



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

Case reference : **MAN/00CH/HNA/2023/0052**

Property : **18 Trafford, Allerdene, Gateshead NE9
6LG**

Applicants : **Steven & Ann Havery**

Representative : **Bell Vue Estates**

Respondent : **Gateshead Council**

Type of Application : **Appeal against a financial penalty - Sec-
tion 249A & Schedule 13A to the Housing
Act 2004**

Tribunal Members : **Mr John Murray LLB
Mr Richard Harris MBE BSc FRICS**

Date of Decision : **31 January 2025**

ORDER

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1. The Tribunal reduces the financial penalty to £1966.67.

INTRODUCTION

2. The Applicants appealed the Respondent's decision to impose a financial penalty of £2966.67 under s249A Housing Act 2004 pursuant to Schedule 13 paragraph 10(1)(a) of the said Act.
3. The Respondent served Improvement Notices on the Applicants on the 6th May 2022 in relation to 18 Trafford Allerdene, Gateshead, NE9 6LG ("the Property"). The Property is described by the Respondent as a midterrace premises over two floors, with its own front and back door and consisting of 3 bedrooms, a lounge room, an upstairs family bathroom, a kitchen-dining room and a downstairs toilet.
4. The Property was inspected by an Officer of the Respondent on the 28 April 2022 and Category 2 Hazards identified resulting in the Improvement Notices being served on the Applicants. The Notices were not appealed and became operative on 13 June 2022, requiring remediation action to be taken by 22 August 2022.
5. The basis of the appeal was that almost all of the works had been completed, matters had been agreed between the Respondent and the Managing Agent, in that insulation was to be replaced later in the year which would enable the roof space to dry out following flooding, as well as enable vermin to be monitored.
6. The Tribunal made directions on the 23 January 2024 and clarified that the appeal would be by way of a rehearing of the local housing authority's decision to impose the penalty and/or the amount of the penalty, and it may be determined, having regard to matters of which the authority was previously aware in accordance with Schedule 13A of the Act.
7. The Tribunal convened to determine the application by way of video hearing with the agreement of the parties
8. The Applicants were represented by Mr. Steven Havery who attended with his lettings agent Clare Johnson of Belle Vue Estates.
9. The Respondent was represented by Laura Dawson of Counsel, accompanied by witness, Priscilla Embler.

RELEVANT LEGISLATION

10. A Local Housing Authority has powers to impose financial penalties on persons where they are satisfied, beyond reasonable doubt, that a person's conduct amounts to a relevant housing offence. The powers are granted by s249 of the Housing Act 2004 as follows:

s249A 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;

Schedule 13A :Financial penalties under section 249A

Paragraph 10: 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.

AGREED FACTS

11. At the outset of the hearing, the parties agreed to the following summary of facts offered by the Tribunal after a preliminary consideration of the papers.

12. The Property is wholly owned by the Applicants and at all material times was rented to third party tenants.

13. The Applicants were served with Improvement Notices on the 6th May 2022. They did not exercise their right of appeal in respect of the Notices. The Improvement Works were started, but not completed within the timescale, giving rise to an offence.

14. The one item outstanding at the expiry of the Improvement Notice was the reinstatement of the insulation in the roof space, which was completed in November of 2022. The Applicant did not ask to extend the time for compliance.

SUBMISSIONS FOR THE RESPONDENT

15. Although the Appeal was brought by the Applicant, the Tribunal asked the Respondent to set out their case first given that the appeal was by way of re-hearing of their decision, and they were legally represented.
16. The Respondent had filed a bundle with a summary of the offence along with their evidence. They confirmed in their statement of case, that the Improvement Notice had been received by the recipients, and the inspection had confirmed that the remedial action had not been completed within the compliance period.
17. The Respondent asserted that their PACE interview conducted on 9 December 2022 had demonstrated to them that the Applicant had no reasonable excuse for having failed to comply with the Improvement Notice. The Respondent was satisfied beyond reasonable doubt that the offence of failing to comply with the Improvement Notice had been committed.
18. In order to establish the most appropriate course of action, regard was had to the Crown Prosecution Service Code for Crown Prosecutors, the Respondent's Communities and Environment Enforcement Policy together with their Policy and Enforcement Guidance for Financial Penalties. The Respondent considered that there was sufficient evidence to proceed with further action for the offence of failing to comply with the Improvement Notice and that it was in the public interest that further action be taken.
19. The Respondent used a checklist ('Assessing Prosecution versus Civil Penalty'), produced to help the officer to determine the most suitable course of action in the event of a relevant offence, to consider the seriousness of the offence; including the vulnerability of the occupiers of the Premises and any proven harm outcome on them or on the neighbourhood, because of the offence; the culpability of the Applicants including the effort made by them to comply with requirements prior to formal action being taken, any mitigating factors that they could demonstrate in their defence of not complying with requirements, any relevant unspent convictions, their track record in respect of complying with housing legislation in Gateshead and nationally, the landlords experience; such as the length of time they have managed privately rented homes, the size of their property portfolio, and membership of any recognised landlords association.
20. Use of the Checklist determined for the Respondent that it was appropriate to deal with the offence by way of imposition of a financial penalty. The Applicants were considered negligent regarding their culpability. The final item of remedial action was not completed until 15 November 2022, almost three

months after the stipulated completion date of 22 August 2022. The Applicant was aware of the possible repercussions of not complying with an Improvement Notice; having managed the property when Mrs Havery received an Improvement Notice for the same premises on 26 July 2021, which was not complied with within the specified timeframe, and following which a Financial penalty was imposed as a consequence.

21. Other than an email of 29 June 2022 from Belle Vue Estates to the Respondent Council which stated “the landlord has asked not to put the new insulation in straight away to allow time...as summer months to allow the area to dry out...at a later date” there was no contact with the Council to agree a date for installation of replacement insulation, or to ask for a variation to extend the Improvement Notice. There was no evidence within the email correspondence between the Applicant and his agent of his urging them to commission works within the time scale stipulated by the improvement notice.
22. Ms. Elmer gave her evidence to the Court. She is a technical officer in the private housing team of Gateshead Council. Her first involvement with the Property dated back to 2020. This was the second of two Improvement Notices the Applicants had been served. The initial inspection for this second notice was carried out in 28th April 2022.
23. She told the Tribunal she did not have time to speak to all the landlords she served Improvement Notices on to remind them to comply, or she would never find the time to respond to all the complaints she received.
24. She considered that the Applicants had no sense of urgency. The breach was a technical breach and culpability was low. The level of was low because the radiators in the Property were oversized so the Property should have been warm. The Respondent had had two opportunities to object, and did not. He has allowed this to happen.

SUBMISSIONS FOR THE APPLICANTS

25. The Applicants were directed to file a bundle of relevant documents for use at the hearing, indexed, and numbered page by page, to include amongst other items, an expanded statement of the reasons for his appeal, any witness statements of fact. and any other documents to be relied upon.
26. He made a number of representations as to the works required on the Improvement Notice.
27. Two storms had resulted in serious floods, and the roof was completely removed. Mr. Havery had to put some weather proofing on there. A lot of water had ponded in the cavity wall which would not have been seen. The ponding water would take a long time to dissipate and disappear. So although had

been served, there was work going on in the background. The roof was a butterfly roof, which was an unusual design. The Council owned the house next door, and Mr. Havery tried to get the Council to agree that both roofs should be replaced. He had been led to believe this would happen, but ultimately it didn't, and he had to arrange to get another contractor.

28. The double glazed units had blown seals, but had not been picked up on previous inspections, and would still operate to be wind and weather tight. He pointed out the Council themselves in their social housing property that they let out would not replace such windows unless they were cracked or damaged. He had replaced them in any event.
29. The external vent for the extractor fan had been damaged by the storm, and again was repaired once the issue had been identified.
30. A new DPC was installed on 10th August 2022 to address excessive moisture by storm damage.
31. The smoke alarm was replaced by the tenant, (who had removed it in the first place) but Mr. Havery had installed a new one.
32. Pest control had carried out a CCTV survey and poison had been put in the roof space. No further activity was recorded.
33. The Applicants submitted a document entitled "Reason for referring to Ombudsman" in support of the appeal. The points they made were that all the works had been completed by the 22nd August, with the exception of the insulation works. Mr. Havery had told the Respondent through his lettings agents in June 2022 that he wanted the roof to be able to dry out, and to be able to listen for infestation in the roof space before reinstalling the insulation material. In his submission he stated that the installation was completed on the 11th October 2022. The Respondent were not told of this until sent they were sent photos by Belle Vue Estates on the 15^h November 2022.
34. The insulation works were a minor part of the works in terms of time (a couple of hours) and cost (a couple of hundred pounds). The tenant was happy with the time extension.
35. Following the installation of the new roof, Mr. Havery resolved to allow the roof space to dry out as best it could before reinstating the insulation. This resulted in the delay of completion beyond the 22nd August. He said that the tenant was happy with this proposal. He told the Tribunal the insulation was installed in October.
36. The Letting Agents Belle Vue Estates were aware of the deadlines. The Respondent said that there was no evidence that the works were completed be-

fore the 15 November 2022 which is when the photos were sent to the Respondent by the Agents. Clare Johnson of Belle Vue Estates told the Tribunal that the insulation work had been booked in on the 13th September for the works to be carried out on the 11th October and that the tenants were "fine" with this being a later date.

DETERMINATION

37. The Tribunal considered carefully the evidence put before it and the submissions of both parties.
38. The Tribunal considered that the Respondent had carried out a thorough investigation and followed their procedures diligently.
39. The Applicant had objected to some of the Respondent's findings, in respect of the double glazed units, and the smoke alarm, but he had nevertheless completed the works the Respondent had requested, rather than submitting an appeal.
40. His agent had written to the Respondent on the 29th June to report on progress of the works and to explain that there was an intention to allow the roof space to dry out for a period before reinstating the insulation, which would also allow the noise of rodent infestation to be better heard.
41. The Respondent wrote back that same day to the agent to say "Great, thanks Claire".
42. This was the last communication between the parties on the issue. There was nothing in the correspondence from the agent that said the insulation would be reinstated before the 22nd August; there was nothing in the email from the Respondent to suggest that the notice would be suspended. The Applicant had carried out the majority of the works; but not this final aspect.
43. In her evidence, Ms. Elmer readily admitted she might have agreed an extension of time on the notice; but she would not have agreed an extension until November, when the weather was likely to be cold.
44. On the Applicant's written evidence, the works were completed on the 11th October, which was 50 days after the due date.
45. The Applicant did appear to take the Improvement Notice seriously. He carried out the works, and informed the Respondent that he was going to delay the reinstallation of the insulation. There was no response to this suggestion other than a thank you, and "great"; which may have allowed him a false sense of security.

46. The Notice still existed; but had Ms. Elmer responded to the agent to say the deadline would still be in force, it is likely the situation could have been avoided.
47. The Applicant had had a lot to contend with in terms of storm damage, and the installation of a new roof, and had carried out the majority of the work. The final aspect of the work was relatively small, being a couple of hours work and the provision of insulation materials.
48. The Applicant was in breach of the Improvement Notice, and the Respondent was correct to find this.
49. The Tribunal using the Respondent's scoring matrix would place the offence in the Low Culpability Band, with little fault on the landlord. The decision to delay installation of insulation to allow a property that had suffered serious storm damage was in the Tribunal's opinion within the bounds of reasonable decision making.
50. The Applicant's downfall was to not fully communicate with the Respondent; but that worked both ways, and the response made by the Respondent might have conceivably led him to understand that the Respondent agreed with his actions.
51. The Tribunal found the amount of the fine to be high in the circumstances. The Tribunal agreed with the Respondent's assessment that the Applicant was on the low level of culpability (the Applicant did not fall short of his legal duties) and there was no harm to the tenant. The Tribunal found the Applicant to be generally a responsible landlord, but in terms of compliance with the conditions of the licence his administration and paperwork was not up to date and the breach was committed.
52. Taking into account all of the circumstances, the Tribunal reduces the financial penalty to £1966.67.

J N Murray

Tribunal Judge

31 January 2025