



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

Case Reference : **CHI/45UB/HNA/2018/0010**

Property : **8 Cross Road Southwick West Sussex,
BN42 4HE**

Appellant : **Mr D Clark**

Representative : **In person**

Respondent : **Adur District Council**

Representative : **Ms Adefehinti, Solicitor**

Type of Application : **Appeal against financial penalty**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr N Robinson FRICS**

Date of consideration : **25 January 2019**

Date of Decision : **30 January 2019**

DECISION

The Tribunal confirms the Financial Penalty imposed by the Respondent.

REASONS

- 1 The Appellant is the freehold owner of the property situated and known as 8 Cross Road Southwick West Sussex, BN42 4HE (the property). He filed an application with the Tribunal on 20 October 2018 appealing against the financial penalty notice served on him by the Respondent under sections 23 and 126 and Schedule 9 Housing and Planning Act 2016 following the Appellant's failure to comply with an improvement notice served on him by the Respondent and against which he had not appealed.
- 2 Directions were issued by the Tribunal on 25 October 2018.
- 3 The Tribunal was not asked to inspect the property but understands it to comprise a large detached house occupying a corner plot in Southwick. The property has 19 bedrooms and was formerly used as a care home which is its authorised use under planning legislation. That use ceased some years ago and currently the property is occupied by a small number of vulnerable tenants who share kitchen and bathroom facilities. The present use of the property is as an HMO for which it does not have planning permission and the Appellant currently only possesses a draft HMO licence. Photographs of the exterior and interior of the property contained in the hearing bundle illustrate the poor condition of the property (pages 149-175 and 296-309).
- 4 At the commencement of the hearing the Respondent made an application for permission to submit an additional bundle of documents which had been omitted from the hearing bundle in error. They said that no prejudice would be caused to the Appellant who would have seen most of the documents during the course of the previous two years. The Appellant objected to the inclusion of the documents. Having retired to consider the matter the Tribunal decided on balance not to allow their inclusion. The hearing bundle in its present form was sufficiently comprehensive and the Tribunal did not wish the Appellant to feel disadvantaged by the late inclusion of some 200 additional pages of documentation.
- 5 Following an intervention by the emergency services the Respondent initially inspected the property in December 2016 (page 103). A second intervention by the emergency services led to a further inspection by the Respondent on 25 July 2017 under a Notice of Intended Entry when a number of defects which ranked as category 1 and 2 hazards were observed. Under the provisions of the Housing Act 2004 the Respondent is obliged to take action where category 1 hazards are present. The Appellant was present at that inspection and was given advice by the Respondent in relation to the remedying of the defects. Subsequently an Improvement Notice was served on the

Appellant on 18 August 2017 as varied by agreement on 22 December 2017.

- 6 As noted above, the Appellant did not appeal against the Improvement Notice and although the Respondent recognised that a number of repairs had been carried out at the property, the Appellant still remained significantly in breach of its terms.
- 7 That being so, the Respondent served a Notice of Intent (to impose a financial penalty) on the Appellant on 8 August 2018. A further inspection was carried out by the Respondent on 18 September 2018 followed by a case review at which the Appellant's written objections to the notice were taken into account. As a result, and giving consideration to the further works recently carried out by the Appellant, the Respondent decided to reduce the amount of the financial penalty to £9,350. The final notice was served on the Appellant on 2 October 2018.
- 8 The appeal hearing before the Tribunal is a re-hearing of the Respondent's decision to impose the penalty. For that reason the Tribunal commenced the proceedings by hearing evidence from Mr Elliott MCIEH (pages 61-63), a senior Environmental Officer employed by the Respondent who, with Ms Seaton, had inspected the property and had been involved in the decision to impose and later to reduce the financial penalty. The Appellant was able question Mr Elliott about his evidence. It was noted that Mr Elliott had re-inspected the property in January 2019, shortly before the present hearing and had found that the Appellant remained in breach of the improvement notice.
- 9 The Tribunal read Ms Seaton's evidence but as she was unable to attend the Tribunal in person she could not be cross-examined, a fact to which the Tribunal had regard when deciding on the weight to be applied to the evidence before it.
- 10 Apart from a brief explanation contained within his application and some unsigned and undated notes (pages 18-32, 35-36, 50) the Appellant had not filed a witness statement or other documentation explaining his objections to the notice or his reasons for contesting the amount of the penalty. Despite this he addressed the Tribunal at some length, the main points of his argument being directed to the improvement notice rather than the penalty notice. He felt that he had not been given enough time in which to complete the works, that the specifications set out by the Respondent were unclear or had been changed without reason, that he had not received sufficient support or advice from the Respondent (see page 35) and that the Respondent had declined to do the work themselves (see pages 26 and 29).
- 11 Since the Appellant had chosen not to appeal the improvement notice, the facts contained in that notice have to be taken by the

Tribunal as having been proved beyond reasonable doubt and it was not open to the Tribunal to re-open that discussion in the present proceedings. The Appellant raised no objections to the procedures followed by the Respondent in issuing the penalty notice, raised no arguable defence to the notice and brought no evidence to the Tribunal of his inability to pay.

12 The Tribunal notes that the original financial penalty was reduced to its current level by the Respondent on their own motion as part of a review of the process and has seen no evidence which suggests that it should be reduced further. They also note that the Respondent had chosen to impose a financial penalty as an alternative to a criminal prosecution which, if successful, might have severe consequences for the Appellant by precluding him from some future activities as a landlord or care home provider.

13 Although the Tribunal recognises that the Appellant has carried out a number of remedial works in accordance with the Respondent's Improvement Notice, at the time of the consideration of the financial penalty notice a number of issues remained unresolved. Some of the outstanding matters present a significant health risk to any occupiers or visitors to the property and for that reason the Tribunal considers that it would be inappropriate to either vary or cancel the penalty notice at the present time.

14 Therefore, having considered the written evidence placed before it, including photographs of the property taken by the Respondent during their inspections and taking into account the Appellant's observations during the present hearing, the Tribunal determines that it will confirm the Respondent's penalty notice, all provisions of which remain extant and in full effect.

15 The Law:

Housing Act 2004 Schedule 13 par 10

10(1)A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a)the decision to impose the penalty, or

(b)the amount of the penalty.

(2)If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3)An appeal under this paragraph—

(a)is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Judge F J Silverman as Chairman
30 January 2019.

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.