



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

Case Reference(s) : **BIR/00CN/HNA/2023/0025**

Property : **35A Weston Road Stafford ST16 3RL**

Applicant : **Mohammed Abu-Bakar**

Representative : **Aman Solicitors**

Respondent : **Stafford Borough Council**

Type of Applications : **Appeal against Financial Penalties - Section 249A & Paragraph 6 of Schedule 13A to Housing Act 2004.**

Tribunal Members : **N Wint FRICS**
R Chumley - Roberts MCIEH, J.P

Date of Decision : **15 October 2024**

DECISION

BACKGROUND

1. This is the Tribunal's determination in respect of an appeal made by Mohammed Abu-Bakar as Applicant against a financial penalty amounting to £9,000 under section 249A and Schedule 13A of the Housing Act 2004.
2. The penalty was issued by the Respondent, Stafford Borough Council.
3. The Council issued a Final Notice confirming the issue of a Financial Penalty on Mr Abu-Bakar dated 18 September 2023. The Notice stated the Council was satisfied that the Applicant had committed an offence under section 30 of the Housing Act 2004 in relation to the Property.
4. Prior to this the Council had served an Improvement Notice dated 16 August 2022 on Mr Abu-Bakar effective from 9 September 2022. Following an inspection on 31 October 2022 the Council established that the Notice had not been complied with resulting in an offence under section 30 of the Housing Act.
5. On 17 February 2023 a Notice of Intent to Issue a Financial Penalty was sent to the Applicant. Representations were received from the Applicant which the Council considered and found there was no justification not to serve a Final Notice.
6. The Council's proposed financial penalty is £9,000 payable within 28 days of the Final Notice. Details of how the penalty was calculated is attached as Schedule 1 to the Notice and has regard to not only the severity of the offence but also associated aggravating and mitigating factors.
7. Mr Abu-Bakar submitted an appeal to the First-tier Tribunal Property Chamber dated 19 October 2023. The Tribunal issued its Directions dated 27 October 2023 and the matter was listed for an inspection and hearing on 12 March 2024 but due to technical difficulties was reconvened on 5 June 2024. Note: although the appeal was received outside the period of 28 days as specified in Rules 27(1) and (2) of the Tribunal Procedure Rules the Tribunal extended time for the matter to be heard.
8. The Tribunal received written submissions from the parties and heard further evidence at the hearing.

Submissions of the Applicant

9. The Applicants Witness Statement dated 24 January 2024 confirms he first became aware of the financial penalty following the receipt of a letter dated 18 September 2023 and is aware that the penalty arises from the failure to

comply with the Improvement Notice dated 8 August 2022.

10. The Applicant is the tenant of the Property and states he had intended to open a restaurant on the ground floor however was unable to trade from the property due to the Covid 19 pandemic and is currently seeking to surrender the lease. He also confirms he has sublet the maisonette to Ms Aston for residential purposes. The rent was set at £600 per month however, there is no written agreement in place and the Applicant states Ms Aston is now in arrears to the amount of £10,800 and as a result is seeking possession for non-payment.
11. The Applicant states that he when he was made aware that the Property was in disrepair he tried to remedy such matters when possible. The Applicant also states that having received the Notice setting out a Schedule of Recommendations he contacted Ms Aston to make arrangements to attend to the matters and that his builders had completed the works required to the satisfaction of Ms Aston.
12. The Council had also carried out a subsequent inspection and were satisfied that some of the works had been undertaken but that the following remained outstanding:
 - Stair treads on the ground floor
 - Light fitting above ground to first floor stairway
 - Electric shower unit not properly connected and had no temperature control
13. The Applicant also stated that he considered these outstanding issues 'modest' but despite this has tried to contact Ms Aston on several occasions without success in order to carry these additional repairs out. To that extent the Applicant stated he thought it more convenient if Ms Aston moved out first before carrying out the necessary works.
14. The Applicant therefore suggests there are mitigating factors in relation to the lack of cooperation from Ms Aston in allowing him access to carry out the repairs in addition to the non-payment of rent, a lack of knowledge of the laws, the fact he lives some distance away in Birmingham and that he is seeking possession of the flat all of which are contributing to a significant financial loss.

Submission of the Respondent

15. Chris Butcher of Stafford Borough Council has provided a Witness Statement to the Tribunal dated 14 December 2023 and further statement dated 15 June 2023.
16. In the first statement, Mr Butcher states he is lead officer for Housing

Standards at Stafford Borough Council and is a qualified Environmental Health Officer and member of the Chartered Institute of Environmental Health.

17. The Respondent set out the background to its decision to impose the financial penalty on the Applicant.
18. The Council received a complaint of poor housing standards and spoke with the tenant who advised that the landlord was unwilling to address the disrepair issues.
19. The Council carried out various investigations and eventually made contact with Mr Abu-Bakar who was identified following a land registry check as the landlord. The Council states that following the initial contact it was evident Mr Abu-Bakar had little understanding or knowledge of housing law and explained he had let the upper floors for residential purposes to recoup some money he was paying in rent having been unable to open the ground floor as a restaurant due to the Covid 19 restrictions.
20. On the 15 August Mr Butcher inspected the Property and undertook a Housing Health and Safety Rating System assessment. To that extent, Mr Butcher noted a number of serious hazards as follows:
 - External door did not lock properly and could not be secured against intruders – Category 1
 - Stairs from ground floor to first floor in poor condition – Category 1
 - Heating boiler regularly losing pressure and heating inadequate as well as no working thermostatic valves, no gas safety certificate, loft access hatch missing, gaps around pipework into loft space – Category 1
 - No working smoke alarms, and fire escape route impeded – Category 2
 - Electric shower units not working and leaking/ mixer valve leaking and no thermostatic control – Category 2
 - WC not secured properly to floor – Category 2
21. As a result, Mr Butcher served an Improvement Notice on 16 August 2022 requiring the remedial works to be commenced by 30 September 2022 and completed within 14 days. Upon receipt of the Notice Mr Abu-Bakar advised he would undertake the works and no appeal was received. Having re-inspected, post the specified date for the works to have been completed Mr Butcher noted that only some repairs had been undertaken. In particular the condition of the stairs remained dangerous and both shower units remained in disrepair. As regard the works that had been done Mr Butcher considered the works to have been done to a particularly low standard.
22. Mr Butcher checked the land registry title on 23 January 2023 and noted that the leasehold of the maisonette remained and consequently notified Mr Abu-

Bakar of his intention to re-inspect to check the repairs had been carried out. Shortly after Mr Abu-Bakar contacted Mr Butcher to advise he had lost his job in November 2022. From that inspection on 23 January, Mr Butcher noted that no further repairs had been made. On 9 February 2023 Ms Aston contacted Mr Butcher to express her concerns that she had been asked to leave the Property without a formal procedure having been followed.

23. On 17 February 2023 Mr Butcher served a Notice of Intent to Issue a Financial Penalty as an alternative to prosecution proceedings.

24. Mr Butcher states that a number of the more serious works remain outstanding, and Mr Abu-Bakar has no intention of carrying these out. He has failed to ensure they are carried out properly and to a satisfactory standard, has not sought to agree any extension of time or adequately explained his financial situation and had previously indicated all the works would be undertaken yet failed to do so until the threat of legal action was made as a result of the service of the Improvement Notice. Mr Butcher believes that the Applicant has been frustrated by the fact that Ms Aston had not allowed his contractors access when required and finally disputes Mr Abu-Bakar's challenge concerning the financial impact of the penalty which follows the Councils approved scheme.

25. The Respondent has also submitted a Witness Statement dated 14 December 2023 following receipt of the Tribunals Directions.

26. In that statement, Mr Butcher advises that following service of the Notice of Intent to issue a financial penalty a case review was conducted and following this a decision made to serve a Final Notice of Financial Penalty. The reasons being that following the service of the Improvement Notice Mr Abu-Bakar had not submitted an appeal nor had complied with the Notice and as a result an offence under the Housing Act 2004 s30(1) had been committed, because the remaining hazards were serious and risked harm to the occupants, the Applicant was considered unwilling to undertake the remedial works, Mr Abu-Bakar was clearly responsible for the repairs and had been given ample opportunity to address these, Mr Abu-Bakar's representations did not provide a 'reasonable excuse' under the Act and finally it was considered that there were no grounds to amend the values in the Notice.

27. Mr Abu-Bakar's grounds of appeal stated that he had tried to gain access to the Property but had been prevented from doing so by the Tenant on several occasions or that when access was granted the contractors were not available and the second ground of appeal concerned financial hardship arising from the Tenant failing to pay rent.

28. Mr Butcher disputes the first ground on the basis that the works were to be undertaken by 14 October 2022 and Mr Abu-Bakar did not advise he had

encountered any difficulty during this period and in particular Mr Abu-Bakar had had no difficulty in meeting with the Tenant and access only became an issue after the expiry of the Improvement Notice as evidenced by Ms Aston's statement to this effect. As regard financial difficulties no evidence was submitted and that the contractors had only completed certain less costly works.

29. Therefore, Mr Butcher advises his assessment of the financial penalty imposed is in line with the Council's policy that was set with effect from 5 August 2021. In doing so, Mr Butcher had regard to the relevant legislation, guidance/policy and considered any aggravating factors (presence of category 1 and category 2 hazards) and any mitigating factors (low culpability and speed of response in dealing with the issues) arising from the representations received. Mr Butcher concluded from this that there was no justification to reduce the value of the penalty imposed. Mr Butcher considers Mr Abu-Bakar was well aware of the works required and he was responsible to ensure they were all addressed to a satisfactory standard and nor was Mr Butcher persuaded that Mr Abu-Bakar's lack of funds should absolve him of his responsibilities or that he had acted with sufficient haste given the seriousness of the matters. Mr Butcher therefore confirms his view that the penalty of £9,000 is correct.
30. The Tribunal also received a statement from Ms Aston dated 2 June 2023. In that statement Ms Aston confirms she has rented the Property from Mr Abu-Bakar at a rent of £600 per month since August 2019. In July 2022 she lost her job and applied for Universal Credit however as the DWP were unable to contact/ confirm Mr Abu-Bakar's relationship with Ms Aston she was unable to claim housing benefit and was forced to stop paying her rent.
31. It was following this that Ms Aston contacted the Council to complain about the disrepair at the Property and the difficulties in not being able to speak with Mr Abu-Bakar. Ms Aston states that Mr Abu-Bakar did carry out some works following a visit from the Council but several remained outstanding and those that were done were of a poor standard. Furthermore, Mr Abu-Bakar had promised to provide a tenancy agreement but this was never provided to her. Ms Aston states that following her notifying the Council Mr Abu-Bakar has asked her to leave the Property on numerous occasions without following the correct legal routes.
32. Ms Aston has also provided a second Witness Statement dated 11 December 2023. In that statement Ms Aston confirms again she has had very little contact with Mr Abu-Bakar despite having made efforts to report a blocked drain and the outstanding repairs. Ms Aston also disputes Mr Abu-Bakar's claim that she has refused him access and had in fact granted him access any day he required as she was available at home having lost her job previously. It was not until March 2023 after the Notice period had expired that Ms Aston was unable to grant Mr Abu-Bakar unrestricted access but only because it was

inconvenient during the week as she had started working again.

The Law

33. The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017. Section 249A of the 2004 Act, inserted by section 126 of, and paragraphs 1 and 7 of Schedule 9 to, the Housing and Planning Act 2016 ('the 2016 Act') provides –

- (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.

Paragraphs 1 to 10 of Schedule 13A to the Housing Act 2004 state as follows:

Notice of intent

34. Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

(1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

Right to make representations

(1) A person who is given a notice of intent may make written

representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

35. After the end of the period for representations the local housing authority must—
1. decide whether to impose a financial penalty on the person, and
 2. if it decides to impose a financial penalty, decide the amount of the penalty.

If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

The final notice must set out—

- (c) the amount of the financial penalty,
- (d) 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, and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

(1) A local housing authority may at any time—

- (a) withdraw a notice of intent or final notice, or
- (b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

(1) A person to whom a final notice is given may appeal to the First-tier Tribunal

against—

- the decision to impose the penalty, or
- 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.

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.

- (3) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

- (4) 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.

Recovery of financial penalty

- (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

- (2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

- (a) signed by the chief finance officer of the local housing authority which imposed the penalty, and
- (b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved

- (5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Decision

36. The Tribunal has considered the appeal in three parts:
- (1) Whether the Tribunal was satisfied, beyond reasonable doubt, that the applicant's conduct amounted to a "relevant housing offence" in respect of premises in England (see sections 249A (1) and (2) of the Housing Act 2004);
 - (2) Whether the local housing authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act); and/or
 - (3) Whether the financial penalty was set at an appropriate level, having regard to any relevant factors, including:
 - (i) the offender's means;
 - (ii) the severity of the offence;
 - (iii) the culpability and track record of the offender;
 - (iv) the harm (if any) caused to a tenant of the premises;
 - (v) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
 - (vi) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

Consideration 1 - Did the Applicants' conduct amount to a relevant housing offence?

37. The Applicant did not contest that the disrepair amounted to a relevant housing offence.
38. The Tribunal has some sympathy with the Applicant as he is not a professional landlord nor has an agent to manage the Property on his behalf. However the extent of the disrepairs were severe enough to warrant immediate remediation and the fact that Mr Abu-Bakar was not well versed in the law is in itself no excuse and he should have sought legal advice or professional assistance before entering into the letting market thereby avoiding the issues that have arisen.
39. The Tribunal is therefore satisfied beyond reasonable doubt that the alleged offence was committed.

Consideration 2 - Whether the local housing authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty?

40. The Applicant raised no significant challenge to the procedural elements of the imposition of the penalties.
41. The Respondent was contacted by Ms Aston complaining that the Property was in poor condition and responded on 29 July 2022. The Respondent carried out its first inspection of the Property on 15 August 2022. The Respondent followed this by serving an Improvement Notice on the Applicant dated 16 August 2022– specifying that the remedial works are required to be started by 30 September 2022 and completed within 14 days. The Respondent reinspected the Property on 31 October 2022 and noted that several required repairs remained outstanding. The Respondent reinspected again on 23 January 2023 and again noted that various repairs were still outstanding. On 17 February 2023 the Respondent served a Notice of Intent to Issue a Financial Penalty on the Applicant. The Applicant submitted his representations in a document dated 10 March 2023. Having reviewed the reasons for non-compliance submitted by the Applicant, the Respondent then served its Final Notice of Financial Penalty dated 18 September 2023.
42. Unless the offence is continuing, the notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates. The time periods within which the Respondent became aware of the offences and subsequently served its Notice of Intent satisfy the requirements of paragraph 2 of Schedule 13A to the Act. Further, the Notice of Intent included all the necessary information required under paragraph 3.
43. The Tribunal determines that the procedural requirements for the imposition of the Financial Penalties were satisfied.

Consideration 3 - Whether the financial penalty was set at an appropriate level?

44. In determining whether the penalty was set at an appropriate level, the Tribunal (the First-tier Tribunal, “FTT”) must take into account the guidance given in recent Upper Tribunal decisions in respect of financial penalties, particularly the following two cases which were consolidated as follows:

London Borough of Waltham Forest and Allan Marshall
London Borough of Waltham Forest and Huseyin Ustek

Both were noted under the UT Neutral Citation Number: [2020] UKUT 0035 (LC).

45. In both appeals, Judge Cooke reinstated the original penalty amounts and held that the FTT must accept the local authority's policy:

"the FTT is not the place to challenge the policy about financial penalties".

When determining an appeal, it must

"start from the policy"

and, though it may depart from it, may only do so in certain circumstances. In addition, the Applicant, in any particular matter, bears the burden of persuading it to do so, and in considering whether it should do so, the FTT must:

"Look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed",

And

"Consider the need for consistency between offenders, which is one of the most basic reasons for having a policy and an essential component of fairness in the financial penalty system."

46. As an appeal under Schedule 13A to the 2004 Act is by way of re-hearing, the Tribunal must of course make its own decision. In doing so, however, it must afford the local authority's decision particular weight, described variously by the Upper Tribunal as "*special weight*", "*considerable weight*" and "*great respect*". Parliament has conferred the primary decision-making function on democratically elected and accountable local authorities.
47. The starting point taken by the Respondent from its penalty matrix calculation was "*1st Offence*":

"There is no evidence that a civil penalty has been issued here or at another local authority."

The starting value of the penalty charge was therefore set at £6,000.

48. The Respondent then determines the aggravating factors and determines multiple Category 1 or high Category 2 Hazards:

'The Notice requires action to address 3 category 1 and 2 category 2 hazards. There was partial compliance meaning that at the time of reinspection, one category 1 hazard had been addressed and two others had some contributory works completed. Of the category 2 hazards, one had been fully completed and the other was not complied with'.

'No representations from Mr Abu-Bakar refute this point and instead relate to his financial circumstances'.

The Respondent adds £3,000 to reflect these points.

49. The Respondent then considers the mitigating factors and determines that there was no evidence of low culpability or rapid action taken to address the various failings.

Therefore, the Respondent made no deduction.

50. The Tribunal notes the following in respect of the nature and conduct of the Applicant:

- a) The Applicant is not a portfolio landlord.
- b) The Applicant is a private individual and has little knowledge of the relevant Housing Law.
- c) The Applicant failed to employ a managing agent to look after the Property.
- d) The Applicant has undertaken some works however there remain several repairs outstanding which were also apparent to the Tribunal during their inspection.
- e) The standard of the repairs carried out are to a poor standard.
- f) The repairs carried out do not address several of the more serious hazards.
- g) The Applicant should have completed all the repairs within the required time period specified in the Respondents Notice.
- h) The Applicant failed to provide a reasonable excuse as to why all the repairs and works were not carried out in full.
- i) The Tribunal found the Applicant was dilatory in his efforts to undertake the works in time and as required by the Notice.
- j) The Tribunal does not accept that the Applicant and his contractors were prevented by the Tenant from accessing the Property when the works were supposed to be undertaken.

51. The Tribunal notes the following in respect of the Respondent's actions:
- a) The Respondent has followed their policy in the calculation of the penalty.
 - b) They have given suitable weight to the Applicants' aggravating factors.
 - c) The Respondent does not consider there to be any mitigating factors on the part of the Applicant.
 - d) The Notice of Intention was correctly served.
 - e) The Respondent has considered the Applicants' representations.
52. The calculation appears to be correct and follows the Councils policy. As the Applicant has failed to fully comply with the Notice and has not provided a reasonable explanation and the Tribunal finds it difficult to deviate from the policy even if it may not properly or fully reflect the severity or number of issues at large.
53. The Tribunal noted that the Applicant has carried out some remedial works albeit these are those that are considered less serious in nature. However, as the Applicant has failed to address the more serious remedial works the Tribunal finds that this is evidence of high culpability and considers that no deduction should be made or reflected in the Financial Penalty calculation.
54. The Tribunal therefore finds and determines that the Financial Penalty payable by the Applicant is **£9,000 (Nine Thousand Pounds)**.

Appeal

55. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Nicholas Wint FRICS