FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00KG/HNA/2021/0029**
HMCTS code (paper, video, audio)	:	**V: CVP REMOTE**
Property	:	**95A Calcutta Road Tilbury Essex RM18 7QA ("the Property")**
Appellant/applicant	:	**Matharu House Limited**
Representative	:	**In person by a director Gurbachan Matharu**
Respondents	:	**Thurrock Council**
Representative	:	**Mr Ryan Thompson of Counsel**
Type of Application	:	**Appeal under s.249A and schedule 13A of the Housing Act 2004**
Tribunal Members	:	**Judge Professor Robert Abbey and Mr Derek Barnden MRICS and Mr Mohammed Bhatti (Lay Member)**
Date of Hearing	:	**21 October 2021**
Date of Decision	:	**25 October 2021**

DECISION

- This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice CVP platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of paper-based trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The decision by the respondent to impose a financial penalty is upheld but subject to a reduction in the total sum. The total of the penalty amounted to a sum of £1950. For the reasons set out below the Tribunal has determined that the financial penalty of £1950 should be subject to a discount of 10% to £1755.
2. In the light of the above, the appeal by the appellant against the imposition of a financial penalty by the respondent under section 249A and schedule 13A of the Housing Act 2004 is therefore allowed in part as set out above.

Introduction

3. This is the hearing of the applicant's application regarding **95A Calcutta Road Tilbury Essex RM18 7QA** ("the Property"), pursuant to Schedule 13A of the Housing Act 2004 ("the 2004 Act"), to appeal against a financial penalty imposed by the respondent under s249A of the 2004 Act. The financial penalty arises from the applicant's failure to comply with the requirements of an improvement notice contrary to section 30 of the Housing Act 2004. The applicant was the freeholder of the property and the respondent is the local authority responsible for the locality in which the property is situate.

The Hearing

4. The appeal was set down for hearing on 21 October 2021 when the applicant was not represented but one of the directors Mr Gurbachan Matharu spoke and appeared for the applicant. Mr Thompson of Counsel appeared for the respondent. This hearing is a re-hearing of the local authority decision, see paragraph 10(3)(a) of Schedule 13A to the 2004 Act. The Tribunal is therefore to consider whether to impose a financial penalty afresh, and is not limited to a review of the decision made by the respondent.

5. The imposition of the financial penalty arose because the applicant failed to complete various works within an extended timescale allowed by the respondent and required by the terms of an improvement notice. The respondents served the improvement notice in an attempt to get the applicant to remedy defects the Council discovered at the property. This notice required the applicant to complete works at the property that dealt with, *inter alia*, installation of a handrail, improved ventilation, the reduction of excess cold and the remediation of damp and mould. The notice also referred to several fire hazards and required a hard-wired interlinked smoke alarm with battery backup.

6. The respondents first became aware of the property in December 2019 when the defects were noted following an inspection and subsequently allowed the respondent to deal with the necessary remedial works initially on an informal basis from 23 December 2019. The works were not completed as required so the improvement notice was served on 12 March 2020.

7. The improvement notice was varied on 29 July 2020 providing a further 2 months to complete works which expired on 12 September 2020. This deadline was further extended to 30 September 2020. Sadly, the works were still not completed in full by this further extended deadline.

8. As a consequence of this default the respondents imposed a financial penalty. Originally this was set at £4550 but after representations made by the applicant were taken into account the respondents decided to reduce the financial penalty to £1950. This arose in the main because the respondents revised down their assessment of the level of culpability so far as the applicant was concerned.

9. At the hearing the applicant maintained that no financial penalty should have been imposed or the level was too high given the circumstances of the work, the consequences of the COVID-19 epidemic and the failure of the tenant in occupation to co-operate with the landlord in getting the remedial works completed. On the other hand, the respondent considers that the financial penalties should remain as imposed. As the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.)

Decision and Reasons

10. From the evidence before it the Tribunal was satisfied that the applicant was in breach of the requirements of the improvement notice. Indeed, the respondent did not deny he was in breach of the requirements of the improvement notice. However, he asserted that although he was in breach, there were mitigating factors that needed to

be taken into consideration. The Tribunal noted that the applicant advanced four main grounds for the appeal: -

i. The effects of the COVID-19 epidemic and Mr Matharu's state of health;
ii. Failure of the tenant in occupation to help the applicant complete the works required by the improvement notice; both of which would amount to
iii. A defence of reasonable excuse, and the applicant also sought to object to the,
iv. Level of the penalty

Each ground will therefore be considered in turn as more particularly set out below.

11. Starting with the effects of the COVID-19 epidemic. The Tribunal noted that the time of the first national lockdown did occur during the timescale of this dispute. The country entered the lock down in mid-March and the restrictions were not lifted until July. During this time the applicant said that he found it very difficult to engage tradesmen to carry out the works of repair required by the improvement notice.

12. On the other hand, the respondent pointed out that the works could have been completed at any time from 23 December 2019 right through to 30 September 2020 a total time span of 9 months and 7 days. The respondent was clearly making the point that the works could have been completed before or after the lockdown as there was plenty of time to do so when the country was not in lockdown. Moreover, the respondents said that "The internal works could have been carried out safely following guidance from Public Health England for working in people's homes during the pandemic".

13. It is the case that the Covid pandemic will have had an effect but Government Guidelines made it clear that there was still an expectation on landlords to carry out important repairs such as those required in this dispute even in the midst of the pandemic.

14. With regard to Mr Matharu's state of health, it was apparent from the evidence that he had slipped a disc in March 2020 and that this was eventually operated on in October 2020. This meant that his ability to work was clearly hampered as a result of this painful back injury. Moreover, he contracted COVID-19 in March and was quite ill as a consequence. He said he had symptoms for a month and was very weak during this time.

15. With regard to this first ground, the Tribunal was not persuaded by the first part of this ground regarding the effects of the national lockdown. It seemed to the Tribunal that the position asserted by the respondent was correct in that the internal works could have been carried out safely following guidance from Public Health England for working in

people's homes during the pandemic and as such there was no reasonable excuse in this regard.

16. However, the Tribunal were persuaded by the respondent's second part of this first ground in relation to Mr Matharu's state of health. The Tribunal accepted that a diagnosis of COVID-19 and of a slipped disc were matters that should be taken into consideration when dealing with the level of a financial penalty. These factors will be referred to again later on in this decision when the level of the penalty is considered by the Tribunal.

17. The Tribunal then went on to consider the next ground relating to the conduct of the tenant in occupation. Essentially the applicant says that the tenant was very uncooperative and would not allow tradesmen to enter the premises. He said that there were seventeen occasions when the tenant obstructed access. Unfortunately, very few of these were confirmed by supporting evidence.

18. However, the respondent had taken into account the problems with the tenant and had in fact made mention of it in the documentation and had had this in mind when the question of culpability was revisited by the respondents at the time the level of the fine was reduced. They wrote that "the Council acknowledges that there were some issues with the tenant in obtaining access which prevented the landlord from carrying out works". In the light of this the Tribunal were satisfied that this concern had already been addressed and had afforded a benefit to the applicant by way of a substantial reduction in the level of the penalty.

19. Turning now to the third ground the defence of reasonable excuse. The applicant seeks to rely on the statutory defence contained within s234(4) of the 2004 Act: "*In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation*." The applicant asserted that the above issues or factors provide support for such a defence. The Tribunal were not persuaded by the applicant in this regard. There was either insufficient evidence in support of such a defence or the consequences of the COVID epidemic did not support the defence either.

20. Finally, the Tribunal considered the final ground, namely the level of the penalty. The applicant says the level of the penalty is excessive as the offences were not severe. The respondent says it has a policy and a fee matrix that dictates how and why a financial penalty might be imposed and at what level. As has been noted previously as the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.). The Council produced to the Tribunal a copy of the

respondent's detailed and comprehensive enforcement policy and this contains a penalty band for every offence. For failure to comply with an improvement notice the starting band is £1,500 to £30,000. The landlord's culpability is then determined. Initially, this was set at high but after representations it was lowered to medium. The level of harm was then considered and was set at medium. So, at the start a high culpability and a medium harm scored a band C and a starting fine of £7,000. After this, deductions were made such as for co-operation by the landlord and this in due course reduced the fine to £4,550.

21. Thereafter, and after the respondent made representations, the respondent lowered the culpability level and then made a 35% reduction to take account of the fact that the respondent had no previous convictions (10%); the fact that steps were taken voluntarily to resolve the problem (10%) and the applicant's self-co-operation (15%) producing a fine of £1950.

22. However, the tribunal noted that the health issues set out above were not taken into account by the Council even though this is a factor in their matrix. Stage 2 mitigating factors allowed by the respondents could include medical issues such as but not limited to serious medical conditions requiring urgent intensive or long-term treatment. The Tribunal accepted the evidence advanced by the applicant in this regard and thought that the level of the penalty should be reduced to take into account this mitigating factor. The Tribunal thought that a 10 % reduction would be in line with the other deductions already made by the Council and set out above. Otherwise, the Tribunal thought that the penalty was correctly made and fixed by the application of the fee matrix.

23. Therefore, although the respondents had reduced the penalty after considering the representations made by the applicant the Tribunal thought that the penalty set by the respondents was not appropriate or proportionate as it did not take into account the mitigating factor of the health of Mr Matharu. It therefore applied a further discount of 10% giving a final figure in this regard of £1755 in place of the figure set by the respondent.

24. Consequently, in the light of the above, the appeal by the appellant/applicant against the imposition of the financial penalty levied by the respondent under section 249A and schedule 13A of the Housing Act 2004 is allowed in part.

25. Rights of appeal are set out in the annex to this decision.

Name:	Judge Professor Robert Abbey	**Date:**	25 October 2021

Annex

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

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.

254 Meaning of "house in multiple occupation"

(1)For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a)it meets the conditions in subsection (2) ("the standard test");

(b)it meets the conditions in subsection (3) ("the self-contained flat test");

(c)it meets the conditions in subsection (4) ("the converted building test");

(d)an HMO declaration is in force in respect of it under section 255; or

(e)it is a converted block of flats to which section 257 applies.

(2)A building or a part of a building meets the standard test if—

(a)it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b)the living accommodation is occupied by persons who do not form a single household (see section 258);

(c)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d)their occupation of the living accommodation constitutes the only use of that accommodation;

(e)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f)two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3)A part of a building meets the self-contained flat test if—

(a)it consists of a self-contained flat; and

(b)paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4)A building or a part of a building meets the converted building test if—

(a)it is a converted building;

(b)it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c)the living accommodation is occupied by persons who do not form a single household (see section 258);

(d)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e)their occupation of the living accommodation constitutes the only use of that accommodation; and

(f)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5)But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6)The appropriate national authority may by regulations—

(a)make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b)provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c)make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7)Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8)In this section—

“basic amenities” means—

(a)a toilet,

(b)personal washing facilities, or

(c)cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

(a)which forms part of a building;

(b)either the whole or a material part of which lies above or below some other part of the building; and

(c)in which all three basic amenities are available for the exclusive use of its occupants.

Schedule 13A

Notice of intent

1Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).

2(1)The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2)But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a)at any time when the conduct is continuing, or

(b)within the period of 6 months beginning with the last day on which the conduct occurs.

(3)For the purposes of this paragraph a person's conduct includes a failure to act.

3The notice of intent must set out—

(a)the amount of the proposed financial penalty,

(b)the reasons for proposing to impose the financial penalty, and

(c)information about the right to make representations under paragraph 4.

Right to make representations

4(1)A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2)Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5After the end of the period for representations the local housing authority must—

(a)decide whether to impose a financial penalty on the person, and

(b)if it decides to impose a financial penalty, decide the amount of the penalty.

6If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

7The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8The final notice must set out—

(a)the amount of the financial penalty,

(b)the reasons for imposing the penalty,

(c)information about how to pay the penalty,

(d)the period for payment of the penalty,

(e)information about rights of appeal, and

(f)the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1)A local housing authority may at any time—

(a)withdraw a notice of intent or final notice, or

(b)reduce the amount specified in a notice of intent or final notice.

(2)The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

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.

Recovery of financial penalty

11(1)This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2)The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3)In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a)signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b)states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4)A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5)In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

12A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A