FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HNA/2024/0610**
Property	**:**	**247b Cann Hall Road, London E11 3NL**
Applicant	**:**	**Lorimer Patrick Tucker**
Respondent	**:**	**London Borough of Waltham Forest**
Type of application	**:**	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal	**:**	**Judge Nicol** **Mr S Mason FRICS**
Date and venue of hearing	**:**	**24th June 2025** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**25th June 2025**

DECISION

The Tribunal has decided to confirm the penalty of £4,000 imposed on the Applicant by the Respondent.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicant owns the freehold of 247 Cann Hall Road, a 2-storey terraced house with 2 flats, a and b. The local authority Respondent has sought to impose a financial penalty of £4,000 on the Applicant for managing or having control of one of the flats when it should have been licensed but was not, contrary to section 95(1) of the Housing Act 2004 ("the 2004 Act") and their selective licensing scheme which came into force on 1st May 2020.

2. The final penalty notice was served on 21st August 2024. The Applicant appealed to this Tribunal on 12th September 2024.

3. The Applicant's appeal was heard by the Tribunal on 24th June 2025. The attendees were:

- The Applicant;
- Mr Riccardo Calzavara, counsel for the Respondent (by remote video);
- A trainee solicitor from the Respondent's solicitors, Sharpe Pritchard;
- The Respondent's witnesses:
    - Mr Jon Fine, Environmental Health Enforcement Officer;
    - Mr Sultan Beg, Licensing Enforcement Officer.

4. The Tribunal had the following documents, filed and served in accordance with the Tribunal's directions issued on 4th June 2024:

- Applicant's Bundle, 41 pages;
- Respondent's Bundle, 236 pages; and
- A second witness statement dated 16th May 2025 from Mr Fine.

5. The Applicant became owner of the property in 1998. It is his only rental. To try to ensure the rental was conducted professionally, he appointed Valley Residentials as his managing agents. When the Respondent instituted a selective licensing scheme with effect from 1st April 2015, Valley told the Applicant about it and he duly authorised them to apply on his behalf for a licence. The licence was granted in his name, to expire on the same day as the scheme itself, 31st March 2020.

6. In 2019, the Respondent obtained legal advice that they could grant licenses which extended beyond the expiry of the scheme in anticipation of the scheme being succeeded by another one. New applicants were granted licences for a term up to 5 years and existing licence-holders were granted extensions without a further fee. The Applicant was unaware of this and did not seek an extension.

7. Prior to the expiry of the original scheme, the Respondent began consulting on the introduction of a successor scheme. They ran an advertising campaign within the borough and emailed interested parties on their database. The Applicant lives outside the borough and so would have been unaware of the advertising. When making the licence application, Valley gave their own email address as the preferred method of contact. The Applicant had seen that they had done this but did not ask them to notify the Respondent of his own email address or to notify them himself – he was happy to leave management, including licensing, to his agents. He found their service to be good and trusted them to be on top of matters. In any event, the result is that he was not amongst the consultees and so didn't become aware of the proposal for a new scheme.

8. On 31st March 2020 the Applicant's licence expired. He had not diarised the event and so it passed him by. On 1st May 2020 the new selective licensing scheme came into effect. It is highly likely that Valley were aware of it – they and other clients are located in the borough and it

would have been an expected part of their role to keep on top of such developments. However, Valley took no steps to inform the Applicant or to apply for a licence on his behalf. The Applicant does not dispute that, from this point, he was committing a criminal offence under section 95(1) of the 2004 Act, subject to the question of whether he had a reasonable excuse (see further below).

9. The Respondent was concerned that a number of landlords had not licensed their properties and so, in February 2021, they sent out 9,000 letters encouraging applications. The Applicant suggested that this meant that 9,000 out of the borough's approximately 15,000 landlords had been left ignorant of the selective licensing scheme and this spoke volumes about the inadequacy of the consultation process. The Tribunal is not convinced that this is the right conclusion. At least some of the 9,000 letters would have gone to the same recipient at alternative addresses or to both landlords and agents for the same properties in order to maximise the chances that the letter would come to their attention. Moreover, it probably says more about inattentive landlords than an inadequate consultation exercise – Mr Fine said that, in his experience, many landlords do not read the materials the Respondent sends out, despite their best efforts.

10. One of the letters was addressed to the Applicant at his home. The address was correct save that the first line said "PENROSE HO" instead of "Penrose House". He says he never received this letter, despite apparently receiving all letters addressed similarly over the years. The Applicant pointed out that one of the 8 houses in the vicinity is called "Penrose Cottage". It is difficult to see how the Royal Mail postman could have thought "PENROSE HO" applied to any property but "Penrose House". Understandably, the Respondent did not think it had done anything wrong in addressing the letter in this way and suspected that it had been received. In any event, despite the Applicant's complaint about the minor error in the address, the Respondent was not obliged to send out such a letter since it was for landlords to keep themselves apprised of their legal obligations.

11. In response to the 9,000 letters, the Respondent received over 2,000 licence applications, albeit not from the Applicant. The Respondent tried a different tack and, on 28th June 2021, wrote to the Applicant's agents, Valley, about the property. They sent the letter to Valley's registered address, found in Companies House records, and to another address but not to the address given in the original licence application. Nevertheless, Valley clearly received the letter because they emailed the Respondent the following day asking for support to complete a licence application and they created a fresh account on the licence application website.

12. For reasons which are not apparent, Valley again did not inform the Applicant about any of this. The Applicant criticised the Respondent for not trying to mail him directly but they were not obliged to and had no reason to think that contacting his agents would be insufficient. It was the Applicant's own evidence that he relied on and trusted Valley to

manage the licensing process and so it is difficult to see why the Respondent should be taken to task for doing the same.

13. In the meantime, Mr Beg had begun an investigation into whether the property should be licensed. As part of that investigation, he visited the property on 17th June 2021. He found that it was rented to Mr and Mrs Headbush so that it should have been licensed. The Applicant does not dispute this.

14. Mr Beg reported his findings to Mr Fine who then completed a pro forma document setting out the details and recommended imposing a financial penalty at the minimum tariff under the Respondent's policy of £5,000. He signed off the form on 28th June 2021 and passed it to his Service Manager, Ms Julia Morris, whose job it was to make the final decision. She accepted the recommendation on 6th December 2021.

15. The Applicant criticised the pro forma for containing no option for consideration of any excuse or mitigating circumstances. The Tribunal does not accept that criticism for two reasons:

    (a) It is difficult to see how the Respondent would normally be aware of any excuse or mitigating circumstances at a stage when they had yet to hear from the Applicant. The purpose of the pro forma was not to reach a comprehensive reasoned conclusion but to decide whether to proceed on the material so far available. Mr Fine's recommendation and Ms Morris's approval were effectively only provisional, not final.
    (b) The Respondent knew that the following process would include the service of a Notice of Intent, as required by the 2004 Act, giving the Applicant an opportunity to make representations which they would be obliged to consider. Any excuse or mitigating circumstances could be considered at that stage.

16. By letter dated 14th December 2021 the Respondent notified the Applicant that they intended to impose on him a financial penalty of £5,000 for the offence under section 95(1). This was the first notification the Applicant had received that there was a licensing issue. He says he received it on Friday 17th December 2021 and arranged for Valley to apply for a licence on the following Monday. For acting so promptly, the Respondent applied a discount to the penalty of 20% so that the Applicant from then on was at risk at most of having to pay £4,000.

17. The Notice of Intent invited the Applicant to make representations and he did so by email dated 10th January 2022. As before the Tribunal, he said the failure to apply for a licence was an administrative oversight and the Respondent itself could have done considerably more to alert him to his error.

18. He had also had a "debrief" with Valley and understood from them that they had made "numerous" attempts to apply for a licence earlier but struggled with the Respondent's online application process. However, he produced no evidence in support of this allegation, either at the time or before the Tribunal. The Respondent looked at its records and could find

no trace of any attempt by Valley to do anything in relation to a licence application for the property between 29th June and 27th November 2021. They did have evidence that Valley were able to apply successfully for another client in March 2021. The Respondent had no reason to believe their system played any part in the Applicant's failure to apply for a licence any earlier.

19. There was then a substantial delay. The 2004 Act requires the Notice of Intent and the recipient's representations to be made within certain time limits but neither it nor the guidance on it produced by the Government has any suggested time limit for any steps thereafter. To Mr Fine's acute embarrassment, the Respondent did not reply to the Applicant's representations until they sent him a letter dated 9th July 2024 informing him that they had decided not to uphold his representations.

20. The Respondent then issued the Final Notice on 21st August 2024 confirming the penalty of £4,000.

21. Under section 95(4) of the 2004 Act, in proceedings against a person for an offence under section 95(1), it is a defence that he had a reasonable excuse for having control of or managing the property which is required to be licensed but is not so licensed.

22. In accordance with the decision of the Upper Tribunal in *Marigold v Wells* [2023] UKUT 33 (LC); [2023] HLR 27, in considering whether a landlord had a reasonable excuse for failing to comply with a licensing requirement, the Tribunal must:

(a) establish what facts the landlord asserts give rise to a reasonable excuse;
(b) decide which of those facts are proven; and
(c) decide whether, viewed objectively, those proven facts initially amounted to a reasonable excuse and whether they continued to do so. The Tribunal should take into account the experience and other relevant attributes of the landlord and the situation in which they found themselves at the relevant time or times.

23. The Applicant claimed that the circumstances set out above constituted an excuse or, at least, mitigation for having control of a property which should have been licensed. The essential facts are not in dispute. The Respondent had disputed the Applicant's allegation they had not taken all reasonable steps to consult interested parties on whether to implement the selective licensing scheme and whether the Applicant had received their letter of 2nd February 2021 but their case did not rest on either point and they did not press them. The Tribunal agrees that it does not matter to the outcome of this case whether the Applicant is right on either point or not.

24. Doubtless, the Applicant would have had a greater opportunity to ensure his property was licensed if the Respondent had prompted him by consulting him directly about the scheme or had successfully contacted him about the lack of any licence. However, the Respondent was not in breach of any obligation in failing to do so. Landlords cannot claim they

have an excuse unless they have implemented a system designed to keep them up-to-date with what they need to do. As many landlords do, the Applicant sought to rely on his agents but, to establish that this may constitute an excuse, the Applicant would need to provide evidence of whose responsibility it was under their contract to deal with licensing and of all efforts to ensure compliance by both him and Valley – there was no such evidence.

25. The 2004 Act obliges the Respondent to issue a Notice of Intent and to consider any resulting representations but otherwise requires no further procedural steps prior to issuing a Final Notice. The Respondent did not give the Applicant or anyone else the impression, whether in policy guidance or by direct communication, that they could rely on any further communications or actions before final action was taken. The Applicant could not identify any prejudice arising from the fact that he was not prompted or warned earlier as to his default.

26. The Applicant was particularly critical of the period, which he calculated as 944 days, between the Notice of Intent and the Final Notice. This is entirely understandable. That period was too long and the Respondent had no excuse for it. The Tribunal would not be surprised if an investigation by the Local Government Ombudsman were to result in the Respondent being criticised.

27. The Applicant said that a reasonable limit could be implied into the statute but there were no grounds for this other than his general sense that he should not be left hanging for that long. While Parliament provided for a time limit at other stages, it did not provide one for service of the Final Notice. The Applicant kept referring to the delay as the Respondent not acting in accordance with the 2004 Act but it does not require them to act any more quickly than they did.

28. Therefore, the Tribunal is satisfied that the Applicant committed the offence under section 95(1) and did not have a reasonable excuse defence under sub-section (4). That leaves the question of the amount of the penalty.

29. The appeal is a rehearing and the Tribunal needs to reach its own conclusion on the penalty and the amount of it. However, in doing so the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).

30. According to the penalty matrix included in the Respondent's policy in accordance with the Government's guidance, the band for this kind of offence for a landlord with just the one property is £5,000-£10,000. This is in line with tariffs used by other London boroughs for the same offence. The Respondent put the Applicant's offence at the lowest end of the band and then gave him a 20% discount for his prompt licence

application. The Tribunal is not satisfied that any of the matters raised by the Applicant constitute any sort of mitigation, at the very least as would justify any further reduction.

31. Therefore, the Tribunal has decided to confirm the penalty of £4,000.

Name: Judge Nicol **Date:** 25th June 2025

Rights of appeal

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.

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.

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.

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.

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.

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

Appendix of relevant legislation

Housing Act 2004

Section 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).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) *"relevant decision"* means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Section 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

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.

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(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.