



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

Case Reference : **MAN/ooCJ/HNA/2022/0038**

Property : **2 Renwick Street Byker Newcastle Upon Tyne
NE6 2JE**

Applicant : **Ocean.Marine.Co.UK. Ltd**

Respondent : **Newcastle City Council**

Type of Application : **Housing Act 2004 - Sch 13A(10)(1)(a)**

Tribunal Members : **Mr John Murray LLB
Mr Richard Harris MBE BSc FRICS**

Date of Decision : **14 July 2023**

DECISION

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ORDER

1. The Applicant's Appeal is dismissed.

INTRODUCTION

2. The Applicant (by its sole director Mr. Alderson who shall be named as the Applicant for the purposes of this judgement) appealed the Respondent's decision to impose a financial penalty of £651.78 under s249A Housing Act 2004 pursuant to Schedule 13 paragraph 10(1)(a) of the said Act.
3. The basis of the appeal was that the Respondent had written to the Applicant at an address he no longer resided at, the financial penalty was addressed to the wrong person at the wrong address and the prosecution notice of intent dated November 2021 was served after the expiry of the licence (30th September 2021)
4. The Tribunal made directions on the 30th August 2022 and clarified that the appeal would be by way of a rehearing of the local housing authority's decision to impose the penalty and/or the amount of the penalty, and it may be determined, having regard to matters of which the authority was previously aware in accordance with Schedule 13A of the Act.
5. The Tribunal convened to determine the application at a hearing in the North Shields County Court, Kings Court, Earl Grey Way, Royal Quays, North Shields, NE29 6AR
6. The Applicant represented by Mr. Alan Anderson, sole director.
7. The Respondent was represented by Grace Taylor (solicitor). The Respondent had three witnesses, Gwen Smith, Kaye Hadden and Graham Hall, all of whom had filed witness statements.

RELEVANT LEGISLATION

8. A Local Housing Authority has powers to impose financial penalties on persons where they are satisfied, beyond reasonable doubt, that a person's conduct amounts to a relevant housing offence. The powers are granted by s249 of the Housing Act 2004 as follows:

s249A 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 sub-section (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

Paragraph 10: 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.

AGREED FACTS

9. At the outset of the hearing, the parties agreed to the following summary of facts offered by the Tribunal after a preliminary view of the papers.
10. 2 Renwick Street, Byker Newcastle Upon Tyne NE6 2JE ("the Property") is held in the name of Ocean.Marine.Co.UK.Limited and at all material times was rented to a third party tenant. The Applicant is the sole director of the company and is the person in control of the house.
11. The Property is located in an area of Newcastle that was designated as a selective licensing scheme with effect from 1st April 2016 under Part 3 of the Housing Act 2004, coming into force on 1st October 2016 and expiring on 30th September 2021. With effect from 1st October 2016, the Property required a licence.
12. The licence had a number of conditions listed in Schedule 2 which were required to make the house suitable. The conditions related to the safety of the Property (gas, electricals, fire safety, furniture, smoke and carbon monoxide alarms) as well as its management.
13. The Applicant did not appeal the amount of the penalty, but the principle, because he had not received the request for documents which had been sent to an address he was not residing at.

SUBMISSIONS FOR THE RESPONDENT

14. Although the Appeal was brought by the Applicant, the Tribunal asked the Respondent to set out their case first given that the appeal was by way of re-hearing of their decision, and they were legally represented.
15. The Respondent had filed a bundle with a summary of the offence along with their witness statements and evidence.
16. The offence summary stated that on 27th May 2021 the Applicant failed to comply with conditions attached to the licence requiring the licence holder to produce certificates and documents required to be in the custody or control of the licence holder, in contravention of s95(2)(b) of the Housing Act 2004 (failure to comply with a condition of the licence).
17. The Respondent had been served a notice under s95(2) of the Act at 75 Birds Nest Road, Byker Newcastle Upon Tyne ("the Birds Nest Road address") requiring listed documents to be produced on or before 26th May 2021.
18. Eight documents requested had been requested of the Applicant six of them should have been available immediately, two of them were not expected to be provided in the same time limits. The Applicant had been asked to complete a PACE questionnaire which may have provided him with a defence or mitigation but had declined to do so.
19. On 31st August 2021 the Applicant contacted the Respondent and said he had received no documentation as they had been sent to the Birds Nest Road address, but he was no longer living there, and was living at the Old School House, Workshop Stores, Red Row, Northumberland NE61 5A ("the Old School House address").
20. The Applicant was advised by the Respondent (Mr. Hall) that the Respondent was using the address he had provided for his licence. He was provided with a copy of the 28th April 2021 request, by email.
21. The Applicant emailed on 1st and 13th September, and 3rd of October 2021 with documentation and information previously requested. The Applicant provided information to show that the Respondent had written to him at the Old School Rooms address in April of 2017, prior to the grant of his licence.
22. The Respondent's database was searched, and one letter to the Old School Rooms address dated 18th April 2017 was found, advising him that a selective licensing licence was required. However the application for the licence granted on 19th July 2017 was from the Birds Nest Road address.

23. January 2022 he confirmed that he put the address on that licence. The Applicant was asked on several occasions if he could provide evidence of that. He was reminded it was his responsibility, so all documents served at the correct address

24. 22nd April 2022 decision to serve financial penalty. Applicant did eventually supply all documentation, albeit late by the 1st September 2021. 13th September for the remainder of the documents.

25. The Applicant confirmed that largely agreed with the evidence of the Respondent's witness Kaye Hadden. Ms. Hadden confirmed that a licence could be varied but there was a process to do so.

26. The Applicant had told the Respondent on the 31st August 2021 that his address had changed but Ms. Hadden did not know if his licence had been formally changed. Ms Taylor for the Respondent pointed out that this was after the offence had already been committed.

27. The Respondent's witness Mr. Graham Hall confirmed that most of the documents were supplied quickly once the Applicant engaged with the Respondent. Witness Mr. Hall confirmed the first time he had spoken to the Applicant was on the 31st August 2021 about the correspondence that the Applicant said he had not seen. The Applicant was told to complete the PACE questionnaire but did not wish to do so. Mr. Hall confirmed that the Applicant looked after his property well and was generally a responsible person.

28. The Respondent's witness Team Manager Gwen Smith had written to the Applicant in an email dated 10 January 2022 confirming that although previous correspondence had been sent from the Old School House address, the licence was applied for from the Birds Nest Road address (Respondent bundle C.63)

29. Ms. Smith confirmed that the receipt of the fine which was low in the range of possible fines would not cause any problems with his future management of property.

30. Ms. Taylor stated that the registered office at Company's House of the Applicant is now the Old School House, but as Director, Mr. Anderson's address is still 75 Birds Nest Road. The Tribunal was aware of these points from its own investigations .

SUBMISSIONS FOR THE APPLICANT

31. The Applicant had been directed to file a bundle of relevant documents for use at the hearing, indexed, and numbered page by page, to include amongst

other items, an expanded statement of the reasons for his appeal, any witness statements of fact. and any other documents to be relied upon.

32. The Applicant chose not to do so and consequently all that he supplied was his original application containing a letter dated 19th May 2022 setting out a chronology, and his application form. He supplied a number of emails, many of which were duplicated, alongside copy correspondence which invariably did not include the attachments referred to. The Applicant's paperwork was difficult to follow.
33. In his letter dated 19th May 2022 he confirmed that his address, at the time of the application for the licence, the Birds Nest Road address.
34. He stated that "during his application" he "noted" his change of address via telephone conversation to be "Mr. Alan Anderson, Ocean.Marine.Co.UK Ltd, the Old School House, Workshop Stores, Red Row, Northumberland NE61 5A ("the Old School House address"). He did not say who this conversation was with, or when.
35. He stated that it was further communicated via addressed letter heading and written communications with regards to his application.
36. He stated that he received correspondence at his new address on 18th April 2017 from Miss J. Earley Selective Licensing Officer for the Respondent, with letters regarding requirements for his application.
37. He exhibited a letter dated 18th April 2017 from Miss Earley addressed to him at the Old School House address. This letter alleged that he had committed an offence of allowing the Property to be occupied without a licence and asked him to apply for a licence within 14 days.
38. He told the Tribunal that he got a phone call, and was offered a licence. He had purchased the property in July 2016 and had not been informed of the need for a licence; his conveyancing solicitor did not tell him about it – despite being aware of his intention to rent it out. The Applicant said that the Respondent's officer Ms. Jessica Earley was quite understanding and did not put pressure on him.
39. The Applicant stated that when he bought the Property, he was living at the Birds Nest Road address.
40. At "some time" in 2017, he let the Property out to his nephew. His nephew however did pass any letters from the Respondent to him, until August of 2021. The Applicant had not sought to have his mail redirected, and had nor had he changed his company address at Companies House.

41. The Applicant stated that he had corresponded with the Respondent on letterheading containing his new address, but on questioning he accepted he had not told the Respondent that his address had changed.
42. Whilst one of the conditions of the licence was to inform the Respondent of any change of address, the Applicant stated that he did not know he had to tell them. He agreed on further questioning that he had not explicitly told the Respondent that he wanted the new address to be used. He had made it clear that he worked at sea and should receive correspondence by email.
43. The Respondent stated that one of the letters had been sent to a Mr Kumar at Birds Nest Road; Ms Taylor for the Respondent clarified this was a typing error and in fact a further copy of the same letter had been sent addressed to "Sir/Madam" at the Birds Nest Road address, and a further copy of the same to the Old School House address
44. The Respondent accepted that with hindsight his communication with the Respondent could have been better, (although he thought that went both ways) and that he had not formally told the Respondent that he needed to vary the terms of the licence; all he had done was to write on headed notepaper which contained a different address.

DETERMINATION

45. The Applicant had three points of appeal
 - (a) The Respondent had written to the Applicant at an address he no longer resided at;
 - (b) the Notice of the financial penalty was addressed to the wrong person at the wrong address;
 - (c) the prosecution notice of intent dated November 2021 was served after the expiry of the licence (30th September 2021)
46. Under condition 33 of the licence the licence holder must inform the licensing team of the Respondent within ten working days of any change in their circumstances, which included at condition 33(9) a change of the licence holder's address.
47. The Applicant accepted that he had not done so and consequently the Appeal must fail on this ground; the Applicant's failure to notify of his change of address was a breach of the conditions of his licence.
48. The Respondent had sent a notice incorrectly addressed to a Mr. Kumar at the Birds Nest Road address. However they had sent a notice addressed "Dear Sirs" to the Applicant's company at the Birds Nest Road address which the

Tribunal found to be valid; a copy had been sent to the Old School House address.

49. There is no requirement for a notice to be served during the duration of the licence period. Under Schedule 13A Notice of intent 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").
50. 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. The notice must be served within 6 months of the last day on which the Respondent had evidence of the offence occurring; 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 at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs.
51. In this case the conduct continued until September/October 2021 and consequently the notice was served within the permitted time limits.
52. The Tribunal found the amount of the fine to be the lowest amount the Respondent could make. The Tribunal agreed with the Respondent's assessment that the Applicant was on the low level of culpability (the Applicant did not fall short of his legal duties) and there was no harm to the tenant. The Tribunal found the Applicant to be generally a responsible landlord, but in terms of compliance with the conditions of the licence his administration and paperwork was not up to date and the breach was committed.
53. For the reasons set out above, the appeal is dismissed.
54. The Applicant told the Tribunal that he has now placed the Property with an estate agency on a fully managed basis so they will be responsible for letting and hopefully prevent the issues he has had whilst managing from a distance – sometime as far as the Indian Ocean, where his work takes him. This seemed an eminently sensible step for the Applicant to have taken.

J N Murray
Tribunal Judge
14 July 2023