



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

**Case reference** : **LON/00AE/HNA/2018/0056**

**Property** : **26A Watford Road, Wembley HA0 3EP**

**Applicants** : **Mohammed Saleem**

**Respondent** : **London Borough of Brent**

**Type of application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A to the  
Housing Act 2004**

**Tribunal** : **Judge Nicol  
Mr S Mason BSc FRICS**

**Date and venue of  
hearing** : **18<sup>th</sup> January 2019  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **18<sup>th</sup> January 2019**

---

**DECISION AND FURTHER DIRECTIONS**

---

1. The appeal is allowed on the ground that the Financial Penalty Notice the Respondent issued on 20<sup>th</sup> August 2018 against the Applicant under section 249A of the Housing Act 2004 was invalid.
2. The Applicant's oral application for reimbursement of fees and costs under rule 13 of the Tribunal Procedure (First Tier Tribunal ) (Property Chamber) Rules 2013 is adjourned on the following directions:
  - a) The Applicant shall, by **1<sup>st</sup> February 2019**, file with the Tribunal and send to the Respondent written submissions in support of the said application together with any documents relied on which were not included in the bundles previously filed by the parties, including a schedule of costs.

- b) The Respondent shall, by **15<sup>th</sup> February 2019**, file with the Tribunal and send to the Applicant their written submissions in response, also together with any additional documents relied on.
- c) The Tribunal will determine the said application on the filed papers, without a hearing, during the week commencing **18<sup>th</sup> February 2019**.

## **Reasons**

1. The Applicant used to hold the leasehold interest in the subject property. His principal business had been the halal butchers on the ground floor but there were also residential premises above let out as a house in multiple occupation. The Applicant had let the residential premises to Mr Jan Nazari who sub-let to the occupying tenants. Then, in September 2017 the Applicant decided to sell his interest and Mr Nazari dropped out of the picture. The Applicant completed the sale on 28<sup>th</sup> July 2018.
2. The Respondent had issued a licence to Mr Nazari, subject to conditions for certain improvements to take place. The licence was not renewed. When the Respondent inspected the property on 25<sup>th</sup> April 2018, they found it was still let as an HMO, despite no longer being licensed, and the previously required works had not been completed.
3. Since the Applicant was still the registered owner, the Respondent looked to him in relation to these defaults. The Applicant claimed that he was no longer the beneficial owner, having agreed the sale and having left the management of the butchers and the residential premises in the hands of the purchaser, Mr Ammor Al-Hemeri. The Respondent did not believe this to be entirely true and, in any event, believed it did not relieve him from his legal responsibility.
4. Therefore, following after the requisite notice of intent, on 20<sup>th</sup> August 2018 the Respondent served a further notice on the Applicant requiring the payment of a financial penalty. The Applicant exercised his right to appeal to the Tribunal.
5. In his application, the Applicant raised the issue that the final notice had said he had only 21 days to appeal rather than 28. The Respondent acknowledged that this was an error but neither party went on to consider the consequences. Before the hearing on 18<sup>th</sup> January 2019, the Tribunal provided the parties with copies of the Tribunal's recent decision in *Bharadia v LB Havering (327 London Road)* LON/ooAR/HNA/oo60 & 61 in which it was stated:
  10. ... the Tribunal decided to consider first the argument raised in the application that the notices were invalid and that this had the consequence of invalidating the penalty as well. If correct, this would be determinative of the appeal.
  11. Schedule 13A of the Housing Act 2004 provides:

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

12. The Respondent uses notices in a standard format of its own devising. The second paragraph states,

You are required to pay a Financial penalty of [£XXXX] within 28 days of the date of this notice.

13. Paragraph 10 of the standard format notice also states that further action will be taken in the event of non-payment “within 28 days of this notice”.

14. This time period is important for a number of reasons:

(a) It shows the time within which the penalty should be paid.

(b) Its expiry triggers the right of the authority to enforce payment.

15. Mr Ham [counsel for the local authority] conceded, correctly in the Tribunal’s opinion, that the Respondent’s notices were defective for failing to comply with the statutory requirement for the period specified in the notice. In fact, there are two elements to this non-compliance:

(a) Time runs not from the date of the notice but from when the notice is “given”. The Tribunal did not receive any submissions as to what this meant but the Applicants asserted that the relevant date was 26<sup>th</sup> September 2018, two days after the date of the notices.

(b) The statutory time limit runs from the day after the notice was given.

16. There remained the issue of the consequences of the Respondent’s failure to give the statutory time period. The Tribunal provided the parties with a copy of *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 in which Lewison LJ considered the consequences of non-compliance with statutory requirements and stated:

52. The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case ... The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly

stated in the statute) is to be ascertained in the light of the statutory scheme as a whole ... Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid ... One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity.

17. Mr Ham pointed out that there appear to have been no consequences flowing from the defect in the notices but that is irrelevant. His principal argument was that, looking at the statutory scheme as a whole, the precise time period is of secondary importance, particularly in the light of the fact that the Respondent's notices were otherwise compliant.

18. Mr Ham conceded that at least two of the three "pointers" identified by Lewison LJ were in favour of the Applicants:

- (a) The time period is particularised in the statute as opposed to being required by general provisions of the statute.
- (b) It is also in the statute itself, not in subordinate legislation.

19. The Tribunal is also satisfied that the third "pointer" is in the Applicants' favour in that it had been open to the Respondent to withdraw the defective notices and issue new ones when they became aware of the issue.

20. Mr Ham is correct in saying that these are only "pointers" so that they are not necessarily conclusive. However, they strongly support the Tribunal's conclusion that the statutory notice requirements in this case are intended to be strict so that non-compliance in any respect invalidates such notices, irrespective of any proven consequences.

21. The statutory scheme is for the imposition of criminal sanctions without the intervention of a court. Such exceptional circumstances must be underpinned by strict compliance with the requisite

procedural protections. It is inappropriate to characterise any of the statutory requirements as lacking in importance, secondary or ancillary.

22. Mr Ham pointed out that the appeal is a re-hearing and argued that the Tribunal could cure the defect by exercising its power under paragraph 10(4) to vary the notice. However, the Tribunal cannot vary statutory requirements. Altering the period given in the notice would not just be a variation but would, as the Applicants asserted, amount to re-issuing the notice, which the Tribunal has no power to do.

23. Therefore, the consequence of the defective nature of the notices in this case is that they are invalid and cannot impose any penalty on the Applicants.

6. Ms Robson, on behalf of the Respondent, conceded that this reasoning applied equally to the current case and the Tribunal believes that concession to be correct. Like the London Borough of Havering, the Respondent uses notices in a standard format of its own devising and it states,

6. Ways on how to pay this financial penalty can be found on the attached letter but will also be detailed on the Council's invoice which will be sent to you in 21 days' time.

7. You have the right of appeal in relation to this Final Notice within 21 days of the date of this notice to the First Tier Tribunal.

7. The letter referred to in paragraph 6 states,

In 21 days time the Council will be invoicing you for the full amount of the financial penalty this being **£10,000**.

However if you do wish to settle before the issuing of the invoice we are prepared to offer you a 10% discount. The discounted penalty charge amounts is **£9,000** if paid within 21 days of the date of this letter.

Alternatively, should you choose not to settle within the next 21 days by 10<sup>th</sup> September 2018, payment terms and conditions will be shown on the invoice that will be sent to you separately. Failure to comply with the payment instructions on your invoice, will result in the Council's debt collection process being commenced without further notice.

8. These provisions clearly fall foul of paragraph 7 of Schedule 13A of the Housing Act 2004. Ms Robson pointed to the Respondent's concern that the Applicant had committed serious offences and asked if there could be any way around the strict application of the statute. The Tribunal expressed understanding as to why a local authority would be disappointed not to be able to levy a financial penalty against a person

they believed to be in serious default of these important provisions but that did not provide any basis for reaching a different conclusion.

9. As in the *Bharadia* case therefore, the consequence of the defective nature of the notice in this case is that it is invalid and cannot impose any penalty on the Applicant.

**Name:** NK Nicol

**Date:** 18<sup>th</sup> January 2019