



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

Case Reference : **MAN/32UH/HNA/2018/0025**

Property : **4 Linden Terrace, Gainsborough
DN21 1JQ**

Applicant : **Mr Fraser Brown**

Respondent : **West Lindsey District Council**

Type of Application : **Appeal against a financial penalty imposed
under Section 249A Housing Act 2004**

Tribunal Member : **Mrs A Rawlence MRICS
Mr P Mountain FRICS**

Date of Determination : **2 April 2019**

Date of Decision : **5 April 2019**

Order : **The decision to impose a financial penalty
notice in respect of 4 Linden Terrace,
Gainsborough DN21 1JQ is upheld.
The amount of that penalty shall be £10,000**

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A. Application

1. The Tribunal has received an application under paragraph 10 of Schedule 13A to the Housing Act 2004 (“the Act”) against a decision of West Lindsey District Council (the local housing authority) to impose a financial penalty against the Applicant under section 249A of the Act.
2. This penalty relates to an offence that the Council determined had been committed by the Applicant in relation to operating an unlicensed dwelling house in an area of selective licencing under the regime established by the Act. The Council had designated the south west ward as an area of selective licensing in 18 July 2016.
3. The Tribunal has sent a copy of the application to the Respondents.
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 Applicant is the owner of 4 Linden Terrace, Gainsborough, DN21 1JQ (“The Property”) that is within the area designated by the Respondent West Lindsey District Council (“The Council”) under its powers to impose selective licencing requirements in furtherance of its duty to ensure the maintenance and improvement of housing standards within the city.
7. On 31 October 2016, the Council received an electronic selective licence from the Applicant in respect of the Property.
8. The Applicant had not supplied copies of a valid Gas Safety Certificate (GSC), a satisfactory graded Electrical Installation Condition Report (EICR) or an Energy Performance Certificate (EPC).
9. The certificates were still outstanding some three months later. On 23 February 2017 the Council stated that, as no steps had been taken to provide the outstanding matters necessary to complete his application, the decision had been taken to terminate the Applicant from the Home Safe scheme.
10. The Tribunal understands that the Home Safe Concept was developed to provide licensing support to local authorities enabling them to maximise the outcome of any licensing scheme and provide both benefits and support to their Landlord community, particularly in areas subject to Selective Licensing.

11. On 2 March 2017 the Applicant was informed of that decision but also advised that he was operating unlicensed and should contact the local authority as a matter of urgency.
12. On 18 December 2017 the Council noted that the property was owned by the Applicant and council checks were undertaken on 26 March 2018 that showed the property was still within the private rented sector.
13. On 11 June 2018 the Council wrote to the Applicant that he was continuing to operate without the required selective license in place. Formal action was being reviewed in respect of this.
14. On 3 July 2018 the Applicant was served a Notice of Intention to issue a financial penalty. The proposed penalty was set at £15,000. The deadline for representations was 2 August 2018.
15. No representations were received by the deadline but on 10 August 2018 the Applicant stated that he believed he had overlooked the selective licensing requirement for the Property and asked for advice on how to rectify the situation.
16. The Council extended the representations deadline on the notice of intent and ask for an immediate application.
17. By 22 August no representations or selective licence application for the property had been received and a final notice to impose a civil penalty was served on that date on the Applicant.
18. On 24 August 2018, the Applicant met with the Council to discuss the civil penalty and representations process. The Council advised that the final notice would be withdrawn to allow an extension to the representations' deadline on the notice of intent.
19. On 27 August 2018 the Council withdrew the final notice dated 22 August to impose a financial penalty. The Council informed the Applicant that the Notice of Intent to impose a financial penalty served on 3 July 2018 remains in effect and the extended representations period provided until 30 August 2018 is in respect of this.
20. On 29 August 2018 the Council received the Applicant's representations dated 25 August 2018.
21. On 29 August all required certificates were received by the Council and the Tribunal has assumed that the property was licensed on or after that date.

22. The Council considered the representations made by the Applicant and on 24 September made the decision to impose a fine of £11,000 rather than the £15,000 originally proposed.
23. On 26 September 2018 the Council served a final notice to impose a fine of £11,000, the offence period being 1 December 2016 to 24 August 2018.

C. The Law

24. 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.
25. In relation to the commission of a relevant offence and imposition of a financial penalty
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.
26. 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)
 - (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)

27. Section 87 of the Act sets out the requirements to be met in any application, those being-
- (1) ...made to a local housing authority
 - (2) ...made in accordance with such requirements as the authority may specify
 - (3) ...be accompanied by any fee required by the authority
 - (4) ... comply with any requirements specified by the authority subject to any regulations made under subsection (5)
 - (5) The appropriate national authority may by regulations make provision about the making of applications under this section
 - (6) Such regulations may, in particular, specify the information, or evidence, which is to be supplied in connection with applications.
28. 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.

D. Submissions by both Parties

29. The Applicant stated that not fully completing the selective licensing application was a genuine oversight. He had been of the understanding that the scheme was optional. He had an excellent longstanding record of compliance with all property licensing requirements in the Mansfield area.
30. The Applicant provided details of a case held at Lincoln Magistrates Court on February 5 2018 when the fine was less for a greater number of offences.
31. The representations the Applicant made dated 25 August 2018 (see paragraph 20) stated that he had good relations with his tenants; compliant HMO properties in Mansfield including up to date gas safety certificates but had struggled to keep up to date with the Gainsborough property.

32. The Applicant referred to his financial position and commented, that although his level of income was based on a number of properties, all of these properties had mortgages. Furthermore, the Gainsborough property was let at a low rent because the tenant was trouble-free and he had had experience of tenant problems in that area.
33. The Respondent's bundle referred to the various occasions they had contacted the Applicant in connection with selective licensing. Furthermore, they had extended the deadline for representations for the Notice of Intent dated 3 July 2018.
34. The Council had designated the South West Ward of Gainsborough as a Selective Licensing Area with effect from 18 July 2016. Prior to this all property owners in the area were sent notification of the scheme and given advice as to how to make an application to seek a license.
35. The initial deadline of 31 October 2016 to apply for a license was extended to 1 December 2016 and subsequently 31 January 2017. At this time landlords were advised that those without complete applications may be liable to prosecution.
36. On 2 February 2017 it was noted that the Applicant had an incomplete application dated 31 October 2017 and a letter was sent to the Applicant (see paragraphs 9,10 and 11).
37. On 1 May 2018 the Council approved the implementation of the civil penalties policy.
38. The legal case details provided by the Applicant were before this date.

E Determination

39. The Tribunal accepts that the policies are the direct result of the democratic process whereby the Respondent (The Council) seeks to fulfil its statutory duty by seeking from its officers a clear and rational process for doing so.
40. The Tribunal also has a duty: to re-hear the case against the Applicant. It has done so with the policies of the Respondent always within its mind. It offers no criticism of the thorough manner in which it has approached this case and the documented procedures it has followed.
41. Has an offence been committed?
The first question the Tribunal must ask itself is whether an offence has been committed. The clear answer is yes. There was no licence in place in respect of 4 Linden Terrace, Gainsborough from 1 December 2016 to 24 August 2018. There was a clear breach of Section 95(1) Housing Act 2004.

42. What sanction is appropriate to mark the commission of the offence?
Under the financial penalty regime the Respondent, in the event of an offence having been committed, has stated that the level of civil penalty is the penalty for an offence plus a level of penalty determined by an impact scoring matrix. It has provided and explained its matrix and methodology to support its finding that an amount of £11,000 is appropriate.
43. The Tribunal notes the financial penalty under Table 2 of an offence under s.95 of the Housing Act as £10,000 and confirms this figure.
44. The Tribunal makes its observations in relation to the application of the matrix policy to the following matters.
- (1) What is the severity of harm or potential harm?
 - (2) Number of properties owned or managed
 - (3) Enforcement history
 - (4) Removal of financial incentive
 - (5) Deterrence and prevention
45. The Tribunal determines that there is low level of harm. The Applicant manages several properties but with the exception of the Property is in compliance with the Housing Act 2004. There is no enforcement history that the Tribunal has been made aware of. The Applicant has provided financial details. The Respondent has stated page 14, paragraph 26 of their bundle that they have high confidence that the penalty would deter a repeat offence.
46. The Tribunal does not find a further penalty of £1,000 to be justified.
47. The Tribunal determines a penalty of £10,000.
48. In making its determination the Tribunal had regard to its inspection of the properties, the submissions of the parties, the relevant law and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.
49. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

A J Rawlence (Chair)