



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

Case Reference : **MAN/00BN/HNA/2018/0033**

Property : **8, Deerpark Road, Manchester M16 8FR**

Applicants : **Waas Properties Limited**

Respondent : **Manchester City Council
(represented by Mr P Whatley of Counsel)**

Type of Application : **Appeal against a financial penalty imposed under Section 249A Housing Act 2004**

Tribunal Member : **Mr J R Rimmer
Mr J Rostron**

Date of Determination : **30 April 2019**

Date of Decision : **28 May 2019**

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Order : **The decision to impose a financial penalty notice in respect of 8, Deerpark Road, Manchester is upheld. The amount of that penalty shall be £5,250.00.**

A. Application

1. The Tribunal has received an application under paragraph 10 of Schedule 13A to the Housing Act 2004 (“the Act”) against a decision of Manchester City Council (the local housing authority) to impose a financial penalty against the Applicant under section 249A of the Act.
2. This penalty relates to an offence that the Council determined had been committed by the Applicant in relation to failing to comply with an improvement notice served in respect of the property by the authority
3. The Tribunal has sent a copy of the application to the Respondents.
4. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
5. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

B Background

6. The Applicant is the owner of 8, Deerpark Road, Manchester, the ground and first floors of which are divided into three self-contained flats, one on the ground floor and two on the first floor, together with a common entrance, hallway and stairway within the building.
7. As a result of enquiries made by the tenant at the time of one of the first floor flats the authority inspected the property and deemed it to present sufficient hazards within the Housing Health and Safety Rating Scheme imposed by the Housing Act 2004 for the authority to issue and improvement notice.
8. The notice is dated 5th December 2017 and required the necessary works to be completed within 28 days of 6th January 2018. There appears to be common agreement between the parties thereafter on a number of matters in relation to those works:
 - (1) Works required in relation to matters other than the fire and smoke detection system proceeded without any significant concern for the authority
 - (2) Subsequent inspection by the authority to monitor compliance revealed a lack of progress in relation to fire and smoke detection such that

following an inspection at the end of June 2018 it set in motion its process to consider the imposition of a financial penalty.

- (3) The financial penalty was imposed by the authority by way of a final notice dated 28th October 2018 after it had received, and taken account of, representations made on behalf of the Applicant.

C Inspection

10. On the morning of 23rd April 2019 the Tribunal inspected the the ground and first floor common parts of 8, Deerpark Road, together with a part of the interior of Flat A. the building is a large Victorian/Edwardian house to which, pertinently, has been installed a hard wired fire detection system with smoke detection in flats and heat detection in the common parts. It is controlled from a board in the ground floor hallway. It appeared to function satisfactorily in such limited test conditions as could be contrived for the assistance of the Tribunal. It appears from the documentation submitted that it is certified to LAC3 standard.

D The Law

- 11 It is appropriate at this stage to set out the various statutory and regulatory provisions that the Tribunal needed to take into account in coming to its decision.

In relation to the commission of a relevant offence and imposition of a financial penalty

- 12 Section 249A of the 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 9failure to comply with improvement notice)...
 - (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.
- 13 Section 30 of the Act provides:
- (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) ...compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial work specified in the

notice [within dates specified within the notice, or within the timescale set by a tribunal if there is an unsuccessful appeal against the notice]

- (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.

14 Paragraph 10 of Schedule 13A of the Act provides

- (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 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 penalty of more than the local housing authority could have imposed.

E The evidence and the hearing

15 Counsel for the Respondent raised an initial matter upon which he sought the view of the Tribunal. The representative of the Applicant at the hearing was Mr Quireshi, he being named as such on the application form. There was no clear indication, however, that the form had been signed by an officer of the company.

16 Mr Quireshi was able to give formal evidence to the Tribunal that the signature appearing upon the form was that of a director of the company. On that basis the Tribunal and Applicant were happy to continue to consider the application.

17 The Tribunal also noted that the improvement notice was unclear as to what constituted the premises to which the notice related.

18 Mr Whatley conceded that if there was any matter that turned upon the contradiction it should be resolved in the way most favourable to the Applicant, but in any event the work was necessary to the building and not just the flat to secure the integrity of the latter's fire safety.

19 the Applicant's case is quite simple:

- (1) It accepted work was required. Some had been done since the acquisition of the premises, but the notice had identified outstanding issues.
 - (2) The timing of the notice was unfortunate in relation to the Christmas period, making the finding of a contractor difficult at short notice.
 - (3) In any event the work that was required, particularly in relation to fire safety, took longer than was anticipated
 - (4) This was made worse by two difficulties involving the tenant of the flat. Neither were wilful and both were completely understandable, but required work to be re-scheduled and resulted in further time lags.
 - (5) The Applicant had not wilfully failed to complete the work and indeed it was completed at the time of the final inspection and certified a few days later (the Applicant had indicated the certificate to be in existence as at 28th June 2018, but it is actually dated 3rd July).
 - (6) The property was otherwise in good condition and not subject to any other complaint
 - (7) The applicant had experience of improvement notices previously and had no history of non-compliance or any other relevant record of offending.
- 20 The Respondent did take issue with a number of the matters raised by Applicant; in particular:
- (1) Whether the system installed was one within the specification outlined in the notice.
 - (2) There had been no appeal against the notice and the timescales were therefore set by law for compliance. There had also been no communication of any difficulty to the authority during the delay.
 - (3) There was still an outstanding issue identified on the inspection by the Tribunal in relation to the door to flat A.
 - (4) The Applicant is a professional landlord and should be more aware of its responsibilities than might otherwise be the case.
- 21 the Respondent also provided a considerable bundle of documents in support of its case to establish:
- that an offence had been committed
 - That it had applied its policies in determining that a financial penalty was the appropriate way to deal with that offence
 - That it had determined the amount of the penalty was consistent with the policy and that the authority had identified relevant aggravating and mitigating factors
 - That it had taken into account the representations made by the Applicant in coming to its decision.
- 22 The Tribunal also engaged at the hearing with both parties in giving further consideration to a number of those matters that the Respondent had taken into its consideration. The Tribunal sought further information as to how the amount decided upon for the penalty, £16,500.00, related to the complete

range available for a penalty from £1.00 to £30,000.00 and also how the respondent assessed the culpability of the Applicant and the capacity for its omission to cause harm to the tenant.

E Determination

23 The Tribunal is aware these proceedings are conducted by way of a rehearing. It takes on board the fact the policies of the Respondent are the direct result of the democratic process whereby the Respondent seeks to fulfil its statutory duty by seeking from its officers a clear and rational process for doing so.

24 The Tribunal nevertheless has a duty: to re-hear the case against the Applicant. It has done so with the policies of the Respondent always within its mind. It offers no criticism of the thorough manner in which the Respondent has approached this case and the documented procedures it has followed.

25 Has an offence been committed?

The first question the Tribunal must ask itself is whether an offence has been committed. The clear answer is yes. It is abundantly evident that the notice was not complied with until well beyond the time limits provided for within the notice in the absence of any appeal against the notice that would have suspended its operation. There was a clear breach of Section 30(1) Housing Act 2004.

26 Nothing that the Tribunal saw, or heard, suggests that the Applicant would be able to rely on any of the defences to criminal liability outlined in Section 30(4). The reasons put forward for the failure to comply within the time required may amount to explanations, at least in part, but they do not amount to a reasonable excuse. They are not reasonable neither from the point of view of what might be expected to have been done by any reasonable person, nor from the point of view of what a reasonable person might have expected the Applicant to have done within the time frame within which work should have been done, or the additional period of time up until the point when compliance was probably effected.

27 The Tribunal is so satisfied that it is sure that the offence has been committed.

28 What sanction is appropriate to mark the commission of the offence?

Under the financial penalty regime, the Respondent, in the event of an offence having been committed, has available to it an amount of up to £30,000.00 that it can impose as a penalty. It has provided and explained its matrix and methodology to support its finding that an amount of £16,500.00 is appropriate.

29 The Tribunal would, limit its observations in relation to the application of the penalty policy to the following matters.

(1) Whether the Applicant gave any admission of guilt during or after the investigation, or thereafter? The Tribunal takes the view that if the Respondent is basing its assessment of a penalty in terms of a matrix that has many similarities in its form to that applied in criminal proceedings within the criminal justice system credit for an early admission of guilt is important. The Tribunal believe that the Applicant is entitled to credit. The Tribunal accept that for what was clearly its own fault the delay in completing the works was improper, but the conduct of the Applicant in relation to the proceedings is suggestive of an admission of guilt.

(2) The Tribunal does find it necessary to look carefully at the nature of these proceedings. They are civil proceedings to which a criminal element has been introduced. If they were entirely criminal in their nature it would be extremely difficult to argue a case on the basis of anything other than the black and white concepts of guilt or innocence. In the Tribunal's view the nature of these proceedings envisages a party being able to argue guilt, or innocence and mitigation for the act at the same time. response to the request to an interview under caution (and the Tribunal.

30 The Tribunal considered carefully the culpability of the Applicant and the likely harm that would may have been caused by the failure to provide the effective fire security system required. The Tribunal can see how the Respondent reached the decision it did but would respectfully apply slightly different tests.

(1) It would see culpability assessed within bandings on a sliding scale, rather than in blocks, but would still assess the culpability of the Applicant as clearly above a low level

(2) It would also consider that there are more than three levels of culpability in order to be able to more accurately categorise that of an offending party, to reflect a fuller range from "minimal" to "very serious" culpability. The Tribunal considers that this reflects a fuller range of offending to which the financial penalty regime may be applied.

(3) The likely harm the Applicant could have caused is also medium, but again within a broader range and on a scale that the Tribunal prefers. It does note that in the original risk assessment carried out under the rating scheme the risk of injury by fire is assessed somewhat lower than that for other issues. Having made that point the risk from inadequate fire safety can rarely be regarded as at the lowest level in view of the possible consequences of inadequacy.

(4) The Tribunal also looked at the overall level of penalty that might be appropriate for this offence by having regard to where it sits in the range of offences that might be dealt with, from the most minor to the most

heinous, whilst bearing in mind that the possibility of criminal prosecution still remains.

31 Consideration was given to a number of factors raised in the submissions of the parties and considered at the hearing which might have affected the conclusions being drawn:

- (1) The Tribunal does not consider anything of significance turns on the confusion within the improvement notice as to what constitutes the relevant premises. It does not invalidate the notice and it is clear what works are required to protect the occupant(s) of flat C.
- (2) It is clear that in respect of flat A work is still required to the front door. This will require immediate attention and now that it has been identified will no doubt be considered further by the Respondent if this is not done.
- (3) There is clearly a difference between the requirement recommended by the notice and that fitted. The difference is not one that the Tribunal is competent to identify, but within the terms of the notice the requirements in respect of detection required and compliance with the British standard appear to be satisfied. If a return is made to consideration of the nature of these proceedings, it is for the Respondent, in the Tribunal's view, to establish that it does not comply if, as in this case, the Tribunal is satisfied that, on balance, it does.

32 Applying those factors in the preceding paragraphs, the Tribunal believes that the appropriate starting point within the range of culpability and harm it has mentioned is £7,500.00 and this also commensurate with this offending within the total range of envisaged conduct.

33 The Applicant appears to be of previous good character, and nothing suggests anything different about its officers and staff. The Applicant also accepts responsibility for its delay. A discount of 30% is therefore appropriate reducing that relevant amount to £5,250.00.

Signed: Judge J R Rimmer

Date: