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

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| **Case reference** | : | **CAM/OOKG/HNA/2019/0016** |
| **Property** | : | **521 London Road, South Stifford, Grays, Essex, RM20** |
| **Appellants** | : | **Palmview Estates Ltd** |
| **Representative** | : | **None** |
| **Respondents** | : | **Thurrock Council** |
| **Representative** | : | **Nick Ham (counsel)** |
| **Type of application** | : | **Appeal against financial penalties** |
| **Tribunal member(s)** | : | **Jim Shepherd**<br>**Mrs M Hardman FRICS IRRV(Hons)**<br>**Mr A Ring** |
| **Venue** | : | **Romford County Court** |
| **Date of decision** | : | **18 February 2020** |

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**APPEAL AGAINST A FINANCIAL PENALTY- S 249A AND SCHED 13A OF HA 2004**

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**Order**

The Final Notice dated 9th August 2019 (Offence in relation to licensing of Houses in Multiple Occupation) is cancelled.

The Final Notice dated 9th August 2019 (Offence in relation to Contravention of Regulation 4 of the Management of Houses in Multiple Occupation (England Regulations 2016) is varied so that the financial penalty is £6000.

The Final Notice dated 9th August 2019 (Offence in relation to Contravention of Regulation 7 of the Management of Houses in Multiple Occupation (England Regulations 2016) is varied so that the financial penalty is £1500.

**Introduction**

1. The Appellant, Palm View Estates are appealing against three financial penalty notices, served by the Respondents dated 9th August 2019. The notices were served for the following alleged offences:

a) The Appellants are the person having control or managing an HMO which is required to be licensed under section 61(1) of the Housing Act 2004 but is not so licensed- an offence pursuant to Section 72 of the Act. The penalty sought was £17500 (Final Notice at pages - 415-417 of the Respondents' bundle). Hereafter referred to as *the license offence*

b) An alleged offence in relation to a Contravention of Regulation 4 of the Management of Houses in Multiple Occupation( England) Regulations 2006 ( Section 234, Housing Act 2004). The penalty sought was £12000 (Final Notice at pages 424-426 of the Respondents' bundle). Hereafter referred to as the *fire safety offence*.

c) An alleged offence in relation to a Contravention of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2016 ( Section 234, Housing Act 2004). The penalty sought was £4000 (Final Notice at pages 433-435 of the Respondents' bundle). Hereafter referred to as the *property condition offence*.

*The license offence*

2. The Respondents allege that the Appellants failed to apply for an HMO license for the premises at 521 London Road, South Stifford, Grays, Essex, RM20 ("The premises") during the period when the extended licensing regime came into effect under The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (1st October 2018) until the Applicant applied for such a license (16th July 2019 - page 358 of the Respondents' bundle). It was common ground that the premises are an HMO and that the Appellants knew of the mandatory licensing regime however the Appellants maintain that they have a reasonable excuse for not having a license at the relevant time namely that they were led to believe by the Respondents that they would not get a license.

3. The relevant parts of Sections 61 and 72 of the Housing Act 2004 state the following:

*61 Requirement for HMOs to be licensed*

> *(1) Every HMO to which this Part applies must be licensed under this Part unless–*
> *(a) a temporary exemption notice is in force in relation to it under section 62, or*
>
> *(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.*

*72 Offences in relation to licensing of HMOs*

> *(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.*
>
> *.... (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–*
> *(a) for having control of or managing the house in the circumstances mentioned in subsection (1),...*

*The fire safety offence*

4. This relates to a visit carried out by officers of the Respondents on 8th March 2019 when it was noted that alarms were missing from the common parts and within the rooms. Further the external door to the Ground Floor Back Addition Room (a means of escape) could not be opened; lights were not working in the common parts and the staircase carpet was torn and frayed. The Appellants said they had a defence in that had a reasonable excuse namely that the occupiers had mistreated the premises, removed lights and alarms etc.

5. The 2006 Regulations state the following at reg 4.

*Duty of manager to take safety measures*

> *4.—(1) The manager must ensure that all means of escape from fire in the HMO are—*
>
> *(a) kept free from obstruction; and*
>
> .
>
> *(b) maintained in good order and repair.*
>
> *(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.*

*The property condition offence*

6. This relates to the same visit by officers to the premises on 8th March 2019 when the communal carpet was torn and frayed presenting a risk of falls. The hob in the kitchen it is alleged was heavily rusted and could not be kept clean. The oven was dirty and greasy, the kitchen had no working light and the back door could not be locked. The Appellant again alleges misuse by the tenants.

7. The 2006 Regulations state the following at reg. 7:

*Duty of manager to maintain common parts, fixtures, fittings and appliances*

*7.—(1) The manager must ensure that all common parts of the HMO are—*

*(a) maintained in good and clean decorative repair;*

.

*(b) maintained in a safe and working condition; and*

*(c) kept reasonably clear from obstruction.*

.

*(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—*

*(a) all handrails and banisters are at all times kept in good repair;*

.

*(b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;*

.

*(c) any stair coverings are safely fixed and kept in good repair;*

.

*(d) all windows and other means of ventilation within the common parts are kept in good repair;*

.

*(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and*

.

*(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.*

.

*(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.*

....

*Chronology of events*

8. The chronology of events is somewhat complex in this case. I intend to set out the undisputed facts in brief:

9. The premises were purchased by the Appellants on 18th March 2014 (page 43 of Respondents' bundle) as a three bedroom house. They were converted into an HMO with 6 rooms and a communal kitchen. On 6th February 2015 the Appellants were granted a certificate of lawful existing use (559 App).

10. In June 2017 there were complaints about the condition of the premises by two of the residents. The Respondents inspected on 12th June 2017 and did "Well Homes Assessments" (64-67 Res).

11. On 20th July 2017 Christopher Cooper of the Respondents sent a letter to the Appellants outlining the apparent contraventions of the HMO regulations (page 130 of the Respondents' bundle).He gave 8 weeks for the Appellants to address the contraventions. At the same time information was sought under Local Government (Misc Provisions) Act 1976s.16 (Page 132 Res). This information was provided by the Appellants on 2nd August 2017 (Page 138 Res).

12. There followed an inspection on 3rd August 2017 when it was alleged that three of the lettings did not meet the minimum space standards of the Essex Amenity Standards. The communal kitchen was not big enough and the lettings had work surfaces but no cooking facilities. It is fair to say that the size of the rooms in the premises is an issue of contention between the parties. The Appellants allege that the Respondents' measurements were wrong and rely on evidence from their own surveyor. This was not an issue that the Tribunal had to resolve.

13. On 22nd August 2017 Christopher Cooper sent a letter threatening to serve an Improvement Notice and Suspended Prohibition Orders on the Appellants. In a

schedule a number of individual hazards were outlined with the proposed remedy. A schedule of remedial works was also attached. On 20th September 2017 Mr Cooper sent an email to the Appellants expressing concern that the premises were still being advertised for re-let when the rooms were undersized and the premises did not have an adequate communal kitchen.

14. On 20th September 2017 Christopher Cooper served Suspended Prohibition Orders under s.20 HA 2004 in relation to rooms 1, 5 and 6 which were occupied and a Prohibition Order in relation to Room 2 which was not occupied (176 onwards Res). The notices required remedial works to be carried out including the removal of the partial kitchen facilities from each room and the creation of a communal kitchen suitable for 6 households of at least 9.3 sq m.

15. On 10th January 2018 the First Tier Tribunal refused permission to appeal its own decision to reject an appeal against the Prohibition Orders because the appeal was brought out of time (263 Res).

16. On 8th January 2018 the Prohibition Order in relation to Flat 2 was suspended until the tenant vacated (269 Res).

17. At some stage it is agreed between the parties that there was a conversation between Mr Sterlicht of the Appellants and an officer of the Respondents. Mr Sterlicht was told that in order for the Respondents to consider revoking the Prohibition Orders a properly sized communal kitchen would need to be built. This could either be by using Room 2 or by building an extension to the existing kitchen. In the event the Appellants chose the latter option and carried out the works extending the kitchen. On 18th May 2018 Mr Sterlicht wrote to the Respondents stating that the works were complete and requesting that the Prohibition Orders be revoked (612-A App). The Respondents say they did not receive this letter. It appears to be correctly addressed albeit it was not directed to the particular department. On a balance of probabilities the Tribunal finds that this letter was sent and received by the Respondents although it may not have reached the relevant officers through no fault of the Appellants. In the event no action was taken by the Respondents in response to this letter.

18. It is common ground that on 1st October 2018 the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221 introduced mandatory licensing of properties which included the premises itself. Accordingly from this point onwards the Appellants were legally compelled to obtain a license for the premises (see s.61(1) Housing Act 2004). Further if they did not obtain such a license they would be committing an offence (see HA 2004,s.72 (1)) unless they had a reasonable excuse for having control of or managing the house without a license (HA 2004,s.72(5)).

19. In the meantime the Appellants were having a planning dispute in relation to the kitchen extension they had carried out in an effort to comply with the Prohibition Order. On 3rd May 2018 the Respondents' planning department wrote to the Appellants notifying them that prior planning approval was refused because the premises were not a C3 dwelling house but were a C4 use class and therefore a full planning application was required (580 App).The Appellants appealed this decision under s.78 of the Town and Country Planning Act 1990 and after some delay the appeal was allowed on 13th February 2019 (592 App). Mr Sterlicht said in evidence that he understood that until the kitchen was extended an HMO license would not be granted and that he was given the option of applying for a Temporary Exemption Notice under s.62 Housing Act 2004. He didn't want to apply for such a notice because he didn't want to convert the premises back to a single residential unit. He also said that he wasn't advised to apply for a license on the basis that conditional permission may be given. The upshot of this was that he considered that the Appellants were in a *Catch 22* situation. Whilst the Respondent's planning department wrongly maintained a position that the kitchen extension was unlawful the Appellants could not move forward and apply for a license. It is right to say however that the Appellants continued to let the premises notwithstanding the fact that there was no license. Laura Bailey moved into the premises on 5th March 2019.

20. On 8th March 2019 two officers from the Respondents, Christopher Cooper and Karen Kingsnorth made an unannounced visit to the premises and witnessed several contraventions of the HMO regulations. They visited again on 11th March 2019 and took witness statements from the occupiers. On 14th March 2019 Christopher Cooper

wrote to Mr Sternlicht in the form of a Letter of Alleged Offence (278 Res). *Inter alia* the letter sent outlined a breach on the basis that no license application had been made and that there were various alleged breaches of the HMO regulations. Mr Sternlicht was invited to a PACE interview which he attended on 24th May 2019.

21. On 20th June 2019 the Respondents served Notice of Intent to Impose Financial Penalties on the basis of six alleged breaches (398 Res). The Appellants made representations in response (411 Res). Inter alia they stated that the prohibition orders and the planning issue had meant that the Appellants could not sub - let the premises to a housing association which would not require a license. The Appellants also stated that they had problems with tenants causing damage. The Respondents served Final notice of intent to impose a Financial Penalty on 9th August 2019. The alleged breaches had been streamlined to the license offence where there was a penalty of £17500 (415 Res); the fire Safety offence where there was a penalty of £12000 (424 Res) and the property condition offence where the penalty was £4000 (433 Res).

22. In the meantime the Appellants applied for an HMO License on 16th July 2019 through an organisation called Legal Property Solution (LPS) (356 onwards Res). In fact the Appellants had instructed LPS to apply for the license on the 7th April 2019. The reason for the delay in actually making the application is unclear.

23. The Appellants brought the current appeals on 6th September 2019 (507 onwards App).

24. On 14th November 2019 Christopher Cooper visited the premises and found a new tenant occupying flat 5 in breach of the prohibition order. He also found no working lights to the ground floor hallway. He noted that a communal kitchen of 11.05m sq had been provided. As a result of this visit the prohibition orders were revoked on 18th November 2019.

**The hearing**

25. Mordecai Sternlicht represented the Appellants and Mr Ham of Counsel represented the Respondents. Whilst Mr Sternlicht had been a Director the Appellants

company only since January 2020, most of the Respondents' dealings had been with him rather than his brother, Hersch Sternlicht. In any event no issue was taken as to Mordecai's standing in the proceedings.

26. Mr Ham was at pains to point out that the breach of the Penalty Notices which were being pursued as criminal proceedings were separate from the proceedings before the Tribunal. The Tribunal accepts this however at times the notices and their enforcement form part of the background to the appeals and it is for this reason that they are mentioned in the summary of events above.

27. Mr Sternlicht said that the Appellants had carried out works after they purchased the premises in 2014, including installing fire alarms. They had obtained permission to convert the building into an HMO. He said that Mr Cooper had informed him that the kitchen was too small to serve the HMO in 2017. He told Mr Cooper he would extend the kitchen. He said that the council's room measurements were incorrect. The rooms were bigger than alleged. He included some evidence from a firm called Great Plans whose room measurements differed from those of the Respondents in his bundle on page 627 onwards. In the event the room sizes were not relevant to the issue that the Tribunal had to decide.

28. Mr Sternlicht said that the kitchen had been enlarged and the Respondents notified of this in a letter in which he asked them to revoke the prohibition orders (612-A App). He said that he had spoken to Mr Ahmed an officer of the Respondent who told him that he could not apply for a license because there was no planning permission for the kitchen which in effect did not exist. It took over a year to win the planning appeal in March 2019 which confirmed that no permission was required. He said that he had been advised to apply for a temporary exemption notice but the Appellants had no intention to return the house to a single residential unit. Once the planning appeal was won the Appellants asked LPS to apply for a HMO license. He could not explain why there had been a delay in this application being made by LPS. The Respondents' officers said that a fee had been requested in relation to the application on 8th January 2020. The parties were unclear whether the fee had been paid prior to the hearing. In any event to all intents and purposes the application had been made in July 2019. Mr Cooper said there was a backlog of inspections and that

this explained the delay in processing the application. It was accepted that the delay was not caused by the Appellants.

29. In summary Mr Sternlicht said that there should be no penalty for the failure to license the premises between October 2018 and July 2019. The Appellants had been caught in a Catch 22 situation. If the Respondents had properly interpreted the planning rules they would have recognised that the new kitchen was lawful and the Appellants could have applied for an HMO license at an earlier stage.

30. In relation to the other financial penalties Mr Sternlicht arguments were clear and concise. The tenants housed by the Appellants, (sometimes on behalf of the Respondents) were needy and had issues which occasionally caused them to cause damage. One tenant had been evicted from Flat 4 after starting a fire. The rear door to room 3 had been damaged following a fight. The fire alarms had been checked in 2017. He also said that the tenants took bulbs from the communal lights and took them into their own rooms. He said that the carpets had been brand new in 2014. The stair carpet had been replaced on several occasions.

31. Mr Sternlicht made reference to a witness statement by Tracey Ann Levett supporting his account of tenant damage ( 613A App). Ms Levett was not in attendance so the Tribunal was unable to give much weight to this evidence. Nevertheless the Tribunal accepts that the residents living at the premises have been high maintenance.

32. Mr Sterlicht made reference to the pictures of a rusted cooker hob at 347-348 Res. He said that this was a picture of old food and not rust. He said the hob was only 12 months old. He did not accept that the cooker featured in a 2017 photograph (117 Res) was the same as the one in the recent photos at 347-348 Res. He maintained that the oven was immaculate despite the photo at page 344 Res. He said that the kitchen had no working light because it had been removed by a tenant. He said that there should be no penalty for the alleged breaches of the HMO regulations.

33. Mr Ham referred the Tribunal first to the failure to license. The relevant period was October 2018 - July 2019. There was no valid application lodged until July 2019. He said that the planning and licensing regimes were separate. The Respondents

actions in relation to the planning permission had no relevance in law to the Appellants' failure to license. A landlord is required to license and comply with planning. The planning issue did not provide a reasonable excuse to carry on with unlawful conduct. There should not have been an HMO operating without a license. He said there may be mitigation but there was no defence. He said that the Appellants could have lost one room and provided a communal kitchen of adequate size.

34. Mr Ham stated that in his PACE interview Mr Sternlicht had accepted that the appellants held other HMO licenses. He was fully aware of the need to license.

35. In relation to the Fire Safety and Property Condition offences Mr Ham said that these arose out of an inadequate inspection regime by the Appellants. The fact that they had a challenging client base merely strengthened the need for regular inspections. The license application showed that the last electrical inspection had taken place nearly two years earlier.

36. In his evidence Christopher Cooper said that he had followed the statement of principles (461 Res) when setting the tariff for each of the breaches. He looked at culpability and the level of harm or potential harm. The fine was agreed with other members of the team. He said that the Appellants had a poor track record of management. He said deterring the offender was the most important factor. He referred to his calculations at page 378 Res onwards. He accepted that there had not been deliberate concealment by the Appellants neither had there been obstruction of justice. He also accepted that there had been no previous convictions. He altered his on page 381 from a high ranking to a high middle ranking. He said that there had been insufficient financial figures provided by the Appellants although there was no real evidence that the Appellants had been asked to provide these figures. He conceded that the penalty for the license offence should be lower than the £17500 claimed.

37. Following questioning Mr Cooper accepted that the fire safety and property condition offences were also pitched too high in relation to penalty.

38. In response Mr Sternlicht did not accept the Respondents' account of inadequate maintenance or inspection by the Appellants. He said that one of his builders had been

to the premises on sixteen separate occasions. He repeated his account that Mr Ahmed had told him he could not have a license because the kitchen did not exist in law. He was required to take it down. Mr Cooper in response to this said that the Respondents would not advise anyone that they could not apply for a license.

39. Finally Mr Ham said that it was not the Respondents' position that the Appellants were unfit to manage the property. The Respondents wanted the premises licensed. The breaches were not serious enough for criminal prosecution. The onus was on the landlord to ensure licenses are in place.

## Decisions

*The license offence*

40. The Tribunal does not accept Mr Ham's general proposition that planning restrictions could not provide a reasonable excuse for failing to license an HMO. There is no such restriction in s.72 (5) HA 2004 and Mr Ham failed to produce any authority supporting his proposition.

41. Once the defendant has raised a defence, it is for the prosecution to show that the excuse was not reasonable to the criminal burden of proof: *Westminster City Council v Mavroghenis* [1983] 11 H.L.R. 56 DC; *Polychronakis v Richards & Jerrom Ltd* [1998] Env.L.R.346; *Roland v Thorpe* [1970] 3 All E.R. 195 DC.

42. The real question for the Tribunal is whether a landlord had a reasonable excuse for not applying for a license if he was told or led to believe by the council that such an application was a waste of time in light of its own planning decision which was in fact unlawful?

43. This question breaks down into several sub - questions:

> First the general principle - i.e. would the scenario as outlined represent a reasonable excuse?

If yes were the Appellants and more specifically Mr Sternlicht told or led to believe that the application was a waste of time?

If yes was it reasonable for the Appellants to fail to apply for a license as a result of this?

*Question 1 - the general principle*

44. We consider that a landlord who did not apply for a license because he was told or led to believe by the council that such an application was a waste of time in light of its own planning decision which was in fact unlawful would have a reasonable excuse for his failure to license. The council is the licensing authority. In this scenario it is also the planning authority. If those controlling licensing were aware of the planning situation and led the landlord to believe that an application was entirely contingent on the removal of a planning barrier (which should not have been imposed in the first place) this would represent a reasonable excuse for a failure to apply.

*Question 2 - was Mr Sternlicht told or led to believe that the application was a waste of time?*

45. Mr Sternlicht has retained a consistent position in relation to this question. In his appeal notice (at 511 App) he stated - *council refused wrongly to allow license. License would not be granted according to the council*. In his statement (at 561 App) he states: *The strong council opinion was all along that this unit is not permitted to operate as an HMO while the communal kitchen is undersized. Given the fact the council refused permission on the back extension which included the enlarged communal kitchen, they rightly argued that an HMO license would not be possible to obtain, hence why we could not ask for an HMO license either.*

46. Mr Sternlicht also maintained that the Respondents had advised him to apply for temporary exemption under s.62 Housing Act 2004. He didn't want to apply for such a notice because he didn't want to convert the premises back to a single residential unit. The fact that he was given this advice rather than simply to apply for a license indicates that the council were aware of the difficulties that faced any such application.

47. Finally in his oral evidence Mr Sternlicht made it clear that he was told by an officer of the Respondent, Mr Ahmed that that he could not apply for a license because there was no planning permission for the kitchen. Mr Cooper said that an officer would never advise someone not to apply for a license however pitched against Mr Sternlicht's clear and compelling evidence such a general statement carries less weight.

48. The Tribunal finds that Mr Sternlicht was told or led to believe that the application for a license was a waste of time because of the planning barrier.

*Was it reasonable for the Appellants to fail to apply for a license as a result of this?*

49. The Tribunal considers that in the circumstances it was reasonable for the Appellants to fail to apply for a license. The Appellants were open in their dealings with the Respondents. As conceded by Mr Cooper there was no deliberate concealment by the Appellants. They were actively seeking to formalise the premises as an HMO and the Respondents were aware of this. One of the steps the Appellants had to take was to remove the planning barrier which had been wrongly imposed. Mr Sternlicht was led to believe that this had to be done before any application could be made. In these circumstances the conduct of the Appellants was reasonable. In hindsight it could be said that the Appellants should have made the application in any event but this was not the advice they were given.

50. Mr Ham said that the planning issue was not a reasonable excuse and that the Appellants should have evicted enough tenants to rectify the issue. If this were a case in which a landlord was deliberately continuing to operate an HMO without making any efforts to formalise the position legally such a draconian approach could be justified but that was not the case here.

51. It could also be argued that the Appellants should have simply used a vacant flat (flat 2) to provide the communal kitchen and remove the extension. The problem here is that the extension was completed at an early stage and the Tribunal have found that the Respondents were informed of this. The Appellants were entitled to use this

method of tackling the problem indeed both alternatives had been discussed as a solution with the Respondents. Mr Sternlicht was candid in his evidence - it was a financial decision - the Appellants wanted to retain as many rooms as possible. In the circumstances this approach cannot be criticised.

52. In summary the Tribunal finds that the Appellants had a reasonable excuse for having control of the premises without a license for the relevant period (October 2018 - July 2019). The appeal in relation to the license offence succeeds and the Final Notice dated 9th August 2019 (pages 415-419 Res) is cancelled.

*The fire safety offence*

53. As indicated above this relates to a visit carried out by officers of the Respondents on 8th March 2019 to the premises when it was noted that alarms were missing from the common parts and within the rooms. Further the external door to the Ground Floor Back Addition Room (a means of escape) could not be opened; lights were not working in the common parts and the staircase carpet was torn and frayed.

54. Mr Sternlicht argued that he had a defence in that he had a reasonable excuse namely that the occupiers had mistreated the premises, removed lights and alarms etc. S.234(4) states that in proceedings against a person for an offence under subsection (3) (failure to comply with a regulation) it is a defence that he had a reasonable excuse for not complying with the regulation. The relevant parts of Regulation 4 of the 2006 regulations are set out at paragraph 5 above.

55. It is plain that when the officers visited the premises there was evidence of a lack of management in a number of respects. The Tribunal considers that Mr Ham was correct when he stated that the Appellants knew that they had a vulnerable and challenging client group (indeed this was a central submission made by Mr Sternlicht), accordingly they should have ensured that there was more intensive management. Fire safety is paramount in houses in multiple occupation. This is a given. If a spot visit reveals defects in basic fire safety this suggests that there is a lack of proper maintenance. Tenants are put at risk and the landlord must face the consequences of

this. This offence is made out beyond reasonable doubt and a penalty should be imposed.

56. Mr Cooper accepted in evidence that the financial penalty should be reduced in the circumstances although he was unable to provide an alternative figure. The Tribunal intends to consider this matter afresh applying the Respondent's own policy checklist. The range of available penalties in relation to offences of failure to comply with HMO regulations is £1550 to £30000.

57. Applying the checklist:

a) *The landlord's culpability*

58. The Tribunal considers this was a medium category offence - the offence was committed through an omission - namely the failure to exercise reasonable care as indicated above.

*b) Harm*

59. The Tribunal considers that there was a high likelihood of harm. The fire safety measures required, particularly in relation to the means of escape were basic. In the context of an HMO the deficiencies could have catastrophic consequences.

c) *Statutory aggravating factors*

60. The Appellants had no previous convictions, neither was there evidence of a motivation by financial gain, deliberate concealment, wider community impact, obstruction of justice, refusal of free advice of training or member of accreditation /rental standard scheme. The Tribunal does however consider that there is some record of providing substandard accommodation and poor management. The Respondents had been involved with this property since at least 2017 following complaints about their condition by tenants.

*d) Starting points and ranges*

61. As indicated above the Tribunal considers that the landlord's culpability is medium and it should be set at a middle range.

*e) Mitigation*

62. The Appellants have no previous convictions; had taken some steps to resolve the problem and had cooperated with the investigation. These are all mitigating factors. In addition the Tribunal considers that Mr Sternlicht was a genuine character who was seeking to resolve issues with the Respondents. In light of the mitigation the Tribunal reduces the range to a Medium- Low range.

63. Doing the best it can the Tribunal considers that the penalty should be £6000.

*The property condition offence*

64. As indicated above this relates to the same visit by officers to the premises on 8th March 2019 when the communal carpet was torn and frayed presenting a risk of falls. The hob in the kitchen it is alleged was heavily rusted and could not be kept clean. The oven was dirty and greasy, the kitchen had no working light and the back door could not be locked.

65. Mr Sternlicht argued that he had a defence in that had a reasonable excuse namely that the occupiers had mistreated the premises. He also sought to argue that the premises were in fact in an immaculate condition and that the cooker was new and where it is alleged there is rust it was in fact food. There are clear photographs of the cooker taken in March 2019 in which the cooker looks very similar to the one in the photographs taken in 2017. Of perhaps more concern is the condition of the stair carpet (photograph at 339 Res). The relevant parts of Regulation 7 of the 2006 regulations are set out at paragraph 7 above in particular it is notable that the manager is required to ensure that *any stair coverings are safely fixed and kept in good repair*.

66. The Tribunal considers that liability for the offence is made out. Mr Cooper again accepted in evidence that the financial penalty should be reduced in the circumstances

although he was unable to provide an alternative figure. As indicated above the range of available penalties in relation to offences of failure to comply with HMO regulations is £1550 to £30000.

67. Applying the checklist many of the criteria are the same in this offence save that some of the risk of fire safety defects are removed. The Tribunal's overall impression was that this was a heavily used HMO which had got into a shabby condition due to a lack of maintenance. It was by no means a serious breach however:

a) *The landlord's culpability*

68. The Tribunal considers this was a low category because the failings were minor save for the stair carpet.

*b) Harm*

69. There was a low risk of harm - the stair carpet being of most concern. The defects could be dealt with through minor maintenance and cleaning.

c) *Statutory aggravating factors*

70. The Appellants had no previous convictions, neither was there evidence of a motivation by financial gain, deliberate concealment, wider community impact, obstruction of justice, refusal of free advice of training or member of accreditation /rental standard scheme. The Tribunal does however consider that there is some record of providing substandard accommodation and poor management. The Respondents had been involved with this property since at least 2017 following complaints about their condition by tenants.

*d) Starting points and ranges*

71. As indicated above the Tribunal considers that the landlord's culpability is low and it should be set at a low - starting point range.

*e) Mitigation*

72. The Appellants have no previous convictions; had taken some steps to resolve the problem and had cooperated with the investigation. These are all mitigating factors. In addition the Tribunal considers that Mr Sternlicht was a genuine character who was seeking to resolve issues with the Respondents. In light of the mitigation the Tribunal reduces range to low - starting point.

73. Doing the best it can the Tribunal considers that the penalty should be £1500.

**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).

**Judge Shepherd**

**18 February 2020**