



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

Case Reference : **LON/OOBH/HNA/2017/0020**

Property : **15A Melford Road, London E11 4PR**

Appellant : **Ms Karen Miller**

Representative : **In person**

Respondents : **The London Borough of Waltham Forest**

Representative : **My Maycock – in-house solicitor**

Type of Application : **Appeal under s.249A and schedule 13A of the Housing Act 2004**

Tribunal Members : **Judge S O’Sullivan
Mr K Ridgeway MRICS**

Date of Decision : **18 April 2018**

DECISION

Decision

- 1. The appeal by Miss Miller against the imposition of a financial penalty on 20th November 2017 by the London Borough of Waltham Forest under section 249A and schedule 13A of the Housing Act 2004 is dismissed**
- 2. The decision by the London Borough of Waltham Forest to impose a penalty in the sum of £4,000 is confirmed.**

Introduction

1. This is an appeal by Ms Karen Miller against the imposition of a financial penalty by the London Borough of Waltham Forest under section 249A and schedule 13A of the Housing Act 2004. The Final Penalty Notice from the council is dated 20th November 2017 and is in the sum of £4,000.
2. The appeal was set down for hearing on 14th March 2018 when Waltham Forest was represented by Mr Maycock, an in-house solicitor together with Mr Fine and Mr Beach and Ms Miller appearing in person.
3. At the commencement of the hearing Counsel for the respondent confirmed that he had been instructed late in the day and was unable to properly represent his client having regard to his duty to the tribunal. A postponement of the hearing was sought. This was refused on the basis that the application had been made very late in the day, the parties and their witnesses were all in attendance and in any event the respondent had senior employees with full knowledge of the current application at the hearing. Counsel excused himself and the Council was represented by Mr Maycock, an in-house solicitor who had been attending as an observer.

Background

4. The background to the imposition of the penalty is primarily set out in a witness statement of Mr Jon Fine dated 12th January 2018, who is a Team Manager in the Private Sector Housing and Licensing Team with the respondent. He manages a team of enforcement officers, including Licensing Officers who are responsible for administering and enforcing the provisions relating to the selective licensing of residential accommodation under Part 3 of the Housing Act 2004.
5. Mr Fine informed the tribunal that in September 2017 the Council was scheduled to undertake an “action day” in the part of the borough which included the address 15A Melford Road, London E11 4PR (the “Property”). As part of the preparation for that day licensing assistants undertook checks on addresses in the target area in August 2017 which appeared to be privately rented but in respect of which no licensing

application had been made. Council Tax checks indicated that the Property was privately rented and a forwarding address for Ms Miller at 11B Glenmore Road London E17 6AP was provided. Following correspondence sent to this address a further search of the National Anti-Fraud Network on 16 August 2017 indicated that the applicant's current address was 51 Cromwell Road London E17 7PN.

6. On 16 August 2017 the Council wrote to the applicant in connection with the licensing of the Property indicating that as the Property was privately rented it required licensing under Part 3 of the Housing Act 2004 and requesting that a licence application be made within 14 days and to contact the Council if it was believed that the Property was not required to be licensed. No reply was received. On 6 September 2017 the Council wrote again to confirm that no application had been received and again requested an application be made. It was also confirmed that a visit would be made to the Property on 14 September 2017 in connection with the licensing scheme.
7. Between 13-15 September 2017 email and telephone contact took place between the applicant and Katy Duncan, a licensing assistant with the Council. The applicant gave no indication of any intention to licence the Property.
8. On 14 September 2017 the Property was visited by licensing enforcement officers. They met a man who identified himself as Mr Rabei Saibi who confirmed that he rents the Property with Ms Verullo and 3 children and pays a rent of £1170 per month. He provided a witness statement and a copy of his tenancy agreement.
9. Council officers then undertook further checks to confirm ownership of the Property which confirmed the applicant to be the owner. It was also revealed that the Council had contacted Ms Miller regarding licensing of another property in August 2016 and an email exchange followed concerning selective licensing.
10. The applicant did not however take any steps to licence the Property at this time instead challenging the need to obtain property licences. At the applicant's request Council officers explained the background to the introduction of borough-wide Selective Licensing and that it was necessary for all eligible private rented properties to be licensed irrespective of whether or not their owners considered themselves to be "good landlords".
11. After the issue of the various warning letters which did not result in a licensing application Mr Fine prepared a witness pack and passed the file to the Head of Service with a recommendation that a financial penalty of £5,000 be imposed. He was satisfied that it was appropriate to impose a financial penalty and considered the level of the proposed penalty having regard to the Council's enforcement policy. This states that for a landlord controlling five or less properties with no

aggravating features a failure to licence should be considered as a moderate Band B offence with a civil penalty of £5,000.

12. On 18 October 2017 the Council gave a Notice of Intent to impose a financial penalty. On 20 October 2017 the applicant's sister called and was advised to seek legal advice. On 23 October 2017 the applicant called and was advised to seek legal advice. On 24 October 2017 the applicant emailed raising similar queries as previously and informed the Council that she had submitted an online application. A "My Services" account is required to apply for a licence and this was created on 24 October 2017.
13. The applicant's email of 24 October 2017 was treated as a representation to the Notice of Intent and a detailed response was provided on 25 October 2017. This confirmed that the representation was not upheld concluding that there was no evidence that the applicant had any immediate intention of licensing the Property until such time as she received the Notice of Intent having known about the scheme as early as August 2016.
14. On 20 November 2017 the Council issued the Final Notice of its Decision to impose a Financial Penalty in the sum of £4,000. The amount was £4,000, 20% less than the proposed penalty at the Notice of Intent stage to reflect the fact that the applicant had submitted an application during the representation period.
15. The Tribunal did not consider an inspection of the property would be of any assistance.

The Appeal

16. On 30th November 2017 Ms Miller submitted an appeal against the Final Penalty Notice. The grounds of appeal were: "I have paid the £650 to the Council and they still want to fine".
17. In an email dated 9th February 2018, those grounds were elaborated as follows:
 - (a) The applicant has rented the flat to the same tenants for 6 years who have enjoyed a good standard of living;
 - (b) There has never been anti social behaviour at the Property and relationships with the tenant are good;
 - (c) She was contacted by the Council on 16 August 2017 in relation to the licence. She tried to call but the telephone lines at the Council were constantly engaged. She did subsequently speak to the licensing team but the replies were vague. She did not understand why the Council wanted £650 from good landlords. She was told to

check online and was given the website but was just about to leave for a break abroad;

- (d) On her return she tried to check the website but there appeared to be a problem.
- (e) On 18 October 2017 she received the Council's intention to impose a fine. She told Mr Fine she was in the process of paying the £650 but found the online process was not easy.
- (f) She asked why good landlords have to pay for bad landlords and does any part of the £650 licensing fee go towards upgrades for their own properties? She also asked why the licensing selective in some boroughs and not universal?
- (g) The applicant did not feel she deserved a fine as she has worked hard to provide excellent accommodation when there is a shortage.

18. At the hearing, it was agreed with the parties that Waltham Forest would start first. Both Mr Jon Fine and Mr David Beach gave evidence.
19. Mr Fine set out the background to the selective licensing scheme, the decision to impose a penalty as referred to above and gave details of the various correspondences with the applicant. Mr Beach is a qualified Environmental Officer with considerable experience having enforced minimum statutory requirements over a period of nearly 20 years. He is employed as Head of Selective Licensing and Regulation managing teams of enforcement officers. Mr Beach had prepared a witness statement dated 28th February 2018 which responded to the applicant's grounds of appeal and matters raised in her bundle.
20. Mr Beach explained that section 95(1) creates the offence of failing to licence a house under part 3 and provides that "*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 but is not so licensed*". The offence under section 95(1) is a strict liability offence to which there is a reasonable excuse defence under section 95(4). However a reasonable excuse defence cannot be made out on the basis of the offender making a mistake or not being aware of their legal obligations.
21. Mr Beach points out that the applicant acknowledges that she was aware of property licensing in Waltham Forest since at least August 2016 when communicating about a different address. In addition he said that any landlord resident in the borough would have been exposed to significant publicity regarding the scheme and the requirement to obtain a licence. He believed that it was extremely unlikely that the applicant did not become aware of the need to obtain a licence at a much earlier stage than in August 2016.

22. Mr Beach also considered it clear that the applicant simply did not agree with licensing and had no intention of complying with her legal obligations until served with the Notice of Intent.
23. Mr Beach went on to explain that the Council policy in respect of civil penalties incorporates a matrix approach to civil penalties in order to aid transparency and consistency in any imposed penalty. The matrix is divided into 6 different equal bands of £5,000 providing an indicative minimum “tariff” under the various offence categories with the final level of the civil penalties being adjusted in each case to take into account other relevant or aggravating factors. The policy document breaks down the various categories for which a financial penalty can be imposed. For each offence category, a differentiation is made between an offender controlling a small number of properties and landlords/agents controlling a significant number of properties in setting the relevant minimum penalty. In relation to the applicant as she controlled five or less properties the policy provided that this should be regarded as a moderate band 2 offence attracting a penalty of £5,000. As there was no evidence of any significant aggravating features it was concluded a £5,000 penalty was appropriate. This was reduced to £4,000 after the application for a licence was submitted.
24. Mr Beach stated that the applicant had not challenged the fact that the Property was required to hold a licence or that at the time of inspection on 14 September 2017 no licence application had been made. Further the applicant had provided no reasonable excuse as to why she had failed to obtain a licence but had rather maintained an in-principle disagreement with the Council’s licensing scheme.
25. The appellant gave her evidence in person. She accepted that she had received all the correspondence referred to in the witness statements of Mr Fine and Mr Beach. She explained that she had been asking questions and wanted the answers to those questions before making an application for a licence. She was not avoiding making the application but was rather seeking to clarify matters. She did not feel she had committed an offence as she had now made an application and had paid the £650 licence fee.
26. She acknowledged that she was contacted in August 2016 but this wasn’t followed through. She did not look into the scheme at the time as she thought that schemes come and go and she did not take it as a compulsory scheme at the time. She had thought that she had made the application for a licence before the Notice of Intent was served but acknowledged that this was not the case.
27. She took her responsibilities as a landlord seriously and provided a good standard of accommodation. She considered the level of the fine was too high. She believed that she had not committed an offence as

she had now obtained a licence and paid the fee. She asked the tribunal to dismiss the fine.

Submissions

28. On behalf of Waltham Forest Mr Maycock referred to the evidence recited above and asked the Tribunal to uphold Waltham Forest's decision. Ms Miller submitted that she was a good landlord, the Property was now licensed and she had done nothing wrong.

Decision and Reasons

29. For the following reasons the Tribunal upholds the Final Penalty Notice in the sum of £4,000.

30. Firstly, the Tribunal is satisfied that the Property was required to be licensed under the Council's Selective Licensing Scheme under section 95 of the Housing Act 2004. This was not disputed by Ms Miller.

31. So far as the level of the financial penalty is concerned the Tribunal decides the following:

(a) The matrix used by Mr Beach is properly based on the DCLG guidance and the Tribunal considered that it worked effectively to distribute the weight of the allocated criteria across the range of possible fines up to £30,000.

(b) In deciding on the scores for each of the individual criterion, the officer concerned is required to apply their expertise to the circumstances and background to the offence to allocate appropriately.

(c) Having regard to the following the Tribunal is satisfied that a penalty of £4,000 is appropriate:

1. The landlord controls five or less dwellings;
2. There are no other relevant or aggravating features;
3. The level of the penalty was reduced by 20% to reflect the fact that the appellant had applied for a licence and paid the fee after the Notice of Intent was served.

32. Accordingly the appeal is dismissed.

Name: Judge O'Sullivan

Date: 18 April 2018

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).

