



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

Case Reference : **MAN/00BR/HIN/2019/0022**

Property : **11 Kenyon Street, Manchester, M18 8SH**

Appellant : **Mr Jitesh S Adatia**

Respondent : **Manchester City Council**

Type of Application : **Housing Act 2004, Section 249A & Sch. 13A**

Tribunal Members : **Mr Phillip Barber (Tribunal Judge)**
Ms Jenny Jacobs (MRICS)

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty under section 249A of the Housing Act 2004 for the offence of failing to comply with an improvement notice under section 30 of that Act, in respect to 11 Kenyon Street, Manchester, M18 8SH should be £2,500.

Reasons

Introduction

1. This Decision and Reasons relates to 1 appeal against the imposition by the Respondent of a financial penalty under section 249A of the Housing Act 2004 (“the Act”) in relation to 1 property owned by the Appellant, Mr Jitesh Subhash Adatia.
2. Both the Appellant and the Respondent have indicated that this appeal can be dealt with on the papers or have not objected to such a course and accordingly the Tribunal is satisfied that the requirements of rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 are made out. We decided that an inspection of the property was unnecessary and that we had all of the necessary evidence within which to make a decision included in the papers. It follows that adjourning for a hearing or to obtain additional evidence was not appropriate.

The issues we had to decide

3. By section 249A of the Act:
 - (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),
.....
4. By subsection (4) the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.
5. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a “Notice of Intent” which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.
6. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a “Final Notice”, which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.
7. Section 30 of the Act creates the following offence:

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

8. “Comply” is defined in section 30(2):

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

9. Mr Adatia, the Appellant, did not appeal the Improvement Notice. In fact, as soon as it was served he started to carry out the works required under the terms of the notice, unfortunately he did not comply fully with the works necessary to eradicate the hazards identified at the property and as a result became subject to action under section 249A of the Act, as described below.

10. Mr Adatia did, however, appeal the financial penalty, and paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

(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.

11. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; the amount of the penalty and can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted.
12. We had to be satisfied beyond reasonable doubt that the conduct of the Appellant amounts to a “relevant housing offence” under section 30 of the Act – i.e. that Mr Adatia has failed to comply with an improvement notice in that he had failed to begin and complete any remedial action specified in the notice and no appeal has been brought.
13. We also considered and took into account the decision of the Upper Tribunal in *London Borough of Waltham Forest v Marshall & Ustek* [[2020] UKUT 0035, The decision makes little difference to the outcome of this appeal.

Findings of Fact

14. Mr Adatia is the freehold owner and landlord of the property at 11 Kenyon Street, Manchester (“the property”).
15. There is generally no dispute as to the chronology of events and this has been very helpfully set out in Mr Kashaff Sadique’s witness statement on pages 54 to 60 of the Respondent’s bundle.
16. On the 05 February 2019 a Compliance Officer from the Respondent Council, Mr Sadique, visited the property and made an inspection. The inspection identified a number of potential concerns with the property, as set out in the schedule to the improvement notice reproduced on pages 139 to 140 of the Respondent’s bundle. These included 1 category 1 hazard: a missing lost hatch giving rise to excessive cold; and a list of 23 category 2 hazards, moving through dampness and moisture penetration in the kitchen and various defective windows and doors, through to loose floor boards; missing door handles and fallen wall tiles. Photographs from that inspection are reproduced on pages 99 through to 107 of the bundle. They are in black and white but they are sufficiently well copied to gain a good understanding of the extent of the disrepair.
17. On the 14 February 2019, a hazard notification letter was sent to Mr Adatia setting out the issues Mr Sadique identified at the property during his visit and providing an indication as to the remedial works necessary. It is relevant to note that this list contained 26 items.
18. Within days of the service of that notice, (18 February 2019), Mr Adatia emailed Mr Sadique to inform him that contractors had been authorised to carry out the necessary works at the property and on the following day, Walker Property Services rang Mr Sadique to discuss the necessary works, indicating that they were due to visit and assess the works shortly.

19. On the 20 February 201, Walker Property Services emailed a Gas Safety Certificate to Mr Sadique and confirmed that 2 smoke alarms had been fitted; a CO alarm had been fitted and provided an update on the works.
20. The Respondent Authority served a Notice of Entry under section 239 of the Act on the 04 April 2019 and following a re-inspection on the 09 April 2019, the Respondent Authority determined that a number of works had not been completed. These outstanding repairs were the subject of the Improvement Notice served on the 24 April 2019.
21. The Improvement Notice required works to be started by the 24 May 2019 and to complete them within 21 days of that date.
22. On the 18 June 2019, Mr Sadique again visited the property and noted that some of the works were still outstanding and on the 20 June 2019 served the notice of intent under section 249A and Schedule 13A of the Act as reproduced on pages 178 to 180 of the bundle. The outstanding works are listed on page 179 and include the missing loft hatch; various outside works, including the window which cannot be opened; timber window frame rotten; eaves gutter missing; the problems with the rear living room door and the unstable walls in the right and left-hand side yards. It was intended to impose a financial penalty of £8,500 and following representation from Mr Adatia, a financial penalty of £7,500 was imposed on the 03 September 2019.
23. It is against this financial penalty which Mr Adatia appeals and he has produced his own bundle comprising 52 pages. It is apparent from his submissions to the Tribunal that he accepts the failure to carry out the works but gives a number of reasons why he was unable to complete the works within the time scale.

Mr Adatia's Defence to the Penalty

24. In his appeal documents, Mr Adatia sets out his response to the factors taken into account by the Respondent in its assessment of the level of the fine. He goes some way to point out the difficulties he had complying with the time frame indicating that requests for extensions were refused. He points out, and we accept, that there were particular issues with the party walls which needed to be addressed before works could be started and it was not until August 2019 that works were agreed on these walls.
25. We note that the tenant had an excessive number of belongings and is described by Mr Adatia as a "hoarder". We accept that this might reasonably be a difficult factor in arranging and complying with works, but we also note that most of the outstanding works were on the outside of the property.
26. Mr Adatia has also produced a statement from Carla Turner of Walker Property Services at pages 6 to 8 of his bundle and we accept what Ms Turner states in that statement as truthful, in particular that as a result of the tenant's ill-health works had to be delayed on a number of occasions.

27. We generally accept Mr Adatia's account of the difficulties he had with carrying out the works and as a result, that is reflected in the lower level of financial penalty we have set.

Our Assessment of the Appeal

28. This is a re-hearing of the decision to impose a financial penalty for the offence committed by Mr Adatia's under section 30 of the Housing Act 2004.

29. As required by section 249A of the Act and for the reasons given above, we are satisfied, beyond reasonable doubt, that Mr Adatia's conduct amounts to a relevant housing offence under section 30 of the Act. Mr Adatia was served with an Improvement Notice on the 24 April 2019 and he had until 21 days after the 24 May 2019 (14 June 2019) to complete the works required under the terms of that notice. He failed to do so and that is without doubt.

30. We find as fact that the Notice of Intent and Final Notice were properly served and that they contained the proper statutory information. There were no procedural irregularities.

31. Accordingly, and given our findings of fact that we are satisfied there is a breach and that Mr Adatia is culpable, the only remaining issue is the level of the financial penalty.

The Amount of the Penalty

32. There is no guidance in the legislation (other than setting maximum amounts) as to the amount of any penalty. As already mentioned, the Tribunal has power to vary the final notice, and this includes a power to increase the penalty.

33. Pages 27 through to 34 of the Respondent's bundle reproduce the Respondent's policy on civil penalties under the Act, and pages 7 through to 26 reproduce the Ministry of Housing, Communities & Local Government "Guidance to Local Authorities on Civil Penalties under the Housing and Planning Act 2016", both of which we have taken into account in arriving at our determination as to the appropriate amount of the penalty for the Appellants' failure to comply with the requirements of the improvement notice. In particular, however, the Guidance gives a number of factors which the Local Authority (and the Tribunal) might have regard to in determining an appropriate financial penalty under which we make the following findings and we note that the Respondent Authority has considered these in its reasons for serving the Final Notice. The Appellant has also addressed these factors in his grounds for appeal.

34. However, as this is a re-hearing and whilst we take into account the Respondent's assessment in relation to each of those factors we consider each factor afresh as follows.

Severity of the Offence

35. Whilst we view the Appellant's failure to comply with the terms of the Improvement Notice as a serious offence, in our judgement his failure is not to the extent that it warrants a particularly high penalty, and certainly not as high as the Respondent has set.
36. In particular we note that Mr Adatia, as soon as he was aware of the Respondent's involvement in relation to disrepair at the property, was proactive. He made contact with the Respondent almost immediately and instructed contractors to carry out works within a very short time frame. At no point does he appear to have questioned the necessity of the works but it seems that the timeframe within which to complete the works caused him difficulties. We note from page 181 that Doran Roofing Company have written to say that they had difficulties with arranging a convenient time for works to be carried out with the tenant, and the tenant himself (Wayne) has delayed works at the property due to hospital and doctors' appointments (it appears he has COPD). Works were finally completed on the 06 September 2019 and whilst we take into account that this was approaching 4 months after the date for completion in the improvement notice, we are also of the view that given the difficulties with access the severity of the offence is low.

Culpability and track record of the offender

37. The Appellant has one previous enforcement action taken against him in the form of a notice under the Prevention of Damage by Pests Act 1949 "a few years back". We do not know what this enforcement notice related to but in our judgment, this should not be a factor which weighs in the balance and accordingly we discount it as we do not know what it was for or when it was made. As mentioned above, Mr Adatia had to work to a very tight time frame and given the difficulties he encountered as set out in his appeal we are satisfied that culpability is also low.

Level of Harm

38. Both the Appellant and Respondent accept that the level of harm is low in relation to the failure to comply with the improvement notice.

Civil Penalty Banding

39. It follows that in our judgment, with low culpability and low harm the appropriate banding level is Band 1: £0 - £4999

Punishment of the Offender

40. Given our findings in relation to the severity of the offences and the culpability of the offender we are satisfied that the Appellant should be appropriately punished but in our judgment, there is no need, when taking account of culpability and harm to either increase or decrease the level of fine.

Deter the Offender from Repeating the Offence

41. We note that Mr Adatia has at least one other property and that he has had involvement with Manchester Council Neighbourhood compliance in relation to another property. That said, we are satisfied that the level of the fine we have set will appropriately deter him from committing any future offence in relation to his responsibilities as a professional landlord.

Deter others from Committing Similar Offences

42. We note that Manchester is an area with a high proportion of rental properties and it is likely that other landlords will take an interest in the general level of financial penalties and the type of offences for which these penalties are given. We believe that the level of fine we have considered appropriate for the breach to comply with the Improvement Notice in relation to this property will help deter other landlords from failing to comply with their responsibilities in similar circumstances.

Remove any Financial Benefit the Offender may have Obtained as a result of Committing the Offence

43. We note that the cost of carrying out works is not excessive and that rent has continued to be paid throughout but it strikes us that Mr Adatia has made no financial gain as a result of the delay in completing the works and the level of the fine appropriately removes any financial benefit she has received in letting this property out and failing to comply with the HMO management regulations.

General Considerations

44. We also place weight on the Respondent Authority's enforcement policy at pages 27 through to 34 of the bundle, in relation to the Private Sector in its geographical remit. The Respondent has followed that policy and utilising its expertise and judgment it has set a level of fine which it justifies by reference to the calculation in that policy but we disagree with the Respondent in relation to the seriousness of the offence and the level of culpability and the appropriate banding. As a result, we have arrived at a different amount for the financial penalty.

Conclusion

45. Taking all of the above on board and in accordance with our findings of fact we have decided that an appropriate level of fine for the breach is £2,500.

Signed



Dated 21 August 2020

Phillip Barber, Judge of the First-tier Tribunal