



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

Case Reference : **BIR/44UE/HNA/2021/0010**

Property : **5 Gilbert Close, Stratford-on-Avon, CV37 0DU**

Applicant and Appellant : **Mr John Stephens**

Respondent : **Stratford-on-Avon District Council**

Type of Application : **Appeal Against a Financial Penalty, section 30, 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr A. McMurdo, MSc, MCIEH**

Date of Decision : **27 October 2021**

DECISION

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Application and Background

1. Mr John Stephens "the Applicant", has been at all times relevant to this case, the owner of 5 Gilbert Close, Stratford-on-Avon, CV37 0DU "the property". By an application, dated 4 June 2021, the Applicant appeals against the issue of a financial and penalty of £5,000 imposed by Stratford-on-Avon District Council "the Respondent", for the offence of failing to comply with an improvement notice, under sections 30, 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004, "the Act".
2. At all times relevant to this case the property has been occupied by two rent paying tenants (David Ovens and a gentleman referred to as Ben), renting two separate rooms within the property. As such the property is not a house in multiple occupation.
3. On 3 July 2020, Consultant Private Sector Housing Officer Mr R. J. Watson, employed by the Respondent, carried out an inspection of the property and found three category 2 hazards. On 10 July 2020 the officer issued an improvement notice for these hazards, being, (i) food safety, (ii) personal hygiene, sanitation and drainage and (iii) electrical hazard. The Applicant has not appealed to the Tribunal against the issue of the improvement notice. It is common ground that only the electrical hazard was remedied before issue of the notices relating to a financial penalty.
4. On 16 February 2021 Housing Officer Watson issued a notice of intent to issue a civil penalty of £5,000 for the offence of failing to comply with an improvement notice.
5. On 10 May 2021 Housing Officer Watson issued a notice of intent to issue a civil penalty of £5,000, for the offence of failing to comply with an improvement notice.
6. The appeal is on the basis that the decision to impose the civil financial penalty fails to take into account of the following facts; the electrical hazard had been repaired. The Covid-19 pandemic has been present in society throughout the time period between improvement notice and financial penalty being issued and that this has made it impossible to remedy the other hazards because of illness, lock downs, persons being involved in self isolation and tenants not wishing to have persons in the property because of fear that they might bring Covid-19 into the property. Further, the Applicant contends that he is in financial difficulties being caused by his income being reduced due to the Covid-19 pandemic.

7. Directions were issued on 1 July 2021 by Regional Surveyor Ward. It is clear that these Directions have not been complied with by the Respondent and they will be dealt with in detail later.
8. On 20 October 2021 Judge Tonge, preparing the case for its final hearing, noticed that it was likely that the Directions of 1 July 2021 had not been complied with by the Respondent and issued Additional Directions. These Directions have not been complied with by the Respondent and will be dealt with later.
9. On 25 October 2021 the Tribunal received an email from the Applicant pointing out various failures of the Respondent to comply with Directions. Judge Tonge (sitting alone) issued further Directions on 26 October 2021, permitting the Applicant to serve additional documents ahead of the hearing that the Applicant contended had been missed out by the Respondent and this was done.
10. The video hearing commenced at 10 am on 27 October 2021.

The Law

The Housing Act 2004

Section 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),

(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.
- (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.
- (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.

Paragraph 10 of schedule 13A

- 10(1) 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.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (3) An appeal under this paragraph—
- (a) is to be a re-hearing of the local housing authority's decision, but
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5)The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

The Tribunal Procedure (First-tier Tribunal)(Property chamber) Rules 2013

Striking out a party's case

9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an applicant except that—

(a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and

(b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Written evidence

11. The Applicant has served a bundle of evidence entitled 'The Bundle ahead of the hearing' and it complies with the Directions of 1 July 2001. Further, as a result of the Directions of 26 October 2021 another 7 screen shots from the Applicants computer were served. These included the Applicant's representations in response to the Respondent's notice of intent to issue a financial penalty, which had not been made part of the Respondent's bundle.

12. The Respondent has served a bundle and a short additional bundle. These will be dealt with in some detail in the preliminary issue that commences the hearing.

The Hearing

13. The hearing commenced at 10 am on 17 October 2021, held via video link. The hearing was attended by Mr Chapman, Private Sector Housing Manager, employed by the Respondent and also by the Applicant. Mr Chapman had not completed a written statement, but was clearly involved in some of the letters sent during the latter part of the case and is a senior and supervisory officer of the witness in the case, Housing Officer Watson. The Respondent had not arranged for Housing Officer Watson to attend the hearing, the Tribunal being informed that Housing Officer Watson is no longer employed by the Respondent.
14. The Tribunal dealt with the Respondent's failure to comply with Directions as a preliminary point.
15. Housing Officer Watson had been sent the Directions of 1 July 2021 both by email and letter, however, upon leaving his employment with the Respondent he did not pass on those Directions to Housing Manager Chapman. As a result Housing Manager Chapman has not seen the Directions and has not attempted to comply with them. Housing Officer Watson simply handed over some email information against the property address and Housing Manager Chapman used these, together with the witness statement, notices and letters to build the case against the Applicant.
16. Direction 8 of the Directions of 1 July 2021 require that the Respondent serve their bundle upon the Applicant and the Tribunal, before 23 July 2021. In fact it appears that the bundle was not served on the Applicant until 5pm on 26 October 2021. The Respondent's bundle of evidence was served on the Tribunal by email on 15 October 2021.
17. Housing Manager Chapman agreed that he had received the Applicant's bundle, but had wondered why that had been served upon the Respondent. It was of course served pursuant to the Directions, but having not seen the Directions there was no way for Housing Manager Chapman to know that.
18. Direction 8(ii) of the Directions of 1 July 2021 require evidence to be served by the Respondent, as to the steps taken and factors taken into account, by the Respondent, when deciding the amount of the financial penalty. This is covered by Housing Officer Watson in his statement, but only very briefly in paragraph 1.28. This paragraph refers to a charging

matrix, but does not make any reference to consulting any official policy, adopted by the Respondent Council or written guidance as to when it is appropriate to take no action, charge a civil penalty or prosecute. The charging matrix is not part of the Respondent's bundle of evidence and was not served until 22 October 2021 in response to the Additional Directions of 20 October 2021. The official policy or guidance adopted by the Respondent Council has not been exhibited, Housing Manager Chapman apologised for this oversight. The representations made by the Applicant to the Respondent after service of the notice of intent to issue a civil penalty is not part of the Respondents bundle of evidence and had to served by the Applicant, after he had raised the issue of missing evidence.

19. Direction 8(iii) of the Directions of 1 July 2021 explicitly requires the official guidance or local policy of the Respondent to be included in the Respondent's evidential bundle. This Direction was repeated in Direction 2 of the Directions of 20 October 2021. These Directions have still not been complied with. On 22 October 2021 a copy of what is said to be the council's matrix was served, but without any proof that it has been officially adopted by the council. The official guidance/policy has not been served.
20. Having ascertained these facts, the Tribunal went into private session to deliberate upon the issues involved in failure to comply with Directions.

Deliberations

21. The Tribunal considered all of the evidence as referred to above and considered the contents of the Respondent's bundle of evidence and additional documents served on 22 October 2021.
22. The Tribunal is satisfied that Direction 8 of the Directions of 1 July 2021 has been breached by the Respondent, due to very late service of the Respondent's bundle of evidence on both the Applicant and the Tribunal.
23. The Tribunal is satisfied that Direction 8(ii) of the Directions of 1 July 2021 has been breached by the Respondent due to a failure to include in the Respondent's bundle of evidence all of the evidence already referred to in paragraph 18, above.
24. The Tribunal is satisfied that Direction 8(iii) of the Directions of 1 July 2021 has been breached by the Respondent. The Respondent has failed to include in the Respondent's bundle of evidence, the official policy or written guidance relating to financial penalties, adopted by the Respondent Council, pursuant to schedule 13A, paragraph 12 of the Housing act 2004. The Tribunal accepts that the matrix applicable to this type of case has been served, but not in compliance with the Direction as it

- was served very late, without any proof that the matrix has been adopted by the council.
25. The Directions of 1 July 2021 carry the following warning at the fourth bullet point on page 2, 'If a Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 rules'.
 26. Having established these significant breaches of the Directions of 1 July 2021, the Tribunal considers whether it is fair and just to bar the Respondent from any further participation in the case.
 27. This is an appeal to be heard by a full 'rehearing' of the evidence, if the Respondent is barred from opposing the appeal in the rehearing, then the Tribunal will have to allow the appeal, since the appeal will not be opposed.
 28. The Tribunal notes that the Respondent has failed to arrange for Housing Officer Watson to be available at the hearing, seeking to rely upon his evidence to establish that the crime of failure to comply with the improvement notice has been committed. Further, this officer is relied upon to establish that the decision to impose a financial penalty has been properly made and set at proper level, without providing a copy of the official policy or written guidance relating to financial penalties, adopted by the Respondent Council. However, Housing Officer Watson is not available to be questioned by the Applicant and the Tribunal. There is no other witness who could give evidence on these points.
 29. If the Tribunal were to decide that it is sure that the crime of failure to comply with an improvement notice has been committed, without any defence preventing that decision, then on what basis should the Tribunal continue with the case? There is no official policy or guidance that the Tribunal could consider as to whether to approve the decision to impose a financial penalty or not. There is no proof that the matrix relied upon by the Respondent has been properly approved by the council.
 30. The Respondent is a District Council, with its own legal department and experts trained in this area of law. The Tribunal expects such a Party to a case to achieve a high standard of preparation for a case. This Respondent has failed to comply with Directions or even to consider them.
 31. The Tribunal is satisfied that it is fair and just to bar the Respondent from taking any further part of this case, pursuant to rule 9(3)(a), 9(7) and 9(8) of The Tribunal Procedure (First-tier Tribunal)(Property chamber) Rules 2013, as amended " the Rules". As such the Tribunal is now called upon to deal with an appeal that cannot be opposed by the Respondent and

- Decides all issues against the Respondent pursuant to rule 9(8) of the Rules. The appeal is allowed, the Applicant is not guilty of the offence of failure to comply with this improvement notice. There is no financial penalty for the Applicant to pay.
32. After the hearing had ended the Tribunal received an email from the Applicant seeking an order of the Tribunal pursuant to rule 13 of the Rules, that the Respondent reimburse the Applicant for the cost of fees paid to the Tribunal for this case to be dealt with. The Tribunal allowed 7 days for the Respondent to make any submissions that it might think appropriate in relation to this application.
 33. Respondent did not make any submissions relating to the issue of reimbursement of the Applicants fees.
 34. On 12 November 2021, the Tribunal members met again in private session, by telephone, to decide the issue as to the reimbursement of fees.
 35. The Tribunal determines that since the Respondent is in breach of Directions issued on 1 July 2021, resulting in the Respondent being barred from further involvement in the case, it is fair and just to order that any fees paid by the Applicant to the Tribunal, after 1 July 2021, be reimbursed to the Applicant, by the Respondent. Fees paid before that date are not to be reimbursed (Rule 13 (2) of the Rules). The Tribunal therefore determines that £200 must be reimbursed by the Respondent to the Applicant.

The Decision

36. The Tribunal Decides that as a result of numerous breaches of the Directions of 1 July 2021, it is fair and just to bar the Respondent from having any further involvement in this appeal against this financial penalty, for the offence of failing to comply with an improvement notice. The Tribunal further Decides that it will allow the appeal. The Tribunal is not sure that the Appellant has committed this offence and there is no financial penalty to pay.
37. The Tribunal Decides that any fees paid the Applicant to the Tribunal, after 1 July 2021, being the hearing fee of £200, must be reimbursed to the Applicant, by the Respondent. Fees paid before that date are not to be reimbursed (Rule 13 (2) of the Rules). Reimbursement of £200, by the Respondent to the Applicant, to take place within 28 days of the date that this Decision is sent to the Parties.
38. This case has been conducted during the Covid-19 Pandemic. The only effect that this had on the Tribunal's procedure is that the hearing took place by video link, rather than in a Tribunal room. The Tribunal has kept

this change in procedure in mind and is satisfied that there has not been any prejudice caused to either Party.

39. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal against this Decision has 28 days from the date that the Decision is sent to the parties in which to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds for the appeal, the paragraph numbers of the Decision appealed against, the particulars of such grounds and the result that the appellant seeks as a result of raising the appeal.

Judge C. P. Tonge

Attached at page12 of this Decision is the Order barring the Respondent from further involvement in this case.

16 November 2021

ORDER

1. The Tribunal is satisfied that the Respondent is in breach of the Tribunal's Directions of 1 July 2021. These Directions carry the following warning at the fourth bullet point on page 2, 'If a Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules', section 30, 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004.
2. The Tribunal considers it fair and just, in all the circumstances of the case, to bar the Respondent from taking part in these proceedings relating to whether the Applicant has committed the offence of failure to comply with an improvement notice and whether or not it has been appropriate, fair and just to issue a civil financial penalty of £5,000 in this case (rule 3(a), 9(7) and (8) of the 2013 Rules).

Judge Tonge
27 October 2021