FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00EJ/HNA/2025/0643**
Property	**:**	**10 Wesley Terrace, Chester Le Street DH3 3EJ**
Applicant	**:**	**J Noble & Sons Limited**
Respondent	**:**	**Durham County Council**
Type of application	**:**	**Appeal against a financial penalty - section 249A & Schedule 13A Housing Act 2004**
Tribunal	**:**	**Tribunal Judge L Brown,** **Tribunal Member Ms J Bissett FRICS**
Date of decision	**:**	**20th February 2026**

DECISION

The appeal is allowed in part. The Tribunal confirms that the Respondent was permitted to issue a financial penalty to the Applicant, but the Tribunal substitutes the amount of the financial penalty to the sum of £2,500.00

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The Application

1. By Application dated 25 March 2025 the Applicant appealed against a financial penalty of £9,000.00 imposed upon it by the Respondent by a Final Notice dated 28 February 2025 in respect of the Property.

2. Procedural Directions were issued by the Tribunal on 12 November 2025.

3. The Application is opposed by the Respondent. Both parties presented their own bundle of documents, comprising 33 pages (Applicant) and 218 pages (Respondent), which the Tribunal took time to read before the hearing.

4. The Application was heard by video link on 12 January 2026. From the Applicant, Mr Jason Noble attended and gave oral evidence to the Tribunal. He is a Director of the Applicant. He also made written representations in an email dated 6 January 2025. Attending with Mr Noble was Ms E Parker, his Assistant. The Respondent was represented by Ms S Grigor, Solicitor. Evidence for the Respondent was given by Ms C Siddall, Selective Licensing Team Leader, who provided a written statement dated 1 December 2025. Also present from the LA was Ms J Thompson. We also had written statements on behalf of the LA from Ms L Proctor, Principal Private Sector Initiative Officer (dated 29 January 2024) and Mr A Lincoln, Housing Enforcement Officer (dated 6 March 2024). The Tribunal accepted the written statements as the statement maker's main evidence.

The Law

5. 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.*"

6. 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.

7. Section 263 sets out definitions of "person having control" and "person managing", as:

   > "*(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*
   >
   > *(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.*
   >
   > *(3 In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—*

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

Facts and Chronology

8. The basic facts were largely agreed. The Property is a 2 bedroom end-terrace house, located in a residential area designated by the Respondent for selective licensing under Part 3 of Housing Act 2004 (HA 2004), which designation commenced on 1 April 2022 for a period of 5 years. Any property occupied under a residential tenancy within that area would require a licence.

9. Notwithstanding the evidence of both parties that the Applicant is the owner of the Property, the Tribunal has learned from the Land Registry office copies of the title to the Property, da*ted 29 April 224, that the registered proprietor of the freehold is recorded as "BARNETT WADDINGHAM TRUSTEES LIMITED (Co. Regn. No. 02005798) of 91 Front Street, Chester le Street, Co Durham DH3 3BJ and JASON NOBLE, JOHN NOBLE and JOHN NOBLE of 91 Front Street, Chester le Street, Co Durham DH3 3BJ the trustees of the J. Noble & Sons Limited Pension Scheme"*. The Respondent recorded that the tenant of the Property stated she paid rent to the Applicant. We heard no correction. Therefore, we found that both parties have proceeded under an apparent error of understanding concerning ownership.

10. However, we found that the issue of ownership does not make a material difference within the proceedings, as will be explained below.

11. The Respondent gave notice of the licensing requirement to the Applicant by letters dated 17 July and 14 August 2023. The Applicant contacted the Respondent on 17 August 2023, initially to ask for support to remove the occupier of the Property, so there would be no need for a licence. On 30 August 2023, a search of the Respondent's Council Tax system confirmed the Property to be occupied by Mr R Handrick and Miss K Kilkenny. It showed the owner to be the Applicant. On 4 January 2024 the Respondent sent a letter to the Applicant alleging that an offence may have been committed under the Housing Act 2004 and that the Council were considering enforcement action. The letter contained a schedule of questions and provided a copy of a caution, in accordance with Police and Criminal Evidence Act 1984 (PACE) (the "PACE Letter"). The Applicant denied receiving that letter.

12. Applications for selective licences from the Respondent are processed through an online system known as Metastreet. An account for the Applicant was created on 18 January 2024 and certain documents relevant to an application were uploaded on 29 February 2024.

13. On 15 March 2024 the Respondent issued a Notice of Intention to the Applicant, advising of intention to issue a civil penalty of £12,500.

14. Application for the licence was submitted to Metastreet on 20 March 2024. A draft licence was issued on 17 October and formally issued on 8 November 2024.

15. On 12 July 2025 a Final Notice was issued, for a civil penalty of £12,500. A further letter dated 24 September 2024 was sent by the Respondent to the Applicant, chasing contact.

16. Engagement between the parties then took place, including a meeting on 22 November 2024. The Applicant's position was that until it received the letter of 24 September 2024 it was unaware of the need for a licence. The original penalty was withdrawn on 6 December 2024.

17. On 13 December 2024 a fresh Notice of Intention was issued, regarding a penalty of £12,500.

18. By email dated 6 January 2025 the Applicant through Mr Jason Noble made representations to the Respondent.

19. A Final Notice dated 28 February 2025 directed to the Applicant was issued for a civil penalty of £9,000.

20. The Final Notice explains " You committed an offence in relation to the licensing of houses (Section 95(1), Housing Act 2004)" Unfortunately, the "Details of the offence" repeats the error regarding ownership, referring to the Applicant as "owner". However, the Tribunal is satisfied that the Applicant was not materially misled by the mistake and the point at issue is dealt with by liability under section 95(1) HA 2004, which attaches liability to the person or body having control or managing the property, not necessarily the freehold owner. It was not in dispute that the Applicant company performed the management functions throughout. Therefore, the Applicant was an appropriate potential recipient of the penalty. We also note that the Respondent's penalty assessment was applied on the basis that the Applicant was the managing entity, not on any specific characteristics exclusive to ownership.

21. The Final Notice does not specify the period during which there was a failure to have in place a selective licence, when one was required. The tenancy agreement provided in evidence by the Respondent regarding the Property was dated 11 October 2024 for a term from that date until 10 November <u>2024</u> (our emphasis). The uncontested evidence from the Respondent was that when its Council Tax records were checked on 30 August 2023 the occupier was "Mr R Hendrick". One of the tenants named on the tenancy agreement was "Mr Robert Hendrick". There was no evidence before the Tribunal that occupation of the Property by a

residential tenant was not continuous from at least 30 August 2023. In the absence of any contrary evidence, that is the date the Tribunal found is relevant for the commencement of the potential offence. The period was found to end upon the making of the appropriate application for a licence, on 20 March 2004.

22. For the purposes of the Application, the Applicant did not dispute it was without the appropriate licence and had not submitted a proper application for it before 20 March 2024. Nor was it in dispute that the Applicant was in "control" and / or "managing" the Property for the purposes of section 263 Housing Act 2004 (HA 2004) – see below.

23. 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.

24. The process leading to the Respondent imposing a financial penalty for the offence was not in dispute and the Tribunal was satisfied that there had been compliance by the Respondent with the requirements of s 249A and Schedule 13 HA 2004.

25. 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.

26. The basis of calculation of the amount of the penalty is set out briefly in evidence from Ms Siddall. Our findings on that matter are set out below.

27. By paragraph 12 of Schedule 13A HA 2004, 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 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.

28. In this case, the Respondent presented its Corporate Enforcmeent Policy of 1 April 2024. Its principal policy identifying its basis of calculation of the penalty is the document in the Respondent's bundle, commencing at page 170.

29. 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 Applicant to show on a balance of probabilities that it had a reasonable excuse for so doing.

30. 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.

Applicant's position

31. In its email to the Respondent dated 6 January 2025 Mr Noble set out that the principal business of the Applicant was in the regulated hospitality and gambling sector and matters of licensing are integral. Therefore, it recognises the legal obligations it has to fulfil for its business. The Property is next door to the business premises, having originally been bought to house a member of staff.

32. It was suggested the application for a licence was put in hand as soon as the need to apply was brought to the Applicant's attention. It was delayed because a tenancy agreement was required in the process and it took time to persuade the occupiers to sign, because they had been in residence for some time without having to enter into a written agreement. The Property was in a good state of repair and all inspections regarding utilities had been provided. Rent had not been increased (£115.38 per week).

33. Following a prompt letter in August 2023 regarding licensing, a meeting had been sought with the Respondent, as it was believed the Property did not merit being classed as "*....run down or depraved....*" It was asserted that a meeting was delayed because officers of the Respondent were working form home, post-COVID. There was no further engagement from the Respondent until it made a telephone call to Ms Parker, the Applicant's General Manager, in early March 2024.

34. Ms Parker experienced bereavements and had to take extended compassionate leave. There was no direct cover for her work .

35. It was denied that the Applicant had received the PACE Letter. Had it been received the Applicant would have been able to make representations, which may have avoided the issuing of a penalty.

Respondent's representations

36. The Respondent represented that the penalty was calculated taking into consideration all of the information available at the time of the offence and in light of the Applicant's representations after it received the second Notice of Intent the penalty was reduced to £9,000.

Conclusions and Reasons

37. The Tribunal must be satisfied, beyond a reasonable doubt, that the Applicant had committed a "relevant housing offence" in respect of the Property. The area in which the Property is situated was designated as a selective licensing area with effect from 1 April 2022. From that date, any property occupied under a residential tenancy within that area would require a licence.

38. The Tribunal was presented with only oral evidence of the steps taken by the Respondent to consult about its proposed designation and its imposition. We found the evidence weak – indication that there had been notices in 3 newspapers, on display at the Respondent's offices and advice to CAB (which predominantly advises tenants, not landlords) – however, we were persuaded that steps had been taken to make the general public aware of the relevant selective licensing scheme and authority for designation had been granted.

39. The date of commencement of letting was unclear. We found that the Applicant did not have a licence for the Property from 30 August 2023 to 20 March 2024 (see paragraph 21). Further, no evidence was presented that any other person or body held an appropriate licence.

40. It was not disputed that the Applicant was a person having control and/ or management, of the Property, as defined by s263.

41. The Tribunal considered the Applicant's position firstly to be that it had a "reasonable excuse" for the offence. It was variously suggested that the Property did not deserve to be in the scheme and that the Applicant had been misled by the Respondent as to the strict requirement to be licensed. We found these points to carry no weight in respect of the failure to seek a licence.

42. The Applicant did not argue ignorance of the application of a selective licensing scheme affecting the Property; therefore the burden lay on the Applicant to make the appropriate application in a timely fashion. Although the Respondent did not explain the date it considered the offence had begun, it was apparent from the evidence of Mr Noble that perhaps the Property was let in April 2022 but it was unclear if there had been continuous occupation. The evidence presented was that regarding council tax and in the absence of clear contrary representation from the Respondent we found that the offence began to be committed on 30 August 2023, for reasons set out above. The application was not made timely and only after the Respondent prompted it firstly by letter dated 17 July 2023 and it is no excuse for the Applicant to say it was waiting for a meeting with the Respondent. There was no evidence before us that the Respondent agreed a moratorium on the licensing requirement for the Property pending a discussion. Similarly, disagreement with the designation of the Property within an area of selective licensing did not provide a reasonable excuse to obtain a licence within a timely manner.

43. Accordingly, the Tribunal was satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Property and that the offence was being committed between 30 August 2023 and 20 March 2024. In consequence, a penalty may become payable in accordance with the aforementioned policies.

Amount of the Penalty

44. The Respondent provided limited detail on the method of calculating the penalty and principally only orally from Ms Siddall at the hearing and by reference to the notes accompanying the Notice of Intention to issue a penalty. The Applicant's challenge was in broad terms about its unfairness.

45. DCLG Guidance has been issued to local housing authorities regarding how their financial penalty powers are to be exercised. The Guidance encourages each authority to issue its own policy for determining the appropriate level of penalty, with the maximum amount being reserved for the worst offenders. Relevant factors include:

    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.

46. The Tribunal has considered the Respondent's published policy and notes that in many respects it is reflective of the DCLG Guidance.

47. The Respondent's process was to identify a starting figure for the penalty, by determining the severity of the offence by reference to culpability, and harm (or risk of harm) caused by the offence. The policy of the Respondent is that any failure to obtain a licence, irrespective of reasons for the failure, has a starting point that the offence is deemed "serious", thus the level of penalty starts at £12,500.00 in line with the matrix set out in the policy. No explanation was offered in evidence as to why that was the attribution, but we found within the notes accompanying the Notice of Intention justification by reference to "*.....tenants and wider community are not protected by the additional regulatory controls afforded by licensing*."

48. We were informed by Ms Siddall that a reduction of £5,000 was granted because of the Applicant being responsible for only one property.

49. The Respondent added for aggravating features: £1,000 for deliberate intent - because the breach of licensing obligations continued after notification about the potential offence; and £4,000 for committing the offence for more than 3 months - because the offence was deemed to have "*...occurred over 18-21 months or longer*."

50. Mitigation was taken into account by the Respondent: £2,000 for steps taken to remedy the problem: and £1,5000 for "*Pro-active efforts were made to provide information relevant to licence the property*."

51. Therefore, the net penalty was assessed at £9,000.

52. On the facts before us, the Tribunal was satisfied that the starting point of £12,500 was in accordance with the Respondent's policy, although we comment that the approach of regarding all breaches of licensing obligations to be automatically deemed as "serious" suggested to us inflexibility in applying the DCLG overall

guidance. The Tribunal agreed with the reduction to £7,500 for the reason set out in paragraph 48.

53. We found the Applicant to present through its Director honestly and while Mr Noble initially had spoken with the Respondent about what would be needed to avoid having to seek a licence – removal of the residential occupancy – no action followed to seek possession and we regarded the question as no more than an exploratory enquiry. We found no evidence to suggest there was any concern about the condition of the Property or management of it.

54. The Respondent's Statement of Intent in its Corporate Enforcement Policy includes "*Our main objective is to protect the public, the environment and specific groups such as consumers and workers*." In this particular case, there was no concern presented that any of those protections were put at risk by the Applicant's omission to be licensed. The policy sets out a series of objectives intended to guide the imposition of penalties in a fair, consistent and proportionate manner. These include punishment, ensuring that penalties reflect the seriousness of the breach; deterrence, both of the individual landlord and of the wider sector; removal of any financial benefit from non-compliance; and fairness and proportionality in ensuring that the penalty is properly calibrated to the circumstances of the landlord.

55. However, the Tribunal found a clear imbalance within the policy between financial consequences for aggravating and mitigating circumstances. The policy contains an extensive list of aggravating features, such as poor property standards, extended periods of offending, deliberate intent and risks to vulnerable tenants, many of which attract substantial and fixed uplifts. By contrast, the mitigating side of the matrix is far narrower and does not provide equivalents for several of the aggravating categories. This imbalance does not sit easily with the policy's stated objective of fairness and proportionality. One example is that the Respondent's policy imposes an uplift for poor property standards, but includes no mitigating reduction for a property that is well maintained and compliant. In this case, the property had a valid Gas Safety Certificate, EICR and EPC, and no hazards or risks were identified by the Respondent.

56. Further, while the policy increases penalties where a landlord delays providing documents or acts obstructively, there is no mitigation category for delays caused by external constraints outside the landlord's control. Here, the landlord could not obtain the tenancy agreement to complete the licensing application because the tenant initially refused to sign an agreement and the landlord had no lawful mechanism to compel signature. However, without a signed tenancy agreement the Respondent would not permit issuing of a licence. We found that these matters, combined with the further personal and operational factors we have identified, create a weighting in the policy that is quite one-directional and risks overlooking genuine, fact-specific mitigation that is directly relevant to culpability, enquiry and deterrence. For these reasons, we think it is necessary to exercise broader discretion, particularly as the policy itself acknowledges that mitigation is not exhaustive and that each case must be considered on its own facts.

57. The Respondent imposed an additional £5,000 for aggravating factors (see paragraph 49). We did not agree that these additions were appropriate. The Respondent did not explain its reasoning to consider the breach to have lasted for 18 – 21 months. Our finding on the evidence before us as to the period in which the breach occurred (see paragraph 43) was for less than 7 months. The policy specifies the sum to be added for such a period therefore is only £1,000.

58. The Property remained unlicensed for an extended period, but the tenant's refusal to sign the tenancy agreement for some time and the personal circumstances outlined, partially explained the delay. In our view, this removes the foundation for alleging deliberate conduct and, accordingly we found no uplift should be applied for such an element. The maximum to add for aggravating factors therefore was found to be £1,000.

59. Further, the Tribunal disagreed with Respondent attributing only £3,500 to mitigating factors. We found the Respondent correctly applied deductions as set out in paragraph 50 for that amount, as following the evidence. However, we also found that the Respondent's policy does not restrict what may amount to mitigation and it recognises that each matter should be considered individually.

60. As expressed above, limited information was provided by the Respondent about the process of calculation. However, the Tribunal was provided with its "Banding Guidelines". The Tribunal determined that a more balanced approach for the facts of this case is achieved by also applying deductions under the 'Other' category recognised in the policy framework. Specifically:

    External constraints beyond the Applicant's control (–£1,000): The Applicant was unable to obtain a signed tenancy agreement because the tenant initially refused and could not legally compel the tenant to sign while unlicensed.

    Exceptional personal and operational circumstances (–£1,000): The General Manager experienced bereavements and was on extended compassionate leave, which materially affected the Applicant's administrative capacity.

    Good property standards and absence of hazards (–£500): All required safety documentation was in place, and no property hazards were identified. Although the policy includes uplifts for poor standards, it does not offer reductions for good standards, but we found that we should consider this in the interests of proportionality.

61. Total deductions for mitigation, therefore, were found to be £6,000.

62. Having taken into account all of the evidence before it, the representations and submissions made to it, including during the course of the hearing, the Tribunal determined that the amount of the penalty should be varied. Taking account of the additional deductions totalling £2,500 referred to in paragraph 60, we determined that the final penalty should be £2,500. Coincidently, that is the minimum penalty the Respondent records in its policy that it could impose.

Tribunal Judge Brown

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).