



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

Case Reference : **BIR/00CU/HNA/2022/0017**

Property : **17 Trent Place, Walsall, West Midlands,
WS3 1NA**

Applicant : **Ms Parmjit Kaur**

Respondent : **Walsall Council**

Type of Application : **Appeal against a financial penalty under
s.249A of the Housing Act 2004**

Tribunal Members : **Judge C Kelly
Mr Chumley-Roberts MCIEH, J.P.**

Date of Decision : **25 October 2022**

DECISION

1. The Applicant, Ms Parmjit Kaur, appeals against the imposition of a financial penalty imposed by the Respondent, Walsall Council, pursuant to s. 249A of the Housing and Planning Act 2016. The appeal was lodged by the Applicant on 20 March 2022 and the matter was heard by the Tribunal on 19 July 2022.
2. The civil penalty of £3,500 was imposed by reason of the Applicant's failure to comply with an Improvement Notice served under s.11 of the Housing Act 2004. There was no dispute that there was a failure to challenge the Improvement Notice by way of appeal and, as such, section 15(6) of the Act deems an appeal notice to be conclusive as to the matters that could have been raised on appeal. The Tribunal could not, therefore, consider whether any of the relevant works identified in the notice were works that were properly the subject of an Improvement notice.
3. The Improvement Notice was served on 25 October 2021 and required repair works to be begin by 22 November 2021 and the stated works to be completed by 6 December 2021. The Respondent served notice of an intention to impose a financial penalty on 13 December 2021 and subsequently imposed that penalty on the 21st February 2022.
4. The financial penalty was imposed by the Respondent following the Applicant's failure to commence the required works by 22 November 2021 and indeed, to complete them by 6 December 2022.
5. The essence of the Applicant's position was:
 - 5.1. that she could not commence the required works due to difficulties contacting her tenant, Ms Woods and thus, it was not possible to undertake the works due to matters outside of her control;
 - 5.2. that the Respondent had failed to apply s.13A of the 2004 Act because it did not take into consideration the representations made as to why it was not possible to comply with the improvement notice, such being submitted on 20 January 2022 and then again, in greater detail, on 28 February 2022; and
 - 5.3. that the improvement notice should have been revoked or varied in view of her explanation, to give her more time to undertake the required works, pursuant, she said, to s.16 of the 2004 Act.
6. Dealing briefly with the second and third grounds of challenge. There can be no doubt on the facts of this case that representations were made by the Applicant, and determined by the Respondent, indeed, they are referenced as having been considered by the Respondent on 16th February 2022. This Tribunal proceeds on the basis of a re-hearing, and a not a review of how the Respondent reached its

decisions in the public law sense that would apply in judicial review proceedings. The Tribunal will consider all matters afresh.

7. The heart of the Respondent's position is really that she has a good excuse for having not commenced (and potentially, completed) the works required in the Improvement Notice by the time stipulated within it.
8. The Applicant said that Ms Woods had failed to pass on her new contact telephone number, which changed twice in the same year. The Applicant produced a detailed chronology for the Tribunal, the most pertinent parts of which are:
 - 8.1. 24 September 2021 – the Applicant attends at the Property to review the state of the same following an invitation to do so by the Respondent; whilst parking up, the tenant contacts the Applicant to inform her she has symptoms of COVID19 and, resultingly, the inspection did not proceed;
 - 8.2. 11 and 14 October 2021, the Applicant sends text messages to the tenant, with a view to arranging access;
 - 8.3. 14 October 2021, the Respondent had arranged an inspection of the Property for this day, but the Applicant says that she only received the appointment letter that same day;
 - 8.4. In October/November 2021, arrangements had been made for the required repairs to be undertaken and the Applicant had been purchasing materials that she knew would be needed for the repairs to be undertaken;
 - 8.5. 17 November 2021 – the Applicant called the tenant's number, intending to arrange the works to be commenced on 22 November 2021, however she could not get through, the line being no longer available;
 - 8.6. 24 November 2021 – the Applicant attended at the Property in person, knocking on the front door, leaving a note for the tenant to call her urgently so that repair works could be arranged;
 - 8.7. 24 November 2021 – the Applicant emailed the Respondent to inform them of the difficulties getting hold of her tenant and told them she was prepared to undertake the works, that she was struggling to get in touch with the tenant, that the tenant's phone number may have changed, that she had written to the tenant and that a builder had attended the property to provide an estimate of costs but that there was no answer.

8.8.29 November 2021 – the Applicant attended at the property again with no answer – she says, unbeknown to her, the tenant had suffered a heart-attack on 25 November 2021 and was convalescing at her sister’s house;

8.9.1 December 2021 – the Applicant was provided with Ms Woods’ telephone number upon Ms Woods having contacted her from a new telephone number.

8.10 That the repair works required were commenced on the 8th January 2022 after receiving the new number for Ms Woods and that they were substantially completed (only 3 of the 28 repair items listed were outstanding) on 6 February 2022.

9. A letter was provided by Ms Woods and relied upon by the Applicant, which stated that (a) Ms Woods had changed her number in October 2021, and (b) that she had provided the new number to the Applicant in December 2021, that she had suffered a heart attack during the relevant period.

10. The Legal Position

11. In order to impose a financial penalty, there must be a “relevant housing offence” committed by the person served with the notice.

12. Section 249A of the 2004 Act provides:

“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),

...

(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.

...

(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...”

13. The “relevant offence” relied upon in this case is a failure to comply with an Improvement Notice under s.20 of the 2004 Act. The relevant provisions are:

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).*
- ...
- (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. As there is a criminal offence at the heart of the jurisdiction to impose a financial penalty, the Tribunal must be satisfied beyond reasonable doubt of the commission of the offence.
15. The Applicant accepted that a number of the required works remained outstanding as at the date of the hearing on 19 July 2022. There could, therefore, be no doubt that the works required were not completed by the required date.
16. Tribunal is satisfied beyond reasonable doubt, based on the Applicant's own admission, that the works required by the Improvement Notice had not been completed by 6 December 2021.
17. The question then arises as to whether the Applicant has a defence to the commission of the offence, which she need establish only on the basis of a balance of probability. In this case, however, by reason of the fact that the tenant had given one month's notice in December 2021, and that some of the works on the Improvement Notice remained outstanding as at 19 July 2022, there could be no reasonable excuse for having not complied with those works certainly by the date of the hearing on 19 July 2022.
18. It matters not whether, as contended by the Applicant, the works could not have been commenced in time, because put simply, they were not completed in time. The wording of section 30(2)(a) creates an offence where the works are not commenced, or completed, in time.

19. There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section. 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act. Dealing with those requirements in Schedule 13A:

19.1. Paragraph 1 – this requires a local housing authority to give notice of it’s intention to impose a financial penalty upon a person under s.249A, and in this case, this was done as noted as paragraph 3 above, on 13 December 2021;

19.2 Paragraph 2 – the notice of intention must be given before the end of six months beginning with the day on which the authority has sufficient evidence of conduct to which the penalty relates and, given that the notice of intention was issued on 13 December, this is within the required period;

19.2. Paragraph 3 – the notice must set out the amount of the penalty, the reasons for imposing it and the right to make representations – all of this detail was included within the notice as produced before the Tribunal and which it is accepted by the Applicant was served upon her;

19.3. Paragraph 4 – there is a right to make representations regarding the intended imposition of the penalty within 28 days after the notice of intention is served and in this case, such right was given and duly exercised by the Applicant;

19.4. Paragraph 5 – the Respondent is required to decide, having considered the representations, whether to proceed to impose the penalty and, if so, in what amount – again, in this case, this was done within days of the representations being made;

19.5. Paragraph 6 – if imposing a penalty, the authority must issue a final notice, which was done in this case and sent under cover of letter dated 21 February 2022;

19.6. Paragraph 7 – the final notice must require payment within 28 days after the day on which it was given – in this case, that requirement was imposed and set out at the bottom of the first page of the notice;

19.7. Paragraph 8 – the final notice must set out (a) the amount of the penalty (which it did, in the sum of £3,500, (b) the reasons for imposing the penalty (which it did, on the first page), (c) information about how to pay the penalty (which it did, and included a discount to that penalty if paid within 14 days via BACS to details contained on an included invoice) (d) the period for payment of the penalty (which it did, stated as 28 days from the date of the notice), (e)

information about rights of appeal (which it did, on the second page of the notice), (f) the consequences of a failure to comply with the notice (which it did, with an indication that the matter will be referred to the county court and enforced by the county court bailiff).

20. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the offence under s.30 of the 2004 Act has been committed and that the procedural requirements of s.249A and Schedule 13A of the 2004 Act have been complied with. Further, it is satisfied that no defence is made out, whether on the balance of probability or otherwise. Accordingly, the Respondent was entitled to impose a financial penalty and that the Tribunal should support that decision – which it does.
21. The issue then is what amount should the penalty be for.
22. The Respondent says that its policies were erroneously followed and it had applied the wrong penalty amount, which it asks the Tribunal to correct. The penalty imposed was £3,500, taken by reference to a starting amount of £5,000 and reduced by 30% by reason of applicable mitigation. The Respondent now asks us to increase the penalty based on a starting figure of £7,500, as it says it failed, in its calculation, to take account of the fact that the Property had multiple category 1 and high category 2 hazards when inspected as recorded in the Improvement Notice.
23. The Tribunal has considered the Respondent's Financial Penalties Policy, including the matrix contained in Appendix 2 of the same, which takes into account a number of factors. It is correct to say, as the Respondent does, that the starting point under the policy for a first offence, as this was, is £5,000 and that there is a premium of £2,500 that ought to be added for actions for multiple category 1 and category 2 hazards.
24. The Tribunal takes the view that it would be unfair in this case to increase the penalty at this stage. It takes this view because the Respondent offered to accept a lesser figure of £2,625 based on prompt payment within 14 days, despite the statutory period for payment being 28 days. The covering letter that enclosed the penalty notice made clear that the penalty might still be challenged within 28 days, as indeed, it must, but its willingness to essentially accept a lesser sum that provided in the notice whilst maintaining the right of the Applicant to appeal, would make it unfair for the Tribunal to increase the penalty amount at this stage. That the appeal was pursued alters nothing, because the Applicant was not required (and could not be required) to forgo her appeal rights notwithstanding that she made prompter payment than required by the notice in return for a lesser sum being paid, thus ensuring accelerated receipt of the discounted penalty. There was no warning within the penalty notice that the Respondent might seek to

increase the penalty if an appeal was lodged or that it would seek in any way to renege on the lesser sum that it was prepared to accept for prompt payment.

25. Accordingly, the Tribunal confirms the financial penalty imposed by the Respondent of £3,500 (which was reduced to £2,625 if paid within 14 days), noting that the Respondent made payment of the reduced sum and that, accordingly, there is no further payment to be made by the Applicant.

Judge C Kelly