



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

Case Reference : **BIR/OOGA/HNA/2019/0030**

Property : **Flat 1, St Martins House, 1 St Martins Avenue,
Hereford HR2 7RQ**

Applicants : **Paul Grafham and Margaret Grafham**

Respondent : **Herefordshire Council**

Type of Application : **Financial Penalty**

Members of Tribunal : **Judge D Jackson
Mr R Chumley-Roberts MCIEH CEnvH, J.P.**

Hearing : **16th January 2020
Hereford Justice Centre**

Date of Decision : **21st January 2020**

DECISION

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Background

1. On 8th February 2018 the Respondent issued an Improvement Notice under section 11 of the Housing Act 2004 (“the Act”). Three Category 1 Hazards were identified in Schedule 1 to the Notice:
 - (i) Hazard No. 1 – Damp and Mould (8 deficiencies specified)
 - (ii) Hazard No. 24 – Fire (3 deficiencies specified)
 - (iii) Hazard No. 2 – Excess Cold (5 deficiencies specified)
2. On 6th July 2018 the Tribunal varied the Improvement Notice (BIR/OOGA/HIN/2018/0012). To ensure continuity of decision making the Members of the present Tribunal are those who also made the July 2018 Decision.
3. On 6th November 2018 Officers from the Local Authority carried out a compliance inspection. It is the Local Authority’s case that an offence under section 30 of the Housing Act 2004 of failing to comply with an improvement notice has been committed by the Applicants. The particulars of the alleged offence are given as:
 - (i) Failure to install a working central heating and hot water system
 - (ii) Failure to replace the existing mechanical extractor ventilation in the bathroom
 - (iii) Failure to install a functioning fire resisting FD30 doorset to the entrance door to the flat.
4. On 26th February 2019 the Local Authority issued Notice of Intent to Issue a Civil Penalty under section 249A of the 2004 Act.
5. On 19th September 2019 the Local Authority issued Final Notice: Issue of a Civil Penalty in relation to an offence contrary to section 30 of the 2004 Act in the amount of £5000.
6. On 10th October 2019 the Applicants appealed against the Financial Penalty under paragraph 10 of Schedule 13A to the 2004 Act.
7. On 17th October 2019 the Tribunal issued Directions.
8. The Tribunal has considered Local Authority Bundle pages 1 -116 and Appendices 1-6. The Tribunal has also considered the Applicants’ Bundle dated 5th December 2019.
9. This matter was heard in Hereford on 16th January 2020. Mr Grafham attended on behalf of himself and his wife. The Local Authority was represented by Dr J O’Mahony (Environmental Health Officer). Susannah Burrage (Environmental Health Officer) and Gavin Kemp (Principal Environmental Health Officer) also attended.

Inspection

10. The Tribunal inspected the Property on the morning of the hearing.
11. St Martins House is a Grade 2 listed, three storey Georgian building situated at the corner of a terrace at the junction of St Martins Street and St Martins Avenue. St Martins House is of solid brick construction with stucco rendering. It has been divided into 3 self-contained flats, one on each floor, arranged around a central staircase. The freeholder owns a number of adjoining properties along the terrace. The whole development consists of six flats and a shop.
12. The Property is a one bedroom ground floor flat with separate living room, bathroom and kitchen.

13. A new combination boiler had been installed in the kitchen. There were six new radiators in total (one each in hall, bedroom, kitchen and bathroom (heated towel rail) and two in the sitting room). All had thermostatic radiator valves except for the radiator in the kitchen (which as it is situated next to the boiler does not require a TRV). The system appeared to be functioning appropriately and the property was well heated at the time of our inspection.
14. The mechanical ventilation extractor in the kitchen had been replaced. However, it was not working when tested by the Tribunal Member. No new ducting has been installed and it appears that the original ducting into the main hallway continues to be used for that purpose. The Notice, as varied by the Tribunal, required ducting through the kitchen to the rear yard. We inspected the kitchen. The rear of the kitchen consists of door and adjoining window. The central heating boiler flu is also vented through the rear of the kitchen. The roof of the kitchen extension remains much as it was when the Tribunal inspected in 2018 and is constructed of corrugated sheeting under drawn with plasterboard.
15. The entrance/exit door to the communal hallway had been subject to extensive damage. It appeared that persons unknown had forced entry. The door was split in several places and the lock smashed. The intumescent strip on the frame was incomplete and missing between the door hinges. Even discounting the damage, it was clear that the door had been poorly fitted and it appeared that little care had been taken over the job.

Deliberation – failure to comply with Improvement Notice

16. In order to impose a financial penalty under section 249A of the 2004 Act the Tribunal must be satisfied beyond reasonable doubt that the conduct of the Applicants amounts to a relevant housing offence. In the present appeal the relevant housing offence (section 249A(e)) is failure to comply with improvement notice under section 30 of the 2004 Act.
17. The Improvement Notice dated 8th February 2018 as varied by the Tribunal on 6th July 2018 required works to begin no later than 13th August 2018 and to be completed by 24th September 2018. The remedial action required was set out in the Appendix to the Decision.
18. Dr O'Mahony and Susannah Burrage attended to inspect the Property on 6th November 2018. In her evidence Dr O'Mahony told the Tribunal that she believed that the damp patches on the walls were due to plaster in the process of drying out. Accordingly, she was satisfied that remedial works in relation to paragraphs 1 and 2 of the Appendix had been carried out. In relation to paragraph 3 no ducting for the extractor fan in the bathroom had been installed to vent through the kitchen to the rear yard. In addition, when tested there was no 20 minute overrun to the extractor fan.
19. New radiators and copper piping were present in sitting room, hallway, bedroom, kitchen and bathroom (towel rail). However, the radiators were not connected and were cold to the touch suggesting work in progress but not completed. The existing boiler in the kitchen was partially dismantled. A new "VOKERAS by Riello" boiler, still in its packaging was found in the sitting room.
20. The entrance door from the main hallway was partially installed. Architrave was incomplete and the door did not close properly. There did not appear to be a FD30 functioning fire door across the compartment line opening. Susannah Burrage in her Witness Statement [13] noted that "the flat entrance door reveals were in poor repair

and there had effectively been an incomplete bodge to the door repair which rendered the door and frame inadequate from a security and fire perspective”.

21. Mr Grafham does not dispute the state of works as at the date of the Local Authority’s inspection. On that basis it is clear that the Applicants had failed to comply with the Improvement Notice by 24th September 2018 as the following works were still outstanding by 6th November 2018:
 - (i) Failure to install a working central heating and hot water system
 - (ii) Failure to replace the existing mechanical extractor ventilation in the bathroom
 - (iv) Failure to install a functioning fire resisting FD30 doorset to the entrance door to the flat.
22. It is the Applicants’ case that they have a “reasonable excuse” under section 30(3) of the 2004 Act. The Applicants argue that in accordance with HHSRS Enforcement Guidance it would have been reasonable and appropriate for the Local Authority to have extended the deadline for completion of the works. On 26th July 2018 the Applicants sent an email [47] to the Tribunal, copied to Dr O’Mahony, indicating that they were unable to get a response from the occupier and accordingly were unable to inspect the Property or obtain quotations. Mrs Grafham sent a further email to Dr O’Mahony on 31st July 2018 [51] stating that the Applicants were unable to gain access to the Property as they had no keys. It then appears that an undated letter was sent to the Applicants by the tenant’s father enclosing a spare key [57 and 58]. In addition, the Local Authority’s Homelessness Officer, Nick Gurney was arranging temporary accommodation for the tenant whilst works were being undertaken [55]. Arrangements were made for work to commence on Monday 13th August 2018. However, problems arose on Wednesday 15th August because “dogs were running loose in the flat” [60 and 61]. On 23rd August 2018 Dr O’Mahony wrote to the tenant in relation to “dogs loose in the flat” [62]. She also wrote to Mrs Grafham on the same date indicating that “we can consider a possible extension of the timescale” [63]. At the hearing Dr O’Mahony denied that any request for an extension was made following her letter of 23rd August to Mrs Grafham. Mr Grafham maintained that an extension had been requested by telephone. We find that no written request, with supporting evidence, for an extension of time was made to the Local Authority.
23. The issue for the Tribunal is whether the Applicants have a “reasonable excuse” for failing to comply “on the grounds of unreasonable withholding of an extension of time to complete the works due to difficulties in gaining access” (see Applicants Statement of Case dated 5th December 2019)
24. The issues of access and the dogs were resolved by the third week in August allowing works to commence. At the hearing Mr Grafham produced a schedule of costs totalling £4750. Mr Grafham told us that he bought the boiler himself in July 2018. He fitted all the copper pipe work himself to save costs. However, the Gas Safety Record produced at the hearing shows that the installation was only completed on 13th December 2018. Mr Grafham said that the Gas Safe Engineer took 4 days to fit the boiler over a two week period. He was unable to explain why it took from July to December to complete the installation of a boiler. In relation to plastering and door fitting Mr Grafham said that he “paid tradesman in cash to get a better rate for the work”. He understood that under those circumstances tradesmen may not be declaring their income but that was “not down to me though”. The plasterer took 2 days to complete works and the fitter/decorator/tiler took between 3 and 4 days. The extractor fan work cost £259.20, which suggests that, again, this was a relatively

quick and easy job. Even though there may have been some initial problems over access we find that the Applicants had more than sufficient time to complete, what were relatively small works, by 24th September 2018.

25. The Local Authority has not acted unreasonably. Problems over access were resolved leaving the Applicants sufficient time to comply with the Improvement Notice. We find that the Applicants do not have a reasonable excuse for failing to comply.
26. Accordingly, we are satisfied, beyond reasonable doubt, the Applicants have failed to comply with an improvement notice and that their conduct amounts to an offence under section 30 of the 2004 Act.

Deliberation – amount of the Financial Penalty

27. The Local Authority, in determining the amount of the Financial Penalty has had regard to:
 - (i) Civil Penalties under the Housing and Planning Act 2016 (DCLG April 2017)
 - (ii) West Midlands Housing Enforcement Practitioners Group Matrix
 - (iii) Herefordshire Council Supplementary Environmental Health Housing Policy
28. The starting point under the WMHEPG Matrix for a 1st offence of failure to comply with an improvement notice is £5000. The Local Authority has adopted that figure without the addition of any Premiums.
29. At the hearing Dr O'Mahony told us that she assessed the Applicants' conduct as high level of culpability and high likelihood of harm. She benchmarked her figure of £5000 against the matrix used by Bristol City Council which produced a figure of £7350.
30. The Tribunal considers failing to comply with an Improvement Notice as extremely serious. In our Decision of July 2018 we confirmed a Category 1 Hazard in relation to Excess Cold (Hazard No. 1) but reduced Damp and Mould Growth (Hazard No. 1) and Fire (Hazard No. 24) to Category 2 Hazards.
31. In relation to "failure to install a working central heating and hot water system" we find that failure was substantially remedied by 13th December 2018. The works should have been completed by 24th September 2018. This means that the Applicants failed to a Category 1 Hazard (Excess Cold) for 80 days. We would also express our concern that the Gas Safety Record produced by Mr Grafham at the hearing gives details of the Customer as "Mr Gedge of 5A St. Martins House, Hereford". Mr Grafham accepts that he was careless and should have checked the address when the document was given to him the Engineer. The Tribunal regards the obtaining of an accurate Gas Safety Record and part and parcel of compliance with the Improvement Notice and would recommend that an amended Gas Safety Record is obtained and copied to the Local Authority.
32. Failure to replace the existing mechanical extractor ventilation in the bathroom has still not been remedied. Both at the time of the Local Authority inspection on 6th November 2018 and at the time of the Tribunal's inspection the replacement extractor fan did not work. No ducting through the kitchen to vent into the rear yard or some other suitable location has been installed. Accordingly, whilst the Applicants have taken steps to remedy damp by undertaking plastering works the Category 2 Hazard – Damp and Mould Growth, although much reduced, remains.
33. As at the date of the Local Authority's inspection it would appear that the fire door was only partially installed and was not functioning properly. Susannah Burrage describes the works as "an incomplete bodge." Mr Grafham told us that the door was

- fitted before the boiler and that all work was completed by mid December 2018. By the time of the Tribunal's inspection the door had sustained significant damage which we discount. However, we noted that the door had been poorly fitted and it appeared that little care had been taken over the job. In assessing risk of harm the Tribunal has regard to the fact that a Category 2 Hazard existed in relation to Fire.
34. The Applicants have failed to comply with an Improvement Notice in relation to one Category I Hazard and two Category 2 Hazards. We have found that, despite initial difficulties over access, that an extension of time was not necessary and works should and could have been completed by 24th September 2018.
 35. Applying DCLG Guidance at paragraph 3.5 we find this was a serious offence. The Applicants ought to have known that they were in breach of their legal responsibilities. The tenant did not have a functioning central heating and hot water system for an additional 80 days. The fire door was poorly fitted and the extractor fan still does not work. We also have to consider punishment of the offender and deterrence as well as removing any financial benefit the offender may have obtained.
 36. Our starting point, based on severity of offence, culpability and level of harm is a Financial Penalty approaching £10,000. However, we take into account partial compliance with the Improvement Notice. In particular the plastering works set out at paragraphs 1 and 2 to the Appendix to the July 2018 Decision were complied with timeously. The installation of central heating and hot water system was underway at the time of the Local Authority inspection and was substantially completed by mid December 2018. We therefore reduce our starting point to £5000 to give credit for partial compliance.
 37. At the hearing Mr Grafham told us that both he and his wife are in receipt of State Pension. Mr Grafham still practices as a Surveyor for between one and two days each week earning between £20,000 and £25,000 per annum. The rent for the Property is £450 p.c.m. but the Applicants have not received any rent since June 2019. They own another flat at St Martins House which is uninhabitable. Their main residence consists of a large house, two cottages and a bungalow. The large house is a holiday let which brought in approximately £35,000 in 2019. However, Mr Grafham said that he and his wife were no longer pursuing holiday lets. One of the Cottages is let at £575 per month and the other is "to let". The Applicants live in the bungalow. In light of the Applicants' disclosed financial position we do not need to adjust the amount of the Financial Penalty to reflect their income.

Decision

38. Under Paragraph 10(4) of Schedule 13A of the Housing Act 2004 the Tribunal confirms the Financial Penalty in the amount of £5000 imposed by the Final Notice issued on 19th September 2019 in relation to an offence contrary to section 30 of the Housing Act 2004.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.