



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

**Case Reference** : **MAN/00CA/HNA/2022/0066**

**Property** : **43A, Seaforth Road, Seaforth,  
Liverpool L21 3TX**

**Applicants** : **Houshang Esmaeili**

**Respondent** : **Sefton Borough Council**

**Type of Application** : **Appeal against a financial penalty imposed under  
Section 249A & Schedule 13A Housing Act 2004**

**Tribunal Member** : **Mr J R Rimmer  
Mr J Gallagher MRICS**

**Date of Decision** : **31<sup>st</sup> March 2023**

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**DECISION**

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**Order:           The financial penalty of £1,000.00 imposed by the Respondent is upheld for the reasons set out herein.**

**A.    Application**

1.    The Tribunal has received an application under paragraph 10 of Schedule 13A to the Housing Act 2004 (“the Act”) against a decision of Sefton Borough Council (the “local housing authority”) to impose a financial penalty against the Applicant under section 249A of the Act in relation to an offence under section 95 of the Act.
2.    This penalty relates to an offence that the Council determined had been committed by the Applicant in relation to controlling or managing an unlicensed dwelling house in an area of selective licencing under the regime established by the Act. The Council had designated the local authority ward in which 43A, Seaforth Road, Seaforth, Merseyside is situated to be an area in which selective licensing of tenanted residential property should apply.
3.    The Tribunal has sent a copy of the application to the Respondents.
4.    Directions were given by a Deputy Regional Judge of the Tribunal for the further conduct of this matter.
5.    Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

**B    Background**

6.    The Applicant is the owner of 43A Seaforth Road, Seaforth, Liverpool L21 3TX that is within the area designated by the Council, as the local housing authority, under its powers to impose selective licencing requirements in furtherance of its duty to ensure the maintenance and improvement of housing standards within the Borough.
7.    In March 2018 the Council designated the relevant local authority ward as an area in which selective licensing of privately rented accommodation would take place.
8.    It is the Councils contention that although the property in question has been let since that time it was not until 5<sup>th</sup> May 2022 that a licensing application was received by the Council and the process of granting a licence could be undertaken.
9.    It is the conduct of the Applicant between those two dates that is alleged by the Respondent to amount to the commission of the offence under Section 95.

10. Although the Applicant has provided an appropriate application for a licence it is the Council's contention that this only occurred after the decision to consider imposing a financial penalty had been taken by the Council and an appropriate notice served upon the Applicant showing an intention to impose a financial penalty.
11. That notice was subsequently followed by a final notice dated 6<sup>th</sup> July 2022 whereby the penalty imposed was £1,000.00
12. The Applicant's case, put clearly in the application form, is that he did not receive initial correspondence from the Respondent, although apparently addressed to the Applicant at his correspondence address, and knew nothing about the need to licence the property until he received a telephone call from the council officer having responsibility for the matter on 11<sup>th</sup> February 2022 who thereafter provided further information by email. This included copies of the letters posted to the Applicant in December 2021 and January 2022.
13. The Applicant accepts that he did not respond immediately by making a proactive licensing application, being under the initial misapprehension that licensing requirements only related to houses in multiple occupation and 43A Seaforth Road was not such a property. When he did commence the process he had difficulty in engaging with both the electronic application process and with officers from whom he sought assistance.

## **C The Law**

14. It is appropriate at this stage to set out the various statutory and regulatory provisions that the Tribunal needed to take into account in coming to its decision.

### In relation to the commission of a relevant offence and imposition of a financial penalty

15. Section 249A of the Act provides;
  - (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-
    - (c) Section 95 (licencing of houses...)
  - (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

16. Section 95 of the Act provides:
- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licensed
  - (2) ...
  - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
    - (a) ...
    - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
  - (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse-
    - (a) For having control or managing the house in the circumstances mentioned in subsection (1)
  - (7) For the purposes of subsection (3) an...application is effective at a particular time if at that time it has not been withdrawn and either-
    - (a) The authority have not decided whether or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
    - (b) (if a license is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful)
17. Section 87 of the Act sets out the requirements to be met in any application, those being-
- (1) ...made to a local housing authority
  - (2) ...made in accordance with such requirements as the authority may specify
  - (3) ...be accompanied by any fee required by the authority
  - (4) ... comply with any requirements specified by the authority subject to any regulations made under subsection (5)
  - (5) The appropriate national authority may by regulations make provision about the making of applications under this section
  - (6) Such regulations may, in particular, specify the information, or evidence, which is to be supplied in connection with applications.

18. If the local housing authority consider an offence to have been committed and impose a financial penalty paragraph 10 of Schedule 13A of the Act provides
- (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 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 penalty of more than the local housing authority could have imposed.

#### **D The evidence**

19. The Applicant's case is clear. It is made in his application and in subsequent evidence. A combination of circumstances led to the position where he did not apply for a licence until the Spring/Summer of 2022:
- He was not aware of a selective licensing scheme, only of a scheme relating to houses in multiple occupation (HMOs).
  - He received neither of the letters sent by the Council on 23<sup>rd</sup> December 2021 and 20<sup>th</sup> January 2022
  - He received the telephone call from Mrs Williams, a council officer on 11<sup>th</sup> March 2022, who thereafter emailed a list of the streets within the designated licensing area.
  - He was still not convinced as to the need to licence properties that were not HMOs.
  - He did however commence a licensing application which took some time to him to complete in view of difficulties he had mastering the online application system
  - He did attempt to speak to the council/Mrs Williams about those problems with limited success

- He was however able to engage the process sufficiently to commence an application by 21<sup>st</sup> April 2022, but continued to have difficulty in providing all information required.
20. For its part, the Council is of the view that having received no direct response to the two letters and then to the telephone call and email of 11<sup>th</sup> February it was proper to consider taking formal action against the Applicant. It did so on 8<sup>th</sup> March 2022 and sent a notice of intent to impose a financial penalty on 10<sup>th</sup> March, at that time considering an amount of £7,500.00.
  21. Its own computerised records show that an application for a licence was not received until 21<sup>st</sup> April and thereafter there was considerable communication between the parties as to the provision of supporting documentation. Although the Applicant made no direct representations with regard to the intended penalty, it was recognised that he was now engaging with the licensing process. It was, however, not until August 2022 that sufficient information was provided to enable a licence to be granted.
  22. The Council also referred to another application for a licence, relating to 111, Stanley Road, Bootle made by the Applicant in February 2020 under the selective licensing scheme as evidence that notwithstanding any claims in relation to missing correspondence and difficulties with the online process the applicant was conversant with licensing requirements.
  23. At the hearing of this matter which took place at the Liverpool Civil and Family Justice Centre on 22<sup>nd</sup> March 2023 the Applicant confirmed the information which he had previously provided, particularly regarding the missing letters and also in relation to the difficulties in contacting the Council in respect of his unfamiliarity with the online process. He was, however, somewhat vague as to when those attempts might have been.
  24. The Tribunal was also provided with two bundles of documents by the parties which contained further information and provided the detailed guidance applied by the council in assessing whether conduct amounted to a criminal offence and the appropriate level of financial penalty.
  25. Having indicated an amount of £7,500.00 in the notice of intention to impose a financial penalty, based upon an assessment of high culpability and low harm, further consideration by the Respondent prior to the final notice indicated that the offence was one of medium culpability and low harm. This resulted in an assessment of a starting point of £4,500.00, reduced to £1,000.00 as at that time the offence was greatly mitigated by the Applicant's engagement with the licensing process.
  26. The Tribunal accepts that it should not seek to interfere unnecessarily with the due process that had taken place and there was nothing to suggest that any of the Respondents actions, or decisions, in this case are fundamentally flawed or

incorrect. Indeed, the way in which review took place suggests that the policy clearly operates with considerable discretion on the part of officers concerned.

## **E Determination**

27. The Tribunal reminds itself that these proceedings are being conducted by way of a rehearing. It is of the view that it should note carefully that the Respondent had taken considerable care to put in place both a licensing policy and a policy for the imposition of financial penalties where appropriate and had provided clear documentary evidence of how they had been applied to reach the conclusion that it had in relation to the Applicant.

28. The Tribunal accepts that the policies are the direct result of the democratic process whereby the Respondent seeks to fulfil its statutory duty by seeking from its officers a clear and rational process for doing so.

29. The Tribunal also has a duty: to re-hear the case against the Applicant. It has done so with the policies of the Respondent always within its mind.

30. Has an offence been committed?

The first question the Tribunal must ask itself is whether an offence has been committed. It is clear that there was no licence in place in respect of 43A, Seaforth Road for the period of time up to the application being made on 21<sup>st</sup> April 2022.

31. The Tribunal takes the view that the Applicant regards his actions from when he says that he became aware of the need for a licence as amounting to a defence within section 95(3), or (4) (set out at paragraph 16, above), However, nothing that the Tribunal has seen or heard suggests that the Applicant would be able to rely on those defences.

32. Even if the Tribunal were to accept the explanations given by the Applicant for not engaging with the licensing process there is a considerable period of time before an application is duly made. Mr Esmaili accepts that he cannot be entirely clear as to what was submitted and when, or when he sought to speak to council officers. The documentation supplied to the Tribunal best supports the view that an application was not made in any form until 21<sup>st</sup> April 2022, whereupon further considerable time passes until all documentation is provided.

33. The Tribunal also has considerable difficulty in accepting some of the evidence of the Applicant that he provides to support the view that he has a reasonable excuse for managing or operating the house during the period it was not licensed when it should have been:

- The letters addressed to him in December 2021 and January 2022 are correctly addressed. Even allowing for any postal difficulties at that

time it is not considered in any way likely that both were undelivered when other correspondence did not go astray

- The Applicant had already engaged with the Council in relation to the licensing requirements in respect of 111, Stanley Road. In addition to any general requirement that he ought, as a landlord, to be familiar with licensing processes he is also aware that selective licensing is taking place within the local authority area.
- He is dilatory, at best, at every point in advancing an application for a licence.
- It is reasonable to infer, upon the timescale of events that best presents itself to the Tribunal, that of the Council, the licensing process is only taken up by the Applicant, when a decision to impose a financial penalty has already been taken and communicated to the Applicant.

34. The Tribunal is so satisfied that it is sure that the offence of having control of a house required to be licensed, but not so licensed has been committed.

35. What sanction is appropriate to mark the commission of the offence?

Under the financial penalty regime, the Respondent, in the event of an offence having been committed, has available to it an amount of up to £30,00.00 that it can impose as a penalty. It has provided and explained its matrix and methodology to support its final finding that an amount of £1,000.00 is appropriate.

36. The Tribunal would limit its observations in relation to the application of the policy adopted by the Respondent in relation to financial penalties to the following matters:

- (1) The findings of the Council that this is an offence of medium culpability and low harm are reasonable and ones which the Tribunal would also make.
- (2) A starting point of £4,500.00 would be correctly within the Respondent's policy. The reduction to an amount of £1,000.00 to give the Applicant credit for his subsequent engagement with the licensing process is also not unreasonable. Although it is re-hearing the matter and might have considered a smaller reduction from £4,500.00, the Tribunal does not consider it appropriate to replace a reasonable amount with what might simply be regarded as a different reasonable amount. This would be unfair to the Applicant.
- (3) The amount, in the particular circumstances of this case, adequately marks:
  - The severity of the offence



- The culpability and track record of the offender
- The lack of any harm caused to the tenant
- Sufficient punishment of the offender
- Adequate deterrence from repeating the offence
- Sufficiently deterring others from committing offences

36 The financial penalty is therefore confirmed in an amount of £1,000.00.

J R Rimmer  
Tribunal Judge

