FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00CJ/HNA/2021/0135**
Property	**:**	**33, Stratford Road, Newcastle upon Tyne, NE6 5PB**
Applicant	**:**	**Graham John Anderson**
Respondent	**:**	**Newcastle City Council**
Type of application	**:**	**Appeal against a financial penalty under section 249A of the Housing Act 2004**
Tribunal member(s)	**:**	**Tribunal Judge J James-Stadden, Tribunal Member L Brown, Tribunal Member J Fraser**
Date of decision	**:**	**06 October 2022**

DECISION

Decision of the Tribunal

(1) The appeal is dismissed and the Tribunal confirms the financial penalty of £1,313.46 imposed by the Final Notice dated 11 October 2021 issued by the Respondent to the Applicant in relation to the Property.

The Application

1. By an Application dated 05 November 2021, with grounds of appeal attached (in the form of email correspondence between the Applicant and the Respondent), the Applicant appeals against a financial penalty of £1,313.46 imposed upon him by the Respondent in a Final Notice dated 11 October 2021 in respect of 33, Stratford Road, Newcastle upon Tyne, NE6 5PB ("the Property").

2. Directions were issued by the Tribunal on 15 March 2022.

3. The Application is opposed by the Respondent, by whom a bundle of documents was filed and served in response to the Application. That bundle is comprised of witness statements and exhibits from James Hunt, senior technician, Kaye Hadden, senior environmental officer, and Gwen Smith, team manager of the Public Protection and Neighbourhoods Team, as well as the Respondent's Private Sector Housing Enforcement Policy dated January 2019 and its Private Sector Housing Civil Penalties Guidance, also dated January 2019.

4. On 05 October 2022, the day prior to the hearing of the Application, the Respondent filed an updated (July 2020) copy of its Private Sector Housing Enforcement Policy, being the policy in force at the time that the financial penalty was issued.

5. The Application was heard by video link on 06 October 2022. The Applicant was unrepresented but accompanied by his father, John Anderson, and both gave oral evidence to the Tribunal. The Respondent was represented by Ms. Taylor, solicitor, who was accompanied by the Respondent's three witnesses, whose witness statements were accepted as their evidence, although both Mr Hunt and Ms Smith also gave oral evidence at the hearing.

Preliminary Matters

6. At the outset of the hearing on 06 October 2022, the Applicant acknowledged receipt of the Respondent's bundle, and also of the July 2020 version of the Respondent's Private Sector Housing Enforcement Policy, which had been served on him on the day preceding the hearing.

7. The Tribunal admitted that document, despite its late filing and service, the salient parts of it (those pertaining to the imposition of financial penalties) not differing from those contained in the version originally filed and served.

Facts and Chronology

8. The Applicant is the registered legal owner of the Property, having purchased it in 2007. The Property is a residential ground floor flat.

9. The Property is situated in an area which the Respondent designated as a selective licensing area with effect from 06 April 2020, such that, from that date, any property occupied under a tenancy within that area would require a licence.

10. On 10 July 2020, the Applicant let the Property to a Mr Reed and Miss Vaiciute pursuant to an assured shorthold tenancy agreement of that date.

11. On 02 February 2021, Mr Hunt wrote to the Applicant at two separate addresses (see below) notifying him that the Property may require a licence, that it did not have a licence and that it is a criminal offence to operate a licensable property without a licence. He provided links to websites where further information could be obtained and at which the relevant application could be submitted.

12. The addresses to which Mr Hunt sent his letters were 9 Trafalgar Court and 7 Roslin Way, the former being the address listed as the Applicant's address in the Respondent's Council Tax system and the latter being that given as the Applicant's address on the title records for the Property at HM Land Registry.

13. Having received no response to his letters of 02 February 2021, Mr Hunt wrote again to the Applicant at both 9 Trafalgar Court and 7 Roslin Way, noting that no licence application had been submitted, requesting that this be done, again providing the link to enable it to be done and warning that enforcement action might ensue.

14. On 26 April 2021, having still received no response, Mr Hunt wrote to the Applicant yet again at both 9 Trafalgar Court and 7 Roslin Way, setting out that no licence application had been received, that it was believed that an offence had thereby been committed and warning that the Respondent was considering taking enforcement action. A schedule of questions was enclosed, and a response requested within 14 days.

15. On the same day, Mr Hunt wrote to the Applicant, again at both addresses, serving notice under s.235 of the Housing Act 2004, requesting the production of various documents, including safety certificates and the tenancy agreement under which the Property had been let.

16. On 13 May 2021, the Applicant emailed Mr Hunt and provided copies of the safety certificates and the tenancy agreement. He did not respond to the separate letter regarding the requirement for the Property to have a licence.

17. The tenancy agreement that the Applicant provided gives his address as 9 Trafalgar Court.

18. At this stage, Mr Hunt passed the matter on to Ms Hadden who, having reviewed it, determined that an offence had been committed by the Applicant and commenced the civil penalty process, completing an enforcement decision sheet and calculating the civil penalty to be £3,840.38.

19. Having undertaken this exercise, on 07 July 2021, Ms Hadden wrote to the Applicant, again at both 9 Trafalgar Court and 7 Roslin Way, enclosing 'Notice of Intention to Issue a Financial Penalty' in the amount of £3,840.38.

20. On 08 July 2021, John Anderson, the Applicant's father, emailed Ms Hadden, copying in the Applicant. He stated that they did not understand what the "'licence the property' issue is all about" and that they had believed that the email of 13 May 2021 referred to above, together with its enclosures, had provided what was required. He provided an alternative correspondence address at Barry House, stating that 9 Trafalgar Court was a 'business address' and nothing to do with the Property.

21. Ms Hadden replied to this email later that same day, 08 July 2021, stating that the letter of 07 July 2021 related to the failure to licence the Property. She explained that, since April 2020, the area in which the Property was situated had been designated a selective licensing area and that, as such, it was required to be licenced. She provided the links to the websites where further information could be obtained and at which the relevant application could be submitted. She further stated that written representations in response to the Notice of Intention could be sent to Gwen Smith, whose contact details were provided.

22. The Applicant's father subsequently left voicemails for Ms Hadden, to which she replied by an email on 29 July 2021 advising that the licence application be submitted as soon as possible and again providing the relevant weblink.

23. The Applicant submitted the licence application on 05 August 2021.

24. On 11 October 2021, the Respondent issued a 'Final Notice – Decision to Impose a Financial Penalty', for the period 11 July 2020 to 06 July 2021, in the sum of £1,313.46, the penalty having been reduced to take account of the fact that the licence application had by then been submitted. The Final Notice was sent to the Applicant at Barry House.

25. As noted above, by application dated 05 November 2021, the Applicant appealed to the Tribunal against the imposition of the financial penalty of £1,313.46.

The Law

26. Section 249A of the Housing Act 2004 ("the 2004 Act") states that:

"*(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*."

27. Section 249A(2) sets out what constitutes a "relevant housing offence". It includes an offence under section 95(1) of the 2004 Act, by which it is an offence for a person who has control of or manages a house to do so without a licence where that house is required to be licensed.

28. Thus, in the first instance, the local housing authority must ascertain beyond reasonable doubt whether a licence should have been applied for and that it was not applied for.

29. In the event that the local housing authority determines that a relevant housing offence has been committed, Schedule 13A to the 2004 Act sets out the procedural requirements which the local housing authority must then follow, including the service of notices of intent and of final notices, before the financial penalty may be imposed under section 249A.

30. In addition, by paragraph 12 of Schedule 13A, the local housing authority must have regard to guidance which the government has issued to local housing authorities as to how their financial penalty powers are to be exercised. The guidance confirms that local housing authorities are expected to issue their own policies in relation to housing offences and the imposition of civil penalties, and must include the factors which it will consider when establishing the offender's level of culpability and the harm which has been caused by the offence, as well as a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.

31. In this case, the Respondent's policy is the document in the bundle entitled 'Private Sector Housing Civil Penalties Guidance', January 2019 edition.

32. Section 95(4) of the 2004 Act provides that it is a defence to proceedings if the person committing the offence had a reasonable excuse for having control of or managing the house without a licence. It is for the landlord to show on a balance of probabilities that he had a reasonable excuse for so doing.

33. On an appeal against a financial penalty, the Tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into account matters which were unknown to the local housing authority when the Final Notice was issued. The Tribunal must make its decision in accordance with the Respondent's published policy unless there are compelling reasons to depart from it.

Conclusions and Reasons

34. The Tribunal must be satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Property for the period to which the Final Notice relates, namely 11 July 2020 to 06 July 2021.

35. The area in which the Property is situated was designated as a selective licensing area with effect from 06 April 2020. From that date, any property occupied under a tenancy within that area would require a licence.

36. On 10 July 2020, the Applicant let the Property pursuant to an assured shorthold tenancy agreement of that date.

37. Thus, with effect from 10 July 2020, the Property was required to be licenced.

38. The Applicant did not have a licence for the Property at the date upon which it was let and did not submit an application for the relevant licence until 05 August 2021.

39. Accordingly, the Tribunal is satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Property for the period in question.

40. The next issue is whether the Respondent correctly followed the procedural requirements set out in Schedule 13A of the Act regarding the giving of the Notice of Intention and the Final Notice.

41. On this issue, the Applicant states that the correspondence sent to him by the Respondent was sent to the wrong address. He states that 7 Roslin Way is a former address, and that 9 Trafalgar Court is a business address. His father further states that he and the Applicant were unaware of the Respondent's correspondence until receipt of the letter dated 07 July 2021 enclosing the Notice of Intention which he collected on a visit to 9 Trafalgar Court on 08 July 2021.

42. When questioned regarding the 9 Trafalgar Court address, the Applicant explained that this is the business address for his construction company, which is still operational, has a turnover of £9-10m per annum and which employs 27 staff. He stated that he has not been present at these premises himself for some time, having instead been working from home. He further stated that staff at the premises would not forward personal correspondence sent to him at that address.

43. 9 Trafalgar Court is, however, the address that the Applicant had provided to the Respondent previously for the purposes of any Council Tax liability in respect of the Property (albeit that that is presently paid by the current tenants). Still further, it is the address for service that the Applicant himself gave in the tenancy agreement dated 10 July 2020, a copy of which he

forwarded to the Respondent with the email of 13 May 2021. It was thus incumbent upon the Applicant to ensure that correspondence sent to him at this address was regularly monitored.

44. In any event, it is apparent that the Applicant must have received correspondence sent to the 9 Trafalgar Court address by reason of the fact that (1) on 13 May 2021, he replied to the letter dated 26 April 2021 sent there by the Respondent giving notice under section 235 of 2004 Act and (2) he received the Notice of Intention, which his father confirmed in his email of 08 July 2021 he had collected from that address.

45. The Final Notice dated 11 October 2021 was sent to Barry House as requested by the Applicant's father and there is no dispute that this was received.

46. The Tribunal is satisfied that the Respondent properly complied with the procedural requirements for the giving of the notices relating to the imposition of the financial penalty.

47. The Tribunal considered whether the Applicant had a reasonable excuse for committing the offence, that is to say the offence of being in control of a property which was unlicensed when it should have been. It is to be emphasised that the failure to apply for a licence is not, in itself, the offence. The offence is, as stated, controlling a property without the requisite licence (*Palmview Estates Ltd v Thurrock Council* [2021] EWCA Civ 1871).

48. The Applicant states that he was unaware that the Property required a licence throughout the period in question (11 July 2020 to 06 July 2021). In evidence, Gwen Smith for the Respondent stated that, from 2019, it had conducted an extensive media campaign, locally, regionally and nationally, in the press, on social media, on electronic signs on bridges and on posters on buses and the Metro service, advertising the newly designated selective licensing areas and encouraging landlords to make contact. Thereafter, the Respondent checked its Council Tax and other records and sought to contact landlords directly, as it did here.

49. Had the Applicant ensured that his correspondence to 9 Trafalgar Court was monitored, or that correspondence regarding the Property could reach him, he would have become aware of the obligation to licence the Property by no later than the Respondent's letter dated 02 February 2021. The Tribunal also found that the Applicant did not keep abreast of his legal obligations as a landlord.

50. The Tribunal finds in all the circumstances that the Applicant did not have a reasonable excuse for allowing the Property to be, and to remain, unlicenced at the material times.

51. The financial penalty itself was initially calculated as £3,840.38. This was reduced on review to £1,313.46 by reason of the fact that, by the time the

Final Notice was issued on 11 October 2021, the Applicant had submitted an application for a licence.

52. As noted above, DCLG Guidance has been issued to local housing authorities regarding how their financial penalty powers are to be exercised. The Guidance encourages each authority to issue its own policy for determining the appropriate level of penalty, with the maximum amount being reserved for the worst offenders. Relevant factors include:

a. the severity of the offence;

b. the culpability and track record of the offender;

c. the harm caused to the tenant;

d. punishment of the offender;

e. deterring the offender from repeating the offence;

f. deterring others from committing similar offences; and

g. removing any financial benefit the offender may have obtained as a result of committing the offence.

53. The Tribunal has considered the Respondent's Private Sector Housing Enforcement Policy dated July 2020 and its Private Sector Housing Civil Penalties Guidance, dated January 2019, and notes that these are reflective of the DCLG Guidance.

54. The Tribunal has considered, as well, the Respondent's financial penalty calculation in light of its Enforcement Policy and Civil Penalties Guidance. It notes that it has:

a. assessed the Applicant's culpability to be low and the resultant 'seriousness of harm risked' to fall within level 'C', giving a penalty level of '1';

b. based on this assessment, determined the penalty band to be 'low' i.e. in the range of £600-1200;

c. applied the lowest level of financial penalty within that band;

d. added £126.92, being 50% of the Applicant's weekly rental income from the Property, in accordance with its policy;

e. added a 'zero weighting' to reflect the fact that the Applicant has no prior offences; and

f. added £650 for financial benefit, that being the cost of the licence application fee, in accordance with its policy.

55. The financial penalty imposed was properly calculated in accordance with the Respondent's policy, it is the lowest penalty that the Respondent could have imposed and the Tribunal finds no basis upon which to interfere with it.

56. Having taken into account all of the evidence before it, the representations and submissions made to it during the course of the hearing on 06 October 2022, the DCLG Guidance and the Respondent's Private Sector Housing Enforcement Policy dated July 2020 and its Private Sector Housing Civil Penalties Guidance, dated January 2019, the Tribunal approves the financial penalty imposed of £1,313.46, without variation.

J James-Stadden
Tribunal Judge
6 October 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)