



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

Case reference : **MAN/00BR/HNA/2021/0119**

Property : **47 Barff Road, Salford M5 5ES**

Applicants : **HK Property Investment Solutions Limited**

Respondent : **Salford City Council**

Respondent's Representative : **Paul Scott, Solicitor, Legal Services, MCC**

Type of Application : **Appeal against a financial penalty -
Section 249A & Schedule 13A Housing Act 2004**

Tribunal Members : **Tribunal Judge S Moorhouse LLB
Mr WA Reynolds MRICS**

Date & Venue of Hearing : **20 July 2022 - remote video hearing (FVH)**

Date of Decision : **27 July 2022**

DECISION

DECISION

1. The financial penalty of £8750 imposed by the Respondent on the Applicant company on 9 April 2021 for failure to comply with an Improvement Notice is confirmed.

REASONS

The Application

2. The Application was made on 6 May 2021 by HK Property Investment Solutions Limited ('the Applicant'), appealing a financial penalty of £8750 imposed by Salford City Council ('the Respondent') for failure to comply with an Improvement Notice dated 15 June 2018 ('the Improvement Notice') relating to 47 Barff Road, Salford M5 5ES (the Property').
3. Directions were issued on 25 January 2022. The tribunal had the benefit of: (1) copies of the application form and accompanying documents; (2) a bundle of documents (to page 319) submitted by the Respondent, including a written statement in response to the Application and witness statements by the Respondent's Housing Standards Officers; (3) a written statement of case by the Applicant and accompanying documents including fire alarm certificates, rental statements and bank statements; and (4) a written reply by the Respondent to the Applicant's statement of case.

The Hearing

4. The remote video hearing was attended for the Applicant by Mr Nazim Hussain and his wife Mrs Parveen Kootbaully, both directors of the Applicant company, and for the Respondent by Mr Paul Whatley of Counsel, Mr Paul Scott (Solicitor) and by Housing Standards Officers Liz Mann and Karin Daniels.

The Law

5. The power of a local authority to impose financial penalties is set out at section 249A of the Housing Act 2004 ('the Act'). Subsection (2) lists 'relevant housing offences'. The Final Notice in the present case relies upon subsection (2)(a) (section 30 - failure to comply with improvement notice). Subsection (4) provides that the amount of a financial penalty imposed under section 249A is to be determined by the local housing authority, but must not be more than £30,000.
6. Section 30(1) of the Act provides: '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.' Section 19 of the Act provides that where an improvement notice has been served on any person and at a later date that person ceases to be in control of the property, then the person who becomes the liable person in respect of the premises is to be in the same position as if the improvement notice had originally been served on him and he had taken all steps relevant for that Part of the Act which the original recipient had taken.
7. Section 30(4) of the Act provides: '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'.
8. Schedule 13A to the Act sets out the procedure for imposing financial penalties, provision for appealing financial penalties, provisions concerning enforcement and a

requirement for local housing authorities to have regard to guidance given by the Secretary of State.

9. Paragraph 10(1) of Schedule 13A provides that a person to whom a final notice is given may appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of the penalty. Sub-paragraph (3) provides that such an appeal is to be by way of a re-hearing of the local housing authority's decision, but may be determined having regard to matters of which the authority was unaware. Sub-paragraph (4) provides that the First-tier Tribunal may confirm, vary or cancel the final notice.
10. Guidance issued by the Ministry of Housing, Communities & Local Government sets out 7 factors that should be considered by a local housing authority to help ensure that a civil penalty is set at an appropriate level: severity of the offence; culpability and track record of the offender; the harm caused to the tenant; punishment of the offender; deterring the offender from repeating the offence; deterring others from committing similar offences; and removing any financial benefit the offender may have obtained as a result of committing the offence.

Preliminary Matters

11. At the outset of the hearing the matters in issue were clarified. It was common ground that at re-inspection on 16 October 2020 the Applicant had failed to comply with the Improvement Notice and therefore, prima facie, an offence had been committed under section 30(1) of the Act.
12. Mr Hussain had not explicitly raised the statutory defence of 'reasonable excuse' within the Applicant's written statement of case. However three issues raised by the Applicant represented explanations or excuses for the Applicant's failure to comply with the Improvement Notice, the issues being: (1) tenant damage; (2) culpability of the Applicant's contractor/agent; and (3) travel restrictions due to COVID 19.
13. Mr Whatley accepted on the Respondent's behalf that the statutory defence of 'reasonable excuse' had implicitly been raised and that it was appropriate for the tribunal to consider this, the burden of proof resting with the Applicant and the standard of proof being the balance of probability. Mr Hussain confirmed that in his view the Applicant had a reasonable excuse for failing to comply with the Improvement Notice. For these reasons the tribunal decided that the statutory defence under section 30(4) of the Act would be considered.
14. The amount of the penalty was in issue. The Applicant challenged the way in which the Respondent's policy had been applied and contended in particular that the Applicant's financial circumstances had not been taken into consideration.
15. Immediately prior to the hearing the Respondent received further documentary evidence from the Applicant. Mr Hussain clarified that these comprised rent statements he believed had been omitted from his previous submission. The further statements were not admitted by the tribunal because, once the tribunal identified that rent statements had been included with the Applicant's submission, Mr Hussain considered these to be duplicates.
16. Having identified the matters in issue and addressed the issue of the Applicant's further submission, the parties' cases were presented. The tribunal's findings of fact and the reasons for the tribunal's decision are set out below.

Findings of Fact and Reasons for Decision

General

17. On 15 June 2018 the Improvement Notice was issued to the then owner of the Property. The Applicant acquired the Property on 8 October 2018 for the purpose of refurbishing it and reletting it to 4 tenants as a House in Multiple Occupation. In the course of purchasing the Property, on 18 September 2018, Mr Hussain obtained a copy of the Improvement Notice. Under section 19 of the Act, upon completion of the purchase the Applicant became the liable person, in the same position as if the Improvement Notice had been served on the Applicant. The August 2018 deadline for completion of the works in the Improvement Notice had expired by the time of the Applicant's purchase and no extension of time was sought or formally granted.
18. The Applicant's directors visited the Property only twice: prior to purchase and around 4 weeks prior to the hearing. The Applicant had a contractual relationship with a local agent, Mr Jamie Parker, trading as 'Invest this Room' and 'Want this Room'. Mr Parker had his own rental portfolio and assisted the Applicant by locating the Property, undertaking the refurbishment and by managing the Property and lettings. The Applicant additionally purchased two other properties. These were also the subject of a contractual arrangement with Mr Parker.
19. The refurbishment works for the Property were specified in a document headed 'HMO Property Development Proposal' ('the Development Proposal') which described the works and estimated costs. This was prepared for the Applicant by Mr Parker on 17 October 2018.
20. In January 2019 Mr Hussain reported to the Respondent that work had started at the Property but had been 'put on the back burner' whilst another property was made ready for letting. He was reminded of the need for re-inspection and asked to keep the Respondent informed of progress with the refurbishment.
21. In October 2019 the Applicant was advised by Mr Parker that the refurbishment works to the Property were complete except for white goods. A re-inspection was arranged by Mr Hussain however the Respondent's officers found that Mr Parker was still only part way through the works and the re-inspection was aborted. By the end of 2019 the Applicant understood that the works had been completed in full. Rental statements and copy tenancy agreements show that by November 2019 three rooms were let and the Applicant was beginning to receive rental income.
22. There was no request by the Applicant for a further re-inspection until this was triggered in 2020 by the Applicant's application for a (selective) HMO licence, the application being referred to the Respondent's enforcement team to identify any outstanding issues. A re-inspection scheduled for 18 September 2020 had to be re-scheduled for 16 October 2020 because the agent did not have the correct key.
23. At the re-inspection on 16 October 2020 the Respondent identified numerous failures to comply with the Improvement Notice. In particular: the fire door to the kitchen did not close and there were no intumescent strips or cold smoke seals; all four bedroom doors had excessive gaps, there were missing strips and seals to two bedroom doors and one overhead closer absent; the hallway cupboard (on the escape route) had not been fitted with a fire door or necessary furniture; and damp issues identified in the Improvement Notice relating to the rear bathroom still subsisted.

24. Notice of Intent to impose a financial penalty of £12,500 was issued on 16 February 2021. Representations were received from the Applicant and the works were completed to the Respondent's satisfaction prior to a Final Notice being issued on 9 April 2021, the financial penalty having been reduced to £8750.

Defence of 'reasonable excuse'

25. There were three elements to the potential statutory defence under section 30(4) of the Act.
26. *Tenant damage* - It was contended by the Applicant that the missing door closer and some intumescent strips had been removed by tenants. Evidence to support this was in the form of a copy WhatsApp message from Mr Parker to Mr Hussain dated 12 February 2021 in which this explanation is given, along with the comment: 'these are quite common problems; tenants find the fire doors annoying and remove these bits to make their doors close easier and/or not self-close when they want them to stay open'. The Applicant also contended that copy invoices included in the Respondent's bundle demonstrated that the works had been completed and paid for in full.
27. It was argued for the Respondent that Mr Parker's message was self-serving and that the Development Proposal and related invoices did not include all of the required compliance works. The Respondent also provided digital photographs of the Property, including relevant doors, taken by Karina Daniels at the re-inspection.
28. The tribunal did not accept, for reasons given later, that the Development Proposal and related invoices evidenced compliance with the requirements of the Improvement Notice. In addition, the tribunal noted that Mr Parker had accepted that aspects of the fire doors were unsatisfactory, stating in a WhatsApp message of 12 February 2021: 'Fire doors will be fixed as per guarantee'.
29. The evidence before the tribunal in support of the Applicant's claim of tenant damage was not sufficiently compelling to satisfy the tribunal that the absence of a door-closer and intumescent strips was attributable to such damage. Even if the claimed tenant damage had occurred, this would not have amounted to a 'reasonable excuse' under section 30(4) of the Act because: (1) it was accepted by the Applicant that tenants were not responsible for all of the non-compliances identified in the Notice of Intent and Final Notice; (2) Mr Parker's admission suggested fire doors had faults covered by guarantee; and (3) on Mr Hussain's testimony, there was no inspection regime in place that enabled them to identify and rectify tenant damage.
30. *Culpability of the Applicants contractor/agent* - The Applicant contended that the refurbishment of the Property, and compliance with the requirements of the Improvement Notice, had been the responsibility of Mr Parker.
31. The tribunal determined that in relation to the refurbishment works, Mr Parker had operated as the Applicant's building contractor, carrying out parts of the works to the Property personally and subcontracting other parts. No arrangements were made for the Applicant, or any third party appointed by the Applicant, to inspect the works - the Applicant relied upon photographs supplied by Mr Parker and upon the impression they had formed of Mr Parker as a reputable and capable property developer and landlord.
32. The refurbishment works were specified in the Development Proposal. This made no mention of the Improvement Notice. Certain items in the Improvement Notice are outside the scope of the works described in the Development Proposal, for example

the requirement for a fire door to the storage cupboard in the hallway and the requirement for thumb turns to allow a quick exit through external doors. An email from Mr Parker to Mr Hussain dated 6 November 2020 claimed that Mr Parker never charged the Applicant to carry out works to the rear bathroom required by the Improvement Notice and that the fire door to the hall cupboard was never requested or charged for.

33. The tribunal determined that the Applicant failed to ensure that the works specified in the Improvement Notice were explicitly included within the scope of the refurbishment, failed to put appropriate measures in place to oversee the refurbishment works, and failed to take appropriate steps to ensure compliance with the Improvement Notice. In these circumstances, the tribunal did not accept that the Applicant's reliance upon Mr Parker constituted a reasonable excuse for failing to comply with the Improvement Notice.
34. *COVID 19 restrictions* - Mr Hussain contended that travel to the Property from their home had been inhibited by COVID restrictions. Having found on the facts that (1) Mr Hussain understood by the end of 2019 that the refurbishment was complete, (2) the Property was tenanted by November 2019, and (3) the Applicant made no move to arrange a further re-inspection until later triggered by a licensing application, the tribunal considered that the introduction in March 2020 of COVID restrictions did not constitute a 'reasonable excuse'.
35. The tribunal determined that the three issues raised by the Applicant did not suffice, individually or cumulatively, to make out a defence of reasonable excuse under section 30(4) of the Act.

Amount of the penalty

36. The Respondent adopts the Association of Greater Manchester Authorities policy on Civil (Financial) Penalties as an alternative to prosecution. The 7 factors set out in guidance issued by the Ministry of Housing, Communities & Local Government are referred to in the policy.
37. In applying the policy the Respondent categorised the Applicant's offence as being in the 'medium' harm category (Housing defect, giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example, falls between levels, excess cold, asbestos exposure). The 'high' category for harm covers defects posing a serious and substantial risk of harm including serious fire safety risk. The 'low' category covers risks of harm such as localised damp and mould, and entry by intruders.
38. In the present case the Applicant failed to implement a number of required fire safety precautions - fire doors were ill fitting and missing safety features, and safety requirements regarding a cupboard on the escape route were omitted. In the Applicant's favour, there was a functioning fire alarm system. The tribunal determined that there would have been an argument for categorising 'harm' as 'high', given that serious fire safety risk is specified as an example in that category, however it accepted that the Respondent was acting reasonably in lowering this to 'medium' in recognition of the fire alarm system. The tribunal considered that the 'low' category simply did not apply to the circumstances of this case and agreed with the Respondent's categorisation.
39. The Respondent categorised the culpability of the Applicant as 'low' (Offence committed with little or no fault on the part of the landlord or property agent; e.g. obstruction by tenant to allow contractor access, damage caused by tenants). The

'medium' category is intended to cover a 'negligent act', and describes a failure of a landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence.

40. The Respondent stands by the categorisation of 'culpability' as low, but contends that they were giving the Applicant the 'benefit of the doubt' in doing so. The tribunal agreed with the Respondent in this respect. Whilst the tribunal determined the appropriate category for culpability to be 'low', on the basis of the tribunal's findings as to the lack of oversight of the refurbishment an argument could be made that the 'medium' category applied.
41. A band 3 penalty applies under the policy where 'harm' is categorised as 'medium' and 'culpability' is categorised as 'low'. The band 3 range of penalties is £10,000 to £14,999, the starting point (prior to any adjustment for aggravating or mitigating factors) being the midpoint of £12,500.
42. Having given Notice of Intent to impose a civil penalty of £12,500 (there being no aggravating or mitigating circumstances identified) the Respondent made a 30% reduction in the penalty in issuing a Final Notice. This reduction can be applied under the policy where corrective action is taken in a timely and appropriate manner in circumstances where 'culpability' is assessed as 'low' or medium'. The corrective action must be taken prior to service of the Final Notice and the maximum reduction is 30%.
43. The tribunal determined that the non-compliances had been remedied prior to the issue of the Final Notice and agreed with the Respondent that a reduction should be applied. The Respondent having given the maximum reduction the tribunal saw no reason to vary this.
44. The Applicant contended that financial circumstances should be taken into account . The policy provides that where an authority is satisfied that assets and income (not just rental income) of the offender are such that it is just and appropriate to increase or reduce the penalty then the penalty may be increased or reduced on a sliding scale, dependent upon the financial circumstances of the offender, up to the maximum or minimum point of the banding level identified for the offence (prior to applying any reduction for corrective action).
45. The tribunal had limited information before it as to the financial circumstances of the Applicant company. The directors submitted that they had raised £300,000 as a mortgage on their own home and invested this in the company, but it became apparent that part of this sum had been used to repay a mortgage on a property not owned by the company. It was submitted that the 3 properties owned by the Applicant had each been purchased with the aid of secured loan finance equivalent to 75% of the purchase price.
46. A copy balance sheet for the company suggested the company had fixed assets of £423,950 but overall net liabilities of £2,676, however this limited information was 'as at 31 March 2020' and did not reflect any changes since that time attributable for example to profit/loss or property revaluation. No profit and loss accounts for the company were supplied.
47. The tribunal had the benefit of rent statements that indicated Mr Parker had paid to the Applicant over £28,000 in relation to the Property for the period November 2019 to April 2022. The figures for the Applicant's other two properties were not supplied.

48. Mr Hussain stated that the Applicant had a single bank account. Statements were supplied. These did not include the name of the account holder and it was accepted by the directors that some of the expenditure did not relate to the company. There were entries for car hire in Tenerife, purchases from shops including Costco, and restaurant bills. Petrol expenses seemed excessive for a company with only three properties, particularly as Mr Hussain had only visited the Property twice.
49. Having reviewed the limited financial information available to it, the tribunal determined that there was no reasonable basis upon which to make any adjustment to the financial penalty by reason of the Applicant's financial circumstances.
50. The tribunal is not bound by the policy adopted by the Respondent. In this case the tribunal saw no reason to depart from the policy. The tribunal considered that the Respondent had treated the Applicant sympathetically and that the Respondent's approach had been more than reasonable.
51. The financial penalty of £8750 was confirmed.

S Moorhouse

Tribunal Judge