

FIRST TIER PROPERTY CHAMBER DECISION



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

<b>Case Reference</b>	:	<b>CHI/18UH/HNA/2022/0025</b>
<b>Property</b>	:	<b>27 Fore Street, Teignmouth, Devon TQ14 8DZ</b>
<b>Applicant</b>	:	Park Green Investments Limited
<b>Representative Director</b>	:	Mr. Stephen Thompson MRICS
<b>Respondent</b>	:	Teignbridge District Council
<b>Representative</b>	:	Marie Downey – Solicitor.
<b>Type of Application</b>	:	Appeal under Paragraph 10 of Schedule 13A of the Housing Act 2004, against a Final Notice and Financial Penalty imposed by the local authority for Failure to comply with an Improvement Notice (Section 30 of the Housing Act 2004.)
<b>Tribunal Judge</b>	:	Tessa Hingston Barrister at Law.
<b>Members</b>	:	Michael J.F. Donaldson FRICS T. Wong – Lay member.
<b>Date of Decision</b>	:	25 <sup>th</sup> May 2023

**Decision of the Tribunal: -**

**It is determined that the financial penalty should be reduced from  
£10,000 to £5,000, for the reasons as set out in detail below.**

## **BACKGROUND.**

1. This case involves a three-storey property in Teignmouth, which has commercial premises on the ground floor and 3 residential units above. The Landlord/Respondent is the Freeholder, Park Green Investments Ltd., whose director and representative is Mr. Stephen Thompson.

2. Mr. Thompson is appealing against a penalty of £10,000, which arose from his alleged failure to comply with an Improvement Notice and which was imposed upon him by a Final Notice dated 20<sup>th</sup> August 2021.

3. The Respondent/Local Authority originally became involved when one of the residential leaseholders/'tenants' contacted them about damp problems to his flat.

4. A summary of key dates in the relevant Chronology is as follows:-

30.03.21 First inspection of the property by local authority Housing officer Kate Dunbar.

22.04.21 Local authority informal letter to S. Thompson re fire hazards etc.

03.08.21 Further visit of Housing officer.

20.08.21 Improvement Notice.

07.12.21 Further visit of Housing Officer.

06.05.22 Notice of Intent to issue a Financial Penalty.

03.10.22 Further visit of Housing officer.

20.10.22 Final Notice of Financial Penalty.

5. Following her inspection in March 2021 Housing Officer Kate Dunbar identified the following issues:

Category 1 Fire hazard

Category 1 Falls on Stairs hazard

Category 2 Damp and Mould hazard.

6. An informal letter was sent to Park Green Investments Limited, the Appellants, and from then on there were a number of contacts between Mr. Thompson and Ms. Dunbar and events as set out in her statement dated 6<sup>th</sup> April 2023 [Page 54 of the bundle.]

7. The repairs and fire safety measures were not completed or carried out to the satisfaction of the Respondents or within the timescale which had been set, and procedures were followed to the point where a Financial Penalty was imposed as referred to above.

8. Mr Thompson did not exercise his right to appeal against the Improvement Notice, but he now appeals both against the decision to impose a financial penalty and against the amount of that penalty. By his Skeleton Argument (undated) he requests that the financial penalty be 'quashed.'

## **9. INSPECTION.**

There was no inspection in this case, and none had been requested by any of the parties.

#### **10. HEARING.**

The hearing took place on the 9<sup>th</sup> of May 2023 at Havant Justice Centre. Mr. Thompson attended in person and the Local Authority solicitor and witnesses appeared by video link.

The Tribunal was provided with a full bundle of documents, including skeleton arguments, statements, reports, exhibits and copies of correspondence. We were also provided (at the hearing) with a complete copy of the Lease for Flat 2.

#### **11. APPELLANT'S CASE.**

The Grounds for the Appeal are set out in the Appeal form which was submitted to the Tribunal with numbered points as follows:-

- 1. The original requirements were excessive and not necessarily required*
- 2. Notwithstanding this we attended to all elements which we were capable of dealing with.*
- 3. This is a private residence built in accordance with building regulations, we cannot economically force entry to a flat privately owned where there is a nutcase living and denying access.*
- 4. Having attended to the work the fine is unwarranted, unnecessary and unfair.*
- 5. Teignbridge has not investigated all the privately owned flats in the town and have unfairly singled us out.'*

**12.** In his Skeleton Argument, in his Response to the local authority's case (Dated 18<sup>th</sup> April 2023 [Page 156 of the bundle]) and in oral evidence the Appellant enlarged upon his objections to the financial penalty and the amount thereof.

**13.** Mr. Thompson confirmed that he was the freeholder and manager of the whole 19<sup>th</sup> Century building, and that he had purchased it in about 1990. The conversion had been carried out in accordance with building regulations. The ground floor is rented as a tattoo parlour. Flat 1 is occupied by Mr. Aaronson, Flat 2 by Mr. Collett and Flat 3 by Mr. Slater, all of whom purchased their flats on 125-year leases.

**14.** Mr. Thompson told the Tribunal that he lives 200 miles away and manages multiple blocks of flats, but Park Green Investments only own two properties in Teignmouth. He has never had a key to the common parts of the building but has an arrangement with one of the tenants for a reduction in service charges in exchange for 'maintenance' of the common parts [email relating to this agreement at Page 177.] The commercial premises have a separate arrangement and do not pay a proportion of the service charges.

**15.** The company does not employ an accountant to do annual accounts: Mr. Thompson said that it was too expensive and he makes no money from this property. Service charges were set according to how much the tenants could afford, and there was no 'sinking' or reserve fund to meet the costs of repairs and maintenance. Invoices were sent out to all three flats but two of them were in arrears and expensive repairs (e.g. to the roof) had had to be carried out at the landlord's own expense.

### **Fire Hazards.**

**16.** Mr. Thompson told the Tribunal that under the terms of their Leases the tenants were responsible for their own entrance doors. [Lease extract, Page 172]. He had informed the tenants that they had to ensure that they had fire-proof doors with self-closers.

**17.** Whilst he acknowledged that the Fire alarm system showed a 'fault' in Flat 2, the Appellant contended that this did not compromise the whole system, and he referred to an extract from Lacors Guidance on Fire Safety Provisions [Page 167] which suggested that separate systems could be recommended in blocks with self-contained flats.

**18.** Mr Thompson argued that he had responsibility only for the '*maintenance and renewal of fire alarms and ancillary apparatus and fire prevention and fire-fighting equipment... in the common parts*'. [Lease extract Page 171].

**19.** He suggested that under the Lease he was not obliged to arrange the repair to the fire alarm within Flat 2, but in any event he had tried his best to comply with the Improvement Notice by repeatedly trying to arrange with Mr. Collett for an engineer to attend the flat and repair that part of the system. Unfortunately the tenant (Mr. Collett) had refused to cooperate and had made it impossible to gain access. [Letters exhibited at Pages 48, 50, 51]

Mr. Thompson said that if he could not get access, even though the Lease might give him a power to enter to carry out repairs, there was little more that he could do: court action against the tenant could cost up to £10,000 and he could not afford it.

**20.** Mr. Thompson considered that the local authority had been 'heavy-handed' and that not all the requirements of the Improvement Notice were necessary, but he had been inundated with work at that time and had missed the deadline for an Appeal.

**21.** In respect of the requirement for a handrail, lighting and smoke alarm in the basement/coal cellar he said that all these were excessive, arguing that none of the flats had their entrances on the ground floor and the tenants had no real need to go down into the basement to read their gas meters because they would all soon have smart meters anyway. He suggested that they didn't need a handrail and they could use their mobile phones for lighting, because if he fitted a light down there it would merely encourage them to store stuff and create more of a hazard on the steps.

Nevertheless, a handrail on the cellar steps had been fitted after the Improvement Notice, and he had actioned the security lighting and the smoke alarm as soon as he could (see point 22 below.)

**22.** Mr. Thompson suggested that there was no need for a sticker warning '*Fire Risk – keep shut*' on the electricity meter cupboard in the common parts because the tenants were well aware of what was in there.

**23.** In respect of the request for Fire Safety certificates Mr. Thompson said that he did have such certificates but was not aware that Ms. Dunbar needed them. He had

informed her that the lights and alarm had been tested [by email dated 6<sup>th</sup> January 2022, Page 175].

**24.** Mr. Thompson gave evidence that a sensor light had been fitted in the cellar by the time of the inspection on 7<sup>th</sup> December 2021, but for some reason it was not working that day. A fire alarm had been ordered but not yet fitted, though it was installed before the final visit in October 2022 and therefore prior to the Final Notice of Financial Penalty on 20<sup>th</sup> October 2022.

**25.** Mr. Thompson accepted that he had ultimate responsibility for ensuring that fire regulations were complied with, but he reiterated that there was little he could do when one of the tenants refused to cooperate.

**26.** Overall Mr. Thompson submitted that the fire risk in this building was low because the tenants were all ‘young guys’ who could make their escape out onto the flat roof if necessary.

**25. Damp and mould – roof leaks.**

Mr. Thompson gave evidence that there had been ongoing problems with the roof, but that he had employed contractors on several different occasions during the last few years to try and resolve the leaks and damp issues. It was difficult to finance major roof repairs because of substantial service charge arrears. At some stages the problem appeared to have been fixed satisfactorily, but then after a while (e.g. at the time of the inspection in December 2021) the roof had just started leaking again. Mr. Thompson denied that he had failed or neglected to deal with the issue and stated that he had done everything possible to resolve it.

**26. Hazards on stairs.**

Mr. Thompson stated that the items stored or placed on the staircases – both the main staircase in the common parts and the ‘cellar’ staircase – were mainly put there by the tenant of Flat 2. He claimed that he had cleared the stairs in response to the Improvement Notice but the tenant merely continued to put items there, despite written warnings [Page 49]. Mr. Thompson argued that it was impossible for him to ensure compliance because he lived 200 miles away.

**27. Appellant’s final submissions.**

The Appellant pointed out that the Financial Penalty had been imposed even though there were only 2 matters left unresolved in October 2022, namely the Fire alarm in flat 2 was not working and there were still some items on the stairs. He submitted that it was unreasonable to penalise him in the circumstances.

**28.** It was also submitted that the Appellant had kept in regular contact with the local authority, emailing Ms. Dunbar to keep her informed of progress and giving likely completion dates for the required works, or explaining the difficulties which he was having in complying with the Improvement Notice. [Emails pages 174 and 175.]

**29.** Mr. Thompson told the Tribunal that he was not involved with any of the other ‘Park Green’ companies, and that Park Green Investments Limited had not filed any accounts for the last two years because they could not afford the accountant’s fees.

He stated that the figure of £490,833 net assets (as per the accounts of 31<sup>st</sup> July 2020) had since been dramatically reduced and the company was now effectively insolvent, with an outstanding mortgage of £65,000 and a floating charge of £400,000. Mr. Thompson gave evidence that the Company owned only two properties including this one, with the maximum equity being approximately £35,000. He expected the Company to be wound up in the next 12 months and the property would be sold to pay off debts. He stated that there was a Possession Order on his own house.

### **30. RESPONDENT'S CASE.**

Ms. Downey, for the Respondent local authority, submitted that they had acted quite properly in this matter and had followed all the correct procedures, using their discretion and being flexible in an effort to ensure that Mr. Thompson had time to comply with the requirements of the Improvement Notice.

**31.** The Respondents submitted a detailed and helpful Skeleton Argument, setting out all relevant guidelines, statutes and regulations pertinent to the matter and explaining the procedure which had led up to the imposition of a financial penalty.

**32.** It was alleged by the Respondents that the majority of the works were not started until after the Improvement Notice in August 2021, despite informal negotiations before that time.

**33.** Statements were provided from Kate Dunbar, Housing Officer [Page 54 of the bundle], Valerie Ward, Senior Housing Officer [Page 112] and Alison Dolley, Private Sector Housing Manager [Page 119]. These statements confirmed that the procedures had been followed correctly and were accompanied by sketches, plans and photographs showing the hazards, as well as scoring system tables, methods of calculating the amount of the financial penalty and explanations thereof.

**34.** Ms. Dolley confirmed that the decision to impose a financial penalty was carefully reviewed and that the Respondents had tried to be fair by allowing quite generous timescales. However, as Mr. Thompson was an experienced manager with an awareness of his legal obligations who had failed to comply fully with the requirements of the Improvement Notice, they considered that these failures were correctly categorised as 'deliberate.'

**35.** Ms. Dunbar gave oral evidence to the Tribunal in addition to her very thorough statement with its detailed chronology of events and its attachments, and she argued that the schedule of works in the Improvement Notice was reasonable and practical.

### **36. Fire Hazards.**

Ms Dunbar referred the Tribunal in particular to the Schedule attached to the Improvement Notice [Page 103] and to her Hazard Report [at Page 68 onwards]. She confirmed that she had identified Fire hazards in connection with the fire alarms, escape routes, fire signage and emergency lighting.

**37.** As for the fault in the fire alarm system in Flat 2, Ms. Dunbar also referred us to the provisions of Lacors Guidance on Fire Safety and to the British Standards on Fire Detection and Alarm Systems.

She stated that the provision for separate systems referred to by Mr. Thompson (point 15 above) was not applicable in this particular (older) type of building, and drew the distinction between 'blocks' of flats and other properties, as well as between 'heat detectors' and smoke alarms. The former only go off in the event of fire and would not give rise to inconvenience to everyone in the building if (for example) one flat occupier burnt toast and set off a smoke alarm.

**38.** Ms. Dunbar stated that because this property had 30-minute separation doors you need a heat detector inside each flat, which in turn alerts everyone in the building in the event of a fire.

**39.** Ms. Dunbar submitted that Mr. Thompson was mistaken, and the fault with the alarm in Flat 2 *would* compromise the safety of the whole building. She accepted that Mr. Thompson was not obliged to pay for the repairs to the alarm inside Flat 2, but she argued that he had responsibility for the overall safety of the building and powers under the Lease and the Landlord and Tenant Act to require the works to be done.

**40.** All the doors into the common parts (including the cellar door) were required to have self-closers, but the cellar door was sticking on the carpet.

**38.** It was reiterated that Mr. Thompson as freeholder had responsibility for fire safety compliance in the common parts of the building, and he could not 'contract out' of that obligation.

**39.** Ms. Dunbar stated that the sticker on the door of the meter cupboard was not 'trivial' as Mr. Thompson suggested: the door was ajar during her inspection and it was important to keep it shut because fire could originate there or (if it originated elsewhere) fire could get to the electricity supply.

#### **Damp and Mould – roof repairs.**

**40.** Ms. Dunbar submitted that there had apparently been a history of problems with the roof of this building which dated back to 2012. She had not suggested a full replacement roof: she had simply required that the damp and mould problem in Flat 3 should be resolved, which was reasonable in the circumstances. It was suggested that the issue could potentially cause harm to the mental health of the tenant, although there was no direct evidence to that effect: it was simply said that he 'came across' as 'concerned and worried'.

#### **Hazards on Stairs.**

**41.** The photographs exhibited on behalf of the Respondents showed a quantity of items and obstructions on the common staircase and on the steps to the coal cellar. Ms. Dunbar commented that escape routes had to be clear of objects and should be kept 'protected and secure and sterile'.

**42.** It was alleged that although Mr Thompson had required the tenants to clear the common areas/stairs, some items appeared to have remained in place throughout the process.

#### **Respondent's final submissions.**

43. Ms. Downey submitted that in this case the works required were reasonable and appropriate, all procedures had been followed correctly and the financial penalty was fair and proportionate.

### **TRIBUNAL FINDINGS.**

44. Firstly Mr Thompson's allegations against the local authority in general and the Housing Officer in particular were unfounded. His comments about their motives and their methods were unnecessary and disrespectful. The Tribunal found no evidence that the actions of the respondents were anything other than professional and objective.

45. Under Paragraph 13 of Schedule 13A of the Housing Act 2004 (see Appendix of Relevant Law hereafter) the case is a re-hearing of the local authority decision. The Tribunal may confirm, vary, or cancel the Final Notice of Financial Penalty.

46. Applying the criteria in the Annex to the Directions of 7<sup>th</sup> February 2023 [Page 16 of the bundle] which derives from the Department of Communities and Local Government guidance note as to civil penalties [Pages 121-122], The Tribunal proceeded to consider the following questions : -

47. Whether we were satisfied beyond reasonable doubt that a 'relevant housing offence' had been committed' (Section 249A Housing Act 2004).

**In this case, despite some efforts to carry out the necessary works, we were satisfied that Mr. Thompson had failed to comply with the Improvement Notice fully and/or within the timescale set.**

48. Whether the authority had complied with all necessary requirements and procedures for financial penalties relating to the imposition of a financial penalty (Section 249A as above and Schedule 13A of the said Act.)

**The Tribunal was satisfied that the local authority had followed the correct procedures in this matter.**

49. Level of Financial Penalty – i.e. Whether the financial penalty was set at the appropriate level, having regard to any relevant factors, which may include:-

a) the offender's means.

The Tribunal considered Mr. Thompson's means as indistinguishable from those of his company, Park Green Investments. The evidence was that he and the company were both in straitened circumstances, with very little in the way of capital assets and limited income from service charges.

Mr. Thompson's Statement of Means [at Page 26] gives his income as £1,500 per month and his outgoings as £3,050 pm. We were told that there was a Possession Order on his house. The Company's assets are outlined at Paragraph 26 above. The Service charge Invoices were taken into account [see Page 179], as was Mr. Thompson's letter to tenants of 11<sup>th</sup> March 2020 [Page 178] in which he invited them to consider what repairs and works they agreed on and how much they were willing to pay for them. Overall it was apparent to the Tribunal that Mr. Thompson, with his professional knowledge and experience, should have made provision for service charges which properly reflected the outgoings and likely expenses of maintaining a



building of this kind, but the reality is that he has (for the last few years at least) collected insufficient monies for that purpose.

b) the severity of the offence.

The Tribunal had regard to the 'Housing Health and Safety Rating System' [Page 95], the Notes attached to the Improvement Notice as to 'Category of Hazards' [Page 105], the hazard scoring system as set out by the local authority, and the detailed Inspection reports submitted by Ms. Dunbar.

Taking the 'Calculation of Civil Penalty' document and the table [Page 41 in the bundle] as the main points of reference, The Tribunal agreed with the categorisations as follows:-

i) that the overall Fire hazard was a 'Level 1 – Major impact' offence, because of the remaining potential danger to occupants of the building. The Tribunal confirmed the score (as at October 2022) for this hazard - **... 5 points**

ii) the 'Falls on Stairs' hazard was still a 'Level 2 – Serious impact' as of the same date, so the score was confirmed - **... 3 points**

iii) the 'Damp and mould' hazard had been resolved by October 2022 so the score was confirmed as - **... 0 points.**

c) Culpability of the offender

It was apparent to the Tribunal that Mr. Thompson took a casual attitude to the RICS guidelines and statutory requirements as to management in general and that he had, by not having a key to the common parts of the building, effectively abdicated his responsibility for maintenance of the same (including the fire safety aspect.)

However, the evidence suggested that Mr. Thompson had been willing to address the issues from the outset, as per his acknowledgement of the Improvement Notice and expressed intention to carry out the works within 2 months [Page 110] and his continuing correspondence with Ms Dunbar [Pages 174, 175 and 177].

In Ms Dunbar's original 'informal letter' of 22<sup>nd</sup> April 2021 to Mr. Thompson after the first Inspection [Page 78] she thanked him for his 'assistance' in working with her to reduce the risk of fire, and referred to the fact that he had purchased temporary 'detectors' to address the immediate problem.

The evidence as a whole showed that initially the fire hazards may have arisen as a result of Mr. Thompson's negligence in failing to visit and ensure compliance with safety requirements, but latterly his genuine efforts to deal with the fire alarm had been foiled by the obstructive tenant in Flat 2 [evidence Pages 47-51].

There was also evidence that Mr. Thompson had tried to ensure that the tenants had cleared obstructions from the stairways, and that he had not ignored the local authorities concerns in this respect. Similarly, the evidence was that contractors had repeatedly attended the premises and tried to resolve the damp problems from the leaking roof.

Although a number of assurances were given during the relevant period and there were delays and deadlines that were missed, the Tribunal found that Mr. Thompson's failure to comply with the local authority's requirements was not 'deliberate' or even 'reckless', but was somewhere between "negligent" and 'low culpability'. The notes as to 'Culpability of the offender, exhibited by the Respondents at Page 122, specifically

state that '*Low or no culpability*' may be found where there is some fault on the part of the landlord but there are other circumstances – '*...for example obstruction by the tenant to allow a contractor access for repairs...*'

The Tribunal thus disagreed with the Respondent's categorisation of culpability as 'Reckless' with a score of 15 points, and categorised it instead as 'Negligent/low culpability', with a score of - **...6 points.**

d)The offender's track record and previous offences (if any).

The Tribunal could not see the logic of applying an additional '10 points' for an offender who had *no* track record and no previous offending. It would seem far more logical for a landlord who *did have a* previous offence to be given a score of 10 points on the next occasion, and 20 points thereafter. Nevertheless, the guidance Notes appear to confirm that this is the system and the Tribunal did not seek to challenge it. There was no suggestion that Mr. Thompson had ever offended previously, and therefore the Tribunal simply confirmed the arbitrary addition (for this category) of -

**...10 points.**

e) Hazards affect more than one household.

This was not in dispute. The Tribunal confirmed a score of -

**...10 points.**

f) the harm (if any) caused to the tenant.

Having regard to the guidance [Page 123], the Tribunal considered both harm and potential harm, and it was confirmed that none of the tenants fell into any of the 'vulnerable' age groups for the purposes of the different hazards. It was acknowledged that the tenants would have been inconvenienced and worried about the damp to the ceiling in Flat 3, but the Authority's proffered view that this would have harmed their 'mental health' was not supported by any medical evidence and was purely speculative. There was the *potential* for harm from the obstructed stairways, and the lack of a working alarm in Flat 2, but that potential 'danger' had already been accounted for under point 49(b)(i) above: 'Level 1 – Fire Hazard – Major Impact'. Any actual harm to the tenant in Flat 3 as a result of the damp problems had been resolved by the time of the inspection in October 2022, so the Tribunal found that the situation would be correctly reflected by a score of -

**...0 points.**

**The Tribunal therefore determined that the total score for the purpose of assessing the appropriate level of the financial penalty in this case was **...34 points.****

g) the need to punish the offender and deter repetition and/or offending by others.

The Tribunal was satisfied that Mr. Thompson's experience of the process would act as an effective deterrent in the future. Although the imposition of this type of financial penalty is not generally in the public domain, other landlords in the Teignmouth area may become aware of the case and take steps accordingly.

h) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

There was no evidence that Mr. Thompson had obtained any financial benefit in this case.

**50. Having considered the guidance as to any reductions to be made [Page 125] , the Tribunal did not make a separate deduction for ‘financial hardship’. However, it was noted that the local authority had taken into account the value of properties in the Teignmouth area and the Company accounts from 2020 in assessing the financial means of the offender for the purpose of calculating the appropriate level of penalty. The Tribunal found that a lesser penalty was appropriate because of the evidence that the property was heavily mortgaged and the company assets were no longer as substantial as they had been 2-3 years ago.**

**51. CONCLUSION.**

**Using the ‘scoring chart’ for Financial penalties [Page 125] the Tribunal determined that the assessed score of 53 points in October 2022 was at the bottom end of the bracket (51 – 60 points) and a financial penalty of £10,000 was too high. The Tribunal’s score was 34 points, at the bottom end of the bracket 31-40 points, and in all the circumstances of the case a Financial Penalty of £5,000 was appropriate.**

**Tribunal Judge Tessa Hingston  
25<sup>th</sup> May 2023.**

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**RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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.