



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

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| Case Reference | : MAN/ooCA/HNA/2022/0079 |
| | 16 Carriage Grove, Bootle L20 3JF |
| Also referred to as:- | |
| Property | : 16B Wishing Well, Carriage Grove, Bootle L20 3JF / Apartment 16, Wishing Wells Apartments, Litherland Road, Bootle (L20 3JF) |
| Applicant | : Tiger Investments 7 Limited |
| Representative | : N/A |
| Respondent | : Sefton MBC |
| Representative | : Ms Fiona Townsend |
| Type of Application | : Appeal against a Financial Penalty – Section 249A of & Schedule 13A to the Housing Act 2004 |
| Tribunal Members | : Tribunal Judge L. F. McLean Tribunal Member Mr K. Kasambara |
| Date of Hearing | : 12th December 2023 |
| Date of Decision | : 13th December 2023 |

DECISION

Decision of the Tribunal

(1) Pursuant to Paragraph 10(4) of Schedule 13A to the Housing Act 2004, the Tribunal confirms the Final Notice Imposing a Financial Penalty dated 3rd August 2022 and served on the Applicant by the Respondent, in the sum of £3750.

The appeal

1. The Applicant appeals against a Final Notice Imposing a Financial Penalty dated 3rd August 2022 in the sum of £3750 (“the Final Notice”), which was served upon him by the Respondent in respect of a relevant housing offence concerning the premises registered at HM Land Registry under title number MS684599 and which is variously known as 16 Carriage Grove, Bootle L20 3JF / 16B Wishing Well, Carriage Grove, Bootle L20 3JF / Apartment 16, Wishing Wells Apartments, Litherland Road, Bootle L20 3JF (“the Property”).

Background

2. The full facts of this matter are set out in the respective statements of case of the parties, of which the most salient issues are addressed below.
3. The Applicant is the current registered leasehold proprietor of the Property. The Property has been subject to selective licensing under Part 3 of the Housing Act 2004 (“the Act”) since 1st March 2018.
4. The Respondent wrote to the Applicant on 23rd March 2022 to invite it to apply for a licence for the Property under Part 3 of the Act. Although an application had already been started on 31st January 2022, the application was incomplete and ineffective and ultimately expired on 2nd April 2022. The Respondent’s view was that no effective application was duly made until 1st February 2023. In the intervening period, the Respondent sent the Applicant a Notice of Intent to Impose Financial Penalty in the sum of £3750, under Section 249A of the Act (“the Notice of Intent”), and ultimately sent him the Final Notice.
5. The Applicant’s appeal was made on 24th August 2022 and considered at a hearing on 12th December 2023 at The Liverpool Civil and Family Court and Employment Tribunal, 35 Vernon Street, Liverpool L2 2BX. The week before the hearing, the Tribunal received an email from Mr Akash Soni (director of the Applicant) in which he stated that the Applicant would not be represented at the hearing and that nobody would be attending on its behalf. The Respondent was represented by its employed lawyer Fiona Townsend, with Clare Taylor and Kim Cahill in attendance as witnesses. Although both parties had requested that the Tribunal determine the case on the papers and without a hearing, the Tribunal explained that Procedural Fairness will generally require an oral hearing (even where the parties have consented to “paper determination”) where a party is at risk of being found to have committed a criminal offence (*Raza v Bradford MBC [2021] UKUT 39 (LC)*).

6. The members of the Tribunal considered the parties' oral and written submissions and evidence and documents filed in accordance with the Tribunal's directions.

Grounds of the appeal

7. The Applicant (through its director Mr Soni) raised various issues in relation to why it was challenging the Final Notice, although the specific grounds of appeal were set out in quite a vague manner and with some degree of mutual contradiction or inconsistency. In summary, the key grounds of dispute appeared to be:-
 - a. The Applicant's director or agents had attempted to complete an application online but had been unable to do so because of problems with the website crashing;
 - b. The Applicant's director had sought to enlist assistance from employees at his offices but the offices were closed and staff were furloughed due to the Coronavirus pandemic;
 - c. The Applicant had asked its lettings agent to undertake the work, but this could not happen as the assigned employee was ill with Covid-19;
 - d. The Applicant's director or agents had telephoned the Respondent's offices but would either get cut off after waiting or would be passed between different departments who did not assist;
 - e. In the Applicant's view, under s95(3) of the Housing Act 2004 "a notification and an application had been made" but were not processed due to circumstances which it asserted were entirely out of its control, amounting to a statutory defence.

Issues

8. The issues which the Tribunal had to decide were:-
 - a. Is the Tribunal satisfied that a relevant offence had been committed?
 - b. Was the Notice of Intent served within the relevant time period?
 - c. Was the Final Notice duly served?
 - d. Having regard to the Respondent's Financial Penalty policy, should the Tribunal confirm, vary or cancel the Final Notice?

Relevant Law

9. The relevant sections of the Act read as follows:-

85 Requirement for Part 3 houses to be licensed

(1) Every Part 3 house must be licensed under this Part unless—

- (a) it is an HMO to which Part 2 applies (see section 55(2)), or
- (b) a temporary exemption notice is in force in relation to it under section 86, or
- (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

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 a 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).

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**

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.

Evidence

10. The Applicant relied on the contents of its Application Form, and its Statement of Case (to which was attached copies of various emails and letters).
11. As the Applicant had chosen not to attend or be represented at the hearing or to contest the Respondent's evidence, the Tribunal acknowledged the written evidence submissions and evidence provided by the Respondent.
12. The Respondent's solicitor asked the Tribunal to strike out the application on the basis that the issues raised by the Applicant could not amount to a defence. However, the Tribunal explained that it was obliged to conduct a re-hearing of the Respondent's original decision so it was appropriate for the Tribunal to consider all of the issues before it, even if the issues relied upon by the Applicant were weak and badly pleaded.
13. The Tribunal discerns the following sequence of events from the evidence before it:-
 - a. 1st March 2018 – the Respondent's selective licensing scheme came into effect in respect of the Property, at which point no licence was in place.
 - b. 26th October 2020 – Applicant became the registered proprietor of the leasehold of the Property.
 - c. 18th January 2022 – the Applicant's lettings agent informed the Applicant of the need for a licence to be applied for within 14 days, and offers to assist for a fee of £300.
 - d. 31st January 2022 – the Applicant's director started the application process for a selective licence for the Property, but was unable to complete it and immediately contacted the lettings agents to seek assistance. The representative of the lettings agency responded to say he was ill at home with Covid-19 but offered to get in touch.
 - e. 1st February 2022 – the Applicant's director spoke with the lettings agent.
 - f. 3rd February 2022 – the Applicant's lettings agent sent an email to the director Mr Soni, advising him to stop completing the form and that he would let Mr Soni know when the Respondent advised him of a new application.
 - g. 22nd March 2022 – the absence of a licence was noticed by the Respondent's officer.
 - h. 23rd March 2022 – the Respondent's Housing Standards Team informed the Applicant in writing that a licence was required for the Property under its selective licensing scheme.

- i. 29th March 2022 – the Respondent’s computer system sent an automated email to the Applicant’s director that the application was due to be timed out.
- j. 2nd April 2022 – the Applicant’s application for a selective licence was cancelled due to being timed out.
- k. 20th April 2022 – the Respondent sent a further warning letter.
- l. 28th June 2022 – the Respondent served the Notice of Intent on the Applicant.
- m. 3rd August 2022 – the Respondent served the Final Notice on the Applicant.
- n. 24th August 2022 – the Applicant’s director Mr Soni emailed the Tribunal to appeal against the Final Notice, albeit that the submissions appeared to be directed at the Respondent and the Applicant failed to comply with the Tribunal’s rules regarding the correct form for such an appeal (although the Respondent has not contended that the Applicant failed to properly appeal in time).
- o. 26th August 2022 – the Applicant’s director sent an email to the lettings agent asking them if they could still apply for the licence on the Applicant’s behalf. A bounceback email was received explaining that the representative no longer worked there.
- p. 6th September 2022 – the lettings agency replied to say they could assist for a fee of £250 plus VAT.
- q. 9th September 2022 – the application for a selective licence was re-submitted by the lettings agents but they failed to pay the initial application fee.
- r. 13th October 2022 – the Applicant submitted an application notice for his appeal (dated 10th October 2023) to the Tribunal.
- s. 1st February 2023 – the initial fee for the selective licence application was paid and the application was thus validated.

Determination

Is the Tribunal satisfied that a relevant offence had been committed?

- 14. On 1st March 2018 the selective licensing scheme came into effect. The Applicant became obliged to comply with Section 85 of the Act in respect of the Property from 26th October 2020 when it acquired the Property. The Applicant has not disputed that from that time it had control of or managed the Property when it did not have the necessary licence in place. Accordingly, it is not in dispute that the offence under Section 95(1) of the Act was committed from 26th October 2020 onwards.
- 15. It is not clear as to the basis on which the Applicant is asserting that it ceased to commit the offence at some point before the Final Notice was served. The burden of proof is upon the Applicant to establish a relevant defence on the balance of probabilities.
- 16. The Applicant has asserted that it has a statutory defence under Section 95(3) of the Act. It suggests in its statement of case that “*both a notification and application had been made*”.

17. The reference to a notification is presumably to Section 95(3)(a) that “*a notification had been duly given in respect of the house under section 62(1) or 86(1) ... and that notification ... was still effective*”. Both of these sections of the Act refer to an exemption notice being given by the local housing authority. There is no suggestion at all that this is fact the case. The Applicant’s assertion on this point is entirely misconceived.
18. The reference to an application having been made is presumably to Section 95(3)(b) that “*an application for a licence had been duly made in respect of the house under section 87 ... and that ... application was still effective*”.
19. The Respondent’s evidence is clear that the selective licensing application had to be completed online and the initial fee paid in order for it to be deemed complete and effective, in order for it to be “*duly made*” in accordance with Section 95(3)(b). Even on the Applicant’s own evidence, this was not all done until well after 3rd August 2022 when the Final Notice was served. The application was started on 31st January 2022 and the automated email from the Respondent’s application system (which Mr Soni himself attached to the Applicant’s statement of case) states that “*You now have two weeks to complete this application. If you do not complete and submit this form along with the appropriate application fee within this timescale, action may be taken against you for operating an unlicensed property.*” He then received multiple warnings that it would be cancelled, which finally occurred on 2nd April 2022. The Applicant made no further application for a licence until after it had received the Final Notice.
20. Although the Applicant has not specifically advanced it as a ground of appeal, the Tribunal nonetheless considered whether the Applicant had made out a defence under Section 95(4) of the Act, i.e. the “reasonable excuse” defence, as this seemed to be implied by Mr Soni’s complaints regarding the exchange of emails with the lettings agent and the alleged difficulties in completing the form online and/or contacting the Respondent by telephone.
21. The members of the Tribunal found the evidence of Mr Soni on this issue to be highly troubling. He signed a statement of truth on the application notice dated 10th October 2022. His email signoff describes him as a solicitor and director of Breakthrough Solicitors, a firm regulated by the Solicitors Regulation Authority, meaning that he should be more familiar than most people with the implications of signing a statement of truth without an honest belief in the truthfulness of its contents. Despite this, Mr Soni referred to his staff as being “furloughed” in the context of being unable to complete the application, which was during spring/summer 2022, even though the Government’s furlough scheme (the “Coronavirus Job Retention Scheme”) ended in September/October 2021. The Tribunal also struggled to see how the Applicant could seemingly assert that it had relied upon its lettings agent for having submitted an application in February 2022, even though Mr Soni asserted in the application notice that attempts had been made in the intervening period to complete the application online and/or telephone the Respondent’s offices to progress the application. Regrettably, Mr Soni was not present to clarify these apparently inconsistent statements.

22. The members of the Tribunal also noted the lack of particularity regarding the number of attempts made to apply online or telephone calls made to the Respondent, which the Tribunal would have expected a solicitor – of all people – to have kept notes concerning such a serious matter, namely the commission of a criminal offence by a company of which he was a director and shareholder. The only such date which was in fact referred to was an email supposedly sent to the Respondent on 11th July 2022, but a copy of which was not even attached to the Applicant’s statement of case.

23. Given the lack of clarity on the Applicant’s grounds of appeal, the absence of particularity regarding attempts made to apply for a licence, and the seemingly inconsistent explanations offered by the Applicant’s director for the failure to do so, the Tribunal was not persuaded on the balance of probabilities that a reasonable excuse defence was made out. Indeed, the case in support of such a defence was flimsy at best.

24. As such, the Tribunal is satisfied beyond reasonable doubt that the underlying facts which comprised the offence were established, and also is not satisfied on the balance of probabilities that any defence has ever been made out. The offence only ceased on 1st February 2023 when the selective licence application fee was paid.

Was the Notice of Intent served within the relevant time period?

25. As the Tribunal has found that the relevant offence was committed continuously until 1st February 2023, the Notice of Intent (service of which was not disputed and was thus proved beyond reasonable doubt on the Respondent’s evidence) was served at a time when the offence was still being committed. In any event, the Applicant would have had no hope of persuading the Tribunal that any of the potential defences had been made out 6 months before service of the Notice of Intent, i.e. by 28th December 2021.

Was the Final Notice duly served?

26. Service of the Final Notice was not disputed by the Applicant and so this has been proved beyond reasonable doubt on the Respondent’s evidence.

Having regard to the Respondent’s Financial Penalty policy, should the Tribunal confirm, vary or cancel the Final Notice?

27. Under Paragraph 10 of Schedule 13A to the Act, the Tribunal is required to make its own decision on whether a financial penalty should have been imposed, and, if so, the appropriate amount of the financial penalty. The Tribunal should start with the local authority’s policy and afford it respect. The burden is on the Applicant to persuade the Tribunal to depart from the policy. The Tribunal can set aside a penalty which was inconsistent with the decision maker’s own policy, but it must do so without departing from the policy (*London Borough of Waltham Forest v Marshall and Ustek [2020] UKUT 0035 (LC); Sheffield City Council v Hussain [2020] UKUT 292 (LC)*).

28. For the reasons set out earlier in this Decision, the Tribunal finds that it was right to impose a financial penalty on the Applicant under Section 249A of the Act. Even after receiving the Notice of Intent, the Applicant was afforded every opportunity to avoid enforcement action but did not establish a good reason for failing to take the necessary steps.

29. The Applicant did not submit any evidence regarding its financial means.

30. Additionally, the Tribunal makes the following findings regarding the appropriate amount of the financial penalty, applying the Respondent's policy:-

- a. Culpability – Medium (Offence committed through act or omission which a person exercising reasonable care would not commit).
- b. Harm – Low (Low risk of adverse effect on an individual(s)).
- c. Within the Respondent's Policy, Medium Culpability and Low Harm has a penalty band range of £3750-£5250 with a starting point of £4500.
- d. No aggravating factors were identified.
- e. Mitigating factors included no relevant unspent previous convictions; no relevant cautions within the last two years; no relevant civil penalties within the last two years.
- f. Further and in order to meet, in a fair and proportionate way, the objective of punishment, deterrence and the removal of gain derived through the commission of the offence – the Tribunal determines that the Financial Penalty should be set in the sum of £3750.

31. Accordingly, the Tribunal confirms the Final Notice Imposing a Financial Penalty dated 3rd August 2022 and served on the Applicant by the Respondent, in the sum of £3750.

Name:

Date: 13th December 2023

Tribunal Judge L. F. McLean

Tribunal Member Mr K. Kasambara

Rights of appeal

1. 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.
2. 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.

3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).