



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

Case Reference : **MAN/00CA/HNA/2022/0028**

Property : **32, Eaton Avenue. Litherland,
Liverpool L21 6NQ**

Applicants : **Carl Coalbran**

Respondent : **Sefton Metropolitan 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 H Thomas FRICS**

Date of Decision : **30th August 2023**

Order : **The decision to impose a financial penalty
notice in respect of 32, Eaton Avenue,
Litherland is upheld. The amount of that
penalty shall be £3,000.00.**

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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 Metropolitan Borough Council (the “local housing authority”) to impose a financial penalty against the Applicant under section 249A of the Act.
2. This penalty relates to an offence that the Council determined had been committed by the Applicant in relation to managing or controlling an unlicensed dwelling house in an area of selective licencing under the regime established by the Act. The Council had designated the relevant area of Litherland, in the Borough of Sefton, within which the subject property is situated, as such a selective licensing area with effect from 21st September 2017
3. The Tribunal has sent a copy of the application to the Respondents.
4. Directions were given by a Tribunal Legal Officer and thereafter by this 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 history of this matter is quite straightforward: 32, Eaton Avenue became subject to the selective licensing regime when the area within which the property is situated was designated a selective licensing area 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. The Applicant is the owner of 32, Eaton Avenue, Litherland that is within the area designated by the Council, as the local housing authority.
7. At that time the property was not owned by the Applicant. He acquired it in 2019 after an enforced sale. It was apparently in poor condition and there is no dispute that the Applicant has made considerable improvements to the property since its acquisition. Nor is there any doubt that the Applicant has been letting the property as a dwelling since those works took place.
8. At the time of his purchase the Applicant was advised as to the situation of the property within a selective licensing area and he entered into the process of making an application for a licence. The Application is dated 14th October 2019.
9. The Respondent in due course gave a written indication on 6th April 2021 that it proposed to grant a licence on its standard terms to the Applicant and inviting the Applicant to make any representations he considered appropriate in relation to the terms and conditions attached to the grant. This was to be done by 21st April 2021. The delay of some 18 months was explained as being affected by the

outbreak of the coronavirus and the lockdown protocols being observed within that period.

- 10 At that point the process stalled. The Respondent repeatedly contacted the Applicant by email seeking to obtain from him the fee for the licence so that it could be granted. No payment was forthcoming. The Applicant did seek to amend the licence to make the holder a limited company rather than himself in person and also to indicate that believed such a company was entitled to a discounted fee and not the £545.00 requested by the Council. There are copies of this email correspondence, with the responses of the Respondent to the queries, in the Respondent's bundle of documents.
- 11 As no fee was ever then paid the Respondent, despite the many reminders, embarked upon the process of determining if the Applicant had committed the offence of operating an unlicensed house and as a consequence of that whether a financial penalty should be imposed upon the Applicant.

The Law

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

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

- 13 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.
- 14 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 licenced
 - (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)
- 15 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.
- 16 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

- 17 The Applicant's case is relatively simple and is put clearly in the annex to the application form he submitted to the Tribunal dated 22nd April 2022.

Therein the Applicant sets out the very difficult personal circumstances that he faced at the time he was making the licensing application. The Tribunal does not consider it appropriate to repeat them in a written decision that is available for public inspection. The Tribunal accepts them at face value and feels that the manner in which the Applicant presented himself before the Tribunal, whilst in no way the subject of any criticism clearly manifested the way those difficulties still affect him. He clearly states that he eventually decided to concentrate upon preserving and securing his own health than create further stress by with what he found to be a very difficult process.

Consequent upon that situation, he then provides a further basis for his appeal that in such circumstances the finding of the need to impose a financial penalty is unfair.

- 18 Although at that time the Applicant makes no express references to the issue of a licence either at a discounted price or without any payment at all, he has already made such representations in the emails referred to at paragraph 10, above.
- 19 He does make those same points in his representations against the imposition of a financial penalty when he receives the notice from the Respondent advising him of their intentions in that regard.
- 20 The Respondent provides an equally simple response. It is placed in a position where communication with the Applicant effectively ceases. No payment is forthcoming. No further communication is received, nor explanation proffered. Numerous email reminders are generated seeking payment. Although it is not until a decision has been made about a penalty that full representations are received outlining the Applicant's situation, the Respondent does give some allowance for such difficulties as it is made aware of by making considerable allowances towards the time for payment to be made. By that time the officers of the Council do not feel able to vary the decision and confirm the penalty notice in the amount of £3,750.00.
- 21 Later in the appeal process the Applicant provides further details of the discussions he believed related to the extent to which a fee would be payable for any licence. The council officer involved was Rebecca Walsh, with whom the Applicant dealt in relation to the purchase of the property in 2019.

- 22 Although she no longer works for the Respondent, a statement was obtained from her by the Council and it has been submitted to the Tribunal and the Applicant. It sets out her recollections of discussions at that time and confirms no such matters as a discounted fee, or the possibility of no fee at all, entered the discussions.
- 23 As that is the situation that the Tribunal would expect to encounter, the absence of any supporting evidence from the Applicant as to the existence of such discussions, together with the lack of any mention of such possibilities in the many emails passing between the parties, draws the Tribunal to the inevitable conclusion that no such discussions took place, notwithstanding the Applicant's view to the contrary. Indeed, if there is any evidence at all it is in an email of 6th April 2021 indicating that the application was made outside a time limit for consideration of a discounted fee.
- 24 Against the background of the above evidence the Respondent's solicitor, Miss Edwards, suggested that the Tribunal was drawn to the following conclusions:
- (1) The Applicant was clearly managing or controlling an unlicensed dwelling house, contrary to Section 95(1) of the Act
 - (2) The statutory defences provided by Section 95(2) are not made out
 - (3) The Applicant does not have a reasonable excuse for operating or controlling the dwelling, as provided for by Section 95(3), in the absence of a licence. The personal difficulties are not sufficient given the interaction with the Respondent and its officers generally from April 2021, there was simply a refusal to pay the licence fee.
 - (4) The finding of medium culpability on the part of the Applicant and low harm to the occupier(s) was appropriate in the circumstances.
 - (5) The penalty imposed by the Respondent from within its guideline matrix was also appropriate and there were no grounds for suggesting that it was appropriate to depart from those guidelines.
- 25 The Tribunal accepts that it should not seek to interfere unnecessarily with the democratic process that has taken place within the elected council and its implementation by its officers. There was nothing to suggest that any of the Respondent's actions, or decisions, in this case are fundamentally flawed or incorrect.

E Determination

- 26 The Tribunal reminds itself, however, that these proceedings being conducted by way of a rehearing. It, firstly, takes the view that the Tribunal should consider carefully whether the Respondent had taken 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.

27 Indeed, 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.

28 The Tribunal also has the duty to re-hear the case against the Applicant. It has done so with the policies of the Respondent always within its mind and seeks to use those as the basis of its determination. It offers no criticism of the thorough manner in which the Respondent has approached this case and the documented procedures it has followed.

29 Has an offence been committed?

The first question the Tribunal must ask itself is whether an offence has been committed. In the Tribunal's view the clear answer is yes and it is satisfied to the extent that it is sure that this is the case. There was, no licence in place in respect of 32, Eaton Avenue. There were no reasonable grounds for there not being one.

30 Nothing that the Tribunal saw, or heard, suggests that the Applicant would be able to rely on any of the defences to criminal liability outlined in Section 95(3) and (4).

31 In particular, the Tribunal has considered very carefully the situation in which the Applicant found himself in the period from 6th April 2021 onwards, that being the date when representations were sought by the Respondent in relation to conditions on the prospective licence and seeking the appropriate fee. Could this offer a defence that it was reasonable to operate the house in the absence of a licence?

32 The Tribunal is satisfied that there is a fundamental inconsistency between the Applicant's approach to making payment and his approach to many other matters in that same time frame, whether in relation to this matter, or others that confronted him at the same period.

33 The reason put forward for the failure to licence, simply for failure to pay the fee is not reasonable either from the point of view of what might be expected to have been done by any reasonable person, nor from the point of view of what a reasonable person might have expected the Applicant to have done, notwithstanding his difficulties.

34 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 £30,000.00 that it can impose as a penalty. It has provided and explained a matrix and methodology to support its finding that an amount of £3,750.00 is appropriate.

- 35 The Tribunal would accept that the Respondent has an appropriate policy for the imposition of a financial penalty and a clear matrix for the assessment of the level of that penalty. The Respondent sets out its use of the matrix, as it relates to this case in its submission.
- 36 The Tribunal takes the view the starting point for an offence involving medium culpability and low harm, according to that policy, is £4,500.00. In the light of its findings set out in paragraphs 29-31, above it cannot see a justification for reducing the level of culpability below that of medium and the level of harm is clearly low. It can also see why the Respondent's officers provided the maximum discount allowed within the matrix for the mitigation available in an amount of £750.00 to reduce the penalty to an amount of £3,750.00.
- 37 The Tribunal has also looked at those factors set out on page 12 of the Respondent's stated policy that might allow the penalty to be increased, or, more pertinently here decreased, and conceivably move outside the matrix bands. The Tribunal is concerned that whilst the Applicant's circumstances at the time of the offence were known, the extent and effect has been greater when seen now by the Tribunal than was seen by the Respondent at the time of imposing the penalty. That is not intended as a criticism of the Respondent, or its officers in any way: merely the result of effecting a rehearing now.
- 38 Against that background of extenuating circumstances, falling short of any defence, as discussed in paragraphs 29-31, the Tribunal would reduce the financial penalty to an amount of £3,000.00. The Tribunal is satisfied that in this particular case such an amount is sufficient to deal adequately with those specific considerations listed at pages 8 and 9 of the policy.

J R RIMMER