



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

Case reference : **BIR/00FK/HNA/2022/0016**

Property : **19 Macklin St, Derby, DE1 1LE**

Applicant : **Mr Abdul Momin Ahmed**

Representative : **None**

Respondent : **Derby City Council**

Representative : **Derby City Council Legal Department**

Type of application : **Appeal against a financial penalty under section 249A of the Housing Act 2004**

Tribunal member : **Judge C Goodall
Mr R Chumley-Roberts MCIEH, J.P.**

Date and place of hearing : **26 August 2022 by video hearing**

Date of decision : **09 September 2022**

DECISION

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Background

1. The Applicant is the owner of the freehold property at 19 Macklin St, Derby (“the Property”), which he purchased in 2010. The Respondent is the local authority for the area, and it is responsible for enforcing the provisions of the Housing Act 2004 in its area.
2. The Respondent issued an improvement notice to the Applicant on 9 November 2020 in respect of three category 1 hazards and five category 2 hazards.
3. The Respondent’s case is that the Applicant failed to comply with the improvement notice. It therefore issued a financial penalty. The final notice of the penalty is dated 22 November 2021. The penalty imposed is the sum of £12,500.00.
4. On 6 March 2022, the Applicant appealed the financial penalty. The appeal was out of time, but on 19 April 2022 Deputy Regional Judge Gravells granted the Applicant permission to appeal out of time, and made directions for the hearing of the appeal.
5. The directions were complied with and a hearing took place on 26 August 2022 by video.
6. This determination states the outcome of the Applicant’s appeal and the reasons for our decision.

Law

7. The relevant provisions of the 2004 Act, so far as this application is concerned are as follows-

Section 30 Offence of failing to comply with 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.
- (2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—
 - (a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);
 - (b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

- (c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.
- (5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.
- (6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.
- (7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

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),
 - ...
- (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.

...

3. Schedule 13A of the Act provides:

SCHEDULE 13A Financial penalties under section 249A

Notice of intent

- 1 Before 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.
- 3 The 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

- 5 After 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.
- 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.
- 7 The 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.
- 8 The 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.

Structure of this determination

8. This determination will be in two parts. In the first part, we set out the facts on the question of whether an offence has been committed under section 30 of the Act, and discuss what determination we should make on that issue. No financial penalty can be imposed unless we find that this offence has been made out. The second part will consider what financial penalty should be imposed.

Part One: The offence under section 30 of the Act

Facts

9. We find the facts set out in this section of this determination to have been established, from the written and oral evidence of the Applicant and Ms Broster, for the Respondent.
10. The Property is a three-bedroom two-story mid-terrace house comprising of on the ground floor, a hallway, two reception rooms (one used as a bedroom) and a kitchen. A cellar is accessed through the kitchen. On the first-floor are two bedrooms and a bathroom. There is a side access through a covered alley to a split level rear garden.
11. The first statutory intervention by the Respondent relating to the Property took place in 2014. A hazard awareness notice was served on the Applicant on 19 June 2014 identifying three category 2 hazards. The works required under this notice were:

Damp and mould

- clean out, secure, and make watertight the gutter to the rear elevation;
- Provide and fix missing rainwater pipe and connect to the gutter at the side of the property;
- Replace perished bricks to the rear of the property and repoint the brickwork on the back addition wall;

Fire Safety

- Fix a new ceiling (to specified standard) insulate ground floor, floor void and provide new floorboarding to that floor;
- Provide a mains wired and interlinked fire alarm in the cellar
- Remove all refuse and any combustible material from the cellar;

Fall on stairs

- provide and fix a new handrail to the cellar steps
12. The notice was accompanied by a letter dated 20 June 2014 informing the Applicant that the notice was advisory only. It does not appear that the Respondent reinspected the Property following the issue of the notice.
 13. The Applicant told the Tribunal that all works listed on the hazard awareness notice were carried out.
 14. On 12 November 2018 the Respondent carried out an inspection of the Property. It was untenanted at the time. The Respondent therefore issued what it terms a Preliminary Works Notice (“PWN”). This is not a statutory notice, but it informed the Applicant of works that would be required had the Property been tenanted. Nine hazards were identified, all being category 2 hazards. Works required were:

Domestic hygiene, pests and refuse

- remove all rubbish in back garden

Excess cold

- Fix draught proofing to threshold and perimeter of front door
- Replace rear door to a defined specification
- Reglaze the cracked fanlight above the front door

Fire

- Deep clean the cooker hob and oven
- Remove combustible material stored in cellar
- Provide a grade D Cat LR3 automatic fire detection system in accordance with BS5839. Fit linked smoke detectors on the landing, in the hall and cellar, a heat detector and fire blanket in the kitchen and provide a Building Regulations certificate on completion.

Food safety

- Deep clean the kitchen floor, wall, and base units
- Fit skirting boards in the kitchen

Carbon monoxide

- Provide a gas safety certificate

Falls associated with steps and stairs

- Repair lighting to illuminate the cellar and adjacent steps
- Replace a missing light pendant on the first floor landing

Falls between levels

- Fit a guardrail/balustrade to boundary to front garden
- Fit a handrail on cellar steps

Falls on the level

- Remove and replace defective footpath to the front elevation in new concrete to a flat finish

Electrical

- Provide an Electrical Installation Condition Report (EICR) in the format recommended in BS7671. Repair or renew all fittings and wiring found to be unsafe or not in proper working order.

15. The PWN was accompanied by a letter from the Respondent advising the Applicant that the Respondent understood the Applicant was proposing to re-let the Property and informing him that an Improvement Notice could be served were it to be found that the Applicant had re-let the Property before the improvements identified had been attended to. No arrangement for a further inspection were made, and the Applicant was not told that he must not re-let until a further inspection had been carried out.
16. The Applicant explained in his oral evidence that, in relation to the issues raised in the PWN:
 - a. He accepted that refuse in the rear garden had accumulated because his neighbour had excess refuse following some building works which had been placed in the garden by consent but which the neighbour had agreed to remove. Unfortunately the neighbour did not keep to this arrangement. The Applicant accepted that refuse remained even now but said it had been substantially reduced by January 2019;
 - b. The rear door had been replaced after the PWN, as had the fanlight on the front door. The draught proofing to the front door had been repaired or replaced by a local DIY handyman;
 - c. In relation to the fire hazard, the cooker had been cleaned and the refuse in the cellar had been removed. There had been a hard-wired fire protection system already but an additional alarm was required which the Applicant said had been installed by a tradesman. He did not have any certification of that system;

- d. The kitchen had received a good clean and the skirting board had been replaced;
 - e. There is a gas safety certificate for the Property, located on top of the boiler. The carbon monoxide sensor had been replaced;
 - f. Lighting on the landing and around the cellar steps had been repaired or replaced;
 - g. A new fence had been erected between the Property and the neighbouring property
 - h. It was accepted that work on the steps at the front and rear of the Property had not been carried out, though the Applicant said that a temporary repair had been attempted;
 - i. It was accepted that no EICR was obtained.
17. The Property was apparently let in 2019 but then vacated. On 1 September 2020, the Applicant re-let the Property to a single female tenant at a rent of £500 per month. She was pregnant at the time and by the end of October 2020 the baby had been born. Her spoken English was reported by the Applicant to be poor, and he said communication with her was therefore difficult. Occupancy of the Property was unclear; it seems likely that others also occupied the Property as sub-tenants or licensees.
18. On 29 October 2020, the Respondent's case officer, Ms Amy Broster, carried out an announced inspection of the Property. She identified deficiencies at the Property. She carried out a second inspection on 4 November 2020 having advised the Applicant that enforcement action was being contemplated.
19. As a result of her observations at the two inspections, Ms Broster decided to issue an Improvement Notice ("IN") to the Applicant. The notice was dated 9 November 2020 and it identified three category 1 hazards and five category 2 hazards. The date on which it became operative is given as 2 December 2020. Work was required to commence by 9 December 2020 and to be completed by 27 January 2021.
20. The Applicant did not appeal the IN.
21. The remedial work required by the IN was as follows (slightly edited in this decision – duplicate works and some details of specification of works have been removed):
- Falling on stairs etc (Cat 1)*
- **Cut out the broken stone tread to the step to the front door. Provide necessary support, prepare, provide and bed replacement precast tread(s). Point up and leave sound and watertight.**

- Key and prepare the worn steps in the rear garden. Treat the bonding agent, erect formwork, and re-surface with fine waterproof concrete. Strike formwork and leave sound upon completion.
- **Provide a new handrail to the full length of the cellar staircase, sited between 900mm and 1,000mm measured from the top of the handrail to the pitch line or floor.**
- **Install two lighting points in suitable positions in the cellar. One shall light the cellar stairs and the other shall light the cellar rooms.**

Excess cold (Cat 1)

- Extend the gas central heating system to include a radiator in the kitchen. Sizing of the radiator shall be determined using an approved radiator manufacturer's sizing table.
- The radiator shall be so sited as to ensure even distribution of heat whilst minimising heat loss through walls and windows.
- **Thoroughly investigate the source of dampness to the rear wall in the ground floor rear living room and carry out such works as may be necessary to prevent a recurrence of the dampness.**
- Hack off any damp affected plaster to the rear wall in the ground floor living room and remove the chipboard panel and expanding foam from this wall. Properly re-plaster the wall, using good quality plasterboard and set with good quality plaster floated off to a smooth and even finish flush with the adjacent plaster.
- Provide and fit Thermostatic Radiator Valves to all radiators except on the one in the room containing the room thermostat (usually the hall).
- **Thoroughly overhaul the front access door and rear kitchen door carrying out such works as may be necessary to ensure that the doors are close-fitting to the frames when closed and are watertight and draughtproof.**
- Take off and renew the broken or otherwise defective hinges to the ground floor living room window. Test and leave in proper working order.

Falling on level surfaces etc (Cat 1)

- Take up the damaged floor covering to the ground floor rear living room. Provide and lay new suitable floor covering.
- Undertake works as necessary to unblock the external drain to the kitchen. Properly and thoroughly cleanse the block paving to the garden using a proprietary cleansing solution.

- **Hack up the broken areas of concrete to the footpath leading to the front door. Prepare and lay new concrete, joint and finish matching existing, flush with adjacent areas.**

Fire (Cat 2)

- **Provide and install a fire alarm and detection system in accordance with the latest edition of BS 5839-6: Grade D Category LD2.**
- **A heat alarm (constructed in accordance with the latest relevant British Standard) shall be sited in the kitchen.**
- **Smoke alarms (constructed in accordance with the latest relevant British Standard) shall be sited in the ground floor hallway, ground floor living room, ground floor front bedroom, first floor front bedroom, first floor rear bedroom, first floor landing, and cellar.**
- **Hard wire the alarms together to ensure simultaneous warning in the event of a fire. The alarms shall be supplied by mains electricity and have battery back-up.**
- **All work shall be carried out by a competent person, shall comply with the latest British Standard 7671 and be carried out in accordance with Part P of the Building Regulations.**
- A combined certificate of design, installation and commissioning shall be obtained in the format suggested by the latest edition of BS 5839-6, a copy of which shall be sent to [the Respondent].
- Provide and install a fire blanket to the kitchen, fixed to the wall adjacent to the cooker.
- Provide, fit and connect new fuse spur outlets to the kitchen. There shall be a minimum of two double electrical socket outlets to the kitchen worktop, located at a suitable height. Test and leave in safe and proper working order. All work shall be carried out by a person competent in the installation of domestic wiring. They shall be familiar with the relevant British Standards. They shall regularly install domestic wiring systems and have their work subject to regular assessment.
- Take off the existing doors to the kitchen, cellar, ground floor living room, ground floor front bedroom, first floor front bedroom and first floor rear bedroom. Carefully remove architraves and set aside for re-use. Remove existing door lining and prepare opening for new frame. Provide and fix new softwood rebated lining and refix architraves previously set aside. Provide and fit a new half-hour fire

doors to satisfy tests under BS 476 (**FD 30s type**). You must ensure the following:

- The doors shall be designed, constructed, installed and maintained in accordance with British Standard 8214 Code of Practice for fire door assemblies with non metallic leaves.
- A specialist joiners with a working knowledge of this standard should be employed in order to ensure appropriate standards are achieved.
- [Specification was provided].
- **Remove and dispose of all stored combustible materials from the cellar.**
- Provide a copy of the waste transfer note to [the Respondent].
- **Provide and fix chicken wire to the underside of the existing lath and plaster ceiling to the cellar and cellar stairs, fixed with 30mm clout nails or staples, and 50 x 25mm softwood battens at 400mm centres nailed to joists. Construct a new ceiling of one layer of 12.5mm plasterboard fixed with galvanised clout nails, with scrimmed joints and finished with a smooth set coat of board finish plaster, flush with adjacent areas.**
- **Alternatively, take down the cellar ceiling complete and remove all nails. Construct a new ceiling of 12.5mm plasterboard fixed with galvanised clout nails, with scrimmed joints and finished with a set coat of board finish plaster, trowelled smooth.**
- Re-locate the cooker and gas hob to the right-hand side of the kitchen, ensuring that there is a minimum of 500mm of worktop to either side of the hob. Refer to the hob manufacturer instructions to determine a suitable new position for the hob. Ensure that there is adequate clearance between the gas hob and any combustible materials, such as wall hung kitchen units. Disconnect services and remove cooker to new position. Extend/adapt services and reconnect to cooker. Test and leave in proper working order.

Electrical hazards (Cat 2)

- **Arrange for the electrical installation to be inspected by a qualified electrical engineer holding an appropriate City and Guilds qualification in ‘inspection and testing’. Obtain from the inspecting engineer an Electrical Installation Condition Report in the format recommended by BS 7671. The Electrical Installation Condition Report must cover 100 per cent live testing of**

all circuits and accessories. Accessories include but are not limited to sockets, light fittings etc.

- **Submit a copy of the report to [the Respondent]. Repair or renew as necessary all fittings and wiring found to be unsafe or not in proper working order. Test and leave entire installation in a safe condition and in proper working order. All new work shall comply with the British Standard 7671. All work shall be carried out by a person competent in the installation of domestic wiring. They shall be familiar with the relevant British Standards. They shall regularly install domestic wiring systems and have their work subject to regular assessment.**
- On completion of any self-certified work submit a signed Building Regulations self-certification certificate to [the Respondent] and submit copies to the relevant building control body. Obtain a copy of the minor works electrical installation certificate as per the model in BS 7671 and submit a copy to [the Respondent]. As required by BS 7671 the certificate must be made out and signed by the competent person or persons who carried out the design, construction, inspection and testing work.

Damp and mould (Cat 2)

- Thoroughly overhaul the roofs to the dwelling, including the associated flashings and fillets, and carry out such works as may be necessary to ensure that the roofs and flashings and fillets are left in a sound and water-tight condition.
- Hack off any damp affected plaster to the ceilings in the first floor rear and front bedrooms and properly re-plaster, using good quality plaster-board and set with good quality plaster floated off to a smooth and even finish flush with the adjacent plaster.
- Thoroughly investigate the source of dampness to the exterior alleyway wall and carry out such works as may be necessary to prevent a recurrence of the dampness.
- **Clean out guttering to the rear bedroom roof and to the bathroom roof. Secure loose fixings, check and make joints watertight as necessary.**

Personal hygiene, sanitation and drainage (Cat 2)

- Unblock the obstructed gully taking discharge from the kitchen sink and washing machine.

Domestic hygiene, pests and refuse (Cat 2)

- **Remove all waste from the rear garden which is likely to attract or harbour rats or mice including all loose bags of household waste, domestic appliances, doors and any other domestic refuse.**
 - Provide a copy of the waste transfer note to [the Respondent].
 - Prepare, provide and fix new tiles to the kitchen wall to match existing, where missing. Point up and leave sound.
 - Prepare, provide and fix new tiles to the bathroom wall to match existing, where missing. Point up and leave sound.
22. It will be seen that the works required are detailed and comprehensive and require more works than were specified in the PWN or the hazard awareness notice. It is nevertheless the case that some works specified in those documents were still required. Those works are marked in bold in the preceding paragraph.
23. The Applicant told the Tribunal that when he received the IN, he went to the Property to see what he could rectify himself. He was short of funds to engage contractors to do all the work. He said that within around two months from service of the IN (he was very vague about dates), he had glued the torn linoleum in the living room back to the floor, though the IN required replacement of the floor covering. He had replaced bulbs at the top of the cellar steps and installed a new light on the right-hand side of the stairs to the cellar. He had previously erected a fence along the boundary.
24. There were telephone conversations between the Applicant and Ms Broster in early 2021. During one, on 18 January, the Applicant informed Ms Broster that he could not afford to carry out the remedial works required by the IN. Ms Broster granted a time extension for the IN to be complied with therefore to 16 March 2021. It is likely that, during this call, or on another call on the same date, Ms Broster informed the Applicant of a report she had received from a resident at the Property saying that a large section of the ceiling in the rear bedroom had collapsed. She informed the Tribunal that the Applicant was aware of the problem and would be sending a contractor to make the ceiling safe.
25. Ms Broster telephoned the Applicant again on 18 February 2021 to establish what progress was being made. The call was not answered, nor was the answerphone message requesting a call back responded to.
26. Ms Broster said she did have a telephone conversation with the Applicant on 16 March 2021, though she gave no detail of it. As a result, she granted the Applicant a further extension of time to comply with the IN, until 27 April 2021.
27. The Applicant said that, in response to the IN, he had been attempting to obtain quotes to carry out the works required. He particularly focussed on

repairs to the roof, as he had been advised that the Property needed significant work to the roof. He said he obtained seven or eight quotes. None were exhibited to his statement of case. He was unclear about the dates he had requested or received quotes.

28. One contractor who had quoted for him was Junction 1 Developments Ltd. At the request of the Tribunal, the Applicant supplied a copy of this quote to the Tribunal and the Respondent whilst the hearing was underway. It is handwritten and is nearly illegible. It is dated 2nd February or March 2021 (the Applicant suggested the March date was correct). The quote appears to include for new radiators in bedroom 2, the living room and dining room, some work on the front and rear doors, work to the external front steps, some electrical sockets (position unspecified), replastering in the dining room, scaffolding, and (presumably, due to the inclusion of the scaffolding) some roof works. The quoted price is £10,500, which is crossed out and replaced with £9,500.
29. Ms Broster told us that on 4 May 2021, she had an email from a resident at the Property who told her that the Applicant, whilst collecting rent, had stated that he would undertake remedial works within the next couple of weeks. He said that no remedial works had been carried out up to that date, however.
30. On 7 May 2021, Ms Broster re-inspected the Property. Her evidence was that none of the remedial works contained in the IN had been carried out, and no action had been taken about the collapsed ceiling in the rear bedroom.
31. On 13 May 2021, the Applicant informed Ms Broster that roofers were due to attend the Property that day to erect scaffolding and to carry out repairs to the roof.
32. On 21 May 2021, Ms Broster carried out another statutory inspection of the Property, as she was concerned that her statutory notice prior to the inspection on 7 May 2021 was not correct. At this visit she made contemporaneous written notes of the visit which had been provided to the Tribunal. It is not necessary to set out all the content of these notes; it suffices to say that her inspection did not identify compliance with the IN in any respect. She did however note that an attempt to make internal repairs to the ground floor rear wall had been undertaken, but the repair was of very poor quality. She noted that the living room floor covering had not been repaired. The external kitchen drain appeared to have been cleared, though it now looked blocked again.
33. The notes said that hard wired interlinked fire alarms were present in the hallway and landing, but not in the kitchen or cellar. However, in the kitchen, there was a loose, live, wire located in the ceiling. This may at some point have been wired to a smoke alarm. Scaffolding was not present.

34. On 14 June 2021, Ms Broster conducted an interview under caution of the Applicant concerning the failure to comply with the IN. A second employee from the Respondent was also present. The Applicant admitted that he had not carried out all the works required. His explanation at the interview was that he did not have funds to carry out the works. The tenants had not been paying their rent. He also has work commitments that prevent him from giving sufficient time to management of the works required.
35. The tenants at the Property moved out in around December 2021. Since then, the Property has apparently remained vacant.
36. Ms Broster visited the Property again on 4 May 2022. She informed us that scaffolding had been erected by that date at the rear of the Property.

The Applicant's case

37. In his statement of case, received by the Tribunal on 15 June 2022, the Applicant said that builders had visited the Property on multiple occasions but access had been denied by the tenants. This meant that the Applicant was unable to comply with the IN. The Tribunal Chair informed the Applicant that the offence of failure to comply with an improvement notice was not committed if the Applicant had a reasonable excuse for not complying. The Applicant said that he believed inability to obtain access meant that he had such an excuse. It was also part of his case that the tenants had vandalised the Property after he had carried out repairs and some of the deficiencies resulted from that damage.
38. The Applicant exhibited a letter from Junction 1 Developments Ltd dated 2 June 2022 in support of his case on the issue of inability to obtain access to the Property. The letter stated that on two undated occasions they had been to the Property but had been denied access by the occupants. The letter states that Junction 1 knew the occupants were in on the first visit but it does not state the reason for that belief. On the second visit, the letter says that a diaper was thrown at them by two women, from an upstairs window, who would not let them in even though they waited 10 minutes. On a third (and final) visit, Junction 1 did gain access. They do not say what work they were able to carry out as a result.
39. The Applicant was unable to give any dates of other visits by other contractors when access was denied. His written evidence was that he sent builders out on at least four occasions; firstly to assess the roof before the ceiling collapsed in the rear bedroom, secondly after the ceiling collapse, thirdly to put up scaffolding, in relation to which the Applicant talks of multiple occasions where access was denied, and fourthly on an occasion when access was provided and scaffolding was erected. It appears from the way in which the statement is written that the builders referred to are the same builders on each occasion. We consider that those builders are highly likely to be Junction 1, as these are the only builders whose identity the Applicant made known to the Tribunal.

40. In relation to the smoke detector in the kitchen, the Applicant's case is that the tenant's ripped out the detector after it had been installed.
41. On cross examination, the Applicant admitted that the IN had not been complied with. He said some parts of it had been, namely partial clearance of rubbish, clearance of the blocked kitchen drain, repair of lighting to the top of the cellar steps, and repair of the tear in the lounge linoleum floor. However, he was adamant that the works would have been done had his contractors had access.
42. In answer to a question from the Tribunal, the Applicant said he had not sought legal advice on the IN, nor on his right to require access to carry out repairs. He had not written to the tenants about the arrangements for contractors to repair, nor had he contacted Ms Broster for assistance with gaining access.

Discussion

43. Has an offence been committed under section 30 of the Act? This requires us to consider:
 - a. Whether the IN has become operative; and
 - b. Whether the IN has been complied with.
44. In this case, the IN became operative on 2 December 2020.
45. Compliance is "beginning and completing any remedial work specified in the notice", by not later than the dates specified in the notice for the work to start and to be completed. In this case, that is that work must have commenced by 9 December 2020, and have been completed by 27 April 2021.
46. The evidence is overwhelming to support a decision that the IN has not been complied with. It is not enough that some of the work has been carried out; for compliance, ALL of the work must be completed. The Applicant admitted in his interview under caution and at the hearing that the IN works were still outstanding, and Ms Broster's inspection on 21 May 2021 confirmed this position. In our view the core of the offence is made out on this evidence.
47. However, section 30(4) of the Act affords the Applicant a defence if he had a reasonable excuse for failing to comply with the IN. We therefore now consider whether the Applicant's claim that he was prevented from carrying out the works required by the refusal of the tenants to allow him and his contractors access. The law imposes the burden of proof for this defence upon the Applicant.
48. In our view, the first action a person served with an improvement notice that was not appealed would take would be to obtain quotations for the works, or to issue an instruction to a contractor to carry out works on

commercial terms that the parties already had in place. There is no evidence before the Tribunal that the Applicant went about this process, despite his saying he had obtained 7 or 8 quotes, with the exception of the involvement of Junction 1 which we discuss below. Even when pressed, the Applicant could not identify any other contractors he had approached, or provide an answer to the question of when they had been approached, or what their quotes had been. Our view is that the Applicant was unable to master the detail of the events following the service of the IN. His evidence was very vague, and, frankly, difficult to accept. We do not accept that he made a genuine attempt to obtain quotes or estimates for the works required.

49. Our view of the Applicant's evidence was further affected by the history of his attention to the maintenance of the Property. The Applicant was clear that he had carried out all the works identified in the hazard awareness notice of 2014, but, though we cannot make a finding to the effect that they were not carried out as nobody checked after the event, we find it difficult to accept that all the works were carried out. Our yardstick is the handrail that was to be fitted to the cellar steps. It was listed again on the PWN and a third time on the IN. We do not consider it to be credible that it had come off by November 2018 and again by October 2020. It is much more likely that it was never installed.
50. Although the PWN had no statutory effect, the Applicant nevertheless said he had carried out the works listed in it (see paragraph 16 above). We accept the evidence of Ms Broster about the condition of the Property on 29 October 2020, when she visited to carry out the inspection that led to the issue of the IN. A comparison between the works required in the IN and the works the Applicant said he did as a result of the PWN shows, in our view, that a very significant part of the works in the PWN were not remedied as at 29 October 2020, despite the Applicant saying they were.
51. Our conclusions in the preceding three paragraphs have led us to the view that the Applicant's evidence is unreliable, and we do not believe that he ever did instruct any contractor to carry out the works required in the IN. That being the case, whether the tenants denied access to any contractor does not come into the equation.
52. We do need to discuss the Junction 1 letter, as that provides some support for the suggestion that at least the Applicant obtained one quote for some work, and that a contractor attempted to gain access but it was denied. The difficulties we have with the letter are:
 - a. It gives no dates for the attendances by Junction 1 at the Property. In his statement, the Applicant has put a little flesh on these bones (see paragraph 24 above where the Applicant said he would be sending a contractor on or after 18 January 2021). We know that the ceiling in the bedroom collapsed on 18 January 2021, and it is reasonable to surmise that the contractor the Applicant sent to inspect as a result was Junction 1. Certainly, the applicant has offered no other name.

In our view it is probable that the two visits by a contractor around that date were two visits by Junction 1. They must have obtained access on at least one occasion, however, to provide some costings for works, as set out in the quote dated 2 Feb or March 2021.

- b. The Junction 1 letter however talks of three visits – two unsuccessful and one successful. In his statement, the Applicant says that his builders (who we believe to be Junction 1 – see paragraph 39) did eventually install scaffolding. We know that there was no scaffolding on 21 May 2021 (see paragraph 33 above). It is likely therefore that the final successful visit at which access was gained was the visit for erection of scaffolding, which was well after the final date for compliance with the IN.
 - c. The Junction 1 quote does not cover all the works required in the IN.
53. Our conclusion is therefore that whilst we do not challenge the Junction 1 letter itself, it is highly unlikely on the evidence that that firm was instructed to carry out all the work required to comply with the IN. The quote does not cover all of those works. Even if it did, it would not appear likely that Junction 1 attempted to gain access on any of the three occasions of which they speak, specifically to carry out the IN works. Rather, their purpose was more likely to be to quote for work to the bedroom ceiling, or to erect scaffolding.
54. The Tribunal would also have expected the Applicant to communicate with his tenants and with the Respondent to explain why he was unable to comply with the IN. The Applicant has no record of any letters, emails, texts, or other communications with his tenants informing them that he had arranged for contractors to carry out works, for which access was required. He could have also informed Ms Broster of these problems, but failed to do so.
55. Our conclusion on the question of whether the Applicant had a reasonable excuse for failure to comply with the IN is that no such reasonable excuse is apparent on the evidence. In our view, therefore, we are satisfied, beyond reasonable doubt, that the Applicant committed the offence under section 30 of the Act of failing to comply with the IN.

Part Two: The financial penalty

The Respondent's policy

56. The Tribunal has been supplied with a copy of a report to the Housing and Urban Renewal Cabinet Members Meeting of the Respondent dated 11 October 2017. Appendix 2 of that report sets out the Respondents policy on financial penalties, and case officers follow the nine step policy when recommending a financial penalty.
57. There are two initial judgements to be made (Steps 1 & 2), being the level of harm caused by the hazard, and the extent of the culpability of the

offender. There are four levels of harm, being very high, high, medium, and low, with examples of the harm that might result being given for each level. The policy requires the highest level of harm to be considered. Culpability is assessed against four categories: deliberate, reckless, negligent, and low / no culpability.

58. A simple grid sets a starting point for all of the possible options arising from the assessment of harm level, and culpability, with a minimum starting point of £2,500 for low level harm and no culpability, and a maximum starting point of £27,500 for a high harm, deliberate culpability offence (Steps 3 & 4).
59. The policy then requires consideration of whether there are aggravating or mitigating factors, with an increase of £500 for each aggravating factor, and a decrease of the same amount for each mitigating factor (Step 5). The policy then requires the person implementing it to take a step back (Step 6) and assess whether the penalty is fair and proportionate. The Respondent's costs can then be added (Step 7), and the policy requires that the offender's financial circumstances be taken into account (Step 8) The Respondent must then serve a Notice of Intent (Step 9 – and see paragraph 3 of Schedule 13A of the Act at paragraph 3 above).

The Respondent's decision in this case

60. The Respondent recorded its decision on the financial penalty in written form on 24 August 2021. It assessed the offence under consideration as causing a high level of harm, with the Applicant's culpability being set at negligent (Steps 1 & 2).
61. Justification for selecting a high level of harm was that the assessment should be made taking account of the most serious risk of harm identified, which in this case was a fall on steps. There were three sets of unsatisfactory steps at the Property, being the external steps at the front and rear (two steps at each) and the cellar steps (13 steps, with no winders or intermediate landings and poor lighting). A fall down the cellar steps could result in head, brain and spinal injuries or even death, though the cellar steps are used infrequently.
62. On the grid, a high level of harm with negligent culpability produced a starting point of £15,000.00 (Steps 3 & 4). This was adjusted by one aggravating and three mitigating factors (Step 5). The aggravating factor was failure to heed the issue of the hazard awareness notice and the PWN and to ensure the Property hazards were resolved before letting after October 2018. The way this was expressed in the Respondent's document was by saying that there was no evidence the hazard awareness notice or the PWN had been complied with and that the Applicant failed to comply with the IN by 21st May 2021.
63. The mitigating factors were that the Applicant had no previous convictions, no history of financial penalties, and no works in default have

been undertaken. The cumulative effect of these adjustments was to reduce the penalty by £1,000.00 to £14,000.00.

- 64 Any record of the Respondent's thinking on Step 6 appears to be missing on the written record of the decision dated 24 August. Instead it is recorded as Step 9 that the economic benefits to the Applicant are considered to be none. There is no adjustment for the Respondent's costs, which the document records are adequately covered in the penalty charge (Step 7). There is equally no adjustment to take account of the Applicant's financial position. The Respondent notes the rental income derived from the Property is £500 per month. The Applicant is in employment earning £25,000 - £30,000 per annum. The Property has a mortgage but no figure is shown for the amount remaining to be paid, and the Property is worth in the region of £145,000. The notice of intent, dated 13 September 2021, proposed a financial penalty of £14,000 and invited the Applicant to make representations.
- 65 The Applicant arranged for representations to be made on the Notice of Intent by a third party. The Respondent decided, on consideration of those representations, that there were three further factors that mitigated the offence, being:
- a. No evidence that any actual harm was caused to the tenants;
 - b. There was no evidence that the Applicant had ignored requests for works from tenants;
 - c. There was no history of obstruction of the Respondent's officers.
- 66 The financial penalty was therefore reduced by a further £1,500 (£500 per further mitigating factor). A final notice (see paragraph 5 of Schedule 13A of the Act) was issued dated 22 November 2021 imposing a financial penalty of £12,500.

The Applicant's submissions at the hearing

- 67 The Applicant firstly said that his earnings were more in the region of £16,000 per annum, not as assumed by the Respondent. Two salary slips for May and June 2022 provided in the Applicant's bundle indicated average pay for those two months of £1,000 per month.
- 68 Secondly, the Applicant provided evidence of credit card and other debts to the Tribunal amounting to £25 – 30,000 in total. The amount outstanding on the Applicants mortgage was in the region of £38,000, supported by mortgage statements.
- 69 The Applicant's submission was that the penalty was over harsh. The health and safety of the tenants was never put at risk. He considered that the Property was in a good state when it was let. He was unable to control the way in which the tenants used the Property, and some hazards, such

as the rubbish kept in the cellar and the blocking of the kitchen drain, were down to tenant use, and not under his control.

The Tribunal's decision on the financial penalty

- 70 The Tribunal disagrees with the Respondent's assessment of the level of harm likely to be suffered because of the most serious hazard in the IN. It is of course possible that a fall down 13 steps could be fatal, but in our view that is rather a remote risk. In our view, the likely harm from a fall down steps is fractured skull, severe concussion, and serious wounds to the head or body, all of which fall within the medium level of harm in the Respondent's policy.
- 71 In addition, our view is that the aggravating factor identified by the Respondent is not one that should increase the penalty. In essence, the factor identified is the core of the offence of failure to comply with the IN. It is true that we have determined that it is unlikely that the hazard awareness notice works were carried out, but nobody checked, and there is no obligation to do those work – awareness is all that was communicated. Likewise, the PWN had no statutory impact and all that failure to comply with it meant was that the IN would be served. In our view the Applicant should be penalised for failure to comply with the IN, but not further penalised for exactly the same actions just because he had been made aware that the service of the IN was a possibility.
- 72 The starting point is therefore adjusted to £10,000 (medium harm, negligent culpability). We remove the aggravating factor adjustment. We do not disturb the six mitigating factors, resulting in a downward adjustment of £3,000 for these factors (£500 each). We see no need to disturb the rest of the financial penalty calculation. We do think the Applicant's financial reserves are more limited than the Respondent was aware of on the evidence he has presented to the Tribunal. However, we think a reduction of £5,500 from the financial penalty imposed by the Respondent leaves a penalty the Applicant can afford. The financial penalty is, after all, designed to deter, and to punish the Applicant for a criminal offence.

Decision

- 73 The Tribunal allows the appeal and varies the financial penalty imposed upon the Applicant from £12,500 to £7,000.

Appeal

- 74 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that

party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)