



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

Case Reference : **MAN/32UH/HNA/2019 /0003**

Property : **9 Wheeldon Street, Gainsborough, DN21 1BS**

Appellant : **Mr Rohail Amin**

Respondent : **West Lindsey District Council**

Type of Application : **Appeal Against a Financial Penalty, section 249 A, section 95 (1) and Paragraph 10 of Schedule 13 A of The Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr P. E. Mountain, FRICS.**

Date of Determination : **23 May 2019**

Date of Decision : **13 June 2019**

DECISION

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Application and Background

1. Mr Rohail Amin "the Appellant" is the owner of 9 Wheeldon Street, Gainsborough, DN21 1BS "the property". By an application dated 30 December 2018 and received by the tribunal office on 7 January 2019, "the Appellant" appeals against the issue of a Civil Penalty of £11,000 by "the Respondent", West Lindsey District Council, under section 249 A of The Housing Act 2004, "the Act". It is also relevant to mention that "the Appellant" also owns 22 Wheeldon Street, Gainsborough, which is also rented out to tenants from time to time.
2. In March 2016 "the Respondent" approved a selective licence scheme designated under section 80 of "the Act" for the Gainsborough South West Ward of the council area, this includes Wheeldon Street, Gainsborough. The scheme requires all landlords renting out properties within this area to be licensed to do this, whilst the requirement is in force, between 18 July 2016 to 18 July 2021.
3. "The Respondent" set a deadline for landlords within this area to apply for and obtain licences, this was extended several times to give landlords further time to comply, finally being set at 31 January 2017. The scheme was given wide publicity and landlords were contacted by letter, informing them of their responsibilities. "The Respondent" was assisted in this by the Home Safe Scheme who were able to accept applications and make sure that they were complete before then submitting them to "the Respondent" on behalf of the person applying. Failure to licence a property in this area could lead to prosecution or a civil penalty.
4. In paragraph 6 of the application to the tribunal "the Appellant" required the Tribunal to hold a hearing. This application and supporting documents were copied to "the Respondent".
5. Directions were issued on 4 February 2019, setting the case down for a one day hearing.
6. On 9 May 2019 a "confirmation of attendance and hearing fee" response was received by the tribunal's administration department from "The Appellant" indicating that he did not intend to appear or be represented at the hearing that he had requested.
7. On 23 May 2019 the tribunal inspected "the property" with a hearing commencing at 12.30 pm that same day at Sheffield Magistrates Court.

The inspection

8. The Tribunal inspected "the property" at 9.55 am on 23 May 2019. The tenant, Mr Niaz Amadamin was waiting for us to arrive and had been told by the Appellant's mother that "the Appellant" would not be attending the inspection. "The Respondent" was represented by Miss Emily Holmes, Housing Standards and Enforcement Officer employed by "the Respondent".
9. "The property" is a mid terraced house. The front door opens into the lounge and that room accommodates the utility meters in a box under the window. There is a gas fire in this room. All windows in "the property" are uPVC and all rooms are provided with central heating radiators .
10. The next ground floor room is a dining room that has an electric fire that is not coupled up to the electricity supply.
11. The kitchen has fitted units and a wall mounted gas boiler, the rear door providing access to the rear garden, the tenant has provided the white goods in the kitchen. The garden is fenced to all three sides. The rear fence, that features in the case, has a gate in it and on the other side of that gate is a public access highway called a ten foot. The garden is tidy and clear of rubbish.
12. Stairs lead up to the first floor where there is a master bedroom. On the other side of the stair well is an area where the present tenant has modified the layout of the property. Originally there was a bedroom that required access through it to the bathroom. Now there is a corridor that permits access to the bathroom without going through the much smaller bedroom. This has been achieved by the installation of stud walls that are not yet finished off.
13. The bathroom has a bath, toilet and sink. The electric shower fitted over the bath has been fitted by the tenant. There is an extractor fan.
14. Stairs lead to the attic bedroom that is fitted with dormer windows. The tenant wanted to make it clear that he has no complaints about "the property".

The Law

The Housing Act 2004

Section 249A Financial penalties for certain housing offences in England

(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—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(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.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8)The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9)For the purposes of this section a person's conduct includes a failure to act.

Section 95 Offences in relation to licensing of houses under this Part

(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.

(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.

(3)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a)a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b)an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4)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), or

(b)for failing to comply with the condition,

as the case may be.

(5)A person who commits an offence under subsection (1) is liable on summary conviction to a fine .

(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Paragraph 10 of schedule 13A

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.

Written Submissions

The Appellant

15. "The Appellant's" case is contained within the application form and an attachment, supplemented by a bundle. The bundle does not comply with Direction 3 in that it is not indexed, numbered page-by-page, and does not contain a copy of the appeal form or any witness statements. The tribunal decides that its overriding objective to be fair and just requires the tribunal to admit the bundle in evidence despite these breaches of the Directions. (Rule 3, The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (S. I. 2013/1169)) "the Rules".
16. The tribunal has given careful consideration to the content of "the Appellant's" application, attachment to the application and bundle, finding a lack of clarity in the content of all of this material. Nevertheless the tribunal has done its best to discern from this material the points upon which "the Appellant" seeks to rely. The tribunal now deals with this in detail because "the Appellant" did not attend the hearing.
17. Paragraph 9 of the application form requires "the Appellant" to state the grounds for the appeal. The tribunal decides that there is nothing written by "the Appellant" in this paragraph that is capable of being a ground of appeal, but "the Appellant" refers to an attachment.
18. The attachment indicates that "the Appellant" takes the view that the decision of "the Respondent" to issue a Civil Penalty involved some unspecified dishonesty. The tribunal accepts this as a general ground of appeal. Further, "the Appellant" appears to indicate that he told his management agent Jo (Jo Swan of Pridea Sales and Lettings) and explained the situation to Jo, who advised him that there was no problem with letting out the property. The tribunal accepts that this may be relevant to the statutory defence under section 95 (4) of "the Act".

19. Further "the Appellant" indicates that when his membership of the Home Safe Scheme was terminated he was advised that the council would contact him and he had sent all his documents to "the Respondent". This is returned to later when the Appellant poses the question "why council not issue selective licensing?" The tribunal accepts that this may be relevant to the statutory defence under section 95 (4) of "the Act".
20. "The Appellant" also refers to being subject to anti-social behaviour in that persons have tipped rubbish into his garden at "the property", he has had things stolen and damaged. "The Appellant" also suggests that he may not receive all his rent in relation to 22 Wheeldon Street. These are not grounds of appeal but are matters which the tribunal will consider in the case.
21. "The Appellant's" bundle contains nine pages of paper upon which submissions have been typed, interspaced with various exhibits. The tribunal has numbered these 1 to 9 for ease of reference. Page 1, contains a reference to his application for a licence and asserts that he intended to operate "the property" with a licence. Page 2, asserts that the electrical installation report submitted to the Home Safe Scheme was an old report submitted in error. Page 3, produces various documentary exhibits covering 10 different areas of the case, some by the use of photographs. Page 4, appears in the middle of these exhibits and refers to damage done by tenants, referring to 12 photographs of the damage, suggesting that this was seen by "The Respondent's" employees before the Prohibition Notice was issued. Page 5 and page 8, mention Nelofar Jabeen with a suggestion that "the Respondent" may have breached data protection in some unspecified way. Page 6, returns to waste dumped in the garden of "the property". Page 7, produces 5 monthly accounts from the management agent and a letter from "the Respondent" revoking the emergency prohibition order. There is also an electrical installation certificate for "the property", dated 29 May 2017 completed after the full rewire that was undertaken after issue of the Emergency Prohibition Order and a landlords gas safety record. Page 9, refers to a burglary and contains an admission that "the property" was let out for a few months in 2018 after the burglary. It should be noted that the final notice imposing the penalty refers to a period of letting out "the property" from 21 March 2018 to 24 October 2018.

The Respondent

22. "The Respondent" did comply with the Direction 2, serving a paginated and indexed bundle containing the witness statements and exhibits that "the Respondent" sought to rely upon. "The Appellant" did not object to any of this evidence and the tribunal decided to let all stand as "the Respondent's" case in chief. The relevant parts of this bundle will be dealt with, briefly, in the Determination of the case.

The Hearing

23. The hearing at Sheffield Magistrates Court commenced at about 12.30 pm on 23 May 2019. Miss Holmes again attending on behalf of "the Respondent". No one attending on behalf of "the Appellant".
24. The tribunal decided that since "the Appellant" had brought this appeal, requested a hearing, but then indicated that he would not attend the hearing, it was incumbent upon the tribunal to deal with this hearing by putting "the Appellant's" case to the representative of "the Respondent". This being done to ensure that "the Appellant" in his absence has as fair and just hearing (the overriding objective, rule 3, "the Rules").

The Deliberations

25. The Tribunal determines that a selective licensing scheme for an area including "the property" has been established by "the Respondent" and that between 18 July 2016 and 18 July 2021 "the Appellant" requires a license issued by "the Respondent" to permit him to rent out "the property"(Respondent's bundle, pages 20, 36, 37, 232 and 234).
26. The tribunal considers the dates referred to in the Final Notice To Issue A Civil Penalty (Respondent's bundle, pages 219 and 220), described as the date of the offence, between 21 March 2018 and 24 October 2018. The Tribunal notes the evidence (Respondent's bundle, pages 163, 196 to 201, 161, 196, 203). The Tribunal determines that this evidence is such that the tribunal is satisfied beyond all reasonable doubt that the Appellant is in control of "the property" and managing "the property" and was doing so during the material dates. The tribunal also notes the admission made by "the Appellant"(penultimate page of the Appellant's bundle) that "my property let out a few months in 2018".
27. The Home Safe Scheme received an application on 21 December 2016 from "the Appellant" for a licence to operate "the property" and 22 Wheeldon Street, Gainsborough "(Respondent's bundle, page 41). In the course of the application for these two licences "the Appellant" caused a report upon the electrical installations at both properties to be provided to the Home Safe Scheme. Copies of these reports were received on 30 March 2017 (Respondent's bundle, pages 43). The purpose in providing these documents is to satisfy "the Respondent" that the electrical installations at these houses are satisfactory. The tribunal accepts the oral evidence of Miss Emily Holmes that if any installed item at a house reveals a code 1 or 2 risk to be present that the report would then be unsatisfactory. It is "the Respondent's" case that both of these documents have been tampered with. In considering the copies of the reports the tribunal makes it clear that the tribunal has seen copies only and not the original reports that would be in the possession of "the Appellant".

28. Dealing first with the copy of the report for "the property""(Respondent's bundle, pages 68 to 75). "The Respondent" points out that the address of "the property" is misspelt and that the same mistake is made in the address of 22 Wheeldon Street"(Respondent's bundle, pages 59 to 64), although it is clear that the reports were compiled by different electricians. The tribunal determines that the spelling mistakes are not exactly the same, being Gansbrough and Gainsbrough. These mistake may have been made by two different electricians.
29. "The Respondent" further contends that at box E"(Respondent's bundle, page 68) the overall assessment of the installation has been tampered with. In the satisfactory or unsatisfactory option both have been crossed out and a word written above which starts with the letter "S" has been written that is intended to look like the word satisfactory. The tribunal determines that although the contents of this box are sufficient to raise suspicion that this has been done, the tribunal is not satisfied beyond all reasonable doubt that it has been tampered with in this way. It is however clear that "the Respondent" did need to raise an issue with this for further investigation, especially so when on the next page of the report at box G, satisfactory appears to be crossed out.
30. "The Respondent" also points out that on page 2 of the report (Respondent's bundle, page 69) only two code 2 faults are referred to whilst on page 4 and 5 of the report"(Respondent's bundle, page 71 and 72) there are a total of 15 code 2 faults. The tribunal determines that this document is such that it could not possibly have been accepted as proof that the electrical installations at "the property" were satisfactory. The tribunal is satisfied beyond all reasonable doubt that a competent electrician would not issue this report bearing the marks and words that give rise to the challenges to its validity and that the report must have tampered with.
31. Dealing then with the report for 22 Wheeldon Street. "The Respondent" contends that the contents of the address box"(Respondent's bundle, page 68) have been subject to alteration with Tipp-Ex and over writing. The tribunal determines that although the contents of this box are sufficient to raise suspicion that this has been done, the tribunal is not satisfied beyond all reasonable doubt that it has been tampered with in this way.
32. Further, that the declaration made in box E (Respondent's bundle, page 59) and again in box G (Respondent's bundle, page 60) that the installations are satisfactory have been subject to alteration with Tipp-Ex deleting the "UN" to make the word in both boxes read satisfactory instead of unsatisfactory. This being despite the fact that 6 code 1 and 1 code 2 faults had been found. The tribunal cannot conclude that it is satisfied beyond all reasonable doubt that Tipp- Ex assisted alterations

have been made without having the opportunity to examine the original document but the tribunal determines that this document is such that it could not possibly have been accepted as proof that the electrical installations at "the property" were satisfactory.

33. The Tribunal notes "the Appellant's" contention that he sent the wrong electrical installation reports to the Home Safe Scheme, being certificates that were out of date. The date that these reports were issued was never the issue, the issue was whether they had been tampered with and if they could be accepted as evidence that the electrical installations were satisfactory.
34. On 4 April 2017 Miss Holmes made a visit to "the property" to give notice that she would conduct an inspection of "the property" the next day.
35. On 5 April 2017 Miss Holmes conducted an inspection of "the property"(Respondent's bundle, page 23 and 24) and concerned about the electrical installations at "the property" called out an electrician who found that the electrical installations at "the property" were dangerous and that an entire rewire was necessary. "The Respondent" issued an emergency prohibition order that same day (Respondent's bundle, page 82 to 89), requiring electrical work to be carried out and prohibiting the property from being let whilst the notice remained in force.
36. On 26 April 2017 the Home Safe Scheme sent "the Appellant" a letter to notify him that his applications for licences were being terminated and that he needed to contact "the Respondent" directly and immediately. (Respondent's bundle, page 43). The tribunal agrees with "the Respondent" that as of this date the application made by "the Appellant" was no longer an effective application so that the defence pursuant to section 95 (3) of "the Act" was no longer available to "the Appellant".
37. The Appellant seeks to take issue with this decision to terminate the application but the tribunal notes that by this time the application had been pending for four months during which time Home Safe had done all that could be reasonably required of them to assist "the Appellant" in furthering his application. Add to that the issues raised by electrical installation reports and the emergency prohibition notice. The Tribunal is certain that termination of the application was the correct decision to take. The Tribunal also notes that "the Appellant" suggests that he was told that "the Respondent" would contact him, seeking to contradict the statement of Mr Ulaeto, but without any supporting evidence. The Tribunal accepts the evidence of Mr Ulaeto, that "the Appellant" was told to contact "the Respondent" directly and immediately.
38. On 21 March 2018 "the Respondent" now being satisfied that the emergency prohibition order had been complied with revoked the order.

39. On 25 April 2018 "the Respondent" became aware that "the Appellant" was once again letting out "the property"(Respondent's bundle, page 24).
40. "The Respondent's" housing benefit records show that a claim for housing benefit was made in respect of "the property" commencing 24 March 2018, remaining as an active claim until 22 February 2019, being the date that Miss Holmes signed her witness statement (Respondent's bundle, page 26). The tribunal accepts this as proof beyond any reasonable doubt that as of 24 March 2018 "the property" was being let again.
41. It is common ground that a license permitting "the property" to be let was issued as of 24 October 2018, following a new application.
42. Having questioned Miss Holmes the tribunal is satisfied that there was no dishonesty at any time on the part of the staff of "the Respondent".
43. "The Appellant" has sought to rely upon advice that he indicates was given to him by Jo Swan, his management agent, of Pridea Sales and Letting. The tribunal notes that "the Appellant" has not served a witness statement from Jo Swann in this regard, so it has not been possible to ascertain what Jo Swann would have said about this suggestion. However, the tribunal does note that Jo Swann was communicated with by Home Safe (Respondent's bundle, page 25 and exhibit EH/11) to notify Ms Swann that "the Appellant" did not have a licence for "the property" or 22 Wheeldon Street. Further, Miss Holmes was again in contact with Ms Swann resulting in management agreements and proof of where rental payments were being paid to by Pridea being produced (Respondent's bundle, page 30 and exhibit EH/23, EH/26 and EH/26A). Ms Swann appears to the tribunal to be a competent management agent and the tribunal is satisfied that she did not advise "the Appellant" that there was no problem for "the Appellant" to rent out "the property" during 2018 without a licence to do so. In fact it appears to the tribunal that Ms Swann was dealing with "the Appellant's" mother, who signed her name as Aisha Amin on the management agreements (Respondent's bundle, page 149 and exhibit EH/11).
44. The Tribunal notes that "the Appellant" raises issues about his neighbours anti-social behaviour putting rubbish into the rear garden of "the property" The only relevance that this has to the case is that "The Respondent" had cause to issue a Community Protection Notice on 23 October 2018 and upon "the Appellant" failing to erect a fence took action to do so in his stead.
45. "The Appellant" seeks to raise issues about a breach of data protection, a burglary and theft at "the property" and that he has not received all the rents from 22 Wheeldon Street. None of these issues assist the tribunal in

deciding whether the Appellant committed the act described on the Final Penalty Notice.

46. The tribunal having read the evidence contained within "the Respondent's" witness statements and having considered the exhibits referred to in those statements determines that on the face of those papers there is evidence capable of making the tribunal satisfied beyond all reasonable doubt that "the Appellant" did operate a property (namely 9 Wheeldon Street, Gainsborough) which is required to be licensed under this Part (see section 85 (1)) but is not licensed under section 95 (1) of the Housing Act 2004, between 21 March 2018 and 24 October 2018.
47. The tribunal is satisfied that "the Respondent" was correct in its decision to impose a civil penalty, rather than commence a prosecution, this being a first offence.
48. The tribunal is satisfied that the Civil Penalties Policy issued by "the Respondent" has been correctly issued, the matrix used by Miss Holmes is properly based on the D. C. L. G. guidance and works effectively to distribute the weight of the allocated criteria across the range of possible fines up to £30,000.
49. In deciding the scores for each criterion the officer concerned is required to apply their own expertise to the circumstances and background to the offence appropriately.
50. The tribunal is satisfied that "the Respondent" took into account all the issues that it was required to have regard to in deciding upon the level of that civil penalty.
51. The tribunal is satisfied that in deciding to reduce the civil penalty from £15,000 to £11,000 "the Respondent" correctly took account of issues raised by "the Appellant" and "the Appellants" conduct after issue of the Notice Of Intent To Issue A Financial Penalty. That conduct being that "the Appellant" did make fresh applications for licences for his two properties that were granted.
52. The tribunal determines that the Civil Penalty of £11,000 is the proper and reasonable penalty to impose, bearing in mind that "the Appellant" owns two properties for rent and the aggravating feature that the electrical installation certificate for "the property" has been tampered with and that the electrical installations at "the property" were in fact not satisfactory, but were dangerous.

The Decision

53. The Tribunal is satisfied that "the property" did need to be licensed under "the Respondent's" Selective licensing Scheme under section 95 of "the Act". The tribunal is satisfied beyond any reasonable doubt that "the Appellant " has let out the "the property" without a license on dates between 24 March 2018 and 24 October 2018 and has therefore committed the offence as detailed on the Final notice to Issue A Civil Penalty.
54. The Tribunal is satisfied that Civil Penalty imposed has been set at the correct level. The Civil Penalty is therefore confirmed.
55. Any party wishing to appeal against this decision has 28 days from the date that the decision is sent to the parties in which to deliver to the tribunal an application for permission to appeal, stating the grounds for the appeal and giving particulars of such grounds.

Signed: Judge C. P. Tonge

Date: 13 June 2019