FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/42UD/HNA/2024/0002**
Property	**:**	**170 Cemetery Road, Ipswich, IP4 2HL**
Applicant	**:**	**Chelmsford Cars & Commercials Limited**
Representative	**:**	**Mr S Hopkins, solicitor**
Respondent	**:**	**Ipswich Borough Council**
Representative	**:**	**Mr O Osinuga, counsel**
Type of application	**:**	**Appeal under the Housing Act 2004 schedule 13A against a financial penalty imposed under section 249A**
Tribunal members	**:**	**First-tier Tribunal Judge K Gray** **Tribunal Member Mr O Miller**
Venue	**:**	**Remote hearing by CVP**
Date of decision	**:**	**7 March 2025**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal is not satisfied beyond reasonable doubt that the Appellant has committed an offence under section 30 of the Housing Act 2004.

(3) The financial penalty notice dated 6 December 2023 is accordingly cancelled.

The application

1. By an application dated 21 December 2023, the Appellant landlord appealed, under paragraph 10 of schedule 13A of the Housing Act 2004 ("the 2004 Act"), the Respondent local authority's decision dated 6 December 2023 to impose a financial penalty.

2. The Respondent asserts that the Appellant has failed to comply with an improvement notice dated 1 June 2022, thereby committing an offence under section 30(1) of the 2004 Act.

3. The Appellant asserts that no such offence has been committed, as the works specified in the improvement notice have been completed and/or it has a reasonable excuse for any failure to complete those works. The Appellant also contends that the financial penalty notices are invalid on various technical grounds and that in any event, the penalty imposed is excessive.

The hearing

4. The Appellant was represented by Mr Hopkins, a solicitor, and the Respondent was represented by Mr Osinuga, counsel.

5. The representatives confirmed that the relevant documents were contained in the Appellant's bundle of 88 pages and the Respondent's bundle of 163 pages. Mr Osinuga also provided a skeleton argument and a bundle of authorities. We have carefully considered these documents.

6. We heard oral evidence from Mr Andrew Grimley, a Private Sector Housing Officer employed by the Respondent. Mr Grimley confirmed the content of his witness statements dated 7 October 2024 and 11 December 2024. He was cross-examined by Mr Hopkins.

7. We also heard oral evidence from Mr Gary Sharp, the managing director of the Appellant. Mr Sharp confirmed the content of his witness

statement dated 6 December 2024. He was cross-examined by Mr Osinuga.

8. Both representatives made helpful submissions. We reserved our decision.

The background

9. The property at 170 Cemetery Road, Ipswich, IP4 2HL is a three bedroom residential property with a kitchen, living room and bathroom. It was, until the beginning of this year, occupied by the Appellant's tenants under the terms of a tenancy protected by the Rent Act 1977.

10. Neither party requested an inspection and the tribunal did not consider that an inspection of the property was necessary, nor would it have been proportionate to the issues in dispute.

11. The following facts are agreed:

    (i) The Appellant is the registered freehold owner of the property under title number SK188212.

    (ii) On 11 October 2016, the Respondent served an improvement notice on the Appellant under section 30 of the 2004 Act requiring it to install a heating system at the property.

    (iii) The notice was suspended until the Appellant's tenants moved out of the property.

    (iv) On 1 June 2022, the Respondent served a further improvement notice on the Appellant identifying Category 1 and Category 2 hazards at the property.

    (v) Amongst other things, the improvement notice required the Appellant to "*supply and install an efficient economical space heating system, a gas central heating system will meet this criterion, to the whole house…The system shall be capable of maintaining an internal temperature of 21*c when the external temperature is -1*c*" and to "*ensure that there is a depth of 280mm* [of insulation] *over the full area of the loft*".

    (vi) The works were to be commenced by 29 June 2022 and completed by 29 September 2022.

(vii) On or around 13 June 2022, the Appellant made an application to the tribunal under Part 3 of Schedule 1 of the 2004 Act appealing the June 2022 improvement notice.

(viii) On 7 October 2022, the Appellant's solicitors wrote to the tribunal describing works that had been carried out at the property and stating "*on the basis that all of the works identified by the Council have been completed…the Appellant hereby withdraws its appeal against the Improvement Notice. The Tribunal should note that the Council has attended the Property and carried out an inspection of the works*".

(ix) On 10 October 2022, the tribunal asked the Respondent for its comments on the letter. The Respondent replied on the same day stating "*Ipswich Borough Council acknowledges the Appellant's email and documents, and consents to the withdrawal of the Appellant's case*".

(x) On 10 August 2023, the Respondent served on the Appellant a notice under paragraph 1 of schedule 13A of the 2004 Act proposing to impose a financial penalty on the grounds that the improvement notice of 1 June 2022 had not been complied with.

(xi) On 6 December 2023, the Respondent imposed a financial penalty on the Appellant in the sum of £10,000.

(xii) Both the notice of intent and the financial penalty notice stated that the Respondent had inspected the property on 12 January 2023 and had then established that the improvement notice of 1 June 2022 had not been complied with.

(xiii) The Respondent imposed the penalty because it says that no adequate space heating system has been installed at the property and that the Appellant has failed to carry out required works to the insulation.

The issues

12. At the start of the hearing the representatives agreed that the following issues remain in dispute and require determination:

(i) Whether an offence under section 30 of the 2004 Act has been committed by the Appellant.

(ii) Whether the Respondent was entitled to impose a financial penalty on the Appellant in light of technical irregularities in the notices and/or a lack of authority.

(iii) Whether the penalty of £10,000 was excessive.

Legal framework

13. By section 30(1) of the 2004 Act "*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*".

14. By section 30(4) of the 2004 Act "*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. By section 249A(1) of the 2004 Act, "*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*".

16. By section 249A(2) of the 2004 Act, an offence under section 30 of the 2004 Act is a "relevant housing offence".

17. By paragraph 10 of schedule 13A of the 2004 Act, a person upon whom a financial penalty is imposed may appeal to the tribunal. The appeal is to be a re-hearing of the local authority's decision. The tribunal may confirm, vary or cancel the final notice.

Findings

18. Having heard evidence and submissions from the parties and having considered all of the documents provided, we make determinations on the various issues as follows.

19. Mr Grimley confirmed that he was not involved in the decision to issue an improvement notice; the decision to consent to the withdrawal of the appeal of that notice; nor the decision to impose a financial penalty. This work was carried out by his predecessor, Mr Paul Rainbow. Mr Grimley had not inspected the property. He fairly accepted during cross-examination that his evidence was based only on the notes and other documents that appear on the Respondent's file for the property. He confirmed that he had not reviewed the Respondent's decision to issue a financial penalty for himself and that, in any event, he would not be the

person who decided whether or not a financial penalty should be imposed, as this would be a matter for a senior manager.

20. Though we do not doubt that Mr Grimley was doing his best to assist the tribunal during his evidence, in light of his lack of involvement in the decision making and his inability to help us with our reconsideration of the issue, we did not find his evidence particularly helpful in our resolution of the issues identified above.

21. Mr Sharp's evidence was largely unchallenged in cross-examination. We found Mr Sharp to be a credible and truthful witness. He gave his evidence in a clear and straightforward manner. There were no inconsistencies which caused us concern.

22. Mr Sharpe's evidence was that the works required to install an adequate space heating system at the property required the tenants of the property to decant for a short period of time. He had agreed to pay for them to be accommodated elsewhere during this period. However, the tenants were not prepared to decant. This is why, he said, the Respondent suspended the 2016 improvement notice until the tenants moved out. We accept Mr Sharp's evidence, which was unchallenged and appeared to us to be consistent with the documents and the facts accepted by the Respondent.

23. Mr Sharp told us during his oral evidence that in 2022, he installed three additional storage heaters in the property. There were also three storage heaters already in place – these had been installed by the tenants before the Appellant purchased the property. Neither witness could tell us the rooms in which the heaters had been installed. Again, this evidence was unchallenged and we accept it.

24. Following the service of the improvement notice in June 2022, the Appellant carried out some works to the property in order to deal with the hazard of excess cold identified by the Respondent. The works carried out included brickwork repointing, repairs to the windows and the installation of additional insulation in the loft which complied with the requirements of the improvement notice. We accept Mr Sharp's evidence on this point, which was unchallenged.

25. As regards the more intrusive works required to install a central heating system, Mr Sharp said that he spoke with a Housing Officer employed by the Respondent named "Carol" about this. She put him in touch with a firm of gas engineers named "Gaselect", who were listed on the Respondent's panel of approved installers. Between Mr Sharp, Carol and the tenants, it was arranged for the work to be carried out in August 2022, when the tenants were away on holiday for two weeks. However, a few days before the works were due to commence, the tenants' daughter told Mr Sharp that she would only allow access to the property for the works between 10am – 1pm. Gaselect told Mr Sharp that these restrictions did not allow them sufficient time to carry out the work in

the allocated window and the job had to be cancelled. Mr Sharp told us that Carol said to him that in the circumstances he could "do no more" to complete the works required and he thereafter left it to the tenants to tell him when access could be provided.

26. The only challenge to this evidence in cross-examination by Mr Osinuga was that Mr Sharp had not produced any written confirmation from Carol which would tend to support the conversation that he said took place between them after the heating works were cancelled, and that he had not given an account of this conversation in his witness statement.

27. We have considered Mr Sharp's evidence carefully in light of this challenge, however we accept what he says. His evidence was given in a clear and straightforward manner, and we consider it to be consistent with the contemporaneous documents found in the hearing bundles. In particular, we find his evidence consistent with the letter sent by the Appellant's solicitor to the tribunal dated 7 October 2022 which refers to the tenants' "long held position that access will not be provided to the property for the Appellant to install a new heating system" and goes on to withdraw the appeal on the basis that all works identified in the 1 June 2022 improvement notice had been completed. The Respondent acknowledged the content of the letter and consented to the withdrawal of the appeal. Had the Respondent not then considered that the Appellant had done what it could to comply with the improvement notice, we think it unlikely that it would have consented to the withdrawal of the appeal without disputing what was said in the Appellant's letter. Though Mr Osinuga relied on the extracts of emails referred to in the notes of an internal meeting of the Respondent on 18 October 2023 (which Carol attended) the emails themselves (and the train of correspondence) were not produced and in our judgment nothing in those extracts undermines what Mr Sharp said in his oral evidence.

28. Mr Sharp's unchallenged oral evidence, which we accept, was that he clearly understood, following the events set out above, that the Respondent was satisfied with the works that had been undertaken and that it understood that the tenants would not give access to the property in order for central heating to be installed. If he had not thought that this was the case, the Appellant would not have withdrawn the appeal against the improvement notice.

29. Mr Grimley agreed that the works carried out by the Appellant in 2022 would have had some positive effect on the property's thermal performance. Though he maintained that these works were not sufficient to comply with the improvement notice or to remove the hazard of excess cold, he accepted that no further assessment of the hazards at the property was completed by Mr Rainbow after the works were completed and that there had been no further monitoring of its internal temperature following those works.

Has the Appellant committed an offence under section 30 of the 2004 Act?

30. In light of our findings set out above, we are not satisfied beyond reasonable doubt that the Appellant has committed an offence under section 30 of the 2004 Act. This is because we have found that:

(i) following the service of the improvement notice, the Appellant carried out various works at the property, including the installation of additional heating and insulation.

(ii) It is accepted that these works would have had a positive effect on the property's thermal performance.

(iii) though the Respondent carried out an inspection of the property after these works were completed, there was no further assessment of whether the hazards identified in the improvement notice continued to exist, and in particular, there was no monitoring of the internal temperatures of the property.

(iv) there was accordingly little evidence before us to demonstrate that the heating system installed at the property in 2022 (that is to say, the three original heaters and the three new heaters provided by the Appellant) was incapable of maintaining an internal temperature of 21*c when the external temperature of the property was -1*c.

(v) though Mr Grimley referred in his second witness statement to Mr Rainbow's inspection notes of 13 January 2023 which he says confirm that Mr Rainbow found there to be no insulation cover to 10% of the floor area of the loft, the notes were not disclosed and Mr Sharp's unchallenged evidence, which we have accepted, was that the Appellant installed modern insulation to the loft as required by the improvement notice (i.e. to the full area of the loft).

(vi) Mr Osinuga accepted in his submissions that there was little information before the tribunal that addressed why Mr Rainbow, following his inspection of the property in January 2023, considered that there remained a failure to comply with the improvement notice. He said that this information would have been found in Mr Rainbow's notes of the

inspection, but these notes were not produced to the tribunal.

31. Accordingly, in our judgment, the Appellant complied with paragraph 1 of schedule 2 of the improvement notice dated 1 June 2022 (which was the only paragraph relied on before us) and no offence has been committed.

32. In case we are wrong about that, we are also satisfied that the Appellant has a reasonable excuse for the alleged offending. This is firstly because we have found that the Respondent has through its employees twice represented (either expressly or by its conduct) to the Appellant that the works specified in the improvement notice had been satisfactorily completed. The first occasion was when Carol told Mr Sharp that the Appellant "could do no more" when the Gaselect works were cancelled in August 2022. Mr Osinuga accepted that, if Carol had said this, then this would amount to a reasonable excuse for any failure to comply with the improvement notice. We have accepted Mr Sharp's evidence of his conversation with Carol.

33. The second occasion was when the Respondent consented to the withdrawal of the appeal of the improvement notice in circumstances where it knew the Appellant was withdrawing the appeal because the Appellant thought the works had been satisfactorily completed. The Respondent's notes of an internal meeting which took place on 18 October 2023 considered whether the Appellant had "wrongly interpreted" its unconditional consent to the withdrawal of the appeal, but the attendees of the meeting ultimately concluded that this was unlikely. However, Mr Osinuga accepted that the notes do not record whether the meeting considered the Appellant's letter of 7 October 2022 which expressly withdrew the appeal on the basis that works had been completed, and in any event, we have accepted Mr Sharp's unchallenged evidence that he understood from the Respondent's consent to the withdrawal that the Respondent was satisfied with the works that had been undertaken.

34. Secondly, we are satisfied that the difficulties encountered by the Appellant in obtaining access to the property to carry out the works also amount to a reasonable excuse for any failure to comply with paragraph 1.1 of the notice. We have found that the Appellant arranged for a central heating system to be installed in August 2022 but that at the last minute, access to the property was restricted to between 10am and 1pm. We have accepted Mr Sharp's evidence that these restricted working hours did not allow sufficient time to complete the works. We consider that the last minute restrictions were unreasonable and that, through no fault of the Appellant, the works could not be completed as planned. In the circumstances, we find that the Appellant's tenants refused reasonable access to the property to complete the works.

35. In answer to this point, Mr Osinuga asserted that the Appellant could reasonably have been expected, following the events of August 2022, to evict the tenants from the property. In our judgment, this assertion ignores the fact that the occupation of the property by the Appellant's tenants had the protection of the Rent Acts. It is plain to us that an action for possession of the property would not have been straightforward. We do not agree that it would have been reasonable for the Appellant to initiate possession proceedings of uncertain prospects against tenants with secure rights of occupation.

Determination

36. For all the reasons set out above, we are not satisfied beyond reasonable doubt that the Appellant is guilty of an offence under section 30 of the 2004 Act. It follows that the Respondent was not entitled to impose the financial penalty of 6 December 2023.

37. Accordingly, we cancel the final notice.

Name: First-tier Tribunal Judge K Gray **Date:** 7 March 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).