 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. 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. The respondent says that no references were ever provided.
>
> Condition 12 – Tenancy management arrangements for anti-social behaviour, including emergency 24-hour contact number, rubbish/waste disposal arrangements, written records of inspections for management and repair issues. 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.

The respondent asserts that no evidence of these matters were ever provided.

Condition 13 – Property inspections (6 monthly). Every Licence Holder shall ensure that inspections of the property are carried out at least every six months to identify any problems relating to the condition and 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. The Council say that no inspection records were ever provided.

Condition 24 – Electrical appliance test reports. 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. The respondent says that no test reports were provided within the 28-day period.

Condition 34 – Declaration as to smoke alarms working. 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. The respondent asserts that no declaration/certification was provided within 28 days.

9. The applicant did not contest the breaches. For example, he said “We had regular scheduled visits before the pandemic, and I admit I have neglected it during Covid outbreak. But as explained, I was following government’s advice on travel and social distancing while protecting my family.” He also said “I admit I have not done the test during the pandemic but it has been rectified.”

10. Accordingly, the applicant in his submissions to the Tribunal summarizes his case in this way: -

> "The 7 breaches which I was accused of are in my mind exaggerated by the Council. Even if we had some issues with the property those could easily be rectified without the need for the huge financial penalty. What is even more worrying is the fact that the property has been checked several times in the last years by the council. Nothing has changed at the property, same tenants since 2013, same living conditions. The council has never made any allegations of breaches previously yet now it turns out I am a rogue landlord and I should be punished. While I admitted that there are several issues which could be worked on and improved, I do not think they qualify as breaches to justify such a high financial penalty. Any shortcoming on my side happened as a result of the difficult times we all found ourselves in with the pandemic, financial crisis and higher cost of living. "

11. The applicant was a person having control of or managing the Property because he received the rack rent of the premises (s.263(1) of the 2004 Act) and/or as owner of the premises he received (whether directly or through an agent or trustee) rent or other payments from persons who are in occupation as tenants or licensees of parts of the premises (s.263(3)(a) of the 2004 Act).

12. The respondent says that as a result of the above an offence was committed under s.95(2) of the 2004 Act. The offence is one of strict liability: *R. (Mohamed) v Waltham Forest LBC* [2020] EWHC 1083 (Admin).

13. At the hearing the applicant maintained that the level of the financial penalty was too high given the circumstances of the tenancy, the consequences of the COVID-19 pandemic and the willingness of the applicant to comply with the requirements of the Council. On the other hand, the respondent considers that the financial penalty should remain as imposed. As the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.)

Decision and Reasons

14. From the evidence before it the Tribunal was satisfied that the applicant was in breach of the requirements of the conditions of the licencing scheme. The applicant did say that the effects of the Covid pandemic lock down had restricted what he could do in relation particularly to inspecting the property and this also militated against accessing correspondence that the respondent had sent to him at his

business address because he was during this period working from home during the lockdown time.

15. With regard to the effects of the COVID-19 pandemic The Tribunal noted that the time of the first national lockdown did occur during the timescale of this dispute. The country entered the lock down in mid-March and the restrictions were not lifted until July. During this time the applicant said that he found it very difficult to make visits to the property.

16. On the other hand, it is the case that the Covid pandemic will have had an effect but Government Guidelines made it clear that there was still an expectation on landlords to carry out important inspections/repairs such as those required in this dispute even in the midst of the pandemic. Accordingly, with regard to this ground, the Tribunal was not persuaded by the effects of the national lockdown as it was clear from the Guidance from the Government that there were an expectation that important and necessary inspections and or repairs would nevertheless be required and should have been carried out.

17. Finally, the Tribunal considered the level of the penalty. The applicant says the level of the penalty is excessive as he tried at all times to co-operate with the respondent. The respondent says it has a policy and a fee matrix that dictates how and why a financial penalty might be imposed and at what level. As has been noted previously as the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.).

18. The Council produced to the Tribunal a copy of the respondent's detailed enforcement policy. The Tribunal noted that this was based upon a scoring system that was at the core of the policy. The Tribunal found it straight forward to follow and to apply the matrix calculation table supplied by the respondent so that in many ways it seemed to the Tribunal that the scores would have been set depending on the view taken of the helpful guidance set out in the matrix.

19. We consider that the amount set by the respondent in the sum of £7500 to be a reasonable amount for an offence of this type, since the local authority scored the matrix with care and took into consideration the requirements of their explicit scheme. Of course, the failure of the applicant to submit early evidence of compliance clearly hindered his case.

20. Finally, mitigating circumstances usually result in a percentage reduction but the Tribunal really could not find any convincing mitigating circumstances that might allow it to make changes to the fine imposed by the local authority.

21. Therefore, the Tribunal thought that the penalty set by the respondent was appropriate and proportionate

22. Consequently, in the light of the above, the appeal by the appellant/applicant against the imposition of the financial penalty levied by the respondent under section 249A and schedule 13A of the Housing Act 2004 is not allowed.

23. Rights of appeal are set out in the annex to this decision.

Name:	Judge Professor Robert Abbey	**Date:**	28 November 2022

Annex

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).

Appendix

249A 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.

(4)The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5)The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a)the person has been convicted of the offence in respect of that conduct, or

(b)criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6)Schedule 13A deals with—

(a)the procedure for imposing financial penalties,

(b)appeals against financial penalties,

(c)enforcement of financial penalties, and

(d)guidance in respect of financial penalties.

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

(8)The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

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

Schedule 13A

Notice of intent

1Before 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.

3The 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

5After 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.

6If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7The 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.

8The 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.

Withdrawal or amendment of notice

9(1)A local housing authority may at any time—

(a)withdraw a notice of intent or final notice, or

(b)reduce the amount specified in a notice of intent or final notice.

(2)The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

10(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.

Recovery of financial penalty

11(1)This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2)The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3)In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a)signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b)states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4)A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5)In this paragraph "chief finance officer" has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

12A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A