



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

Case reference : **BIR/41UC/HNA/2023/0016**

Property : **85 Queens St, Burton-on-Trent, DE14
3LW**

Applicant : **Mrs Shaheen Tariq**

Representative : **Mr Mohammed Tariq**

Respondent : **East Staffordshire Borough Council**

Representative : **Legal Department, East Staffordshire
Borough Council**

Type of application : **Application under paragraph 10 of
Schedule 13A to the Housing Act 2004 to
appeal against a financial penalty**

Tribunal member : **Judge C Goodall
Mr R Chumley-Roberts MCIEH, J.P**

**Date and place of
hearing** : **10 January 2024 by Video Hearing**

Date of decision : **17 January 2024**

DECISION

Background

1. On 5 July 2023, the Respondent Council (“the Council”) issued a final notice imposing a financial penalty upon Mrs Shaheen Tariq (“the Applicant”) of £3,673.00 resulting from what the Council considered to be the offence of managing or having control of a house which is required to be licensed but is not so licensed. This is an offence under section 95 of the Housing Act 2004 (“the Act”).
2. The Applicant appealed against the final notice in an appeal dated 12 July 2023.
3. Directions were issued for the conduct of the appeal as a result of which both parties have provided the Tribunal with bundles of documents. The matter was directed to be dealt with by way of an oral hearing which took place by video on 10 January 2024.
4. The Applicant attended, represented by her husband, Mr Mohammed Tariq. The Applicant does not speak English well and so an interpreter attended the hearing to ensure she was able to follow the proceedings.
5. The Council was represented by a trainee solicitor, Ms Lea As. Its witnesses were Ms Rachel Liddle, an Environmental Health Manager, and Ms Elizabeth Daykin, a Senior Selective Licensing Officer, both employed by the Council.
6. This document contains our determination of the Applicant’s appeal, and the reasons for our decision.

Law

7. Section 95 of the Act provides as follows-

95 Offences in relation to licensing of houses under this Part

- (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 (see section 85(1)) but is not so licensed.
- (2) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

- (a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,
- and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for failing to comply with the condition,as the case may be.
 - (5) A person who commits an offence under subsection (1) is liable on summary conviction to [F1a fine] .
 - (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
 - (6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
 - (6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]
 - (7) For the purposes of subsection (3) a notification or 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 to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

- (8) The conditions are—
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of [F3the appropriate tribunal]) has not expired, or
 - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

8. A house is defined in section 99 of the Act as being one or more dwellings. A dwelling is defined as a building or part of a building occupied or intended to be occupied as a separate dwelling. The meaning of ‘managing’ and ‘having control’ of a house are contained in section 263 of the Act and the definition essentially identifies these persons as recipients of the rent.

9. Section 249A of the Act deals with financial penalties and provides as follows:

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—
 - ...
 - (c) section 95 (licensing of houses under Part 3),
 - ...
- (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.

...

10. Schedule 13A of the Act provides:

Financial penalties under section 249A

Notice of intent

- 1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).
- 2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.
 - (2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
 - (a) at any time when the conduct is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the conduct occurs.
 - (3) For the purposes of this paragraph a person's conduct includes a failure to act.

3 The notice of intent must set out—

- (a) the amount of the proposed financial penalty,
- (b) the reasons for proposing to impose the financial penalty, and

- (c) information about the right to make representations under paragraph 4.

Right to make representations

4(1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5 After the end of the period for representations the local housing authority must—

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8 The final notice must set out—

- (a) the amount of the financial penalty,
- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1) A local housing authority may at any time—

- (a) withdraw a notice of intent or final notice, or
- (b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

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.

....

Facts

10. The following facts are our findings taken from the oral testimony of the Applicant and Mr Mohammed Tariq, the witness statements of the Council's witnesses, and the documents in the bundles.
11. Mr and Mrs Tariq bought a property in Queen St, Burton-on-Trent (not number 85) in around 1992 for themselves and their family.
12. In June 2006 they bought the Property at 85 Queen Street, which was put into the Applicant's sole name. We were told that they lived in that Property for a time but their daughter moved into it in 2007 on her marriage and Mr & Mrs Tariq thereupon moved (or moved back) to the first house they had purchased on Queen St. Their daughter moved out in 2015, whereupon Mr & Mrs Tariq moved back to 85 Queen St until 2020 at which point they let the Property to a tenant and moved back to their first house. They were adamant this was the first time they had let a Property. They told us that the tenant was the daughter of a neighbour.

13. The Council first resolved to designate Queen St for selective licensing, under section 80 of the Act, from 12 September 2017. That first scheme expired in September 2022 and was replaced by a new scheme approved on 30 May 2022, to come into force from 12 September 2022.
14. As part of the process of informing the community of the new scheme, in June 2022 a letter was hand delivered to all houses in Queen St by Ms Daykin, addressed to the occupier, and informing the occupier of the selective licensing scheme.
15. In December 2022, the tenant made a referral to the Council concerning the condition of the Property. As a result, the Council carried out a non-statutory inspection on 12 December 2022. They found certain deficiencies (which have not been pursued), but also noted that there was no licence in place.
16. Accordingly, the Council wrote to the Applicant on 13 December 2022 (we were told by ordinary first class post) pointing out that there was no licence and that all private landlords of let property in Queen Street and other specific roads had to have a licence. A web-site link was provided which could be used for making an application.
17. There was no response to the 13 December 2022 letter, and Ms Daykin followed up her letter with a further letter dated 1 February 2023. A copy of the previous letter was attached, Again, it was pointed out that a licence was required if the Property was rented out. This time, a hard copy application form was enclosed with the letter.
18. Mr & Mrs Tariq are adamant that neither of the two letters dated 13 December 2022 and 1 February 2023 were in fact received by them. They informed us that the post in that street was unreliable and letters are regularly posted into the incorrect letter box, meaning that neighbours sometimes give them letters that they have wrongly received. Mr Tariq thought this happened in the region of once or twice a month. We found this evidence somewhat vague and unconvincing.
19. Ms Daykin then hand delivered a letter to the Applicant dated 24 April 2023. Its contents were similar to the previous two letters, copies of both of which were attached, as was another hard copy licence application form, to be completed and returned no later than 2 May 2023. The Applicant said that she signed the form, and Mr Tariq said he completed it and posted it in an A4 envelope with a large letter stamp at the Post Office in Asda on around 27 April 2023. The Council say they did not receive that application form.
20. On 16 May 2023, Ms Daykin wrote again to the Applicant – once again this letter was hand delivered. She informed the Applicant that the Council was considering taking legal action for failure to obtain a licence, as “you have failed to submit an application for a licence”. She invited the Applicant to an interview under caution to be held on 5 June 2023, but it

was made clear that there was no obligation to attend. The Applicant was asked to confirm whether she intended to attend by 23 May 2023.

21. Mr Tariq is clear that following receipt of that letter, he telephoned the Council on 17 and 18 May and left messages to contact him. The Council have no record of receiving those messages. Ms Daykin gave evidence to us that she has no messaging facility on her telephone. Neither Mr Tariq nor the Applicant, however, made any attempt to provide another completed application form urgently.
22. Mr Tariq did email the Council on 31 May 2023 about the 16 May letter. He apologised for sending the email late as he did not read the letter in full. He wished to re-arrange the interview. The Council did not re-arrange the interview but instead issued a Notice of Intent to issue a financial penalty, dated 6 June 2023. The proposed penalty was £3,811.00. The opportunity to make representations was explained in the Notice and a form on which to make them was included.
23. Mr Tariq completed the representations form, which was then signed by the Applicant. It was received by the Council on 21 June 2023. He explained that he had posted the application form before the deadline of 2 May 2023. He was upset that the Council had not re-arranged the interview, and he stressed a number of times that he felt that if only that meeting had gone ahead, everything would have been sorted out without his wife needing to appeal.
24. The Applicant provided some financial details on the form; she is employed. Her March 2023 payslip was provided indicating an annual salary of in the region of £22,000.00, giving her net pay of around £1,500 per month. At the hearing, she provided further financial information. Her husband, Mr Tariq works as a taxi driver. They have two adult sons living with them. There is a mortgage on 85 Queen St which costs £135 per month in interest. It was not entirely clear whether they were also making contractual capital payments or voluntary ones, but in any event she pays somewhere between £300 and £450 per month, inclusive of interest, for the mortgage.
25. We were told by the Applicant that the Property rent had been £500 per month until 1 July 2023, at which point it increased to £600 per month. There had been no written tenancy agreement until this was requested by the Council. A written agreement, dated 1 July 2023, was then provided.
26. The Council reviewed their decision to issue a Notice of Intent on 5 July 2023. They noted that there had been a mathematical error made when issuing the Notice of Intent. Details are given below in the section entitled Calculation of the Penalty. The result of the error was that the penalty was reduced to £3,673.00.
27. On 5 July 2023 of course, there was still no licence. Despite the obvious urgency, as failure to apply for a licence is an ongoing criminal offence,

there was further delay in applying making an (or another) application. Mr Tariq said he submitted another completed form on 6 July 2023. The Council said they eventually received an application in some form in early August 2023 and treated it as a completed application as at 20 August 2023. The evidence on this was confusing but we prefer the Council's account and find that the eventual application for a licence was made at some point in early August 2023.

Calculation of the Penalty

28. The Tribunal was provided with a policy document adopted by the Council concerning calculation of financial penalties. There are four stages:
 - a. Determination of a penalty band;
 - b. Determine how much to add to reflect the landlord's income and track record;
 - c. Add a and b together and cap it at the maximum amount in the penalty band;
 - d. Add any financial benefit the landlord has obtained from committing the offence.
29. Determination of the penalty band itself has two components. An assessment is made of the landlord culpability (assessed as high, medium, or low) and of the seriousness of harm (assessed as level A – HHSRS levels I and II, level B – HHSRS levels III and IV, and level C - all other cases). This case fell within penalty band 3 on the Council's policy scale. A penalty within band 3 justifies a financial penalty of between £3,000 and £6,000 according to the policy. The lowest figure is taken as the starting point.
30. In this case, the Council assessed culpability as high and seriousness as level C. The justification for the high level of culpability was the combination of the following factors: failure to apply for a licence despite several warnings; no EPC for the Property; no Electrical Inspection Condition Report; failure to provide a tenancy agreement. The landlord had, in the Council's view, fallen far short of their expectations.
31. So far as stage 2 is concerned, this was the first time the Applicant had been involved in any housing law enforcement and so no increase for a track record was imposed. An addition for income is imposed under the policy of 150% of the gross weekly rental income. The gross rental income figure used was £138 per week. An addition of £345 for this element had been included in the Notice of Intent figure. On review, it was noted that this was an error and the addition to reflect the landlord's income in accordance with the policy was therefore reduced to £207, being 150% of £135.00.
32. At stage three, there was no need to cap the resultant addition of stage 1 and stage 2 figures as the total was within the band range.

33. For stage 4, the Council assessed the benefit to the Applicant from not having to bear the cost of the licence whilst the Property was unlicensed as £466.
34. Therefore the penalty imposed was £3,000 plus £207 plus £466 = £3,673.

Discussion

35. We remind ourselves that we are conducting a rehearing of the decision to impose a financial penalty.
36. The Applicant's appeal is essentially focussed on two main limbs:
 - a. There was a reasonable excuse for not applying for the licence before August 2023; and
 - b. If the reasonable excuse defence fails, the penalty imposed is too high and unaffordable.
37. Our first task though is to determine whether we are satisfied that an offence under section 95 of the Act has been committed prior to our consideration of reasonable excuse. Unless we are persuaded beyond reasonable doubt that it has, the financial penalty cannot be imposed at all. The wording of section 95 is set out in the section above under the heading 'Law'.
38. There are 6 elements to the offence:
 - a. That the Property must be a "house";
 - b. That the Property must be in an area which the local authority has designated as an area of selective licensing;
 - c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
 - d. That the Property is not licensed;
 - e. That the Applicant is "a person having control" of the Property;
 - f. That there is no reasonable excuse for the Applicant having control of the Property without it being licensed.
39. The Tribunal is satisfied beyond reasonable doubt that the elements (a) to (e) in the preceding paragraph are all met (and there was no suggestion from the Applicant that they were not), such that the offence under section 95 of the Act is made out, subject to the reasonable excuse defence.
40. The Applicant in effect claims that there was a reasonable excuse for not obtaining a licence as she did not know she needed to obtain a licence prior to receiving the letter from the Council dated 24 April 2023, and then she

responded almost immediately by applying for the licence on 27 April 2023.

41. Of course, the Council's case is that the Applicant did know she needed a licence as they had hand delivered a letter to the 'occupier' in June 2022, and had written two letters specifically to the Applicant on 13 December 2022 and 1 February 2023. And their case is that they doubt that the Applicant did complete an application form and return it on 27 April 2023, as they did not receive such an application.
42. The reasonable excuse defence is decided on the balance of probabilities with the Applicant required to prove the defence. (see paragraphs 27 and 28 in *I R Management Services Ltd v Salford City Council* [2020] UKUT 81 (LC)).
43. We are satisfied on the basis of her oral evidence that Ms Daykin posted a letter to the 'occupier' into the post box of the Applicants home in June 2022, and that the Council posted the letters to the Applicant's address in December 2022 and February 2023 in the ordinary post with a first class stamp. The Applicant therefore has to prove, on the balance of probabilities, that (a) she did not receive or read the June 2022 circular, and (b) that neither of the letters were delivered by Royal Mail.
44. Furthermore, the Applicant needs to prove to us more generally that she was unaware of the existence of the selective licensing scheme, in the sense that a person deciding to let a property for the first time might be expected to carry out enquiries and research into any legal obligations that they were subject to when considering that business opportunity.
45. One of the Council witnesses made a point along these lines in the hearing by saying that ignorance of the law is no excuse. We respectfully disagree that that is an accurate statement of the position. In *Marigold v Wells* [2023] UKUT 33 (LC), the Deputy Chamber President of the Upper Tribunal quoted with approval in the context of housing and landlord and tenant law (in paragraph 49) the following extract from a case called *Perrin v HMRC* [2018] UKUT 156 (TCC):

"82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

46. We have reached the view that the defence of reasonable excuse cannot succeed in this case. We do consider, viewed objectively, that the Applicant would have, or at least should have, been aware had she taken a reasonable interest in these matters, that property letting is subject to regulatory controls and that she should have taken the time to find out what controls she had to abide by. Furthermore, we consider it to be highly unlikely that one or more of the three communications that we are satisfied the Council delivered or sent to her address did not in fact come to her attention.
47. We consider it unlikely that Mr Tariq posted a fully completed application for a licence on 27 April 2023 as we are satisfied that generally the Royal Mail system works, and that local authorities have reasonably robust systems for recording post that is received. Even if we are wrong, when the Applicant became aware, from the letter of 16 May 2023, that a licence application had still not been received, the Applicant should have immediately completed another form because of the importance and urgency of complying with her legal obligation, which she failed to do.
48. We therefore find that the offence under section 95 of the Act is established beyond reasonable doubt, and that the defence of reasonable excuse is not made out. The Council was therefore entitled to impose a financial penalty upon the Applicant.
49. The next question for us is whether the penalty imposed was for the right amount. Tribunals will generally be slow to criticise properly adopted policies. At the hearing, we were not sure how aggravating and mitigating factors identified in the section of the policy that discussed selection of the harm level would actually impact upon the selection of that appropriate level. It was not clear how the Applicants previous good character was to be reflected, though we note that having selected the penalty band, the Council then started their calculations using the lowest level of that band, and accordingly there was little scope for a further reduction anyway. We are satisfied that generally the Council have applied their policy correctly.
50. The Applicant's case is that the penalty is unaffordable. However, we are satisfied that she can in fact afford the penalty. There is a clear excess of rental income over outgoings, and the household generally has the benefit of two incomes at least, and possibly four with the Applicant's adult sons being in residence.

Decision

51. We therefore determine that the Final Notice dated 5 July 2023 issued to the Applicant by the Council imposing a financial penalty of £3,673.00 under section 249A of the Act is confirmed.

Appeal

52. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)