FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00DA/HNA/2022/0012** **MAN/00DA/HNA/2021/0062** **MAN/00DA/HNA/2021/0074**
Property	**:**	**18, Westbourne Mount, Beeston, Leeds, LS11 6EH** **4, Sefton Street, Beeston, Leeds, LS11 6NA** **7, Ingleton Close, Beeston, Leeds, LS11 6BZ**
Applicant	**:**	**Carl Hogan**
Respondent	**:**	**Leeds City Council**
Type of application	**:**	**Appeal against a financial penalty under Section 249A & Schedule 13A of the Housing Act 2004**
Tribunal member(s)	**:**	**Tribunal Judge Jodie James-Stadden,** **Tribunal Member Aaron Davis, MRICS FAAV,** **Tribunal Member Peter Mountain**
Date of decision	**:**	**13 December 2022**
Date of Determination	**:**	**26 January 2023**

DECISION

Decision of the Tribunal

The financial penalties imposed on the Applicant by the Respondent by Final Notices dated 26 April 2021 are each reduced by 5% to £4,250.

The Application

1. By three separate Applications dated 20 May 2021, with grounds of appeal attached (in the form of a document headed "Points to be considered by the review board"), the Applicant appeals against three financial penalties, each in the sum of £4,500, imposed upon him by the Respondent in Final Notices dated 26 April 2021 in respect of each of 18, Westbourne Mount, Beeston, Leeds, LS11 6EH, 4, Sefton Street, Beeston, Leeds, LS11 6NA and 7, Ingleton Close, Beeston, Leeds, LS11 6BZ ("the Properties").

2. Directions were issued by the Tribunal on 08 June 2022.

3. The Applications are opposed by the Respondent, by whom a bundle of documents was filed and served in response to the Applications. That bundle includes a statement of case and a witness statement from Maria Bell, senior housing officer, together with various exhibits, including the Respondent's civil penalty policy, dated 24 May 2021. The bundle also includes a copy of the guidance issued by the government to local housing authorities regarding how their financial penalty powers are to be exercised ("the DCLG Guidance").

4. On the morning of the hearing of the Applications, the Respondent filed and served a copy of its Private Sector Housing Enforcement Policy.

5. The Application was heard by video link on 13 December 2022. The Applicant represented himself and gave oral evidence to the Tribunal. The Respondent was represented by Ms Lloyd-Henry, its legal officer, who was accompanied by the Respondent's witness, Ms Bell, whose witness statement was accepted as her evidence, although she also gave oral evidence at the hearing.

Preliminary Matters

6. At the hearing on 13 December 2022, the Applicant acknowledged receipt of the Respondent's bundle, and confirmed that he had also received a copy of its Private Sector Housing Enforcement Policy, which had been served on him by email that morning.

7. Ms Lloyd-Henry emphasised to the Tribunal at the outset of the hearing on 13 December 2022 that the Private Sector Housing Enforcement Policy that had been circulated that morning had been filed for the sake of completeness only.

8. The Tribunal admitted that document, despite its late filing and service, on this basis.

Facts and Chronology

9. The Applicant is the registered legal owner of the Properties, having purchased 4 Sefton Street on or around 03 March 2008, and 18 Westbourne Mount and 7 Ingleton Close on or around 07 July 2008. 4 Sefton Street and 18 Westbourne Mount are 2 bedroom terraced houses and 7 Ingleton Close is a 3 bedroom semi-detached house.

10. The Properties are situated in an area which the Respondent designated as a selective licensing area with effect from 06 January 2020, such that, from that date, any property occupied under a tenancy within that area required a licence.

11. Each of the Properties were let, as at 06 January 2020, as follows:

    a. 4, Sefton Street – to Kate Dutton, from 02 October 2019;
    b. 18, Westbourne Mount – to Malcolm Lee Robinson, from 01 November 2019; and
    c. 7, Ingleton Close – to Mikala Wood from 30 November 2014.

12. In December 2020 and January 2021, the Respondent conducted investigations, including internal enquiries and inspections of the Properties, and established that each of the Properties was licensable but that no licensing application had been received for any of them.

13. On 09 February 2021, the Respondent wrote to the Applicant separately in respect of each of the three Properties setting out that a selective licensing designation had come into force in the area in which the Properties were situated, that private rented properties within that area required a licence, that no licence application had been received and that it was believed that an offence may thereby have been committed by the Applicant. A schedule of questions was enclosed, and a response requested within 14 days.

14. The Applicant completed the schedule of questions in respect of each of the Properties and returned them to the Respondent under cover of a letter which was received by the Respondent on 23 February 2021.

15. The completed schedules confirmed that each of the Properties was occupied by a tenant and that the Applicant was in receipt of rent from each tenant. The covering letter stated that the Applicant believed that, as each of the Properties was on the market for sale, they did not require a licence. It went on to say that the Applicant had been having difficulties selling the Properties due to the pandemic, that he had had no intention of committing an offence, that he wished to work with the Respondent and that he invited guidance on how he should proceed.

16. The Respondent concluded at this stage that an offence had been committed by the Applicant and commenced the civil penalty process, completing civil penalty matrices in accordance with the Respondent's civil penalty policy in respect of each of the Properties and calculating the civil penalty for each of the Properties to be £4,500.

17. Having undertaken this exercise, on 05 March 2021, the Respondent served the Applicant with 'Notice of Intent to Issue a Financial Penalty' in respect of each of the three Properties in the amount of £4,500.

18. The Applicant responded to these Notices of Intent with written representations by letter dated 26 March 2021. In that letter, he reiterated that he had understood that he "would be able to forego a licence" as he had immediate plans to sell the Properties and had placed them for sale with Reeds Rains estate agents in December 2019, but that sales had been delayed by the inception of the pandemic. He further explained that he realised that he should have looked into the matter further and that his failure to apply for licences had been "a total oversight" on his part. He stated that 4, Sefton Street had been sold (on 24 March 2021) but that he had submitted applications for licences in respect of 18 Westbourne Mount (on 23 March 2021) and 7 Ingleton Close (on 26 March 2021).

19. The Respondent replied to the Applicant's written representations on 08 April 2021 stating that it had reviewed each case but intended to issue final notices.

20. On 26 April 2021, the Respondent issued 'Final Notice of the Imposition of a Financial Penalty' of £4,500 in respect of each of the Properties.

21. As noted above, by applications dated 20 May 2021, the Applicant appealed to the Tribunal against the imposition of the financial penalties of £4,500 for each of the Properties.

The Law

22. Section 249A of the Housing Act 2004 ("the 2004 Act") states that:

"(*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*."

23. Section 249A(2) sets out what constitutes a "relevant housing offence". It includes an offence under section 95(1) of the 2004 Act, by which it is an offence for a person who has control of or manages a house to do so without a licence where that house is required to be licensed.

24. Thus, in the first instance, the local housing authority must ascertain beyond reasonable doubt whether a licence should have been applied for and that it was not applied for.

25. In the event that the local housing authority determines that a relevant housing offence has been committed, Schedule 13A to the 2004 Act sets out the procedural requirements which the local housing authority must then follow, including the service of notices of intent and of final notices, before the financial penalty may be imposed under section 249A.

26. In addition, by paragraph 12 of Schedule 13A, the local housing authority must have regard to guidance which the government has issued to local housing authorities as to how their financial penalty powers are to be exercised. The guidance confirms that local housing authorities are expected to issue their own policies in relation to housing offences and the imposition of civil penalties, and must include the factors which it will consider when establishing the offender's level of culpability and the harm which has been caused by the offence, as well as a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.

27. In this case, the Respondent's policy is the document in the Respondent's bundle entitled 'Leeds City Council Civil Penalties', dated 24 May 2021 [exhibit MB22 to Ms Bell's witness statement].

28. Section 95(4) of the 2004 Act provides that it is a defence to proceedings if the person committing the offence had a reasonable excuse for having control of or managing the house without a licence. It is for the landlord to show on a balance of probabilities that he had a reasonable excuse for so doing.

29. On an appeal against a financial penalty, the Tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into account matters which were unknown to the local housing authority when the Final Notice was issued. The Tribunal must make its decision in accordance with the Respondent's published policy unless there are compelling reasons to depart from it.

Conclusions and Reasons

30. The Tribunal must be satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Properties.

31. The area in which the Properties are situated was designated as a selective licensing area with effect from 06 January 2020. From that date, any property occupied under a tenancy within that area would require a licence.

32. At the time that the selective licensing area was designated, each of the Properties were let by the Applicant to tenants, and remained so let at least until the Applicant returned his responses to the schedules of questions on 23 February 2021.

33. Thus, with effect from 06 January 2020, the Properties were required to be licenced.

34. The Applicant did not have licences for the Properties and he did not sell 4, Sefton Street until 24 March 2021 and nor did he apply for the relevant licences for 18 Westbourne Mount and 7 Ingleton Close until 23 March 2021 and 26 March 2021, respectively.

35. Accordingly, the Tribunal is satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Properties for the period in question.

36. The Tribunal is satisfied that the Respondent correctly followed the procedural requirements set out in Schedule 13A of the Act regarding the giving of the Notices of Intention and the Final Notices relating to the imposition of the financial penalties.

37. The Tribunal considered whether the Applicant had a reasonable excuse for committing the offence, that is to say the offence of being in control of a property which was unlicensed when it should have been. It is to be emphasised that the failure to apply for a licence is not, in itself, the offence. The offence is, as stated, controlling a property without the requisite licence (*Palmview Estates Ltd v Thurrock Council* [2021] EWCA Civ 1871).

38. The Applicant states that, whilst he had received some "vague information" from the Residential Landlord's Association (of which he had been a member for 5 or 6 years) that licensing was to take place in Beeston in January 2020, he did not believe that he needed a licence for the Properties as he proposed to sell them, and had instructed estate agents to do so in 2019. He accepts that his understanding "may have been flawed" but states that his mistake was an honest one.

39. In her witness statement, Ms Bell for the Respondent details the extensive consultation activity undertaken by the Respondent prior to the introduction of the designation of Beeston as a selective licensing area over a period of 13 weeks from 01 August 2018. This included advertisements in the press, on the radio, on social media, on electronic signs on bridges, on posters on buses, advertising the newly designated selective licensing areas and encouraging landlords to make contact. Subsequently, after the implementation of the licensing scheme, the Respondent checked its Council Tax and other records and sought to contact landlords directly, as it did here, by sending the Applicant the pre-action (PACE) letters dated 09 February 2021 to which he replied by letters received by the Respondent on 23 February 2021. The Applicant still did not, however, apply for the requisite licences until after he received the Notices of Intent dated 05 March 2021.

40. The Tribunal finds that the Applicant did not keep abreast of his legal obligations as a landlord and that he did not make the appropriate enquiries to ensure that he was fully informed regarding the implications of Beeston

being designated as a selective licensing area, despite being aware of the introduction of the selective licensing scheme.

41. The Tribunal finds in all the circumstances that the Applicant did not have a reasonable excuse for allowing the Properties to be, and to remain, unlicenced at the material times.

42. The financial penalty in respect of each of the three Properties was calculated as £4,500.

43. As noted above, DCLG Guidance has been issued to local housing authorities regarding how their financial penalty powers are to be exercised. The Guidance encourages each authority to issue its own policy for determining the appropriate level of penalty, with the maximum amount being reserved for the worst offenders. Relevant factors include:

a. the severity of the offence;
b. the culpability and track record of the offender;
c. the harm caused to the tenant;
d. punishment of the offender;
e. deterring the offender from repeating the offence;
f. deterring others from committing similar offences; and
g. removing any financial benefit the offender may have obtained as a result of committing the offence.

44. The Tribunal has considered the Respondent's Civil Penalties Policy dated 24 May 2021 and notes that it is reflective of the DCLG Guidance.

45. The Tribunal has considered, as well, the Respondent's financial penalty calculations in light of its Civil Penalties Policy. It notes that it has (in respect of each of the Properties):

a. assessed the Applicant's culpability to be medium, based on the fact that he owned and managed 4 properties in the Beeston area;
b. assessed the level of harm as 'low';
c. based on this assessment, determined the initial fine level as £5,000, with a minimum fine level of £4,000;
d. applied no aggravating factors; and
e. deducted 10% from the initial fine level of £5,000 to reflect two mitigating factors, which each attract a reduction of 5% in the fine, namely that the Applicant co-operated with the investigation and that he has no previous convictions.

46. The financial penalty imposed was properly calculated in accordance with the Respondent's policy.

47. The Tribunal finds, however, that, as the Applicant readily and fully accepted responsibility for his failure to apply for licences for the Properties, the Respondent should, pursuant to the terms of its Civil Penalties Policy, have included this in its calculation as a further mitigating factor and applied an additional 5% deduction to each of the penalties imposed.

48. Accordingly, having taken into account all of the evidence before it, the representations and submissions made to it during the course of the hearing on 13 December 2022, the DCLG Guidance and the Respondent's Civil Penalties Policy, dated 24 May 2021, the Tribunal reduces each of the financial penalties imposed by 5% to £4,250 per property.

Tribunal Judge Jodie James-Stadden
13 December 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 case number) state the grounds of appeal and state 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).