IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case reference	:	**LON/00BC/HNA/2024/0039**
Property	:	**570A Green Lane, Ilford, London IG3 9LW**
Applicant	:	**Abdul Bhatti, appearing in person**
Respondent	:	**London Borough of Redbridge, appearing by Ms Victoria Osler of counsel**
Type of application	:	**Appeal against a financial penalty notice**
Tribunal	:	**Judge Adrian Jack, Tribunal Member Appollo Fonka FCIEH**
Date of decision	:	**24th February 2025**

DECISION

Procedural

1. By notice of appeal dated 25th March 2024, the appellant appealed against a financial penalty of £10,000 imposed on him by the respondent London Borough Council pursuant to a financial penalty notice dated 19th March 2024. The financial penalty was imposed for the appellant's alleged failure to comply with an improvement notice served on him on 28th July 2023.

2. The appeal was originally listed for hearing on 16th December 2024. At that hearing, the appellant produced a copy of the selective licence dated 5th June 2023 granted to his wife in respect of the property. This potentially afforded him a defence in that the improvement notice should have been served on his wife instead of on him. The respondent wanted to answer this evidence and the matter was adjourned to be heard afresh.

3. At the adjourned hearing before us on 20th February 2025, we considered at the conclusion of the respondent's case whether the respondent has

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shown a case for the appellant to answer. We decided that it had not and announced our decision to that effect. These are our reasons for our decision.

4. We should add that, if we had not reached that conclusion, we would have had to consider whether the appellant was able (as he wished) to appeal against his alleged non-compliance with the improvement notice on the grounds that he had in fact complied with the notice. An issue as to reasonable excuse for non-compliance with the improvement notice may also have arisen (section 30(4) of the Housing Act 2004) arising from the date on the selective licence. These matters may have necessitated an application to amend the grounds of appeal. It was apparent from his cross-examination of Ms Alice Nyonjo, the environmental health officer with responsibility for the notice, that there were some issues with her evidence as to the alleged non-compliance with the improvement notice. In particular, Ms Nyonjo produced photographs of the property purportedly taken on three separate occasions (27th February 2023, 8th June 2023 and 26th September 2023), but the photographs appeared to be identical, thus casting doubt on their evidential value. In the event, however, we did not need to consider these further issues and have not done so.

The facts, so far as relevant

5. The property is a terrace house divided into two flats. The appellant, his wife ("Mrs Bhatti") and their family live in the upstairs flat. The ground floor flat, which is the subject of the current appeal, was occupied by Mr Rehman Ashraf and his wife Mrs Ram Ashraf Chaudhary. They are in poor health with one of them bedridden.

6. The freehold of the whole house is and has at all material times been registered in the name of the appellant. By a tenancy agreement between Mrs Bhatti and Mr Ashraf, the downstairs flat was let on a monthly tenancy at a rent of £1,300 per month from 30th June 2022. No evidence was adduced before us as to the basis on which the appellant permitted his wife to let the downstairs property out in her own name. However, there was no dispute that the tenancy between Mrs Bhatti and Mr Ashraf was a genuine tenancy which genuinely reflected the actual relationship of landlord and tenant between her and him.

7. On 27th February 2023, Ms Nyonjo carried out an inspection of the downstairs flat. She found issues of mould and damp, caused she thought by a defect with the washing machine, poor ventilation, as well as electrical and fire issues. On 16th March 2023 she wrote to Mrs Bhatti asking her informally to remedy the defects identified.

8. The flat falls within an area of selective licensing under Part 3 of the Housing Act 2004. On 19th April 2023, Mrs Bhatti started an on-line application for a selective licence. She completed and submitted the application on 25th April 2023. At that stage she had not paid any of the fees, but that is how the respondent's system operates. Instead, the

respondent asks for fees in two parts. The initial deposit was requested by a computer generated letter of 11th May 2023 and Mrs Bhatti paid this.

9. This payment prompted the respondent on 18th May 2023 to issue a draft licence, so that Mrs Bhatti could point out any errors or omissions in its terms and conditions. No representations were made and on 1st June 2023, the respondent asked for the balance of the fee for the licence to be paid. Mrs Bhatti paid the balance on 5th June 2023.

10. The selective licence, it is common ground, was granted to Mrs Bhatti for the period from 25th April 2023 until 24th April 2028. The date on the physical licence is stated as having been granted on 5th June 2023. It is signed by Sarah Foster, the respondent's operational director.

11. On 8th June 2023 Ms Nyonjo revisited the property. She was not satisfied that the defects identified in her informal letter of 16th March 2023 had been remedied. On 28th July 2023 she issued a formal improvement notice to the appellant. The appellant did not appeal the improvement notice.

12. In the meantime, on 30th June 2023 the respondent wrote to Mrs Bhatti at her personal email address to ask for the energy performance certificate ("EPC"), the gas safety certificate and an electricity certificate ("EICR"). The email said: "We are ready to issue your full licence but are unable to issue at present as you have failed to submit the [three] documents." This email was not sent to the appellant. There is no evidence that he had knowledge of it.

13. Mrs Bhatti sent the respondent copies of the three certificates as an attachment to an email of 31st July 2023 from her personal email address.

14. Cheryl Hart, who gave evidence to us says that on 13th August 2023 she went into the respondent's computer system and noticed that a physical copy of the licence had not been sent to Mrs Bhatti. She checked the details but did not realise that the computer set a default date of issue based on when the final payment of the fees was received, so that the date of issue would be recorded as 5th June 2023.

15. The physical copy of the licence was sent to Mrs Bhatti promptly thereafter, so it would have been received by her before the time for her husband, the current appellant, to appeal the improvement notice.

16. On 26th September 2023 Ms Nyonjo carried out her third inspection of the property. She considered that the appellant had not complied with the requirements of the improvement notice. On 21st November 2023 the respondent gave the appellant notice of its intention to make a financial penalty order against him and on 19th March 2024 they did so.

The law

17. Para 1(1)(a) and (2) of Schedule 1 to the Housing Act 2004 provides that where a dwelling is licensed under Part 3 of that Act (the selective licensing provisions), an improvement notice must be served on the holder of the selective licence. Para 3 of that Schedule provides that where a flat is not licensed under Part 3, an improvement notice must be served "on a person who (a) is an owner of the flat, and (b) in the authority's opinion ought to take the action specified in the notice."

18. The appellant is and was the owner of the flat within the definition of "owner" in section 262(7) of the Act. There was no dispute that the authority could properly take the view that the appellant was the person who ought to remedy the defects identified in the improvement notice.

19. The sole question is thus whether there was or must be treated to have been a selective licence in force on 28th July 2023. If there was, then the appeal must succeed: the improvement notice should have been served on Mrs Bhatti. If there was not, then the Tribunal would need to deal with the other issues in the appeal. (There is no dispute that the appellant could properly dispute the validity of the service of the improvement notice on him — the para 1(2) point — before us on this appeal. The respondent did not submit that the appellant's only remedy was to appeal the improvement notice on that ground.)

20. Before resolving this issue, we mention one point which was put forcibly in evidence by Ms Hart. She said in evidence that it was *unlawful* to issue the selective licence before the three certificates were received. Ms Osler for the respondent could not provide any statutory support for this proposition and we know of none. We agree with Ms Hart that the respondent's policy of not issuing selective licences until all the relevant certificates are available is lawful and indeed is a very sensible policy. However, in our judgment the respondent has (in the absence of any statutory prohibition) the *power* to issue a selective licence before the licensee has produced her safety certificates. There is no *legal* bar to the respondent issuing the selective licence in question in this case on 5th June 2023.

21. The question is thus whether it is open to a local authority to dispute the date on which it has purported to issue a selective licence. We note here that a selective licence does not just have effect as between the local authority and the licensee. The date is of significance for third parties. Tenants' right to apply for a rent repayment order may be impacted by the date on which a selective licence was granted to their landlord.

22. Other third parties to the licence, such as the appellant here, are affected. Ms Osler accepted before us that it was only on 16th December 2024, when this matter was originally listed before this Tribunal, that the appellant learnt that the date of the grant of the licence on the selective licence was or might be incorrect. We have not investigated (because the matter never got past the half-time submission) whether the appellant was in fact

prejudiced, but if he had sought legal advice as to whether to appeal the improvement notice, the advice would have been that the respondent has served the wrong person: it should have served his wife as the licensee pursuant to para 1(2) of the 2004 Act.

23. Ms Osler submitted that the selective licence was only issued when it was sent to Mrs Bhatti. Using the expression "issue" is, however, likely to confuse. It has two meanings. The first is in the sense that the document was physically sent to Mrs Bhatti. The second is the legal question of when the licence had legal effect or is treated as having legal effect.

24. The second meaning is in our judgment independent of the first. There appears to be no statutory requirement that a copy of licence be sent to the licensee, or received by her. It is of course standard administrative procedure to send copies of such licences to the licensee, but we see no reason why a licence cannot have effect without having been sent or, for example, where the licence is misdelivered, so it is never received by the licensee.

25. In our judgment, a selective licence is a document issued as a matter of local government housing law, a branch of public law. Accordingly, the public are entitled to rely on the date of issue given on licences. If judicial review proceedings were brought to quash the date on a licence, then the Administrative Court would have discretion as to whether to grant the remedy sought and would no doubt look carefully at the prejudice potentially caused to third parties. Unless and until the date is quashed, in our judgment the public are entitled to rely on the purported date of issue. (The position might be different if the local authority could not lawfully issue the licence, but as discussed above that is not the position here.)

26. Any other conclusion would cause chaos. Until Ms Hart gave evidence as to the mistake which had been made, no one without intimate access to the respondent's computer systems would have any knowledge or any means of knowledge that a mistake had been made as to the date of the grant.

27. Only Mrs Bhatti might have had sufficient information to be put on enquiry as to whether the respondent had made a mistake (as a result of the letter of 30th June 2023), but even if she had been on enquiry it is not clear why she should have wanted to make the enquiry, since the date of the grant was of no relevance to her. It was the 25th of April 2023 start date which would have been of importance to her.

Conclusion

28. Accordingly we find that the improvement notice was served on the wrong person and we allow the appeal. As to the costs payable to the Tribunal, we have a discretion. Since the respondent has lost, it is right to order that it pays the fees payable to the Tribunal in the sum of £320 (comprising the £100 issue fee and the £220 hearing fee).

DETERMINATION

(1) The appeal is allowed.

(2) The financial penalty is quashed.

(3) The respondent shall pay the appellant £320 in respect of the fees payable to the Tribunal.

Signed: Adrian Jack **Dated: 24th February 2025**