FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference:	**MAN/00CJ/HNA/2023/0090**
Property:	**147 Rothbury Terrace, Newcastle upon Tyne NE6 5DB**
Applicant:	**Deborah Burns**
Respondent:	**Newcastle City Council**
Type of Application:	**Appeal against financial penalty- Section 249A and Schedule 13A to the Housing Act 2004**
Tribunal Members:	**Judge J.M.Going** **J.Gittus MRICS**
Date of Hearing :	**11 March 2025**
Date of Decision :	**24 March 2025**

DECISION

The Decision and Order

The Final Notice is to be varied by amending the financial penalty to £4095 to be paid within the period of 28 days beginning with the day after that on which this Decision is posted to the parties.

Preliminary

1. By an Application dated 19 December 2023 the Applicant ("Ms Burns") appealed to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under paragraph 10 of Schedule 13A of the Housing Act 2004 ("the Act") against the Respondent ("the Council")'s issue on 1 December 2023 of a Penalty Charge Notice ("the Final Notice") requiring the payment of a penalty charge of £5251.92, after it had been satisfied that she had failed to licence the property when it was required to be licensed thereby having committed an offence under section 95 of the Act.

2. Directions were issued on 27 June 2024 detailing a timetable for documents to be submitted, and how the parties should prepare.

3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other.

The Property

4. The Tribunal did not inspect 147 Rothbury Terrace but understands it to be a first floor Tyneside flat with 3 bedrooms.

Background, facts and chronology

5. The following facts and timeline of events are confirmed from an analysis of the papers or are of public record. None have been disputed, except where specifically referred to.

22 December 2006	Ms Burns purchased the property.
25 June 2019	The Council in exercise of its powers under the Act designated the East End area of Heaton, which includes Rothbury Terrace and the property, as a selective licence area for a 5-year period beginning on 6 April 2020 until 5 April 2025, meaning that any non- exempt property occupied under a tenancy or licence within the area would require a licence.
23 March 2020	The Prime Minister announced the first national lockdown due to the coronavirus pandemic.
6 April 2020	The need for the property to be licensed when let became legally operative.
17 July 2020	Ms Burns applied to the Council for a licence in respect of 3 properties within Heaton, including 147 Rothbury Terrace, ("the initial application").

5 October 2020	Ms Burns emailed the Council to confirm that she had "made payment of £1950 for 3 licences…".
21 October 2020	Ms Burns let the property to Charlotte Anderson and Aeron Corbett, and they were noted as being responsible for the Council Tax.
18 August 2021	Ms Burns emailed the Council with 3 attachments stating "Please find attached the final documentation in respect of the licence application for 147 Rothbury Terrace NE65DB. This is in addition to what was originally uploaded to the portal."
4 January 2022	Ms Burns emailed the Council stating "I write to request that the applications submitted for selective licences at the following properties be revoked: 157 Rothbury Terrace, Heaton (NCC-168698-1) 118 Rothbury Terrace, Heaton (NCC-118109-1) 147 Rothbury Terrace, Heaton (NCC-166282-1) The applications and payments were made, but the licences have not yet been issued/dealt with. In the meantime, I have decided to change our business model and will no longer be dealing with the private rented sector/assured shorthold tenancies. As such, the licences are no longer required. As the local authority has not yet processed the applications, I would like to request that they be revoked and the fees refunded..".
24 January 2022	The initial application was noted by the Council as having been withdrawn.
11 December 2022	Council tax records showed Charlotte Anderson and Aeron Corbett to be still living at the property.
14 December 2022	Mr McFall, a Senior Technical officer with the Council, wrote to Ms Burns advising of potential need for a licence and that to rent the property without a licence was offence.
3 January 2023	Mr McFall emailed Ms Burns at 11.01 attaching copies of his previous letters advising "the property sits within a designated selective licence area (since April 2020) and as such if occupied even by one person the property requires a licence. Please contact me asap…" Ms Burns responded by email at 11.41 stating "we are turning this flat into a short-term let so I believe it falls outside … the licensing scheme" Mr McFall replied at 12.16 stating inter alia "if the property is empty then it is exempt, a short-term let would be exempt. However, if the property is occupied as per our Council tax records by Charlotte Anderson & Aaron Corbett then a licence is required and has been since April 2020. Please let know how you wish to proceed"
12 January 2023	Mr McFall visited the property and met Charlotte Anderson.
31 January 2023	Mr Guthrie, a senior environmental health officer with the Council sent letters with a Schedule with questions under caution to Ms Burns ("the Pace questionnaire")

6 February 2023	Ms Burns emailed Mr Guthrie stating "…I write with the intention of us resolving this issue. I am aware of the licensing scheme and, as records will state, applied and paid (£650) for a licence for 147 Rothbury Terrace NE65DB when it fell under the scheme in April 2020. However, despite a number of email requests, by April 2022 the local authority had repeatedly failed to administer the licence. As I had been considering moving into short lets, I informed the LA of my intention and requested the licence application be revoked. This was accepted, although the Council retained £175. The balance of £475 was returned. Over the last year, the cost of living crisis (higher energy prices, labour costs and interest rate rises) has caused significant financial strain and has therefore delayed my plans somewhat; however, I remain committed to moving this flat to a short let. Nevertheless, if it deemed necessary that a licence be issued, then I am willing to reinstate the original application. I trust that only the £475 would be due, given that the LA bears some responsibility for the delay.
10 February 2023	Mr Guthrie responded by email, reiterating the caution, stating inter alia "…..In response to your email reply to my letter of 31 January I can advise that • The property has been confirmed as being occupied by the current tenant for 4 years and so the property is, and has always been, licensable since the scheme commenced in April 2020. • You have agreed that the property was licensable in the past and made the required licence application on 17 July 2020. • Based on your intention to move into short term lets you requested that the application was withdrawn. • The application was formally withdrawn on 24 January 2022. The current position is that • The property is still occupied in a manner that requires a licence to be in force. • It is not permitted to reinstate the original licence application that was withdrawn at your request • You must now submit a new application for a licence and this will be subject to the full fee becoming due. I must also advise that the Council are now satisfied that the property has been operated as a licensable property without the necessary licence being in force. This is an offence under the Housing Act 2004. The full details of the matter will now be referred for consideration to the implementation of formal enforcement action for the offence…."
10 February 2023	Ms Burns replied "Many thanks for your correspondence. Having attempted to restart the application, it appears

	the system will not allow me to do so, as the original one continues to be recorded as still underway. I am also unable to complete the original application, as it is listed as 'withdrawn'....”
13 February 2023	Mr Guthrie replied “As the original application has been withdrawn the system will not allow that application to be restarted or completed. In effect this application no longer exists and it will be necessary for a new application to be created…Please let me know if the system prevents you from completing this”.
14 February 2023	Ms Burns replied “Please find attached the signed documentation that was requested by the local authority on respect of this matter. I am uploading additional relevant documentation (relating to the property) to the licence application..”.
14 February 2023	Ms Burns returned the Pace questionnaire. She confirmed, inter alia, “…I still plan to move the property to a short let and the tenants are therefore on a periodic tenancy. The move will happen in the next 3 to 4 months. The council took so long with the licence it seemed to be more an opportunistic exercise to take money in the original application. I submitted all paperwork safety certificates. There was no attempt at evasion”.
29 March 2023	The Council granted Ms Burns a licence for 147 Rothbury Terrace.
12 June 2023	The Council served a Notice of Intent to impose a Financial Penalty of £5251.92 on Ms Burns and included a summary sheet setting out the detail of how that figure had been calculated. The Notice advised Ms Burns of her right to make written representations within 28 days.
1 December 2023	The Council served its Final Notice confirming the imposition of a Financial Penalty of £5251.92, together with notes on her rights of appeal. (The Council officer’s witness statements state that Ms Burns did not make any written representations in response to the Notice of Intent. At the hearing she referred to having tried to make telephone contact).
19 December 2023	Ms Burns’s appeal Application was dated and thereafter submitted to the Tribunal.
22 December 2023	Ms Burns emailed the Council stating “This email is to inform you that I have today submitted paperwork to the First-tier Tribunal in respect of my appeal against the penalty notice…”
15 May 2024	The Council wrote to Ms Burns with (“a letter before action”) seeking recovery of the penalty charge stating that if it was not paid within 14 days the Council would apply to the County Court and detailing various consequences of a court order.

Written submissions

6. In her application Ms Burns stated "My appeal is largely on the grounds that the Local Authority made errors in administering the scheme which led to misunderstandings and delays. At all times throughout, I openly declared my situation to the Authority, and the Authority was aware of the circumstances. At no time did the Authority indicate any of my actions constituted an offence. I did not avoid the selective licensing process; indeed, I initially instigated it. As my communications to the Authority were transparent, it is my contention that the Authority misadvised/misled me, and should therefore bear responsibility for the period during which my property is considered to have been unlicensed..... I duly applied for a licence online, submitted all relevant paperwork and paid the fee (£650) within the time scale set out by the Authority (completed by 17 July 2020)..... By January 2022, almost 2 years after the scheme had commenced, the licence had still not been issued. I had decided to change the flat to a short let, rather than an Assured Shorthold Tenancy, meaning that it would no longer require a licence. I informed the Authority by email that this was my intention and that the licence would no longer be required. In my email I stated that 'I have decided to change our business model and will no longer be dealing with the private rented sector/assured shorthold tenancies'. Please note the use of the future tense in this sentence; I did not write, 'I am no longer'. The use of the future tense illustrates that this was an intention and not an action that had already been carried out. The Authority concurred that in these circumstances a licence would not be required and the application was withdrawn, with the agreement of both parties, on 24th January 2022.... The Authority agreed the withdrawal of the original licence application with full knowledge that the change of use had not yet occurred. This, along with the lack of action in issuing licences, led me to believe that the licence was not required in my situation. Changing the use of the flat took longer than I had expected – the impact of Covid and the cost of living crisis hit hard and it was difficult to complete the process.
Nevertheless, at no time did I misadvise the Authority. When contacted and told I needed to reapply for the licence, I did so, and a licence is now in place...I suggested that I should only be liable for the licence fee, having paid the administration fee in the first application process. The Authority demanded I pay the administration fee once again, and so I paid a further £650, making the total I have paid on this application £825. Nevertheless, I still plan to move to a short-let basis; However, having paid for the licence, finances are further stretched. It is unfortunate that my plans are further delayed as it is my desire to operate short term lets, rather than long term..... If an offence was committed, the Authority must/should have known that at the time, and therefore should not have withdrawn the application, or should have made it clear the potential consequences. Had it been made clear to me that this was an offence, I would not have proceeded with the withdrawal. .... Additionally, at the time of the application withdrawal, the Authority did not impose a deadline within which the changes were required to take place. Had the Authority indicated that the required changes must be made within 2 weeks of withdrawal, I would not have proceeded. Had the Authority indicated a period of 6 months, I would have considered withdrawing.

However, no stipulation or clarity was provided. This lack of precision again led to misunderstandings. … I would like to request that the Tribunal order the Authority, in light of the above, to reconsider their intention to impose a penalty in these circumstances, and withdraw the Notice of Intent. Nevertheless, should the Tribunal uphold the decision to proceed with a penalty, I would ask that consideration be given to the amount levied and the amount specified be significantly reduced. The last two years have been financially challenging for me, as well as many others. I have two dependent children and, due to the pressures of Covid, rising interest rates, then energy prices and the cost of living crisis, I have had months where I am paying energy bills (which have almost trebled) on credit cards".

7. Ms Burns in her written statement of case in July 2024 made further criticisms of the Council including saying "Furthermore, by holding my money for almost 2 years ….and not actually issuing a licence, the Authority is effectively guilty of misappropriation of funds. The Authority took my money and did not deliver a licence in a timely manner. Had the Authority issued the licence for which I paid within a timely manner, we would not be here today. This expensive and time-consuming process is entirely unnecessary and the fault lies with the Authority….
The Authority currently has a huge backlog in terms of void social housing and housing in desperate need of repair. Thousands of people across Newcastle upon Tyne are sitting on waiting lists for social housing. Yet the Authority cannot competently issue a selective licensing scheme that it chose to implement, and, instead of dealing with more pressing matters, is wasting time and resources bullying landlords such as myself, who maintain properties to a high standard. The degree of hypocrisy is unacceptable.
Additionally, I have paid – twice – for this licence. If someone were to stand accused of evading the regulations, it is hard to see how they could have handed over money in good faith on not one but two occasions. The Authority failed to administer the licence for my property. As such, the Authority is responsible for any unlicensed period. There are no reasonable grounds on which I should bear the responsibility.
As this was entirely new legislation, the Authority is responsible for ensuring all affected residents are informed. The Authority failed to do this. The Authority claims that the scheme was advertised in publications such as Citylife. Given the potential seriousness of the scheme, this is entirely inappropriate. Landlords should have been written to directly and informed of the details of the scheme…..They did not bother to do so when implementing the scheme. This is a dereliction of duty on their part.
I emailed and called the Authority at various stages to enquire about the licence but was repeatedly informed there was a backlog of administration….
Repeated queries were not responded to … The Local Authority did not seem prepared for the scheme, and it became clear it had been launched without adequate systems and staffing being in place. This caused confusion for landlords and overall degraded the reputation of the scheme. Throughout, the Local Authority did not update me on the progress of my application and held my funds without issuing a licence for 20 months (July 2020 – January 2022). The reason given by the Authority was the volume of applications, but this was something for which the Authority could and should have prepared,

given that they know how many privately rented properties there are in the designated licensing zone.
By January 2022, almost 2 years after the scheme had commenced, the licence had still not been issued. I had decided to change the flat to a short let, rather than an Assured Shorthold Tenancy, meaning that it would no longer require a licence…. the flat has been empty for several months now and renovations are taking place. However, having paid for the licence, finances are further stretched.
Overall, it seems that the Authority was rolling out a new scheme, and there were teething problems with this. Whilst I can understand that administrative backlogs and systemic errors are perhaps inevitable with new systems, it is not acceptable that individuals are heavily fined when they have been misadvised and/or misled.
The Authority has not acted with integrity throughout. Taking funds and not delivering is not a responsible way to operate.
Given that the Authority failed to administer the licence for 20 months in the first instance, and that the Authority was aware of the circumstances at the time that the withdrawal of application was made, the Authority must bear responsibility in this case….
Further evidence of the current inadequacy of the Authority's systems in relation to the selective licensing process: despite the lodging of this appeal and the suspension of the penalty for the duration of the process, the Authority continues to harass me for payment of the penalty. On 15th May 2024, a letter was sent to my home address demanding payment of £5251.92 within 14 days. This letter contained threats of bailiffs, Charging Orders and Third Party Debt Orders. The Authority clearly believes it can act with impunity against its own residents whilst making error after error. This is nothing short of bullying and is entirely unacceptable".
She also gave further details of her outgoings, which the Tribunal has carefully noted…. and stated, inter alia, "I have no savings. Due to 14 consecutive interest rate rises, the mortgage payments on 147 Rothbury Terrace have gone from £125/month to £600/month, thus drastically reducing my income …. The monthly rental income from this flat fell to £216.76 per month (not accounting for maintenance): Rent: £816.80 Mortgage: £600.04 Income: £216.76… …A financial penalty of £5251.92 is therefore devastating and is not remotely proportionate. As the alleged offence (which I deny) is deemed to fall between £3000 - £6000, it is unreasonable to levy a penalty at the higher end of this range. I have no evidence that the Authority has conducted any form of review into my financial situation to determine this amount, yet the selective licence policy states that the fine should be determined by this…
I request that the Tribunal…. cancel the penalty; if not, then I request that the Authority significantly lower the threshold in my case, firstly on account of the points raised above regarding communications between the Authority and I, and secondly given the small amount of income the property in question is generating. I would request that the Tribunal take into account the fact that the flat in question, 147 Rothbury Terrace, has been maintained in good condition throughout. The conditions of the licence were already in place prior to the original application, and these high standards have been sustained. At no time did my tenants suffered any discomfort or inconvenience as a consequence of this issue. I take my responsibilities as a landlord very seriously and find the Authority's determination to criminalise

hardworking people somewhat disturbing….. Double standards should not be operating so clearly in public life….

8. The Council's case papers included witness statements from Mr McFall, Mr Guthrie, and Ms Cassley, a Senior Practitioner, copies of emails, letters, screenshots, Ms Burns registered title, the Designation of the Selective Licence area, checklists, the various notices, the Council's Private Housing Enforcement Policy and Civil Penalties guidance and the Government's guidance.

9. The Council in its written submissions referred (inter alia) to those matters set out in the timeline, explaining why it had determined that the offence had been committed, and its justification for and calculation of the financial penalty having regard to its published policy. It stated "The culpability level for this case was deemed as 'high'. Ms Burns fell far short of her legal duties. Ms Burns had admitted that she knew of the existence of the licensing scheme. She was aware that the property had been occupied in a licensable manner since 2020. Although she had intended to change the occupation of the property she had not done so and the existing tenants remained in place"…. "The risk of harm was deemed to fall into the lowest category;" It identified 3 aggravating factors " a) the offence had continued over a prolonged period, b) the offence had been motivated by financial gain - the cost of the licence fee, and c) there had been deliberate concealment of the activity – the property had continued to be occupied by the same tenants and Ms Burns had not reapplied for a licence". 3 mitigating factors were identified "a) Ms Burns had accepted responsibility b) Ms Burns had no previous convictions c) Ms Burns had no history of non-compliance". In answer to grounds identified in the application it said that whilst Mr Burns was entitled to change her business to short lets, the property remained licensable whilst occupied in a licensable manner. She should not have withdrawn her license application until such time that the property was no longer occupied in a licensable manner; the local authority was entitled to take her assertion that she no longer wished to proceed with the licence application at face value; she had not requested a temporary exemption. "In any event the property remained unlicensed from more than one year after the licence application was withdrawn. It was not a temporary state of affairs"; responding to the assertion that it was up to the local authority to advise her, the Council stated that Ms Burns " was a professional landlord who at the time owned 3 properties which she rented out, it is expected she will be aware of her legal obligation as a landlord" The Council noted she had not responded to the Notice of intent and stated that had she done so, she could have provided details of her financial situation "As she did not, the Local Authority had no evidence upon which to consider departing from its calculation".

The Hearing

10. The hearing took place using CVP (the common video platform) on 11 March 2025. Ms Burns represented herself. Also in attendance were Mr McFall, Mr Guthrie, Ms Cassley and Ms Bagshaw, the solicitor for the Council.

11. The parties were thanked for the papers which had been studied carefully. The Tribunal then outlined the matters that it needed to consider, having explained the nature of the alleged offence and potential defences.

12. After opening submissions, the events referred to in the timeline and the written submissions were discussed, clarified and amplified. The Tribunal asked various questions, and the parties were given ample opportunities to ask questions of each other.

13. It would be otiose to attempt to set out all that was said. Instead, the Tribunal has highlighted matters of note which went beyond what was in the papers and which were found to be relevant to, or helpful in explaining, its decision-making.

14. Ms Burns confirmed that: –

- she had nothing to hide and there was no evasion and no deliberate attempt for financial gain and no evidence of financial gain;
- the property had been let to long-term tenants Charlotte and Aaron continuously for over four years and at all material times;
- so far as she could recall, at the beginning of their tenancy they paid rent of £650 per calendar month, but which throughout the periods in question had risen to £780 per month;
- she repeated a number of her written submissions emphasising the licensing scheme was new, and that getting information from the Council was like trying to get "blood out of a stone" and that it had not advised her properly;
- she is the owner of the 3 Tyneside flats in Heaton referred to in her email of 4 January 2022, (she had inadvertently referred to 118 Cartington Terrace as being 118 Rothbury Terrace in that email);
- in addition to her home in Gosforth, she also owns another letting flat in Gateshead, together with two holiday cottages in Northumberland purchased so far as she could recall, in or around February 2023;
- her address as shown on the registered title to 147 Rothbury Terrace is out of date and was where she used to live;
- she did not employ managing agents, the standing orders shown in her exhibited rental bank statements referencing Property Management fees were to her partner for his input, and those to Joicey Street management company were effectively a service charge contribution in respect of the Gateshead flat;
- she defined short-term lets as being for a few days or up to a month;
- she could not remember exactly when 157 Rothbury Terrace and 118 Cartington Terrace had ceased to be used for longer term lettings. One was being used for short-term lets and another empty. She thought that one was now registered for business rates rather than Council tax but waiting on the valuation agency.
- she was asked about what steps had been taken to bring the long-term tenancy of the property to an end after the withdrawal of the initial licence application and said that a notice had been served, albeit without legal help, and a conversation had with the tenants on the phone after which the intention had been shelved;

- she appeared to be unaware that an eviction notice would not be valid whilst the property remained unlicensed;
- no rent repayment orders had been claimed by the now former tenants of 147 Rothbury Terrace.

15. Ms Cassley alluded to the steps taken before the introduction of the selective licensing scheme, and explained the pressure that the Council had been put under at its outset due the covid lock downs, with staff suddenly having to work from home, and trying to navigate new ways of communicating in very difficult circumstances. She confirmed that no one had been penalised for late applications in the early months, and there had been a publicised moratorium delaying the effective start date until July 2020, but that in itself had caused further problems, due to a huge backlog.

16. The parties were asked about the 4 different figures for the monthly rent for the property referred to in different parts of the papers. It was noted that in Mr McFall's notes of his conversation with the tenant, Charlotte, on 12 January 2023 he referred to rent of £800, whereas in his witness statement he referred to £850. He confirmed that the witness statement was wrong and contained a typographical error. Ms Burns in her Pace replies had referred to £780 whereas in her statement of case she had referred to a monthly figure of £816.80. She said that the latter figure must have been a mistake.

17. There was detailed discussion as to Ms Burns' email sent to the Council on 4 January 2022. The Tribunal read that out confirming that it was important that it should be read in its entirety to properly understand its ordinary and natural meaning. Ms Burns was adamant that it had put the Council on notice that her intention to move to short-term lets had still to be actioned. The Council's view was it should be taken to mean what it said. Having aired at length how the sentence beginning with the words "in the meantime…" might or should be interpreted, Ms Burns was specifically asked about her subsequent sentence "As such, the licences are no longer required". She said that was probably written more in frustration due to the delays and because the licences had not been issued, and it was not indicative of understanding the consequences of withdrawing the initial application.

18. Ms Cassley explained that in normal circumstances fees were levied in 2 parts with £175 payable on receipt of the original application and a further £475 due prior to the grant of the licence. Having referred to the papers it was noted that in this case, because of the pandemic, Ms Burns had been granted a bypass code allowing for a delayed payment. The papers showed that Ms Burns had paid the full fee for all 3 properties in respect of the initial application in October 2020. It was also agreed and confirmed that a full fee of £650 had been paid in respect of the new application made in February 2023.

19. When the discussions turned to the Council's policy, Ms Burns referred to parts of the Private Sector Housing Enforcement policy and the principles underpinning that saying that enforcement action should be targeted at properties and people that pose the greatest risk. She felt that she had been wrongly targeted and pointed to references referring to use of informal action, guidance, and advice. Ms Bagshaw explained that that particular overarching

policy covered the whole range of private-sector housing matters including health and safety matters, prosecutions and all the other areas referred to under the various headings listed within it. She also referred to the Council's detailed and specific civil penalties policy and guidance.

20. Ms Cassley and Mr Guthrie were both questioned as to their calculation of the penalty charge. Both still regarded it correct to have assessed the level of culpability as being high, taking the view that Ms Burns was aware of, or at the very least should have been aware of, her legal obligations and had allowed the offence to continue over a long period of time. All parties agreed that the level of harm was low. The mechanics of how the notional figure for a landlord's income was included within the matrix calculations was noted.

21. When discussing the aggravating and mitigating factors included within the Council's calculation Ms Burns submitted that there was a lack of clarity as to what the word "prolonged" might mean. Mr Guthrie, having referred to the usual 3-month period for temporary exemption notices which as he explained were only given in exceptional circumstances, said that might indicate, in the context of licensing, that any period over 3 months could legitimately be considered as being prolonged. Ms Burns submitted the Council was at fault because of a lack of definition or certainty. Mr Guthrie said that a period of over a year was, by any definition, prolonged.

22. Ms Burns said that she had not been motivated by financial gain. Mr Guthrie pointed out that she had asked for the fees to be returned.

23. Ms Burns emphatically denied any "deliberate concealment of the activities/evidence". Mr Guthrie said his assessment had been based on Ms Burns not returning to the Council after acceding to her request to withdraw the initial application to make it clear that she had not ceased letting the property as before. There was reference to how the word "deliberate" should be interpreted.

24. Mr McFall explained whilst he had not entered the property it looked well-maintained from the outside and the tenants had certainly not made any complaints.

25. Mr Guthrie agreed, after reflection, that there was no good reason not to include within the calculation reference to 2 more mitigating factors which are specifically labelled within the Council's policy being "cooperation with the investigation" and "good record of maintaining the property".

26. Towards the end of the hearing, and when discussing her financial circumstances, Ms Burns confirmed the following estimates based on her most recent valuations: –

Property	Value £	Mortgage £
Her home in Gosforth	420,000	320,000
147 Rothbury Terrace	150,000	120,000
157 Rothbury Terrace	125,000	95,000

118 Cartington Terrace	140,000	100,000
Gateshead flat	60,000	72,000
2 holiday cottages in Northumberland	440,000	350,000

27. Ms Bagshaw in her closing comments submitted that the offence had clearly been made out, any lack of knowledge the scheme at its outset was irrelevant, nor could possibly provide Ms Burns with a reasonable excuse for not having a necessary licence some 18 months after it was known about. The Council had applied its policy properly, although it was obviously open to the Tribunal to take its own view on the detailed calculations of the penalty charge.

28. Ms Burns in her closing comments reiterated that it was a new licensing scheme that many landlords were unfamiliar with. She submitted that the Council had failed to offer proper guidance and there was misinformation and misunderstanding. The Council had failed to do what it was supposed to do, it had not set clear timescales or definitions. There had been no financial gain and no deliberate concealment because she had always responded at all times. She considered the policies had been unfairly applied with mitigating factors overlooked.

The Statutory Framework and Guidance

29. Section 249A(1) of the Act (inserted by the Housing and Planning Act 2016) states that a "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…". Subsections (3)(4) and (5) specify only one such penalty may be imposed on a person for the same conduct, the amount is limited to £30,000 per offence and the housing authority may not impose a financial penalty if there has been a conviction or if there are ongoing criminal proceedings in respect of the offence. Subsection (9) confirms that a person's conduct includes a failure to act.

30. The list of relevant housing offences is set out in Section 249A(2),which includes the offence, under Section 95(1) of the Act, of controlling or managing of an unlicensed house.

31. Section 95(3)(b) states that it is a defence, if at the material time an application for a licence had been duly made. Section 95(4) states that it is also a defence if the person committing the offence had a reasonable excuse.

32. The procedural requirements are set out in Schedule 13A of the Act.

33. Before imposing a penalty the local housing authority must issue a "notice of intent" which must set out

- the amount of the proposed financial penalty,
- reasons for proposing to impose it, and
- information about the right to make representations. (Paras 1 and 3)

Unless the conduct to which the penalty relates is continuing the notice of intent must be given before the end of the period of 6 months beginning on

the first day on which the authority has sufficient evidence of that conduct. (Para 2)

34. A person given notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the Notice was given. (Para 4)

35. If the housing authority then decides to impose a financial penalty it must give a "final notice" imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the final notice was given. (Paras 6 and 7)

36. The final notice must set out: –

- the amount of the financial penalty,
- the reasons for imposing it,
- information about how to pay it,
- the period for payment,
- information about rights to appeal; and
- the consequences of failure to comply with the notice. (Para 8)

37. The local housing authority in exercising its functions under Schedule 13A or section 249A of the Act must have regard to any guidance given by the Secretary of State.(Para 12)

38. Such guidance ("the Guidance") was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled "Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities".

39. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

40. The Guidance states "Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the… penalty is set at an appropriate level:

- severity of the offence,…
- culpability and track record of the offender,…
- the harm caused to the tenant,…
- punishment of the offender,…
- deter the offender from repeating the offence,….
- deter others from committing similar offences,….
- remove any financial benefit the offender may have obtained as a result of committing the offence…

41. The Council documented its own "Private Sector Housing Enforcement Policy" in July 2020 and "Private Sector Housing Civil Penalties Guidance" which was revised and updated in April 2022 and included copies in the papers. They are together referred to in these reasons as "the Council's policy".

42. A person receiving a final notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the Act).

43. The final notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

44. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

45. The Tribunal may confirm, vary or cancel the final notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

46. The Upper Tribunal has, in various cases, confirmed that: –

- the Tribunal's task is not simply to review whether a penalty imposed by a Council was reasonable, it must make its own determination having regard to all the available evidence,
- in so doing, it should have regard to the 7 factors specified in the Guidance,
- it should also have particular regard to the Council's own policy. *Sutton and another v Norwich City Council [2020] UKUT 90 (LC).*
- the Tribunal's starting point in any particular case should normally be to apply that policy as if it were standing in the Council's shoes,
- whilst a Tribunal must afford great respect (and thus special weight) to the decision reached by the Council in reliance on its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review; the Tribunal must use its own judgement and it can vary the Council's decision where it disagrees with it, despite having given it that special weight. If, for example, the Tribunal finds that there are mitigating or aggravating circumstances which the Council was unaware of, or of which it took insufficient account, the Tribunal can substitute its own decision on that basis. *London Borough of Waltham Forest v Marshall and another [2020] UKUT 0035 (LC).*

The Tribunal's Reasons and Conclusions

47. After having carefully considered all the evidence in the round, the Tribunal made the following findings, supplementing the facts that were self-evident from the papers: –

- Ms Burns had understandable frustrations due to the time taken by the Council to process initial application;
- however, she was not prejudiced by that or at risk of committing an offence whilst the Council were processing the initial application;

- there is no evidence to substantiate her claim that she was “misadvised or misled” by the Council;
- her complaints that Council had not met its statutory requirements before introducing selective licensing in Heaton were not substantiated;
- not being individually advised as to the introduction of selective licensing to parts of Heaton is not evidence that the Council failed in its duties;
- nor was there ever any suggestion of Ms Burns being penalised for not knowing about the scheme at its inception;
- in any event, her initial lack of awareness is irrelevant to considerations of whether an offence took place some 18 months after she had clearly become aware of the need for a selective licence;
- the Council had published detailed advice on its website. The latest and present version of “Property Licensing- A guide to compliance” is dated August 2020;
- Ms Burns has in her various written submissions and at the hearing has repeatedly sought to deflect responsibility from herself to the Council;
- Ms Burns, not the Council, instigated the withdrawal of the initial application;
- the Council was entitled to read, as did the Tribunal, her email of 4 January 2022 as confirmation that licences for her 3 properties in Heaton were no longer required. She did not ask for clarification. She stated the matter as a fact and asked for her money back;
- rather than finding that the Council had misled the Ms Burns, the Tribunal found the email to be misleading and possibly even disingenuous. Only by applying a very generous interpretation can it construe it as containing an innocent inadvertent misrepresentation based on a misunderstanding of the licensing requirements;
- by later selectively quoting from that email and attempting to spin the syntax she has tried to make the case that it should have been immediately obvious to the licensing department of Council that what she had stated, as a fact, was wrong;
- the Tribunal does not agree;
- nor does it agree that the Council was by its actions in some way endorsing the fanciful notion that any continuation of the letting of 147 Rothbury Terrace, or any of her 3 properties in Heaton, as a main residence without a licence could somehow be compliant;
- it was Ms Burns, not the licensing Department of the Council, who had full knowledge of how 147 Rothbury Terrace was occupied;
- she either knew, or the very least should have known, that if it continued to be occupied as a main residence, a selective licence was required;
- as time went on with such occupation continuing, she became ever more duty-bound to make the licensing department aware of the true situation;
- by not correcting what, at best, may be construed as having been an innocent inadvertent misrepresentation in January 2022, she became increasingly culpable;
- nonetheless, Ms Burns did have a perfectly legitimate complaint that the letter before action should not have been sent by the Council. She had clearly advised the licensing department of her appeal in December 2023.Whilst an

- appeal is pending the Final Notice is suspended until the appeal is finally determined or withdrawn.

48. There are three substantive issues for the Tribunal to address: –
- whether the Tribunal is satisfied beyond reasonable doubt that Ms Burns has committed a "relevant housing offence" in respect of the property,
- whether the Council has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
- whether a financial penalty is appropriate and, if so, has been set at the appropriate level.

Dealing with each of these issues in turn:-

49. Ms Burns has readily confirmed that the property was continuously let from the withdrawal of the original application in January 2022 until the submission of her subsequent application for a licence in February 2023.

50. There was no dispute therefore that the property was unlicensed at times when it was required to be licensed, and the Tribunal was satisfied, beyond any reasonable doubt, that the offence set out in Section 95(1) of the Act of having control or managing of an unlicensed house was committed, unless Ms Burns had the defence under Section 95(4) of having a reasonable excuse.

51. The case of *IR Management Services Ltd v Salford City Council [2020] UKUT 0081(LC)* confirms that the burden of proving any such defence falls on the person seeking to rely on the defence, in this case Ms Burns, and must be established on the balance of probabilities. The Tribunal finds that she has not done so.

52. The Tribunal reminded itself that not applying for a licence is not the same thing as controlling a property without a necessary licence. This was confirmed and explained by the Court of Appeal in *Palmview Estates Ltd v Thurrock Council [2021] EWCA Civ 1871*.

53. The important question is not whether Ms Burns had a reasonable excuse for not applying for a licence, but rather whether there was a reasonable excuse for her renting the property without a licence.

54. The Tribunal finds that there was no such reasonable excuse. Ms Burns knew about the need for a selective licence. She was not misled by the Council. She is responsible for her own actions. She advised the Council in January 2022, by her own volition, that a licence was no longer required, yet she thereafter continued for over a year to let the property as an only or main residence without a licence or applying for a licence.

55. The Tribunal found that Ms Burns is an experienced landlord and the owner of, or having an interest in, a portfolio of 6 properties in addition to her own home. It was her responsibility to ensure that statutory requirements are met, rather than avoided.

56. Her criticisms of the Council do not justify, nor provide a reasonable excuse for, avoiding her own responsibilities. Ms Burns has provided no good reason as to why she did not properly inform herself of the licensing requirements. All the relevant information was publicly available, including on the Council's website.

57. In *Thurrock Council v Daoudi (2020) UKUT 209 (LC),* the Upper Tribunal observed "No matter how genuine a person's ignorance of the need to obtain a licence, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence".

58. The Tribunal is satisfied therefore, beyond reasonable doubt, that offence under Section 95(1) of the Act was committed and without there being a reasonable excuse. The offence subsisted for over a year.

59. The Tribunal next carefully reviewed the actions taken by the Council and the timing and information set out in its different notices and concluded that it had complied with the necessary procedural requirements to be able to impose a financial penalty.

60. The Tribunal then considered the appropriateness and amount of a penalty.

61. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence, which as confirmed in the Guidance is an alternative to prosecution. In *Daoudi* the Deputy President of the Upper Tribunal said at paragraph 31 "I do not see how eventually doing what the law requires can justify a decision to impose no penalty at all, although it has a bearing on the level of punishment." The importance of failure to obtain a licence should not be underestimated. Unlicensed properties undermine the statutory objective to promote proper housing standards and a Housing Authority's regulatory role and pose a risk for harm. Ms Burns as a landlord has a duty to ensure that relevant legislation is complied with.

62. The Tribunal began the task of assessing the appropriate amount of the fine by a review of the actions of the parties and an evaluation of the evidence. In so doing it has had particular regard to the 7 factors specified in the Guidance.

63. Whilst not bound by it, the Tribunal also carefully reviewed the Council's policy and generally found that it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. The Tribunal accepts that the policy results from a process whereby the Council has sought to fulfil its statutory duty to provide a clear and rational basis for its determinations on a case-by-case basis. As confirmed by the Upper Tribunal in the *Sutton* case, the local authority is well placed to formulate its policy on penalties taking into account the Guidance, and that "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities and not by courts or Tribunals. The local housing authority will be aware of housing conditions in its locality

and will know if particular practices or behaviours are prevalent and ought to be deterred".

64. As such the Tribunal was content to use the Council's policy as the starting point and as a tool to assist its own decision making, paying very close attention and respect to the views expressed by the Council, to see if after making its own decision (in place of that made by the Council) the Tribunal agreed or disagreed with the Council's conclusions.

65. The Council's policy refers to a four-stage process in determining the level of the penalty. "Stage 1 determines the penalty band for the offence. Each penalty band has a starting amount and an upper and lower limit. Stage 2 determines how much will be added to the penalty amount as result of the landlord's income. The landlord's track record will be taken into account including aggravating and mitigating factors. Stage 3 is where the figures from stage 2 are added to the penalty band from stage 1. Stage 4 considers any financial benefit the landlord obtained from committing the offence. This amount will be added to the figure from stage 3."

The Council's calculation of the Financial Penalty

66. As part of Stage 1, the Council assessed Ms Burns's culpability as high and the harm level as low. This put the penalty within the Council policy's Level 3 and its penalty band of £3000 – £6000, where the starting amount is £4500. As part of Stage 2, it applied the formula set out in the policy to reflect Ms Burns income, which set that at 150% of the weekly rent from the property. It then found that the relevant aggravating and mitigating factors counterbalanced each other. Finally, it added a figure to reflect its assessment of the financial benefit obtained from committing the offence.
Its computation of the penalty incorporated in both the Notice of Intent and the Final Notice can be summarised as follows: –

Starting Amount	£4500
3 aggravating factors were noted, but they were offset by 3 mitigating factors resulting in the starting amount remained unchanged	–
Additions were applied with the assessments of: –	
Ms Burns relevant income (150% of weekly rental income of £184.62); and the	£276.92
Financial benefit from committing the offence being the balance of the licence fee which had been avoided	£475
	£5251.92

67. The Council had assessed the harm rating as low, which the Tribunal agrees with. There was no suggestion of any complaint from the long-standing tenants, nor that the property was other than in good condition.

68. The Tribunal also, and after careful consideration of the terms of the Council's policy, agreed that Ms Burns culpability had been correctly assessed as within the category labelled as high. The Council's policy sets out 4 potential categories with very high as the most serious.

69. The combination of "high" level culpability and "low" harm put the penalty within level 3 in the Council's matrix with the starting point being £4500.

70. The Tribunal agreed with 2 of the 3 aggravating factors identified by the Council. The first, that the offence had continued over a prolonged period- being entirely satisfied that a year in this context was a prolonged period and, the second, that Ms Burns had in part been motivated by financial gain because she had unambiguously sought a refund of all 3 of the licence fees paid as part of the original application. The Tribunal did not agree with the Council's third aggravating factor, taking Ms Burns at her word, and that her concealment of the continued letting of the property had not been deliberate.

71. The Tribunal agreed with all 3 of mitigating factors that the Council had applied, and saw no reason not to add to them 2 more of those specifically referred to in its policy being firstly "cooperation with the investigation"- because there was no evidence to suggest otherwise, and secondly as was now agreed both by Mr Guthrie and Mr McFall- because Ms Burns had a "good record of maintaining the property".

72. Having identified 5 mitigating factors offset by 2 aggravating factors (and with each factor requiring a 5% movement) the starting point figure of £4500 fell to reduce by 15% i.e. to £3825.

73. The Tribunal's relevant income calculation was slightly adjusted from that of the Council to reflect the best evidence as to the rent as having been £780 per month or £180 per week. 150% of the weekly rent amounted to £270 which was then added to the figure of £3825 referred to in the previous paragraph resulting in a figure of £4095.

74. The Tribunal did not feel it appropriate to add anything further to that in respect of the cost of that part of the original application fee which had been refunded, because of Ms Burns having subsequently effectively repaid that when paying the fee for the new application.

75. It is perfectly logical for a Housing Authority to use a formula (indeed the legislation has mandated that it should have a policy), but it is essential that it, and in this instance the Tribunal, then review the answer given in a holistic way, to see if that answer in a particular case is able to pass the test of being reasonable and proportionate in all the circumstances.

76. The Tribunal, when reviewing the figure of £4095, noted (inter alia),

- that it is the equivalent of 5¼ months' rent;
- and between 13% and 14% of £30,000, being the maximum penalty that could have been imposed by law for a single offence, but which

understandably the Guidance states generally would only be expected to be reserved for the very worst offenders;

- that Ms Burns is no longer at risk of being ordered to repay rent to her former tenants. Not because an application for a rent repayment order would have been without merit, but simply because of it would now be out of time;
- that when she withdrew the original application and the bulk of the fees previously paid for the 3 properties were returned, she may have received a windfall in respect of any periods within the 5-year term of the licensing scheme when the other 2 rented properties in Heaton should also have been licensed;
- she is an experienced landlord with a portfolio of letting properties;
- which she has been able to add to in the last 2 years;
- the necessary new licence application was not made until over 12 months after the withdrawal of the original application;
- but, Ms Burns then lodged a new application and paid a new fee of £675;
- the licence was granted; and
- there was no evidence or suggestion of the property being substandard.
- The Tribunal reminded itself that it must consider all 7 factors referred to in the Guidance being the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, punishment of the offender, and the need to deter not just the offender but also others from repetition as well as removing any financial benefit obtained as a result of committing the offence, and as the Guidance confirms "a civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities".

77. Having conducted that review and carefully considered all the matters referred to in the Guidance, the Tribunal is content that the figure of £4095 is just, equitable and proportionate in all the circumstances of the case and should therefore be confirmed.

78. The Tribunal did not find a compelling reason to limit it on the grounds of Ms Burns' ability to pay. It accepts what she has disclosed as regards her income, but notes that she has also confirmed having a substantial portfolio of properties with, on her own figures, a present combined equity, after allowing for present mortgage balances, of approximately £278,000. It is relevant in this context to note that she was able to expand that portfolio and obtain a substantial additional mortgage in 2023. It is also noted that the Council's private-sector housing enforcement policy [at p22] in the section headed "Financial means to pay a civil penalty" states "if an offender claims they are unable to pay a financial penalty and shows that they have only a low-income, consideration will be given to whether any of the properties can be sold or re-financed".