



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

Case Reference : **LON/00AM/HNA/2021/0056
Remote CVP. VIDEO**

Property : **1 Fairleigh Rd Stoke Newington
London N16 7SU**

Appellant : **Mohammed Iftkar Zaman**

Representative : **In person**

Respondent : **London Borough of Hackney**

Representative : **Mr M Feldman Counsel**

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

Tribunal Members : **Judge F J Silverman MA LLM
Ms R Kershaw BSc**

Date of video hearing : **07 December 2022**

Date of Decision : **14 December 2022**

DECISION

The Tribunal confirms the Financial Penalty imposed by the Respondent on the Appellant. All provisions of the penalty notice are unaltered and remain in effect.

REASONS

- 1 The Appellant is the owner of the property situated and known as 1 Fairleigh Road Stoke Newington London N16 7SU (the property) a house which is currently divided into three flats. He represented himself at the hearing of this matter having filed an application with the Tribunal on 24 November 2021 in which he is appealing against the financial penalty notice served on him by the Respondent under s 95 Housing Act 2004 (failure to licence premises in a selective licensing area). Directions were issued on 11 July, 17 August and 27 September 2022.
- 2 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered that the matter was capable of determination without a physical inspection of the property. The Tribunal had the benefit of an exterior view of the property from Google maps and was assisted photographs of the premises contained in the hearing bundles.
- 3 The hearing took place by way of a CVP video hearing (to which neither party had objected) on 07 December 2022 at which the Respondent was represented by Mr Feldman of Counsel.
- 4 Electronic hearing bundles containing documents from both parties had been supplied to and read by the Tribunal prior to the hearing and are referred to below.
- 5 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 Mr Olise and Mr Mfum who are both employed by the Respondent in their Private Sector Housing department.
- 6 The Appellant gave oral evidence on his own behalf. Both parties' written submissions had been filed and were taken into account by the Tribunal.
- 7 Following a public consultation between 18 September 2017 and 3 December 2017 the Respondent introduced a Selective Licensing Scheme for single household dwellings in the Brownswood, Cazenove and Stoke Newington Wards of the Respondent authority with effect from 1 October 2018. The subject property is situate within the Stoke Newington Ward.

- 8 On 3 August 2021, Mr Monday Olise, a Private Sector Housing Officer for the Respondent, carried out a doorstep survey in the area which included the subject property and discovered that the property was tenanted. At the time of his visit, no selective licence application had been made in respect of the property and on 15 September 2021, Mr Olise issued a stage- 3 warning letter, informing the Appellant of the need to obtain a licence. The Appellant responded to Mr Olise on 17 September 2021.
- 9 On 22 September 2021, Mr Olise issued a Notice of Intent indicating that the Respondent intended to impose a financial penalty of £7,500 in respect of a failure to licence under the Selective Licensing Scheme (s95 of the 2004 Act). The Respondent was of the opinion that the evidence met the criminal standard of proof. On 24 September 2021 the Applicant made an application and subsequently obtained a licence under the Selective Licensing Scheme.
- 10 The Respondent calculated the amount of the penalty in accordance with their standard matrix. Because Mr Olise had not been able to gain access to the property on inspection the harm level under the matrix was automatically rated at 'Medium' setting the minimum fine level at £7,500 despite the fact that the Appellant's prompt action in applying for the licence graded the culpability level as 'Low'.
- 11 The Respondent also offered to lower the amount of the fine to £6,000 if it was paid within 28 days but the Appellant did not do this and the full amount of the fine remains outstanding.
- 12 The Appellant said that he had failed to obtain a selective licence because he had not known one was required. He did not live within the borough and did not own any other property in the borough. He contended that the Respondent should have contacted him personally to inform him of the need for a licence and should have advertised and publicised the change in the rules more openly. He said that he had spent a large amount of money in upgrading the property and that the project had been hampered by Covid restrictions and his own and his mother's ill health. The Respondent said that all the requirements of the scheme were available on their website. The Appellant said the website was difficult to navigate and he had not looked at it and had not been directed to it by the Respondent. He did not seem to accept that he had a responsibility as landlord to keep abreast of the relevant legislation and regulations which affected him, his property and his tenants.
- 13 When questioned by the Tribunal the Appellant did accept that the offence of failing to obtain a licence is one of strict liability, and said that he understood the concept of strict liability. He considered however that the appropriate amount of his fine should be zero.
- 14 The Appellant's contentions as set out above are not capable of amounting to a 'reasonable excuse' and afford no defence to this matter. Similarly, whether or not the Appellant carried out major works at the property between December 2017 and 2018 as he asserts is irrelevant to the matter before the Tribunal in the factual context of this case.

- 15 The Respondent had an enforcement policy in place which they used as the basis of assessment of the penalty for the offence. *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC) states that the Tribunal should take that policy as its starting point. The Tribunal is satisfied that the Respondent used and applied their policy in a reasonable manner. As stated above (para 10) the Respondent set the penalty to be imposed at the lowest level, this takes into account the facts that the Appellant had applied for a licence promptly once aware of its necessity and that the tenancies had only recently been granted, weighed against the fact that at the time of the offence the selective licensing order had been in place for almost three years.
- 16 Given that at the time of the offence the Appellant's monthly income from the three flats at the property amounted to £4,000 per month, and taking into account the circumstances of the offence, the Appellant's explanations as set out above, and the enforcement procedures followed by the Respondent, the Tribunal considers that the penalty of £7,500 is fair and proportionate and the Tribunal therefore confirms the penalty imposed by the Respondent on the Appellant.

**17 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

14 December 2022.

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.