FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00EJ/HNA/2024/0631 & 0632**
Property	**:**	**2 & 3, Hamilton Close, Esh Winning, Durham, DH7 9AL**
Applicant	**:**	**Winning Homes Limited**
Applicant's Representative	**:**	**Tom Tyson, Counsel, instructed by Riley Langdon, LLP, solicitors**
Respondent	**:**	**Durham County Council**
Respondent's Representative	**:**	**Sarah Grigor, solicitor**
Type of Application	**:**	**Appeal against a financial penalty under section 249A of the Housing Act 2004**
Judge	**:**	**Tribunal Judge James-Stadden** **Tribunal Member Joe Fraser**
Date of Decision	**:**	**14 August 2025**

DECISION

Decision of the Tribunal

(1) The Tribunal varies each of the Final Notices dated 18 April 2024 which are the subject matter of these appeals so as to reduce the penalties payable, in respect of each Final Notice, from £17,500 to £7,500.

The Appeals

1. On 26 November 2024, the Applicant lodged appeals against two financial penalties, each in the sum of £17,500, imposed upon it by the Respondent in Final Notices dated 18 April 2024 in respect of Nos 2 & 3, Hamilton Close, Esh Winning, Durham, DH7 9AL ("the Properties").

2. The appeals were lodged significantly outside of the 28-day period allowed but, by a decision dated 23 April 2025, the Tribunal exercised its power to extend the time for appealing and permitted the Applicant to bring the Applications out of time, for reasons set out in that decision.

3. The Respondent opposes the appeals.

4. Directions were issued by the Tribunal on 24 April 2025, pursuant to which the Respondent filed a bundle on 20 May 2025, the Appellant filed a separate bundle on 17 June 2025 and the Respondent filed a Reply on 30 June 2025. Those bundles were collated into one bundle by the Tribunal's case officer, and page references given below refer to page numbers in the collated bundle.

5. The appeals were heard at an in-person hearing on 14 August 2025. The Applicant was represented by Mr Tyson of Counsel and the Respondent by its solicitor, Ms Grigor. Mr John Slater, a director of the Applicant, gave oral evidence on its behalf and Mr Jack Gibson, senior housing enforcement officer, gave evidence on behalf of the Respondent.

Facts and Chronology

6. The Applicant is the registered legal owner of the Properties. No 2 is a 3 storey, 5 bedroomed townhouse and No 3 is a 3 storey, 4 bedroomed townhouse.

7. The Properties are situated in an area which the Respondent designated as a selective licensing area with effect from 01 April 2022, such that, from that date, any property occupied under a tenancy within that area would require a licence.

8. No 2 is let to Mr and Mrs Wooding pursuant to an assured shorthold tenancy agreement dated 17 September 2021, which was for an initial period of 12 months, and which is now a periodic tenancy. The rent stated in the tenancy agreement is £775.00 per month, and that remains the currently payable rent.

9. No 3 has been let to Mrs Thompson for over 10 years, presently pursuant to an assured shorthold tenancy agreement dated 01 April 2024, which was for an initial period of 12 months, and which has since become a periodic tenancy. The rent stated in the tenancy agreement is £775.00 per month, and that, too, remains the currently payable rent.

10. On 05 September 2023, the Respondent sent 2 letters to Mr Slater at his home address, Firtrees, Hamilton Row, Waterhouses ("Firtrees"), one in respect of each of the Properties but otherwise in identical terms, notifying him that the Properties each required a licence and that no licence applications had been received. The letters stated that applications must be made within 14 days of the date of the letters and provided links to websites where further information could be obtained and at which the relevant applications could be submitted.

11. On 19 September 2023, identical letters were sent to the Applicant at Valley View Farm, Cockhouse Lane, Ushaw Moor ("Valley View"), Land Registry title searches for the Properties having given this as the Applicant's address.

12. Thereafter, on 28 September 2023, identical letters were sent to the Applicant at Office 64, Derwent Business Centre, Consett ("Office 64"), a search of Companies House having given this as the address of the Applicant's registered office.

13. The Respondent received no responses to any of these letters.

14. On 24 October 2023, the Respondent sent 2 letters, one in respect of each of the Properties, again in identical terms, to the Applicant at both the Valley View address and the Office 64 address. Those letters invited the Applicant to an interview under caution on 07 November 2023.

15. A note produced by the Respondent states that Mr Slater telephoned it on both 06 and 07 November 2023 stating that he had received correspondence in September 2023 which he understood to mean he had until 2027 to apply for licences for the Properties and that he was unable to attend the interview. The note states that Mr Slater was informed that he had misinterpreted the letter and had needed licences since 2022, that Mr Slater disputed this interpretation and that he said that he was planning to sell the Properties in any event.

16. No one from the Applicant attended the interview on 07 November 2023.

17. On 17 January 2024, Mr Gibson attended both of the Properties. He spoke with Mrs Thompson at No 3, who confirmed that she was the tenant of it, and with Mr & Mrs Wooding's daughter at No 2, who confirmed that her parents, who were away, rented it. Mr Wooding subsequently called Mr Gibson on 23 January 2024 to confirm this.

18. Mr Gibson completed the Respondent's "Checklist for Assessing Prosecution vs Civil Penalty" form on 24 January 2024, following which he proposed that notices of intent to impose financial penalties be issued in

respect of the Properties. That proposal was approved and Notices of Intent in respect of each of the Properties were issued on 12 March 2024 and sent by post to the Applicant to both Office 64 and Firtrees.

19. The Respondent received no representations from the Applicant during the 28 day representation period, but partial licence applications (some supporting documentation was missing) for both Properties were received by it on 15 March 2024.

20. On 12 April 2024, following the end of the representation period, and having received no representations, Mr Gibson prepared final notices in respect of both Properties, those were approved and subsequently posted to the Applicant on 18 April 2024, again to both Office 64 and Firtrees, in the sum of £17,500 for each of the Properties.

21. Draft licences for the Properties were issued on 15 May 2024 once the outstanding documentation had been received, and final licences on 05 June 2024. Those licences are both for a full 5 year period, commencing 15 May 2024 and neither is subject to any conditions.

22. On 07 November 2024, the Respondent sent the Applicant letters reminding it of the amounts outstanding under the financial penalty notices and seeking payment of the same, failing which County Court proceedings would be issued. Those letters were sent only to Office 64.

23. Marie Riley, of Riley Langdon, the Applicant's solicitors telephoned the Respondent on 15 November 2024, following this with an email on the same date, in which she emphasised Mr Slater's age (he is currently 82) and his need for assistance with computer technology. She explained that Mr Slater had attended the Respondent's offices in Crook seeking assistance in submitting the licence applications in March 2024 and that he had understood from comments made to him by the Respondent's staff that, having been granted the licences in May 2024, all issues were resolved; he had not understood that the penalty notices remained extant.

24. As noted above, on 26 November 2024, the Applicant appealed to the Tribunal against the imposition of the financial penalties of £17,500 in respect of each of the Properties.

The Law

25. Section 249A of the Housing Act 2004 ("the 2004 Act") states 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*."

26. Section 249A(2) sets out what constitutes a "relevant housing offence". It includes an offence under section 95(1) of the 2004 Act, by which it is an offence for a person who has control of or manages a house to do so without a licence where that house is required to be licensed.

27. Thus, in the first instance, the local housing authority must ascertain beyond reasonable doubt whether a licence should have been applied for and that it was not applied for.

28. In the event that the local housing authority determines that a relevant housing offence has been committed, Schedule 13A to the 2004 Act sets out the procedural requirements which the local housing authority must then follow, including the service of notices of intent and of final notices, before the financial penalty may be imposed under section 249A.

29. In addition, by paragraph 12 of Schedule 13A, the local housing authority must have regard to guidance which the government has issued to local housing authorities as to how their financial penalty powers are to be exercised. The current guidance is that issued by the Ministry of Housing, Communities & Local Government in 2018 entitled "Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities" ("the MHCLG Guidance").

30. Section 95(4) of the 2004 Act provides that it is a defence to proceedings if the person committing the offence had a reasonable excuse for having control of or managing the house without a licence. It is for the landlord to show on a balance of probabilities that he had a reasonable excuse for so doing.

31. On an appeal against a financial penalty, the Tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into account matters which were unknown to the local housing authority when the Final Notice was issued. The Tribunal must make its decision in accordance with the Respondent's published policy unless there are compelling reasons to depart from it.

Guidance and Policy

32. The MHCLG Guidance confirms that local housing authorities are expected to issue their own policies in relation to housing offences and the imposition of civil penalties, and must include the factors which it will consider when establishing the offender's level of culpability and the harm which has been caused by the offence, as well as a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.

33. In this case, the Respondent's policy is entitled "Civil Penalties under the Housing and Planning Act 2016", and copies of it are attached to each of the Notices of Intent and Final Notices that were issued to the Applicant.

34. The Respondent's Policy reiterates the MHCLG Guidance in setting out the factors that should be taken into account to ensure that a civil penalty is set at an appropriate level in each case, namely:

    a. the severity of the offence;

b. the culpability and track record of the offender;
c. the harm caused to the tenant;
d. punishment of the offender;
e. deterring the offender from repeating the offence;
f. deterring others from committing similar offences; and
g. removing any financial benefit the offender may have obtained as a result of committing the offence.

35. The Respondent's policy then sets out its 'Civil Penalties Matrix' [RPT p.173] to which its "officers will have regard…[and] is to be read in conjunction with the associated guidance". The matrix provides an "indicative starting level…with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors the [Respondent] deems significant, including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants".

36. The Respondent's policy further sets out that a 4-stage process is to be adopted, whereby:

a. the starting level of the penalty is identified;
b. an assessment of the number of properties owned by the landlord and/or their experience in letting/managing property is considered;
c. aggravating and mitigating factors will be considered;
d. discounts may be applied.

37. The policy states that, to reflect the seriousness of the offence, the presence of one or more mitigating factors will rarely and only in exceptional circumstances result in the penalty being decreased by in excess of £5,000. Similarly, to ensure the penalty imposed is proportionate, the presence of one or more aggravating factors will rarely and only in exceptional circumstances result in the penalty being increased by in excess of £5,000.

38. The policy details the offences for which a civil penalty may be imposed as an alternative to prosecution, together with the starting level of penalty for each offence and the specific and generic aggravating features for each of those offences.

39. The policy does not set out any specific or generic mitigating factors at all, stating instead that the Respondent "has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might give rise to mitigation".

The Hearing

40. At the outset of the hearing, Mr Tyson on behalf of the Applicant confirmed that the Applicant did not dispute that it had failed to apply for and obtain the licences within the requisite time period. He stated that, rather, the Applicant contended that the penalties were manifestly excessive and

disproportionate in the circumstances of this case, and (in essence) failed to take account of all relevant mitigating factors.

41. Having confirmed the contents of his witness statement, in oral evidence, Mr Slater additionally (in summary):

    a. confirmed that the Applicant owns 4 separate properties, including the Properties the subject of these appeals;
    b. stated that he had not been aware of the need to obtain licences for the Properties;
    c. was unsure which of the letters sent to the various addresses he had actually received, although he:
        i. confirmed that Firtrees is his current home address, and had been so at all material times, and that he had not had issues receiving post there;
        ii. stated that he never received any post sent to Valley View;
        iii. accepted that Office 64 is the address of the Applicant's registered office;
        iv. thought that he had received the letter dated 24 October 2023 regarding the interview under caution;
        v. recalled that he had telephoned the Respondent in response to this, and accepted that the note dated 07 November 2023 reflected the conversation had;
    d. accepted that he did not notify the Respondent of any health or personal issues (including the death of his son-in-law and his wife's ill health) prior to these proceedings (in which they are detailed in his witness statement);
    e. stated that, once he had received the Notices of Intent dated 12 March 2024, he attended the Respondent's Crook offices approximately 4 times for assistance in submitting the licence applications, as he does not own a computer and is not computer literate;
    f. stated that he 'thought everything was okay' once he had been to the Crook offices, as the staff there had said 'they would look after things and they did'.

42. Mr Gibson gave oral evidence on behalf of the Respondent, having also confirmed his witness statement. Points of note from his evidence are:

    a. he agreed that it was fair to say that Mr Slater had not been wilfully obstructive in delaying in applying for the licences;
    b. he accepted that Mr Slater had submitted the applications shortly after receiving the Notices of Intent in March 2024, with partial applications being submitted on 15 March 2024;
    c. the licences were granted with effect from 15 May 2024, without any objections being raised to their grant;
    d. in determining the penalties, Mr Gibson, in applying the Respondent's policy:
        i. applied a starting level of £12,500;
        ii. applied 2 aggravating features/factors, namely (1) committing an offence after receiving communication from the Respondent

about it and (2) the offence occurring for 21 months or longer, as per the table in the Notices of Intent [RPT p.169 refers];

e. prior to issuing the Final Notices, he checked whether or not licence applications had been made and found that only partial applications had been made, in that certification documents remained outstanding;
f. a partial application does not constitute mitigation as it does not equate to rectification of the breach;
g. he accepted that:
    i. no harm had been caused to the tenants of the Properties;
    ii. the Properties were in a good condition;
    iii. each of the Properties had the relevant electrical and gas safety certificates;
    iv. when he spoke with the tenants, they made no complaints about their landlord;
    v. there was no risk or danger to the tenants or occupiers;
h. 'harm', or lack thereof, is not considered a mitigating factor; rather 'harm' is only considered an aggravating factor by the Respondent, as properties are expected to be safe, as a basic element of a landlord's role;
i. the specific aggravating features that he considered applied to this case are those set out in the Notices [see, e.g., RPT p.169], namely continuing to commit the offence after receiving communication from the Respondent regarding it (+£1,000) and that the offence occurred over a 21 month period (+£5,000);
j. he accepted that the Applicant had made no financial gain from failing to obtain the licences;
k. he accepted that Mr Slater had experienced significant personal problems;
l. had Mr Slater notified the Respondent of his personal issues, he would have been sent a standard letter [RPT p.737] requesting further information;
m. he (Mr Gibson) would not have imposed a penalty in the same amount had he known at the time of issuing the notices the information that he knew at the date of the hearing: he would have awarded mitigating factors and imposed a lower penalty;
n. he would have allowed mitigation in respect of the son-in-law's death, for which a death certificate had been produced, probably in the sum of £1,000;
o. he might have applied mitigation for the ill-health of Mr Slater's wife, subject to receiving medical evidence in support, of between £500 to £5,000;
p. there are guidelines for officers' use when considering mitigation which are not included in the Respondent's policy document, and which were not included in the bundle submitted to the Tribunal;
q. when inputting information, there is a general box for 'other' mitigation that officers can complete, but that is rarely used;
r. there are banding guidelines, and guidance, but these are subject also to the discretion of each officer.

43. Both Mr Wooding of No 2 and Mrs Thompson of No 3 filed witness statements in support of the Applicant, both dated 07 June 2025 and appearing at [RPT .683] and [RPT p. 698] respectively. They did not attend the hearing, but their

statements were supported by statements of truth. They each confirmed the Applicant to be a "good landlord". Those statements were not challenged by the Respondent.

Conclusions and Reasons

44. The imposition of a financial penalty can only be upheld if the Tribunal is satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" under section 95 of the Act in respect of the Properties.

45. The Applicant admitted that it had failed to apply for licences for the Properties as required under the selective licencing scheme which came into effect on 01 April 2022, and the Tribunal is therefore satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Properties.

46. The Applicant did not challenge the Respondent's compliance with the procedural requirements of Schedule 13A of the Act and, from the documents provided, the Tribunal accepts that those requirements were met.

47. Whilst it was not contended on behalf of the Applicant, the Tribunal nonetheless considered whether the Applicant had a reasonable excuse for committing the offence, that is to say the offence of being in control of a property which was unlicensed when it should have been. It is to be emphasised that the failure to apply for a licence is not, in itself, the offence. The offence is, as stated, controlling a property without the requisite licence (*Palmview Estates Ltd v Thurrock Council* [2021] EWCA Civ 1871).

48. The Applicant is a landlord which owns a number of properties and Mr Slater stated that he was simply not aware that he needed licences for them. Whilst he was unsure which letters he had received from the Council during the relevant period, he accepted that he had no postal issues at Firtrees and that Office 64 is the Applicant's registered office. He also stated that he believed he had received the letter regarding the interview under caution and confirmed that he did telephone the Respondent in response to it, but still he did not apply for the licences until after receiving the Notices of Intent in March 2024.

49. On these facts, the Tribunal does not consider that the Applicant had a reasonable excuse for committing the offence.

50. The issue for determination by the Tribunal is the level of the financial penalties imposed by the Respondent.

51. The appeals come before the Tribunal by way of rehearing and the Tribunal is required to make its own finding as to the imposition and/or amount of the financial penalties. As noted above, the Tribunal may take into account matters which were unknown to the Respondent when the Final Notices were issued but must make its decision in accordance with the

Respondent's published policy unless there are compelling reasons to depart from it (*London Borough of Waltham Forest v Marshall & Another [2020] UKUT 0035 (LC)*). That said, as the Tribunal is conducting a rehearing and not a review, it can vary any decision where it disagrees with it.

52. The first stage of the 4-stage process set out in the Respondent's policy is to identify the starting level of the penalty.

53. The Respondent's policy sets out a tabular matrix which includes 6 levels of 'seriousness of offence' from 'mild' to 'very severe' and provides 'starting level' penalties for each, from £2,500 to £27,500.

54. With regard to the offence in question in these appeals, the policy states that the Respondent views "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. This seriousness of the offence is viewed by [the Respondent] as being a serious matter attracting a financial penalty with a starting level of £12,500."

55. Applying the Respondent's policy and matrix, the Tribunal finds that the starting level for the relevant offences in these appeals is £12,500.

56. Turning to the second stage of the process, Mr Slater confirmed that the Applicant owns 4 properties.

57. Applying the Respondent's policy, the Tribunal finds that a landlord of only 4 properties would attract a penalty of £12,500.

58. The Tribunal next considered aggravating and mitigating factors, as required by the third stage of the process set out in the Respondent's policy.

59. The Tribunal accepts that the Applicant failed to seek or obtain licences as swiftly as it should have done, and despite receiving correspondence from the Respondent notifying it of its obligations. The Tribunal finds that these are aggravating factors.

60. In terms of mitigation, the Tribunal reminds itself that the Respondent's policy states that no list of mitigating factors is included in the policy because the Respondent "acknowledges that there are myriad possible circumstances that might give rise to mitigation".

61. In the particular circumstances of these appeals, the Tribunal finds the following to be mitigating factors/features in this case:

    a. the Applicant has no prior history or track record of committing offences;
    b. the Applicant obtained no financial advantage from the offences;

c. the Properties are in good condition, as evidenced by the condition reports submitted by the Applicant (which were not challenged by the Respondent);
d. no harm, risks or danger were caused to the tenants and occupiers of the Properties, none of whom raised any complaints against the Applicant;
e. partial applications for the licences were submitted on 15 March 2024, 3 days after the date on which the Notices of Intent were posted, with outstanding documentation being provided subsequently, enabling draft licences to be issued on 15 May 2024, despite (1) Mr Slater being elderly (he was at the time 80 years old) (2) Mr Slater being computer illiterate (3) Mr Slater having accordingly physically to attend the Respondent's offices in Crook on 4 occasions to enable the Respondent's staff to assist in, firstly, submitting the applications electronically and, secondly, uploading the relevant supporting documentation;
f. Mr Slater and his family had suffered the loss of his son-in-law, on 04 July 2023, shortly before the Respondent began communicating with the Applicant regarding the issues the subject matter of these proceedings.

62. The Respondent's policy contains no guidance on what 'value' is to be attributed to any aggravating or mitigating factor. It says only that it is only in exceptional circumstances, that aggravating factors will result in the penalty being increased by more than £5,000, or that mitigating factors will result in the penalty being reduced by more than £5,000.

63. Having considered and weighed both the aggravating and mitigating factors that the Tribunal finds in these appeals, it further finds that the mitigating factors far outweigh the aggravating factors, and are sufficient to justify the maximum penalty reduction of £5,000.

64. The Tribunal finds that there are no discounts to be applied, pursuant to stage 4 of the Respondent's policy.

65. Having taken into account all of the evidence before it, the oral evidence given, and representations and submissions made to it during the course of the hearing on 14 August 2025, the MHCLG Guidance and the Respondent's "Civil Penalties under the Housing and Planning Act 2016" policy, the Tribunal varies each of the Final Notices dated 18 April 2024 and the subject of these appeals to reduce the penalties payable, in respect of each Final Notice, from £17,500 to £7,500, which sum the Tribunal also considers to reflect the seriousness of the offences in question and to be proportionate to the offending behaviour, as is required by the Respondent's policy.

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)