



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

Case Reference : **MAN/OOCG/HNA/2019/0026 & 27**

Property : **556A &558A Abbeydale Road, Sheffield,
S7 1TD**

Applicant : **Alan John Martin**

Representative : **Tierneys Solicitors**

Respondent : **Sheffield City Council**

Representative : **Mr James Tomlinson –Senior Private
Standards Housing Officer**

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

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member S.A Kendall-Valuer**

**Date of
Determination** : **2 July 2019**

Date of Decision : **11 Jul 2019**

DECISION

© CROWN COPYRIGHT 2019

Decision

1. The Final Notice of a Financial Penalty dated the 5th February 2019 in respect of 556A Abbeydale Road Sheffield is varied at paragraph 5 to refer to the sum of £2500 payable within 28 days beginning with the day after the service of this decision upon Mr Martin.
2. The Final Notice of a Financial Penalty dated the 5th February 2019 in respect of 558A Abbeydale Road Sheffield is varied at paragraph 5 to refer to the sum of £2500 payable within 28 days beginning with the day after the service of this decision upon Mr Martin.

Background

3. This is an application by Alan John Martin (“Mr Martin”) against financial penalties in the total sum of £8000 issued by Sheffield City Council (“the Council”) pursuant to section 249A of the Housing Act 2004 (“the Act”) in respect of 556A & 558A Abbeydale Road Sheffield (“the Properties”). The Final Notices, dated the 5th February 2019, imposed a financial penalty for each of the Properties, in the sum of £4000, for the Mr Martin’s failure to apply for a licence.
4. Mr Martin’s representative sent the appeal application opposing the financial penalties to the Tribunal on 11th March 2019.
5. The Tribunal issued directions providing for the filing of statements and a bundle of documents in preparation of the determination of the application.
6. The Tribunal ordered the application be dealt with on the basis of written submissions and without an inspection, as requested by both parties.

The Properties

7. The Properties are each described as flats above commercial premises on Abbeydale Road Sheffield.

Chronology

8. On 1st November 2018 the Council introduced Selective Licensing for Abbeydale Road, Sheffield. In documents produced to the Tribunal it set out the statutory procedures required to notify all interested parties of their intention to do so, as required by section 59 of the Act.
9. The Council identified the occasions when it had written to Mr Martin advising him of its intention to introduce Selective Licensing and the requirement for him to have applied for licences for the Properties by 1st November 2018. Mr Martin did not apply for the necessary licences by the due date. The Council provided details of a telephone call with Mr Martin on 12th November 2018 during which he advised the Council he would not be applying for the licences.
10. On 21st November, Mr Tomlinson, on behalf of the Council, visited 556A Abbeydale Road and established the property was occupied and obtained a copy of the tenancy agreement, showing Mr Martin as the

- Landlord. On 22nd November he visited 558A Abbeydale Road and again verified the property was occupied and Mr Martin was named as the Landlord on the tenancy agreement.
11. The Council thereafter decided to impose a financial penalty and Civil Penalty Determination Records were produced proposing a penalty of £5000 for each property.
 12. On 3rd December 2018 the Council served a Notice of Intent to Impose a Financial Penalty. They were served at the Properties and also at Mr Martin's personal address.
 13. On 18th December 2018 the Council received written representations from Mr Martin in respect of the financial penalties. On 18th December 2018 and 14th January 2019 it also received the licence applications for the Properties.
 14. The Council thereafter reconsidered the financial penalties and reduced each of them by 20%, taking into account the offences were first offences and Mr Martin having applied for the necessary licences.
 15. On 5th February 2019 the Council issued and served the Final Notice of a Financial Penalty for the reduced sum of £4000 in respect of each property and again served them at the Properties and at Mr Martin's personal address.
 16. On 23rd February 2019 Mr Martin's solicitors contacted the Council requesting the Final Notice be withdrawn. The Council declined this request and an offer of a lower payment in satisfaction of the financial penalty. Thereafter Mr Martin lodged his appeal.
 17. The parties agreed the date by which any appeal had to be filed was 8th March 2019. Mr Martin's solicitors lodged the appeal on 11th March 2019, explaining they had been unable to access the correct application form online. They subsequently received the correct form on 8th March. They submitted Sheffield City Council was not prejudiced by the delay.
 18. On 16th April 2019 the Tribunal issued directions in respect of the application providing for the filing of statements and thereafter for the matter to be determined on the written representations submitted by the parties and as requested by both parties.

The Law

19. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been "a relevant housing offence".
20. Section 249 (2) sets out what amounts to a housing offence and includes at s 249(b) an offence under section 72 of the Act, namely a failure to licence a property. Section 249 (3)-(4) further provide 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.

Procedural requirements

21. Schedule 13A of the Act then 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.

22. 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.
23. 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
24. 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.
25. 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

26. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance (“the HCLG Guidance) in April 2018 : *Civil penalties under the Housing and Planning Act 2016- Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
27. Sheffield City Council has developed its own guidance (“the Sheffield Guidance”) that follows the HCLG Guidance in setting out the criteria to be taken into account when determining any penalty:
 - severity of the offence
 - culpability and track record of the offender
 - the harm caused to the tenant
 - punishment of the offender
 - deterrence of the offender from repeating the offence
 - deterrence of others from committing similar offences
 - removal of any financial benefit the offender may have obtained as a result of committing the offence
28. The Sheffield Guidance further sets out how they determine the level of any financial penalty. This is done in 3 steps:

Step 1
Assess the culpability and track record of the offender and the level of harm, or potential harm, to the occupiers.

Step 2
Adjust any penalty after considering any aggravating or mitigating circumstances

Step 3

Make any final adjustments to ensure the level is fair and proportionate but in all instances as punishment, a deterrent and removes any benefit of the offence.

29. The Sheffield Guidance provides examples of culpability on three levels being high, medium and low:

High level of culpability

- they have a history of non-compliance
- despite a number of opportunities to comply they have failed to comply
- have been obstructive as part of the investigation
- are an experienced landlord/agent with a portfolio of properties who would be expected to have known their responsibilities
- serious and systematic failure to comply with their legal duties

Medium level of culpability

- it is a first offence-with no high level of culpability criteria being met
- the landlord/agent had systems in place to manage risk or comply with their legal duties but they weren't sufficient or complied with on this particular occasion

Low level of culpability

- no or minimal warning given to offender
- the breaches are minor
- the offence is an isolated occurrence
- a significant effort has been made to comply but was inadequate in achieving compliance

30. The same categories apply to harm and the following are given as examples:

High

- actual harm to an individual
- high risk of harm to an individual
- serious risk of overcrowding
- serious effect on individual(s) or widespread impact

Medium

- adverse effect on an individual
- moderate risk of harm to an individual(s) or broader impact

Low

- minimal adverse effect on individual(s)
- low risk of harm to an individual
- limited impact or effect on occupiers

31. Once the appropriate levels have been determined a schedule is given to fix the level of penalty. The Sheffield Guidance then goes onto to give examples of aggravating factors and mitigating factors from which the Council may choose to deviate from the prescribed level of penalty.
32. The aggravating factors are given as follows:
- Previous convictions having regard to the offence to which it relates and the time elapsed since that offence
 - Landlord motivated by financial gain
 - Obstruction of the investigation
 - Deliberate concealment of the activity/evidence
 - Number of items of non-compliance-greater the number the greater the potential aggravating factor
 - A record of letting substandard accommodation
 - A poor management/inadequate management provision
 - Lack of a tenancy agreement/paid in cash.
33. The mitigating factors are exemplified as follows:
- Co-operation with the investigation e.g. attends the PACE interview
 - Any voluntary steps taken to address issues e.g. submits a licence application
 - Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
 - Willingness to undertake training
 - Health reasons preventing reasonable compliance-mental health, unforeseen health issues, emergency health concerns
 - has no previous convictions
 - Vulnerable individual(s) where their vulnerability is linked to the commission of the offence
 - Previous good character and/or exemplary conduct

Submissions

34. Mr Martin did not deny he had failed to licence the Properties. His appeal related to the level of financial penalties imposed in the total sum of £8000. In support of his application Mr Martin asked the Tribunal to consider his financial position, the rental stream from the Properties and the fact he had retrospectively applied for the necessary licences. He offered a total payment of £3000 for the Properties.
35. Mr Martin had said to the Council, when sending his written representations, that he had been in the process of transferring ownership of the Properties to his sons, following his retirement and had expected that to have taken place in December 2018. He had also been absent from Sheffield for a substantial amount of time following his mother's death, earlier in the year and the relocation of his father. Mr Martin produced an unaudited spread-sheet for the year, showing a net income from the Properties in the sum of £3202.
36. It was further submitted the penalties did not reflect that, at the date of the Final Notice, Mr Martin had already lodged his licence applications.

37. Mr Martin stated the Council had failed to produce a Civil Penalties Determination Record for the Properties at 3rd December 2018 and because of that the subsequent procedure was "flawed".
38. The Council confirmed that when calculating the appropriate financial penalty, it had determined that culpability was medium and harm was low. On their scale that gave rise to a penalty of £5000 for each property.
39. The Council confirmed that it did not accept the offer made by Mr Martin and that it should remain in the sum of £4000 for each property.

Determination

40. The Tribunal firstly considered whether it would accept the appeal that was strictly out of time. It determined the appeal would be accepted, since the delay was minimal and Mr Martin's representatives had attempted to file the application on time. Sheffield Council was not prejudiced by the delay.
41. The Tribunal noted there was no dispute Mr Martin had committed a housing offence by failing to apply for the relevant licences as required by the Selective Licensing Scheme effective for Abbeydale Road from 1st November 2018.
42. The issue for determination was therefore the amount of the financial penalties. It noted the original penalties had been reduced by 20% once the Council had taken into account the submissions made by Mr Martin in respect of his personal circumstances. Credit had been given for his co-operation and that he had applied for the licences once the Notice of Intent had been issued.
43. The Tribunal considered the submission made on behalf of Mr Martin, namely the Council had failed to produce a Civil Penalties determination at 3rd December 2018. Within the Council's documents there were copies of the Civil Penalties Determination Record showing a financial penalty for each property of £4000.
44. Schedule 13A of the Act does not require the Council to serve a Civil Penalties Determination Record, only a Notice of Intent followed by a Final Notice. Consequently, the alleged failure by the Council to produce the document does not affect the procedure required by the Act.
45. The Tribunal noted the Council's assessment for culpability as medium and of harm as low. It followed from the Sheffield Guidance that the resulting penalty was £5000 per property.
46. The Tribunal accepted the Council's determination that culpability should be at the medium level. It took note of the fact the Selective Licensing Scheme had come into effect on 1st November 2018. It accepted Mr Martin had been given ample notice of the Council's intention to impose the Scheme having written to him on four occasions. It had then moved very rapidly to the Notice of Intent issued on 3rd December 2018 followed by the Final Notice on 5th February 2019, having taken into account Mr Martin's written submissions.
47. The Tribunal accepted the Council did correctly assess harm to be low. It noted in his written representations to Sheffield Council Mr Martin

had said that he maintained his properties to a high standard and Sheffield Council had confirmed this to him. The Tribunal noted Sheffield Council had never suggested Mr Martin was not a reputable landlord.

48. The Tribunal considered that having heard Mr Martin's mitigating circumstances it would have been more reasonable to reduce the overall penalties by a higher amount than 20%. In its reasons, given on the Civil Penalties Determination Record, the Council simply stated "Claims limited financial yield and "First Offence".
49. When considering the mitigating factors in the Sheffield Guidance the Tribunal noted Mr Martin fulfilled the majority of them. He had explained his own difficult circumstances following the death of his mother and the subsequent relocation of his father to some distance away from the Sheffield area. He had applied for a licence after being served with the Notice of Intent and had expressed remorse in failing to do so before. There was nothing said by Sheffield Council to suggest he was not a man of good character and it was his first offence.
50. The Tribunal noted that, under the Sheffield Guidance, there should be no financial benefit from any offence. Here, Mr Martin stated his rental income for the year to December 2018 was £3202 for the Properties. The financial benefit for the period without a licence from which Mr Martin should derive no benefit is therefore significantly below this sum, given the scheme did not commence until 1st November 2018.
51. When taking into account all the factors stated here, the Tribunal determined the mitigating factors should reduce the financial penalties imposed for the Properties, by 50%, to the total sum of £5000, this being £2500 for each property.

Signed: Judge J Oliver

Dated: 11 July 19