



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

**Case Reference** : **CAM/33UD/HNA/2022/0007**

**Property** : **83, St Peter's Road, Great Yarmouth,  
Norfolk NR30 3AY**

**Applicant** : **Great Yarmouth Borough Council**  
**Representative** : **NP Law**

**Respondents** : **Vida Kerpiene**

**Type of Application** : **Application for Review of a Decision  
under Rule 55 or for Permission to  
Appeal under Rules 52 and 53 of the  
Tribunal Procedure (First-tier  
Tribunal) (Property Chamber) Rules  
2013**

**Tribunal** : **Judge JR Morris  
Mrs M Hardman FRICS, IRRV(Hons),  
Regional Valuer**

**Date of Original Decision:** **20<sup>th</sup> December 2022**  
**Date of Application** : **17<sup>th</sup> January 2023**  
**Date of Decision** : **31<sup>st</sup> January 2023**

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**DECISION**

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**Decision of the Tribunal**

1. The Tribunal decides not to review its Original Decision under rule 55 and refuses permission to appeal to the Upper Tribunal under rules 52 and 53 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 because it is of the opinion that there is no realistic prospect of a successful appeal.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal)

(Lands Chamber) Rules 2010, the Respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, you should send your application for permission to appeal **by email** to [Lands@justice.gov.uk](mailto:Lands@justice.gov.uk), as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

3. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

### **Reason for the Decision**

4. The Tribunal finds that its Original Decision was based on the evidence and submissions before it and the Applicant has raised no new legal arguments or additional evidence in support of the application for review or permission to appeal.
5. Therefore, it decides not to review its Original Decision under Rule 55 and refuses permission to appeal to the Upper Tribunal under Rules 52 and 53 because it is of the opinion that there is no realistic prospect of a successful appeal.
6. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the applicant in the application for permission to appeal, in the Appendix attached.

**Judge J R Morris**

APPENDIX TO THE DECISION  
REFUSING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal. References in square brackets are to those paragraphs in the main body of the Tribunal's Original Decision.

**Original Application and Decision**

1. The Tribunal received an application on 26<sup>th</sup> July 2022 to appeal a Final Financial Penalty Notice for £7,500.00 issued on 9<sup>th</sup> June 2022 to the Ms Vida Kerpiene by Great Yarmouth Borough Council for the offence under section 95(1) of the Housing Act 2004 (the 2004 Act) of being a person having control of or managing a house which is required to be licensed by reason of the Property being in Selective Licensing Designated Area under Part 3 of the Housing Act 2004 but is not so licensed.
2. A hearing was held on 23<sup>rd</sup> November 2022 attended by Ms Vida Kerpiene, the Applicant, and her representative, Mr Said Jordan. Mr Steven Hall, Housing Enforcement Officer, and Mr Ray Haslam Environmental Health Housing Manager and Mr David Lowens, Solicitor for NP Law attended for the Respondent.
3. Ms Vida Kerpiene made an application on 25<sup>th</sup> February 2021 to the Home Safe Scheme, a third-party agency assisting Great Yarmouth Borough Council in licensing application administration, but the application was missing the Gas Safety Certificate and the Electrical Inspection Condition Report which are mandatory documents for the licensing application.[23]
4. Great Yarmouth Borough Council submitted [24] and the Tribunal found by reason of section 87(2) of the 2004 Act, that the Application was not “duly made” as a result of the omission of the Gas Safety Certificate and the Electrical Inspection Condition Report and so the defence set out in section 95(3)(a) of the 2004 Act could not be pleaded. [72]
5. On 15<sup>th</sup> November 2021 a Notice of Intention to serve a Financial Penalty Notice was served on the Ms Vida Kerpiene. No representations were received from Ms Vida Kerpiene and on 9<sup>th</sup> June 2022 a Final Notice Imposing a Financial Penalty was served in the sum of £7,500.00. [27]
6. In applying its Financial Penalty Policy (“the Policy”), Great Yarmouth Borough Council assessed culpability to be “High (Deliberate Act)” because it determined Ms Vida Kerpiene’s conduct to be “an Intentional breach by or flagrant disregard for the law, i.e., failure to licence” and the harm caused by the offence to be “Low”. [32]

The Tribunal, pursuant to paragraph 10(3) of Schedule 13A of the 2004 Act, applied the Policy and found that the Applicant's culpability was much more in line with that of "Medium" (Negligent Act). A "satisfactory" Electrical Installation Condition Report was issued on 9<sup>th</sup> April 2021 and a valid Gas Certificate did not expire until July 2021. The Tribunal found Ms Vida Kerpiene's explanation credible that these documents were not produced because she was stressed by the breakup of her long-term relationship and her lack of fluency in English adversely affected her ability to communicate effectively with Great Yarmouth Borough Council and the Home Safe Scheme. These were matters of which Great Yarmouth Borough Council was unaware when the Final Notice was served. [88] – [92]. The Tribunal therefore determined Ms Vida Kerpiene's conduct was of Medium Culpability and Low Harm and took its starting point as £3,750.00 in accordance with the Policy.

7. The Tribunal also found there were mitigating circumstances and reduced the penalty, with reference to the Policy, by £1,000 because Ms Vida Kerpiene's was distressed at her long-term relationship ending, she had no previous convictions and she promptly commenced the Licence Application once she was aware that it was required and took action to obtain the required documents although in the event, she carelessly failed to produce them.
8. Therefore, the Tribunal ordered that the Financial Penalty be varied to £2,750.00.

### **Grounds of Appeal**

9. Great Yarmouth Borough Council submitted the following grounds of appeal (in summary):
  - (1) The totality of the evidence indicated a deliberate act over a lengthy period, and it is suggested that the Tribunal gave insufficient weight to the facts regarding Ms Vida Kerpiene's state of knowledge and actions and inactions and gave too much weight to what are suggested as mitigating factors being stated difficulties with English and the effects of a relationship breakdown.
  - (2) Great Yarmouth Borough Council believes that the stress caused by the breakup of Ms Kerpiene's relationship is a factor for mitigating the penalty, as is any difficulty with the English language, but these do not properly have the weight of reducing her behaviour from a deliberate act to a negligent one.
  - (3) Great Yarmouth Borough Council feels that weight should be given to the fact that Ms Kerpiene did at no point in the process prior to appeal state to Great Yarmouth Borough Council that she had difficulties with English and/or was suffering from the effects of a

breakdown in her relationship, as in Great Yarmouth Borough Council's view the lack of notification is relevant to the extent of difficulties suffered by her.

(4) Great Yarmouth Borough Council reiterates that it considers Ms Kerpiene:

- a) Had sufficient knowledge of the licensing scheme and a sufficient grasp of written and spoken English to be able to carry out her obligations and deliberately failed to provide adequate supporting documentation.
- b) Deliberately provided a partial image of a Gas Service Certificate and failed to provide an Electrical Installation Condition Report
- c) Knew a licence would not be issued without these documents and deliberately failed to provide them despite reminders and that this went beyond a failure to take reasonable care.

### **Tribunal's Response**

10. In its Decision the Tribunal recorded and subsequently considered the evidence adduced and submissions made by both parties. The points now raised by Great Yarmouth Borough Council were raised and considered by the Tribunal in making that Decision. Great Yarmouth Borough Council is reiterating its case that Ms Kerpiene, for some unknown reason, deliberately withheld two documents which she had in her possession. The Tribunal does not agree and considered her failure to produce the documents to be negligent for the reasons it states in its Decision, which Great Yarmouth Borough Council agrees, included matters of which it was unaware when it served the Final Penalty Notice.
11. The Tribunal finds that its Original Decision was based on the evidence and submissions before it and the Applicant has raised no new legal arguments or additional evidence in support of the application for review or permission to appeal.
12. Therefore, it decides not to review its Original Decision under Rule 55 and refuses permission to appeal to the Upper Tribunal under Rules 52 and 53 because it is of the opinion that there is no realistic prospect of a successful appeal.