



FIRST - TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference : **BIR/00CN/HNA/2025/0014**

Property : **4 Herrick Road, Birmingham. B8 1NT**

Applicant : **Jahangir Ashraf**

Applicant's Representative : **Mr Usman Javed. Solicitor**

Respondent : **Birmingham City Council**

Representative : **Mr Callum Styring Solicitor Legal Dept
Birmingham City Council**

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 Tribunal quashes the conviction and financial penalty imposed on the Applicant by the Respondent for the alleged breach by the Applicant of conditions 5 and 11 of the property selective licence issued by the Respondent on 17 April 2025.

Introduction

1. This is an appeal against a financial penalty imposed on the Applicant Jahangir Ashraf by Birmingham City Council for breach of conditions attached to a selective licence.
2. The Applicant is the holder of a Property Licence issued on 4 April 2024 by the Birmingham City Council under the Housing Act 2004 and is subject to attached conditions. The relevant conditions in this case are Conditions 5 and 11
 - a. *Condition 5 “The licence holder must ensure that smoke alarms are installed on each storey of the house on which there is a room used wholly or partly as living accommodation. A declaration as to the positioning of such alarms must be provided to Birmingham City Council on demand.*
The licence holder must ensure that the smoke alarms are kept in proper working order. A declaration as to the proper working order of the alarms must be supplied to the Council on request.
 - b. *Condition 11 (relevant part) Ensure that provisions for securing access to the premises are maintained in good working order at all times, and sufficient to prevent reasonable attempts of forced entry.”*
3. By a Final Notice to Issue a Financial Penalty of 17 April 2025 the Respondent imposed financial penalties of £12,500.00 for a breach of condition 5 and £7500.00 for a breach of condition 11. After representation the penalties were reduced by 10% for good character to the sums of £11250.00 and £6750.00 respectively. The Notice gave information to the Applicant about his entitlement to appeal to this Tribunal against the penalty.
4. The Grounds of Appeal are:

- a. The existence of a reasonable excuse for the delay in dealing with the alleged breaches of conditions
 - b. Taking all reasonable steps to comply with the conditions
 - c. Material impropriety in relation to the conduct of its investigation by the Respondent, failing to consider mitigation and fettering its discretion in reaching its decision and further by conducting an investigation facilitated by an unauthorised third party namely Sofia
 - d. Manifest disproportionality and error in law consequent upon its decision to apply reductions in the penalty based on cooperation and ultimate compliance
 - e. Ultimate compliance achieved. The conditions were fully complied with. Any delay was as a result of factors outside the Applicants control.
5. This application was issued on 15 May 2025; Directions were issued on 15 July 2025. The matter came on for hearing by video on 11 May 2026. The Applicant was represented by Mr Usman Javed Solicitor. The Respondent was represented by Mr Callum Styring a solicitor with Birmingham City Council Legal Services.
6. The appeal is by way of a re-hearing of the Respondent's decision to impose the penalty and/or the amount of the penalty, but it may be determined having regard to matters of which the respondent was previously unaware.
7. The Tribunal did not inspect the Property which is described in the papers as being a three-bedroom terrace property constructed probably before 1914. Bedrooms are on the upper floor, a kitchen, living room and bathroom are on the ground floor. Smoke alarms are fitted in the living room and on the ceiling of the landing on the upper floor. A heat alarm is fitted in the kitchen. The door from the kitchen to the outside alley way is the rear door deemed insecure by the Respondent.
8. On 24 October 2024 a tenancy agreement was renewed between the Applicant and Estera Mirabela Stoican who had been the tenant for the previous six months. The tenancy agreement includes obligations

To keep the interior of the property and the contents in good and clean condition and complete repair (reasonable wear and tear excepted) and

to keep the property at all times well and sufficiently aired and warmed during the tenancy

Not to assign, or sublet, part with possession of the property, or let any other person live at the property

Not to damage or injure the property and contents or make any alteration or addition to it. Any decoration is to be made only with the prior written consent of the Landlord or his Agent

The Reasons for the Penalty

9. On 12 November 2024 Mr Mark Maltby a compliance officer with the Respondent attended the property in order to carry out a check on compliance with conditions imposed on the Applicant's licence. He identified four potential breaches of conditions and what he regarded as further hazards. The four alleged breaches relevant to this case were
 - a. smoke alarms failing to sound when tested;
 - b. a carbon monoxide alarm failing to sound;
 - c. electrical hazards caused by an unsafe light switch and low-level plug socket; and
 - d. an insecure and unsound rear door.
10. He also identified further hazards which do not form a substantive part of this case.
11. On 13 November 2024 he sent the schedule of works required to remedy the defects. The work required to remedy the defects to the rear door are "*Repair or replace the rear door. Ensure the door is secure and all locks must be capable of being operated from the inside without the use of a key*".
12. Evidence was given that locking the door was by a bolt fixed to the door frame. Also the lower panel of the door was a sheet of wood which might be kicked in as might the bolt lock.

13. Mr Maltby produced a document entitled Inspector's Report. It has the appearance of a pro-forma document with entries typed after completion of the inspection. The form identified work required to remedy breaches and a time frame for completion but although the date of inspection is given as 12 November 2024 the dates for completion are either from 21 August 2025 or 7 September 2025. Mr Maltby was asked to explain the late dating of the inspection and the timetable for the work. He explained that the data is stored on a computer which produces the report with revised dates according to the date of request for a copy.
14. Mr Maltby then adduced a further document also in pro-forma entitled Property Inspector Hazard Review Form also with typed entries with a declaration as to the truth of the typed entries concluding with the name of the Applicant in block letters type written and dated 19 November 2024. By this form it appears the hazards reported to Mr Ashraf have been remedied. This document was put to Mr Ashraf who denied it was his document. Mr Maltby stated the Hazard report of Mr Ashraf was also completed on an automated system.
15. On 27 November 2024 Mr Amir Youans the Respondent's Team Leader visited the property at the request of Mr Maltby to verify whether the required work had been completed as appeared to be alleged by the form dated 19 November. Mr Youans found that the work had not been completed. He did not produce any documentary note of his visit.
16. The Respondent wrote to Mr Ashraf on 9 December 2024 notifying him that the investigation into alleged breach of licensing conditions was nearing completion. The letter did not mention the inspection of 27 November 2024. He was informed there would be no interview under caution but he was asked to confirm what action had been taken to remedy the defects. The letter concluded with a list of questions relating to the work including this question:

3 *“Why was the response given that all the required work had been carried out and on two revisited and at the 9th of December 2024 none of the breaches and identified hazards have been addressed?” (sic)*

17. Mr Maltby did not describe the further visits in his written statement but in giving evidence at the hearing he stated there had been three visits to the Property. He made a visit to inspect a water leak at the property in May 2025.
18. Both Mr Maltby and Mr Youans said they had no difficulty gaining entrance to the property. They carried identification cards. The person they met at the property identified herself as Sofia who permitted access to the property. In cross examination they admitted they could not be certain this lady was the tenant as no identification documents were produced but she produced the tenancy agreement with the Applicant. It is the Applicant's case that Sofia is an unauthorised subtenant who was not authorised to allow officers of the council to carry out the inspection.
19. On 9 December 2024 the Respondent issued a Notice of Intention to Issue a Financial Penalty for each of the alleged offences. In respect of the smoke alarm the proposed penalty was stated as £12,500.00. In respect of the insecure rear door the penalty was £6500.00.
20. On the same day the Applicant sent an email to Mr Maltby notifying him that he had *“sent a couple of electricians to the property but due to the weekend no one (was) willing to work”*. The email continued with a request for more time to arrange an electrician and also a request for help from the Respondeent.
21. There was an exchange of emails on Tuesday 10 December 2024 in which Mr Maltby asked for confirmation the work required was completed. He also asked for the name of the managing agent which was supplied.
22. The smoke and carbon monoxide alarms were reinstated in December 2024 after the occupier was persuaded to allow access to the Applicant's tradesman

Mr Mehmood. The landlord's agent persuaded the tenant to permit entry as attention to alarms was required as a matter of urgency. Other work relating to the rear door, electrical installations and accumulated waste was left until later at the occupier's request.

23. After the exchange of emails in which the Applicant and his agent complained that the tenant would not allow access to the property in the absence of her husband, Mr Maltby intervened in the first week of January 2025 to facilitate access to the property so that outstanding required work was completed by 7 January 2025.
24. Mr Maltby made further visits to the Property on 9 January 2025 in connection with a matter unrelated to the penalty as the tenant reported a flood in the bathroom. On visits in connection with that matter, he observed the work to the alarms and door had been completed.
25. On 3 March 2025 the Respondent issued a Notice of Intention to Issue a Financial Penalty in respect of the smoke alarms and the rear door. Mr Maltby explained the reason for deciding to proceed with a financial penalty was that an offence had been committed, the Applicant appeared indifferent to the requirement to carry out remedial works set out in a schedule served on 13 November 2024 and that there was some evidence of misrepresentation relating to the number of smoke alarms in the property. Moreover, the Applicant had not made any representations after receiving the letter of 9 December 2024.
26. The Applicant made a response to the Notice on 11 March 2025 in which he asserted that fire safety work and door security had been completed in time. He also asked for an interview under caution and assured the Respondent he wanted to cooperate with the Respondent.
27. The Respondent was not prepared to moderate its position and issued a Final Notice of Intention to Issue a Financial Penalty reduced by 10% for previous good character. However, the penalty was restricted to the two breaches only,

the breaches associated electrical appliances, and the carbon monoxide alarm were not pursued by the Respondent, allegedly in order to keep the penalty proportionate.

The Reasons for the Appeal

28. The Applicant maintained that as far as he was concerned, the EICR prepared after an inspection in February 2024 in support of his application for a licence confirmed the state of all electrical installations was satisfactory. When the tenancy was renewed in October 2024 there was no change to the position.
29. The rear door was secure but if it was damaged then it was probably as a result of the occupier's behaviour. The smoke alarm may have been tampered with by the occupier who was smoking in the house. He further believed the tenant had sublet the property without his consent to someone who did not keep the property in good condition.
30. Having received the schedule of works of 13 November 2024 from the Respondent he instructed his agent Edward Lloyds to arrange for necessary work. The person appointed to attend the property to carry out the work by the agent was Mr Qaiser Mehmood who attended the hearing. His evidence was that on seeking to gain entry into the property he was refused access by the persona at the property. According to Mr Mehmood she was not prepared to permit entry without her husband being present. Her English was poor. It was believed she is Romanian.
31. The Applicant produced photographs taken by Mr Hussain of Edward Lloyds showing the firms notepaper and a door of the property supporting the Applicant's claim that there were several visits to the property for the purpose of carrying out works but access was constantly denied apart from one occasion when Mr Mehmood was admitted in order to repair the smoke alarm. Mr Hussain had satisfied her that there were urgent works relating to the installation and maintenance of essential safety devices, including smoke alarms, carbon monoxide detectors, and electrical socket checks. The rear

door and other non-urgent issues were left until the husband was present in January 2025.

32. A statement from Estera Mirabela Stoican was produced in which Ms Stoican admitted refusing to allow entry to the engineer and carpenter as it was not appropriate to admit workmen to the house while her husband was away. In her statement Ms Stoican states that at no time during November and December did she admit entry to the carpenter for door repair works which she did not consider urgent.
33. Mr Mehmood gave evidence of his attempts to examine the smoke alarms and the number of visits he and Mr Hussain made to the property before they were allowed in to carry out the urgent work. He was also responsible for preparing the house for its EICR inspection in February 2024. He maintained the smoke alarms and all electrical installations were satisfactory but had been damaged by the tenant.
34. The Applicant denied he had made or given the information contained in the housing inspection report of 19 November 2024 stating the work was “removed” apart from waste in the garden against which entry it was stated that the tenant had been told to remove it.
35. Mr Hussain of Edward Lloyds also gave evidence to confirm that Mr Memhmood had contacted the office complaining he could not get access to carry out the work Mr Ashraf required. After receiving a call from Mr Mehmood on 14 November Mr Hussain attempted to speak to Ms Stoican by telephone. He was unsuccessful. His calls were not returned. Mr Hussain made a visit to the property on 2 December 2024 with Mr Mehmood. He or members of his company made several visits to the Property between 14 November 2024 and 10 December 2024. The Tribunal was shown copies of eight photographs of compliments slips which were prepared at the property on the dates of visits in order to gain access for repair work. They were refused access at first but he persuaded Ms Stoican to permit entry in order to reinstall a carbon monoxide alarm, smoke alarms and replacement of an electrical

socket. Work on the door was not permitted. Ms Stoican asked him to return with a carpenter in January. The door was replaced on 7 January 2025.

36. In cross examination of Mr Maltby he admitted he could not be certain that the woman who identified herself as 'Sofia' was the tenant. He did not carry out identification checks at the time of his visit. He admitted it was not until May 2025 that he saw identification documents when he was visiting the property in connection with another unrelated issue. The Applicant contended that it was possible the tenant had sublet the property. In any event the Respondent was in error by allowing an unidentified person to inspect the property.

The Respondent's Enforcement Policy

37. The Respondent has issued its policy for application of its enforcement powers setting out the principles it applies in ensuring compliance with the law and committing Birmingham City Council's Regulation and Enforcement Division to good enforcement practice with effective procedures and clear policies. The policy has three appendices. Appendix 1 – Enforcement Policy Risk Matrix Appendix 2 – Civil Penalties Charging Policy. Appendix 3 -Equality Assessment. This case is concerned with Appendices 1 and 2.

38. The Risk Matrix is used as a framework to support transparency and consistency of approach and decision making using a scoring model for the consequences or associated risks of the activity under investigation. A score of 12 and above indicates a high risk. If an activity results in three or more scores of 12 formal action should be considered. Scores of 2-11 denote medium risk, consider informal action or lower tier action. A score of 1 is low risk, no action.

39. The penalty charging policy at appendix 2 is the methodology that Birmingham City Council will apply in exercising its powers under the Housing and Planning Act 2016 to impose a civil penalty on a landlord and/or occupier. It sets out the main principles for issuing a penalty charge (paragraph 3) and main principles which will be taken into account when

setting penalty charge levels (paragraph 4). At paragraph 5 there is a table for determining the level of penalty charge. The table details the starting level of a civil penalty for offences ranging from moderate to very severe. Seriousness of the offence starting level mild £2500; moderate £7500; serious £12500 very serious £17500 severe £22500.

The Statutory Framework

40. Relevant sections of the Housing Act 2004 are sections 95(2),(4), and (6A) and s249A. S95(2) provides

(2) A person commits an offence if—(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and (b) he fails to comply with any condition of the licence.

S95(4) provides “In proceedings against a person for an offence under subsection (2) it is a defence that he had a reasonable excuse for failing to comply with the condition”.

S6A refers to s249A providing financial penalties are an alternative to prosecution.

S249A provides (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section “relevant housing offence” means an offence under—
(c) section 95 (licensing of houses under Part 3),

And subsection 6 provides (6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

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

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.

Discussion and Decision

41. In answer to questions from Mr Javed on behalf of the Applicant both Mr Maltby and Mr Youans conceded they had not verified the identity of the person called Sofia who met them at the premises at the time of their inspections in November 2024. They proceeded on assumption that the person allowing them access to the premises was the tenant.
42. It was the Applicant's case that the tenant had permitted another person to occupy the property contrary to the terms of the tenancy agreement. It is not known who this person is. Entering the property without verifying her identity was a serious procedural failure by the Respondent.
43. The Applicant contends that after receiving the Schedule of works from Mr Maltby he notified his agent who attempted to make arrangements to carry out the necessary work without delay but Mr Mehmood, the tradesman sent to do the work was refused access by the tenant Ms Estera-Mirabela Stoican until her husband was present. Ms Stoican was not called to give personal evidence but a letter was produced by Mr Javed in which Ms Stoican confirmed her refusal to permit access until persuaded by Mr Hussain of the urgency of electrical work and smoke alarms but insisted the work on the door should

wait. Mt Styring challenged this evidence as Ms Stoican was not called to verify her statement. Mr Javed said Ms Stoican was no longer in the property having moved without leaving any address.

44. The Respondent relied on a document it produced claiming it was a statement by Mr Ashraf reporting work required by the schedule of works had been carried out by 19 November 2024 although the Report makes no mention of the smoke alarms. Mr Ashraf denied that was his document. The Respondent did not produce any other notes contemporaneous with any conversation Mr Ashraf might have had with the officers as a source of this Report. The document produced was the only evidence of an assertion that Mr Ashraf misrepresented the remedial position to the Respondent.
45. As far as particulars of the offences are concerned the Respondent did not contend the smoke alarms were not present only that they did not work. Mr Maltby's evidence regarding the alarms was confusing. He was unclear whether they were connected to the electricity or battery powered or what type of battery was required. Council rules prohibited officers from working at height. Consequently, his only means of testing the alarm was by using a stick supplied for that purpose.
46. Mr Youans accepted that a bolt on the door provided an effective barrier to entry but he contended it was still insufficient security. The door was replaced with a new door on 7 January 2025 as arranged with Ms Stoican.
47. The Notice of Intention to Impose a Fine was served on the Applicant three months after the completion of remedial work. There were no aggravating features, the penalty was reduced by 10% because of his previous good character. Mr Maltby relied on the apparent delay in remedying alleged defects and a misrepresentation regarding the date of remedial work as the reason for imposing a financial penalty. He contended that had he known about difficulty of access he would have offered assistance using his powers if necessary to ensure entry to the property. However, he held to his view that a penalty was appropriate because an offence of unremedied breach of conditions had occurred.

48. In his closing submissions Mr Javed maintained the Respondent had acted in haste. It was apparent no enquiries into the cause of the failure of the smoke alarm was conducted or whether there had been tampering to hide the fact that someone was smoking in the property. There were children in the property who may have damaged the alarms. He pointed out that the new tenancy commenced three weeks before the date of inspection when installation would have been inspected by the agent. Regard should be given to the efforts to gain access to the property as evidenced by Mr Mehmood, the numerous compliments slip from Edward Lloyds and the statement of Ms Stoican. Moreover, the door was not an emergency. The tenant did not want the carpenter in the property until her husband returned home.

49. Mr Styring on behalf of the Respondent reminded the Tribunal it must determine whether an offence has occurred and if so whether the Applicant has a reasonable excuse. He submitted the licencing regime operates by holding the licence holder accountable. The Applicant had not disclosed the existence of the agent until the inspection revealed breached of conditions. He had misrepresented the status of the remedial work. There was no evidence of regular inspections by the landlord or his agent. The carpenter sent along to the property by the agent did not have electricians' qualifications. No credence should attach to the untested evidence of the tenant.

50. The Tribunal has had the benefit of both written submissions of the parties and witnesses as well as hearing their evidence and cross examination. Mr Styring is correct that the evidence of Ms Stoican was not tested in cross examination but the evidence of both Mr Hussain and Mr Mehmood was tested.

51. The first issue for the Tribunal to determine is whether it is satisfied beyond reasonable doubt that the offence of breaching conditions attached to a selective licence has occurred. In this case the Tribunal is not satisfied that the Respondent has established to the standard required that either of the two conditions in issue has been breached.

52. The second element of condition 5 requires that the licensee ensures the smoke alarms are kept in proper working order. The Tribunal asked Mr Maltby how a landlord could know whether a smoke alarm is in working order or not after its last inspection. In reply, Mr Maltby claimed the offence is made out when the defect is not remedied within 24 hours. It is not known when the alarm ceased to function or whether its failure was as a result of the intervention of a third party because the Respondent did not check the condition of the alarm other than by poking it with a stick from the floor.
53. The Respondent's evidence lacked sufficient detail for the Tribunal to find to the standard of proof required that the smoke alarms were not kept in a proper working order.
54. The Applicant relies on the efforts to gain access to the property in support of his defence that he had a reasonable excuse for the alleged breach.
55. The Tribunal determines that if the smoke alarm was not in proper working order then the Applicant has a reasonable excuse for failing to keep it so. The alarm was inspected at the time of the last EICR; at commencement of the tenancy and at renewal of the tenancy three weeks before the inspection. The tenant is under an obligation to keep the interior of the property in good condition. If the alarm was not working properly the tenant was under an obligation to report it to the agent or the landlord.
56. As far as the rear door is concerned the security means were adequate at the time of inspection to provide an effective barrier to entry. The Respondent classified the risk as moderate. It was remedied on 7 January 2025 but three months later the Respondent went ahead with a penalty notice. The timetable for repair is not of the same urgency as that of the smoke alarms. The Applicants representative was asked to wait until after Christmas before making the repairs. There was no evidence of complaints from the tenant about the condition of the door. The Tribunal determines the Respondent has not proved to the standard required that condition 11 has been breached.

57. For this reason the Tribunal quashes the conviction and financial penalty imposed on the Applicant by the Respondent for the alleged breach by the Applicant of conditions 5 and 11 of the Property Licence issued by the Respondent on 17 April 2025.

Appeal

58. 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