



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

Case reference : LON/00BH/HNA/2022/0057

Property : 81 Perth Road, Leyton, London E10 7PA

Appellant : Vanfil Johnson

Representative : Joseph Anoom, Counsel

Respondent : London Borough of Waltham Forest

Representative : John Fitzsimons, Counsel

Type of application : Appeal against a financial penalty

Tribunal member(s) : Judge D Brandler
Andrew Lewicki FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 13th February 2023

Date of decision : 21st February 2023

DECISION

Decision of the tribunal

The appeal against the financial penalty notice issued on 30/06/2022 against Vanfil Johnson in relation to 81 Perth Road, Leyton, London E10 7PA (“the property”) is dismissed. Vanfil Johnson is ordered to pay £7,000 as detailed in that notice.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. Vanfil Johnson (“the appellant”) appeals against a decision notice dated 30/06/2022 issued by the London Borough of Waltham Forest (“the respondent”), imposing a financial penalty on him of £7,000 under s.249A of the Housing Act 2004 (“the 2004 Act”), for failing to ensure that 81 Perth Road, Leyton, London E10 7PA (“the property”) was licenced under s.95(1) of the 2004 Act Part 3 and because of aggravating factors relating to disrepair, damp and mould at the property.

2. The respondent asserts that the appellant has committed a relevant housing offence. The reason given to the appellant by the respondent for imposing a financial penalty is as follows:

“You failed to ensure that the premises was licensed under Section 95(1) Housing Act 2004 Part 3”

3. The appellant is the registered leasehold owner of the property which was let as an assured shorthold tenancy to Ms Dawkins from May 2020. The appellant is named as the landlord on the agreement. Ms Dawkins occupies the property with her three-year old daughter.

4. On 01/05/2020 a new selective licensing designation came into force covering all wards in the respondent’s Borough, except the Endlebury and Hatch Lane Wards. This required anyone privately renting out a property to hold a licence under Part 3 of the Housing Act 2004 in order to lawfully let the property. The property is not located in the excluded areas of the Borough, and must be licenced.

5. The documented history of the respondent’s attempted contact in the case is as follows:

- On 08/07/2021 the respondent received an email complaint from Ms Dawkins concerning pest issues at the property
- On the same day the respondent wrote to the appellant at his known address at 54 Broadway Gardens, Mitchem, CR4 4EE to alert him to the fact that the property was let without a licence
- On 03/08/2021 the respondent inspected the property and identified various defects.
- On 12/08/2021 the respondent sent a post inspection letter to the appellant both to his address in Mitcham and to his agents, Capital Stock Housing Ltd (“CSH”)
- On 28/09/2021 the respondent telephoned CSH who informed them that they did not manage the property and that the appellant lived abroad. The respondent asked CSH for his address abroad

- On 12/11/2021 the respondent sent a notice requiring CSH to declare the nature of their interest in the property
- 13/12/2021 CHS spoke to the respondent and confirmed they let the property but did not collect rent and were not responsible for disrepair as the appellant did not pay them for management services
- 14/12/2021: CSH confirmed in writing that they did not manage the property and provided the appellant's mobile telephone number
- 14/12/2021: The respondent spoke to the appellant on the phone who indicated he had been trying to contact them about the letter he had received. The disrepair issues were discussed with him and he was informed that he must apply for a licence and that further delay would result in enforcement action
- 22/12/2021: Ms Palmo, a Council environmental health enforcement officer completed her witness statement
- 25/01/2022: A Legal Report concerning a calculation of the civil penalty to be imposed based on the Council's Civil Penalty Matrix was sent to the Council's Assistant Director for Regulatory Services for approval
- 01/02/2022: the respondent sent an intention to issue a civil penalty notice for the amount of £7,000 to the appellant at his Mitcham address
- 30/06/2022: As no response had been received in relation to the notice of intention, the respondent proceeded to issue its civil penalty decision notice
- 08/09/2022: the appellant applied for a selective licence for the property

The grounds of appeal

6. The appellant's grounds of appeal are as follows:

- (a) The appellant asserts that he has a reasonable excuse in accordance with s.95(4) of the 2004 Act based on:
- (i) When he left the UK in January 2021 and travelled to Ghana, he had instructed estate agents to sell the property while he was away. They let the property 6 months before he left the UK. The agents failed to honour his request and granted an AST without his consent or knowledge.
 - (ii) When he arrived back in the UK in October 2021, he carried out remedial works at the property further to the tenant's complaints. The works were carried out to the tenant's satisfaction
 - (iii) He found out he needed a licence and made enquiries by telephoning the respondent Council. He spoke to Catherine Lovett who explained the process and he immediately started it. He rang the respondent Council a few times and eventually was sent a link from Catherine Lovett, but was unable to

- complete the application. When he paused the application, he could not reconnect to it.
- (iv) He faced further delay because of the difficulty reconnecting to the application form, as well as not being able to talk to anyone in person at the respondent Council's offices due to Covid.
 - (v) There is a distinctive paper trail to show the efforts he has made to access their site to apply for a licence, even though the tenant in his property should never have occupied it

THE HEARING

7. This has been a face to face hearing. The appellant was represented by Mr Anoom. The respondent Council was represented by Mr Fitzsimons who was accompanied by Catherine Lovatt and Lobsang Palmo, the witnesses for the respondent as well as a trainee solicitor from Sharpe Pritchard and an observer from the Council. The appellant provided a bundle of [34] electronic pages documents. Reference to pages in that bundle are referred to in this decision as [A/page number]. The respondent provided a bundle of [201] electronic pages of documents. Reference to pages in that bundle appear as [R/page number].

8. At the beginning of the hearing Mr Anoom told the Tribunal that his client does not challenge any of the respondent's evidence provided in their bundle. The only basis for the appeal is to submit that the appellant has a reasonable excuse for not having applied for a licence for the property from May 2020 to date. On that basis, both parties had agreed that there was no need to call the respondent's witnesses. However, further to Mr Anoom adducing further oral evidence in chief, Mr Fitzsimons did call the respondent's witnesses who were able to respond to the issues raised.

9. At the end of the hearing Mr Anoom handed up a print out from the HMRC internal manual Compliance Handbook in relation to reasonable excuse.

The Appellants' evidence

10. The Tribunal heard from the appellant who relies on the grounds of appeal in his application form [A/6] signed on 12/08/2022 [A/7], and various scribbled notes on the face of the tenancy agreement [A/9]. No signed witness statement was provided by him.

11. At the start of the hearing Mr Anoom sought to correct the dates detailed in the grounds of appeal. He was permitted to adduce oral evidence in that regard as follows:

- (i) Point (1) should read '*I left UK Jan 2021*' (not as written "*Jan 2020*")
- (ii) Point (4) should read '*I eventually arrived back into the UK October 2021*' (not as written "*October 2020*")

12. In oral evidence the appellant told the Tribunal that he had bought the property in 2003 as a buy-to-let property, that he had never lived in it, and had previously used an agent to deal with all aspects of the lettings. However, around the end of 2019 or the beginning of 2020 he had decided to sell the property so that he could return to Ghana. He had refurbished the property himself, ended his relationship with the previous letting agents, and handed the property over to Capital Stock Housing Ltd. In oral evidence he told the Tribunal that he asked these agents to market the property for sale, but when there was no interest in the property, due to the Pandemic, he agreed to a short term let of the property. He said he had no written agreement with the agent, who was a friend, and with whom he had agreed a 1% commission on the sale of the property.

13. The tenancy agreement between him and Ms Dawkins at the property is not disputed by him. He confirmed receipt of the tenancy agreement and he confirmed receipt of rental payments into his account.

14. He originally told the Tribunal that he hadn't known that Ms Dawkins was occupying the property and found out only when he got a phone call from her out of the blue while he was in Ghana, during which she told him that the property was in disrepair. However, he later corrected this statement and said that he had known who she was when she called, but that he was surprised that she was still in the property as the 12 months term of tenancy had expired. He also stated that he had not received rent from her since June 2021.

15. He confirmed receipt of the notice of intention which was sent to his residential address (when he is in the UK) at 54 Broadway Gardens, Mitcham. This, he says, is his sister's house. He previously owned two other houses which he has gifted to his children some years ago.

16. When asked why he had ignored the invitation under Part C of the Notice of Intention dated 01/02/2022 to make representations within 28 days [R/69], his response was that he had made representations. When asked where those representations were in his bundle, his response was that his action had been to start the application for the licence, that he says was sometime between October 2021 and November 2021. Then when he could not re-access the application form, he phoned Julie in the Council. He confirmed that he has no documentary evidence to support that assertion.

17. He acknowledges that there was a gap of 11 months between him starting the application and finally paying the fee on 08/09/2022 and he is feels somewhat aggrieved that he hasn't been provided with the licence, as he has paid for it. However, he is aware that there are still issues

outstanding because he told the Tribunal that as recently as last Thursday or Friday, he received enquiries from the respondent asking for documentation that they had previously requested about his convictions. He said he had not yet had time to deal with that request and the licence remains outstanding.

18. He confirmed receipt of the letter in August 2021 notifying him of disrepair at the property.

19. The appellant explained how he had started an application on line once Julie at the Council had sent him a link. This was a correction from his written grounds in the appeal in which he stated that his contact had been with Catherine Lovett. This he said was a mistake. He told the Tribunal that he had spoken to Julie on several occasions and she had sent him a link for the application. He ran into difficulties with the application when there was a question he could not answer and had to close the application. When he tried to access it again, the system would not let him reopen it. This, he said, caused the delay in him making the application. He could not remember the exact date he started the application, but confirmed it was around October or November 2021. Yet it was not until 08/09/2022 that he completed the application form and paid the fee.

The Respondent's evidence

20. Further to the acceptance of all the respondent's evidence by the appellant, Mr Fitzsimons had not intended to call any of the respondent's witnesses. Having heard the appellant's newly adduced evidence in chief, and after a short adjournment to allow Mr Fitzsimons to take instructions on that new evidence, he called both witnesses.

21. The Tribunal heard from Catherine Lovatt who is a registered environmental practitioner and is employed by the respondent Council as a team manager in the private sector housing and licensing team. She provided a witness statement dated 14/11/2022 [R/12]

22. She was asked whether there were difficulties applying for a licence on their website, having heard the claims made by the appellant. She told the Tribunal that and there are often difficulties, not because of system, more because of appellants' IT skills. She explained that the Council has a team of assistants to help people through the process. She confirmed that Julie Coyer is one of those assistants, mentioned by the appellant. When asked if she had ever seen a case take 11 months to get to application, she replied that there probably had been occasions when they had to take similar enforcement action to resolve issues, such as in this case.

23. Ms Lovatt explained that the team of assistants are aware of how the system works, they can see the application and they can explain to people over the telephone how to resolve difficulties. People often have a misconception that they can only make the application when they have all

the relevant certificates, but the assistants tell them to pay for the application and sort out the certificates later.

24. In this case, they took enforcement action because of length of time it was taking. They offer as much support as they can but in her opinion if they had not issued the notice of intention in this case, it was quite likely that there would still be no application in place. In her opinion the appellant only made the decision to make application after the final notice.

25. Ms Lovatt also described how the penalty in this case had been arrived at, in accordance with their civil penalty matrix. In this case the starting point was £5,000 as this was a non-professional landlord with less than 5 properties. The aggravating feature in this case was the disrepair.

26. The Tribunal then heard from Lobsang Palmo who provided a statement dated 22/12/2021. She explained the issues of disrepair found at the property.

27. The Tribunal heard submissions from both Counsel, which are very briefly summarised.

28. It was submitted by Mr Anoom that while ignorance is not an excuse, the respondent Council and the appellant's agents should have informed the appellant that he needed a licence. When he did find out, the appellant went "*hammer and tong*" to try to get a licence by trying to go online and by going in person to the Council offices. However, he encountered difficulties opening the application and speaking to people face to face was difficult due to Covid. That, he says, is the reason the appellant couldn't get a licence at the time. Mr Anoom asked the tribunal to take into account the appellant's conduct in attempts to try to get the licence. He acknowledged that the manner in which the appellant approached the application was not perfect but that he did try to speak to Council officers.

29. Mr Fitzsimons submitted that the appellant's case essentially argues a reasonable excuse from October 2021 when he found out he needed a licence. This omits the period from May 2020 when he did not have a licence and when his only excuse was ignorance and/or that the agents should have told him about the need for one. Even if he had only found out about the licence in October 2021, it had taken a further 11 months for an application to be made. Reliance was made on the evidence of Ms Lovatt in relation to the support available to the appellant, even if there were occasional technical difficulties.

Findings

30. The starting point is that there was an undoubted offence under section 95(1) Housing Act 2004 in that the Appellant had control of or managed a property which was required to be licensed and was not so licensed.

Reasonable excuse

31. The appellant maintains however that he has a reasonable excuse under section 95(4)(a) and (b) Housing Act 2004 both for *having control of or managing a house which is required to be licensed* and for failing to apply for a licence between 01/05/2020 to 08/09/2022.

32. The appellant's case is that he found himself in control of an unlicensed property because of the unauthorised actions of his agents given it was his intention to sell the property. He had not intended to let the property and, if it had not been let, he would not have required a licence.

33. The Tribunal accept that he may have wanted to sell the property and to that end had refurbished it in 2019. However, notwithstanding initially maintaining he did not know he had a tenant until a phone call from her while he was in Ghana, from his oral evidence it was clear he was fully aware the property was tenanted and that he had agreed to this given the property had failed to sell. The rent was paid to him and while he may not understand the effect of section 5 of the Housing Act 1988 after the fixed term had expired there was no evidence that he had tried to stop letting the property. Given that he corrected the period when he left the UK from January 2020 to January 2021, he was in the UK when the tenancy started in May 2020 at the same time as the licencing scheme was introduced.

34. The appellant received the rent directly and he had no management agreement with the agents. There is no documentary evidence that supports in any way the assertion that he was hoodwinked or duped into controlling a property that needed a licence.

35. The alternative argument is that the appellant had a reasonable excuse as firstly he did not know he needed a licence and then secondly the technical difficulties he had in applying for one.

36. For reasons largely given by Mr Fitzsimons the Tribunal reject that the appellant has a reasonable excuse:

- a. The offence is one of strict liability and while a 'reasonable excuse' should be construed broadly, ignorance is no excuse [*Palmview Estates Limited v Thurrock Council* [2022] 1 WLR 1896; [2021] EWCA Civ 1871 at 33]
- b. The relationship with the agents was not one where it would be reasonable to expect the agents to act or even advise the appellant. He had no written agreement and there were no set roles, responsibilities or division of labour between him and agents. The agents were only there to find a tenant and to market the property for sale on an informal agreement and there was no management fee being paid
- c. The rent was being paid by Universal Credit to him. The AST agreement is clear that the appellant is the landlord and Ms Dawkins is the tenant. He confirmed that he was in receipt of the rent from May 2020 until June 2021, and this was used to pay his mortgage.

- d. Even if wrong about his ignorance of the licensing scheme, he admitted knowing about it approximately 11 months before the application was made
- e. The Tribunal do not accept, even if there were glitches with the online application, that it was not possible to complete the application for 11 months
- f. The Tribunal accept that the respondent has systems and people in place to help resolve difficulties in the application process
- g. Despite claiming a distinctive paper trail to show the efforts he has made to access their site to apply for a licence, no paper trail was presented to the Tribunal.
- h. Despite claiming to have responded to the Notice of Intention, no evidence of this was presented to the Tribunal
- i. His main point, which was repeated throughout his evidence was that he was trying to sort the licence out, but from oral evidence, these attempts appeared to be sporadic and done without much vigour.

37. The Tribunal finds that the appellant has not demonstrated a reasonable excuse for his failure to apply for a licence from May 2020 until 08/09/2022 and thereby being in control of a property which required a licence.

Amount of penalty

38. Despite the appellant not challenging the amount of the penalty, the Tribunal heard evidence both as to the matrix used by the respondent and its application in this case

39. The Tribunal did not find that the £7,000 penalty was outside the Respondent's policy or that it was an unreasonable application of that policy.

40. The Tribunal therefore upholds the £7,000 penalty.

Name: Judge D. Brandler **Date:** 21st February 2023

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.

Housing Act 2004

95 Offences in relation to licensing of houses under this Part

(1) 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 (see section 85(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b) he fails to comply with any condition of the licence.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine .

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or 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 to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

249A Financial penalties for certain housing offences in England

(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—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act