



FIRST - TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/41UC/HNA/2025/0034
Property	:	291 Goodman Street, Burton on Trent DE14 2RQ
Applicant	:	Mohammed Ashraf
Applicant's Representative	:	Mr Greg Leckey of Counsel
Respondent	:	East Staffordshire Borough Council
Representative	:	Mrs R Liddle
Type of Application	:	Appeal against a financial penalty under S249A and paragraph 10 Schedule 13A of the Housing Act 2004
Tribunal	:	Tribunal Judge P. J. Ellis Tribunal Member Mr I. D. Humphries FRICS
Date of Hearing	:	08 May 2026
Date of Decision	:	13 July 2026

DECISION

The decision of the Tribunal is that the Appellant is guilty of a housing offence contrary to s95 Housing Act 2004 by reason of the failure to licence a residential dwelling .

The penalty imposed upon the Applicant is disproportionate. The Tribunal quashes the penalty imposed by the Respondent of £16000.00 on 25 August 2025 and replaces it with a penalty of £2500.00.

Introduction

1. This is an appeal by way of rehearing of the imposition of a financial penalty of £16000.00 on the Applicant who was the owner or controller of a residential property that is in an area of selective licensing but was not so licensed. It raised the issue of the application of ss79(1) 79)2)(b) and s99 of the Housing Act 2004.
2. The appeal was issued on 10 September 2025. The penalty the subject of the appeal was imposed on 13 August 2025 following a Notice of intention to Issue a Penalty dated 4 June 2025. Directions were issued on 3 December 2025. The matter was heard on 8 May 2026 by video.
3. At the hearing the Applicant Mr Ashraf assisted by an interpreter gave written and oral evidence. He was represented by Mr Greg Leckey of Counsel. He is the registered proprietor of 291 Goodman Street which he holds as trustee for the Park Street Mosque. The Respondent council was represented by Mrs. Rachel Liddle the Environmental Health Manager and Ms Liz Daykin the Housing Licensing Officer. Ms Lauren Sheffield a solicitor with the Respondent's legal services office was in attendance.
4. The subject property is in an area of Selective Licensing introduced by the Respondent on 12 September 2022. The Proprietor Register shows the Appellant is the joint owner with Mr Mohammed Riaz who had died in January 2021.

The Grounds of Appeal

5. The Grounds of Appeal are that the Penalty Notice of £16,000 should be set aside because the subject property was not a house or part of a house or a dwelling within the meaning of s79 or s99 Housing Act 2004 (the Act), the property is not licensable.
6. Alternatively, the Applicant had a reasonable excuse for not obtaining a selective license for the property, namely that his genuine belief that the rooms did not amount to a dwelling/house was sufficient excuse for him not to need a licence. He had other properties in the area which were licensed. As one familiar with licensing obligations it was not unreasonable for him to decide not to apply for a licence. The space was not occupied before January 2024 when the occupier moved in and it has reverted to commercial use now.
7. Alternatively, it should be reduced as it is excessive and there are mitigating factors including failing to consider relevant factors, failing to give adequate reasons for the classification of the alleged offence, failing to give sufficient attention to alternative penalties. As these alternatives were not considered the penalty is unsafe.
8. The penalty imposed was disproportionate and excessive having regard to the numerous mitigating factors which the Respondent had failed to consider.
9. The penalty has not been calculated in accordance with the guidelines adopted by the Respondent in its enforcement policy and penalty calculation matrix.

The Property

10. 291 Goodman Street, which was not inspected by the Tribunal, is a two storey terraced building comprising commercial premises on the ground floor with an apartment (291a) on the first floor. The commercial premises are used as a retail shop by tenants of Mr Ashraf.
11. The apartment on the upper floor of Goodman Street and the other properties of Mr Ashraf are all licensed as required by the local housing authority.

12. This case is concerned with rooms at the rear of the ground floor which were occupied by a Mr Pascariu between January 2024 and July 2025. They were not licensed at any time nor has any application for a license been made either during the period of occupation or since. At the time of the hearing and since July 2025 the entire ground floor is used for commercial purposes. Prior to January 2024 when residential occupation commenced the ground floor was used for commercial purposes.
13. The parties' dispute is whether the use of three rooms on the ground floor of the entire property for residential purposes constitutes a dwelling susceptible of selective licensing.
14. The rooms concerned are a bathroom, kitchen and bed/sitting room. The kitchen and bathroom were in use as such prior to January 2024 as part of the commercial premises. The third room is a small room off the kitchen.
15. Access to the rooms is by an alleyway at the side of the property. Entrance to the kitchen and bathroom is by a door off the alleyway. It is not possible to move between the third room and the other rooms by internal doors because a wardrobe blocks an internal door. If it was not blocked the door would open into the shop at the front of the building. Access to the third room is also from the alleyway.

The Parties Submissions

16. The Appellant's evidence of how the rooms came to be occupied as a residential tenant was given in his written statement. There was no substantial challenge to the evidence, which is that in or around January 2024, Mr Ashraf was approached by a Romanian national named Mr Alexandru Valentin Pascariu ("the Tenant") whilst he was coming out of the local Mosque. It is common for individuals waiting for their application for leave to remain in the UK to approach people leaving the mosque and make an appeal for charity by asking for money or accommodation. Mr Pascariu asked Mr Ashraf for accommodation and Mr Ashraf took pity on him and agreed to allow Mr Pascariu to stay in the Property temporarily.

17. Mr Ashraf provided Mr Pascariu with a tenancy agreement which stated that rent of £80 per week was payable, The tenancy agreement this was made in order to support Mr Pascariu with his immigration application. Any rent been paid to the Appellant would have been used to support the mosque of which he was a trustee.
18. It was not his intention to disregard his licensing obligations. The apartment on the upper floor was licensed as were two other properties he owned and other properties owned by his family were also licensed. He took the view that as the primary purpose of the ground floor was a retail shop or commercial unit a licence was unnecessary.
19. It was not the Appellants case that the premises were necessarily suitable residential accommodation. They were simply rooms in which Mt Pescariu could stay temporarily. The condition of the rooms did not cause Mr Pescariu any discomfort or harm as he was pleased to have some accommodation.
20. As far as the Appellant was concerned it remained part of a commercial property because it has no separate postal address; no separate council tax band; shares services with the commercial premises; and has no planning consent for use as a self-contained residential dwelling.
21. Mr Ashraf strongly disputed the suggestion that he exploited the individual. He did not profit from the situation; or apply pressure or coercion; or deliberately take advantage of vulnerability.
22. The occupation came to an end on 26 July 2025 after a notice of intention to impose a financial penalty was served on the Appellant.
23. The discovery of the presence of a resident at the property occurred on 2 April 2025 when a housing inspector visited 291a Goodman Street, the apartment on the upper floor to carry out a routine check on compliance with conditions.

24. While there he observed the resident of the ground floor rooms. The inspector reported his finding to Ms Daykin who conducted investigations to identify that there was no licence and that Mr Ashraf was the owner who was also the owner of other licensed properties. Ms Daykin inspected the property which she found to be in poor condition justifying service of the Notice of Intention to issue a Financial Penalty after consultation with Mrs Liddle. The Notice was issued on 4 June 2025. Notices were also served at the last address for Mr Riaz and the Parker Street mosque.
25. At the time he received the Notice Mr Ashraf was recovering from an accident in which he had suffered burning injuries to his hands. For this reason he did not immediately respond to the Notice. He authorised a councillor to speak on his behalf to explain he was suffering from the effects of his accident, that his wife had died recently and that the person in the premises was homeless and was sleeping in the property. Ms Daykin asserted Mr Ashraf as an established landlord was aware of the obligation to register the property if used for residential purposes. Also the selective licensing scheme has been in operation for three years justifying a zero tolerance policy for failure to licence.
26. After the consultation with Cllr Walker Ms Daykin discussed the case with Mrs Liddle. The outcome was the decision to issue a final Notice of intention to issue a Financial Penalty. Mr Ashraf's financial circumstances are poor. He is substantially dependent on his state pension. Income from rent of the other properties is not significant. He made no profit from letting the subject property. Mrs Liddle was asked whether any information given in the hearing gave her reason to review the decision to impose the penalty. In reply Mrs Liddle stated that had she known more about the Appellant's financial circumstances the discount may have been higher. The financial circumstances of the Appellant have not changed since that time.
27. Mr Leckey submitted the Respondent was careless with its data entry. In the grid describing aggravating factors the entry relating to deliberate intent refers to "two or more band 4 or above features on this list" but Ms Daykin could not explain the meaning of this phrase or where band 4 is referred to

either in the enforcement policy or the matrix. He contended that as a consequence of this confusion the aggravating factors are unreliable and should fall away from the calculation of the penalty.

28. Also, in the course of the hearing it was revealed the Respondent's officers use a grid of mitigating factors which is not published. Mr Leckey submitted the effect of the failure to publish the grid is that the Appellant cannot understand how mitigating or aggravating factors are worked out.

29. There were a number of incidents in applying the enforcement policy which suggested an ill-considered approach to the penalty. The penalty was calculated using a computer program written by and acquired from a third party. Ms Daykin who was the lead witness and the person most closely involved with the property gave evidence to the effect that data was entered and the outcome produced was not appraised as to its suitability in this particular case.

30. A further confusion was the reference to the penalty imposed on the Parker St Mosque. The Respondent accepted that no action had been taken against the mosque. Ms Daykin admitted the references to the mosque and the service of a penalty notice on it were an error. It was served because the name of the landlord was given as the Parker Street mosque in the tenancy agreement. In his submission it was apparent the decision-making process was unclear, vague, unpublished and rushed.

31. Mr Leckey then listed other mitigating factors which should have been considered, age, status as widower, ill health, (depression & burns), English not primary language, good character, other properties are licensed, no profit, letting was an act of charity, engagement with the council, mischief remedied before the date of the penalty, no harm to tenant, no repeat offending, limited means, no action against co-owner (Deceased).

32. Mr Leckey concluded by asking the penalty be quashed and replaced with other more proportionate penalty.

The Respondent's Enforcement Policy and the Final Notice of a Financial Penalty

33. The Respondent has published its enforcement policy which is intended to:

“to promote both transparency and consistency in the imposition of financial penalties so that those managing and having control of rented properties know how the Council will generally penalise relevant offences and are assured that like cases will be penalised similarly, and different cases penalised differently.” And

“create an environment where landlords engage with the Council's requests and demands fulsomely, openly and honestly.”

34. The policy also directs that *“ The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending”*

35. The matrix included in the policy identifies a four-stage process to be adopted by officers determining a penalty. *“First, consider the seriousness of the relevant housing offence to identify a starting level of the penalty. Next assess the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property. This may have the effect of increasing or decreasing the penalty. Then identify aggravating and mitigating factors that may relate to a number of factors including, but not limited to, culpability, track record and harm. These may have the effect of increasing or decreasing the penalty. Fourth if any of the Discounts, as set out below apply, the penalty will be decreased.”*

36. Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table provided. The table identifies six levels of seriousness. Mild, moderate, serious, very serious and very severe. The starting point in respect of each level of seriousness is £2500, £7500, £12500, £17500, £22500, £27500.

37. The Respondent decided the level of seriousness was serious with a starting point of £12500. As the Appellant owned three properties the penalty was increased by £5000.00 in accordance with the guidance table written in the policy in support of the four-stage process. Had the Appellant owned one or two other properties the starting point would be reduced by £5000.00.
38. In deciding whether there were any aggravating factors the Respondent in accordance with step three identified four factors each with a value. Taken together the total of aggravating factors exceeded the cap provided in the policy of £5000.00. Therefore, the total penalty was put at £17500.00 which was reduced to £16000.00 for the mitigating factor of previous good character.
39. The four aggravating factors were
- a. Holding other licences demonstrating the need to obtain a licence
 - b. Condition of the premises, a lack of waste receptacles, kitchen space, minor disrepair to interior, exterior, garden or outbuildings
 - c. Deliberate intent described as “two or more band 4 or above aggravating features on this list”
 - d. Offence occurred over twelve months.

The Statutory Framework

40. In this case the Appellant contends the rooms occupied by Mr Pescariu are not a house or dwelling within the meaning of the Act. S79 of the Act provides
- This Part provides for houses to be licensed by local housing authorities where—*
- (a) they are houses to which this Part applies (see subsection (2)), and*
- (b) they are required to be licensed under this Part (see section 85(1)).*
- (2) This Part applies to a house if—*
- (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and*
- (b) the whole of it is occupied either—*

(i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4),

Section 99 provides: In this Part—

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“house” means a building or part of a building consisting of one or more dwellings;

and references to a house include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it).

41. Section 95 of the Act prescribes offences in relation to licensing of houses under Part 3 (Selective Licensing)

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Sub section 4 provides *“In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—*

(a) for having control of or managing the house in the circumstances mentioned in subsection (1)”

The powers of the local housing authority to impose a financial penalty as an alternative to a prosecution are in s249A which provides *“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.*

42. Appeals against a financial penalty order are regulated by Schedule 13A paragraph 10 which provides that *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.

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

Discussion and Decision

43. The Appellant's case is first that three rooms in a commercial unit do not constitute a dwelling. He made a number of submissions regarding the property which amounted to an admission and contention that the rooms were part of commercial premises and ordinarily only used as such. Mr Leckey referred to *Q Studios (Stoke) v Premier Ground Reents* [2020] UKUT 197 (LC) a right to manage case which held "*the test for determining what is a flat is concerned with the physical characteristics of the premises, and that the terms of the letting and the subject intent of the developer or builder are irrelevant*". The decision of the Upper Tribunal in *Q Stokes* referred to the case of *Gaingold Ltd v WHRA RTM Co Ltd* [2006] 1 EGLR 81, in which the President said that *there was no justification for reading into the statutory provision the qualification that it is the underlying purpose of the person providing the residential accommodation that must be treated as the determinant of whether the part is occupied for residential purposes. Those who occupy or who are intended to occupy the premises are the relevant occupiers. If the purpose of their occupation is residential, the premises are occupied, or intended to be occupied, for residential purposes. The purpose of the qualifying tenants, or any other parties, who may let the premises for profit are irrelevant.*"
44. Both of the cases were related to qualification for right to manage but they were concerned with the definition of "*occupied or intended to be occupied for residential purposes*" in legislation connected with the right to buy but the effect of the decisions is that the test of whether a property is occupied or intended to be occupied for residential purposes is objective. In this case the wording of the relevant section goes on to qualify occupation as a separate dwelling, but Mr Pescariu intended to occupy this part of the building for residential purposes.

45. The Tribunal is satisfied that the ordinary meaning of the words of the s99 covers the part of the building occupied or intended to be occupied as a separate dwelling. The combination of kitchen bathroom and bed/living room were not licenced. The Appellant was guilty of owning or controlling an unlicensed property contrary to s 95 Housing Act 2004.

46. In so far as deciding what level of penalty is appropriate HHJ Cooke stated in *Homes & Housing v LB Of Croydon*

“15. The approach that the FTT and the Tribunal should take to the local housing authority’s policy is well-established. In Sutton v Norwich City Council [2020] UKUT 90 (LC) the Deputy President said at paragraph 244:

“It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred. The authority is well placed to formulate its policy and in London Borough of Waltham Forest v Marshall [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) gave guidance on the respect that should be afforded to a local authority’s policy by the FTT when hearing an Appeal from a civil penalty imposed by the authority. As Wilkie J put it, concerning the approach which should be taken by magistrates, in Darlington Borough Council v Kaye [2004] EWHC 2836 (Admin): 7 “The Justices ... ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority’s decision or, to put it another way, the Justices may accept the policy and apply it as if it was standing in the shoes of the council considering the application.

245. If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the

seriousness of the offence and the culpability of the appellant in reaching its own decision.”

47. The Tribunal is satisfied that the Applicant has committed a housing offence which entitles the Respondent as local housing authority to impose a penalty under the Act. However, having heard the evidence and submissions by both parties the Tribunal is satisfied the penalty imposed was disproportionate to the offence in the circumstances. The Respondent’s officers applied the results of the automated system of determining a penalty with having regard to the overall principles of the policy.
48. Paragraph 4 of the schedule attached to the Notice of Intent to issue a financial penalty states *“In determining whether to impose a financial penalty the Council will have regard to the Housing Enforcement Policy and comprehensive guidance issued by DCLG (Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities).*
- 4.2 Paragraph 3.5 of the statutory guidance states that *‘The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending’.* The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case.
49. The factors then set out are severity of offence, culpability and track record of the offender, the harm caused to the tenant, punishment of the offender, deter the offender from repeating the offence, deter others from committing similar offences, remove any financial benefit the offender may have obtained as a result of committing the offence.
50. The Respondent has admitted the financial circumstances of the Appellant justify a discount. In addition, the Tribunal is satisfied that the circumstances of this Appellant are such that he has a good track record of complying with licensing obligations.

51. Further, his situation is such that he is unlikely to repeat the offence, the tenant suffered no harm, and the Appellant made no profit from the letting. He produced medical evidence of his incapacity caused by his accident when asked to explain his delay in making a response to the Respondent's Notice.
52. Although the enforcement policy describes failure to licence as a serious matter on this occasion and in the circumstances of the Appellant the Tribunal is satisfied that the offence was within the mild category. A Penalty of £2500.00 is a fair and proportionate penalty.
53. Accordingly, the decision of the Tribunal is that the Appellant is guilty of a housing offence contrary to s95 Housing Act 2004 by reason of the failure to licence a residential dwelling . The Tribunal quashes the penalty imposed by the Respondent of £16000.00 on 25 August 2025 and replaces it with a penalty of £2500.00.

Appeal

54. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to Appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge Peter Ellis