



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

Case reference : **LON/00AQ/HNA/2022/0012**

**HMCTS code
(paper, video,
audio)** : **Video**

Property : **1A Minehead Road Harrow HA2 9DW**

Applicant : **Ms Martha Hyland**

Representative : **In person**

Respondent : **London Borough of Harrow**

Representative : **Mr Andrew Sedman**
(Reference WK/000700250)

Type of application : **Appeal against a financial penalty -**
Section 249A & Schedule 13A to the Housing
Act 2004

Tribunal members : **Judge H Carr**
Ms J Mann

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **20th October 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a video hearing. The documents that the Tribunal were referred to are in two bundles, the appellant's bundle comprising 126 pages, and the respondent's bundle comprising 292 pages together with an appellant's reply of 3 pages, and the respondents skeleton argument the contents of which have been noted.

Decision of the tribunal

1. The tribunal determines to vary the financial penalty of £5000 imposed upon the appellant by the respondent by reducing the amount of the penalty to £2500.
2. The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The appellant is appealing against the imposition of a financial penalty by the respondent, the London Borough of Harrow.
2. The financial penalty was imposed for an offence under section 95(1) of the Housing Act 2004 i.e., letting of an unlicensed flat in part of a house occupied by the applicant. The property is in a selective licensing area.
3. The appellant is appealing against the imposition and level of the financial penalty on the basis that:
 - (i) It is inappropriate to impose a financial penalty.
 - (ii) The level of penalty is too high.
4. The alleged offence was committed on 2nd December 2021. A notice of intent to issue a financial penalty in respect of the failure to obtain a selective licence was dated 3rd December 2021. The Final Notice of the Financial Penalty was served by the respondent on the appellant on 20th January 2022. This imposed a financial penalty of £5000 for the offence of failing to obtain a selective licence for renting part of the property.
5. The notice of application to appeal is dated 17th February 2022,
6. The property comprises the first floor and second (attic) floor of a converted house. The Applicant lives on the ground floor of the property and rents the first and second floor of the property known as 1A Minehead Road. The applicant built 1A Minehead Rad in 2005 adjacent to 1 Minehead Road which was built in the 1930s. The applicant originally also owned 1 Minehead Road which was sold in 2016.
7. The occupiers, who comprised a family, Mrs Maria Zeno, her 17-year-old son, her adult daughter and the daughter's boyfriend were granted assured shorthold tenancies on 1st May 2021. The mother and son were granted a tenancy of the two first floor bedrooms with shared use of the first-floor kitchen and bathroom, and the daughter and her boyfriend

were granted a tenancy of the second floor or attic bedroom including the shared use of the first- floor kitchen and bathroom. In the local authority proceedings, the property has been treated as one property.

8. Each tenancy was for a fixed term of 1 year. The rent for the first-floor rooms was £1200 per month and for the second-floor rooms, £300 per month.
9. The tenancies ended on 12th December 2021 when the tenants voluntarily vacated the property. The occupation of the property was less than 8 months in total having commenced on 1 May 2021.
10. The Applicant gave evidence of a poor relationship between her and the tenants including allegations of verbal abuse and physical violence towards her. The local authority officer Mr Sedman gave evidence in his second witness statement that during his inspection he had been shown a video on Gabriella Tranchini's phone where he saw the applicant shouting and swearing at the tenants in their home.
11. The Tribunal did not consider the evidence on the harassment allegations and counter allegations and it did not form part of the decision.

The hearing

12. The hearing took place on 21st August 2023 as a video hearing.
13. The applicant attended and represented herself.
14. The respondent was represented by Mr Howard Lederman of counsel. Mr Sedman, an enforcement officer with the Respondent was present and gave evidence.
15. The tribunal considered an application by the respondent for permission to admit the 2nd statement of Mr Sedman and the applicant's late evidence in response.
16. The respondent argued that it was in the interests of justice and consistent with the overriding objective to allow the statements to be admitted. The reason that there was a delay in serving the statements was because of the intermittent sick leave and the annual leave of Mr Sedman. Mr Sedman works almost alone in the licensing team in a demanding role and a significant number of urgent matters to deal with. Leave exacerbates the delays which are inevitable as a result of the pressure Mr Sedman is under. The respondent kept in touch with the applicant about the delays and the reasons for them.

17. The applicant consented to the service of the late evidence and expanded bundle. She has been able to provide a reply to that statement.

The decision of the tribunal

18. The tribunal determined to admit the 2nd statement of Mr Sedman and the applicants response.

The reasons for the determination of the tribunal

19. It is in the interests of justice for the statements and the expanded bundle to be considered and the applicant has consented to their admission.

The background

20. The property is in the Roxbourne Ward area of the London Borough of Harrow and has been designated as an area for selective licensing pursuant to s.80 Housing Act 2004 since 14th March 2018. The designation expired on 13th March 2023 and has not been replaced.
21. The applicant considered she should be refunded her current licence fee as there is no longer a requirement for a licence. This request was not considered by the tribunal as it is not pertinent to the appeal.
22. The selective licensing scheme required that all privately rented property let or occupied under a tenancy or a licence within the Roxbourne Ward be licensed. This is confirmed in the Public Notice of the selective licensing designation on page H215 of the respondents bundle and in the borough's Houses in Multiple Occupation and Selective Licensing Policy.
23. The property does not fall under any of the exemptions in the Selective Licensing of Houses (Specified Exemptions (England) Order 2006.

The local authority's dealing with the property

24. Mr Andrew Sedman, a Residential Licensing Enforcement Officer inspected the property on 2nd December 2021 following receipt of a complaint.

The law

Section 263 Housing Act 2004

Meaning of “person having control” and “person managing” etc.

1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises:

a. receives (whether directly or through an agent or trustee) rents or other payments from

— i. in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

ii. in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises;

or b. would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments. and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

4) in its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing itn 263 of the Act provides as follows:

The issues

25. The issues before the tribunal are:

- (i) Whether the tribunal is satisfied, beyond reasonable doubt, that the applicant's conduct amounts to a "relevant housing offence" in respect of premises in England (see sections 249A(1) and (2) of the Housing Act 2004);
- (ii) Does the applicant have a reasonable excuse defence?
- (iii) Whether a financial penalty should have been imposed at all
 - (a) Would it have been more appropriate to impose a caution?
 - (b) Were the circumstances such that no penalty should have been paid
- (iv) Whether the level of penalty was too high
 - (1) The financial resources of the applicant were not taken into account
 - (2) Insufficient attention was paid to mitigating factors
 - (a) First time offence
 - (b) No intention to continue renting out the property
 - (c) No intention to continue to rent

The determination

Is the tribunal satisfied beyond reasonable doubt that the offence has been committed?

26. The respondent says that it received a complaint on 22nd November 2021 relating to a landlord. The address referred to was 1A Minehead Road Harrow Middlesex, the address of the property. When Mr Sedman checked the database he found that the property was in a designated Selective licence ward and unlicensed.
27. He contacted the complainant who was one of the tenants living at the property to inspect the property. He inspected the property on 2nd December 2021. and witnessed that there were tenants living in the property. He took information from the occupiers and took photographs of the property and a tenancy agreement.
28. He concluded that the property fell within the definition of a single household private rented property requiring selective licensing under the boroughs selective licensing scheme.
29. Mr Sedman served a Notice of Intention to serve a financial penalty on the applicant who responded to the receipt of the Notice of Intention by email stating that she was not aware that she needed a licence to rent out rooms.
30. Mr Sedman responded to the applicant on the 9th December 2021 providing the information she required and instructing her to apply for a Selective Licence.
31. He states that he was not satisfied that the applicant had any reasonable excuse not to apply for a selective licence.
32. Mr Sedman notes that on 20th January 2022 42 days after serving the Notice of Intent the property was still not licenced. This led him to serve a Final Notice. He then received a response from the solicitor instructed by the applicant.
33. The applicant informed Mr Sedman on 21st December 2021 that the tenants vacated voluntarily on 12 December 2021.

Decision of the tribunal

The tribunal determines that the offence has been committed.

Reasons for the decision of the tribunal

34. The tribunal accepts the evidence of the respondent and notes that the applicant does not disagree that the property required a selective licence at the time of the offence.

35. It therefore determines that the first and second floors of 1A Minehead road were let to tenants under a tenancy agreement from 1 May 21 to 12 December 2021 and there was no licence during this time period. The property was in the Roxbourne ward and was in a designated selective licensing area.

Does the applicant have a reasonable excuse defence?

36. The applicant says that she did not know about the need for selective licensing and that the information about the need for selective licensing was very poorly publicised. She says that there has been no press release about the scheme since its designation was made on 1st December 2015.
37. She says that three estate agents who viewed the property for renting purposes did not know about the need for a licence. Nor did Harrow Council itself when it agreed to rent her home for a fixed two-year period for the purposes of renting it out.
38. The applicant also provided a screen shot taken from the Harrow Council website in August 2023 which excludes the property from the requirement for a selective licence.
39. The respondent says that information about selective licensing in the Roxbourne and Rothex wards was on the council website, on public notice boards and in libraries. Mr Sedman remembers the team active in putting posters up in libraries and notifications in the local press. He does not have specific dates as this occurred over 5 years ago but he points out that the efforts were enough to make the public consultation successful enough for the licensing to be introduced.
40. The respondent confirms that the applicant is correct. Her property is not included in the current selective licensing scheme in Edgware ward which came into force on 28th April 2021 and the Wealdstone ward which came into force on 2nd September 2021. However, at the time of the offence and at the time she obtained a licence the property did require a selective licence.
41. The applicant says that she has carried out extensive research but failed to find any published articles in the local press. She also says that Mr Sedman failed to answer her question about where the public notice boards are in Harrow. She says that she has lived in Harrow for 40 years but has no knowledge of public notice boards.
42. The respondent refers the tribunal to a series of authorities about the reasonable excuse defence.

The decision of the tribunal

43. The tribunal determines that the applicant has no reasonable excuse defence.

The reasons for the decision of the tribunal

44. The tribunal does not agree with the applicant that not being aware of the need for a selective licence is a reasonable excuse. The applicant should have investigated the legal requirements to let a property in the area prior to letting to tenants. The applicant had regularly used the services of a solicitor and had obtained a copy of the National Resident Landlords Association (NRLA) tenancy agreement form so had access to legal advice. The applicant could have easily checked the local authority website for licensing requirements prior to letting the property.

Should a penalty have been imposed at all?

45. The applicant argued as the occupiers had left the property on 12th December 2021 the fine was academic and she should not be required to obtain a licence nor should she have a fine imposed. She argues that as there was no intention going forward to rent out the property from 13th December 2021 and an intention to sell the premises it was inappropriate to fine her.
46. The respondent argues that the fine is strict liability and future intention and events cannot remedy a breach of the licensing regulation on a specific day retrospectively. Mr Sedman witnessed an offence on 2nd December 2021 and this is not disputed by the Applicant. Therefore a penalty is due.
47. Subsequent intentions do not countermand the breach nor reduce the penalty fine.

The decision of the tribunal

48. The tribunal determines that the respondent was entitled to impose a penalty for the applicant's failure to obtain a licence.

The reasons for the decision of the tribunal

49. The tribunal is satisfied beyond all reasonable doubt that the applicant's conduct amounts to a relevant housing offence. The

applicant was the person managing or having control of 1A Minehead Road on 2 December 2021. The first and second floor were let to tenants under tenancy agreements. The property was in a designated selective licensing area at the relevant time.

50. The tribunal is satisfied that the local authority complied with the necessary requirements and procedures relating to the imposition of the financial penalty in section 249A and paragraphs 1 to 8 of schedule 13A of the Housing Act 2004 . A Notice of Intent was given on 3 December 21 the day after the local authority had sufficient evidence of the conduct to which the financial penalty relates. The applicant was made aware of the right to make representations within 28 days on the Notice of Intent. A valid Final Notice was issued on 20th January 2022
51. The tribunal notes that there was a lack of security for the tenants of the property in that the ground floor premises was accessed through a locked door and exclusive to the applicant. However, the first and second floors were accessed from the communal entrance and only the bedroom doors had locks which the applicant said were installed at the time the property was built in 2005. The tribunal also notes that the applicant did not sell the property but decided to let it through an estate agent to the local authority. These circumstances add weight to the decision to impose a financial penalty.

Is the level of penalty imposed too high?

52. The applicant says that the offence is at the very bottom of the scale. The applicant was not running a business, nor is she a corporate landlord. She is an individual landlord and very inexperienced. Her motivation was to use her property to raise additional income whilst preparing for retirement.
53. She notes that the applicable fine for her failure to licence is £5000 but that the grid provided by the local authority stipulates that the financial resource of the perpetrator must be considered.
54. The applicant argued that the respondent had failed to ask her about her financial resources and therefore could not possibly have taken them into account when determining the level of penalty.
55. She has a very limited income in addition to the rent obtained for the property. She has only a private pension of £260.37 per month and has no savings. Her only capital is tied up in the equity of the property. She started a business selling homemade organic beauty products but that business is paused and the applicant is in debt to about £40,000.
56. The applicant says that there was no harm caused to the tenants as a consequence of her failing to licence the property.

57. The applicant points out that there is no evidence in the respondent's bundle that they even considered her financial resources, let alone took them into account.
58. The respondent says that the penalty imposed of £5,000 was the lowest possible under its Enforcement Policy and Matrix.
59. It says it was entitled to add extra costs as well as an additional fine for the absence of working smoke alarms in contravention with standards for renting. In the light of the emailed appeals for the tenant two potentially large additional charges of enforcement costs and the fine for failure to fit a fire alarm was waived resulting in the lowest penalty fare being awarded.
60. The respondent did not provide details of the council's policy on smoke alarm offences in the bundle and when questioned Mr Sedman said it was a separate document. There was no evidence presented that a remedial notice had been served under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended). There was disagreement between the parties about whether the Smoke Alarm was defective at the time of inspection.
61. The council's policy does state under note 1 page H211 of the respondents bundle that preparation costs should be added but Mr Sedman did not add these or provide details of what costs were incurred and waived.
62. The respondent says that personal matters such as the fact that it was a first offence were taken into account and the fact that it was the only property she owned.
63. The respondent says that no weight can be given to lack of knowledge that it was an area of selective licensing.
64. The respondent says that its enforcement policy and its discretion were applied correctly and fairly.
65. The respondent says that it was in the public interest to apply a financial penalty.

The decision of the tribunal

66. The tribunal determines to vary the amount of the financial penalty by reducing it by 50%

The reasons for the decision of the tribunal

67. The tribunal accepts the respondent's evidence that within its policy the starting point for an offence of failure to licence for a landlord with 1-5 properties, first offence is £5000. (H 211)
68. The tribunal noted that the applicant was not advised of the council's policy to reduce the penalty by 20% if the penalty was paid within 14 days. (H211 note 2) At the hearing the respondent said that it did not think the applicant would have paid within this period but the tribunal determines that the applicant should have been made aware of this potential discount at the Final Notice stage.
69. The Tribunal noted that the applicant was also not advised of the availability of a 20% discount if the offence was rectified in the notice of intention period. (H211 note 2) Mr Sedman said at the tribunal and in his second witness statement that had the applicant applied for a selective licence in the Notice of Intention period he would not have imposed a financial penalty. This is contrary to the Council policy on page H207 which states "It should be noted that compliance with the identified breach during the notice of intent period does not negate the penalty, but would lead to a potential discount as documented below"
70. There was a failure to consider the applicant's financial circumstances. The respondent did not ask the applicant to provide details of her financial circumstance despite its policy stating in note 3 on page H211 that financial resources of the perpetrator must be taken into account. The local authority could not have taken the financial circumstances into account if it was unaware of the full details of those circumstances.
71. The tribunal considers that if the respondent had taken proper account of the applicant's financial circumstances it is likely that it would have reduced the penalty.
72. The respondent's policy states on page H209 that a record of each decision and the reasons for the civil penalty amount shall be made, including how the amount was assessed and reasons for imposing it. Mr Sedman initially stated at the hearing that this had been sent in an e mail but was unable to locate the e mail in the bundle. The tribunal considers that this is an important protection and the respondent should have evidence that it had adhered to its policy.
73. Taking all these points into account the tribunal therefore determines to reduce the penalty and in the circumstances of this case it reduces the penalty by 50% to £2,500.

Name: Judge H Carr

Date: 20th October 2023

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).

