



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

Case Reference : **MAN/00BR/HNA/2019/0063**

Property : **29A Church Street, Eccles M30 0BJ**

Applicant : **Mr Aftab Raja**

Respondents : **Salford City Council**

Type of Application : **Appeal against a financial penalty Section 249A & Schedule 13A of the Housing Act 2004**

Tribunal Members : **Tribunal Judge Professor Caroline Hunter
Tribunal Member Neil Swain**

Date and venue of Hearing : **Determined without a hearing on 5 February 2021**

Date of Decision : **16 February 2021**

Date of Determination : **1 March 2021**

DECISION

Summary Decision

1. The Tribunal dismisses the appeal and confirms the final notice.

Background

2. This is an appeal by the applicant, Mr Aftab Raja, against a financial penalty of £22,500 imposed on him by Salford City Council ('the Council') under the Housing Act 2004 ('the Act'), s.249A. The penalty arose because of a failure of Mr Raja to apply for a licence under section 85 of the Act in a designated area of selective licensing.
3. The penalty was imposed on 17 June 2019. Mr Raja appealed to the Tribunal against the penalty on 3 July 2019. In his application Mr Raja indicated that he would be content with a paper determination.
4. Directions were provided by the Tribunal on 19 August 2019. The Directions required the Council to provide a bundle to the Tribunal within 21 days of the Directions. 21 days receiving the Council's bundle, Mr Raja was required to provide his bundle in response.
5. At that time Mr Raja was represented by Ms Tahira Jan. On 18 September 2019 Ms Tahira Jan informed the Tribunal via email that she was no longer the representative of Mr Raja.
6. In November 2019 the Tribunal sent a letter to Mr Raja with a copy of the Directions and were also informed that the Council had copied their bundle to him. In December 2019 the Tribunal received an email informing it that Mr Raja was out of the country. At that time Ms Tahira Jan, despite her previous email, informed the Tribunal that all his evidence was with his application.
7. On 26 June 2020, the Council emailed the Tribunal to ask to an update on the progress on the case and a paper determination was arranged.

The Law

Housing Act 2004

8. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been "a relevant housing offence".
9. Section 249 (2) sets out what amounts to a housing offence and includes at, section 249(b) an offence under section 95 of the Act, namely a failure to licence a property. Section 249 (3)-(4) further provides that only one financial penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.
10. Section 95 of the Act provides:
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.
- ...
- (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.
- ...

Procedural requirements

11. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
12. A Notice of Intent must be given within 6 months of the local authority becoming aware of the offence to which the penalty relates, unless the conduct of the offence is continuing, when other time limits are then relevant.
13. The Notice of Intent must set out:
 - the amount of the proposed financial penalty
 - the reasons for imposing the penalty
 - Information about the right to make representations regarding the penalty
14. If representations are to be made, they must be made within 28 days from the date the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
15. The Final Notice must set out:
 - the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for the payment of the penalty
 - information about rights of appeal
 - the consequences of failure to comply with the notice.

Guidance

16. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties: 2004 Act, Sched.13, para.12. The Ministry of Housing, Communities and Local Government issued such guidance ('the MHCLG Guidance') in April 2018: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Authorities*. This requires a local authority to develop its own policy regarding when or if to prosecute or issue a financial penalty.
17. The MHCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:
 - a. Severity of the offence.
 - b. Culpability and track record of the offender.
 - c. The harm caused to the tenant.
 - d. Punishment of the offender.
 - e. Deterrence of the offender from repeating the offence.
 - f. Deterrence of others from committing similar offences.
 - g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.
18. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, of the Association of Greater Manchester authorities (AGMA) (of which the Council is a member) have adopted a joint Policy for the use of Civil Penalties as an alternate to prosecution in the Housing and Planning Act 2016 ('the AGMA Guidance'). We make further reference to this policy later in these reasons.

Appeals

19. A final notice given under Schedule 13A to the 2004 Act must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).
20. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.
21. The appeal is by way of a re-hearing of the local housing authority's decision and may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.
22. A number of decisions of the Upper Tribunal have established the questions that should be addressed when considering an appeal against a financial penalty. Those are *London Borough of Waltham Forest v Younis* [2019] UKUT 0362 (LC), *London Borough of Waltham Forest v Marshall & Another* [2020] UKUT 0035

(LC), *IR Management Services Ltd v Salford City Council* [2020] UKUT 0081 (LC), *Sutton & Another v Norwich City Council* [2020] UKUT 0090 (LC) and *Thurrock Council v Daoudi* [2020] UKUT 209 (LC).

23. The Tribunal's task is not simply matter of reviewing whether the penalty imposed by the Final Notice was reasonable: the Tribunal must make its own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In doing so, the Tribunal should have regard to the seven factors specified in the MHCLG Guidance as being relevant to the level at which a financial penalty should be set (see paragraph 17, above).
24. The Tribunal should also have particular regard to Salford's Guidance (see paragraph 18, above). As the Upper Tribunal (Lands Chamber) observed in *Sutton & Another v Norwich City Council* [2020] UKUT 0090 (LC):

“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.”
25. The Upper Tribunal went on to say that the local authority is well placed to formulate its policy and endorsed the view that a tribunal's starting point in any particular case should normally be to apply that policy as though it were standing in the local authority's shoes. It offered the following guidance in this regard:

“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.”
26. Upper Tribunal guidance on the weight which tribunals should attach to a local housing authority's policy (and to decisions taken by the authority hereunder) was also given in another recent decision of the Lands Chamber: *London Borough of Waltham Forest v Marshall & Another* [2020] UKUT 0035 (LC). Whilst a tribunal must afford great respect (and thus special weight) to the decision reached by the local housing authority in reliance upon its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review: the tribunal must use its own judgment and it can vary such a decision where it disagrees with it, despite having given it that special weight.
27. The decision of the Upper Tribunal in *Sutton & Another v Norwich City Council* was appealed to the Court of Appeal. The Court concluded that the penalties imposed could not be impugned: *Sutton & Another v Norwich City Council* [2021] EWCA Civ 20. The Court (at para. 14) having considered the Upper Tribunal's view on the weight to attach to a policy of the authority in *Borough of Waltham Forest v Marshall & Another* took the view there are no reason to dissent from those observations.

Facts

28. We take fact from the Council's submission, as Mr Raja has not questioned them.

29. The relevant selective licencing scheme was designated on 27 January 2015.
30. Invitations to apply for a licence were sent to Mr Raja of 12 and 29 January 2018. A warning letter was sent on 12 February 2018. A further letter on 26 February. A further letter was sent on 12 March 2018 inviting him to a PACE interview.
31. The first response from Mr Raja to the Council was an email on 9 April 2018, stated that he had no business at the property and therefore he did not need a licence. A reply to that email from Council asked if the property was empty, to which Mr Raja replied that he did not know what the licence was for. A further confirmation email from the council did not receive a response.
32. The Council visited the property on 12 July 2018 but got no response. A further visit on 9 October 2018 found a tenant in the property. She stated that she had lived in the property for over two years with her two children.
33. A further letter was sent to Mr Raja on 8 November 2018 inviting him to a PACE interview on 27 November 2018. On 20 November 2018 an improvement notice under the Housing Act 2004 was served on Mr Raja by the Housing Standards team.
34. Mr Raja did not attend a PACE interview. On 14 November a Mr Abdul Khan contacted the Council to notify them that Mr Raja would not be attending because he was currently in Police custody. This was confirmed by Greater Manchester Police: Mr Raja was subsequently released without charge.
35. On 26 November 2018, the tenant contacted the Council and informed it that she believed that Mr Raja had entered the property without consent and disconnected the water and electricity supply. The property was inspected on 28 November and it confirmed that the water and electricity had been interrupted. An Emergency Prohibition Order was served by the Council on Mr Raja on 29 November 2018 and the tenant supported to find alternative accommodation.
36. On 6 December 2018 a final letter was sent to Mr Raja that stated that in the circumstances the Council was considering enforcement action. The Council determined that a Civil Penalty was the appropriate course for action, and a Notice of Intent was served on 30 April 2019. Mr Raja responded 28 May 2019. Following those representations the Council determined to serve a Final Notice on Mr Raja.

Submissions

37. In his application Mr Raja essentially made three points:
 - a. He did not receive letters from the Council requiring him to have a licence, when letters were received he was out of the country;
 - b. That there was no tenant in the property;
 - c. He is on benefits and cannot afford the penalty.He has not provided any evidence to support these claims.
38. We have set out the facts above. The Council in their Final Notice dealt with the fact that Mr Raja had not received the notifications. They were satisfied he had received notification on numerous occasions that he required a licence.

39. The evidence from the Council's Council Tax records showed that the property was continuously let from 8 March 2016 until the tenant vacated following the Emergency Prohibition Order on 29 November 2018.
40. The terms of Mr Raja's means in particular as to his income, no representations were received from him to the Council.

Decision

41. We agree with the Council that Mr Raja had many opportunities to apply for a licence. As a landlord it was his responsibility to be aware whether a selective licensing scheme was in operation. Landlords if they away for periods of time must arrange for suitable management for the property.
42. There is clear evidence that the tenant was living in the property at the relevant time.
43. Given the failure of Mr Raja to provide any evidence it is difficult for us to judge his income. He asserts he is on benefits. We note, he did not raise the issue with the Council. In our view there is not sufficient evidence for his appeal to succeed on this ground.
44. We are aware that we must make own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In the light of the evidence before us, particularly the need for an improvement notice and the landlord leading for the Emergency Prohibition Order, we confirm the Final Notice.

Rights of appeal

45. 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.
46. 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.
47. If the person wishing to appeal does not comply with the 28 day time limit, that 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.
48. 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.

Tribunal Judge Professor Caroline Hunter