



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

Case Reference : **LON/00BC/HNA/2021/0001
Remote CVP. VIDEO**

Property : **54A Grosvenor Road, Ilford, Essex,
IG1 1LA**

Appellant : **Mr O Sadiq**

Representative : **In person**

Respondent : **The London Borough of Redbridge**

Representative : **Mr Afzal**

Type of Application : **Appeal against financial penalty**

Tribunal Members : **Mrs F J Silverman MA LLM
Mr P Roberts Dip Arch RIBA**

Date of video hearing : **19 July 2021**

Date of Decision : **19 July 2021**

DECISION

The Tribunal confirms the Financial Penalty imposed by the Respondent on the Appellant.

REASONS

- 1 The Appellant is the leasehold owner of the property situated and known as 54A Grosvenor Road Ilford Essex IG1 1LA (the property). He filed an application with the Tribunal on 17 December 2020 appealing against the financial penalty notice served on him by the Respondent under s 249A Housing Act 2004 following the Appellant's failure to comply with s95 of the same Act (failure to licence a rented property in a selective licensing area).
- 2 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered however that the matter was capable of determination without a physical inspection of the property.
- 3 The hearing took place by way of a CVP video hearing (to which neither party had objected) on 19 July 2021 which the Appellant failed to attend. The Respondent was represented by Mr Afzal, Legal Officer employed by the Respondent.
- 4 The Tribunal had the benefit of an exterior view of the property from Google maps. It is understood that the property forms the ground floor of a property divided into three self-contained flats and is presently occupied by a single family. It is believed that the property has been owned and let by the Applicant since 2015. The property became subject to the Respondent's selective licensing provisions in July 2017 and had never had a licence since that date. Apart from inadequate fire protection systems (now remedied) Ms Nelson of the Respondent authority found the property to be in good condition when she gained access to inspect on 29 January 2020.
- 5 The Appellant does not dispute that the property is subject to the selective licensing provisions in the Respondent borough and that it did not have a licence at the relevant time. The grounds of his appeal as stated in his application to the Tribunal are against the amount of the penalty imposed which he considers to be too high taking into account that he had been unable to deal with this matter during the lockdown/furlough period of 2020 and that the property does now have a valid licence (issued on 17 March 2021).
- 6 The appeal hearing before the Tribunal is a re-hearing of the Respondent's decision to impose the penalty. For that reason the Tribunal commenced the proceedings by hearing evidence from Ms Nelson who is employed as a Housing Enforcement Officer employed by the Respondent. Ms Nelson had inspected the property and had been involved in the decision to impose the financial penalty.
- 7 The Tribunal heard the Respondent's evidence which established that the property fell within the Respondent's selective licensing scheme which had come into force in 2017 (page 107) and was unlicensed.

On discovering this the Respondent issued warning letters to the Appellant in both September and October 2019 (pages 119-121) to which they had received no response. An inspection by Ms Nelson in January 2020 revealed that the property was occupied by a tenant who paid rent to the Appellant (page 123). Apart from lack of some fire prevention measures the property was found to be in good condition. Mr Osman's ownership of the leasehold property was confirmed by council tax records (page 179).

- 8 In the absence of any response from the Appellant the Respondent decided to issue a Notice of Intent to issue a Financial Penalty Notice. This was done on 26 February 2020 (page 65). The Respondent believed that they had established beyond reasonable doubt that the Appellant had committed an offence by omitting to licence the property. It is noted that the offence is not denied by the Appellant.
- 9 It is believed that the Appellant owns at least one other rental property and that he works for Carter Estates, a property management company. He should therefore have been aware of the regulations relating to rental properties and of the need for this property to be licensed. He had not previously been found guilty of an offence under this legislation and had not been prosecuted for this offence. The purpose of the fine was in part to act as a deterrent and taking all these matters into account the Respondent concluded that a penalty of £2,500 was appropriate. A Final Notice was issued on 28 July 2020 (page 79) which remains unpaid although the property is now licenced (as from March 2021) and the lack of fire precautions has been remedied.
- 10 In considering the quantum of the financial penalty to be imposed on the Appellant the Respondent followed its own policy including the application of a matrix (page 85) which allocates a points value to various factors resulting in a suggested penalty figure.
- 11 In considering the amount of the fine the Respondent had regard to all the circumstances including the length of time during which the property had been unlicensed and the harm to the occupiers. In the present case the property had been unlicensed for over three years. A small number of defects eg lack of working smoke detectors and alarm were present although they have now been remedied by the Appellant.
- 12 The Appellant's own circumstances had also been investigated by the Respondent who had found that he owns at least one other rental property and works in the property industry, he would therefore be classified as a professional landlord who would be expected to operate his business to a professional standard.
- 13 In his written statement the Appellant said that he had not been able to obtain a licence sooner because of lock down and the pandemic. Given that this property should have been licensed in 2017 this excuse is not a satisfactory explanation for the delay. Since the original warning notice sent to him by the Respondent was dated September 2019 the Appellant would have had adequate time in which to apply for a licence before the first lock down at the end of March 2020. Further, the final penalty notice was served on him in

July 2020 during a period when the lock down restrictions had been relaxed. The Respondent said that the procedure for obtaining a licence is carried out by email and their offices had been (remotely) open throughout the lock down periods.

- 14 Taking the above matters into account, the Tribunal considered that the Appellant had not satisfied the Tribunal that he had a reasonable excuse for the offence and that the penalty sum of £2,500 was reasonable.
- 15 Therefore, having considered the written evidence placed before it, and taking into account the Respondent's oral observations during the present hearing, the Tribunal determines that it will confirm the Respondent's financial penalty notice imposing a fine of £2,500 on the Appellant, all provisions of which remain extant and in full effect.

16 The Law:
Section 95 Housing Act 2004

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).

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.

Judge F J Silverman as Chairman
19 July 2021.

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.