FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FK/HNA/2019/0032**
HMCTS Code	**:**	**V:SKYPEREMOTE**
Subject Property	**:**	**20 Sudbury Street Derby DE1 1LU**
Applicants	**:**	**(1) Joseph Leonard Killeen (2) Christine Evelina Killeen**
Respondent	**:**	**Derby City Council**
Type of Application	**:**	**Appeal under paragraph 10 of Schedule 13A to the Housing Act 2004 against a financial penalty imposed by the Respondent.**
Date of Hearing	**:**	**30 June 2020**
Tribunal Members	**:**	**Deputy Regional Judge Nigel Gravells Mr Robert Chumley-Roberts MCIEH, JP**
Date of Decision	**:**	**7 July 2020**

DECISION

Introduction

1 This is a decision on an appeal made by Mr Joseph Leonard Killeen and Mrs Christine Evelina Killeen ('the Applicants') against the decision of Derby City Council ('the Respondent') to impose a financial penalty under section 249A of the Housing Act 2004 ('the 2004 Act') in respect of 20 Sudbury Street, Derby DE1 1LU ('the subject property').

2 The Applicants are the freehold owners of the subject property.

3 On 21 August 2019, pursuant to paragraph 1 of Schedule 13A to the 2004 Act, the Respondent served separate notices of intent to impose a financial penalty on the Applicants. Each of the notices stated –

(i) that the Respondent was satisfied beyond reasonable doubt that the Applicant was at the relevant time a person having control of premises (the subject property) which were required to be licensed as a house in multiple occupation ('HMO') but which were not so licensed, which is an offence under section 72(1) of the 2004 Act;

(ii) that the Respondent proposed to impose a financial penalty of £5,500 (although it was later confirmed that £5,500 was the total penalty imposed on both Applicants jointly);

(iii) that the Applicant was entitled to make representations about the proposed financial penalty within the period of 28 days.

4 On 13 September 2019 the Applicants wrote jointly to the Respondent with representations. Following a review of those representations by Ms Adrienne Mainwaring, Housing Standards Intelligence Officer for Derby City Council, and Ms Syma Akhtar, the Derby City Council Solicitor, the Respondent concluded that they provided no mitigation and confirmed the decision to impose the financial penalty.

5 On 30 September 2019 the Respondent served on the Applicants final notices to impose the financial penalty of £5,500, as proposed in the notices of intent.

6 On 14 November 2019 the Applicants appealed against the financial penalty to the First-tier Tribunal. The appeals were received after the default 28-day time limit set out in rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'); but, following representations from both parties, on 21 November 2019 the Tribunal exercised its power under rule 6(3)(a) of the 2013 Rules and extended the time limit and accepted the appeals.

7 On 21 November 2019 the Tribunal issued Directions.

Inspection and hearing

8 Owing to the restrictions imposed during the Covid-19 pandemic, the Tribunal did not inspect the subject property. However, the Applicants provided photographs of the property.

9 Following various delays, largely as a result of the pandemic, the hearing took place on 30 June 2020. The hearing took place by remote video conferencing (Skype). Participating in the hearing were Mr Killeen, representing both himself and Mrs Killeen; and Ms Akhtar and Ms Mainwaring, representing the Respondent.

Statutory framework

10 Section 55 of the 2004 Act provides (so far as material) –

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO

...

11 Paragraph 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 ('the 2018 Order') provides -

(4) An HMO is of a prescribed description for the purpose of section 55(2)(a) of the [2004] Act if it—

(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate households; and
(c) meets—
(i) the standard test under section 254(2) of the Act;
(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
(iii) the converted building test under section 254(4) of the Act.

12 Section 254(2) of the 2004 Act provides (so far as material) –

(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.

13 Section 61(1) of the 2004 Act provides –

(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.

14 Section 72 of the 2004 Act provides (so far as material) –

(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.

...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).

(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), or

…

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

…

15 Section 249A of the 2004 Act provides –

(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.

16 Paragraphs 1 to 10 of Schedule 13A to the 2004 Act provide –

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 no tice.

(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.

Representations of the parties

Background

17 The Respondent outlined the background to its decision to impose the financial penalty on the Applicants.

18 In February 2019, as part of pro-active checks, the Respondent started an investigation into the licence-status of the subject property. The procedure involved visits to the property, statements from tenants of the property, a Land Registry search, a HMO licence search, the issue of notices under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and interviews of the Applicants under the Police and Criminal Evidence Act 1984.

19 As a result of its investigation the Respondent concluded –

(i) That the Applicants were at all material time the freehold owners of the subject property.

(ii) That since 1 October 2018, following the coming into force of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 ('the 2018 Order'), Part 2 of the Housing Act 2004 has required all properties occupied by five or more persons who form two or more households to be licensed as HMOs.

(iii) That from 1 October 2018 to 31 March 2019 the subject property was occupied by five persons under assured shorthold tenancies and that those five persons formed more than one household.

(iv) That from 1 October 2018 to 31 March 2019 the subject property was therefore required to be licensed as a HMO but was not so licensed

(v) That the rent under the tenancy agreements was paid directly into the Applicants' joint bank account.

(vi) That the Applicants were at the relevant time the persons having control of premises (the subject property) which were required to be licensed as a HMO but which were not so licensed.

(vii) That the Applicants had committed an offence under section 72(1) of the 2004 Act.

20 On 30 September 2019, following a review of the case, the Respondent decided that enforcement action by way of financial penalty pursuant to section 249A of the 2004 Act was the most appropriate course of action.

21 That decision was made in accordance with the policies and guidance set out in Derby City Council's 'Civil Penalties as an Alternative to Prosecution under the Housing and Planning Act 2016' ('the Derby Guidance'), which is based on 'Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities', issued by the Ministry of Housing, Communities and Local Government ('the Government Guidance'), together with Derby City Council's 'Corporate Prosecution Policy' and 'Communities, Environmental and Regulatory Services Enforcement Policy'.

22 The Derby Guidance and the Government Guidance also provide guidance as to the calculation of the amount of the financial penalty. Local housing authorities should consider the severity of the offence, the culpability and track record of the offender, the harm caused to the tenants, punishment of the offender, deterrence of the offender from repeating the offence and others from committing similar offences and the removal of any financial benefit that the offender may have obtained as a result of committing the offence.

23 First, the Respondent determined the starting point for the financial penalty. For most relevant housing offences listed in section 249A(2), the starting penalty is determined by reference to the factors of culpability and the risk and seriousness of harm to the occupants of the subject property. However, in relation to a failure to obtain a HMO licence, the starting point is determined simply by reference to the culpability factor. The Respondent assessed the culpability of the Applicants as negligent (higher than no/low culpability and lower than reckless or deliberate). According to the penalty matrix set out in the Derby Guidance, the starting penalty in such a case was £7,500.

24 Second, the Respondent considered whether there were any aggravating factors that might justify an increase in the starting penalty or any mitigating factors that might justify a reduction. The Respondent identified four mitigating factors – no relevant (housing-related) previous convictions, no history of penalty charge notices, evidence of immediate steps to apply for an HMO licence and no history of obstruction of housing officers – and it applied a reduction of £500 in respect of each factor.

25 Finally, the Respondent considered (i) whether the resultant sum of £5,500 met, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain through the commission of the offences and (ii) whether any further adjustment should be made to take account of the costs incurred by the Respondent in investigating the licence-status of the subject property and the known financial circumstances of the Applicants; but the Respondent concluded that no adjustments were appropriate.

26 The final penalty amount was confirmed at £5,500, which was the penalty proposed in the notice of intent (see paragraph 3 above) and imposed by the penalty notice (see paragraph 5 above).

Representations of the Respondent

27 The Respondent argued –

(i) That it was established beyond reasonable doubt that at the relevant time the Applicants were persons in control of the subject property and that, since the subject property was required to be licensed as a HMO but was not so licensed, the Applicants had committed an offence under section 72(1) of the 2004 Act, which is a 'relevant housing offence' within the meaning of section 249A of the 2004 Act.

(ii) That the Respondent had complied with the procedural requirements relating to the interviews under the Police and Criminal Evidence Act 1984 and with the requirements relating to the imposition of financial penalties, set out in paragraphs 1-8 of Schedule 13A to the 2004 Act.

(iii) That the financial penalty imposed was determined in accordance with the principles set out in the Government Guidance and the Derby Guidance; and that it was set at a reasonable and appropriate level.

Representations of the Applicants

28 Although the Applicants stated that they had no knowledge of the changes to the HMO licence requirements that came into force on 1 October 2018, as a result of which the subject property became a licensable HMO, they did not deny that they had committed an offence under section 72(1) of the 2004 Act in that at the relevant time they were persons having control of the subject property, which was required to be licensed as a HMO but was not so licensed.

29 The Applicants did not argue that the Respondent had failed to comply with the statutory procedural requirements relating to the interviews and the imposition of a financial penalty under the 2004 Act.

30 However, the Applicants did seek to argue that the imposition of a financial penalty was unreasonable. In summary, they argued -

(i) that, since the financial penalty regime was introduced by the Housing and Planning Act 2016 to 'clamp down on rogue landlords', it was a 'misuse of the Act' for local housing authorities to 'raise substantial sums by penalising honest landlords who, occasionally, inadvertently make a minor transgression'; and that the appropriate response would have been a caution;

(ii) that the Respondent had shown no concerns about the condition of the subject property or the welfare of the tenants;

(iii) that the Respondent had wrongly categorised their culpability as negligent.

31 These arguments are elaborated in more detail in the following paragraphs.

Discussion

Preliminary

32 The Tribunal determined the three issues correctly identified by the Respondent in its representations set out in paragraph 27 above –

(i) whether the Tribunal is satisfied beyond reasonable doubt that the Applicants committed a 'relevant housing offence' within the meaning of section 249A of the 2004 Act;

(ii) whether the Respondent complied with the procedural requirements relating to the interviews and those relating to the imposition of a financial penalty set out in paragraphs 1-8 of Schedule 13A to the 2004 Act; and

(iii) whether the financial penalty imposed was determined in accordance with the principles set out in the Government Guidance and the Derby City Council Guidance; and whether it was set at a reasonable and appropriate level.

33 In determining those three issues, the Tribunal took account of all relevant written and oral representations of the parties.

34 Moreover, the Tribunal was mindful of two recent decisions of the Upper Tribunal.

35 In *Waltham Forest LBC v Marshall and Ustek* [2020] UKUT 0035 (LC) the Tribunal examined at some length the approach to be taken by tribunals on appeals against financial penalties imposed by local housing authorities under section 249A of the 2004 Act. Judge Cooke appears to have identified the following principles –

(i) The First-tier Tribunal is not the place to challenge the policy about financial penalties.

(ii) In applying its financial penalty policy, the local housing authority must not fetter its discretion: it must not apply the policy so rigidly as to reject the possibility of departing from the policy.

(iii) The Tribunal can and should give proper consideration to arguments that it should depart from the policy. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed.

(iv) As an appeal under paragraph 10 of Schedule 13A to the 2004 Act is by way of re-hearing the Tribunal must make its own decision. However, in doing so, however, it must afford the local authority's decision particular weight, described variously by Judge Cooke as 'special weight', 'considerable weight' and 'great respect'. If, having heard evidence, it disagrees with the decision, it may vary it.

36 These principles were endorsed and applied in *Sutton v Norwich City Council* [2020] UKUT 0090 (LC), where the Upper Tribunal disagreed with the Respondent's assessment of the Applicant's culpability.

Relevant housing offence

37 As indicated, the Applicants did not deny that they had committed a 'relevant housing offence' for the purposes of section 249A of the 2004 Act; and the Tribunal is satisfied beyond reasonable doubt that they had done so.

38 In summary -

(i) Since 1 October 2018, following the coming into force of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 ('the 2018 Order'), Part 2 of the Housing Act 2004 has required all properties occupied by five or more persons who form two or more households to be licensed as HMOs.

(ii) From 1 October 2018 to 31 March 2019 the subject property was occupied by five persons under assured shorthold tenancies and those five persons formed more than one household.

(iii) From 1 October 2018 to 31 March 2019 the subject property was therefore required to be licensed as a HMO but was not so licensed

(iv) The rent under the tenancy agreements was paid directly into the Applicants' joint bank account.

(v) The Applicants were at the relevant time in receipt of the rack rent of the subject property and were therefore the persons having control of the property within the meaning of section 263(1) of the 2004 Act.

(vi) The Applicants had committed an offence under section 72(1) of the 2004 Act, which is a relevant housing offence within the meaning of section 249A of the 2004 Act.

Procedural requirements

39 The Applicants did not argue that the Respondent had failed to comply with the statutory procedural requirements relating to the interviews and the imposition of a financial penalty under the 2004 Act; and the Tribunal is satisfied that the Respondent did so comply.

40 In summary –

(i) The Respondent followed the required procedures for the investigation of the licence-status of the subject property.

(ii) The Respondent followed the required procedures for the interviews of the Applicants under the Police and Criminal Evidence Act 1984.

(iii) The Respondent complied with the substantive and procedural requirements relating to the notice of intent and final notice set out in paragraphs 1 to 8 of Schedule 13A to the 2004 Act.

Imposition of a financial penalty

41 Ms Mainwaring, Housing Standards Intelligence Officer for Derby City Council, was questioned at some length about the Respondent's response to the Applicants' failure to obtain a HMO licence for the subject property. Although the full range of responses (no action, caution, financial penalty, prosecution) was considered, the first two responses were ruled out for two reasons. First, the offence is considered to be a very serious offence because failure to apply for a HMO licence prevents the local housing authority from keeping under control properties which by their very nature pose increased risks to the health and safety of the occupants. (This is reflected in the separate penalty matrix for the offence in the Derby Guidance.) Second, the Applicants are experienced landlords: they have been letting residential property for more than 20 years and currently own or manage four such properties. In those circumstances, she argued that the decision to take enforcement action against the Applicants was appropriate and could not be regarded as a 'misuse of the Act'.

42 Ms Mainwaring further argued that the decision to impose a financial penalty on the Applicants (rather than prosecution) was properly made on the basis of the published guidelines. The Applicants had no track record of any non-compliance with landlord obligations and, when alerted to the fact that the subject property was a licensable HMO, they responded promptly by

applying for a licence; the public interest would be better served by the imposition of a financial penalty rather than by prosecution; and the evidence and the decision had been reviewed by the appropriate senior colleague and by the Respondent's legal services.

43 The Tribunal, applying the principles identified in *Waltham Forest LBC v Marshall and Ustek*, determines that the decision of the Respondent to take enforcement action against the Applicants by way of the imposition of a financial penalty reflected the proper application of the policy and guidance of the Derby Guidance and Government Guidance; and that the arguments of the Applicants did not justify a departure from that policy.

44 Finally, the Tribunal determines that the Applicant's argument that the Respondent had shown no concerns about the condition of the subject property or the welfare of the tenants has no direct relevance to the failure to license a licensable HMO. While the purpose behind mandatory licensing is to ensure so far as possible that higher occupancy HMOs are not overcrowded and do not pose risks to the health or safety of occupiers, that purpose can only be efficiently and effectively achieved if all relevant HMOs and their landlords go through the licensing procedure. Indeed, the Tribunal notes that, when the Applicants applied for an HMO licence for the subject property, the subsequent inspection of the property identified a not insignificant list of category 2 hazards relating to fire, falling on stairs, electrical, food safety and collision and entrapment.

Level of the penalty

45 The methodology adopted by the Respondent for calculating the penalty amount is set out in paragraphs 22 to 26 above.

46 The starting point on the penalty matrix applicable to the offence under section 72(1) of the 2004 Act reflected the Respondent's assessment of the Applicants' culpability as negligent.

47 The Applicants questioned that assessment. They argued that throughout their careers as landlords they had looked after their properties and their tenants. However, that is not the issue in this case. The issue is whether they were negligent in failing to license the subject property. Their only argument on that issue was that they were not aware of the change in the scope of mandatory HMO licensing introduced by the 2018 Order and that they were abroad at the time that the Order came into force.

48 The Tribunal is not persuaded by that argument –

(i) Although the Applicants disputed being labelled as 'professional' landlords, they have been letting residential property for more than 20 years and currently own or manage four such properties.

(ii) The Applicants were conversant with the HMO licensing regime and admitted that they had consciously avoided letting HMOs with three or more storeys precisely because they would require to be licensed under Part 2 of the 2004 Act.

(iii) Although the 2018 Order only came into force on 1 October 2018, the Order was published in February 2018, the extension of the scope of HMO licensing had been flagged as long ago as May 2015 and it had been the subject of widespread consultation in the intervening years.

(iv) Although not members of the Residential Landlords Association at the time, the Applicants admitted that they received emails from the

Association. Although the Tribunal has not seen any of those emails, it is unlikely that such emails did not refer to the (proposed) changes (to be) brought about by the 2018 Order; but the Applicants admitted that they did not take much notice of emails from the Association.

(v) Moreover, prior to the coming into force of the new regime the changes were widely publicised in the national and local media; and the Respondent had carried out a multi-faceted awareness campaign.

49 In the circumstances, the Tribunal has no hesitation in finding that the failure of the Applicants to keep up to date with the changes to the HMO licensing regime - and the consequent failure to license the subject property - amounted to negligence.

50 As noted, according to the Derby Guidance the starting penalty for negligent failure to license a licensable HMO is £7,500. However, the Respondent deducted from that figure £500 for each of four mitigating factors, resulting in a final figure of £5,500.

51 The Applicants questioned why there had been no further reduction for good character and/or exemplary conduct, which is listed as a mitigating factor in the Derby Guidance. Since these proceedings are (quasi-) criminal proceedings, it would be normal practice to give weight to the Applicants' lack of any criminal record. The Respondent accepted that a further reduction would be appropriate and the Tribunal determines that a further reduction of £500 should be applied.

52 The Tribunal is satisfied that the resultant figure of £5,000 meets in a fair and proportionate way the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence.

53 The Tribunal noted the assumption in the Derby Guidance that the Applicants are able to pay the penalty unless they can demonstrate otherwise. Although the Applicants drew attention to the outgoings on the subject property, they did not seek to argue an inability to pay the penalty imposed.

Decision

54 The Tribunal therefore varies the final penalty notices by substituting the figure £5,000 as the total penalty payable jointly by the Applicants.

Appeal

55 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below, stating the grounds on which that party intends to rely in the appeal and the result that that party is seeking.

7 July 2020

Professor Nigel P Gravells
Deputy Regional Judge