FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/HNA/2022/0048**
Date of Hearing	**:**	**08 September 2023**
Property	**:**	**10 Woodview Street, Leeds LS11 6JY**
Appellant		**Mr Adrian McAteer**
Respondent		**Leeds City Council**
Type of Application		**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members		**Mr Phillip Barber (Tribunal Judge)** **Mr Amin Hossain (Valuer Member)**

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty under section 249A of the Housing Act 2004 for the offence of failing to comply with an improvement notice under section 95(1) of the Housing Act 2004 is £7875.

Reasons

Introduction

1. This Decision and Reasons relates to 1 appeal against the imposition by the Respondent of a financial penalty under section 249A of the Housing Act 2004 ("the Act") in relation to 1 property owned, at the relevant time, by the Appellant, Mr Adrian McAteer. The property is 10 Woodview Street, Leeds LS11 6JY ("the property").

2. We held an oral face to face hearing of this appeal. The Appellant came to the hearing and represented himself. The Respondent was represented by Ms Lloyd-Henry, Legal Officer for Leeds City Council. We heard evidence from Mr Mau Man Yip, Principal Housing Officer for Leeds City Council.

3. There was no inspection of the property by the Tribunal, which was unnecessary, and we had a bundle of documents from the Respondent and a bundle of documents from the Appellant.

Findings of Fact

4. The Appellant is the registered owner of the Property which he rents out to paying tenants and which he has owned for at least 20 years. At the relevant time, the Appellant told us that he owned 3 other properties in the selective licensing area and at least one other property outside the selective licensing area, and in this regard, can properly be described as a professional landlord. The Appellant told us, and we accept that two of the properties have been managed by the letting agency known currently as "Lintell Property" but that the other two, which includes this Property was managed by the Appellant himself.

5. All four properties have been the subject of a penalty notice for failing to comply with selective licensing requirements: 2 of which had a penalty of £8250 each, one of which had a penalty of £5000 and the subject Property. None of the other three were the subject of an appeal for various reasons of lateness.

6. On the 06 January 2020 the Beeston area of Leeds (as designated in a map) became a selective licensing area. The full designation is set out on pages 42 to 47 of the Respondent's bundle and the Property is situated in that area. There are 6,400 properties in the Beeston selective licensing area of which around 3,200 are privately rented. Prior to the designation, the Respondent carried out an extensive city-wide consultation and advertisement campaign starting in August 2018 which we are satisfied was in accordance with Government

guidance and sufficient for the purposes of a public awareness campaign and for public consultation. Mr Mau Man Yip sets out the steps which were taken to bring the licensing requirements to public awareness in paragraphs 4 of his witness statement. Individual landlords were not written to as there is no public register of privately rented properties and in any event, it seemed to us, the task of identifying privately rented properties would have been difficult, time consuming and simply not proportionate.

7. In August 2021, Mr Mau Man Yip was assigned the Property to investigate as potentially unlicensed and following a visit on the 12 April 2022, it was determined that the property was let to paying tenants and that the tenant had rented the property since 2010 from the Appellant.

8. Following a search of the land register, it was established that the property was jointly owned by the Appellant, Patricia McAteer and Amanda McAteer Mason since December 2012. The Appellant told us at the hearing that the property was held in a family trust. That may well be the case, but no trust documents were provided and in any event the existence of a family trust would make little difference to the outcome of this appeal.

9. Mr Mau Man Yip then checked the Housing Benefit database, and it was established that the Appellant, Mr McAteer was in receipt of housing benefit for the property directly and had been so for many years. At the same time, a further check of the Respondent's computer system established that Mr McAteer owned (in part at least) the three other properties he told us about at the hearing. Details of these are set out in paragraph 14 of Mr Mau Man Yip's statement.

10. Following further enquiries, as set out by Mr Mau Man Yip in paragraphs 20 through to 22 of his statement, including enquiries under PACE and an interview with Mr McAteer, the Respondent served a Final Notice on the 06 July 2022 in respect to the Property advising the Appellant of the penalty.

11. Mr McAteer appealed the imposition of a financial penalty on the 13 July 2022 and the Tribunal heard that appeal on the 08 September 2023.

The Legal Framework

12. By section 249A of the Housing Act 2004:

> (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 (licensing of houses under Part 3),
> .....

13. Section 95 of the Act provides that "(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part…but is not so licensed."

14. Subparagraph 95(4) provides that "it is a defence that he has a reasonable excuse (a) for having control or managing the house in the circumstances mentioned in subsection (1)…".

15. Section 263 defines the term "person having control" as the "person who receives the rack-rent" and "person managing" means the "the person, who, being an owner…receives (whether directly or through an agent…) rents…from persons who are in occupation as tenants…".

16. By subsection (4) of section 249A the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

17. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

18. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

19. Paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

    (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.

20. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; the amount of the penalty and can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted.

21. We had to be satisfied beyond reasonable doubt that the conduct of the Appellant amounts to a "relevant housing offence" under section 95 of the Act – i.e. that Mr McAteer failed to comply with the licensing requirements under Part 3 of the Housing Act 2004.

Our Assessment of the Appeal

22. This is a re-hearing of the decision to impose a financial penalty for a purported offence committed by the Appellant as a result of contravening section 95 of the Housing Act 2004.

23. We find as fact that the Notice of Intent and Final Notice were properly served and that they contained the proper statutory information. There were no procedural irregularities. In any event the Appellant did not take issue with the process he was more concerned with the outcome.

24. There was no dispute that the property was not licensed under the selective licensing requirements and that Mr McAteer owned the property at the relevant time. Mr McAteer's claim, in the round, is that the Respondent should have informed him that a selective license was required and that they would have been able to establish that he owned the property if they carried out appropriate enquiries. His claim is also that during conversations with Mr Mau Man Yip in relation to other properties, he asked for a list of all the properties in the selective licensing area but was never provided with such a list and had he received one, he would have been able to scan that list and establish whether 10 Woodview Street was on it and then apply for a licence. We did not find either of those grounds in any way persuasive.

The Evidence of Mr Mau Man Yip

25. Mr Mau Man Yip gave evidence to the Tribunal in line with his witness statement and answered cross questions from Mr McAteer. We accept Mr Mau Man Yip's evidence in its entirety finding that the steps he has taken in establishing the existence of an offence and thereafter arriving at a decision on the imposition of a penalty to have been carried out in a professional and thorough manner. At times during the hearing Mr McAteer seemed to question Mr Mau Man Yip's integrity, suggesting that he was withholding information about whether the selective licensing area included 10 Woodview Street, but we reject any such suggestion entirely. At no point did the Appellant ask Mr Mau Man Yip the direct question whether 10 Woodview Street came within the area, and we are satisfied that if he had done so, Mr Mau Man Yip would have

checked, told him that it did and then probably provided a space within which the Appellant might have applied for a licence. In any event, a simple check of the licensing area which the Appellant easily had access to, would have enabled him to establish that the property came well within the designated area.

Person Having Control or Person Managing

26. We find that at the relevant time the Appellant was a person having control of the Property. He was an owner, and he received the rent. The Local Authority was correct, therefore, to identify him as a person who has potentially committed an offence under section 95(1).

27. It follows therefore that in order to avoid a penalty, the Appellant would have to bring himself within the scope of a defence under section 95(4) as having a reasonable excuse for the failure to apply for a licence.

Reasonable Excuse

28. In our view, neither of the Appellant's grounds of appeal amount to a reasonable excuse.

29. Firstly, we think the advertisement campaign was sufficient to bring the scheme to the attention of landlords, tenants, letting agents and the general public. The Respondent in this regard relies upon the judicial review decision in *R(on the application of Croydon Property Forum Ltd) v Croydon London Borough Council* [2015] EWHC 2403 (Admin) which deals with the consultation requirements under section 80(9) of the 2004 Act. By any reasonable view, the use of leaflets, newspaper advertisements, bus and billboard advertising, writing to estate agents and such like undertaken by the Respondent in the lead up to the designation and set out in the witness statement of Mr Mau Man Yip must be sufficient for the purposes of bringing the scheme to widespread public attention and accordingly the fact that that Mr McAteer did not know about the scheme does not, and cannot be a reasonable excuse.

30. Secondly, the claim by the Appellant that asking Mr Mau Man Yip to give him a list of properties so he could establish whether the Property is within the designated area does not amount to a reasonable excuse for failing to obtain one. As mentioned above, the Appellant could simply have asked Mr Mau Man Yip if the property was in the area and then applied for a licence. Given that he was under investigation for other properties in the area we can see no reasonable reason as to why he did not simply check the map. Again, this does not amount to a reasonable excuse.

31. The Appellant has put forward no other defence to the imposition of a penalty and it follows that we are satisfied beyond reasonable doubt that an offence has been committed under section 95(1) of the Act and that there is no defence of reasonable excuse for that offence. The only outstanding matter is in relation to the amount of penalty.

The Amount of the Penalty

32. The starting point is the Respondent's policy in relation to civil penalties which has been provided in the Respondent's bundle. The policy document generally requires consideration of a matrix comprising of the level of culpability set against the level of harm. There are three levels of culpability ranging from high (intentional or reckless) through to medium (negligence) down to low (no fault) and likewise, three levels of harm, high (serious effect/vulnerability), medium (adverse effect that is not high) and low (low risk of harm or potential harm).

33. The policy thereafter sets out a harm/culpability matrix in which the level of harm is assessed in line with the level of culpability so as to provide a starting point banding with a starting point within which a range of financial penalties might be expected. That starting point can then be increased or reduced within that range by reference to aggravating and mitigating factors.

34. The Respondent has set out in both the final notices its reasons and conclusions in respect to the policy and the factors leading up to the assessment of the level of harm.

Culpability and Harm

35. Taking account of the Respondent's Civil Penalty Policy, and assessing the issues anew, we agree with the Respondent's view that the level of culpability is high. Mr McAteer is a professional and experienced landlord who has owned and managed rented property for many years. Culpability should be approached with that in mind. Further, the benchmark for a high level of culpability in accordance with the Respondent's matrix is intentionality or recklessness and for the reasons set out above, we think at the very least the Appellant has been reckless in failing to obtain a licence and in some regards, it could be defined as wilful.

36. As mentioned above, when the Appellant was under investigation for other properties, it would have been a relatively easy question to ask about this property but for reasons which we consider further below, he chose not to.

37. In relation to harm, we again agree with the Respondent that this is properly classed as low harm for the reasons given by the Respondent. We need say nothing more about that.

38. It follows that as the level of culpability is medium and the level of harm is medium, the appropriate starting point is £7500.

Aggravating/Mitigating Factors

39. We also agree with the Respondent's assessment of aggravating factors. It seems to us that in choosing not to ask Mr Mau Man Yip about whether 10 Woodview Street is within the selective licensing area despite being under investigation and subject to penalty notices for other properties nearby, the

Appellant was motivated by financial gain. The only reason for failing to check, in our view, is that the Appellant was hoping not to be caught out. At the hearing he told us that he formed the view that the Respondent itself did not know which properties were in the area and we gained the impression that he thought if the Respondent did not know then it is possible that this property would not be identified thereby enabling him to avoid the cost of obtaining a licence. That amounts to an aggravating factor which requires an uplift of 5%.

Conclusion

40. In those circumstances from the Respondent's matrix set out in its Civil Penalty Policy as reproduced in the bundle, a high degree of culpability and a low degree of harm starts at £7500. Added to this is a 5% uplift for aggravating factors, £375, to give a financial penalty of £7875.00 for the offence under section 95(1) of the Housing Act 2004.

41. That is the decision of the Tribunal.

Signed  Dated 06 October 2023

Phillip Barber, Judge of the First-tier Tribunal