



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

**Case Reference** : **MAN/OOCX/HNA/2018/0009**

**Property** : **88 Undercliffe Lane, Bradford BD3 0QD**

**Applicant** : **Mr Zulfiqar Riasat**

**Respondent** : **Bradford Metropolitan District Council**

**Type of Application** : **Housing Act 2004 – Section 249A**

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)  
Sally Kendall BSc. MRICS (Valuer)**

**Date of determination** : **14 May 2019**

**Date of Decision** : **22 May 2019**

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DECISION

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## **Application**

1. Mr Zulfiqar Riasat appeals under Section 249A the Housing Act 2004 (the Act) and Paragraph 10 of Schedule 13A against a financial penalty in the sum of £17,250 imposed by Bradford Metropolitan District council (Bradford) by notice dated 3 May 2018 in respect of failure to conform to the requirements of an Improvement Notice dated 10 April 2017 served under Sections 11 and 12 of the Act.

## **Attendance**

2. Mr Riasat attended the hearing.
3. Bradford was represented by Mr Robert Derbyshire, a Barrister instructed by the Authority's Legal Team. Its witness was Ms Elizabeth Burr, Environmental Health Officer.

## **Preliminary**

4. Mr Riasat's appeal application was received on 4 June 2018 accompanied by the Final Notice of Imposition of a Financial Penalty.
5. Following notice of the application sent by the Tribunal, Bradford submitted confirmation of opposition to the appeal dated 27 June 2018.
6. In compliance with directions both parties submitted case statements and documentary evidence. Bradford prepared a hearing bundle.
7. The Tribunal inspected the Property on 24 April 2019 prior to the hearing which took place at Phoenix House, Bradford.
8. At the hearing Mr Derbyshire submitted a chronology of events with bundle page references. This was not challenged as incorrect by Mr Riasat. The Tribunal considers this of assistance and it has been annexed to this decision.
9. Page references in this decision relate to the paginated hearing bundle.

## **The Property**

10. 88 Undercliffe Lane, Bradford BD3 0QD is a 3 story terraced property with a cellar situated in an area of Bradford relatively close to the City centre and on a bus route.
11. On inspection, the Tribunal considered the Property to be of average to poor condition with many aspects requiring attention. There was evidence of disrepair and issues potentially serious requiring investigation, for example, structural repairs.
12. Interior fittings were considered dated and worn and not to modern expected standards.
13. The Tribunal makes observations below.

## Chronology

14. The chronology prepared by Mr Derbyshire is appended to this decision. It sets out the sequence of events as can be derived from the bundle of evidence. Whilst Mr Riasat did not comment on the date of each event, he did not give evidence that raises queries about the sequence of events.
15. The Tribunal was directed by Mr Derbyshire to the relevant pages of the bundle setting out details and records of the events set out within the Schedule.
16. Briefly, following a tenant complaint in November 2016 and inspection by the Authority, served notification of work required on 1 December 2016. Ultimately, this led to inspection in April 2017 and service of an Improvement Notice on 10 April 2017 identifying both Category 1 and 2 Hazards, briefly described in the Schedule to the Notice (p.57)
  - Category 1, Section 11**
  - Domestic hygiene, pests and refuse
  - Category 2, Section 12**
  - Structural Collapse & failing elements
  - Fire
  - Falling between Levels
  - Electrical Hazards
  - Excess cold
  - Personal hygiene, sanitation & drainage
  - Food safety
17. Mr Riasat did not appeal the Improvement Notice and satisfied a demand for payment for the Housing Act Notice. Although at stages he notified Bradford that the Property was vacant, he subsequently re-let.

## Law and guidance

### Power to impose financial penalties

18. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to 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.
19. Relevant housing offences are listed in section 249A(2). They include licensing offences under sections 72 and 95 of the 2004 Act, and the offence (under section 234) of failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the HMO Management Regulations").
20. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

## Procedural requirements

21. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:
  - the amount of the proposed financial penalty;
  - the reasons for proposing to impose it; and
  - information about the right to make representations.
22. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.
23. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.
24. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:
  - the amount of the financial penalty;
  - the reasons for imposing it;
  - information about how to pay the penalty;
  - the period for payment of the penalty;
  - information about rights of appeal; and
  - the consequences of failure to comply with the notice.

## Relevant guidance

25. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance (“the HCLG Guidance”) was issued by the Ministry of Housing, Communities and Local Government in April 2018: *Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state:

“Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending.”

26. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:
  - a. Severity of the offence.
  - b. Culpability and track record of the offender.
  - c. The harm caused to the tenant.
  - d. Punishment of the offender.
  - e. Deterrence of the offender from repeating the offence.
  - f. Deterrence of others from committing similar offences.
  - g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.
27. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, Bradford Council has devised a policy entitled Private Sector Housing Enforcement Policy. We make further reference to this policy later in these reasons.
28. The relevant Law is set out in Sections ..... the Act and the Regulations referred to above.

## **Background**

29. The sequence of events is set out in greater detail within the chronology annexed to this decision.
30. An inspection on 14 August 2017 found that although some work had been completed, other work had not and a PACE interview was arranged. This took place on 1 September 2017 under caution, a transcript was submitted within the bundle.
31. Emails from Bradford subsequent to the interview confirmed an extension to the time for completion of work to 30 September 2017.
32. On 15 November 2017, Mr Riasat notified the Property would become vacant on 10 December 2017 and work would be completed prior to reletting after Christmas 2017. However, the Property was reoccupied on 11 December 2017, although Mr Riasat did not give notice of the reletting, information was obtained from the Council Tax Register.
33. Following a Notice of Intention to issue a financial penalty, Mr Riasat made representations. The final Notice of Imposition was served by hand on 3 May 2018 and an invoice raised for the sum determined.

## **Alleged offences**

34. It is alleged that Mr Riasat failed to comply with the requirements of the Sections 11 and 12 Improvement Notices.

## **Appeal**

35. Mr Riasat did not appeal the Housing Act Notices. At the hearing he confirmed his reasons for appealing the penalty were as set out in his letter dated 26 October 2018. This raised issues as discussed below.

## **Evidence and submissions**

36. Mr Riasat commented on occasions when Ms Burr did not meet him for inspection as arranged and his request for delay to allow work to be completed. He was hampered in compliance because of a fire at his own residence which destroyed significant documents relating to the work to be carried out. At the time he was working outside the country for significant periods. Mr Riasat questioned the nature of specified requirements, for example, the specification for fire retardant doors. Mr Riasat disputed that some work was necessary, for example, in connection with pest infestation.
37. Mr Riasat made comments about service of the Notice by hand stated to be standard practice by Ms Burr and discrepancies in the amount of the financial penalty.
38. Ms Burr addressed issues raised by Mr Riasat and the work outstanding after successive extensions of the time to do so. She stated that the PACE interview was an opportunity for Mr Riasat to give his explanation about non-compliance and for the Local Authority to consider alternative enforcement, such as a civil penalty or criminal prosecution. On the basis of information in the interview, a 4 week extension period was agreed in respect of particular work specified and confirmed in an email dated 5 September 2017 (p.197). Three items were completed in the agreed time, a further 2 some 2 months later. Ms Burr did not clarify whether this agreement constituted a variation of the Improvement Notice served upon Mr Riasat.
39. Based on the work that has been completed and items remaining both confirmed by inspection and on overview on the morning of the hearing, Ms Burr considered, applying Bradford's guidance devised in accordance with HCLG guidance and taking into account mitigatory and aggravating factors, particularly that the Property was relet before completion of work, that the appropriate penalty could now be calculated at £7,500.
40. Mr Riasat's closing submissions included reference to the age of the Property, the possibility that required items of repair such as cracks in the windows did not affect amenity and were not worth replacing and that certain problems may have recurred after rectification. He gave details of proposals for the Property including concreting the front garden and rebuilding the front wall and an offer to fit a new bathroom with a walk-in shower that had been rejected by the tenant. He said the financial return from the Property was low with little margin between the rent received and his mortgage liability.

## **Tribunal's conclusions Housing Act offences**

41. We have no doubt that all work specified within the Housing Act Notices was not completed. This is apparent from our inspection. Although we did not have access to all areas such as occupied bedrooms, we observed matters remain outstanding including some specified requirements following the PACE interview. This was also the evidence of Ms Burr. We have noted item 2 (electrical certificate) has outstanding items, item 3 the guard rail to the front steps is clearly inadequate and items 4 and 5 cracked glass has not been replaced.

42. Despite Mr Riasat's absences abroad, difficulties in meetings between himself and Ms Burr without attributing blame and complications in paperwork because of his domestic fire he has had time to comply with the Notice and has still not completed the work. We gain the impression that he felt compliance could be negotiated and to that extent the Improvement Notices were only a starting point. If this was his view, the fact is he did not appeal them and they became binding in their existing form.
43. It follows that Mr Riasat is culpable of the alleged offence by failing to comply with the Improvement Notice as may arguably have been varied after the PACE interview. Further, some of the unresolved issues present a significant risk to occupiers or visitors to the Property and for that reason we find it appropriate that Mr Riasat is subject to a penalty.
44. We have taken into account the list of factors within the HCLG Guidance as reflected within Bradford's Housing Enforcement Policy provided at divider 40 in the bundle.
45. We do not consider Mr Riasat's cash surplus after mortgage repayments a relevant factor as he has the benefit of the repayment of a liability. The rental received is however relevant.
46. We have taken note of Ms Burr's revised calculations at the hearing having regard to the level of culpability, level of harm and consideration of aggravating and mitigating factors. We concur with the revised calculation of £7,500 which takes into account some items have been completed but others remain affecting the amenity and risk to occupiers and the reletting of the Property before full compliance which shows Mr Riasat derived financial benefit from the Property for most of the period of non-compliance to date. We note and have found non-compliance is the sole offence committed and conclude that the sum of £7,500 is fair and proportionate balancing all factors.
47. For the above reasons we vary the final Penalty Notice to amend the sum imposed to £7,500.

### **Order**

48. The Notice of Imposition of a Financial Penalty dated 3 May 2018 is varied in paragraph 1 to refer to the sum of £7,500 payable within 28 days of this decision.

### **Order accordingly**

**Signed: Judge L J Bennett**  
**Dated: 22 May 2019**