



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

Case reference : **LON/00BB/HNA/2021/0002**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **141 Newham Way, Plaistow, London E16 4EG**

Applicant : **Mr Ejaz Ahmed**

Representative : **In person**

Respondent : **The Mayor & Burgesses of the London Borough of Newham**

Representative : **Counsel, Ms Zang
Magdalena Scokowska
(Ref: 20/1258/HOHE2)**

Type of application : **Appeal against a financial penalty
Section 249A & Schedule 13A to the
Housing Act 2004**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Mr M Cairns MCIEH**

Remote : **10 Alfred Place, London WC1E 7LR**

Date of decision : **15th July 2021**

DECISION

Covid-19 pandemic: description of hearing: This has been a remote video hearing, which had not been objected to by the parties. The form of the remote hearing was V: Skype remote. A face-to-face hearing was not held because it was not practicable under the current covid restrictions. The documents the Tribunal referred are in a two bundles submitted respectively by the Applicant and the Respondent. The inclusion of further submissions was agreed by the parties at the outset of the hearing.

Determination

1. The Tribunal has determined the sum payable by the Applicant as a financial penalty is **£5,000**. These monies should be paid to the Respondent within two weeks of issue of this Decision.

Application

2. This is an Appeal against the Respondent's decision to issue a Financial Penalty Notice pursuant to Section 249(2)A of the Housing Act 2004 ('HA2004') for the failure to comply with an Improvement Notice.

Hearing

3. A video hearing was held on 15 July 2020.
4. Mr Ahmed, the Applicant represented himself at the hearing and gave evidence to the tribunal.
5. The Respondents, the London Borough of Newham were represented by Counsel, Ms Zang. Ms Scokowska a senior Environmental Health Officer from the London Borough of Newham provided expert evidence to tribunal.

Background

6. The Applicant is the freeholder of 141 Newham Way, Plaistow, London E16 4EJ ('**the Property**'). The Property is a one bedroom first floor flat.
7. The Tenant of the property contacted Newham Council Private Health and Housing Team by e-mail to complain about the standard of the accommodation. Ms Scokowska, a Senior Environmental Health Officer, acting on behalf of the Respondent visited the premises on 22 January 2020. The inspection revealed a number of defects and the following hazards were identified:
 - (a) Excess cold – risk category 1 band A.
 - (b) Damp and mould growth – risk category 2 band E.
 - (c) Fire – risk category 2 band F.
8. After consultation with the Tenant the Authority served the Applicant an Improvement Notice dated 26 February 2020, requiring the Applicant to carry out a number of essential works to remedy the identified hazards. All works were to have been completed by 26 May 2020.
9. The Applicant did not submit an appeal against the Improvement Notice.
10. On 10 June 2020 the Respondent wrote to the Applicant to offer an extension of time from the original 26 May 2020 completion date to 31 August 2020 (see page **R107** of the Respondent's bundle). The Council voluntarily making allowance for Covid disruption.

11. The Applicant accepted this offer of additional time on 11 June 2020.
12. Mr Ahmed had already claimed to the Authority after their initial visit in January 2020, that most of the works had been completed with the only outstanding matter the installation of the gas boiler.
13. On 2 September 2020 the Respondent e-mailed Mr Ahmed notifying him of their intention to visit the property to conduct an inspection on 7 September 2020.
14. The inspection by the Respondent revealed a number of the specified works had not been completed.
15. The Authority issued a Notice of Intention to issue a financial penalty of £25,000. The Applicant made written representations on 21 October 2020 seeking to reduce the proposed penalty charges. The Authority responded by reducing the financial penalty from £25,000 to £5,000. This was confirmed to Mr Ahmed in the Respondent's letter of 5 November 2020 (see page R185).
16. Despite subsequent representations made by the Applicant about the proposed penalty the Authority confirmed the £5,000 penalty through service of the Notice on a 2 December 2020.

Legislation

17. The Respondent may impose a financial penalty pursuant to 249A of the Housing Act 2004, in respect of the Applicant's breach of Section 30 of the Housing Act 2004:
 - (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).*
18. Section 30 of the HA2004 provides as follows in respect of improvement notices:

- (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.*
- (5) *The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.*
- (6) *In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.*
- (7) *See also section 219A (financial penalties as alternative to prosecution for certain housing offences in England).*
- (8) *If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted if an offence under this section is respect of the conduct.*

The Applicant's evidence and submission

19. The reasons provided by the Applicant for his failure to comply with the Improvement Notice (see page 2 of the Applicant's bundle) was: -
 - the Tenant restricted access to the property to avoid Covid -19 infection; and,
 - the Tenant failed to organise the gas meter installation.
20. The Applicant provided to the tribunal details of his efforts to gain access to the Property. He alleged the Tenant was not cooperative about access and had resisted his efforts to undertake the works. He claimed this prevented access for his works contractors.
21. Mr Ahmed was unable to provide any evidence of the efforts he made to access the dwelling from April 2020 to late-July 2020.
22. The Applicant told the tribunal he had used his best efforts to complete the necessary works prior by the deadline. He accepted that all the Notice works had not been completed by 31 August 2020. He told the tribunal works outstanding at this date were not done because the gas meter had not been installed.
23. The tribunal were told the Applicant did make an informal application for a further extension of time by e mail dated 5 September 2020 after the expiry of the time limit in the improvement notice. This is after the deadline and receipt of notification of the inspection visit by the Authority. The e-mail is at page 66 of the Applicants bundle.

The Respondent's evidence and submissions

24. The Respondent confirmed to the tribunal that the Applicant had at no time challenged the Improvement Notice. Counsel for the Authority emphasised that this put the Applicant at strict liability to carry out the works within the specified timescale which ended on 31 August 2020.
25. Counsel drew the attention of the tribunal to the extension of time from 26 May 2020 to 31 August 2020. This to offset the disruptive effects of the Covid 19 pandemic.
26. Counsel for the Respondent asked the tribunal to note the Applicant had claimed in January 2020 that “nearly all of the work had been completed after the initial inspection”.
27. The tribunal were told by the Authority they did not receive a formal application for an extension of time to carry out the works. The e-mail dated 5 September was ambiguous and received after the deadline.
28. Ms Scokowska in her evidence to tribunal did not accept completion of the Notice works was delayed beyond the deadline by the failure of the gas utility to install a gas meter. Ms Scokowska offered several solutions to overcome difficulties caused by this delay. These included direct

instruction of the utility followed by account transfer to Tenant, the installation of a prepayment meter or the fitting of new electric panel heaters instead of a gas supply.

29. Counsel for the Respondent raised doubts as to how the failure to install the gas meter and failure to replace the bathroom window had delayed carrying out a number of works contained in the Improvement Notice. The tribunal were told of the Applicant's failure to install insulation in the roof space, carry out works to the fire safety equipment, provide commissioning certification for the smoke detection system, and the FENSA certificate for the replacement windows. These works were not related to the installation of the gas meter.
30. Both parties made representations about the quantum of financial penalty. The Applicant argued that the matrix used to calculate the penalty score and resultant charge (see page R213) was incorrect. The Applicant referred to section 2 "*Removal of financial incentive*", in respect of the number of properties the Respondent had cited to be in his letting portfolio. The Applicant contended he did not own seven properties.
31. A detailed discussion took place at the Hearing between Applicant and Respondent. The Respondent accepted they had erred in their identification of the number of properties owned by the Applicant and it was agreed the Applicant owned 7A & 7B Station Road, E17 8AA, 48 St James's Street, E17 7PE and the subject property which comprised flats 141 & 141A Newham Way, E16 EG. At the hearing the Respondent accepted the Applicant owned five properties in addition to his primary residence, a total of six properties.
32. The Authority respondent contended they had been generous in their revision of the financial penalty. The Respondent had pro-actively reduced the charge from £25,000 to £5,000.
33. The Respondent told the tribunal ownership of 5 dwellings generates a score of 19 in the matrix and such a score incurs a penalty fine of £7,500. Counsel explained that reduction of the financial penalty was at the Respondents discretion.
34. The Applicant argued the financial penalty was excessive and did not fairly reflect the scoring criterion.

Discussion and conclusion

35. The Tribunal is satisfied the Improvement Notice was not challenged by the Applicant. Any challenge to an Improvement Notice must be made within 20-days' of service. This was not done.
36. The extended deadline for carrying out the works was 31 August 2020.
37. After careful review of the evidence the tribunal conclude the Improvement Notice works were not completed by the deadline of 31 August 2020. This is accepted by the Applicant. It is evidenced by correspondence after the completion date between parties The timely

completion of the outstanding works after the deadline resulted in the reduction of the financial penalty charge.

38. The tribunal has to determine whether there is a reasonable excuse for the Applicant's failure to carry out the works within the deadline.
39. The tribunal noted at the hearing date some Improvement Notice works had still not been completed, examples include provision of Fire Safety commissioning and FENSA certification. The requirement to improve roof insulation remained outstanding.
40. The Tribunal failed to identify any technical evidence to support the Applicant's assertion that the delay in installation of the gas meter and the covid pandemic gave reasonable excuse for his failure to complete the works set-out in the Improvement Notice by the extended deadline of 31 August 2020.
41. The tribunal has concluded there was no appropriate or formal application for an extension of the deadline. After careful scrutiny of the evidence the tribunal are unable to identify any reasonable excuse for the Applicant's failure to comply with the Improvement Notice.
42. The decision of the tribunal is that a financial penalty is payable by the Applicant.

Financial penalty

43. The penalty charge is calculated by the Authority using a matrix (see R213). It is acknowledged by the Respondents an error was made in the identification of the property holdings by the Applicant. This error was remedied at the hearing.
44. The Applicant has ownership and control of six dwellings including his primary residence. The Applicant falls into the medium portfolio landlord category. The recalculation of the matrix generates a score of 19. A scale of fines issued by the Respondent and submitted to tribunal confirmed this equates to a financial penalty of £7,500. Any reduction of this charge is at the discretion of the Authority. They advised tribunal they were not minded to make any further reduction to the £5,000 penalty charged.
45. The tribunal has carefully weighed the evidence and the criterion for determination of a Financial Penalty Notice and conclude the Respondent exercised generous discretion in calculating the revised financial penalty payable. The tribunal endorses the financial penalty of £5,000 imposed by the Respondent.

Name: Ian Holdsworth **Date:** July 2021
Valuer Chairman

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.