



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

Case Reference : **MAN/ooDA/HNA/2023/0064**

Property : **19 Burlington Place, Hunslet, Leeds, LS11 7DQ**

Applicant and Appellant : **Mr. Asghar Khan**

Respondent Represented by : **Leeds City Council**
Ms Hayley Lloyd-Henry, principal legal officer

Counsel : **Christopher Machin**

Type of Application : **Appeal Against a Financial Penalty, sections 30, 249A and Paragraph 10 of Schedule 13A of The Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.**
Mr. A. Hossain, BSc, MRICS

Date of Decision : **11th July 2024**

DECISION

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Application and Background

1. Mr. Asghar Khan has been, at all times relevant to this case, the freeholder of 19 Burlington Place, Hunslet, Leeds, LS11 7DQ "the property". By an application, dated 15 September 2023, the Applicant appeals against the issue of a financial penalty of £26,250 imposed by Leeds City Council "the Respondent", for the offence of failing to comply with an improvement notice, under sections 30, 249A and Paragraph 10 of Schedule 13A of The Housing Act 2004, "the Act".
2. At all times that are material to this case the property has been occupied by a tenant Ebenezer Manube, renting the whole the four bedrooomed terraced property, to house himself and a varying number of his children. The tenant should have been paying a rent of £650 per calendar month.
3. The Applicant inherited the property in 2007, along with a basement flat, being 19A Burlington Place, Hunslet, Leeds, LS11 7DQ.
4. On 6 January 2020 the property was designated as being subject to selective licensing by the Respondent.
5. The Respondent, suspecting that the property was being used as a rental property and understanding that the Applicant had not applied for a licence to operate the property in this manner, arranged for Principal Housing Officer Maria Simpson "the Officer" to call at the property on 1 June 2022. The purpose of the visit was to check to see if the offence of managing a licensable property without such a licence was being committed.
6. The Officer confirmed that the property was being rented out and on a brief inspection was concerned as to the condition of the interior of the property.
7. On 20 July 2022 the Officer served the Applicant with a written notice of her intention to carry out a formal inspection of the property on 27 July 2022.
8. On 27 July 2022 the Officer visited the property and conducted an inspection. The Officer found that there were hazards contrary to the Housing Health and Safety Rating System (England) Regulations 2005 "HHSRS" and Operating Guidance, at the property that required remedial action. Photographs P. Ex 1 to P. Ex 24 (Respondent's bundle, pages 114 to 135, first photograph on the page only) were taken of the faults that create the hazards.

9. The HHSRS assessments carried out following the Respondent's inspection on 27 July 2022 identified hazards as follows:
 - a. Category 1 – Excess cold – holes in the rear attic bedroom ceiling and floorboards allowing warm air to escape, faulty window mechanisms preventing them from being shut, defective air vent allowing cold draughts to enter the property.
 - b. Category 1 – Falling on stairs – lack of handrail, worn flooring which poses a trip hazard on both flights of stairs, missing spindle on the staircase guarding.
 - c. Category 1 – Fire – no working fire detection and inadequate kitchen door.
 - d. Category 2 – Domestic hygiene, pests and refuse – damaged walls and floor covering preventing proper cleaning, weathered bathroom sealant, cracked wash basin, missing kitchen tiles.
 - e. Category 2 – Falling on level surfaces – uneven surface due to broken floor tiles in the hallway, missing floorboards causing uneven surface on the first-floor landing.
 - f. Category 2 – Flames and Hot Surfaces – cooker positioning causing risk of colliding with the door whilst cooking.
 - g. Category 2 – Electrical hazards – insufficient and damaged sockets, damaged and exposed wiring in light fittings.
 - h. Category 2 – Falling between levels – unrestricted window with a low sill height, missing spindle on the staircase guarding.
- There are a total of 21 faults giving rise to 8 hazards.
10. On 24 August 2022 the Applicant was served with an Improvement Notice. No appeal was made against that Improvement Notice. The facts of the hazards existing in the property at the time of the inspection on 27 July 2022 are therefore beyond dispute and can properly be included in this Decision as being part of the background to the offence.
11. Remedial action in relation to the Category 1 Hazards was required to be completed by 30 November 2022 and by 30 March 2023 for the Category 2 hazards.
12. The following facts are agreed between the Parties.

13. The Applicant did not request any extensions of the time limits for completing the required remedial action imposed within the Improvement Notice.
14. On 6 January 2023 notice was served on the Applicant that the Officer intended to carry out a further inspection on 11 January 2023, to see if the Category 1 hazard remedial action had been carried out.
15. On 11 January 2023 the Officer inspected the property again and saw that no remedial action had been undertaken at all.
16. On 20 April 2023 notice was served on the Applicant that the Officer intended to carry out a further inspection on 24 April 2023, to see if the Category 1 hazard remedial and the Category 2 hazard remedial action had been carried out.
17. On 24 April 2023 the Officer carried out an inspection of the property and saw that no remedial action had been carried out at all within the property. During this inspection the Officer took photographs of the faults creating the hazards P. Ex 1 to P. Ex 24 (Respondent's bundle, pages 114 to 135, second photograph on the page only).
18. On 8 June 2023 the Respondent served upon the Applicant a Notice of Intent to serve a Financial Penalty Notice, the penalty being £26,250 in respect of the offence of failing to comply with the Improvement Notice.
19. The Applicant did take the opportunity to make representations in relation to this Notice.
20. On 23 August 2023 the Respondent served upon the Applicant a Final Notice of Imposition of a Financial Penalty, the penalty being £26,250 in respect of the offence of failing to comply with the Improvement Notice.
21. The Applicant appeals against the Notice described in paragraph 20, above.
22. Directions were issued on 31 January 2024.
23. There is no need for the Tribunal to inspect the property.
24. The case was listed to be dealt with by this Tribunal on 11 July 2024.
25. Both parties have served a bundle of evidence. The Applicant's bundle being 7 pages, the Respondent's bundle being 223 pages.
26. The Tribunal will refer to written evidence where appropriate.

The hearing

27. The hearing was listed to be held on the Tribunal's video platform, commencing at 10.30 am on Thursday 11 July 2024. Persons present were the Applicant, the Officer, the Respondent's solicitor and barrister and an observer, S. Wilkinson. Immediately during the joining of persons to the video hearing platform it became apparent that there were technical difficulties and after a delay the hearing took place using an alternative video platform, a cloud video platform.
28. The Officer was called to give evidence. The Tribunal indicated that the Officer's witness statement is accepted as her evidence in chief. The Officer is authorised by the Respondent to carry out all of the functions that she has taken in this case. The Officer summarised her visits to the property and the inspections that she had made. The Officer confirmed that she had made assessments of the hazards that she had found in the property and that they were 3 Category 1 hazards and 5 category 2 hazards. Additional time had been built into the remedial action requirements because the Applicant had made it clear that he was having difficulty paying for the remedial action to be carried out. The Officer referred to the photographs of the inspection giving rise to the Improvement Notice and explained the rating system used to calculate the level of the hazards.
29. The Officer confirmed that in two additional inspections after the Improvement Notice had been served that the remedial action had not been carried out. The Applicant had not asked for additional time to carry out the remedial works.
30. The Respondent follows a procedure in which any Housing Officer in this position presents the officer's case to a review panel of appropriately qualified persons. Decisions are taken as to whether to take enforcement action (in this case an Improvement Notice) and later, decisions on whether, if it is necessary to take additional action, prosecution in the Magistrates Court or the financial penalty procedure is necessary. If the later procedure is followed, decisions as to the appropriate financial penalty are made, following the Respondent's Guidance on Civil Penalties (Respondent's bundle, page 12) and policy (Respondent's bundle page 149, providing detail as to levels of civil financial penalties and how they will be assessed). The Officer's matrix calculations are at the Respondent's bundle, page 199.
31. The Officer confirmed that every decision taken by her as to the issue of the Improvement Notice, the culpability and harm assessments resulting in the calculation of the base financial penalty then adjusted by aggravating and mitigating features at £26,250 and the use of the civil

financial penalty scheme rather than prosecution had all been approved by review panels.

32. The Notice of Intention to Impose a Financial Penalty for failure to comply with the Improvement Notice, thereby committing an offence pursuant to section 30 of the Housing Act 2004 “the Act” recites the remedial action required by the Improvement Notice that is still outstanding. The Notice issued on 8 June 2023 provided for the Applicant to make representations to the Respondent within 28 days (Respondent’s bundle, page 144).
33. The Applicant did not make any representations to the Respondent.
34. The Respondent’s Final Notice of the Imposition of a Financial Penalty on 23 August 2023 (Respondent’s bundle, page 203) imposes a financial penalty of £26,250.
35. Financial hardship had been raised by the Applicant and he was required to support this submission. He served a document stating that he was in receipt of child benefit and working tax credits, but nothing else.
36. On two occasions the Officer caused PACE questionnaires to be sent to the Applicant (Respondent’s bundle page 102 and 136). These forms asked the Applicant to provide information under caution to the Respondent about the alleged offence, providing the Applicant with an opportunity to provide any information that he would like to give to the Respondent. The Applicant did respond to these requests.
37. The Officer confirmed that the Respondent’s policy and guidance had been followed in this case.
38. The Officer was cross examined by the Applicant.
39. During the inspection on 27 July 2022. The Applicant attempted to hand a handwritten note to the Officer for her to give it to the tenant Mr. Manube. The Officer declined to become involved in this. The Tribunal notes that the handwritten note is contained within the Applicant’s bundle and is dated 18 September 2018, nearly 4 years before the Officer’s inspection. The note refers to no rent having been paid by or on behalf of the tenant since 12 June 2017. A debt of £10,000 as a result of the non-payment of rent and the possibility of eviction (called repossession in the note). The note has the Applicant’s home address endorsed upon it.
40. The Officer was asked about a closed off access way between the property and the basement flat. This was described as a door on the ground floor of the property giving access to stairs leading to a locked door that would give access to the flat, if the door were to be unlocked. The Officer was asked to agree that she had inspected this and found the second door to have been

kicked in. The Applicant suggesting that his tenant had caused this damage. The Officer stated that she had not seen this.

41. It was evident from the brief cross examination that the Applicant accepted the vast majority of the case against him.
42. The Applicant gave evidence. He has not provided a witness statement but has provided written details as to grounds of his appeal. He is a private hire vehicle driver with 4 children who are, 23 years, 20 years, 15 years and 5 years old.
43. In Summary the Applicant states that the tenant moved into his property in 2012 with his three sons. The tenant is from Gambia and has experienced difficulties in relation to immigration. The Local Authority had been paying his rent through housing benefit to the Applicant. As at the end of 2016 the tenants rent had been paid. During 2017 the housing benefit payments stopped. No rent has been paid since then. Rent should be £650 per month (the Tribunal assumes that this was the level of rent as charged in 2016).
44. The Applicant states that one occasion he saw that the tenant was growing cannabis in the property and that the Applicant has become aware that the tenant's eldest son Denis or possibly the tenant are dealing drugs from the property. The Applicant has not reported this to the police.
45. The Applicant states that he is afraid of his tenant and Denis. He has not done anything to try to recover the unpaid rent. The tenant is still in residence, so the unpaid rent for at least 8 years, would be approximately £62,400. The Applicant has not reported any threats made against him to the police.
46. The Applicant states that he cannot afford to pay any financial penalty and hopes that the Tribunal will cancel the financial penalty.
47. Under cross examination the Applicant agreed that the Improvement Notice was properly issued with the hazards existing in the property that did require remedial action. He would not live in the property in the condition that it is in. He agreed that he could have carried out much of the work required by the remedial action himself but had not done so.
48. The Applicant kept repeating that he did not know what to do. The Applicant agreed that he had been given advice by the Officer as to the eviction processes.
49. He agreed that he used to receive rent from tenants of the basement flat at £250 per month. The flat is not currently occupied and the Applicant blames Mr Manube for this because of the damaged doorway giving access

to the flat from the property and Mr Manabe's general attitude towards tenants of the flat. As such the Applicant is not now receiving income from the flat.

50. The Applicant agrees that the Respondent's guidance, policy and matrix in relation to financial penalties appeared to have been followed and applied correctly even in the assessment of aggravating and mitigating features. He did not challenge the financial penalty but did want the Tribunal to determine that he should not pay it. The Applicant accepts that he had and has a responsibility to complete the remedial action required by the Improvement Notice. The Applicant accepts that culpability and harm have been correctly dealt with by the Officer in calculating the financial penalty.
51. The Applicant seeks to suggest that he has been subject to stress, panic attacks and has been treated by his GP for anxiety and depression with a suggestion that he contact MIND to assist him with his mental health. This is not supported by medical evidence from his GP or from MIND.

The Law

The Housing Act 2004

Section 30

Offence of failing to comply with improvement notice

- (1) 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.
- (2) 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).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(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.

Section 249A Financial penalties for certain housing offences in England

(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.

Paragraph 10 of schedule 13A

10(1)A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a)the decision to impose the penalty, or

(b)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.

(3)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.

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

(5)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.

Section 263. Meaning of “person having control” and “person managing” etc.

(1)In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2)In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

Deliberations

52. The Tribunal first considers whether the Respondent has satisfied the Tribunal beyond any reasonable doubt that the Applicant has committed

the offence of failure to comply with an improvement notice, contrary to section 30 of the Act.

53. There has not been any appeal against the issue of the improvement notice. The improvement notice is a valid notice, served in accordance with the Act.
54. The Improvement Notice requires remedial action in relation to the Category 1 Hazards be completed by 30 November 2022 and in relation to the Category 2 hazards remedial action be completed by 30 March 2023. The remedial works were not completed by these dates. In fact, upon the admission of the Applicant they have still not been started.
55. The Officer inspected the property after the expiration of each time limit for the completion of remedial action and saw that the remedial work had not even been commenced.
56. As a result the Respondent decided that further enforcement action was required and that imposition of a financial penalty was the correct approach. The guidance policy and matrix calculations have not been challenged by the Applicant. Nevertheless that Tribunal has considered them and agrees that all procedures adopted and calculations follow the guidance and policy set by the Respondent. Mitigating and aggravating features have been considered and properly used to set the financial penalty at £26,250.
57. The Applicant seeks to blame the tenant for putting the Applicant in fear of the tenant so that he was unable to start the remedial works. The Tribunal has considered this issue at length. Can it amount to a reasonable excuse for failure to comply with the Improvement Notice, pursuant to section 30(4) of the Act?
58. The Tribunal determines that it is highly unlikely that the Applicant would permit Mr Manube to live in the property from 2017 to today's date, 11 July 2024, without paying rent. The Applicant has not taken any action to recover unpaid rent, or to evict the tenant.
59. The Tribunal determines that if the Applicant were in fear of his tenant, he would report this to the police and to the Housing Officer. The Applicant did not do so. The Housing Officer visited the property four times and did not receive any complaints of threats being made. The Applicant was sent two PACE forms in which the Applicant could have stated that he was receiving threats. The Applicant could have made representations following service of the Notice of Intention to Impose a Financial Penalty, but he failed to do so. The Applicant could have telephoned the Housing Officer at any time but did not do so. The Applicant has permitted Mr

Manube to be his tenant for about 12 years without making any formal complaints about his tenant.

60. Further, the handwritten note that the Applicant prepared and though it was years out of date he tried to give to the Officer during the inspection on 27 July 2022. This contained the Applicant's home address. Would the Applicant want to remind the tenant of the Applicant's address if the Applicant were actually in fear of him? The Tribunal determines that the Applicant would not do this.
61. In these circumstances we determine that the applicant cannot rely upon a reasonable excuse for not complying with the Improvement Notice.
62. The Applicant seeks to raise the fact that he is suffering financial hardship so that the financial penalty should be reduced. The Applicant has failed to produce his bank statements, business accounts for his private hire business, business accounts for his two properties that are let out, or could be let out to tenants, details of total income, or details of total outgoings supported by utility bills. The Applicant accepts that he owns 19 and 19A Burlington Place, Hunslet, Leeds, without there being a mortgage on either property. He estimates that together they could be sold for £240,000. As such the Applicant could sell one or both properties, or mortgage them, to raise money.
63. The Tribunal determines that the Applicant has failed to satisfy the Tribunal that he is in financial hardship upon the evidence before it.
64. The Tribunal determines that the procedure required by the Act has been followed. The notice of intention to impose a financial penalty is a valid notice, properly served on the Applicant.
65. The Tribunal determines that the final notice of a financial penalty is a valid notice, properly served on the Applicant.
66. Further, the Tribunal has carefully considered the policy and the way that the Officer has followed the policy in determination of the correct level of the civil financial penalty. The Tribunal is satisfied that the Officer, on behalf of the Respondent, has followed the policy and the Tribunal agrees that the civil financial penalty remain at £26,250.
67. The Tribunal is unsure how the fact that the tenant or his son was growing cannabis and selling drugs from the property could assist the Applicant.
68. The Tribunal determines that the financial penalty of £26,250 is fair and just. The Tribunal confirms the final notice and the penalty of £26,250.

Costs application

69. After closing speeches, Mr. Machin made an application to the Tribunal for a summary costs order against the Applicant on the basis that the Respondent's case has not been challenged and that as such it is unreasonable for the Applicant to have brought this case before the Tribunal. The application is made pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 "the Rules".
70. Mr Machin points out that the Applicant accepts all 21 repair issues and the 8 hazards in the Improvement Notice. The remedial action has not been carried out. The Applicant accepts that the Respondents policy and guidance has been followed and correctly applied in calculating the financial penalty, correctly applying the facts to culpability and harm. The Applicant accepts that the aggravating and mitigating features of the case have properly been dealt with in accordance with the Respondent's policy, guidance and matrix.
71. Mr Mahin submits that the Applicant seeks to rely upon a sob story that is not true. The Applicant raises financial hardship, without supporting that submission in the manner required.
72. Mr Macin submits that the Applicant suggests that he is afraid of his tenant, but he visited the property when required to do so by the Officer, did not make any report to the police, did not seek legal advice from a solicitor and did not make any effort to evict the tenant.
73. Mr Machin submits that the appeal was hopeless and had to fail. Public funds have been expended on the case. His fees are £1,750 plus VAT and his solicitor's costs are estimated at being £1,500 without VAT. A total of £3,600.
74. Mr Machin asks for a costs order in that amount.
75. The Tribunal in considering the costs application agrees with the submissions made by Mr Machin. However, the Tribunal has been required to consider whether or not the statutory defence under section 30(4) of the Act has been made out.
76. Further, Mr Khan had the right to bring this case to the Tribunal, this being the correct venue for the financial penalty to be scrutinised.
77. The Tribunal takes the view that where Rule 13(1)(b) refers to unreasonably bringing a case, that requires very unreasonable conduct, that is not present in this case.

78. For the above reasons the Tribunal will not make a costs order.

The Decision

79. The Tribunal Decides that it is satisfied beyond any reasonable doubt that the Applicant was in control of the property during the period relevant to this case and has committed the offence of failing to comply with the improvement notice, contrary to section 30 of the Housing Act 2004.

80. The Tribunal confirms the final notice of the imposition of a financial penalty in this case and the penalty of £26,250.

81. The Tribunal will not make a costs order.

82. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal against this Decision has 28 days from the date that the Decision is sent to the parties in which to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds for the appeal, the paragraph numbers of the Decision appealed against, the particulars of such grounds and the result that the appellant seeks as a result of raising the appeal.

Judge C. P. Tonge

Date this Decision and order sent to the parties 17th September 2024