



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

Case Reference : **LON/00BH/HNA/2025/0682**

Property : **16 Nutfield Road, London E15 2DG**

Applicant : **Ms Iwona Juszczak**

Representative : **Mr Karol Hart, Solicitor Advocate of
Freemans Solicitors**

Respondent : **London Borough of Waltham Forest**

Representative : **Mr Alex Williams of Counsel instructed
by Sharpe Pritchard LLP**

**Type of
Application** : **Appeal against a financial penalty -
Section 249A and Schedule 13A to the Housing
Act 2004**

Tribunal Members : **Judge N Hawkes
Mr S Mason BSc FRICS**

Venue of hearing : **10 Alfred Place, London WC1E 7LR on 15
January 2026 on 15 January 2026**

Date of Decision : **16 February 2026**

DECISION

Decisions of the Tribunal

- (1) The Tribunal varies the Respondent's decision to impose a financial penalty on the Applicant by reducing the penalty from £7,600 to £6,000.
- (2) The Tribunal makes an order under Rule 13(2) of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 requiring the Respondent to, within 28 days, reimburse £168.50 of the Tribunal fees in the total sum of £337 which have been paid by the Applicant in respect of these proceedings.

Background

1. By an application dated 4 April 2025, Ms Iwona Juszcak ("the Applicant") brought an appeal against a financial penalty in the sum of £7,600. This financial penalty was imposed on her under section 249A of the Housing Act 2004 by the London Borough of Waltham Forest ("the Respondent"), pursuant to a final penalty notice dated 6 March 2025.
2. The financial penalty was imposed on the grounds that, contrary to section 72 of the Housing Act 2004 ("the 2004 Act"), on 12 April 2023, the Applicant was in control of or managing an unlicensed property, namely, 16 Nutfield Road, London E15 2DG ("the Property"), when the Property was a house in multiple occupation ("HMO") which required a licence under the Respondent's Additional Licensing Scheme but was unlicensed.
3. The Property is a four-bedroom house and the Applicant, and her ex-husband Mr Raymond Gatt, are the freehold owners of the Property. It is not in dispute that, at the material time, the Property was an HMO which was occupied by four tenants.
4. 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.

5. On 11 July 2025, the Tribunal issued Directions (“the Directions”) leading up to a final hearing. The Directions were amended on 20 October 2025 by a Legal Officer who fixed the hearing date and extended time for the Respondent to serve its Reply from 6 October 2025 to 20 October 2025.

The hearing

6. The final hearing took place on 15 January 2026 as a face-to-face hearing at 10 Alfred Place, London WC1E 7LR.
7. The Applicant attended the hearing in person and was represented by Mr Karol Hart, a Solicitor Advocate at Freemans Solicitors.
8. The Respondent was represented at the hearing by Mr Alex Williams of Counsel, instructed by Sharpe Pritchard LLP. Mr Williams was accompanied by a trainee solicitor, Mr Manasvini Mohan of Sharpe Pritchard LLP.
9. The hearing was also attended by the Respondent’s two witnesses: Mr Jon Fine, a Team Manager in Respondent’s Private Sector Housing and Licensing Team, and Ms Sian Smith, a Licensing Enforcement Officer employed by the Respondent. An observer attended the hearing who played no part in the proceedings.
10. The Tribunal heard oral evidence of fact from the Applicant and from Mr Fine. During the course of the hearing, Mr Hart informed the Tribunal that he was not going to challenge the witness evidence of Ms Smith through cross-examination. Accordingly, it was not necessary for Ms Smith to give evidence, and the Tribunal accepts her unchallenged evidence on the balance of probabilities.

11. The Tribunal informed the parties that all evidence and submissions would need to be presented orally at the hearing. This was so that each party would know exactly what the other party's case was and how it was being presented, and so that any party with an alternative viewpoint would have the opportunity to make oral representations to the Tribunal in response to each point which was being raised. In *Arrowdell Limited v Coniston Court (North) Hove Limited* LRA/72/2005, it was held at [23] that the Tribunal “*must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment.*”
12. The Tribunal has considered all the submissions that were made, and all of the evidence that was referred to during the course of the hearing. However, to keep this decision to a proportionate length, the Tribunal will only refer below to those matters which it is necessary to set out in order to understand the reasons for the Tribunal's decision.

The Tribunal's determinations

Procedural issues

13. Paragraph 8 of the Directions includes provision that, by 12 September 2025, the Applicant “must” provide the Tribunal and the Respondent a hearing bundle which “must” include any documents to be used at the hearing.
14. By Paragraph 15 of the Directions, the parties were clearly and expressly informed that:

“Applications for ... variations of existing directions... must be made using form Order 1”
15. For ease of reference, a direct link to form Order 1 was then provided:

“Form Order 1 is available at <https://www.gov.uk/government/publications/ask-the-first-tier-tribunal-property-chamber-for-case-management-or-other-interim-orders>”
16. At the commencement of the hearing, Mr Hart made an oral application for an extension of time to enable the Respondent to rely upon a letter dated 25 March 2022 from a Licensing Enforcement Officer of the Respondent to the Applicant concerning a different property (27 Lyttelton Road, Leydon, London E10 5NQ). The Respondent and the Tribunal were not put on notice of the Applicant's intention to rely upon this letter in these proceedings until very shortly before the hearing.

17. The Tribunal was not satisfied that the Applicant had a good reason (i) for failing to include this letter in the hearing bundle which the Applicant was required to serve on the Respondent and on the Tribunal by the deadline of 12 September 2025 or, having failed to do so, (ii) for failing to make the application for an extension of time on form Order 1 sufficiently in advance of the hearing that the Respondent and the Tribunal would not be taken by surprise.
18. The Tribunal was also not persuaded by submissions made by Mr Hart which appeared to suggest that there is a conflict or inconsistency between rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”), other provisions of the 2013 Rules, and the Tribunal’s Directions. There is no conflict or inconsistency but rather the Tribunal must seek to give effect to the overriding objective when it exercises any power under the 2013 Rules or when it interprets any Rule or Practice Direction.
19. However, having first invited submissions from Mr Williams, the Tribunal extended time under Paragraph 8 of the Directions pursuant to rule 6(3)(a) of the 2013 Rules so as to enable the Applicant to rely on the letter on the basis that, if any evidence emerged which the Respondent was unable to address due to the late service of the letter, very little or no weight would be placed upon that evidence. Mr Williams did not oppose this course of action, which was proposed by the Tribunal.

The substantive appeal

20. 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.
21. 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—

...

(b) section 72 (licensing of HMOs)

22. The Tribunal must also be satisfied to the criminal standard of proof that a relevant housing offence has been committed. DCLG Guidance for Local Authorities (“the Guidance”) has been issued under paragraph 12 of Schedule 13A. 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.
23. 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 Applicant 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 Applicant in reaching its own decision.”

24. At times the Applicant appeared to invite the Tribunal to carry out a review of the Respondent's decision-making process. The Tribunal notes that, 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."

25. Further, at [4] of *Ekweozoh v Redbridge LBC* [2021] UKUT 180, the Upper Tribunal stated:

"It is therefore not the task of the FTT in these appeals to consider whether the authority's decision was justified or reasonable; the FTT is instead required to decide for itself whether a financial penalty should be imposed at all and, if so, how much the penalty should be."

26. Section 72 of the 2004 Act includes provision that:

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

...

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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)

27. The onus is on a 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)).
28. The following matters were not in dispute at the hearing and, so far as they concern evidence of fact, the Tribunal also accepts beyond reasonable doubt the Respondent's evidence to this effect.
29. Under the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO"), it is possible to materially change the use of a property from a dwelling to a small "C4" HMO (of less than 6 persons), without seeking planning permission for that change. In other words, the GPDO conferred a permitted development right to change the use to C4.

30. On 16 September 2013, the Respondent made (and, on 9 January 2014, confirmed) a direction under Article 4 of the GPDO (“the Article 4 Direction”). The Article 4 Direction removed the permitted development right described above, meaning that any such change of use in the Respondent Council’s area required planning permission from that date.
31. On 11 July 2019, the Respondent designated the area in which the Property is situated for additional HMO licensing with the effect that, from 1 April 2020, it was necessary to licence HMOs occupied by more than two unrelated persons in that area.
32. On 2 October 2017, the Applicant submitted a selective licence application for the Property. The application recorded that there were four occupants comprising four households at the Property.
33. A selective licence was granted in respect of the Property on 24 November 2017. The selective licence expired on 31 March 2020 and, after its expiry, the Property fell within the definition of an HMO and required an additional licence.
34. On 20 June 2020, the Applicant submitted an additional HMO licence application for the Property. The application again recorded that there were four occupants of the Property comprising four households.
35. On 16 October 2020, the Respondent issued the Applicant with notice of its proposal to grant a HMO licence for the Property, together with a draft licence, and indicated that it was only prepared to grant a licence for 1 year due to the fact that the Property did not have planning permission for use as a HMO.
36. By letter to the Applicant dated 11 November 2020 (in response to representations received from the Applicant objecting to the proposal), the Respondent stated (emphasis supplied):

“Thank you for your letter dated 5 November 2020 regarding representations appealing the decision to issue a 1-year licence for the above property.

The crux of this matter lies within the fact that you do not have planning permission for the change of use of your property from a single-family dwelling to a House of Multiple Occupation (HMO). This is the sole reason that we are considering issuing a shorter licence for the property.

Within that year you will be required to regulate the use of the property. This means either obtaining the relevant planning permission from the planning department or returning the property into a single-family dwelling.”

37. On 13 January 2021, the Respondent granted an additional licence for the reduced term of 1 year, citing concerns that the Applicant lacked planning permission to use the Property as a HMO. It is stated in Appendix 1 to the licence under the heading “Reasons for proposing a 1 year licence”

“The Council considers a range of factors in determining whether a reduced licence term, or outright refusal of a licence application, is appropriate.

In determining this licence application, the Council has given due consideration to the fact that a breach of planning regulations has occurred at 16. Nutfield Road, London, Leyton. E15 2DG namely:

The above address is occupied as a House in Multiple Occupation [HMO] without having the necessary planning permission or established use for that purpose.

In the light of this breach of planning regulations, the Council considers that the licence relating to the above property should be granted for a reduced term.

In the event that it is decided to grant a licence for a reduced duration of one year, this will allow the landlord to legally rent the property whilst taking steps to regularise the use of the address - this will include, if necessary, the landlord being able to obtain possession of the property through the service of a s21 notice [Housing Act 1988] in order to bring about necessary changes in occupation or physical changes to the building.”

38. In light of the concerns expressed by the Applicant regarding the possibility of evicting tenants during the covid 19 pandemic, it is noted that the Respondent did not require the Applicant to regularise the position by evicting the tenants.
39. On 21 October 2021, the Respondent wrote to the Applicant to remind her to renew the licence ahead of its expiry date in January 2022.
40. In an email to the Respondent dated 27 December 2021, the Applicant stated:

“As you know, a licence for a small HMO was granted in relation to the above Property for a limited time of 1 year until 12 January 2022 because there is no planning permission for letting a property to more than 2 unrelated people... “

41. Accordingly, the Applicant recognised the reason why a licence for a period of only one year had been granted. On 12 April 2023, the Respondent carried out an inspection and found two tenants in occupation, both of whom confirmed that there were a total of four tenants at the Property.
42. On 20 September 2023, the Applicant received a letter from the Respondent asking her to apply for a HMO licence within two weeks. She then requested an extension of time due to the pending planning decision.
43. By email dated 2 October 2023, the Respondent told her not to delay, to submit an application, and to await the planning outcome. On 3 October 2023, the Applicant made an application for an additional HMO licence, naming herself as the rent collector and licence holder and Raymond Gatt as a joint freeholder.
44. On 6 October 2023, the Respondent issued a notice of intention to impose a financial penalty of in the sum of £7,600 on the Applicant. The date of the offence was given as 12 April 2023, the day of the Respondent's inspection of the Property.
45. On 17 October 2023, the Respondent, in its capacity as local planning authority, granted a lawful development certificate ("LDC") certifying that the use of the Property as a C4 HMO was lawful on (and therefore from) 18 July 2023.
46. On 2 November 2023, the Applicant made representations in response to the Respondent's notice of intent to impose a financial penalty dated 6 October 2023.
47. On 15 August 2024, the Respondent granted the Applicant a 5-year additional licence, the planning situation having been regularised by the grant of the LDC the previous year.
48. On 24 January 2025, the Respondent responded to the Applicant's representations of 2 November 2023 and, on 6 March 2025, the Respondent issued the civil penalty notice in the sum of £7,600.
49. The Applicant does not dispute that the alleged offence under section 72 of the 2004 Act was committed and does not assert that she has a "reasonable excuse" defence. Further, on the basis of the facts which are set out above, the Tribunal satisfied beyond reasonable doubt that the relevant offence was committed and is not satisfied on the balance of probabilities that the Applicant has a "reasonable excuse" defence.
50. The Applicant has three Grounds of Appeal, each of which will be considered in turn:

“Ground 1 : The Respondent has failed to follow the guidance in (i) the Ministry of Housing Communities & Local Government document entitled “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities (the Central Government Guidance)” [RB23–42] (ii) the Regulators’ Code [AB 147-153] and (iii) the London Borough of Waltham Forest Housing and Licensing Policy (the Respondent’s enforcement policy) by issuing the financial penalty.[RB 189-196]. The appeal should be allowed based upon the broad principles reflected in Ekweozoh v London Borough of Redbridge [2021] UKUT 180 (LC). This was a case where the Upper Tribunal President compared the approach of the London Borough of Redbridge with their own internal guidance and concluded that it was inconsistent given the individual factual circumstances of that case.”

51. Mr Hart stated that culpability is a spectrum, and he relied upon the fact that the Applicant submitted a licence application within 24 hours of the Respondent’s correspondence dated 2 October 2023. Mr Hart invited the Tribunal to find that the Applicant misunderstood “the planning side”; that she made a mistake; and that her culpability is sufficiently low to render enforcement action unnecessary. He submits that the Respondent should have and could have dealt with the situation by giving the Applicant a warning or written advice.
52. Mr Williams drew the Tribunal’s attention to the history and, in particular, to the fact that the Applicant herself had expressly acknowledged, in her correspondence of December 2021, the reason why a short licence had been granted. The selective licence expired in January 2022, but it was not until October 2023, more than 18 months later, that the Applicant made an application for a fresh licence. The offence date is 12 April 2023, which is over 14 months after the last licence expired. After this, it was still another six months before the Applicant made an application for a new licence.
53. Mr Williams submitted that it was therefore not a quick or hasty decision on the Respondent’s part to impose a financial penalty on the Applicant. The date of the LDC is 17 July 2023 and there is no evidence that immunity for the planning breach had been acquired at the time of the offence date in April 2023. It is also not part of the Applicant’s pleaded case that immunity was acquired by the offence date. Accordingly, on date of offence for which the financial penalty was imposed, there was no licence for the Property and no evidence that the planning position had been regularised at that date.
54. Mr Williams drew the Tribunal’s attention to significant factual differences between *Ekweozoh* and the present case. He submitted that the policies and guidance relied upon by the Applicant, other than the Respondent’s Policy and Matrix which is directed at financial penalties (“the Matrix”), do not assist. He argued that the starting point is the Matrix and that, in any event, the other policies are abstract with no

direct bearing on the issues in this case, or they set out general policies which either have been properly or would not change result.

55. In our judgment, the starting point is the Respondent's Matrix, because this is the policy document which was specifically formulated for dealing with the imposition of financial penalties; in *Sheffield City Council v Hussain*, the Upper Tribunal stated the Tribunal should start from this document (see above); and the Applicant did not contend that this is a case in which the Tribunal can depart from the Matrix. Further, the Tribunal is not, in any event, satisfied that following any potentially relevant provisions of the other policy documents referred to by the Applicant would result in a different determination.
56. Under the Respondent's Matrix, it is possible in appropriate cases to simply caution a person who has committed a relevant housing offence.
57. We note that it is common ground that the Property was at all material times in good condition.
58. It was not suggested at the hearing that the Respondent mislead the Applicant regarding the planning position and, in any event, we are not satisfied that the information provided by the Respondent was in any way misleading.
59. We accept the Applicant's oral evidence that she took advice from a Planning Consultant early on and that she did not fully understand the planning position. However, the Applicant's email of 27 December 2021 shows a good understanding of what needed to be done, and she had ample time between that email and the offence date to ensure that she understood how to regularise the position, and to take the necessary steps to do so.
60. Whilst recognising that each case turns on its own facts, the Tribunal notes that there are very significant differences between the facts of *Ekweozoh* and the facts of the present case. In *Ekweozoh*, the Applicant was unaware of the need to licence; she lived in Canada; she had been abroad for 10 years; and she had delegated the management of her property to a professional managing agent. She also applied for a licence within three weeks of first contact between the agent and a local authority housing officer.
61. At [50] of the judgement in *Ekweozoh*, the Upper Tribunal stated (emphasis supplied):

"The appellant's case was not presented to the FTT on the basis that, having appointed an agent to manage her property and that agent having failed to alert her to the need for a licence, she had a reasonable excuse for the property having been unlicensed which provided her with

*a statutory defence under s.95(4), 2004 Act. Nevertheless, the fact that she engaged the services of an agent, as a responsible landlord in her circumstances would have done, is **a highly relevant consideration.***

62. In the present case, the Applicant was aware of the need to apply for a licence; she was not based aboard; she did not instruct a professional agent; and she received multiple warnings from the Respondent concerning the need to regularise the planning position and to apply for a licence. In our judgment, the Applicant's culpability is considerably higher than that of the appellant in *Ekweozoh*.

63. We note that at [42] of the judgment in *Ekweozoh*, the Upper Tribunal stated:

"There is no doubt that a failure to license a house which is required to be licensed is not a technical or minor infringement, as the appellant suggested. I entirely accept the reasons given by the respondent's housing officer for treating the offence in this case as one of moderate seriousness, because unlicensed tenancies cannot be monitored by the respondent as intended by the scheme."

64. In all the circumstances and, in particular, having regard to the timeline set out above, the Tribunal has no hesitation in finding that this is a case in which a financial penalty should be imposed on the Applicant.

"Ground 2: In the alternative, the Applicant is a joint owner of the property with Raymond Gatt. The majority of the tasks and time relating to management of the property was undertaken by Raymond Gatt. In accordance with the principles of totality as set out in the case of Gill v The Royal Borough of Greenwich [2022] UKUT 216 (LC), applied in Shorr v London Borough of Camden [2024] UK UT 202 (LC), this should have led to at least a reduced fine."

65. Mr Hart relied upon the fact that two of four tenants at the Property expressly refer to Mr Gatt as their landlord in written statements which are contained in the Respondent's bundle and that Mr Gatt was responsible for the day to day management of the property.

66. Mr Hart accepted that the Applicant was involved at some level, but he submitted that her level of involvement was very different from that of Mr Gatt and he invited the Tribunal to accept the Applicant's evidence regarding the nature and extent of her role. He submitted that it is surprising that the financial penalties imposed against two different people should be identical. He referred the Tribunal *Shorr and another v Camden London Borough Council* [2024] UKUT 202 (LC) and to *Gill v Greenwich RLBC* [2022] UKUT 26.

67. Mr Williams submitted that the facts of the present case are very different from the facts of *Shorr* and *Gill* and that there is good reason to impose a financial penalty on the Applicant in the present case.
68. The Tribunal heard detailed evidence from the Applicant but did not hear evidence from Mr Gatt. The Tribunal also has more information concerning the Applicant. This makes it difficult to make a direct comparison between the Applicant and Mr Gatt.
69. The Applicant gave evidence, which the Tribunal accepts on the balance of probabilities that:
- (i) Tradespeople were sometimes paid by Mr Gatt and sometimes paid by the Applicant.
 - (ii) After October 2018, the Applicant's involvement decreased but both she and Mr Gatt signed the tenancy agreements and dealt with online listings.
 - (iii) After October 2018, she was more active at some times than at other times.
 - (iv) The Applicant dealt with all of the paperwork concerning the Property and she was solely responsible for obtaining licences for the Property.
 - (v) She was also solely responsible for regularising the planning situation.
 - (vi) It was the Applicant who corresponded with and made representations to the Respondent Council.
 - (vii) She considered herself to be a manager of the Property.
70. On the evidence available, we are not satisfied that the degree of Mr Gatt's culpability in relation to this licensing offence is greater than that of the Applicant. In reaching this conclusion, we place particular reliance on the fact that the Applicant was solely responsible for obtaining licences for the Property; for regularising the planning situation; and for making representations to the Respondent.

Ground 3: In any event, should the Tribunal conclude that a financial penalty is payable, and in addition to the matters set out at Ground 2, the Respondent has not properly and fairly applied the Respondent's enforcement policy in determining the level of the fixed penalty. The

figure should appear be significantly reduced when applying the policy correctly.

71. Mr Hart accepted that the Respondent applied the correct starting point but submitted that there is significant mitigation. In particular, Mr Hart relied upon the following matters:
- (i) The Applicant had no previous convictions, cautions or fines.
 - (ii) The Respondent had regularised the position prior to imposition of the financial penalty.
 - (iii) Although the Applicant's pleaded case is that she had been badly served by the Respondent as to the appropriate mechanism to remedy the planning position during the one-year period of the temporary Licence, Mr Hart accepted that the Respondent did not mislead her and that there was a misunderstanding on her part.
 - (iv) The Respondent did not advise the Applicant to obtain a certificate for lawful development.
 - (v) The Applicant had always engaged with the Respondent and received either inadequate, incomplete or no responses.
 - (vi) Had the Applicant known of the availability of a certificate of lawful development she would have applied for it earlier.
 - (vii) The property was maintained to an exceptionally high standard and represented high quality accommodation that was compliant with all the regulations, aside from not having a licence.
 - (viii) This was a purely technical breach which breached the letter of the law but not the spirit of the law; namely the reason that the law was there.
72. Mr Hart's primary case was that there are exceptional circumstances which would justify the Tribunal going below the relevant band and imposing no financial penalty. In the alternative, he submitted that a financial penalty of £2,500 is appropriate in all the circumstances of this case. Mr Williams submitted that the Respondent had gone through the correct steps and had reached the right decision.

73. The Policy and Matrix include express provision that:

“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.

...

Under the Council’s policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a moderate matter, representing a band 2 offence, attracting a civil penalty of at least £7500.

...

Aggravating features/factors specific to non-licensing offences

- *The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty.*

Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty

- *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*

Generic aggravating features/factors

As set out under 'Improvement Notice' above.

[These are]

The Council will have regard to the following general factors in determining the final level of the civil penalty:

- *A previous history of non-compliance would justify an increased civil penalty.*

Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action

- *Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s]"*

74. In accordance with the Respondent's policy, we find that the correct starting point is £7,500, at the middle band 2 of the Matrix. Band 2 has a band width of £5,000-£10,000. We find that the Applicant's knowledge of the licensing scheme, as well as and considered in the context of the amount of time which it took her to apply for a licence, are aggravating factors which warrant an increase of £2,000. In making this assessment, we have taken into account the entirety of the timeline.

75. Mr Williams submitted that the fact that the Applicant had no previous convictions, cautions or fines is not a potential mitigating factor but rather it is simply the absence of an aggravating factor. His primary submission was that the Sentencing Council Guidelines are not relevant in light of the express wording of the Respondent's Policy. He argued, in the alternative, that the long period during which the Property was without a licence effectively cancels this factor out.
76. The Tribunal notes that at [65] of in *Shorr*, the Upper Tribunal stated:
- "The proper approach is reflected in the guidance on criminal sentencing published by the Sentencing Council. Although this guidance is aimed at sentencing in the criminal context, there is no civil equivalent and it provides an invaluable resource when assessing financial penalties under section 249A, which are intended as an alternative to criminal sanctions."*
77. There is no offence specific guideline for this offence. The Sentencing Council *General Guideline: Overarching Principles* includes provision that having relevant previous convictions is an aggravating factor and, also, that having "no previous convictions" is a mitigating factor. It is stated that:
- "First time offenders usually represent a lower risk of reoffending. Reoffending rates for first offenders are significantly lower than rates for repeat offenders. In addition, first offenders are normally regarded as less blameworthy than offenders who have committed the same crime several times already. For these reasons first offenders receive a mitigated sentence."*
78. This is not inconsistent with the Respondent's Policy and Matrix which does not include any list of mitigating factors. Accordingly, the Tribunal is satisfied that the fact that the Applicant has no previous, convictions, cautions, fines, or civil penalties is a relevant factor. We also take into account the fact that the Applicant did initially seek independent professional planning advice, whilst noting that the scope of this advice was limited in that it did not result in a timely application for a licence. We find that these factors warrant a reduction of £2,000, bringing the total down to £7,500, before the relevant discount is applied.
79. The Tribunal has already have taken the length of time for which the Property was unlicensed into account assessing culpability and does not take it into account again, at this stage, in order to avoid double counting. The fact that the Applicant regularised the position prior to the imposition of the financial penalty is taken into account in applying a discount for "compliance" (see below).

80. The Tribunal does not accept the Applicant's contention that the Respondent was under an obligation to advise her to obtain a certificate for lawful development. The Tribunal is also not satisfied, on the balance of probabilities on the basis of the evidence which was referred to at the hearing, that the Respondent was itself responsible for any delay in applying for a licence by providing inadequate or incomplete responses, or by failing to respond to the Applicant. For the reasons stated above, the Tribunal is, in addition, not satisfied that the Applicant's breach was a "technical breach". Further, the Tribunal accepts Mr Williams' submission that the good condition of the Property and the compliance with regulations, aside from not having a licence, is the lack of an aggravating factor rather than a mitigating factor.
81. The Tribunal is not satisfied on the balance of probabilities that there are any exceptional circumstances in the present case which cause the penalty to be decreased below the relevant band. The Respondent accepts that a discount of 20% falls to be applied to reflect the Applicant's compliance, and this discount reduces the penalty from £7,500 to £6,000.

Conclusion

82. The Tribunal therefore varies the Respondent's decision to impose a financial penalty on the Applicant by reducing the penalty from £7,600 to £6,000.

Reimbursement of Tribunal fees

83. Having considered all of the circumstances of the case and, in particular, the degree of success on the part of the Applicant, the Tribunal makes an order under Rule 13(2) of Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 requiring the Respondent to reimburse the Tribunal fees in the sum of £168.50 in respect of Tribunal fees in the total sum of £337 paid by the Applicant in respect of these proceedings.

Name: Judge Hawkes

Date: 16 February 2026

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).