



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

**Case reference** : **LON/00AB/HNA/2022/0058**

**HMCTS code  
(paper, video,  
audio)** : **V: VIDEO**

**Property** : **19 Lynette Road, Dagenham, Essex RM8  
1 RJ**

**Applicant** : **Zara Bokhari**

**Representative** : **Babar Bokhari, father of the Applicant**

**Respondent** : **London Borough of Barking and  
Dagenham**

**Representative** : **Mr N Ham Counsel with Ms Mykia  
Angus MCIEH**

**Type of application** : **Appeal against a financial penalty-  
section 29and Schedule 13A Housing Act  
2004**

**Tribunal** : **Judge Dutton  
Mr. C P Gowman MCIEH MCMi BSc**

**Date of Hearing** : **6 April 2023**

**Date of decision** : **19 April 2023**

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**DECISION**

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This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was a video using CVP Platform. A face-to-face hearing was not held because all issues could be determined in a remote hearing. The documents that we were referred to are in a bundles of 129 pages, the contents of which we have noted.

## DECISION

**The Tribunal allows in part the appeal of Zara Bokhari the Applicant against the imposition of a Financial Penalty notice by the London Borough of Barking and Dagenham (the Council) and reduces the sum payable to £3,000 which said penalty is payable within 28 days of the date of this decision.**

### Background

1. This is an appeal against the imposition of a Financial Penalty (FP) under the provisions of s 249A of the Housing Act 2004 by the London Borough of Barking and Dagenham (the Council) dated 26 July 2022.
2. The Applicant Ms. Bokhari made an appeal to the Tribunal on 21 August 2022 and named her father as her representative. Directions were issued on 4 November 2022 and the matter came before us for hearing on 6 April 2023.
3. Attached to the appeal application were the grounds of appeal. In the bundle the Applicant lodged for the hearing she included a statement of reasons, which to an extent mirrored the grounds of appeal and witness statements, one she had submitted, and one made by her father Babar Bokhari. In addition, there are certain exhibits to which we shall refer as necessary.
4. For the Council they had also provided a bundle of papers which contained a witness statement from Mykia Angus MCIEH employed by the Council as an Environmental Health Practitioner and several exhibits and a witness statement from Daniel Allen-Kelly a Tenancy Sustainment Officer with the Council.
5. The brief circumstances of the case are as follows. It seems that in 2017 Ms. Bokhari “obtained” the property 19 Lynette Road, Dagenham, Essex RM8 1 RJ (the Property) intending it to be her home. We discovered at the hearing that the Property had been gifted to her. At the time it was occupied, and she unsuccessfully sought vacant possession. The occupiers were reluctant to move out and it is suggested by the Applicant that they did not have, and refused to sign, a tenancy agreement.

6. At the time that the Applicant acquired the Property the Council was operating a Selective Licensing Scheme, which was Borough wide and applied to all rented properties. The first scheme expired at the end of August 2019 but was renewed to run from 1 September 2019 until 31 August 2024. It seems that the Applicant was not aware of this scheme.
7. It seems that as a result of the request to vacate made by the Applicant the occupiers contacted the Council and were visited by Mr. Daniel Allen-Kelly a tenancy sustainment Officer. This caused him to undertake some research into the Property and he discovered that it was not licensed. It appears he spoke with Mr. Bokhari and advised him that his daughter could not seek possession of the Property whilst it remained unlicensed as no Notice seeking possession could be served. This appears to have ended Mr. Allen-Kelly's involvement.
8. However, on 21 April 2022 the Council wrote to Ms. Bokhari at 17a London Road, Barking, the address which appears, together with the Property address on the Proprietorship Register at the HM Land Registry advising her of the need to license the Property. There was no response because the Applicant, unbeknown to the Council, was not living at the London Road address. A further letter dated 5 May 2022 likewise did not elicit a response. On 20 May 2022 a Notice of Intention to impose a FP was sent again to the London Road address. It appears that this came to the attention of the Applicant on or about 24 June 2022 for on that day she contacted the Council (Ms. Angus) and gave her parents address for service. The Notice of Intent was reissued and served on the Applicant dated 24 June 2022, giving her until 22 July 2022 to respond. The penalty was shown as £5,000.
9. On 20 July 2022 Ms. Bokhari sent in representations which were as set out in the Grounds of Appeal. She said that the Property was managed by an estate agent during the whole of the period and that the rent she received was spent on the agents' fees, mortgage costs and maintaining the Property. She said that she would be seeking to sell the Property at auction and asked if she could be given three months to do so and if successful the new owner could apply for a licence.
10. It seems that the Applicant had considered selling the Property earlier but in her grounds of appeal she said that this had proved impossible because of the occupiers. At about this time it is said that COVID struck and the Applicant's father who was handling the Property became seriously ill and required care from the Applicant, who, in addition, was nursing her mother who was suffering from Motor Neuron Disease. It is said that these matters prevented the Applicant from resolving the problems with the Property and in particular the occupiers.

11. These matters were put to the Council, but a Final Notice was issued reaffirming the FP of £5,000 on 26 July 2022. The Applicant responded by letter dated 8 August 2022 confirming that the Property was to be sold at auction and that as that was to be in the near future suggesting that the need for a licence could be left to the new owner to resolve. In addition, it is suggested that she would apply for a licence for the short period until sale if the FP could be revoked or at least reduced as there was no financial benefit obtained by her.
12. The Council responded on 18 August 2022, and we have noted the contents of the letter. On 21 August 2022 the Applicant sent her appeal to the Tribunal offices.
13. At the hearing on 6 April 2023 Ms. Bokhari was represented by her father. She was not well and was unable to attend. Mr. Bokhari confirmed he was happy to represent his daughter and had been named as such on the application and his role confirmed in correspondence with the Council. Mr. Ham confirmed he had no objection. We considered in the circumstances of the case it would be appropriate to proceed with the hearing in the applicant's absence as her case had been fully laid out in the Grounds of Appeal, the Statement of Reasons and her and her father's witness statements. The details of her illness were only conveyed to the Tribunal the day before the hearing and we considered that it was in all parties' interests to deal with the case, rather than adjourn, with the resultant increase in costs and tribunal time.
14. We heard first from Mr. Bokhari. He said his daughter did not admit the offence as she did not know about the need to license until 2022. He did accept that the Property should have been licensed certainly since 2019. He told us that the occupiers had only recently signed a tenancy agreement to assist with being rehoused by the Council. We had in the bundle evidence of the sale of the Property on 15 September 2022 at a price of £300,000. It would seem that the sale was completed in November 2022 and that after costs Ms. Bokhari received £276,840. Mr. Bokhari said that his daughter had mortgaged the Property, it seems in 2018 but no mention of any redemption payment is shown on the solicitors account for the sale. He said that no other properties are owned.
15. Ms. Angus provided a detailed witness statement with a number of exhibits, which we have by and large referred to above. She was not able to tell us whether any letters in April or May 2022 had been sent to the Property address, certainly none were exhibited. She did say that she believed the agents were Woodlands, who are reputable and should have been aware of the licensing requirements for the Property. Certainly, the involvement of Woodlands is supported by a copy of Ms. Bokhari's bank statement she exhibited showing a

payment to her of £1,200 from the agents, being, we understand, rent for the Property. She said that whilst there may have been an attempt to obtain a licence, no application had been made at any time by the Applicant.

16. It was put to her by Mr. Bokhari that she had made no attempt to establish his daughter's correct address for correspondence and that it was their responsibility to do so. He had hoped that in trying to sell the Property the Council would cancel the FP.
17. Ms. Angus was then asked by us how the penalty of £5,000 had been calculated as there was no copy of the Council's policy in respect of the imposition of FP's under the Act, nor a copy of any matrix that might have been used to reach the sum of £5,000 as an appropriate penalty in this case. It was put to her that by reference to the notice the Council issued dated 1 September 2019 which refers to a penalty of £5,000 for breaching the terms of any licence granted that this had set a benchmark figure for FP's. She did not accept this. She did express unhappiness with the wording set out in Council's papers relating to FP's and that she had problems with her computer, which had prevented the production of the Policy or the Matrix. She told us that the Applicant could have asked for both and it was not the policy of the Council to provide them unless asked to do so.
18. Mr. Ham then made short submissions, reminding us that the case was a rehearing. That the Property clearly fell within a selective licensing area and that lack of knowledge was no defence. There was no evidence from the agents said to have been involved. He submitted that the Act did not require that the Council's policy or the matrix used had to be supplied to the Applicant. Further there was little evidence from the Applicant as to her financial circumstances.

## **FINDINGS**

19. We are satisfied that the Applicant knew that the Property was required to be licensed in May 2022, but did nothing but pay lip service to the requirement to obtain a licence, even when she admits she knew one as required. However, we agree with Mr. Ham that the lack of knowledge that the Property required to be licensed throughout her period of ownership is no excuse at law. The fact that there were agents involved at some time does not remove the Applicants responsibility to observe the licensing law. We are therefore satisfied beyond all reasonable doubt that the offence of failing to obtain a licence for the Property under the provisions of s95 of the Housing Act 2004 has been committed during the period for which the Applicant was the registered proprietor that is to say from 2017 to 2022.

20. However, we are concerned that the Council did not provide us, or indeed the Applicant, with its policy on the imposition of a FP or the matrix upon which the penalty had been assessed. In our experience the Council always provides their policy and the matrix so that we can be satisfied that the penalty imposed is one we can support. We are aware of Upper Tribunal authority that says we should start with the policy, but we were not provided with it. We have no evidence as to how the penalty of £5,000 was reached.
21. The Guidance issued by the Government states that the Council are expected to “develop and document their own policy on determining the appropriate level of civil penalty in a particular case”. The guide goes on to set out factors to be considered to set the civil level at the appropriate level. They include:
- the severity of the offence
  - culpability and record of the offender.
  - the harm to the tenant
  - punishment
  - deterrence from repeating the offence and to deter others
  - removal of the financial benefit for the offender
22. We have no knowledge in this case as to what the policy may say, nor how the penalty was assessed. At first sight a penalty of £5,000, is, in our experience at the lower end of the penalties imposed in these cases.
23. However, considering the elements that the Guidelines suggest we do not consider this to be a serious offence. Admittedly it has been committed for some time, although as Ms. Angus told us at the hearing if the Applicant had immediately applied for a licence on receipt of the Initial Notice, it would have been withdrawn, suggesting that the Council did not consider this to be a serious offence. The Applicant appears to be naïve in the world of letting, having been gifted the Property. There is no evidence of any other offences involving her role as a landlord, nor that harm was caused to the occupiers.
24. We accept that having found the Applicant is guilty of the offence there must be some deterrence. Similarly, there should be deterrence to others. It is not clear what benefit the Applicant has received in committing the offence. The Property was gifted to her. She has received rent. The cost of a licence appears to be £900, which she has not paid.
25. Taking the matter in the round and bearing in mind the factors referred to above we are satisfied that a penalty should be imposed. £5,000 is not, in the normal run of things that excessive. However, we consider that the Council has been lax in not providing us with its policy or the basis upon which the penalty was assessed. We are dealing with this appeal afresh. Our

task is not to review but to make a determination on all that has been provided to us, both orally and in the papers. On that basis we find that the financial penalty should be reduced to £3,000 and is payable within 28 days.

Signed Judge Dutton

Date 19 April 2023

## **The Law**

### **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 13 A of the Housing Act 2004 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.

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*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*

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### **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).