FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/HNA/2024/0605**
Property	:	**1C Dawlish Road, Leyton, London E10 6QB**
Applicants	:	**Mr Simeon Brookstone (1)** **Mrs Reenah Brookstone (2)**
Representative	:	**Mr Simeon Brookstone**
Respondent	:	**London Borough of Waltham Forest**
Representative	:	**Mr Riccardo Calzavara of Counsel**
Type of Application	:	**Appeal against a financial penalty -** Section 249A and Schedule 13A to the Housing Act 2004
Tribunal Members	:	**Judge N Hawkes** **Mrs L Crane CEnvH MCIEH**
Venue of hearing	:	**10 Alfred Place, London WC1E 7LR on 16 June 2025**
Date of Decision	:	**8 July 2025**

DECISION

Decision of the Tribunal

The Tribunal confirms the Respondent's decision to impose a financial penalty in the sum of £9,500 on the First Applicant.

Background and procedural matters

1. By an application dated 28 August 2024, Mr and Mrs Brookstone brought an appeal against financial penalties which were imposed on them under section 249A of the Housing Act 2004 by the London Borough of Waltham Forest ("the Respondent"), pursuant to final penalty notices dated 1 August 2024.

2. The Respondent imposed a financial penalty in the sum of £9,500 on the Mr Simeon Brookstone ("the First Applicant"), and a financial penalty in the sum of £7,500 on Mrs Reenah Brookstone, ("the Second Applicant").

3. These penalties were imposed on the grounds that, contrary to section 95(1) of the Housing Act 2004, on 31 May 2023 the Applicants were in control of or managing an unlicenced property, namely 1C Dawlish Road, Leyton, London, E10 6QB ("the Property"), when the Property required a licence under the Respondent's Selective Licensing Scheme but was unlicensed.

4. It is common ground that the Property required but did not have a licence from 2 May 2022 to 17 March 2024 and the following facts were not in dispute at the hearing. On 23 January 2018, Mr Brookstone applied for and was granted a licence in respect of the Property. On 25 November 2019, he applied for and was granted an extension to that licence so that the licence expired on 2 May 2023. No application for a further licence was then made until 17 March 2024. Mr Brookstone accepts that he was aware of the need to obtain a licence for the Property.

5. Paragraph 10 of Schedule 13A to the Housing Act 2004 provides:

   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.

6. On 28 January 2025, the Tribunal issued Directions ("the Directions") leading up to a final hearing which took place on 16 June 2025 at 10 Alfred Place, London WC1E 7LR.

7. By letter dated 13 June 2025 from the Respondent's solicitors, the Tribunal was informed that, following a further review of the case in preparation for the hearing, the Respondent had withdrawn the financial penalty which had been imposed against the Second Applicant. Accordingly, the hearing of the appeal solely concerned the financial penalty which had been imposed upon the First Applicant, Mr Brookstone.

8. Mr Brookstone represented himself at the final hearing and the Respondent was represented by Mr Calzavara of Counsel, instructed by Sharpe Pritchard LLP. Mr Calzavara was accompanied by Mr Dickie, Solicitor, and by the Respondent's two witnesses.

9. Mr Brookstone's hearing bundle was served late. However, Mr Calzavara did not contend that the Respondent was prejudiced by the delay, and it would be disproportionate in all the circumstances to exclude the evidence contained in this bundle from consideration. Accordingly, the Tribunal waives this defect pursuant to rule 8 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

10. The Tribunal heard oral evidence from Mr Brookstone in support of the appeal.

11. The Tribunal heard oral evidence on behalf of the Respondent from:

    (i) Mr Ziaul Choudhury, a Licensing Enforcement Officer.

(ii) Ms Stacey Walkes, the Service Manager who manages the Respondent's Private Sector Housing and Licensing Team Managers.

The Tribunal's determinations

12. Financial penalties were introduced by the Housing and Planning Act 2016 ("the 2016 Act"). The 2016 Act amended the Housing Act 2004 ("the 2004 Act") by inserting section 249A and Schedule 13A. These provisions enable local authorities to impose financial penalties of up to £30,000 in respect of a number of offences under the 2004 Act, as an alternative to prosecution.

13. Subsection 249A(1) of the 2004 Act provides that a local authority may only impose a financial penalty if satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence. The Tribunal must also be satisfied to the criminal standard of proof that an offence has been committed.

14. DCLG Guidance for Local Authorities ("the Guidance") has been issued under paragraph 12 of Schedule 13A.

15. The Guidance encourages each local authority to develop their own policy for determining the appropriate level of penalty. The maximum amount should be reserved for the worse offenders.

16. As regards the weight to be given to a local authority's policy, in *Sheffield City Council v Hussain* [2020] UKUT 292 (LC)), the Upper Tribunal stated:

> *44. In London Borough of Waltham Forest v Marshall [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) considered the weight to be given to a local housing authority's policy on an appeal against a decision which had applied that policy. At [54] Judge Cooke explained the proper approach:*
>
> > *"The court can and should depart from the policy that lies behind an administrative decision, but only in certain circumstances. The court is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed."*

At [55] she recognised the power of a court or tribunal to set aside a decision which was inconsistent with the decision-maker's own policy. Furthermore, having regard to the fact that an appeal under Sch.13, 2004 Act is a rehearing:

> *"It goes without saying that if a court or tribunal on appeal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis."*

45. The proper approach was also discussed by the Tribunal in Sutton v Norwich City Council [2020] UKUT 0090 (LC), at [254], as follows:

> *"If a local authority has adopted a policy, the Tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision."*

17. In *Gateshead BC v City Estate Holdings* [2023] UKUT 35 (LC), the Upper Tribunal stated:

"26. … the FTT in hearing an appeal from a financial penalty is to make its own decision, not to review that of the local housing authority."

The "reasonable excuse" defence

18. Part 3 of the 2004 Act provides for the selective licensing of areas designated for that purpose by the local housing authority.

19. Section 95(1) of the 2004 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 under this Part … but is not so licensed.

…

(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) …

20. Section 249A of the 2004 Act includes provision that:

(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 (licensing of houses under Part 3)

21. The onus is on person who relies upon the defence of reasonable excuse to establish on the balance of probabilities that he has that defence (see *IR Management Services Limited v Salford City Council* [2020] UKUT 81 (LC)).

22. Mr Brookstone initially advanced the defence of reasonable excuse on the basis that the Respondent failed to take adequate steps to remind him of the need to renew the licence for the Property. He later stated that he was no longer blaming the Council for not reminding him. Accordingly, it may be that this defence is no longer pursued.

23. In any event, the Tribunal is not satisfied that the defence of reasonable excuse is made out because we are not satisfied that the Respondent was under any obligation to remind Mr Brookstone of the need to obtain a licence for the Property.

24. Mr Brookstone also initially advanced the defence of reasonable excuse on the grounds that that the Property should have had the benefit of a temporary exemption notice. This issue was not referred to in Mr Brookstone's closing submissions and it is not clear whether it is being pursued.

25. In any event, the following facts were not disputed at the hearing. On 29 January 2024, Mr Brookstone sought a temporary exemption notice on the basis that the Property was being marketed for sale, although there remained a tenant in occupation. On 20 February 2024, the Respondent decided not to grant a temporary exemption notice because it considered that the requisite criteria had not been met. No appeal was brought by Mr Brookstone in respect of the refusal to grant a temporary exemption notice, and the decision not to grant one is therefore final. Accordingly, the Tribunal is not satisfied that Mr Brookstone has made out his case that he has a reasonable excuse because a temporary exemption notice should have been granted.

26. The Tribunal accepts beyond reasonable doubt the Respondent's evidence (which was not disputed) that, from 2 May 2023 to 17 March 2025, the Property required but did not have a licence and that Mr

Brookstone was controlling and managing the Property. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the housing offence which gave rise to the civil penalty was committed.

The amount of the civil penalty

27. The Tribunal was referred to the Respondent's Private Sector Housing Enforcement Policy ("the Policy"). The Applicant does not seek to challenge the Policy/submit that it is open to the Tribunal to depart from it, and the Tribunal has applied the Policy in making this determination.

28. The Policy includes the following provisions (emphasis supplied):

"Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide indicative 'tariffs' under the various offence categories, with the final level of the civil penalty adjusted in each case, and generally within the relevant band, to take into account aggravating and mitigating factors.

In deciding what level of penalty to impose, officers will conduct the following four stage process. First, they will consider within which band the offence (and offender) initially falls, giving the presumptive band width. Second, any aggravating and/or mitigating factors are considered, which may have the effect of increasing or decreasing the penalty within the relevant band. Third, if there are any exceptional circumstances, the penalty may be increased or decreased beyond the relevant band. Fourth, if any of the Discounts, as set out below, apply, the penalty will be decreased, which may result in the penalty falling below the relevant band.

Once the band has been identified, the assumption is that the indicative minimum tariff will apply, being the sum set out in the text below the matrix. If a single aggravating factor is identified, the indicative minimum tariff will normally be increased by up to, but not exceeding, £5000. If there are numerous aggravating factors officers may consider that to amount to exceptional circumstances, so that the penalty may be increased beyond the presumptive band width. There may be an increase in the penalty in respect of each such factor.

The indicative minimum tariff will normally be reduced by up to, but not exceeding, £5000 if one or more mitigating factors is/are identified. For the avoidance of doubt, the presence of one or more mitigating factors will not of itself amount to exceptional circumstances so that the penalty may not thereby fall below the band width. The Council has not provided a list of mitigating factors in this policy because it

acknowledges that there are myriad possible circumstances that might, at the officer's discretion, give rise to mitigation. The Council may, exceptionally, including for the reason given above, increase the penalty above the band maximum or, again exceptionally, decrease it below the minimum 'tariff'. In order to meet the objectives of this policy and of financial penalties in particular, however, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty beyond band limits in exceptional circumstances only [excluding any Discounts as set out below]. The Council will consider on a case-by-case basis, in light of the information with which it is provided, whether any such circumstances exist.

Band number	*Severity of offence*	*Band width [£]*
1	*Moderate*	*0-5000*
2		*5000-10000*
3	*Serious*	*10000-15000*
4		*15000-20000*
5	*Severe*	*20000-25000*
6		*25000-30000*

Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

…

Failure to license a property under the Council's Selective Licensing Scheme

Waltham Forest Council has also exercised their powers under section 80 Housing Act 2004 and has designated 18 of 20 wards as a selective licensing area [Hatch Lane and Endlebury wards are excluded]. Under this scheme, which came into force on 1st May 2020 and expires on 30 April 2025, most privately rented homes which are occupied by a single-family household or by no more than 2 unrelated persons, are required to have a property licence to operate in the borough. Through the Selective Licensing scheme, which was introduced to combat anti-social behaviour and tackle poor conditions that exist in privately rented homes, the Council intends to improve the professionalism of private landlords and drive up property standards.

The Council would view the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

Under the Council's policy the civil penalty for a landlord controlling five or fewer dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a moderate band 2 offence, attracting a civil penalty of at least £7500 in respect of a failure to obtain the necessary Selective Licence under part 3 Housing Act 2004.

Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio) the failure to obtain the necessary Selective Licence would be viewed as being a serious matter attracting a civil penalty of £17500 or above [a band 4 offence].

Aggravating features/factors specific to non-licensing offences.

....

- *Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises"*

29. Ms Walkes gave evidence that Mr Brookstone's case was assessed as falling under Band 2 of the Respondent's Civil Penalties' Matrix because selective licencing is considered to be a moderate offence attracting a civil penalty of at least £7,500, with £2,000 added due to Mr Brookstone's prior knowledge of the need to obtain a licence.

30. Ms Walkes accepted that there were no other aggravating factors. For example, it is not alleged that the Property was in poor condition. She did not accept that there were any relevant mitigating factors, and she was of the view that the fact that a person only has one rental property cannot be a potential mitigating factor

31. As stated above, Mr Brookstone accepted that he was aware of the need to obtain a licence for the Property. He gave evidence that he had failed to diarise the date on which he needed to renew the licence and that, on becoming aware that he had missed the renewal date, he had had insufficient funds available to pay the licence fee of £750.

32. Mr and Mrs Brookstone had previously resided at the Property. Mr Brookstone accepted that he had not become an accidental landlord and he gave evidence that, when he moved out and retained the Property as a rental property, he had harboured ambitions to become an experienced landlord with a more extensive property portfolio.

33. Mr Brookstone indicated that he had not intended to make a profit from the rental income from letting the Property, and he informed the Tribunal that he is charging his tenant a lower than market rent. However, he had hoped that the value of the Property would increase over time. He had also hoped to later be in a position to offer the Property to his children, as a place in London that they could call their first home.

34. Mr Brookstone described the Selective Licencing regime as a "cash grab" and said that he had had no extra money to pay the licence fee until an interim management order was contemplated which forced him to miss a mortgage payment. He accepted that whether or not to pay the licence fee had been a "question of priorities" and that he had made the decision to prioritise other bills.

35. At paragraph 27 of his witness statement, Mr Brookstone stated:

The reality of this case is that there have been no inspections of the property during the entire 5-year period that a license was in place. During this 5-year period, both myself and Mrs Brookstone have become parents, the world has stumbled through a pandemic, and the cost of living crises has financial crippled myself and Mrs Brookstone to the point of needing to sell their only property. During this period Mrs Brookstone was additionally made redundant and has moved employment three times, with income gaps between each.

36. Mr Brookstone also gave oral evidence that, during a five year period, he moved house twice, he attended eight funerals, and he has had type 1 diabetes and depression, triggered in part by these proceedings. Mr Brookstone also informed the Tribunal that he has started a business which as yet is unprofitable. Much of this evidence was neither in Mr Brookstone's written representations to the Respondent nor in his witness statement in these proceedings and the Respondent objected to its inclusion in these proceedings.

37. In our judgment, this offence and offender fall within band 2 of the Respondent's Civil Penalties' Matrix with a starting point of £7,500. This is because, under the Respondent's Policy, the civil penalty for a landlord controlling five or fewer dwellings, with no other relevant factors or aggravating features is be regarded as a moderate band 2 offence, attracting a civil penalty of at least £7,500 in respect of a failure to obtain the necessary Selective Licence under part 3 Housing Act 2004.

38. In our view, each case turns on its own facts and the fact that a landlord only has one rental property could potentially be a mitigating factor. Mr Calzavara agreed with this proposition but submitted that only having one rental property is most likely to be relevant in the context of a landlord's lack of knowledge of the licensing regime. Mr Brookstone was well aware of the need to obtain a licence for the Property and the fact he

has one rental Property has not been demonstrated to be relevant on the facts of this case.

39. We accept Mr Calzavara's submission. In our judgment, Mr Brookstone's familiarity with the licensing regime is an aggravating factor which merits an increase of £2,000 to the level of the penalty. The fact that he only has one rental property could potentially be relevant, but it has not been demonstrated to be relevant to any particular aspect of this case.

40. We accept Mr Brookstone's evidence concerning his motivation for becoming a landlord. We also accept his evidence that he failed to diarise the renewal date for the licence and then, at a difficult time financially, prioritised paying other bills over paying the licence fee. We do not accept that these factors amount to mitigation for controlling or managing the Property without a licence which would justify a reduction in the level of the civil penalty. Mr Brookstone should have taken steps to ensure that he did not forget the renewal date and there was a statutory obligation to obtain a licence the Property.

41. We accept Mr Calzavara's submission that the Tribunal should not exercise its discretion to admit the new evidence concerning other potential mitigating factors which was introduced for the first time in oral evidence at the hearing. The Respondent has not had sufficient time to fully consider and investigate these new assertions.

42. In any event, if we had exercised our discretion to admit the new evidence, we would not have been satisfied that it was appropriate to reduce the level of the civil penalty on account of it. No detail or supporting evidence was provided and Mr Brookstone did not specify the date on which each of the events relied upon took place or explain how each of them had had a significant impact on his ability to obtain a licence for the Property.

43. We found Mr Brookstone to be a straightforward witness, and we do not suggest that he has fabricated his account. However, considerably more detail and supporting documentation would be needed to satisfy the Tribunal that the matters raised are relevant to the licensing offence. We also consider it likely that, if the evidence given for the time at the hearing had been of significance to the licencing offence, Mr Brookstone would have referred to it both in his written representations to the Respondent and in the witness statement which he prepared for these proceedings.

44. The Tribunal is not satisfied that there are any exceptional circumstances or discounts which apply. We note that Mr Brookstone did not seek to argue that there are any relevant applicable discounts under the Policy.

45. For these reasons, the Tribunal confirms the Respondent's decision to impose a financial penalty in the sum of £9,500 on Mr Brookstone.

Name: Judge Hawkes **Date:** 8 July 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).