



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

- Case Reference** : **MAN/00BN/HNA/2020/0046 and 47**
- Properties** : **12, Eileen Grove, Rusholme,  
Manchester M14 5WE**
- Applicants** : **Ashraf Uz-Zaman Choudhury and  
Rabia Akhtar Choudhury**
- Respondent** : **Manchester City Council  
(represented by Miss Short of Counsel)**
- Type of  
Application** : **Appeals against financial penalties imposed  
under Section 249A Housing Act 2004**
- Tribunal Member** : **Mr J R Rimmer  
Mrs A Rawlence**
- Date of Decision** : **23<sup>rd</sup> July 2021**
- Date of  
Determination** : **28<sup>th</sup> July 2021**

**Order : (1) the decision to impose a financial penalties in respect of 12, Eileen Grove, Rusholme, Manchester is upheld, but the amount of each penalty shall be £3,500.00.**

**A. Application**

1. The Tribunal has received an application under paragraph 10 of Schedule 13 to the Housing Act 2004 (“the Act”) against a decision of Manchester City Council to impose a financial penalty against each of the Applicants under section 249A of the Act.
2. The penalties relates to offences that the Council determined had been committed by the Applicants in relation to operating an unlicensed dwelling house within an area of selective licensing under the regime established by the Act.
3. The Tribunal has sent a copy of the application to the Respondent.
4. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
5. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

**B Background**

6. The Applicants are the owners of a house at 12, Eileen Grove, Rusholme, Manchester within an area designated by the City Council under its powers to impose selective licencing requirements to further its duty to ensure the maintenance and improvement of housing standards within the city.
7. There would appear to be common agreement between the parties that when the selective licensing scheme envisaged by the Act was adopted by the Council, and applied to the area in which the property is situated on 7<sup>th</sup> January 2018 the Applicants failed to apply for the relevant licence for that property. It came to the Council’s attention in 2019 that there was no relevant licence in place and, following correspondence with the Applicant, the Respondent embarked upon the process of establishing whether it was appropriate to impose a financial penalty for offence of operating, or controlling a dwelling in respect of which no licence was in force. Such a penalty may only be applied where relevant housing offences have been committed.

- 8 The Applicants accept that an offence has been committed. They accept that a considerable period of time passed between the need for a licence first and the eventual granting of a licence in February 2020. The Applicants suggest that once they became aware of the need for a licence they did as much as they could in the circumstances that a licence was obtained as quickly as possible.
- 9 The Council eventually determined that it was appropriate to impose upon each of the Applicants a penalty of £4,550 in the circumstances of the case, having gone through the process of assessing the nature of the offences, applying its relevant policy, notifying the Applicant and considering representations upon the amount before reaching the final determination. The penalties have been reduced from what would have been amounts of £7,500.00 in view of the mitigating circumstances that the Council found in the circumstances pertaining to the Applicants.
- 10 It is appropriate at this stage to set out the various statutory and regulatory provisions that the Tribunal needed to take into account in coming to its decision.

In relation to the commission of a relevant offence and imposition of a financial penalty

- 11 Section 249A of the Act 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 (licencing of houses...)
  - (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- 12 Section 95 of the Act provides:
  - (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced
  - (2) ...
  - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
    - (a)...
    - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
  - (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse-
    - (a) For having control or managing the house in the circumstances mentioned in subsection (1)
    - (b) ...
  - (7) For the purposes of subsection (3) an...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 or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
- (b) (if a license is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful.

13 Paragraph 10 of Schedule 13A of the Act provides

- (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 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 penalty of more than the local housing authority could have imposed.

#### The appeal

- 14 It is useful to consider the Respondent's case against the Applicant first as the process towards the imposition of a financial penalty depends upon a finding, to the criminal standard of proof, that the applicant has committed a relevant offence.
- 15 The offence in question in this case is that under section 95(1) above and to establish its case in that respect the Council relies upon the following facts:
  - (1) At the time of the application of the licensing scheme to the Moss Side area of Manchester in which 12, Eileen Grove is situated the Council sought to publicise the scheme as widely as possible, but no application for a licence was forthcoming from the Applicants.
  - (2) Thereafter an appropriate officer of the Council took steps in September 2019 to ascertain the position in respect of the property and to establish if an offence was being committed
  - (3) Despite making various enquiries as to the address of the Applicants no means of communication was established prior to October 2019 when the Applicants' current address was ascertained and a visit took place to 12, Eileen Grove to make contact with the tenant.
  - (4) Steps were taken to interview both Mr and Mrs Choudhury under caution in respect of possible offences and those interviews took place on 18<sup>th</sup> December 2019 and 7<sup>th</sup> January 2020.

- (5) In the meantime, an application for a licence was submitted on 13<sup>th</sup> November 2019 (after the invitation for interview), although the application was not complete until the provision of the gas safety certificate.
- (6) This was supplied and a licence granted in due course
- (7) The timescale of events is, however, in the Respondent's view, evidence of the Applicants managing a relevant house whilst failing to hold a licence for the period from 7<sup>th</sup> January 2018 up until the time that an application was duly made to the Council.
- 16 The Applicants accept that no licence was in place up to the point that their application was completed following its submission, but they were in ignorance of the requirement until the Council made contact with them, they made application immediately and the co-operated fully with the Council's enquires and interview process.
- 17 They do not regard themselves as rogue landlords (indeed the evidence provided at the hearing suggested that they have accepted a moral and social responsibility for providing housing to the tenant over and above what is required by the Housing Act 1988) and have done their best as the owners of a single rented property to comply with obligations as they became aware of them.

### The Hearing

- 18 In view of the corona virus protocols in place at the time of the hearing on 8<sup>th</sup> July 2021 the Tribunal dispensed with a pre-hearing inspection (which would not have been particularly pertinent to this case) and conducted the hearing by remote means. There were some initial difficulties in ensuring all attendees were able to join the process and see and hear sufficiently, but these were overcome with some ease.
- 19 The Tribunal did have one preliminary matter of concern in that Mr Choudhury appeared to be taking on the responsibility of conducting the proceedings on behalf of both himself and Mrs Choudhury. The Tribunal spoke to Mrs Choudhury and was satisfied that she understood the nature of the proceedings and that she was happy for Mr Choudhury to represent them both. It was subsequently apparent from the contents of her interview (although conducted by telephone) that when interviewed by Mrs Gillies from the Council that she was responsible jointly with Mr Choudhury for the property.
- 20 The Tribunal was able to deal firstly with the commission, or otherwise, of the offence of managing an unlicensed property. Mr Choudhury was once again concerned about being regarded as a rogue landlord and was adamant that in the circumstances of his case his fault had arisen only out of ignorance and not out of deliberate wrongdoing and he and his wife had subsequently done

all that they could to apply for a licence. It was also clear that they were not accused of any other failings in relation to the standard of accommodation provided for the tenant.

- 21 It was also accepted that whatever may have occurred by way of communication between the Council and the Applicants via the tenant in relation to correspondence addressed via the property the licensing issue was not brought to the Applicants' attention through that channel.
- 22 The Respondent, through Miss Short, was satisfied that the delay between January 2018 and November 2019, when the licence was applied for, was sufficient to establish the offence. The actions of the Applicants prior to that time did not enable them to rely on the defences provided by sections 95(3) and (4) (set out in paragraph 12, above). Their ignorance of the requirement was not a sufficient excuse.
- 23 The Tribunal then proceeded to consider the financial penalty imposed, in the event that the Tribunal was satisfied beyond reasonable doubt that an offence had been committed.
- 24 The Applicants was quite clear in the view that the extent of the fine, upon persons of previous good character and with no previous convictions in a total amount between them of £9,100.00 was excessive. The Tribunal would add that there appears to be no previous complaint as to any other possible housing offences on the Applicants' part, nor, as mentioned above, any complaint as to the standard of his housing provision.
- 25 Mrs Gillies, being the council officer with overall responsibility for this matter, provided a very cogent explanation as to the application of the policy in respect of financial penalties for housing offences devised by Manchester City Council in relation to the imposition of financial penalties and the matrix established within it to provide a reasoned assessment of a relevant financial penalty based upon the level of culpability on the part of the offender and the likely harm resulting from the offence in question.
- 26 The Tribunal is satisfied that it should not seek to depart, without good cause, from a policy that has been arrived at by due democratic process and agrees with Miss Short that the Tribunal should be guided in that regard by the decision of the Upper Tribunal in *Waltham London Borough Council v Marshall* ("Marshall").
- 27 Accordingly, the Council, having determined a medium level of culpability attributable to the Applicants' failures and a low level of harm from the offending the matrix provided an entry point of £7,500.00, the mid-point between £5,000.00 and £9,999.00, for this level of offending. From this starting point deductions were made of £1,000.00 for an application then having been made for a licence and a further 30% for the co-operation and

acceptance of responsibility on the part of the Applicants, thus reducing the amount to £4,550.00.

28 The Tribunal explored at some length with Miss Short the view that although there were two Applicants and that their joint responsibility was resulting in two penalties, there should be some adjustment in view of the likely different responsibilities of the Applicants. Miss Short was at pains to point out that it would not normally be the case in situations of joint responsibility to exonerate one party and penalise only the other. Additionally, Mrs Choudhury had accepted her responsibility in her interview and, ultimately, the licence that was granted was in her name.

### Determination

29 Following the conclusion of the hearing the Tribunal reconvened later on 8<sup>th</sup> July to consider all that it had read in the submissions to it and heard at the hearing.

30 The Tribunal is satisfied that the offence of controlling or managing an unlicensed dwelling is made out beyond reasonable doubt. The Tribunal accepts at face value what the Applicants say about their ignorance of the need for making application for a licence, but emphatically recognises that landlords must be aware of their legal responsibilities in relation to properties that they provide to let.

31 The Tribunal moved on to consider the appropriate penalty according to the assessment made by the Council of medium culpability and low harm. The Tribunal notes that the Council's policy sets a series of steps, or a staircase, at some point upon which the offender's behaviour is placed. It is not a graph that produces a line referable to the x axis of culpability and the y axis of harm. The Tribunal makes this point as it is of the view that it should not interfere without good reason in the democratic process that has taken place in setting the policy. The culpability of the Applicants is, however on the very boundary between low and medium. It feels able to distinguish between that on the part of owners of a single rented property, who take action as soon as they are alerted to the difficulties that exist and, for example identified in the decision of the Upper Tribunal in London Borough of Waltham v Marshall where the Applicant took longer to join in the application process and, in the Tribunal's view, from a background likely to indicate a clearer understanding of what was required.

32 To the Tribunal's mind to start at the mid-point in the matrix without assessing the exact extent of culpability first is unfair, otherwise all cases of medium culpability and low harm would start at the same point, before looking at the mitigating factors considered by the Council in respect of the application for the licence and the co-operation proffered. To come to what it believes to be an appropriate outcome the Tribunal accepts a situation in

which there is medium culpability, at nearer to, but not at, the lowest level, and low harm, the starting point on the matrix of £6,000.

33 It then finds there are no aggravating features. There are however mitigating features correctly identified by the Council. Firstly that a licence is applied for with some speed by the Applicants. (£1,000) and then a further 30% reduction that effectively reflects:

- 1) No previous convictions or cautions.
- 2) No relevant civil penalties (at all).
- 3) An apparent good record of maintaining the property.
- 4) A likely one-off event (this being the Applicants' only property to let).
- 5) No particular suggestion that the offending is motivated by the financial gain of avoiding the cost of a licence.
- 6) The co-operation provided when the licensing issue is raised

34 On the basis of that assessment the result is £6,000.00

Deduct £1,000 for the speedy application	<u>£1,000.00</u>
	£5,000.00
Deduct 30% credit	<u>£1,500.00</u>
Final penalty	£3,500.00 in respect of each
Applicant	

35 The Tribunal has not been provided with any significant details as to the financial circumstances of the Applicants and have therefore also considered the likely effect of such penalties from the perspective of rental profit that they may have made from the period during which the property was unlicensed. It is satisfied that this is only one of the considerations that it must take into account and the level of penalty set out above sufficiently weighs that element of profit against the Applicants' culpability and the relatively insignificant harm caused.

**Tribunal Judge J R Rimmer**  
**23<sup>rd</sup> July 2021**