



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

**Case Reference** : **CHI/45UH/HNA/2023/0012**

**Property** : **Flat 6 44 Rowlands Road Worthing  
BN11 3JT**

**Applicant** : **Tiripati Hridata Property Investments  
Limited**

**Respondent** : **Adur & Worthing Councils**

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

**Tribunal Members** : **Judge H Lumby  
Mr C Davies FRICS**

**Venue** : **Havant Justice Centre, Elmleigh Road,  
Havant, Hampshire PO9 2AL**

**Date of Hearing** : **27 November 2023**

**Date of Decision** : **20 December 2023**

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**DECISION**

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## **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 £6,000. For the reasons set out below the Tribunal has determined that the financial penalty should be £5,000.
- 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 it, under section 249A and schedule 13A of the Housing Act 2004, is therefore allowed to the extent of the amount of the financial penalty being reduced to £5,000 but is otherwise dismissed.

## **Introduction**

- 3.** The Applicant appeals against the imposition of a financial penalty imposed by the Respondent pursuant to s. 249A of the Housing and Planning Act 2016. The appeal was lodged by the Applicant on 23 June 2023 and the matter was heard by the Tribunal on 27 November 2023.
- 4.** The civil penalty of £6,000 was imposed on the Applicant as owner of the Property by reason of the Applicant'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 first served an abatement notice on 27 May 2022, on the same day serving a notice of intention to carry out an HHSRS inspection. That inspection was carried out on 31 May 2022. This revealed a number of hazards and an Improvement Notice was served on 21 July 2022. The stated works were to be completed by 1 October or 1 November 2022, depending on their urgency. The Property was inspected on 12 January 2023 at which it was identified that a number of items listed in the Improvement Notice had not been addressed.
- 6.** The Respondent served notice of an intention to impose a financial penalty on 14 March 2023 and subsequently imposed that penalty on 26 May 2023.
- 7.** The financial penalty was imposed by the Respondent on the Applicant due to its failure to complete the required works by 1 October or 1 November 2022.

8. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the Respondent enabled the Tribunal to proceed with this determination.
9. This has been a determination following a hearing on 27 November 2023. The documents that the Tribunal was referred to are in a bundle of 253 pages, the contents of which included details of the issues found on inspection by the Respondent, copies of the improvement notice and details of steps taken to comply with it as well as the methodology used to calculate the financial penalty. The contents of all these have been noted by the Tribunal.
10. The Tribunal heard from Mrs Archana Patel and Mr Philip Goacher on behalf of the Applicant. Mrs Patel was now running the Applicant company following the sad and sudden death of her husband. Mr Goacher was assisting the Applicant in ensuring that the required works were carried out. We also heard from Mrs Shelley-Ann Flanigan and Ms Jo Vickery from the Respondent. Mrs Flanigan is an in-house legal representative and Ms Vickery is a private sector housing officer. Mr Bruce Reynolds of the Respondent was also in attendance but did not contribute.
11. Having considered all of the documents provided and heard the submissions of the parties, the tribunal has made determinations on the issue as follows.

### **The Law**

12. In order to impose a financial penalty, there must be a “relevant housing offence” committed by the person served with the notice.
13. 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...”*

14. 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..."*

15. 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 Applicant's Case**

- 16. The Applicant confirmed that an Improvement Notice had not been complied with. She accepted that an offence had been committed for the purposes of section 30 of the 2004 Act.
- 17. Mrs Patel explained that her husband had passed away on 14 May 2022, shortly before the Respondent had begun serving notices in relation to the Property. She had taken over running the Applicant company but had no relevant

experience or expertise. She did not receive initial notices and claims not to have been aware of these until October 2022. Once aware, she had sought to find builders to carry out the required works. She said that builders were very busy and she had struggled to obtain quotations or to get work done. She had therefore appointed Mr Goacher to assist. As a result the works would begin in January 2024.

18. She felt that the penalty was too high. She had been left on her own with three children to support. She had done her best to make improvements; the works would begin in January 2024. She also contended that she was facing substantial financial pressures; although the Applicant owned fifteen properties, there was substantial borrowing on these and she was facing pressure from the lenders to pay them. On the other hand there were tenants defaulting in rent, for example the occupier of Flat 6 at the Property had not made payments since 2022.
19. Overall, she argued that she was doing her best and requested help.

### **The Respondent's Case**

20. The Respondent explained that as the Applicant had admitted to committing the offence, it would not spend time demonstrating the offence. However, it argued that there was no reasonable excuse, all procedures had been complied with and the penalty was appropriate, given the property had been owned for a long time.
21. The Respondent submitted that the penalty had been calculated by reference to the Council's policy, utilising the charging table for determining Financial Penalties under the 2004 Act that had been adopted by it.
22. The Applicant's culpability was moderate as a landlord with reasonable care would not have committed the offence. Particular attention was drawn to the excessive cold in Flat 6 as there was no central heating and the heaters provided were very expensive to run. This led to a harm rating of high. Taken together, this would lead to a score of 6 on their financial penalty matrix, which would trigger a fine of £6,000.
23. There were however aggravating factors which the Respondent argued should be taken into account. The length of ownership meant that proper processes should have been in place, the Applicant was aware of the notice from at least October 2022 and had failed by the date of the hearing – over one year later – to remedy the breaches.
24. The Respondent however accepted that there were some mitigating factors, notably the death of the sole director, Mrs Patel's husband, in May 2022. These had the effect of cancelling out the aggravating factors, leaving the penalty as £6,000.

### **Consideration**

25. 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.
26. The Applicant accepted that a number of the required works remained outstanding as at the date of the hearing. The Improvement Notice required the works to be completed by 1 October 2022 or 1 November 2022. There could, therefore, be no doubt that the works required were not completed by the required dates.
27. The Tribunal is therefore satisfied beyond reasonable doubt, based on the Applicant's own admission, that the works required by the Improvement Notice had not been completed by the required dates.
28. The question then arises as to whether the Applicant has a defence to the commission of the offence, which it needs to establish only on the basis of a balance of probability. In this case, Mrs Patel has argued that she was distracted by having to deal with the death of her husband, was not aware of the notices for some time, was not experienced in running a property company and had difficulties finding builders. All of these are mitigating factors in assessing the level of the financial penalty but do not amount to an excuse for failing to comply with the Improvement Notice. As such, no reasonable excuse was established for having not complied with those works by the required dates.
29. 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.
30. 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 above, on 14 March 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 14 March 2023 and the inspection at which the evidence was gathered that works had not been completed took place on 12 January 2023, 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 on 26 May 2023;
  - 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 in the notice;
  - h) Paragraph 8 - the final notice must set out (a) the amount of the penalty (b) the reasons for imposing the penalty (c) information about how to pay the penalty (d) the period for payment of the penalty (e) information about rights of appeal (which it did) (f) the consequences of a failure to comply with the notice. All these requirements were complied with.
31. 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.
32. The Tribunal then turned to the penalty of £6,000 that was imposed. This is the appropriate amount stated as the starting point where there is a moderate level of culpability and high level of harm. The Respondent then increased this amount to take account of aggravating factors and reduced it back to the starting point to reflect mitigating factors.
33. The Tribunal has considered the Respondent's Financial Penalties Policy, including the matrix table, which takes into account a number of factors. The Respondent argues that the correct assessment where there is a moderate degree of culpability and a high degree of harm is a starting point of £6,000. The Tribunal agrees with these assessments as to culpability and harm and the

resulting starting point.

34. The Tribunal also agrees that the fine could be increased to take account of aggravating factors and reduced again by mitigating factors. However, the Tribunal considers that insufficient weight was given by the Respondent to mitigating factors. The Applicant may have existed for a reasonable length of time but Mrs Patel was inexperienced at managing properties and was clearly on a steep learning curve whilst dealing with competing demands and coping with bereavement and a young family. It is difficult to obtain builders and it is clear that she was doing her best. It therefore takes the view that an additional £1,000 should have been added to the mitigating factors. This would have reduced the penalty from £6,000 to £5,000. The Tribunal considers this to be a fair and appropriate level under the circumstances.
35. Accordingly, the Tribunal determines that the financial penalty imposed on the Applicant by the Respondent should be £5,000.



### **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)
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.