FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/HNA/2024/0031**
Property	**:**	**7 Mascotts Close, London NW2 6NS**
Applicant	**:**	**Supreme Lettings Ltd**
Respondent	**:**	**The Mayor & Burgesses of the London Borough of Brent**
Type of application	**:**	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal	**:**	**Judge Nicol** **Mr M Cairns MCIEH**
Date and venue of hearing	**:**	**29th January 2025** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**29th January 2025**

DECISION

The Tribunal has decided to confirm the penalty of £5,000 imposed on the Applicant by the Respondent.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicant is the manager of the subject property, a modest 2-storey terraced family house converted to form 5 separate lettings. The local authority Respondent has sought to impose a financial penalty of £5,000 on the Applicant for managing or having control of the property as an HMO (House in Multiple Occupation) when it should have been licensed but was not, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

2. The final penalty notice was served on 2nd February 2024. The Applicant appealed to this Tribunal on 29th February 2024.

3. The Applicant's appeal was heard by the Tribunal on 29th January 2025. The attendees were:

- Mr S Davidovits, representing the Applicant and assisted by his wife, Mrs Mina Davidovits;
- Ms Tola Robson, representing the Respondent and assisted by Ms Sherkila Finnegan; and
- Mr Alex Pang and Mr George Graham, Housing Enforcement Officers.

4. The Tribunal had the following documents, filed and served in accordance with the Tribunal's directions issued on 4th June 2024:

- Applicant's Bundle, 49 pages;
- Respondent's Bundle, 194 pages; and
- A skeleton argument from Mr Davidovits.

5. It is not in dispute that the property was an unlicensed HMO at the time the Respondent inspected in November 2022. The Applicant's principal case has been that the failure to licence was a mistake for which they should not be punished.

6. The property used to be managed by Sam Estates. They were granted an HMO licence in 2017 which was renewed on 9th March 2020 and had been due to expire in 2025. However, on 25th August 2021 the Respondent sought to arrange a licence compliance inspection but Mr Joel Stern of Sam Estates replied by email on 26th August 2021:

> Please note, we no longer manage the above property.
> Please reach out to the owners.
> Please remove my name from the license as a matter of urgency.

7. On 3rd October 2021 the Respondent issued a notice revoking the licence and sent it to the licence-holder, Sam Estates.

8. As Sam Estates had suggested, the Respondent also contacted the freehold owner of the property, Ms Malka Hadasa Lew. On 8th October 2021, the Respondent wrote to Ms Lew warning her that the property needed to be licensed. In a phone conversation on 12th October 2022, Mr Graham further informed Ms Lew of the licensing situation and she said she would look into it. Mr Graham sent an email on the same day confirming what had been said.

9. By this time, the Applicant was managing the property and received the rents. The Respondent was later provided with 5 tenancy agreements granted by the Applicant, the earliest of which was dated 26th June 2020.

10. On 10th February 2023 the Respondent notified the Applicant of their intention to impose a penalty of £5,000. Mr Peter Clarke, the principal and sole director of the Applicant company, emailed his representations

on 10th March 2023. He admitted that the Applicant knew of the licence held by Sam Estates, not least because it was displayed in the property, but that they had been unaware of its revocation and, for that reason, the failure to apply for their own had been overlooked. The Respondent reviewed the representations but notified the Applicant of the reasons for rejecting them on 28th September 2023 and went ahead with the final notice.

11. Mr Davidovits's skeleton argument set out 3 points of defence which are considered in turn below. Mr Davidovits's main problem was that he had no witness evidence to support his submissions. He said that Mr Clarke was too busy to attend the Tribunal but he hadn't made a witness statement. Indeed, there were no witness statements at all on behalf of the Applicant. Mr Davidovits complained that he had had no advance notice that the Respondent's main witness, Mr Alex Pang, was to attend, contrary to previous indications, but at least he was present to be asked questions and Mr Davidovits took the opportunity to do so.

12. The Respondent had initially issued a final penalty notice on 29th January 2024. Mr Clarke pointed out by email that it contained a reference to Ms Lew which hadn't been in the notice of intention. The Respondent admitted the error and withdrew the final notice on 1st Februay 2024. They then issued the further penalty notice the following day, on 2nd February 2024. Mr Davidovits asserted that the Respondent had no power under the Housing Act 2004 to issue a further final notice after withdrawing the first.

13. The Tribunal can see no reason why the Respondent could not have followed this procedure. Mr Clarke himself had pointed out an error which, while not substantive, it was appropriate to remedy. The Respondent could have exercised their express power to amend the notice but there is nothing in the Act to prohibit the procedure they did use of withdrawal and re-issue. It had the advantages of simplicity and clarity and we see no possible prejudice caused for the Applicant.

14. Mr Davidovits's skeleton argument considered whether it is possible to imply the power to withdraw and re-issue into the Act but it is not necessary to imply anything. The Respondent had not withdrawn or revoked the original notice of intention so all the prior requirements for a final notice were satisfied. Mr Davidovits pointed out that section 249A(3) of the Act expressly prohibits more than one penalty but there has only ever been one penalty, irrespective of how many notices have been issued in respect of that penalty.

15. Mr Davidovits's next point in his skeleton argument objected to the delay involved in the Respondent taking over 6 months to address the Applicant's representations and then a further four months to issue the final notice. He pointed to authority that makes clear that delay can amount to abuse of process if it prevents a party from having a fair trial.

16. Ms Robson admitted that the delay was regrettable but pointed out that the Applicant had not claimed, let alone proved, any prejudice. In the Tribunal's opinion, the delay must have had a deleterious impact in some way, real or potential, in order to be relevant. The Applicant had no evidence of any. Ms Robson was right to recognise that the delay should not have happened but it does not create a defence to the penalty.

17. The third point in Mr Davidovits's skeleton argument relied on the Applicant's representations of 10th March 2023 which asserted that the failure to licence had been an innocent mistake. The Tribunal rejects that submission. The Applicant may well have been ignorant of the revocation of the previous licence, possibly even until December 2022, but there was no reasonable excuse for that ignorance. Moreover, the licence was in the name of a third party no longer involved in any way with the property, and so could not be relied on by the Applicant in any event.

18. As a professional property agent, the Applicant is expected to keep abreast of legal and regulatory requirements and to check on the licensing status of property they manage. The Applicant could see from the licence in their possession that it was in the name of Sam Estates which was no longer involved in the management of the property and had never had any proprietary interest in it. Both Sam Estates and Ms Lew knew that the original licence had been revoked. The Applicant only needed to check with any of Sam Estates, Ms Lew or the Respondent to find out the licensing position. Further, after the Respondent had inspected on 16th November 2022 Mr Pang had telephoned Mr Clarke the very next day to tell him the property did not have a valid licence. The Applicant cannot rely on its own inaction either as an excuse or in mitigation of the offence.

19. The Applicant did not specifically dispute the quantum of the penalty but Mr Davidovits did say it should be reduced for the reasons he had already given. However, the quantum was calculated in accordance with the matrix recommended by government guidance and included in the Respondent's enforcement policy.

20. The appeal is a rehearing and the Tribunal needs to reach its own conclusion on the penalty and the amount of it. However, in doing so the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)). In the light of the Respondent's policy, the Tribunal is satisfied that the penalty of £5,000 is justified for the Applicant's offence.

Name: Judge Nicol **Date:** 29th January 2025

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).

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) 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 67(5), and

(b) he fails to comply with any condition of the licence.

(4) 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

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) 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.

(a) For the purposes of subsection (4) 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 (9) is met.

(b) 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 the 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.

(c) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Section 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 13A
FINANCIAL PENALTIES UNDER SECTION 249A

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.

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(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.