



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

Case Reference	: MAN/ooDA/HNA/2022/0100
Property	: 26, Darfield Place, Leeds LS8 5DD
Applicants	: Kubhaib Rafiq
Respondent	: Leeds City Council (represented by Miss V Vodanovic of Counsel)
Type of Application	: Appeal against a financial penalty imposed under Section 249A & Schedule 13A Housing Act 2004
Tribunal Member	: Mr J R Rimmer Mr N Swain FRICS
Date of Decision	: 7th November 2023
Order	: The Tribunal determines that an offence under Section 95(1) Housing Act 2004 has been committed and imposes a financial penalty notice upon the Applicant in respect of 26, Darfield Place, Leeds. The amount of that penalty shall be £5,750.00.

A. Application

1. The Tribunal has received an application under paragraph 10 of Schedule 13A to the Housing Act 2004 (“the Act”) against a decision of Leeds City Council (the “local housing authority”) to impose a financial penalty against the Applicant under section 249A of the Act.
2. This penalty relates to an offence that the local housing authority determined had been committed by the Applicant in relation to managing or controlling an unlicensed dwelling house in an area of selective licencing under the regime established by the Act. The Council had designated the relevant area of the city, within which the subject property is situated, as such a selective licensing area with effect from 6th January 2020. The legislation relating to the relevant offence it considered to have been committed is set out, below, at paragraph 16, onwards.
3. The Tribunal sent a copy of the application to the Respondent, which indicated a wish to oppose the appeal.
4. Directions were given by the Deputy Regional Judge of the Tribunal and thereafter by this Tribunal, for the further conduct of this matter.
5. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application at a hearing at the Leeds office of the Employment Tribunal on 7th November 2023.
6. Counsel for the Respondent had served additional documentation upon the Tribunal and the Applicant, including a skeleton argument and two supporting authorities on the day before the scheduled hearing which the Applicant indicated he had not yet seen.
7. With the assistance of the Employment Tribunal staff further copies of the documentation were provided in paper form and the Applicant given a sufficient opportunity to read them.

B Background

8. The history of this matter is quite straightforward: 26, Darfield Place became subject to the selective licensing regime when the area within which the property is situated was designated a selective licensing area under its powers to impose selective licencing requirements in furtherance of its duty to ensure the maintenance and improvement of housing standards within the City. The Applicant has, at all relevant times, been the owner of that property.
9. On 6th October 2021 Heather McEwan, an officer of the city council had

cause to visit the property in the course of certain enquiries and found that the property was occupied by one Adrijana Motuzaite who indicated that she was a tenant of her landlord. The Council was at this point therefore aware of occupation by a tenant and further enquiries revealed that there was no licence in place in respect of the property.

- 10 The Respondent embarked upon further enquiries into the status of the property, principally through the offices of one of its housing officers, Ian Grosvenor. He was assisted by another officer, Stacey Giles.
- 11 During the course of those enquiries, occupancy of the property changed and when Mr Grosvenor and Miss Giles visited on 12th May 2022 the tenant was then found to be Rashdha Hussain who provided information to the effect that she had been resident from 7th February 2022.
- 12 The Applicant indicated throughout the period of the enquires that both Miss Motuzaite and Miss Hussain were sufficiently close relatives of his to enable him to take advantage of the exception to licensing requirements offered by Section 79(2)(b) of the Act and the order made under Section 79(4) referring to tenants who were relatives of the landlord (Selective Licensing of Houses (Specified Exemptions) (England) Order 2006) (the Exemption Order).
- 13 In the course of his enquiries seeking to obtain evidence of the relationships indicated by the Applicant Mr Grosvenor received no supporting documentation that he considered as being sufficient to support the Applicant's contentions. In due course a decision was made that there was sufficient information to indicate a housing offence had been committed and that it was appropriate to consider the imposition of a financial penalty.
- 14 Thereafter, the Applicant has sought to establish a further basis for his appeal on the fact that he was ignorant of the imposition of the selective licensing scheme upon Darfield Place. Specifically, he had not become aware at any time of any of the publicity circulated by the Respondent and therefore he had a reasonable excuse for not applying for an appropriate licence. He believed he would, in such circumstances, be able to take advantage of the defence of "reasonable excuse" provided by Section 95(4) of the Act.

The Law

- 15 It is appropriate at this stage to set out the various statutory and regulatory provisions that the Tribunal needs to take into account in coming to its decision.

In relation to the commission of a relevant offence and imposition of a financial penalty

16 Section 249A of the Act provides:

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section "relevant housing offence" means an offence under
 - (c) Section 95 (licencing of houses...)
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

17 Section 95 of the Act provides:

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced.
- (2) ...
- (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
 - (a)...
 - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse
 - (a) For having control or managing the house in the circumstances mentioned in subsection (1)

18 In the event of a civil penalty being applied, rather than a prosecution, Paragraph 10 of Schedule 13A of the Act provides:

- (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 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 penalty of more than the local housing authority could have imposed.

19 Paragraph 2(1)(f) of the Exemption Order provides that a tenancy will be an exempt tenancy if it meets the following description:

A tenancy or licence of a house or dwelling granted by a person to a person who is a family member where-

- (i) The person to whom the tenancy or licence is granted occupies the house or dwelling as his only or main residence;
- (ii) The person granting the tenancy or licence is the freeholder or the holder of the lease of the house or dwelling the full term of which is at least 21 years; and
- (iii) The lease referred to in sub-paragraph (ii) does not contain a provision entitling the landlord to determine the tenancy, other than by forfeiture, earlier than the end of the term.

20 Paragraph 2(2) of the Order provides that;

- (a) A person is a member of the same family as another person if
 - (i) Those persons live as a couple
 - (ii) One of them is the relative of the other; or
 - (iv) One of them is, or is the relative of, one member of the couple and the other is a relative of the other member of the couple;
- (b) "couple" means two persons who are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex)
- (c) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or cousin;
- (d) A relationship of the half-blood is to be treated as a relationship of the whole blood;
- (e) A stepchild of a person is to be treated as his child.

D The evidence

21 The Applicant's case is relatively simple and is put clearly first in the application form he submitted to the Tribunal dated 15th December 2022.

Therein the Applicant sets out the relationships that he says support the exemption from licensing requirements in respect of 26, Darfield Place. Both the tenants of the property Adrijana Motuzaitė and Rashdha Hussain were relatives within the provisions of paragraph 2 of the Exemption Order. Thereafter, the Applicant raises the issue of the publicity and advertisement of the proposed licensing area and indicates he knew nothing at all about it coming into effect.

22 The Respondent's response to these two submissions was provided primarily within the Statement of Ian Grosvenor which provides considerable detail as to the various media through which attention was drawn to the licensing proposals by local radio, local newspapers, social media and poster advertising on council property and omnibuses.

23 The Applicant averred that he was unaware of the use of these various means of publicity. Although he was not in the letting business and had only one property to rent out, he regarded himself as a responsible landlord, having had his attention drawn to such matters as the need for

smoke alarms, gas and electrical safety certificates and regular inspections. He was of the view that in such circumstances he had a reasonable excuse for failing to licence.

- 24 He had also produced a number of documents that he believed assisted the Tribunal with establishing the family relationship with both tenants; Miss Motutaite being the stepdaughter of his uncle, the latter being married to Miss Motutaite's mother and Miss Hussain being related by reason that her mother was the cousin of the Applicant's mother.
- 25 The Respondent had sought to obtain evidence from the Applicant to establish further and better proof of the relationships over and above the brief statements provided by the tenants themselves. These are found at pages 243-5 of the Respondent's bundle of documents. The Respondent has also sought to rely upon Section 101 Magistrates' Courts Act 1980 which provides that where a party seeks to rely upon an exemption from requirements that might result in criminal liability if there is an absence of compliance, there is an onus on the Applicant (in this case) to establish, at least on balance, that the exemption applies.
- 26 Later in the appeal process at the hearing on 7th November 2023 the members of the Tribunal were able to hear further from the parties at first hand. Mr Grosvenor, Miss Giles and Mrs McEwan all confirmed the content of their statements and answered questions from the Applicant and the Tribunal.
- 27 Mr Grosvenor particularly confirmed the extent of the publicity campaign undertaken by the Council to advertise the selective licensing proposals which the Applicant indicated he had not been aware of. The Applicant averred that he was not a user of any relevant social media, had not been aware of any radio or press advertising and had seen no local posters on any council site.
- 28 All three witnesses confirmed their evidence as to what they found upon their various visits to 26, Darfield place and particularly the comments made by both Miss Motutaite and Miss Hussain as to there being no familial relationship with the Applicant and, in Miss Hussain's case, how she was advised of a possible tenancy by a work colleague.
- 29 Miss McEwan was also clear in answer to a question, put by the Applicant, that Miss Motutaite appeared in no way under the influence of drink, or other substances, at the time of her visit, such that Miss Motutaite's answers might have been unclear in what she was saying.
- 30 Mr Grosvenor explained the requests made for further particulars of the relationships alleged by the Applicant and the lack of any supporting documentation. Mr Rafiq confirmed the relationships, but indicated that

neither Miss Hussain, nor Miss Motutaite, who apparently now resides with him, were able to attend court. On questioning from both Counsel for the Respondent and the Tribunal Mr Rafiq was not able to provide any cogent explanation for the absence of any further evidence of the relationships alleged other than his own statement and the brief written statements of the two ladies.

- 31 Counsel also drew the attention of Mr Rafiq to other difficulties in his evidence, particularly:
 - (1) the existence of two tenancy agreements, bearing two apparently different signatures attributed to Miss Motutaite.
 - (2) A submission from The Applicant dated 9th February 2022 referring to Miss Motutaite as the tenant when council tax records showed Miss Hussain as tenant at least since 7th February.
 - (3) The inconsistencies between what is communicated to the council officers on their visits and what is later claimed in respect of purported relationships between the Applicant and the tenants.
 - (4) The relationships alleged were not only unsupported by any significant evidence, but also failed, in the Respondent's opinion, to be relationships of a sufficiently close nature to fall within the types of relationship listed within paragraph 2(2)(c) of the Exemption order.
- 32 The Tribunal then heard from Mr Grosvenor as to the determination that an offence under Section 95(1) of the Act had been committed, a decision made to impose a financial penalty and how the amount of that penalty had been decided upon by reference to the civil penalty policy adopted by the Council.
- 33 An assessment had been made that this was an offence which indicated medium culpability of the part of the Applicant and low harm arising from its commission. Initially the assessment of culpability had been that it was at a high level, but, following submissions from Mr Rafiq, it had been reduced to a medium level.
- 34 On the penalty matrix within the council's policy the indication was that the starting point for the penalty should be £5,000.00. Three aggravating features were considered relevant: financial gain from failing to obtain a licence, the continuation of the offence over a considerable period of time and a lack of insight into the relevant offending. This increased the amount to £5,750.00. A mitigating factor was the lack of any previous wrongdoing on the Applicants part, suggesting a reduction of £250.00 to £5,500.00.

E Determination

35 The Tribunal reminds itself, firstly, that these proceedings are conducted by way of a rehearing and it may take account of any new evidence, if there is such, that may not have been available at the time the Respondent made its own decision. Secondly, although these proceedings are civil in nature, they relate to an allegation that a criminal offence has been committed. The Tribunal must therefore apply the criminal standard of proof to determine if any offence has been committed.

36 It is clear to the Tribunal that there has been no licence in place in respect of 26, Darfield Place under the Respondent's selective licensing scheme. The Applicant was clearly managing or controlling an unlicensed dwelling house, contrary to Section 95(1) of the Act. He proffers two reasons why this absence does not amount to the commission of the offence:

- (1) That the tenancies of the property, being granted to relatives of the Applicant, take them within the exemption from licensing requirements provided by paragraph 2(2) of the exemption order. In the light of the observations at paragraph 30, above, and the lack of any further evidence other than the two statements purportedly made by the tenants as to the supposed relationships the Applicant cannot, even at a very base level, satisfy the Tribunal that the exemption applies to either of the tenancies. The Tribunal is entirely satisfied that this is the only proper conclusion that can be drawn from the relative weight of the evidence provided by the parties. The Tribunal is satisfied that Section 101 Magistrates' Courts Act 1980 does shift the burden of proof in respect of a defence such as this to the Applicant and he has failed to establish any defence arising from the nature of any relationship, in respect of either tenant, within the Exemption Order
- (2) That the Applicant has a reasonable excuse for not seeking a licence by reason of him not being aware of the proposals for the selective licensing designation affecting Darfield Place.

37 The Tribunal notes in this regard:

- (1) The very extensive steps taken by the Respondent to publicise the designation and the variety of means used.
- (2) The dichotomy between the Applicants stated awareness of certain requirements or good practice attaching to residential tenancies, referred to at paragraph 24, above, and a failure to maintain that awareness through the continuing process of managing a landlord and tenant relationship.
- (3) The lack of credibility attaching to the Applicant's assertion that he did not become aware of the licensing proposals by any of the means adopted by the Respondent.
- (4) The Applicant's lack of credibility generally, in view of the manner in which he has sought to assert the family relationships between himself

and the two tenants without any significant evidence in support of those assertions and the inconsistencies in his evidence relating to the times the tenants occupied the property and the nature of the signatures upon copies of the tenancy agreements.

In the circumstances the Tribunal is not satisfied that a reasonable excuse has been forthcoming, even on the balance of probability, for the failure to apply for a licence.

- 38 The Tribunal must then ask whether an offence under section 95(1) of the Act, that of controlling or managing a house required to be licensed, but not so licensed, has been committed. In the light of the above observations, it is satisfied to the extent that it is sure that an offence has been committed.
- 39 The Tribunal has deliberated at some length as to the extent of the Applicant's culpability. There is evidence to suggest that he has embarked upon a deliberate course of action to hide the truth from both the Tribunal and the Respondent. The Tribunal has reached the conclusion that this has arisen out of naivety, rather than wilful fraud, and that an assessment of medium culpability is ultimately appropriate. It also notes in reaching this conclusion that there is no evidence to suggest that the Applicant is a commercial landlord who might be held to a higher standard of behaviour.
- 40 It finds nothing to suggest that the likely harm arising from the commission of the offence will be anything other than at a low level.
- 41 A starting point on the Respondent's penalty matrix of £5,000.00 is appropriate. The Tribunal sees nothing to suggest that there is anything unfair, offensive, or contrary in the well drafted policy which expresses the democratic will of the Council.
- 42 The Tribunal has given extensive consideration to the aggravating and mitigating factors referred to in the policy and the Tribunal notes that the Applicant has no previous convictions. This would reduce the penalty by £250.00. There are however a number of aggravating factors:
 - (1) The offence was continued over a considerable period of time.
 - (2) The Applicant has made some financial gain over the delay in applying for a licence.
 - (3) There has been a lack of insight into the nature and effect of the offending.
 - (4) The lack of candour on the part of the Applicant, which amounted to obstruction of the Respondent's enquiries, increasing the workload of its officers.

43 The Tribunal feels that the final observation, above should be reflected in a further addition of £250.00 to the penalty and a total of £1,000.00 to be added, resulting in a final penalty amount of £5,750.00.

J R RIMMER (CHAIRMAN)

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