



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

Case Reference : **CHI/45UH/HNA/2020/0024**

Property : **4 Ludlow Court Brighton Road
Worthing West Sussex BN11 2EG**

Appellant : **Mrs R A M Walker**

Representative : **In person**

Respondent : **Worthing Borough Council**

Representative : **Ms Flanagan**

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

Tribunal Members : **Mrs F J Silverman MA LLM
Mr C M Davies FRICS**

Date of hearing : **25 April 2023**

Date of Decision : **04 May 2023**

DECISION

The Tribunal confirms the Financial Penalty imposed by the Respondent on the Appellant.

REASONS

- 1 The Appellant is the leasehold owner of the property situated and known as Flat 4 Ludlow Court Brighton Road Worthing West Sussex BN11 2EG (the property). She filed an application dated 03 November 2022 with the Tribunal on 09 November 2022 appealing against the financial penalty notice served on her by the Respondent under s 249A Housing Act 2004 following the Appellant's failure to comply with an improvement notice served on her by the Respondent.
- 2 Directions were issued by the Tribunal on 24 January 2023 (page 54).
- 3 In accordance with current practice directions the Tribunal did not carry out a physical inspection of the property. The Tribunal had sight of the property via Google maps and photographs contained in the hearing bundle and considered that the matter was capable of determination without a physical inspection of the property.
- 4 The hearing on 25 April 2022 took place at Havant where the Appellant accompanied by her daughter, represented herself. The Respondent was represented by Ms Flanagan an employee of the Respondent.
- 5 For the benefit of the Appellant the Tribunal explained its procedure. As is usual in an appeal of this type the Tribunal started by considering the Respondent's evidence because it has to be satisfied beyond reasonable doubt that a criminal offence had been committed and that the Respondent had engaged in a fair process in reaching their decision to impose a financial penalty of £4,500 on the Appellant. This was followed by the Appellant's case, after which the Tribunal retired to consider its decision.
- 6 The Tribunal had the benefit of an exterior view of the property from Google maps. It is understood that the property forms part of the ground floor of a building divided into four self-contained flats and is presently occupied by a single tenant who had complained to the Respondent that the flat was not adequately heated. The Respondent then conducted an inspection and assessment of the property when they found a Category 1 hazard in the form of excess cold and other hazards were also present. The existence of a category 1 hazard places a mandatory obligation on the Respondent to take action.
- 7 An electronic bundle of documents comprising 240 pages had been read by the Tribunal prior to the commencement of the hearing. The Appellant had not brought a copy of the bundle with her to the hearing.
- 8 At the commencement of the hearing the Appellant told the Tribunal that she was hard of hearing. The Tribunal was not aware that any request for assistance had been made to the Tribunal before the hearing but made its best effort to speak clearly because no additional audio equipment was available in the court room. The Appellant's daughter accompanied her but did not appear to give much assistance to her mother who wrote copiously in her notebook during the hearing and constantly interrupted both the Tribunal and other speakers.

- 9 The appeal hearing before the Tribunal is a re-hearing of the Respondent's decision to impose the financial penalty. For that reason the Tribunal commenced the proceedings by hearing evidence from Ms Vickery who is employed as a Private Sector Housing Officer employed by the Respondent. Ms Vickery had inspected the property and had been involved in the decision to impose the financial penalty.
- 10 On 17 May 2021 Ms Vickery carried out a preliminary inspection of the property which had been prearranged with the tenant. Conditions within the property gave her reasonable grounds to believe that Category 1 hazards under the Housing Act 2004 (the Act) were likely to exist, specifically in relation to Excess cold and so triggered the Council's duty to carry out a formal assessment.
- 11 On 18 May 2021 Ms Vickery gave written notice of her intention to enter the property under s.235 of the Act to the tenant and Mrs Rosemary Walker, the owner of the property (according to the Land Registry), for the purpose of completing a Housing Health and Safety Rating System (HHSRS) inspection under the Housing Act 2004 on 26 May 2021.
- 12 On 26 May 2021 the HHSRS inspection was carried out by Ms Vickery and James Elliott, Senior Environmental Health Officer with the Respondent. Ms Vickery then completed the assessment using the HHSRS spreadsheet contained in the Council's complaint management programme with reference to the national HHSRS Operating Guidance. This identified a Category 1 hazard under the hazard profile of Excess cold, and Category 2 hazards under the hazard profiles of Damp and mould growth; Entry by intruders; Domestic hygiene, pests and refuse; Food safety; Personal hygiene, sanitation and drainage; Electrical hazards; Fire; and Structural collapse and falling elements.
- 13 On 6 July 2021, in consultation with Mr Reynolds, an Improvement Notice under section 11 of The Housing Act 2004 was served on the Appellant, as the most appropriate enforcement action as specified in Schedule 2 to the Notice, to mitigate the Category 1 and Category 2 hazards (page 82).
- 14 The Improvement Notice required works to be completed within set timescales of 11 September 2021, 1 October 2021 and 1 December 2021. The Notice specifically required the replacement of the existing heating system by 1 October 2021 (page 82 et seq). Copies of the Improvement Notice were also sent to the tenant, the letting agent and the mortgage company being persons identified as having an interest in the property.
- 15 On 8 July 2021 Mrs Walker telephoned Ms Vickery to say that she had received and read the Improvement Notice and that, although she

disagreed with the serving of an Improvement Notice, the majority of the remedial actions were now being arranged.

- 16 However, on 14 July 2021 Ms Vickery received two emails from the letting agent stating that Mrs Walker would not agree to replace the heating system. Copies of those emails are found on pages 93 and 95, and on 21 July 2021 Mrs Walker telephoned the Respondent to say that she would not be replacing the heating for various reasons including the cost of doing so. She said however, that she would not be appealing the notice itself.
- 17 Mrs Walker also said that she had not received the Improvement Notice, despite stating on 8 July 2021 that she had received and read the Notice. A further copy was then sent to her by post.
- 18 On 22 July 2021 the letting agent contacted the Respondent to say that the Appellant had now agreed to change the heating system and that they were in talks regarding changing the layout of the kitchen. However, a further email from the letting agent to the Respondent on 19 October 2021 said that the Appellant was no longer willing to change the heating system in the property or to change the layout of the kitchen. (page 97).
- 19 A further inspection of the property was carried out on 29 November 2021 which confirmed that not all the requirements of the Improvement Notice had been met, including the replacement of the heating system.
- 20 Following a request from the letting agents a further inspection was carried out on 05 July 2022 at which it was established that some but not all of the requirements of the improvement notice had been met. Among those still outstanding was the replacement of the heating system.
- 21 It was considered that there was sufficient evidence to conclude beyond reasonable doubt that the Appellant had committed a criminal offence by not complying with the improvement notice and that she had been given sufficient time in which to comply with the notice. The Respondent therefore decided that further action in the form of a financial penalty would be appropriate. In view of the severity of the Category 1 hazard it would be inappropriate to not take any further action and a criminal prosecution was a little harsh.
- 22 The Respondent then applied its standard matrix to the factual situation to establish the level of fine to be imposed. For the Appellant's benefit it should be noted that all local authorities use a similar matrix which allocates a points value to various factors resulting in a suggested penalty figure which can then be adjusted to meet individual circumstances.
- 23 The fact that a Category 1 hazard existed and had not been rectified set the starting level of the fine level at £6,000. The Respondent decided that there were no aggravating factors to increase the level

of the penalty and the fact that the Appellant had eventually complied with most of the Respondent's requirements (but had still not rectified the Category 1 hazard) reduced the potential fine to £5,000.

- 24 The Respondent had regard to the fact that the Appellant was an established and experienced landlord with an interest in or ownership of 5 disclosed properties and also took into account her personal circumstances which indicated that a fine in the region of £5,000 was not unreasonable. They did however make a further reduction to the fine and decided to set it at £4,500.
- 25 The Appellant was notified of the decision to impose the penalty (page 113) and the penalty notice itself (page 164) and has appealed against it. It is noted that following the imposition of the financial penalty the works to install a new heating system were completed in December 2022 (they should have been completed in October 2021) although the motivation for this late compliance may have been assisted by the fact that she had been informed by her agents that unless the heating system in the flat was upgraded she would not be able to achieve a sufficient EPC rating to allow the flat to be let.
- 26 The Appellant's grounds for appeal included the fact that she had been a landlord for over 30 years with no complaints; she was aware of the high cost of energy prices, especially for her current tenant and has even written to the Prime Minister regarding the high cost of electricity compared to gas; the current system was not prohibitively expensive to use, so long as the system was being used correctly and she did not want to install gas fired central heating due to health and safety concerns about using gas appliances, and because gas boilers will soon be "banned". The main thrust of her appeal was that she objected to replacing what she described as a 'state of the art' heating system with a new system and insisted that the flat was comfortably heated.
- 27 No new grounds of appeal or extenuating circumstances were put forward by the Appellant. She gave oral evidence to the Tribunal which comprised a half page of written material essentially repetitive of her written submissions. The Respondent chose not to cross examine her.
- 28 It is noted that the offence is not denied by the Appellant in that she has not challenged the Respondent's findings although she maintains her stance (without supporting evidence) that the flat is adequately heated.
- 29 Taking the above matters into account, the Tribunal considered that the Appellant had not satisfied the Tribunal that she had any viable

grounds of appeal against the offence and that the penalty sum of £4,500 was in the circumstances reasonable.

30 Therefore, having considered the written evidence placed before it, and taking into account the parties' oral observations during the present hearing, the Tribunal determines that it will confirm the Respondent's financial penalty notice imposing a fine of £4,500 on the Appellant, all provisions of which remain extant and in full effect.

31 The Law

Section 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.

Judge F J Silverman as Chairman
04 May 2023.

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. Under present Covid 19 restrictions applications must be made by email to rpsouthern@justice.gov.uk.
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.