



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

Case Reference : **BIR/00CS/HNA/2023/0007**

Property : **6 Morris Street, West Bromwich, B70
7SN**

Applicant : **Mr Badrul Mohammed Islam
(Litigant in Person)**

Respondent : **Sandwell Metropolitan Borough Council**

**Type of
Application** : **Appeal against a financial penalty under
s.249A of the Housing Act 2004**

Tribunal Members : **Judge C Payne
Mr R Chumley-Roberts, MCIEH, J.P.**

**Date of Inspection
and Hearing** : **20 September 2023**

Date of Decision : **26 September 2023**

DECISION

Decision of the Tribunal

1. The decision by the respondent to impose a financial penalty is upheld. The total of the penalty originally amounted to a sum of £5,000. For the reasons set out below the Tribunal has determined that the financial penalty of £5,000 should be confirmed.
2. In the light of the above, the appeal made by the Appellant against the imposition of a financial penalty imposed by the Respondent against him and his wife, Mrs Nurjahan Mita Islam, under section 249A and schedule 13A of the Housing Act 2004 is therefore dismissed and not allowed.

Introduction

3. The Applicant, Mr Badrul Mohammed Islam, appeals against the imposition of a financial penalty imposed by the Respondent, Sandwell Metropolitan Borough Council, pursuant to s. 249A of the Housing and Planning Act 2016. The appeal was lodged by the Applicant on 18 March 2023 and the matter was heard by the Tribunal on 20 September 2023.
4. The civil penalty of £5000 was imposed on the Applicant and his wife, Mrs Nurjahan Mita Islam, as joint owners of the Property by reason of the Applicant and his wife's failure to comply with an Improvement Notice served under s.11 and s12 of the Housing Act 2004. There was no dispute that there was a failure to challenge the Improvement Notice by way of appeal and, as such, section 15(6) of the Act deems an appeal notice to be conclusive as to the matters that could have been raised on appeal. The Tribunal could not, therefore, consider whether any of the relevant works identified in the notice were works that were properly the subject of an Improvement Notice.
5. The Respondent wrote to the Applicant and his wife on 5 January 2022 raising concerns about the condition of the Property. An inspection took place on 19 May 2022 and an Improvement Notice was served on 16 June 2022, which required repair works to be begin by 20 July 2022 and the stated works to be completed by 18 August 2022. The Property was inspected on 6 October 2022 at which time 17 items, constituting 3 Category 1 Hazards and 4 Category 2 Hazards, listed in the Improvement Notice had not been addressed.
6. The Respondent served notice of an intention to impose a financial penalty on 12 January 2023 and subsequently imposed that penalty on the 16 March 2023.
7. The financial penalty was imposed by the Respondent on the Applicant and his wife due to their failure to commence the required works by 20 July 2022 and indeed, to complete them by 18 August 2022.

The Law

8. In order to impose a financial penalty, there must be a "relevant housing offence" committed by the person served with the notice.
9. Section 249A of the 2004 Act provides:

“249A Financial penalties for certain housing offences in England

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.

(a) *In this section “relevant housing offence” means an offence under—
section 30 (failure to comply with improvement notice),*

...

(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.

...

*(6) Schedule 13A deals with—
the procedure for imposing financial penalties,
appeals against financial penalties,
enforcement of financial penalties, and
guidance in respect of financial penalties...”*

10. The “relevant offence” relied upon in this case is a failure to comply with an Improvement Notice under s.30 of the 2004 Act. The relevant provisions are:

30 Offence of failing to comply with improvement notice

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.

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);*
- (b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and*
- (c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).*

...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice...”

11. The questions the Tribunal must consider are:

- a) Whether the Tribunal is satisfied beyond reasonable doubt that the offence has been committed.
- b) If an offence is found to have been committed, the question then arises as to whether, on the balance of probabilities the Applicant has a defence.
- c) There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section. 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.
- d) The final consideration is whether the penalty imposed is for an appropriate sum.

The Inspection

12. The Tribunal attempted to inspect the Property on the morning of 20 September 2023 but were unable to gain access due to the current tenant being unavailable to grant access. The Tribunal were able to conduct a limited inspection of the exterior of the Property, which is a semi-detached property consisting of 3 bedrooms, a living room, kitchen and bathroom with parking to the front and a garden to the rear.
13. During the course of the inspection the Tribunal noted that the Applicant still did not appear to have undertaken the works to replace the missing mortar to the verge of the gable end which was an item identified in the Improvement Notice.

The Applicant's Case

14. The Applicant confirmed that 17 items on the Improvement Notice were not completed by 18 August 2022 and remained outstanding at the time of the inspection on 6 October 2022.
15. The Applicant submitted that all works were now complete and that a builder had undertaken the required work to the roof, though no evidence of the engagement of the builder or other professionals being engaged to undertake the works was available.
16. The Applicant submitted that the tenants of the property refused to allow access to his contractors to complete works and, in particular, in the period from 16 June 2022 to 18 August 2022 he was unable to gain access to complete the works. The Tribunal were presented with evidence of a gas engineer being unable to gain access in May 2022, prior to the issue of the Improvement Notice. No evidence was available to demonstrate that access had been requested and refused at any particular time during the period of 16 June 2022 to 18 August 2022 or that any contractors had been commissioned to complete the outstanding works during that time.
17. The Applicant submitted a letter purporting to be from one of the tenants dated 10 August 2022 in which the tenant apologised for '*not answering the front*

door during the day time on the many occasions that the electricians and building surveyors etc were sent to my house... All other communications with the Tenant, save for a final notice terminating the tenancy were either verbal or via WhatsApp text service. The tenant subsequently denied over the course of a number of emails to the Respondent that they had sent that letter. In any case, the letter makes reference to no specific appointment and references only electricians and building surveyors, neither of which are likely to have been appointed to carry out the outstanding works. As such, the Tribunal finds that there is no evidence of the Applicant having made any attempt to carry out the outstanding items of work under the Improvement Notice during the relevant period.

18. The Applicant provided receipts for electrical components, which he used to carry out some of the works listed in the Improvement Notice between 16 June 2023 and 18 August 2023. There was no evidence before the Tribunal demonstrating that components were purchased to address the outstanding items in the Improvement Notice.
19. The Applicant felt that some items listed in the Improvement Notice resulted from damage caused by the tenants or were the tenants' responsibility. However, agreed that no action had been taken to challenge the Improvement Notice.
20. The Applicant drew the Tribunal's attention to an email sent to the Respondent by Nicola Richards MP on behalf of the Applicant on 9 February 2023 in which she expressed surprise that a fine has been issued where, in other cases, considerable periods of time were allowed for issues to be addressed. The Tribunal noted that the issues were initially raised with the Applicant in January 2022 and had not been addressed 10 months later when the inspection took place in October 2022. The Tribunal finds that substantive time was allowed by the Respondent for the Applicant to complete the works before the Penalty was imposed.
21. The Applicant provided evidence that his average weekly income from employment was £309.52. He also received an income of £850 per month from the Property and some limited income from a car sales business. This placed his weekly income in excess of £500. The Applicant has no other rental properties.

The Respondent's Case

22. The Respondent submitted that the Applicant had admitted to committing the offence as items of work were not completed by 18 August 2022 and that no relevant defence had been raised.
23. The Respondent provided copies of emails from the Tenant denying that she had written the letter in August 2022 apologising for not providing access. The Respondent submitted that the Applicant had failed to establish any defence.
24. The Respondent submitted that the penalty had been calculated by reference to the Council's policy. The charging table for determining Financial Penalties under the 2004 Act that has been adopted by the Respondent was devised by

the West Midlands Housing Enforcement Practitioners Group, which consists of a number of West Midlands local authorities.

25. The Respondent submitted that the starting point for a first offence was a penalty of £5,000. It was open to the Respondent to add an additional £2,500 as multiple category 1 and category 2 items remained outstanding. However, the Respondent chose not to apply this uplift. Also, as the Property is jointly owned by the Applicant and his wife, the £5,000 penalty was split, with each being allocated a fine of £2,500. The Respondent noted that the representations made by the Applicant following the Notice of Intention issued in January 2023 were taken into account and contributed to the decision not to apply the uplift to the penalty.

Discussion

26. As there is a criminal offence at the heart of the jurisdiction to impose a financial penalty, the Tribunal must be satisfied beyond reasonable doubt of the commission of the offence.
27. The Applicant accepted that a number of the required works remained outstanding as at 18 August 2022 and at the date of the inspection on 6 October 2022. The photographic evidence from the inspection on 6 October 2022 showing items of incomplete works was accepted. There could, therefore, be no doubt that the works required were not completed by the required date.
28. Tribunal is satisfied beyond reasonable doubt, based on the Applicant's own admission, that the works required by the Improvement Notice had not been completed by 18 August 2022 and remained outstanding at the date of the inspection on 6 October 2022.
29. The question then arises as to whether the Applicant has a defence to the commission of the offence, which he need establish only on the basis of a balance of probability. In this case, the Applicant was clearly able to gain access to the Property to carry out some of the works during the relevant period and there was no evidence before the Tribunal that attempts had been made to undertake the outstanding works. A general letter purporting to be from the tenant was produced but the communication made no reference to any specific attempt to gain access for a particular purpose and the tenant denied on a number of occasions, writing the letter. There was no evidence of any items being purchased or contractors engaged to seek to address the outstanding issues and the Tribunal noted upon inspection that at least one item (an external repair where access via the tenants was not required) still remained outstanding. That being the case, the Tribunal finds that, on the balance of probabilities, the Applicant has failed to establish that the tenants prevented him from undertaking the outstanding works during the relevant period to 18 August or before the inspection on 6 October 2022. As such, no reasonable excuse was established for having not complied with those works by the date of the inspection on 6 October 2022.
30. It matters not whether, as contended by the Applicant, the works could not have been commenced in time, because put simply, they were not completed in time.

The wording of section 30(2)(a) creates an offence where the works are not commenced, or completed, in time.

31. There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section. 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act. Dealing with those requirements in Schedule 13A:
- a) Paragraph 1 – this requires a local housing authority to give notice of its intention to impose a financial penalty upon a person under s.249A, and in this case, this was done as noted in paragraph 6 above, on 12 January 2023;
 - b) Paragraph 2 – the notice of intention must be given before the end of six months beginning with the day on which the authority has sufficient evidence of conduct to which the penalty relates and, given that the notice of intention was issued on 12 January 2023 and the inspection at which the evidence was gathered that works had not been completed took place on 6 October 2022, this is within the required period;
 - c) Paragraph 3 – the notice must set out the amount of the penalty, the reasons for imposing it and the right to make representations – all of this detail was included within the notice as produced before the Tribunal and which it is accepted by the Applicant was served upon her;
 - d) Paragraph 4 – there is a right to make representations regarding the intended imposition of the penalty within 28 days after the notice of intention is served and in this case, such right was given and duly exercised by the Applicant;
 - e) Paragraph 5 – the Respondent is required to decide, having considered the representations, whether to proceed to impose the penalty and, if so, in what amount – again, in this case, this was done;
 - f) Paragraph 6- if imposing a penalty, the authority must issue a final notice, which was done in this case and sent under cover of letter dated;
 - g) Paragraph 7 - the final notice must require payment within 28 days after the day on which it was given – in this case, that requirement was imposed and set out at the bottom of the first page of the notice;
 - h) Paragraph 8 - the final notice must set out (a) the amount of the penalty (which it did, in the sum of £5000, split between the Applicant and his

wife as joint owners of the Property, (b) the reasons for imposing the penalty (which it did, on the first page), (c) information about how to pay the penalty (which it did) (d) the period for payment of the penalty (which it did, stated as 28 days from the date of the notice), (e) information about rights of appeal (which it did), (f) the consequences of a failure to comply with the notice (which it did, with an indication that the matter will be referred to the county court and enforced by the county court bailiff).

32. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the offence under s.30 of the 2004 Act has been committed and that the procedural requirements of s.249A and Schedule 13A of the 2004 Act have been complied with. Further, it is satisfied that no defence is made out, whether on the balance of probability or otherwise. Accordingly, the Respondent was entitled to impose a financial penalty and that the Tribunal should support that decision, which it does.
33. Turning then to the penalty of £5,000 that was imposed. This is the amount stated as the starting point for a first offence. The Respondent may have increased the amount by a further £2,500 but, taking into account the submissions made by the Applicant chose not to do so and to split the fine between the Applicant and his wife as joint owners. The Applicant is not entitled to a further reduction under the policy as his income is not such that he would be deemed unable to pay the full sum and therefore entitled to a discount.
34. The Tribunal has considered the Respondent's Financial Penalties Policy, including the matrix table, which takes into account a number of factors. It is correct to say, as the Respondent does, that the starting point under the policy for a first offence, as this was, is £5,000 and that there is a premium of £2,500 that ought to be added for actions for multiple category 1 and category 2 hazards.
35. The Respondent's position is that the fine of £5,000 split between the Applicant and his wife remains a fair and appropriate level under the circumstances. The Tribunal agrees and takes the view that it would be unfair in this case to increase the penalty at this stage.
36. Accordingly, the Tribunal confirms the financial penalty imposed by the Respondent of £5,000, which is split between the Applicant and his wife, both being required to make payment of £2,500.

Right of Appeal

37. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

38. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
39. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
40. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Judge C Payne
First-tier Tribunal (Property Chamber) (Residential Property)