



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

Case Reference : **BIR/00CW/HNA/2019/0007**

Property : **119, Owen Road, Wolverhampton, WV3 OAJ**

Applicant : **Joga Singh Basra**

Respondent : **Wolverhampton City Council**

Representative : **Mr Abel, Wolverhampton City Council
Legal Services**

Type of Application : **Appeal against a financial penalty under
S249A and paragraph 10 Schedule 13A of the
Housing Act 2004**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr A. Lavender**

Date of Hearing : **6 December 2019**

Date of Decision : **18 December 2019**

DECISION

- 1. The Tribunal is satisfied beyond reasonable doubt that the Applicant has committed an offence under s30 Housing Act 2004 (the Act) by failing to comply with an Improvement Notice and**
- 2. The Respondent has complied with s249A and Schedule 13A of the Act in connection with the procedure for imposing financial penalties.**
- 3. The Tribunal allows the appeal in part by substituting a penalty of £10,000.00.**

1. This is an appeal against the imposition of financial penalties as a result of the commission of the housing offence in this case failing to comply with an Improvement Notice. The Applicant is Mr Joga Singh Basra who gave his address as 16 Marchant Road, Wolverhampton. The Respondent is the Wolverhampton City Council. The relevant property the subject of the Improvement Notice is 119 Owen Road, Wolverhampton (the subject Property).
2. On 22nd of June 2018 the Respondent city council served upon that the appellant at 56 Merridale Street West, Wolverhampton WV3 0RJ an Improvement Notice in respect of the subject property. The Notice required the Applicant to complete remedial action by 3 August 2018. The Notice stated that category one and two hazards exist at the subject Property as set out in Schedule 1 to the Notice. The category 1 hazards were in summary:
 - a) Excess cold – caused by an absence of insulation to the roof structure above bathroom and lobby. Damp floor in bathroom due to leaks from bath and wc supply and draughty rear door.
 - b) Personal hygiene sanitation and drainage arising from a hole in the bath causing bathroom floor to become sodden at each use
 - c) Flames, hot surface etc arising from poor positioning of gas cooker immediately adjacent a door opening serving bathroom and the rear external door
 - d) Electrical hazard caused by incorrect light fittings and extractor fan in the bathroom; twin socket electric power points cover parts missing with live conductors exposed in bedroom, unattached electrical sockets in rear

bedroom with second twin socket near to door loose and twin socket with loose cover in another bedroom

- e) Collision and entrapment caused by door from kitchen to rear lobby fitted with non-safety glass panels with one broken glass panel exposing sharp edges
3. The category 2 hazard was a risk of entry by intruder caused by the inability to lock a rear door. The Schedule noted that there is above average crime in the area.
 4. The Respondent carried out an inspection of the property on 6 September 2018. The inspection revealed a failure to comply with the requirements of the Improvement Notice within the specified timetable. On 30 January 2019 the Respondent notified the Applicant that failure to comply with the Improvement Notice was an offence under section 30 of the Housing Act 2004. The Applicant was warned that the Respondent has two methods of dealing with such offences, either impose a civil penalty or lay an information in a magistrate's court. The Respondent notified the Applicant it intended to impose a civil penalty which it calculated as £25,000.00. The letter invited the Applicant to make a payment of the discounted sum of £18,250.00 within 28 days.
 5. The Applicants did not respond to the letter of 30 January 2019. Accordingly, on 6 March 2019 the Respondent served the Final Financial Penalty Notice on the Applicant and notified him of his right to appeal by this Tribunal.
 6. The Applicant issued these proceedings on 9 May 2019. On 9 July 2019 the Tribunal allowed the application to proceed notwithstanding that it had been issued out of time and gave directions for preparation of a hearing.
 7. Annexed to the order for directions was a notice stating that the issues for the Tribunal to consider will or may include
 - a. Whether the Tribunal is satisfied beyond reasonable doubt that the Applicant's conduct amounts to a relevant housing offence

- b. Whether the local housing authority has complied with all the necessary requirements and procedures relating to the imposition of the financial penalty
 - c. The financial penalty is set at an appropriate level having regard to any relevant factors.
8. At the hearing the Applicant represented himself although he was accompanied by his former wife Amandeep Kaur Basra. The Respondent was represented by Mr. D Abel a solicitor with the Respondent. With him was Mr. Edward Langley Senior Environmental Health Officer and Miss Anisa Shaukat an Environmental Health Officer both with the Respondent.

The Subject Property

9. The Tribunal visited the subject property on the morning of the hearing but was unable to gain access to the property. Although the Applicant had notified the present tenant of the proposed inspection, there was no answer to the Tribunal's knock at the door.
10. The Tribunal noted that the property is a terraced two Storey house constructed in either the late 19th or early 20th century.
11. It was common ground that the defects noted in the improvement notice were no longer present as a result of work carried out after the imposition of the financial penalty.

The Statutory Framework

12. Section 30(1) Housing Act 2004 creates the offence of failing to comply with an 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.

Other relevant provisions of s30 are

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a penalty 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.

13. The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017. Section 249A of the 2004 Act, inserted by section 126 of, and paragraphs 1 and 7 of Schedule 9 to, the Housing and Planning Act 2016 ('the 2016 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 (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.

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.

14. By paragraph 10 of schedule 13A

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.

By clause 10(3) *an appeal under this paragraph*

(a) is to be a rehearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware

and by clause 10(4) *on an appeal under this paragraph the First-tier Tribunal may confirm vary or cancel the final notice.*

The Parties Submissions

15. At the opening of the hearing both sides presented more documents which the Tribunal admitted. The Applicant's documents included orders of both the High Court and the Family Court.

16. The Respondent's documents included a list of properties which the Respondent alleged were owned by the Applicant or were owned by a company known as I Partner Limited of which the Applicant was majority shareholder.

17. By an order of His Honour Judge Cooke sitting at the Birmingham District Registry in action number E3OBM446 between the Applicant and various companies (Claimants) and Ms Narash Kumari Badhan (Defendant) on 21 August 2019 the Applicant was ordered not to remove from England and Wales or in any way dispose of, deal with or diminish the value of certain properties owned by him including the subject Property. The freezing order also extended to dealing in shares owned by the Applicant in companies including I Partner Limited.

18. By an order of His Honour Judge Webster of 16 November 2018 various directions were given for service of pleadings in the action which appears on the face of the Order to have been on foot for some years.
19. By a Consent Order of Mr District Judge Gailey sitting at Wolverhampton County Court on 29 May 2019 the Applicant agreed that his former wife could take a legal charge over properties listed in the order to secure payment to Ms Kaur a lump sum of £360,000.00. The properties listed included the subject property and four other properties listed on the schedule presented by the Respondent.
20. Finally, by an order of Mr District Judge Gailey in the Family Court at Wolverhampton of 29 November 2019 a non-molestation order made ex-parte against the Applicant on 20 November 2019 was discharged. The grounds for discharging the order were recited as being in light of proceedings ongoing before His Honour Judge Cooke, it is appropriate to discharge the existing non-molestation order. There is a potential finding which will affect the non-molestation application as they arise out of the same factual dispute.
21. The Applicant also submitted evidence that he was in very poor health. The Tribunal was aware of the Applicant's poor health from the hearing of 9 July 2019 to decide whether to allow the appeal to proceed. The Respondent attended that hearing to oppose the application.
22. The Applicant submitted that he acquired the subject Property in September 2015. It was occupied at the time of acquisition by the tenants who in 2018 referred the state of the Property to the Respondent. He was vague as to the basis of the tenancy but assumed it was an assured shorthold tenancy and did not challenge the Respondent's proposition that he was responsible under s11 Landlord and Tenant Act 1985 to keep in repair and proper working order the installations for the supply of water, gas and electricity and for sanitation. He asserted that the tenants were difficult but he attended

to any complaint which they raised. However, his poor health caused him to neglect his affairs.

23. The Applicant described how his health deteriorated significantly and he was bedbound at the time of service of the Improvement Notice. He appointed solicitors namely Messrs Talbots of Wolverhampton to hold his power of attorney to manage his affairs including management of the subject Property. He admitted he had not notified the Respondent of the appointment of Talbots as his attorney.
24. He maintained the Respondent had not properly served him with the Notice. At the time of service of the Improvement Notice he was dangerously ill in hospital. He had no recollection of receiving the Notice. Moreover, the address to which the Notice was sent (56 Merridale Street) was that of his mother with whom he was not on good terms. The Notice of intention to impose a financial penalty and the Financial Penalty notice were both sent (hand delivered) to 175 Tettenhall Road, which was occupied by Ms Badhan. He admitted to once being in relationship with her but asserted that although he occasionally lived there he was not on good terms with Ms Badhan as appears from the various court orders produced to the Tribunal. He did not trust either his mother or Ms Badhan to pass on to him any correspondence going to those addresses. Copies of Notice of intention to impose a financial penalty and the Financial Penalty notice were also hand delivered to 119 Victoria Road and 56 Merridale Street West. As well as a copy being sent to Talbots Law by standard post
25. He also contended that the investigation was defective in that Mr Langley relied on the evidence of Ms Badhan who was hostile to Mr Basra. Mr Langley's statement recorded a conversation with Ms Badhan. The Applicant complained that as Ms Badhan was not present to give evidence the Tribunal should disregard that part of the Respondent's evidence as hearsay.
26. In answer to questions from the Tribunal the Respondent stated there were two inspections of the Property before the Improvement Notice was served. The first inspection was conducted by Miss Shaukat on 5

February 2018. The Respondent wrote to Mr Basra on 15 February 2018 notifying him that hazards were identified at the Property. The hazards identified at that time were substantially the same as those which formed the Improvement Notice. However, the electrical hazard identified in February was inadequate bathroom light, as described in the Improvement Notice and also exposed wiring to the light bulb in the hallway, not noted in the Improvement Notice. The letter did not describe the exposed wiring and damaged sockets which were the subject of the Improvement Notice. The Applicant asserted the defect in the electrical installation set out in the Improvement Notice was probably caused by the tenant. He contended that as Miss Shaukat did not record the hazards with the electrical sockets the tenants could well have caused the problems.

27. Mr Abel for the Respondent submitted that the Applicant does not dispute that the hazards noted in the Improvement Notice required attention and that as he was responsible for the state of the Property he has committed the offence of failure to comply with an Improvement Notice. Mr Abel called both Miss Shaukat and Mr Langley to explain why there was a difference in hazards identified between February and June 2018. Miss Shaukat stated that her attention was not drawn to the sockets. Mr Langley stated that the tenants reported the faults to him on his visit but the sockets were only visible after moving furniture.

28. As far as service was concerned Mr Langley's evidence was that he used the address for Mr Basra shown on the Land Registry Office copies of the title of the Property. Before doing so he had sent an email to an address for the Applicant given to him by the tenants. He received no response. He then served the Improvement Notice by posting through the letterbox at 56 Merridale.

29. It appeared to him that although he had not received any communication from the Applicant, on 5 July 2018 he received a letter from The Mortgage Works notifying him they had written to the homeowner (Applicant) requiring full compliance with the notice.

30. Also in July 2018 Mr Langley obtained information from the Respondent's council tax offices that the Applicant was resident at 175 Tettenhall Road.
31. In September 2018 Mr Langley inspected the Property again. The repair works had not taken place. Also, in September The Mortgage Works gave notice that a receiver had been appointed namely Templeton LPA of Cardiff on 28 August 2018. An electrical contractor was appointed by the receiver to undertake the electrical repair work in October 2018.
32. On 22 January 2019 officers of the Respondent carried out a case conference and decided to issue a civil penalty by reason of the serious category 1 & 2 hazards, the failure to complete repair works, the attempts to contact the landlord and the fact the landlord was a portfolio landlord.
33. Having fixed the penalty Mr Langley then personally delivered the Notice of Intention to Impose a Financial Penalty on Mr Basra at the addresses which the Respondent had for him together with another address at 119 Victoria Road, the address of his former wife supplied by Ms Badhan.
34. The Notices were delivered on 30 January 2019. Within 30 minutes of delivering the Notices Mr Langley received a call from an employee of Harveys Estates who had been appointed managing agents in November 2018. From the call Mr Langley understood that Mr Basra had received the Notices. Mr Langley then called Mr Basra using a telephone number he had previously used to attempt contact with the Applicant. This time he spoke to the Applicant and explained the meaning and effect of the Notices in particular the offer of a settlement for a discounted payment of £18,250.00. In the conversation with Mr Langley Mr Basra referred to his ill health and invited the council to withdraw the Notices if the works were completed without delay. By this time the works had been substantially completed.
35. Thereafter Mr Langley had no contact with the Applicant and on 6 March 2019 he personally delivered the Financial Penalty Notice to Mr

Basra at 175 Tettenhall Road copies hand delivered to 119 Victoria Road and 56 Merridale Street West.

36. As far as the penalty itself was concerned the Respondent relied on the matters described in paragraph 32 above to decide that the hazards constituted a high hazard and by reason of the disregard of the Notices and inaction by the landlord there was high culpability. As there were no aggravating or mitigating matters the penalty was fixed at the maximum provided for in the matrix used by the Respondent to determine penalties, £25,00.00.

37. The Respondent decided that the value of the property portfolio owned by the Applicant either in his own name or in the name of companies in which he had a substantial shareholding was very substantial and he was therefore well able to pay the penalty.

Decision

38. By the Applicant's admission he has not complied with an Improvement Notice which is an offence under s 30 Housing Act 2004. The Tribunal is satisfied beyond reasonable doubt that the Applicant has committed a housing offence.

39. S30(4) provides that a person has a defence if he had a reasonable excuse for failing to comply with the notice.

40. The Tribunal is satisfied that the Applicant has suffered and continues to suffer with serious ill-health which may have affected his ability to conduct his affairs. In addition, he is a party to significant litigation with his former business or life partner Ms Badhan and his former wife. The information relating to the litigation was not known to the Respondent until the morning of the hearing.

41. Although the Applicant asserted his illness caused him not to see the Improvement Notice, the Respondent had inspected the Property in February 2018 and reported on the inspection at that time. The Applicant did not satisfy the Tribunal that he was unaware of the action

of the Respondent at all relevant times in 2018. The other litigation disclosed to the Tribunal indicated that even if seriously ill he was in contact with both his former wife and Ms Badhan. As an experienced residential property landlord, he could and should have taken steps to effectively manage his property when he became ill. The Tribunal is satisfied there is no reasonable excuse for failing to comply with the Improvement Notice.

42. The Tribunal is satisfied that the Respondent did all it could to contact the Applicant. It first used the address given by the Applicant to the Land Registry but having obtained further information about the possible location of the Applicant, Mr Langley personally attended the various addresses to deliver Notices. The Tribunal is also satisfied that all other procedures were correctly carried out by the Respondent.
43. The Respondent may not have known of the Applicant's ill-health during 2018. That information was first disclosed in July 2019 when the Applicant applied for permission to appeal the penalty notices.
44. These are new facts which the Tribunal is entitled to take into consideration when deciding the application pursuant to paragraph 10(3)(b) Schedule 13A Housing Act 2004.
45. Although the Applicant was an experienced landlord, his portfolio of properties is affected by litigation and mortgage charges. The Tribunal heard Mr Basra explain that the equity in each of his properties is severely reduced and some properties are in negative equity.
46. The Tribunal must consider a number of factors in deciding whether the penalty was appropriate. These include:
 - the severity of the offence,
 - the culpability and track record of the offender
 - the level of harm caused to the tenant
 - punishment of the offender
 - deterrence
 - removal of financial benefit

47. The statutory guidelines also require consideration of the assets of the offender.

48. In this case the Respondent assessed the hazards as high risk and high culpability and decided upon the maximum fine. The Tribunal having considered the hazards listed in the Improvement Notice is satisfied that the level of potential harm to the tenant was more towards the medium level of harm, except for the electrical defects, which may have been as a result of tenant misuse. Also, Mr Basra had no previous track record of offending. This is a case when it is appropriate to vary the level of the civil penalty. The Tribunal determines that the level of culpability and harm is medium. Applying the levels of penalty set out in the Respondent's matrix the penalty should be between £7,500.00 and £15,000.00. The Tribunal is not bound by the matrix but considers it a helpful guide. Applying its findings, the Tribunal substitutes a penalty of £10,000.00

Appeal

49. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair