



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

Case Reference : **LON/00BB/HNA/2017/0021**

Property : **Flat above Victoria Cross Pub,
Jack Cornwell Street, E12 5NN**

Applicant : **Mr Indar Jeet**

Respondent : **L.B. Newham**

Present at hearing : **Mr Jimi Islam**

Type of Application : **Financial Penalty - s. 249(a)
Housing Act 2004**

Tribunal : **Mr M Martyński (Tribunal Judge)
Mrs S Redmond BSc MRICS**

Date of Hearing : **4 April 2018**

Date of Decision : **16 April 2018**

DECISION

Background

1. On 21 June 2012, the Respondent Council designated the whole of the London Borough of Newham as a Selective Licensing area. This meant that any residential property (subject to some exemptions) let in the borough would require a licence issued by the Council. The designation came into force on 1 January 2013.
2. In 2015 Mr Athwal purchased the leasehold interest in The Victoria Cross, Jack Cornwell Street, E12 which is a disused public house at ground floor level and a flat at first floor level ('the Property').
3. The Applicant (under the name of Inderjit Athwal) applied for and was granted a temporary exemption from the requirement to licence in respect of the Property effective from 14 June 2016 until 13 September 2016. A further exemption was applied for and granted effective from 14 September to 13 December 2016. It appears that the reason for applying for these exemptions was that, on purchasing the property, the Applicant found that there was a tenant in occupation on the first floor; in order to issue proceedings to remove that tenant, the Property had to have a licence.
4. On 15 May 2017, the flat at first floor level was then let by the Applicant (named in the tenancy agreement as 'Mr Inderjit Athall') to Mr Mamun & Ms Akter for a term of 6 months. It appears that the letting was arranged through Eastenders Property Services Limited ('Eastenders').
5. On 26 September 2017, the Property was inspected by Mr Oatt, a Senior Environmental Health Officer from Newham Council. He found the Property to be occupied by Mr Mamun who told him that he occupied the Property with his wife and three children and was paying a rent (via Housing Benefit) of £1450 per calendar month.
6. By letters dated 26 September 2017 the Council sent to Mr Athwal and Eastenders notices of intention to issue financial penalties of £2,500 and £5,000 respectively for failing to licence the Property. The notices invited representations by 26 October 2017.
7. No representations were received by the Council and by letters dated 27 October 2017 final notices were sent to Mr Athwal and Eastenders imposing the fines.
8. By letter dated 8 November 2017, Eastenders made representations to the Council regarding the fine imposed on them.

9. On or about 8 December 2017 Mr Indar Jeet made an application to the tribunal to appeal against the penalty. He gave his address as 423 High Street E12 (Eastenders' address) and gave his email address as; info@eastenders-property.co.uk. He named his representative as 'Jimmy Islam'. Attached to the application form was the penalty notice addressed to Mr Athwal in the sum of £2,500. In the 'Grounds of Application' part of the form Mr Jeet wrote the following:

London Borough of Council issue a PCN for not licencing the property. We explained why we was not able to licence the property but due to oversight we missed the consultation date. Furthermore we explained the circumstances but the Council insisted we go to tribunal.

10. On 5 January 2018, the tribunal issued directions on the application. The directions were sent to Mr Jeet at the address he gave in his application form. The directions stated that the application would be heard on 4 April 2018 and that the Applicant should send his documents and an expanded statement for the appeal to the Council and to the tribunal by 2 March 2018.
11. The Applicant failed to comply with the direction and on 5 March 2018 the tribunal directed (by letter addressed to Mr Jeet/Mr Islam) that unless the Applicant complied with the direction by 9 March he would be debarred from relying upon any evidence on his application.
12. By letter dated 27 March 2018 (addressed to Mr Jeet), the tribunal wrote to the Applicant confirming that he was debarred from relying on any evidence in the application. The letter went on to say that the tribunal would now deal with the application on the papers, without a hearing. The Applicant was advised in the letter that he could object and request an oral hearing.
13. On 29 March 2018, Mr Islam sent an email to the tribunal in which he requested an oral hearing and appeared to ask for an adjournment of the hearing.
14. On 3 April 2018, the tribunal sent a letter (by email) to the parties advising them that; (a) the oral hearing was re-instated for 4 April, and; (b) the request for a postponement of the hearing was refused.

The hearing and the evidence

15. We heard the application on 4 April 2018. The Council were not present at the hearing having not received the tribunal's letter which had been sent the day before.
16. Mr Jimmy Islam appeared at the hearing. He told us that he did not work for Eastenders but did 'some work' for them from time to

time. He told us that he was not representing Mr Jeet/Athwal and that as far as he knew, Mr Jeet/Athwal was not contesting the fine imposed upon him.

17. We took the view that the evidence before us suggested that Mr Jeet and Mr Athwal were one and the same person.
18. Given therefore that the Applicant was not present and not represented at the hearing, we decided to consider and deal with the application based on the papers before us. The Respondent Council had complied with the directions and we had before us a bundle of documents from the Council which contained the witness statement of Mr Paul Oatt exhibited to which were the relevant documents.
19. In his witness statement, Mr Oatt set out the matters referred to in the 'Background' section of this decision.
20. Mr Oatt stated that on inspection of the Property in September 2017 he found the following issues of concern:
 - (a) an issue (unspecified) with the boiler and lack of hot water
 - (b) inadequate front door (of an internal door type construction)
 - (c) lack of smoke detection
21. Mr Oatt presented evidence to the effect that Mr Athwal had a portfolio of at least 4-5 properties.
22. Exhibited to Mr Oatt's witness statement was a copy of the letter sent by Mr Sharma of Eastenders to the Council dated 8 November 2017 making representations regarding the fine. In summary that letter made the following points:
 - on 2 March 2017, a former member of Eastenders, Mr Razzak, attempted to licence the Property online but could not complete the licence as there was an 'error message on screen'. He then telephoned the Council and spoke to the assistant licensing officer who confirmed that the Property already had a licence. Mr Razzak updated the company's system to that effect. The letter goes on to state; "*Upon research, it seems that it was an oversight on our part and I can confirm that the property was not licensed*".
 - Eastenders have a large portfolio of properties and had been licensing those properties
 - The Property was due for refurbishment before it was let and no complaints from the tenants had been received.
 - The company was; "*embarrassed and appalled that there was an oversight on our part*"
 - The company had already incurred a financial burden as the previous occupants did not pay rent for approximately 14 months

- The fact that temporary exemption notices were applied for and granted in respect of the Property showed that the company was aware of the need to licence and took steps to comply with their obligations
23. The Council arrived at the penalty of £2,500 in respect of Mr Athwal by using a matrix that it had compiled. That matrix has four factors; Deterrence and prevention; removal of financial incentive; offence and history, and; harm to tenants. Set against each factor are a scale of five circumstances indicating the level of culpability. Those five circumstances have scores as follows; 1, 5, 10, 15 and 20. A score is set for each factor producing a total score which automatically determines the level of fine.
24. In Mr Athwal's case the factors were scored by the Council as follows:
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|----------------------|----|--|
| Deterrence: | 10 | (low confidence that a financial penalty will deter) |
| Financial incentive: | 15 | (medium portfolio landlord – 4-5 properties) |
| Offence: | 5 | (minor previous enforcement, single offence) |
| Harm: | 5 | (Low level likely harm to tenants) (to arrive at the total points this score is automatically doubled) |
- Total points = 40
25. Mr Oatt expanded on the reasoning behind the scoring in his witness statement. As to the category of 'Offence', Mr Oatt referred to an Enforcement Notice that had to be served on Mr Athwal in respect of the Property regarding drainage in April 2016.

Decision

26. As far as we could tell, the application had been brought in respect of the fine imposed upon Mr Athwal. There was no indication that the application had been brought by Eastenders; its name did not appear on the application form, the notice attached to the application form was the notice that related to Mr Athwal.
27. As Mr Islam did not represent Mr Athwal/Jeet, and because Eastenders was not a party to the proceedings, we decided to deal with the application on the papers alone and let Mr Islam leave the hearing.
28. We moved considered whether the Applicant had been guilty of an offence under section 95(1) Housing Act 2004 by being the person managing and in control of the property on 26 September 2017. There was no argument from the Applicant that he was not guilty of such an offence. He was clearly letting the Property (the Council produced a copy of the tenancy agreement in their evidence) and

was entitled to take the rent for that letting; further, the Property required a licence and there was no licence at the relevant time. Accordingly, we conclude (beyond reasonable doubt) that the Applicant committed the offence.

29. We considered the matrix used by the Council. This is based on the guidance issued by the Department for Communities and Local Government ('DCLG'). We found it to be a logical method of applying that guidance to arrive at a view of the seriousness of an offence and the appropriate financial penalty to be imposed.
30. We then considered the weightings given in the matrix by the Council; again, we found these to be largely appropriate to the case.
31. Finally, we went on to consider for ourselves, with reference to the DCLG guidance, what the appropriate financial penalty should be. First, the Applicant appears to be a person who has a small portfolio of properties and who is assumed to be; (a) making a profit from that portfolio; (b) aware of the regulatory requirement in the lettings market. Second, we consider that the offence is not of the most serious kind, but there was a glaring omission to licence in circumstances that suggest that the Applicant was well aware, or should have been well aware of the need to licence. Third, we accept the Respondent's evidence (which was not contested) that there were safety/disrepair issues at the Property and accordingly there was harm or potential harm to the tenants in the failure to licence. Fourth, we agree that the fact that previous enforcement action had to be taken in regard to the drainage at the Property in April 2016 is a relevant factor to be weighed against the Applicant. Fifth, we considered the issues of punishment of the offender, deterrence of the offender and the removal of any financial benefit. We note that in the matrix used by the Council, they scored Deterrence and Prevention at 10 meaning that they had low confidence that a financial penalty would deter repeat offending – it could be argued on the background and facts of this matter that the less serious section in the matrix could have been applied, that being; medium confidence that a financial penalty would deter – this would have attracted a score of 5 reducing the overall score to 35.
32. However, we have to stand back and look at the matter weighing all the relevant circumstances; the scoring on the Council's matrix is only one matter to be taken into account.
33. We had regard to the letter dated 8 November 2017 sent by Eastenders to Mr Oatt. We are aware that this email was not sent on behalf of Mr Athwal but we have taken the letter to express what may be Mr Athwal's concerns regarding the penalty. Dealing with the points in that letter (so far as they may relate to the Applicant);

- The fact that the licensing was overlooked is not an excuse. An owner or agent of a property has a responsibility to have systems in place for matters like this and the failing of such systems is not an excuse;
 - The statement that the Property was due for refurbishment before it was let and no complaints from the tenants had been received is not correct. There was a complaint from a tenant which had resulted in an enforcement notice being served; further, as described above, there were disrepair and smoke detection issues found at the Property.
 - The fact that the company (or the Applicant) had already incurred a financial burden as the previous occupants did not pay rent for approximately 14 months is not a relevant matter. The Property appears to have been purchased for commercial development and the finding of a tenant in occupation was a business risk and unrelated to the issue of licensing.
 - The fact that temporary exemption notices were applied for and granted showed that there was an awareness of the need to licence and to have a proper and robust system in place to ensure that the licence was obtained – we have however given credit for the fact that there is a history of previous licensing in our decision, although, even taking into account that credit, our decision leaves the amount of the penalty unaffected.
34. The fine imposed of £2,500 is at the lower end of the scale and we believe it is at the correct level given the severity of the offence (particularly the harm or potential harm to the tenants), the fact that the Applicant did know or should have known that the Property required licensing and taking into account what we know of the Applicant’s regulatory history in the field of housing and the extent of his business interests – all of this balanced against the other factors that we have referred to in this decision.
35. Accordingly, the appeal is dismissed.

Mark Martyński, Deputy Regional Tribunal Judge
16 April 2018

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.